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COMPLETE TEXAS STATUTES

EMBRACING

THE REVISED STATUTES 1911 AND THE REVISED CRIMINAL STATUTES 1911

THE STATUTES OF GENERAL OPERATION, ENACTED SUBSEQUENT TO THE REVISIONS OF 1911, AT THE REGULAR AND SPECIAL SESSIONS OF THE 32D, 33D, 34TH, 35TH, AND 36TH LEGISLATURES

AND STATUTES ENACTED PRIOR TO 1911 AND OMITTED FROM THE REVISED CRIMINAL STATUTES 1911

WITH HISTORICAL NOTES
AND CITATIONS OF LEADING CASES AFFECTING THE MORE GENERALLY USED STATUTES

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PREFACE

THE publishers of Vernon's McIlwaine's Pocket Digest of Texas Laws present in a single volume all laws of a general nature now in force in Texas. The new book bears the designation COMPLETE TEXAS STATUTES. In response to a large demand from the bench and the bar of Texas, the policy heretofore pursued by the publishers in the former editions, of selecting only those laws which most vitally concerned the practicing lawyer and those which he would most likely desire to refer to in the courtroom, has been abandoned, and all general laws, which were omitted from the former editions and which are still in force, have been gathered together and inserted in this volume. The laws have been classified and compiled on the plan of the Revised Civil and Criminal Statutes of 1911, and according to the arrangement and article numbering of Vernon's Annotated Statutes, Civil and Criminal. Thus in a single compact volume is presented the entire existing general statute law of the state, down to and including the regular and the first and second called sessions of the Thirty-Sixth Legislature.

The work has been done by the same editorial staff which prepared Vernon's Annotated Statutes.

The errors and omissions in the Revised Penal Code and Revised Code of Criminal Procedure of 1911, which were corrected in Vernon's Criminal Statutes Annotated of 1916, have been noted, and the corrections carried into this edition. The character and extent of those corrections are described at length in the preface to Vernon's Criminal Statutes of 1916.

The citations of Texas decisions and of Texas books on local law and practice, which were inserted in the Pocket Edition of 1912, have been carried into this edition, with continuations to and including 208 Southwestern Reporter, and including the new editions of the law and practice books. It is not claimed that these citations constitute a complete annotation of the statute text under which they appear, but it is believed that, as far as they go, they include the leading cases directly construing and applying the statutes. Inasmuch as the article numbers in the present edition correspond exactly with the article numbers in Vernon's Annotated Statutes, Civil and Criminal, the reader who desires to obtain the complete annotations can do so readily by turning to the corresponding number in Vernon's Annotated Statutes.

A separate complete index has been made for each branch of the statute law. A table of statutes enacted since the revision of 1911 will be found immediately preceding each index.

The large number of letters received from attorneys, asking that omitted statutes be included, and the hundreds of requests for a new edition of this popular work, make the publishers feel and hope that the COMPLETE TEXAS STATUTES will be the most serviceable edition of this work yet published.

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CONSTITUTION OF THE UNITED STATES—1787*

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

ARTICLE I

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

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

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

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

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

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

[5] The House of Representatives shall chuse

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

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

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

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

their Speaker and other Officers; and shall have the sole Power of Impeachment.

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

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

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

See note to preceding paragraph of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[3] Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on

a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

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

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

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

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

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

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

[7] To establish Post Offices and post Roads;

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

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

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

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

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

[13] To provide and maintain a Navy;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE II

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

[2] Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number

of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE III

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

Section. 2. 1 The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which

shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between citizens of different States,—between citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

2 In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

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

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

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

ARTICLE IV

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

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

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

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

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

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

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

ARTICLE V

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

ARTICLE VI

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

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

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

ARTICLE VII

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

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

[ARTICLE I]*

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

[ARTICLE II]

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

[ARTICLE III]

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

[ARTICLE IV]

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

[ARTICLE V]

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

[ARTICLE VI]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

[ARTICLE VII]

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

[ARTICLE VIII]

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

[ARTICLE IX]

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

[ARTICLE X]

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

[ARTICLE XI]

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

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

[ARTICLE XII]

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not ex-

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

ceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

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

[ARTICLE XIII]

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

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

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

[ARTICLE XIV]

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

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

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

The disability created by this section was removed by Act June 6, 1898, c. 389, 30 Stat. 432, post, § 3219.

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

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

The fourteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Thirty-ninth Congress, on the 16th of June, 1866. On the 21st of July, 1868, Congress adopted and transmitted to the Department of State a concurrent resolution, declaring that "the legislatures of the States of Connecticut, Tennessee, New Jersey, Oregon, Vermont, New York, Ohio, Illinois, West Virginia, Kansas, Maine, Nevada, Missouri, Indiana, Minnesota, New Hampshire, Massachusetts, Nebraska, Iowa, Arkansas, Florida, North Carolina, Alabama, South Carolina, and Louisiana, being three-fourths and more of the several States of the Union, have ratified the fourteenth article of amendment to the Constitution of the United States, duly proposed by two-thirds of each House of the Thirty-ninth Congress: Therefore, Resolved, That said fourteenth article is hereby declared to be a part of the Constitution of the United States, and it shall be duly promulgated as such by the Secretary of State." The Secretary of State accordingly issued a proclamation, dated the 28th of July, 1868, declaring that the proposed fourteenth amendment had been ratified, in the manner hereafter mentioned, by the legislatures of thirty of the thirty-six States, viz: Connecticut, June 30, 1866; New Hampshire, July 7, 1866; Tennessee, July 19, 1866; New Jersey, September 11, 1866, (and the legislature of the same State passed a resolution in April, 1868, to withdraw its consent to it;) Oregon, September 19, 1866; Vermont, November 9, 1866; Georgia rejected it November 13, 1866, and ratified it July 21, 1868; North Carolina rejected it December 4, 1866, and ratified it July 4, 1868; South Carolina rejected it December 20, 1866, and ratified it July 9,

1868; New York ratified it January 10, 1867; Ohio ratified it January 11, 1867, (and the legislature of the same State passed a resolution in January, 1868, to withdraw its consent to it;) Illinois ratified it January 15, 1867; West Virginia, January 16, 1867; Kansas, January 18, 1867; Maine, January 19, 1867; Nevada, January 22, 1867; Missouri, January 26, 1867; Indiana, January 29, 1867; Minnesota, February 1, 1867; Rhode Island, February 7, 1867; Wisconsin February 13, 1867; Pennsylvania, February 13, 1867; Michigan, February 15, 1867; Massachusetts, March 20, 1867; Nebraska, June 15, 1867; Iowa, April 3, 1868; Arkansas, April 6, 1868; Florida, June 9, 1868; Louisiana, July 9, 1868; and Alabama, July 13, 1868. Georgia again ratified the amendment February 2, 1870. Texas rejected it November 1, 1866, and ratified it February 18, 1870. Virgina rejected it January 19, 1867, and ratified October 8, 1869. The amendment was rejected by Kentucky January 10, 1867; by Delaware February 8, 1867; by Maryland March 23, 1867, and was not afterward ratified by either State.

[ARTICLE XV]

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

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

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

[ARTICLE XVI]

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

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

[ARTICLE XVII]

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

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

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

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

[ARTICLE XVIII]

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

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

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

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

CONSTITUTION OF THE STATE OF TEXAS

[The following statement appears at the head of the Constitution as printed in the Revised Statutes of 1911: The text of the original constitution of 1876, as here given, has been carefully compared with the original document on file in the office of the secretary of state. The text of the amendments has been carefully compared with the joint resolutions as given in the official edition of the Session Acts since 1876, and with a certified copy of the original enrolled resolutions proposing said amendments, made and certified by the secretary of state on February 11, 1910.]

PREAMBLE

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

ARTICLE I

BILL OF RIGHTS

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

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

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

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

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

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

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

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

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

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

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

Sec. 10. In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself and shall have the right of being heard by himself or counsel, or both, shall be confronted by the witnesses against him and shall have compulsory process for obtaining witnesses in his favor, except that when the witness resides out of the State and the offense charged is a violation of any of the anti-trust laws of this State, the defendant and the State shall have the right to produce and have the evidence admitted by deposition, under such rules and laws as the Legislature may hereafter provide; and no person shall be held to answer for a criminal offense, unless on an indictment of a grand

jury, except in cases in which the punishment is by fine or imprisonment, otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the army or navy, or in the militia, when in actual service in time of war or public danger. (Sec. 10, art. 1, adopted election ———; proclamation ———.)

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

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

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

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

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

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

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

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

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

Sec. 20. No citizen shall be outlawed; nor shall any person be transported out of the state for any offense committed within the same.

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

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

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

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

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

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

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

Sec. 28. No power of suspending laws in this state shall be exercised, except by the legislature.

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

ARTICLE II

THE POWERS OF GOVERNMENT

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

ARTICLE III

LEGISLATIVE DEPARTMENT

Section 1. The legislative power of this state shall be vested in a senate and house of representatives, which together shall be styled, "The Legislature of the State of Texas."

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

Sec. 3. The senators shall be chosen by the qualified electors for the term of four years; but a new senate shall be chosen after every apportionment, and the senators elected after each apportionment shall be divided

by lot into two classes. The seats of the senators of the first class shall be vacated at the expiration of the first two years, and those of the second class at the expiration of four years, so that one-half of the senators shall be chosen biennially thereafter.

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

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

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

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

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

Sec. 9. The senate shall, at the beginning and close of each session, and at such other times as may be necessary, elect one of its members president pro tempore, who shall perform the duties of the lieutenant-governor in any case of absence or disability of that officer, and whenever the said office of lieutenant-governor shall be vacant. The house of representatives shall, when it first assembles, organize temporarily, and thereupon proceed to the election of a speaker from its own members; and each house shall choose its other officers.

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

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

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

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

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

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

Sec. 16. The sessions of each house shall be open, except the senate when in executive session.

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

Sec. 18. No senator or representative shall, during the term for which he may be elected, be eligible to any civil office of profit under this state, which shall have been created, or the emoluments of which may have been increased, during such term; no member of either house shall, during the term for which he is elected, be eligible to any office or place, the appointment to which may be made, in whole or in part, by either branch of the legislature; and no member of either house shall vote for any other member for any office whatever, which may be filled by a vote of the legislature, except in such cases as are in this constitution provided. Nor shall any member of the legislature be interested, either directly or indirectly, in any contract with the state, or any county thereof, authorized by any law passed during the term for which he shall have been elected.

Sec. 19. No judge of any court, secretary of state, attorney general, clerk of any court of record, or any person holding a lucrative office under the United States, or this state, or any foreign government, shall, during the term for which he is elected or appointed, be eligible to the legislature.

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

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

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

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

Sec. 24. The members of the legislature

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

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

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

Sec. 27. Elections for senators and representatives shall be general throughout the state, and shall be regulated by law.

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

PROCEEDINGS

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

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

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

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

Sec. 33. All bills for raising revenue shall originate in the house of representatives, but the senate may amend or reject them as other bills.

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

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

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

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

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

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

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

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

REQUIREMENTS AND LIMITATIONS

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

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

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

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

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

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

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

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

The erection and repairs of public buildings;

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

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

The payment of the cost of assessing and collecting the revenue; and the payment of all officers, agents and employés of the state government, and all incidental expenses connected therewith;

The support of the blind asylum, the deaf and dumb asylum and the insane asylum, the state cemetery and the public grounds of the state;

The enforcement of quarantine regulations on the coast of Texas;

The protection of the frontier.

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

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

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

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

Sec. 51. The legislature shall have no power to make any grant, or authorize the making of any grant, of public money to any individual, association of individuals, municipal or other corporations whatsoever; provided, however, the legislature may grant aid to indigent and disabled Confederate soldiers and sailors who came to Texas prior to January 1, 1880, and who are either over sixty years of age, or whose disability is the proximate result of actual service in the Confederate army for a period of at least three months, their widows in indigent circumstances who have never remarried, and who have been bona fide residents of the state of Texas since March 1, 1880, and who were married to such soldiers or sailors anterior to March 1, 1866; provided, said aid shall not exceed eight dollars per month; and provided, further, that no appropriation shall ever be made for the purpose hereinbefore specified, in excess of two hundred and fifty thousand dollars for any one year. And also grant aid to the establishment and maintenance of a home for said soldiers and sailors, under such regulations and limitations as may be provided by law; provided, the grant to aid said home shall not exceed one hundred thousand dollars for any one year; and no inmate of said home shall be entitled to any other aid from the state; and provided, further, that the provisions of this section shall not be construed to prevent the grant of aid in case of public calamity. (Sec. 51, Art. 3, adopted election November 1, 1898; proclamation December 22, 1898.)

Sec. 51. The legislature shall have no power to make any grant, or authorize the making of any grant, of public money to any individual, association of individuals, municipal or other corporations whatsoever; provided, however, the legislature may grant aid to indigent and disabled Confederate soldiers and sailors, who came to Texas prior to January 1, 1880, and who are either over sixty years of age or whose disability is the proximate result of actual service in the Confederate army for a period of at least three months, their widows in indigent circumstances, who have never remarried and who have been bona fide

residents of the state of Texas since March 1, 1880, and who were married to such soldiers or sailors anterior to March 1, 1880; provided, said aid shall not exceed eight dollars per month; and provided, further, that no appropriation shall ever be made for the purpose hereinbefore specified in excess of five hundred thousand dollars for any one year. And also grant aid to the establishment and maintenance of a home for said soldiers and sailors, under such regulations and limitations as may be provided by law; provided, the grant to aid said home shall not exceed one hundred thousand dollars for any one year; and no inmate of said home shall be entitled to any other aid from the state; and provided, further, that the provisions of this section shall not be construed to prevent the grant of aid in case of public calamity. (Sec. 51, Art. 3, adopted election November 8, 1904; proclamation December 29, 1904.)

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

Sec. 51. The legislature shall have no power to make any grant or authorize the making of any grant of public money to any individual, association of individuals, municipal or other corporation whatsoever; provided, however, the legislature may grant aid to indigent and disabled Confederate soldiers and sailors who came to Texas prior to January 1, 1900, and their widows in indigent circumstances, and who have been bona fide residents of the State of Texas since January 1, 1900, and who were married to such soldiers and sailors anterior to January 1, 1900; to indigent and disabled soldiers, who under special laws of the State of Texas, during the war between the States served for a period of at least six months in organizations for the protection of the frontier against Indian raids or Mexican marauders, and to indigent and disabled soldiers of the militia of the State of Texas, who were in active service for a period of at least six months during the war between the States, to the widows of such soldiers who are in indigent circumstances, and who were married to such soldiers prior to January 1, 1900, provided that the word "widow" in the preceding lines of this section shall not apply to women born since 1861, and also to grant aid for the establishment and maintenance of a home for said soldiers and sailors, their wives and widows, and women who aided in the Confederacy under such regulations and limitations as may be provided for by law; provided, the Legislature may provide for husband and wife to remain together in the home.

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

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

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

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

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

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

Sec. 53. The legislature shall have no power to grant, or to authorize any county or municipal authority to grant, any extra compensation, fee or allowance to a public officer, agent, servant or contractor after service has been rendered or a contract has

been entered into, and performed in whole or in part; nor pay, nor authorize the payment of, any claim created against any county or municipality of the state, under any agreement or contract, made without authority of law.

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

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

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

The creation, extension or impairing of liens;

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

Changing the names of persons or places;

Changing the venue in civil or criminal cases;

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

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

Vacating roads, town plats, streets or alleys;

Relating to cemeteries, graveyards, or public grounds not of the state;

Authorizing the adoption or legitimation of children;

Locating or changing county seat;

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

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

Granting divorces;

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

Changing the law of descent or succession;

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

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

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

Fixing the rate of interest;

Affecting the estates of minors, or persons under disability;

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

Exempting property from taxation;

Regulating labor, trade, mining and manufacturing;

Declaring any named person of age;

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

Giving effect to informal or invalid wills or deeds;

Summoning or impaneling grand or petit juries;

For limitation of civil or criminal actions;

For incorporating railroads or other works of internal improvements;

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

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

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

ARTICLE IV

EXECUTIVE DEPARTMENT

Section 1. The executive department of the state shall consist of a governor, who shall be the chief executive officer of the state, a lieutenant-governor, secretary of state, comptroller of public accounts, treasurer, commissioner of the general land office, and attorney general.

Sec. 2. All the above officers of the executive department, except secretary of state, shall be elected by the qualified voters of the state at the time and places of election for members of the legislature.

Sec. 3. The returns of every election for said executive officers, until otherwise provided by law, shall be made out, sealed up, and transmitted by the returning officers prescribed by law, to the seat of government, directed to the secretary of state, who shall deliver the same to the speaker of the house of representatives, as soon as the speaker shall be chosen; and the said speaker shall, during the first week of the session of the legislature, open and publish them in the presence of both houses of the legislature. The person voted for at said election, having the highest number of votes for each of said offices respectively, and being constitutionally eligible, shall be declared by the speaker, under sanction of the legislature, to be elected to said office. But if two or more persons shall have the highest and an equal number

of votes for either of said offices, one of them shall be immediately chosen for such office by joint vote of both houses of the legislature. Contested elections for either of said offices shall be determined by both houses of the legislature in joint session.

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

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

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

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

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

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

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

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

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

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

Sec. 14. Every bill which shall have passed both houses of the legislature shall be presented to the governor for his approval. If he approves, he shall sign it; but if he disapproves it, he shall return it, with his objections, to the house in which it originated, which house shall enter the objections at large upon its journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of the members present agree to pass the bill, it shall be sent, with the objections, to the other house, by which likewise it shall be reconsidered; and, if approved by two-thirds of the members of that house, it shall become a law; but in such cases the votes of both houses shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor with his objections within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the legislature, by its adjournment, prevent its return; in which case it shall be a law, unless he shall file the same, with his objections, in the office of the secretary of state, and give notice thereof by public proclamation within twenty days after such adjournment. If any bill presented to the governor contains several items of appropriation, he may object to one or more of such items, and approve the other portion of the

bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects; and no item so objected to shall take effect. If the legislature be in session, he shall transmit to the house in which the bill originated a copy of such statement, and the items objected to shall be separately considered. If, on reconsideration, one or more of such items be approved by two-thirds of the members present of each house, the same shall be a part of the law, notwithstanding the objections of the governor. If any such bill, containing several items of appropriation, not having been presented to the governor ten days (Sundays excepted) prior to adjournment, be in the hands of the governor at the time of adjournment, he shall have twenty days from such adjournment within which to file objections to any items thereof, and make proclamation of the same, and such item or items shall not take effect.

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

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

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

Sec. 18. The lieutenant-governor or the president of the senate succeeding to the office of governor, shall, during the entire term to which he may succeed, be under all the restrictions and inhibitions imposed in this constitution on the governor.

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

Sec. 20. All commissions shall be in the name and by the authority of the state of Texas, sealed with the state seal, signed by the governor, and attested by the secretary of state.

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

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

Sec. 23. The comptroller of public accounts, the treasurer, and the commissioner of the general land office, shall each hold office for the term of two years, and until his successor is qualified; receive an annual salary of two thousand five hundred dollars, and no more; reside at the capital of the state during his continuance in office; and perform

such duties as are or may be required of him by law. They and the secretary of state shall not receive to their own use any fees, costs or perquisites of office. All fees that may be payable by law for any service performed by any officer specified in this section, or in his office, shall be paid, when received, into the state treasury.

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

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

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

ARTICLE V

JUDICIAL DEPARTMENT

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

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

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

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

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

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

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

to provide for holding more than two terms of the court in any county, for the dispatch of business; and shall provide for the holding of district courts when the judge thereof is absent, or is from any cause disabled or disqualified from presiding.

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

Section 1. The judicial power of this state shall be vested in one supreme court, in courts of civil appeals, in a court of criminal appeals, in district courts, in county courts, in commissioners' courts, in courts of justices of the peace, and in such other courts as may be provided by law. The criminal district court of Galveston and Harris counties shall continue with the district, jurisdiction and organization now existing by law until otherwise provided by law. The legislature may establish such other courts as it may deem necessary, and prescribe the jurisdiction and organization thereof, and may conform the jurisdiction of the district and other inferior courts thereto.

Sec. 2. The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and the concurrence of two judges shall be necessary to the decision of a case. No person shall be eligible to the office of chief justice or associate justice of the supreme court unless he be, at the time of his election, a citizen of the United States and of this state, and unless he shall have attained the age of thirty years, and shall have been a practicing lawyer or a judge of a court, or such lawyer and judge together, at least seven years. Said chief justice and associate justices shall be elected by the qualified voters of the state at a general election, shall hold their offices six years, or until their successors are elected and qualified, and shall each receive an annual salary of four thousand dollars until otherwise provided by law. In case of a vacancy in the office of chief justice of the supreme court, the governor shall fill the vacancy until the next general election for state officers; and at such general election the vacancy for the unexpired term shall be filled by election by the qualified voters of the state. The judges of the supreme court who may be in office at the time this amendment takes effect shall continue in office until the expiration of their term of office under the present constitution, and until their successors are elected and qualified.

Sec. 3. The supreme court shall have appellate jurisdiction only, except as herein specified, which shall be co-extensive with the limits of the state. Its appellate jurisdiction shall extent to questions of law arising in cases of which the courts of civil appeals have appellate jurisdiction, under such restrictions and regulations as the legislature may prescribe. Until otherwise provided by law, the appellate jurisdiction of the supreme court shall extend to questions of law arising in the cases in the courts of civil appeals in which the judges of any court of civil appeals may disagree, or where the several courts of civil appeals may hold differently on the same question of law, or where a statute of the state is held void. The supreme court and the justices thereof shall have power to issue writs of habeas corpus as may be prescribed by law; and, under such regulations as may be prescribed by law, the said courts and the justices thereof may issue the writs of mandamus, procedendo, certiorari, and such other writs as may be necessary to enforce its jurisdiction. The legislature may confer original jurisdiction on the supreme court to issue writs of quo warranto and mandamus in such cases as may be specified, except as against the governor of the state. The supreme court shall also have power, upon affidavit or otherwise as by the court may be determined, to ascertain such matters of fact as may be necessary to the proper exercise of its jurisdiction. The supreme court shall sit for the transaction of business from the first Monday in October of each year until the last Saturday of June in the next year, inclusive, at the capital of the state. The supreme court shall appoint a clerk, who shall give bond in such manner as is now, or may hereafter be, required by law, and he may hold his office for four years, and shall be subject to removal by said court for good cause, entered of record on the minutes of said court, who shall receive such compensation as the legislature may provide.

Sec. 4. The court of criminal appeals shall consist of three judges, any two of whom shall constitute a quorum; and the concurrence of two judges shall be necessary to a decision of said court. Said judges shall have the same qualifications and receive the same salaries as the judges of the supreme court. They shall be elected by the qualified voters of the state at a general election, and shall hold their offices for a term of six years. In case of a vacancy in the office of a judge of the court of criminal appeals, the governor shall fill such vacancy by appointment for the unexpired term. The judges of the court of appeals who may be in office at the time when this amendment takes effect shall continue in office until the expiration of their term of office under the present constitution and laws as judges of the court of criminal appeals.

Sec. 5. The court of criminal appeals

shall have appellate jurisdiction co-extensive with the limits of the state in all criminal cases of whatever grade, with such exceptions and under such regulations as may be prescribed by law. The court of criminal appeals and the judges thereof shall have the power to issue the writ of habeas corpus, and, under such regulations as may be prescribed by law, issue such writs as may be necessary to enforce its own jurisdiction. The court of criminal appeals shall have power, upon affidavit or otherwise, to ascertain such matters of fact as may be necessary to the exercise of its jurisdiction. The court of criminal appeals shall sit for the transaction of business from the first Monday in October to the last Saturday of June in each year, at the state capital and two other places (or the capital city) if the legislature shall hereafter so provide. The court of criminal appeals shall appoint a clerk for each place at which it may sit; and each clerk shall give bond in such manner as is now or may hereafter be required by law, and who shall hold his office for four years, unless sooner removed by the court for good cause, entered of record on the minutes of said court.

Sec. 6. The legislature shall, as soon as practicable after the adoption of this amendment, divide the state into not less than two nor more than three supreme judicial districts, and thereafter into such additional districts as the increase of population and business may require, and shall establish a court of civil appeals in each of said districts, which shall consist of a chief justice and two associate justices, who shall have the qualifications as herein prescribed for justices of the supreme court. Said courts of civil appeals shall have appellate jurisdiction co-extensive with the limits of their respective districts, which shall extend to all civil cases of which the district courts or county courts have original or appellate jurisdiction, under such restrictions and regulations as may be prescribed by law. Provided, that the decision of said courts shall be conclusive on all questions of fact brought before them on appeal of error. Each of said courts of civil appeals shall hold its sessions at a place in its district to be designated by the legislature, and at such time as may be prescribed by law. Said justices shall be elected by the qualified voters of their respective districts, at a general election, for a term of six years, and shall receive for their services the sum of three thousand five hundred dollars per annum until otherwise provided by law. Said courts shall have such other jurisdiction, original and appellate, as may be prescribed by law. Each court of civil appeals shall appoint a clerk, in the same manner as the clerk of the supreme court, which clerk shall receive such compensation as may be fixed by law. Until the organization of the courts of civil appeals and criminal appeals, as herein provided for, the jurisdiction, power and organization and location of the supreme court, the court of appeals, and the commission of appeals shall continue as they were before the adoption of this amendment. All civil cases which may be pending in the court of appeals, shall, as soon as practicable after the organization of the courts of civil appeals, be certified to, and the records thereof transmitted to the proper courts of civil appeals, to be decided by said courts. At the first session of the supreme court, the court of criminal appeals, and such of the courts of civil appeals which may be hereafter created under this article, after the first election of the judges of such courts under this amendment, the terms of office of the judges of each court shall be divided into three classes, and the justices thereof shall draw for the different classes. Those who shall draw class No. 1 shall hold their offices two years, those drawing class No. 2 shall hold their offices four years, and those who may draw class No. 3 shall hold their offices for six years, from the date of their election, and until their successors are elected and qualified; and, thereafter, each of the said judges shall hold his office for six years, as provided in this constitution.

Sec. 7. The state shall be divided into as many judicial districts as may now or hereafter be provided by law, which may be increased or diminished by law. For each district there shall be elected by the qualified voters thereof, at a general election, a judge, who shall be a citizen of the United States and of this state, who shall have been a practicing lawyer of this state, or a judge of a court in this state, for four years next preceding his election; who shall have resided in the district in which he was elected for two years next preceding his election; who shall reside in his district during his term of office; who shall hold his office for the period of four years, and shall receive for his services an annual salary of two thousand five hundred dollars, until otherwise changed by law. He shall hold the regular terms of his court at the county seat of each county in his district at least twice in each year, in such manner as may be prescribed by law. The legislature shall have power by general or special laws to authorize the holding of special terms of the court, or the holding of more than two terms in any county for the dispatch of business. The legislature shall also provide for the holding of district court when the judge thereof is absent, or is from any cause disabled or disqualified from presiding. The district judges who may be in office when this amendment takes effect shall hold their offices until their respective terms shall expire under their present election or appointment.

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

writs of habeas corpus, mandamus, injunction, and certiorari, and all writs necessary to enforce their jurisdiction. The district court shall have appellate jurisdiction and general control in probate matters over the county court established in each county, for appointing guardians, granting letters testamentary and of administration, probating wills, for settling the accounts of executors, administrators, and guardians, and for the transaction of all business appertaining to estates; and original jurisdiction and general control over executors, administrators, guardians and minors, under such regulations as may be prescribed by law. The district court shall have appellate jurisdiction and general supervisory control over the county commissioners' court, with such exceptions and under such regulations as may be prescribed by law; and shall have general original jurisdiction over all causes of action whatever for which a remedy or jurisdiction is not provided by law or this constitution, and such other jurisdiction, original and appellate, as may be provided by law. (Secs. 1, 2, 3, 4, 5, 6, 7 and 8, Art. 5, adopted election August 11, 1891; proclamation September 22, 1891.)

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

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

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

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

Sec. 11. No judge shall sit in any case wherein he may be interested, or where either of the parties may be connected with him, either by affinity or consanguinity, within such a degree as may be prescribed by law, or when he shall have been counsel in the case. When the supreme court, the court of criminal appeals, the court of civil appeals, or any member of either, shall be thus disqualified to hear and determine any case or cases in said court, the same shall be certified to the governor of the state, who shall immediately commission the requisite number of persons learned in the law, for the trial and determination of such cause or causes. When a judge of the district court is disqualified by any of the causes above stated, the parties may, by consent, appoint a proper person to try said case; or, upon their failing to do so, a competent person may be appointed to try the same in the county where it is pending, in such manner as may be prescribed by law. And the district judges may exchange districts, or hold courts for each other when they may deem it expedient, and shall do so when required by law. This disqualification of judges of inferior tribunals shall be remedied, and vacancies in their offices filled, as may be prescribed by law.

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

Sec. 13. Grand and petit juries in the district courts shall be composed of twelve men; but nine members of a grand jury shall be a quorum to transact business and present bills. In trials of civil cases, and in trials of criminal cases below the grade of felony in the district courts, nine members of the jury concurring may render a verdict, but when the verdict shall be rendered by less than the whole number, it shall be signed by every member of the jury concurring in it. When, pending the trial of any case, one or more jurors, not exceeding three, may die, or be disabled from sitting, the remainder of the jury shall have the power to render the verdict; provided, that the legislature may change or modify the rule authorizing less than the whole number of the jury to render a verdict.

Sec. 14. The judicial districts in this state and the time of holding the courts therein are fixed by ordinance forming part of this constitution, until otherwise provided by law.

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

Sec. 16. The county court shall have original jurisdiction of all misdemeanors, of which exclusive original jurisdiction is not given to the justices' court, as the same are now or may be hereafter

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

Sec. 16. ~~The county court shall have original jurisdiction of all misdemeanors of which exclusive original jurisdiction is not given to the justice's court as the same is now or may hereafter be prescribed by law, and when the fine to be imposed shall exceed two hundred dollars; and they shall have exclusive jurisdiction in all civil cases when the matter in controversy shall exceed in value two hundred dollars, and not exceed five hundred dollars, exclusive of interest; and~~ concurrent jurisdiction with the district court when the matter in controversy shall exceed five hundred dollars, and not exceed one thousand dollars, exclusive of interest; ~~but shall not have jurisdiction of suits for the recovery of land. They shall have appellate jurisdiction in cases, civil and criminal, of which justices' courts have original jurisdiction, but of such civil cases only when the judgment of the court appealed from shall exceed twenty dollars, exclusive of cost, under such regulations as may be prescribed by law. In all appeals from justices' courts there shall be a trial de novo in the county court; and appeals may be prosecuted from the final judgment rendered in such cases by the county court, as well as all cases, civil and criminal,~~ of which the county court has exclusive or concurrent or original jurisdiction of civil appeals in civil cases to the court of civil appeals, and in such criminal cases to the court of criminal appeals, with such exceptions and under such regulations as may be prescribed by law. The county court shall have the general jurisdiction of a probate court; they shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards; grant letters testamentary and of administration; settle accounts of executors; transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition and distribution of estates of deceased persons; and to apprentice minors, as provided by law; and the county court, or judge thereof, shall have power to issue writs of injunction, mandamus, and all writs necessary to the enforcement of the jurisdiction of said court, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the county court, or any other court or tribunal inferior to said court. The county court shall not have criminal jurisdiction in any county where there is a criminal district court, unless expressly conferred by law; and, in such counties, appeals from justices' courts and other inferior courts and tribunals in criminal cases shall be to the criminal district court, under such regulations as may be prescribed by law; and in all such cases an appeal shall lie from such district court to the court of criminal appeals. When the judge of the county court is disqualified in any case pending in the county court, the parties interested may, by consent, appoint a proper person to try said case, or, upon their failing to do so, a competent person may be appointed to try the same in the county where it is pending, in such manner as may be prescribed by law. (Sec. 16, Art. 5, adopted election August 11, 1891; proclamation September 22, 1891.)

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

Sec. 18. Each organized county in the

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 28. Vacancies in the office of judges of the supreme court, the court of criminal appeals, the court of civil appeals, and district courts, shall be filled by the governor, until the next succeeding general election,

and vacancies in the office of county judge and justices of the peace shall be filled by the commissioners' court, until the next general election for such offices. (Sec. 28, Art. 5, adopted election August 11, 1891; proclamation September 22, 1891.)

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

ARTICLE VI

SUFFRAGE

Section 1. The following classes of persons shall not be allowed to vote in this state, to-wit:

First. Persons under twenty-one years of age.

Second. Idiots and lunatics.

Third. All paupers supported by any county.

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

Fifth. All soldiers, marines and seamen, employed in the service of the army or navy of the United States.

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

Sec. 2. Every male person subject to none of the foregoing disqualifications, who shall have attained the age of twenty-one years, and who shall be a citizen of the United States, and who shall have resided in this state one year next preceding an election, and the last six months within the district or county in which he offers to vote, shall be deemed a qualified elector; and every male person of foreign birth, subject to none of the foregoing disqualifications, who, not less than six months before any election at which he offers to vote, shall have declared his intention to become a citizen of the United States in accordance with the Federal naturalization laws, and shall have resided in this state one year next preceding such election, and the last six months in the county in which he offers to vote, shall also be deemed a qualified elector; and all electors shall vote in the election precinct of their residence; provided, that electors living in any unorganized county may vote at any election precinct in the county to which such county is attached for judicial purposes. (Sec. 2, Art. 6, adopted election November 3, 1896; proclamation December 18, 1896.)

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

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

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

Sec. 4. In all elections by the people, the vote shall be by ballot, and the legislature shall provide for the numbering of tickets and make such other regulations as may be necessary to detect and punish fraud and preserve the purity of the ballot-box; and the

legislature may provide by law for the registration of all voters in all cities containing a population of ten thousand inhabitants or more. (Sec. 4, Art. 6, adopted election August 11, 1891; proclamation September 22, 1891.)

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

ARTICLE VII

EDUCATION

THE PUBLIC FREE SCHOOLS

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

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

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

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

Sec. 3. One-fourth of the revenue derived from the state occupation taxes, and a poll tax of one dollar on every male inhabitant of this state, between the ages of twenty-one and sixty years, shall be set apart annually for the benefit of the public free schools; and, in addition thereto, there shall be levied and collected an annual ad valorem state tax of such an amount, not to exceed twenty cents on the one hundred dollars valuation, as, with the available school fund arising from all other sources, will be sufficient to maintain and support the public free schools of this State for a period of not less than six months in each year; and the legislature may also provide for the formation of school districts within all or any of the counties of this state, by general or special law, without the local notice required in other cases of special legislation, and may authorize an additional ad valorem tax to be levied and collected within such school districts for the further maintenance of public free schools, and the erection and equipment of school buildings therein; provided, that a majority of the qualified property taxpaying voters of the district, voting at an election to be held for that purpose, shall vote such tax, not to exceed in any one year fifty cents on the one hundred dollars valuation of the property subject to taxation in such district, but the limitation upon the amount of district tax herein authorized shall not apply to incorporated cities or towns constituting separate and independent school districts. (Sec. 3, Art. 7, adopted election November 3, 1908; proclamation September 24, 1909.)

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

Sec. 3. One-fourth of the revenue derived from the State occupation taxes and a poll tax of one ($1.00) dollar on every male inhabitant of this State, between the ages of twenty-one and sixty years, shall be set apart annually for the benefit of the public free schools; and, in addition thereto, there shall be levied and collected an annual ad valorem State tax of such an amount not to exceed thirty-five cents on the one hundred ($100.00) dollar valuation, as, with the available school fund arising from all other sources, will be sufficient to maintain and support the public schools of this State for a period of not less than six months in each year and it shall be the duty of the State Board of Education to set aside a sufficient amount out of the said tax to provide free text books for the use of children attending the public free schools of this State; provided, however, that should the limit of taxation herein named be insufficient the deficit may be met by appropriation from the general funds of the State and the Legislature may also provide for the formation of school districts by general or special law without the local notice required in other cases of special legislation; and all such school districts, whether created by general or special, law may embrace parts of two or more counties. And the Legislature shall be

authorized to pass laws for the assessment and collection of taxes in all said districts, and for the management and control of the public school or schools of such district, whether such districts are composed of territory wholly within a county or in parts of two or more counties. And the Legislature may authorize an additional ad valorem tax to be levied and collected within all school districts heretofore formed or hereafter formed, for the further maintenance of public free schools, and the erection and equipment of school buildings therein; provided, that a majority of the qualified property tax-paying voters of the district voting at an election to be held for that purpose, shall vote such tax, not to exceed in any one year fifty cents on the one hundred dollar valuation of the property subject to taxation in such district but the limitation upon the amount of school district tax herein authorized shall not apply to incorporated cities or towns constituting separate and independent school districts. (Sec. 3, art. 7, adopted election Nov. 5, 1918; proclamation ———.)

Sec. 3a. Every school district heretofore formed, whether formed under the general law or by special act, and whether the territory embraced within its boundaries lies wholly within a single county or partly in two or more counties, is hereby declared to be, and from its formation to have been, a valid and lawful district. All bonds heretofore issued by any such districts which have been approved by the attorney general and registered by the comptroller, are hereby declared to be, and at the time of their issuance to have been, issued in conformity with the constitution and laws of this state; and any and all such bonds are hereby in all things validated and declared to be valid and binding obligations upon the district or districts issuing the same. Each such district is hereby authorized to, and shall, annually levy and collect an ad valorem tax sufficient to pay the interest on all such bonds and to provide a sinking fund sufficient to redeem the same at maturity, not to exceed such a rate as may be provided by law under other provisions of this constitution. And all trustees, heretofore elected in districts made up from more than one county, are hereby declared to have been duly elected, and shall be and are hereby named as trustees of their respective districts, with power to levy the taxes herein authorized, until their successor shall be duly elected and qualified, as is, or may be, provided by law. (Sec. 3a, Art. 7, adopted election August 3, 1909, proclamation September 24, 1909.)

Sec. 4. The lands herein set apart to the public free school fund shall be sold under such regulations, at such times and on such terms as may be prescribed by law; and the legislature shall not have power to grant any relief to the purchasers thereof. The comptroller shall invest the proceeds of such sales, and of those heretofore made, as may be directed by the board of education herein provided for, in the bonds of this state, if the same can be obtained, otherwise in United States bonds; and the United States bonds now belonging to said fund shall likewise be invested in state bonds, if the same can be obtained on terms advantageous to the school fund. (Const. 1876.)

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

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

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

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

Sec. 6. All lands heretofore or hereafter granted to the several counties of this state for educational purposes, are of right the property of said counties respectively, to which they were granted, and title thereto is

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

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

Sec. 8. The governor, comptroller and secretary of state shall constitute a board of education, who shall distribute said funds to the several counties and perform such other duties concerning public schools as may be prescribed by law.

ASYLUMS

Sec. 9. All lands heretofore granted for the benefit of the lunatic, blind, deaf and dumb, and orphan asylums, together with such donations as may have been, or may hereafter be, made to either of them, respectively, as indicated in the several grants, are hereby set apart to provide a permanent fund for the support, maintenance and improvement of said asylums. And the legislature may provide for the sale of the lands and the investment of the proceeds in manner as provided for the sale and investment of school lands in section 4 of this article.

UNIVERSITY

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

Sec. 11. In order to enable the legislature to perform the duties set forth in the foregoing section, it is hereby declared that all lands and other property heretofore set apart and appropriated for the establishment and maintenance of the University of Texas, together with all the proceeds of sales of the same, heretofore made or hereafter to be made, and all grants, donations and appropriations that may hereafter be made by the state of Texas, or from any other source, shall constitute and become a permanent university fund. And the same as realized and received into the treasury of the state (together with such sum belonging to the fund, as may now be in the treasury), shall be invested in bonds of the state of Texas, if the same can be obtained; if not, then in United States bonds; and the interest accruing thereon shall be subject to appropriation by the legislature to accomplish the purpose declared in the foregoing section; provided, that the one-tenth of the alternate sections of the lands granted to railroads, reserved by the state, which were set apart and appropriated to the establishment of the University of Texas, by an act of the legislature of February 11, 1858, entitled, "An act to establish 'The University of Texas,'" shall not be included in, or constitute a part of, the permanent university fund.

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

Sec. 13. The Agricultural and Mechanical College of Texas, established by an act of the legislature, passed April 17, 1871, located in the county of Brazos, is hereby made and constituted a branch of the University of Texas, for instruction in agriculture, the mechanic arts, and the natural sciences connected therewith. And the legislature shall, at its next session, make an appropriation, not to exceed forty thousand dollars, for the construction and completion of the buildings and improvements, and for providing the furniture necessary to put said college in immediate and successful operation.

Sec. 14. The legislature shall, also, when deemed practicable, establish and provide for the maintenance of a college or branch university for the instruction of the colored youths of the state, to be located by a vote of the people; provided, that no tax shall be levied, and no money appropriated out of the general revenue, either for this purpose or for the establishment and erection of the buildings of the University of Texas.

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

ARTICLE VIII

TAXATION AND REVENUE

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

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

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

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

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

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

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

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

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

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

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

Sec. 9. The state tax on property, exclusive of the tax necessary to pay the public debt, and of the taxes provided for the benefit of public free schools, shall never exceed thirty-five cents on the one hundred dollars valuation; and no county, city or town shall levy more than twenty-five cents for city or county purposes, and not exceed fifteen cents for roads and bridges on the one hundred dollars valuation except for the payment of debts incurred prior to the adoption of the amendment, September 25, A. D. 1883; and for the erection of public buildings, streets, sewers, waterworks and other permanent improvements, not to exceed twenty-five cents on the one hundred dollars valuation in any one year, and except as is in this constitution otherwise provided; and the legislature may also authorize an additional annual ad valorem tax to be levied and collected for the further mainte-

nance of the public roads; provided, that a majority of the qualified property taxpaying voters of the county, voting at an election to be held for that purpose, shall vote such tax, not to exceed fifteen cents on the one hundred dollars valuation of the property subject to taxation in such county. And the legislature may pass local laws for the maintenance of public roads and highways without the local notice required for special or local laws. (Sec. 9, Art. 8, adopted election November 4, 1890; proclamation December 19, 1890.)

Sec. 9. The state tax on property, exclusive of the tax necessary to pay the public debt, and of the taxes provided for the benefit of the public free schools, shall never exceed thirty-five cents on the one hundred dollars valuation; and no county, city or town shall levy more than twenty-five cents for city or county purposes, and not exceeding fifteen cents for roads and bridges, and not exceeding fifteen cents to pay jurors, on the one hundred dollars valuation, except for the payment of debts incurred prior to the adoption of the amendment September 25, 1883; and for the erection of public buildings, streets, sewers, water works and other permanent improvements, not to exceed twenty-five cents on the one hundred dollars valuation, in any one year, and except as is in this constitution otherwise provided; and the legislature may also authorize an additional annual ad valorem tax to be levied and collected for the further maintenance of the public roads; provided, that a majority of the qualified property taxpaying voters of the county, voting at an election to be held for that purpose, shall vote such tax, not to exceed fifteen cents on the one hundred dollars valuation of the property subject to taxation in such county. And the legislature may pass local laws for the maintenance of the public roads and highways, without the local notice required for special or local laws. (Sec. 9, Art. 8, adopted election November 6, 1906; proclamation January 7, 1907.)

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

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

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

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

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

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

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

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

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

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

ARTICLE IX

COUNTIES

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

First. In the territory of the state exterior to all counties now existing, no new counties shall be created with a less area than nine hundred square miles, in a square form, unless prevented by pre-existing boundary lines. Should the state lines render this impracticable in border counties, the area may be less.

The territory referred to may, at any time, in whole or in part, be divided into counties in advance of population, and attached, for judicial and land surveying purposes, to the most convenient organized county or counties.

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

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

COUNTY SEATS

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

ARTICLE X

RAILROADS

Section 1. Any railroad corporation or association, organized under the law for the purpose, shall have the right to construct and operate a railroad between any points within this state, and to connect at the state line with railroads of other states. Every railroad company shall have the right, with its road, to intersect, connect with or cross any other railroad; and shall receive and transport each the other's passengers, tonnage and cars, loaded or empty, without delay or discrimination, under such regulations as shall be prescribed by law.

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

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

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

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

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

Sec. 6. No railroad company organized under the laws of this state shall consolidate by private or judicial sale or otherwise with any railroad company organized under the

laws of any other state or of the United States.

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

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

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

ARTICLE XI

MUNICIPAL CORPORATIONS

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

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

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

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

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

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

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

Sec. 5. Cities having more than five thousand (5000) inhabitants may, by a majority vote of the qualified voters of said city, at an election held for that purpose, adopt or amend their charters, subject to such limitations as may be prescribed by the legislature, and providing that no charter or any ordinance passed under said charter shall contain any provision inconsistent with the constitution of the state, or of the general laws enacted by the legislature of this state; said cities may levy, assess and collect such taxes as may be authorized by law or by their charters; but no tax for any purpose shall ever be lawful for any one year, which shall exceed two and one-half per cent of the taxable property of such city, and no debt shall ever be created by any city, unless at the same time provision be made to assess and collect annually a sufficient sum to pay the interest thereon and creating a sinking fund of at least two per cent thereon; and provided further, that no city charter shall be altered, amended or repealed oftener than every two years. (Sec. 5, Art. 11, adopted election Nov. 5, 1912; proclamation Dec. 30, 1912.)

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

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

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

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

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

ARTICLE XII

PRIVATE CORPORATIONS

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

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

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

Sec. 4. The first legislature assembled after the adoption of this constitution shall provide a mode of procedure by the attorney general and district or county attorneys, in the name and behalf of the state, to prevent and punish the demanding and receiving or collection of any and all charges, as freight, wharfage, fares or tolls, for the use of property devoted to the public, unless the same shall have been specially authorized by law.

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

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

Sec. 7. Nothing in this article shall be construed to divest or affect rights guaranteed by any existing grant or statute of this state, or of the republic of Texas.

ARTICLE XIII

SPANISH AND MEXICAN LAND TITLES

Section 1. All fines, penalties, forfeitures and escheats, which have heretofore accrued to the republic and state of Texas, under their constitutions and laws, shall accrue to the state under this constitution; and the legislature shall provide a method for determining what lands have been forfeited, and for giving effect to escheats; and all such rights of forfeiture and escheat to the state shall, ipso facto, inure to the protection of the innocent holders of junior titles, as provided in sections 2, 3 and 4 of this article.

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

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

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

not affect such rights or presumptions as arise from actual possession. By the words, "duly recorded," as used in sections 2 and 4 of this article, it is meant that such claim of title or right to land shall have been recorded in the proper office, and that mere errors in the certificate of registration, or informality, not affecting the fairness and good faith of the holder thereof, with which the record was made, shall not be held to vitiate such record.

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

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

Sec. 7. Sections 2, 3, 4 and 5 of this article shall not be so construed as to set aside or repeal any law or laws of the republic or state of Texas, releasing the claimants of headrights of colonists of a league of land, or less, from compliance with the conditions on which their grants were made.

ARTICLE XIV

PUBLIC LANDS AND LAND OFFICE

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

Sec. 2. All unsatisfied genuine land certificates barred by section 4, article 10, of the constitution of 1869, by reason of the holders or owners thereof failing to have them surveyed and returned to the land office by the first day of January, 1875, are hereby revived. All unsatisfied genuine land certificates now in existence shall be surveyed and returned to the general land office within five years after the adoption of this constitution, or be forever barred; and all genuine land certificates hereafter issued by the state shall be surveyed and returned to the general land office within five years after issuance, or be forever barred. Provided, that all genuine land certificates heretofore or hereafter issued shall be located, surveyed or patented, only upon vacant and unappropriated public domain, and not upon any land titled or equitably owned under color of title from the sovereignty of the state, evidence of the appropriation of which is on the county records or in the general land office; or when the appropriation is evidenced by the occupation of the owner, or of some person holding for him.

Sec. 3. The legislature shall have no power to grant any of the lands of this state to any railway company, except upon the following restrictions and conditions:

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

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

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

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

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

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

Sec. 8. Persons residing between the Nueces river and the Rio Grande, and owning grants for lands which emanated from the government of Spain, or that of Mexico, which grants have been recognized and validated by the state, by acts of the legislature, approved February 10, 1852, August 15, 1870,

and other acts, and who have been prevented from complying with the requirements of said acts by the unsettled conditions of the country, shall be allowed until the first day of January, 1880, to complete their surveys, and the plots thereof, and to return their field-notes to the general land office; and all claimants failing to do so shall be forever barred; provided, nothing in this section shall be so construed as to validate any titles not already valid, or to interfere with the rights of third persons.

ARTICLE XV

IMPEACHMENT

Section 1. The power of impeachment shall be vested in the house of representatives.

Sec. 2. Impeachment of the governor, lieutenant governor, attorney general, treasurer, commissioner of the general land office, comptroller and the judges of the supreme court, court of appeals and district courts, shall be tried by the senate.

Sec. 3. When the senate is sitting as a court of impeachment, the senator shall be on oath, or affirmation, impartially to try the party impeached; and no person shall be convicted without the concurrence of two-thirds of the senators present.

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

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

Sec. 6. Any judge of the district courts of the state who is incompetent to discharge the duties of his office, or who shall be guilty of partiality, or oppression, or other official misconduct, or whose habits and conduct are such as to render him unfit to hold such office, or who shall negligently fail to perform his duties as judge, or who shall fail to execute in a reasonable measure the business in his courts, may be removed by the supreme court. The supreme court shall have original jurisdiction to hear and determine the causes aforesaid when presented in writing upon the oaths, taken before some judge of a court of record, of not less than ten lawyers, practicing in the courts held by such judge, and licensed to practice in the supreme court; said presentment to be founded either upon the knowledge of the persons making it or upon the written oaths as to the facts of credible witnesses. The supreme court may issue all needful process and prescribe all needful rules to give effect to this section. Causes of this kind shall have precedence and be tried as soon as practicable.

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

ADDRESS

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

ARTICLE XVI

GENERAL PROVISIONS

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

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

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

Sec. 4. Any citizen of this state who shall, after the adoption of this constitution, fight a duel with deadly weapons, or send or accept a challenge to fight a duel with deadly weapons, either within this state or out of it, or

who shall act as second, or knowingly assist in any manner those thus offending, shall be deprived of the right of suffrage, or of holding any office of trust or profit under this state.

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

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

Sec. 7. The legislature shall, in no case, have power to issue "treasury warrants," "treasury notes," or paper of any description intended to circulate as money.

Sec. 8. Each county in the state may provide, in such manner as may be prescribed by law, a manual labor poorhouse and farm, for taking care of, managing, employing and supplying the wants of its indigent and poor inhabitants.

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

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

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

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

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

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

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

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

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

Sec. 16. The legislature shall, by general laws, authorize the incorporation of corporate bodies with banking and discounting privileges, and shall provide for a system of state supervision, regulation and control of such bodies which will adequately protect and secure the depositors and creditors thereof. Each shareholder of such corporate body incorporated in this state, so long as he owns shares therein, and for twelve months after the date of any bona fide transfer thereof, shall be personally liable for all debts of such corporate body existing at the date of such transfer, to an amount additional to the par value of such shares so owned or transferred, equal to the par value of such shares so owned or transferred. No such corporate body shall be chartered until all of the authorized capital stock has been subscribed and paid for in full in cash. Such body corporate shall not be authorized to engage in business at more than one place, which shall be designated in its charter. No foreign corporation, other than the national banks of the United States, shall be permitted to exercise banking or discounting privileges in this state. (Sec. 16, Art. 16, adopted election November 8, 1904; proclamation December 29, 1904.)

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

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

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

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

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

Sec. 20. (a) The manufacture, sale, barter and exchange in the State of Texas, of spirituous, vinous or malt liquors or medicated bitters capable of producing intoxication, or any other intoxicant whatever except for

medicinal, mechanical, scientific or sacramental purposes, are each and all hereby prohibited.

The Legislature shall enact laws to enforce this Section.

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

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

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

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

Sec. 21. All stationery and printing, except proclamations and such printing as may be done at the deaf and dumb asylum, paper and fuel used in the legislative and other departments of the government, except the judicial department, shall be furnished, and the printing and binding of the laws, journals and department reports, and all other printing and binding, and the repairing and furnishing the halls and rooms used for the meetings of the legislature and its committees, shall be performed under contract, to be given to the lowest responsible bidder, below such maximum price, and under such regulations, as shall be prescribed by law. No member or officer of any department of the government shall be in any way interested in such contracts; and all such contracts shall be subject to the approval of the governor, secretary of state and comptroller.

Sec. 22. The legislature shall have the power to pass such fence laws, applicable to any subdivision of the state or counties, as may be needed to meet the wants of the people.

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

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

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

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

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

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

Sec. 29. The legislature shall provide by law for defining and punishing barratry.

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

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

Sec. 30a. The Legislature may provide by law that the members of the Board of Re-

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

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

Sec. 32. The legislature may provide by law for the establishment of a board of health and vital statistics, under such rules and regulations as it may deem proper.

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

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

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

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

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

Sec. 38. The legislature may, at such time as the public interest may require, provide for the office of commissioner of insurance, statistics and history, whose term of office, duties and salary shall be prescribed by law.

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

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

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

Sec. 42. The legislature may establish an inebriate asylum for the cure of drunkenness and reform of inebriates.

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

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

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

Sec. 46. The legislature shall provide by law for organizing and disciplining the militia of the state, in such manner as they shall deem expedient, not incompatible with the constitution and the laws of the United States.

Sec. 47. Any person who conscientiously scruples to bear arms shall not be compelled

to do so, but shall pay an equivalent for personal service.

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

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

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

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

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

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

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

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

Sec. 56. The legislature shall have no power to appropriate any of the public money for the establishment and maintenance of a bureau of immigration, or for any purpose of bringing immigrants to this state.

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

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

Sec. 59. (a) The conservation and development of all of the natural resources of this State, including the control, storing, preservation and distribution of its storm and flood waters, the waters of its rivers and streams, for irrigation, power and all other useful purposes, the reclamation and irrigation of its arid, semi-arid and other lands needing irrigation, the reclamation and drainage of its overflowed lands, and other lands needing drainage, the conservation and development of its forest, water and hydro-electric power, the navigation of its inland and coastal waters, and the preservation and conservation of all such natural resources of the State are each and all hereby declared public rights

and duties; and the Legislature shall pass all such laws as may be appropriate thereto.

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

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

ARTICLE XVII

MODE OF AMENDING THE CONSTITUTION OF THIS STATE

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

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THE

REVISED CIVIL STATUTES

OF THE

STATE OF TEXAS

TITLE 1

ADOPTION

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

See post, art. 2463; Herron's Probate Guide, pp. 1-4; White v. Holman, 60 S. W. 437; Logan v. Lennix, 88 S. W. 364; Thompson v. Waits, 159 S. W. 82; Mellville v. Wickham, 169 S. W. 1123; Harle v. Harle, 166 S. W. 674; Evans v. Evans, 186 S. W. 815.

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

See post, art. 2463; White v. Holman, 60 S. W. 437; Clark v. West, 73 S. W. 797; Logan v. Lennix, 88 S. W. 364; Herron's Probate Guide, pp. 3, 4; Thompson v. Waits, 159 S. W. 82; Harle v. Harle, 166 S. W. 674; Mellville v. Wickham, 169 S. W. 1123; Evans v. Evans, 186 S. W. 815; State v. Walton, 189 S. W. 291.

See Minors as Real Property Vol 2 pgs.

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

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

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

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

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

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

TITLE 2

AFFIDAVITS, OATHS AND AFFIRMATIONS

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

Campbell v. S., 68 S. W. 513; Sullivan v. Banks, 83 S. W. 421; Smith v. S., 156 S. W. 645.

Art. 10. (4) (4) Oaths, etc., generally by whom administered.—All oaths, affidavits or affirmations necessary or required by law may be administered, and a certificate of the fact given, by any judge or clerk of a court of record, justice of the peace, or by any notary public, within this state. (Acts 1887, p. 5; 1885, p. 78.)

Thames v. Chitwood, 60 S. W. 345; Campbell v. S., 68 S. W. 513; Smith v. S., 156 S. W. 645; Schaffer v. First Nat. Bank, 189 S. W. 556; Wrenn v. S., 200 S. W. 844.

Art. 11. (5) (5) Affidavit may be made by agent or attorney.—Whenever, at the commencement or during the progress of any civil suit or judicial proceeding, it may be necessary or proper for any party thereto

to make an affidavit, such affidavit may be made by either the party or his agent or attorney. (Acts 1856, p. 13; P. D. 35.)

Wilson Hdw. Co. v. Anderson Knife & Bar Co., 54 S. W. 928; Harwell v. So. Furniture Co., 75 S. W. 888; Ferguson-McKinney Dry Goods Co. v. Bank, 78 S. W. 265; Tyson v. First State Bank & Trust Co., 154 S. W. 1055; Smith v. S., 156 S. W. 645.

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

Lanier v. Taylor, 41 S. W. 516; Davis v. Sherrill, 113 S. W. 556; Smith v. S., 156 S. W. 645; Order of Aztecs v. Noble, 174 S. W. 623.

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

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

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

3. If without the United States, before any notary public, or any minister, commissioner or charge d'affaires of the United States, resident in and accredited to the country where the affidavit may be taken; or any consul general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul or consular agent of the United States, resident in such country. (Acts 1887, p. 5.)

Sullivan v. Bank, 83 S. W. 421; Latimer v. Ry., 88 S. W. 444; Green v. Hewett, 118 S. W. 170; Smith v. State, 156 S. W. 645.

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

TITLE 2A

AGRICULTURE

CHAPTER ONE

COMMERCIAL FERTILIZERS

Art. 14a. Commercial fertilizers before sale to have brand or label; what must be shown, etc.—All corporations, firms or persons, before selling or offering for sale any commercial fertilizer for use within this state, shall brand or attach to each bag, barrel or package a plainly printed statement, showing the brand or name of said fertilizer, the net weight of the contents of the package, the name and address of the corporation, firm or person registering said fertilizer and the minimum percentages guaranteed to be present of available phosphoric acid, of nitrogen and of potash soluble in distilled water. Only such potash shall be claimed to be present as sulphate, which is in excess of the quantity required to combine with the chlorine present, less one-half per cent. In bone meal, tankage, or other similar products, the phosphoric acid shall be claimed as total phosphoric acid, unless it be desired to claim available phosphoric acid only, in which latter case the guarantee must take the form above set forth. In the case of bone meal and tankage, information showing the fineness of the product may be branded or attached to the package; provided it takes a form approved by the state chemist. All branding or labeling must be durable and legible, and so placed and arranged as to be easily read. (Acts 1911, p. 218, sec. 1.)

Art. 14aa. Statement and copy of brand or stamp to be filed with state chemist; certificate of registration; what brand or name may be registered; priority in registration, etc.; chemist to publish annual list.—All firms, corporations or persons, before selling or offering for sale any commercial fertilizer for use within this state, shall annually file with the chemist of the Texas agricultural experiment station, herein termed the state chemist, a certified statement giving the information required by section 1 of this chapter [Art. 14a] and the true names and sources of all the ingredients used in the manufacture of the said fertilizer. If the same fertilizer is sold under a different name or names, said fact shall be stated, and the different brands which are identical shall be named. If the source of any ingredient of said fertilizer is changed, notification must be promptly furnished the state chemist. A copy of the brand or stamp on the bag or other package or on the label attached thereto shall be filed with the state chemist on or before delivery to the dealers, agents or consumers in this state, which brand or stamp shall be uniformly used during the fiscal year for which it is filed, but such brand or stamp shall truly set forth the data required in section 1 of this Act, and be otherwise in accordance with the provisions of this chapter. On receipt of the certified statement above described, and the copy of the brand or stamp and after compliance with other requirements of this chapter, the state chemist shall issue a certificate of registration for the commercial fertilizer, which shall be in force until the succeeding September first. A brand name previously registered shall not be allowed to be registered by another firm, corporation or individual, and no brand or name shall be allowed to be registered which is so nearly similar to another as to lead to uncertainty, confusion or fraud. The party whom the previous records of the state chemist's office show to have first registered the name shall be permitted to retain it, subject, however, to appeal and hearing before the state chemist to determine who is entitled to the brand; but the action of the state chemist shall be without prejudice to the legal rights of the parties to the brand or trade-mark. No brand or name once registered shall be changed to a lower grade at any subsequent registration. The state chemist shall publish annually a list of brands or trade-marks registered with him. (Id. sec. 2.)

Art. 14b. Use of words "high grade" and "standard" upon bags or packages; when "low grade" must appear, etc.—The words "high grade" shall not appear upon any bag or other package of any complete fertilizer which complete fertilizer contains, by its guaranteed analysis, less than ten per cent. available phosphoric acid, one and sixty-five one-hundredths per cent nitrogen and two per cent of potash, or a grade or analysis of equal total commercial value; the word "standard" shall not appear upon any bag

or other package of any complete fertilizer which contains, by its guaranteed analysis, less than eight per cent available phosphoric acid, one and sixty-five one-hundredths per cent nitrogen and two per cent potash, or a grade or analysis of equal total commercial value; the words "high grade" shall not appear upon any bag or other package of any acid phosphate with potash, which shall contain, by its guaranteed analysis, less than thirteen per cent available phosphoric acid, and one per cent of potash, or a grade or analysis of equal total commercial value; the word "standard" shall not appear upon any bag or other package of any acid phosphate with potash which shall contain by its guaranteed analysis, less than eleven per cent available phosphoric acid, and one per cent potash, or a grade or analysis of equal total commercial value; the words "high grade" shall not appear upon any bag or other package of any plain acid phosphate which shall contain by its guaranteed analysis, less than fourteen per cent available phosphoric acid; and the word "standard" shall not appear upon any bag or other package of any plain acid phosphate which shall contain by its guaranteed analysis less than twelve per cent available phosphoric acid. The word "standard" shall not appear upon any bag or other package of acid phosphate with nitrogen which shall contain, by its guaranteed analysis, less than nine per cent of available phosphoric acid and two per cent nitrogen, or a grade or analysis of equal total commercial value. It is hereby further provided that no commercial fertilizer shall be sold, offered or exposed for sale for use within this state, upon which the use of the words "high grade" or "standard" is prohibited by this section, unless the words "low grade" is printed in two-inch letters in a conspicuous place upon the package of said commercial fertilizer. Provided, further, that no claim or guarantee for less than one per cent of phosphoric acid or of potash, or for less than a 0.82 per cent of nitrogen, shall be allowed in any commercial fertilizer. (Id. sec. 3.)

Art. 14bb. Inspection tax; tags showing payment; not applicable to certain fertilizers; fees and penalties, how disposed of; tags, how issued; attaching tags when fertilizer not registered, etc., prohibited; fiscal year, etc.—For the purpose of defraying the expenses connected with the inspection of commercial fertilizer sold, or exposed, or offered for sale in this state, and experiments relative to the value thereof, all firms, corporations or persons engaged in the manufacture or sale of commercial fertilizers shall pay to the state chemist an inspection tax of twenty-five cents per ton (2000 pounds) for such commercial fertilizers sold or exposed, or offered for sale in this state in order to entitle the same to inspection and delivery, and shall attach a tag furnished by the state chemist as evidence that said tax is paid, and goods so tagged shall not be liable to any further tax. But nothing contained in this section shall interfere with fertilizers passing through the state in transit; nor shall apply to the delivery of fertilizing materials in bulk to fertilizing factories for manufacturing purposes. The fees received by the state chemist and all the penalties collected under this chapter shall be deposited with the treasurer of the agricultural and mechanical college of Texas, and shall be expended under the direction of the board of trustees of said college in defraying the expenses of inspecting and analyzing commercial fertilizers, the preparation of tags, and bulletins, experiments relative to the value of fertilizers, and for such other purposes as the board of trustees of said agricultural and mechanical college of Texas shall allow or direct. Firms, corporations or persons, or agents representing them, who have registered their brands in compliance with section 2 of this chapter [Art. 14aa], shall forward to the state chemist a request for tax tags, stating that the said tags are to be used upon the brands of commercial fertilizers registered and sold in accordance with this chapter, and said request shall be accompanied with the inspection tax, whereupon, it shall be the duty of the state chemist to issue tags to parties applying, who shall attach said tags to each bag, barrel or package thereof. All firms, corporations or persons are hereby forbidden to attach the tag prescribed by this section to any bag, barrel or package of any commercial fertilizer which has not been previously registered as required in section 2 of this chapter, and which is not in accordance with all other provisions of this chapter. No tags shall be used after the end of the fiscal year for which they are issued, and they shall not be redeemed by the state chemist. The fiscal year shall be comprised between the dates of September first and August thirty-first, inclusive. The state chemist is hereby empowered to adopt a form for said tags. (Id. sec. 4.)

Art. 14c. Duties and powers of state chemist; penalty for interference; analysis and samples; certificate of state chemist; evidence; bulletins, information, etc.—The state chemist shall cause one analysis or more to be made annually of such commercial fertilizer sold or offered for sale under the provisions of this Act as may be sampled under his direction. The state chemist, in person or by deputy, shall have power to enter into any car, warehouse, store, building, boat, vessel, steamboat, or place, supposed to contain fertilizers for the purpose of inspection or sampling, and shall have the power to take a sample for analysis, not exceeding two pounds, from any package or lot of fertilizer found within the state. Any person who opposes the entrance of said chemist or deputy, or in any way interferes with the discharge of his duty, shall be liable to a fine of not less than fifty dollars and not more than five hundred dollars. Said sample shall be drawn by means of a sampling tube of uniform diameter and at least eighteen inches long, placed in a jar or can, sealed and labeled by the inspector. Said sample shall be taken from not less than five bags, but in lots of 100 and over, from not less than 5 per cent of the entire number. All analyses shall be made by the official methods of the association of official agricultural chemists of North America. In the trial of any suit or action wherein is called in question the value or composition of any fertilizer, a certificate signed by the state chemist and attested with his seal, setting forth the analysis made by the state chemist, or under his direction, of the sample of said

fertilizer analyzed by him under the provisions of this chapter, shall be prima facie proof that the fertilizer was of the value and consistency shown by his said analysis. And the said certificate of the state chemist shall be admissible to evidence to the same extent as if it were his deposition taken in said action in the manner prescribed by law for the taking of depositions. The state chemist shall issue at least one bulletin annually, setting forth the analyses of fertilizers made under the provisions of this chapter, the operations of the law, and such other information concerning violations or operations of this chapter, or otherwise pertaining to the sale of fertilizers as may be considered necessary. The state chemist shall also investigate the composition, properties and agricultural values of fertilizers or of fertilizer materials or ingredients of fertilizers sold or offered for sale within the state of Texas, and shall publish his results as he may find. (Id. sec. 5.)

Art. 14cc. Deficiency below guaranteed value; duties of state chemist; selling fertilizer which is below guaranteed value misdemeanor.—Whenever the state chemist shall be satisfied that any lot or shipment of fertilizer is four per cent or more below the guaranteed value in plant food, it shall be his duty to assess such deficiency against the manufacturer or guarantor of the fertilizer, and require that the value of the deficiency be made good to all persons who have purchased said fertilizer; and the state chemist may seize any fertilizer belonging to such manufacturer or guarantor if the deficiency shall not be paid within thirty days after notice to such manufacturer.

Any person, firm, or corporation who shall intentionally or knowingly sell or offer for sale any commercial fertilizer for use within this state which is materially below the guaranteed value in plant food, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than fifty dollars nor more than two hundred dollars for the first offense, and not less than two hundred dollars nor more than five hundred dollars for each subsequent offense, and shall refund to all purchasers of said commercial fertilizer twice the value of the deficiency in plant food. (Id. sec. 6.)

Art. 14d. Selling fertilizer containing forbidden materials unlawful, etc.; duty of state chemist; to issue bulletins; evidence; etc.—It shall be unlawful to sell or offer for sale, in this state, any fertilizer or fertilizing materials which contain an undue quantity of hair, or which contains leather scraps, peat, or other substances of low availability as food for plants, but in which such forbidden materials aid in making up the required or guaranteed analysis. Whenever the analysis by the state chemist shall show the presence of any of these unlawful materials in goods registered for sale, publication shall be made in bulletins giving the name or brand of the goods and the unlawful substance contained in its composition. No manufacturer or seller of such goods shall be allowed to collect pay for the same, and if payment has been made it shall be returned by the seller to the purchaser. A copy of the bulletin containing the statement of the presence of said unlawful materials in the named goods shall be evidence in any court in this state in bar of payment and for recovery of money paid for goods so named. The presence of any forbidden material shall vitiate the whole; provided that manufacturers who desire to use any such material may do so under such regulations as the state chemist may prescribe, if it be shown that it is available for a proper purpose. (Id. sec. 7.)

Art. 14dd. Monthly statements by carriers; examination of carriers' books.—It shall be lawful for the state chemist to require the officers, agents, or managers of any railroad, steamboat or other transportation company, transporting fertilizers or fertilizing material in the state, to furnish monthly statements of the quantity of such fertilizers, with the names of the consignor and consignee and the name of brand delivered on their respective lines at any and all points within this state. And the state chemist is hereby empowered to compel such officers, agents or managers to submit their books for examination, if found expedient so to do. (Id. sec. 8.)

Art. 14e. Statements to be mailed to state chemist after sales, etc.; annual statements of sales to be submitted.—Every firm, corporation or person who has registered fertilizers for sale within the state of Texas, shall mail to the state chemist, on forms provided by the state chemist, within three days of each sale, shipment or delivery, a statement showing the official name of fertilizer, the quantity and the name and address of the person to whom the fertilizer is sold, and if such fertilizer is to be used for manufacturing purposes, the fact must be so stated, and also the composition of said fertilizer. Every corporation, firm or person registered to sell fertilizers within the state of Texas according to this chapter, shall annually on the first day of May, submit to the state chemist a statement of their sales of said fertilizer since September 1, preceding, and the state chemist is hereby authorized to require other statements of sales, if necessary, in such form as he may prescribe. The sales or shipments of any individual, corporation, firm, or person shall not be disclosed. (Id. sec. 9.)

Art. 14ee. Fertilizer sold, etc., in violation of law liable to seizure; warrant for seizure on complaint of state chemist, etc.; hearing, condemnation and sale; sale, how advertised and made, etc.—Any commercial fertilizer sold, offered, or exposed for sale within this state in violation of any provision of this chapter, shall be liable to seizure at the instance of the state chemist. Upon complaint being filed by the state chemist, in person or by duly authorized deputy, with any county judge or justice of the peace, describing the commercial fertilizer and the place where it is believed that said commercial fertilizer is sold, offered or exposed for sale in violation of law, such county judge or justice of the peace shall issue his warrant directing and commanding the sheriff or any constable of his county to search such place, and if the law is being violated, to seize the commercial fertilizer, and it shall be the duty of the officer to whom such warrant is delivered to search the place described in the warrant and to seize all commercial fertilizer found therein which is in violation of law, and if admission into said place is refused,

the officer executing said warrant is hereby authorized to force open the same. If it shall appear at the hearing before the county judge or justice of the peace who issued said writ, that the commercial fertilizer was being sold, exposed or offered for sale in violation of any provision of this chapter, said commercial fertilizer shall be condemned and delivered to an officer or agent of the state chemist, to be sold by or under the direction of the state chemist, and the net proceeds paid to the treasurer of the agricultural and mechanical college of Texas, for the purpose of enforcing the provisions of this chapter. The sale shall be made at the court house door in the county in which the seizure is made, after thirty days' advertisement in some newspaper published in said county, or if no newspaper is published in such county, then by like advertisement in a newspaper published in the nearest county thereto having a newspaper. The advertisement shall state the name or brand of the goods, the quantity, and why seized and offered for sale. Said commercial fertilizer shall be sampled and subjected to analysis if necessary or tagged or branded and otherwise brought into compliance with the requirements of this chapter, before being sold. The state chemist, however, may, in his discretion, release the commercial fertilizer seized or condemned, upon the payment of the required tax or charge and all cost and expense incurred in any proceeding connected with such seizure and condemnation and upon compliance with all other requirements of this chapter. (Id. sec. 10.)

Art. 14f. Selling, etc., offering in certain cases misdemeanor; duties of attorney general and county attorneys; injunction.—Every firm, corporation or person who shall sell or offer for sale any commercial fertilizer without having attached thereto such labels, stamps and tags as are required by law, or who shall use the required tag a second time to avoid the payment of the tonnage charge, or who shall sell adulterated or misbranded fertilizer within the meaning of this Act, shall be guilty of a misdemeanor and upon conviction shall be fined not less than fifty nor more than two hundred dollars for each offense. It shall be the duty of the attorney general and of the several county attorneys, when requested by the state chemist, to institute suit to enjoin any person, firm, or corporation, resident or nonresident, from manufacturing, or selling or soliciting orders for the sale of fertilizers in this state or selling fertilizers for use in this state without complying with all the provisions of this chapter, which injunction may issue without bond or advanced cost. (Id. sec. 11.)

Art. 14ff. Commercial fertilizer defined; certain substances exempt.—A commercial fertilizer is hereby defined as any material, substance or mixture, which contains or is claimed to contain more than one per cent of total phosphoric acid, or of potash, or of nitrogen, and which is used for application to the soil to promote the growth of crops, or any substance, material or mixture, which is claimed to exert a beneficial action upon the soil or to promote the growth of crops; provided, that following substances: lime, limestone, marl, unground bones, stockpen manure, barn-yard manure, or the excrement of any domestic animal, shall be exempt from the provisions of this chapter, in case that said manure or excrement has not been dried or manipulated or otherwise treated or is not claimed to have a value of more than four dollars a ton. (Id. sec. 12.)

Art. 14g. Penalty for selling, etc., adulterated or misbranded fertilizer; when deemed misbranded or adulterated.—Any person, firm or corporation manufacturing, selling or offering for sale any adulterated or misbranded commercial fertilizer for use within this state shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars or not more than two hundred dollars. A fertilizer shall be deemed to be misbranded if it carries any false or misleading statement upon or attached to the package, or if false or misleading statements concerning its agricultural value are made on the package or in any printed advertising matter issued by the corporation, firm or individual that registered said fertilizer, or if the number of net pounds set forth upon the package is not substantially correct. A fertilizer is adulterated if it contains any substance or substances injurious to the crop or to the soil, or if the guaranteed valuation exceeds the valuation of the plant food found on analysis ten per cent or more, or if any of the plant food constituents falls twenty per cent or more below the guaranteed composition. (Id. sec. 13.)

Art. 14gg. Sale of fertilizer in bulk in certain cases authorized.—Manufacturers, jobbers, dealers or manipulators of commercial fertilizers may sell acid phosphate or other commercial fertilizer in bulk to persons, individuals or firms who desire to purchase the same for their own use on their own land but not for sale or distribution, under rules and regulations prescribed by the state chemist which will not be inconsistent with the provisions of this chapter; provided, that inspection tax shall be paid upon such fertilizer as provided in section 5 [Art. 14c]. But if such bulk fertilizer is offered for sale or distribution, it must be tagged and branded and otherwise accord with the provisions of this chapter. (Id. sec. 14.)

Art. 14h. Penalty for deceiving, counterfeiting, etc.—Any person, party or manufacturer who uses the fertilizer tags, bags or labels of some other person, party or manufacturer, in such a way as to deceive or tend to deceive, or who counterfeits, or uses a counterfeit, of the tax tag prescribed in this chapter, shall be subject to a fine of not less than one hundred dollars, and not more than five hundred dollars. (Id. sec. 15.)

Art. 14hh. Weight of bags or packages; weight, how ascertained; penalty for failure to make good deficiency, etc.—All fertilizers or fertilizing materials sold or offered for sale for use within this state, shall be in bags or packages of one hundred pounds net weight, except as provided in section 14 [Art. 14gg]. The weight of fertilizers shall be ascertained by the inspectors of the state chemist before drawing a sample, or by the purchaser within ten days of delivery to him, in the presence of at least two disinterested witnesses, one chosen by the purchaser and the other by the manufacturer, and the purchaser shall within five days

notify the manufacturer to make good the deficiency, and upon failure of the manufacturer to do so within twenty days thereafter, he shall be liable to a penalty of three dollars for each sack, barrel, or package, which immediately attaches and becomes recoverable by the state, one-half of the penalty so received to be paid to the purchaser in case of a sale; provided, if any such manufacturer shall refuse, decline, or neglect to be present or to choose a witness within six days as herein provided after having been notified or requested in writing by the purchaser so to do, then he or they shall have forfeited their right to do so and the purchaser may select two witnesses, who shall select a third, who shall proceed to ascertain said weight. (Id. sec. 16.)

Art. 14i. Purchaser for use who is not dealer, etc., may take sample for analysis; state chemist to make analysis; samples, how taken, certified, etc.; penalty for refusal to furnish certificate, etc.—Any person not a dealer in, or agent for the sale of any fertilizer, who may purchase any commercial fertilizer for his own use within this state and not for sale, may take a sample of same for analysis, which analysis shall be made free of charge by or under the direction of the state chemist. Said sample or samples of fertilizer shall be taken in the presence of both purchaser and seller. One cupful of the fertilizer shall be taken from the top and one cupful from the bottom of each sack, provided that there are not more than five sacks in the lot, but in lots of 10 to 100 sacks, from not less than five sacks; in lots of 100 and over, from not less than five per cent of the entire number. The samples so taken shall be intermixed upon some surface so as not to mix dirt or any other substance with the fertilizer. After thorough mixing, at least one pound of the material must be put into each of two cans or jars, one of which securely sealed and marked in such a way as to surely identify the sample and show by whom it was sent, but the name of the fertilizer or of the person from whom it was purchased need not be given, and must be forwarded by express, all charges prepaid, to the state chemist; the other sample, securely sealed, shall be turned over to the company or agent selling same. The purchaser shall also send with the sample a certificate signed by himself and two disinterested witnesses, stating that the sender has purchased the fertilizer for his own use and not for sale and that the sample was taken in the manner prescribed in this section, and that the sender has in his possession a certificate signed by himself and the two witnesses, giving the name of the fertilizer and manufacturer thereof as tagged or branded on the packages and will forward this certificate to the state chemist on receipt of the analysis. Provided, however, that if the person, company or agent shall refuse, decline or neglect to witness the taking of samples, after having been requested or notified by the purchaser in writing six days before so to do, then the sample may be taken in the manner already described in the presence of two disinterested witnesses. Any person having sent a sample for analysis under the provisions of this section, who shall, after having received the report of analysis of same refuse to furnish the required certificate, shall thereafter forfeit the privilege of analysis of fertilizers under this section. (Id. sec. 17.)

For section 18 of this Act see post, Penal Code, art. 999fff.

Art. 14ii. Laws repealed.—Chapter 46 of the General Laws of 1899 and all other laws and parts of laws in conflict herewith are hereby repealed. (Id. sec. 19.)

CHAPTER TWO

COUNTY AGRICULTURAL EXPERIMENT FARMS AND STATIONS

Art. 14j. Commissioners' court may establish and maintain.—The commissioners court of any county within this state by an election as hereinafter provided, shall, under the terms and provisions of this Act, establish and maintain an agricultural experiment farm and station within their county. (Acts 1911, p. 208, sec. 1.)

Art. 14jj. Number of acres; to be donated.—Said agricultural experiment farm and station shall consist of such number of acres of land as might be reasonably expected to produce a revenue sufficient to maintain the same, to be determined by the commissioners court, and shall, with sufficient houses, residences, barns and lots thereon, be donated to the county with good and legal title thereto, free of and without any cost whatsoever to the county. (Id. sec. 2.)

Art. 14k. Where to be located.—Said farm shall be located at the county seat or as near thereto as practicable, but if no such donation is offered at or within reasonable distance from the county seat, not to exceed two miles, then such farm may be located elsewhere in the county, having due regard for the benefits of all the people to be derived from such experimental farm and station. (Id. sec. 3.)

Art. 14kk. Director, how appointed; qualifications; examination; compensation, etc.—The said experimental farm and station shall be in charge of and under the direction of a director, who shall be appointed by the commissioners court, but who shall be a practical farmer, and who has, in addition, passed a satisfactory examination to be prescribed by the state director of experiment stations touching his general knowledge, information, education, and his knowledge of farming, stock raising and other affairs incident to successful farm life; the examination shall be conducted by the state director of experiment stations or by some one designated by him for such purpose. The said director of said farm shall be furnished a residence on said farm, free of cost for himself and family, as a part of his compensation, and in addition thereto shall receive such salary or additional compensation as may be fixed by the commissioners court, not less than $75.00 per month, which shall be paid by the county. The commissioners shall not rent or lease said farm to anyone, nor permit it to be done by anyone. (Id. sec. 4.)

Art. 14l. Commissioners' court to supply necessities.—The commissioners court shall supply said farm and station with sufficient houses, barns, lots, machinery, farm utensils, scientific instruments, materials, seeds and such other necessities as may be

necessary, and from time to time shall make such improvements as may be necessary to carry out the purposes of this Act. Said farm shall also be supplied with such stock, including work stock and cattle, both for service and breeding purposes, as may be necessary to efficiently carry out the terms and provisions of this Act, and to promote the betterment and improvement of the farm and stock raising industry of such county. (Id. sec. 5.)

Art. 14*ll*. Shall be under advisory direction of state director of experiment stations, etc.—Said experiment farm and station shall be affiliated with all other experiment stations heretofore created by law or hereunder in this state, and shall be under the advisory direction of the said director of experiment stations, and shall be directed along the same lines and with the same purpose as the other agricultural demonstration farms and experiment stations in this state. (Id. sec. 6.)

Art. 14m. Duties of director; annual report, etc.—The director of said experiment farm and station shall conduct the same, employ the necessary labor with the approval and advice of the commissioners court to conduct said farm, and keep a complete and accurate record of rainfall, temperature, the winds, and general climatic conditions; the planting, cultivation and marketing of all crops of every character; of his management and observation, and of his management of the live stock on said farm; he shall also make an annual report to the commissioners court of the county, showing in detail his methods and results, which report shall be published by the county and a copy thereof mailed free to every person in the county actually engaged in farming, also to every experiment station within the state, and to the state and United States departments of agriculture, and to every other person within the county who desires a copy of same; said director shall, by and with the consent of the commissioners court, issue such bulletins for distribution in the county from time to time as it may be deemed proper or necessary; the said director shall perform such other duties as may be prescribed by the commissioners court not inconsistent with law. He shall sell and market the products of said farm, under the rules made therefor by the commissioners court, and shall pay the proceeds thereof to the county treasurer of the county, who shall place the same to the credit of the general fund of the county. The said director shall also, at all reasonable times, keep said farm open to the inspection of the public, and it shall be his duty to disseminate information, and to explain to all persons his manner and methods of preparation, soil culture, planting, of cultivation, gathering, preservation and marketing of the products of said farm. (Id. sec. 7.)

Art. 14mm. Expenses, how paid.—The labor necessary for the cultivation and care of said experiment farm and station, including the salary of the director thereof, as well as all expenses and expenditures provided for herein, shall be paid by the county out of its general funds under the provisions of the law, upon warrants drawn by the director and approved by the county judge. Provided that county paupers shall not be maintained or permitted to work upon said farm. (Id. sec. 8.)

Art. 14n. Question of adoption of Act to be submitted to voters; petition; election; ballots, etc.—On petition of legal voters of such county in number not less than ten per cent of the last vote cast for governor in such county, the commissioners court shall submit the question of the adoption of the provisions of this Act to the qualified voters of said county. Such election shall be held at the usual voting places and by the usual election officers, and as near as may be shall be conducted in accordance with the general election laws of the state. Upon the filing of such petition with the commissioners court the said court shall order an election to be held not less than thirty nor more than sixty days from the date of the order ordering the same, which said order shall be signed by the county judge as presiding officer for the commissioners court; that notice of such order shall be given by the posting of copies of said order at all the postoffices within such county or district, if there be such, and at the court house door of such county, or by publication in some newspaper of general circulation within such county or district. At such election those favoring a county experiment farm and station, under the terms and provisions of this Act, shall vote a ticket on which shall be written or printed the words, "For a County Experiment Farm and Station," and those who are opposed shall vote a ticket on which shall be written or printed the words, "Against a County Experiment Farm and Station." But, both tickets may be written or printed on the same piece of paper, and the voter may vote by erasing or drawing a line through the one which he does not desire to vote. The officers of the election shall make their report to and certify to the commissioners court the number of votes cast both for and against the county experiment farm and station, and, if it appear that a majority of the votes cast at such election are in favor of such county experiment farm and station, the commissioners court shall so declare the result, and shall then proceed to execute the terms and provisions of this law by establishing such farm and station. (Id. sec. 9.)

CHAPTER THREE

DEMONSTRATION AND EXPERIMENT FARMS

Art. 14nn. Right to maintain demonstration and experiment farms, etc.—Any railway corporation in the state of Texas, is hereby authorized to acquire, either by lease or purchase, and to own, maintain and operate, or cause to be operated, demonstration and experimental farms, orchards and gardens, no single farm, orchard or garden to exceed 1000 acres in size and not more than four farms for any railroad corporation, for the purpose of aiding in the development of the agricultural and horticultural resources of the state. (Acts 1913, p. 319, sec. 1).

CHAPTER FOUR

EXPERIMENTAL STATIONS

Art. 14*o*. Establishment of stations; purposes.—There shall be established at such places in the state of Texas as the board

hereinafter named may deem[ed] proper, experiment stations in addition to those now in operation for the purpose of making experiments and conducting investigations in the planting and growing of agricultural and horticultural crops, and soils, and the breeding, feeding and fattening of livestock for slaughter. (Acts 1913, S. S., p. 98, sec. 2.)

Art. 14*oo*. Principal station; supervision; federal government aid; sub-stations.—The experiment station located at the agricultural and mechanical college in Brazos county which is in part supported by the federal government shall remain at said point as a permanent institution. It shall be known as the main or principal state experiment station and it shall continue as heretofore, under the supervision of the board of directors of the agricultural and mechanical college of Texas, which board shall have the authority to accept from the federal government such aid, in its support, as is now or which may hereafter be provided by Congress. All other experiment stations of whatever character which may have heretofore been, or which may hereafter be, established, as provided in this Act, shall be considered as sub-stations. (Id. sec. 3.)

Art. 14p. Government of sub-stations; composition and appointment of board.—Said sub-experiment stations shall be governed by a board, consisting of four persons who shall be qualified voters, to be known as the governing board, one of whom shall be the lieutenant governor and the other three shall be appointed by the governor with the advice and consent of the senate. The members of the governing board heretofore appointed by the governor shall continue to exercise their duties until the appointment and qualification of their successors. (Id. sec. 4.)

Art. 14pp. Classification of board members; terms of office; vacancies.—With the exception of the lieutenant governor, the governing board shall be divided by lot into three classes, numbered one, two and three as determined by the board at its first meeting after this Act takes effect. The person drawing number one shall hold office until the regular session of the thirty-fourth legislature and until the appointment and qualification of his successor; the person drawing number two shall hold office until the regular session of the thirty-fifth legislature and until the appointment and qualification of his successor, and the person drawing number three shall hold office until the regular session of the thirty-sixth legislature and until the appointment and qualification of his successor. The governor shall fill all vacancies as they occur for any unexpired term subject to the approval of the senate. The terms of office of all appointees on said board thereafter shall be made for six years. (Id. sec. 5.)

Art. 14q. Powers of governing board.—With the approval of the governor, the governing board shall have power:

(a) To establish sub-experiment stations at such places in the state of Texas as it shall deem proper in addition to those now in operation.

(b) To abandon or discontinue any sub-station which is now or which may hereafter become undesirable for experiment purposes, and, if deemed necessary, may establish others in their stead at such place or places in the state of Texas as it shall deem advisable; provided, however, no station shall be abandoned and re-located beyond the bounds of the county in which such station was originally located.

(c) To sell any land or other property of the state of Texas owned or used by it in the operation of an experiment station, when such station is abandoned as herein provided the proceeds from the sale of which may be applied by said board in the purchase of other land and property for the establishment of an experiment station. In the event of any such sale being made the title to said property shall not pass from the state until a deed of conveyance therefor is made to the purchaser duly signed by the governor and attested by the secretary of state under his official seal, who are hereby authorized to execute the same. All funds received from the sale of said station land or other property shall be deposited in the state treasury in an account to be known as "The Experiment Station Fund," and to be paid out in accordance with the provisions of this Act, upon voucher, as prescribed in section 16 of this Act [Art. 14v], for experiment station accounts. (Id. sec. 6.)

Art. 14qq. Power to accept donations.—The said governing board shall also have power to accept and receive all donations in money or other property when given to be used in connection with any experiment work authorized by this Act. (Id. sec. 7.)

Art. 14r. Location of stations; donations; lease of land.—In the location of any experiment station said board may take into consideration and receive any donation either in money, land or other property, to be used in the operation, equipment or management of any such station, and, for experiment work, may lease such land as may, in its judgment, be necessary for any of the purposes named in section 2 [Art. 14*o*] of this Act. (Id. sec. 8.)

Art. 14rr. Sub-experiment stations; government of; residence of director.—All sub-experiment stations, including those heretofore as well as those hereafter established shall be subject to the provisions of this Act and shall be under the supervision, control, management and direction of the director of the Texas agricultural experiment station at the agricultural and mechanical college, who residence shall be at College Station, Brazos county, Texas. (Id. sec. 9).

Art. 14s. Employment of assistants; purchase of supplies.—The director of the Texas agricultural experiment station may employ such assistants and labor and may purchase such livestock, farming implement, tools, seed, and such other materials and supplies as he shall deem necessary to the successful management of all, or any, of such experiment stations, subject to the approval of the governing board. (Id. sec. 10.)

Art. 14ss. Proceeds of sales of crops; report as to.—Proceeds from the sale, barter or exchange of crops raised on any of said experiment stations shall go to defray the expenses of operating the same. The directors shall make a complete report monthly to the governing board showing receipts and disbursements, the source of such receipts

and for what the same were disbursed. (Id. sec. 11.)

Art. 14t. Bulletins to farmers; reports as to operations and expenditures.—It shall be the duty of the director of Texas agricultural experiment stations to issue and circulate among the farmers and livestock raisers of the state of Texas, from time to time, as may be deemed beneficial to such industries, printed bulletins showing the results of such experiments, such bulletins to be mailed to such persons as may desire them. Said bulletins shall also show the results accomplished and the progress made in the improvement of the agricultural and livestock interests of the state. He shall also invite their co-operation and shall give them advice when requested with reference to the management and cultivation of their farms, and also the care, management and feeding of their stock. It shall also be the duty of the director of said stations to make the governing board, annually on or before the first day of January, a full and detailed report of the operation of said stations, including a statement of receipts and expenditures, which report shall be transmitted to the governor with such additional report as the board shall deem proper. (Id. sec. 12.)

Art. 14tt. Duty of governing board to visit stations.—In addition to the duties hereinbefore prescribed it shall be the duty of the governing board to visit said experiment stations at least once each year; it shall make such criticisms to the director and his assistants as it shall deem expedient and needful. (Id. sec. 13.)

Art. 14u. Payment of director's salary.—The governing board is hereby authorized to pay a part of the director's salary from funds appropriated by the legislature for the maintenance and support of said experiment stations in such proportion, as in its judgment, may be just and proper; taking into consideration the division of his time between said sub-stations and the main station at the agricultural and mechanical college and the sum appropriated for such purposes from the federal appropriation. (Id. sec. 14.)

Art. 14uu. Traveling expenses of governing board; payment; compensation.—The necessary traveling expenses of the members of the said governing board and those of the director and of his assistants shall be paid out of the funds appropriated by the state of Texas for the maintenance and support of said experiment stations. In addition to their actual traveling expenses, the members of said board when traveling upon the official business of said stations shall each be paid five dollars per day while actually engaged in the discharge of their duties. (Id. sec. 15.)

Art. 14v. Issuance of warrants; audit.—Before warrants are issued by the State comptroller in payment of state experiment stations accounts, vouchers covering the same shall be audited and signed by the director or by an assistant designated by him in writing for that purpose, and also by the president of the board herein created, or by a member of said board designated by him in writing for that purpose. (Id. sec. 16.)

Art. 14vv. Inconsistent laws repealed.—That all laws and parts of laws in conflict with this Act be and the same are hereby repealed. (Id. sec. 17.)

Art. 14w. State director of state experimental stations to assist United States government in maintaining station.—That the state director of the state experimental stations of Texas is hereby authorized and directed to co-operate with the national government in maintaining an experimental station for the purpose of conducting experimental culture of tobacco and carrying on researches and experiments in tobacco growing and other farm products, said station to be under the direction of the national government in the 17th representative district. (Acts 1911, p. 168, sec. 1.)

Art. 14ww. Appropriation, how used; expert; salary; appointment, etc.—There is hereby appropriated out of any money in the state treasury not otherwise appropriated for the support of the state government, the sum of six thousand ($6,000.00) dollars, to be used in co-operating with the national government expert in demonstrating and experimenting the culture of tobacco. Said superintendent of experimental stations is hereby authorized to use three thousand ($3,000.00) dollars per annum for a period of two years in defraying the expense of the national government expert, in employment of help and securing one assistant who is experienced in the culture of tobacco, to visit the various farms in the various counties that raise tobacco, and assisting the actual producer in showing him the best methods of raising tobacco for the market, said expert to receive a salary of twelve hundred ($1,200.00) dollars per annum, and actual expenses while on the road, said expert to be appointed by the governor upon the recommendation of the federal government expert. Provided that the citizens of Nacogdoches county shall be required to pay one-half the purchase price of the buildings and lands upon which such experimental station is located and such grounds and buildings shall be purchased and donated to the state of Texas, before any part of the appropriation herein provided for shall be expended, and the state shall pay one-half of such purchase price, and the remainder of this appropriation shall be expended under the direction and upon the approval of the director of the state agricultural experimental stations of Texas. (Id. sec. 2.)

Art. 14x. Proceeds of crops raised, how used.—The proceeds from the sale, barter or exchange of all crops raised on said station, shall go to defray the expense and continuing the operation of said station. (Id. sec. 3.)

CHAPTER FIVE

FARMERS' COUNTY LIBRARY

For county libraries, see post, arts. 1498½-1498½a.

Art. 14xx. Submission to vote.—Upon the petition of one hundred or more legal voters of a county being filed with the county judge thirty days prior to any county election praying that the proposition of providing for a farmers' county library at the county seat be submitted to a vote of the people of such county, such proposition shall be submitted to a vote of the people of such county at the next ensuing county election. (Acts 1913, p. 249, sec. 1.)

Art. 14y. Duties of commissioners' court.—If a majority of all the votes cast upon such proposition are in favor thereof, it shall be the duty of the commissioners' court of such county, within six months after said election, to provide a room or rooms in the county court house sufficient for the accommodation of such library, and to make an appropriation out of the county funds sufficient for the support and maintenance thereof. (Id. sec. 2.)

Art. 14yy. Librarian.—The commissioners' court of such county shall employ a librarian whose duty it shall be to gather information pertaining to agriculture, horticulture and kindred subjects, to compile and catalogue same so as to be available for ready reference and use. (Id. sec. 3.)

Art. 14z. Powers of commissioners' court.—The commissioners' court of such county shall have entire control of such library and shall make such rules and regulations as may be necessary for its proper management. (Id. sec. 4.)

CHAPTER SIX

CO-OPERATIVE DEMONSTRATION WORK

Art. 14zz. May appropriate money for farmers' co-operative demonstration work.—The commissioners courts of the respective counties of this state may and they are hereby authorized and empowered to appropriate and use under such rules and regulations as they may prescribe, any sum or sums of money not exceeding one thousand dollars per year for farmer's co-operative demonstration work in their respective counties, along the same lines as this work is and may be conducted by the United States department of agriculture, and may conduct such work jointly in the respective counties with the agents and representatives of the United States department of agriculture, upon such terms and conditions as may be agreed upon between the agents of the department of agriculture and the commissioners court. (Acts 1911, p. 105, sec. 1.)

Art. 14zzz. Canning demonstration work.—The commissioners courts of the respective counties of this State may and they are hereby authorized and empowered to appropriate and use under such rules and regulations as they may prescribe any sum or sums of money not to exceed fifteen hundred ($1500.00) dollars per year for the canning demonstration agent in their respective counties along the same lines as this work is and may be conducted by the Agricultural and Mechanical College and may conduct such work jointly in their respective counties with the agents and representatives of the Agricultural and Mechanical College upon such terms and conditions as may be agreed upon between the agents of the Agricultural and Mechanical College and the commissioners court. (Acts 1917, 1st C. S., ch. 35, sec. 1.)

CHAPTER SEVEN

FARMERS' CO-OPERATIVE SOCIETIES

Art. 14½. Corporations may be created.—That private corporations may hereafter be incorporated for the purpose of enabling those engaged in agricultural pursuits to co-operate with each other for the purposes named in this Act. Only those engaged in agricultural pursuits can become incorporators of or members of Societies chartered under this Act.

Each corporation chartered hereunder shall contain as a part of its name these words, "Farmers' Co-operative Society." No. 1. Provided, persons not engaged in agricultural pursuits may be permitted to contribute an amount not in excess of one-third the outstanding working capital of the society. (Acts 1917, ch. 193, sec. 1.)

Art. 14½a. Locality of operation; public funds not to be used in organizing societies; joint agencies.—Corporations chartered hereunder shall be purely local in their character, shall confine their activities, business operations and membership to the community in which they are located, and in no event to extend beyond the territory surrounding the town, village or city designated as the place of business of the corporation, provided that no public funds appropriated to any department of State Government, or to any State Institution shall be used in organizing any societies or corporations mentioned in this Act. Provided, that corporations incorporated hereunder may join with other corporations incorporated under this Act in establishing and maintaining joint agencies for the accomplishment of the purposes for which they are incorporated. (Id. sec. 2.)

Art. 14½b. Incorporation proceedings.—Those desiring to form corporations hereunder shall, in the exercise of the rights herein granted and subject to the limitations herein provided, prepare and file their charters under the General Corporation Laws of this State, which said corporation laws shall govern them except where in conflict with the provisions of this Act, and then in such instances this Act shall govern. (Id. sec. 3.)

Art. 14½c. Charter fees; filing charters, amendments, etc., with Secretary of State; approval of Attorney General; filing charters, etc., with County Clerk; certified copies.—The Secretary of State shall, instead of the statutory fees charged for filing charters, charge for filing charters and amendments to charters of corporations incorporated hereunder the sum of Ten Dollars for each charter and amendment thereof. Charters, amendments to charters and all by-laws must be filed in the office of the Secretary of State, and must first before being filed be approved by the Attorney General. Copies of the charter and by-laws properly certified to by the Secretary of State shall also be filed in the office of the County Clerk of the county in which is located any Society which is incorporated hereunder, but need not be recorded by the County Clerk but shall be kept by him subject to inspection of any person interested. The Secretary of State shall, in furnishing the corporation certified copies of charters, amendments and by-laws, furnish to the Society two certified copies of each, one for the files of the Society and one to be filed in the office of the County Clerk. (Id. sec. 4.)

Art. 14½d. Purposes of corporations; franchise tax; statements; surplus.—Corporations chartered hereunder shall be purely co-operative, and not for profit, and shall not be required to pay any annual fran-

chise tax, but shall nevertheless make a statement of their assets and liabilities to the Secretary of State, showing the condition of their affairs, in such form as may be prepared for the Secretary of State by the Attorney General. Such Societies may, by their Directors in accordance with their by-laws pass their profits to the surplus fund or divide the same among the members of the Society in proportion to the respective contributions in cash to the working capital of the corporation, and patronage of their members. (Id. sec. 5.)

Art. 14½e. Assets; payment of contributions; rights of certificate holders before payment; notes.—Corporations chartered hereunder shall have property of not less than Five Hundred Dollars in value, which may be cash, property or notes acceptable to the Board of Directors; provided, however, that no membership certificates shall be issued for subscriptions in the form of notes until such notes have been paid in full, principal and interest, and the holders of membership certificates for which cash or property has not been paid, while entitled to vote in the management of the affairs of the corporations shall not be entitled to share in its dividends nor in a distribution of any assets until such notes are paid in full. However, they may become borrowers from the corporation under the provisions of this Act and the by-laws adopted hereunder. Such notes shall be construed to be valid subscription contracts, and shall be the property of the corporations chartered hereunder for any and all purposes. (Id. sec. 6.)

Art. 14½f. Powers.—Corporations chartered under this Act shall have authority to borrow money and discount notes to an aggregate amount not in excess of five times the working capital of the corporation; such corporations shall have the right to loan their funds to members only upon such terms and such security, if any, as may be provided in their by-laws; they shall also have the right to act as the co-operative selling and purchasing agents of their members only, and may for their members sell any and all agricultural products, and for their members purchase machinery and all supplies of any kind or character, including the purchase of fire, livestock, hail, cyclone and storm insurance for its members in the event of purchasing insurance for its members, however, the corporation shall have authority to be, and shall be appointed and licensed as, the agent of the insurance companies, and the commissions so received by it shall be a part of the corporate funds of the company; they shall also have authority to own and operate such machinery and instrumentalities as may be necessary in the production, harvesting, and preparation for market of farm and ranch products. (Id. sec. 7.)

Art. 14½g. Membership.—Membership in Societies incorporated under this Act can be obtained only by election thereto at the time of the organization of the Society by the organizers thereof, or by the Board of Directors of such Society when organized under such rules and limitations as may be made in the by-laws. Members shall each have one vote only in the management of the affairs of the corporation. Members may be suspended or expelled for misconduct under such rules and regulations as may be prescribed, in the by-laws. In case of expulsion the Society shall return to the member at such time as may be fixed in its by-laws an amount equal to the money value of the amount contributed by such member to the working capital of the society. (Id. sec. 8.)

Art. 14½h. Membership certificates not transferable; withdrawal.—Membership certificates shall not be transferable, but members shall have the right of withdrawal under such rules and regulations as may be adopted by the Society in its by-laws. In case of withdrawal the society may return to the member an amount equal to the money value of the amount contributed by him to the working capital of the society. (Id. sec. 9.)

Art. 14½i. Liability of members; waiver of exemption.—Unless otherwise provided, the members of a corporation chartered hereunder shall not be responsible to the corporation, or to its creditors, in excess of the membership shares subscribed by them, and when such shares are paid for their liability shall cease; provided, however, that the association may, in its by-laws, make each member responsible for an additional amount equal to 100 per cent. of the shares owned by a member, payable upon assessment of the Board of Directors for the payment of the debts and obligations of the corporation; And may provide in like manner that members may waive their right to claim personal property exempt from seizure for debt as against debts and obligations due to the society; but in all such instances such liability must be plainly provided for in the by-laws, which by-laws in this and all other instances must be signed by the member. (Id. sec. 10.)

Art. 14½j. Forms to be prepared by Attorney General.—Appropriate forms of charter, charter amendments, by-laws, rules and regulations and annual reports to the members, and such other forms as may be necessary to make this Act effective, shall be prepared by the Attorney General of the State and filed with the Secretary of State who shall cause same, together with copy of this Act, to be published and distributed among the citizens of the State who may be interested. (Id. sec. 11.)

CHAPTER EIGHT

AGRICULTURAL SEEDS

The counties of the state were authorized to purchase seed for planting for distribution to residents of such counties unable to procure seed by reason of poverty for the years 1918 and 1919, to be repaid from the proceeds of the crops of the distributees, and to pay for such seed out of the funds of the county or out of moneys advanced by the state, by Acts 1918, 4th C. S. ch. 4, and Acts 1919, ch. 22, respectively. The obligations incurred by counties under Acts 1918, 4th C. S. were authorized to be extended for 2 years, by Acts 1919, ch. 23, sec. 1.

Art. 14¾. Agricultural seeds defined.—For the purpose of this Act agricultural seeds are defined as the seeds of alfalfa, Irish potatoes and sweet potatoes, clovers, corn, cotton, saccharine, sorghums, non-saccharine sorghums, broom corn, small grains, (including rice), cowpeas, soybeans, velvet beans, peanuts, vetch, rape, millet, Johnson grass, Bermuda grass, Kentucky blue grass, orchard grass, sudan grass, onion and Rhodes grass, which are to be used for sowing or seeding purposes. (Acts 1919, 2d C. S., ch. 62, sec. 1.)

Art. 14¾a. Statements attached to packages; contents.—Agricultural seeds, except as herein otherwise provided, which are offered or exposed for sale within this State for seeding purposes, in lots of ten (10) pounds or more, shall bear a plainly written or printed statement in the English language stating:

(a) Commonly accepted name of agricultural seed.

(b) Correct weight in pounds and ounces.

(c) Name of State where seed was grown, and if unknown, a statement that the locality where grown is unknown.

(d) Approximate percentage of germible seed as determined by germination test and date on which germination test was made.

Name and address of person, firm or party or agency making the germination test, provided however, that the statement shall not be a basis for prosecution under this Act.

(e) Name and address of vendor.

(f) The approximate percentage, by weight, or purity, meaning freedom of such agricultural seed from foreign matter and from other seed distinguishable by their appearance.

(g) The approximate total percentage, by weight, of weed seeds or other foreign matter.

(h) The name and the approximate number per pound of each kind of the seed of the following named noxious weeds which are present at the rate of, or in excess of, one such noxious weed seed in five (5) grams of agricultural seed. Such noxious weed seed are defined as seeds of dodder (cascuta, various species), bind, weed or wild morning glory (convolvulus, various species) blue weed (helianthus cilistus), wire grass (Pasplum distichum). Bermuda grass, (cynodon dactylon L.) Johnson grass, (Andropogan Halotensis), and all other seeds or foreign matter known (by science), to be noxious are hereby defined as noxious weed seeds. (Id. sec. 2.)

Art. 14¾b. Statements attached to packages of mixed seeds; contents.—Mixtures of seeds offered or exposed for sale within the State for seeding purposes, in lots of ten (10) pounds or more, containing one or more kinds of the agricultural seeds defined in Section 2 of this Act [Art. 14¾a] in excess of five per centum, by weight, of the total mixture, shall bear a plainly written or printed statement in English language, stating:

(a) That such seed is a mixture.

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

(c) The requirements providing in paragraphs (c), (g) and (h) of Section 2 [Art. 14¾a], of this Act. (Id. sec. 3.)

Art. 14¾c. Seeds excepted from operation of act.—The provisions of this Act shall not apply to agricultural seeds, or mixtures of seeds, as defined in Section 3, of this Act [Art. 14¾b], when plainly labeled, "not clean seed," or "not tested seed" nor "seeds sold to merchants to be recleansed before being sold or exposed for sale for seeding purposes, or when in storage for the purpose of recleaning." (Id. sec. 4.)

Art. 14¾d. Test or analysis of seed; conduct of.—The percentage of purity of agricultural seed and the mixture as defined in this Act, and other percentages required by this Act, shall be based upon a test or analysis, conducted either by the Commissioner of Agriculture, or his Assistants, or by the Vendor of the agricultural seed, or "mixture," or his agents; provided that such test or analysis made by the vendor or his agents shall conform to the reasonable regulations which said Commissioner of Agriculture is hereby authorized and directed to prescribe, or shall conform to the reasonable regulations or methods of testing adopted or used by the Association of Official seed analysis of the United States Department of Agriculture. (Id. sec. 5.)

Art. 14¾e. Samples of seed for examination and test; fees for; report of result.—Whoever buys or sells agricultural seeds, defined in Section 1, of this Act [Art. 14¾], or mixtures of seeds as provided in Section 3, of this Act [Art. 14¾b], for the use in this State for seeding purposes, may submit fair samples of such seeds to the Commissioner of Agriculture for examination, and test of purity and of viability, and said Commissioner of Agriculture shall cause such examination and test to be promptly made, and report thereon, and return to the sender. For the test of purity, said Commissioner of Agriculture shall charge a fee of twenty-five cents, for the examination of each sample, and for a test of vitality, a fee of twenty-five cents, either or both of which fees shall be payable in advance, provided that these tests shall be made free of charge to the citizens of this State. All money received from receipt of such fees shall be paid into the Treasury of the State, to be credited to the funds of the Department of Agriculture. (Id. sec. 6.)

Art. 14¾f. Enforcement of act by Commissioner of Agriculture; samples for analysis; report to Governor.—The enforcement of this Act shall be entrusted to the Commissioner of Agriculture, and he is authorized in person or by his inspectors, or assistants to take for analysis, paying the reasonable purchase price, a sample not exceeding four ounces in weight, from any lot of agricultural seeds or "mixtures" offered or exposed for sale; provided that said sample shall be drawn or taken in the presence of the vendor or parties interested, or his or their agents or representatives, and shall not be less than ten per cent of the whole lot inspected and shall be thoroughly mixed and then divided into two samples and placed in glass or metal vessels or containers, carefully sealed and a label placed on each vessel stating the name of the agricultural seed or mixture sampled, the name of the vendor from whose stock said samples were taken, and the date and place of taking such samples, and said label shall be signed by said Commissioner of Agriculture, or his authorized agent; or said sample may be taken in the presence of the disinterested witnesses if the vendor or party in interest fails or refuses to be present, when notified. One of said duplicate samples shall be left with or on the premises of the vendor or party in interest, and the other retained by the Commissioner of Agriculture, for analysis and comparison with the labels required by Sections two and three of this Act [Arts. 14¾a, 14¾b].

The Commissioner of Agriculture shall annually and prior to December first, make and submit to the Governor a report of the serv-

ices performed by him or his assistants, together with an itemized account of all moneys paid out as authorized under this Act. (Id. sec. 7.)

For section 8 of this Act, see post, Penal Code, art. 1007a.

Art. 14¾g. Actions by buyer against seller for damages must be based upon samples examined and tested; accrued rights; sales between farmers.—No action for the recovery of damages or any liability whatsoever for any violation of any of the provisions of this Act, or for the breach of any legal duty or obligation in the sale of the agricultural seeds defined in Section one of this Act [Art. 14¾], or the sale of mixtures defined in Section three of this Act [Art. 14¾b], shall be maintained by the buyer and against the vendor of such seeds, unless the claim or claims of such buyer are based upon properly drawn samples of such seed, from the bulk thereof, and examined in the way and manner provided in Section six of this Act [Art. 14¾e]; provided, that none of the provisions of this Act shall affect any right accruing prior to the time when this Act shall go into effect; provided that nothing in this Act shall be construed as preventing one farmer from selling to another farmer such seed grown on his own farm as covered by the provisions of this Act without having said seed tested and labeled as provided for herein. (Id. sec. 9.)

Art. 14¾h. Results of analysis and tests may be published in report of Commissioner.—The result of the analysis and tests of seed made by the Commissioner of Agriculture of samples drawn by him or his inspectors may at his discretion, be published in his report. (Id. sec. 10.)

Art. 14¾i. Annual appropriation; use of with fees for enforcement of act.—There shall be appropriated annually from the State Treasury, the sum of $..... in favor of the Department of Agriculture and the same together with the fees provided for in Section Six of this Act [Art. 14¾e], may be expended in the enforcement of this Act. So much of said appropriation and the moneys secured as fees for tests and analysis of seed after first exhausting the moneys secured from the collection of the fees as herein provided for, shall be paid to the Commissioner of Agriculture as he may show by his bills has been expended in performing the duties required by this Act. (Id. sec. 11.)

Art. 14¾j. Definitions.—The words, "persons," "vendor" and "party" in interest and "whoever" as used in this Act shall be construed to impart both the plural and singular, as the case demands, and shall include corporations, companies, societies and individuals. (Id. sec. 12.)

TITLE 3

ALIENS

See, also, Title 45.

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

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

Art. 17. (11) Interest in liens and acquisitions of land under foreclosures, and to collect debts, permitted.—The provisions of this title shall not prevent aliens from acquiring lands, or any interest therein, in the ordinary course of justice in the collection of debts; nor from acquiring liens upon real estate, or any interest therein; nor from lending money and securing the same upon real estate, or any interest therein; nor from enforcing any such lien; nor from acquiring and holding title to such real estate, or any interest therein, upon which a lien may have heretofore or may hereafter be fixed, or upon which a loan of money may have been heretofore or hereafter may be made and secured. (Acts 1892, p. 6.)

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

Art. 19. (13) May convey before escheat proceedings, good faith required.—Any alien who shall hereafter hold lands in Texas, in contravention of the provisions of this title, may, nevertheless, convey the fee simple title thereof at any time before the institution of escheat proceedings as hereinafter provided; provided, however, that if any such conveyance shall be made by such alien either to an alien or to a citizen of the United States, in trust, and for the purpose and with the intention of evading the provi-

sions of this title, such conveyance shall be null and void; and any such land so conveyed shall be forfeited and escheated to the state absolutely. (Id.)

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

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

TITLE 4

AMUSEMENTS—PUBLIC

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

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

TITLE 5

APPORTIONMENT

Counties.	Senatorial District.	Representative District.	Congressional District.	Judicial District.	Sup. Judicial District.
Anderson	13	25	7	3	1
Andrews	28	122	16	70	8
Angelina	13	10	2	2	9
Aransas	22	75	14	36	4
Archer	29	100	13	30	2
Armstrong	29	123	18	47	7
Atascosa	22	80	15	81	4
Austin	18	71, 127	10	22	1
Bailey	29	123	18	64	7
Bandera	24	115	16	38	4
Bastrop	19	90	10	21	3
Baylor	29	102	13	50	2
Bee	22	75	14	36	4
Bell	27	66, 67	11	27	3
Bexar	24	85	14	37,45,57,73	4
Blanco	21	87	14	33	3
Borden	28	122	18	32	8
Bosque	27	95	11	18	2
Bowie	1	1, 3	1	5	6
Brazoria	17	19	9	23	1
Brazos	12	22	6	85	1
Brewster	25	117	16	63	8
Briscoe	29	122	18	64	7
Brooks	23	78	15	79	4
Brown	26	110	17	35	3
Burleson	19	68, 127	10	21	1
Burnet	20	92	17	33	3
Caldwell	21	86	10	22	3
Calhoun	22	74	9	24	4
Callahan	28	108, 110	17	42	2
Cameron	23	77	15	28	4
Camp	7	31	1	76	6
Carson	29	125	18	31	7
Cass	1	2, 3	1	5	6
Castro	29	123	18	64	7
Chambers	17	17	7	75	1
Cherokee	13	26	2	2	6
Childress	29	104	18	46	7
Clay	29	100	13	30	2
Cochran	29	122	18	72	7
Coke	25	111	16	51	3
Coleman	26	112	17	35	3
Collin	5	41, 43	4	59	5
Collingsworth	29	124	18	46	7
Colorado	18	71, 127	9	25	1
Comal	21	88	14	22	3
Comanche	26	109	17	52	2
Concho	26	112	17	35	3
Cooke	4	48	13	16	2

Counties.	Senatorial District.	Representative District.	Congressional District.	Judicial District.	Sup. Judicial District.
Coryell	27	93	11	52	3
Cottle	29	104	13	50	7
Crane	28	120	16	70	8
Crockett	25	115	16	83	3
Crosby	29	122	13	72	7
Culberson	25	119	16	34	8
Dallam	29	125	13	69	7
Dallas	6	44, 47	5	14, 44, 68	5
Dawson	28	122	13	72	2
Deaf Smith	29	123	13	69	7
Delta	2	35	1	8, 62	5
Denton	31	46, 54	13	16	2
DeWitt	22	81	9	24	1
Dickens	29	105	13	50	7
Dimmit	23	116	15	49	4
Donley	29	124	13	47	7
Dunn	23	76	15	28	4
Duval	23	76	15	79	4
Eastland	28	108	17	88	2
Ector	28	120	16	70	8
Edwards	25	115	16	83	4
Ellis	10	55	5	40	5
El Paso	25	118, 119	16	34, 41, 65	8
Erath	26	96, 97	12	29	2
Falls	11	62, 63	11	82	3
Fannin	3	37, 38	4	6	6
Fayette	18	70, 127	9	22	1
Fisher	28	121	13	39	7
Floyd	29	122	13	64	7
Foard	29	103	13	46	7
Fort Bend	16	18, 127	8	23	1
Franklin	2	35	1	76	6
Freestone	12	58	6	77	5
Frio	22	80	15	81	4
Gaines	28	122	13	72	8
Galveston	17	16, 17	7	10, 56	1
Garza	28	122	13	72	7
Gillespie	24	87	16	33	4
Glasscock	28	120	16	70	8
Goliad	22	74	9	24	4
Gonzales	21	82	9	25	4
Gray	29	124	13	31	7
Grayson	4	42, 43	4	15, 59	5
Gregg	8	126	3	4	6
Grimes	15	21, 22	8	12	1
Guadalupe	21	83	14	25	4
Hale	29	123	13	64	7
Hall	29	104	13	46	7
Hamilton	27	94	11	52	3
Hansford	29	125	13	31	7
Hardeman	29	103	13	46	7
Hardin	14	12	2	9, 75	9
Harris	16	15	8	11,55,61,80	1
Harrison	8	4, 126	2	71	6
Hartley	29	125	13	69	7
Haskell	28	102	13	39	2
Hays	21	88	10	22	3
Hemphill	29	124	13	31	7
Henderson	9	28	3	3	5
Hidalgo	23	78	15	79	4
Hill	10	56, 59	6	66	5
Hockley	29	122	13	72	7
Hood	30	97	12	29	2
Hopkins	2	34, 35	1	8	6
Houston	13	24	7	3	1
Howard	28	120	16	32	2
Hudspeth	25	119	16	34	8
Hunt	5	39, 40	4	8, 62	5
Hutchinson	29	125	13	31	7
Irion	25	113	16	51	3
Jack	29	99	13	43	2
Jackson	22	73	9	24	1
Jasper	14	9	2	1	9
Jefferson	14	13, 14	2	58, 60	9
Jeff Davis	25	117	16	63	8
Jim Hogg	23	78	15	79	4
Jim Wells	23	76	15	79	4
Johnson	10	53, 95	12	18	2
Jones	28	106	17	39	2
Karnes	22	81, 84	14	81	4
Kaufman	9	45, 47	3	86	5
Kendall	24	87	14	38	4
Kent	28	105	13	39	7
Kerr	24	115	16	38	4
Kimble	25	115	16	33	4
King	29	105	13	50	7
Kinney	25	117	15	63	4
Kleberg	23	77	15	28	4
Knox	29	103	13	50	2
Lamar	3	36, 38	1	6, 62	6
Lamb	29	123	13	64	7
Lampasas	20	93	17	27	3
La Salle	23	80	15	81	4
Lavaca	18	72	9	25	1
Lee	19	68, 127	10	21	8
Leon	15	23	6	12	1
Liberty	14	12, 14	7	9, 75	9
Limestone	12	60, 63	6	77	5
Lipscomb	29	124	13	31	7
Live Oak	22	75	15	36	4
Llano	26	87	17	33	3
Loving	28	120	16	70	8
Lubbock	29	122	13	72	7
Lynn	28	122	13	72	7
Madison	15	23	6	12	1
Marion	1	3	1	76	6
Martin	28	120	16	70	8
Mason	25	115	16	33	4
Matagorda	17	19	9	23	1
Maverick	25	117	15	63	4
McCulloch	26	114	17	35	3
McLennan	11	61, 63	11	19, 54, 74	3
McMullen	23	80	15	36	4
Medina	25	116	15	38	4
Menard	25	115	16	33	4
Midland	28	120	16	70	8
Milam	11	65, 67	6	20	3
Mills	26	94	17	27	3
Mitchell	28	121	16	32	2
Montague	31	49	13	16	2
Montgomery	15	21	7	9, 75	9, 75
Moore	29	125	13	69	7
Morris	1	32	1	76	6
Motley	29	104	13	50	7
Nacogdoches	14	7	2	2	9
Navarro	9	57,58,59	6	13	5
Newton	14	9	2	1	9
Nolan	28	121	17	32	2
Nueces	23	76	14	28	4
Ochiltree	29	124	13	31	7
Oldham	29	125	13	69	7
Orange	14	14	2	1	9
Palo Pinto	28	98	17	29	2
Panola	8	5	2	4	6, 9
Parker	30	51	12	43	2
Parmer	29	123	13	69	7
Pecos	25	120	16	83	8
Polk	15	11	7	9	9
Potter	29	125	13	47	7
Presidio	25	117	16	63	8
Rains	5	30	4	8	5
Randall	29	123	13	47	7
Reagan	25	120	16	83	8
Real	24	115	16	38	4
Red River	2	33	1	6	6
Reeves	25	120	16	70	8
Refugio	22	75	9	24	4
Roberts	29	124	13	31	7
Robertson	12	64	6	85	3
Rockwall	6	40	5	86	5
Runnels	26	111	17	35	3
Rusk	8	6	3	4	6
Sabine	14	9	2	1	9
San Augustine	14	10	2	1	9
San Jacinto	15	11	7	9	9
San Patricio	23	75	14	36	4
San Saba	26	114	17	33	3
Schleicher	25	113	16	51	3
Scurry	28	105	13	32	2
Shackelford	28	106	17	42	2
Shelby	8	8	2	4	9
Sherman	29	125	13	69	7
Smith	7	27, 28	3	7	6
Somervell	30	97	12	18	2
Starr	23	78	15	79	4
Stephens	28	98	17	42	2
Sterling	25	113	16	51	3
Stonewall	28	105	13	39	2
Sutton	25	115	16	83	4
Swisher	29	123	13	64	7
Tarrant	30	52, 54	12	17, 48, 67	2
Taylor	28	107	17	42	2
Terrell	25	117	16	63	8
Terry	28	122	13	72	7
Throckmorton	29	102	13	39	2
Titus	2	32	1	76	6
Tom Green	25	113	16	51	3
Travis	20	89	10	26, 53	3
Trinity	13	20	7	12	1
Tyler	14	12	2	75	9
Upshur	7	31	3	7	6
Upton	28	120	16	83	8
Uvalde	25	116	15	63	4
Val Verde	25	117	16	63	4
Van Zandt	7	29	3	86	5
Victoria	22	74	9	24	4
Walker	15	20	7	12	1
Waller	16	18, 127	8	80	1
Ward	28	120	16	70	8
Washington	19	69	10	21	1

Counties.	Senatorial District.	Representative District.	Congressional District.	Judicial District.	Sup. Judicial District.
Webb	23	79	15	49	4
Wharton	17	73	9	23	1
Wheeler	29	124	18	31	7
Wichita	29	101	13	30, 78	2
Wilbarger	29	101	13	46	7
Willacy	23	77	15	28	1
Williamson	20	91, 92	10	26	3
Wilson	22	84	14	81	4
Winkler	28	120	16	70	8
Wise	31	50	13	43	2
Wood	7	30	3	7	5
Yoakum	28	122	18	72	7
Young	29	99	13	30	2
Zapata	23	79	15	49	4
Zavala	25	116	15	38	4

SENATORIAL DISTRICTS

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

No. 1. Bowie, Cass, Marion and Morris.

No. 2. Red River, Titus, Franklin, Hopkins and Delta.

No. 3. Lamar and Fannin.

No. 4. Grayson and Cooke.

No. 5. Collin, Hunt and Rains.

No. 6. Dallas and Rockwall.

No. 7. Van Zandt, Wood, Smith, Upshur and Camp.

No. 8. Harrison, Rusk, Panola, Shelby and Gregg.

No. 9. Navarro, Henderson and Kaufman.

No. 10. Ellis, Johnson and Hill.

No. 11. McLennan, Falls and Milam.

No. 12. Limestone, Freestone, Robertson and Brazos.

No. 13. Anderson, Cherokee, Houston, Angelina and Trinity.

No. 14. Nacogdoches, San Augustine, Sabine, Newton, Jasper, Tyler, Liberty, Hardin, Orange and Jefferson.

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

No. 16. Harris, Fort Bend and Waller.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

No. 31. Denton, Wise and Montague. (Acts 1901, S. S., p. 9.)

The following Acts, creating certain counties, place the counties so created in senatorial districts, as follows:

Brooks county, in the 23d district, by Acts 1911, p. 55; Culberson county, in the 25th district, by Acts 1911, p. 53; Dunn county, in the 23d district, by Acts 1913, S. S. p. 86; Hudspeth county, in the 25th district, by Acts 1917, ch. 25, sec. 5; Jim Hogg county, in the 23d district, by Acts 1913, p. 133; Jim Wells county, in the 23d district, by Acts 1911, p. 58; Kleberg county, in the 23d district, by Acts 1913, p. 14; Real county, in the 24th district, by Acts 1913, p. 264; Willacy county, in the 23d district, by Acts 1911, p. 83.

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

First district. Bowie county.
Second district. Hopkins county.
Third district. Lamar county.
Fourth district. Grayson county.
Fifth district. Collin county.
Sixth district. Dallas county.
Seventh district. Smith county.
Eighth district. Rusk county.
Ninth district. Navarro county.
Tenth district. Ellis county.
Eleventh district. McLennan county.
Twelfth district. Limestone county.
Thirteenth district. Cherokee county.
Fourteenth district. Tyler county.
Fifteenth district. Walker county.
Sixteenth district. Harris county.
Seventeenth district. Galveston county.
Eighteenth district. Colorado county.
Nineteenth district. Lee county.
Twentieth district. Williamson county.
Twenty-first district. Hays county.
Twenty-second district. Bee county.
Twenty-third district. Nueces county.
Twenty-fourth district. Bexar county.
Twenty-fifth district. Tom Green county.
Twenty-sixth district. Brown county.
Twenty-seventh district. Bell county.
Twenty-eighth district. Eastland county.
Twenty-ninth district. Clay county.
Thirtieth district. Tarrant county.
Thirty-first district. Wise county. (Acts 1901, S. S., p. 10.)

REPRESENTATIVE DISTRICTS

Art. 26. That the state of Texas be and it is hereby apportioned and divided into rep-

resentative districts, and the said districts and the number of representatives in each district shall be as follows:

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

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

No. 3. The third district, composed of the counties of Bowie, Cass and Marion, and shall elect one representative.

No. 4. The fourth district, composed of the county of Harrison, and shall elect one representative.

No. 5. The fifth district, composed of the county of Panola, and shall elect one representative.

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

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

No. 8. The eighth district, composed of the county of Shelby, and shall elect one representative.

No. 9. The ninth district, composed of the counties of Jasper, Sabine and Newton, and shall elect one representative.

No. 10. The tenth district, composed of the counties of San Augustine and Angelina, and shall elect one representative.

No. 11. The eleventh district, composed of the counties of Polk and San Jacinto, and shall elect one representative.

No. 12. The twelfth district, composed of the counties of Tyler, Hardin and Liberty, and shall elect one representative.

No. 13. The thirteenth district, composed of the county of Jefferson, and shall elect one representative.

No. 14. The fourteenth district, composed of the counties of Jefferson, Liberty and Orange, and shall elect one representative.

No. 15. The fifteenth district, composed of the county of Harris, and shall elect four representatives.

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

No. 17. The seventeenth district, composed of the counties of Galveston and Chambers, and shall elect one representative.

No. 18. The eighteenth district, composed of the counties of Fort Bend and Waller, and shall elect one representative.

No. 19. The nineteenth district, composed of the counties of Brazoria and Matagorda, and shall elect one representative.

No. 20. The twentieth district, composed of the counties of Walker and Trinity, and shall elect one representative.

No. 21. The twenty-first district, composed of the counties of Montgomery and Grimes, and shall elect one representative.

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

No. 23. The twenty-third district, composed of the counties of Madison and Leon, and shall elect one representative.

No. 24. The twenty-fourth district, composed of the county of Houston, and shall elect one representative.

No. 25. The twenty-fifth district, composed of the county of Anderson, and shall elect one representative.

No. 26. The twenty-sixth district, composed of the county of Cherokee, and shall elect one representative.

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

No. 28. The twenty-eighth district, composed of the counties of Smith and Henderson, and shall elect one representative.

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

No. 30. The thirtieth district, composed of the counties of Wood and Rains, and shall elect one representative.

No. 31. The thirty-first district, composed of the counties of Camp and Upshur, and shall elect one representative.

No. 32. The thirty-second district, composed of the counties of Titus and Morris, and shall elect one representative.

No. 33. The thirty-third district, composed of the county of Red River, and shall elect one representative.

No. 34. The thirty-fourth district, composed of the county of Hopkins, and shall elect one representative.

No. 35. The thirty-fifth district, composed of the counties of Hopkins, Delta and Franklin, and shall elect one representative.

No. 36. The thirty-sixth district, composed of the county of Lamar, and shall elect one representative.

No. 37. The thirty-seventh district, composed of the county of Fannin, and shall elect one representative.

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

No. 39. The thirty-ninth district, composed of the county of Hunt, and shall elect one representative.

No. 40. The fortieth district, composed of the counties of Hunt and Rockwall, and shall elect one representative.

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

No. 42. The forty-second district, composed of the county of Grayson, and shall elect two representatives.

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

No. 44. The forty-fourth district, composed of the county of Dallas, and shall elect four representatives.

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

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

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

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

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

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

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

No. 52. The fifty-second district, composed of the county of Tarrant, and shall elect three representatives.

No. 53. The fifty-third district, composed of the county of Johnson, and shall elect one representative.

No. 54. The fifty-fourth district, composed of the counties of Tarrant and Denton, and shall elect one representative.

No. 55. The fifty-fifth district, composed of the county of Ellis, and shall elect two representatives.

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

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

No. 58. The fifty-eighth district, composed of the counties of Freestone and Navarro, and shall elect one representative.

No. 59. The fifty-ninth district, composed of the counties of Hill and Navarro, and shall elect one representative.

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

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

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

No. 63. The sixty-third district, composed of the counties of McLennan, Limestone and Falls, and shall elect one representative.

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

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

No. 66. The sixty-sixth district, composed of the county of Bell, and shall elect one representative.

No. 67. The sixty-seventh district, composed of the counties of Bell and Milam, and shall elect one representative.

No. 68. The sixty-eighth district, composed of the counties of Burleson and Lee, and shall elect one representative.

No. 69. The sixty-ninth district, composed of the county of Washington, and shall elect one representative.

No. 70. The seventieth district, composed of the county of Fayette, and shall elect one representative.

No. 71. The seventy-first district, composed of the counties of Austin and Colorado, and shall elect one representative.

No. 72. The seventy-second district, composed of the county of Lavaca, and shall elect one representative.

No. 73. The seventy-third district, composed of the counties of Wharton and Jackson, and shall elect one representative.

No. 74. The seventy-fourth district, composed of the counties of Victoria, Goliad and Calhoun, and shall elect one representative.

No. 75. The seventy-fifth district, composed of the counties of Aransas, Refugio, San Patricio, Bee and Live Oak, and shall elect one representative.

No. 76. The seventy-sixth district, composed of the counties of Duval, Nueces and Jim Wells, and shall elect one representative.

No. 77. The seventy-seventh district, composed of the counties of Willacy and Cameron, and shall elect one representative.

No. 78. The seventy-eighth district, composed of the counties of Starr, Hidalgo and Brooks, and shall elect one representative.

No. 79. The seventy-ninth district, composed of the counties of Webb and Zapata, and shall elect one representative.

No. 80. The eightieth district, composed of the counties of Frio, Atascosa, McMullen and LaSalle, and shall elect one representative.

No. 81. The eighty-first district, composed of the counties of Karnes and DeWitt, and shall elect one representative.

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

No. 83. The eighty-third district, composed of the county of Guadalupe, and shall elect one representative.

No. 84. The eighty-fourth district, composed of the counties of Wilson and Karnes, and shall elect one representative.

No. 85. The eighty-fifth district, composed of the county of Bexar, and shall elect four representatives.

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

No. 87. The eighty-seventh district, composed of the counties of Llano, Gillespie, Blanco and Kendall, and shall elect one representative.

No. 88. The eighty-eighth district, composed of the counties of Hays and Comal, and shall elect one representative.

No. 89. The eighty-ninth district, composed of the county of Travis, and shall elect two representatives.

No. 90. The ninetieth district, composed of the county of Bastrop, and shall elect one representative.

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

No. 92. The ninety-second district, composed of the counties of Williamson and Burnet, and shall elect one representative.

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

No. 94. The ninety-fourth district, composed of the counties of Mills and Hamilton, and shall elect one representative.

No. 95. The ninety-fifth district, composed of the counties of Johnson and Bosque, and shall elect one representative.

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

No. 97. The ninety-seventh district, composed of the counties of Hood, Somervell and Erath, and shall elect one representative.

No. 98. The ninety-eighth district, composed of the counties of Palo Pinto and Stephens, and shall elect one representative.

No. 99. The ninety-ninth district, composed of the counties of Young and Jack, and shall elect one representative.

No. 100. The one hundredth district, com-

posed of the counties of Clay and Archer, and shall elect one representative.

No. 101. The one hundred and first district, composed of the counties of Wichita and Wilbarger, and shall elect one representative.

No. 102. The one hundred and second district, composed of the counties of Baylor, Throckmorton and Haskell, and shall elect one representative.

No. 103. The one hundred and third district, composed of the counties of Hardeman, Foard and Knox, and shall elect one representative.

No. 104. The one hundred and fourth district, composed of the counties of Cottle, Motley, Childress and Hall, and shall elect one representative.

No. 105. The one hundred and fifth district, composed of the counties of Dickens, Kent, King, Stonewall and Scurry, and shall elect one representative.

No. 106. The one hundred and sixth district, composed of the counties of Jones and Shackelford, and shall elect one representative.

No. 107. The one hundred and seventh district, composed of the county of Taylor, and shall elect one representative.

No. 108. The one hundred and eighth district, composed of the counties of Callahan and Eastland, and shall elect one representative.

No. 109. The one hundred and ninth district, composed of the county of Comanche, and shall elect one representative.

No. 110. The one hundred and tenth district, composed of the counties of Brown and Callahan, and shall elect one representative.

No. 111. The one hundred and eleventh district, composed of the counties of Coke and Runnels, and shall elect one representative.

No. 112. The one hundred and twelfth district, composed of the counties of Coleman and Concho, and shall elect one representative.

No. 113. The one hundred and thirteenth district, composed of the counties of Sterling, Irion, Tom Green and Schleicher, and shall elect one representative.

No. 114. The one hundred and fourteenth district, composed of the counties of McCulloch and San Saba, and shall elect one representative.

No. 115. The one hundred and fifteenth district, composed of the counties of Sutton, Kimble, Kerr, Bandera, Edwards, Crockett, Mason and Menard, and shall elect one representative.

No. 116. The one hundred and sixteenth district, composed of the counties of Uvalde, Medina, Zavala and Dimmit, and shall elect one representative.

No. 117. The one hundred and seventeenth district composed of the counties of Maverick, Kinney, Val Verde, Terrell, Brewster, Presidio and Jeff Davis, and shall elect one representative.

No. 118. The one hundred and eighteenth district, composed of the county of El Paso, and shall elect one representative.

No. 119. The one hundred and nineteenth district, composed of the counties of El Paso and Culberson, and shall elect one representative.

Superseding Acts 1911, p. 53, placing Culberson county in 100th representative district.

No. 120. The one hundred and twentieth district, composed of the counties of Reeves, Pecos, Ward, Crane, Upton, Reagan, Glasscock, Midland, Ector, Winkler, Loving, Martin and Howard, and shall elect one representative.

No. 121. The one hundred and twenty-first district, composed of the counties of Mitchell, Nolan and Fisher, and shall elect one representative.

No. 122. The one hundred and twenty-second district, composed of the counties of Briscoe, Floyd, Crosby, Garza, Borden, Dawson, Gaines, Andrews, Yoakum, Terry, Lynn, Lubbock, Hockley and Cochran, and shall elect one representative.

No. 123. The one hundred and twenty-third district, composed of the counties of Bailey, Lamb, Hale, Swisher, Castro, Parmer, Deaf Smith, Randall and Armstrong, and shall elect one representative.

No. 124. The one hundred and twenty-fourth district composed of the counties of Donley, Collingsworth, Gray, Wheeler, Hemphill, Roberts, Lipscomb and Ochiltree, and shall elect one representative.

No. 125. The one hundred and twenty-fifth district, composed of the counties of Carson, Hutchinson, Hansford, Sherman, Moore, Potter, Oldham, Hartley and Dallam, and shall elect one representative.

No. 126. The one hundred and twenty-sixth district, composed of the counties of Harrison and Gregg, and shall elect one representative.

No. 127. The one hundred and twenty-seventh district, composed of the counties of Burleson, Lee, Fayette, Waller, Fort Bend, Austin and Colorado, and shall elect one representative. (Acts 1911, S. S., p. 80, sec. 1.)

The following Acts, creating certain counties, place the counties so created in representative districts, as follows:

Brooks county, in the 95th district, by Acts 1911, p. 55; Dunn county, in the 76th district, by Acts 1913, S. S. p. 86; Hudspeth county, in the 119th district, by Acts 1917, c. 25, sec. 5; Jim Hogg county, in the 78th district, by Acts 1913, p. 133; Jim Wells county, in the 94th district, by Acts 1911, p. 58; Kleberg county, in the 77th district, by Acts 1911, p. 83; Real county, in the 115th district, by Acts 1913, p. 264; Willacy county, in the 95th district (superseded), by Acts 1911, p. 83.

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

In the third district, Marion county.
In the fifth district, Panola county.
In the sixth district, Rusk county.
In the ninth district, Jasper county.
In the tenth district, Angelina county.
In the eleventh district, Polk county.
In the twelfth district, Hardin county.
In the fourteenth district, Liberty county.
In the seventeenth district, Galveston county.
In the eighteenth district, Waller county.
In the nineteenth district, Brazoria county.
In the twentieth district, Trinity county.
In the twenty-first district, Grimes county.

In the twenty-second district, Brazos county.
In the twenty-third district, Leon county.
In the twenty-eighth district, Henderson county.
In the thirtieth district, Wood county.
In the thirty-first district, Upshur county.
In the thirty-second district, Morris county.
In the thirty-fifth district, Delta county.
In the thirty-eighth district, Lamar county.
In the fortieth district, Hunt county.
In the forty-third district, Collin county.
In the forty-seventh district, Kaufman county.
In the fifty-fourth district, Denton county.
In the fifty-eighth district, Freestone county.
In the fifty-ninth district, Navarro county.
In the sixty-third district, Limestone county.
In the sixty-seventh district, Milam county.
In the sixty-eighth district, Lee county.
In the seventy-first district, Colorado county.
In the seventy-second district, Lavaca county.
In the seventy-third district, Wharton county.
In the seventy-fourth district, Goliad county.
In the seventy-fifth district, Bee county.
In the seventy-sixth district, Jim Wells county.
In the seventy-seventh district, Cameron county.
In the seventy-eighth district, Hidalgo county.
In the seventy-ninth district, Webb county.
In the eightieth district, Atascosa county.
In the eighty-first district, DeWitt county.
In the eighty-fourth district, Wilson county.
In the eighty-seventh district, Kendall county.
In the eighty-eighth district, Hays county.
In the ninety-second district, Burnet county.
In the ninety-third district, Lampasas county.
In the ninety-fourth district, Hamilton county.
In the ninety-fifth district, Johnson county.
In the ninety-seventh district, Hood county.
In the ninety-eighth district, Palo Pinto county.
In the ninety-ninth district, Jack county.
In the one hundredth district, Clay county.
In the one hundred and first district, Wichita county.
In the one hundred and second district, Baylor county.
In the one hundred and third district, Hardeman county.
In the one hundred and fourth district, Childress county.
In the one hundred and fifth district, Dickens county.
In the one hundred and sixth district, Jones county.
In the one hundred and eighth district, Callahan county.
In the one hundred and tenth district, Brown county.
In the one hundred and eleventh district, Runnels county.
In the one hundred and twelfth district, Coleman county.
In the one hundred and thirteenth district, Tom Green county.
In the one hundred and fourteenth district, McCulloch county.
In the one hundred and fifteenth district, Kimble county.
In the one hundred and sixteenth district, Uvalde county.
In the one hundred and seventeenth district, Brewster county.
In the one hundred and nineteenth district, El Paso county.
In the one hundred and twentieth district, Howard county.
In the one hundred and twenty-first district, Mitchell county.
In the one hundred and twenty-second district, Lubbock county.
In the one hundred and twenty-third district, Randall county.
In the one hundred and twenty-fourth district, Donley county.
In the one hundred and twenty-fifth district, Potter county.
In the one hundred and twenty-sixth district, Harrison county.
In the one hundred and twenty-seventh district, Fayette county. (Id. sec. 2.)

CONGRESSIONAL DISTRICTS

Art. 28. (20) (15) The State of Texas shall be apportioned into the following congressional districts, each of which shall be entitled to elect one member of the Congress of the United States;

First—The following Counties shall compose the First District, to wit; Bowie, Red River, Lamar, Delta, Hopkins, Franklin, Titus, Camp, Morris, Cass and Marion.

Second—The following counties shall compose the Second District, to wit; Panola, Shelby, San Augustine, Sabine, Newton, Jasper, Orange, Jefferson, Hardin, Tyler, Angelina, Nacogdoches, Cherokee and Harrison.

Third—The following counties shall compose the Third District, to wit; Kaufman, Van Zandt, Wood, Upshur, Smith, Gregg, Henderson and Rusk.

Fourth—The following counties shall compose the Fourth District, to wit; Fannin, Grayson, Collin, Hunt and Rains.

Fifth—The following counties shall compose the Fifth District, to wit; Dallas, Ellis and Rockwall.

Sixth—The following counties shall compose the Sixth District, to wit; Navarro, Freestone, Limestone, Robertson, Brazos, Milam, Leon, Madison and Hill.

Seventh—The following counties shall compose the Seventh District, to wit; Galveston, Chambers, Liberty, San Jacinto, Polk, Trinity, Houston, Anderson, Walker and Montgomery.

Eighth—The following counties shall compose the Eighth District, to wit; Harris, Fort Bend, Waller and Grimes.

Ninth—The following counties shall compose the Ninth District, to wit; Brazoria, Fayette, Colorado, Wharton, Matagorda, Jackson, Lavaca, Gonzales, DeWitt, Victoria, Calhoun, Goliad and Refugio.

Tenth—The following counties shall compose the Tenth District, to wit; Washington, Austin, Burleson, Lee, Bastrop, Caldwell, Hays, Travis and Williamson.

Eleventh—The following counties shall

compose the Eleventh District, to wit; Bell, Coryell, Hamilton, Bosque, McLennan and Falls.

Twelfth—The following counties shall compose the Twelfth District, to wit; Erath, Hood, Somervell, Johnson, Tarrant and Parker.

Thirteenth—The following counties shall compose the Thirteenth District, to wit; Cooke, Denton, Wise, Montague, Clay, Jack, Young, Archer, Wichita, Wilbarger, Baylor and Throckmorton.

Fourteenth—The following counties shall compose the Fourteenth District, to wit; Aransas, San Patricio, Bee, Karnes, Wilson, Bexar, Comal, Kendall, Blanco, Nueces and Guadalupe.

Fifteenth—The following counties shall compose the Fifteenth District, to wit; Cameron, Willacy, Kleberg, Jim Wells, Brooks, Hildalgo, Starr, Jim Hogg, Zapata, Webb, Duval, Live Oak, McMullen, LaSalle, Dimmit, Maverick, Zavala, Frio, Atascosa, Medina, Uvalde, and Kinney.

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

Acts 1917, ch. 25, creating Hudspeth county, by section 5 thereof places such county in the 16th congressional district.

Seventeenth—The following counties shall compose the Seventeenth District to wit; Burnet, Llano, Comanche, McCulloch, San Saba, Lampasas, Mills, Brown, Coleman, Callahan, Eastland, Stephens, Shackelford, Jones, Palo Pinto, Taylor, Nolan, Concho and Runnels.

Eighteenth—The following counties shall compose the Eighteenth District to wit; Hardeman, Foard, Knox, Haskell, Fisher, Stonewall, King, Cottle, Childress, Collingsworth, Wheeler, Hemphill, Lipscomb, Ochiltree, Roberts, Gray, Donley, Hall, Motley, Dickens, Kent, Scurry, Borden, Garza, Crosby, Floyd, Briscoe, Armstrong, Carson, Hutchison, Hansford, Sherman, Moore, Potter, Randall, Swisher, Hale, Lubbock, Lynn, Dawson, Gaines, Terry, Hockley, Lamb, Castro, Dallam, Hartley, Oldham, Deaf Smith, Palmer, Bailey, Yoakum and Cochran. (Acts 1903, p. 44; Acts 1905, p. 96; Acts 1909, p. 156; Acts 1917, ch. 119, sec. 1.)

SUPREME JUDICIAL DISTRICTS

Art. 29. (21) (16) The State of Texas shall be, and is hereby divided into nine Supreme Judicial Districts, for the purpose of constituting and organizing courts of civil appeals therein, respectively:

1. The following counties shall compose the First Supreme Judicial District: Houston, Madison, Walker, Harris, Grimes, Washington, Waller, Fort Bend, Brazoria, Matagorda, Wharton, Colorado, Austin, Fayette, Lavaca, Jackson, Anderson, Chambers, Brazos, Leon, Burleson, DeWitt, Galveston and Trinity.

2. The following counties shall compose the Second Supreme Judicial District: Wichita, Cooke, Montague, Clay, Archer, Baylor, Knox, Stonewall, Haskell, Throckmorton, Young, Jack, Wise, Denton, Tarrant, Parker, Palo Pinto, Stephens, Shackelford, Jones, Mitchell, Nolan, Taylor, Callahan, Bosque, Eastland, Erath, Hood, Sommervell, Comanche, Johnson, Dawson, Howard, and Scurry.

3. The following counties shall compose the Third Supreme Judicial District: Runnels, Coleman, Brown, Mills, Hamilton, Coryell, Bell, Lampasas, San Saba, McCulloch, Concho, Llano, Burnet, Williamson, Milam, Lee, Bastrop, Travis, Blanco, Hays, Comal, Caldwell, Robertson, McLennan, Falls, Sterling, Coke, Tom Green, Irion, Schleicher, and Crockett.

4. The following counties shall compose the Fourth Supreme Judicial District: Val Verde, Sutton, Edwards, Kinney, Maverick, Menard, Kimble, Kerr, Bandera, Uvalde, Zavala, Dimmit, Webb, LaSalle, Frio, Medina, Duval, McMullen, Atascosa, Bexar, Kendall, Gillespie, Mason, Guadalupe, Wilson, Live Oak, Zapata, Bee, Gonzales, Karnes, Calhoun, Victoria, Goliad, Refugio, San Patricio, Aransas, Nueces, Hidalgo, Cameron, Starr, Jim Hogg, Real, Brooks, Jim Wells, and Kleberg.

5. The following counties shall compose the Fifth Supreme Judicial District: Grayson, Collin, Dallas, Rockwall, Ellis, Navarro, Kaufman, Henderson, Van Zandt, Raines, Hunt, Hill, Limestone, Freestone, Wood, and Delta.

6. The following counties shall compose the Sixth Supreme Judicial District: Lamar, Red River, Bowie, Hopkins, Franklin, Titus, Morris, Cass, Marion, Camp, Fannin, Cherokee, Gregg, Harrison, Panola, Smith, Upshur, and Rusk.

7. The following counties shall compose the Seventh Supreme Judicial District: Dallam, Sherman, Hansford, Ochiltree, Lipscomb, Hartley, Moore, Hutchinson, Roberts, Hemphill, Oldham, Potter, Carson, Gray, Wheeler, Deaf Smith, Randell, Armstrong, Donley, Collingsworth, Parmer, Castro, Swisher, Briscoe, Hall, Childress, Bailey, Lamb, Hale, Floyd, Motley, Cottle, Foard, Hardeman, Wilbarger, King, Dickens, Crosby, Lubbock, Hockley, Cochran, Yoakum, Terry, Lynn, Garza, Kent, and Fisher.

8. The following counties shall compose the Eighth Supreme Judicial District: Gaines, Borden, Andrews, Martin, Loving, Winkler, Midland, Glasscock, Reeves, Ward, Crane, Upton, Reagan, Terrell, Pecos; Brewster, Presidio, Jeff Davis, El Paso, Ector, and Culberson.

Acts 1917, ch. 25, creating Hudspeth county, by section 5 thereof places such county in the 8th supreme judicial district.

9. The following counties shall compose the Ninth Supreme Judicial District: Shelby, Panola, Nacogdoches, Angelina, San Jacinto, Montgomery, Liberty, Jefferson, Orange, Hardin, Newton, Jasper, Tyler, Polk, Sabine, San Augustine. (Acts 1907, p. 324; Acts 1911, p. 269, sec. 1; Acts 1911, unpublished; Acts 1913, p. 7, sec. 1; Acts 1915, ch. 70, sec. 1.)

Within thirty days after the passage of this Act, the Governor shall by and with the consent of the Senate, if in session, appoint one Chief Justice and Two Associate Justices, for the Ninth Supreme Judicial District who shall each reside in the territorial limits of the Ninth Supreme Judicial District, and

who shall possess the qualifications now required by law, who shall constitute the Court of Civil Appeals within and for the Ninth Supreme Judicial District, and who shall hold their offices until the next general election in 1916, and who shall thereafter be elected and qualify as provided and required by Article 1581 of the 1911 Revised Statutes of Texas. (Id. sec. 2.)

JUDICIAL DISTRICTS

Art. 30. (22) (17) The judicial districts of the state shall be constituted as follows:—

1. Hereafter the First Judicial District of the State of Texas shall be composed of the counties of San Augustine, Sabine, Newton, Jasper and Orange, and terms of the courts in said district shall, on and after July 1st, 1917, be held as follows:

San Augustine county, beginning the first Monday in January and July of each year and continuing for a period of six weeks. In Newton county beginning the seventh Monday after the first Monday in January and July of each year and continuing for a period of four weeks. In Sabine county beginning on the eleventh Monday after the first Monday in January and July of each year and continuing for a period of five weeks. In Orange county beginning on the sixteenth Monday after the first Monday in January and July of each year and continuing for a period of five weeks. In Jasper county beginning on the twenty-first Monday after the first Monday in January and July of each year and continuing for a period of six weeks. The courts of said district shall continue to hold their terms as provided by existing law until July 1st, 1917. (Acts 1907, p. 100; Acts 1913, p. 176; Acts 1917, ch. 99, sec. 1.)

All process issued out of the courts of the First Judicial District prior to July 1st, 1917, is hereby made returnable to the terms of the courts as fixed by this Act on and after July 1st, 1917, and all bonds executed and all recognizances entered of record in said courts prior to July 1st, 1917, shall bind the parties for their appearance or to fulfill the obligations thereof at the terms of such courts as fixed by this Act on and after July 1st, 1917, and all process heretofore or hereafter issued or returned prior to July 1st, 1917, as well as all bonds or recognizances taken in the courts of said district heretofore or prior to July 1st, 1917, shall on and after July 1st, 1917, be as valid as if no change had been made in the times of the holding of such courts in said district. (Id. sec. 2.)

By Act Feb. 13, 1917, Tyler county is removed from the first judicial district and included in the seventy-fifth district. See post, this article, subdivision 75.

2. The second judicial district shall be composed of the counties of Angelina, Cherokee and Nacogdoches, [and] the terms of the district court shall be held therein in each year as follows: In the county of Nacogdoches on the first Monday in September and second Monday in February, and may continue in session for seven weeks. In the county of Angelina on the seventh Monday after the first Monday in September and the seventh Monday after the second Monday in February, and may remain in session seven weeks. In the county of Cherokee on the fourteenth Monday after the first Monday in September, and may remain in session until the second Monday in February, and the fourteenth Monday after the second Monday in February, and may remain in session until business is disposed of. (Acts 1911, p. 93, sec. 1.)

The district judges and the district attorneys, respectively, of the second and fourth judicial districts, elected and now acting for said districts respectively shall hold their respective offices, until the time for which they have been elected shall expire, and their successors are duly elected and qualified. (Id. sec. 4.)

All process issued or served before this Act takes effect, including recognizances and bonds returnable to the district court of any of the counties of said judicial districts [second, fourth, and seventy-first], shall be considered as returnable to said courts in accordance with the terms as prescribed in this Act, and all such process hereby legalized, and all grand and petit juries drawn and selected under existing laws in any of the counties of said judicial districts, shall be considered lawfully drawn and selected for the next term of the district court of their respective counties, held after this Act takes effect, and all such processes are hereby legalized and validated, provided that if any court in any county of said district shall be in session at the time this Act takes effect, such court or courts affected hereby shall continue in session until the term thereof shall expire, under the provisions of existing laws, but thereafter the courts in such county or counties shall conform to the requirements of this Act. (Id. sec. 8.)

Section 11 repeals all laws in conflict.

3. The Third Judicial District shall be composed of the Counties of Houston, Henderson and Anderson, as now constituted, and the district courts shall be held therein as follows:

In the County of Henderson on the first Monday in February and the second Monday before the first Monday in September, and may continue in session for seven weeks.

In the County of Houston on the seventh Monday after the first Monday in February and on the fifth Monday after the first Monday in September, and may continue in session seven weeks.

In Anderson County on the fourteenth Monday after the first Monday in February and may continue in session eight weeks; on the twenty-second Monday after the first Monday in February, and may continue in session until the business is disposed of; on the twelfth Monday after the first Monday in September, and may continue in session until the business is disposed of. (Acts 1905, p. 141; Acts 1915, ch. 19, sec. 1; Acts 1915, ch. 42, sec. 1.)

All process, writs and bonds issued, served or executed prior to the taking effect of this Act and returnable to the terms of the Third Judicial District Court as heretofore fixed by law in the several counties composing said district are hereby made returnable to the terms of said court in said several counties as fixed by this Act, and all process heretofore returnable, as well as all bonds and recognizances heretofore entered into in

any court created or reorganized by this Act, shall be valid and binding and have the same effect as if no change had been made by this Act in the times of holding said terms of court. (Id. sec. 2.)

Section 3 of Acts 1915, ch. 42, repeals Senate Bill No. 38, regular session, 34th Leg., approved Feb. 20, 1915, and all other conflicting laws.

4. The fourth judicial district shall be composed of the counties of Rusk, Shelby, Panola and Gregg, and the terms of the district court shall be held therein in each year as follows: In the county of Rusk on the first Monday in January and the last Monday in June, and may continue in session five weeks. In the county of Shelby on the fifth Monday after the first Monday in January, and on the fifth Monday after the last Monday in June, and may continue in session seven weeks. In the county of Panola on the twelfth Monday after the first Monday in January, and on the twelfth Monday after the last Monday in June, and may continue in session five weeks. In the county of Gregg on the seventeenth Monday after the first Monday in January, and on the twenty-first Monday after the last Monday in June, and may continue in session until the business is disposed of. (Acts 1911, p. 93, sec. 2.)

The district clerk of Shelby county, duly elected and acting, shall be the clerk of the district court of said fourth judicial district, sitting in Shelby county, until the next general election and his successor is duly elected and qualified. (Id. sec. 6.)

Sections 4, 8, and 11 of this Act (subdiv. 2 of this article) also relate to the fourth judicial district.

5. The Fifth Judicial District of Texas shall be composed of the counties of Bowie and Cass, and the terms of the District Court shall be held therein in each year as follows:

In the County of Bowie, beginning on the first Monday in January of each year, and may continue in session for ten weeks.

In the County of Cass, beginning on the tenth Monday after the first Monday in January of each year, and may continue in session for five weeks.

In the County of Bowie, on the fifteenth Monday after the first Monday in January of each year, and may continue in session until the first Monday in September.

In the County of Cass, on the first Monday in September of each year, and may continue in session for five weeks.

In the County of Bowie, on the Fifth Monday after the first Monday in September of each year, and may continue in session until the first Monday in January following. (Acts 1907, p. 198; Acts 1911, p. 167, sec. 1; Acts 1915, ch. 5, sec. 1.)

The District Judge and the District Attorney of the Fifth Judicial District, elected and now acting for said District, shall hold their respective offices until the term for which they were elected shall expire and their successors are elected and duly qualified. (Id. sec. 3.)

All process issued or served before this Act takes effect, including recognizances and bonds returnable to the district courts of any of the counties of the said judicial districts, shall be considered as returnable to the said court in accordance with the terms and provisions as prescribed in this Act, and all such process is hereby legalized, and all grand and petit juries drawn and selected under the existing laws in any of the counties of said judicial district, shall be considered lawfully drawn and selected for the next term of the district court of their respective counties, held after this Act takes effect, and all such processes are hereby legalized and validated; provided, that if any court in any county of said districts shall be in session at the time this Act takes effect, such court or courts affected thereby shall continue in session until the term thereof shall expire under the provisions of existing laws, but thereafter the courts in such counties shall conform to the requirements of this Act. (Id. sec. 7.)

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

Lamar county is made a part of the 62d judicial district by Acts 1905, p. 75 and Acts 1915, ch. 27, sec. 1, post, subdiv. 62 of this article.

7. The Counties of Upshur, Wood and Smith shall hereafter constitute and be the Seventh Judicial District of the State of Texas, and the terms of the District Court shall be held therein each year as follows:

In the County of Upshur: One term, beginning on the second Monday in January and may continue in session six weeks.

In the County of Wood: Beginning on the seventh Monday after the second Monday in January and may continue in session six weeks.

In the County of Smith: Beginning on the thirteenth Monday after the second Monday in January and may continue in session until the thirtieth day of June.

In the County of Upshur: Beginning on the first Monday in July and may continue in session six weeks.

In the County of Wood: Beginning on the seventh Monday after the first Monday in July and may continue in session six weeks.

In the County of Smith: Beginning on the thirteenth Monday after the first Monday in July and may continue in session until the third Saturday in December. (Acts 1909, p. 120; Acts 1917, ch. 70, sec. 3.)

The District Judge of the Seventh Judicial District, as formerly constituted, and the District Attorney thereof, shall continue in office as district judge and district attorney of the Seventh Judicial District, as herein constituted, until the end of the term for which they were elected. (Id. sec. 4.)

All process and writs issued out of the district courts of said counties and jurors selected prior to the taking effect of this Act are hereby made returnable to the terms of said courts, as said terms are fixed by this Act, and all bonds executed and recognizances entered in said courts shall bind the parties for their appearance or to fulfill the obligations of such bonds and recognizances at the terms of said courts as they are fixed by this Act, and all process heretofore returned to, as well as all bonds and recognizances heretofore taken in any of said counties' district courts thereof shall be as valid as though no change had been made in the said districts and the times of holding courts therein. (Id. sec. 8.)

Should any district court of the Seventh, Fourteenth or Fortieth Judicial District be in session in any of the counties in said district under existing laws when this Act takes effect the same shall continue and end its term under such existing laws as if no change in the district had been made, and all process, writs, judgments and decrees shall be valid and shall not be affected by the change in said districts and the times of holding courts therein made by this Act. (Id. sec. 9.)

Section 11 of Acts 1917, ch. 70, repeals all conflicting laws.

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

The district court of the eighth judicial district, and the district court of the sixty-second judicial district, in the county of Hunt shall have concurrent jurisdiction with each other in said county, throughout the limits of the county of Hunt, of all matters, civil and criminal, of which jurisdiction is given to the district courts by the constitution and laws of the state of Texas; and the district court of the eighth judicial district, and the district court of the sixty-second judicial district, in the county of Delta, shall have concurrent jurisdiction with each other in said county, throughout the limits of the county of Delta, of all matters, civil and criminal, of which jurisdiction is given to the district courts by the constitution and laws of the state of Texas; provided, that the judge of the sixty-second judicial district shall never impanel the grand jury in said court in the counties of Lamar, Hunt and Delta, unless in his judgment he thinks it necessary. Either of the judges of the district court of the county of Hunt may, in their discretion, either in term time or vacation, transfer any case or cases, civil or criminal, that may at any time be pending in his court, to the other district court in said county of Hunt, by order or orders entered upon the minutes of the court making such transfer; and, where such transfer or transfers are made, the clerk of said court shall enter such case or cases upon the dockets of the court to which such transfer or transfers are made, and, when so entered upon the docket, the judge of said court shall try and dispose of said cases in the same manner as if such cases were originally filed in said court. Either of the judges of the district courts of the county of Delta may, in their discretion, either in term time or vacation, transfer any case or cases of a civil or criminal nature, that may, at any time, be pending in his court, to the other district court in said Delta county, by order or orders entered upon the minutes of the court, making such transfer; and, when such transfer or transfers are made, and when so entered upon the docket, the judge of said court shall try and dispose of said case or cases in the same manner as if such cases were originally filed in said court. The clerks of the district courts of Delta and Hunt counties, respectively, as heretofore constituted, and their successors in office, shall be the clerks of both the eighth and sixty-second district courts in said counties, respectively, and shall perform all the duties pertaining to the clerkship of both of said counties. (Acts 1905, p. 75.)

The counties of Hunt and Delta are constituted a part of the 62d judicial district, by Acts 1905, p. 75 and Acts 1915, ch. 27, sec. 1, post, subdiv. 62 of this article.

9. The Ninth Judicial District of the State of Texas shall hereafter be composed of the following named counties, to wit: Hardin, Liberty, Montgomery, San Jacinto and Polk, and the terms of the district courts in and for said Ninth Judicial District of Texas shall be begun and holden therein as follows:

In the County of Montgomery, on the second Monday in January and July of each year, and may continue in session four weeks.

In the County of Liberty on the fourth Monday after the second Monday in January and July of each year, and may continue in session five weeks.

In the County of Hardin, on the eleventh Monday after the second Monday in January and July of each year, and may continue in session five weeks.

In the County of San Jacinto, on the sixteenth Monday after the second Monday in January and July of each year, and may continue in session four weeks.

In the County of Polk, on the twentieth Monday after the second Monday in January and July of each year, and may continue in session until the business is disposed of. (Acts 1909, p. 128; Acts 1915, ch. 155; Acts 1917, ch. 23, sec. 1.)

Either of the judges of the District Court

of Montgomery, Liberty and Hardin Counties in said judicial districts may, at his discretion, either in term time or in vacation transfer any case or cases, civil or criminal, that may at any time be pending in his court to the other district court in said county by an order or orders entered upon the minutes of the court making said transfer; and where such transfer or transfers are made the clerk of said court shall enter such case or cases upon the docket of the court to which said transfer or transfers are made, and when so entered upon the docket the judge of said court shall try and dispose of such cases in the same manner as if such cases were originally filed in such court. The district courts of said Ninth and Seventy-Fifth Districts shall each have and exercise concurrent jurisdiction co-extensive with the limits of said three counties in all civil and criminal matters of which district courts are given jurisdiction under the Constitution and Laws of this State. (Id. sec. 3.)

The district clerks and sheriffs elected, qualified and acting as officers of the district court in the counties of Montgomery, Liberty and Hardin shall be alike officers of both the Ninth and Seventy-fifth Judicial Districts in their respective counties. (Id. sec. 4.)

The present judges of the Ninth Judicial District and of the Seventy-fifth Judicial District as same now exist shall remain the district judges of their respective districts as reorganized under the provisions of this Act and shall hold their office until the term for which they have been elected shall have expired and their successors are duly appointed or elected and qualified, and they shall receive the same compensation as now, or may hereafter be provided by law for district judges, and a vacancy in either of said offices shall be filled as is now, or may hereafter be provided for by law. (Id. sec. 5.)

There shall be a district attorney in and for said Seventy-fifth Judicial District, and the said Ninth Judicial District, and the present district attorneys of the Seventy-fifth Judicial District and of the Ninth Judicial District as same now exist shall remain the district attorneys of their respective districts as reorganized under the provisions of this Act, and shall hold their office until the term for which they have been elected shall have expired and their successors are duly appointed or elected and qualified, and they shall receive the same compensation as now, or may hereafter be provided by law for district attorneys, and a vacancy in either of said offices shall be filled as is now, or may hereafter be provided for by law. (Id. sec. 6.)

The counties of Hardin, Liberty, and Montgomery are constituted a part of the 75th judicial district, by Acts 1915, ch. 155, secs. 2, 6, 7, 9 and Acts 1917, ch. 23, sec. 2, post, subdiv. 75 of this article.

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

Galveston county is also constituted the 56th judicial district by Acts 1899, p. 116, post, subdiv. 56 of this article.

11. Harris county shall constitute the eleventh judicial district, as well as the fifty-fifth and the sixty-first judicial districts. The said district courts of Harris county shall not have nor exercise any criminal jurisdiction, such criminal jurisdiction having been by law vested exclusively in a criminal district court. Said district courts shall have and exercise concurrent jurisdiction co-extensive with the limits of Harris county, in all civil cases, proceedings and matters of which district courts are given jurisdiction by the constitution and laws of the state. The terms of the district court of said eleventh judicial district shall be begun and holden in said Harris county on the first Monday in February, April, June, October and December of each and every year, and may continue in session until the business of the court is disposed of. The judges of each and all of said courts shall be elected at the times and in the manner provided by law, by the qualified voters of Harris county; and the judges of the eleventh and fifty-fifth judicial districts shall continue as judges thereof, holding their offices as provided by law. In all suits, action or proceedings, it shall be sufficient in every instance for the address or designation to be merely "the District Court of Harris County;" and the clerk of said court shall docket alternately on the dockets of the eleventh judicial district, of the fifty-fifth judicial district, and the sixty-first judicial district, all cases filed, and all cases shall in this manner be docketed in and divided between said courts; but any cases pending in said courts may, in the discretion of the respective judges thereof, be transferred from one of said courts to the other, and so from time to time; in case of the disqualification of the judge of either of said courts

in any case, such case, on his suggestion of disqualification, shall stand transferred to one or the other of said courts, and be docketed by the clerk accordingly. The clerk of the district court of Harris county shall perform the duties of the clerk of the district court of the sixty-first judicial district in like manner as he fills the duties of the clerk of the eleventh and fifty-fifth judicial districts; and, in case of vacancy in said office, the same shall be filled by such appointee as may be selected by all or a majority of the judges of the three courts herein named. (Acts 1903, p. 22.)

Harris county is also constituted the 55th and the 61st judicial districts, and a part of the 80th judicial district, by Acts 1903, pp. 22, 23, and Acts 1915, 1st C. S., ch. 19, sec. 2, post, subdivisions 55, 61, and 80 of this article.

12. The Twelfth Judicial District of Texas shall be composed of the Counties of Trinity, Leon, Walker, Madison and Grimes, as now constituted, and the District Courts shall be held therein as follows:

In the County of Trinity, on the third Monday in February and September of each year, and may continue in session four weeks.

In the County of Leon, on the fourth Monday after the third Monday in February and September of each year, and may continue in session four weeks.

In the County of Walker, on the eighth Monday after the third Monday in February and September of each year, and may continue in session four weeks.

In the County of Madison, on the twelfth Monday after the third Monday in February and September of each year, and the terms of Court convening on the Twelfth Monday after the third Monday in February may continue for three weeks and the terms of court convening on the twelfth Monday after the third Monday in September may continue four weeks.

In the County of Grimes, on the third Monday in June and on the sixteenth Monday after the third Monday in September of each year, and may continue in session for six weeks. (Acts 1905, p. 55; Acts 1919, ch. 67, sec. 1.)

All writs and process returnable to the Courts at the times now fixed by law shall be returnable at the terms and times as fixed by this Act, and shall be valid. (Id. sec. 2.)

Section 3 of Acts 1919, ch. 67, repeals all conflicting laws.

13. The Thirteenth Judicial District of Texas shall hereafter be composed of the county of Navarro, and the terms of the District Court shall be held therein in each year as follows: On the first Mondays in January, April, July and October of each year, and the terms of the January and April terms of said Court shall continue in session twelve weeks, or until all of the business be disposed of; the term beginning on the first Monday in July shall continue in session six weeks, or until the business is disposed of; and the term beginning on the first Monday in October shall continue in session twelve weeks, or until all of the business be disposed of; provided, there shall be no jury trials at the July term of said Court. (Acts 1899, p. 38; Acts 1915, ch. 8, sec. 1.)

There shall be organized grand juries at the April and October terms of said District Court of said District, and at such other terms of said Court as may be determined and ordered by the Judge thereof. (Id. sec. 2.)

The District Judge of the Thirteenth Judicial District elected and now acting for said District shall hold his office until the term for which he was elected shall expire, and until his successor is duly elected and qualified, and the office of District Attorney for the Thirteenth Judicial District is hereby abolished, the county attorney of Navarro county shall hereafter perform all the duties heretofore performed by said District attorney of the Thirteenth Judicial District. (Id. sec. 5.)

The several District Clerks of Navarro, Limestone and Freestone counties, duly elected and acting as such shall continue to be the clerks of the District Court of their respective counties, until the next general election and until their respective successors are duly elected and qualified. (Id. sec. 7.)

All process issued or served before this Act takes effect, including recognizances, and bonds, returnable to the District Court of any of the counties of said Judicial District, shall be considered as returnable to said Courts in accordance with the terms as prescribed in this Act, and all such process is hereby legalized and grand and petit juries drawn and selected under existing laws in any of the counties of said Judicial Districts shall be considered lawfully drawn and selected for the term of the District Court of their respective counties held after this Act takes effect. And all such process are hereby legalized and validated, provided, that if any court in any county of said District shall be in session at the time this Act takes effect, such court or courts affected hereby shall continue in session until the term thereof shall expire under the provisions of existing laws, but thereafter, the courts in such county shall conform to the requirements of this Act. (Id. sec. 8.)

14. Dallas County shall constitute the Fourteenth Judicial District instead of Dallas and Rockwall, as it has heretofore existed, and the District Court of the said Fourteenth Judicial District shall hold four terms each year in the County of Dallas as follows:

Beginning on the second Monday in January and ending on the Saturday before the second Monday in April.

Beginning on the second Monday in April and ending on Saturday before the second Monday in July.

Beginning on the second Monday in July and ending on Saturday before the second Monday in October.

Beginning on the second Monday in October and ending on Saturday before the second Monday in January.

The said Fourteenth Judicial District Court shall continue and have jurisdiction as is now provided by the acts of the Thirty-third Legislature, Chapter 89, approved March 31, 1913 [Art. 30, subd. 14], save and except as the Act may apply to Rockwall County. Nothing herein nor in this Act shall be construed to in any manner affect the jurisdiction or validity of any other district court in Dallas County heretofore created, but this Act shall be construed in so far as it may affect the Fourteenth Judicial District of Dallas County to leave each of said courts, including the Fourteenth District

Court, with the same jurisdiction now granted them under existing laws, save and except the transfer of Rockwall County to a new judicial district and the changing of the terms in Dallas County for the said Fourteenth Judicial District. (Acts 1913, p. 171; Acts 1917, ch. 70, sec. 5.)

The District Judge of the said Fourteenth Judicial District, as formerly constituted, shall continue in office as district judge of the Fourteenth Judicial District, as herein constituted, until the end of the term for which he was elected. (Id. sec. 6.)

Dallas county is also constituted the 44th and 68th judicial districts, by Acts 1907, p. 131 and Acts 1909, p. 4, post, subdivisions 44 and 68 of this article.

See, also, ante, subdiv. 7 of this article.

15. The fifteenth judicial district of the state of Texas shall be composed of the county of Grayson, and the district court shall be held therein as follows: Beginning on the first Monday in October, and continuing until and including the last Saturday before the first Monday in January. Beginning on the first Monday in January, and continuing until and including the last Saturday before the first Monday in April. Beginning on the first Monday in April, and continuing until the first Monday in October, or until the business is disposed of. [Acts 1903, p. 2.] The district court of the fifteenth judicial district, and the district court of the fifty-ninth judicial district, in the county of Grayson, shall have concurrent jurisdiction with each other throughout the limits of Grayson county, of all matters, civil and criminal, of which jurisdiction is given to the district courts by the constitution and laws of the state; provided, that the judge of the fifteenth judicial district shall never impanel the grand jury in Grayson county, except that, when, in the discretion of said court, it is deemed by him proper so to do, he may draw and impanel such grand jury for any terms of his court as provided by law for other district courts for impaneling grand juries. [Acts 1909, 2 S. S., p. 393.] Either of the judges of the district court of Grayson county may, in their discretion, either in term time or in vacation, transfer any case or cases, civil or criminal, that may, at any time, be pending in his court to the other district court in Grayson county by order or orders entered upon the minutes of the court making such transfer; and, where such transfer or transfers are made, the clerk of said court shall enter such case or cases upon the dockets of the courts to which such transfer or transfers are made, and when so entered upon the docket the judge of said court shall try and dispose of said cases in the same manner as if such cases were originally in said court. [Acts 1903, p. 3.] The clerk of the district court of Grayson county, as heretofore constituted, and his successor in office, shall be the clerk of both the fifteenth and fifty-ninth district courts in said Grayson county, and shall perform all the duties pertaining to the clerkship of both of said courts.

Grayson county is constituted a part of the 59th judicial district, by Acts 1909, 2 C. S., p. 393, post, subdiv. 59 of this article.

16. The Sixteenth Judicial District shall be composed of the counties of Denton, Montague and Cooke, and the district court shall be held therein as follows: In the County of Montague on the first Monday in January and the twenty-second Monday after the first Monday in January, and may continue in session six weeks; in the County of Denton on the sixth Monday after the first Monday in January, and on the first Monday in September, and may continue in session eight weeks; in the County of Cooke on the fourteenth Monday after the first Monday in January, and the eighth Monday after the first Monday in September and may continue in session eight weeks. (Acts 1917, ch. 26, sec. 1.)

All process issued or served before this Act goes into effect, returnable to the district court in said judicial district, shall be returnable to the said court as fixed by the terms of this Act, and said process is hereby legalized and validated, and all grand and petit jurors selected and drawn under existing laws in any of the counties of said judicial district shall be considered as legally drawn and selected for the next term of the district court of the respective counties held after this Act takes effect, and all appearance bonds and recognizances taken in and for said court shall bind the parties therein obligated to appear at the next term of said court under this Act. (Id. sec. 2.)

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

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

by either of said judges, the suits wherein granted shall be docketed in the court of the judge who granted such injunctions; and in all cases wherein receivers may be appointed by either of said judges, the suit wherein such receivers shall be appointed shall be docketed in the court of the judge who appointed such receivers. In causes filed in said county cognizable by the district court, it shall be sufficient for the petition to state the court in which suit is filed as "The district court of Tarrant county," and it shall be sufficient to address the petition to "The district court of Tarrant county." [Acts 1891, p. 2.] In case of a vacancy by death, resignation or removal of the clerk of the district court of Tarrant county, his successor shall be appointed by the said three district judges of said three districts. (Acts 1907, p. 339.)

See post, subdivisions 48, 67, of this article.

18. The 18th Judicial District shall be composed of the counties of Johnson, Bosque and Somervell. The district courts in the counties comprising the said 18th Judicial District shall be holden as follows: In the County of Johnson, beginning on the first Monday in January and may continue in session until and including Saturday before the third Monday in March; beginning on the first Monday in May and may continue in session until and including Saturday before the first Monday in July; beginning on the second Monday in October, and may continue in session until and including Saturday before the first Monday in December. In the County of Bosque, beginning on the third Monday in March and may continue in session until and including Saturday before the third Monday in April; beginning on the third Monday in September and may continue in session until and including Saturday the second Monday in October; beginning on the first Monday in December and may continue in session until and including Saturday before the first Monday in January. In Somervell County beginning on the third Monday in April and may continue in session until and including Saturday before the first Monday in May; beginning on the first Monday in September and may continue in session until and including Saturday before the third Monday in September. (Acts 1905, p. 37; Acts 1917, ch. 45, sec. 1.)

All processes issued or served before this Act goes into effect, including recognizances and bonds, returnable to the district court of any of said counties in each of said Judicial Districts shall be considered as returnable to said courts in accordance with the terms as described by this Act, and all such process is hereby legalized and all grand and petit juries drawn and selected under existing laws in any of the counties of either of said Judicial Districts, shall be considered lawfully drawn and selected for the next term of the district court of their respective counties, held in accordance with this Act, and after this Act takes effect, all such process is hereby legalized and validated; provided, that if any court in any county of either of said Judicial Districts shall be in session at the time this Act takes effect, such court or courts affected hereby shall continue in session until the term thereof shall expire under the provisions of existing laws, and thereafter the said courts of said county or counties shall conform to the requirements of this Act. (Id. sec. 3.)

Section 4 of Acts 1917, ch. 45, repeals all conflicting laws.

19. McLennan County shall constitute the Nineteenth Judicial District. (Acts 1893, p. 52; Acts 1915, ch. 3, sec. 1.)

The Judges of the Nineteenth and Fifty-fourth Judicial Districts as heretofore existing, shall be and remain the Judges of the respective Courts, as provided for in this Act, until the expiration of their respective terms of office to which they were elected and until their successors are elected and qualified. (Id. sec. 4.)

The Clerk of the District Courts of McLennan County as heretofore existing, shall be and remain the Clerk for each of said District Courts, and shall hold his office until his successor is elected and qualified. (Id. sec. 5.)

The terms of the Nineteenth Judicial District shall be held as follows:

On the first Mondays in January, April, July and October in each year, and may continue in session until the business is disposed of; provided, the October term shall not continue longer than the last Saturday before the 25th day of December. (Id. sec. 8.)

The Judges of the Nineteenth and Seventy-fourth Judicial Districts shall never impanel a Grand Jury in their Courts, but may at any time reconvene the Grand Jury impaneled by the Judge of the Fifty-fourth District when a necessity therefor exists in the judgment of the Judge or Judges of said Nineteenth and Seventy-fourth Judicial Districts. (Id. sec. 9.)

Either of the Judges of said Courts may, in their discretion, either in term time or vacation, transfer any cause or causes Civil or Criminal, that may at any time be pending in his court, to either of the other said District Courts in McLennan County, by order or orders entered upon the minutes of his said Court, and where such transfer or transfers are made, the Clerk of said Courts shall enter such cause or causes upon the docket of the Court to which such transfer or transfers are made, and when so entered upon the docket, the Judge of said Court to which such cause or causes have been transferred, shall try and dispose of said cause or causes in the same manner as if such cause or causes were originally in said Court. (Id. sec. 10.)

The Judges of the Nineteenth and Fifty-fourth Judicial Districts shall transfer to the docket of the Seventy-fourth Judicial District immediately upon the taking effect of this Act, a sufficient number of cases now pending in their respective Courts to equalize the cases and business of the Nineteenth, Fifty-fourth, and Seventy-fourth Judicial Districts. (Id. sec. 11.)

No petit Juries shall be drawn for the July term of the Nineteenth Judicial District or for the August term of the Seventy-fourth Judicial District, unless the Judges of said Courts shall deem the same necessary. (Id. sec. 12.)

McLennan county is also constituted the 54th and the 74th judicial districts, by Acts 1911, 1st C. S. p. 79, and Acts 1915, ch. 3, secs. 2, 3, post, subdivisions 54, 74, of this article.

20. The Twentieth Judicial District of Texas shall hereafter be composed of the county of Milam, and the terms of the District Court shall be held therein in each year as follows: On the first Monday in the months of January, March, May and September, and the second Monday in the month of November of each year, and each term may continue in session until and including the Saturday next preceding the beginning of the next succeeding term, unless the business of the term shall be disposed of. (Acts 1893, p. 52; Acts 1916 (1917), ch. 96, sec. 1.)

Grand Juries in said Twentieth Judicial District shall be organized at the May and November terms of said court and at such other terms as the judge of said District Court may determine and order by causing an order to that effect to be entered upon the minutes of said court by the clerk thereof. (Id. sec. 2.)

The District Judge of the Twentieth Judicial District elected and now acting for said district shall hold his office until the term for which he was elected shall have expired and until his successor is duly elected and qualified, but shall continue as judge of said Twentieth Judicial District as herein constituted. (Id. sec. 6.)

The office of district attorney for the Twentieth Judicial District as now existing, is hereby abolished. Provided, that the District Attorney of said Twentieth Judicial District as now constituted, and now acting as such shall hold his office as District Attorney of the Twentieth Judicial District as it now exists, charged with the duties of prosecuting all felony cases presented in the District Courts of said three counties until the term for which he was elected shall have expired; provided further that the respective duly elected county attorneys of Milam, Brazos and Robertson counties, shall be charged with the duties of prosecuting all misdemeanor cases prosecuted in their respective counties during the term for which they were elected.

And it is further provided, that at the expiration of the term for which said District Attorneys was elected for said Twentieth Judicial District shall have expired, that said office of District Attorneys for said Districts as created by this Act shall be abolished; and the regularly elected county attorneys for the counties of Milam, Brazos, and Robertson, elected at the general election to be held in November, A. D. 1918, and each regular election thereafter held, shall perform all the duties of District Attorneys in their respective counties, theretofore performed by said District Attorney. (Id. sec. 7.)

The several clerks of Milam, Robertson, and Brazos Counties, duly elected and acting as such, shall continue to be the clerk of the District Court of their respective counties until the next general election and until their respective successors are duly elected and qualified. (Id. sec. 8.)

The District Court of the Twentieth Judicial District shall have all such powers and jurisdiction as District Courts now have or which may hereafter be conferred upon them and under the laws and Constitution of the State of Texas, and shall also have and exercise all such other and further jurisdiction as may be at any time transferred to it from the County Court of Milam County by any Act or Acts of the Legislature. (Id. sec. 9.)

It is provided that in case a term of any of the District Courts of the three counties of Milam, Robertson and Brazos, shall in session at the time this Act takes effect, said term of said Court shall continue until said term shall have been adjourned or expired under the existing law, and in case said term of said court is in session in any of said counties, then the provisions of this Act shall not be operative as to said court in said county until such term shall have expired or shall be adjourned sine die by the Judge of said District Court as the same is now constituted. (Id. sec. 19.)

It is provided further that an official Court Reporter of said Twentieth Judicial District, and also one for said Eighty-fifth Judicial District, shall be appointed by the Judge of said Courts, the said official Court Reporters, to have the qualifications, be subject to the duties and regulations, and entitled to the same compensation as official court reporters for District Courts of this State are now or may hereafter be subject to and entitled to under the general laws of this State. (Id. sec. 20.)

It is further provided that Chapter 67 of the General Laws of the 18th Legislature of the State of Texas, passed at the Regular Session, and approved April 9th, 1883, entitled "An Act to re-district the State into Judicial Districts, and fixing a time for the holding of Court therein, and to provide for the election of Judges and District Attorneys in said District," and which now constitutes Section 20, Article 30, of the Revised Statutes of 1911, and also all other laws and parts of laws in conflict with this bill, are here now repealed. (Id. sec. 21.)

21. The counties of Washington, Burleson, Lee and Bastrop shall constitute the Twenty-first Judicial District, and the district courts therein shall be held as follows: in the county of Washington, on the first Monday in March and September, and may continue in session six weeks; in the county of Lee, on the sixth Monday after the first Monday in March and September, and may continue in session four weeks; in the county of Burleson, on the tenth Monday after the first Monday in March and September, and may continue in session five weeks; in the county of Bastrop there shall be held two terms of said court in each year, the first term to be held on the second Monday in January of each year, and may continue in session six weeks, and the second term to be held on the fifteenth Monday after the first Monday in March of each year, and may continue in session six weeks. (Acts 1911, p. 39; Acts 1917, ch. 118, sec. 1.)

22. The counties of Comal, Hays, Caldwell, Fayette and Austin shall constitute the Twenty-second Judicial District, and the District Courts therein shall be held twice in each year, as follows:

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

In the County of Hays on the third Monday after the first Monday in February and September of each year, and may continue in session four weeks.

In the County of Caldwell on the seventh Monday after the first Monday in February of each year, and may continue in session five weeks, and on the seventh Monday after the first Monday in September of each year, and may continue in session four weeks.

In the County of Fayette on the twelfth Monday after the first Monday in February of each year, and may continue in session five weeks; and on the eleventh Monday after the first Monday in September of each year, and may continue in session six weeks.

In the County of Austin on the seventeenth Monday after the first Monday in February and September of each year, and may continue in session four weeks. (Acts 1903, p. 27; Acts 1915, ch. 64, sec. 1.)

All process, writs and bonds, civil and criminal, issued or executed prior or subsequent to the taking effect of this Act and returnable to the terms of said court as heretofore fixed by law in the several counties composing the said Twenty-second Judicial District are hereby made returnable to the terms of said courts in the several counties as fixed in this Act, and in conformity with the change herein made, and all process heretofore returned, as well as all bonds and recognizance heretofore entered into or hereafter entered into after this Act takes effect in any of said courts shall be as valid and as binding as if no change had been made in the time of holding said courts. (Id. sec. 2.)

Section 3 of Acts 1915, ch. 64, repeals all conflicting laws.

23. The Twenty-third Judicial District of Texas shall be composed of the Counties of Brazoria, Fort Bend, Wharton and Matagorda, and the terms of the district court in said counties shall be held therein in each year as follows:

In the County of Brazoria, beginning on the first Monday in September of each year, and may continue in session for five weeks.

In the County of Fort Bend, beginning on the fifth Monday after the first Monday in September of each year, and may continue in session for five weeks.

In the County of Wharton, beginning on the tenth Monday after the first Monday in September of each year, and may continue in session five weeks.

In the County of Matagorda, beginning on the seventeenth Monday after the first Monday in September of each year, and may continue in session five weeks.

In the County of Brazoria, beginning on the first Monday in February of each year, and may continue in session for six weeks.

In the County of Fort Bend, beginning on the sixth Monday after the first Monday in February of each year, and may continue in session for six weeks.

In the County of Wharton, beginning on the twelfth Monday after the first Monday in February of each year, and may continue in session for six weeks.

In the County of Matagorda, beginning on the eighteenth Monday after the first Monday in February of each year, and may continue in session for six weeks. (Acts 1905, p. 80; Acts 1915, 1st C. S. ch. 19, sec. 1; Acts 1917, ch. 44, sec. 1.)

The District Judge of the Twenty-third Judicial District of Texas elected and now acting as judge for said district shall hold his office until the term for which he was elected shall expire, and until his successor is duly elected and qualified. (Acts 1915, 1st C. S. ch. 19, sec. 4.)

Any judge of any civil district court of Harris County may, in his discretion, either in term time or in vacation, transfer any civil case, that may at any time be pending in his court, to any other civil district court in said county, by order entered upon the minutes of the court making such transfer, and where such transfer is made, the clerk of said court shall enter the case upon the docket of the court to which the same is transferred, and when the same has so been entered upon the docket, the judge of the court to which the case has been transferred shall try and dispose of said case in the same manner as other cases pending in said court. (Id. sec. 7.)

Upon the county attorney of Waller County elected and now acting as such in said county, and his successor in office, is imposed the same duties of representing the State in all matters, both civil and criminal, now imposed by general law upon county and district attorneys in reference to matters of which district courts have jurisdiction under the Constitution and laws of the State, and his compensation shall be that now provided by law for county attorneys in counties having no district attorney. (Id. sec. 8.)

The several district clerks of Brazoria, Fort Bend, Wharton, Waller and Matagorda Counties, duly elected and acting as such, shall continue to be the clerks of the district court of their respective counties, until the next general election and until their respective successors are duly elected and qualified. (Id. sec. 9.)

The district attorney of the Twenty-third Judicial District of Texas, elected and now acting as district attorney shall hold his office until the term for which he was elected shall expire and until his successor is duly elected and qualified. (Id. sec. 10.)

All process issued or served before this Act takes effect, including recognizances, and bonds returnable to the district court of any of the counties of the Twenty-third Judicial District, shall be considered as returnable to said courts in accordance with the terms as prescribed in this Act, and all such process is hereby legalized and grand and petit juries drawn and selected under existing laws in any of the counties of said judicial district, and in the county of Waller, shall be considered lawfully drawn and selected for the term of the district court of their respective counties held after this Act takes effect. All such process is hereby legalized and validated. It is further provided that if any court in any county of said district shall be in session at the time this Act takes effect, such court or courts affected hereby shall continue in session until the term thereof shall expire under the provisions of existing laws, but thereafter, the court in such county shall conform to the requirements of this Act. (Id. sec. 11.)

All laws or parts of laws in conflict with the provisions of this Act be and the same are hereby repealed, provided that this Act shall take effect and be in force from and after the first day of September, 1915. (Id. sec. 13.)

All process issued or served before this Act takes effect, including recognizances and bonds returnable to the district court of any

of the counties of the Twenty-third Judicial District shall be considered as returnable to said court, in accordance with the terms as prescribed in this Act, and all such process is hereby legalized, and grand and petit juries drawn and selected under existing laws in any of the counties of said Judicial District shall be considered lawfully drawn and selected by the term of the court of their respective counties held after this Act takes effect, as herein provided. All such process is hereby legalized and validated.

It is further provided that if any court in any county of said district shall be in session at the time this Act takes effect, such court or courts affected hereby shall continue in session until the term thereof shall expire under the provisions of existing laws, but thereafter the court in such county shall conform to the requirements of this Act. (Acts 1917, ch. 44, sec. 2.)

24. The twenty-fourth judicial district of Texas shall hereafter be composed of the counties of Goliad, Jackson, Refugio, Calhoun, Victoria and DeWitt, and that the district court be held therein as follows:

In the county of Goliad on the second Monday in February and the first Monday in September, and may continue in session three weeks.

In the county of Jackson on the third Monday after the second Monday in February, and the third Monday after the first Monday in September, and may continue in session three weeks.

In the county of Refugio on the sixth Monday after the second Monday in February and the sixth Monday after the first Monday in September, and may continue in session two weeks.

In the county of Calhoun on the eighth Monday after the second Monday in February, and the eighth Monday after the first Monday in September, and may continue in session three weeks.

In the county of Victoria on the eleventh Monday after the second Monday in February and the eleventh Monday after the first Monday in September, and may continue in session five weeks.

In the county of DeWitt on the first Monday in January, such term to continue for five weeks, and on the sixteenth Monday after the second Monday in February, and may continue in session five weeks. (Acts 1913, p. 190, sec. 2.)

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

26. The Twenty-sixth Judicial District shall be composed of the counties of Travis and Williamson, and the terms of the District Court of said district shall be held hereafter for the trial of civil cases therein as follows:

(a) In the County of Williamson, on the first Monday in February, and may continue in session to and including the last Saturday before the first Monday in March; on the first Monday in June, and may continue in session five weeks; and on the first Monday in November, and may continue in session four weeks.

(b) In the County of Travis, on the first Monday in March, and may continue in session to and including the last Saturday in May; on the third Monday in September, and may continue in session to and including the last Saturday in October; and on the first Monday in December, and may continue in session to and including the last Saturday in January. (Acts 1913, 1st C. S. p. 15; Acts 1915, ch. 17, sec. 1.)

The Twenty-sixth and Fifty-third District Courts of Travis County shall have concurrent jurisdiction with each other throughout the limits of Travis County of all matters civil of which jurisdiction is given to the district courts by the Constitution and the laws of the State of Texas.

(a) The clerk of the District Court of Travis County as heretofore constituted, and his successors in office, shall be the clerk of the Twenty-sixth and Fifty-third District Courts, and also the clerk of the Criminal District Court in Travis County hereinafter created, and shall perform all the duties pertaining to all of said courts; and the clerk of the District Court of Williamson County, as heretofore constituted, and his successors in office, shall be the clerk of the Twenty-sixth District Court in Williamson County, and also the clerk of the Criminal District Court in Williamson County, Texas, hereinafter created, and shall perform all duties pertaining to both of said courts.

(b) Either of the judges of the Twenty-sixth and Fifty-third District Courts in Travis County may in his discretion transfer any civil cause that may at any time be pending in his court to the other Civil District Court in Travis County, by an order entered upon the minutes of his court; when such transfer is made the clerk of the District Court of Travis County shall enter such cause upon the docket of the court to which such transfer is made, and when so entered upon the docket the judge of said court shall try and dispose of said cause in the same manner as if such cause was originally instituted in said court.

(c) All writs, process and bonds in civil cases and matters issued, executed or entered into prior to the taking effect of this act in the Twenty-sixth and Fifty-third District Courts, respectively, and returnable to terms of said courts heretofore fixed by law in the counties of Travis and Williamson, are hereby made returnable to the next ensuing term of said respective courts as fixed by this act, and shall be as valid and binding as if no change had been made in the time of holding of said courts; and all juries drawn and

selected under existing laws shall be as valid as if no change had been made in the time of holding said courts, and provided further, that jurors drawn and selected under existing laws shall be required to appear and serve at the next ensuing term of said respective courts as fixed by this act, and their acts shall be as valid as if no change had been made in the time of holding said courts.

(d) Should either the Twenty-sixth or Fifty-third District Court be in session under existing laws when this act takes effect, such court shall continue in session for the time fixed by such existing law, and all process, writs, orders, judgments and decrees issued and rendered by said court shall be valid, and shall not be affected by the change in the terms of said court made by this act. (Id. sec. 3.)

Travis county is also constituted the 53d judicial district, by Acts 1913, 1st C. S. p. 17 and Acts 1915, ch. 17, sec. 2, post, subdiv. 53 of this article.

27. The 27th Judicial District of this State shall be composed of the counties of Bell, Lampasas and Mills, and the terms of the court shall be held therein each year as follows:

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

In the County of Lampasas, on the sixth Monday after the first Monday in March and on the first Monday in September, and may continue in session three weeks.

In the County of Mills, on the 9th Monday after the first Monday in March and on the fourth Monday in September and may continue in session three weeks. Provided this Act shall not go into effect until the first Monday in June A. D. 1918, upon which date it shall be in full force and effect. (Acts 1913, p. 115, sec. 1; Acts 1918, 4th C. S., ch. 33, sec. 1.)

All process issued or served before this Act goes into effect, returnable to the district court of said judicial districts, [twenty-seventh and thirty-fifth] shall be returnable to said courts as fixed by the terms of this Act and said process is hereby legalized and validated; and all grand and petit jurors selected and drawn under existing laws in any of the courts of said judicial districts, shall be considered lawfully drawn and selected for the next term of the district court of the respective counties held after this Act takes effect; and all appearance bonds and recognizances taken in and for said courts shall bind the parties therein obligated to appear at the next terms of said court held under this Act. (Acts 1913, p. 115, sec. 3.)

All laws and parts of laws in conflict with this Act shall be and the same are hereby repealed; provided, however, that in the event any term of the district court in any of the counties herein affected be in session when this Act takes effect, the same shall in no manner affect said term of court, but the same shall continue in session under the old law for said term, and this Act shall only affect subsequent terms of court in said county. (Id. sec. 4.)

28. The Twenty-eighth Judicial District of the State of Texas shall be composed of the counties of Nueces, Kleberg, Willacy and Cameron, and the terms of the Civil District Court shall be held in said district each year as follows:

In the County of Nueces on the first Monday in January of each year and may continue in session ten weeks; and on the last Monday in July of each year and may continue in session ten weeks.

In the County of Cameron on the tenth Monday after the first Monday in January of each year and may continue in session five weeks; and on the twenty-first Monday after the first Monday in January of each year and may continue in session five weeks; and on the fifteenth Monday after the last Monday in July of each year and may continue in session five weeks.

In the county of Kleberg on the fifteenth Monday after the first Monday in January of each year and may continue in session four weeks; and on the tenth Monday after the last Monday in July of each year and may continue in session three weeks.

In the county of Willacy on the nineteenth Monday after the first Monday in January of each year and may continue in session two weeks; on the thirteenth Monday after the last Monday in July and may continue in session two weeks. (Acts 1913, 1st C. S. p. 14; Acts 1915, ch. 48, sec. 1; Acts 1917, ch. 46, sec. 6a; Acts 1917, ch. 82, sec. 6a; Acts 1917, 1st C. S. ch. 19, sec. 1.)

All processes, writs, and bonds issued, served or executed prior to the taking effect of this Act and returnable to the term[s] of said court as heretofore fixed by law in the several counties composing said district are hereby made returnable to the terms of said court in the several counties as fixed by this Act, and all processes heretofore returnable, as well as all bonds and recognizances heretofore entered into, in any of said courts, shall be valid and binding as if no change had been made by this Act in the times of holding said terms of court. (Acts 1917, ch. 82, sec. 2.)

The present district judge and district attorney of the Twenty-eighth Judicial District, as the same now exists, being residents of the Twenty-eighth Judicial District as recognized under the provisions of this Act shall hold their office until the time for which they were elected shall expire and their successors are duly elected and qualified. (Acts 1915, ch. 48, sec. 3.)

Acts 1913 S. S. p. 86, creating Dunn county, places such county in the 28th Judicial District.

29. The 29th Judicial District shall be composed of the Counties of Palo Pinto, Hood and Erath. The district courts in the counties, comprising the said 29th Judicial District, shall be holden as follows: In Palo Pinto County, beginning on the first Monday in March and September and may continue in session eight weeks. In Hood County beginning on the eighth Monday after the first Monday in March and September and may continue in session five weeks. In Erath County beginning on the thirteenth Monday after the first Monday in March and September, and may continue in session until all the business is disposed of. (Acts 1909, 2d C. S. p. 390; Acts 1917, ch. 45, sec. 2.)

See ante, subdiv. 18 of this article.

30. The Thirtieth Judicial District shall be composed of the counties of Young, Archer,

Clay and Wichita, and terms of the district court shall be held therein each year as follows:

In the county of Young on the first Monday in March and September and may continue in session four weeks.

In the county of Archer, on the fourth Monday after the first Monday in March and September and may continue in session three weeks.

In the county of Clay on the seventh Monday after the first Monday in March and September and may continue in session eight weeks.

In the county of Wichita on the fifteenth Monday after the first Monday in March and September, and may continue in session until the business of the term is disposed of. (Acts 1903, p. 96; Acts 1915, ch. 128; Acts 1915, 1st C. S. ch. 6, sec. 1.)

All process issued from the office of the district clerk of Wichita County, Texas, since March 23, 1915, providing for service on the thirteenth Monday after the first Monday in March and served more than ten days before May 31, 1915, is hereby validated and shall be as effective for service as if calling for the time provided in this Act (Id. sec. 2.)

Wichita county is constituted the 78th Judicial District, by Acts 1915, ch. 6, sec. 1, post, subdiv. 78 of this article.

31. The thirty-first judicial district shall be composed of the counties of Hemphill, Roberts, Carson, Hutchinson, Wheeler, Gray, Ochiltree, Hansford and Lipscomb, and the terms of the district court shall be holden each year therein as follows:

Beginning in Hemphill county on the second Monday in January and August in each year, and may remain and continue in session for four weeks.

Beginning in Roberts county on the fourth Monday after the second Monday in January and August in each year, and may continue in session two weeks.

Beginning in Carson county on the sixth Monday after the second Monday in January and August in each year, and may continue in session two weeks.

Beginning in Hutchinson county on the eighth Monday after the second Monday in January and August in each year, and may continue in session one week.

Beginning in Wheeler county on the ninth Monday after the second Monday in January and August in each year, and may remain in session two weeks.

Beginning in Gray county on the eleventh Monday after the second Monday in January and August in each year, and may continue in session two weeks.

Beginning in Ochiltree county on the thirteenth Monday after the second Monday in January and August in each year, and may continue in session one week.

Beginning in Hansford county on the fourteenth Monday after the second Monday in January and August in each year, and may continue in session for one week.

Beginning in Lipscomb county on the fifteenth Monday after the second Monday in January and August in each year, and may continue in session until the business is disposed of. (Acts 1911, p. 99, sec. 1.)

All process and writs issued out of the district courts of said counties prior to the taking effect of this Act are hereby made returnable to the terms of said courts as the said terms are fixed by this Act, and all bonds executed and recognizances entered of record in said courts shall bind the parties for their appearance or to fulfill the obligation of such bonds and recognizances at the terms of said courts as they are fixed by this Act, and all process heretofore returned to, as well as all bonds and recognizances heretofore taken in any of said courts shall be valid, or as valid as if no change had been made in the time of holding said courts. (Id. sec. 2.)

Should any district court in said thirty-first district be in session under existing laws when this act takes effect, the same shall come to an end under such existing laws, and its process, writs, judgments and decrees shall be valid and binding notwithstanding the change in the time made by this Act. (Id. sec. 3.)

All laws and parts of laws in conflict with the provisions of this Act, be and the same are hereby repealed. (Id. sec. 4.)

This Act shall take effect and be in force from and after the first day of July, A. D. 1911, and it is so enacted. (Id. sec. 5.)

32. The Thirty-second Judicial District of Texas shall hereafter be composed of the following counties:

Howard, Borden, Nolan, Mitchell and Scurry; and the terms of the district courts shall be held therein in each year as follows:

In the county of Howard on the first Mondays in February and September, and may continue in session three weeks.

In the County of Borden on the third Mondays after the first Mondays in February and September and may continue in session one week.

In the County of Nolan on the fourth Mondays after the first Monday in February and September and may continue in session seven weeks.

In the County of Mitchell on the eleventh Mondays after the first Monday in February and September and may continue in session five weeks.

In the County of Scurry on the sixteenth Mondays after the first Mondays in February and September and may continue in session four weeks. (Acts 1913, p. 4; Acts 1917, ch. 4; Acts 1917, ch. 12, sec. 1.)

All process and writs issued out of the district courts of said counties, prior to the taking effect of this act are hereby made returnable to the terms of said courts as fixed by this Act, and all bonds executed, and recognizances entered of record in said courts shall bind the parties for their appearance, or to fulfill the obligation of such bonds and recognizances at the terms of said courts as they are fixed by this Act, and all process heretofore returned to, as well as all bonds and recognizances heretofore taken in any of said courts shall be valid or as valid as if no change had been made in the time of holding said courts. (Id. sec. 4.)

The present judges and district attorneys of the said Thirty-second, Thirty-ninth and Seventieth Judicial Districts shall continue to hold their offices until their said present terms expire. (Id. sec. 5.)

33. The Thirty-third Judicial District of this State shall be composed of the counties of Kimble, Gillespie, Mason, Blanco, Menard, San Saba, Llano and Burnet, and the district courts shall be holden therein as follows:

In the county of Kimble, on the first Monday in February and September, and may continue in session two weeks.

In the county of Gillespie, on the third Monday in February and September, and may continue in session two weeks.

In the county of Mason, on the fourth Monday after the first Monday in February and September, and may continue in session two weeks.

In the county of Blanco, on the sixth Monday after the first Monday in February and September, and may continue in session two weeks.

In the county of Menard on the eighth Monday after the first Monday in February and September, and may continue in session two weeks.

In the county of San Saba on the tenth Monday after the first Monday in February and September, and may continue in session three weeks.

In the county of Llano on the Thirteenth Monday after the first Monday in February and September, and may continue in session three weeks.

In the county of Burnet on the first Monday in January and may continue in session three weeks, and on the sixteenth Monday after the first Monday in February, and may continue in session until the business is disposed of. (Acts 1913, ch. 37, p. 68; Acts 1915, 1st C. S., ch. 16, sec. 1.)

34. The terms of the District Court of the Thirty-fourth Judicial District, composed of El Paso and Culberson Counties, shall be held in each of said counties each year as follows, to-wit:

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

Beginning on the first Monday in September of each year and may continue in session for four weeks thereafter; a term beginning on the first Monday in November of each year and may continue in session until the last Saturday before the 25th day of December of each year thereafter; a term beginning on the first Monday in January of each year and may continue in session until the last Saturday in March thereafter; a term beginning on the first Monday in May of each year and may continue in session until the last Saturday in June of each year thereafter.

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

A term beginning on the first Monday in April of each year and may continue in session for four weeks thereafter; and a term beginning on the first Monday in October of each year and may continue in session for four weeks thereafter. (Acts 1913, 1st C. S. p. 17; Acts 1915, ch. 24, sec. 4.)

The said District Courts of El Paso County shall have concurrent civil and criminal jurisdiction with each other in said county of matters over which the jurisdiction is given or shall be given by the Constitution and laws of Texas to District Courts; provided, that no grand jury shall be impaneled in the District Courts of said county, other than that of the Thirty-fourth Judicial District, unless by special order of the judge of either of the other District Courts a grand jury shall be called for either of said courts. (Id. sec. 6.)

The District Attorney of the Thirty-fourth Judicial District shall also act as District Attorney in and for the Forty-first and Sixty-fifth Judicial Districts, and the clerk of the District Court of El Paso County shall act as clerk of the District Court for each of said District Courts. (Id. sec. 7.)

Either of the Judges in the said District Courts in El Paso County may, in their discretion, either in term time or vacation, transfer any case or cases, civil or criminal, to any other of said District Courts by order entered on the minutes of his court, or minutes of orders made in chambers, as the case may be, which orders, when made, shall be copied and certified to by said clerk, together with all orders made in said case, and such certified copies of such orders shall be filed among the papers of any case thus transferred, and the fees therefor shall be taxed as part of the costs of said suit. And the clerk of said court shall docket any such cause in the court to which it shall have been transferred, and, when so entered, the court to which the same shall have been thus transferred shall have like jurisdiction therein as in cases originally brought in said court, and the same shall be dropped from the docket of the court from which it was transferred: provided, that where there shall be a transfer of any case from one court to another, as herein provided, on motion of either of the parties to said suit, notice must be given to either the opposite party or his attorney by the party making the motion to transfer one week before the time of entering the order of transfer. (Id. sec. 8.)

El Paso county is also constituted the 41st and 65th judicial districts, by Acts 1903, p. 78, and Acts 1915, ch. 24, secs. 1, 3, post, subdivisions 41, 65, of this article.

As to Hudspeth county as a part of this district, see Acts 1917, ch. 25.

35. The thirty-fifth judicial district of this state shall be composed of the following counties: Brown, Coleman, Runnels, Concho and McCulloch, and the district court shall be holden therein each year as follows:

In the county of Concho on the first Monday in February and September, and may continue in session two weeks.

In the county of McCulloch on the second Monday after the first Monday in February and September, and may continue in session three weeks.

In the county of Runnels on the fifth Monday after the first Monday in February and September and may continue in session four weeks.

In the county of Coleman on the ninth Monday after the first Monday in February and September, and may continue in session five weeks.

In the county of Brown on the fourteenth Monday after the first Monday in February and September and may continue in session until the business is disposed of. (Acts 1913, p. 115, sec. 2.)

See ante, subdiv. 27 of this article.

36. The Thirty-sixth Judicial District of Texas shall hereafter be composed of the counties of Aransas, San Patricio, Bee, Live

Oak, and McMullen, and the district courts shall be held therein as follows:

In the County of Aransas, on the first Monday in September and February and may continue in session two weeks.

In the County of San Patricio, on the second Monday after the first Monday in September and February, and may continue in session six weeks.

In the County of Bee, on the eighth Monday after the first Monday in September and February, and may continue in session eight weeks.

In the County of Live Oak, on the sixteenth Monday after the first Monday in September and February, and may continue in session three weeks.

In the County of McMullen, on the nineteenth Monday after the first Monday in September and February, and may continue in session two weeks.

All processes, recognizances, writs and bonds issued, served or executed prior to the taking effect of this Act, and returnable to the terms of said court, as heretofore fixed by law, in the several counties composing said district, are hereby made returnable to the terms of said court in the several counties as fixed by this Act, and all processes heretofore returnable, as well as all bonds and recognizances heretofore entered into in any of said courts shall be valid and binding as if no change had been made by this Act in the times of holding said terms of court.

The present district judge of the Thirty-sixth Judicial District shall be and remain the judge of said district, as fixed by this Act, for the term for which he was elected and until his successor is duly elected and qualified.

The Governor of the State is hereby empowered to appoint a district attorney for said Thirty-sixth Judicial District of Texas, who shall hold his office until the next general election and until his successor is duly elected and qualified.

All grand and petit jurors selected in any of said counties shall be legal jurors for the terms of said court, fixed by this Act. (Acts 1913, p. 190; Acts 1917, ch. 91, sec. 1.)

Section 4 of Acts 1917, ch. 91, repeals all conflicting laws.

37. Bexar county shall constitute the thirty-seventh judicial district. (Acts 1911, p. 87, sec. 1.)

The judges of the thirty-seventh, forty-fifth and fifty-seventh judicial districts as heretofore existing shall be and remain judges of the respective courts as provided for in this act, until the expiration of their respective terms of office to which they were elected, and until their successors are elected and qualified. (Id. sec. 5.)

The jurisdiction of said district courts of Bexar county herein created by this Act shall be concurrent and shall extend with the limits of Bexar county over all cases, proceedings and matters of which district courts are given jurisdiction by the constitution and the laws of this state. (Id. sec. 7.)

The terms of the district court of the thirty-seventh judicial district shall be held as follows: One term beginning on the first Monday in October, and may continue in session until the last Saturday before the first Monday in November. One term beginning on the first Monday in November, and may continue in session until the last Saturday before the first Monday in January. One term beginning on the first Monday in January, and may continue in session until the last Saturday before the first Monday in March. One term beginning on the first Monday in March, and may continue in session until the last Saturday before the first Monday in May. One term beginning on the first Monday in May, and may continue in session until the last Saturday before the first Monday in July. The terms of the district courts of the forty-fifth, the fifty-seventh and seventy-third judicial districts, in said respective courts, shall be held as follows: One term beginning on the first Monday in October, and may continue in session until the last Saturday before the first Monday in December. One term beginning on the first Monday in December, and may continue in session until the last Saturday before the first Monday in February. One term beginning on the first Monday in February, and may continue in session until the last Saturday before the first Monday in April. One term beginning on the first Monday in April, and may continue in session until the last Saturday before the first Monday in June. One term beginning on the first Monday in June and may continue in session until the last Saturday before the first Monday in July. (Id. sec. 8.)

All writs and process heretofore issued or that may hereafter be issued up to the time this Act shall take effect by and from said district courts and made returnable to said terms of court as now fixed by law, shall be returnable to the next ensuing terms of said courts as fixed by this Act; and all such writs and process shall be valid and legal. (Id. sec. 9.)

The district attorney of the thirty-seventh judicial district shall be and remain the district attorney of the thirty-seventh judicial district, as herein defined, and shall also represent the state in all cases, criminal and civil, in the forty-fifth, fifty-seventh and seventy-third judicial districts, and shall be elected by the qualified voters of said thirty-seventh judicial district. (Id. sec. 10.)

The judges of said district courts may, in their discretion, or by agreement of the parties, transfer any civil suit or cause of action from one district court to another, by an order duly entered upon the minutes of the court, and when such transfer is made the clerk shall enter such case or cases upon the docket of the court to which the transfer is made. When the transfer is made by the court of its own motion, unless the parties are present in court and take notice of such transfer, reasonable notice of such order or orders shall be given to the parties or their attorney of record; provided that in cases where ancillary writs be granted by either of the judges, and transfer may be made to the court of the judge granting such writ without such notice. (Id. sec. 12.)

All laws and parts of laws in conflict with this Act are hereby repealed. (Id. sec. 13.)

Bexar county is also constituted the 45th, 57th, and 73d judicial districts, by Acts 1911, p. 87, secs. 2, 3, 4, post, subdivisions 45, 57, and 73 of this article.

38. The Thirty-eighth Judicial District of the State of Texas shall be composed of the counties of Kendall, Zavalla, Medina, Ban-

dera, Real and Kerr, and the district courts therein shall be held as follows:

In the county of Kendall, on the first Mondays in March, and September of each year, and may continue in session three weeks.

In the county of Zavalla, on the third Monday after the first Monday in March and September and may continue in session three weeks.

In the county of Medina on the sixth Monday after the first Monday in March and September and may continue in session four weeks.

In the county of Bandera on the tenth Monday after the first Monday in March and September and may continue in session three weeks.

In the county of Real on the thirteenth Monday after the first Monday in March and September and may continue in session two weeks.

In the county of Kerr on the fifteenth Monday after the first Monday in March and September and may continue in session until the business is disposed of. (Acts 1913, 1st C. S. p. 22; Acts 1917, ch. 67; Acts 1917, ch. 209, sec. 1.)

The district judge and district attorney for the Thirty-eighth and Sixty-third Judicial Districts, respectively, and now in office, shall continue in office during the time for which they were elected respectively. (Id. sec. 4.)

The district courts of the Thirty-eighth Judicial District in the county of Uvalde, shall be held as now provided for the April 1917 term, and be presided over by the district judge of said district, and all the courts of said Thirty-eighth District shall be holden at the times now prescribed for the spring terms, including the court in Kerr county on the nineteenth Monday after the first Monday in March 1917; and thereafter all the courts in said Thirty-eighth District shall be holden at times as herein prescribed in Section One of this Act. (Id. sec. 3.)

All process issuing out of the district court of any of the counties named in this Act, issued or served before this Act takes effect, including recognizances and bonds, returnable to the district courts of any such respective counties, shall be considered as returnable to such respective courts in accordance with the terms and times of holding same as prescribed in and fixed by this Act; and all such process is hereby legalized. And all grand and petit juries drawn and selected under existing laws for any of the counties of said districts shall be considered lawfully drawn and selected for the next term of the respective district courts held after this Act takes effect, and all such process is hereby legalized and validated. (Id. sec. 6.)

39. The Thirty-ninth Judicial District of Texas shall hereafter be composed of the counties of Fisher, Kent, Stonewall, Throckmorton, Haskell and Jones; and the terms of the district courts shall be held therein in each year as follows:

The County of Fisher on the sixth Monday after the first Monday in January and the first Monday in September and may continue in session three weeks.

In the County of Kent on the ninth Monday after the first Monday in January and third Monday after the first Monday in September and may continue in session two weeks.

In the County of Stonewall on the eleventh Monday after the first Monday in January and fifth Monday after the first Monday in September and may continue in session three weeks.

In the County of Throckmorton on the fourteenth Monday after the first Monday in January and the eighth Monday after the first Monday in September and may continue in session two weeks.

In the County of Haskell the sixteenth Monday after the first Monday in January and tenth Monday after the first Monday in September and may continue in session five weeks.

In the County of Jones on the first Monday in January and the twenty-first Monday after the first Monday in January and may continue in session six weeks. (Acts 1899, p. 171; Acts 1903, p. 26; Acts 1917, ch. 4, sec. 2; Acts 1917, ch. 12, sec. 2.)

See ante, subdiv. 32 of this article.

40. That the County of Ellis be and the same is hereby constituted the Fortieth Judicial District and the terms of district courts therein shall be held each year as follows:

One term beginning on the first Monday in March of each year and continuing in session until the first Monday in June.

One term, beginning on the first Monday in June of each year and continuing in session until the first Monday in September.

One term, beginning on the first Monday in September of each year and continuing in session until the first Monday in December.

One term, beginning on the first Monday in December of each year and continuing in session until the first Monday in March. (Acts 1913, p. 171, § 2; Acts 1917, ch. 70, sec. 1.)

The District Judge of the Fortieth Judicial District, as formerly constituted, shall continue in office as district judge of the Fortieth Judicial District, as herein constituted until the end of the term for which he was elected. (Id. sec. 2.)

See ante, subdiv. 7 of this article.

41. The terms of the District Court of El Paso County in and for the Forty-first Judicial District, composed of El Paso County, shall be as follows:

Beginning on the first Monday in January of each year and may continue in session until the last Saturday before the first Monday in March, thereafter; beginning on the first Monday in March of each year and may continue in session until the last Saturday before the first Monday in May, thereafter; beginning on the first Monday in May of each year and may continue in session until the last Saturday before the first Monday in July, thereafter; beginning on the first Monday in September of each year and may continue in session until the last Saturday before the first Monday in November, thereafter; beginning on the first Monday in November of each year and may continue in session until the last Saturday before the first Monday in January, thereafter. (Acts 1903, p. 78; Acts 1915, ch. 24, sec. 3.)

El Paso county is constituted a part of the 34th judicial district, by Acts 1913, 1st C. S. p. 17, and Acts 1915, ch. 24, sec. 4, ante, subdiv. 34 of this article, and also the 65th judicial district, by Acts 1915, ch. 24, sec. 1, post, subdiv. 65 of this article.

42. The 42nd judicial district of the State of Texas shall hereafter be composed of the

counties of Taylor, Callahan, Shackelford and Stephens, and the terms of court shall be held in each county therein each year as follows:

In the County of Taylor on the 1st Monday in January, April, July, and October of each year, and may continue in session five weeks.

In the County of Callahan on the 5th Monday after the 1st Monday in January, April, July, and October, and may continue in session three weeks.

In the County of Stephens on the 8th Monday after the 1st Monday in January, April, July, and October, and may continue in session three weeks.

In the County of Shackelford on the 11th Monday after the 1st Monday in January, April, July, and October, and may continue in session two weeks. (Acts 1919, ch. 139, sec. 8; Acts 1919, 2d C. S., ch. 5, sec. 1.)

Section 2 of Acts 1919, 2d C. S. ch. 5 repeals all conflicting laws.

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

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

Dallas county is also constituted the 14th judicial district, by Acts 1913, p. 171, and Acts 1917, ch. 70, sec. 5, ante, subdiv. 14 of this article; and the 68th judicial district, by Acts 1909, p. 4, post, subdiv. 68 of this article.

45. Bexar county shall constitute the forty-fifth judicial district. (Acts 1911, p. 87, sec. 2.)

Bexar county is also constituted the 37th judicial district, by Acts 1911, p. 87, sec. 1, ante, subdiv. 37 of this article; and the 57th and 73d judicial districts, by Acts 1911, p. 87, secs. 3, 4, post, subdivisions 57, and 73 of this article.

46. The Forty-sixth Judicial District of the State of Texas shall be composed of the following counties, to-wit:

Wilbarger, Hardeman, Foard, Collingsworth, Childress and Hall, and terms of court shall be held therein each year as follows:

In the County of Wilbarger, on the first Mondays in February and September, and may continue in session four weeks.

In the County of Hardeman, on the fourth Monday after the first Mondays in February and September, and may continue in session four weeks.

In the County of Foard, on the eighth Mondays after the first Mondays in February and September, and may continue in session two weeks.

In the County of Collingsworth, on the tenth Mondays after the first Mondays in February and September, and may continue in session three weeks.

In the County of Childress, on the thirteenth Mondays after the first Mondays in February and September, and may continue in session four weeks.

In the County of Hall, on the seventeenth Mondays after the first Mondays in February and September, and may continue in session until all the business is disposed of. (Acts 1911, S. S. p. 100; Acts 1915, ch. 15, sec. 1.)

All process issued or served before this Act goes into effect, returnable to the District Court in said Judicial District, shall be returnable to said court as fixed by the terms of this Act; and said process is hereby legalized and validated and all Grand and Petit Jurors selected and drawn under existing laws in any of the counties of said Judicial District, shall be considered legally drawn and selected for the next term of the District Court of the respective counties held after this Act takes effect, and all appearance bonds and recognizances taken in and for said court shall bind the parties therein obligated to appear at the next term of such court held under this Act. (Id. sec. 2.)

47. The forty-seventh judicial district shall be composed of the counties of Donley, Armstrong, Randall and Potter, and the terms of the district court shall be held therein from and after the first day of November, 1913, as follows:

In the county of Donley on the second Monday in January and third Monday in July, and may continue in session three weeks.

In the county of Armstrong on the third Monday after the second Monday in January and the third Monday after the third Monday in July and may continue in session three weeks.

In the county of Randall on the sixth Monday after the second Monday in January and the sixth Monday after the third Monday in July, and may continue in session four weeks.

In the county of Potter, on the tenth Monday after the second Monday in January, and on the tenth Monday after the third Monday in July, and may continue in session ten weeks; and in said county of Potter on the twentieth Monday after the second Monday in January, and the twentieth Monday after the third Monday in July, and may continue in session two weeks. (Acts 1913, S. S., p. 19, sec. 1.)

All process issued or served before this Act takes effect, including recognizances, bail bonds and appeal bonds returnable to the district court of any of the counties of said judicial district, shall be considered and held returnable to said courts in accordance with the terms as prescribed by this Act, and all process is hereby legalized; and all grand jurors and petit jurors selected and drawn under the existing laws in any of the counties of said judicial district shall be considered and held lawfully selected and drawn for the next term of the district court of the respective counties held after this Act takes effect, and all such process is hereby legalized and validated. (Id. sec. 2.)

All laws and parts of laws in conflict with this Act be and the same are hereby repealed. (Id. sec. 3.)

48. Tarrant county shall constitute the

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

See ante, subdiv. 17 of this article, and post, subdiv. 67 of this article.

49. The Fourty-ninth Judicial District of Texas shall hereafter be composed of the counties of Webb, Zapata and Dimmit, and the districts courts shall be held therein in each year as follows:

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

In the County of Zapata, on the fourth Monday after the first Monday in September and February, and may continue in session one week.

In the County of Webb as follows: One term beginning on the fifth Monday after the first Monday in September and, may continue in session eight weeks; one term beginning on the thirteenth Monday after the first Monday in September and may continue in session eight weeks; one term beginning on the fifth Monday after the first Monday in February, and may continue in session eight weeks; one term beginning on the thirteenth Monday after the first Monday in February and may continue in session eight weeks.

The present district judge and district attorney of said Forty-ninth Judicial District shall continue as judge and district attorney respectively of said Forty-ninth Judicial District for the terms for which they were elected and until their successors shall be duly elected and qualified.

All process, recognizances, writs, and bonds issued, served, executed, or entered into, prior to the taking effect of this Act and returnable to the terms of said court as heretofore fixed by law in the several counties composing said district are hereby made returnable to the terms of said court in the several counties, as fixed by this Act and all process heretofore returnable, as well as all bonds and recognizances heretofore entered into in any of said courts shall be valid and binding as if no change had been made by this Act in the times of holding said terms of court.

All grand and petit jurors selected in any of said counties shall be legal jurors for the terms of said court fixed by this Act. (Acts 1913, S. S. p. 12; Acts 1915, ch. 98; Acts 1915, 1st C. S., ch. 25; Acts 1917, ch. 91, sec. 2.)

Section 4 of Acts 1917, ch. 91, repeals all conflicting laws.

50. The Fiftieth Judicial District of the State of Texas shall be composed of the counties of Baylor, Knox, King, Cottle, Motley, and Dickens and the terms of court shall be held therein each year as follows:

In the county of Baylor on the first Mondays in January and July, and may continue in session six weeks.

In the county of Knox on the sixth Mondays after the first Mondays in January and July, and may continue in session six weeks.

In the county of King on the twelfth Mondays after the first Mondays in January and July, and may continue in session two weeks.

In the county of Cottle on the fourteenth Mondays after the first Mondays in January and July, and may continue in session four weeks.

In the county of Motley on the eighteenth Mondays after the first Mondays in January and July, and may continue in session three weeks.

In the county of Dickens on the twenty-first Mondays after the first Mondays in January and July, and may continue in session three weeks. (Acts 1911, p. 212, secs. 7, 8; Acts 1917, ch. 109, sec. 1.)

51. The Fifty-first Judicial District of this State shall be composed of the counties of Tom Green, Irion, Schleicher, Coke and Sterling, and the district courts shall be held therein as follows:

In the County of Tom Green on the first Monday in January and may continue in session ten weeks, and on the eighteenth Monday after the first Monday in January, and may continue in session until the last Saturday in August, and the first Monday in September, and may continue in session eight weeks.

In the County of Irion on the tenth Monday after the first Monday in January, and the eighth Monday after the first Monday in September, and may continue in session two weeks.

In the County of Schleicher on the twelfth Monday after the first Monday in January and the tenth Monday after the first Monday in September, and may continue in session two weeks.

In the County of Coke on the fourteenth Monday after the first Monday in January, and the twelfth Monday after the first Monday in September, and may continue in session two weeks.

In the County of Sterling on the sixteenth Monday after the first Monday in January and the fourteenth Monday after the first Monday in September, and may continue in session two weeks. (Acts 1909, p. 56; Acts 1917, ch. 67, sec. 2.)

See ante, subdiv. 38 of this article.

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

53. The County of Travis shall constitute the Fifty-third Judicial District, and the District Court shall be held therein for the trial of civil cases as follows: On the first Monday in October, January, March and May in each year, and may continue in session until the business is disposed of; provided, the May term shall not continue longer than the third Saturday in July, unless continued longer by the judge thereof by an order duly entered; and the October term shall not con-

tinue longer than the last Saturday before the 25th of December each year, unless continued longer by the judge thereof by an order duly entered. (Acts 1913, 1st C. S. p. 17; Acts 1915, ch. 17, sec. 2.)

Travis county is constituted a part of the 26th judicial district, by Acts 1913, 1st C. S. p. 15, and Acts 1915, ch. 17, sec. 1, ante, subdiv. 26 of this article.

54. McLennan County [and Falls County] shall constitute the Fifty-fourth Judicial District. (Acts 1911, 1st C. S. p. 79; Acts 1915, ch. 3, sec. 3.)

The terms of the Fifty-fourth Judicial District shall be held as follows:

[In the County of Falls on the first Mondays in January, and the first Mondays in June and the January term of said Court may continue in session nine weeks and the June term nine weeks.] In the County of McLennan on the Second Mondays in March and the fourth Mondays in September and may continue in session until the business is disposed of. (Id. sec. 8.)

McLennan county is constituted the 19th judicial district, by Acts 1893, p. 52, and Acts 1915, ch. 3, sec. 1, ante, subdiv. 19 of this article; and the 74th judicial district, by Acts 1915, ch. 3, sec. 2, post, subdiv. 74 of this article.

Falls county is constituted the 82d judicial district, by Acts 1917, ch. 9, post, subdiv. 82 of this article.

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

Harris county is also constituted the 11th judicial district, by Acts 1909, p. 22, ante, subdiv. 11 of this article; the 61st judicial district, by Acts 1903, p. 22; and a part of the 80th judicial district, by Acts 1915, 1st C. S. ch. 19, sec. 2, post, subdivisions 61 and 80 of this article.

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

See ante, subdiv. 10 of this article.

57. Bexar county shall constitute the fifty-seventh judicial district. (Acts 1911, p. 87, sec. 3.)

Bexar county is also constituted the 37th and 45th judicial districts, by Acts 1911, p. 87, secs. 1, 2, ante, subdivisions 37 and 45 of this article; and the 73d judicial district, by Acts 1911, p. 87, sec. 4, post, subdiv. 73 of this article.

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

See post, subdiv. 60 of this article.

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

Grayson county is also constituted the 15th judicial district, by Acts 1909, 2 S. S. p. 393, ante, subdiv. 15 of this article.

60. Jefferson county shall constitute the sixtieth judicial district, as well as the fifty-eighth judicial district; and the jurisdiction of the district courts in and for said judicial districts shall be concurrent and co-extensive with the limits of said county. [Acts 1903, p. 8, sec. 1.] The terms of the district court of the sixtieth judicial district shall be begun and holden as follows: On the first Monday

in October, and may continue until and including the last Saturday in November; on the first Monday in December, and may continue in session until and including the last Saturday in January; on the first Monday in February, and may continue in session until and including the last Saturday in March; on the first Monday in April, and may continue in session until and including the last Saturday in May; and on the first Monday in June, and may continue in session until and including the last Saturday in September. [Id. sec. 3.] The judge of the district court of the sixtieth judicial district, in his discretion, may have a grand jury drawn and organized for said court at any term thereof. (Id. sec. 7.)

See ante, subdiv. 58 of this article.

61. Harris county shall constitute the sixty-first judicial district, as well as the eleventh judicial district, and the fifty-fifth judicial district; and the jurisdiction of the district courts, in and for said judicial districts, shall be concurrent and co-extensive with the limits of said county, but shall extend to civil cases only. The terms of the district court of said sixty-first judicial district shall be begun and holden on the third Monday in August, October, December, February, April and June of each year, and may continue in session until the business is disposed of. (Acts 1903, p. 22.)

See ante, subdivisions 11, 55, and post, subdiv. 80, of this article.

62. The terms of the court in the Sixty-second Judicial District of the State of Texas, composed of the counties of Hunt, Delta and Lamar, shall be held therein each year as follows:

In the county of Hunt, beginning on the first Monday in December, and may continue in session eight weeks, and on the third Monday in May, and may continue in session ten weeks. In the county of Lamar, beginning on the ninth Monday after the first Monday in December, and may continue in session eight weeks, and on the first Monday in August, and may continue in session eight weeks. In the county of Delta, beginning on the seventeenth Monday after the first Monday in December, and may continue in session three weeks, and on the ninth Monday after the first Monday in August, and may continue in session three weeks. (Acts 1905, p. 75; Acts 1915, ch. 27, sec. 1.)

All process issued out of the District Court of the counties of said district before this Act takes effect is hereby made returnable to the terms of said court, as fixed by this Act, and all bonds heretofore executed, and recognizances entered of record in said court shall bind the parties for their appearance, or to fulfill the obligation of such bonds and recognizances at the terms of said court as fixed by this Act, and all process heretofore returned, as well as all bonds and recognizances heretofore taken in the Districts Courts of the Sixty-second Judicial District shall be as valid as if no change had been made in the times of holding said courts in the counties of said district. (Id. sec. 2.)

Should the District Court in any of the counties of said district be in session under existing laws when this Act takes effect, the same shall continue and end its terms under such existing laws, and all process, writs, judgments and decrees shall be valid, and shall not be effected by the change in the times of holding the courts in the district, by this Act. (Id. sec. 3.)

The counties of Hunt, Delta, and Lamar are constituted a part of the 8th judicial district, by Acts 1897, p. 111, ante, subdiv. 8 of this article.

63. The Sixty-third Judicial District of Texas shall be composed of the counties of Jeff Davis, Presidio, Brewster, Terrell, Val Verde, Kinney, Maverick and Uvalde, and the district courts shall be held therein as follows:

In the county of Jeff Davis, on the second Monday in January and July and may continue in session two weeks.

In the county of Presidio on the third Monday after the first Monday in January and July and may continue in session three weeks.

In the county of Brewster on the sixth Monday after the first Monday in January and July and may continue in session for three weeks.

In the county of Terrell on the ninth Monday after the first Monday in January and July and may continue in session for two weeks.

In the county of Kinney on the eleventh Monday after the first Monday in January and July, and may continue in session for two weeks.

In the county of Maverick, on the thirteenth Monday after the first Monday in January and July and may continue in session for three weeks.

In the county of Uvalde on the sixteenth Monday after the first Monday in January and July and may continue in session for four weeks.

In the county of Val Verde on the twentieth Monday after the first Monday in January and July and may continue in session until the business is disposed of. (Acts 1913, 1st C. S. p. 34; Acts 1917, ch. 67, sec. 3; Acts 1917, ch. 209, sec. 1 [2].)

The district court in the Sixty-third Judicial District for Val Verde county for the term commencing as now provided on the sixteenth Monday after the first Monday in January, 1917, shall be holden at that time, as now provided; and thereafter said court shall be holden at the times prescribed herein in Section two of this Act. (Id. sec. 5.)

See ante, subdiv. 38 of this article.

64. The terms of court in the Sixty-fourth Judicial District of the State of Texas, composed of the counties of Hale, Floyd, Briscoe, Castro, Lamb, Swisher and Bailey, shall be held therein each year as follows:

In the County of Hale on the second Monday in January and first Monday in August, and may continue in session seven weeks.

In the County of Floyd, on the seventh Monday after the second Monday in January and first Monday in August, and may continue in session five weeks.

In the County of Briscoe, on the twelfth Monday after the second Monday in January and first Monday in August, and may continue in session two weeks.

In the County of Castro, on the fourteenth Monday after the second Monday in January and first Monday in August, and may continue in session two weeks.

In the County of Lamb, on the sixteenth Monday after the second Monday in January and first Monday in August, and may continue in session two weeks.

In the County of Swisher, on the eighteenth Monday after the second Monday in January and first Monday in August, and may continue in session three weeks.

In the County of Bailey, on the twenty-first Monday after the second Monday in January and first Monday in August, and may continue in session one week. (Acts 1911, 1st C. S. p. 102; Acts 1917, ch. 117; sec. 1; Acts 1919, ch. 82, sec. 1; Acts 1919, 2d C. S. ch. 7, sec. 1.)

64a. Bailey County heretofore unorganized and attached to the County of Castro for judicial purposes, is severed from said Castro County, but all suits filed in Castro County which otherwise would have been filed in Bailey County had it been an organized county at the time of filing said suits, and all indictments for offenses occurring in Bailey County which have been returned by any grand jury in Castro County, prior to the organization of Bailey County, and which said civil and criminal cases being yet untried and are on the docket of Castro County, said cases shall be by the Clerk of Castro County, transferred, together with all bonds and other process pertaining to said cases, to Bailey County for trial. (Acts 1917, ch. 117, sec. 2; Acts 1919, ch. 82, sec. 2; Acts 1919, 2d C. S., ch. 7, sec. 2.)

All process issued out of the District Court of the counties of said District before this Act takes effect, is hereby made returnable to the term of said Court, as fixed by this Act, and all bonds heretofore executed, and recognizances entered of record in any of said courts shall bond the parties for their appearance, or to fulfill the obligations of such bonds and recognizances at the term of said Court as fixed by this Act, and all process heretofore returned as well as all bonds and recognizances heretofore taken in the District Courts of the Sixty-fourth Judicial District, shall be as valid as if no change had been made in the time of holding said Courts in the Counties of said District. (Acts 1917, ch. 117, sec. 3; Acts 1919, ch. 82, sec. 3; Acts 1919, 2d C. S., ch. 7, sec. 3.)

Should the District Court in any of the Counties of said District be in session under the existing laws when this Act takes effect, the same shall continue and end its term under such existing laws, and all process, writs, judgments and decrees shall be valid, and shall not be affected by the change in the time of holding the courts in the district, by this Act. (Acts 1917, ch. 117, sec. 4; Acts 1919, ch. 82, sec. 4; Acts 1919, 2d C. S., ch. 7, sec. 4.)

Section 5 of Acts 1919, 2d C. S., ch. 7, repeals all conflicting laws.

65. The Sixty-fifth Judicial District of Texas be, and the same is hereby, created, to be composed of the County of El Paso, in the State of Texas. (Acts 1915, ch. 24, sec. 1.)

The terms of said court shall be as follows: Beginning on the first Monday in January of each year and may continue in session until the last Saturday before the first Monday in March, thereafter; beginning on the first Monday in March of each year and may continue in session until the last Saturday before the first Monday in May, thereafter; beginning on the first Monday in May of each year and may continue in session until the last Saturday before the first Monday in July thereafter; beginning on the first Monday in September of each year and may continue in session until the last Saturday before the first Monday in November, thereafter; beginning on the first Monday in November of each year and may continue in session until the last Saturday before the first Monday in January, thereafter. (Id. sec. 2.)

The Governor of this State shall, upon the taking effect of this Act, appoint a judge of the Sixty-fifth Judicial District, who shall hold the office of judge of said court until the election and qualification of his successor at the next general election. (Id. sec. 5.)

The said District Court for the Sixty-fifth Judicial District of Texas hereby created shall have jurisdiction over all judgments and proceedings had in the Special District Court for El Paso County, Texas, heretofore created by the Thirty-third Legislature of the State of Texas, the same as if the District Court for the Sixty-fifth Judicial District were a continuation of said Special District Court, and all cases, tried in said Special District Court before its expiration, appealed to the Court of Civil Appeals or the Supreme Court, in the event the same are reversed, shall be returned to said Sixty-fifth Judicial District Court hereby created, and a mandate issued by order of the clerk of the Court of Civil Appeals or the Supreme Court in said cases shall be returnable to the said Sixty-fifth Judicial District Court hereby created, and the provisions of this Act shall apply to all cases tried in said Special District Court before its expiration in which writs of error have been applied for, or may be applied for, within the time prescribed by law. (Id. sec. 9.)

Upon the taking effect of this Act and the appointment and qualification of the judge of said Sixty-fifth Judicial District Court, it shall not be necessary for said judge to wait until the first day of the ensuing term thereafter to organize his court and summon a jury; but he shall open said court on the first Monday after he shall have been appointed and qualified for the trial, during the remainder of said term, of such cases as may be transferred to said court for trial from the other District Courts of said county, and he may cause to be summoned jurors for service from the list of those eligible for jury service in the manner provided by law except as to the time of such selection. (Id. sec. 10.)

El Paso county is constituted a part of the 34th judicial district, by Acts 1913, 1st C. S. p. 17, and Acts 1915, ch. 24, sec. 4, ante, subdiv. 34 of this article; and the 41st judicial district, by Acts 1903, p. 78, and Acts 1915, ch. 24, sec. 3, ante, subdiv. 41 of this article.

66. The terms of the District Court in the Sixty-sixth Judicial District of Texas, comprising the County of Hill, shall be holden in said County of Hill as follows: Beginning on the first Mondays in January, March, May, July, September and November of each year. Each term of said court may continue in session for a period of seven weeks, or until the business is disposed of, save and except the term beginning annually on the first Monday in July may continue in session for the period of five weeks, or until the disposal of the business. (Acts 1905, p. 37; Acts 1915, ch. 139, sec. 1.)

67. Tarrant county shall constitute the sixty-seventh judicial district, as well as the

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

See ante, subdivisions 17 and 48 of this article.

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

See ante, subdivisions 14 and 44 of this article.

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

70. The Seventieth Judicial District of the State of Texas shall be composed of the counties of Midland, Ector, Winkler, Andrews, Martin, Glasscock, Reeves, Ward, and the unorganized counties of Crane and Loving, and the district courts shall be holden therein as follows:

In the County of Midland on the first Monday in February and September and may continue in session three weeks.

In the County of Ector on the third Monday after the first Monday in February and September and may continue in session two weeks.

In the County of Winkler on the fifth Monday after the first Monday in February and September, and may continue in session one week.

In the County of Andrews on the sixth Monday after the first Monday in February and September, and may continue in session one week.

In the County of Martin on the seventh Monday after the first Monday in February and September, and may continue in session for two weeks.

In the County of Glasscock on the ninth Monday after the first Monday in February and September, and may continue in session two weeks.

In the County of Reeves on the eleventh Monday after the first Monday in February and September, and may continue in session six weeks.

In the County of Ward on the first Monday in January and on the seventeenth Monday after the first Monday in February, and may continue in session three weeks.

The unorganized County of Loving is hereby attached to Reeves County for judicial and all other purposes, and the unorganized County of Crane is hereby attached to Ector County for judicial and other purposes. (Acts 1913, p. 4, § 2; Acts 1917, ch. 4, sec. 3; Acts 1917, ch. 12, sec. 3; Acts 1917, ch. 67, sec. 4; Acts 1917, 3d C. S., ch. 3, sec. 1.)

All process issuing out of the district courts of any of the counties named in this Act issued or served before this Act takes effect, including recognizances and bonds returnable to the district court of any such respective counties, shall be considered as returnable to such respective courts in accordance with the terms and time of holding same as prescribed in and fixed by this Act; and all such process is hereby legalized. And all grand and petit juries drawn and selected under existing laws for any of the counties of said districts shall be considered lawfully drawn and selected for the next term of the respective district courts held after this Act takes effect and all such process is hereby legalized and validated. (Acts 1917, 3d C. S., ch. 3, sec. 2.)

If any court in any county of said judicial districts shall be in session at the time this Act takes effect, such court affected hereby shall continue in session until the term thereof shall expire under the provisions of existing laws; thereafter the terms of court of said county shall conform to the requirements of this Act. (Id. sec. 3.)

That all laws and parts of laws in conflict with the provisions of this Act shall be and the same are hereby repealed. (Id. sec. 4.)

See ante, subdiv. 38 of this article.

71. The seventy-first judicial district is hereby created, and shall be composed of Harrison county, and the terms of the district court shall be held therein each year as follows: On the first Monday in January, March, May, July, September and November, and each term of said court shall continue in session until the Saturday before the beginning of the next succeeding term, or until all the business is disposed of. (Acts 1911, p. 93, sec. 3.)

The county attorney of Harrison county, duly elected and now acting as such, shall do and perform all the duties of county attorney and district attorney in the seventy-first judicial district herein created until the next general election, and his successor is duly elected and qualified. (Id. sec. 5.)

The governor of Texas, immediately upon the taking effect of this Act, shall appoint a suitable and legally qualified person as district judge for the seventy-first judicial district, who shall hold his office until the next

general election, and until his successor is duly elected and qualified. (Id. sec. 7.)

The district court of the seventy-first judicial district shall have such jurisdiction and power as is conferred on district courts under the constitution and existing laws of Texas, and such as shall be hereafter given by law, and in addition thereto, shall have jurisdiction of all matters of a civil nature over which the county court of Harrison county, Texas, has jurisdiction, original or concurrent, and over all appeals of a civil nature from justice courts of Harrison county, Texas, appealable to the county court of said county under existing laws. (Id. sec. 9.)

The district clerk of Harrison county, duly elected and acting, shall be the clerk of the district court of said seventy-first judicial district, sitting in said county, until the next general election, and his successor is duly elected and qualified. (Id. sec. 10.)

See ante, subdiv. 2 of this article.

72. The Seventy-second Judicial district of the State of Texas shall be composed of the counties of Lynn, Dawson, Gaines, Yoakum, Terry, Crosby, Garza and Lubbock and the unorganized counties of Hockley and Cochran, and the terms of the district court shall be held therein, in each year, in each of the counties, as follows:

In the county of Lynn on the first Mondays in March and September, and may continue in session two weeks.

In the county of Dawson on the second Monday after the first Mondays in March and September, and may continue in session two weeks.

In the county of Gaines on the fourth Monday after the first Monday in March and September, and may continue in session two weeks.

In the county of Yoakum on the sixth Monday after the first Monday in March and September, and may continue in session two weeks.

In the county of Terry on the eighth Monday after the first Monday in March and September, and may continue in session two weeks.

In the county of Crosby on the tenth Monday after the first Monday in March and September, and may continue in session two weeks.

In the county of Garza on the twelfth Monday after the first Monday in March and September, and may continue in session two weeks.

In the county of Lubbock on the fourteenth Monday after the first Monday in March and September, and may continue in session until business is disposed of. (Acts 1913, p. 4, sec. 4; Acts 1918, 4th C. S., ch. 9, sec. 1.)

The unorganized counties of Hockley and Cochran are hereby attached to the county of Lubbock for judicial and all other purposes. (Acts 1913, p. 4, sec. 5; Acts 1918, 4th C. S., ch. 9, sec. 2.)

All process issued or served before this Act takes effect, and all bonds and recognizances, returnable to the district courts in said judicial district, and all juries drawn for any of said courts, are hereby changed so as to be returnable to various terms of the courts of said counties, as changed by this Act, and shall be as valid as if returnable to the terms as fixed by this Act. (Id. sec. 3.)

Section 4 of Acts 1918, 4th C. S., ch. 9, repeals all conflicting laws.

73. Bexar county shall constitute the seventy-third judicial district. (Acts 1911, p. 87, sec. 4.)

The governor shall appoint a suitable person possessing the qualifications as prescribed by section 7, article 5, of the constitution, as judge of the seventy-third judicial district court as herein constituted, who shall hold such office until the next general election and until his successor shall have been elected and qualified. The judges of said courts shall thereafter be elected as provided by the constitution and laws of the state for the election of district judges. (Id. sec. 6.)

When this act takes effect the clerk of the district court of Bexar county shall make up a docket for the district court of the seventy-third judicial district by placing thereon consecutively and alternately every fourth civil case from the dockets on the thirty-seventh, forty-fifth and fifty-seventh judicial districts then pending, beginning with the fourth civil case on the docket of the thirty-seventh district court, then taking the fourth civil case from the docket of the forty-fifth district court, and the fourth civil case from the docket of the fifty-seventh district court, and in the same order continuing through said dockets until all the cases thereon are exhausted: provided, that no case then on trial in either of said courts, nor any case pending on appeal, shall be transferred to the docket of the seventy-third judicial district court. The cases so transferred shall bear the same docket numbers as the new court from which they are transferred. The judges of the thirty-seventh, forty-fifth and fifty-seventh judicial district courts respectively shall make proper orders transferring from said courts to the court of the seventy third judicial district the cases which shall have been placed upon the docket of the latter court in pursuance of this Act. (Id. sec. 11.)

Bexar county is also constituted the 37th, 45th, and 57th judicial districts, by Acts 1911, p. 87, secs. 1, 2, 3, ante, subdivisions 37, 45, and 57 of this article.

74. McLennan County shall constitute the Seventy-fourth Judicial District. (Acts 1915, ch. 3, sec. 2.)

The judges of said Courts shall thereafter be elected as provided by the Constitution and Laws of the State for the election of District Judges. (Id. sec. 7.)

The Governor shall appoint a suitable person as Judge of the Seventy-fourth Judicial District as herein constituted, who shall hold such office until the next general election and until his successor shall have been elected and qualified. (Id. sec. 6.)

The terms of the Seventy-fourth Judicial District shall be held as follows:

Beginning on the second Mondays in February, April, June, August, October and December of each year, and may continue until the business thereof is disposed of. (Id. sec. 8.)

McLennan county is also constituted the 19th and 54th judicial districts, by Acts 1893, p. 52, Acts 1911, 1st C. S. p. 79, and Acts 1915, ch. 3, secs. 1, 3, ante, subdivisions 19 and 54 of this article.

75. The Seventy-fifth Judicial District of Texas shall hereafter be composed of the following named counties, to wit: Hardin, Chambers, Montgomery and Liberty and Tyler, which last named county is hereby removed from the First Judicial District and

placed in said Seventy-fifth District and the terms of the district courts in and for said Seventy-fifth Judicial District shall be begun and holden therein as follows:

In the County of Hardin, on the first Monday of January and July of each year, and may continue in session five weeks.

In the County of Tyler, on the fifth Monday after the first Monday in January and July of each year, and may continue in session five weeks.

In the County of Chambers, on the tenth Monday and the twenty-second Monday after the first Monday in January, and the fourteenth Monday after the first Monday in July of each year, and may continue in session two weeks.

In the County of Montgomery, on the twelfth Monday after the first Monday in January, and the tenth Monday after the first Monday in July of each year, and may continue in session six weeks.

In the County of Liberty, on the seventeenth Monday after the first Monday in January and July of each year, and may continue in session six weeks. (Acts 1915, ch. 155, secs. 2, 6, 7, 9; Acts 1917, ch. 23, sec. 2.)

All process issued in the First Judicial District and returnable to its terms as heretofore established in Tyler County and all recognizances and bonds returnable to said court shall be valid and returnable to the Seventy-fifth Judicial District Court sitting in Tyler County and all such process are hereby legalized; and all subpœnas and other process made returnable to said court shall be treated and considered as returnable to the term of the said Seventy-fifth Judicial Court in said Tyler County as herein provided; and all grand and petit jurors drawn and selected under existing laws shall be considered lawfully drawn and selected in said Tyler County for the next term of the Seventy-fifth Judicial District Court as herein provided for and such process, is legalized and validated, and all process, recognizances and bonds heretofore issued or which may hereafter be issued before this act takes effect returnable to the district court in Tyler County, shall be valid and considered returnable to the next term of court sitting after this Act takes effect and the succeeding term as provided by law. This act shall not affect the term of any court in session at the time it goes into effect and said court so in session shall continue until the expiration of the term or the same be adjourned under existing laws, and thereafter the terms of said court shall conform to the provisions of this Act. (Id. sec. 7.)

Hardin, Montgomery, and Liberty counties are also constituted a part of the 9th judicial district, by Acts 1909, p. 128, Acts 1915, ch. 155, and Acts 1917, ch. 23, sec. 1, ante, subdiv. 9 of this article.

76. The 76 Judicial District of Texas shall hereafter be composed of the following counties: Titus, Franklin, Camp, Morris and Marion; and the terms of the District Courts therein each year shall be held as follows:

In the County of Titus, beginning on the first Monday in January and may continue in session six weeks; and on the 22nd Monday after the first Monday in January, and may continue in session six weeks.

In the County of Franklin, beginning on the 6th Monday after the first Monday in January, and may continue in session four weeks; and on the fourth Monday in August, and may continue in session four weeks.

In the County of Camp, beginning on the tenth Monday after the first Monday in January, and may continue in session four weeks; and on the fourth Monday after the fourth Monday in August, and may continue in session four weeks.

In the County of Morris, beginning on the fourteenth Monday after the first Monday in January, and may continue in session four weeks; and on the eighth Monday after the fourth Monday in August, and may continue in session four weeks.

In the County of Marion, beginning on the eighteenth Monday after the first Monday in January, and may continue in session four weeks; and on the twelfth Monday after the fourth Monday in August, and may continue in session four weeks. (Acts 1915, ch. 5, sec. 2; Acts 1917, ch. 41, sec. 1.)

All processes issued or served before this Act goes into effect, including recognizances and bonds, returnable to the District Court of any of said counties in each of said Judicial Districts shall be considered as returnable to said courts in accordance with the terms as described by this act, and all such process is hereby legalized and all grand and petit juries drawn and selected under existing laws in any of the counties of either of said Judicial Districts, shall be considered lawfully drawn and selected for the next terms of the District Court of their respective counties, held in accordance with this act, and after this Act takes effect, all such process is hereby legalized and validated; provided, that if any court in any county of either of said Judicial Districts, shall be in session at the time this Act takes effect, such court or courts affected hereby shall continue in session until the term thereof shall expire under the provisions of existing laws, and thereafter the said courts of said county or counties shall conform to the requirements of this Act. (Id. sec. 2.)

Section 2a of Acts 1917, ch. 41, repeals all conflicting laws.

The clerks of the District Courts of Marion, Morris, Titus and Franklin Counties, duly elected and now acting, shall be the clerks of the Seventy-sixth Judicial District sitting in their respective counties, until the next general election and until their successors are elected and duly qualified. (Acts 1915, ch. 5, sec. 4.)

The Governor of Texas, immediately upon the taking effect of this Act, shall appoint a suitable and legally qualified person as District Judge of the Seventy-sixth Judicial District, who shall hold his office until the next general election and until his successor is elected and duly qualified. (Id. sec. 5.)

The Governor of Texas, immediately upon the taking effect of this Act, shall appoint a suitable and legally qualified person as District Attorney for the Seventy-sixth Judicial District, who shall hold his office until the next general election and until his successor is elected and duly qualified. (Id. sec. 6.)

The District Court of the Seventy-sixth Judicial District shall have such jurisdiction and powers as are conferred by the Constitution and existing laws of the State of Texas, and such as shall hereafter be given by law. (Id. sec. 8.)

See ante, subdiv. 5 of this article.

77. The Seventy-seventh Judicial District of Texas is hereby created and shall be composed of the counties of Limestone and Freestone, and the terms of the District Court shall be held therein in each year as follows:

In the county of Limestone beginning on the first Monday in January, March, May, July, September and November, and each term may continue in session four weeks.

In the county of Freestone beginning on the first Monday in February, April, June, August, October and December, and each term may continue in session four weeks. (Acts 1915, ch. 8, sec. 3.)

There shall be organized grand juries at the January, May and September terms of said court in Limestone county, and at the February, June and October terms of said court in Freestone County, and at such other terms of the said court in each county as may be determined and ordered by the Judge thereof. (Id. sec. 4.)

The Governor of the State of Texas is hereby authorized and empowered to appoint some person having the qualifications provided by law for District Judge, for the Judge of the District Court of the Seventy-seventh District, who shall hold his office until the next general election for State offices in the State of Texas, and until his successor is elected and qualified, as is provided by law. He shall receive the same salary that is now provided, or may hereafter be provided, to be paid to the District Judges, and in like manner. (Id. sec. 4a.)

The office of District Attorney is hereby created for the Seventy-seventh Judicial District, and the present District Attorney of the Thirteenth Judicial District, elected and now acting for said District shall hold his office in the Seventy-seventh Judicial District until the time for which he was elected shall expire, and until his successor is duly elected and qualified. (Id. sec. 6.)

See ante, subdiv. 13 of this article.

78. Wichita County shall hereafter constitute the 78th Judicial District and the District Court in said district shall hold its terms as follows: beginning on the first Mondays in March and September and shall continue in session until the Saturday night next preceding the beginning of the following term unless the business of the terms shall be sooner disposed of: provided that nothing in this Act shall be construed to in any way affect the time and terms of the courts of the 30th Judicial District in said county as the same is now constituted. (Acts 1915, ch. 6, sec. 1.)

The district courts of the 78th and 30th Judicial districts shall have concurrent jurisdiction of all cases, civil and criminal and appellate, over which the district courts of the state have jurisdiction under the constitution and laws of the State of Texas, coextensive with the limits of Wichita County; provided however that no grand jury shall be drawn for the 78th district court unless the judge thereof, in his discretion shall decide that it is necessary and shall make a special order for the same upon the minutes of said court; provided further that the Judge of the 78th district shall have the authority, at any time he may think it necessary to recall, reassemble and reimpanel the grand jury last impaneled of the 30th District Court for Wichita County and the grand jury so reimpaneled and reorganized shall constitute a legal grand jury for the 78th district court the same as of [if] originally drawn, summoned and organized in said court. (Id. sec. 2.)

The Judges of the 30th and the 78th District Courts for Wichita County may each, in his discretion, at any time or upon agreement of the parties or where the Judge may believe the administration of justice will be facilitated thereby, transfer any cause, civil or criminal, from the dockets of their respective courts to the docket of the other district court for Wichita County and shall note such transfer on the docket; whereupon the Clerk of the District Court shall enter said cause upon the docket of the other district court to which such cause has been transferred and such case shall there be tried or disposed of as if originally filed in said court; provided that no transcript of the records shall be necessary to the jurisdiction of the court to which such case has been transferred [and jurisdiction of the court to which such case has been transferred] and no formal proceeding shall be necessary in such case to show such transfer. (Id. sec. 3.)

As soon after this Act shall take effect as practicable the Clerk of the District Court for Wichita County shall make up the dockets for said 78th District Court in the following manner: he shall enter upon said dockets such cases as may be transferred by the Judge of the 30th Judicial District and all such cases as may be transferred to such court by agreement of the parties and if, after all such cases are transferred, there remains upon the docket of the 30th District Court for said County more than 40 per cent of the total number of cases pending in said county then he shall transfer enough of the oldest cases on the dockets to make up 60 per cent of the pending business for the said 78th District Court: After the beginning of the first term of the 78th District Court the Clerk shall make up the dockets of each court by filing each case in the court having the first appearance day after the time of filing the petition in which ten days service may be had; provided that all criminal cases shall be docketed in the court which receives the indictment or information upon which such cases are based and all appeals in probate cases from the county probate court of Wichita County shall be to the court holding the first term after notice of appeal is given. (Id. sec. 4.)

All writs, process, bonds and recognizances, civil or criminal, issued, executed, entered into or effective in the district court of Wichita County prior to the taking effect of this Act and returnable or cognizable in or to said court as it has been heretofore fixed by law are hereby made returnable to and cognizable in either the 30th district court for Wichita County or the 78th District Court as the same may acquire jurisdiction by the terms of this Act and they shall be as valid and binding in law as if originally issued, made, filed or entered into in the court acquiring jurisdiction by the terms of this Act. (Id. sec. 5.)

The Clerk of the District Court for Wichita County shall be the Clerk of the 78th District Court and the District Attorney for the 30th Judicial District of Texas shall prosecute the pleas of the State in all criminal causes cognizable in said court and his per diem ac-

counts approved by the Judge of said court shall be paid the same as if approved by the Judge of the 30th Judicial District Court. (Id. sec. 6.)

As soon as this Act takes effect, the Governor, shall appoint a suitable person as Judge of the 78th Judicial District of Texas, who shall hold his office until the next general election in November A. D. 1916, and until his successor is elected and qualified. He shall possess the constitutional qualifications for District Judges and shall receive the same salary as other District Judges in this State. (Id. sec. 7.)

Wichita county is constituted a part of the 30th judicial district, by Acts 1903, p. 96, Acts 1915, ch. 128, and Acts 1915, 1st C. S., ch. 6, sec. 1, ante, subdiv. 30 of this article.

79. The Seventy-ninth Judicial District of Texas, is hereby created and shall be composed of the counties of Starr, Hidalgo, Brooks, Jim Hogg, Duval, and Jim Wells, and the terms of court of the district shall be held therein each year as follows:

In the county of Starr on the first Monday in February of each year, and may continue in session three weeks; on the first Monday in September in each year, and may continue in session three weeks.

In the county of Hidalgo on the third Monday after the first Monday in February of each year, and may continue in session six weeks; on the third Monday after the first Monday in September, and may continue in session four weeks.

In the county of Brooks on the ninth Monday after the first Monday in February of each year, and may continue in session four weeks; on the seventh Monday after the first Monday in September and may continue in session four weeks.

In the county of Jim Hogg on the thirteenth Monday after the first Monday in February of each year, and may continue in session two weeks; on the eleventh Monday after the first Monday in September, and may continue in session two weeks.

In the county of Duval on the fifteenth Monday after the first Monday in February of each year, and may continue in session four weeks; on the thirteenth Monday after the first Monday in September, and may continue in session until December 31 of each year.

In the county of Jim Wells on the nineteenth Monday after the first Monday in February of each year, and may continue in session four weeks; on the first Monday in January of each year, and may continue in session until the first Monday in February of each year.

All process, writs and bonds issued, served or executed prior to the taking effect of this Act and returnable to the terms of said court in each of the said counties composing said judicial district, and all process heretofore returnable, as well as all bonds and recognizances heretofore entered into, in any of said counties shall be as valid and binding as if no change had been made by this Act in the times of holding said terms of court. (Acts 1915, ch. 48, sec. 2.)

The Governor, immediately upon the taking effect of this Act, shall appoint a suitable person as district judge of the Seventy-ninth Judicial District, and a suitable person as district attorney for the Seventy-ninth Judicial District, respectively, each of whom shall hold his office until the next general election, and his successor is duly elected and qualified. (Id. sec. 4.)

See ante, subdiv. 28 of this article.

80. The Eightieth Judicial District of Texas is hereby created and shall be composed of the counties of Harris and Waller, and the terms of the district court shall be held therein in each as follows:

In the county of Harris, beginning on the first Monday in January, February, March and September, and on the second Monday in May, June, July, November and December of each year, and may continue in session four weeks.

In the county of Waller, beginning on the first Monday in April and October of each year and may continue in session five weeks. (Acts 1915, 1st C. S., ch. 19, sec. 2.)

The Governor of the State of Texas is hereby authorized and empowered to appoint some person having the qualifications provided by law for district judge as the Judge of the District Court of the Eightieth Judicial District of Texas, who shall hold his office until the next general election for state offices in the State of Texas, and until his successor is elected and qualified, as is provided by law. He shall receive the same salary that is now provided, or may hereafter be provided, to be paid to district judges, and in like manner. (Id. sec. 3.)

The clerk of the District Court of Harris County, as that office is now constituted, and his successor in office, shall be the clerk of the District Court of the Eightieth Judicial District of Texas in Harris County, and shall perform all the duties pertaining to the clerkship of said court, as well as the duties imposed upon him as the clerk of other district courts of Harris County, and for such additional service, shall receive twelve hundred dollars per year, as additional compensation to be collected out of the fees allowed by law. (Id. sec. 5.)

The other civil district courts of Harris County and the district court of the Eightieth Judicial District, in the County of Harris, shall have concurrent jurisdiction with each other throughout the limits of Harris County, in all matters, civil, of which jurisdiction is given to the district courts by the Constitution and laws of the State. (Id. sec. 6.)

The District Court of the Eightieth Judicial District shall have such jurisdiction and powers as are conferred upon district courts by the Constitution and existing laws of the State of Texas, and such as shall hereafter be given by law, but said district court shall have only civil jurisdiction in Harris County. (Id. sec. 12.)

Harris county is also constituted the 11th, 55th, and 61st judicial districts, by Acts 1903, pp. 22, 23, ante, subdivisions 11, 55, and 61 of this article.

See, also, ante, subdiv. 23 of this article.

81. The Eighty-first Judicial District of Texas is hereby created and shall be composed of the counties of Frio, LaSalle, Atascosa, Wilson and Karnes, and the district courts shall be held therein as follows:

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

In the County of LaSalle, on the third Monday after the first Monday in September and February, and may continue in session three weeks.

In the County of Atascosa, on the sixth Monday after the first Monday in September and February, and may continue in session five weeks.

In the County of Wilson, on the eleventh Monday after the first Monday in September and February, and may continue in session six weeks.

In the County of Karnes, on the seventeenth Monday after the first Monday in September and February, and may continue in session five weeks.

All process, writs, recognizances and bonds issued, served, executed, or entered into, prior to the taking effect of this Act, and returnable to the terms of said court, as heretofore fixed by law, in the several counties, composing said district, are hereby made returnable to the terms of said court in the several counties as fixed by this Act, and all process heretofore returnable, as well as all bonds and recognizances heretofore entered into in any of said courts, shall be valid and binding as if no change had been made by this Act in the times of holding said terms of court.

All grand and petit jurors selected in any of said counties shall be legal jurors for the terms of said court fixed by this Act.

The present district attorney of the Thirty-sixth Judicial District of Texas, who resides in Wilson County, Texas, shall act and be the district attorney of the Eighty-first Judicial District of Texas, as herein created, and shall hold office until the next general election and until his successor is duly elected and qualified.

The Governor of Texas is hereby authorized and empowered to appoint a suitable person as district judge of the Eighty-first Judicial District hereby created, who shall hold his office until the next general election and until his successor is duly elected and qualified. (Acts 1917, ch. 91, sec. 3.)

Section 4 repeals all conflicting laws.

82. The Eighty-second Judicial District of Texas is hereby created and shall be composed of Falls County. (Acts 1917, ch. 9, sec. 1.)

The terms of the district court in said Eighty-second Judicial District shall be held at the following times: Beginning on the first Monday in the months of January, March, May, September, and November of each year, and each term may continue in session until and including the Saturday next preceding the beginning of the next succeeding term unless the business of the term shall be sooner disposed of; provided that in case a term of district court shall be in session in Falls County as a part of the Fifty-fourth Judicial District at the time this Act takes effect the judge of the Fifty-fourth Judicial District shall continue to hold said term until such term is adjourned or expires under existing laws. (Id. sec. 2.)

The terms of the district court in said Fifty-fourth Judicial District shall be held at the following times, to-wit: Beginning on the first Monday in the months of January, March, May, September and, November, and each of said terms may continue in session until and including the Saturday next preceding the beginning of the next succeeding term, unless the business of the term shall be sooner disposed of; provided that in case a term of said Fifty-fourth District Court shall be in session in McLennan County at the time this Act takes effect the judge of the said Fifty-fourth Judicial District shall continue to hold said term until such term is adjourned or expires under existing laws. (Id. sec. 3.)

Grand juries in said Eighty-second Judicial District shall be organized at the May and November terms of said court, and at such other terms as the judge of said district may determine and order. Grand juries in the Fifty-fourth Judicial District shall hereafter be empanelled at the March and September terms of court therein and at such other terms as the judge of said district may determine and order. (Id. sec. 4.)

The district court of the Eighty-second Judicial District shall have all such powers and jurisdiction as district courts now have or which may hereafter be conferred upon them by and under the laws and Constitution of the State of Texas, and said district court of the Eighty-second Judicial District shall have such further jurisdiction as may at any time be transferred to it from the county court of Falls County by act or acts of the Legislature. (Id. sec. 5.)

All prosecutions, suits, actions, causes, and proceedings of whatever nature, civil or criminal, filed or pending in the district court of Falls County as constituted prior to the taking effect of this Act shall continue on the dockets and be tried and disposed of by the district court of said county as constituted by this Act, the same as if originally filed or instituted in said court as constituting the Eighty-second District. All writs and process issued in connection with all prosecutions, suits, actions, causes, and proceedings of whatever nature, civil or criminal, in the district court of Falls County prior to the taking effect of this Act shall be returnable to and effective in said court as constituted by this Act, and all bonds and recognizances filed and entered into in said district court of Falls County prior to the taking effect of this Act shall be valid, continuing and cognizable in and by the district court of said county as constituting the Eighty-second Judicial District; provided all such writs and process issued and made returnable to the June term, A. D. 1917, of the district court of Falls County shall be returnable to the September term, A. D. 1917, of the district court of said county as constituting the Eighty-second Judicial District. (Id. sec. 6.)

An official court reporter for said Eighty-second Judicial District shall be appointed by the judge thereof, the said official court reporter to have the qualifications, to be subject to the duties and regulations, and entitled to the same compensation as official court reporters for district courts of this State are now or may hereafter be subject to and entitled under the General Laws of the State. (Id. sec. 7.)

The Governor shall appoint a suitable person as judge of the Eighty-second Judicial District, as herein constituted, who shall hold such office until the next general election and until his successor shall have been elected and qualified. (Id. sec. 8.)

The judge of the Eighty-second Judicial District shall receive the same salary, payable by the State of Texas in the same manner as other district judges of said State do now or shall hereafter receive under the Constitution and laws of Texas. (Id. sec. 9.)

Such part of Section 3, of Chapter 3, of the General Laws of 1915, enacted at the Regular Session of the Thirty-fourth Legislature of Texas, as constitutes Falls County a part of the Fifty-fourth Judicial District, and such part of Section 8 of said Act of 1915 as provides for the holding of terms of court in Falls County as a part of said Fifty-fourth Judicial District, are hereby repealed save and except that said repeal shall not become operative in case a term of court shall be in session in Falls County at the time this Act takes effect, until such term shall be adjourned sine die by the judge of said Fifty-fourth Judicial District or expires under existing laws as prescribed in Section 2 of this Act. All other laws and parts of laws in conflict with or inconsistent with this Act are hereby repealed. (Id. sec. 10.)

83. The Eighty-third Judicial District of the State of Texas is hereby created and shall be composed of the counties of Edwards, Crockett, Sutton, Reagan, Upton, and Pecos, and the district courts shall be holden therein as follows:

In the County of Edwards on the last Monday in January and August and may continue in session four weeks.

In the County of Sutton on the third Monday after the first Monday in February and September, and may continue in session three weeks.

In the County of Crockett on the sixth Monday after the first Monday in February and September, and may continue in session three weeks.

In the County of Reagan on the ninth Monday after the first Monday in February and September and may continue in session two weeks.

In the County of Upton on the eleventh Monday after the first Monday in February and September and may continue in session two weeks.

In the County of Pecos on the thirteenth Monday after the first Monday in February and September and may continue in session until the business is disposed of. (Acts 1917, ch. 67, sec. 5.)

The Governor shall, immediately after the passage of this Act, appoint a suitable person qualified under the Constitution of the State of Texas as a judge of the Eighty-third Judicial District as herein constituted, who shall hold such office until the next general election, and until his successor shall have been elected and qualified. (Id. sec. 6.)

The Governor shall, immediately after the passage of this Act, appoint a suitable person qualified under the Constitution and laws of the State of Texas as district attorney of the Eighty-third Judicial District as herein constituted, who shall hold such office until the next general election, and until his successor shall have been elected and qualified; the district attorney of said district shall thereafter be elected as provided by the Constitution and laws of the State of Texas for the election of the district attorney. (Id. sec. 7.)

See ante, subdiv. 38 of this article.

84. [There is no 84th judicial district.]

85. The Counties of Robertson and Brazos, now constituting part of the Twentieth Judicial District are here now declared to constitute the Eighty-fifth Judicial District, and the terms of the District Court in said counties shall be held as follows: In the County of Robertson on the first Monday in the months of January, April and July, and the second Monday in the month of November in each year, and each term may continue in session for five weeks. The terms of the District Court in Brazos County shall be held on the second Monday in the months of February and May and third Monday in the month of September, and each term may continue in session for six weeks. (Acts 1916 [1917], ch. 96, sec. 3.)

There shall be organized grand juries at the January and July terms of said court in Robertson County, and at the February and September terms of said court in Brazos County, and at such other terms of the said court of each county as may be determined and ordered by the Judge thereof. (Id. sec. 4.)

The Governor of the State of Texas is hereby authorized and empowered to appoint some person having the qualifications provided by law as District Judge for the judge of the District Court of the Eighty-fifth Judicial District, who shall hold his office until the next general election for State officers in the State of Texas, and until his successor is elected and qualified as provided by law, and he shall receive the same salary as is now provided or may hereafter be provided, to be paid to District Judges and in like manner. (Id. sec. 5.)

The District Court of said Eighty-Fifth Judicial District shall have all the powers and jurisdiction as District Courts now have or which may hereafter be conferred upon them by and under the laws and constitution of the State of Texas, and the District Court of said Robertson and Brazos Counties shall have and exercise all such other jurisdiction as is here now provided for in this Act. (Id. sec. 10.)

See ante, subdiv. 20 of this article.

86. The Eighty-sixth Judicial District be and the same is hereby created and shall be composed of the counties of Kaufman, Van Zandt, and Rockwall; and the terms of the District Court shall be held therein each year as follows:

In the County of Van Zandt: Beginning on the first Monday in January of each year and continuing in session six weeks; on the thirteenth Monday after the first Monday in January of each year and continuing in session six weeks, and on the first Monday in September of each year and continuing in session six weeks.

In the County of Kaufman: Beginning on the sixth Monday after the first Monday in September of each year and continuing in session seven weeks; beginning on the twenty-third Monday after the first Monday in January of each year and continuing in session until the last Saturday in August, and beginning on the tenth Monday after the first Monday in September of each year and continuing in session until the last Saturday in December.

In Rockwall County: Beginning on the nineteenth Monday after the first Monday in January of each year and continuing in session four weeks, and beginning on the sixth Monday after the first Monday in September of each year and continuing in session four weeks. (Acts 1917, ch. 70, sec. 7.)

Immediately after the passage of this Act,

the Governor shall appoint a suitable person possessing the qualifications prescribed for district judges in this State as judge of the Eighty-sixth Judicial District, who shall hold his office until the next general election for State and county officers and until his successor, shall be elected and qualified, and shall receive such compensation as is now provided by law for district judges. And the County Attorney of Van Zandt County shall represent the State in criminal cases in said county and receive the same fees and compensation as is now provided by law for the County Attorney of Kaufman County. (Id. sec. 10.)

See ante, subdiv. 7 of this article.

87. [There is no 87th judicial district.]

88. Eastland County shall constitute the Eighty-eighth Judicial District of Texas and the jurisdiction of said district court shall be co-extensive with the limits of said county over all cases, civil and criminal, proceedings and matters of which district courts of this State are given jurisdiction by the Constitution and laws of this State.

The terms of said district court shall be held as follows:

Beginning on the first Mondays in January, March, May, July, September and November of each year, and may continue in session until the business of the court is disposed of. (Acts 1919, ch. 139, sec. 1.)

The present judge of the Forty-second Judicial District shall be and constitute the judge of the newly created Eighty-eighth Judicial District and shall continue in office for the term for which he was elected Judge of the Forty-second District which is until the next General Election and until his successor is elected and qualified.

The district attorney of the present Forty-second Judicial District shall be the District Attorney in and for the Forty-second Judicial District of Texas and may hold his office until the next General election and until his successor is elected and qualified. (Id. sec. 2.)

The district clerk of Eastland County shall be the clerk of the district court of said Eighty-eighth Judicial District, sitting in Eastland County, and shall receive such compensation for his services as is provided by law for district clerks. (Id. sec. 3.)

The county attorney of Eastland County shall do and perform all the duties of county attorney and district attorney in the Eighty-eighth Judicial District, composed of Eastland County, and shall receive the same compensation for his services as is now, or which may hereafter be fixed by law for district attorneys acting in judicial districts composed of two or more counties. (Id. sec. 4.)

The Governor of Texas, immediately upon the taking effect of this Act, shall appoint a suitable and legally qualified person as district judge for the Forty-second Judicial District, who shall hold his office until the next general election, and until his successor is duly elected and qualified. (Id. sec. 5.)

The jurisdiction of said district courts shall be such jurisdiction as is granted by the Constitution and Laws of the State of Texas to judicial district courts of said State. (Id. sec. 6.)

Upon the taking effect of this Act, the judge of the Forty-second Judicial District shall immediately transfer to the district court of the Eighty-eighth Judicial District all cases originating in Eastland County, of which the district court has jurisdiction; and when such transfers are made, the clerk of the Eighty-eighth Judicial District shall enter such cause, or causes, upon the docket of the said Eighty-eighth Judicial District Court to which said transfer, or transfers, are made and when so entered upon the docket of the said Eighty-eighth Judicial District Court, the judge of the said court shall try and dispose of said case or cases, in the same manner as if the same were filed originally in the said court.

All process, writs and bonds, issued or executed prior to the taking effect of this Act and returnable to the terms of the Forty-second Judicial District Court as now fixed by law, in the county of Eastland are hereby made returnable to the terms of the district court of the newly created Eighty-eighth Judicial District of Texas, and all process heretofore returned, as well as all bonds and recognizances, heretofore entered into in said Forty-second District Court shall be as valid as if no change had been made in said Forty-second District or in the time of holding said courts.

All process, writs and bonds issued or executed prior to the taking effect of this Act and returnable to the Forty-second District Court as heretofore fixed by law in the counties of Taylor, Callahan, Stephens and Shackelford are hereby made returnable to said Forty-second District Court as re-organized by this Act, and such process, writs and bonds shall be as valid as if no change had been made in said Forty-second District or in the time of holding court in the several counties thereof. (Id. sec. 7.)

Section 9 repeals all conflicting laws.

See ante, subdiv. 42 of this article.

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

TITLE 6

APPRENTICES

Art. 32. (23) (18) When minor may be apprenticed.—The county court may bind a minor as an apprentice—

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

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

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

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

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

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

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

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

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

2. That he will treat said minor humanely.

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

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

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

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

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

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

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

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

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

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

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

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

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

Art. 46. (37) (32) Proceedings when apprentice runs away, etc.—If any apprentice shall run away from or leave the employment of the person to whom he is apprenticed without permission, such person may pursue and recapture such apprentice and bring him before the county judge having jurisdiction of the case, who shall investigate the case; and if satisfied that said apprentice ran away or left the employment of such person without good and sufficient cause, he shall order such apprentice to return to his service; and upon his failure or refusal to do so the court may punish him as for contempt of court.

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

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

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

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

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

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

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

Art. 54. (45) (40) Costs shall be paid by whom.—In all proceedings apprenticing a minor, or discharging him from apprenticeship, and in all other proceedings connected with such apprenticeship, the person to whom such minor was apprenticed shall pay the costs of such proceedings, and the same shall be adjudged against him and collected as in other cases, except in a suit brought under the preceding article, in which case the costs shall be adjudged as in other civil suits.

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

TITLE 7
ARBITRATION

CHAPTER ONE
ARBITRATION IN GENERAL

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

See Simkins' Contracts and Sales (3d Ed.) p. 531; Bryant v. Ellis' Adm'r, 49 S. W. 234; Eubank v. Bostick, 194 S. W. 214.

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

Bell v. Campbell, 143 S. W. 953.

Art. 58. (49) (44) Agreement to be filed in court having jurisdiction.—If the amount in dispute is two hundred dollars or less, exclusive of interest, such agreement shall be filed with some justice of the peace of the county in which the defendant resides or in which the controversy arose. If the matter in dispute exceeds two hundred dollars, exclusive of interest, then such agree-

ment shall be filed with the clerk of the district or county court of the county in which the controversy arose, according as the amount involved or matter in dispute may come within the jurisdiction of one court or the other. (Id.; P. D. 60.)

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

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

Art. 61. (52) (47) Continuances permissible.—After being sworn, the arbitrators may, for good cause shown, continue the hearing to some other day, and during the progress of any trial, for like good cause, may adjourn the same over to some other time.

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

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

See Brulay v. Brooks, 50 S. W. 648.

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

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

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

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

Art. 68. (59) (54) Penalty for refusing to proceed.—After an agreement to arbitrate is filed, as prescribed in article 58, the parties thereto shall be bound to that mode of trial under the following penalties, to-wit: Such agreement may be pleaded in bar to any suit thereafter brought by a plaintiff in such agreement for the same cause of action, when such plaintiff has refused to proceed under such agreement; and said agreement may be pleaded in bar to any right claimed or defense set up by defendant in such agreement, who has refused to proceed thereunder, where such right or defense existed at the time of filing such agreement. (Acts 1846, p. 127; P. D. 67.)

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

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

CHAPTER TWO

ARBITRATION OF GRIEVANCES BETWEEN EMPLOYER AND EMPLOYED

Art. 71. (61a) Board of arbitration authorized.—Whenever any grievance or dispute of any nature, growing out of the relation of employer and employés, shall arise or exist between employer and employés, it shall be lawful, upon mutual consent of all parties, to submit all matters respecting such grievance or dispute in writing to a board of arbitrators to hear, adjudicate, and determine the same. Said board shall consist of five persons. When the employés concerned in such grievance or dispute, as the aforesaid, are members in good standing of any labor organization which is represented by one or more delegates in a central body, the said central body shall have power to designate two of said arbitrators, and the employer shall have the power to designate two others of said arbitrators; and the said four arbitrators shall designate a fifth person as arbitrator, who shall be chairman of the board. In case the employés concerned in

any such grievance or dispute, as aforesaid, are members in good standing of a labor organization which is not represented in a central body, then the organization of which they are members shall designate two members of said board; and said board shall be organized as hereinbefore provided; and in case the employés concerned in any such grievance or dispute, as aforesaid, are not members of any labor organization, then a majority of said employés, at a meeting duly held for that purpose, shall designate two arbitrators for said board; and said board shall be organized as hereinbefore provided; provided, that when the two arbitrators shall have been selected by each of the respective parties to the controversy, the district judge of the district having jurisdiction of the subject matter shall, upon notice from either of said arbitrators that they have failed to agree upon the fifth arbitrator, appoint said fifth arbitrator. (Acts 1895, p. 85, sec. 1.)

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

Art. 73. (61c) If controversy involves different labor organizations, concurrent action is necessary.—When a controversy involves and affects the interests of two or more classes or grades of employés belonging to different labor organizations, or of individuals who are not members of a labor organization, then the two arbitrators selected by the employés shall be agreed upon and selected by the concurrent action of all such labor organizations, and a majority of such individuals who are not members of a labor organization. (Id. sec. 3.)

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

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

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

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

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

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

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

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

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

Art. 78. (61h) Status quo to be preserved pending arbitration.—During the pendency of arbitration under this chapter it shall not be lawful for the employer or receiver party to such arbitration, nor his agent, to discharge the employés parties thereto, except for inefficiency, violation of law, or neglect of duty, or where reduction of force is necessary, nor for the organiza-

tion representing such employés to order, nor for the employés to unite in, aid or abet strikes or boycotts against such employer or receiver. (Id. sec. 8.)

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

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

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

TITLE 8
ARCHIVES

CHAPTER ONE
ARCHIVES OF THE GENERAL LAND OFFICE

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

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

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

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

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

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

6. All owners of lands between the Nueces and Rio Grande rivers, under grants or titles from the former government, which grants or titles are such as are described in section 4 of article 13 of the present constitution, and have been, previous to the adoption of this constitution, recorded in the respective counties where the land is situated, but have not yet been deposited or archived in the general land office of this state, be and they are hereby authorized and required to deposit and archive said grants or titles in said general land office; and provided, further, that such titles when so archived shall be subject

to all defenses and objections to which they would have been subject if not so archived; and said act of archiving shall invest said titles with no greater validity than they before had as titles recorded in the proper county; and the commissioner of the general land office is hereby authorized and required to receive the same as archives of said office. (Acts 1881, p. 37.)

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

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

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

CHAPTER TWO

OTHER PUBLIC ARCHIVES

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

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

Art. 88. (68) (63) Historical archives.—All books, pictures, papers, maps, documents, manuscripts, memoranda and data which relate to the history of Texas as a province, colony, republic, or state, which have been or may hereafter be delivered to the state librarian by the secretary of state, comptroller, commissioner of the general land office, or by any of the heads of the departments, or by any person or officer, in pursuance of law, shall be deemed books and papers of the state library and shall constitute a part of the archives of said state library; and copies therefrom shall be made and certified by the state librarian upon application of any person interested, which certificate shall have the same force and effect as if made by the officer originally in custody of them, and for which the same fees shall be charged, to be collected in advance and turned over to the state treasurer quarterly. (Acts 1876, 225; 1856, 50; 1853, 38. Acts 1909, p. 122, sec. 10. P. D. 85, 86.)

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

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

TITLE 9

ASSIGNMENTS FOR CREDITORS

Art. 91. (71) General assignment, how made and construed; preferences void.—Every assignment made by an insolvent debtor, or in contemplation of insolvency, for the benefit of his creditors, shall provide, except as herein otherwise provided, for a distribution of all his real and personal estate, other than that which is by law exempt from execution, among all his creditors in proportion to their respective claims, and, however made or expressed, shall have the effect aforesaid, and shall be construed to pass all such estate, whether specified therein or not; and in every assignment made under this title, whether for the benefit of all creditors, or accepting creditors, any attempted preference of one creditor, or creditors, of the assignor shall be deemed fraudulent and without effect. (Acts 1879, p. 57, as amended on revision 1895.)

See Gibson v. Gray, 43 S. W. 922; Petty-Joiner, etc., Co. v. Cummins, 57 S. W. 566; Kimbrough v. Bevering, 182 S. W. 403.

Art. 92. (72) Assignment acknowledged, etc., and recorded. Inventory attached, what shall contain and how verified.—Every assignment shall be proved or acknowledged and certified and recorded in the same manner as provided by law in con-

veyances of real estate or other property; and the debtor shall annex to such assignment an inventory containing the following statement:

1. A full and true account of all the creditors of such debtor or debtors.

2. The place of residence of each creditor, if known to such debtor or debtors, and if not known, that fact to be so stated.

3. The sum owing to each creditor, and the nature of each debt or demand, whether arising on written security, account, or otherwise executed.

4. The true cause and consideration of such indebtedness in each case, and the place where such indebtedness arose.

5. A statement of any existing judgment, mortgage, collateral or other security for the payment of any such debt.

6. A full and true inventory of all such debtor's estate at the date of such assignment, both real and personal, in law or in equity, and the incumbrances existing thereon, and of all vouchers and securities relating thereto, and the value of such estate according to the best knowledge of such debtor or debtors.

7. An affidavit shall be made by such debtor or debtors, and annexed to, and delivered with, such inventory or schedule, that the same is in all respects just and true according to the best of such debtor or debtors' knowledge and belief. Nothing contained in this chapter shall affect the assignor's right to retain all such of his property as is by the constitution and laws of this state exempt from execution, but such list and inventory shall not be conclusive, except as against the debtor making the same. (Id. sec. 2, as amended, on revision 1895.)

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

Art. 94. (74) Notice of assignee's appointment, when and how given.—Every assignee shall, within thirty days after the execution of the assignment, give public notice of his appointment, in some newspaper printed in the county where the assignor resides, or where his principal business was conducted, or, if no newspapers be printed therein, then in the newspaper published nearest to such place of residence or business, and which notice shall be published for three successive weeks; and, so far as he can, the assignee shall also give personal notice, or notice by mail, to each of the creditors of the assigning debtor. (Acts 1879, p. 37, sec. 4.)

Art. 95. (75) How and when consenting creditors may accept.—The creditors of the assignor consenting to such assignment shall make known to the assignee their consent in writing, within four months after the publication of the notice provided in the preceding article, and no creditor not assenting shall receive or take any benefit under the assignment; provided, however, that any creditor, who had no actual notice of such assignment, may make known his assent at any time before any distribution of assets under the assignment has been made; and provided, further, that the receipt by a creditor of any portion of his claim from the assignee, shall be conclusive evidence of the assent of such creditor to the assignment. (Id. sec. 5.)

Moody v. Templeman, 56 S. W. 588; First State Bank of Teague v. Hadden, 158 S. W. 1168.

Art. 96. (76) Where assignee shall reside and his preliminary duties and bond approved by county or district judge.—Every such assignee shall be a resident of this state and of the county in which the assignor resides, or in which his principal business was conducted; and he shall forthwith, after the execution and delivery of the deed of assignment, cause the same to be recorded as herein provided, in the county of such assignee's residence, and also in every county in which there is any real property conveyed to him by such deed of assignment, and shall execute a bond, with sureties, to be approved by the judge of the county court of the county in which the assignee resides, or by the judge of the district court of the judicial district in which such county is situated, conditioned that he will faithfully discharge his duties as such assignee, and that he will make proportional distribution of the net proceeds of the assigned estate among the creditors entitled thereto; which bond shall be payable to the state of Texas, and shall be filed with the county clerk of the county in which such assignee resides, and shall inure to the benefit of the assignor, and the creditor or creditors, who may maintain an action thereon against such assignee and sureties, in his or their own name, jointly or severally, for any breach thereof, or violation of this law, by reason of which such assignor or creditor shall sustain damage; and upon the filing of said bond the assignee shall take possession of the assigned property, and proceed to execute the assignment; and, if such assignee shall not, within five days after the delivery of the deed of assignment, execute an approved bond and file the same with the county clerk, as herein provided, such assignment shall nevertheless take effect as against the assignor and his creditors; and it shall be the duty of the county judge, or judge of the district court, as aforesaid, upon the application of the assignor, or any creditor, and being satisfied that such bond has not been given, approved and filed, to appoint in writing another competent assignee, who shall, upon the execution of such bond, approved and filed as herein provided, take possession of the assigned property and proceed to execute the assignment. (Acts 1883, p. 46.)

Birmingham Drug Co. v. Freeman, 39 S. W. 626; Calisher v. Mathias, 43 S. W. 265.

Art. 97. (77) Fraud of assignor will not defeat assignment.—No fraudulent act, intent or purpose of the assignor or assignee

shall have the effect to defeat the assignment or to deprive the creditors consenting thereto from the benefits thereof, but any such fraudulent act, intent or purpose on the part of the assignee shall be sufficient cause for his removal, as being an unsuitable person to perform the trust; and any consenting creditor may be or become a party to prosecute or defend in any suit or proceeding necessary or proper for the enforcement of his rights under such assignments, or for the protection of his interests in the assigned property. (Id.)

See Simkins' Equity (2d Ed.) p. 211.

Art. 98. (78) Proof of claim, when and how made.—Every creditor consenting to an assignment shall, within six months from the time of the first publication of the notice of the appointment of the assignee, file with such assignee a distinct statement of the particular nature and amount of his claim against the debtor, which shall be supported by an affidavit of the creditor, his agent or attorney, that the statement is true, that the debt is just and that there are no credits or offsets that should be allowed against the claim, except as shown by the statement; and no creditor shall take any benefit under any assignment whatever who neglects to file such statement. (Acts 1879, p. 57, sec. 7.)

Hughes v. Potts, 87 S. W. 708; Schutz v. Burges, 110 S. W. 494; Lang v. Collins, 190 S. W. 784.

Art. 99. (79) Surplus subject to garnishment.—Any creditor not consenting to the assignment may garnishee the assignee for any excess of such estate remaining in his hands, after the payment to the consenting creditors the amount of their debts and the costs and expenses of executing the assignment. (Id. sec. 8.)

Art. 100. (80) Property fraudulently sold by assignor passes by the assignment and may be recovered by assignee, etc.—All property conveyed or transferred by the assignor previous to and in contemplation of the assignment, with the intent or design to defeat, delay or defraud creditors, or to give preference to one creditor over another, shall pass to the assignee by the assignment, notwithstanding such transfer; and the assignee, or in case of his neglect or refusal, any creditor or creditors may in his name, upon securing such assignee against cost or liability, sue for, recover and collect the same, and cause the same to be applied for the benefit of creditors as other property belonging to the debtor's estate in the hands of the assignee; but, if it shall appear in such action that the purchaser of any such property bought the same of the assignor in good faith and for a valuable consideration, and without any reason to believe that the debtor was conveying or transferring the same with the intent or design aforesaid, such purchaser shall be held to have acquired as against the assignee and creditors aforesaid a good and valid title to such property. (Id. sec. 9.)

Mansur & Tebbetts Imp. Co. v. Beeman-St. Clair Co., 45 S. W. 729.

Art. 101. (81) Failure to attach inventory presumption of fraud, but does not vitiate assignment; assignor, etc., may be examined.—No assignment shall be declared fraudulent or void for want of any inventory or list, as provided herein, but the absence of the same shall be deemed prima facie evidence that the assignor or debtor has concealed or secreted some of his estate from his assignee or creditors; and whether the said list and inventory be prepared and filed or not, the judge of the district or county court, in whose court the proceedings shall have been filed, and having jurisdiction of the estate assigned, may, on the application of the assignee, or of any creditor of the assignor or debtor, or without such application, if the judge see fit, at all times require, upon such reasonable notice as the judge may direct, the assignor or debtor, or any other person, to attend and submit to an examination, on oath, upon all matters relating to the disposition made, or status of the property of the estate assigned, including all transactions in the past bearing upon the rights of the assignee or creditors with respect to the estate in assignment, as contemplated in law. The judge may enforce attendance and obedience to the orders made, by a writ or order directed to the sheriff, or any constable, commanding the arrest of the persons referred to in the writ or order, to be brought before the judge at a time named for the purpose of examination, as provided herein, and such examination shall be in writing, and shall be signed by the persons examined, and shall be attested or sworn to before the clerk of the court wherein the proceedings are pending and filed with such clerk, for the use of those interested in the estate; provided, nevertheless, that no assignor or debtor shall be prosecuted or punished for any matter or thing disclosed by him on such examination as had above. The costs of such proceedings to be paid out of the estate assigned, or by the applicant for the examination, as the judge in each case may deem right and proper to order. (Acts 1883, p. 46.)

Art. 102. (82) Verified claims shall be allowed by assignee unless contested.—The statement of a creditor, verified and filed with the assignee as hereinbefore provided, shall be sufficient prima facie evidence to justify the assignee in allowing it as a valid claim against the estate, and shall be so allowed, and such creditor shall be entitled to his proportional share of the debtor's estate, unless the assignor, or another creditor disputing the same, shall, within sixty days after the expiration of the time within which the creditors are required by this title to file their statements, institute an action in the district or county court of the proper county to set aside the allowance and to restrain the payment thereon, for which purpose the assignor or any disputing creditor or creditors may have a remedy, jointly or severally, by injunction or other proper action to try the justness and validity of the disputed claim: and, if it appears that an action could not successfully be maintained at law by the creditor against the assignor upon such claim or any disputed part thereof, the same shall be disallowed, in whole or in part, as the case may be, and the assignee restrained from paying the same, or such portion thereof as may be disallowed; and, for the information of the assignor and creditors, it is further provided, that the assignee shall allow them, or any of them, to take a copy of any creditor's statement of his claim that has been filed with such assignee as herein provided. (Acts 1879, p. 57, sec. 12.)

Briam v. Sullivan, 66 S. W. 572; Schutz v. Burges, 110 S. W. 494; First State Bank of Teague v. Hadden, 158 S. W. 1168.

Art. 103. (83) Unmatured claims discounted and collateral securities estimated and deduction for same.—Claims that are not due may be allowed at their present value, by discounting them at the rate of interest mentioned in the contract, if any, otherwise at the legal rate, and if any creditor holds collateral security of less value than his debt, the value thereof may be estimated by the assignee, and only the difference between such sum and the debt shall be allowed. (Id. sec. 13.)

Art. 104. (84) Assignee may be removed, and vacancy from any cause filled, how.—If any assignee becomes unsuitable to perform the trust, refuses or neglects so to do, or mismanages the property, the county judge or judge of the district court may, upon the application of the assignor, or one or more of the creditors, upon reasonable notice to all parties interested, by publication or otherwise, as such judge may direct, remove such assignee, and, in case of a vacancy by death or otherwise, shall appoint another in his place, who shall have the same powers and be subject to the same liabilities as the original assignee. (Id. sec. 14.)

See Simkins' Equity (2d Ed.) p. 188.

Art. 105. (85) Dividend declared, when and how—Allowance to assignee.—Whenever any assignee shall have in his hands funds sufficient to pay ten per cent of the debts due by the assignor, he shall make a pro rata distribution of the same among said creditors, and the assignee shall be entitled to reasonable compensation for his services and his necessary costs and expenses, including also his attorneys' fees, all to be allowed, in case of difference between the parties, by the county judge or judge of the district court. (Id. sec. 15.)

Schutz v. Burges, 110 S. W. 494.

Art. 106. (86) Final report and discharge of assignee.—Whenever any assignee shall have fully performed the duties of his trust and desires to be finally discharged therefrom, he may make a report of his proceedings under the assignment, showing the moneys and assets that have come into his hands, and how the same have been disbursed and disposed of, the truth of which shall be verified by his affidavit; and such report shall thereupon be filed and recorded in the office of the county clerk of the county in which the assignment is recorded; and no action shall be brought against such assignee by reason of anything done by him under the assignment as shown by his report unless the same be brought within twelve months from the time of the filing thereof, as aforesaid; and any moneys or funds on hand shall be deposited in the district court, subject to be paid out upon the decree of said court. (Id. sec. 16.)

Schutz v. Burges, 110 S. W. 494; McCord v. Nabours, 109 S. W. 913; Bass v. McCord, 178 S. W. 998.

TITLE 10
ASYLUMS

CHAPTER ONE
THE LUNATIC ASYLUMS

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

Art. 107a. Northwest Texas Insane Asylum.—There shall be constructed, established and maintained an asylum for the care, treatment and support of white insane persons of this State. It shall be known as the Northwest Texas Insane Asylum. The asylum shall be located at some point north of the Texas and Pacific Railway between El Paso and Ft. Worth and west of the Gulf, Colorado & Santa Fe Railway between Ft. Worth and Gainesville, and at a place where at least five hundred acres of land can be secured. (Acts 1917, ch. 183, sec. 1.)

Art. 107b. Board for selection of site.—The Governor, the Lieutenant Governor, and the Attorney General shall be constituted a board to select a site for the said asylum. Said board shall select the site for said asylum and shall make such selection with a view to its accessibility and convenience to the greatest number of inhabitants, the supply of water, building material, fuel, fertility of soil and healthfulness, and the same shall contain at least five hundred acres of land. Said board shall take title to the land so selected by them in the name of the State for the use and benefit of said asylum, provided, however, that the Attorney General's Department shall first approve the title to the said land so selected by the said board. (Id. sec. 2.)

Art. 107c. Appointment of board of managers.—That the Governor shall appoint, by and with the consent of the Senate, a Board of Managers for said asylum with such powers and duties as are now provided for managers of other lunatic asylums in Title 10 of the Revised Civil Statutes of Texas. (Id. sec. 3.)

Art. 107d. Support and general management.—The support and general management of the said asylum shall be the same in every respect as is provided for asylums in Title 19[10] of the Revised Civil Statutes of Texas. (Id. sec. 4.)

Art. 107e. Construction of buildings.—There shall be constructed upon said grounds so selected permanent, suitable, substantial and fireproof buildings, sufficient to accommodate at least one thousand inmates; said buildings to be provided with modern improvements for furnishing water, heat, ventilation and sewerage; and the Governor immediately after this Act goes into effect, and after the selection of the site for said asylum, and after the title to said land shall have been approved by the Attorney General, shall advertise for plans and specifications for said buildings for thirty days in not more than two daily newspapers published in this State; and he, together with the Lieutenant Governor and the Attorney General, shall constitute a board for the purpose of having said buildings erected and shall have full power and authority to do and perform all things necessary to carrying out the purpose of this Act. Provided that all buildings authorized by this Act and for which an appropriation is hereby made, shall be of fireproof construction, and that part of all plans and specifications for the erection of said build-

ings relating to fire protection shall be subject to the approval of the State Fire Insurance Commission. (Id. sec. 5.)

Art. 107f. Establishment of Hospital for Negro Insane.—That there shall be constructed, established and maintained a hospital for the care, treatment and support of all insane persons in this State of African blood or of African descent. It shall be known as the hospital for negro insane. The hospital shall be located at Rusk, Texas, and on the property there situated and owned by the State of Texas, and now held and in part used by the penitentiary system of the State. (Acts 1917, ch. 198, sec. 1.)

Art. 107ff. Name changed.—That the name of the Insane Asylum at Rusk, Texas, known as the hospital for the negro insane be changed to "The East Texas Hospital for the Insane." (Acts 1919, 2d C. S., ch. 39, sec. 1.)

Art. 107g. Board of managers.—As soon as this act becomes effective and operative the Governor shall appoint a board of managers for said hospital, in accordance with the provisions of Title 10 of the Revised Civil Statutes of the State of Texas, who shall have the power, and authority and shall receive the compensation and shall perform the duties provided in said law, and in accordance with the general laws of this State. Said board of managers shall, in addition to the duties and powers given them in said laws, have the authority, and it shall be their duty to employ, with the consent of the Governor, the State Architect, if his services are available, and if not, some other architect to prepare plans and specifications for the erection, remodeling, change, repair or alteration of such building or buildings and the installing of such equipment as may be necessary to construct or alter or install as may be proper or necessary to carry out the provisions of this Act. Said board of managers, under the control and direction of the Governor, Comptroller of Public Accounts, and State Treasurer, shall have the power and it is made their duty to select the site for said hospital on the property belonging to the State at Rusk, Texas, and all or any part of said property or such portion thereof; as may be so selected by them under the control and direction of the Governor, Comptroller of Public Accounts and State Treasurer, is hereby set aside to and for said hospital. (Acts 1917, ch. 198, sec. 2.)

Art. 107h. Superintendent.—The board of managers for said hospital, appointed by the Governor, shall appoint a superintendent of said hospital, whose duties, qualifications, terms of office and emoluments shall be the same as are now or may hereafter be provided by law for the superintendent of the State Lunatic Asylum at Austin, Texas. (Id. sec. 3.)

Art. 107i. Transfer of negro insane to hospital.—As soon as practicable after this act becomes effective, all negro insane persons in this State, now inmates of any jail or insane asylum in this State shall be transferred to the Hospital for Negro Insane, and hereafter all insane persons of African blood entitled by law to be admitted or admitted to the asylums of this State, shall be sent to said hospital at Rusk, Texas. (Id. sec. 4.)

Art. 107ii. Persons admitted to hospital.—As soon as this Act becomes effective and operative, the Superintendent of said Asylum shall admit all persons in Texas who have been adjudged insane, giving preference to those who are now in jail, or other places of restraint. (Acts 1919, 2d C. S., ch. 39, sec. 2.)

Art. 107iii. White and negro patients kept separate.—Both white and negro patients shall be admitted to said hospital, but the whites and negroes shall be kept in separate wards, and the two races shall be kept separate and apart at all times. (Id. sec. 3.)

Art. 107iiii. Acts repealed.—All laws and parts of laws in conflict with this Act are hereby repealed, but this Act is intended to be cumulative of all other laws relating to the care and custody of the insane. (Id. sec. 4.)

Art. 107j. Support and management.—The support and general management of the said hospital shall be the same and equal in every respect as that which are now provided or as may hereafter be provided for the other asylums for the insane in the State of Texas. (Acts 1917, ch. 198, sec. 5.)

Art. 107k. Officers to be white persons.—All boards of managers, superintendents, officials and physicians shall be white persons, and as many of the other employés and attendants as practicable shall be white persons. (Id. sec. 6.)

Art. 107*l*. Erection of buildings.—The board of managers under the control and direction of the Governor, Comptroller of Public Accounts and State Treasurer, shall cause to be erected fireproof buildings or have remodeled existing buildings selected by them so that they will be of such character so that such buildings erected or remodeled shall be of substantial, permanent and suitable character sufficient to accommodate at least one thousand inmates; said buildings to be provided with modern improvements for furnishing water, heat, ventilation and sewerage and otherwise in keeping with modern ideas of the suitable character for buildings and appliances to obtain best results in the treatment and care of insane persons. The board of managers, with the consent of the Governor, may select a competent architect to supervise the erection, remodeling and equipping of all said buildings and other improvements, all of which shall be made and erected under the direction, management and supervision of the superintendent of said hospital and of the supervising architect to be appointed by the board with the consent of the Governor, which supervising architect shall be under the control of the State Architect, the salary and compensation of such supervising architect shall be deducted from the appropriations made herein for said hospital, and is not to exceed $2500 per annum. Bids to erect said or such buildings, alter, remodel or repair such buildings, and install such other improvements shall be let to the lowest responsible bidder or bidders, the bids being so arranged that the different buildings and units of the same and installation may be bid upon by items or units; the contractor or contractors shall enter into a good and sufficient bonds to be approved by the Governor, all awards to bidders to be made with his approval, and payable to the State of Texas in a sum double the amount of the contract, conditioned that he or they will do the work

contracted for according to the plans and specifications furnished by the architect, and use such materials in the construction remodeling or repair of such buildings, equipment and improvements as may be called for in said plans and specifications and comply in every respect with all the conditions of said contract and pay for all labor and material; eighty per cent of the value of the materials to be paid when actually delivered on the grounds, and the same per cent for labor when done, payable every two weeks, to be only payable on the certificate of the supervising architect, approved by the State Architect and the Governor, and the remaining twenty per cent to be paid when said buildings, equipment or other improvements are completed to the entire satisfaction of the Governor, supervising architect and State Architect and received by them; provided, that the Comptroller shall not issue any warrants except upon itemized statements sworn to by the contractor or contractors and approved by said supervising architect and the Governor as a voucher for same, which shall be filed with the Comptroller. The architect, if other than the State Architect, preparing plans and specifications, and the supervising architect, shall each execute a bond payable to the State of Texas at Austin, Texas, in a sum to be fixed by the Governor, and to be approved by him, with good and sufficient sureties, conditioned that said architect or architects shall be liable and bound to pay to the State of Texas, all such damages as it may sustain by reason of defective plans and specifications, or any wilful failure or negligent performance of duty. (Id. sec. 7.)

Section 8 makes an appropriation for buildings and improvements.

Art. 107m. Same; capacity of hospital.—That in the provisions made in the erection or remodeling of buildings due care and thought should be given, and such improvements should be made so that the capacity of the hospital may be added to and enlarged from time to time as necessity may arise in the future. (Id. sec. 9.)

Art. 107n. Lands of penitentiary set aside for hospital.—So much of the lands of the East Texas penitentiary at Rusk, Texas, as may be requisite and needful, as well as any improvements now situated thereon, for such buildings, grounds, parks, for pasturage, orchards and for growing agricultural products are hereby set aside for the use of said hospital. (Id. sec. 10.)

Art. 107o. Board to select site and let contracts for buildings.—The Governor, Comptroller of Public Accounts and State Treasurer shall constitute a board to determine what, if any, property now owned by the State at Rusk, Texas, and used in whole or in part by the penitentiary system, shall be set apart to and used permanently by the hospital; and the Governor, together with the State Comptroller of Public Accounts and the State Treasurer shall let the contract or contracts for the construction or remodeling of said buildings, equipment or other improvements. (Id. sec. 11.)

Art. 107p. Convict labor for work.—The commissioners of the penitentiary are hereby directed and required to furnish said board of managers with a sufficient number of able-bodied convicts to prepare the grounds for such hospital buildings and to do the excavating and other work for the construction of said buildings, and to prepare and deliver all such materials as may be required in the construction and equipment of said buildings, and to do and perform all other work in the erection and construction of such buildings for which convicts may be found suitable and competent. (Id. sec. 12.)

1. THE BOARDS OF MANAGERS

Art. 108. (88) Board of managers provided for.—The general control, management and direction of the affairs of the Texas asylums for the insane shall be vested in boards of managers, to be styled, the boards of managers of the lunatic asylums, subject only to such rules and regulations as may be prescribed by the legislature. Three of the members of each board shall reside within five miles of their respective asylums. (Acts 1883, p. 103.)

Art. 109. (89) (67) Board of managers, how constituted and appointed.—[The governor shall appoint for each lunatic asylum a board of managers consisting of five members, who shall hold their office for two years,] or until their successors are appointed and qualified; [and whenever a vacancy occurs in said boards it shall be filled by the governor,] and the term of office of the person so appointed shall be for the unexpired term of the person whose place is made vacant. [The board of managers shall be appointed by the governor, by and with the advice and consent of the senate.] (Acts 1883, p. 103.)

Bracketed parts of article superseded by arts. 4042a-4042c, post.

Art. 110. (90) (68) Compensation of members of board.—Each of the members of the boards of managers shall be paid five dollars per day and five cents a mile for going and returning from the asylums for the purpose of holding their monthly meetings provided for by this act; and no member shall be paid, except in case of his actual attendance on said meetings; and the certificate of the president of the boards of managers, approved by the superintendent, shall be a sufficient voucher for the comptroller to draw his warrant upon the treasurer for the amount due each member of said board for his attendance on said meetings; provided, no meeting shall be for a longer time than one day. (Acts 1883, p. 103.)

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

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

Art. 113. (93) (71) Powers of the board.—The members of said boards of managers shall be persons distinguished for their philanthropy; and, when appointed in accordance with this act, they shall have the general direction and control of all the prop-

erty and business of the asylums, in accordance with the requirements of law; and in all those cases not provided for by law they shall have such direction and control of the property and business of the asylums according to the by-laws, rules and regulations of the asylums. They may take and hold in trust any gift or devise of real or personal estate for the benefit of the said asylums, and apply the same as the donor or devisor may direct. (Id.)

Art. 114. (94) (72) Same subject.—The board of managers shall have power—

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

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

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

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

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

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

7. They shall also cause to be kept a clinical record of all cases admitted in the asylums. (Acts 1883, R. S., p. 103.)

Art. 115. (95) (73) Monthly inspections.—The managers shall maintain an effective inspection of their asylums, a committee for which purpose shall visit them once every month, a majority once every quarter, and the whole board once a year, at the time and in the manner prescribed by the by-laws. In a book kept by the managers for this purpose, the visiting manager or managers shall note the date of each visit, the condition of the house, patients, etc., with remarks of commendation or censure, and all the managers present shall sign the same. (Acts 1883, R. S., p. 103.)

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

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

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

2. THE SUPERINTENDENTS

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

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

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

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

Art. 123. (101) (80) Powers and duties of superintendent.—The superintendent shall be the chief executive medical and disbursing officer of the institution, and, subject to the by-laws, shall have general care and control over everything connected therewith. He shall attend to the enforcement of the laws of this state relating to the asylums and the by-laws of the institution, and shall take care that all employés connected therewith diligently and faithfully perform the duties assigned to them; and it shall be his duty to admit any of the board of managers into every part of the asylum, and to exhibit to them, or either of them, on demand, all the books, papers and accounts belonging to the institution or pertaining to its business, management, discipline or government, also to furnish copies, abstracts and reports whenever required by the board. (Id.)

Art. 124. (102) (81) Same subject.—The superintendent shall also, with the consent of the board of managers, employ such

officers, attendants and other persons as may be required for the service of the institution, and with like consent may discharge them at pleasure. He shall also receive and discharge patients, superintend repairs and improvements, and take care that all moneys intrusted to him are judiciously and economically expended. (Acts 1883, p. 116, P. D. 118.)

Art. 125. (103) (82) Accounts and reports of superintendents.—The superintendent shall keep also an accurate and detailed account of all moneys received and expended by him, specifying the sources from which such moneys were received, and to whom and on what account paid out; and, on the first days of January and July of each year, he shall report the same under oath to the governor. (Acts 1883, p. 116, P. D. 118; Const., art. 4, sec. 24.)

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

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

3. FISCAL MANAGEMENT

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

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

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

Art. 131. (109) (88) Funds from outside sources, how disposed of.—All funds of every character received into or belonging to the asylums, other than the sums of money appropriated for their support from time to time by the legislature, shall, as soon as received, be paid over to the state treasurer by the superintendents or other persons receiving it; and the treasurer shall keep the same separate and apart from all other funds in his hands, and shall pay the same out only on the order of the superintendents, approved by the presidents of the boards of managers.

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

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

4. ADMISSION AND DISCHARGE OF PATIENTS

Art. 134. (112) (91) Who may be admitted.—The following persons may be admitted into the asylums as patients:

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

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

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

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

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

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

Art. 139. (117) (96) Private patients at their own expense.—All private patients shall be kept and maintained at the asylum at their own expense or the expense of their relatives or friends; and for the board of such patients, the superintendent may make a special contract at a rate of not less than five dollars per week; and, at the time of the admission of any such patient into the asylum, his board must be paid in advance for six months, and bond and security given for the prompt payment of all future expenses of such patient as may from time to time be required by the by-laws of the institution. (Act Feb. 5, 1858, pp. 117–18, sec. 13; P. D. 125; Act Aug. 15, 1876, p. 140, sec. 9.)

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

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

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

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

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

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

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

Art. 147. (125) (103) Transportation home by the state.—The expense of conveying to their homes public patients discharged from the asylums, and the necessary clothing furnished to them at the time of their discharge, shall be paid by the state. (Act Aug. 15, 1876, p. 140, sec. 6.)

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

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

5. JUDICIAL PROCEEDINGS IN CASES OF LUNACY

Art. 150. (128) (106) Apprehension of lunatics.—If information in writing and under oath be given to any county judge that any person in his county is a lunatic, or non compos mentis, and that the welfare of himself or of others requires that he be placed under restraint, or that such lunatic is a convict confined in the state penitentiary, and such county judge shall believe such information to be true, he shall forthwith issue his warrant for the apprehension of such person, or, upon the filing of such complaint before any justice of the peace, said justice may issue the warrant for the apprehension, returning said complaint and warrant to said county judge; and said county judge shall fix a day and place for the hearing and determining of the matter, which place shall be either in the court house of the county or at the residence of the person named, or at the state penitentiary, if he be a state convict, as the county judge may deem best for such person. (Acts 1903, p. 236; 1899, p. 172; 1876, p. 138, sec. 1.)

These articles (150-165) were amended by Acts 1913, c. 163, p. 341. Said amendatory act was held wholly void in White v. S., 196 S. W. 508, and the old law (these articles) still in force.

See, also, Glenn v. S., 107 S. W. 621; Ex parte Singleton, 161 S. W. 123; White v. White, 183 S. W. 369; Suhre v. Kott, 193 S. W. 417.

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

Glenn v. S., 107 S. W. 621.

Art. 152. (130) (108) Jury to be summoned.—At the time of issuing the warrant mentioned in the preceding article the county judge shall also issue an order to the sheriff or constable, directing him to summon a jury of six competent jurors of the county, to be and appear before such judge at the time and place designated in said order, for the hearing and determination of the matter. (Id.; Const. art. 5, sec. 17.)

Glenn v. S., 107 S. W. 621; White v. White, 183 S. W. 369; Loving v. Hazelwood, 184 S. W. 355; White v. White, 196 S. W. 508.

Art. 153. (131) (109) Cause to be docketed, etc.—The cause shall be docketed on the probate docket of the court in the name of the state of Texas as plaintiff, and of the person charged to be insane as defendant. The county attorney shall appear and represent the state on the hearing, and the defendant shall also be entitled to counsel; and in proper cases the county judge may appoint counsel for that purpose. (Id.)

Glenn v. S., 107 S. W. 621.

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

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

Glenn v. S., 107 S. W. 621.

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

1. Is A B, the defendant, of unsound mind?

2. If the defendant is of unsound mind, is it necessary that he should be placed under restraint?

3. If you answer both the foregoing questions in the affirmative, then what is the age and nativity of the defendant?

4. How many attacks of insanity has he had, and how long has the present attack existed?

5. Is insanity hereditary in the family of defendant or not?

6. Is defendant possessed of any estate, and, if so, of what does it consist and its estimated value?

7. If the defendant is possessed of no estate, are there any persons legally liable for his support? If yea, name them. (Acts 1876, p. 138, secs. 1, 2.)

Clough v. Worsham, 74 S. W. 350; Glenn v. S., 107 S. W. 621.

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

Glenn v. S., 107 S. W. 621; White v. White, 183 S. W. 369.

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

be conveyed to the lunatic asylum for restraint and treatment.

Clough v. Worsham, 74 S. W. 350; Glenn v. S., 107 S. W. 621; Rowan v. Hodges, 175 S. W. 847.

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

Glenn v. S., 107 S. W. 621.

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

Glenn v. S., 107 S. W. 621.

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

Glenn v. S., 107 S. W. 621.

Art. 161. (139) (117) Warrant to convey lunatic to asylum.—Immediately after any person is adjudged a lunatic, the county judge shall communicate with the superintendent of the asylum, and, if notified by the latter that there is a vacancy in the institution or that the patient can be accommodated, he shall issue his warrant to the sheriff or some other suitable person, directing him to convey the lunatic to the asylum without delay, which warrant shall prescribe the number of guards to be allowed, in no case to exceed two, and shall be executed with all convenient dispatch. (Acts 1876, p. 139, sec. 3.)

Glenn v. S., 107 S. W. 621; Wilson v. S., 149 S. W. 117; Watkins v. Minter, 180 S. W. 227; Loving v. Hazelwood, 184 S. W. 355.

Art. 162. (140) (118) Relative or friend may give bond, etc.—No warrant to convey a lunatic to the asylum shall issue if some relative or friend of the lunatic will undertake, before the county judge, his care and restraint, and will execute a bond in a sum to be fixed by the county judge, payable to the state, with two or more good and sufficient sureties to be approved by the county judge, conditioned that the party giving such bond will restrain and take proper care of the lunatic so long as his mental unsoundness continues, or until he is delivered to the sheriff of the county or other person, to be proceeded with according to law, which bond shall be filed with, and constitute a part of, the record of the proceedings, and may be sued and recovered upon by any party injured, in his own name. (Id. sec. 1; Wilson v. State, 149 S. W. 117.)

Glenn v. S., 107 S. W. 621.

Art. 163. (141) (119) Record made up and forwarded.—The proceedings in any inquisition of lunacy shall be entered of record in the probate minutes of the county court by the clerk thereof; and before any patient is sent to the asylum the county judge shall cause a complete transcript of the proceedings to be made up and certified by the clerk of the county court under the seal of said court, which transcript he shall forward by mail to the superintendent of the asylum. (Id. secs. 1, 3.)

Glenn v. S., 107 S. W. 621.

Art. 164. (142) (120) Suitable clothing to be provided.—Before sending any patient to the asylum, the county judge shall take care that the patient is provided with two full suits of substantial summer clothing and one full suit of substantial winter clothing. (Id. sec. 3.)

Glenn v. S., 107 S. W. 621.

Art. 165. Fees of officers in lunacy cases.—In judicial proceedings in cases of lunacy, as prescribed in this chapter, in each case the sheriff and county clerk shall be allowed the same fees as are now allowed said officers for similar services in misdemeanor criminal cases, the county attorney shall be allowed a fee of five dollars, provided, that such fees shall be allowed only when a conviction is obtained; said costs to be paid out of the estate of the defendant, if he shall have an estate sufficient therefor, otherwise said costs shall be paid out of the county treasury; and the jurors in such cases shall be allowed fifty cents each, to be paid out of the county treasury. Justices of the peace who may take complaints, issue warrants and subpœnas in such lunacy cases,

shall receive the same fees as are now allowed them by law for taking complaints, issuing warrants and subpœnas in criminal misdemeanor cases. Constables shall receive for executing warrants and serving subpœnas in lunacy cases the same fees as are now allowed them by law for similar services in criminal misdemeanor cases; such fees to be paid upon conviction out of the estate of the defendant, if he shall have an estate sufficient therefor, otherwise the same shall be paid by the county upon an account approved by the county judge. (Acts 1903, p. 110.)

NOTE

Acts 1913, p. 341, containing a general repeal of all laws and parts of laws in conflict therewith, provided that upon the filing of an affidavit the county judge should appoint a commission, to be composed of six persons, to investigate and determine the allegations of the affidavit. The act further provided that in counties having a population of 50,000 each member of the commission should be a physician; in counties having a population of less than 50,000, but more than 25,000, four of the members should be physicians; in counties having a population of less than 25,000, but more than 10,000, three of the commission should be physicians; in counties having a population of less than 10,000, but more than 5,000, two of the members should be physicians; while in counties having less than 5,000 population, one of the members of the commission should be a physician; but that in any county, regardless of population, as many of the six commissioners should be physicians as it may be possible for the county judge to obtain. The act further provided for the administration of an oath to the commissioners, for the organization of the commission, that the county attorney should appear and represent the affiant, and that the respondent should be entitled to counsel and if he had no counsel the county judge should appoint one. The act further provided for the proceedings and report of the commission, and for the rendition of a judgment on the report by the county judge in the presence of the respondent. The act superseded articles 150 to 165 inclusive of the Revised Civil Statutes of 1911.

In the case of White v. White, 183 S. W. 369, it was held that there being under the statute prior to the act of 1913 a right to jury trial in lunacy proceedings, and such right having existed at the date of the adoption of Const. art. 1, § 15, providing that the "right of trial by jury shall remain inviolate," the act of 1913, substituting a commission of doctors for a jury in such proceedings, is invalid. The court further held that the right of trial by jury and not the number of jurors previously obtained was guaranteed by Const. art. 1, § 15, as that section further provides that the Legislature shall pass such laws as may be needed to regulate the same, and art. 5, § 17, fixing the number of jurors in the county court at six.

In the same case, on appeal to the Supreme Court, as reported in 196 S. W. 508, it was held that the Constitution of the United States does not expressly guarantee the right of trial by jury in any state court in any character of case, and that while the act of 1913 is not violative of U. S. Const. Amend. 7, which relates only to trials in the courts of the United States and does not necessarily contravene U. S. Const. Amend. 14, if a proceeding before a commission of doctors may be said to constitute due course of law, there was by statute a right to jury trial in lunacy proceedings at the date of the adoption of Const. art. 1, §§ 15, 19, 29, and that hence the substitution of a commission of physicians for a jury in such proceeding is invalid, for a trial by jury means something more than a hearing before such commission, and in civil cases it means a due and orderly trial before the statutory number of men properly qualified for such jury service, impartial, residing within the jurisdiction of the court, drawn and selected according to statute, duly impaneled under the direction of a court of competent jurisdiction and sworn to render an impartial verdict according to the law and the evidence, the hearing to be in the presence and under the supervision of a court duly authorized and empowered to rule on the evidence and, except in courts of justices of the peace, to charge on the law of the case and to set aside the verdict if in the opinion of the court it is contrary to the law and the evidence. The court further held that the failure of respondent in a lunacy proceeding to deny in habeas corpus proceedings brought by her that she is a lunatic was of no consequence, as the law presumed that she was of sound mind. The court concludes: "The asserted right [of trial by jury] having existed at common law and in various American states and especially in Texas prior and down to the adoption of our present Constitution, so much of said act of 1913 as relates to a hearing before a commission, in lieu of the time-honored trial by jury, is invalid; and, inasmuch as that vice obviously permeates said entire act, we hold it void as a whole. The effect, of course, is to leave the old law in force. * * * Necessarily defendant in error would be entitled to full liberty were it not for the fact that, in compliance with the requirements of the old law, an affidavit charging her with lunacy has been presented to the county judge. For further proceedings under R. S. 1911, art. 150 et seq., she should be remanded to the custody of the sheriff of El Paso county, and if such proceedings be not instituted within ten days after issuance of the mandate of this court, she should be released from all restraint. The judgment of the Court of Civil Appeals is modified to the extent of fixing such definite time limit within which such further proceedings may be instituted, and, as so modified, it is affirmed."

CHAPTER TWO

PASTEUR HOSPITAL

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

Art. 167. Indigent persons treated at expense of state; county to pay traveling and living expenses; nonindigent persons to pay their own expenses.—All indigent persons afflicted with hydrophobia in this State shall be treated at the expense of the State at the pasteur hospital or department of the asylum for the treatment of hydrophobia at Austin, but the county in which such indigent persons reside, shall pay the traveling expenses of such person to and from

Austin and the necessary living expenses of such person while in Austin undergoing said treatment, such expenses to be paid upon order of the commissioners court of the county in which such person resides when satisfactory showing is made to said court as to indigency and the reasonableness and the necessity of the expense. All nonindigent persons shall be kept, treated and maintained at said hospital at their own expense or that of the relatives, friends or guardians. (Acts 1903, p. 195; Acts 1907, p. 320, sec. 2; Acts 1917, ch. 151, sec. 1.)

Art. 168. Laws, etc., same as those of institution with which connected.—Laws pertaining to the introduction and control of said patients shall be the same as those applying to the institution with which said hospital is connected. (Acts 1907, p. 320, sec. 3.)

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

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

CHAPTER THREE

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

1. GENERAL PROVISIONS

a. BOARD OF TRUSTEES

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

Art. 172. (144) (122) Boards, how constituted.—[The governor shall appoint a board of trustees for each, consisting of five members each, who shall hold their office for two years,] or until their successors are appointed and qualified; [and, whenever a vacancy occurs in said board, it shall be filled by the governor,] and the term of office of the person so appointed shall be for the unexpired term of the person whose place is made vacant. [The appointment of said board shall be by and with the advice and consent of the senate.] (Acts of 1883, p. 109.)

Bracketed parts of article superseded by arts. 4042a-4042c, post.

For special board for Texas School for the Blind, see post, arts. 187½-187½c.

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

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

Art. 175. (147) (125) Powers of the boards.—The boards of trustees shall have power—

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

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

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

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

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

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

Art. 180. (152) (130a) Compensation of trustees.—The members of the respective boards of trustees shall be paid five dollars each per day and mileage at the rate of three cents per mile, in going to and returning from their respective asylums, for their services in attending the monthly meetings provided for in article 174; provided, that no member shall draw pay for said monthly meetings, unless he shall have actually attended said meeting; and provided, further,

that no member can draw pay under this article for more than one day's attendance upon said monthly meeting; and the certificate of the president of the board, approved by the superintendent, shall be sufficient evidence upon which the comptroller can draw a warrant upon the treasurer of the state to pay the amount provided for in this article. (Acts 1905, p. 47; Acts 1883, p. 103.)

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

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

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

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

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

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

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

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

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

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

2. PARTICULAR PROVISIONS

a. BLIND ASYLUM

a. Texas School for the Blind

Art. 187½. New building site to be acquired; name of institution.—That a new building site shall be acquired as a site of the Texas School for the Blind, consisting of not less than forty acres of land, and modern and commodious buildings shall be erected thereon, as nearly fireproof as possible, with such other improvements and equipment as may be necessary for a first-class school for the blind, and the name of this new institution shall hereafter be known as the "Texas School for the Blind." Before the purchase of said land it shall be the duty of the Attorney General to examine and pass upon the title to same. (Acts 1915, 1st C. S., ch. 18, sec. 1.)

Art. 187½a. Board of trustees.—That the Board of Trustees of the Blind Asylum shall become and be known, upon the taking effect of this Act, as the "Board of Trustees of the Texas School for the Blind," and as such shall continue to act for the unexpired parts of their respective terms for which they are appointed, and whenever any duty, power or function is by law, or may hereafter be by law placed upon the Board of Trustees of said Blind Asylum, the same shall be construed to be placed upon and shall be executed by the Board of Trustees of the Texas School for the Blind. (Id. sec. 2.)

Art. 187½b. Board how constituted.—The Governor, the Lieutenant Governor and the Attorney General of Texas shall constitute a board whose duty it shall be to carry out the provisions of this Act, of which board the Governor shall be chairman and the superintendent of the Texas School for the Blind shall be secretary of said board. (Id. sec. 3.)

Art. 187½c. Title to land, how taken.—The board provided for herein shall take the title to any real estate acquired under this Act to "The Board of Trustees of the Texas School for the Blind," and their successors, as trustees for the use and benefit of the State of Texas. (Id. sec. 4.)

Art. 188. (160) (137) Appointment of oculist and qualifications.—The board of trustees and the superintendent shall appoint an oculist for the blind asylum, who shall be

skilled in his profession and a married man, and who shall attend regularly at the asylum and administer treatment to all cases of blindness among its pupils deemed curable. (Acts of 1883, p. 109; amend. 1895, Sen. Jour., p. 478.)

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

Art. 189a. Conveyance of certain property to University of Texas.—That the title to the property near the intersection of Nineteenth Street and East Avenue in the City of Austin, Travis county, Texas, belonging to the State Blind Asylum consisting of the grounds and buildings now occupied by the said Blind Asylum, be and the same is hereby vested in the University of Texas for a period not to exceed ten years, and the Chairman of the Board of Trustees of said Blind Asylum is empowered and directed upon completion of the new buildings for said Blind Asylum now in course of erection in Austin, Texas. (Acts 1917, 1st C. S., ch. 39, sec. 1.)

b. DEAF AND DUMB ASYLUM

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

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

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

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

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

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

c. ORPHAN ASYLUM

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

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

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

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

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

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

Art. 202. [Superseded by art. 7085b, post.]

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

Art. 204. (171a) Board to dispose of artesian water.—The board of trustees of the state orphans home, situated at Corsicana, Texas, are hereby authorized and empowered to sell, lease or dispose of the surplus water belonging to the state, and flowing from the artesian well on the grounds of said orphans home, for such price and upon such terms and conditions as the said board may deem best; provided, that the term of

said lease shall not exceed ten years. (Acts 1895, p. 15.)

d. CONFEDERATE HOME

Art. 205. (172) Board of trustees, term of office, duties, etc.—[The governor shall appoint a board of trustees of five] ex-confederate soldiers for the management of said home, [said trustees to remain in office two years,] or until their successors are appointed and qualified; and they shall be governed in their regulations of the affairs of said home by the laws now in existence relative to the deaf, dumb and blind institutions of this state, so far as the same may be applicable, and shall make and prescribe such rules and regulations as may be necessary for the internal government, discipline and management of the home, and shall have power to enforce obedience to and compliance with said rules and regulations by discharging from the home, if in its judgment it be necessary, any inmate who may violate said rules and regulations; and said board shall be required to make such examinations from time to time as it may deem necessary, as to the qualifications and record as a soldier in the confederate army or navy of any inmate, and to discharge at once any said inmates who procured admission to the home by fraud or misrepresentation; and said board shall, every three months, cause to be examined by a board of physicians, consisting of the home physician and two others not connected with the home, any inmate who may be designated by the superintendent and the home physician, or by any member of the board of trustees, as to the physical condition of such inmate, and, if it be shown from said examination and report of said examining board that any inmate so examined has sufficiently recovered from his disabilities to be able to earn a living, such inmate shall be given an honorable discharge from the home, with transportation to the place from which he entered the home; provided, however, that such inmate be given twenty days notice of his dismissal, and that he be subject to all the rules and regulations governing the home during said twenty days, or such part of that time as he may remain in the home after said notice of dismissal be given. The two physicians assisting the home physician in such examinations shall be selected by the board of trustees; and they shall be paid for such service two dollars and fifty cents each for each examination made by them; and that said board of managers shall also have charge of all the property received from the John B. Hood camp confederate veterans, or from any other source, for the maintenance of said home. Said board of trustees shall make annual reports to the governor on the first day of each December, embracing a full statement of all expenditures and transactions of the institution for the fiscal year next preceding. They shall visit the home at least once each month. (Acts 1891, p. 14; and 1895, p. 42.)

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

In addition to his other duties he shall keep in a book prepared for that purpose the name and age of each inmate, date of admission to the home, the company and regiment or other command or capacity, in which the military service was performed, and the state from which he entered the service, and such other data concerning the history of the inmates as the board of trustees may prescribe. The superintendent of said home shall receive a salary of fifteen hundred dollars per annum. (Acts 1891, p. 14. Acts 1895, p. 42.)

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

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

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

dd. CONFEDERATE WOMAN'S HOME

Art. 208a. Home established, and name.—There shall be established in or near the city of Austin, in the state of Texas, a home for the indigent wives and widows and who are over sixty years of age, of disabled ex-confederate soldiers and sailors who entered the confederate service from Texas, or who came to the state prior to January 1,

1880, and whose disability is the proximate result of actual service in the confederate army for at least three months, and also for women who aided the confederacy. This institution shall be known as the Confederate Woman's Home. (Acts 1911, p. 50, sec. 1.)

Art. 208b. Managers appointed by governor, powers and duties.—[Upon the taking effect of this Act it shall be the duty of the governor to appoint a board of managers, the same to be composed of five persons, two of whom shall be women,] who shall have the management and control of said Confederate Woman's Home, [and may hold their office for a term of two years,] or until their successors are appointed and qualified. It shall be the duty of said board of managers to make suitable rules and regulations for the admission of women to the benefits of said home. They shall also have the power to make proper rules and regulations for the internal government and management of said home. (Id. sec. 2.)

The bracketed parts of this article are superseded by arts. 4042a-4042c.

Art. 208c. Annual report, and duties.—The board of managers of the Confederate Woman's Home shall make annual reports to the governor on or before December 1st of each year; said reports shall embrace a full statement of all expenditures in the management and conduct of said home for the fiscal year next preceding the date of said report. It shall be the duty of the members of said board of managers, or the majority thereof, to make monthly visits and inspections of the home. (Id. sec. 3.)

Art. 208d. Superintendent; duties, salary.—The board of managers shall appoint a superintendent for the Confederate Woman's Home, with the approval of the governor. Said superintendent must be the widow or daughter of a confederate soldier. The superintendent shall have supervision of the affairs of said Confederate Woman's Home, and shall cause the accounts and disbursements of same to be properly kept, and have general management and direction of said home, subject to the control of the board of managers. Said superintendent may hold office for a term of two years, or until her successor is duly appointed and qualified. Said superintendent shall receive a salary of twelve hundred dollars per annum, and free lodging and board, and shall reside in the home. (Id. sec. 4.)

Art. 208e. Site, buildings and attendants.—The board of managers of the Confederate Woman's Home shall select a site for the location of said home, and is hereby authorized to construct or purchase suitable buildings and improvements for the comfortable accommodation of the inmates, and shall submit to the attorney general of Texas an abstract of title to said site and it shall be his duty to pass upon such title and report his opinion to said board. The board shall also provide such attendants and nurses as may be deemed necessary in the management of the home, and fix their compensation. (Id. sec. 5.)

Art. 208f. Maintenance; purchase from United Daughters of Confederacy; Warrants.—The legislature shall make suitable provision in the general appropriation bill, or otherwise, for the proper maintenance and support of said Confederate Woman's Home. The sum of twenty thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any moneys in the treasury not otherwise appropriated for the purpose of purchasing a site and erecting suitable buildings thereon. If it becomes necessary to do so, subject to the approval of the governor, it is further provided that said board of managers shall have authority to receive or purchase from the United Daughters of the Confederacy any buildings or grounds which may now be used by that organization as a home for confederate women. It shall be the duty of the comptroller to issue warrant for the expenditures authorized by this Act on accounts therefor when approved by the Governor and board of managers. (Id. sec. 6.)

e. DEAF, DUMB AND BLIND ASYLUM FOR COLORED YOUTHS

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

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

f. EPILEPTIC COLONY

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

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

Art. 212a. Support and management.—The support and general management of said asylum shall be the same as is now provided for other branch asylums of the state. (Id. sec. 6.)

Art. 213. Who admitted to colony.—All persons afflicted with epilepsy, who shall have been bona fide residents of this state for one year next preceding the filing of his application with the county judge, as herein provided, shall be admitted into the epileptic colony under the provisions of this subdivision with the following exceptions:

1. Idiots and imbeciles who are afflicted with epilepsy.

2. Those who are infirm and bedridden, or suffering from contagious or infectious disease.

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

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

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

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

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

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

1. Indigent public patients.
2. Non-indigent public patients.
3. Private patients. (Id. sec. 3.)

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

Art. 220. Non-indigent public patients defined; maintained by state, but reimbursement; suit; duties of county attorney and superintendent.—Non-indigent public patients are those who possess some property, out of which the state may be reimbursed, or who have some one legally liable for their support and able to reimburse the state. This class shall be kept and maintained at the expense of the state in the first instance; but in such cases the state shall have the right to be reimbursed for the support of such patients, and the claim of the state for such support shall constitute a valid indebtedness against any such patient, or in case he has a guardian, against his estate, or against the person or persons who may be legally liable for his support and financially able to contribute thereto, as herein aforesaid, and such claim may be collected by suit or other proceedings in the name of the state by the county attorney of the county from which said patient is sent, against such patient, his guardian, or the person or persons liable for his support, as the case may be; such suit or proceeding to be instituted upon the request in writing of the superintendent of the colony, accompanied by his certificate as to the amount due the state, which shall in no case exceed five dollars per week. In all such suits or proceedings the certificate of the superintendent shall be sufficient evidence of the amount due the state for the support of such patient. It shall be the duty of the county attorney, upon such request being made, to institute and conduct such suit or proceedings, and for which he shall be entitled to a commission of ten per cent of the amount collected. All moneys so collected, less the commission above provided, shall be by the county attorney paid into the state treasury, and placed in the general funds. (Id. sec. 3.)

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

Art. 222. Application for admission of public patient; requisites.—The parent, guardian, or friend of any epileptic, not seeking admission as a private patient, may make application in writing and under oath to the county judge of the county wherein such epileptic resides, for the admission of the epileptic into the epileptic colony, which application shall show, (1) the name of the epileptic, (2) sex, (3) age and nativity, (4) whether possessed of any property, and if so, what, and the estimated value thereof, (5) whether the epileptic has any one legally liable for his support, if so, whom, what property possessed by such person, and the estimated value thereof, (6) residence of the epileptic for the year next preceding the date of application, (7) occupation, trade or

employment, (8) parent or parents, if living, or guardian, if any, (9) name of husband or wife, if any, (10) children, if any, number, age and sex, (11) relatives similarly affected, insane, inebriate, consumptive or criminal. (Id. sec. 4.)

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

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

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

Art. 226. Where applicant appears not indigent.—If the county judge should find that the person for whom application is made is in fact not indigent, then he shall make application for his admission as a non-indigent patient, and so show in his application to the superintendent. The object of this provision is to make it the duty of the county judge upon careful investigation to determine whether such person shall be admitted into the colony as an indigent public patient, or a non-indigent public patient. (Id. sec. 6.)

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

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

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

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

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

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

g. STATE COLONY FOR THE FEEBLE MINDED

Art. 232a. Colony established.—There is hereby established at some suitable place in the vicinity of Austin, where suitable farm lands may be secured, a farm colony on the cottage plan for the training and custodial care of the feeble minded of the State, to be known as the State Colony for the Feeble Minded. (Acts 1915, ch. 90, sec. 1.)

Art. 232b. Purpose of colony.—It shall be the purpose of this colony to educate by such special methods as the best modern science has discovered the feeble minded children of the State that are capable of being educated, and to provide suitable work and supervision for the adult feeble minded who are not able to protect and support themselves at large as law abiding citizens, to the end that these unfortunates may be prevented from reproducing their kind and society relieved of the heavy economic and moral losses arising from the existence at large of these unfortunate persons. (Id. sec. 2.)

Art. 232c. Board of managers; qualifications; compensation; authority; erection of buildings; superintendent; employés.—The Colony for the Feeble Minded shall be under the control and management of a board of five managers, two ex-officio members and three to be appointed by the Governor, with the advice and consent of the Senate. The ex-officio members shall be the State Superintendent of Public Instruction and the ranking professor of child psychology in the department of education of the University of Texas. Of the managers first appointed by the Governor, one shall hold office until February 1, 1917, one until February 1, 1919, and one until February 21, 1921. All subsequent appointments, except to fill vacancies, shall be for a term of six years. Appointments to fill vacancies shall be for the remainder of the unexpired term.

The members of said board shall be public spirited citizens interested in measures of social betterment, one of whom shall be a physician, and at least one of whom shall

be a woman. Each member of the board, except the ex-officio members, shall receive five dollars per day while engaged in the performance of his duties as such member, and all members shall be entitled to their necessary traveling expenses, to be paid out of the funds appropriated for the support of the colony, when properly itemized and approved by the board.

The said board of managers shall have authority to purchase or receive as gift such lands as may be needed, and shall also have authority, and it shall be their duty, to advertise, if necessary, for plans and specifications for the buildings to be erected, and to contract for the erection of the same, requiring the contractor to furnish bond for the erection of said buildings in accordance with the contract.

The board of managers shall employ a superintendent and fix his salary and his duties, and for cause deemed sufficient by the board, may, after giving him an opportunity to be heard, remove him. The board shall also determine the number and fix the salary of other officers and employés connected with the colony, but the power to appoint and remove from the subordinate positions is vested in the superintendent, upon whom the responsibility for the details of management is placed. The superintendent shall be a man of education, with training and experience in the work of institutions of this kind. (Id. sec. 3.)

Art. 232d. Accommodations for inmates.—In carrying out the provisions of this Act the board of managers shall provide accommodations for only such number of inmates from year to year as can be advantageously cared for with the appropriations granted for that year, giving preference, first, to girls and women of child bearing age, and to those of both sexes who are most likely to profit by the special education and training. (Id. sec. 4.)

Art. 232e. Rules and regulations.—The detailed manner and condition of admission, transmittal and dismissal shall be provided by the board of managers, subject to the provisions of this Act. (Id. sec. 5.)

Art. 232f. Expenses of inmates to be paid by parents or guardians.—In all cases in which the parent or guardian of a feeble minded person is financially able to pay the expenses of support and [training in the colony, in whole or in part, he shall be required to do so, but in all other cases there shall be no fees or charges.] (Id. sec. 6.)

The words in brackets do not appear in the session laws as published, but are in the enrolled bill.

Art. 232g. Feeble minded persons defined.—A feeble minded child, as defined in this Act, is one of such feeble mental or moral powers as to be unable to profit by the ordinary methods of education as employed in the common schools, and a feeble minded adult is one who is unable under ordinary circumstances to protect and support himself as a law abiding citizen because of lack of mental power. (Id. sec. 7.)

CHAPTER FOUR

STATE HOME FOR LEPERS

See arts. 232½-232½f, post.

Art. 232½. Commission to select site; report; location and other requirements; repeal; compensation of commissioners.—The Governor of Texas shall as soon as practical after the taking effect of this bill appoint a commission to consist of the State Health Officer and two other citizens of the State of Texas, for the purpose of selecting a site for the erection of an institution to be known as the State Home for Lepers. Such commission shall report within thirty days to the Governor their selection, which selection shall consist of not less than one hundred acres of land, which said site shall not be less than two miles distant from any town or city within this State and not less than one mile distant from any residence; said site shall upon selection by the commission as aforesaid be purchased for the State and shall cost not to exceed $10,000.00. The Land Commissioner is hereby authorized upon request of the board, to award to the State any school land for the location of this home they may select, at the price fixed upon it by the land office; provided nothing herein shall be construed as repealing any law now in force except as herein provided. Said members of said commission shall each be paid five dollars per day and necessary expenses for the time actually consumed in the service required by this Section of this law. (Acts 1917, 1st C. S., ch. 24, sec. 1.)

Art. 232½a. Erection of buildings; cost; equipment.—As soon as practicable after the selection and purchase of such site, the said commission shall designate the exact location of the ground, and the character and plans for all necessary buildings, including a home for the superintendent of such Home for Lepers, and an administration building. The inmates buildings to be on the cottage plan, and shall have plans and specifications made therefor and shall advertise for thirty days in at least one newspaper of general circulation in this State and one newspaper published in the county where such home is to be located, for bids for the erection of such buildings, and shall award the contract to the lowest and best bidder, provided the total amount of said bid for all the buildings shall not exceed one Twenty-five thousand dollars; and the said commission shall also purchase all necessary furniture and equipment for said buildings, not to exceed in cost fifteen thousand dollars. (Id. sec. 2.)

Art. 232½b. Expenditures, how made.—All payments of money required under the provisions of Section 1 [Art. 232½] and Section 2 [Art. 232½a] of this Act shall be made by warrant on the State Treasury drawn by the State Comptroller based on vouchers signed by the commission provided for in Section 1 and approved by the Governor. (Id. sec. 3.)

Art. 232½c. Isolation, confinement, and treatment of lepers.—Any person within this State found to be suffering with the disease of leprosy shall be isolated and removed to said State Home for Lepers, upon certificate of the county health officer of the county where such leper may be and of the State Health Officer to the effect that such person is so suffering.

Upon the certificate of said health Officer and county health officer as herein provided for, the county judge of the county where such leper may be shall issue his warrant

commanding the sheriff of such county to seize such leper and convey him to the Home for Lepers as herein provided. All necessary expenses for conveying such leper to the Home for Lepers shall be paid for by the county wherein said Leper may be found.

Such person after having been conveyed to the Home for Lepers, as herein provided for, shall be confined therein and cared for and treated at the expense of this State during life, unless sooner discharged on account of being cured. Provided, however, that any person found suffering from leprosy within this State, who shall not have been a resident of this State for a period of one year, shall be returned to the State from whence he came, and the expense of such return shall be paid by the county in which such leper is found. (Id. sec. 4.)

Art. 232½d. Superintendent; qualifications; salary; powers and duties.—As soon as such Home for Lepers is completed and ready for occupancy, and every four years thereafter, the Governor shall appoint a superintendent for the State Home for Lepers, who shall be a graduate of a reputable school of medicine, who shall be authorized to practice medicine within this State, and he shall receive a salary of Three Thousand Dollars per annum; said superintendent shall hold office for four years after his appointment and until his successor qualifies, which superintendent shall employ such nurses, assistants and servants as shall be necessary, and shall pay for same such salaries as may be fixed by such superintendent and approved by the Governor; provided that said superintendent shall live at said State Home for Lepers and be in active management and control of said Home subject to the limitations of this Act, and shall not engage in private practice. (Id. sec. 5.)

Art. 232½e. Disbursements, how made.—All payments of money necessary under the provisions of Section 5 of this Act [Art. 232½d] shall be made by Warrant on the State Treasury drawn by the Comptroller based upon vouchers signed by the superintendent of the Home for Lepers and approved by the Governor. (Id. sec. 6.)

For section 7 of this act see post, Penal Code, art. 695e.

Art. 232½f. Appropriation.—There is hereby appropriated from the general revenue of this State the sum of twenty-five thousand dollars or as much thereof as may be necessary for the purpose of carrying into effect this Act, and to purchase such site and erect and equip such building as herein provided for, and for the maintenance of such institution for the fiscal year ending August 31, 1918, and August 31, 1919. (Id. sec. 8.)

Section 9 repeals all conflicting laws.

Arts. 233-239. [Superseded.]

CHAPTER FIVE

STATE TUBERCULOSIS SANITORIUM

Art. 239a. Sanitorium established, and name.—That there shall be maintained at Carlsbad, Texas, a sanitorium for the treatment of persons suffering with tuberculosis; said institution shall be known as the state tuberculosis sanitorium. The land on which said sanitorium is located, including that which is now owned by the state, shall not exceed one thousand acres. (Acts 1911, p. 136, sec. 1, amended Acts 1913, p. 120, sec. 1.)

Art. 239b. Anti-tuberculosis commission, how constituted; expenses and compensation.—The governor of the state of Texas shall appoint four citizens commissioners, who with the governor, and the state health officer as chairman, shall constitute the anti-tuberculosis commission of Texas. The four citizens of said commission shall receive for their services their actual expenses incurred and the sum of $5.00 per day while attending to their duties under the law as said commissioners. (Id. sec. 2, amended Acts 1913, p. 120, sec. 1.)

Art. 239c. Meetings of commission; land to be selected; vice-chairman and superintendent; duties.—The said commissioners, together with the governor and chairman, shall meet once every three months, unless called more often by the chairman. They shall accept title to any land selected by them in the name of the state for the use and benefit of the state, but not until the attorney general shall first have approved the title of the land so selected. Said commissioners shall elect one of their number vice-chairman, who shall approve all accounts of the said state tuberculosis sanitorium, and the said superintendent of said sanitorium may under the direction of the state health officer, determine whether any person is entitled to admission into said sanitorium, as provided under the laws regulating the same. (Id. sec. 3, amended Acts 1913, p. 120, sec. 1.)

Section 2 of Acts 1913, p. 120, repeals sec. 6 of Acts 1911, p. 136.

Art. 239d. Duties and powers of commissioners.—The duties and powers of said commissioners shall be such as is now provided in title 9 of the Revised Statutes of Texas, where it does not conflict with this Act. The said commissioners shall also hand in quarterly and annual reports of their work and of the status of said institutions under their control to the state health officer. (Id. sec. 4.)

Art. 239e. Support and maintenance.—The support and maintenance of said institutions shall be made by appropriation for that purpose. (Id. sec. 5.)

Art. 239f. Separate colonies; right of applicant.—There shall be constructed one colony on each separate piece of ground so selected, including the necessary buildings therefor; provided, that if any of said sanitoriums to which an applicant who has complied with the provisions of this Act applies for admission are full of patients, then such applicant shall have the right to furnish his own tent, bedding and enter said sanitorium by paying the regular charges for board and treatment and complying, in every respect, with the law, rules and regulations governing said sanitorium. (Id. sec. 7.)

Art. 239g. Board of control, and powers and duties; construction and equipment of colonies.—The commissioners so selected, together with the governor and the state health officer as before mentioned, shall constitute the board of control for the tuberculosis colonies of Texas, and shall have full power to act in their capacity as hereinbefore provided; and they shall advertise for plans and specifications for said colonies. When plans have been accepted, the board shall contract for the construction and equip-

ment of said colonies, according to plans and specifications as adopted, to the lowest responsible bidder, who shall give good and sufficient bond for the completion and equipment of said plant according to the contract; provided, that the total cost of land and buildings, with all necessary equipment and improvements, shall not exceed one hundred thousand ($100,000.00) dollars, and that said plants when so completed and equipped, shall each have a capacity of sixty patients. (Id. sec. 8.)

Art. 239h. Appropriation.—That there shall be appropriated out of the general revenue of the state, not otherwise appropriated, the sum of one hundred thousand ($100,000.00) dollars for the purchase of the land for said two colony plants, and toward the buildings and such other improvements and fixtures as may be necessary to complete them, equip and establish said colony plants. (Id. sec. 9.)

Art. 239i. Commission, when appointed; appropriation.—Said commission shall be appointed immediately upon the passage of this Act, and for the purpose of defraying the operating expenses of said institutions for the years 1911 and 1912 there is hereby appropriated out of the general revenue of this state, not otherwise appropriated, the sum of forty thousand ($40,000.00) dollars. (Id. sec. 10.)

Art. 239j. Board not to acquire property used for treatment of tuberculosis.—It is especially provided by this Act that the board hereby created shall not buy nor acquire any lands, tents, tenements or houses or any other property now being used or heretofore used for the treatment of tuberculosis by any firm, individual or corporation. (Id. sec. 11.)

Art. 239k. Who may be admitted.—Persons afflicted with tuberculosis who shall have been citizens of this state and of the county from which he or she comes, at the time of filing of their application with the county judge, as hereinafter provided, shall be admitted to said institutions under this Act. (Id. sec. 12.)

Art. 239l. Citizen defined.—A citizen of this state under the provisions of this Act is defined to be any person who has actually resided therein with the bona fide intention of being a citizen thereof for a period of twelve months next preceding the date of the application for admission to said sanitorium. (Id. sec. 12½.)

Art. 239m. Patients, how classified; indigent public patients supported by state; non-indigent public patients maintained by state, but reimbursement; suit; duties of county attorney and superintendent; private patients, how admitted and maintained.—Patients admitted to said institutions shall be of three classes, to wit:

1. Indigent public patients.
2. Non-indigent public patients.
3. Private patients.

Indigent public patients are those who possess no property of any kind nor have any one legally responsible for their support, and who are unable to reimburse the state This class shall be supported entirely at the expense of the state.

Non-indigent public patients are those who possess some property out of which the state may be reimbursed, or who have some one legally liable for their support. This class shall be kept and maintained at the expense of the state, as in the first instance, but in such case the state shall have the right to be reimbursed for the support of such patients, and the claim of the state shall constitute a valid lien against any property of any such patient, or, in case he has a guardian, against any property of his which is in the possession of said guardian, or against the person or persons who may be legally liable for his support, and financially able to contribute as herein provided; and such claim may be collected by suit or other proceedings in the name of the state of Texas by the county attorney of the county from which said patient is sent, against such patient, his guardian or the person or persons liable for his support; and the venue of any such suit is hereby fixed to be in the county from which such patient was sent. Such suit or proceedings shall be instituted upon the request, in writing, of the superintendent of said colony, accompanied by a certificate as to the amount due the state, which in no case shall exceed five dollars per week for the board of such patient, and together with the necessary cost incident to his transportation to said colony. In all suits or proceedings, the certificate of the superintendent shall be sufficient evidence of the amount due the state for the support of such patient. It shall be the duty of the county attorney, upon such request being made, to institute and conduct such proceedings, and for which he shall be entitled to a commission of ten (10) per cent of the amount collected. All moneys so collected, less the commission above provided for, shall be by the county attorney paid to the superintendent of said colony, who shall receive and receipt for the same, and shall use the same for the maintenance and improvement of said property.

Private patients may be admitted into said colonies upon application of parent or guardian or friend, under such regulations as the board of managers may prescribe, not in conflict with this Act. Such patients shall be kept and maintained at the colony at their own expense for the board and care of such patients. The board may make special contracts for private patients at a rate not to exceed ten dollars per week, payable in advance. All moneys collected shall be paid to the superintendent of such institution, who shall account for the same and for its use in the maintenance and improvement of said colony at which the same is received. (Id. sec. 13.)

Art. 239n. Application for admission; requisites.—The parent, guardian or friend of any patient seeking admission may make application in writing and under oath to the county judge of the county wherein such patient resides, for admission of said patient into said state colony, which application shall show:

1. The name of the patient.
2. The sex.
3. Age and nativity.
4. Whether possessing any property; if so, what, and the estimated value thereof, and where located.
5. Whether the patient has any one legally liable for his support; if so, whom; what

property possessed by such person; the estimated value thereof, and where located.

6. Residence of patient for two years next preceding the date of application.

7. Occupation, trade or employment.

8. Parent or parents, if living, or guardian, if any.

9. Name of husband or wife, if any.

10. Children, if any; number, age and sex.

11. Relatives similarly affected, insane, invalid, consumptive, and such other information as may be required by the board of said institution. (Id. sec. 14.)

Art. 239o. Certificates to accompany application; requisites.—Said application shall be accompanied by the certificate of a reputable practicing physician, or, in the case of indigent patients, by a certificate from the county physician, stating that he has thoroughly examined the person for whose admission application has been made, and that such person is suffering from tuberculosis, and the duration of said disease, if known, and the accompanying bodily disorders; provided, that no person afflicted with any contagious, infectious or transmissible disease, other than tuberculosis, shall be admitted. It shall be the duty of the county judge to certify that the physician making the certificate is a reputable physician, actively engaged in the practice of his profession, and has complied with the laws of this state governing licenses to physicians, to practice medicine. (Id. sec. 15.)

Art. 239p. Duty of county judge if not satisfied; duty if applicant appears entitled; where applicant appears not indigent; duties and powers of state health officer.—If the county judge is not satisfied as to the showing made in said application and certificate, or either, he may subpœna witnesses and examine them under oath touching such matters, and if it be made to appear to the county judge that such person is entitled to admission into the colonies under the provisions of this Act he shall forward an application for admission, together with the application hereinbefore described, to the state health officer, and the state health officer shall receive the same, alphabetically index it and file in his office, where it shall become a permanent record. If the county judge shall find that the person for whom application is made is in fact not indigent, then he shall make application, as before provided, for him as a non-indigent patient, and in either or both cases, if the county judge shall determine not to make such application for any person, then such person may make an application direct to the state health officer, and if in the judgment and opinion of the state health officer such patient is entitled to admission into the state colony for tuberculosis, then he shall order him to be admitted upon his own motion, which order must be by him written, signed and filed with the superintendent of the institution into which such patient is admitted. (Id. sec. 16.)

Art. 239q. No discrimination between patients; rewards prohibited.—No patient in any state colony shall be discriminated against by virtue of the fact that he is an indigent, non-indigent or private patient, but they shall all be treated alike, given equal facilities, equal attention and equal treatment, and no patient in any such institution shall be permitted to give to any officer, servant, agent or employé in any such institution any tip, pay or reward of any character or kind whatever, and if such patient does so, and it is discovered, it shall be a cause for his expulsion from said colony, and the discharge of any servant accepting the same; and the board shall see that this provision is rigidly and drastically enforced. (Id. sec. 17.)

Art. 239r. Index of applications; patients admitted in order; accommodations for classes of patients.—The state health officer shall keep on file an alphabetical index of all applications of all patients, and patients shall be admitted according to their file number; reserving at all times not less than one-half the accommodations afforded at each colony for indigent consumptives, one-fourth of the accommodations for the non-indigent patients, and one-fourth for private or pay patients; subject, however, to the control and discretion of the board. (Id. sec. 18.)

Art. 239s. Clothing to be supplied patients; how paid for.—It shall be the duty of the county judge to see that each patient admitted to the colony is supplied with three full suits of underwear and one neat top suit, all being such as may be prescribed by the state health officer; and the expenses of the clothing and transportation of indigent public patients shall be paid by the county from which the patient is sent. And if any patient is admitted directly upon the certificate of the state health officer as an indigent patient as provided hereinbefore, then the state health officer shall supply such patient with such clothing, and his certificate thereof shall be full evidence that the same was so supplied and of the value thereof, and the county from which the said patient came shall be chargeable with said clothes, and shall pay the same upon presentation of said certificate. Non-indigent public patients shall pay for their clothing and transportation themselves. (Id. sec. 19.)

Art. 239t. By-laws, rules and regulations; physicians and salaries; superintendents and employés.—It shall be the duty of the board of said colonies to prepare and adopt by-laws, rules and regulations for the government of the entire colonies, prescribing the duties of all officers and employés, and for enforcing the necessary discipline and restraint of all patients. The governor shall appoint for each of said colonies a regularly licensed physician, who shall receive a salary of two thousand ($2,000.00) dollars per year; and in addition to such physician, the board shall supply each colony with the necessary cooks, waiters, yard men, nurses, etc., for the operation and maintenance of such colonies. Each physician so appointed shall be superintendent of the institution under his control, and shall have the power to remove at will, and without assigning any cause whatever, any person employed in any colony over which he has such authority. (Id. sec. 20.)

As to salary of superintendent of sanitorium at Carlsbad, see post, art. 7085b.

Art. 239u. Purpose of act; offices on good behavior; civil service.—The purpose of this bill being to bring about the best results for those unfortunate people who are afflicted with this disease, and for the general welfare of the state, it is hereby expressed

that it is the desire of this legislature that the physicians and the members of the board whose appointments are herein provided for, they, and each of them, shall be permitted to hold their respective offices during the term of their good behavior, and that they be removed only for cause, which cause shall be determined by the board; and that this board, the physicians and superintendents herein provided for, shall be under, as near as possible, the rule of civil service, to the end that they may be taken entirely out of politics. (Id. sec. 21.)

Art. 239v. Fraternal societies may erect and maintain buildings for accommodation of their members on state sanitorium grounds; expense of maintenance; inmates; unoccupied quarters may be used by state.—The Board of Control of the State Tuberculosis Sanitorium at Carlsbad, Texas, be and they are hereby authorized and empowered, on request of charitable fraternities or societies, in this State, such as Free Masons, Odd Fellows, Knights of Pythias and the like, acting through their properly authorized officers, boards or committees, to permit the erection, furnishing and maintenance by such fraternities or societies upon the grounds of said Sanitorium, of dormitories, cottages, tents or other sleeping and housing accommodations as may be desired by any such fraternity or society, for the proper and comfortable housing, sleeping, treatment and caring for any member or members of such fraternity or society or for any members of their families or for the widows and children of deceased members of such fraternity or society, who may be afflicted with tuberculosis and which accommodations so erected shall be reserved for the preferential use of such members and members of their families and of the widows and children of deceased members of the respective fraternity or society so erecting, furnishing and maintaining such accommodations hereunder; provided that the State shall be at no expense whatever in the erection, furnishing or maintenance of such accommodations, and provided the charity fraternity or society entering a patient or patients shall provide such prorata part for the maintenance of such patient or patients as may be found just and equitable pending the next succeeding appropriation to be made by the Legislature of Texas for the maintenance of said Tuberculosis Sanitorium, and provided further that children under this section shall mean any person, under twenty-one years of age, the child of a deceased member of such fraternity or society, and further provided that such accommodations or any part of them not being used nor required by those entitled to such preference, as hereinbefore provided, may be used and occupied by other patients in said sanitorium, at the discretion of the Superintendent thereof and without any charge therefor against the State. (Sec. 22.) (Acts 1917, ch. 186, sec. 1.)

This act amends Acts 1911, c. 77, as amended by Act March 31, 1913, by adding sections 22, 23, and 24.

Art. 239w. Plan and location of buildings.—All matters pertaining to the location, construction, style or character of buildings, term of their existence and all other questions arising in connection with the granting of the permission to erect and maintain the accommodations herein contemplated, shall be arranged and agreed upon in writing by and between the board of control of said sanitorium, on the part of the State of Texas, and the properly authorized officers, board or committee of each respective charitable fraternity or society and such written agreement in each case shall be recorded at length upon the minutes of said board of control and be duly reported to the State health officer in the next succeeding quarterly or annual report, accompanied with all documents pertaining to the matter, or full copies thereof. (Sec. 23.) (Id.)

Art. 239x. Classification of patients and rules of admission, etc.—The members of such charitable fraternities or societies, members of their families and the widows and children of deceased members thereof, shall be classified as indigent public patients, nonindigent public patients or private patients, according to the facts, the same as other patients of said sanitorium are classified and shall be admitted, maintained, cared for and treated in said sanitorium upon the same terms and conditions and under the same regulation as all other patients therein, save and except that they shall at all times have the preference right to occupy the accommodations erected and maintained hereunder by their several and respective fraternities or societies, when not already filled with others having the same preferential right. (Sec. 24.) (Id.)

CHAPTER SIX

STATE HOSPITAL FOR CRIPPLED AND DEFORMED CHILDREN

Art. 239½. Hospital established; gift to state accepted; name; inmates.—That there is hereby established a State Hospital for crippled and deformed children. The gift to the State by the Texas Public Health Association of the Walter Colquitt Memorial Children's Hospital, also known as the children's ward of the John Sealy Hospital, on the premises of the University of Texas, at Galveston, Texas, is hereby accepted by the State, and this hospital shall be the State Hospital for crippled and deformed children. The term "crippled or deformed children," as used in this Act shall include children suffering from disease from which they may become crippled or deformed. (Acts 1915, ch. 18, sec. 1.)

Art. 239½a. Management and control; lease of building; what children admitted.—Said hospital shall be under the control and management of the Board of Regents of the University of Texas and said board is hereby authorized and empowered to lease said hospital building to the city of Galveston in the same manner as the John Sealy Hospital buildings, and to require that provision be made in such hospital for the care and treatment of crippled or deformed children, who may be benefited or cured by treatment in said hospital, and for such other cases or patients as may be required in the interest of scientific study by the faculty and students of the Medical Department of the University of Texas.

Said Board of Regents or the board of managers of said hospital, may also receive in said hospital any sick or afflicted children

who are not crippled or deformed, and who are not suffering from any communicable diseases, provided that the beds occupied by such children are not needed for the use of crippled or deformed children. (Id. sec. 2.)

Art. 2391/2b. Rules and regulations.—The said Board of Regents or board of managers of said hospital shall adopt such rules and regulations as said boards may deem proper and necessary for the admission, discharge, care and treatment of such children. The said Board of Regents or the board of managers of said hospital may require the parents or guardians of patients, when able to do so and otherwise the home counties or cities of such patients, to pay all or part of the expense of the care and treatment of patients. And said boards may refuse to admit to said hospital as patients any except crippled or deformed children. (Id. sec. 3.)

Art. 2391/2c. Appropriations; use and expenditure.—The Legislature shall make suitable provision in the general appropriation bill, or otherwise to pay for the proper care and treatment of children afflicted with surgical tuberculosis, and the Board of Regents or board of managers of said hospital shall give free care and treatment to such children to the extent of the appropriation therefor. Said Board of Regents are also authorized to accept donations for the support of crippled or deformed patients and for the improvement of the hospital and building. (Id. sec. 4.)

TITLE 11

ATTACHMENT AND GARNISHMENT

CHAPTER ONE

ATTACHMENT

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

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

1. That the defendant is justly indebted to the plaintiff and the amount of the demand; and,

2. That the defendant is not a resident of the state, or is a foreign corporation, or is acting as such; or

3. That he is about to remove permanently out of the state, and has refused to pay or secure the debt due the plaintiff; or

4. That he secretes himself so that the ordinary process of law can not be served on him; or

5. That he has secreted his property for the purpose of defrauding his creditors; or

6. That he is about to secrete his property for the purpose of defrauding his creditors; or

7. That he is about to remove his property out of the state, without leaving sufficient remaining for the payment of his debts; or

8. That he is about to remove his property, or a part thereof, out of the county where the suit is brought, with intent to defraud his creditors; or

9. That he has disposed of his property, in whole or in part, with intent to defraud his creditors; or

10. That he is about to dispose of his property with intent to defraud his creditors; or

11. That he is about to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors; or

12. That the debt is due for property obtained under false pretenses. (Acts 1863, p. 37; P. D. 142.)

Smith v. Dye, 51 S. W. 858; Starr v. Taylor, 56 S. W. 543; Davis v. Sherrill, 113 S. W. 556; Simon v. Temple Lumber Co., 146 S. W. 592; Patterson v. McMinn, 152 S. W. 223; Arnold v. Pike, 191 S. W. 207; Stringfellow v. Patterson, 192 S. W. 555; Moore v. Belt, 206 S. W. 225.

Art. 241. (187) (153) What facts must further appear.—The affidavit shall further state—

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

2. That the plaintiff will probably lose his debt unless such attachment is issued. (Id.; P. D. 142.)

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

Taylor v. Fryar, 44 S. W. 183; Rabb v. White, 45 S. W. 850.

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

Gimbel v. Gomprecht, 35 S. W. 470; Taylor v. Fryar, 44 S. W. 183; Rabb v. White, 45 S. W. 850; Pioneer Savings & L. Co. v. Peck, 49 S. W. 160; Kildare Lbr. Co. v. Atlanta Bk., 41 S. W. 64; Green v. Hoppe, 175 S. W. 1117.

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

First Nat. Bk. v. Wallace, 65 S. W. 392.

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

Art. 246. (192) (158) Form of bond.—The following form of bond may be used:

"The State of Texas,

"County of ——

"We, the undersigned, A B, ——— as principal, and ——— and ——— as sureties, acknowledge ourselves bound to pay to C D the sum of ——— dollars, conditioned that the above bound A B, plaintiff in attachment against the said C D, defendant, will

prosecute his said suit to effect, and that he will pay all such damages and costs as shall be adjudged against him for wrongfully suing out such attachment. Witness our hands this ——— day of ——— 19—

"A B,
"E F,
"G H."

(Acts 1848, p. 65; P. D. 163.)
First Nat. Bk. v. Wallace. 65 S. W. 392.

Art. 247. (193) (159) Attachment abated for want of affidavit or bond.—Every original attachment issued without affidavit and bond, as herein provided, shall be abated on motion of the defendant; but such affidavit and bond shall not be void for want of form, provided they contain all essential matters. (Id.; P. D. 147, 148.)

Art. 247a. Attachments in actions based on unliquidated demands—Fixing amount of bond.—Provided that nothing in this chapter shall prevent the issuance of attachments in suits against persons, copartnerships, associations or corporations upon whom personal service cannot be obtained within this state, founded in tort or upon demands which are unliquidated; but where the demand is unliquidated the amount of the bond to be made by the plaintiff shall be fixed by the judge or clerk of the court or by the justice of the peace issuing the attachment and the bond shall be made in the sum so fixed and upon the approval and filing of same the attachment shall issue as in other cases. (Acts 1913, S. S., p. 31, sec. 1.)

Art. 248. (194) (160) Upon execution of affidavit and bond, writ to issue instanter.—Upon the execution of such affidavit and bond, it shall be the duty of the judge or clerk, or justice of the peace, as the case may be, immediately to issue a writ of attachment, directed to the sheriff or any constable of any county where property of the defendant may be supposed to be, commanding him to attach so much of the property of the defendant as shall be sufficient to satisfy the demand of the plaintiff and the probable costs of the suit. (Act March 11, 1848; P. D. 145.)

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

Art. 250. (196) (162) Form of the writ.—The following form of writ may be issued:

"The State of Texas,

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

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

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

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

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

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

Chase v. York Co. Savings Bk., 36 S. W. 406; Kessler v. Halff, 51 S. W. 48; Needham v. Cooney, 173 S. W. 979.

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

Jones & Nixon v. First State Bank of Hamlin, 140 S. W. 116.

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

Ranken v. Jones, 53 S. W. 583.

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

See Art. 7769.

Art. 258. (204) (170) Replevy by the defendant.—At any time before judgment, should the property not have been previously claimed or sold, as provided in this chapter, the defendant may replevy the same, or any part thereof, by giving bond, with two or more good and sufficient sureties, to be approved by the officer who levied the writ, payable to the plaintiff, in double the amount of the plaintiff's debt, or, at the defendant's option, for the value of the property replevied, to be estimated by the officer, conditioned that, should the defendant be condemned in the action, he shall satisfy the judgment which may be rendered therein, or shall pay the estimated value of the property with lawful interest thereon, from the date of the bond. (P. D. 150.)

See Norvell, etc., Hdw. Co. v. Hall, etc., Mach. Wks., 91 S. W. 1092; Elrod Bros., etc., v. Rice, 99 S. W. 733; American Surety Co. of New York v. Stebbins, Lawson & Spraggins Co., 180 S. W. 101, L. R. A. 1916F, 583; Wells v. Cloud, 202 S. W. 331

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

Texarkana Clothing Co. v. Bisco, 40 S. W. 559; Parlin & Orendorff Co. v. Howard, 52 S. W. 631.

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

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

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

Texarkana Clothing Co. v. Bisco, 40 S. W. 559.

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

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

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

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

Art. 267. (213) (179) Attachment creates a lien.—The execution of the writ of attachment upon any property of the defendant subject thereto, unless the writ should be quashed or otherwise vacated, shall create a lien from the date of such levy on the real estate levied on and on such personal property as remains in the hands of the attaching officer, and on the proceeds of such personal property as may have been sold.

See Atkinson v. Witte, 54 S. W. 611; Rule v. Richards, 159 S. W. 386; Neville v. Miller, 171 S. W. 1109.

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

Hamill v. Samuels, 135 S. W. 746; Patterson v. McMinn, 152 S. W. 223; S. K. McCall Co. v. Page, 155 S. W. 655; Rule v. Richards, 159 S. W. 386; Jackson v. Lancaster, 199 S. W. 1179; Baker v. Pitluk & Meyer, 205 S. W. 982.

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

See Atkinson v. Witte, 54 S. W. 611; Wells v. Cloud, 202 S. W. 331.

Art. 270. (216) (182) Order of court when attachment quashed: pending appeal, property may be replevied.—Should the attachment be quashed or otherwise vacated by interlocutory judgment or order of the court, the court shall make the proper order making disposition of the property, or the proceeds of the sale thereof, if the same has been sold under order of the court directing that it be turned over to the defendant. But the property, or the proceeds of the sale thereof, if the same has not been replevied, shall remain in the hands of the offi-

cers pending the final disposition of the main case and until it shall be finally disposed of, or until the time for perfecting an appeal has elapsed and no appeal has been perfected, when said order disposing of the property shall be carried into effect; provided, that, pending the final disposition of the main case, the defendant shall have the right at any time to replevy the property in the same manner as is provided for in article 258 of this chapter; or if the property has been sold he may replevy the proceeds of such sale by giving a bond in double the amount of the money arising from such sale, with like conditions as are contained in article 258. And any replevy bond given in such case, whether before or after the quashing or vacating such attachment, shall be as valid and binding as if such attachment had never been quashed or vacated. (Acts 1891, p. 29.)

First State Bank of Hamlin v. Jones & Nixon, 139 S. W. 671; Jones & Nixon v. First State Bank of Hamlin, 140 S. W. 116.

CHAPTER TWO

GARNISHMENT

See Title "Insurance."

Art. 271. (217) (183) Writ of garnishment, who may issue and when.—The clerks of the district and county courts and justices of the peace may issue writs of garnishment, returnable to their respective courts, in the following cases:

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

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

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

See Wilson Hdw. Co. v. Anderson Knife & Bar Co., 54 S. W. 928; Sullivan & Co. v. King, 80 S. W. 1048; Masterson v. Keller, 89 S. W. 803; Smith v. City Nat. Bank of Wichita Falls, 140 S. W. 1145; Nesom v. City Nat. Bank, 174 S. W. 715; National Bank of Commerce of Amarillo v. A. Walker Brokerage Co., 198 S. W. 174; Fannin County Nat. Bank v. Gross, 200 S. W. 187; Burrow-Jones-Dyer Shoe Co. v. Gerlach Mercantile Co., 200 S. W. 250; Four Acre Oil Co. v. National Bank of Commerce, 206 S. W. 711.

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

See Masterson v. Keller, 89 S. W. 803; National Bank of Commerce v. A. Walker Brokerage Co., 198 S. W. 174.

Art. 273. (219) (185) Application for the writ, etc.—Before the issuance of the writ of garnishment, the plaintiff shall make application therefor in writing, under oath, signed by him, stating the facts authorizing the issuance of the writ, and that the plaintiff has reason to believe, and does believe, that the garnishee, stating his name and residence, is indebted to the defendant, or that he has in his hands effects belonging to the defendant, or that the garnishee is an incorporated or joint stock company, and that the defendant is the owner of shares in such company or has an interest therein.

Harrington v. Edrington, 38 S. W. 246; Godfrey v. Newly, 39 S. W. 594; Smith v. Wallis, 45 S. W. 820; Holloway Seed Co. v. City Nat. Bk., 47 S. W. 77; Wilson Hdw. Co. v. Anderson Knife & Bar Co., 54 S. W. 928; Lash v. Morris Co. Bk., 54 S. W. 806; Underwood v. First Nat. Bk. of Honey Grove, 62 S. W. 943; First Nat. Bk. v. Brown, 92 S. W. 1052; Modern Dairy & Creamery Co. v. Blanke & Hauk Supply Co., 116 S. W. 154; McClung v. Watson, 165 S. W. 532; C. E. Harris & Co. v. C. B. Cozart Grain Co., 178 S. W. 733; Freeman v. Port Arthur Rice & Irrigation Co., 188 S. W. 444; National Bank of Commerce v. A. Walker Brokerage Co., 198 S. W. 174; Four Acre Oil Co. v. National Bank of Commerce, 206 S. W. 711.

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

See Planters & Mechanics Bank v. Floeck, 43 S. W. 589; Holloway Seed Co. v. City Nat. Bk., 47 S. W. 78 and 96; Lash v. Morris Co. Bk., 54 S. W. 806; Gallagher v. Pugh, 66 S. W. 118; Gilbert Book Co. v. Pye, 95 S. W. 8; McClung v. Watson, 165 S. W. 532; Fannin County Nat. Bank v. Gross, 200 S. W. 187.

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

Planters, etc., Bk. v. Floeck, 43 S. W. 589; Le Tulle Mer. Co. v. Markham, etc., Co., 94 S. W. 416; Jones Hardware & Furniture Co. v. Gunter, 184 S. W. 342.

Art. 276. (222) (188) Form of writ.—The following form of writ may be used:

"The State of Texas,

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

"Whereas, in the ——— court of ——— county [if a justice's court, state also the number of the precinct], in a certain cause

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

Holloway Seed Co. v. City Nat. Bk., 47 S. W. 78; Gallagher v. Pugh, 66 S. W. 118; Jones Hardware & Furniture Co. v. Gunter, 184 S. W. 342.

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

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

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

See Plowman v. Easton, 39 S. W. 171; Planters, etc., Bk. v. Floeck, 43 S. W. 589; Seinsheimer v. Flanagan, 44 S. W. 30; McCoslin v. David, 54 S. W. 404; Tinsley v. Ardrey, 64 S. W. 803; Sullivan & Co. v. King, 80 S. W. 1048; Fleming, etc., v. Pye, 95 S. W. 594; Battle & McKinney v. White, 124 S. W. 216; Davis v. McFall, 168 S. W. 453; Army Bank of Ft. Sam Houston v. Sunset Wood Co., 206 S. W. 222.

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

See Holloway Seed Co. v. Bk., 47 S. W. 78.

Art. 281. (227) (193) Garnishee to be discharged on his answer, when.—Should it appear from the answer of the garnishee that he is not indebted to the defendant, and was not so indebted when the writ of garnishment was served on him, and that he has not in his possession any effects of the defendant and had not when the writ was served, and when the garnishee is an incorporated or joint stock company in which the defendant is alleged to be the owner of any shares of stock or interested therein, if it shall further appear from such answer that the defendant is not and was not, when the writ was served, the owner of any of such shares, or interested in such company, and should the answer of the garnishee not be controverted as hereinafter provided, the court shall enter judgment discharging the garnishee.

See Planters, etc., Bk. v. Floeck, 43 S. W. 589; Bevil v. Trotti, 141 S. W. 287; Jones Hardware & Furniture Co. v. Gunter, 184 S. W. 342.

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

See Lash v. Morris Co. Bk., 54 S. W. 808; Queen Ins. Co. v. Keller, 186 S. W. 359.

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

See Lash v. Morris Co. Bk., 54 S. W. 806; Gulf Nat. Bank v. Johnson, 177 S. W. 1000; General Bonding & Casualty Ins. Co. v. Lawson, 196 S. W. 346.

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

"The State of Texas,

"To the clerk of the district court, the county judge, clerk of the county court, or any notary public of ———— county, greeting:

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

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

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

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

"The State of Texas,

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

"Whereas, in a certain cause pending in the ———— court of ——— county [if a justice's court state the number of the precinct], wherein A B is plaintiff and C D is defendant, wherein the plaintiff claims of the said defendant the sum of ——— dollars, besides interest and costs of suit, a writ of garnishment was issued against E F of your county, which was duly served upon him on the —— day of ———, 19——, requiring him to answer thereto before the said court at its late term, and whereas the said garnishee has failed to answer as required by said writ, and whereas a commission has been issued by the said court and lodged in my hands, whereby I am commanded to summon the said E F before me to make such answer; therefore, you are hereby commanded forthwith to summon the said E F, if to be found within your county, to be and appear before me, at my office in ———, on the —— day of ———, 19——, then and there to answer upon oath what, if anything, he is indebted to the aforesaid C D, and was when the aforesaid writ of garnishment was so served upon him, and what effects, if any, of the said C D he has in his possession and had when the said writ was so served, and what other persons, if any, within his knowledge, are indebted to the said C D, or have effects belonging to him in their possession; and if the garnishee is an incorporated or joint stock company, in which the defendant is alleged to be the owner of shares, or interested therein, the writ shall proceed: And further, to answer what number of shares, if any, the said C D owns in such company and owned when the said writ was served, and what interest, if any, he has in such company, and had when the said writ was served.] Herein fail not, but of this writ make return forthwith."

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

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

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

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

Gay Ranch Co. v. Pemberton, 57 S. W. 71.

Art. 292. (238) (204) Proceedings on return of certificate of such refusal to answer.—Upon the return of such commission with the citation for the garnishee, and the return thereon, and the certificate of such failure or refusal of the garnishee to answer, as mentioned in the preceding article, it shall be lawful for the court at any time after judgment shall have been rendered against the defendant, and on or after default day, to render judgment against such garnishee for the full amount of such judgment against the defendant, with all accruing interest and

costs, unless the defendant shall have previously filed a full and complete answer to the writ, and shall have also shown some good and sufficient excuse for his failure to appear and answer before the officer holding such commission. (P. D. 167.)

McDowell v. Bell, 46 S. W. 400; Gay Ranch Co. v. Pemberton, 57 S. W. 71; Jones Hardware & Furniture Co. v. Gunter, 184 S. W. 342; General Bonding & Casualty Ins. Co. v. Lawson, 196 S. W. 346.

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

Plowman v. Easton, 39 S. W. 171; Planters, etc., Bk. v. Floeck, 43 S. W. 589; City of San Antonio v. Stevens, 126 S. W. 666; Waggoner v. Briggs, 166 S. W. 50; Sellers v. Puckett, 180 S. W. 639; Fannin County Nat. Bank v. Gross, 200 S. W. 187.

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

See Holloway Seed Co. v. City Nat. Bk., 47 S. W. 96; Houston Drug Co. v. Kirchain, 71 S. W. 608; Waggoner v. Briggs, 166 S. W. 50; Hall v. Nunn Electric Co., 183 S. W. 13.

Art. 295. (241) (207) Remedy when garnishee refuses to deliver effects found to be in his possession.—Should the garnishee be adjudged to have effects of the defendant in his possession, as provided in the preceding article, fail or refuse to deliver them to the sheriff or constable on such demand, the officer shall immediately make return of such failure or refusal, whereupon, on motion of the plaintiff, the garnishee shall be cited to show cause at the next term of the court why he should not be attached for contempt of court for such failure or refusal; and should the garnishee fail to show some good and sufficient excuse for such failure or refusal, he shall be fined for such contempt and imprisoned until he shall deliver such effects.

See Holloway Seed Co. v. Bk., 47 S. W. 96; Hall v. Nunn Electric Co., 183 S. W. 13.

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

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

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

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

See Blum v. Moore, 42 S. W. 856; Planters, etc., Bk. v. Floeck, 43 S. W. 589; Holloway Seed Co. v. City Nat. Bk., 47 S. W. 78; White v. San Miguel, 66 S. W. 311; Ferguson, etc., Dry Goods Co. v. Bank, 78 S. W. 265; American Surety Co. v. Bernstein, 105 S. W. 990; General Bonding & Casualty Ins. Co. v. Lawson, 196 S. W. 346; Fannin County Nat. Bank v. Gross, 200 S. W. 187.

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

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

See Holloway Seed Co. v. Bk., 47 S. W. 78; American Surety Co. v. Bernstein, 105 S. W. 990; General Bonding & Casualty Ins. Co. v. Lawson, 196 S. W. 346.

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

See Alamo F. Ins. Co. v. Hetherington, 39 S. W. 958; Jones v. Cummins, 43 S. W. 854; American Surety Co. v. Bernstein, 105 S. W. 990; General Bonding & Casualty Ins. Co. v. Lawson, 196 S. W. 346.

Art. 303. (249) (215) Case to be docketed and notice to issue.—It shall be the duty of the clerk of such court or the justice of the peace, as the case may be, on receiving such certified copies, to docket the case in the name of the plaintiff as plaintiff, and of the garnishee as defendant, and to issue a notice to the garnishee, stating that his answer has been so controverted, and that the issue between him and the plaintiff will stand for trial at the next term of court. (P. D. 164.)

American Surety Co. v. Bernstein, 105 S. W. 990; General Bonding & Casualty Ins. Co. v. Lawson, 196 S. W. 346.

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

American Surety Co. v. Bernstein, 105 S. W. 990; Robinson v. Belt, 151 S. W. 598; General Bonding & Casualty Ins. Co. v. Lawson, 196 S. W. 346.

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

American Surety Co. v. Bernstein, 105 S. W. 990; General Bonding & Casualty Ins. Co. v. Lawson, 196 S. W. 346.

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

Davidson v. Logeman Chair Co., 41 S. W. 824.

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

See Mayer v. Templeton, 53 S. W. 68; Reid v. Walsh, 63 S. W. 940; Eastham Bros. v. Blanchette, 94 S. W. 441; Webb v. Texas Christian University, 107 S. W. 86; Maury v. McDonald, 118 S. W. 812; City of San Antonio v. Stevens, 126 S. W. 666; McClung v. Watson, 165 S. W. 532; L. C. Malone Lumber Co. v. Davis Co., 181 S. W. 849; Stratton v. Westchester Fire Ins. Co. of New York, 182 S. W. 4.

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

TITLE 12

ATTORNEY AT LAW

Arts. 309-316. [Repealed by Acts 1919, ch. 38, sec. 10. See post, art. 317.]

Art. 317. (257) (222a) Board of examiners; number; qualifications; appointment; terms of office; oath.—From and after the taking effect of this Law, there shall be one Board of Examiners for the State of Texas. This Board shall consist of five lawyers, having the qualifications required of Members of the Supreme Court of the State. They shall be appointed by the Supreme Court and shall each hold office for a period of two years, and until his successor shall be appointed, and shall qualify. They shall be required to take the Constitutional Oath of Office. (Acts 1903, p. 60; Acts 1897, p. 17; Acts 1846, p. 245; Acts 1905, p. 150; Acts 1919, ch. 38, sec. 1.)

Acts 1919, ch. 38, amends article 317 of the Rev. Civil Stat. of 1911 to read as set forth in this article, and the 8 articles next following. Section 10 of this act repeals articles 309-316, 318-321, of the Rev. Civil Stat. of 1911.

Art. 317a. Duties of board; examinations; recommendations for licenses.—It shall be the duty of this Board, acting under the instructions of the Supreme Court, as hereinafter provided, to pass upon the eligibility of all candidates for examination for license to practice Law within this State, and to examine thoroughly such of these as may show themselves eligible therefor, as to their qualifications to practice Law. This Board shall not recommend any person for license to practice Law unless such person shall affirmatively show to the Board, in the manner to be prescribed by the Supreme Court, that he is of such moral character and of such capacity and attainment that it would be of advantage to the public, and particularly to any community in which he may follow his profession for him to be licensed. (Acts 1919, ch. 38, sec. 2.)

Art. 317b. Rules and regulations by Supreme Court; what to include.—The Supreme Court is hereby authorized and empowered to make any and all rules and regulations which, in its judgment, may be proper and expedient to govern eligibility for such examination, and the manner of conducting the same, covering, among other points, proper and effective guarantee to insure:

(a) Good moral character on the part of each candidate for license.

(b) Adequate pre-legal study and attainment.

(c) Adequate study of the Law for a period of at least two years, covering the course of study prescribed by the Supreme Court, or the equivalent of such course, before coming to the examination.

(d) The legal topics to be covered by such study and by the examination given.

(e) The time and place for holding the examinations, the manner of conducting same and the grades to be made by the candidates to entitle them to be licensed, provided that whenever as many as five applicants shall request the Board to conduct an examination in any particular town or city convenient to their place of residence, the examination of such applicants shall be conducted at such town or city at some suitable time, to be determined by the Board.

(f) Any other such matters as shall be desirable in order to make the issuance of a license to practice Law evidence of good character, and fair capacity and real attainment and proficiency in the knowledge of Law. (Id. sec. 3.)

Art. 317c. Fee for examination; disposition of.—The fee for such examination shall be fixed by the Supreme Court, not to exceed Twenty ($20.00) Dollars for each candidate, which shall be paid to the Clerk of the Supreme Court at the time the application for examination is made. The money thus obtained shall be used:

First: To pay all legitimate expenses incurred in holding the examination, and

Second: As compensation to the Members of the Board under such regulations as shall be agreed upon by the Board, or determined by the Supreme Court. (Id. sec. 4.)

Art. 317d. Removal of members of board.—The several examiners shall be subject to removal by the Supreme Court for incompetency, indifference, or inattention to duty. (Id. sec. 5.)

Art. 317e. Exemption of graduates of law schools.—It is hereby declared to be the duty of the Supreme Court, by General Order to that effect, to exempt graduates of such Law Schools as may be approved by the Supreme Court from taking any examination as to pre-legal or legal studies and attainments, but such graduates must, in all instances, furnish evidence as to moral character required of candidates; provided that every Law School in this State shall be approved for this purpose which maintains the following standards:

(a) Admission requirements of Law equivalent to successful completion of the four years' High School Course.

(b) A Law Curriculum extending over at least three scholastic years, with not less than ten hours' class room work in Law a week for each of the three classes respectively.

(c) Standards for credit based upon written examination satisfactory to the Supreme Court.

(d) A Law Library of not fewer than twenty-five (2500) hundred well selected Law Books. (Id. sec. 6.)

Art. 317f. Rules and regulations for admission of attorneys from other jurisdictions.—The Supreme Court shall make such rules and regulations as to admitting attorneys from other jurisdictions to practice Law in this State as it shall deem proper and just. All such attorneys must be required to furnish satisfactory proof as to good moral character. (Id. sec. 7.)

Art. 317ff. Certain licenses validated.—That all license to practice law in the courts of record of this State, heretofore issued by the clerk of the Supreme Court, purporting to have been issued under the provisions of Chapter 91 of the General Laws of the State of Texas passed by the Thirty-fourth Legislature at its regular session, and where the issuance of such license may not have been fully authorized under a strict construction of said Act, be and they are hereby validated, and that the holders thereof granted the same privileges of attorneys and councellors at law, as though such license had been fully warranted by said Act; provided, that nothing in this Act shall be construe[ct]ed as authorizing the clerk of the Supreme Court to issue other license under the provisions of Chapter 91 of the General Laws passed by the Thirty-fourth Legislature at its regular session until the applicant therefor shall comply with the provisions of this Act. (Acts 1918, 4th C. S., ch. 19, sec. 2.)

Section 1 of this act amended article 318 of the Rev. Civil Stat. 1911, which was repealed by Acts 1919, ch. 38, sec. 10. See ante, art. 317.

Art. 317g. Fee for issuing license.—The fee for issuing such license shall be One ($1.00) Dollar, to be paid to the clerk of the Supreme Court at the time the license is issued. Money thus received by the Clerk shall be deemed fees of office and must be applied as provided by Law as to such fees. (Acts 1919, ch. 38, sec. 8.)

Art. 317h. License to be issued only by Supreme Court.—No license to practice Law in this State shall be issued by any court or authority except by the Supreme Court of the State, under the provisions of this Act. (Id. sec. 9.)

Arts. 318-321. [Repealed by Acts 1919, ch. 38, sec. 10. See ante, art. 317.]

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

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

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

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

Art. 326. (264) (229) Shall be cited to show cause, etc., when.—If any district court observes any fraudulent or dishonorable conduct or malpractice by any attorney at law, or if complaint be made to the district court of such conduct or malpractice by a judge of any court, a practicing attorney, a county commissioner or justice of the peace,

such court shall order the attorney to be cited to show cause why his license shall not be suspended or revoked.

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

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

Art. 329. (267) (232) Trial, how conducted.—Upon the return of said citation executed, if the defendant appear and deny the charge, the cause shall be docketed for trial and conducted in the name of the state of Texas against the defendant, and the state shall be represented by the county or district attorney. A jury of twelve men shall be impaneled unless waived by the defendant, and the cause shall be tried in like manner as other cases.

See Gooch v. Parker, 41 S. W. 662.

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

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

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

See Blair v. Blanton, 54 S. W. 321; United States Fidelity & Guaranty Co. v. Huffmaster, 204 S. W. 337.

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

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

See post, art. 1734; McAllen v. Raphael, 96 S. W. 760; Marta v. S., 193 S. W. 323.

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

Hess v. Webb, 113 S. W. 618; State v. Murphy, 137 S. W. 708; Brasfield v. Young, 153 S. W. 180.

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

Hess v. Webb, 113 S. W. 618; State v. Murphy, 137 S. W. 708.

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

State v. Murphy, 137 S. W. 708.

TITLE 13

ATTORNEYS—DISTRICT AND COUNTY

CHAPTER ONE

DISTRICT ATTORNEYS

Art. 338. (275) (240) Legislature may provide for election of, etc.—The legislature may provide for the election of district attorneys in such districts as may be deemed

necessary; and they shall hold office for the term of two years and until their successors are qualified, and shall be commissioned by the governor. (Const., art. 5, sec. 21.)

Art. 339. (276) (241) What districts shall elect district attorneys.—The following judicial districts in the State shall each respectively, elect a district attorney, viz.: First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Twelfth, Thirteenth, Twentieth, Twenty-first, Twenty-second, Twenty-third, Twenty-fourth, Twenty-fifth, Twenty-seventh, Twenty-eighth, Twenty-ninth, Thirtieth, Thirty-first, Thirty-second, Thirty-third, Thirty-fourth, Thirty-fifth, Thirty-sixth, Thirty-seventh, Thirty-eighth, Thirty-ninth, Forty-sixth, Forty-seventh, Fiftieth and Fifty-first, also the Twenty-sixth and the Fifty-third districts combined, and the criminal district composed of Galveston and Harris Counties. (Acts 1901, p. 127; Acts 1915, ch. 151, sec. 1.)

See ante, art. 30.

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

Art. 340a. Salary and fees.—In any county having a population in excess of one hundred thousand inhabitants, according to the last census of the United States, and according to any United States Census which may hereafter be taken, the district attorney of such county shall receive a salary of $500.00 from the State of Texas, as provided in the Constitution of Texas, and all fees, commissions and perquisites earned by such office; provided, that the amount of such salary, fees, commissions and perquisites to be so received and retained by him shall not exceed the sum of $6,000.00 in any one year; and provided further, that all salaries, fees, commissions and perquisites so earned and received by such office in excess of $6,000.00 during each and every fiscal year shall be paid into the county treasury of said county in accordance with the terms and provisions of the maximum fee bill, except as to such portion of such excess as shall be used and expended in the payment of salaries to deputies, assistants and stenographers as hereinafter provided. (Acts 1917, ch. 64, sec. 1; Acts 1919, ch. 47, sec. 2.)

Art. 340b. Assistant district attorneys; stenographer; salaries.—Such district attorney, in connection with, and for the purpose of conducting his office in such county, shall be, and is, hereby authorized to appoint six assistant district attorneys, two of whom shall receive a salary not to exceed three thousand dollars per annum, and one of whom shall receive a salary not to exceed twenty-four hundred dollars per annum, and three of whom shall receive a salary not to exceed twenty-one hundred dollars per annum, all salaries payable monthly. He shall also be authorized to employ a stenographer, who shall receive a salary not to exceed fifteen hundred dollars per annum, payable monthly, and two investigators, who shall each receive a salary not to exceed fifteen hundred dollars per annum, payable monthly. The salaries of the assistants, deputies and stenographer and investigators above provided for shall be paid by said county by warrant drawn upon the general funds thereof. (Acts 1919, ch. 47, sec. 3.)

Art. 340c. Same subject; additional assistants and employés; salaries.—Should such district attorney be of the opinion that the number of deputies, assistants and stenographer above provided for are insufficient or inadequate for the proper investigation of crime and the efficient performance of the duties of said office, he may, with the written consent of the county judge of said county, to be spread upon the minutes of the commissioners' court, appoint such additional assistants and employés as may be so authorized by such county judge, such additional assistants and employés to receive salaries of not exceeding eighteen hundred dollars per annum each, to be paid monthly; provided, however, that if at any time the county judge shall be of opinion that such additional assistants and employés, or any of them, are not necessary he may, by written declaration spread upon the minutes of the commissioners' court, withdraw, amend or qualify his written authority previously given for the appointment of such additional assistants or employés, the same to become effective on the first day of the next succeeding month; provided however, that said county judge shall give to such district attorney ten days written notice of his intention to so amend or qualify such written authority. (Id. sec. 4.)

Art. 340d. Same subject; salaries; how paid.—The salaries for the additional assistants and employés as above provided for herein, shall be paid out of the excess fees collected by such district attorney and his office, which would otherwise go to said county, a detailed, itemized statement under oath of which he shall include in his annual report as provided to be made in the maximum fee bill; and in no event shall said county be liable for the salaries of such additional assistants or employés. (Id. sec. 5.)

Art. 340e. Same subject; oath of office; duties; removal.—The assistant district attorneys above provided for, when so appointed, shall take the oath of office, and be authorized to represent the State in any court or proceeding in which such district attorney is or shall be authorized to so represent the State, such authority to be exercised under the direction of said district attorney, and such assistants, deputies, stenographer and investigator, whether regular or additional, shall be subject to removal at the will of said district attorney. Each of said assistant district attorneys shall be authorized to perform any official act devolving upon or authorized to be performed by such district attorney in said county. (Id. sec. 6.)

Art. 340f. Same subject; counties to which act applies.—The provisions of this Act shall apply to every district attorney within the State of Texas within counties of a population of more than one hundred thousand, to be determined as above provided, whether said district attorney be of and for a judicial district called and known by number, or whether called and known as a criminal judicial district or whether of and for any court called or known as a criminal district court; and whether such district attorney be called and known as a district attorney, or a criminal district attorney, or the criminal district attorney of any named county or court. (Id. sec. 7.)

Art. 340g. Same subject; repeal.—All laws and parts of laws in conflict herewith are hereby repealed, whether referred to herein or not; provided, however, that this act is not intended, and shall not be considered or construed as repealing or affecting Chapter 121, Page 315, Acts of the Thirty-fifth Legislature, Regular Session, except in so far as it applies to the amount of fees to be retained by the Criminal District Attorney of Dallas County, Texas, and as to the amount and method of payment of salaries to the assistant criminal district attorneys, special assistants and stenographer employed in the office of the Criminal District Attorney of Dallas County, Texas, and Chapter 167 of the Acts of the regular session of the Thirty-fifth Legislature of the State of Texas, appearing on page 378 thereof, but shall be cumulative thereof; and provided further, that the same shall be cumulative of all laws not in conflict with the provisions hereof. (Id. sec. 8.)

See, also, Code of Criminal Procedure, arts. 97ggg, 97*lll*. See post, arts. 342-344b.

Art. 341. (278) (243) Failure to attend courts shall forfeit, etc.—When any district attorney shall fail to attend any term of the district court of any county in his district, the clerk of the district court of such county shall certify the fact of such failure under his official seal to the comptroller of public accounts, and, unless some satisfactory reason for such failure is shown to the comptroller, such district attorney shall receive no salary for the time that he has so failed to attend. (Acts May 13, 1846; P. D. 183.)

Art. 342. District attorney in certain districts shall appoint assistant; qualifications of appointee; bond and oath; powers and duties; tenure.—From and after the passage of this Act the district attorney shall appoint one assistant district attorney in districts in which there is situated a city of twenty-eight thousand population or over according to the United States census of 1910; provided the district attorney shall furnish data to the district judge of his district that he is in need of an assistant and that the district attorney is himself unable to attend to all of the duties required of him by law, and that it is necessary to the best interests of the State that an assistant district attorney be appointed. Every person so appointed shall be a qualified resident attorney of the district in which said appointment is made and shall give bond and take the oath of office required of district attorneys by this State, and shall have the power and authority to perform all the acts and duties of district attorneys under the law of this State, and said appointment shall be for such time as the district attorney shall deem best in the enforcement of the law, not to be less than one month. (Acts 1909, p. 94; Acts 1917, ch. 167, sec. 1.)

This act amends chapter 48, Acts regular session 31st Legislature 1909, so as to read as set forth above and in the two following articles. The act of 1909 was carried into the Revised Civil Statutes of 1911 as articles 342, 343, and 344.

Art. 343. Salary of assistant.—Said assistant district attorney shall be paid for the time of actual service rendered at the rate of the sum of $2500.00 per annum, by the Comptroller of the State of Texas, and said amounts to be paid in monthly payments, upon certificates of district clerk and district judge of said district, that said assistant district attorney has performed his duties and is entitled to pay. (Acts 1909, p. 94, sec. 2; Acts 1917, ch. 167, sec. 2.)

Art. 344. Removal of assistant.—The district attorney of any such district at any time he deems said assistant unnecessary, or that the person appointed is not attending to his duties as required by law, may remove said person from office by merely writing to the district judge of the said district to that effect. (Acts 1909, p. 94, sec. 3; Acts 1917, ch. 167, sec. 3.)

Art. 344a. Assistant District Attorney for Sixth Judicial District.—The District Attorney of the Sixth Judicial District of Texas, be and he is hereby authorized to appoint an Assistant District Attorney, whose qualifications shall be the same as now required by law for District Attorney, and who before entering upon the discharge of his duties as such Assistant shall enter into bond in the sum of Five Thousand ($5,000.00) Dollars, conditioned the same as bonds of District Attorneys, and to be approved by the District Judge of said District and shall take the oath of office as required by law and who shall have such authority as the District Attorney of said District. (Acts 1917, ch. 102, sec. 1.)

Art. 344b. Same; salary.—Said Assistant District Attorney shall receive a salary of not exceeding Two Thousand ($2,000.00) Dollars per year to be paid out of excess fees of said office as the same accrues under the law. (Id. sec. 2.)

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

CHAPTER ONE A

CRIMINAL DISTRICT ATTORNEY OF DALLAS, HARRIS AND OTHER COUNTIES

Arts. 345a-345d.

These articles consisted of sections 19-22 of Acts 1911, p. 111, and related to the criminal district attorney of Harris County. They are set forth in the Code of Criminal Procedure, post, arts. 97t, 97tt, 97ttt, 97u. To avoid duplication they are omitted here. For special provisions relating to the criminal district attorneys of the following counties see, post, Code of Criminal Procedure—

Dallas County, art. 97*lll*; Nueces, Kleberg, Willacy, and Cameron Counties, art. 97½c; Tarrant County, arts. 97½r-97½u; Bowie County, art. 97¾ee.

CHAPTER TWO

COUNTY ATTORNEYS

Art. 346. (280) (245) Election and term of office.—A county attorney for counties in which there is not a resident criminal district attorney shall be elected by the qualified voters of each county, who shall be commissioned by the governor and hold his office for the term of two years. (Acts 1883, p. 2; Const. art. 5, sec. 21.)

Art. 347. (281) (245a) May appoint assistants.—County attorneys shall have power, by consent of the commissioners' court, to appoint in writing one or more assistants, not to exceed three, for their respective counties, to continue in office during the pleasure of their principals, and who shall have the power and authority to perform all the acts and duties of their principals, and who shall have the qualifications prescribed by law for county attorneys; and every person so appointed shall, before he enters upon the duties of his office, take and subscribe the oath of office prescribed by the constitution, which shall be indorsed upon his appointment, together with the certificate of the officer administering the same; and such appointments and oaths shall be recorded in the office of the county clerk, and deposited in said office. (Acts 1891, p. 91.)

See Dane v. S., 35 S. W. 661; Pierson v. S., 180 S. W. 1080.

Art. 348. (282) (246) Vacancy in office of, how filled.—In case of a vacancy in such office, the county commissioners' court of the county shall have power to appoint a county attorney until the next general election. (Const., art. 5, sec. 21.)

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

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

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

CHAPTER THREE

GENERAL PROVISIONS APPLICABLE TO BOTH DISTRICT AND COUNTY ATTORNEYS

Art. 352. (286) (249) Shall be licensed attorneys.—District and county attorneys shall be attorneys at law, duly licensed to practice in the district courts of this state, and no person who is not so licensed shall be eligible to either of said offices. (Acts 1876, p. 85, sec. 2.)

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

Art. 354. (288) (251) Residence of.—District attorneys shall severally reside in the districts for which they were elected, and county attorneys shall severally reside in the county for which they were elected. (Acts 1876, p. 85, sec. 1.)

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

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

Art. 356a. Shall give opinion, etc., to county and precinct officers.—The district and county attorneys of this state shall give to all county and precinct officers within his district or county respectively, upon request, an opinion and advice in writing touching their official duties. (Acts 1913, p. 48, sec. 2.)

Art. 357. (291) With the consent of attorney general to buy property.—In any case wherein any property shall be sold by virtue of any execution or order of sale issued upon any judgment in favor of the state except execution issued upon judgments in cases of scire facias, the agent or attorney

representing the state, by and with the advice and consent of the attorney general of the state, is authorized and required to attend such sales, and bid on and buy in for the state said property, when it shall be deemed proper to protect the interest of the state in the collection of such judgment; provided, that in no case shall the amount bid by him exceed the amount necessary to satisfy said judgment and all costs due thereon. (Acts 1879, p. 9.)

See post, art. 3766.

Art. 358. (292) May sell property bought for state, with consent of attorney general.—The agent or attorney of the state, buying for the state any such property at such sale, shall be authorized, by and with the advice and consent of the attorney general, at any time to sell or otherwise dispose of said property so purchased, in the manner and upon such terms and conditions as he may deem most advantageous to the state; and, if sold or disposed of for a greater amount than is necessary to pay off the amount due upon the judgment and all costs, the remainder shall be paid into the state treasury and placed to the credit of the general revenue; and, when such sale is made, the attorney general shall, in the name of the state, execute and deliver to the purchaser a deed of conveyance to said property; which deed, when so signed by him, shall vest all the right and title to the same in the purchaser thereof. (Id.)

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

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

See Russell v. S., 40 S. W. 69.

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

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

See Russell v. S., 40 S. W. 69.

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

See Flynt v. Jones County, 50 S. W. 203; State v. Bratton, 192 S. W. 814.

Art. 364. (298) (258) Shall keep register of official acts, etc.—Each district and county attorney shall keep in proper books, to be procured by them for that purpose at their own expense, a register of all their official acts and reports, and all actions or demands prosecuted or defended by them as such attorneys, and of all proceedings had in relation thereto, and shall deliver such books to their successors in office; and the same shall at all times be open to the inspection of any person appointed by the governor, or by the county commissioners' court of a county, to examine the same. (Id. sec. 8.)

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

Art. 366. (300) (260) Shall institute proceedings against officers, when, etc.—When it shall come to the knowledge of any district or county attorney that any officer in his district or county, intrusted with the collection or safe keeping of any public funds, is in any manner whatsoever neglecting or abusing the trust confided in him, or is in any way failing to discharge his duties under the law, he shall institute such proceedings as are necessary to compel the performance of such duties by such officer, and to

preserve and protect the public interests. (Id. sec. 9.)

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

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

See post, art. 6398.

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

TITLE 14

BANKS AND BANKING

CHAPTER ONE

BANKS

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

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

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

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

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

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

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

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

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

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

Art. 374. Board of directors.—The affairs and business of every banking corporation shall be managed by a board of directors or managers, consisting of not less than five nor more than twenty-five shareholders, who shall be elected annually, a majority of whom shall be bona fide resident citizens of the state, and each of whom shall be a bona fide owner of at least ten shares of the capital stock thereof; provided, that, where the capital stock of such corporation does not exceed ten thousand dollars, each director shall be a bona fide owner of at least five shares of the capital stock thereof; nor shall any person be a director in any bank against whom such bank shall hold a judgment. Every person who shall be elected a director of a bank shall, within thirty days after said election, qualify himself as such director by filing with the officers of such bank a written acceptance of the position, a copy of which said acceptance shall be spread upon the records of the acts of the directors. Failure to comply with this provision, within the time specified, shall work a forfeiture of the position; and, when any vacancy occurs by such failure, the board of directors shall, at the next regular meeting thereafter, enter the fact of such vacancy upon their records, and immediately proceed to elect some competent person to fill the vacancy for the unexpired term. In the event of vacancy happening from any cause in the board, previous to the annual election, remaining members thereof may fill such vacancy. (Id. sec. 6.)

Art. 375. Capital stock prescribed; to be fully paid up.—The capital stock, which shall be fully paid up, shall not be less than ten thousand dollars for banks located in towns and cities having less than twenty-five

hundred inhabitants, nor less than twenty-five thousand dollars for banks located in towns and cities having twenty-five hundred or more and less than ten thousand inhabitants, nor less than fifty thousand dollars for banks located in towns and cities having ten thousand or more and less than twenty thousand inhabitants, nor less than one hundred thousand dollars in towns and cities having twenty thousand inhabitants or more. The population of all towns and cities for the purpose of fixing the minimum capital stock of banks, under this title, shall be ascertained by reference to the last United States census taken prior to their incorporation. (Id. sec. 5.)

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

Art. 376a. Demand deposits defined.—Demand deposits within the meaning of this Act [Arts. 377, 377a, post] shall comprise all deposits payable within thirty days, and time deposits shall comprise all deposits payable after thirty days, and all savings accounts and certificates of deposit which are subject to not less than thirty days notice before payment. (Acts 1914, 3d C. S. ch. 3, sec. 2.)

Art. 377. Cash reserve of banks not holding membership in Federal Reserve bank.—Every banking corporation chartered under the laws of this State with a capital stock of less than Twenty-five Thousand ($25,000.00) Dollars, and which does not become a member of a Federal Reserve bank under the laws of the United States, shall at all times have an amount of cash on hand and cash due from other banks equal to at least twenty per cent. of the aggregate amount of its demand deposits, eight-twentieths of which shall be actual cash in the bank; and all banks, not located in a Central Reserve City, having a capital stock of Twenty-five Thousand ($25,000.00) Dollars or more, and which do not become members of a Federal Reserve bank under the laws of the United States, shall at all times have an amount of cash on hand and cash due from other banks, equal to at least fifteen per cent. of the aggregate amount of its demand deposits, six-fifteenths of which shall be actual cash in the bank. Whenever the reserve of any bank as hereinbefore required shall fall below the amount specified above for its class, then such bank shall not make any new loans or discounts until it shall by collection restore its [l]awful reserve. Twelve-twentieths of the reserve fund, or any part thereof, of a bank with a capital stock of less than $25,000.00, or nine-fifteenths of the reserve fund, or any part thereof, of a bank with a capital stock of $25,000.00 or more, together with the current receipts may be kept on hand or on deposit payable on demand in any bank or banking association of the State of Texas, or any bank, banking association or trust company regularly chartered and operating under the laws of any State or under the laws of the United States, approved by the Commissioner of Insurance and banking, and having a paid up capital stock of Fifty Thousand Dollars or more; but the deposit in any one bank or trust company shall not exceed twenty per cent. of the total deposits, capital and surplus of the bank making the deposit. (Acts 1905, S. S. p. 491; Acts 1907, p. 60, sec. 7; Acts 1914, 3d C. S. ch. 3, sec. 3.)

This section supersedes art. 377 of the Revised Civil Statutes of 1911. See ante, art. 376c, and post, arts. 377a, 517e, 517f, 522a, 523a, 539, 569a-570b.

Art. 377a. Cash reserve of banks holding membership in Federal Reserve bank.—All banks and banking corporations chartered by the laws of this State which become members of a Federal Reserve bank under the Federal Reserve Act, shall as to their reserves be governed as follows:

(a) A bank not in a reserve or central reserve city as now or hereafter defined by the laws of the United States or designated by the Comptroller of the Currency of the United States shall hold and maintain reserves equal to twelve per centum of the aggregate amount of its demand deposits and five per centum of its time deposits, as follows:

In its vaults for a period of thirty-six months after the Secretary of the Treasury of the United States has officially announced the establishment of a Federal Reserve bank in the district of which is located the subscribing member bank, five-twelfths thereof and permanently thereafter four-twelfths;

In the Federal Reserve bank of its district for a period of twelve months after said date two-twelfths, and for each succeeding six months an additional one-twelfth until five-twelfths have been so deposited, which shall be the amount permanently required;

For a period of thirty-six months after said date the balance of the reserve may be held in its own vaults or in the Federal Reserve bank, or in National banks in reserve or central reserve cities as now defined by the laws of the United States.

After said thirty-six months period said reserve other than those hereinbefore required to be held in the vaults of the member bank and in the Federal Reserve bank, shall be held in the vaults of the member bank or in the Federal Reserve bank, or in both, *shall be held in the vaults of the member bank or in the Federal Reserve bank, or in both*, at the option of the member bank.

(b) A bank in a reserve city, as now or hereafter defined by the laws of the United States or designated by the Comptroller of the Currency, shall hold and maintain reserves equal to fifteen per centum of the aggregate amount of its demand deposits, and five per centum of its time deposits, as follows:

In its vaults for a period of thirty-six months after the date of the establishment of the Federal Reserve bank of which any bank chartered under the laws of this State may become a member, six-fifteenths thereof and permanently thereafter five-fifteenths;

In the Federal Reserve bank of its district for a period of twelve months after the date aforesaid at least three-fifteenths and for each succeeding six months an additional one-fifteenth until six-fifteenths have been so deposited, which shall be the amount permanently required;

For a period of thirty-six months after said date the balance of the reserve may be held in its own vaults, or in the Federal Reserve bank, or in National banks, in reserve or central reserve cities as now defined by law;

After said thirty-six months period all of said reserves, except those hereinbefore required to be held permanently in the vaults of the member bank and in the Federal Reserve bank, shall be held in its vaults or in the Federal Reserve bank, or in both, at the option of the member bank.

(c) Provided, however, that notwithstanding the limitations in paragraphs (a) and (b) of this Section, State banks becoming members of a Federal Reserve bank shall have all the rights permitted them under the Federal Reserve Act, as to reserve deposits with State banks and trust companies; provided, further that State banks becoming members of a Federal Reserve bank shall have authority to conform to the Federal Reserve Law now, or as hereafter enacted, and all rules and regulations promulgated relative thereto by lawful authority; and shall likewise be subject to all limitations of law and of such rules and regulations now or hereafter enacted or promulgated.

(d) The kind and character of money which may be held as reserve by banking corporations incorporated under the laws of this State which become members of a Federal Reserve bank, shall be the same as that required of National banks under the laws of the United States. (Id. sec. 4.)

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

Art. 378a. Limitation upon borrowing, etc., by directors and officers.—No director of a bank in this state shall be permitted to borrow any of the money of the bank of which he is a director, in excess of ten per cent of the capital and surplus, without the consent of a majority of the directors of the bank (other than the borrower) first having been obtained at a regular meeting of the board; said consent to be made a matter of record before loan is made; and no officer, whether a director or not, shall be indebted to such bank in any sum whatever without the consent of the board, obtained and recorded in like manner. (Id.)

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

CHAPTER TWO

BANK AND TRUST COMPANIES

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

See post, arts. 517a-517c, 525b.

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

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

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

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

4. The names and places of residence of the several shareholders and the number of shares subscribed by each.

5. The number of the board of directors or managers, and the names of those agreed upon for the first year.

6. The number of years the corporation is to continue, which in no case shall exceed fifty years.

7. The purposes for which the association or company is formed, which shall be the establishment of a bank of deposit or discount, or both of deposit and discount, with the power set out in article 376, and may include any one or more of the purposes set out in article 385. (Id. sec. 9.)

Art. 382. To be signed, acknowledged, recorded, etc.—The articles of agreement shall be signed and acknowledged by the parties thereto, and recorded in the office of the secretary of state, and a certified copy thereof returned by the secretary of state to the incorporators, which shall be filed in the office of the county clerk of the county in which such corporation is to do business. (Id. sec. 10.)

Art. 383. Board of directors.—The property or business of the corporation shall

be controlled and managed by directors, not less than five nor more than twenty-five in number, who shall respectively be stockholders of such corporation, and a majority of whom shall be bona fide citizens of this state, to be elected by ballot by the shareholders of such corporation for one year, if the number of directors of such corporation does not exceed five, at such time and place as shall be directed by the by-laws of such corporation, of which time and place at least two weeks notice shall be published in some newspaper, published at least once a week, in the city or county in which the corporation is located, which circulates in the locality where such corporation is located. Such election shall be made by such shareholders as shall attend in person, or by proxy in writing; and, in case the election shall not be made on the day named, the corporation shall not thereby be dissolved, but the election may be had at any other time, agreeably to the by-laws of said corporation; and the persons so elected shall hold their office until others are elected and qualified. If the board of directors of such corporation named in the articles of the association shall exceed five in number, they shall, as soon as may be after their organization, divide themselves by ballot into three classes of equal number, as near as may be, designated the first, second and third class, of which the first class shall remain in office one year, the second class two years, and the third class three years; and at each annual election, conducted in the manner heretofore designated, directors shall be elected for the term of three years to fill the vacancies created by the retiring class. In case of death or resignation of one or more of said directors, the survivors shall fill the vacancy until the next election. (Id. sec. 12.)

Art. 384. Capital stock prescribed.—The amount of capital stock of any trust company, or bank and trust company, shall not be less than fifty thousand dollars nor more than ten million dollars; provided, however, that no trust company, or bank and trust company, shall be incorporated in towns and cities having twenty thousand inhabitants or more with less than one hundred thousand dollars of capital stock. (Acts 1905, S. S. p. 492, sec. 12; Acts 1913, p. 207, sec. 1.)

Art. 385. Powers of corporation.—Corporations may be created under articles 380 and 381 for the purpose of establishing a bank of deposit or discount, or both of deposit and discount, with the powers set out in article 376, and any one or more of the following purposes:

1. To act as the fiscal or transfer agent of any state, municipality, body politic, or corporation, and, in such capacity, to receive and disburse money; to transfer, register and countersign certificates of stock, bonds or other evidences of indebtedness, and to act as agent of any corporation, foreign or domestic, for any lawful purpose.

2. To receive deposits or trust moneys, securities and other personal property from any person or corporation, and to loan money on real or personal securities.

3. To lease, hold, purchase and convey any and all real property necessary in the transaction of its business, or which it shall acquire in satisfaction, or partial satisfaction, of debts due the corporation, under sales, judgments or mortgages, or in settlement, or partial settlement, of debts due the corporation by any of its debtors; which shall be alienated in good faith to some person other than some one interested in the company, within five years from the date of its acquisition.

4. To act as trustee under any mortgage or bond issue, by any municipality, body politic or corporation, and accept and execute any other municipal or corporate trust not inconsistent with the laws of this state.

5. To accept trusts from, and execute trusts for, married women, in respect to their separate property, and to be their agent in the management of such property, or to transact any business in relation thereto.

6. To act under the order or appointment of any court of record as guardian, receiver or trustee of the estate of any minor, the annual income of which shall not be less than one hundred dollars, and as depository of any moneys paid into court, whether for the benefit of any such minor or other persons, corporation or party.

7. To take, accept and execute any and all such legal trusts, duties and powers, in regard to the holding, management and disposition of any estate, real or personal, and the rents and profits thereof, or the sale thereof, as may be granted or confided to it by any court of record, or by any person, corporation, municipality or other authority; and it shall be accountable to all parties in interest for the faithful discharge of every such trust, duty or power, which it may so accept.

8. To take, accept and execute any and all such trusts and powers of whatever nature or description, as may be conferred upon or intrusted or committed to it by any person or persons, or any body politic, corporation or other authority, by grant, assignment, transfer, devise, bequest or otherwise, or which may be intrusted or committed or transferred to it or vested in it by order of any court of record, and to receive and take and hold any property or estate, real or personal, which may be the subject of any such trust.

9. To purchase, invest in, guarantee and sell stocks, bills of exchange, bonds and mortgages and other securities; and when moneys, or securities for moneys, are borrowed or received on deposit, or for investment, the bonds or obligation of the company may be given therefor, but it shall have no right to issue bills to circulate as money.

10. To act as executor under the last will or as administrator of the estate of any deceased person, or as guardian of any infant, insane person, idiot or habitual drunkard, or trustee for any convict in the penitentiary under appointment of any court of record having jurisdiction of the estate of such deceased person, infant, insane person, idiot, habitual drunkard or convict. (Acts 1905, S. S. p. 492, sec. 11.)

Subdivision 11 of this article, appearing in Rev. Civ. St. 1911, was repealed by Acts 1913, p. 207, § 2.

CHAPTER TWO A

LOAN AND BROKERAGE COMPANIES

Art. 385a. Corporations to loan money and act as trustee.—Corporations may be created for any or all of the following pur-

poses, to-wit: To accumulate and lend money, purchase, sell and deal in notes, bonds, and securities, but without banking and discounting privileges. To act as Trustee under any lawful express trust committed to them by contract and as agent for the performance of any lawful act. But no corporation organized hereunder shall act as agent or trustee in the consolidation of or for the purpose of combining the assets, business, or means of any other persons, firms, corporations or associations, nor shall such corporation as agent or trustee carry on the business of another. (Acts 1919, ch. 83, sec. 1.)

Art. 385b. Capital paid in; statements; examination and taking possession of by Commissioner of Insurance and Banking.—No corporation created under this Act shall be authorized to engage in or carry on any such business unless it shall have an actual paid in capital of not less than $10,000, and providing that each corporation organized under this Act shall publish in some newspaper of general circulation in the county where it has its principal place of business, on or before the first day of February of each year, a statement of its condition on the previous thirty-first day of December, in such form as may be required by the Commissioner of Insurance and Banking, showing under oath its assets and liabilities. That a copy of this statement shall be filed with the Commissioner of Insurance and Banking and a fee of $10.00 paid that officer for filing the same.

That it shall be the duty of the Commissioner of Insurance and Banking to examine, or cause to be examined, such corporation annually. The said corporation shall pay the actual traveling expenses, hotel bills, and all other actual expenses incident to such examination, and a fee therefor not exceeding one-eighth of one per centum of its actual paid in capital.

If upon examination it shall appear that the assets of said corporation, exclusive of its said capital paid in, are less than its liabilities, the said Commissioner of Insurance and Banking shall notify it thereof in writing, and if the said corporation shall not within thirty days from receipt of said notice restore and make good such impairment of its capital, then it shall be the duty of the Commissioner of Insurance and Banking to take possession of the said corporation and its property and to wind the same up and distribute its assets in accordance with the provisions of the law of this State with reference to the winding up of the affairs of banks incorporated under its laws. And if it shall appear from such examination that said corporation has exceeded its corporate powers or has been guilty of an unlawful act or acts, the said Commissioner shall, in writing, notify the said corporation to cease such act or practice and to conduct its business in accordance with law and its charter powers, and if such corporation shall fail or refuse for a period of thirty days thereafter to comply with such notice, then it shall be the duty of the said Commissioner of Insurance and Banking to take possession of the said Corporation and its assets and wind it up and distribute the said assets as hereinbefore provided. (Id. sec. 2.)

CHAPTER THREE

SAVINGS BANKS

Art. 386. Savings banks, incorporated how.—Any five or more persons who shall have associated themselves by articles of agreement, in writing, may be incorporated as a savings bank, under any name or title designating such business, such agreement in writing to constitute the articles of association of such corporation. (Acts 1905, S. S. pp. 489, 491, sec. 13.)

Art. 387. Articles of association, requisites.—Such agreement shall set out:

1. The corporate name of the proposed corporation, which shall not be the name of any other corporation heretofore incorporated in this state for similar purposes, nor an imitation of such name.

2. The name of the city, town or county in which such corporation is to be located.

3. The amount of capital stock of the corporation, which shall be divided into shares of one hundred dollars each; and that the entire amount thereof has been subscribed and actually paid up, in lawful money of the United States, and is in possession of the persons named as the first board of directors.

4. The names and places of residence of the several shareholders, and the number of shares subscribed by each.

5. The number of the board of directors, and the names of those agreed upon for the first year.

6. The number of years the corporation is to continue, which in no case is to exceed fifty years.

7. The purpose for which the corporation is formed. (Id. sec. 13.)

Art. 388. Further requisites.—The articles of association shall state that the entire amount of the capital stock of such proposed corporation has been paid in. (Id. sec. 14.)

Art. 389. To be signed, acknowledged and recorded.—Said articles of association shall be sworn to and shall be signed and acknowledged by the parties thereto, and filed in the office of the secretary of state, and by him recorded, and a certified copy returned to the incorporators, who shall record the same in the county clerk's office of the county of the domicile of such corporation. (Id. sec. 14.)

Art. 390. Board of directors and other officers.—The property and business of savings banks shall be controlled and managed by a board of directors, not less than five nor more than thirteen in number, who shall be stockholders of the corporation, and a majority of whom shall be bona fide citizens of the state, to be elected by ballot of the shareholders of the corporation, for one year, at such time and place as shall be directed by the by-laws of the corporation, of which time and place at least two weeks' notice shall be published in some newspaper, published at least once a week, in the city or county where such corporation is located. Such election shall be made by such of the shareholders as shall attend in person or by proxy in writing. In case the election shall not be made on the date named, the corporation shall not thereby be dissolved, but an election may be held any other time, agree-

ably to the by-laws of the corporation; and the persons so elected shall hold office until their successors are elected and qualified. If the board of directors shall exceed five, they shall, as soon as may be after organization, divide themselves by ballot into three classes of equal number, as near as may be, designated the first, second and third class, of which the first class shall remain in office for one year, the second class two years and the third class three years; and, at each annual election, conducted in the manner hereinbefore designated, directors shall be elected for the term of three years, to fill vacancies created by the retiring classes. In case of death or resignation of one or more of such directors, the survivors shall fill the vacancies until the next election. The directors shall elect from their number a president, one or more vice presidents, a secretary and treasurer, and may appoint such other officers and agents as they may deem necessary for the proper conducting of the business of the corporation, and may allow them reasonable compensation for services rendered; and the vote of a majority of the full board shall be requisite for the appointment of any officer receiving a salary therefrom, or to fix or increase the salary of any officer. No person shall be disqualified from being a director by reason of his being a director or officer of a bank or savings institution organized under the laws of this state. (Id. sec. 19.)

Art. 391. Meetings of board of directors, quorum.—Regular meetings of the board of directors of savings banks shall be held at least once in each month, for the purpose of receiving reports of the officers and committees, and for the transaction of other business. A quorum at any regular, special or adjourned meeting shall consist of not less than a majority of directors, but less than a quorum may adjourn from time to time, until the next regular meeting. (Id. sec. 23.)

Art. 392. Capital stock prescribed, to be subscribed and paid up.—The capital stock of any savings bank shall not be less than ten thousand dollars, in cities having a population of fifty thousand inhabitants or under, and not less than fifty thousand dollars in cities having a population of more than fifty thousand; the entire amount of capital stock to be subscribed in good faith, and actually paid up in lawful money of the United States at the time of filing of article of association. (Id. sec. 15.)

Art. 393. Capital stock limited, requirements as to increase of.—No savings bank formed under the provisions of this chapter shall have a capital stock of more than five million dollars, and any such corporation may increase its capital stock in any amount within the limit of this article; but all increase of stock shall be subscribed for in good faith and shall be paid up in full in lawful money of the United States, at the time of filing the certificate of increase; provided, that stockholders shall have the first right to subscribe to such increase in capital stock in proportion to the amount of stock held by each. (Id. sec. 27.)

Art. 394. Stock a guarantee fund, and invested, etc.—Said capital stock, however, shall be regarded as a guarantee fund, for the security of depositors, and shall be invested as provided in article 403. (Id. sec. 15.)

Art. 395. Powers of corporation.—Savings banks shall have authority:

1. To receive, accumulate and safely keep any deposits of money from any persons, corporations or societies, and to invest, hold and repay the same, crediting and paying interest thereon, as in this act authorized and provided, and not otherwise.

2. At its option, in connection therewith, to take and receive as bailee, for safe keeping and storage, jewelry, plate, money, specie, bullion, stocks, bonds, securities and valuable papers of any kind, and other valuables, guaranteeing their safety upon such terms and for such compensation as may be agreed upon, and to let out vaults, safes, and other receptacles for the use, benefit and purposes of such corporations. (Acts 1905, S. S. p. 495. Acts 1907, p. 305, sec. 16.)

Art. 396. May limit deposits, etc.—Every such corporation shall have the right to limit the aggregate amount which they will receive from any one person or society to such sum as they may deem expedient, and may, in their discretion, refuse to receive the sum offered, and may also at any time return all or any part of any sum received; provided, that the aggregate amount that may be received from any one individual or corporation shall not exceed four thousand dollars, inclusive of dividends. But this limitation shall not apply to moneys arising from judicial sales or trust funds, or if received pursuant to order of a court of record, or to moneys or property received as bailee for safe keeping and storage only. (Act 1905, S. S. p. 489, sec. 26.)

Art. 397. Payment of deposits; regulations; notice, interest.—Deposits made with savings banks shall be paid to depositors, or their representatives, when requested, under regulations as the board of directors may prescribe, not inconsistent with the provisions of this act, which regulations shall be printed and conspicuously posted in all places where deposits are received, accessible and visible to all depositors; but no alteration in such regulations shall in any manner affect depositors in respect to any deposits or interest thereon, made prior to such alterations, and it shall be lawful to require sixty days written notice of the withdrawal of any deposit. Any account may be closed at any time upon notice to the depositor, and, after such notice, the deposit shall cease to draw interest; provided, nothing in this section [article] shall be so construed as to prevent the issuing of certificates of deposit, payable on demand, or such other time as may be agreed upon by the depositor and this bank or corporation. (Id. sec. 24.)

Art. 398. Pass book, requirements as to.—A pass book shall be issued by savings banks to each depositor, containing the rules and regulations adopted by the board of directors, governing deposits, in which book shall be entered each deposit made by, and each payment made to, such depositor; and no payment or check against any such savings account shall be made, unless accompanied by, and entered in, the pass book issued therefor, except for good cause and on assurance satisfactory to the officers of the bank. At least once in every three years the pass book of all depositors shall be called in

and verified in such manner as the board of directors shall elect. The directors may provide for making payments in case of loss of pass book or other exceptional case, when its production may produce loss or serious inconvenience to the parties. (Id. sec. 26.)

Art. 399. Deposit in name of minor or female thereafter married.—Whenever any deposit shall be made with any savings bank by or in the name of any person being a minor or a female, being or thereafter becoming a married woman, the same shall be held for the exclusive right and benefit of such depositor, and free from the control or lien of all persons whatsoever, except creditors, and shall be paid, together with the interest thereon, upon production of, and proper entry in, the pass book at the time of such payment, and in accordance with the by-laws of the corporation, to the person in whose name the deposit shall have been made, and the receipt or acquittance of such minor or female shall be a valid and sufficient release and discharge for such deposit, or any part thereof, to the corporation. (Id. sec. 25.)

Art. 400. Deposit in trust.—Whenever any deposit shall be made by any persons in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the bank, in the event of the death of the trustee, the same, or any part thereof, together with the dividends or interest thereon, may be paid to the person for whom the said deposit was made. (Id. sec. 25.)

Art. 401. No interest paid or declared until when, nor unless, etc.—No interest shall be paid or declared by savings banks until the board of directors of such corporation cause an examination to be made of the assets and securities, and find the amount of such interest and dividend has been actually earned and accrued, and no interest or dividend shall be paid or declared, unless authorized by a vote of the board of directors, at a regular meeting duly entered on the minutes. (Id. sec. 33.)

Art. 402. Interest rate paid, to be regulated by directors.—It shall be the duty of the board of directors of savings banks to regulate, from time to time, the rate of interest to be allowed to depositors out of the net profits, and to pay or credit the same semi-annually on semi-annual interest dates, to be fixed by the by-laws; provided, however, that the directors of any such corporation may classify its depositors according to character, amount and duration of their dealings with the corporation, and regulate the interest allowed in such manner that each depositor shall receive the ratable portion of interest as all others of the same class. (Id. sec. 28.)

Art. 403. Deposits invested, how.—All sums so received, except those held as bailee, for safe keeping and storage only, and the income derived therefrom, and all moneys intrusted to any such corporation by order of court, shall be invested as follows:

1. In bonds or interest bearing notes or obligations of the United States, or of those for which the faith of the United States is pledged for the payment of principal and interest.

2. In bonds of the state of Texas, or of any state in the union that has not, within the last five years previous to making such investments, defaulted in the payment of any part of either principal or interest thereof.

3. In bonds of any city, county, town or school district of this state, which has not defaulted in the payment of any part of either principal or interest thereof, within five years previous to making such investments.

4. In the first mortgage bonds of any steam railroad, the income of which is sufficient to pay all operating expenses and fixed charges, which has its domicile in the state.

5. In bonds or notes secured by first mortgages or deed of trust on unincumbered real estate worth at least twice the amount loaned thereon. But the mortgage investment of such corporation shall not exceed sixty per cent of its total assets.

6. In real estate sufficient to reasonably furnish a domicile for such corporation, and no more. (Id. sec. 17.)

Art. 404. Same subject.—It shall be the duty of the directors of any such savings bank, as soon as practicable, to invest such fund of money, by purchase or otherwise, in the securities mentioned in article 403, and, from time to time, sell and invest the proceeds of such investments, but, for the purpose of meeting current demands and expenses in excess of the receipts, any of the securities may be sold or pledged. (Id. sec. 18.)

Art. 405. Application for loans, how made; record of; presented to board.—All applications for loans shall be made in writing through the treasurer of the corporation, who shall keep a record thereof, showing the date, name of applicant, amount asked for and security offered, and shall cause the same to be presented to the board of directors. (Id. sec. 20.)

Art. 406. Cash reserve.—There shall be kept an available cash fund of not less than fifteen per cent of the whole amount of its assets, and the same, or any part thereof, may be kept, on hand or on deposit, payable on demand, in any bank or banking association of the state of Texas, or under the laws of the United States, approved by the superintendent of banking, and having a paid up capital stock of fifty thousand dollars or more, but the deposits in any one bank or trust company shall not exceed twenty per cent of the total deposits, capital and surplus of such savings banks. (Id. sec. 18.)

Art. 407. Indemnity fund and guaranty fund.—When the guaranty fund of any savings bank amounts to a sum equal to the capital stock of the corporation, and after interest on the deposits and dividends on the capital stock have been paid, as herein provided, the board of directors shall, at the time of making the regular semi-annual dividends, set aside and reserve from the remaining net profits which have accumulated during the preceding six months, a sum not exceeding one-fourth of one per cent of the total deposits on such interest day, to be known as indemnity fund, until such fund amounts to ten per cent of the whole deposits; and such fund shall thereafter be maintained and held to meet any contingency or loss from depreciation of securities or otherwise. (Id. sec. 31.)

Art. 408. Guaranty and indemnity funds, rule in determining per cent of.—In determining the per cent of the guaranty

and indemnity funds so held by savings banks, the interest-bearing notes and bonds shall not be estimated above their par value, or above their market value, if below par; its bonds and mortgages and deeds of trust, not in arrears of interest for a period longer than one year, at their face; its real estate at not above cost. All debts due any savings bank or institution on which the interest is past due for a period of twelve months, unless well secured and in process of collection, shall be considered as bad debts, and shall be charged to profit and loss account at the expiration of that time. (Id. sec. 35.)

Art. 409. No dividend over ten per cent, etc.; nor except as provided.—No dividend exceeding ten per cent per annum shall be paid on its capital stock in any event, and no dividend shall be paid except as herein provided. (Id. sec. 15.)

Art. 410. Dividend not over ten per cent may be declared when, etc.—Whenever interest at rate of not less than three per cent per annum shall have been paid or credited by savings banks out of the net profits of the current six months on all savings or trust funds which may be entitled thereto, the board of directors may, out of the remaining net earnings of such six month[s], if any there be, declare and pay a dividend on the capital stock of the corporation, not exceeding the rate of ten per centum per annum on the par value thereof; provided, however, that no such dividends shall be declared or paid until at least one-tenth of the profits of the corporation for such period of six months shall be carried to the credit of the guaranty fund, until such fund equals the amount of the capital stock, which sum shall be invested as provided herein for the investment of the capital fund. (Id. sec. 29.)

Art. 411. Dividends, further provisions as to, and as to net profit.—If, for any period of six months, the net profits shall not be sufficient to pay a dividend on the capital stock of any savings bank, amounting to three per cent for such six months, then, if there are any net profits in any succeeding six months period or periods, over the interest required to be paid depositors for such period or periods, and the amount required to be carried to the guaranty fund, such excess or net profits shall be applied to the arrears of the dividend on the capital stock, until such arrears of dividend are paid in full; and no part of the net profit shall be credited on the indemnity fund, as provided in article 407, or to the payment of the extra interest to the depositors, as provided in article 412. (Id. sec. 30.)

Art. 412. Division of net profit, guaranty and indemnity funds.—Once in every term of three years, if the net profits of savings banks which have accumulated over and above the guaranty and indemnity funds, as provided in articles 407 and 410, amount to one per cent of the deposits which have remained with such corporation, for at least one year next preceding, such net profits shall be divided among the depositors whose deposits shall have remained therein at least one year next preceding, in proportion to the amount of interest which has been paid on their deposits during the three years then next preceding. But nothing in this section [article] shall be so construed as to require the payment of any interest on money or property received as bailee for safe keeping and storage only. (Id. sec. 32.)

Art. 413. Safety deposit box rent, default in payment of; proceedings on.—Any corporation which has been authorized, or may hereafter be authorized, to own or control a safety vault and rent the boxes therein, may, if the amount due for the use of any safe or box in the vault of such corporation shall not have been paid for two years, at the expiration thereof, cause to be sent to the person in whose name such safe or box stands on its books, a notice in writing, in a securely closed, postpaid, registered letter, directed to such person at his post-office address as recorded upon the books of the corporation, notifying such person that, if the amount then due for the use of such safe or box is not paid within sixty days from the date of such notice, the corporation will then cause such safe or box to be opened in the presence of its president, or vice president, or secretary, or treasurer, and of a notary public, not an officer or in the employ of the corporation, and the contents thereof, if any, to be sealed up by such notary public in a package, upon which such notary public shall distinctly mark the name and address of the person in whose name such safe or box stands upon the books of the corporation, and the estimated value thereof. And the package so sealed and addressed, when marked for identification by such notary public, will be placed by such notary public in one of the general safes or boxes of the corporation, and retained by the corporation, subject to the payment of all rent that may be unpaid, and of all expenses incurred in opening the safe or box, and also of a reasonable compensation for the safe-keeping of the contents, after their removal from the safe or box. (Id. sec. 57.)

Art. 414. Powers of savings bank as to real estate.—It shall be lawful for any savings bank to purchase, hold, sell and convey real estate as follows:

1. The house and lot on which is the domicile of such corporation, and from portions of which, not required for its own use, any revenue may be derived, not to exceed in value twenty per cent of the capital of such association.

2. Such as shall be purchased by it at sales upon foreclosure of mortgages or deeds of trust[s] owned by such corporations, or upon judgments or decrees rendered for debts due to it, or purchased or taken in settlement to secure such debts, and all such interest shall be sold by such corporation within five years after same shall be vested in it, unless the superintendent shall extend the time within which such sale shall be made. (Id. sec. 20.)

Art. 415. Corporation, etc., shall not repurchase lands sold.—At the sale of lands or real estate acquired by said corporation the said corporation shall not repurchase said real estate, directly or indirectly, nor shall any officer, director or person holding stock in said corporation be a purchaser of said real estate for the use of the corporation. (Id. sec. 20.)

Art. 416. Powers of directors.—The board of directors of any such corporation shall have power, from time to time, to make such laws, rules and regulations as they may think proper for the election of officers, for

prescribing their respective powers and duties, and the manner of discharging same; for the appointment of committees, and generally for transacting, managing and directing the affairs of the corporation; provided, such by-laws, rules and regulations be not repugnant thereto, nor inconsistent with the provisions of this title, nor the constitution of this state, nor of the United States. (Id. sec. 19.)

Art. 417. Notices and rules posted, effect of.—Notices and rules, posted conspicuously by savings banks in the room where such business is transacted, shall be equivalent to a personal notice, to each person or party interested. (Id. sec. 34.)

Art. 418. Compensation of directors, when and how allowed.—It shall be lawful for directors, acting as officers of savings banks, whose duties may require their regular and faithful attendance at the institution, to receive such compensation as the majority of the board of directors shall deem just and reasonable; but such majority shall be exclusive of any director to whom such compensation shall be voted. But it shall not be lawful to pay the directors as such for attendance at the meetings of the board. (Id. sec. 36.)

Art. 419. No director to receive pay for services, except, etc.—No director shall, directly or indirectly, receive any payment or emolument for his services as such of any savings bank, except as provided in article 418. (Id. sec. 22.)

Art. 420. Restriction as to fees, brokerage, etc.—No such corporation, or any person acting in its behalf, shall negotiate, take or receive a fee, brokerage, commission or gift, or other consideration, for or on account of the loan made by and in behalf of such corporation, other than appears on the face of the note or contract by which such loan purports to be made. But nothing contained herein shall apply to any reasonable charge for services in the examination of title, and the preparation of conveyance to such corporation as security for its loan. (Id. sec. 20.)

Art. 421. No director or officer to borrow funds, nor use, except, etc., nor be surety, etc., for loans to bank.—No director or officer of such corporation shall, directly or indirectly, for himself, or as agent or partner of others, borrow any of the funds of the corporation, or funds in its custody, or in any manner use the same, except to make necessary current payments for the corporation, or to make investments, or to deposit for safety, under the direction and authority of the board of directors; nor shall any director or officer of such corporation be an indorser or surety or in any way be an obligor for moneys loaned by or borrowed of the corporation. (Id. sec. 22.)

Art. 422. Fees, etc., to member of board, to be reported.—All sums paid for services, fees, or otherwise, to a member of the board of directors shall be reported in detail at each regular meeting of the directors. (Id. sec. 20.)

Art. 423. Penalty for directors borrowing, being surety, failure to attend meetings, etc.—Whenever a director of such corporation shall borrow, directly or indirectly, any of the funds of the institution of which he is a director, or become surety or guarantor for any money borrowed of, or loan made by, such corporation; or, upon his failure to attend regular meetings of the board, or to perform any duties devolved upon him as such director, for three successive months, without having been excused by the board for such failure, the office of such director shall become vacant; but the director vacating his office, for failure to attend meetings, or to discharge his duties, may, in the discretion of the board, be eligible to re-election. (Id. sec. 22.)

Art. 424. Security from officers, agents, etc., for fidelity.—The board of directors of savings banks may, from time to time, require from the officers, employés and agents such security for their fidelity and good conduct as may be necessary. (Id. sec. 37.)

Art. 425. Annual report of savings banks, etc., to commissioner; form; requisites.—Every savings bank organized under this title shall, on or before the first day of November in each year, make a report in writing to the commissioner of insurance and banking, in such form as he may prescribe, of its condition on the first day of September preceding. Such report shall state the amount loaned on bonds and mortgages, together with a list thereof; the par value and the estimated market value of all bond investments, designating each particular kind, and the amount invested in each; the amount loaned upon pledge of deposits, with a statement of the amount held as collateral for such loans; the amount of cash on hand and on deposit in banks or trust companies, with their names and amount deposited in each; the amount of all assets, including interest accrued and not enumerated above, and such other information as the commissioner may require. (Id. sec. 69.)

Art. 426. Report continued and requisites.—Such reports shall also state all liabilities of such savings bank, on the morning of the first day of September, the amount due depositors, which shall include any dividend to be created to them for six months on that day, and any other claims against the corporation which are or may be charged against its assets. Such reports shall also state the amount of all deposits made during the fiscal year ending that day, and the amount drawn out during the same period; the whole amount of interest received and earned, and the amount of interest paid and credited to depositors, together with the amount of each semi-annual credit of interest; the number of accounts opened and re-opened, the number closed during the year, and the number of open accounts at the end of such year, and such other information as the commissioner may require. (Id. sec. 70.)

Art. 427. Report continued, and requisites, examination of books as basis, etc., forfeiture for failure to report.—Such report shall be verified by the oath of the two principal officers of such savings bank; and the statement of the assets shall be verified by the oath of at least three of the board of directors, who shall examine the same pursuant to the requirements of this section [article.] It shall be the duty of not less than three of the directors, on or about

the first day of September of each year, to thoroughly examine the books, vouchers and assets of such institution, and its affairs generally; and the statement of assets and liabilities reported to the commissioner on the first day of November of each year shall be based upon such examination; but nothing herein contained shall be construed as prohibiting the directors from requiring such examination at such other times as they shall prescribe. Any such corporation failing to furnish to the commissioner any report or statement required by this act shall forfeit the sum of one hundred dollars per day for every day such report or statement shall be so withheld; and the commissioner may maintain an action in his name of office to recover such penalty, and, when collected, the same shall be paid into the treasury of the state, and be applied to the school fund; but the commissioner may, for sufficient cause, extend the time for making such report, not exceeding thirty days. (Id. sec. 71.)

Art. 428. Commissioner may give directions to savings bank, etc., when; communication to attorney general; his duties; order of court.—Whenever it shall appear to the said commissioner, from any such examination or report, that any such savings bank is conducting its business in an unsafe or unauthorized manner, he shall, by an order under his hand and seal, direct the discontinuance of such illegal and unsafe, or unauthorized practices, and strict conformity with the requirements of the law, and with safety and security in its transactions; and whenever any such corporation shall refuse or neglect to make any such report, as is hereinbefore required, or comply with any such orders, as aforesaid, or whenever it shall appear to the commissioner that it is unsafe or inexpedient for any such corporation to continue to transact business, or that extraordinary withdrawals of money are jeopardizing the interests of remaining depositors, or that any director or officer has abused his trust, or been guilty of misconduct or of malversation in his official position, injurious to the institution, or that it has suffered a serious loss by fire, burglary, repudiation or otherwise, he shall communicate the facts to the attorney general, who shall thereupon institute such proceedings as the nature of the case may require. Such proceedings may be for an order restraining the institution from paying more than ten per cent of its funds in any six months, or until a further order of court, or for the removal of one or more of the board of directors, or for the appointment of a receiver or receivers, to wind up the affairs of such corporation. And the court before which such proceedings shall be instituted shall have the power to grant such orders, and, in its discretion, from time to time, modify or revoke the same, and to grant such relief as the evidence, situation of the parties and the interests involved shall seem to require; and, whenever in such proceedings, an order shall be granted, restraining such corporation from paying out or disposing of any money or property of or held by such corporation, the commissioner may, and, if directed by the court, shall, take temporary possession of all the assets, property and rights of or held by such corporation, and hold such possession until restored to the directors, or until further order of the court. (Id. sec. 74.)

Art. 429. Visitation of savings banks, etc., by commissioner, etc.; powers, expenses; certificate; report.—It shall be the duty of the commissioner, once in two years, either personally or by one or more competent persons to be appointed by him, to visit and examine every such savings bank in this state. The commissioner shall also have the power in like manner to examine any such corporation whenever, in his judgment, it may be deemed necessary or expedient. The commissioner and every other such examiner shall have the power to administer an oath to any person whose testimony may be required on any such examination, and to compel the appearance and attendance of any such person for the purpose of such examination by summons, subpœna or attachment, in the manner now authorized in respect to the attendance of persons as witnesses in the courts of record of the state; and all books and papers, which it may be deemed necessary to examine by the superintendent or examiner so appointed, shall be produced, and their production may be compelled in like manner. The expense of every such special examination, if any, shall be paid by the corporation examined, in such manner as the commissioner shall certify to be just and reasonable; but, whenever such special examination shall be made by the commissioner in person, or by one or more of the regular clerks in his department, no charge shall be made except for necessary traveling and other actual expenses. The result of any such examination shall be certified by the examiners, or one of them, upon the records of the corporation examined; and the result of all the regular examinations during the previous year shall be embodied in the annual report of the commissioner required by this chapter to be submitted to the legislature. (Id. sec. 73.)

Art. 430. Commissioner to report to legislature, requisites.—It shall be the duty of the commissioner on or before the first day of February, during the session of the legislature, to communicate to the legislature a statement of the condition of every such savings bank from which a report has been received for the past preceding years; also the name and location of the savings banks and institutions for savings authorized by him during the previous two years, with the date of their incorporation. (Id. sec. 72.)

CHAPTER FOUR

SAVINGS DEPARTMENTS

Art. 431. Bank, etc., desiring to establish savings department, etc., shall do what.—Any state bank or banking and trust company, incorporated under the laws of this state, desiring to maintain a savings department or to use or continue to use the word "savings" as part of its corporate name, or in or as part of any sign or advertisement, or in or upon any stationery used or to be used by it, shall establish and maintain a savings department in compliance with the provisions of this chapter. Such savings department may be established by the board of directors adopting a resolution providing therefor, at a regular meeting, which shall contain a copy of this chapter; and a certi-

fied copy of which shall be filed in the office of the commissioner of insurance and banking, and also recorded in the office of the county clerk of the county in which such bank or banking and trust company is located; such copies to be filed in the bank or banking and trust companies maintaining such savings departments and using the word "savings" as above provided, which desire to continue to do so, and be filed by banks desiring to establish such savings departments prior to the establishment of such department. All banks or banking and trust companies establishing or maintaining a savings department or using the word "savings," as above provided, or which, having such departments or using the word "savings," shall continue to maintain such departments or to so use the word "savings," shall keep the business of such department entirely separate and distinct from the general business of such bank or banking and trust company, and shall keep all moneys received as such savings deposits and the funds and securities in which the same may be invested at all times segregated from and unmingled with the other moneys and funds of the bank or banking and trust company. (Acts 1909, 2 S. S. p. 406, sec. 13.)

Art. 432. Shall invest not over eighty-five per cent of savings deposits, how; power to sell and reinvest.—Such banks or banking and trust companies may invest not more than eighty-five per cent of the total amount of such savings deposits in any of the following classes of securities, and not otherwise, to wit:

1. In bonds or interest bearing notes or obligations of the United States or of those for which the faith of the United States is pledged for the payment of principal and interest.

2. In bonds of any city, county, town or school district or other subdivision of this state, now organized or which may hereafter be organized, and which is now or may hereafter be authorized to issue bonds under the constitution and laws of this state, which has not defaulted in the payment of any part of either principal or interest thereof, within five years previous to making such investments.

3. In bonds of the state of Texas, or of any state of the union that has not within the last five years, previous to making such investment defaulted in the payment of any part of either principal or interest thereof.

4. In the first mortgage bonds of any steam or electric railroad, the income of which is sufficient to pay all operating expenses and fixed charges, which has its domicile in the state.

5. In bonds or notes secured by first mortgage, deed of trust or other valid lien on unincumbered, improved real estate to run for a term of not longer than ten years, situated in the state, worth at least twice the amount loaned thereon, such bonds or notes to be always accompanied by a complete abstract of title to the property mortgaged and an attorney's certificate or title insurance policy in some company incorporated under the laws of this state, certifying said bonds or notes to be the first lien on the land mortgaged.

It shall be the duty of the directors of such bank or banking and trust company, as soon as practicable, to invest the moneys and funds of such savings department, by purchase or otherwise, in the securities above described. (Id. sec. 13.)

Art. 433. May sell securities and reinvest proceeds.—The directors shall, from time to time, sell and reinvest the proceeds of such investments. (Id. sec. 13.)

Art. 434. To meet current demands, securities may be sold, or taken up by bank, etc., out of guaranty fund.—For the purpose of meeting current demands in excess of the receipts, any of the securities may be sold, or taken up and replaced in cash, by the bank or banking and trust company, out of its general fund. (Id. sec. 13.)

Art. 435. Amount of deposits to be kept on hand.—There shall be kept on hand at all times not less than fifteen per cent of the whole amount of such deposits in such savings department; one third of which shall be kept in actual cash in such savings department and two-thirds of which may be kept with reserve agents designated and approved for such purpose by the Commissioner of Insurance and Banking. (Acts 1909, 2 S. S. p. 406, sec. 13; Acts 1917, ch. 205, sec. 7a.)

Art. 436. Notice of withdrawal of deposits.—It shall be lawful to require sixty days written notice of the withdrawal of any savings deposits, as provided for in this chapter, at the option of the bank or banking and trust company. (Acts 1909, 2 S. S. p. 406, sec. 13.)

Art. 437. Exclusive prior lien of savings depositors on cash of savings department, etc.—In case of the insolvency or liquidation of any state bank or banking and trust company which shall establish or maintain a savings department, under the terms of this chapter, its savings depositors shall have an exclusive prior lien upon all the assets, including cash, of such savings department, and which shall be first paid; and the remainder, after they have been paid in full, shall be applied to the payment of claims of general creditors. (Id. sec. 13.)

Art. 438. Statement of assets and liabilities of savings department; no savings deposits to be received unless, etc.—It shall be the duty of the president of each state bank or banking and trust company, maintaining a savings department under the provisions of this chapter, to file with the commissioner of insurance and banking, not less than ten days after the first day of each calendar month, a statement of the assets and liabilities of such savings department, upon a form to be prescribed by the commissioner of insurance and banking; and it shall be unlawful for any officer of any state bank or banking and trust company to receive or assent to the receiving of any savings deposits, when the last preceding monthly statement, as herein provided for, is not conspicuously posted in the office from wherein its business is transacted. (Id. sec. 13.)

Art. 439. Directors may provide for interest on savings deposits, etc., provided, etc.—The directors of any state bank or banking and trust company establishing or maintaining, or continuing to maintain, a savings department, may provide that such rate of interest shall be paid on the savings deposits, as it may see fit, payable at such

periods and upon such terms and conditions as may be reasonable; provided, that in any case the earnings of such savings department are insufficient to pay any interest due upon any savings deposits, such interest, or the deficiency therein, shall be paid by the bank or banking and trust company out of its general funds. (Id. sec. 13.)

Art. 440. Accumulated earnings of savings department may be transferred to general fund of bank, etc., when.—At the end of any period for which such bank or banking and trust company may lawfully declare a dividend upon its stock, it shall be proper to transfer to the general fund of such bank or banking and trust company all accumulated earnings of the said savings department, after the payment or credit of all interest due on the accrued savings deposits and the legitimate expenses of such department have been provided for. (Id. sec. 13.)

Art. 441. Savings department governed by provisions of this title, etc.—All such savings departments shall be governed by the terms and provisions of this title, so far as the same are applicable and are not in conflict with the special provisions of this chapter, and shall also be governed by such provisions of laws of the state applicable to savings banks as are not in conflict with any of the provisions of this title or of this chapter. (Id. sec. 13.)

Art. 442. Directors may adopt regulations; to be submitted to commissioner, etc.—Such reasonable rules and regulations for the control of such savings departments may be adopted and put in force by the board of directors at any regular meeting of the stockholders at any annual meeting; provided, that such rules and regulations shall not become effective until they have been submitted to the commissioner of insurance and banking, and by him approved. (Id. sec. 13.)

Art. 443. Certain acts forbidden.—It shall be unlawful for any director or officer of any bank or banking and trust company, which shall establish or maintain, or continue to maintain, a savings department, or which shall use the word "savings," as provided in this chapter, to knowingly misappropriate any moneys or funds belonging to such savings department, or to use or consent to the use of any such moneys or funds, otherwise than for the payment of lawful demands of savings depositors, and in the making of such investments as are prescribed in this chapter, and in the payment of such dividends to the shareholders as are allowed by the law to be paid therefrom, or to borrow any of the funds belonging to such savings department, or to in any way be an obligor for moneys loaned by or borrowed of such savings department, or to receive or accept, directly or indirectly, any commission, brokerage or other valuable thing or favor of any kind by reason or on account of any loan or investment made out of the funds of such savings department, or to sell such savings department any security or other investment. (Id. sec. 13.)

Art. 444. Assets not to be reduced below deposits, and fifteen per cent to be cash.—It shall be unlawful for any director or officer of any bank or banking and trust company, which shall establish or maintain, or continue to maintain, a savings department, or which shall use the word "savings," as provided in this chapter, to willfully and knowingly do or perform any act or transaction by or as a result of which, at any time, the assets of such savings department, including cash, shall not at least equal in amount the deposits in such savings department, at least fifteen per cent of which shall be actual cash in such savings department. (Id. sec. 13.)

CHAPTER FIVE

BANK DEPOSIT GUARANTY LAW

Art. 445. What banking, etc., corporations may protect depositors under provisions of this chapter.—Each and every corporation which may hereafter be incorporated under the laws of this state, with banking and discounting privileges, and each banking and trust company in this state heretofore incorporated under the provisions of Chapter 10 of the Acts of the first called session of the Twenty-ninth Legislature, and known as the state banking law, or hereafter incorporated under the provisions of this title, shall, at its option, protect its depositors in the manner hereinafter prescribed, either by availing itself of the depositors' guaranty fund herein provided for, or by the depositors bond security system hereinafter set forth. (Acts 1909, 2 S. S., p. 406, sec. 1.)

Art. 446. State banking board created, powers, etc.—A state banking board is hereby created, which board shall be composed of the attorney general, commissioner of insurance and banking and the treasurer of this state. Said board shall have the control and management of the depositors guaranty fund hereinafter provided for, and shall have the power to adopt all necessary rules and regulations in harmony with this chapter, for the management of said fund. Said board shall have the general supervision and control of the depositors bond security system provided for in this chapter, and shall have the power of the regulation, control and supervision of all state banking corporations and trust companies as hereinafter provided in this title. (Id. sec. 2.)

Art. 447. Such bank, etc., to have option of methods of securing deposits, must adopt one, when, etc.—Each and every bank and trust company, mentioned in article 445, shall have the right and privilege, at its option, to secure its depositors by the manner, method, and under the terms, provisions and regulations, as set forth in this title for the depositors guaranty fund or the bond security system; provided, that all such banks and trust companies shall secure their deposits by one of said plans on January 1, 1910; provided, further, that such option shall be exercised on or before October 1, 1909; and provided, that such option shall be exercised by the holders of the majority of the stock; and the president or cashier of such bank shall notify the commissioner of insurance and banking by registered mail of such action. (Id. sec. 3.)

Art. 448. Bank, etc., electing guaranty fund method, to pay what and when for creation of fund.—Any such bank or trust company which shall elect to secure its deposits under the depositors guaranty fund, provided for by this chapter, shall pay to

said banking board, provided its application is approved by said board as prescribed in article 451, on January 1, 1910, one per cent of its daily average deposits, for the preceding year ending November 1, 1909, not including United States, state or other public funds, if otherwise secured, for the purpose of creating a depositors guaranty fund. Annually after the first payment to said fund, each bank and trust company subject to the provisions of the guaranty fund plan of this chapter, shall pay to said board one-fourth of one per cent of its daily average deposits for the year ending November 1 of the preceding year, as above defined, which amount shall be added to said guaranty fund; provided, that when the amount available in said guaranty fund shall reach the sum of two million dollars, the bank commissioner shall notify all banks and trust companies subject to this chapter, at least thirty days before the next annual payment; and thereafter the banks and trust companies participating shall not pay any further amount into said fund until said fund be depleted. In the event of the depletion of said fund from any cause so that it falls below two million dollars, or below the amount of the guaranty fund on January 1, preceding, or in the event of necessity to meet an emergency at any time, said board shall have authority to require the payment for the current year of two per cent of such average deposits, or such part thereof as may be necessary to restore said fund to the maximum above named, or to its amount as of January 1, preceding, or to meet the emergency; but no bank or trust company coming under the provisions of this chapter shall ever be required to pay more than two per cent of said average daily deposits for any one year; provided, further, that first payment herein provided for shall be made to said board without reference to said maximum sum. (Id. sec. 4.)

Art. 449. Fund paid to whom, and how; how paid out; no diversion; not state fund; duty of board.—The fund provided for in this chapter shall be paid to the state banking board as follows: Twenty-five per cent of each payment required of each such bank or banking and trust company shall be paid to said board in cash, and shall be by it deposited for safe keeping only with the state treasurer, as bailee for the state banking board, and shall be paid out by the state treasurer on warrants drawn by the order of said board; and said fund shall never be diverted from the purpose specified in this chapter, nor shall it ever be considered state funds. The remaining seventy-five per cent of each payment required shall be paid by each such bank or banking and trust company crediting the state banking board with such amount as a demand deposit subject to check upon the order of said board. It shall be the duty of said board to keep, at all times, twenty-five per cent of the amount of said fund deposited with the state treasurer in cash as provided herein. (Id. sec. 5.)

Art. 450. Certain bank and trust companies to pay what; credit fund.—State bank and trust companies, organized less than one year prior to the taking effect of this law, or hereafter organized, on approval of their applications, as provided for in article 451, shall pay into said guaranty fund three per cent of the amount of their capital stock and surplus, which amount shall constitute a credit fund, subject to adjustment on the basis of their deposits as provided for other banks now existing, at the end of one year; provided, however, that said payment shall not be required of banks and trust companies formed by the reorganization or consolidation of banks that have previously complied with the terms of this chapter. (Id. sec. 6.)

Art. 451. Board to admit, etc., only such banks, etc., as they deem solvent, etc.; applications; grounds of refusal to be stated.—The state banking board shall admit to the benefits and protection of this chapter only such banks and trust companies as, in their opinion, are solvent and properly officered and conducted, and shall prescribe the form of application and statement which shall be made by each and every bank and trust company, and which shall be sworn to by two of the chief officers of the bank, blank copies of which application and statement shall be mailed to each state bank and trust company in this state at least ten days before this chapter requires the initial payment, and which shall be filled out, signed and sworn to and returned promptly to said board; and such copies shall be mailed to any other bank within this state on request. Should said board decline the application of any bank and trust company, it shall state the ground of such declination to such institution, and whether the objection can be removed, and the condition thereof. (Id. sec. 7.)

Art. 452. National banks may avail of protection of guaranty fund; may withdraw when.—Any national bank in this state may voluntarily avail its depositors of the protection of the depositors guaranty fund, upon the same terms, payments, conditions and in the same manner as herein provided for state banks; provided, that in the event national banks should be required by federal enactment to pay assessments to any bank guaranty fund of the federal government, and thereby the deposits in national banks in this state should be guaranteed by virtue of federal laws, that the national banks having availed themselves of the benefits of this chapter, may withdraw therefrom and have returned to them the unused portion of all assessments levied upon and paid by said banks. (Id. sec. 8.)

Art. 453. Commissioner may wind up affairs of bank, by receiver, or, etc.; bond; notice.—Whenever any state bank or trust company shall become insolvent and shall voluntarily, or by law, or in any manner as provided in this title, come into the hands of the commissioner of insurance and banking, he may proceed to wind up its affairs, either through a receiver or through some competent person, who shall give bond as may be required by the board, payable to the board, for the faithful performance of all duties imposed upon him. Said bond may be recovered upon for the benefit of said guaranty fund, or any party at interest. On taking possession of the property and business of any such state bank, the commissioner shall forthwith give notice of such fact to any and

all banks, trust companies, associations and individuals holding or in possession of any assets of any such state bank. (Id. sec. 9.)

Art. 454. No bank, etc., notified shall have a lien or charge against assets for payment, etc., thereafter.—No bank, trust company, association, or individual, knowing of such taking possession by the commissioner, or notified as aforesaid, shall have a lien or charge for any payment, advance of clearance thereafter made, or liability thereafter incurred against any of the assets of the state bank of whose property and business the commissioner shall have taken possession as aforesaid. (Id. sec. 9.)

Art. 455. Bank, etc., may resume business with the consent of board, when, etc.—Such state bank may, with the consent of the state banking board, resume business upon such condition as may be approved by such board, which permission shall be evidenced by a written statement to that effect from the commissioner. (Id. sec. 9.)

Art. 456. General powers and duties of commissioner—Upon taking possession of the property and business of such state bank, the commissioner is authorized to collect moneys due to such corporation, and do such other acts as are necessary to conserve its assets and business and shall proceed to liquidate the affairs thereof as provided in this chapter. (Id. sec. 9.)

Art. 457. Shall collect debts, etc.—The commissioner shall collect all debts due and claims belonging to such state bank. (Id. sec. 9.)

Art. 458. On order of court, etc., may sell, etc., bad debts, or real or personal property.—Upon the order of the district court, if in session, or the judge thereof, if in vacation, of the county in which such state bank was located and transacting business, the commissioner may sell or compound all bad or doubtful debts, and, on like order, may sell the real or personal property of such state bank, on such terms as the court shall direct. (Id. sec. 9.)

Art. 459. May enforce liability of stockholders; if, etc.—The commissioner may, if necessary to pay the debts of such state bank, enforce the individual liability of the stockholders. (Id. sec. 9.)

Art. 460. May appoint agents, etc., and give what authority.—The commissioner may, under his hand and official seal, appoint one or more special agents to assist him in the duty of liquidation and distribution, the certificate of appointment to be filed in the office of the commissioner, and a certified copy in the office of the clerk of the county court in which such state bank was located and transacted business. The commissioner may, from time to time, authorize a special agent to perform such duties connected with such liquidation and distribution as the said commissioner may deem proper. (Id. sec. 9.)

Art. 461. May employ counsel and expert assistance, etc.—The commissioner may employ such counsel and procure such expert assistance as may be necessary in the liquidation and distribution of the assets of such state bank, and may retain such of the officers or employés of such state bank as he may deem necessary. (Id. sec. 9.)

Art. 462. May require security from agents, etc.—The commissioner shall require from a special agent, and from such assistants, such security for the faithful discharge of their duties as he may deem proper. (Id. sec. 9.)

Art. 463. Notice to claimants and creditors.—The Commissioner shall cause notice to be given, by advertisement in such newspapers as he may direct, weekly, for three consecutive months, calling on all persons who may have claims against such state bank to present the same to the Commissioner and make legal proof thereof, at a place designated in such notice within ninety days after the date of the first insertion of such published notice, which notice shall also contain a statement in larger type than that in which the body of such notice is printed, specifically stating that all such claims of guaranteed depositors must be presented and legal proof thereof made at the place designated within ninety days after the date of the first insertion of such published notice, and that no claim of guaranteed depositors presented after expiration of ninety days from such date, shall be entitled to payment of any portion thereof out of the Depositors' Guaranty Fund. The Commissioner shall mail a similar notice to all persons whose names appear as creditors upon the books of the State bank. (Acts 1909, 2 S. S. p. 406, sec. 9; Acts 1917, ch. 205, sec. 4.)

Art. 464. May reject claim if, etc., notice, etc., action on.—If the commissioner doubts the justice and validity of any claim, he may reject the same, and serve notice of such rejection upon the claimants, either by mail or by written notice personally served. An affidavit of the service of such notice, which shall be prima facie evidence thereof, shall be filed with the commissioner. The action upon the claim so rejected must be brought within six months after such service. (Acts 1909, 2 S. S. p. 406, sec. 9.)

Art. 465. Claims presented after expiration of time; rights of.—Claims presented after the expiration of the time fixed in the notice to the creditors shall be entitled to share in the distribution only to the extent of the assets in the hands of the commissioner equitably applicable thereto. (Id. sec. 9.)

Art. 466. Inventory of assets of bank; and list of claims; requisite; filing; open to inspection.—Upon taking possession of the property and assets of such state bank, the commissioner shall make an inventory of the assets of such bank in duplicate, one to be filed in the office of the commissioner, and one in the office of the clerk of the county court of the county in which such state bank was located and transacting business; upon the expiration of the time fixed for the presentation of claims, the commissioner shall make a full and complete list of the claims presented, including and specifying such claims as have been rejected by him, and showing fully all claims and amounts paid to guaranteed depositors out of the depositors guaranty fund, and the amount to which said fund is entitled by reason of its subrogation to the rights of such guaranteed depositors so paid, and all amounts held by him on account of claims of guaranteed depositors, which have been rejected or are in dispute, one to be filed in the office of the clerk of the county court of the

county in which such state bank was located and transacted business. Such inventory and list of claims shall be open at all reasonable times to inspection. (Id. sec. 9.)

Art. 467. Compensation of agents, etc.; expenses.—All compensation of special agents, counsel and other employés and assistants, and all expenses of supervision and liquidation, shall be fixed by the commissioner, subject to the approval of the district court, if in session, or the judge thereof, if in vacation, of the district in which such state bank was located and transacting business, on notice to such state bank; provided, that the compensation of such special agents shall always be the same as is provided by law for state bank examiners, and shall, upon the certificate of the commissioner, be paid out of the fund of such state banks in the hands of the commissioner. (Id. sec. 9.)

Art. 468. Disposition of moneys collected by commissioner.—The moneys collected by the commissioner shall be, from time to time, deposited in one or more state banks, and, in case of the suspension or insolvency of the depository, such deposits shall be preferred before all other deposits. (Id. sec. 9.)

Art. 469. Dividends may be declared when, and how.—At any time after the expiration of the date fixed for the presentation of claims, the commissioner may, out of the funds remaining in his hands after the payment of expenses, declare one or more dividends, and, after the expiration of one year from the first publication of a notice to creditors, he may declare a final dividend, such dividends to be paid to such person and in such manner and upon such notice as may be directed by the district court, if in session, or the judge thereof, if in vacation, of the district in which such state bank was located and transacted business. (Id. sec. 9.)

Art. 470. Guaranty fund to receive its portion of dividends with interest; how paid.—In the declaration and payment of all such dividends, the depositors guaranty fund shall be entitled to receive, as its dividend, such portions of the amounts due and payable to guaranteed depositors as shall have been paid to them out of the depositors guaranty fund, together with six per cent interest thereon from the date or dates upon which checks were drawn upon all state banks, as hereinafter provided for the payment of the guaranteed deposits of such state banks; and the commissioner shall forthwith distribute such dividends to state banks, upon which checks were drawn for such payment of guaranteed deposits, in proportion to the amounts of such checks, respectively. (Id. sec. 9.)

Art. 471. Objections to allowed claims.—Objections to any claim not rejected by the commissioner may be made by any party interested, by filing a copy of such objections with the commissioner, who shall present the same to the district court, if in session, or the judge thereof, if in vacation, at the time of the next application to declare a dividend. (Id. sec. 9.)

Art. 472. Provision by court for unproved or unclaimed deposit.—The court may make proper provision for unproved or unclaimed deposits. (Id. sec. 9.)

Art. 473. Bank aggrieved may enjoin proceedings by commissioner.—Whenever any such state bank, of whose property and business the commissioner has taken possession, as aforesaid, deems itself aggrieved thereby, it may, at any time, apply to the district court, if in session, or to the judge thereof, if in vacation, of the district in which such bank is located and transacting business, to enjoin further proceedings; and said court, if in session, or the judge thereof, if in vacation, after citing the commissioner to show cause why further proceedings should not be enjoined, and hearing the allegations and proofs of the parties and determining the facts, may, upon the merits, dismiss such application, or enjoin the commissioner from further proceedings and direct him to surrender such business and property to such state bank. (Id. sec. 9.)

Art. 474. Continued liquidation by commissioner decided by stockholders.—Whenever the commissioner shall have paid to each and every depositor and creditor of such state bank (not including stockholders, except for the amount of their deposits over and above their liability under the law as stockholders), whose claim or claims as such creditor or depositor shall have been duly proven and allowed, the full amount of such claims, and shall have repaid to the depositors guaranty fund all amounts paid out of it to guaranteed depositors of such state bank, together with six per cent interest thereon, from the date when the checks to provide for such payment were drawn, and shall have made proper provision for unclaimed and unpaid deposits or dividends, and shall have paid all the expenses of the liquidation, the commissioner shall call a meeting of the stockholders of such state bank, by giving notice thereof for thirty days in one or more newspapers in the county where such state bank was located and transacted business. At such meeting, the stockholders shall determine whether the commissioner shall be continued as liquidator, and shall wind up the affairs of such state bank, or whether an agent or agents shall be elected for that purpose, and, in so determining, the said stockholders shall vote by ballot, in person or by proxy, each share of stock entitling the holder to one vote; and a majority of the stock shall be necessary to a determination. (Id. sec. 9.)

Art. 475. Continued liquidation by commissioner.—In case it is determined to continue the liquidation under the commissioner, he shall complete the liquidation of such corporation, and, after paying the expenses thereof, shall distribute the proceeds among the stockholders in proportion to the several holdings of stock, in such manner and upon such notice as may be directed by the district court. (Id. sec. 9.)

Art. 476. Continued liquidation by agent of stockholders; selection; bond.—In case it is determined to appoint an agent or agents to liquidate, the stockholders shall, thereupon, select such agent or agents by ballot, a majority of the stock present and voting, in person or by proxy, being necessary for a choice. Such agent or agents shall execute and file with the commissioner a bond, in such amount, with such sureties, and in such form, as shall be approved by the commissioner, conditioned for the faith-

ful performance of all the duties of his or their trust. (Id. sec. 9.)

Art. 477. Transfer, etc., by commissioner; and his discharge from liability.—Upon the filing and approval of such bond, the commissioner shall transfer and deliver to such agent or agents all the undivided and unclaimed or other assets of such state bank then remaining in his hands; and, upon such transfer and delivery, the said commissioner shall be discharged from any further liability to such state bank and its creditors and stockholders. (Id. sec. 9.)

Art. 478. Duties of agent continuing liquidation.—Such agent or agents shall convert the assets coming into his or their possession into cash, and shall account for, and make distribution of, the property of said state bank, as herein provided in the case of distribution by the commissioner, except that the expenses thereof shall be subject to the direction and control of the district court, if in session, or the judge thereof, if in vacation, of the district in which such state bank was located and transacted business. (Id. sec. 9.)

Art. 479. On death, etc., of agent, successor selected; powers, etc.—In case of the death, removal, or refusal to act, of such agent or agents, the stockholders, on the same notice to be given by the commissioner, upon proof of such death, removal, or refusal to act, being filed with him, and by the same vote herein provided, may select a successor who shall have the same power and be subject to the same liabilities and duties as the agent originally elected. (Id. sec. 9.)

Art. 480. Dividends and unclaimed deposits unpaid, disposition of.—Dividends and unclaimed deposits remaining unpaid in the hands of the commissioner for six months after the order for final distribution shall be by him deposited in some state bank to be designated by the state banking board, to the credit of the commissioner in his name of office, in trust for the several depositors with, and creditors of, the liquidated state bank from which they were received, who are entitled thereto. (Id. sec. 9.)

Art. 481. Commissioner's report to show what.—The commissioner shall show in his official report the names of the state banks so taken possession of and liquidated, and the amounts of unclaimed and unpaid deposits or dividends, with respect to each of them, respectively. (Id. sec. 9.)

Art. 482. Commissioner to pay over moneys on order of board, etc., order of court, if, etc.—The commissioner shall pay over the moneys so held by him to the persons respectively entitled thereto, upon the order of the state banking board, who shall direct such payment to such persons, upon being furnished satisfactory evidence of their right to the same. In case of doubt or conflicting claims, the state banking board may require an order of the district court, if in session, or the judge thereof, if in vacation, authorizing and directing the payment thereof. (Id. sec. 9.)

Art. 483. Interest on such moneys how applied; report to include amount.—The state banking board may apply the interest earned by the moneys held by the commissioner, or may authorize him to apply the same, toward defraying the expenses incurred in payment and distribution of such unclaimed deposits or dividends to the depositors and creditors entitled to receive the same, and the commissioner shall include in his official report a statement of the amount of interest earned by such unclaimed dividends. (Id. sec. 9.)

Art. 484. Bank may place affairs under commissioner, how, etc.—Any state bank may, at any time, place its affairs and assets under the control of the commissioner, by posting a notice on its front door, as follows: "This institution is in the hands of the commissioner of insurance and banking of the state of Texas." (Id. sec. 9.)

Art. 485. Effect of posting notices by commissioner; bars attachment, etc.—The posting of this notice, or of the same notice by the commissioner or any state bank examiner, at any time when he shall have taken possession of the property and business of a state bank, shall be sufficient to place all its assets and property, of whatever nature, in the possession of the commissioner, and shall operate as a bar to any attachment proceedings whatever. (Id. sec. 9.)

Art. 486. Depositors paid in full out of guaranty fund, etc., excepting interest bearing and secured deposits, paid pro rata from assets.—In the event the commissioner of insurance and banking shall take possession of any bank or trust company, subject to the depositors guaranty fund plan of this chapter, as herein provided, the depositors of said bank or trust company, as specified in article 448, shall be paid in full out of the cash in said bank or trust company that can be made immediately available from such bank; and the remainder shall be paid out of the depositors guaranty fund through the said board, in the event the cash available in said institution shall be insufficient; provided, that deposits upon which interest is being paid, or contracted to be paid, directly or indirectly by said bank, its officers or stockholders, to the depositor and deposits otherwise secured, shall not be insured under this chapter, but shall only receive the pro rata amount which may be realized from the assets, resources and collections of and from such banks and trust companies, its stockholders or directors. (Id. sec. 10.)

Art. 487. State to have first lien on assets, for benefit of guaranty fund; deposits not insured, etc., share in dividends of assets, etc.—The state shall have, for the benefit of the depositors guaranty fund, a first lien upon all assets of such bank or trust company and all liabilities owing or accruing to such bank or trust company in the event of the closing, as provided by law, of any such state bank or trust company, operating under the depositors guaranty fund plan; which lien shall attach and be in force from the time such bank or trust company is legally closed, upon all the property and assets then in possession of such bank or trust company; provided, however, that any deposits on which said bank was paying interest and any other deposits or debts not insured under this chapter, and which are entitled to share in the assets, shall share in the dividends and proceeds of such assets and collections pro rata or as may be provided by law. (Id. sec. 11.)

Art. 488. National bank receiver to refund amounts paid depositors out of guaranty fund.—In the event the depositors guaranty fund, or any part thereof, shall be used by said banking board to pay off the depositors of a national bank which has accepted the provisions of this law, then said banking board shall receive from the receiver, or other officer in charge of said bank, the pro rata share of the proceeds of the assets and collections which would be due to said depositors to the amount so paid by the banking board. (Id. sec. 12.)

Art. 489. Savings department deposits not included in estimate of payment into guaranty fund.—In computing the aggregate amount of average annual deposits of any bank or banking and trust company, for the purpose of determining the amount required to be paid into the depositors guaranty fund, as provided in this chapter, the deposits of its savings department as provided in chapter 4 of this title shall not be included. (Id. sec. 13.)

Art. 490. When depositors paid in full, pro rata of guaranty fund returned.—In the event of the voluntary liquidation of any bank or trust company, operating under the provisions of the depositors guaranty fund, when it shall be made to appear to the state banking board that all depositors have been paid in full, said board shall return to such bank or trust company the pro rata part paid by it into such fund when unused. (Id. sec. 14.)

Art. 491. Banks, etc., electing bond security to file bond, when and where; requirements; approval.—Each and every state bank or trust company now or hereafter incorporated under the laws of this state, which shall elect to come under the provisions of the bond security system of this chapter shall, on January 1, 1910, and annually thereafter, file with the commissioner of insurance and banking, and his successors in office, for and on behalf of the lawful depositors of such bank, a bond, policy of insurance, or other guaranty of indemnity in an amount equal to the amount of its capital stock, which said bond, policy of insurance or other guaranty of indemnity, shall be for and inure to the benefit of all depositors. Such instrument and the security thereby provided shall be approved by the county judge of the county in which such business is domiciled, and shall take effect and be in force from and after it is approved and filed in the office of the commissioner of insurance and banking. Every such corporation shall comply with the provisions of this chapter, as herein provided; and every such corporation that may hereafter be incorporated shall comply with the provisions of this chapter as to the depositors guaranty fund plan, or the bond security system, on filing its charter, before it shall be permitted to receive deposits. (Id. sec. 15.)

Art. 492. Bond to secure depositors at time of filing and for twelve months thereafter.—Every such bond or policy of insurance or other guaranty of indemnity, filed as provided for in this chapter, shall secure depositors at the time said bond is filed and approved, and all deposits made during the period of twelve months thereafter. (Id. sec. 15.)

Art. 493. Requirements in case of personal security.—In case the bond herein provided for shall be executed by personal obligation or security, then in no event shall such bond be deemed adequate and sufficient, unless and until it shall have been executed by at least three different persons or individuals of financial responsibility and solvency, satisfactory to the authorities herein authorized by this chapter, to approve such bond. (Id. sec. 15.)

Art. 494. Who may make bonds, etc., and who not.—The bond or other form of guaranty provided for in this chapter may be made by any person, firm, or corporation, authorized to execute the same, and any and all corporations incorporated under the provisions of articles 380 and 381, shall be and they are hereby authorized and empowered to execute such bonds or guaranties, either singly or collectively, subject to approval as herein provided for; provided, that any such corporation which is at the time operating under the guaranty fund system provided for by this chapter shall not be accepted as a surety on any such bond. (Id. sec. 15.)

Art. 495. Who may take advantage of bond security system; shall file bond; requirements; approval; certificate.—Any person, firm or corporation, other than as described in article 445, transacting lawfully a banking business in this state, or lawfully receiving funds on deposit, shall be authorized to take advantage of the provisions of the bond security system of this chapter and to file with the commissioner of insurance and banking a bond, or policy, or other guaranty of indemnity. Any such corporation shall, in such event, file a bond, or policy of insurance, or other guaranty of indemnity, in like manner as it would be required to file if incorporated under the laws of Texas.

Any such person or firm transacting the business of a private bank shall, in such event, file a bond, or policy of insurance, or other guaranty of indemnity, in any amount to be fixed by the commissioner of insurance, which amount shall in no case be less than one-half the amount of the average of the daily deposits with such person or firm for the preceding period of twelve months; provided, that no person or firm shall be permitted to take the benefit of this article, unless such person or firm shall have been engaged in such business in the state of Texas for the period of at least twelve months; provided, that any such person, firm or corporation shall submit to the commissioner of insurance and banking such reports and statements concerning its deposits and concerning the solvency of such bond, or policy of insurance, or other guaranty of indemnity, as he may require, in order to enable him to determine the sufficiency of such bond, or policy of insurance, or other guaranty of indemnity, and shall pay all such reasonable expenses as may be incurred by him in the making of an examination thereof; provided, further, that such bond, policy of insurance, or other guaranty, shall be approved by the county judge and filed with the commissioner of insurance and banking as provided for in article 491.

Upon the filing of such bond or other form of guaranty, it shall be the duty of the com-

missioner to furnish a certificate of such fact. (Id. sec. 16.)

Art. 496. On default by bond, etc., secured bank, duty of commissioner, etc.—In the event of default by any person, firm or corporation transacting such business or receiving deposits, which shall make, execute or file the bond, or policy of insurance, or other guaranty of indemnity, provided for herein, in the payment of a deposit lawfully demanded, it shall be the duty of the commissioner of insurance and banking, when such default shall be made known to him, to at once make an examination of such bank, and, if in his judgment the bank is insolvent, he shall take charge of such bank, as provided by law for the liquidation of state banks. Upon taking charge of a bank, as above provided, the commissioner of insurance and banking shall at once give notice thereof to each and all persons who may be obligated by reason of such default, and of the conditions of such bond, or policy of insurance, or other guaranty of indemnity, and upon such notice the full amount of the same shall thereby become due and payable within sixty days. (Id. sec. 17.)

Art. 497. Sureties, etc., to pay commissioner full amount of bond, or, etc., in trust for depositors; to be paid pro rata to depositors, etc.—When any bond or policy of insurance, or other guaranty of indemnity, provided for herein, shall become due and payable in accordance with the provisions of this chapter, it shall be the duty of the makers and signers thereof to pay over the full amount of the same to the commissioner of insurance and banking, or such part thereof as he may demand, to be held by him in trust for the depositors, with the person, firm or corporation furnishing such bond, or policy of insurance, or other guaranty of indemnity. All proceeds thus arising, either from voluntary payment or otherwise, shall be payable to the commissioner of insurance and banking, and shall be by him promptly paid over pro rata to unpaid depositors upon presentation to him of satisfactory proofs of their claims, which proofs shall be received and filed before payment thereof shall be approved by him. (Id. sec. 17.)

Art. 498. Texas corporation surety, etc., refusing, etc., to pay, etc.; charter subject to forfeiture, etc.; attorney general's duty.—In the event any maker or signer as surety of such bond, or policy of indemnity, shall be a corporation incorporated under the laws of Texas, and it shall refuse or fail to pay over, within sixty days, as herein provided, the full amount due by it upon such bond, or policy of insurance, or other guaranty of indemnity, its charter shall thereby become subject to forfeiture; and it shall be the duty of the attorney general, upon receiving notice thereof from the commissioner of insurance and banking, to bring suit in the district court of Travis county, Texas, within thirty days, to forfeit such charter, and, upon hearing thereof, decree and judgment may be rendered, annulling and forfeiting the charter of such corporation. (Id. sec. 17.)

Art. 499. Foreign corporation surety, etc., refusing, etc., to pay, permit subject to forfeiture; duty of secretary of state.—In the event any maker or signer as surety of such bond, or policy of insurance, or other guaranty of indemnity, shall be a corporation incorporated elsewhere than in the state of Texas, and transacting business in this state under a permit from the state, and it shall refuse or fail to pay over, within sixty days after demand shall have been made therefor by the commissioner of insurance and banking, as herein provided, the full amount of its liabilities upon such bond, or policy of insurance, or other guaranty of indemnity, it shall thereupon be the duty of the commissioner of insurance and banking to notify the secretary of state of said facts; and it shall be the duty of the secretary of state and the commissioner of insurance and banking thereafter to refuse any permit to said corporation to transact business in the state, until it shall show to the satisfaction of such officers that it has fully discharged its liabilities upon such bond, or policy of insurance, or other guaranty of indemnity, upon which default was thus made. (Id. sec. 17.)

Art. 500. Suit by attorney general, etc., in case of default on bond, etc.—In the event such person, firm or corporation shall default in the payment of a lawful demand, and shall so continue for the period of ninety days from the beginning thereof, and the obligation of such bond of insurance, or other guaranty of indemnity, is not discharged, it shall be the duty of the attorney general, or any district or county attorney, acting at his instance, to bring suit upon such bond, or policy of insurance, or other guaranty of indemnity, in the name of the governor, and for the benefit of all persons who may be beneficiaries thereof by reason of its terms and conditions. (Id. sec. 17.)

Art. 501. Venue of suit on bond, etc.; limitation.—Such suit shall be instituted in the district court of the county where the person, firm or corporation furnishing such bond, policy of insurance, or other guaranty of indemnity, transacted such business at the time of the filing thereof, or in any county immediately adjacent thereto, at the option of the attorney general. Any action upon such bond, or policy of insurance, or other guaranty of indemnity, shall be brought within twelve months of the date therein fixed for the termination thereof. (Id. sec. 17.)

Art. 502. Surety, etc., paying, subrogated to rights of depositors.—Whenever any maker or signer of any bond, or policy of insurance, or other guaranty of indemnity, other than the principal therein, shall be required under the provisions of this chapter to pay over for the benefit of the depositors, with any person or corporation, any sum or sums of money, such maker or signer making or participating in such payment, shall thereby become subrogated to the rights of a depositor to the extent of the payments so made, and entitled to assert such right in accordance with the laws of the state, secondary and subject to the rights of all depositors secured by such bond, or policy of insurance, or other guaranty of indemnity. (Id. sec. 18.)

Art. 503. Fees for examination of bank with view to bond.—The commissioner of insurance and banking, when in his judgment it is necessary to make an examination of a bank in order to determine whether or

not it is authorized to make bond under this chapter, or to determine the amount of such bond, shall charge a fee of not to exceed twenty dollars against each corporation incorporated under the laws of the state to do a banking business, or to receive funds on deposit, for the examination of the bond, or policy of insurance, or other guaranty of indemnity, provided for in article 491, and the examination of the solvency thereof, and for the filing of the same, and shall be authorized to charge an examination fee sufficient to cover the actual expenses thereof, against any other person, firm or corporation permitted to file such bond, or policy of insurance, or other guaranty of indemnity, under the provisions of this chapter. (Id. sec. 19.)

Art. 504. Form of guaranty bond.—The bond, or policy of insurance, or other guaranty of indemnity, herein provided for, shall contain substantially the following provisions:

"State of Texas,
County of .....

Know all men by these presents: That we, ...as principal, and ..... and .....as sureties, are held and firmly bound unto the governor of the state of Texas, and his successors in office, in trust for the benefit of depositors having funds deposited with .....in the sum of ..... dollars, payable as provided by the laws of Texas, at the time of the execution hereof, conditioned that the above bound ..... will pay, upon demand, or in accordance with the certificate of deposit, to the persons entitled thereto, all deposits in said bank at the date of said bond, and all other deposits made therein during the period of one year from the date hereof. Upon payment of any sum or sums made obligatory by reason of the terms hereof, any surety herein making or participating in such payment, shall thereby be subrogated to the rights of a depositor and entitled to assert such rights in accordance with the laws of the state, secondary and subject to the rights of all depositors secured by the terms hereof." (Id. sec. 20.)

Art. 505. Security may be divided into two or more bonds, etc.—The security for the benefit of depositors provided for by this chapter may be divided into two or more bonds, policies of insurance, or other guaranties of indemnity, or any part thereof may be given in either of such forms of guaranty of indemnity; provided, that the aggregate thereof shall be equal to the total amount of the security required in accordance with the provisions of this chapter. (Id. sec. 21.)

Art. 506. Additional security where deposits excessive; penalty.—Whenever the deposits of any corporation incorporated under the laws of Texas, which shall have filed a bond, or policy of insurance or other guaranty of indemnity, with the commissioner of insurance and banking, in accordance with the provisions of this chapter, shall exceed six times the amount of its capital and surplus, it shall be its duty to furnish, in addition to the security theretofore so given, additional security for the protection of its depositors, which additional security shall consist of one or more bonds, or policies of insurance, or other guaranties of indemnity, as herein provided, in a sum or sums, which shall, in the aggregate, be equal to the total amount of such excess of deposits above six times the amount of the capital and surplus of such corporation. In the event any such corporation shall refuse or fail to comply with the provisions of this article, after demand by the commissioner of insurance and banking, it shall be his duty to report the facts to the attorney general, who shall thereupon institute suit in the district court of Travis county to forfeit the charter of such corporation; and such court shall, upon hearing and proof thereof, enter a decree and judgment therein, forfeiting and annulling the charter of such corporation. (Id. sec. 22.)

Art. 507. Upon failure to give bond, etc., or avail of guaranty fund, suit to forfeit charter.—If any corporation organized under the general laws of this state to do a banking business or to receive funds on deposit shall fail or refuse to file the bond, or policy of insurance, or other guaranty of indemnity, provided for in articles 491, 492, 493, 494 hereof, in accordance herewith, or avail itself of the depositors guaranty fund plan as provided in this chapter, it shall be the duty of the commissioner of insurance and banking to promptly report such failure to the attorney general, who shall thereupon institute suit in the district court of Travis county to forfeit the charter of such corporation; and such court shall, upon hearing and proof thereof, enter decree and judgment therein, forfeiting and annulling the charter of such corporation. (Id. sec. 23.)

Art. 508. New or additional security may be required, when; penalty for failure to give; powers of commissioner and attorney general.—If at any time it shall appear to the state banking board that any bond, or policy of insurance, or other guaranty of indemnity, filed as provided for herein, by any corporation organized under the laws of Texas, is insufficient, they shall have the authority, and it shall be their duty, to require such corporation to file new or additional security in an amount sufficient to protect its depositors, in accordance with this chapter. In the event such corporation shall refuse or fail to comply with such requirements, they shall communicate the facts to the attorney general, who shall thereupon institute such proceedings and take such steps as the nature of the case may require. The commissioner of insurance and banking and the attorney general shall, in such event, have and exercise, for the protection of depositors, all the authority conferred upon them by article 523, and all authority conferred by the provisions of this title. (Id. sec. 24.)

Art. 509. National bank may avail depositors of protection of bond security system.—Any national bank in this state may voluntarily avail its depositors of the protection of the bond security system herein provided for state banks. (Id. sec. 32.)

Art. 510. Certain banks and trust companies created by special acts, may avail of provisions of this chapter.—Any bank or trust company created by virtue of a special act of the legislature of the state of Texas, now or hereafter engaged in the general banking business in Texas, and which at the time has only one place of business, and which has heretofore accepted or may

hereafter accept one or more of the provisions of this title, thereby submitting itself to the jurisdiction of the state banking department, may, with the approval of the state banking board, avail itself of the provisions of this chapter, either as a bond security bank, or as a guaranty fund bank, by vote, as prescribed for state banks. (Id. sec. 30.)

Art. 511. Bank, etc., to have certificate of authority posted.—All state banks transacting business in this state shall be required, on or after the first day of January, 1910, to hold a certificate of authority to transact a banking business issued by the commissioner, in compliance with the provisions of this chapter, and to keep same conspicuously posted at all times in the banking house where such business is transacted. (Id. sec. 25.)

Art. 512. Certificate issued by commissioner to bank, etc., approved by board; form.—It shall be the duty of the commissioner of insurance and banking to issue to each state bank which the state banking board shall have approved and certified to him, as provided in this chapter, as being entitled to transact a banking business, a certificate of authority in such form as the state banking board shall approve, to be signed by him under his official seal, certifying that such state bank is authorized, under the laws of this state, to engage in the banking business. Such certificate of authority, when issued to guaranty fund banks, shall contain the following statement on the face thereof in bold type: "The noninterest bearing and unsecured deposits of this bank are protected by the state bank guaranty fund." And, when issued to bond security banks, shall contain the following statement on the face thereof, in bold type: "All deposits of this bank are protected by security bond under the laws of the state of Texas." And, when issued to the state banks other than guaranty fund banks and bond security banks, it shall contain neither of these, nor any similar statement. (Id. sec. 25.)

Art. 513. Commissioner shall close banks when disapproved by board; procedure.—The commissioner of insurance and banking shall close all state banks which the state banking board shall disapprove and determine not entitled, under the laws of this state, to transact a banking business, and shall proceed in such cases in the manner provided by law, with respect to insolvent banks, unless such banks shall go into voluntary liquidation. (Id. sec. 25.)

Art. 514. Secretary of state, issuing charter to deliver to commissioner, duty of latter.—The secretary of state shall, on issuance of any charter to any bank or banking and trust company, deliver the same to the commissioner of insurance and banking, who shall deliver such charter to such corporation, together with the certificate herein provided for, upon such corporation showing to the satisfaction of the state banking board that it has complied with the state banking laws. (Id. sec. 25.)

Art. 515. Advertisements and designations of banks, etc., regulated.—All guaranty fund banks provided for in this chapter are hereby authorized and empowered, if they desire so to do, to publish, by any form of advertising which they may adopt, or upon their stationery, the following words: "The non-interest bearing and unsecured deposits of this bank are protected by the depositors guaranty fund of the state of Texas." All bond guaranty banks, provided for in this chapter, are hereby authorized and empowered, if they desire so to do, to publish, by any form of advertising which they may adopt, or upon their stationery, the following words: "The deposits of this bank are protected by guaranty bond under the laws of this State." Said banks are authorized to use the terms "guaranty fund bank," or, "guaranty bond bank," as the case may be, but they are hereby prohibited from describing said forms of guaranty by any other terms or words than herein named. (Id. sec. 31.)

Art. 516. If certain articles of this title held unconstitutional, etc., remainder unaffected.—Should the courts declare any section of chapter 15 of the Acts of 1909, second called session, as embodied in this title (being chapters 4 and 5, and articles 521, 522, 530, 548 and 564 to 574, inclusive) unconstitutional or unauthorized by law, or in conflict with any other section or provision of said chapter 15, then such decision shall affect only the section or provision so declared to be unconstitutional, and shall not affect any other section or part of said chapter, as embodied in this title. (Id. sec. 40.)

Art. 517. Provisions of certain chapters and articles cumulative.—The provisions of the articles and chapters mentioned in the preceding article shall be held to be cumulative of all laws now in force applicable to state banks or banking and trust companies, incorporated under the laws of Texas, not in conflict therewith. (Id. sec. 47.)

CHAPTER SIX

GENERAL PROVISIONS

Art. 517a. Banks, trust companies, and banks and trust companies; application to state banking board for charter.—The incorporations [incorporators] of any proposed state bank or trust company or bank and trust company, shall, in addition to the other things required by law, make application to the state banking board for a charter in such form as said board may prescribe, and submit and present to said board articles of incorporation, or association, as prescribed by law. (Acts 1913, p. 211, sec. 1.)

Art. 517b. Board to investigate, and refuse or grant charter; articles of incorporation.—Upon presentation of the articles of incorporation mentioned in section 1 hereof [Art. 517a], to the state banking board, said board shall carefully examine the same and investigate and inform themselves as to the financial standing and charter of the incorporations [incorporators], each such incorporation [incorporator] to show, to the satisfaction of said board, through affidavit or otherwise as may be required by said board, that he is worth over and above exemptions and liabilities, at least double the amount of the par value of the stock subscribed for by him. The said board shall also inform itself as to the public necessity of the business in the community in which it is sought to establish the same, and determine whether the

capital for which the business is sought to be capitalized is commensurate with the requirements of law, and the location of the business, and that the applicants are acting in good faith. Should said board determine any of the foregoing requirements or questions unfavorably to the applicants the charter shall be refused; but if favorably, then the charter shall be granted and the articles of incorporation shall be filed with the commissioner of insurance and banking, who shall deliver a certified copy thereof to the incorporators. (Id. sec. 2.)

Art. 517c. Deposit of fee with commissioner of insurance and banking; franchise tax.—At the time [of] the articles of incorporation aforesaid are submitted to the state banking board, the applicants for charter shall deposit with the commissioner of insurance and banking the fee required by law for the charter they seek to have granted. If the charter is refused by said board, then the charter fee shall be returned to the applicants.

Before issuing and delivering to the incorporations [incorporators] a certified copy of the articles of incorporation, the incorporators shall present to the commissioner of insurance and banking a receipt from the secretary of state, showing that they have paid to the latter officer the required franchise tax, and annually thereafter the franchise tax shall be paid to the secretary of state. (Id. sec. 3.)

Art. 517d. Laws repealed.—All laws and parts of laws in conflict herewith are hereby repealed. (Id. sec. 4.)

Art. 517e. Membership in Federal Reserve Banks.—All banks or bank and trust companies incorporated under the laws of Texas shall have authority to become members of Federal Reserve Banks under such terms and limitations as may be prescribed by the laws of the United States and such rules and regulations relative thereto as may be promulgated by lawful authority. (Acts 1914, 3d C. S., ch. 3, sec. 1.)

See ante, arts. 377-377b, and post, arts. 517f, 522a, 523a, 539, 569a-570b.

Art. 517f. Conformity to Federal Reserve Act and regulations thereunder.—Any bank incorporated under the laws of this State which becomes a member of a Federal Reserve bank shall have authority to conform to the Federal Reserve Act as the same now exists, or as it may hereafter be amended, and such rules and regulations as the Federal Reserve Board may prescribe in order to entitle it to membership in a Federal Reserve bank. (Id. sec. 11.)

Art. 517g. Amendments to charter may be filed with commissioner of insurance and banking; fees.—All amendments to charters of banks and banking and trust companies heretofore or hereafter incorporated under the General Banking Laws of the State of Texas shall be filed in the office of the Commissioner of Insurance and Banking and it shall not be necessary for the same to be filed in the office of the Secretary of State. When amendments are tendered the Commissioner of Insurance and Banking for filing he shall charge for filing of same and issuing a certified copy thereof the same fees as are now charged therefor by the Secretary of State. (Acts 1917, ch. 205, sec. 1.)

Art. 517h. Oath of directors; increase or decrease of number of directors; hypothecation of qualifying shares held by director shall vacate office.—In addition to the method of qualifying as director of a state bank or banking and trust company as heretofore required by law, each person so elected director shall hereafter make oath that he will diligently and honestly administer the affairs of such corporation and will not knowingly violate or willingly permit to be violated any of the provisions of the Banking Laws of this State and that he is the owner in good faith and in his own right of the number of shares of stock required by law to be owned by directors of said banking corporations, and that same is not hypothecated or pledged for debt, such oath subscribed by the director making it and certified by the officer before whom it is taken shall be filed permanently in the minutes of the corporation. Provided, however, that it shall not be necessary to amend the charter of any such banking corporation when it is desired to increase or decrease the number of directors, but that the stockholders shall have the right at any regular annual election of directors to elect such number as they may see fit, not less than five nor more than twenty-five, and such number so elected shall be the full number of directors for the ensuing year for which they are elected; provided, however, that when the number of directors is changed under this section a certified copy of the resolution changing the number shall be forwarded at once to the Commissioner of Insurance and Banking to be filed by him in the charter file of the corporation, but no charge shall be made by the Commissioner therefor; provided, further, that no director of any such bank shall, while he is such director, hypothecate or pledge that number of his shares of stock required by law in order to be a director; and the pledging or hypothecation of such stock shall automatically vacate his position as a director. (Id. sec. 2.)

Art. 518. Commissioner of insurance and banking; bond; seal; not to be interested, etc.; salary.—The commissioner of insurance and banking shall, in addition to his duties as now prescribed by law, be superintendent and inspector of all corporations incorporated under the provisions of this title, availing themselves of its provisions, under the title and designation of commissioner of insurance and banking. He shall give, in addition to the bond now required of him by law, a bond in the penal sum of ten thousand dollars, payable to the state of Texas, with two or more securities, to be approved by the governor and filed in the office of the secretary of state, conditioned for the faithful discharge of his duties as commissioner. The secretary of state shall provide the commissioner of insurance and banking with an official seal with which he shall authenticate all instruments of writing executed by him under this title. The commissioner of insurance and banking shall not be, either directly or indirectly, interested in any such corporation, and shall receive as compensation or salary, for his services under this act, the sum of five hundred dollars per annum, in ad-

dition to his compensation as now fixed by law. (Acts 1905, S. S. p. 501, sec. 38.)

By Acts 1917, 1st C. S. ch. 48, sec. 2, post, art. 7085b, the additional compensation of the commissioner for his banking duties is fixed at $1,000.

Art. 519. Commissioner may employ examiners.—Such commissioner shall employ, from time to time, such clerks and examiners as he may need to discharge, in a proper manner, the duties imposed upon him, by law, who shall perform such duties as he shall assign to them. (Id. sec. 38.)

Art. 520. Examiners; qualifications; oath; bond; right of action on bond for false report.—Every examiner appointed by the commissioner shall be an expert bookkeeper and bank accountant, and, before entering upon the duties of his appointment, take and file in the office of the secretary of state an oath to support the constitution of the state, to faithfully demean himself in office, to make fair and impartial examinations, and that he will not accept, as presents or emoluments, any pay, directly or indirectly, for the discharge of any act in the line of his duty other than the remuneration fixed and accorded him by law, and that he will not reveal the condition of any bank or trust company examined by him, or any information secured in the course of any examination of any bank or trust company, to any one, except the commissioner. No such examiner shall be appointed who has not had practical experience in the banking business for at least five years. No such examiner shall be appointed who is an officer or stockholder in any bank organized under this act. No such examiner shall be appointed receiver of any bank whose books, papers and affairs he shall have examined pursuant to his appointment; and every such examiner shall enter into a bond, payable to the state, in the sum of ten thousand dollars, to be approved by the commissioner and deposited in the office of the state comptroller, conditioned that he will faithfully perform his duties as such examiner; and, in case any such examiner shall knowingly report any such financial company, bank or trust company, in an insolvent condition, or in case he shall report any such financial company, bank or trust company, to be solvent, knowing the same to be otherwise, and any person be injured thereby, such person shall have a right of action on such bond for his injuries. Such action shall be brought in the name of the state on the relation of the injured party. (Id. sec. 43.)

Art. 520a. Indictment disqualifies, until, etc.—Upon indictment of any such examiner for any violation of the provisions of chapters 5 and 6 of this title, he shall be disqualified from further discharging the duties of such office, until such indictment is fully disposed of. (Id. sec. 68.)

Art. 521. Appointment and compensation, etc., of examiners; accounts.—The commissioner of insurance and banking, from time to time, shall appoint such number of state bank examiners as may be necessary to make the examination of banking corporations required by law, which number shall at no time exceed one for each forty banking corporations then subject to examination under the laws of this state. As full compensation for the performance of the duties of examiners, each person so appointed shall be entitled to receive a salary of two thousand dollars per annum, besides necessary traveling expenses. An itemized account of such expenses shall be rendered monthly, under oath, by each examiner and shall be approved by the commissioner. (Acts 1905, S. S. p. 505, sec. 44; Acts 1909, 2 S. S. p. 424, sec. 33.)

See post, art. 521a.

Art. 521a. Salaries of bank examiners; traveling expenses and account thereof; classification of examiners; designation of examiner as general liquidating agent; salary, assessment against banks in liquidation.—The salary and full compensation for State Bank Examiners appointed by the Commissioner of Insurance and Banking shall hereafter be as follows: for the first year of service, the sum of Two Thousand Dollars; for the second year of service, the sum of Two Thousand Two Hundred Dollars; for the third year of service the sum of Two Thousand Four Hundred Dollars; for the fourth year of service, the sum of Two Thousand Six Hundred Dollars; for the fifth year of service, the sum of Two Thousand Eight Hundred Dollars; and for the sixth year of service the sum of Three Thousand Dollars, which salary shall not be increased; and in addition to the salary above specified, they shall receive all necessary traveling expenses. An itemized account of such expenses shall be rendered monthly under oath by each Examiner and shall be approved by the Commissioner. Provided, however, that the Commissioner of Insurance and Banking shall classify the Examiners on his force when this Act goes into effect in accordance with the year of service they have heretofore served in such offices, and shall count such years of service in determining the salaries which shall be paid such Examiners after this Act becomes effective. It is further provided in this connection that the Commissioner of Insurance and Banking may designate any one of his Bank Examiners as a General Liquidating Agent for the purpose of liquidating any one or all state banks in process of liquidation, with his office in the Banking Department at Austin, Texas, and conducting the liquidation for and under the direction of the Commissioner of Insurance and Banking; and for such service such Bank Examiner acting as General Liquidating Agent for the Commissioner shall in addition to the salaries above provided for receive Five Hundred Dollars per annum for his services as General Liquidating Agent of the Department, provided that such Liquidating Agent shall never receive a total salary in excess of Three Thousand Dollars per annum. It is further provided that the entire salary of the General Liquidating Agent herein referred to may be assessed proportionately by the Commissioner against any bank or banks in liquidation and be collected and paid into the State Treasury, as fees for examinations are collected and paid into the Treasury; provided, however, that the amount which may be assessed against any one bank shall not exceed proportionately for the time the compensation herein fixed as the salary of a Bank Examiner for his first year's service. (Acts 1917, ch. 205, sec. 5.)

Art. 522. Commissioner to examine banks quarterly, etc.; power of commissioner and examiners to administer oaths; examination fees how paid, pro-

portioned, etc.; when collected, to be paid into treasury to credit general revenue fund; payments for salaries and expenses of examinations, etc., in enforcing certain provisions of law, made how. —It shall be the duty of the commissioner of insurance and banking, at least once in each quarter of each calendar year, to cause each banking corporation, heretofore or hereafter incorporated under the general laws of the state of Texas, subject by law to examination, to be thoroughly and fully examined, and any such corporations may be examined whenever such commissioner may deem it necessary or expedient. Such commissioner and all state bank examiners shall have the power to administer oaths to any person whose testimony may be desired for the purpose of any such examinations. The expense of every general and special examination shall be paid by the corporation examined in such amount as the commissioner of insurance and banking shall certify to be just and reasonable. Provided, such expenses shall be paid in proportion to the amount of capital stock of the various corporations as follows: Those with a capital stock of ten thousand dollars shall not pay more than twelve and one-half dollars; those with a capital stock of more than ten thousand dollars and not exceeding twenty-five thousand dollars shall not pay more than fifteen dollars; those with a capital stock of more than twenty-five thousand dollars and not exceeding fifty thousand dollars shall not pay more than twenty dollars; those with a capital stock of more than fifty thousand dollars and not exceeding one hundred thousand dollars shall not pay more than thirty dollars; those with a capital stock of more than one hundred thousand dollars and not exceeding two hundred and fifty thousand dollars shall not pay more than thirty-seven and one-half dollars; those with a capital stock of more than two hundred and fifty thousand dollars and not exceeding five hundred thousand dollars shall not pay more than seventy-five dollars; those with a capital stock of more than five hundred thousand dollars and not exceeding one million dollars shall not pay more than one hundred and twenty-five dollars; those with a capital stock of more than one million dollars and not exceeding two million dollars shall not pay more than one hundred and fifty dollars; those with a capital stock of more than two million dollars and not exceeding four million dollars shall not pay more than two hundred dollars; and those with a capital stock exceeding four million dollars shall not pay more than three hundred dollars. The permanent surplus of any such corporation shall be reckoned in ascertaining the fees for examination as a part of its capital stock. All sums collected as examination fees shall be paid by the commissioner of insurance and banking directly into the state treasury, to the credit of the general revenue fund. Payments for salaries and expenses of examinations and for expenses of the commissioner of insurance and banking in enforcing this title shall be made upon the certificate of the commissioner of insurance and banking by warrant of the comptroller upon the state treasurer. (Acts 1905, S. S. p. 501, sec. 39; 1909, 2 S. S. p. 422, sec. 26.)

See post, art. 522a.

Art. 522a. Examination of members of Federal Reserve bank.—It shall be the duty of the Commissioner of Insurance and Banking, at least once in each quarter of each calendar year, to cause each banking corporation incorporated under the laws of this State, to be thoroughly and fully examined; provided, however, that as to such banking corporations as shall become members of a Federal Reserve bank, should the Federal Reserve Board or the Comptroller of the Currency insist upon making examination of such banking corporations by National bank examiners, then the Commissioner of Insurance and Banking shall be required to make or cause to be made but two regular examinations of such banking corporations during any one year; provided, further, that the Commissioner shall have the power to make special examinations of any State banking corporation at any time in his discretion.

The Commissioner of Insurance and Banking, or any State bank examiner, at his direction, shall be authorized at any time to forward to the Comptroller of the Currency, or the Federal Reserve Board, copies, or certified copies, of a State bank examiner's report of any regular or special examination made of any banking corporation which has or shall become a member of a Federal Reserve bank.

The provisions of this section shall be cumulative of any other laws now upon the statute books of this State in respect to this subject. (Acts 1914, 3d C. S., ch. 3, sec. 9.)

Art. 523. Duties of commissioner in cases of certain derelictions, etc., of banks, etc.; duties of attorney general.—Whenever the commissioner shall have reason to believe that the capital stock of any corporation, subject to the provisions of this title, is reduced, by impairment or otherwise, below the amount required by law, or by its certificates or articles of association, he shall require such corporation to make good the deficiency. Whenever it shall appear to the commissioner, from any examination made by him or his examiners, that any such bank or trust company is conducting its business in an unsafe, unauthorized manner, he shall, by an order under his hand and seal, direct the discontinuance of such illegal and unsafe and unauthorized practices and strict conformity with the requirements of the law, and with safety and security in its transactions; and, if wrong entries or unlawful uses of the funds of such corporation have been made, he or they shall require that such entries shall be corrected and such sums unlawfully paid out shall be restored by the person or persons responsible for the wrongful or illegal payment thereof; and, whenever any corporation shall refuse or neglect to make any such report, as is hereinbefore required, or to comply with any such orders as aforesaid, or whenever it shall appear to the commissioner that it is unsafe or inexpedient for any such corporation to continue to transact business, or that extraordinary withdrawals of money are jeopardizing the interest of remaining depositors, or that any director or officer has abused his trust, or been guilty of misconduct or malversation in his official position, injurious to the institution or that it has suffered a serious loss by fire, burglary, repudiation or otherwise, he shall communi-

cate the facts to the attorney general who shall thereupon institute such proceedings as the nature of the case may require. Such proceedings may be for an order of officers or members of the board of directors [or] for any other remedy suggested by the conditions disclosed to the court; and the court, or judge thereof, in vacation, before whom such proceedings shall be instituted, shall have power forthwith to grant such orders, and, in its or his discretion, from time to time, to modify or revoke the same, and to grant such relief as the evidence, situation of the parties and the interests involved, shall seem to require. If, from an examination made by the commissioner, or by one of his examiners, it shall be discovered that any bank or trust company organized under this act is insolvent, or that its continuance in business will seriously jeopardize the safety of its depositors or other creditors, and, if the action is taken from an examination by an examiner, such examiner shall recommend the closing of the bank, then it shall be the duty of the commissioner, if he approves such recommendation, by himself or one of his examiners, immediately to close said bank or trust company, and take charge of all the property and effects thereof. Upon taking charge of any bank or trust company, the commissioner shall, as soon as practicable, ascertain, by a thorough examination into the affairs, its actual financial condition; and, whenever he shall become satisfied that such corporation cannot resume business or liquidate its indebtedness to the satisfaction of all its creditors, he shall report the fact of its insolvency to the attorney general, who shall, immediately upon the receipt of such notice, institute proper proceedings in the proper court for the purpose of having a receiver appointed to take charge of such bank or trust company and to wind up the affairs and business thereof, for the benefit of its depositors, creditors and stockholders; and it is made the duty of the court, or the judge thereof, in vacation, summarily to appoint said receiver to take possession of the property and assets of said bank, for the purpose of winding up the business thereof, any complaint or opposition of the bank or trust company, or its officers, subsequently to be heard in open court. The commissioner may appoint a special agent to take charge of the affairs of insolvent banks or trust companies temporarily, until a receiver is appointed, such agent to qualify, give bond and receive compensation the same as a regularly appointed bank examiner, such compensation to be paid by the bank, or allowed by the court, as costs in case of the appointment of a receiver; provided, that in no case shall any bank continue in charge of such special agent for a longer period than sixty days. Any incorporated bank or trust company doing business in this state under the laws cited in this title, may place its affairs and assets under the control of the commissioner, by posting a notice on its front door as follows: "This institution is in the hands of the commissioner of insurance and banking of the state of Texas." The post of this notice, or of a notice by the commissioner, that he has taken possession of any bank, shall be sufficient to place all its assets and property, of whatever nature, in the possession of the commissioner, and shall operate as a bar to any attachment proceedings whatever. (Acts 1905, S. S. p. 502, sec. 40.)

Art. 523a. Insolvency of member of Federal Reserve bank; disposition of stock in Federal Reserve bank.—If any State bank which is a member of a Federal Reserve bank shall be declared insolvent and a receiver appointed therefor or other agency for the liquidation of its affairs and the payment of its debts, the stock held by it in the said Federal Reserve bank may be cancelled without impairment of its liability and all cash paid subscriptions on said stock with one-half of one per cent. per month from the period of last dividend, not to exceed the book value thereof; may be first applied to all the debts of said insolvent member bank to the Federal Reserve bank, and the balance, if any, paid to the receiver of the insolvent bank or other agency for its liquidation as provided for in Section six (6) of the Federal Reserve Act. (Acts 1914, 3d C. S., ch. 3, sec. 7.)

Art. 524. Refusal to submit to inspection, etc., to be reported to attorney general, his duty.—If any corporation, subject to the provisions of this title, shall refuse to submit its books, papers and concerns to the inspection of the commissioner, or any of his examiners, or if any officer or director thereof shall refuse to submit to be examined on oath touching the concerns of said corporation, or if it shall be found to have violated its charter, or any law of the state binding upon it, the commissioner shall report the fact to the attorney general, who shall institute such action or proceedings against such corporation as is authorized in article 523 against insolvent banks. (Acts 1905, S. S. p. 502, sec. 42.)

Art. 525. Directors to furnish statement under oath, etc., when required by commissioner, etc.; penalty for failure, etc.—The board of directors of any state bank, trust company, savings bank, or bank and trust company, whenever required thereto by the commissioner of insurance and banking, shall furnish a statement to be filed in his office within ten days from the date of such call under oath before a notary public, by the president, cashier or secretary and attested by three of the directors of the actual condition of the affairs of such state bank, trust company, savings bank, or bank and trust company, at the close of business on the day designated and which day shall be prior to such call; such statement to be upon the form prescribed by the commissioner of insurance and banking.

Each state bank, trust company, savings bank, and bank and trust company which fails to make and transmit any report required in this section within ten days from the date of such notice, shall be subject to a penalty of not less than five dollars nor more than one hundred dollars for each day after the expiration of said ten days that it delays to make and transmit its report to the said commissioner of insurance and banking. Whenever any state bank, trust company, savings bank or bank and trust company, fails neglects or refuses to pay the penalty herein imposed after it has been assessed against such corporation by the commissioner

of insurance and banking such penalty may be recovered by the commissioner of insurance and banking in the name of the state in a suit in Travis county, against such state bank, trust company, savings bank and bank and trust company so refusing to pay; such penalty, when collected to be paid into the state treasury for the benefit of the general school fund. (Acts 1905, S. S. p. 502, sec. 45; Acts 1913, p. 207, sec. 3.)

Art. 525a. One vote on each share; proxy.—In all elections of directors, and in deciding all questions at meetings of shareholders of state banks, trust companies, savings banks and bank and trust companies, each shareholder shall be entitled to one vote on each share of stock held by him.

Shareholders may vote by proxy duly authorized in writing. (Id. sec. 4.)

Art. 525b. Certain titles may not be granted to banks, etc.; approval by commissioner.—The title "First State Bank of ———" will not be granted in case a state bank, trust company, savings bank or bank and trust company was ever before chartered in the place, nor the title of any state bank, trust company, savings bank, or bank and trust company before existing, nor a title liable to be confounded with that of another state bank, trust company, savings bank or bank and trust company; nor the title "Second State Bank" where such title would be a misnomer on account of the existence of two or more state banks, trust companies, savings banks, or bank and trust companies, savings bank or bank and trust companies in the place, and, when the promoters have fixed upon the name for the bank, the commissioner shall be notified, his approval of the title selected being necessary. (Id. sec. 5.)

Art. 525c. Laws repealed.—All laws and parts of laws in conflict herewith are hereby repealed. (Id. sec. 6.)

Art. 526. Form of statement.—The statement required by article 525 shall be in the following form, to wit:

"Official statement of the financial condition of the ..... [here insert name of bank], at ....., state of Texas, at the close of business on the ..... day of ....., 19.., published in the ....., a newspaper printed and published at ....., state of Texas, on the ..... day of ..... 19..

RESOURCES

Loans and discounts, undoubtedly good on personal or collateral .... $.....
Loans, real estate..... $.....
Overdrafts ..... $.....
Bonds and stocks..... $.....
Real estate (banking house)..... $.....
Other real estate..... $.....
Furniture and fixtures..... $.....
Due from other banks and bankers, subject to check..... $.....
Cash items..... $.....
Currency ..... $.....
Specie ..... $.....
Other resources as follows:
..... $.....
..... $.....

Total ..... $.....

LIABILITIES

Capital stock paid in..... $.....
Surplus fund..... $.....
Undivided profits, net..... $.....
Due to banks and bankers, subject to check..... $.....
Individual deposits subject to check $.....
Time certificates of deposit..... $.....
Demand certificates of deposit..... $.....
Cashier's checks..... $.....
Bills payable and rediscounts..... $.....
Other liabilities as follows:
..... $.....
..... $.....

Total ..... $.....

State of Texas, county of .....

We, ..., as president, and ....., as cashier, of said bank, each of us do solemnly swear that the above statement is true to the best of our knowledge and belief.

....., President.
....., Cashier.

Subscribed and sworn to before me this ..... day of ....., A. D. nineteen hundred and .....

Witness my hand and notarial seal on the date last aforesaid.

(Seal.)

Correct—attest: .....Notary Public.
.....
.....
.....
Directors.

(Acts 1905, S. S. p. 502, sec. 46.)

Art. 527. Commissioner to demand statement at least twice a year or oftener, etc.; penalty.—It shall be the duty of the commissioner, not less than twice during any one year, to call upon each bank organized under this title, and each trust company or savings bank, doing business under the provisions of this title, for a statement as hereinbefore provided; and he may call upon any one or more of such corporations to make such statements at any time, though it be more than a second statement within the year; and the commissioner shall give no notice to any person whatsoever of the day on which he will call for such statement. For a violation of this requirement, or of any other duty imposed upon him by this title, he shall be deemed to have committed a misdemeanor in office, and, upon conviction of the same, upon indictment or information, before a competent tribunal, he shall be punished by removal from office and by a fine as provided by the Penal Code. (Id. sec. 49.)

Art. 528. Publication of statement, etc., and posting.—Publication of the statement shall be made by banking corporations in one or more newspapers published in the town, city or county where it is located, if there is one so published; provided, if said banking corporation is located in a town or city having a population exceeding ten thousand inhabitants, then such publication must be in a daily newspaper, if such is published in such city; but, if such corporation is located in a town or city having a population of ten thousand inhabitants or less, then said publication may be in either a daily or weekly newspaper published in said city or town as aforesaid; and in all

cases, a copy of the said statement shall be posted in the banking house, accessible to all. (Id. sec. 47.)

Art. 529. Books and records to be open for inspection of persons interested.—The books and all records of the proceedings of such corporation shall be kept open for inspection of all persons interested. (Id. sec. 62.)

Art. 530. Directors may appoint and remove officers, etc.; authority of officers, etc.; acts without authority void.—The directors of any bank or trust company organized under this title may appoint and remove any officer or other employé at pleasure. The officer or employé shall have no power to endorse, sell, pledge, or hypothecate any note, bond or other obligation received by such corporation for money loaned, until such power and authority shall have been given such officer or employé by the board of directors in a regular meeting of the board, a written record of which proceeding shall have first been made upon the minutes of the corporation; and all acts of endorsing, selling, pledging or hypothecating, done by said cashier, or other officer or employé of any such bank or trust company, without the authority of the board of directors given as here provided, shall be null and void. (Acts 1905, S. S. p. 510, sec. 56; Acts 1909, 2 S. S. p. 425, sec. 34.)

Art. 531. Reduction of capital stock permitted and regulated.—Every corporation doing a banking business in this state may, at any time, reduce its capital stock to any sum not less than ten thousand dollars, and every trust company may reduce its capital to not less than one hundred thousand dollars, in accordance with the provisions of this act; the capital stock of any corporation doing banking business in this state shall not be reduced below the amount provided for in article 375, said amount regulated by the population of towns and cities in this state. The capital stock of every trust company so reduced must conform to the provisions of article 384. The capital stock of savings banks shall not be reduced contrary to the provisions of article 392; provided, that no reduction of such stock shall be made except upon the written consent of the owners of not less than two-thirds of the stock of such corporation. Notice of the intention to so reduce the capital stock shall be published for thirty days, in some daily newspaper in the city or county where such bank is located, or in a weekly paper, for four insertions before the time when such reduction shall be effected, and the last insertion of such notice shall be at least ten days before the date of the reduction; provided, that a statement of such reduction of capital stock, acknowledged by the officers of the corporation, shall be recorded and filed in the same manner as provided in articles 372 and 382 for the original articles of agreement. (Acts 1905, S. S. p. 508, sec. 51.)

Art. 532. Increase of capital stock permitted and regulated.—Any bank or trust company doing business in this state may, at any time, increase its capital stock to any amount not exceeding ten million dollars, in accordance with the provisions of this chapter, with the consent of the persons holding a majority of the stock of such corporation, which shall be obtained at a meeting of the shareholders, called for that purpose. Upon the presentation of a petition signed by the owner or owners of a majority of the stock, asking for such increase, the board of directors shall call a meeting for the purpose of voting on such proposition, sixty days notice of which said meeting shall be published in some daily or weekly newspaper, printed and published in the city or town in which the corporation is located, the last insertion to be not more than five days before the day fixed for such meeting, giving the time, place and the amount of the proposed increase. If, upon a canvass of the votes at such meeting, it is ascertained that the proposition has carried, it shall be so declared by the president of the meeting, and the proceedings entered of record. When the full amount of said proposed increase has been bona fide subscribed and paid in cash to the board of directors of said corporation, then a statement of the proceedings, showing a compliance with the provisions of this chapter, the increase of capital, actually subscribed and paid up, shall be made out, signed and verified by the affidavit of the president and countersigned by the secretary, and such statement shall be acknowledged by the president and received in the office of the recorder of deeds for the county or city in which such corporation is located; and a certified copy of such recorded instrument shall be filed in the office of the secretary of state. Upon the filing of such certified copy, the secretary of state shall issue a certificate that such corporation has complied with the law made and provided for the increase of capital stock, and the amount to which said capital stock has been increased. Thereupon the capital stock of such corporation shall be increased to the amount specified, and such certificate or certified copies thereof shall be taken in all the courts of the state as evidence of such increase. (Id. sec. 52.)

Art. 533. Power to increase or diminish stock, and extend business.—Any corporation which may hereafter be formed for any of the purposes contemplated by this title may increase or diminish its capital stock by complying with the provisions of this chapter, in any amount within the limits of this chapter and may also extend its business to any other purposes authorized by this title, subject to the provisions and liabilities thereof. (Id. sec. 63.)

Art. 534. Notice of meeting to avail of privileges of this title; increase or diminish stock, etc.—Whenever any corporation shall desire to call a meeting of its stockholders for the purpose of availing itself of the privileges and provisions of this title, or for increasing or diminishing the amount of its capital stock, or for extending or changing its business, it shall be the duty of the directors to publish a notice, signed by at least a majority of them, in a newspaper of the county, if any shall be published therein, at least sixty days, and to deposit a written or printed copy thereof in the postoffice, postage prepaid, addressed to each stockholder at his usual place of residence, at least sixty days previous to the day fixed upon for holding such meeting, specifying the object of the meeting, the time and place when and where such meeting shall be held, and the amount to which it shall be

extended or changed. The notice provided for in this article shall be published at least once a week, and the first publication must be at least sixty days before the day of such meeting. (Id. sec. 64.)

Art. 535. Vote of majority of stock necessary to increase stock, etc.—An affirmative vote of the persons holding the larger amount in value of all the shares of stock shall be necessary to increase or diminish the amount of its capital stock, or to extend or change its business as aforesaid, or to enable a corporation to avail itself of the provisions of this title. (Id. sec. 64.)

Art. 536. How to proceed at each meeting; statement to be made, etc., and recorded with secretary of state; certificate; effect.—If, at any time and place specified in the notice provided for in article 534, stockholders shall appear in person or by proxy, in number representing not less than a majority of all the shares of stock of the corporation, they shall organize, by choosing one of the directors chairman of the meeting, and a suitable person for the secretary, and proceed to a vote of those present, in person or by proxy; and if, on canvassing the vote, it shall appear that a sufficient number of votes has been given in favor of increasing or diminishing the amount of capital, or of extending or changing its business as aforesaid, or availing itself of the privileges and provisions of this title, a statement of the proceedings, showing a compliance with the provisions of this title, the amount of capital actually paid in, the business to which it is extended or changed, the amount of assets and liabilities of the corporation and the amount to which the capital stock shall be increased or diminished, shall be made out, signed and verified by the affidavit of the chairman, and be countersigned by the secretary; and such statement shall be acknowledged by the chairman and recorded, as provided in articles 372, 382 and 389; and a certified copy of such recorded instrument shall be filed in the office of the secretary of state, who shall thereupon issue a certificate that such corporation has complied with the law made and provided for the increase or decrease of capital stock, as the case may be, and the amount to which said capital stock is increased or decreased; and such a certificate shall be taken in all courts of this state as evidence of such increase or decrease of stock; and thereupon the capital stock of such corporation shall be increased or diminished to the amount specified in such certificate, and the business extended or changed as aforesaid, and the corporation shall be entitled to the privileges and provisions and be subject to the liabilities of this title. (Id. sec. 65.)

Art. 537. Executor, etc., and pledgor to represent and vote stock.—Every such executor, administrator, guardian or trustee shall represent the shares of stock in his hands at all meetings of the corporation, and may vote accordingly as a shareholder; and every person who shall pledge his stock as aforesaid, may, nevertheless, represent the same at all such meetings, and may vote accordingly as a shareholder. (Id. sec. 61.)

Art. 538. Directors may invest money on what securities.—The directors of banks and trust companies created under this title shall have power of investing the moneys placed in their charge, in loans secured by real estate or other sufficient collateral security, in public bonds of the United States or of this state, in the bonds of any incorporated city, or county, or independent school district in this state. (Id. sec. 58.)

Art. 539. Loans limited.—No incorporated bank or trust company chartered under the laws of this State shall loan its money, directly or indirectly, or permit any individual, corporation, company or firm to become at any time indebted or liable to it in a sum exceeding twenty-five per cent. of its capital stock actually paid in and surplus, or permit a line of loans or credits to any greater amount to any individual, corporation, company or firm, and * * * all loans to members of any unincorporated company or firm shall be considered as if they were loans to such company or firm in determining the limitation here prescribed; and the discount of commercial or business paper actually owned by the person negotiating the same shall not be considered as borrowed money; a permanent surplus, the setting apart of which shall have been certified to the Commissioner of Insurance and Banking and which cannot be diverted without due notice to and consent of said officer, may be taken and considered as a part of the capital stock for the purpose of this section, provided, however, that in no event shall any such loan exceed 25 per cent. of the authorized capital stock and certified surplus; provided, that the provisions of this section shall not be construed as in anywise to interfere with the rules and regulations of any clearing house association in this State in reference to the daily balances between banks; provided that this section shall not apply to balances due from correspondents subject to draft; and provided, further, that the discount of the following classes of paper shall not be considered as money borrowed within the meaning of this section, viz.:

(a) The discount of bills of exchange, drawn in good faith, against actual existing values.

(b) The discount of paper upon the collateral security of warehouse receipts, covering agricultural and manufactured products in store in elevators and warehouses; under the following conditions; first, that the actual market value of the property held in store and covered by such receipts shall at all times, exceed by at least twenty-five per cent, the amount loaned upon the same; second, that the full amount of such loans shall at all times be covered by policies of fire insurance issued by companies lawfully doing business in this State, to the extent of their ability to cover such loans; and all such policies shall be made payable in case of loss to the bank or holder of the warehouse receipts.

Any state banking corporation may accept drafts or bills of exchange drawn upon it and growing out of transactions involving the importation and exportation of goods having not more than six months sight to run; but no bank shall accept such bills to an amount equal at any time in the aggregate to more than one-half of its paid-up capital and surplus. (Acts 1909, 2 S. S. p. 425, sec.

53; Acts 1914, 3d C. S., ch. 3, sec. 8; Acts 1917, ch. 205, sec. 7.)

Acts 1914, 3d C. S. ch. 3, sec. 8 superseded this article as contained in the Revision of 1911, and was amended by Acts 1917, ch. 205, sec. 7, to read as set forth above. For penal provision of this article, see Penal Code, art. 529b.

Art. 540. Company may qualify as guardian, executor, etc., or be sole guarantor or surety on bonds, upon what conditions; evidence of compliance.—Any company, which may hereafter be organized under the provisions of this title to do business in this state, which shall make the state treasurer a deposit of fifty thousand dollars, consisting of cash, treasury notes of the United States, or government, state, county, municipal or other bond, or bonds, notes or debentures, secured by first mortgages or deeds of trust, or mortgages or deeds of trust on unincumbered real estate in this state, worth at least double the amount loaned thereon, or such other first class securities as the said commissioner may approve, said bonds or securities not to be received or held at a rate above par, but if their market value is less than par, they shall not be held above their actual market value, and which shall satisfy said commissioner of its solvency, and shall have received the certificate of said commissioner that such company has made said deposit and has satisfied him of its solvency, it being hereby made the duty of said commissioner to issue such certificate in accordance with the facts, shall be permitted to qualify as guardian, curator, executor, administrator, assignee, receiver, trustee by appointment of any court or under will, or depositary of money in court, without giving bond as such, and become sole guarantor or surety in or upon any bond required to be given under the laws of this state, any other statute to the contrary notwithstanding; and, whenever any such company shall exhibit to the court, judge, clerk or other officer making such appointment, or whose duty it is to approve such bond, the certificate of the commissioner of banking of the state that such company has complied with the provisions of this chapter with respect to said deposit, and proof of solvency, the court or officer making such appointment, or whose duty it is to approve such bond, may appoint such company to such office or trust, and permit it to qualify as such without giving bond, and permit such company to become sole guarantor or surety upon any bond required to be given under the laws of this state, without requiring any other surety therefor. Provided, said company maintain a premium reserve of the amount required to reinsure all outstanding risks, to be determined by taking fifty per cent of the premiums on all unexpired risks that have less than one year to run, and a pro rata of all gross premiums on risks that have more than one year to run, and further that they be required to file with the insurance department, within sixty days after the first of January of each year, a report sworn to by president and secretary, or by two of its principal officers, as to the surety and bond business done by the same, and that they shall pay taxes thereon as required of other surety companies. (Acts 1909, 2 S. S. p. 425, sec. 66.)

Art. 541. Deposit primarily liable for said obligation, and solely until, etc.—The funds so deposited with the state treasurer shall be primarily liable for the obligation of such company as guardian, curator, executor, administrator, assignee, executor trustee by appointment of the court, or under will, depositary of money in court, guarantor or surety in or upon any bond required to be given under the laws of this state, or other fiduciary capacity, under appointment of any court, and shall not be liable for any other debt or obligation of the company until all trust liabilities aforesaid of such company have been discharged. (Id. sec. 66.)

Art. 542. Statutes applicable.—All articles of the statutes, so far as the same are applicable and not inconsistent with the provisions of this title, shall apply to all companies doing business under article 540. (Id. sec. 66.)

Art. 543. Substitution of securities when.—And, in case the interest on any security deposited with the state treasurer under articles 540 and 541, shall not be paid at maturity, and shall remain unpaid for six months thereafter, it shall be his duty to require the company which deposited the same to remove them and deposit there in their place other securities, equal in amount to those removed, upon which the interest has not been defaulted. (Id. sec. 66.)

Art. 544. Who else may enjoy privileges conferred by article 540, and how.—Any person or association of persons, or any other corporation, organized under the laws of this state, doing the business specified in article 540, shall enjoy the privileges conferred by said article by complying with the provisions thereof. And any corporation, organized under the laws of any other State, may do the business specified in said article by complying with the laws of this State relating to insurance other than life. (Id. sec. 66.)

Art. 545. Company complying with provisions of article 540, not to exercise certain powers; unless.—Any company that complies with the provisions of article 540 shall not exercise any other of the powers enumerated in article 385 except such as are mentioned in said article 540, unless such company shall have, at the time of making such deposit, a paid up capital or surplus of at least one hundred thousand dollars in addition to said deposit of fifty thousand dollars. (Id. sec. 66.)

Art. 546. Bank, etc., not to employ its moneys in trade, commerce or industrial plants, provided, etc.—No corporation organized under this title shall employ its moneys, directly or indirectly, in trade or commerce, by buying and selling ordinary goods, chattels, wares and merchandise, or by owning or operating industrial plants; provided, that it may sell all kinds of property which may come into its possession as security for loans, or in the ordinary collection of debts. (Id. sec. 54.)

Art. 547. Power to own real estate limited.—Banks and trust companies, created under this title, shall own only such real estate as may be required for the transaction of their business, and such as they may acquire in the enforcement and collection of debts or liabilities due to them, which lands

so acquired by any such corporation shall be alienated by it, within five years after its acquisition, to some one not interested, directly or indirectly, in said company. (Id. sec. 58.)

Art. 548. Restrictions as to withdrawal of capital and dividends; liability of officers, etc.—No bank and no bank or trust company, or any member of either, shall, during the time it shall continue in banking or banking and trust operations, withdraw, or permit to be withdrawn, either in the form of dividends or otherwise, any portion of its capital. If losses have at any time been sustained by any such association equal to or exceeding its undivided profits then on hand, no dividend shall be made; and no dividend shall ever be made by a bank or bank and trust company while it continues its banking and trust operations to an amount greater than its net profits then on hand, deducting therefrom its losses and bad debts. All debts due to any state bank, on which interest is past due and unpaid for a period of six months, unless the same are well secured or in process of collection, shall be considered bad debts within the meaning of this article. The board of directors of any bank or trust company, organized under this title, may declare a semi-annual or quarterly dividend, if such dividend has been earned, provided the corporation be fully solvent, without such earnings proposed to be divided. But they shall not declare a dividend at any time when the capital of such corporation shall have become impaired to such an extent that it is not worth in good resources the full amount paid in after the payment of all liabilities; and any officer or director of such corporation, who shall assent to declaring and paying dividends where the capital stock is so impaired, shall be personally liable to the creditors of the corporation to the amount of his proportion of the proposed dividend, if any loss occur by reason of the payment of such dividend. (Acts 1905, S. S. p. 507, sec. 50; Acts 1909, 2 S. S. p. 426, sec. 38.)

Art. 549. Dividends, regulation of; liability of directors for violations provided, etc.—Dividends of the profits of the corporation may be declared by the trustees or directors thereof, every six months or oftener, as the directors may elect; but no such dividend shall be made and paid to the stockholders while such corporation is in an insolvent condition, nor shall any dividend be declared which would render such corporation insolvent; and, if the directors of any such corporation shall knowingly declare and pay any dividends, when the corporation is insolvent, or of any dividend the payment of which would render it insolvent, they shall be jointly and severally liable for all debts of the corporation then existing, and for all that shall thereafter be contracted while they shall respectively continue in office; provided, that if any of the directors shall object to the declaring of such dividend, or to the payment of the same, and shall, at any time before the time fixed for the payment thereof, file a certificate of their objections in writing with the clerk of the corporation, and with the county clerk of the county, they shall be exempt from the said liability. (Acts 1905, S. S. p. 511, sec. 58.)

Art. 550. Dividends regulated; surplus fund.—The board of directors of any bank or trust company in this state organized under this title, when it shall declare a dividend, shall first set apart to the surplus fund ten per cent of the net profits of the bank for the period covered by the dividend until the same shall amount to fifty per cent of its capital stock; and said surplus shall not be diminished, except for the payment of any losses which may occur; provided, if there are undivided profits, these shall first be used in payment of such losses. (Id. sec. 55.)

Art. 551. Bank, etc., shall not make voluntary general assignment, etc.; duty in failing condition; duty of commissioner, no attachment, etc.—It shall be unlawful in this state for a bank, savings bank or trust company, organized under this title, to make a voluntary general assignment of its business and affairs. In case it shall find itself to be in a failing condition, it shall immediately place itself in the hands of the commissioner. Any deed of voluntary general assignment, executed by any such bank or trust company, shall be null and void; and, in case the officers or directors of any such institution shall endeavor to make any voluntary general assignment of its assets, the commissioner shall immediately take possession thereof and proceed as heretofore provided in the case of insolvent banks in this state, for the appointment of a receiver by court. All transfers of the notes, bonds, bills of exchange or other evidence of debt, owing to any bank or trust company organized under this title or of deposits to its credit, all assignments of mortgages, securities on real estate, or of judgment or decrees in its favor, all deposits of money, bullion or other valuable thing for its use, or for the use of any of its shareholders or creditors, and all payments of money to it made after the commission of an act of insolvency, or in contemplation thereof, made with a view to prevent the application of its assets in the manner prescribed by this title, or with a view to the preference of one creditor to another, shall be utterly null and void. No attachment, injunction or execution shall be issued against such bank or trust company, or its property, before final judgment in any suit, action or proceeding in any court. (Id. sec. 41.)

Art. 552. Stockholder's liability for debts of bank, etc., defined.—If default shall be made in the payment of any debt or liability contracted by any bank, trust company, surety and guaranty company, [or] savings bank, each stockholder of such corporation, as long as he owns shares therein, and for twelve months after the date of a transfer thereof, shall be personally liable for all debts of such corporation existing at the date of such transfer, or at the date of such default, to an amount additional to the par value of such shares so owned or transferred, equal to the par value of such shares so owned or transferred. (Id. sec. 59.)

Art. 553. Responsibility of directors for certain losses.—For any losses of money which the capital stock shall not be sufficient to satisfy, the directors of corporations shall be responsible in the same manner and to the same extent that directors

are now responsible in law or equity. (Id. sec. 59.)

Art. 554. Receipt of deposits or creation of debts after knowledge of insolvency, etc., liability of officers, etc., for.—No president, director, manager, cashier, or other officer or agent, of any bank or banking institution organized and doing business under the provisions of this title, shall receive [or] assent to the reception of deposits, or create and assent to the creation of any debts by such bank or banking institution, after he shall have knowledge of the fact that it is insolvent or in failing circumstances. Every person violating the provisions of this article shall be individually responsible for such deposits so received, and all debts so contracted; provided, any director who may have paid more than his share of the liabilities mentioned in this article may have the proper remedy at law against such other persons as shall not have paid their full share of such liabilities; and provided, further, that in case of the insolvency of one or more of such officers, agents or managers, the same shall be paid, for the time being, by those who are solvent, in equal proportion. (Id. sec. 67.)

Art. 555. Suit for recovery of deposits or debts received or created after insolvency; prima facie evidence.—In all suits brought for the recovery of the amount of any deposits received or debts created, all officers, agents or managers of any bank, savings bank, or trust company, charged with having so assented to the reception of such deposits, or the creation of such debt, may be joined as defendants, or proceeded against severally; and the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit charged to have been received, or the creation of the debt charged to have been created, shall be prima facie evidence of such knowledge and assent to such deposit, or creation of such debt on the part of such officer, agent or manager so charged therewith. (Id. sec. 48.)

Art. 556. Who liable where stock held by executor, etc., or as security.—No person holding stock in the corporation as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholder in such corporation; but the person pledging such stock shall be considered as holding the same, and shall be liable as stockholder accordingly. And the estate and funds in the hands of such executors, administrators, guardians or trustees, shall be liable in like manner and to the same extent as the testator or intestate, or the ward or person interested in such trust fund would have been if he had been living and competent to act and hold the same stock in his own name. (Id. sec. 60.)

Art. 557. No incorporated bank, etc., to do business, etc., otherwise in state, except, etc.; forfeitures for violation.—It shall not be lawful after ninety days from the time this bill takes effect for any incorporated bank other than corporations chartered by the United States, or trust company, savings bank, or any corporations save and except such as are organized under the provisions of this act [title], or which take advantage of this title, as provided in article 563, or corporations created by virtue of the acts of the legislature passed prior to the adoption of the constitution of 1876, and now authorized to do business in this state, to advertise or put forth any sign as a bank, trust company or savings bank, or in any way solicit or receive business as such or as any such, or to use as their name, or part of their name, or any sign, advertising or letterhead or envelope, the word "bank," "banker," "banking," "trust," "trust company," "savings bank," "savings," or any other term which may be confused with the name of corporations organized under this title; provided, that corporations heretofore organized under the general laws of the state, and foreign corporations heretofore or hereafter authorized to do business in this state, authorized by their charters to use such name or parts of names, as are hereby prohibited, may continue to use the same by using thereafter the words "without banking privileges." Any such corporation violating the provisions of this article shall forfeit its charter, or, if a foreign corporation, its permit to do business within this state, and the attorney general shall, upon information lodged with him to that effect, bring an action against such corporation to wind up its affairs, as now provided by law for insolvent corporations, and, in addition thereto, any corporation or officer or agent thereof, who shall offend against those provisions, shall forfeit and pay for every such offense the sum of one hundred dollars per day for every day such offense shall be continued, to be sued for and recovered in the name of the state, by prosecuting attorneys of the several counties, in any court of cognizance thereof, for the use of the school fund in the county in which such offense shall be committed.

This title shall not apply to corporations chartered by the acts of the legislature before the adoption of the present constitution, and now authorized to do business in this state; but such corporations may accept any one or more of the provisions of this title, by complying as to such provisions with article 563, and shall, as to the provisions so accepted, be subject to the terms of this law as to reports and examinations. (Id. sec. 76.)

Art. 558. Private individuals or firms in banking business, requirements as to.—It shall be the duty of private individuals or firms, engaging in the banking business, to use after the name under which the business is conducted the word in parenthesis "unincorporated," and failure to comply with this article shall subject the offender to a penalty of one hundred dollars, to be collected in the manner provided in article 557. (Id. sec. 76.)

Art. 559. No foreign corporation, except national banks, shall do banking and discount business in this state.—No foreign corporation other than the national banks of the United States shall be permitted to do a business of banking and discount in this state. (Id. sec. 79.)

Art. 560. Corporations created, etc., charged with public use; banks, etc., created, etc., subject to state control and regulation by legislature.—Corporations created for the purposes mentioned in

this title are hereby declared to be charged with the public use, and all banks or trust companies or corporations created under this title shall be under state control and be subject to such legislation as the legislature may enact for the government and regulation of such banks and trust companies or corporations in this state. The right, privileges and powers conferred by the terms of this title to corporations taking advantage thereof or incorporating hereunder are to be held subject to the right of the legislature to amend, alter or reform the same. (Id. sec. 80.)

Art. 561. Business of solvent corporation may be closed, how.—Whenever the board of directors of any solvent corporation, organized under, or subject to, the provisions of this title, shall deem it necessary, expedient or desirable, to close the business of the corporation, they shall call a meeting of the stockholders to vote upon the proposition to close the business of the corporation, first having given sixty days notice thereof, by publication once every week, in a newspaper published in the county or city in which such corporation is located, also by mailing notices, at least sixty days prior to the day fixed for such meeting, addressed to the stockholders at their usual place of business or residence. The vote upon such proposition shall be taken by ballot, and the resolution and vote thereon shall be recorded in the minutes of the board of directors. If, at such meeting, at least two-thirds of the shares of the corporation are voted in favor of such proposition, the board of directors shall proceed to wind up the business of such corporation, as in this article provided; a copy of such proceedings, to be certified by the president and secretary of such corporation, shall be filed with the secretary of state. The board of directors shall thereupon give notice to all depositors, creditors and stockholders of the adoption of such resolution, by publication once a week thereof, in a daily or weekly newspaper, for three months thereafter, and by a written or printed notice, personally served upon, or mailed to, every depositor, creditor or stockholder of such corporation, at last known residence, postage fully paid. Within six months after the filing of such certificate in the office of the secretary of state, the corporation shall pay all sums due depositors and creditors, whom they can discover, and who claim the moneys due them, and, upon the expiration of six months after the filing of such certificate, it shall be the duty of the corporation to make a statement from the books of said corporation, certified by the president and secretary, of the names of all depositors and creditors who have not claimed, or have not received the balances to their credit, or due them respectively, and to file the same with the state treasurer, and to pay the said state treasurer all such unclaimed deposits, moneys and credits, for the use and benefit of such depositors and creditors. Whenever all the depositors and creditors have been paid in full, or the amounts due those who cannot be found, or who have not claimed same, have been deposited with the treasurer of the state, for their use and benefit, the board of directors shall divide the capital stock, guaranty and indemnity fund, and all other assets, or the proceeds thereof, securities or real estate in which same may have been invested, among the stockholders ratably: The board of directors shall thereupon, after having divided the remaining property among the shareholders, as herein provided, file in the office of the secretary of state a certificate surrendering the corporate franchise. (Id. sec. 77.)

Art. 562. Who may accept provisions of this title, and how.—Any bank, trust company, or savings bank organized under the general or any special laws of this state, whose capital is fully paid up and unimpaired, may, with the consent of a majority of the stockholders, accept the provisions of this title, by filing with the secretary of state a certificate of such acceptance, signed by its president and secretary. The consent of the stockholders of such acceptance may be in writing, or by a vote of the stockholders, at any meeting at which all of the stockholders have due notice, and vote in favor of such acceptance. Upon the filing of such certificate of acceptance, such corporation shall thereupon become subject in all respects to the provisions of this title, and to the general laws of this state relating to corporations with like effect, as if it had been originally incorporated under the provisions of this title; and it shall take such action as may be necessary to make its corporate organization conform in all respects to the provisions of this title. And when any existing corporation shall determine to avail itself of the provisions of this title, and shall do so by amending its charter or filing a certificate as hereinbefore provided, and it shall not thereafter transact any corporate business until it has fully complied with the provisions of this title; provided, that when an existing corporation accepts the benefit of this title, such corporation shall be deemed and held to have abandoned, waived and surrendered all of its charter powers granted under charters heretofore issued, and shall derive their sole powers under the terms of this title. (Id. sec. 75.)

Art. 563. Who may accept privileges of this chapter, and how.—Any private corporation now incorporated under the laws of Texas, possessing banking powers or privileges, or any of the powers or privileges by this title conferred upon savings banks or upon trust companies, may, by a vote of the majority of its capital stock, accept the provisions of this title, and amend its charter, and shall have thereafter such powers as are hereby conferred upon other "banks," "savings banks," or "trust companies." The vote authorizing such amendment shall be certified to the superintendent of banking [commissioner of insurance and banking] together with an application as provided herein; and, upon compliance with all the other requirements of this title, for the organization of corporations hereunder, the superintendent of banking [commissioner of insurance and banking] shall issue his certificate as provided herein, authorizing such amendments, and thereafter such corporation shall be authorized to do business under and subject to the terms of this title, with succession from the date of said amendment of its charter for the term herein specified for corporations organized under this title. Corporations amending their charter as herein provided shall have the right to continue business under their corporate names, as designated by the

charter amended, or by any name to which it may have been changed by amendments made under and by virtue of the existing general laws of the state of Texas. (Id. sec. 78.)

Art. 564. Increase of stock for excessive ratio of deposits to stock and surplus, required; penalty.—If, from the sworn statement of the average daily deposits of any bank, for the year ending on the first day of November, 1909, or of any subsequent year, filed with the commissioner as provided in this title, it shall appear that such average daily deposits for such year amounted to more than five times the capital stock and surplus of such bank on November 1 of each year, if the capital stock of such bank is not more than ten thousand dollars or more than six times such capital stock and surplus, if the capital stock is more than ten thousand dollars and less than twenty thousand dollars, or seven times such capital stock and surplus, if the capital stock is twenty thousand dollars or more and less than forty thousand dollars, or eight times such capital stock and surplus, if the capital stock is forty thousand dollars or more and less than seventy-five thousand dollars, or nine times such capital stock and surplus, if the capital stock is seventy-five thousand dollars or more and less than one hundred thousand dollars, or ten times such capital stock and surplus, if such capital stock is one hundred thousand dollars or more, then, in any such case, it shall be the duty of the state banking board to require that such state bank shall, within sixty days thereafter, increase its capital by twenty-five per cent. thereof; and it shall be the duty of the commissioner to immediately furnish such state bank with a certified copy of the order making such requirement; and, upon receipt of such requisition, the directors of such state bank shall, within the time required, cause such increase to be made in its capital stock; and, if the same is not done within such time, it shall be unlawful for such bank to thereafter receive any deposits at any time when its total demand and time deposits shall in the aggregate amount to more than the limitation herein placed upon deposits. (Acts 1909, 2 S. S. p. 423, sec. 27.)

Art. 565. Bank purchasing assets of another bank must first increase stock as above.—Any state bank which purchases the assets of any other bank shall, before the purchase of the assets of such other bank, increase its capital to such an amount that the same will have the ratio to the total deposits of the bank the assets of which it has purchased, as defined and required in the last preceding article. (Id. sec. 27.)

Art. 566. Savings department deposits not included in estimate for increase of stock.—In computing the aggregate amount of average annual deposits of any bank or banking and trust company, for the purpose of ascertaining whether or not it shall be required to increase its capital stock, as provided in this chapter, or for the purpose of determining the amount required to be paid into the depositors guaranty fund, as provided in chapter five of this title, the deposits of its savings department as provided in chapter four of this title shall not be included. (Id. sec. 13.)

Art. 567. No bank, etc., to own over ten per cent of stock of another, or loan on its stock, if, etc., unless, etc.—It shall be unlawful for any state bank or trust company to own more than ten per cent of the capital stock of any other banking corporation, or to make a loan secured by the stock of any other banking corporation, if, by the making of such loan, the total stock of such other banking corporation held by it as collateral will exceed in the aggregate ten per cent of the capital stock of such other banking corporation, unless the ownership or the taking of a greater percentage of such capital stock as collateral shall be necessary to prevent loss upon a debt previously contracted in good faith; and any such excess so taken as collateral or owned by such state bank shall not be held as collateral nor owned by it for a longer period than six months. (Id. sec. 28.)

Art. 568. Bank, etc., may loan or discount on security of cotton and cotton seed products, as national banks.—All state banks and trust companies shall be permitted to loan upon or discount commercial or business paper secured by lien upon cotton and cotton seed products, to the same extent and upon the same conditions as is now or may be provided for national banks under the laws of the United States. (Id. sec. 29.)

Art. 569. Bank may not loan on security of its own stock, unless, etc.; penalty.—No state bank shall make any loan or discount on the security of the shares of its own capital stock, nor be the purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent a loss upon a debt previously contracted in good faith; and stock so purchased or acquired shall, within six months from the time of its purchase, be sold or disposed of at public or private sale; or, in default thereof, such state bank shall be considered to have its capital stock impaired to the extent of the par value of such shares. (Id. sec. 36.)

Art. 569a. Conformity by members of Federal Reserve bank with requirements imposed on National banks.—A State bank becoming a member of a Federal Reserve bank shall in addition be required to conform to the provisions of law imposed upon National banks respecting the limitations of liability which may be incurred by any person, firm or corporation to such banks, the prohibition against making purchases of or loans on stock of such bank, and the withdrawal or impairment of capital, the payment of unearned dividends and of such rules and regulations as the Federal Reserve Board may, in pursuance of the Federal Reserve Act prescribe. (Acts 1914, 3d C. S., ch. 3, sec. 5.)

Art. 570. Restrictions on pledge of securities of bank; members of Federal Reserve bank; notice to Commissioner.—It shall be unlawful for any bank to hypothecate or pledge as collateral security for money borrowed upon bills payable, certificates of deposit or otherwise, its securities to an amount greater than fifty per centum in excess of the amount borrowed thereon, or for any banking corporation to issue and execute any notes, bills or other evidences of indebtedness secured, or to be secured, by the pledge or hypothecation of any of its securi-

ties, which shall not contain a provision that in the event such banking corporation shall, for any cause, have its property and business taken possession of by the Commissioner at any time, before such pledge or hypothecation shall have been actually foreclosed, a grace of thirty days after date of such taking possession shall be allowed in which such bank or the Commissioner shall be permitted to redeem such securities so hypothecated or pledged by the payment of the amount due as principal and interest on such indebtedness; provided, however, that banking corporations, incorporated under the laws of this State, upon becoming members of a Federal Reserve bank shall not be required to insert the thirty days grace clause in their notes, bills or certificates of deposit made to a Federal Reserve bank, should a Federal Reserve bank decline to permit the insertion of such thirty days grace clause in a note, bill or certificate of deposit accepted by it from such member bank; and provided, further, that collateral to a greater extent than 50 per centum in excess of the amount borrowed thereon may be hypothecated or pledged to secure money borrowed from a Federal Reserve bank, should it so require.

Should the securities of any State banking corporation be hypothecated or pledged to an amount in excess of fifty per centum greater than the amount borrowed thereon, it shall be the duty of the officers of such bank to immediately notify the Commissioner giving amount of money borrowed, and amount of securities hypothecated or pledged to secure same.

A State bank becoming a member of a Federal Reserve bank shall have the right to discount to a Federal Reserve bank, notes, drafts, and bills of exchange arising out of actual commercial transactions and to indorse the same with a waiver of demand, notice and protest and to do any other thing necessary under the Federal Reserve Act or rules and regulations relative thereto promulgated by lawful authority, in order to obtain all the benefits and privileges of membership in a Federal Reserve bank.

The lien and rights obtained by a Federal Reserve bank upon the discount to it of any such notes, drafts and bills of exchange shall be a first and preference lien thereon. (Acts 1909, 2 S. S., p. 423, sec. 37; Acts 1914, 3d C. S., ch. 3, sec. 6.)

This article supersedes art. 570 of the Revision of 1911.

Art. 570a. Limitation of indebtedness.—No banking corporation incorporated under the laws of this State shall at any time be indebted or in any way liable to an amount exceeding the amount of its capital stock at such time actually paid in and remaining undiminished by losses or otherwise, except on account of demands of the nature following:

(a) Moneys deposited with or collected by it.

(b) Bills of exchange or drafts drawn against money actually on deposit to the credit of the corporation or due thereto.

(c) Liabilities to the stockholders of the association for dividends and reserve profits.

(d) Liabilities incurred under the provisions of the Federal Reserve Act.

(e) This section shall not apply to any guaranty executed by any trust company whose demand deposits are not in excess of its interest-bearing deposits, provided such trust company is not a member of a Federal Reserve bank.

(f) Provided further that upon a permit obtained in writing from the Commissioner of Banking any bank may borrow a sum not in excess of its unimpaired surplus in addition to its capital stock. (Id. sec. 10.)

Art. 570b. Obligations incurred in financing movement of crops.—Provided further, however, that State banks may, with the permission and under the direction and control of the Commissioner of Insurance and Banking, borrow or make discounts individually or collectively, or enter into any agreement or association for the purpose of obtaining funds to finance the movement of agricultural and farm products only; and when so doing, paper endorsed by them for such purpose shall not be considered as within limitation prescribed in this Act as to the amount of indebtedness which a State bank may incur. (Id. sec. 10a.)

Art. 571. No bank, etc., to loan to commissioner, etc.; penalty.—It shall be unlawful for any state bank or banking and trust company in this state to, directly or indirectly, loan to the commissioner of insurance and banking, or any other person interested in or employed by the department of insurance and banking, and it is hereby expressly provided that a violation of this article shall render such corporation liable to a penalty of not less than one hundred dollars nor more than one thousand dollars, to be recovered for the benefit of the state. (Acts 1909, 2 S. S. p. 423, sec. 48.)

Art. 572. Neither commissioner, clerks, employés, nor examiners, shall be interested in bank, etc., or indebted to same; penalty.—Neither the commissioner of insurance and banking, nor any regularly appointed clerks or employés of the department of insurance and banking, nor any state bank examiner, shall, at any time during his incumbency, be financially interested, directly or indirectly, in any state bank or banking and trust company subject to the supervision of the department of insurance and banking, or knowingly be or become indebted, either directly or indirectly, to any such state bank or banking and trust company. The violation of the provisions of this article by any officer or employé named therein shall work a forfeiture of the office or position held by him. (Id. sec. 44.)

Art. 573. Board may change form of statements required of banks.—The state banking board shall have the power, from time to time, to make such changes in the form of the statements required of each banking corporation as it may deem advisable, and to require any additional statements which it may deem necessary as to average daily deposits, capital stock, surplus, character of deposits and such other matters as it may deem necessary to the enforcement of this title. (Id. sec. 39.)

Art. 574. Bonds of officers and employés of banks; form; filing with and approval by commissioner; directors may require other bonds.—All officers and employés of banks incorporated under the Banking Laws of this State who are active in the discharge of their duties or who draw salaries for their services and whose duties permit or require the handling of any of the

funds of the bank shall, before entering upon the discharge of their duties, give a good and sufficient bond in such sum as may be fixed by the board of directors of any such bank the solvency and amount of such bond shall be subject to the approval of the Commissioner of Insurance and Banking, conditioned for the faithful performance of their duties and such pecuniary loss as the bank may sustain for money or other valuable securities embezzled, wrongfully abstracted or willfully misapplied by any such officer or employé in the course of his employment as such or in the course of his employment in any other position in such bank, whether he be assigned, appointed, elected, re-elected or temporarily assigned to said position. All such bonds shall be upon forms prepared by the Commissioner of Insurance and Banking, and may be made in some incorporated surety company lawfully transacting business in the State of Texas. All such bonds shall immediately after their execution be forwarded to the Commissioner of Insurance and Banking and be filed by him as an archive of his office and a certified copy thereof shall be returned to the board of directors of such bank and be kept in their custody; provided, however, that the board of directors may require any other bond or bonds in addition to that herein required, at their discretion; provided, that only officers of banks who handle bank's money or draw a salary shall be required to give bond. (Acts 1909, 2 S. S. p. 423, sec. 35; Acts 1917, ch. 205, sec. 6.)

TITLE 15

BEES

Arts. 575-578. [Acts 1903, p. 196. Amended. See Arts. 578a–578r.]

Art. 578a. State entomologist; duties and powers; assistants and inspectors; annual report.—That for the purpose of carrying out the provisions of this Act, the entomologist of the agricultural experiment station of the Agricultural & Mechanical College of Texas shall be the state entomologist of this state and as such it shall be his duty to enforce the provisions of this Act and to issue such rules, regulations, etc., as are hereinafter required. As state entomologist he shall receive no fees or remuneration other than his regular salary as entomologist of the experiment station and state entomologist; provided, that he may be reimbursed for necessary expenses incurred in discharge of his duties as state entomologist. He shall employ such assistants and inspectors as may be necessary, subject to the approval and confirmation of the director and governing board of the Texas agricultural experiment station. He shall make an annual report to the director and governing board of the experiment station, such report giving a detailed account of all funds received and disbursed, and for what purpose, as well as a full report upon all prosecutions, etc., made under the provisions of this act. (Acts 1913, p. 96, sec. 2.)

Art. 578b. Power to deal with diseases; prohibiting shipments into state.—The said state entomologist shall have full and plenary power to deal with all contagious or infectious diseases of honey bees which, in his opinion, may be prevented, controlled or eradicated; and shall have full power and authority to make, promulgate and enforce such rules, ordinances, orders and regulations, and to do and perform such acts as, in his judgment, may be necessary to control, eradicate or prevent the introduction, spread or dissemination of any [or] all contagious diseases of honey bees as far as may be possible, and all the rules, ordinances, orders and regulations of said state entomologist shall have the force and effect of law in so far as they conform to the general laws of this state and the United States. The state entomologist, in the exercise of the power and authority herein delegated, shall have authority to prohibit the shipment or bringing into this state of any honey bees, honey, honey-comb, or articles or things capable of transmitting contagious or infectious diseases of bees, from any state, territory or foreign country, except under such rules and regulations as may be adopted and promulgated by said state entomologist. (Id. sec. 3.)

Art. 578c. Bees shipped into state to be accompanied by certificate of official entomologist of state of shipment; shipper to file certified copy; evidence in lieu of certificate; confiscation, etc.—All honey bees shipped or moved into this state shall be accompanied by a certificate of inspection signed by the state entomologist or state foul brood inspector of the state or country from which shipped. Such certificate shall certify to the apparent freedom of the bees, and their combs and hives, from contagious and infectious diseases and must be based upon an actual inspection of the bees themselves within a period of sixty days preceding date of shipment. The shipper of such bees is hereby required to file with the state entomologist at College Station, Texas, at least ten days in advance of such shipment, a certified copy of said certificate, together with the names and addresses of both consignor and consignee; provided, that when honey bees are to be shipped into this state from other states or countries wherein no official apiary inspector or state entomologist is available, the state entomologist of Texas may issue permit for such shipment upon presentation of suitable evidence showing such bees to be free from diseases. Shipments of bees arriving at points within this state, not accompanied by the certificate herein described, shall be subject to confiscation and destruction by the state entomologist or his assistants. This requirement shall not apply to shipments of live bees in wire cages, when without combs or honey. (Id. sec. 4.)

Art. 578d. Carriers not to accept shipments except under regulations.—It shall be unlawful for railroad companies, express companies and other common carriers to accept for shipment, between points within this state, any honey bees, used honey combs, used bee hives or fixtures, except under such regulations and provisions as the state entomologist shall prescribe. (Id. sec. 5.)

Art. 578e. Authority to seize and confiscate shipments, etc.—The state entomologist, through himself, assistants or inspectors, shall have authority to seize and confiscate any shipment of diseased bees found in trans[m]it in this state, or found in any depot, express office, store room, car, warehouse or premises awaiting transporta-

tion or delivery, and the state entomologist, through himself or assistants, shall have authority to enter, during ordinary business hours, any depot, express office, store room, car, warehouse, or premises for the purpose of inspecting any shipment of honey bees therein which he may have reason to believe are or may be infected with a contagious or infectious disease or which he may have reason to believe are being transported or have been or are about to be transported in violation of any of the provisions of this Act. (Id. sec. 6.)

Art. 578f. Authority to enter premises, etc.—In the discharge of the duties herein delegated the state entomologist, and his assistants and inspectors, shall have authority to enter, during ordinary business hours, any premises, public or private, wherein may be located any honey bees, or wherein he or they may have reason to believe any honey bees are kept or located, for the purpose of examining said bees and determining whether or not they are infected with any contagious or infectious disease. (Id. sec. 7.)

Art. 578g. Authority to declare protective quarantine, etc.—The state entomologist shall have authority to declare a protective quarantine in any district, county, precinct or other defined area wherein foul brood or other contagious disease of bees is not known to exist, or wherein any disease of bees is being eradicated in accordance with the provisions of this Act, said quarantine to prohibit the movement or shipment into said district, county, precinct or other area, of any bees, honey, appliances or other things capable of transmitting the disease or infection, except under such rules and regulations as he shall prescribe. (Id. sec. 8.)

Art. 578h. Authority to place restrictive quarantine, etc.—The state entomologist shall have authority when, in his opinion, public welfare and necessity require it, to place a restrictive quarantine upon any district, county, precinct or other defined area wherein are located any honey bees infected with contagious or infectious disease, said quarantine to prohibit the movement or shipment therefrom of any bees, honey, appliances or other things capable of transmitting the infection, except under such rules and regulations as he shall prescribe. (Id. sec. 9.)

Art. 578i. Queen bees not to be sold without copy of certificate, etc.—Queen bees and their attendant bees shall not be sold or offered for sale in this state unless accompanied by a copy of a certificate from a state or government entomologist or apiary inspector to the effect that the apiary from which said queen bees are shipped has been inspected within the preceding twelve months and found apparently free from contagious and infectious diseases, or by a copy of a statement by the beekeeper made before a notary public or other officer having a seal that the bees are not diseased to the best belief of affiant and that the honey used in making the candy contained in the queen cage has been diluted and boiled for at least thirty minutes in a closed vessel. (Id. sec. 10.)

Art. 578j. Violation of provisions, etc., a misdemeanor; prosecutions; injunctions; duties of attorney general and district attorneys; production of documents; witnesses; duties of sheriffs and constables, etc.—Any person, firm or corporation violating any of the provisions of this Act, or violating any of the rules, quarantines, orders or regulations of the state entomologist issued in accordance with the provisions of this Act, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be fined in any sum not less than twenty-five nor more than two hundred dollars. All prosecutions under this Act shall be commenced and carried on in any county of the state affected by the violation of said orders, quarantines, rules or regulations, and the said state entomologist may enjoin any threatened or attempted violation of his orders, quarantines, rules or regulations in any court of competent jurisdiction, or take any other civil proceedings necessary to carry out and enforce the provisions of this Act. It shall be the duty of the attorney general and the various county and district attorneys to represent said state entomologist whenever called on to do so; and said state entomologist, in the discharge and enforcement of the duties and powers herein delegated, shall have the authority to compel the production for examination by said state entomologist, or any one designated by him, of all books, papers and documents in the possession of any person; to take testimony, and compel the attendance and examination under oath of witnesses; and it is hereby made the duty of the various sheriffs and constables throughout the state to serve all papers, orders, summons and writs, that may be delivered to them by said state entomologist and to protect the state entomologist or his assistants or inspectors in the discharge of their duties, as herein defined whenever called upon to do so. The said state entomologist is authorized when necessary to apply to any court of competent jurisdiction for the necessary writs and orders to enforce the provisions of this article, and in such cases he shall not be required to give bond. (Id. sec. 11.)

This article is duplicated in the Penal Code, as art. 1288h.

Art. 578k. Entomologist to publish directions, rules and information, etc.—For the purpose of disseminating knowledge regarding honey bees and their diseases, the state entomologist shall publish methods and directions for treating, eradicating or suppressing contagious or infectious diseases of honey bees, including the rules and regulations provided for in sections 2, 3, 5, 8 and 9 [Arts. 578a, b, d, g, h] and such other information as he shall deem of value or necessity to the beekeeping interests of the state. (Id. sec. 12.)

Art. 578l. Bees affected with foul brood, etc., to be reported by owner, etc.—If any owner of, or any person having control or possession of any honey bees in this state, knows that any bees so owned or controlled are affected with American foul brood, or any other contagious or infectious disease, or knows of any other bees so diseased, it shall be and is hereby made his duty to at once report such fact to the state entomologist at College Station, Texas, setting out in his said report all the facts known with reference to said infection. (Id. sec. 13.)

Art. 578m. Power to transfer bees to movable frame hives, etc.—The state entomologist shall have full power in his discretion to order any owner or possessor of

bees dwelling in hives without movable frames, or not permitting of ready examination, to transfer such bees to a movable frame hive within a specified time. In default of such transfer the state entomologist may destroy, or order destroyed, such hives, together with the honey, frames, combs and bees contained therein, without recompense to the owner, lessee or agent thereof. (Id. sec. 14.)

Art. 578n. Power to inspect, burn diseased colonies, etc.—If at any time the state entomologist finds, or has reason to believe, that the owner or keeper of any bees or the owner of any apiary has refused or is refusing to comply with any or all of the rules and regulations hereinbefore provided for, then and in that event the state entomologist is hereby authorized to inspect or cause to be inspected said bees, and, if necessary, burn diseased colonies, appliances and honey, and do any and all things necessary in the premises to eradicate foul brood or any other contagious or infectious disease of bees. (Id. sec. 15.)

Art. 578o. Failure of owner, etc., to carry out instructions; duty of entomologist and county attorney.—When any owner or possessor of bees shall fail to carry out the instructions of the state entomologist as hereinbefore set forth, the state entomologist or his assistants or inspectors shall carry out such destruction or treatment and shall present to the owner or possessor of said bees a bill for the actual cost of such destruction or treatment, including the cost of such hives, foundation, etc., as may be necessary for proper treatment of the disease. In the failure of the owner or possessor of such bees to pay said bill within thirty days after the delivery of same to himself, tenant or agent, or within thirty days after mailing same to his usual post office address the state entomologist shall certify to the county attorney of the county wherein such bees were located, the amount and items of such bill; and the county attorney shall file suit for the recovery of said account. All moneys recovered by the county attorney for such destruction or treatment shall be paid into the hands of the state treasurer, to become a part of the fund for carrying out the provisions of this Act. (Id. sec. 16.)

For sections 17, 18 and 19 of this act see post, Penal Code, arts. 1288*l*-1288n.

Art. 578p. Disposition of fines.—All fines collected for prosecutions under the provisions of this Act shall be paid to the state treasurer, to become a part of the fund for carrying out the provisions of this Act. (Id. sec. 20.)

Art. 578q. Bond or security not to be required.—The state entomologist, his assistants and inspectors, shall not be required to give any bond or security in any legal proceedings which he or they may institute or defend in any court of justice in this state. (Id. sec. 21.)

Art. 578r. Laws repealed.—All laws or parts of laws in conflict with or inconsistent with this Act be and the same are hereby repealed. (Id. sec. 22.)

Art. 578s. Establishment of experimental apiaries.—The Director of the Texas Agricultural Experiment Stations of the Agricultural and Mechanical College of Texas shall have power to establish and maintain experimental apiaries for the purpose of experimenting with the culture of honey, and studying honey yield conditions, and other beekeeping problems confronting the beekeepers and the beekeeping industry of this State; such experimental apiaries to be under the care, control, management and direction of the director of the experimental stations, and to be maintained and operated at such places in Texas as said director may direct. (Acts 1919, ch. 62, sec. 1.)

Art. 578t. Location.—In the location of such experiment apiaries, said director may take into consideration any donation of money or other property to be used in the operation and management of such apiaries and may accept any lease of lands upon which to locate such apiaries. (Id. sec. 2.)

Art. 578u. Assistance, supplies, etc.—The director shall have authority, in the conduct and management of the same, to employ such assistance as may be needed, and to purchase, from time to time, such supplies, equipment and bees as may be necessary in the successful management thereof. (Id. sec. 3.)

Art. 578v. Appropriation.—There shall be appropriated out of any funds in the State Treasury not otherwise appropriated the sum of six thousand dollars per annum, to be expended in the location and establishment, maintenance and operation of such experimental apiaries. (Id. sec. 4.)

Art. 578w. Same subject.—The appropriations herein provided are to be construed as the maximum amounts to be appropriated to and for the purpose of the establishment and maintenance of such experimental apiaries, and no expenditure shall be made, nor obligations incurred, which, added to the expenditures, shall exceed the amounts herein appropriated for the said purpose, except under the provisions of Article 4342, Chapter 2, Title 65, of the Revised Civil Statutes of 1911. (Id. sec. 5.)

Art. 578x. Experimental apiaries sales fund.—The receipts from the sales of any products or old equipment, shall be deposited in the experiment station treasury, in a fund to be known as the "Experimental Apiaries Sales Fund," to be expended by the director of the Texas Agricultural experiment stations for the purpose of said experimental apiaries, in the same manner and upon the same requisition and voucher system as are expended the appropriations hereinbefore provided. (Id. sec. 6.)

TITLE 16

BILLS, NOTES AND OTHER WRITTEN INSTRUMENTS

For the Uniform Negotiable Instruments Law, see post, arts. 6001a(1)-6001a(197).

Art. 579. (304) (262) Liability of drawer, etc., how fixed by suit in district or county court.—The holder of any bill of exchange or promissory note, assignable or negotiable by law, may secure and fix the liability of any drawer or indorser of such bill of exchange, and every indorser of such promissory note, without protest or notice, by instituting suit against the acceptor of such bill of exchange, or against the maker of such promissory note, before the first term of the district or county court to which suit can be brought, after the right of action shall

accrue; or by instituting suit before the second term of said court, after the right of action shall accrue, and showing good cause why suit was not instituted before the first term next after the right of action accrued. (Acts 1848, p. 187, sec. 1; P. D. 229.)

See Simkins' Contracts and Sales (3d Ed.) p. 423; Smith v. Ojerholm, 44 S. W. 41; Smith v. Richardson Lbr. Co., 49 S. W. 574; Vitkonitch v. Kleinecke, 75 S. W. 544; Ketterson v. Inscho, 118 S. W. 626; Patterson v. Walker, 135 S. W. 612; Guaranty State Bank & Trust Co. v. Lively, 149 S. W. 211; Dunn v. Townsend, 163 S. W. 312; Toole v. First Nat. Bank of Hemphill, 168 S. W. 423; Newton County Bank v. Montgomery, 175 S. W. 803; Barger v. Brubaker, 187 S. W. 1025; McCamant v. McCamant, 187 S. W. 1096; Morris v. First State Bank of Dallas, 192 S. W. 1074; Prince v. Colvin, 198 S. W. 637; McCamant v. McCamant, 203 S. W. 118.

Art. 580. (305) (263) How fixed by suit in justice's court.—Whenever the amount of such bill of exchange or promissory note shall be within the jurisdiction of a justice of the peace, the holder thereof may secure and fix the liability of any drawer or indorser by instituting suit against the acceptor or maker within sixty days next after the right of action shall accrue. (Id. sec. 2; P. D. 230.)

Art. 581. (306) (264) Drawer of bill liable on non-acceptance.—The drawer of any bill of exchange which shall not be accepted when presented for acceptance shall be immediately liable for the payment thereof; and the holder of such bill may secure and fix the liability of any indorser thereof by instituting suit against such drawer, within the time and in the manner prescribed by this title. (Id. sec. 3; P. D. 231.)

See Simkins' Contracts and Sales (3d Ed.) p. 426; Vaughn v. Farmers' & Merchants' Nat. Bank of Alvord, 126 S. W. 690; Morris v. First State Bank of Dallas, 192 S. W. 1074.

Art. 582. (307) (265) Assignee may sue in his own name.—Any person to whom any of the said negotiable instruments may have been assigned may maintain any action in his own name which the original obligee or payee might have brought; but he shall not only allow all just discounts against himself, but, if he obtained the same after it became due, he shall also allow all just discounts against the assignor before notice of the assignment was given to the defendant; but, should he obtain such instrument before its maturity, by giving for it a valuable consideration, and without notice of any discount or defense against it, then he shall be compelled to allow only the just discounts against himself. (Acts 1840, p. 144, sec. 2; P. D. 221.)

See Simkins' Contracts and Sales (3d Ed.) p. 418; Word v. Ellwood, 37 S. W. 414; Ft. Dearborn Nat. Bk. v. Berrott, 57 S. W. 340; Prouty v. Musquiz, 58 S. W. 721; Hutchison v. King, 83 S. W. 215; Bank v. Kenney, 83 S. W. 368; Rowe v. Gohlman, 98 S. W. 1077; Elmore v. Rugely, 107 S. W. 151; Brannin v. Richardson, 148 S. W. 348; Douglass v. Lockhart, 168 S. W. 382; Ford v. Johnston, 184 S. W. 303; Brannin v. Richardson, 185 S. W. 562; Landon v. Foster Drug Co., 186 S. W. 434; Iowa City State Bank v. Milford, 200 S. W. 883; Lewis v. Farmers' & Mechanics' Nat. Bank of Ft. Worth, 204 S. W. 888; State Nat. Bank v. East Coast Oil Co., 208 S. W. 190; California State Life Ins. Co. v. Kring, 208 S. W. 372.

Art. 583. (308) (266) Non-negotiable instruments may be assigned.—The obligee, or assignee, of any written instrument not negotiable by the law merchant may transfer to another, by assignment, all the interest he may have in the same. (Id. sec. 3; P. D. 222.)

See Simkins' Contracts and Sales (3d Ed.) p. 419; Ablowich v. Greenville Nat. Bk., 54 S. W. 794; Lakeview Land Co. v. S. A. Traction Co., 66 S. W. 766; M. K. & T. Ry. Co. v. Carter, 68 S. W. 159; Ry. v. Cluck, 72 S. W. 83; Ry. v. Eldredge, 80 S. W. 556; Coleman v. Anderson, 82 S. W. 1057; Stamford Compress Co. v. Farmers' & Merchants' Nat. Bank, 143 S. W. 1142; McFarling v. Carey, 149 S. W. 766; National State Bank of Mt. Pleasant, Iowa, v. Ricketts, 152 S. W. 646; Prentice v. Security Ins. Co., 153 S. W. 925; Davidson v. Lee, 162 S. W. 414; Toole v. First Nat. Bank of Hemphill, 168 S. W. 423; Sands v. Curfman, 177 S. W. 161; Morris v. Burrows, 180 S. W. 1108.

Art. 584. (309) (267) Assignee of non-negotiable instrument may sue in his own name.—The assignee of any instrument mentioned in the preceding article may maintain an action thereon in his own name, but he shall allow every discount and defense against the same which it would have been subject to in the hands of any previous owner before notice of the assignment was given to the defendant; and in order to hold the assignor as surety for the payment of the instrument, the assignee shall use due diligence to collect the same. (Id.)

See Simkins' Contracts and Sales (3d Ed.) p. 419; Ablowich v. Bk., 54 S. W. 794; Nat. Oil, etc., Co. v. Teel, 68 S. W. 979; Stamford Compress Co. v. Farmers' & Merchants' Nat. Bank, 143 S. W. 1142; Davidson v. Lee, 162 S. W. 414; Toole v. First Nat. Bank of Hemphill, 168 S. W. 423.

Art. 585. (310) (268) Waiver of diligence is not to be shown by parol.—Parol testimony shall be inadmissible to prove that the assignor, drawer, or indorser of any of the aforesaid instruments has released the holder thereof from his obligation to use due diligence to collect the same. (Acts 1840, p. 144, sec. 7; P. D. 225.)

Art. 586. (311) (269) Assignor liable to assignee.—The assignee of any instrument not negotiable by the law merchant shall be entitled to recover from any previous assignor thereof; but, in any suit brought against a remote assignor of such instrument, he shall be subject only to such recovery and shall have the benefit of all defenses which he would have been entitled to had the suit been instituted by any intermediate assignee. (Id. sec. 4; P. D. 223.)

Art. 587. (312) (270) Assignor, indorser, etc., may be sued alone, when.—Assignors, indorsers and other parties not primarily liable upon any of the instruments named in this title may be jointly sued with their principal obligors, or may be sued alone in the cases provided for in articles 1842 and 1843. (Id. sec. 6; P. D. 225; amended on revision 1879.)

Art. 588. (313) (271) Assignment, how put in issue.—When a suit shall be instituted by an assignee or indorsee of any written instrument, the assignment or indorsement thereof shall be regarded as fully proved, unless the defendant shall deny in his plea that the same is genuine, and moreover shall file, with the papers in the cause, an affidavit stating that he has good cause to believe, and verily does believe, that such assignment or indorsement is forged. (Id. sec. 5; P. D. 224.)

Phœnix Ins. Co. v. Shearman, 43 S. W. 930; Schauer v. Beitels, Exr., 50 S. W. 932; Standifer v. Bond Hdw. Co., 94 S. W. 144; McCormick v. Rainey, 107 S. W. 45; Clymer v. Terry, 109 S. W. 1129; Forster v. Enid, O. & W. R. Co., 176 S. W. 788; First Nat. Bank of Garner, Iowa, v. Smith,

183 S. W. 862; Bloch v. Rio Grande Valley Bank & Trust Co., 190 S. W. 541; Commonwealth Nat. Bank v. Hawes, 196 S. W. 859; Denman v. Kaplan, 205 S. W. 739; Webb v. Reynolds, 207 S. W. 914.

Art. 589. (314) (272) Consideration, failure of, when it constitutes a defense.—The defendant in any action that may be instituted upon any written instrument may plead a want or failure, or partial failure, of consideration, where such written instrument shall remain in the possession of the original payee or obligee, or when it shall have been transferred or assigned after the maturity thereof, or when the defendant may prove a knowledge of such want or failure of consideration on the part of the holder prior to such transfer. (Id. sec. 7; P. D. 227.)

See Ablowich v. Bk., 54 S. W. 794; Simkins' Contracts and Sales (3d Ed.) p. 83; Kampmann v. McCormick, 59 S. W. 832; McCormick v. Kampmann, 115 S. W. 24; Taylor v. Trussell, 139 S. W. 660; Hendrick v. Chase Furniture Co., 186 S. W. 277; Iowa City State Bank v. Milford, 200 S. W. 883.

Art. 590. (315) (273) Liability of drawer, etc., fixed by protest.—The holder of any bill of exchange or promissory note assignable or negotiable by the law merchant may also secure and fix the liability of any drawer or indorser of such bill of exchange or promissory note, for the payment thereof, without suit against the acceptor, drawer or maker, by procuring such bill or note to be regularly protested by a notary public for nonacceptance or nonpayment, and giving notice of such protest to such drawer or indorser, according to the usage and custom of merchants. (Acts 1848, p. 187, sec. 4; P. D. 232.)

See Williams v. Planters & Mechanics Nat. Bk. of Houston, 44 S. W. 617; Robinson v. Belt, 151 S. W. 598; Dunn v. Townsend, 163 S. W. 312.

Art. 591. (316) (274) Protest, how made, and evidence of.—It shall be the duty of any notary public who shall protest any bill of exchange or promissory note, for nonacceptance or nonpayment, to set forth in his protest and in his notarial record a full and true statement of what shall have been done by him in relation thereto, according to the facts, by specifying therein whether demand was made of the sum of money in such bill or note specified, of whom, and when and where such demand was made. It shall also be his duty to make the requisite notices of protest for the drawers and indorsers who are sought to be made liable, and when any such notice shall be served by him, he shall note in his protest and notarial record on whom and when such notice was served; and when such notice shall be deposited in the postoffice by him he shall specify when and where mailed, and to whom and where directed; and such protest, or a copy of such notarial record, certified under the hand and seal of such notary public, shall be admitted in all the courts of this state as evidence of the facts therein set forth. (Id. sec. 5; P. D. 233.)

Art. 592. (317) (275) Damages on protested bill recoverable, when.—The holder of any protested draft or bill of exchange, drawn by a merchant within the limits of this state upon his agent or factor living beyond the limits of this state, shall, after having fixed the liability of the drawer or indorser of any such draft or bill of exchange, be entitled to recover and receive ten per cent on the amount of such draft or bill as damages, together with interest and costs of suit thereon accruing. (Acts 1851, p. 23, sec. 1; P. D. 236.)

Art. 593. [Superseded.]

See post, art. 6001a[85].

Art. 593a. Notes and liens for patent rights.—That all notes and liens given for a patent right consideration or patent right territory shall state on their face that the same were given for a patent right. (Acts 1915, ch. 76, sec. 1.)

Art. 593b. Same; notice to subsequent purchasers.—The aforesaid statement on the face of said notes or liens shall be notice to all subsequent purchasers of said notes or liens of all equities existing between the parties to the original transaction, and the same shall be subject to all defenses against subsequent owners and holders, that they would, if the same had remained in the hands of the original owner. (Id. sec. 2.)

For provision making it a misdemeanor to take a note for a patent or patent right territory without complying with the act, see Penal Code, art. 999zzzz.

TITLE 17

BLACKLISTING

Art. 594. Discrimination.—Either or any of the following acts shall constitute discrimination against persons seeking employment:

1. Where any corporation, or receiver of the same, doing business in this state, or any agent or officer of any such corporation or receiver, shall blacklist, prevent, or attempt to prevent, by word, printing, sign, list or other means, directly or indirectly, any discharged employé, or any employé who may have voluntarily left said corporation's service, from obtaining employment with any other person, company, or corporation, except by truthfully stating in writing, on request of such former employé, the reason why such employé was discharged, or why his relationship to such company ceased.

2. Where any corporation, or receiver of the same, doing business in this state, or any officer or agent of such corporation or receiver shall, by any means, directly or indirectly, communicate to any other person or corporation any information in regard to a person who may seek employment of such person or corporation, and fails to give such person in regard to whom the communication may be made, within ten days after demand therefor, a complete copy of such communication, if in writing, and a true statement thereof if by sign or other means not in writing, and the names and addresses of all persons or corporations to whom said communication shall have been made.

3. Where any corporation, or receiver of the same, doing business in this state, or any agent or employé of such corporation or receiver, shall have discharged an employé, and such employé demands a statement in writing of the cause of his discharge, and such corporation, receiver, agent or employé thereof fails to furnish a true statement of the same to such discharged employé, within ten days after such demand, or where any corporation or receiver of the same, or any officer or agent of such corporation or receiver, shall fail, within ten days after written demand for the same, to furnish to any employé voluntarily leav-

ing the service of such corporation or receiver, a statement in writing that such employé did leave such service voluntarily, or where any corporation or receiver of the same, doing business within this state, shall fail to show in any statement under the provision of this title the number of years and months during which such employé was in the service of the said corporation or receiver in each and every separate capacity or position in which he was employed, and whether his services were satisfactory in each such capacity or not, or where any such corporation or receiver shall fail within ten days after written demand for the same to furnish to any such employé a true copy of the statement originally given to such employé for his use in case he shall have lost or is otherwise deprived of the use of the said original statement.

4. Where any corporation, or receiver of same, doing business in this state, or any agent or officer of the same, shall have received any request, notice or communication, either in writing or otherwise, from any person, company or corporation, preventing, or calculated to prevent, the employment of a person seeking employment, and shall fail to furnish to such person seeking employment, within ten days after a demand in writing therefor, a true statement of such request, notice or communication, and, if in writing, a true copy of same, and, if otherwise than in writing, a true statement thereof, and a true interpretation of its meaning, and the names and addresses of the persons, company or corporation furnishing the same.

5. Where any corporation, or receiver of the same, doing business in this state, or any officer or agent of such corporation or receiver, discharging an employé, shall have failed to give such employé a true statement of the causes of his discharge, within ten days after a demand in writing therefor, and shall thereafter furnish any other person or corporation any statement or communication in regard to such discharge, unless at the request of the discharged employé.

6. Where any corporation, or receiver of same, doing business in this state, or any officer or agent of such corporation or receiver, shall discriminate against any person seeking employment on account of his having participated in a strike.

7. Where any corporation, or receiver of the same, doing business in this state, or any officer or agent of such corporation or receiver, shall give any information or communication in regard to a person seeking employment having participated in any strike, unless such person violated the law during his participation on such strike, or in connection therewith, and unless such information is given in compliance with subdivision 1 of this article. (Acts 1907, p. 142. Acts 1909, p. 160, sec. 1.)

This article held unconstitutional in Galveston, H. & S. A. Ry. Co. v. King, 174 S. W. 335; Galveston, H. & S. A. Ry. Co. v. S., 175 S. W. 1096; St. Louis Southwestern Ry. Co. of Texas v. Griffin, 171 S. W. 477, reversing 154 S. W. 583.

Art. 595. Discrimination prohibited, etc.—Any and all discriminations against persons seeking employment as defined in this title are hereby prohibited and are declared to be illegal. (Acts 1907, p. 142, sec. 2.)

Art. 596. Foreign corporations to forfeit permit for violating provisions; duty of attorney general.—Every foreign corporation violating any of the provisions of this title is hereby denied the right, and is prohibited from doing any business within this state, and it shall be the duty of the attorney general to enforce this provision, by injunction or other proceeding in the district court of Travis county, in the name of the state of Texas. (Id. sec. 3.)

Art. 597. Every person or corporation violating provisions liable to forfeiture; suit; venue; duty of attorney general; fees.—Each and every person, company or corporation, who shall in any manner violate any of the provisions of this title shall, for each and every offense committed, forfeit and pay the sum of one thousand dollars, which may be recovered in the name of the state of Texas, in any county where the offense was committed, or where the offender resides, or in Travis county; and it shall be the duty of the attorney general, or the district or county attorney under the direction of the attorney general, to sue for the recovery of the same. (Id. sec. 4.)

Art. 598. Fees of prosecuting attorney.—The fees of the prosecuting attorney for representing the state in proceedings under this title shall be over and above the fees allowed him under the general fee bill. (Id. sec. 4.)

Art. 599. Prima facie evidence of agency.—In prosecutions for the violation of any of the provisions of this title, evidence that any person has acted as the agent of a corporation in the transaction of its business in this state shall be received as prima facie proof that his act in the name, behalf or interest of the corporation of which he was acting as the agent, was the act of the corporation. (Id. sec. 6.)

Art. 600. On application of attorney general, justice of peace to have witness examined.—Upon the application of the attorney general, or of any district or county attorney, made to any justice of the peace in this state, and stating that he has reason to believe that a witness, who is to be found in the county of which such justice of the peace is an officer, knows of a violation of any of the provisions of this title, it shall be the duty of the justice of the peace to whom such application is made to have summoned and to have examined such witness in relation to violations of any of the provisions of this title. (Id. sec. 7.)

Art. 601. Witness sworn and examined, how; statement in writing and disposition of.—Such witness shall be summoned as provided for in criminal cases. He shall be duly sworn, and the justice of the peace shall cause the statements of the witness to be reduced to writing and signed and sworn to before him, and such sworn statement shall be delivered to the attorney general, district or county attorney, upon whose application the witness was summoned. (Id. sec. 7.)

Art. 602. Failure of witness to appear, contempt, etc.—Should the witness summoned as aforesaid fail to appear or to make statements of the facts within his

knowledge under oath, or to sign the same after it has been reduced to writing, he shall be guilty of contempt of court and may be fined not exceeding one hundred dollars, and may be attached and imprisoned in the county jail until he shall make a full statement of all the facts within his knowledge with reference to the matter inquired about. (Id. sec. 7.)

Art. 603. Immunity of witness, if, etc.—Any person so summoned and examined shall not be liable to prosecution for any violation of the provisions of this title about which he may testify fully and without reserve. (Id. sec. 7.)

Art. 604. Written statement of cause of discharge, not to be used as cause of action, civil or criminal.—Said written statement of cause of discharge, if true, when so made by such agent, company or corporation, shall never be used as the cause for an action for libel, either civil or criminal, against the agent, company or corporation so furnishing same. (Id. sec. 8.)

TITLE 18

BONDS—COUNTY, MUNICIPAL, ETC.

CHAPTER ONE

GENERAL PROVISIONS AND REGULATIONS AS TO THE ISSUE OF BONDS

Art. 605. Election on bonds required.—It shall be unlawful for the commissioners' court of any county, or the city or town council of any incorporated town or city in this state, to issue the bonds of said county, or town or city, for any purpose authorized by law, unless a proposition for the issuance of such bonds shall have been first submitted to a vote of the qualified voters, who are property taxpayers of said county, town or city; and unless a majority of the said qualified property taxpayers, voting at said election, be in favor of the proposition for the issuance of bonds, then the said bonds shall not be issued. If the proposition for the issuance of bonds be sustained by a majority of such property taxpayers, voting at such election, then such bonds shall be authorized and shall be issued by such commissioners' court, or city or town council; provided, that this article shall not be construed to authorize and render valid bonds without being first submitted to the attorney general, and certified to by him, as now required by law. (Acts 1899, pp. 103 and 258.)

Hendrick v. Culberson, 56 S. W. 616; Moller v. City of Galveston, 57 S. W. 1116; Bell County v. Lightfoot, 138 S. W. 381; Moore v. Coffman, 189 S. W. 94; Kempen v. Bruns, 195 S. W. 643; Lasater v. Lopez, 202 S. W. 1039.

Art. 606. Proposition submitted, how.—The proposition to be submitted for the issuance of bonds shall distinctly specify the purpose for which the bonds are to be issued, the amount thereof, the time in which they are payable, and the rate of interest; and all voters desiring to support the proposition to issue bonds shall have written or printed upon their ballots the words, "For the issuance of bonds," and those opposed shall have printed upon their ballots the words, "Against the issuance of bonds." (Acts 1899, p. 258, sec. 2.)

Art. 607. Time and place of election determined how.—The commissioners' court, or city or town council of such incorporated town or city, shall determine the time and place or places of holding said election; and the manner of holding the same shall be governed by the laws of the state regulating general elections. (Id. sec. 3.)

Art. 608. Do not apply in what cases.—The preceding articles of this chapter shall not apply to funding bonds issued, or to be issued, for the funding of any valid outstanding bonds of such county, town or city; nor to any bond issue for a sum less than two thousand dollars, when issued for the purpose of repairing buildings or structures for the building of which bonds are allowed to be issued. (Id. sec. 4.)

Bell County v. Lightfoot, 138 S. W. 381; Lasater v. Lopez, 202 S. W. 1039.

Art. 609. Sections of special charters in conflict herewith repealed.—All sections of any special charter of any city or town in conflict with the terms of the preceding articles of this chapter are expressly repealed. (Id. sec. 5.)

Art. 610. (877) Courthouse, jail and bridge bonds, authorized.—The county commissioners court of any county in this State is hereby authorized and empowered to issue the bonds of said county for the following purposes:

1. For the erection of a county court house and jail, or either.

2. For purchasing or constructing bridges for public purposes, within the county or across a stream that constitutes a boundary line of the county, or for the purpose of improving and maintaining the public roads in the county; or for the purpose of establishing county poor houses and farms in the county; provided that this Act shall not be construed as authorizing the commissioners court to issue bonds for any of the said purposes without submitting the same to a vote of the people of said county as provided in Chapter 149, Acts of the Twenty-Sixth Legislature of the State of Texas, Laws of 1899; provided, further, that, when the commissioners court deem it advisable to issue bonds for the purchase or construction of bridges and the improvement and maintenance of public roads, both questions may be submitted and voted on as one proposition. (Acts 1903, S. S. p. 9; Acts 1893, p. 112; Acts 1911, p. 204.)

See post, art. 2252; Alley v. Mayfield, 131 S. W. 295; Bell County v. Lightfoot, 138 S. W. 381; Lasater v. Lopez, 202 S. W. 1039.

Art. 611. (878) To run not exceeding forty years; redeemable when.—All bonds issued under this chapter shall run not exceeding forty years, and shall be redeemable at the pleasure of the county at any time after five years after the issuance of the bonds, or after any period not exceeding ten years, which may be fixed by the commissioners' court. (Acts 1893, p. 112, sec. 2.)

Art. 612. (879) Interest on such bonds.—Said bonds shall draw interest at a rate not exceeding six per cent per annum, payable on the tenth day of April; or interest may, in the discretion of the commissioners' court, be made payable semi-annually, on the tenth day of April and the tenth day of October, respectively. Interest shall be evidenced by attached coupons. (Id. sec. 3.)

Art. 613. (880) Bonds to be based on and limited by taxable values.—The issue of bonds under this chapter shall be based upon the taxable values of the county according to the last approved assessment, and shall be limited as follows: Courthouse and jail bonds shall be limited to an amount not exceeding two per cent of said taxable values; bridge bonds shall be limited to an amount not exceeding one per cent of said taxable values. In determining the amount of the bonds of the respective kinds to be issued, previous indebtedness for said several purposes shall be considered. The total indebtedness of any county shall not be increased by any issue of bonds to a sum exceeding five per cent of its said taxable values. (Id. sec. 4.)

Art. 614. (881) Interest and sinking fund provided.—The commissioners' court shall levy annual ad valorem taxes sufficient to pay the interest on said bonds and create a sinking fund for their redemption; which said taxes shall not exceed, for courthouse and jail bonds, one-fourth of one per cent; for bridge bonds, fifteen cents on each one hundred dollars. (Id. sec. 5.)

Alley v. Mayfield, 131 S. W. 295.

Art. 615. (882) Bonds to be signed, countersigned, registered and sold at not less than par, etc.—The bonds shall be signed by the county judge and countersigned by the county clerk and registered by the county treasurer before delivery. The county treasurer shall keep an account of the amount of principal and interest paid on each, and no bond shall be sold at less than its par value and accrued interest, exclusive of commissions. (Id. sec. 6.)

Art. 616. (918a) Annual tax to meet interest and sinking fund.—Hereafter any county, city, or town, acting through its commissioners' court, city council, or board of aldermen, as the case may be, in authorizing the execution of any bonds in pursuance of law, shall, at the time, provide for the levy and collection of a tax annually of sufficient amount with which to pay the annual interest and a sinking fund with which to pay such bonded indebtedness at maturity. (Acts 1895, p. 184.)

See post, art. 880.

Art. 617. (918b) Rate of interest; terms of sale.—Hereafter no bonds executed by any county, city, or town shall bear a higher rate of interest than six per cent per annum, and shall not be sold at less than its par value and accumulated interest, exclusive of commissions. (Id. sec. 2.)

Art. 618. (918c) No bond to run longer than forty years.—Hereafter no county, city, or town shall execute a bond to mature later than forty years from the date of its execution. (Id. sec. 3.)

Art. 619. (918d) Conditions precedent to the issuance of bonds; examination by attorney general, etc.—Any county, city, or town in the state of Texas, desiring to issue bonds as authorized by the constitution and laws of this state, shall, before such bonds are offered for sale, forward to the attorney general the bonds to be issued, a certified copy of the order, or ordinance, levying the tax to pay interest and provide a sinking fund, with a statement of the total bonded indebtedness of such county, city, or town, including the series of bonds proposed, and the assessed value of property for purposes of taxation, as shown by the last official assessment, of such county, city, or town, together with such other information as the attorney general may require; whereupon it shall be the duty of the attorney general to carefully examine said bonds in connection with the facts and the constitution and laws on the subject of the execution of such bonds, and if, as the result of such examination, the attorney general shall find that such bonds were issued in conformity with the constitution and laws, and that they are valid and binding obligations upon such county, city, or town, by which they are executed, he shall so officially certify. (Id. sec. 4.)

Brownson v. Smith, 57 S. W. 570; Smith v. Reaves, 208 S. W. 545.

Art. 620. (918e) Bonds to be registered by comptroller.—When said bonds have been examined by the attorney general, and his certificate attached thereto, they shall be registered by the comptroller, in a book to be kept for that purpose. (Acts 1895, p. 184; Acts 1901, p. 16.)

Art. 621. (469) (423) Comptroller's indorsement on bond and certificate.—In case of city bonds, the comptroller shall indorse on each bond so registered his certificate of registration, and give, at the request of the mayor, his certificate certifying to the amount of bonds so registered in his office up to date. (Acts 1875, p. 113, sec. 79.)

Art. 622. (918e) Certificate of attorney general recorded.—The certificate of the attorney general to the validity of such bonds shall be preserved of record, for use in the event of litigation. (Acts 1895, p. 184; Acts 1901, p. 16.)

Art. 623. (918e) Funding or refunding bonds not registered until old bonds presented for cancellation.—In the case of funding or refunding bonds, the comptroller shall not register the same until the old bonds, in lieu of which such funding or refunding bonds are issued, are presented to him for cancellation. (Acts 1895, p. 184; Id.)

Art. 624. (918e) Old bonds canceled and new bonds delivered; provided, etc.—After registration of the new bonds, the comptroller shall cancel the old, and deliver such new bonds to the proper party or parties; provided, further, that the old bonds may be so presented for cancellation, in installments, and a like amount of the new bonds registered and delivered as herein provided. (Acts 1895, p. 184; Id.)

Art. 625. (918f) Certificate of attorney general and registration prima facie evidence of validity.—Such bonds, after receiving the certificate of the attorney general, and having been registered in the comptroller's office, as provided herein, shall thereafter be held, in every action, suit, or proceeding in which their validity is or may be brought into question, prima facie valid and binding obligations. And in every action brought to enforce collection of such bonds, the certificate of the attorney general, or a duly certified copy thereof, shall be admitted and received in evidence of the validity of such bonds, together with the coupons thereto attached; provided, the only defense which can be offered against the validity of said bonds shall be for forgery or fraud. But this article shall not be construed to

give validity to any such bonds as may be issued in excess of the limit fixed by the constitution, or contrary to its provisions, but all such bonds shall, to the extent of such excess, be held void. (Id. sec. 6.).

See City of Tyler v. Tyler B. & L. Ass'n, 86 S. W. 750; Simpson v. City of Nacogdoches, 152 S. W. 858.

Art. 626. (918g) Law not applicable in certain cases.—Nothing in this law shall be construed to apply to the issuance of any bonds in cases where provisions for their issuance have been made, in whole or in part, before the passage of this law. (Id. sec. 8.)

CHAPTER TWO

PARTICULAR PROVISIONS AND REGULATIONS AS TO THE ISSUE OF BONDS

1. PUBLIC ROADS—CONSTRUCTION AND MAINTENANCE OF

Art. 627. Power to issue road, etc., bonds and levy tax for interest and sinking fund.—Any county in this state, or any political subdivision or defined district, now or hereafter to be described and defined, of a county, is hereby authorized and empowered to issue bonds, or otherwise lend its credit, in any amount not to exceed one-fourth of the assessed valuation of the real property of such county, or political subdivision, or defined district thereof, and to levy and collect such taxes to pay the interest upon such bonds and provide a sinking fund for the redemption thereof, for the purpose of constructing and maintaining and operating macadamized, graveled or paved roads and turn-pikes, or in aid thereof. (Acts 1909, p. 186; Acts 1907, p. 251; Acts 1909, S. S. p. 271.)

Art. 628. Election for; propositions, restrictions and requirements; provision as to interest.—Upon the petition of fifty, or a majority of resident property tax paying voters of any county, or political subdivision or defined district of any county in this state, to the county commissioners court of such county, such court shall have the power, and it is hereby made its duty, at any regular or special session thereof, to order an election to be held in such county, political subdivision or defined district thereof, to determine whether or not the bonds of such county, or political subdivision or defined district thereof, shall be issued in any amount not to exceed one-fourth of the assessed valuation of the real property of such county, or political subdivision, or defined district, for the purpose of constructing, maintaining or operating macadamized, graveled or paved roads and turnpikes, or in aid thereof; and, at such election, there shall also be submitted to such resident property taxpaying voters the question as to whether or not a tax shall be levied upon the property of said county, or political subdivision or defined district thereof, subject to taxation, for the purpose of paying the interest on said bonds and to provide a sinking fund for the redemption thereof. The amount of bonds proposed to be issued, with rate of interest thereon and date of maturity, shall be stated in the order ordering said election, and in the notice therefor; or such order and notice may provide that the bonds may bear interest at a rate to be fixed by the commissioners court, not to exceed five and one-half per cent, and that the bonds may mature at such times as may be fixed by the commissioners court, serially or otherwise, not to exceed thirty years from their date, except as otherwise provided in Articles 637a and 637b hereof; provided that where such election is ordered for a political subdivision or defined district of a county, other than the whole county, such order and notice of election shall describe the boundaries thereof as described and defined in the order of the county establishing such political subdivisions or defined district of the county. (Acts 1907, p. 250; Acts 1909, S. S. p. 271, sec. 2; Acts 1917, ch. 203, sec. 1.)

Art. 629. Notice of election.—Notice of said election shall be given by publication in a newspaper published in the county for four successive weeks, and in addition thereto by posting notices at three public places in the county, one of which shall be at the courthouse door, for three weeks prior to said election, if said proposed issue of bonds and levy of taxes is for the entire county. If said proposed issue of bonds and levy of taxes is for any political subdivision or defined district of the county, notice of such election shall be given by publishing, in a newspaper published in the political subdivision or defined district in which such bond is proposed, and, if no newspaper is published in such political subdivision or defined district, then in some newspaper published in the county, for four successive weeks, and by posting in at least three public places in such political subdivision or defined district of the county, for three successive weeks prior to said election. (Acts 1909, S. S. p. 271, sec. 3.)

Art. 630. Time, place and manner of holding election.—The commissioners' court of the county shall determine the time and place or places of holding such election; provided, no such election shall be held at any time less than thirty days from the time of making of the order ordering the election. The manner of holding said election shall be governed by the general laws of the state when not in conflict with the provisions of this subdivision of this chapter, and the returns of said election shall be made as now provided by law for making returns of elections held for the purpose of determining whether or not county bonds shall be issued. (Id. sec. 4.)

Art. 631. If election carried by two-thirds vote, bonds to be issued.—If, after the result of said election is known, it shall appear to the commissioners' court of the county in which said election was held, that a two-thirds majority of the vote cast at such election were in favor of the issuance of bonds, it shall be the duty of said commissioners' court, as soon thereafter as practicable, to issue said bonds on the faith and credit of said county, or of said political subdivision or defined district now or hereafter to be described and defined, within the state of Texas, and which may or may not include towns, villages, or municipal corporations of the county, as the case may be. (Id. sec. 5.)

Art. 632. Bonds, term, interest, examination, registry, custody; sale; disposition of proceeds; disbursement, regulation of.—Such bonds shall mature not later than thirty years from their date, except as

otherwise provided in Articles 637a and 637b hereof, with such options of redemption as may be fixed by the commissioners court, or such bonds may be issued to mature serially in approximately equal portions every year for not exceeding thirty years; and such bonds shall bear not more than five and one-half per cent interest per annum, and which bonds shall be examined by the Attorney General of Texas, and registered by the Comptroller of Public Accounts of Texas, and such bonds, when so issued, shall continue in the custody of and under the control of the commissioners court of the county in which they were issued, and shall be by said court sold to the highest and best bidder, for cash, either in whole or in parcels, at not less than their par value, and the purchase money therefor shall be placed in the county treasury of such county to the credit of the available road fund of such county, or of such political subdivision or defined district of such county, as the case may be; provided that the expense incurred in surveying the boundaries of a political subdivision or defined district of the county and other expenses incident to the issuance of bonds of such political subdivisions or defined districts shall be paid from the proceeds of the sale of the bonds of the district. Such funds shall be paid out by the county treasurer upon warrants drawn on such funds issued by the county clerk of the county, countersigned by the county judge, upon certified accounts approved by the commissioners court of the county, when such funds belong to the entire county; and, when such funds belong to a political subdivision or defined district of the county, they shall be paid out by the county treasurer upon warrants issued by the county clerk, upon certified accounts of the road superintendent of such road district, and approved by the commissioners court of the county. (Acts 1909, S. S. p. 271, sec. 5; Acts 1917, ch. 203, sec. 1.)

Art. 633. General laws applicable.—The general laws of Texas relative to county bonds, not in conflict with the provisions of this subdivision of this chapter shall apply to the issuance, approval, registration, sale and payment of the bonds provided for in said provisions. (Acts 1909, S. S. p. 271, sec. 5.)

Art. 634. Tax for interest and sinking fund; levy, assessment and collection; treasurer to be custodian, and to deposit with depository.—Before said road bonds shall be put on the market, the county commissioners' court of the county in which such election was held shall levy a tax sufficient to pay the interest on such bonds and to produce a sinking fund sufficient to pay the bonds at maturity; provided, that said tax herein authorized shall be assessed and collected in the same manner as now provided by law for the assessment and collection of other road taxes, if for a whole county, and, if for a political subdivision or other defined district of a county, then it shall be assessed and collected as is now provided by law for the assessment and collection of common school district special local taxes. And it is hereby made the duty of such commissioners' court to levy such tax, and it is hereby made the duty of the tax collector and assessor of such county wherein such taxes have been levied to assess and collect the same in the same manner and at the same time as other taxes. And said taxes, when so collected by such collector, shall be by him paid over to the county treasurer of such county, as and when other taxes are paid to the county treasurer. And the county treasurer of said county shall be custodian of all funds collected by virtue of this law, and shall deposit the same with the county depository as county funds. (Id. sec. 6.)

Art. 635. Treasurer to pay interest and sinking fund.—The treasurer shall pay the interest and principal as it becomes due on such bonds out of the funds so collected, in the same manner as the law directs in case of county courthouse bond funds. (Id. sec. 6.)

Art. 636. Numbering of districts and bonds to correspond, etc.; designation of bonds. Provision not applicable to bonds of whole county, designation of latter.—For the purpose of operating and being known under the provisions of this subdivision of this chapter, each political subdivision or defined district now or hereafter to be described and defined for the employment of said subdivision, in any county in this state shall be known as "Road District No. ..... of ..... county, Texas," and the bonds herein provided for in such political subdivision or defined district in any county, shall be known as "Road Bonds of Road District No. ..... of ..... county, Texas," being definitely numbered and bearing the name of the county in which it is located. This article shall apply only to districts composing less than a county, and shall not apply to bonds issued hereunder by a whole county, which county bonds shall be known as "..... County Special Road Bonds," taking the name of the county issuing the same. (Id. sec. 7.)

Art. 637. District accepting provisions to be body corporate; powers.—For the purpose of this subdivision of this chapter, any political subdivision of a county or defined district, now or hereafter to be described and defined, accepting the provisions of said subdivision, by voting such tax, is hereby made and created a body corporate, which may sue and be sued in like manner as counties. (Id. sec. 7.)

Art. 637a. County may issue bonds to compensate districts for bonds issued; election; tax.—Whenever in any political subdivision or defined districts in any county in this state bonds have been issued under the authority of Chapter 2, Title 18, Revised Civil Statutes of Texas of 1911, or any amendments thereto, or under authority of any special county road law, and thereafter bonds are voted by the entire county for the purposes hereinafter authorized, such political subdivisions or defined districts first issuing bonds may be fully and fairly compensated by the county in an amount equal in value to the amount of district bonds issued by such districts, and which shall be done in the form and manner hereinafter prescribed:

(1) It shall be the duty of the commissioners court, upon the presentation of a petition signed by two hundred and fifty resident property taxpaying voters of the county, whether residing in such road district or districts, or not, to order an election under

the provisions of Chapter 2, Title 18, Revised Civil Statutes of Texas, 1911, to determine whether or not the bonds of such county shall be issued for road construction purposes as authorized by subdivision 3 and 4 of this article.

(2) Such county bonds to be issued in such an amount as may be stated in the petition and order of the commissioners court, but within the limitations of the constitutional and statutory provisions; and at such election there shall also be submitted to the resident property taxpaying voters of the county the question as to whether or not a tax shall be levied upon the property of said county subject to taxation for the purpose of paying the interest on said bonds and to provide a sinking fund for the redemption thereof.

(3) Where such road district or districts have by the requisite vote of the qualified property taxpaying voters thereof authorized the issuance of bonds, and the same have not been issued and sold, or, if sold and the proceeds have not been expended, at the time the election is to be ordered for the entire county, then the proposed county bonds shall be issued for the following purpose: "The issuance of County bonds for the construction of district roads and the further construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof, throughout such county." If the proposition to issue such county bonds for said purpose shall receive the necessary favorable vote as is now provided by law, and said bonds shall have been approved and issued, then so much of the bonds so issued by the county as may be necessary to fairly and fully compensate such road district or districts shall be set aside by the commissioners court for that purpose: provided, that in the event such district bonds have not been issued and sold, then so much of the bonds so issued by the county as may be necessary to fairly and fully compensate such road district or districts shall be set aside by the commissioners court for that purpose; provided, that in the event such district bonds have not been issued and sold, then so much of the bonds so issued by the county as may be necessary to fairly and fully compensate such road district or districts shall be set aside for that purpose, and the same shall be sold and the proceeds applied to the construction, maintenance and operation of the roads within and for such road district or districts as contemplated by the election or elections theretofore held within and for such road district or districts, and such unsold district bonds shall thereupon become totally void, and it shall be the duty of the commissioners court of such county to immediately cancel and destroy such unsold district bonds; provided, however, that in the event such district bonds have been sold, then an exchange of a like amount of said county bonds may be made with the holder or holders of said district bonds as provided in subdivision 1 of Article 637b of this chapter, but if the commissioners court should find that such exchange cannot be made, then so much of the county bonds as may be necessary shall be transferred and placed to the credit of the interest and sinking fund account of such road district or districts in conformity with the procedure prescribed by subdivision 2 of Article 637b hereof.

(4) Where such road district or districts have issued bonds for the construction of public roads therein and the proceeds derived from the sale of the bonds have been applied to the construction of roads within and for such districts, then such district roads may be merged into and become a part of the general county system of public roads and such road district or districts shall be fully and fairly compensated by the county in an amount equal in value to the amount of bonds outstanding against such road district or districts at the time the bonds are issued by the county, and the proposed county bonds shall be issued for the following purpose: "The issuance of county bonds for the purchase of district roads and the further construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof, throughout such county." In the event the proposition to issue such county bonds shall receive the necessary favorable vote as is now provided by law, and said bonds shall have been approved and issued, then so much of the bonds so issued by the county as may be necessary for that purpose shall be set aside and exchanged for a like amount of outstanding district bonds, or the same may be transferred and placed to the credit of such road district or districts for the purpose of paying and retiring such district bonds as the same may mature. (Acts 1917, ch. 203, sec. 2; Acts 1919, 2d C. S., ch. 38, sec. 1.)

Art. 637b. Use of and exchange of bonds for outstanding bonds.—If the proposition to issue such county bonds shall receive the necessary favorable vote as is now provided by law, and said bonds shall have been approved and issued, the taxes theretofore levied and collected in any road district or districts shall from that date be dispensed with as hereinafter provided, and the bonds so set apart by the commissioners court shall be used exclusively for the purpose of constructing the roads in any such subdivisions or districts or for the purpose of purchasing or taking over the improved roads in any such subdivisions or districts, as the case may be. The exchange of such county bonds for such outstanding district bonds shall be made in one of the following methods, towit:

(1) An exchange of said bonds may be made with the holder or holders of any outstanding district bonds. The agreement for such exchange shall be evidenced by order of the commissioners court authorizing the same and by the written consent of the holder or holders of such district bonds, properly signed and acknowledged, as provided for the acknowledgment of written instruments by the laws of this state, which said order of the commissioners court, written agreement properly executed by the holder or holders of such district bonds, together with the county bonds to be given in exchange, shall be presented to and approved by the Attorney General of the State and shall bear his certificate of approval before the exchange is finally consummated. When such exchange of county bonds for district bonds shall have been consummated, it shall be the duty of the commissioners court to cancel and destroy said district bonds, and thereafter no tax

shall ever be levied or collected therefor under the original election in such subdivisions or districts and the sinking funds then on hand to the credit of any such subdivisions or districts shall be passed to the sinking fund account of the county.

(2) In the event the exchange of the county bonds for the outstanding district bonds cannot be made as hereinabove provided for, it shall then be the duty of the commissioners court, at as early a date as practicable, to deposit with the county treasurer for the credit of the interest and sinking fund account of such road district or districts an amount of county bonds equal in value to the amount of outstanding district bonds. The order of the commissioners court authorizing the deposit of county bonds for the credit of the interest and sinking fund account of such road district or districts, together with the county bonds so authorized to be deposited, shall be presented to and approved by the Attorney General of the State and shall bear his certificate of approval before such deposit of county bonds shall be made and credit passed to such road district or districts. After such county bonds shall have been deposited for the credit of the interest and sinking fund accounts of any such road district or districts the sinking fund then on hand to the credit of such road district or districts shall be passed to the credit of the sinking fund account of the county and the commissioners court shall no longer levy and collect the taxes provided for under the original election for said bonds in such road district or districts, but in lieu thereof the said court shall, from the taxes levied for the purpose of providing the necessary interest on the county bonds hereinabove provided for, pay annually the interest on said county bonds deposited for the credit of such road district or districts, detaching the coupon therefor, and said payment of interest shall be passed to the credit of the interest account of such road district or districts as the owner or owners of said county bonds, and the funds so realized by said road district or districts shall be used by the commissioners court for the purpose of paying the interest on all such outstanding district bonds. It shall also be the duty of the commissioners court to set aside annually, from the taxes levied to provide the necessary sinking fund for such county bonds, the necessary sinking fund for the retirement of said county bonds and upon the maturity of said county bonds the commissioners court shall pay said bonds in full and said payments shall be passed to the credit of the sinking fund of such road district or districts and the funds so realized by said road district or districts shall be used by the commissioners court to pay in full all outstanding district bonds. (Id.)

Art. 637c. Denominations of bonds; interest rate; maturity; sale.—The county bonds issued for the purpose contemplated in subdivisions three and four of Article 637a shall be issued in similar denominations, bearing the same rate of interest, having the same date or dates or maturity and with similar options of payment as the outstanding district bonds, it being the intent hereof that said county bonds shall in every respect be similar to said district bonds, except they shall be county obligations instead of district obligations, and shall be dated on a date after the date of the election at which they were authorized; and the county bonds issued in excess of the amount required to exchange, offset and retire said outstanding district bonds shall be issued and sold in the manner now provided by law and may mature serially or otherwise at the discretion of the commissioners court and may run for a term not to exceed forty years and such bonds shall bear not more than 5½% interest per annum, and the proceeds thereof shall be credited to the available road fund of the county and shall be expended by the commissioners court in constructing, maintaining and operating macadamized, graveled or paved roads and turnpikes or in aid thereof throughout such county. The issuance and sale of the bonds herein authorized and the levy and collection of taxes therefor shall be conducted as now required by law, except as herein otherwise provided; and provided further that the necessary expense incident to the issuance of said bonds may be paid out of the proceeds from the sale thereof. (Id.)

Art. 637d. Political subdivision not to be created out of territory having outstanding bonds.—Where a political subdivision or defined road district of a county has heretofore been established and issued bonds or is hereafter established and issues bonds, no political subdivision or defined road district shall thereafter be created or established overlapping the same territory or embracing any part thereof while any of the bonds of such political subdivision or defined road district are outstanding and unpaid, except as hereinabove provided for the county as a whole:

Provided that in the event the boundaries of any defined road district hereafter created or established overlap or embrace any part of the territory or area of another defined road district or road districts theretofore created or established, such road district shall be invalid only as to that portion thereof which overlaps or embraces any part of the territory of a defined road district or road districts theretofore established, and it shall be the duty of the commissioners court of the county in which such conflicting road districts are situated to pass a nunc pro tunc order accurately defining the boundaries of the subsequently created road district in conformity to the boundaries of such contiguous road district or road districts;

Provided further that all defined road districts in this state heretofore attempted to be established where the territory already embraced therein overlaps any portion of the territory embraced within the boundaries of another defined district or road district theretofore formed or established are validated in all respects, except as to that portion thereof which overlaps or embraces any part of the road district or road districts first created or established, and it shall be the duty of the commissioners court of the county in which such districts are situated to pass a nunc pro tunc orders accurately defining the boundaries of the road district attempted to be created or established so as to conform to the boundaries of the contiguous road district of road districts;

And provided that all regular and proper proceedings and orders had made in the is-

suance of bonds or proposed bonds in such defined road districts attempted to be established prior to the taking effect of this Act are hereby in all things validated, ratified and confirmed; provided that this Act shall in no way affect or repeal any provision of any special road law heretofore enacted for any county. (Acts 1917, ch. 203, sec. 2; Acts 1918, 4th C. S., ch. 18, sec. 1.)

Art. 637e. Investment of sinking fund; interest, how disposed of.—The Commissioners Court of any county in this state is authorized and empowered, when it considers it advisable, to invest sinking funds now on hand or which may hereafter be on hand, accumulated for the redemption and payment of any bonds issued by such county or political subdivision or defined district thereof, in bonds of the United States, of the State of Texas or any county in the State, or of any incorporated city or town or road district or school district in this state; or in bonds of the Federal Farm Loan Bank System; provided that no such bonds shall be so purchased which, according to their terms, mature at a date subsequent to the time of maturity of the bonds for the payment of which such sinking fund was created; and, provided, that all interest on such investments shall be credited to the sinking fund to which it belongs; and such sinking funds, together with the interest thereon, shall be and is hereby set apart as a special fund for the uses designated herein, and their use for any other purpose shall be considered a diversion thereof and punishable as provided by the Penal Code of this State, Article 104, Acts 1911. (Acts 1917, ch. 203, sec. 2.)

Art. 637f. Provisions cumulative; partial invalidity.—The provisions of this Act shall be held cumulative of other laws now in effect and shall not operate to amend or repeal any law except as herein specifically provided, and in case it shall be declared by the courts that any part of this Act is unconstitutional such decision shall not impair other parts and provisions of this Act. (Id.)

Art. 637g. Issue of bonds where district bonds have been issued, etc.—Where any county in this State has already voted bonds for the purpose of purchasing or taking over district roads in any road district or districts within such county, and it shall appear that at the time such county election was held any one or more of such road district or districts has not issued and sold the road district bonds theretofore authorized by a vote of the qualified voters therein, then the commissioners court of such county may issue the county bonds already authorized in the election held throughout the county for the purpose of purchasing or taking over such district roads, and such county bonds so issued shall as to amount, rate of interest, date or dates of maturity, and options of payment conform in every respect to such district bonds as described in the order of the commissioners court ordering the election at which such district bonds were authorized. If such district bonds have been sold but no roads have been constructed within and for such road district or districts, then such county bonds shall be issued for an amount equal in face value to the amount of said district bonds and the issuance thereof shall conform in every respect to the provisions and requirements of either subdivision 1 or subdivision 2 of Article 637-b hereof. The county, for and on behalf of such road district or districts, shall then proceed with the construction of such district roads, and the district roads so constructed shall be merged into and become a part of the general county system of public roads; provided, that the provisions of this Article shall apply only to such county road bond elections that have been ordered and held prior to the taking effect of this Act. (Acts 1919, 2d C. S., ch. 38, sec. 2.)

Art. 637h. Cancellation or revocation of bonds issued.—In the event any bonds heretofore voted or that hereafter may be voted by an[y] county or political subdivision or defined district of any county, under the provisions of Chapter 2, Title 18, Revised Civil Statutes of Texas of 1911, and amendments thereto, or under authority of any special county road law, shall have remained unsold and the Commissioners Court shall find that the bonds cannot be legally sold in conformity with the law, then it may, or, upon petition of a two-thirds majority of the qualified property tax-paying voters of such county or political subdivision or defined district thereof, as shown by the records in the office of the County Tax Collector, shall, order an election for the purpose of submitting the question of the cancellation and revocation of said bonds to a vote of the qualified property taxpaying voters of such county or political subdivision or defined district thereof and the said election shall be ordered, held and conducted in the same form and manner as that at which such bonds may have been originally voted and authorized, and in the event the result of such election for the cancellation and revocation of such unsold bonds shall show that two-thirds of the qualified resident property taxpaying voters of such county or political subdivision or defined district of such county voting at such election have voted for the cancellation and revocation of such unsold bonds, the result of such election shall be duly declared by the commissioners court of the county in which such election shall have been held, the returns of such election and the result thereof duly entered of record in the minutes of the commissioners court of such county and immediately thereupon such unsold bonds shall become totally null and void and it shall thereupon become the duty of the commissioners court to cancel and destroy such unsold bonds by burning and shall forward a certified copy of their minutes showing such destruction and [can]cellation to the Comptroller of Public Accounts, who shall thereupon cancel the registration of said bonds, as shown on the records of his office. It shall further be the duty of the commissioners court of such county immediately to re-adjust all existing tax levies to properly meet the conditions resulting from the cancellation and revocation of such unsold bonds and to relieve the taxpayers of such county or political subdivision or defined districts of such county of any further or existing tax levy previously made for the purpose of paying the interest on said bonds and providing a sinking fund for the redemption thereof; provided that where any taxes have

been levied and collected in the name of the county or political subdivision or defined district thereof in anticipation of the sale of such bonds, such taxes so far as unexpended shall in the event of the cancellation and revocation of such unsold bonds and on order of the commissioners court duly entered of record be returned to the taxpayers ratably after deducting the compensation of the tax assessor, tax collector and county treasurer in connection therewith, and any other claims properly chargeable against such taxes and proper receipts for all sums so refunded to be taken and filed by the County Treasurer. Provided further that in the event a two-thirds majority of such qualified resident property taxpaying voters voting at said election be not in favor of the proposition for the cancellation and revocation of such unsold bonds, the result of such election shall nevertheless be declared and entered of record in the same manner as though the result thereof had shown a two-thirds majority for the cancellation and revocation of such bonds. (Id. sec. 2.)

Art. 637hh. Previous bond elections not invalidated.—Nothing in this Act shall be construed as invalidating any bond elections previously ordered or held within and for any county in this state or any political subdivision or defined district of any county under the provisions of Chapter 2, Title 18, Revised Civil Statutes of Texas of 1911, and amendments thereto, or under authority of any special county road law. (Id. sec. 3.)

Art. 638. Road district not liable for torts.—No road district created under the provisions of said subdivision shall ever be held liable for torts. (Acts 1909, S. S. p. 271, sec. 7.)

Art. 639. County commissioner to be ex officio road superintendent, powers.—The county commissioner, in whose commissioner's precinct such political subdivision or defined district, now or hereafter to be described and defined, is located, shall be ex officio road superintendent of said road district, with power to contract for and in behalf of such road district; provided, such contract shall not exceed the sum of fifty dollars which shall be approved by the commissioners' court, and all contracts exceeding the sum of fifty dollars shall be awarded by the entire court, which contracts shall be binding on said county, political subdivision or defined district. (Id. sec. 7.)

Art. 640. Bids to be taken on contract work; contract to be let to lowest and best bidder. Rights to reject.—When work is done by contract in any county, political subdivision or defined district, bids shall be invited by publishing an advertisement in a newspaper or newspapers published in such county, and in a paper or papers outside of the county, when the commissioners' court may deem it advisable to do so, and the contract shall be awarded to the lowest and best bidder; provided, however, that the commissioners' court shall have the right to reject any and all bids. (Id. sec. 7.)

Art. 641. County operating under special road tax law may take advantage of provisions.—Any county operating under a special road tax law may take advantage of any of the provisions of this subdivision. (Id. sec. 9.)

2. CAUSEWAYS, VIADUCTS, BRIDGES, ETC., CONSTRUCTION AND MAINTENANCE AND USE OF

Art. 642. Elections in certain counties to authorize bonds for causeways, viaducts, bridges, etc.—Whenever the county commissioners of any county in the state of Texas, having a population in excess of fifty thousand inhabitants, according to the last preceding census taken by the United States, deem it expedient so to do, they may order an election, to ascertain the will of the qualified voters of such county, to determine the propriety of a bond issue to provide for the construction and maintenance of causeways, viaducts, bridges, and approaches, across any river and bottoms within the limits of such county, irrespective of any municipal boundaries. (Acts 1909, p. 46.)

Art. 643. Preliminary surveys and estimates; order for election to prescribe amount and terms of bonds.—The commissioners' court of such county shall, prior to ordering any such election as referred to in article 642, provide for preliminary surveys and estimates for such work, and shall, in the order for such election, prescribe the amount and terms of such bond issue. (Id. sec. 2.)

Art. 644. Resolution for election to be recorded, and submitted to vote, how.—Whenever the commissioners' court of such county deem it necessary or expedient to order such election, the resolution therefor shall be recorded in the minutes of the commissioners' court, and the resolution shall be submitted to the property owning qualified voters of said county, at any regular or special election which may be ordered by said court for that purpose, and if, at such election, a majority of the votes cast thereon shall be for such resolution, the same shall be deemed to be adopted, but if a majority of the votes cast thereon at such election shall be against said resolution, it shall be deemed to be rejected. (Id. sec. 3.)

Art. 645. General laws to govern election, etc., proclamation posted; publication.—Said election shall be governed in all respects by the law governing elections in this state, and the returns shall be made and canvassed in the same manner, and the results declared by proclamation of the county judge of said county; which proclamation shall be posted in at least three public places in said county, and, at the option of said county judge, published in some newspaper in said county. (Id. sec. 3.)

Art. 646. Qualifications for voting.—No person shall be permitted to vote at any election provided for in article 644, unless he is a property owner and taxpayer and qualified voter of said county. (Id. sec. 4.)

Art. 647. Ballot, form, etc., restrictions.—Those desiring to vote for the resolution shall have written or printed on their tickets the words, "For the Resolution to Issue Bonds to ....." [here insert purpose of the proposed bond issue as set forth in said resolution], and those desiring to vote against the resolution shall have written or printed on their tickets the words, "Against the Resolution to Issue Bonds to ....." [here insert such purpose of the proposed bond issue, as set forth in said resolution]. Such tickets shall be written or printed on plain white paper, with black ink or pencil,

and shall contain no distinguishing mark or device, except as above provided, and, if printed, shall be in type of uniform size and face. (Id. sec. 4.)

Art. 648. If election carried by majority, etc., bonds to be prepared and executed, how, terms, regulations, etc.—If, at the election herein provided for, a majority of the qualified voters voting thereon at such election shall vote in favor of the resolution provided for in article 644, and after the commissioners' court has canvassed said vote and declared the result, and after the proclamation of said county judge, declaring the result, it shall be the duty of said court, under the supervision and direction of the comptroller of this state, to prepare and execute the bonds of the county for such sums as may be deemed advisable by said county, not exceeding the amount stipulated in said resolution, said bonds to bear not exceeding five per cent interest, payable annually, and which shall be redeemable in not less than five years and not more than forty years from the date thereof, the time of maturity to be expressed on the face of the bonds, and shall have such bonds registered or enrolled as in case of other county bonds, and the same shall not be sold nor negotiated at less than their par value; provided, that in no case shall said court issue bonds under this subdivision of this chapter for a greater sum or amount than that a levy for this purpose of five cents on the one hundred dollars property valuation of said county will yield sufficient revenue to pay such interest, as it accrues, and will at the same time create a sinking fund sufficient to pay the principal of such bonds at maturity. (Id. sec. 5.)

Art. 649. Levy of tax annually for interest and sinking fund.—When the bonds of the county are issued and sold, under the provisions of this subdivision of this chapter, it shall be the duty of said commissioners' court to levy an annual ad valorem tax on all property of the county; which tax, when collected, shall be used only for the purpose of paying interest on said bonds and creating a sinking fund to pay the principal of same. (Id. sec. 6.)

Art. 650. Commissioners may contract for privilege of using causeways, etc., or constructing, etc., tracks, telegraph lines, etc., no exclusive, etc., contracts; previous notice, etc.—The commissioners' court of such county is authorized to contract with individuals, firms or corporations, for the privilege of using such causeways, viaducts, bridges and approaches, or constructing and maintaining and using tracks, telegraph lines, or other such privileges as said commissioners may deem expedient, but shall make no exclusive nor preferential contracts, and before executing any such contracts shall give notice by posting at the courthouse door and in three other public places in said county the full terms and nature of such proposed contracts before execution of same. (Id. sec. 7.)

Art. 651. Revenues to be appropriated to maintenance and repair of structures; excess to road and bridge fund of county.—Any revenues that may accrue from any contract or contracts made in accordance with the provisions of the preceding article may be appropriated by the commissioners' court to the maintenance and repair of such structure or structures; and such court shall have the authority to make adequate provision for such maintenance and repair, as in the case of any other structure under its control. In the event the revenues accruing from the use of any such structure shall exceed the expenditures for its maintenance and repair, any such excess shall be applied to the road and bridge fund of the county. (Id. sec. 8.)

Art. 652. Commissioners may make regulations, etc., for use of structures.—The commissioners' court shall have authority to make rules and regulations for the use of any structure erected under the provisions of this subdivision of this chapter, and to provide for the enforcement thereof. (Id. sec. 9.)

Art. 653. Power of condemnation, etc.—Said county, acting through its commissioners' court, shall have the power, and is hereby authorized to take and appropriate such lands and other property, situated within or without the limits of any city or town, as may be deemed necessary for the establishment, location, construction, maintenance, repair or security of said causeways, viaducts, bridges and approaches, and to define the area of land needed not to exceed two hundred feet in width, and to acquire, take, hold and enjoy the same, for the purposes aforesaid, and shall have the right to exercise the power of eminent domain, and to condemn lands for the uses and purposes aforesaid; said condemnation proceedings to be instituted in the name of the county before the judge of the court having jurisdiction by law to act in condemnation proceedings for rights of way for railroad companies; and all laws in reference to applications and proceedings for the condemnation of rights of way for railroad companies shall apply to condemnations under this subdivision of this chapter, the county occupying the position of the railroad company, except that in no case shall the county be required to give bond; provided, nevertheless, that said county, acting through its commissioners' court, shall be empowered to take the fee simple estate to the land condemned or acquired hereunder, whenever deemed necessary for the purposes of this said subdivision; provided, further, that before exercising the power of eminent domain hereunder said county commissioners' court shall, by order duly entered on its minutes, define and describe the lands needed and determine whether an easement or fee simple estate in said land shall be taken. (Acts 1910, 3 S. S. p. 22.)

Art. 654. Use, etc., of streets, etc., may be granted for purposes of causeway, etc.—And the county commissioners' court of any county, with the consent of any city, given by its duly authorized municipal authorities, or the municipal authorities of any city in which said causeway, viaduct, bridge, and approaches are to be constructed and maintained, shall have power, and are hereby authorized, to grant the use of, and impose such additional uses upon all streets, alleys, public highways and other public grounds as they may deem necessary for the location, construction and maintenance of said causeways, viaducts, bridges and approaches, and may authorize the con-

struction of same across or upon any such street, alley, public highway or public grounds. (Id.)

Art. 655. May condemn land of railway, etc.—Said county, acting through its commissioners' court, is authorized to enter upon any lands owned by any railway, telegraph or telephone corporation, in fee or in any less estate, whether acquired by purchase or condemnation, or by virtue of any provision in the charter of such corporation, for the purposes of this subdivision of this chapter, and, from time to time, to define and appropriate so much of said lands as may be necessary for the establishment, location, construction and maintenance of said causeways, viaducts, bridges and approaches, and shall have the right of access to construct and maintain said causeways, viaducts, bridges and approaches, and when constructed to repair the same, and may proceed to obtain the right of way, and to condemn lands for the use of the county in the manner provided by law in the case of railway corporations. Said county shall have the right to cross and intersect the line of any such railway, telegraph or telephone corporation; and, in case any differences shall arise between the county and said railway, telegraph or telephone corporation, as to the manner or mode of any crossing or intersection made by said causeway, viaduct, bridge and approaches, their differences shall be adjusted by the special commissioners appointed hereunder to assess damages for the land condemned. (Id.)

CHAPTER THREE

FUNDING, REFUNDING AND COMPROMISE OF INDEBTEDNESS

1. GENERAL POWERS OF FUNDING, REFUNDING AND COMPROMISING DEBTS

Art. 656. (890) Debts may be funded, when and how.—All counties, incorporated cities and towns in this state owing debts are hereby authorized to fund the same in bonds of said counties, cities and towns, in such sums and at such rate of interest as may seem best to the authorities of said counties, cities and towns; provided, that in no case shall the rate of interest be greater than six per cent per annum; and provided, further, that this article and articles 658 and 659 shall not apply to any indebtedness of any counties, cities or towns made and undertaken since the eighteenth day of April, 1876, and shall not apply to any bonds issued under an act entitled, "An act to authorize counties, cities and towns to aid in the construction of railroads and other works of internal improvements," approved April 12, 1871; provided, further, that no city shall issue bonds to a greater amount than is authorized by its charter, where a limit is placed on the issue of bonds in its charter. (Acts 1879, p. 61.)

Art. 657. (883) Old bonds of legal issue may be substituted by new.—Where bonds have been legally issued, or may be hereafter issued, by any county for any of the purposes named in article 610, new bonds bearing the same or a lower rate of interest may be issued, in conformity with existing law, in lieu thereof. (Acts 1901, p. 16; Acts 1893, p. 112, sec. 7.)

Art. 658. (891) Debts may be compromised.—All the counties, incorporated cities and towns of this state are hereby authorized to scale their debts of every description, bonded or otherwise, by adjustment and compromise with their creditors, and may issue bonds, as provided for in article 656, in any sums and at any rate of interest not greater than six per cent per annum, in settlement or compromise with said creditors, or with any one or more of them. (Acts of 1879, p. 61, sec. 2.)

Art. 659. (892) Sinking fund to be provided and tax levied.—Said counties, cities and towns, in funding and scaling their said indebtedness made and undertaken before said eighteenth day of April, 1876, as herein provided, shall provide a suitable sinking fund of two per cent per annum, to be applied to the payment of the principal of the bonds issued under article 656, and shall annually levy and collect a sufficient tax on all the taxable property of said counties, cities and towns to pay the interest and sinking fund aforesaid; provided, that, should there be annually collected more than is necessary to pay the interest already due and the two per cent sinking fund, such excess and sinking fund may be used in the purchase and cancellation of the bonds for which said sinking fund is set aside. (Id. sec. 3.)

2. STORMS, FLOODS, OR OTHER GREAT DISASTERS—FUNDING, REFUNDING AND COMPROMISE OF DEBTS IN CASE OF

Art. 660. Storms, etc., bonds, power to fund, refund and compromise.—Any county or city incorporated under the general laws of the state, in which there has been heretofore, or may be hereafter, great destruction or damage of property or depreciation of the value of taxable property, by reason of storms, floods, or other great disasters, is hereby authorized and empowered to fund or refund, compromise or settle its valid outstanding bonded and floating indebtedness in such manner as may be deemed to the best interest of such county or city. (Acts 1901, S. S. p. 18.)

Art. 661. Bonds issued for said purpose, regulations as to.—For the purpose of effecting the compromise or settlement, authorized by the preceding article, the said counties and cities are hereby severally authorized and empowered to issue bonds in denominations of not less than one hundred dollars nor more than one thousand dollars each, for an amount sufficient to consummate such compromise or settlement, not to exceed the amount unpaid on the outstanding indebtedness; and the bonds hereby authorized may be exchanged for bonds, warrants, scrip, or other evidences of outstanding indebtedness of such county or city, or said bonds may be sold and the proceeds applied in the purchase of outstanding bonds or the payment of outstanding floating indebtedness; and said bonds may be issued without submitting the question of issuance to a vote of the taxpayers, and may be exchanged or sold from time to time in such amounts as may be required for refunding said outstanding bonds and funding or settling said floating debts; and said bonds may be issued, if deemed necessary, to an

aggregate amount not exceeding six per cent of the taxable value of the remaining taxable property in such county or city. (Id.)

Art. 662. Order of commissioners' court, prerequisite, recitals, etc.—Before issuing any bonds, authorized by the two preceding articles, and not later than two years from and after the date of the storm or other disaster, the commissioners' court of the county, or the city council of the city, in which such storm or other disaster has occurred, shall, by an order or ordinance, as the case may be, duly entered on the minutes, recite the nature and date of such disaster, the taxable value of the remaining property subject to taxation in said city or county, as shown by the first approved assessment roll of such county or city made after such storm, flood, or other great disaster, and the amount of said bonds that will in the judgment of said commissioners' court, or the city council, be sufficient to fund, refund or compromise, or settle the outstanding valid bonded and floating indebtedness of such county or city, stating, also, the amount of said new bonds that will be required for refunding or settling each outstanding issue of bonds, and the amount of said new bonds that will be required in funding or settling the outstanding indebtedness charged against each particular fund. (Id.)

Art. 663. Classification of bond issues.—Separate classes of bonds shall be issued to refund or settle, respectively, each separate issue of outstanding bonds, and to fund or settle, respectively, the indebtedness against each particular fund. (Id.)

Art. 664. Apportionment of taxes, record.—Said court or council shall determine and record in the minutes the proportion of the several annual ad valorem taxes authorized by law that can be applied, respectively, in payment of the interest and sinking funds of the several classes of bonds without depriving the city or county of the funds which, in the judgment of said court, or city council, will be required to meet the necessary current annual expenses of such county or city. (Id.)

Art. 665. Levy for interest and sinking fund, proportioned, how.—A levy in proportion to such excess or excesses beyond the amount required for current annual expenses may be made to pay the interest and sinking fund, respectively, of the said several classes of bonds. (Id.)

Art. 666. Constitutional limit not to be exceeded.—The constitutional limitation as to the rates and purposes of the several taxes shall not be exceeded or disregarded. (Id.)

Art. 667. Commissioners to prescribe form and class of bonds, and for issuance.—Said commissioners' court, or city council, shall, also, by said order, or ordinance, prescribe the form and the classes of said bonds, and provide for the issuance thereof, at such dates as may be expedient. (Id.)

Art. 668. Term of bonds, etc.—Said bonds may be made payable at any date deemed expedient by such commissioners' court, or city council, not later than forty years from the date of the execution. (Id.)

Art. 669. Redemption of bonds.—Provision may be made for the redemption of said bonds after five years, or after such longer period, as may be deemed expedient. (Id.)

Art. 670. Interest rate.—Said bonds shall bear interest as stipulated and specified in coupons attached thereto, not to exceed four per cent per annum. (Id.)

Art. 671. Bonds to conform to requirements of certain articles not in conflict with the provisions of this subdivision.—Said bonds shall be issued under and subject to all requirements of articles 616 to 620, inclusive, and articles 622 to 625, inclusive, of this title, which are not in conflict with the requirements and provisions of this subdivision of this chapter. (Id.)

Art. 672. Signature and attestation of bonds.—Said bonds shall be signed by the county judge, or mayor, and attested by the county or city clerk, as the case may be. (Id.)

Art. 673. Registry by comptroller, after examination, etc., by attorney general.—When examined and certified by the attorney general, in compliance with article 619, said bonds shall be registered by the comptroller. (Id.)

Art. 674. Registry without presentation and cancellation of old bonds.—The bonds shall be registered by the comptroller without requiring the old bonds, warrants or other evidence of indebtedness to be presented to him for cancellation. (Id.)

Art. 675. Bonds delivered to county or city treasurer and registered by him.—Said bonds shall be delivered to the county or city treasurer, as the case may be, and said officer shall register said bonds in a book kept for that purpose, and said bonds may thereafter be sold or exchanged as herein authorized. (Id.)

Art. 676. Bonds not to be sold, etc., for less than par value and accrued interest.—Said bonds shall never be sold or exchanged for less than their face value and accrued interest. (Id.)

Art. 677. Date of sale, etc., indorsed and certified and attested, how, before delivery of bonds.—Before delivery of the bonds issued hereunder, the date of sale or exchange of said bonds shall be indorsed and certified on such bonds by the county judge or mayor, whose signature shall be attested by the county or city clerk, as the case may be. (Id.)

3. RAILROAD, ETC., SUBSIDY BONDS, ETC.—COMPROMISE, ADJUSTMENT AND REFUNDING OF

Art. 678. (909) Railroad, etc., subsidy bonds, how adjusted and paid.—Any county, city or town that has heretofore issued bonds to aid in the construction of railroads and other works of internal improvements are hereby authorized to compromise or adjust such indebtedness so created, in such manner as may be deemed to the best interest of such county, city or town; provided, that the amount of the debt and the rate of interest thereon shall not be thereby increased; and provided, further, that no debt which has become barred by the statute of limitation shall be thereby revived. For the purpose of carrying out the compromise or adjustment hereby authorized, the said counties, cities and towns are authorized to issue bonds, in denominations of not less than one hundred nor more than one thousand

dollars each, for an amount sufficient to consummate such compromise or adjustment, not to exceed the amount unpaid on the outstanding bonds. (Acts 1887, p. 77, sec. 1.)

Art. 679. (910) Bonds sold and exchanged, how.—The bonds authorized by the preceding article may be exchanged for the bonds heretofore issued, or they may be sold and the proceeds used to buy up the old bonds as it may be necessary; provided, that the said bonds shall not be exchanged for the old bonds at a greater rate than par, except that the old bonds may be taken at a discount, and the new at the face value, according to agreement; and provided, that the new bonds issued hereunder shall not be sold for less than the amount for which the old bonds can be purchased. No such bonds shall be sold until there has been a contract by which the proceeds can be invested in the purchase of the old bonds. (Id. sec. 2.)

Art. 680. (911) Authority for executing bonds and terms and conditions of same.—If any county, city or town shall desire to avail itself of the provisions of articles 678 to 686, inclusive, and when arrangements shall have been made for the compromise or adjustment of any of the bonds, as hereinbefore mentioned, the commissioners' court of such county, or the city council of such town or city, shall enter an order, or adopt an ordinance, as the case may be, authorizing the issuance of bonds, which shall prescribe the amount to be issued, and shall cause blank bonds to be prepared for the purpose aforesaid. The bonds shall be made payable to bearer, and shall be payable such time after date as may be fixed and agreed upon, not to exceed fifty years, and shall bear such rate of interest as may be agreed upon, which shall not exceed the rate of interest that the old bonds now bear. The interest may be made payable annually, or semi-annually, and at such place as may be specified. Coupons shall be attached, representing each installment of interest as specified, which shall also include two per cent of the face of the bond as a sinking fund. The bonds issued by the county shall be signed by the county judge and attested by the county clerk, with the seal of the county, and the coupons shall be signed by the county judge. The bonds that may be issued by any city or town under the provisions hereof shall be signed by the mayor and attested by the city secretary or recorder, with the seal of such city or town attached, and the coupons shall be signed by the mayor. (Id. sec. 3.)

Art. 681. (912) Bonds may be exchanged or sold.—The bonds as herein authorized to be issued may be exchanged or sold from time to time, and in such amounts as can be procured of the old bonds by purchase or exchange. (Id.)

Art. 682. (912) Levy of tax for interest and sinking fund.—Whenever any bonds shall be issued, the county commissioners' court, or council of such city or town shall levy upon the last assessment of the property for such city or town, as the case may be, a tax sufficient to pay the interest and sinking fund of not less than two per cent upon such bonds. The tax so levied shall remain as the levy for that purpose until a new levy may be made for that purpose; provided, that such commissioners' court or council may, from time to time, increase or diminish such tax so as to adjust the same to the taxable values of the property of the county or city or town and the amount to be collected; provided, further, that the amount shall not at any time be reduced so that it will not raise an amount sufficient to pay the annual interest and sinking fund on all the bonds sold or exchanged under the provisions hereof. (Id. sec. 4.)

Art. 683. (913) Collector liable on bond for failure of duty; new collector appointed, when.—If the tax collector, or any officer charged with the duty of collecting the tax levied to pay the interest and sinking fund upon said bond, shall refuse to collect the said tax at any time, he shall be liable upon his official bond to any person who may be injured thereby. If any collector shall refuse to collect said taxes, then, upon the complaint of any citizen or person interested, or upon their own motion, it shall be the duty of the commissioners' court of such county, or the city council of such city or town, to appoint some suitable person, who shall qualify as required of the collector aforesaid, and shall proceed to collect said tax until the next general election, and until a collector shall be elected and qualified who will collect the same. If the commissioners' court or council aforesaid shall fail or refuse to appoint some person as aforesaid, then the governor of the state shall make such appointment of some suitable person who shall collect said taxes until the next general election and until some collector shall be elected who will collect the same; and such person so appointed by the governor shall qualify as the regular collector is or may be required by law. (Id. sec. 5.)

Art. 684. (914) Bonds to be registered in comptroller's office, how and effect of.—Before the bonds that may be issued hereunder shall be delivered, they shall be registered in the office of the comptroller of the state, who shall indorse upon each bond the date of such registration; and, when so registered and delivered, the said bonds shall not be subject to any defense that existed prior to the delivery of them, and this shall be stated in the face of the bonds. (Id. sec. 6.)

Art. 685. (915) Assessment of taxes and compensation of assessor.—The taxes levied hereunder shall be assessed by the officer whose duty it is by law to make the assessment for such county, city or town, who shall receive for such assessment one per cent for making such assessment. The officer whose duty it is by law to collect the taxes for such county, city or town, shall collect the taxes levied hereunder, and shall receive as compensation therefor one per cent of the amount collected. (Id. sec. 7.)

Art. 686. (916) Surplus fund, how applied.—If after all the matured coupons upon any series of bonds that may be issued hereunder have been paid off there shall remain a surplus of the taxes so collected for the payment thereof, then the commissioners' court of such county, or the council of such city or town, may use the surplus so remaining to purchase any of the outstanding bonds at not more than par. If said bonds cannot be purchased at par, then the said surplus

may be applied to the payment of the next maturing coupons upon their maturity, and the taxes for that year remitted to that extent. (Id. sec. 8.)

Art. 687. (893) May compromise and fund indebtedness.—The county commissioners' court of any county, or the mayor and board of aldermen of any city or town in this state, are hereby authorized and empowered to compromise and fund any existing bonded indebtedness by such county, city or town issued, and the coupons due thereon, to aid in the construction of railroads or other works of internal improvement, or other bonds issued by authority of law; and for this purpose they are hereby authorized and empowered to issue new bonds in denomination of not less than fifty nor more than one hundred dollars, in their discretion, with interest coupons payable annually at the office of the state treasurer; said new bonds to become due and payable in twenty years, and to bear such rate of interest, not exceeding eight per cent per annum, as in their discretion may best subserve the purpose intended. (Acts 1879, p. 109.)

Art. 688. (894) Authority to compromise limited.—No compromises shall be made under the provisions of articles 687 to 695, inclusive, by which any debt barred by the statute of limitation, or which may be barred at the time of such compromise shall be revived, nor shall such new bonds, to be used in funding the principal of such old bonds, be issued for any greater amount than three-fourths of the principal of the old bonds outstanding; provided, that when the rate of interest of such new bonds is not more than five per cent per annum, then new bonds may be issued to the full amount of the old bonds outstanding; and provided, further, that the amount of new bonds to be issued for the funding of the matured interest shall be left to the discretion of the county commissioners' court or the mayor and board of aldermen, as the case may be, but in no case to exceed the amount of such matured interest. (Id. sec. 2.)

Art. 689. (895) Bonds exempt from taxation.—The new bonds thus issued by any county shall be exempt from the payment of all county taxes, general and special, in the county by which they are issued; and the new bonds thus issued by any city or town shall be exempt from the payment of all taxes levied by such city or town. (Id. sec. 3.)

Art. 690. (896) Issued and registered, how.—The county commissioners' court or mayor and board of aldermen, as the case may be, shall cause to be prepared the necessary blank bonds to give effect to the provisions hereof, the cost of which shall be paid out of the treasury of such county, city or town; said bonds, when issued by any county, shall be signed by the county judge and attested by the county clerk of such county, with the seal of the county court affixed; and when issued by any city or town shall be signed by the mayor and attested by the city clerk or secretary, with the seal of such city or town affixed; and such new bonds, whether issued by any county, city or town, shall be registered in the office of the state comptroller. (Id. sec. 4.)

Art. 691. (897) May be exchanged or sold.—Such new bonds may be exchanged for the old bonds at the rate specified in article 688, or they may be sold and the proceeds applied to the purchase of such old bonds at the rate specified in said article; provided, that no delivery of such new bonds shall take place unless a contract has already been entered into for the purchase of a corresponding amount of such old bonds; and provided, further, no bonds so issued shall be sold at less than par; each bond sold shall be made to bear the lowest rate of interest that will give it par value. (Id. sec. 5.)

Art. 692. (898) Tax laws to be continued in force.—All laws in force providing for the collection of taxes for the payment of the principal and interest of such existing bonds shall apply and be in force for the collection of taxes for the payment of the principal and interest of such new bonds; provided that the sinking fund may be used in the purchase and cancellation of such new bonds whenever the same can be bought at not more than their par value. (Id. sec. 6.)

Art. 693. (899) Same subject.—The object and intention of these provisions being to enable the counties, cities or towns in this state which have granted subsidy bonds to railroads or other works of internal improvement, or created any bonded indebtedness whatever, to compromise the same and thereby reduce the burden of taxation, it is hereby declared, as an inducement to the holders of said bonds to accept the compromise, that whenever such compromise shall be entered into and accepted in good faith, either by the holder of the present bonds or by any person purchasing said new bonds as provided in the foregoing articles, that all laws in force or which may hereafter be in force for the assessment and collection of the state taxes, shall also be in force and apply to the assessment and collection of the taxes levied to meet the interest and sinking fund of said new bonds; and in any suits which may be instituted to enforce the payment of said new bonds or coupons against any such county, city or town, no defense either in law or equity shall be admitted in any of the courts of this state, except such as originated upon or subsequent to the issuance of such new bonds. (Id. sec. 7.)

Art. 694. (900) Collector liable for failing to collect tax, and when to be appointed by governor.—Whenever a collector of taxes shall neglect or refuse to collect the taxes levied for the payment of the interest and sinking fund of such new bonds, he shall be liable on his official bond at the suit of any person or persons holding any of said bonds or coupons for all such damages as said person or persons shall have sustained by reason of his neglect or refusal; nor shall such collector or his sureties be relieved of such liability by his resignation of the office; and whenever any person who may be elected collector of taxes of any county, city or town shall fail, neglect or refuse to give the bond required by law for the collection of such tax, or whenever the commissioners' court or the mayor or board of aldermen, as the case may be, shall appoint any person who shall fail, neglect or refuse to give said bond, or whenever they shall fail, neglect or refuse to appoint some person who will give

said bond and collect said tax, then it is hereby made the duty of the governor to appoint some suitable person to collect said taxes, who shall perform all the duties required herein or [by] any other law of this state relating to the collection of said taxes from the time of his said appointment until the next general election. (Id. sec. 8.)

Art. 695. (901) Compromise by vote of the people; notice of election, how given.—No compromise which may be agreed upon between the commissioners' court or the mayor and board of aldermen, as the case may be, and the bondholders or others, shall be binding upon the taxpayers of any county, city or town until the terms of said compromise shall have been submitted to a vote of the property taxpayers at an election held by order of the commissioners' court, or mayor and board of aldermen, as the case may be, and a majority of the said taxpayers shall vote in favor of and ratify the terms of said compromise; said election shall be held in accordance with the general law regulating elections; provided, that none but property taxpayers shall vote at any such election; provided, further, that notice of such election shall be published for thirty days in some newspaper published in the county, city or town, as the case may be; and in case there shall be no paper published in such county, city or town, then by posting in ten public places in such county, city or town, as the case may be, for thirty days prior to any election hereunder. (Id. sec. 9.)

Art. 696. (917) Counties and city authorities may adjust tax to conform to interest and sinking fund for bonded indebtedness.—The county commissioners' court of any county, or the mayor and board of aldermen or city council of any city or town that have heretofore issued bonds to aid in the construction of railroads or other works of internal improvement, are hereby authorized and empowered to reduce the rate of taxation heretofore levied for the purpose of paying the interest and sinking fund on such bonds, so as to raise the amount necessary to pay the said interest and sinking fund which may become due annually according to the terms of the said bonds; and any county, city or town, by its said commissioners, or city council, or mayor and aldermen, may from time to time hereafter increase or diminish its rate of taxation according to the valuation of its taxable property, so as to raise the amount necessary for the payment of said interest and sinking fund annually; provided, that the taxes shall never be reduced below the rate that will raise the amount that is annually due upon such bonds. (Acts 1887, p. 29, sec. 1.)

Art. 697. (918) How amount of levy determined and fees of collector.—The levy of tax provided for in the preceding article shall be made upon the assessed valuation of the property of such county, city or town for the previous year, and shall remain in force from year to year until there has been a new levy, according to the provisions hereof. It shall be the duty of the officer who shall make the assessments annually for such county, city or town to make the levy of the taxes aforesaid upon the assessment of property made for general purposes, and to so return his rolls as to show the said tax due from each person the same as the other taxes are shown. No additional fees shall be allowed for said work. For collecting the said taxes, the tax collector of such county, city or town shall receive one and one-half per cent upon the amount collected. (Id. sec. 2.)

CHAPTER FOUR

SINKING FUNDS—INVESTMENTS, REPORTS, REGULATIONS AND PENALTIES

Art. 698. Sinking fund of county, city, town, school district or school community to be invested in United States, state, city or town bonds, provided, etc.—The Commissioners Court of any county, the city council of any incorporated city or town, and the board of trustees of any independent school district, or any other school district or school community, in the State of Texas, are authorized and empowered, whenever they may deem it advisable, to invest any sinking fund or sinking funds now on hand or hereafter acquired for the redemption and payment of any outstanding bonds of such county, city or town, or independent school district, or any other school district or school community, in bonds of the United States, war-savings certificates and certificates of indebtedness, issued by the Secretary of the Treasury of the United States and in bonds of the State of Texas, of any county of the State of Texas, or of any incorporated city or town; provided, that no such bonds shall be purchased which, according to their terms, mature at a date subsequent to the time of maturity of the bonds for the payment of which such sinking fund was created; and provided, further, that in the event any commissioners court, city council or board of trustees is unable to purchase any securities of the character above mentioned, which mature at a date prior to the time of maturity of the bonds for the payment of which such sinking fund was created, then they are authorized, in their discretion, to invest such funds in the bonds of any independent school district, or of any other school district or school community authorized to issue bonds, under the same restrictions as herein mentioned. (Acts 1905, p. 25, sec. 1; Acts 1918, 4th C. S., ch. 75, sec. 1.)

Art. 699. Report, annual, of county or city treasurer to comptroller, requisites of.—It shall be the duty of the treasurer of each county in this state and of each city, whether incorporated under the general law or by special charter, to make an annual report to the comptroller of public accounts of this state on the first day of August of each year, showing the condition of the interest and sinking fund for each set of bonds of said county or city outstanding on the thirtieth day of June of each year, which said report shall be made under oath, and shall show:

First. The outstanding bonded indebtedness of said city or county, giving date when issued, the amount of each set of bonds, the rate of interest they bear and when they mature.

Second. The tax levy in force to provide for the interest and sinking fund on each set of said bonds.

Third. The amount on hand to the credit of the interest and sinking fund of each set of said bonds, showing whether in cash or securities.

Fourth. The amount received by the said fund since last report, and from what source.

Fifth. The disbursements from said fund since last report, and for what purpose.

Sixth. The amount of said bonds redeemed since last report, and the amount still outstanding. (Acts 1899, p. 45.)

Art. 700. Draft on sinking fund not to be honored by treasurer except for interest, redemption or investment.—No city or county treasurer shall honor any draft upon the interest and sinking fund provided for any of the bonds of such city or county, nor pay out nor divert any of the same, except for the purpose of paying the interest on such bonds or for redeeming the same, or for investment in such securities as may be provided by law. (Id. sec. 2.)

Art. 701. Penalties for failure to report or for diversion or misapplication.—Any treasurer who shall fail to make the reports provided for in article 699, or who shall divert said fund or apply said fund for any other purpose than as permitted by article 700, shall be subject to a penalty of not less than five hundred dollars nor more than one thousand dollars, to be recovered by the state, and, in addition thereto, shall be liable for the amount of such fund so diverted. (Id. sec. 3.)

Art. 702. Comptroller to notify attorney general, district or county attorney; suit to recover fund; payment into treasury.—It shall be the duty of the comptroller of public accounts, whenever the reports of any treasurer show that he has diverted said funds, or when he shall fail to make such reports, to notify the attorney general of the state, or the district attorney of the district in which such treasurer resides, or county attorney in counties in which there is no district attorney provided for by law, of the fact, who shall thereupon institute suit against such treasurer and his official bondsmen for the amount of such penalty and of said fund so diverted; and the amount of such penalty so recovered shall be paid into the state treasury, and the amount of the diverted fund so recovered shall be paid into the county or city treasury to the credit of the fund from which it was so diverted. (Id. sec. 3.)

TITLE 19

BRANDS, TRADE-MARKS, ETC.

Art. 703. (318a) Trade marks of carbonated goods, how established.—All manufacturers or dealers in carbonated goods, mineral waters, soda water, wine, cider, or other beverage, or manufacturers of medicine or other compound requiring the use of kegs, casks, barrels, boxes, syphons, bottles, or any other vessels for containers, upon which the names, brands, marks, or trade marks, or other designation of ownership or proprietorship is stamped, engraved, etched, blown in, impressed, or otherwise produced upon such boxes, syphons, bottles, or any other vessels for containers, may file in the office of the county clerk of the county in which the principal place or office of business is situated, a fac simile or description of the name or names, marks or devices, so used by such manufacturer or dealer in such wares herein enumerated, and cause such description to be published in a public newspaper published in such county for three successive weeks; and the act of so filing and causing to be recorded by the county clerk, and publishing, shall operate as a trade mark, securing to the said manufacturer the full protection of the law as a trade mark, entitling the said manufacturer to the sole and exclusive use in Texas of said mark, name, or device; for which services the clerk shall be allowed the sum of one dollar, to be paid by the party having such brands, etc., recorded. (Acts 1893, p. 125.)

See Penal Code, art. 1392 for this article as amended by Acts 1901, p. 288.

Art. 704. (318b) Disposition of penalty funds.—All moneys collected as fines or penalty, under the provisions of this chapter, shall be returned by the justice of the peace into the county treasury, to become a part of the public road fund. (Id.)

Art. 705. (318c) Infringement of trade mark may be enjoined.—Every person, association or union of workingmen, incorporated or unincorporated, having adopted a label, trade mark, design, device, imprint or form of advertisement, as aforesaid, may proceed by suit to enjoin the wrongful manufacture, use, display or sale of any such label, trade mark, design, device, imprint or form of advertisement, and the manufacture, use, display or sale of any such counterfeit or imitation; and all courts having jurisdiction thereof shall grant injunctions to restrain such manufacture, use, display or sale, and shall award the plaintiff in such suit such damages, resulting from such wrongful manufacture, use, display or sale as by him may have been sustained. Where such association or union is not incorporated suits under this law may be commenced and prosecuted by any officer or member of such association or union in his own name, for himself and for the use and benefit of such association or union. (Act 1895, p. 108.)

Art. 706. (318d) Trade mark to be filed, etc.—Every person, association or union of workingmen, incorporated or unincorporated, that has heretofore or shall hereafter adopt a label, trade mark, design, device, imprint or form of advertisement, shall file the same in the office of the secretary of state by leaving two copies, counterparts or fac similes thereof, with the secretary of state, and said secretary shall deliver back to such person, association or union so filing the same one of said copies, counterparts of fac similes, along with and attached to a duly attested certificate of the filing of same, for which he shall receive a fee of one dollar from such person, association or union. Such certificate of filing shall in all suits and prosecutions under this chapter be sufficient proof of the adoption of such label, trade mark, design, device, imprint or form of advertisement, and of the right of such person, association or union to adopt the same. No label, trade mark, design, device, imprint or form of advertisements shall be filed as aforesaid that would probably be mistaken for a label, trade mark, design, device, imprint or form of advertisement already of record; provided, that no person or associations shall be permitted to register as a

label, trade mark, design, device, imprint or form of advertisement any emblem, design or resemblance thereto that has been adopted or used by any charitable, benevolent or religious society or association without their consent; and provided, further, that all persons, institutions or associations now using a label, trade mark, design, device, imprint or form of advertisement shall have thirty days time after this law takes effect in which to file such label, trade mark, design, device, imprint or form of advertisement under the provisions of this law, before the same can be registered by others. (Id.)

TITLE 20

CARRIERS

CHAPTER ONE

DUTIES AND LIABILITIES OF CARRIERS

Art. 707. (319) (277) Common law shall govern, except, etc.—The duties and liabilities of carriers in this state shall be the same as are prescribed by the common law, and the remedies against them shall be the same, except where otherwise provided by this title.

See Const. art. 10, sec. 2; Ry. v. Rogers, 53 S. W. 366; Ry. v. Fenwick, 78 S. W. 549; Bibb v. Ry., 84 S. W. 663; American Express Co. v. Duncan, 193 S. W. 411.

Art. 708. (320) (278) Carriers can not limit their responsibility.—Railroad companies and other common carriers of goods, wares and merchandise, for hire, within this state, on land or in boats or vessels on the waters entirely within the body of this state, shall not limit or restrict their liability as it exists at common law, by any general or special notice, or by inserting exceptions in the bill of lading or memorandum given upon the receipt of the goods for transportation, or in any other manner whatever, and no special agreement made in contravention of the foregoing provisions of this article shall be valid. (Acts Dec. 4, 1863; P. D. 452.)

See Ry. v. Stribling, 34 S. W. 1002; Ry. v. Davis, 40 S. W. 167; Pacific Exp. Co. v. Hertzberg, 42 S. W. 795; Ry. v. Parish, 43 S. W. 1066; Ry. v. Rogers, 53 S. W. 366; Ry. v. Ware, 60 S. W. 343; Ry. v. Carter, 68 S. W. 159; Ry. v. Richmond, 63 S. W. 619; Ry. v. Fenwick, 78 S. W. 549; Ry. v. Allen, 87 S. W. 168; Atchison, T. & S. F. Ry. Co. v. Smythe, 119 S. W. 892; St. Louis & S. W. Ry. Co. of Texas v. Brass, 133 S. W. 1075; Southern Kansas Ry. Co. of Texas v. Hughey, 182 S. W. 361; San Antonio & A. P. Ry. Co. v. Jackson & Allen, 187 S. W. 488; St. Louis Southwestern Ry. Co. of Texas v. Morehead, 207 S. W. 336.

Art. 709. (321) (279) Bound to carry goods, when.—Upon the tender of the legal or customary rates of freight on goods offered for transportation, to any common carrier whatever, such carrier shall receive and transport such goods, provided his vehicle or vessel has capacity safely to carry the goods so offered on the trip or voyage then pending, and such goods are of the kind usually carried upon such vehicle or vessel, and are offered at a reasonable time. Any common carrier refusing to transport goods, as above provided, taking in the same in the order presented, shall be liable to the party injured for damages sustained by reason of his refusal, and shall also be liable to a penalty of not less than five nor more than five hundred dollars, to be recovered in each case by the owner of the goods in any court having jurisdiction in the county where the wrong is done or where the common carrier resides; provided, this article shall not affect such corporations as are embraced in article 6554 of these statutes. (Id. sec. 453; amend. 1895, Sen. Jour., p. 478, sec. 14.)

Repealed as to railroads by art. 6554, post. Railway Co. v. Kay, 22 S. W. 665. And see Railway Co. v. Bailey, 15 S. W. 203.

Art. 710. (322) (280) Must give bill of lading.—Common carriers are required, when they receive goods for transportation, to give to the shipper, when it is demanded, a bill of lading or memorandum in writing, stating the quantity, character, order and condition of the goods; and such goods shall be delivered, in the manner provided by common law, in like order and condition to consignee, the unavoidable wear and tear and deterioration in due course of transportation only excepted; and in case such common carrier shall fail to deliver goods as above required, they shall be liable to the party injured for his damages, as at common law; and in case of their refusal to execute and deliver a bill of lading or memorandum in writing, as above required, they shall be liable to a penalty of not less than five nor more than five hundred dollars, to be recovered as in the preceding article. (Act Feb. 4, 1860; Id. sec. 454.)

See Simkins' Contracts and Sales (3d Ed.) p. 886; Conly v. Ry., 38 S. W. 519; Missouri, K. & T. Ry. Co. of Texas v. Thompson, 118 S. W. 618; Elder, Dempster & Co. v. St. Louis Southwestern Ry. Co. of Texas, 154 S. W. 975; Quanah, A. & P. Ry. Co. v. R. D. Jones Lumber Co., 178 S. W. 858; Southern Kansas Ry. Co. of Texas v. Hughey, 182 S. W. 361; Ft. Worth & D. C. Ry. Co. v. Bone, 195 S. W. 244; Missouri Iron & Metal Co. v. Texas & P. Ry. Co., 198 S. W. 1067.

Art. 711. (323) (281) Liability as warehousemen, etc.—Railroad companies and other common carriers having depots and warehouses for storing goods, shall be liable as warehousemen are at common law for goods and the care of the same stored in such depots or warehouses before the commencement of the trip or voyage on which said goods are to be transported; but shall be liable as common carriers from the commencement of the trip or voyage until the goods are delivered to the consignee at the point of destination. (Id. sec. 455.)

St. Louis & S. W. Ry. Co. of Texas v. Brass, 133 S. W. 1075; Chicago, R. I. & P. Ry. Co. v. S. Marshall Bulley & Son, 140 S. W. 480; St. Louis, B. & M. Ry. Co. v. Hicks, 158 S. W. 192; American Express Co. v. Duncan, 193 S. W. 411.

Art. 712. (324) (282) Diligence as to delivery.—If the carrier at the point of destination shall use due diligence to notify the consignee, and the goods are not taken by the consignee, and have in consequence to be stored in the depots or warehouses of the common carriers, they shall thereafter only be liable as warehousemen. (Id.)

Art. 713. (325) (283) Shall forward in good order, etc.—Where common carriers receive goods for transportation into their warehouses or depots they shall forward them in the order in which they are received, the first received to be first forwarded, without giving the preference to one over another; and in case they shall fail to do so, they shall be liable, absolutely, for all losses occurring while the goods remain, and for all damages occasioned or in any wise resulting from the delay; provided, that the trip or voyage shall be considered as having commenced from the time of the signing of the

bill of lading, and the liability of the common carrier shall attach, as at common law, from and after such signing. (Id.)

See post, art. 6610.

Art. 714. (326) (284) Shall feed and water live stock.—It shall be the duty of a common carrier who conveys live stock of any kind to feed and water the same during the time of conveyance and until the same is delivered to the consignee or disposed of as provided in this title, unless otherwise provided by special contract; and any carrier who shall fail to so feed and water said live stock sufficiently shall be liable to the party injured for his damages, and shall be liable also to a penalty of not less than five nor more than five hundred dollars, to be recovered by the owner of such live stock in any court having jurisdiction in any county where the wrong is done or where the common carrier resides.

Ry. v. Davis, 40 S. W. 167; Ry. v. Peters, 71 S. W. 70; Ry. v. Startz, 82 S. W. 1071; Ry. v. Brown, 85 S. W. 44; Galveston, H. & S. A. R. Co. v. Jones, 134 S. W. 328; Kansas City, M. & O. Ry. Co. of Texas v. Beckham, 152 S. W. 228; Pecos & N. T. Ry. Co. v. Morrison, 169 S. W. 1098; Dickerson v. San Antonio, U. & G. Ry. Co., 170 S. W. 1045; Gulf, C. & S. F. Ry. Co. v. Winn Bros., 178 S. W. 697.

CHAPTER TWO

BILLS OF LADING CERTIFIED, ETC.

Art. 715. Certain common carriers, etc., to issue bills of lading, and certify, etc., same when demanded by shipper, etc.—It shall be the duty of all railroad companies, steamship companies, and other common carriers, or receivers thereof, except express companies and pipe line companies, upon the receipt of freight for transportation, to issue bills of lading therefor, and to authenticate, validate or certify such bills of lading, when the same shall be demanded by the shipper, in accordance with the provisions of this chapter. (Acts 1910, 4 S. S., p. 138, sec. 1.)

Art. 716. Requisites, etc., of certificate, etc.—Each bill of lading issued by a common carrier, to which the provisions of this chapter apply, for an intrastate shipment, shall contain and each bill of lading issued by such carrier for interstate or foreign shipment may contain, within the written or printed terms, in addition to the other requirements of this chapter, the following:

(a) The date of its issuance;

(b) The name of the person from whom the goods have been received;

(c) The place where the goods have been received;

(d) The place to which the goods are to be transported;

(e) A statement of whether the goods will be delivered to a specific person or the order of a specific person;

(f) A description of the goods or the packages containing them, which may, however, be in terms such as may be approved by the railroad commission;

(g) The signature of the carrier or the duly authorized agent of the carrier; said bill of lading shall be so signed with pen and ink, and the person signing the same shall attach his signature below all written, printed or stamped matter contained in said bill of lading, except the words, "Authorized Agent of ....." (stating the name of his principal), which shall appear below his signature.

(h) The carrier may insert in a bill of lading issued by him any other terms and conditions; provided such terms and conditions shall not be contrary to law or public policy or the orders promulgated by the railroad commission; and provided, further, that no language shall be inserted in any bill of lading having the effect of limiting or avoiding any of the provisions of this chapter; provided, that when any form of bill of lading has been approved by the interstate commerce commission, and has been adopted by any carrier and made a part of its tariff, then such bill of lading, as to interstate and foreign shipments, shall be a sufficient compliance with the provisions of this article. (Id. sec. 2.)

Art. 717. "Straight" and "order" bills of lading defined, and issuance of "order" bills of lading regulated.—A bill of lading in which it is stated that the goods are consigned or destined to a specific person is a "straight" bill of lading, and a bill of lading in which it is stated that the goods are consigned to the order of any person named in such bill of lading, is an "order" bill of lading. Order bills of lading shall not be issued in sets or in duplicate, but copies thereof may be issued; provided, such copy has written or printed across the face thereof: "Copy—Not Negotiable." (Id. sec. 3.)

Art. 718. Authority of agent to be posted in station, his signature attached.—It shall be the duty of the carriers affected by this chapter to keep posted for public inspection in some conspicuous place in the station or place where freight is received an instrument of writing authorizing the agent of such carrier, or person authorized to act for such carrier, selected for such purpose, to execute, sign and issue bills of lading; and the agent or person so authorized to act for said carrier, so selected, shall attach his signature to such instrument in the same manner that he signs bills of lading. (Id. sec. 5.)

Art. 719. Bill of lading issued by authorized agent, to be held act of carrier, etc., liability thereon; effect of certificate, etc.—Each and every bill of lading issued by the authorized agent of any carrier or receiver thereof, affected by the provisions of this chapter, shall be deemed and held to be the act and deed of such carrier or receiver thereof, and the principal shall be liable thereon in accordance with the terms thereof. When any such bill of lading shall be validated, authenticated or certified in accordance with the rules and regulations herein provided for, and as may be prescribed by the railroad commission in accordance with the provisions of this chapter, and in the hands of an innocent holder for value, it shall be incontestable as to the matters and things therein set forth. (Id. sec. 6.)

Art. 720. Carrier's liability in case of delivery of goods without taking up, etc., "order" bill of lading; exception.—If the carrier shall deliver goods for which an "order" bill of lading has been issued, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel said bill of lading,

such carrier shall be liable for the failure to deliver the goods to any one who, for value, in good faith, purchases such bill of lading, whether the purchaser acquired title to the bill of lading before or after the delivery of the goods by the carrier, notwithstanding such delivery was made to the person entitled thereto, except when goods are sold to satisfy the carrier's lien, and except when compelled to do so by legal process. (Id. sec. 7.)

Art. 721. Same subject, where part of goods are delivered, etc., exception.—If a carrier delivers part of the goods for which an "order" bill of lading has been issued, and fails to take up and cancel the bill of lading, or to place plainly upon the bill of lading that a portion of the goods had been delivered, with a description which may be in general terms, either of the goods or packages that had been so delivered, or of the goods or packages which still remain in the carrier's possession, he shall be liable for the failure to deliver all of the goods specified in the bill of lading, to any one, who for value, and in good faith, purchases it, whether such purchaser acquires title to the bill of lading before or after the delivery of any portion of the goods by the carrier, and notwithstanding such delivery was made to the person entitled thereto, except when goods are sold to satisfy the carrier's lien, and except when compelled to do so by legal process. (Id. sec. 8.)

Art. 722. Procedure in case of loss of "order" bill of lading; carrier not relieved from liability to innocent purchaser, etc., proviso.—When an "order" bill of lading shall have been lost or destroyed, a court of competent jurisdiction, in term time or in vacation, may order the delivery of the goods upon satisfactory proof of such loss or destruction, and upon the giving of a bond, with good and sufficient sureties, to be approved by the court, to protect the carrier or any person injured by such delivery from any liability or loss incurred by reason of the original bill of lading remaining outstanding. The court may also, in its discretion, order the payment of the carrier's reasonable costs and counsel fees; but the delivery of the goods under an order of court, as provided for in this article, shall not relieve the carrier from liability to a person to whom the order bill of lading has been or shall be negotiated for value, and without notice of the proceedings or the delivery of the goods; provided, that nothing herein shall prevent the carrier from delivering the property covered by such lost bill of lading to any party claiming the same, on such terms as such party and the carrier may agree upon. (Id. sec. 9.)

Art. 723. Carriers not liable, etc., when.—The carrier shall not be liable under the provisions of this chapter, where the property has been replevied or levied upon or taken from the possession of the carrier by other legal process, or has been lawfully sold to satisfy the carrier's lien, or in case of the sale or disposition of perishable, hazardous or unclaimed goods, in accordance with law. (Id. sec. 10.)

Art. 724. Duties and powers of railroad commission.—It shall be the duty of the railroad commission to adopt and prescribe forms, terms and conditions for the authentication, certification or validation of bills of lading issued by common carriers referred to in article 715, and to regulate the manner and method of their issuance, and to take such steps as it may deem necessary to carry into effect the provisions of this chapter; and it shall have authority to amend, alter and modify, from time to time, as may seem to it expedient, any regulations which may be adopted by it in accordance with the provisions of this chapter, after giving due notice thereof to all carriers interested and to the public. (Id. sec. 17.)

CHAPTER THREE

DISPOSITION OF UNCLAIMED OR PERISHABLE PROPERTY BY CARRIERS

Art. 725. (327) (285) Unclaimed freight may be sold, when and how.—When any freight or baggage has been conveyed by a common carrier to any point in this state, and shall remain unclaimed for the space of three months at the office or depot nearest or most convenient to destination, and the owner, whether known or unknown, fails within that time to claim such freight or baggage, or to pay the proper charges if any there be against it, then it shall be lawful for such common carrier to sell such freight or baggage at public auction, offering each box, bale, trunk, valise or other article separately as consigned or checked. (Acts 1874, p. 203; P. D. 5884a.)

See Ry. v. North Texas Grain Co., 74 S. W. 567; Ry. v. Rucker, 88 S. W. 815; Slayden-Kirksey Woolen Mill v. Houston & T. C. R. Co., 132 S. W. 77; Gulf, C. & S. F. Ry. Co. v. Patten Mfg. Co., 151 S. W. 1158; Texas & P. Ry. Co. v. Gate City Fertilizer Co., 176 S. W. 868.

Art. 726. (328) (286) Notice of such sale.—Thirty days' notice of the time and place of sale, and a descriptive list of the packages to be sold, with names and numbers or marks found thereon, shall be posted up in three public places in the county where the sale is to be made, and on the door of the depot or warehouse, if any, where the goods are, and shall also give notice in at least one newspaper in the county, if any be published therein, for thirty days before sale; and out of the proceeds of such sale the carrier shall deduct the proper charges on such freight or baggage, including costs of storing and costs of sale, and hold the overplus, if any, to the order of the owner any time within five years, on proof of ownership made by the claimant or his duly authorized agent or attorney. (Id.; P. D. 5884b.)

Ry. v. North Texas Grain Co., 74 S. W. 567; Ry. v. Rines & Co., 84 S. W. 1092; Ry. v. Rucker, 88 S. W. 815; Carter & Corey v. Ry., 93 S. W. 681; Gulf, C. & S. F. Ry. Co. v. Patten Mfg. Co., 151 S. W. 1158; Texas & P. Ry. Co. v. Crowder, 165 S. W. 116.

Art. 727. (329) (287) Carrier shall keep an account of sales, etc.—The carrier shall keep an account of sales, copy of the notice, a copy of the sale bill, and the expense thereof proportioned to each article sold. (Id.; P. D. 5885c.)

See Ry. v. Rines & Co., 84 S. W. 1092.

Art. 728. (330) (288) Carrier may sell live stock, when.—Should any live stock remain unclaimed for the space of forty-eight hours after its arrival at the place of its destination, the carrier may sell the same at public auction after giving five days' no-

tice of the time and place of such sale, as prescribed in article 726, and apply the proceeds as prescribed in said article, after deducting reasonable expenses for keeping, feeding and watering said live stock from the time of its arrival at the place of its destination until disposed of as herein provided; and such carrier shall also keep an account of any such sale, copy of the notice, copy of the sale bill, and an account of all expenses. (Id.; P. D. 5884d.)

See Ry. v. Rucker, 88 S. W. 815; Texas & P. Ry. Co. v. Crowder, 165 S. W. 116.

Art. 729. (331) (289) Carrier shall sell perishable property, when.—Should any perishable property remain unclaimed after arrival at its place of destination until in danger of depreciation, it shall be the duty of the carrier to sell the same at public auction, after giving five days' notice of the time and place of sale, as prescribed in article 726, and apply the proceeds as prescribed in said article, and keep an account of such sale, copy of the notice, copy of the sale bill, and an account of all expenses. (Id.; P. D. 5884d.)

Ry. v. North Texas Grain Co., 74 S. W. 567; Carter & Corey v. Ry., 93 S. W. 681; Ft. Worth & D. C. Ry. Co. v. W. A. Nabors Fruit Co., 200 S. W. 420.

Art. 730. Disposition of unclaimed intoxicating liquor.—When any express company, railroad company or other common carrier, within this state, shall receive any package or parcel of whatsoever nature, whether from a point within or without this state, containing any intoxicating liquor, for transportation to any point within any county, justice precinct, school district, city or town, or subdivision of a county, where the sale of intoxicating liquors has been prohibited under the laws of this state, such express company, railroad company or other common carrier shall forthwith transport such intoxicating liquor to the place of its destination; and, upon the arrival of same at its place of destination, there shall be entered in a book to be kept for that purpose the names of the consignor and the consignee, the exact time of the arrival of such package or parcel at the place of its destination, the place from where shipped, the quantity and character of such intoxicating liquor, as shown on such package or parcel, the exact time delivered to the consignee, if delivered, and the signature of such consignee, who shall sign in person for same before delivery thereof; and such book shall be open at all reasonable hours for inspection by any officer of the law or any member of the grand jury. If such package or parcel be not called for and taken away by the consignee, and all charges thereon, if any, paid by such consignee, it shall be the duty of such express company, railroad company, or other common carrier, to start such package or parcel in transit back to the consignor thereof within seven days from the time of its arrival at the place of its destination; and the consignor shall be liable to such express company, railroad company, or other common carrier for the express or freight charges in transportation and returning same. Any express company, railroad company, or other common carrier, violating any of the provisions of this article or articles, shall be liable to a penalty of one hundred dollars for each infraction thereof, to be recovered in the name of the state of Texas in any court of competent jurisdiction, in any county where such express company, railroad company or other common carriers have an office or an agent or a line of railway; and each day that such intoxicating liquor shall be kept at the place of its destination after the expiration of seven days from the time of its arrival shall be deemed a separate infraction. (Acts 1905, p. 379; Acts 1910, 3 S. S. p. 33.)

CHAPTER FOUR

CONNECTING LINES OF COMMON CARRIERS

Art. 731. (331a) Connecting lines of common carriers defined.—All common carriers in this State, over whose transportation lines, or parts thereof, is transported any freight, baggage or other property received by either of such carriers for shipment or transportation between points in this State, on a contract for carriage recognized, acquiesced in, or acted upon by such carriers shall, with respect to the undertaking and matter of such transportation be considered and construed to be connecting lines; and such lines shall be deemed and held to be agents of each other, each the agent of the others, and all the others the agents of each, and shall be deemed and held to be under a contract with each other and with the shipper, owner and consignee of such property for the sage and speedy transportation thereof from point of shipment to destination; and such contract as to the shipper, owner or consignee of such property shall be deemed and held to be the contract of each of such common carriers. The provisions of this Act shall apply whether the routine of such freight, baggage or other property be chosen by the owner or his agents, or by the initial carrier to whom such property is delivered and in any suit brought hereunder, the rights, duties, liabilities of the parties shall be determined by the initial contract executed by and between the owner, shipper or his or her duly authorized agents and the initial carrier, unless it be proved that a subsequent contract supported by a valuable consideration moving to the owner or shipper, in addition to that of the initial contract, was executed by such owner, shipper or his or their duly authorized agents with a subsequent connecting carrier handling the shipment, and the transportation of a caretaker shall not be deemed to be such valuable consideration. In any of the courts of this State, any bill of lading, waybill, receipt, check or other instrument issued by either of such carriers, or other proof showing that either of them has received such freight, baggage or other property for shipment or transportation, shall constitute prima facie evidence of the subsistence of the relations, duties and liabilities of such carrier as herein defined and prescribed, notwithstanding any stipulations or attempted stipulations to the contrary by such carrier, or either of them and any stipulation contained in any contract contrary to any of the provisions of this Act shall be void. (Acts 1895, p. 186, sec. 1; Acts 1919, ch. 165, sec. 1.)

Ry. v. Randle, 44 S. W. 603; Ry. v. Bingham, 47 S. W. 814; Ry. v. Short, 51 S. W. 261; Ry. v. Ney, 58 S. W. 43; Ry. v. Botts, 70 S. W. 113; Ry. v. Ber-

ry, 71 S. W. 326; Ry. v. Lynch, 73 S. W. 65; Ry. v. Terry & McAfee, 89 S. W. 792; Ry. v. Arnell, 92 S. W. 57; Ry. v. Turner, 94 S. W. 214; Ry. v. Lynch, 94 S. W. 1093; Texas & P. Ry. Co. v. Townsend, 106 S. W. 760; International & G. N. R. Co. v. Doolan, 120 S. W. 1118; Houston, E. & W. T. Ry. Co. v. Eastern Texas Ry. Co., 122 S. W. 972; Galveston, H. & S. A. R. Co. v. Jones, 134 S. W. 328; Williams & Hawkins v. Gulf & I. Ry. Co. of Texas, 135 S. W. 390; San Antonio & A. P. Ry. Co. v. Chittim, 135 S. W. 747; Elder, Dempster & Co. v. St. Louis Southwestern Ry. Co. of Texas, 154 S. W. 975; Texas & N. O. R. Co. v. Drahn, 157 S. W. 282; Galveston, H. & S. A. Ry. Co. v. Patterson, 173 S. W. 273; Kansas City, M. & O. Ry. Co. of Texas v. Adams, 182 S. W. 365; Quanah, A. & P. Ry. Co. v. Warren, 184 S. W. 232; St. Louis Southwestern Ry. Co. of Texas v. Hughston Grain Co., 186 S. W. 429; San Antonio & A. P. Ry. Co. v. Jackson & Allen, 187 S. W. 488; Ft. Worth & D. C. Ry. Co. v. Bone, 195 S. W. 244; Kansas City, M. & O. Ry. Co. v. Bell, 197 S. W. 322; Ft. Worth & D. C. Ry. Co. v. Kemp, 207 S. W. 605.

Art. 732. (331b) Liability of connecting lines.—For any damage for injury or damage to, or loss or delay of, any freight, baggage or other property sustained anywhere during the transportation over connecting liens or either of them, as contemplated and defined in the next preceding Article of this Chapter, either or all of such connecting carriers as the person or persons sustaining such damage may elect to sue therefor in this State, shall be held liable to such person or persons. The provisions of Article 1830, subdivision 25 of the Revised Civil Statutes of 1911, allowing an apportionment of damage, shall not be applicable to suits brought by such person or persons under the provisions of this Act, except upon the plaintiff's request. Any carrier or carriers held liable under the provisions of this Act, shall be entitled in a proper subsequent action to recover the amount or any loss, damage or injury it has been required to pay under this Act, from the carrier or carriers through whose negligence, the loss, damage or injury was sustained, together with all costs of suit; and for the purpose of such recovery, it shall only be necessary that the carrier against whom judgment was had to show, which carrier or carriers caused the loss or damage and produce satisfactory evidence, that the judgment rendered against it has been paid; and in this latter action between the carriers, the provisions of Article 1830, subdivision 25 shall be applicable. (Acts 1895, p. 186, sec. 2; Acts 1919, ch. 165, sec. 2.)

See authorities under preceding article; International & G. N. R. Co. v. Doolan, 120 S. W. 1118; San Antonio & A. P. Ry. Co. v. Chittim, 135 S. W. 747; Elder, Dempster & Co. v. St. Louis Southwestern Ry. Co. of Texas, 154 S. W. 975; Gulf, C. & S. F. Ry. Co. v. Boger, 169 S. W. 1093; St. Louis Southwestern Ry. Co. of Texas v. Hughston Grain Co., 186 S. W. 429; Ft. Worth & D. C. Ry. Co. v. Bone, 195 S. W. 244; Kansas City, M. & O. Ry. Co. v. Bell, 197 S. W. 322; Ft. Worth & D. C. Ry. Co. v. Kemp, 207 S. W. 605.

CHAPTER FIVE
PIPE LINES

Art. 732½. Certain persons, etc., declared to be common carriers.—Every person, firm, corporation, limited partnership, joint stock association or association of any kind whatever;

(a) Owning, operating or managing any pipe line or any part of any pipe line within the State of Texas for the transportation of crude petroleum to or for the public for hire, or engaged in the business of transporting crude petroleum by pipe line; or

(b) Owning, operating or managing any pipe line or any part of any pipe line for the transportation of crude petroleum, to or for the public for hire, and which said pipe line is constructed or maintained upon, along, over or under any public road or highway, or in favor of whom the right of eminent domain exists; or

(c) Owning, operating or managing any pipe line or any part of any pipe line or pipe lines for transportation to or for the public, for hire, of crude petroleum, and which said pipe line or pipe lines is or may be constructed, operated or maintained across, upon, along, over or under the right of way of any railroad, corporation or other common carrier required by law to transport crude petroleum as a common carrier; or

(d) Owning, operating or managing or participating in ownership, operation or management, under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind whatsoever, any pipe line or pipe lines, or part of any pipe line, for the transportation from any oil field or place of production within the State of Texas to any distributing, refining or marketing center or reshipping point thereof, within this State, of crude petroleum bought of others:

Is hereby declared to be a common carrier and subject to the provisions hereof. But the provisions of this Act shall not apply to those pipe lines which are limited in their use to the wells, stations, plants and refineries of the owner and which are not a part of the pipe line transportation system of any common carrier as above defined; nor shall such provisions apply to any property of such a common carrier which is not a part of or necessarily incident to its pipe line transportation system. (Acts 1917, ch. 30, sec. 1.)

Art. 732½a. Subject to regulation as carrier and to control of Railroad Commission.—It is declared that the operation of those pipe lines, to which this Act applies, for the transportation of crude petroleum, in connection with the purchase or purchase and sale of such crude petroleum, is a business in the mode of the conduct of which the public is interested, and as such is subject to regulation by law; and accordingly it is provided that from and after the expiration of thirty (30) days from the time this law takes effect the business of purchasing, or of purchasing and selling crude petroleum, using in connection with such business a pipe line of the class subject to this Act to transport the crude petroleum so bought or sold, shall not be conducted, unless such pipe line so used in connection with such business be a common carrier within the purview of this law and subject to the jurisdiction herein conferred upon the Railroad Commission of Texas. It shall be the duty of the Attorney General to enforce this provision by injunction or other adequate remedy. (Id. sec. 2.)

Art. 732½b. Powers of common carriers; telegraph and telephone lines; rights in highways.—The right to lay, maintain and operate pipe lines, together with telegraph and telephone lines incidental to and designed for use only in connection with the operation of such pipe lines along, across or under any public stream or high-

way in this State, is hereby conferred upon all persons, firms, limited partnerships, joint stock associations, or corporations coming within any of the definitions of common carrier pipe lines as hereinbefore made. Any person, firm, limited partnership, joint stock association, or corporation may acquire the right to construct pipe lines and such incidental telephone and telegraph lines, along, across or over any public road or highway in this State, by filing with the Railroad Commission an acceptance of the provisions of this law, expressly agreeing in writing that in consideration of the rights so acquired it shall be and become a common carrier pipe line, subject to the duties and obligations conferred or imposed in this Act. This right to run along, across or over any public road or highway, as before provided for, can only be exercised upon condition that the traffic thereon be not interfered with, and that such road or highway be promptly restored to its former condition of usefulness, and the restoration thereof to be subject also to the supervision of the county commissioners' court or other proper local authority. And provided, that in the exercise of the privileges herein conferred, such pipe lines shall compensate the county or road district, respectively, for any damage done to such public road, in the laying of pipe lines, telegraph or telephone lines, along or across the same; and nothing herein shall be construed to grant any pipe line company the right to use any public street or alley of any incorporated city or town, except by express permission from the city or governing authority thereof; and nothing herein shall be construed to permit any company to use any street or alley of any unincorporated town, except by express permission of the commissioners' court of the county in which such town is situated. (Id. sec. 3.)

Art. 732½c. Regulation of rates and charges and mode of conducting business; procedure.—The Railroad Commission shall have the power to establish and enforce rates of charges and regulations for gathering, transporting, loading and delivering crude petroleum by such common carriers in this State, and for the use of storage facilities necessarily incident to such transportation, and to prescribe and enforce rules and regulations for the government and control of such common carriers in respect to their pipe lines and receiving, transferring and loading facilities, and it shall be its duty to exercise such power upon petition by any person showing a substantial interest in the subject. No order establishing or prescribing rates, rules and regulations shall be made except after hearing and at least ten days and not more than thirty days' notice to the person, firm, corporation, partnership, joint stock association, or association owning or controlling and operating the pipe line or pipe lines affected. In the event any rate shall be filed by any pipe line and complaint against same or petition to reduce same shall be filed by any shipper, and such complaint be sustained, in whole or in part, all shippers who shall have paid the rates so filed by the pipe line shall have the right to reparation or reimbursement of all excess in transportation charges so paid over and above the proper rate as finally determined on all shipments made after the date of the filing of such complaint. (Id. sec. 4.)

Art. 732½d. Exchange of facilities between carriers; regulations as to transportation of crude petroleum; extent of powers of Railroad Commission; orders.—Every common carrier as above defined shall exchange crude petroleum tonnage with each like common carrier and the commission shall have the power to require such connections and facilities for the interchange of such tonnage to be made at every locality reached by both pipe lines whenever a necessity therefor exists and subject to such rates and regulations as may be made by the commission; and any such common carrier under like rules and regulations shall be required to install and maintain facilities for the receipt and delivery of crude petroleum of patrons at all points on such pipe line. No carrier shall be required to receive or transport any crude petroleum except such as may be marketable under rules and regulations to be prescribed by the commission, which they are hereby empowered and required to prescribe. The commission is also empowered and required to make rules for the ascertainment of the amount of water and other foreign matter in oil tendered for transportation, and for deduction therefor and for the amount of deduction to be made for temperature, leakage and evaporation. It is provided, however, that the recital herein of particular powers on the part of said commission shall not be construed to limit the general powers conferred by this Act. Until set aside or vacated by some decree or order of a court of competent jurisdiction, all orders of the commission as to any matter within its jurisdiction shall be accepted as prima facie evidence of their validity. (Id. sec. 5.)

Art. 732½e. Publication of tariffs; reports to commission; complaints.—Such common carriers of crude petroleum shall make and publish their tariffs under such rules and regulations as may be prescribed by said commission, and the commission shall require them to make reports and may investigate their books and records kept in connection with such business. The commission shall require of such common carrier pipe lines monthly reports, duly verified under oath, of the total quantities of crude petroleum owned by such pipe lines and of that held by them in storage for others, as also of their unfilled storage capacity, provided no publicity shall be given by the commission to the reports as to stock of crude petroleum on hand of any particular pipe line; but the commission in its discretion may make public the aggregate amounts held by all the pipe lines making such reports, and of their aggregate storage capacity. The commission shall have the power and authority to hear and determine complaints, to require attendance of witnesses, pay their expenses out of the fund herein created, and to institute suits and sue out such writs and process as may be necessary for the enforcement of its orders. (Id. sec. 6.)

Art. 732½f. Discrimination prohibited.—No such common carrier in its operations as such shall discriminate between or against shippers in regard to facilities furnished or service rendered or rates charged under same or similar circumstances in the

transportation of crude petroleum; nor shall there be any discrimination in the transportation of crude petroleum produced or purchased by itself directly or indirectly. In this connection the pipe line shall be considered as a shipper of the crude petroleum produced or purchased by itself directly or indirectly and handled through its facilities. No such carrier in such operations shall directly or indirectly charge, demand, collect or receive from any one a greater or less compensation for any service rendered than from another for a like and contemporaneous service; provided this shall not limit the right of the commission to prescribe rates and regulations different from or to some places from other rates or regulations for transportations from or to other places, as it may determine; nor shall any carrier be guilty of discrimination when obeying any order of the commission. When there shall be offered for transportation more crude petroleum than can be immediately transported, the same shall be equitably apportioned. The commission may make and enforce general or specific regulations in this regard. No such common carrier shall at any time be required to receive for shipments from any person, firm, corporation or association of persons, exceeding three thousand barrels of petroleum in any one day. (Id. sec. 7.)

Art. 732½g. Rules for prevention of waste.—The commission, when necessary, shall make and enforce rules and regulations either general in their nature or applicable to particular oil fields for the prevention of actual waste of oil or operations in the field dangerous to life or property. (Id. sec. 8.)

Art. 732½h. Penalty for violation of regulations; venue of suits.—Any common carrier as herein defined who shall violate any provision of this Act or who shall fail to perform any duty herein imposed or any valid order of the commission when not stayed or suspended by order of court, shall be subject to a penalty of not less than one hundred dollars nor more than one thousand dollars for each offense, such penalty to be recoverable at suit of the Attorney General of the State of Texas in the name of the State and for its use. Such penalty may also be recorded by and for the use of any person, corporation or association of persons against whom there shall have been an unlawful discrimination as herein defined; such suit to be brought in the name of and for the use of party aggrieved and may be maintained in any court of proper jurisdiction, having due regard to the ordinary statutes of venue. * * * (Id. sec. 9.)

For provision making it a misdemeanor to willfully violate the provisions as to discrimination, see Penal Code, art. 1522p.

Art. 732½i. Transportation of crude petroleum.—Subject to the provisions of this Act and the rules of regulations which may be prescribed by the commission, every such common carrier shall receive and transport crude petroleum delivered to it for transportation and shall so receive and transport same and perform its other duties with respect thereto without discrimination. (Id. sec. 10.)

Art. 732½j. Employment of expert; salary; assistants; tax on crude petroleum to pay expenses.—It shall be the duty of the commission to employ an expert who shall gather information and assist the commission in the performance of its duties under this Act. The salary of this expert shall be at the rate of thirty-six hundred dollars per annum, payable in equal monthly installments. And the commission shall employ such other assistants as may be necessary. These salaries and expenses and the expenses of the hearings and investigations conducted by said commission shall be paid out of a fund to be derived from a tax of one-twentieth of one per cent of the market value of crude petroleum produced within this State, which tax is hereby levied, and which tax shall be in addition to and collected in the same manner as the present gross receipts production tax on crude petroleum. Producers of crude petroleum are hereby required to make reports of production in the same manner and under the same penalties as for the gross production tax. The tax thus collected shall be paid into the State treasury as other revenue, and shall be paid out in warrants as other State funds. Any yearly excess of the tax over and above the requirements of the commission shall become a part of the general revenue of the State and any deficit shall be made up out of the general revenue of the State. (Id. sec. 11.)

Art. 732½k. Payment of salary of expert and other expenses.—The salary of the expert for the commission shall be paid by monthly warrants drawn by the State Comptroller on the State Treasurer. Other expenses of the commission, such as traveling expenses, expenses of witness, stenographers and stationery, shall be paid by like warrants issued upon duly verified statements of the persons entitled, with the approval of the chairman of the commission endorsed thereon. (Id. sec. 13.)

Art. 732½l. Cumulative of other laws.—This act shall be cumulative of all the laws of this State, which are not in direct conflict herewith, regulating the control of pipe line companies or similar corporations, in this State. (Id. sec. 14.)

Art. 732½m. Partial invalidity.—If any provision of this Act shall be held unconstitutional or for any other reason shall be held to be void, or if more than one provision of this Act shall be held to be void, such holding shall not have the effect to nullify the remaining parts of this Act, but the parts not so held to be void shall nevertheless remain in full force and effect. (Id. sec. 15.)

TITLE 21

CERTIORARI

CHAPTER ONE

CERTIORARI TO THE COUNTY COURT

Art. 733. (332) (290) Certiorari to county court, issued when.—Any person interested in the estate of a decedent or ward may have the proceedings of the county court therein revised and corrected at any time within two years after such proceedings were had, and not afterward; provided, that persons non compos mentis, infants and femes covert shall have two years after the

removal of their respective disabilities within which to apply for such revision and correction. (Acts 1848, p. 106, secs. 7 and 9; P. D. 480, 482.)

See post, art. 4301; Herron's Probate Guide, pp. 13, 14, 467; Miers v. Betterton, 45 S. W. 430; Kaltever v. Wipff, 49 S. W. 1055; Adue v. Gonzales, 54 S. W. 367; Harbison v. Harbison, 56 S. W. 1006; Friend v. Boren, 95 S. W. 711; In re Pearce, 96 S. W. 1094; Williams v. Steele, 108 S. W. 155; Bloom v. Oliver, 120 S. W. 1101; Heaton v. Buhler, 127 S. W. 1078; Dodge v. Youngblood, 202 S. W. 116.

Art. 734. (333) (291) Application for.—All applications for the writ of certiorari to the county court shall be made to the district court, or a judge thereof. It shall state the names and residences of the parties adversely interested, and shall distinctly set forth the error in the proceeding sought to be revised. (Id.; P. D. 480.)

See Herron's Probate Guide, pp. 14, 15; Heaton v. Buhler, 127 S. W. 1078; Walker v. Walker's Estate, 136 S. W. 1145; Hall v. Davison, 176 S. W. 642.

Art. 735. (334) (292) Shall be granted on execution of bond.—The writ of certiorari shall, in all cases, be granted upon the application of a party therefor, upon the applicant entering into bond in such sum as shall be required by the judge, sufficient to secure the costs of the proceeding.

See Herron's Probate Guide, pp. 16, 17.

Art. 736. (335) (293) Not to operate as supersedeas, unless bond given.—A writ of certiorari shall not operate as a supersedeas of the judgment of the county court, unless the applicant therefor shall enter into bond with two or more good and sufficient sureties, in such sum as shall be fixed by the order of the district judge, payable to the adverse party, and conditioned for the performance of the judgment of the district court, in case such judgment shall be against the applicant.

Art. 737. (336) (294) Writ to issue to contain what.—The writ of certiorari shall be issued by the clerk of the district court upon the compliance of the party with the order of the district court or the judge thereof. It shall be directed to the sheriff or any constable of the proper county, and shall command him to cite the clerk of the county court to make out a certified transcript of the proceedings designated in the writ, and transmit the same to the district court to which the writ is returnable, on or before the return day of the next succeeding term thereof.

Art. 738. (337) (295) When supersedeas granted.—When an order for a supersedeas has been made, it shall also require the clerk and all officers of said court to stay further proceedings on the judgment specified in said writ.

Art. 739. (338) (296) Citation as in ordinary cases.—Whenever a writ of certiorari has been issued, the clerk shall forthwith issue a citation, as in ordinary cases, for the party named in the application, as being adversely interested in the proceedings sought to be revised.

Art. 740. (339) (297) Trial de novo; judgment to be certified below.—The cause shall be tried de novo in the district court, but the issues shall be confined to the grounds of error specified in the application for the writ. The judgment shall be certified to the county court for observance. (Acts 1846, p. 363, sec. 60; P. D. 1460.)

See Kalteyer v. Wipff, 49 S. W. 1055; Gulf, C. & S. F. Ry. Co. v. Lemons, 152 S. W. 1189; Hall v. Davison, 176 S. W. 642; McAllen v. Wood, 201 S. W. 433.

Art. 741. (340) (298) Appeals and writs of error allowed.—Appeals and writs of error to the supreme court, from the judgments of the district courts in cases of certiorari, shall be allowed, and shall be governed by the same rules as in other cases.

See Const. art. 5, secs. 3, 6; post, arts. 1522, 1589-1591, 2046, 2048, 2096; Herron's Guide, pp. 19, 20.

CHAPTER TWO

CERTIORARI TO JUSTICES' COURTS

Art. 742. (341) (299) Certiorari to justices' court.—After final judgment in a court of a justice of the peace, in any cause, except in cases of forcible entry and detainer, the cause may be removed to the county court by writ of certiorari (or if the jurisdiction, civil or criminal, has been transferred from the county to the district court, then to the district court) in the manner hereinafter directed. (Acts 1879, p. 125.)

See post, arts. 1767, 1768, 2398.

Art. 743. (342) (300) On order of the county or district court or judge.—The writ of certiorari shall be issued by order of the county court or the judge thereof (or district court or the judge thereof, if jurisdiction is transferred to said district court) as provided in the preceding article.

Art. 744. (343) (301) Requisites of the writ.—It shall command the justice of the peace to make and certify a copy of the entries in the cause on his docket, and transmit the same, with the papers in his possession, to the proper court on or before the first day of the next term thereof; but if there is not time for such transcript and papers to be filed at such term, then they shall be so filed at the next succeeding term of said court. (Acts 1848, p. 163, sec. 67; P. D. 468).

Art. 745. (344) (302) Affidavit of sufficient cause.—The writ shall not be granted unless the party applying for the same, or some person for him having knowledge of the facts, shall make affidavit in writing, setting forth sufficient cause to entitle him thereto. (Id.)

See Parlin & Orendorff Co. v. Keel, 78 S. W. 1082; Hughes v. Underwood Typewriter Co., 187 S. W. 399; Chicago, R. I. & G. Ry. Co. v. Boyce, 206 S. W. 112.

Art. 746. (345) (303) What application for certiorari must show.—In order to constitute a sufficient cause, the facts stated must show that either the justice of the peace had not jurisdiction, or that injustice was done to the applicant by the final determination of the suit or proceeding, and that such injustice was not caused by his own inexcusable neglect. (Id.)

See Parlin & Orendorff Co. v. Keel, 78 S. W. 1082; Lucas v. Harrison, 139 S. W. 659; Hall v. Collier, 200 S. W. 880.

Art. 747. (346) (304) Within what time granted.—Such writ shall not be granted after ninety days from the final judgment of the justice of the peace. (Id.)

See Kyle v. Richardson, 71 S. W. 399; Southwestern Land Corporation v. Neese, 161 S. W. 1090.

Art. 748. (347) (305) Bond with sureties required.—The writ shall not be issued

unless the party applying therefor shall first cause to be filed a bond with two or more good and sufficient sureties, to be approved by the clerk, payable to the adverse party, in such sum as the judge shall direct, to the effect that the party applying therefor will perform the judgment of the county or district court, if the same shall be against him. (Id.)

Webb v. Texas Christian University, 107 S. W. 86; Turner v. Fowler, 189 S. W. 1038.

Art. 749. (348) (306) Bond, affidavit and order to be filed.—The bond and affidavit, with the order of the judge, when made in vacation, shall be filed with the clerk of the court to which the same is returnable.

Art. 750. (349) (307) Writ to issue instanter.—As soon as such affidavit, order of the judge and bond shall have been filed, the clerk shall issue a writ of certiorari, as directed in article 744. (Acts 1850, p. 60, sec. 2; P. D. 470.)

Art. 751. (350) (308) Justice shall stay proceedings and make return.—Upon service of such writ of certiorari being made upon the justice of the peace, he shall stay further proceedings on the judgment and forthwith comply with said writ; but if there be not time for the transcript and papers to be filed at such first term, then they shall be so filed at the next succeeding term of said court. (Id. sec. 67; P. D. 468.)

Art. 752. (351) (309) Citation as in other cases.—Whenever a writ of certiorari has been issued, the clerk shall forthwith issue a citation, as in ordinary cases, for the party adversely interested.

Art. 753. (352) (310) Cause to be docketed, and how.—The action shall be docketed in the name of the original plaintiff, as plaintiff, and of the original defendant, as defendant.

Art. 754. (353) (311) Motion to dismiss at first term.—At the first term of the court to which the certiorari is returnable, the adverse party may move to dismiss the certiorari for want of sufficient cause appearing in the affidavit, or for want of sufficient bond.

See Howth v. Shumard, 40 S. W. 1079; Beck v. Arkansas Motor Co., 180 S. W. 942; Turner v. Fowler, 189 S. W. 1038; J. I. Case Threshing Mach. Co. v. Lochridge & Denny, 195 S. W. 266.

Art. 755. (354) (312) No amendment of bond or oath.—No amendment of the affidavit or bond shall be made in the county or district court, nor shall a new affidavit or bond be filed.

See art. 2104; Harris v. Parker, 46 S. W. 844; Wilbur v. Lane, 115 S. W. 298.

Art. 756. (355) (313) Judgment of dismissal.—If the certiorari be dismissed, the judgment shall direct the justice of the peace to proceed with the execution of the judgment below.

Art. 757. (356) (314) Pleading same as in justice's court, except, etc.—No pleading other than that required by law in the justice's court shall be necessary, except in cases of amendment, as hereinafter provided.

Art. 758. (357) (315) Issues made up under direction of the court.—When no pleadings have been filed in justices' courts, and none were necessary, the issues shall be made up under the direction of the court.

Art. 759. (358) (316) New matter may be pleaded, etc.—Either party may plead any new matter in the county or district court which was not presented in the court below; but no new cause of action shall be set up by the plaintiff, nor shall any set-off or counter claim be set up by the defendant which was not pleaded in the court below; and in all such cases the pleadings shall be in writing, and filed in the cause before the parties have announced themselves ready for trial.

O'Maley v. Garriott, 49 S. W. 108; White Dental Mfg. Co. v. Hertzberg, 50 S. W. 122; Barrett v. Habeen, 54 S. W. 644; Brigman v. Aultman, Miller & Co., 55 S. W. 509; Nixon v. Padgett, 57 S. W. 854; Brown v. Reed, 62 S. W. 73; Comer v. Floore, 88 S. W. 246; Williams v. Houston Cornice Wks., 101 S. W. 839; Webb v. Texas Christian University, 107 S. W. 86; Davis v. Morris, 114 S. W. 684; Abeel v. Southwestern Telegraph & Telephone Co., 145 S. W. 284; Young Men's Christian Ass'n of Dallas v. Schow Bros., 161 S. W. 931; Texas & P. Ry. Co. v. Southern Produce Co., 168 S. W. 999; Missouri, K. & T. Ry. Co. of Texas v. Ryan, 170 S. W. 858; James McCord Co. v. Rea, 178 S. W. 649; Scott & Co. v. O. D. Mann & Sons, 190 S. W. 847.

Art. 760. (359) (317) Trial de novo.—The cause shall be tried de novo, in the county or district court; and judgment shall be rendered, as in cases of an appeal from justices' courts. (Revision, 1879.)

See post, arts. 1950, 2003; Webb v. Texas Christian University, 107 S. W. 86; J. I. Case Threshing Mach. Co. v. Lodhridge & Denny, 195 S. W. 266.

Art. 761. (360) (318) Appeals and writs of error in certiorari cases.—Appeals and writs of error from the judgments of the county or district court, in cases of certiorari from justices' courts, shall be allowed, subject to such rules and limitations as apply in cases appealed from justices' courts.

TITLE 21 A

CHILD AND ANIMAL PROTECTION

CHAPTER ONE

STATE BUREAU OF CHILD AND ANIMAL PROTECTION

Art. 761a. Governor to appoint state bureau.—That the governor of the state of Texas shall appoint a state bureau of child and animal protection from and among the members of the directorate of the Texas state humane society, which shall be composed of not less than nine, nor more than twenty-one members. (Acts 1913, p. 108, sec. 1.)

Art. 761b. Ex-officio members of board of directors.—The governor, the superintendent of public instruction and the attorney general shall be ex-officio members of the board of directors of said state bureau. (Id. sec. 2.)

Art. 761c. Duties of bureau.—It shall be the duty of the said bureau to secure the enforcement of the laws for the prevention of wrongs to children and dumb animals as now defined and as hereafter may be defined by law; to appoint local and state agents to assist in this work; to assist the organization of district and county societies, and to give them representation in the state bureau; to aid such societies and agents in the enforcement of the laws for the prevention of wrongs to children and dumb animals as prescribed by law now existing, or which may

hereafter exist; and to promote the growth of education and sentiment favorable to the protection of children and dumb animals. (Id. sec. 3.)

Art. 761d. Annual meeting.—Said bureau shall hold its annual meeting on the second Monday in November in each year, at the capitol of the state, for the transaction of its business and the election of officers, at which meeting all questions relating to child and animal protection in the state may be considered. (Id. sec. 4.)

Art. 761e. Annual report.—The said bureau shall make an annual report before the first day of January of each year to the secretary of state, embracing the proceedings of the bureau for the preceding year, and statistics showing the work of the bureau and its agents and county and district societies throughout the state, together with such papers, facts and recommendations as they may deem useful to the interests of children and dumb animals in the state, said report to be fully prepared for publication. The secretary of state shall cause the same to be published in pamphlet or book form by the state, under the supervision of the bureau. (Id. sec. 5.)

Art. 761f. Publication and distribution of report.—The number of copies of said report to be published shall be not less than five thousand, all of which shall be bound in uniform style, every two years in one volume, and shall be distributed by the secretary of state as follows: Ten copies, each, to the governor of the state, secretary of state, state comptroller and state treasurer, five copies, each, to the judges of the supreme court, and the attorney general, two to each member of the legislature, one copy to each judge and clerk of the district, county and federal courts, one copy to each board of county commissioners, one copy to each newspaper office in the state, ten copies to the state University, state industrial schools, and the warden of the penitentiary, two copies to each college of learning in the state, two copies to each of the other state boards, and the remainder to the bureau of child and animal protection. (Id. sec. 6.)

Art. 761g. Acceptance of act by state humane society.—If the said humane society shall accept the provisions of this Act, they shall certify their acceptance of the same to the secretary of state and state comptroller. (Id. sec. 7.)

CHAPTER TWO

PREVENTION OF CRUELTY TO ANIMALS

Art. 761h. Cruel or inhumane treatment; penalty.—Every person who overdrives, willfully overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, unnecessarily or cruelly beats, or needlessly mutilates or kills, or carries in or upon any vehicle, or otherwise in a cruel or inhumane manner, or causes or procures to be done, or who having the charge or custody of any animal unnecessarily fails to provide it with proper food, drink or cruelly abandons it, shall, upon conviction be punished by fine of not less than ten dollars nor more than two hundred and fifty dollars. (Acts 1913, p. 168, sec. 1.)

Art. 761i. Food and water for animals impounded; penalty for failure.—Every person who shall impound, or cause to be impounded in any pound or corral under the laws of this state or of any municipality in this state, any animal, shall supply to the same during such confinement a sufficient quantity of wholesome food and water, and in default thereof, upon conviction, be punished by fine or [of] not less than five nor more than fifty dollars. (Id. sec. 2.)

Art. 761j. Right to enter pound or corral and supply food and water; reasonable cost may be collected; exemption.—In case any animal shall be at any time impounded as aforesaid and shall continue to be without necessary food and water for more than twelve successive hours, it shall be lawful for any person from time to time and as often as it shall be necessary, to enter into or upon any pound or corral in which such animal shall be confined, and to supply to it necessary food and water so long as it shall be so confined; such persons shall not be liable to any action for such entry, and the reasonable cost for such food and water may be collected by him or [of] the owner of the animals; and the said animal shall not be exempt from levy and sale, upon execution issued upon a judgment therefor. (Id. sec. 3.)

Art. 761k. Live poultry; coops, crates and cages; water troughs; penalty for failure.—Every person who shall receive live fowls, poultry or other birds for transportation or to be confined on wagons or stands, or by the owners of grocery stores, commission houses, or other market houses, or by other persons when to be closely confined shall place same immediately in coops, crates or cages made of open slats or wire on at least three sides, and of such height, that the fowls can stand upright without touching the top, and shall have troughs or other receptacles easy of access at all times by the birds confined therein and so placed that their contents shall not be defiled by them, in which troughs or other receptacles clean water and suitable food shall be constantly kept; shall keep such coops, crates or cages in a clean and wholesome condition; shall place only such numbers in each coop, crate or cage as can stand without crowding one another, but have room to move around; shall not expose same to undue heat or cold; shall remove immediately all injured, diseased or dead fowls or other birds, and in default thereof shall, upon conviction, be punished by fine of not less than five nor more than two hundred dollars, or by both such fine and imprisonment, for each offense. (Id. sec. 4.)

Art. 761*l*. On arrest agent of humane society may take charge of animals and vehicle, etc.; notice; lien.—When any person arrested under any provision of this Act is, at the time of such arrest, in charge of any vehicle drawn by or containing any animal cruelly treated, any agent of said humane society, having been authorized by the sheriff of the county to make arrests in such cases, may take charge of such animal and such vehicle and its contents, and the animal or animals drawing same, and shall give notice thereof to the owner, if known, and shall care and provide for them until their owner shall take charge of the same; and such

agent shall have a lien on said animals and on said vehicle and its contents for the expense of such care and provision, or the said expense or any part thereof remaining unpaid may be recovered by such agent in a civil action. (Id. sec. 5.)

Art. 761m. May take charge of animal abandoned, cruelly treated, etc.; society may collect expense.—Any officer or agent of the said humane society may lawfully take charge of any animal found abandoned, neglected or cruelly treated and shall thereupon give notice thereof to the owner, if known, and may care and provide for such animal until the owner shall take charge of same, and the expense of such care and provision shall be a charge against the owner of such animal and collectible from such owner by said humane society in an action therefor. (Id. sec. 6.)

Art. 761n. May detain till expense is paid.—When said humane society shall provide neglected abandoned animals with proper food, shelter and care, it may detain such animals until the expense of such food, shelter and care is paid, and shall have a lien upon such animals therefor. (Id. sec. 7.)

Art. 761o. May destroy animal in certain cases.—Any agent or officer of the said humane society may lawfully destroy or cause to be destroyed any animal in his charge, when, in the judgment of such agent or officer, and by written certificate of two reputable citizens called to view same in his presence, one of whom may be selected by the owner of said animal if he shall so request, and who shall give their written certificates that such animal appears to be injured, disabled, diseased, past recovery, or unfit for any useful purpose. (Id. sec. 8.)

Art. 761p. Enforcement of lien; sale.—Any person or corporation entitled to a lien under any of the provisions of this Act may enforce the same by selling the animals and other personal property upon which such lien is given, at public auction, upon giving notice to the owner, if he be known, of the time and place of such sale, at least five days previous thereto, and by posting three notices of the time and place of such sale in three public places within the county, at least five days previous thereto; and if the owner be not known, then such notice shall be posted at least ten days previous to such sale. (Id. sec. 9.)

Art. 761q. Officers or agents to have certificate or badge.—Officers and agents of said humane society shall be provided with a certificate by said society that they are such officers or agents in such form as the directors of said society may choose, or with a badge bearing the name and seal of said society; and shall if requested, show such certificate or badge when acting officially. (Id. sec. 10.)

Art. 761r. Member of society may require arrest.—Any member of the Texas state humane society may require the sheriff of any county, the constable of any precinct or the marshal or any policeman of any town or city, or any agent of said society authorized by the sheriff to make arrests for the violation of this Act, to arrest any person found violating any of the provisions of this Act, and to take possession of any animal cruelly treated in their respective counties, cities or towns. (Id. sec. 11.)

Art. 761s. Terms defined.—In this Act the word "animal" shall be held to include every living dumb creature; the words "torture" and "cruelty" shall be held to include every act, omission or neglect whereby unnecessary or unjustifiable pain or suffering is caused, permitted or allowed to continue, when there is a reasonable remedy or relief, and the words "owner" and "person" shall be held to include corporations, and the knowledge and act of agents and employés of corporations in regard to animals transported, owned, employed by or in custody of the corporation shall be held to be the knowledge and acts of such corporations. (Id. sec. 12.)

Art. 761t. Laws repealed.—All Acts or parts of Acts in conflict with this Act are hereby repealed. (Id. sec. 13.)

Art. 761u. Pending proceedings; prior offenses.—Nothing in this Act shall be held to apply to or in any manner affect any indictment, trial, writ of error, appeal or other proceedings, judgment, or sentence in case of violation of the provisions of this section by this Act repealed now pending in any court in this state, and the same shall be held, conducted and adjudged as provided by the law in force before this Act shall take effect. Any offense under the provisions of the section by this Act repealed which shall have been committed before this Act takes effect shall be required to be prosecuted and punished in accordance with the law in force at the time of the commission of such offense. (Id. sec. 14.)

TITLE 22

CITIES AND TOWNS

CHAPTER ONE

GENERAL PROVISIONS RELATING TO CITIES

Art. 762. (381) (340) Cities, towns and villages may accept the provisions of this title.—Any incorporated city, town or village in this State containing 600 inhabitants or over, including those incorporated under Chapter 14 of this Title, or Chapter 11 of Title 18 of the Revised Statutes of 1895, and other laws, general and special, and any incorporated city, town or village of whatever population containing one or more manufacturing establishments within the corporate limits, and which may be subject to the provisions of the Act known as "Chapter 23 of the Acts of the Regular Session of the 34th Legislature, Page 38," which was approved by the Governor on February 25th, 1915, or any amendments thereto, may accept the provisions of this Title relating to cities and towns, in lieu of any existing Charter, by a two-thirds vote of the Council of such city, town or village, which action by the Council shall be had at a regular meeting thereof, and entered upon the journal of their proceedings, and a copy of the same, signed by the Mayor and attested by the Clerk or Secretary under the corporate seal, filed and recorded in the office of the Clerk of the County Court in which such city, town or village is situated, and the provisions of this Title shall be in force, and all acts theretofore passed incorporating said

city, town or village which may be in force by virtue of any existing Charter, shall be repealed from and after the filing of said copy of their proceedings, as aforesaid. When such city, town or village is so incorporated as herein provided, the same shall be known as a city or town, subject to the provisions of this Title relating to cities and towns, and vested with all the rights, powers, privileges, immunities and franchises therein conferred. (Acts 1881, p. 115; Acts 1885, p. 57; Acts 1915, p. 64; Acts 1919, ch. 66, sec. 1.)

See Lamar v. S. 95 S. W. 509; Trent v. Randolph, 130 S. W. 737.

Art. 763. (382) (341) Provisions of this title do not apply until accepted.—The provisions of this title shall not apply to any city, town or village until such provisions have been accepted by the council in accordance with the preceding article. (Acts 1875, ch. 100, sec. 157.)

Art. 764. (383) (342) General powers of the corporation.—All the inhabitants of each city, town or village so accepting the provisions of this title shall continue to be a body corporate, with perpetual succession, by the name and style by which such city, town or village was known before the acceptance of the provisions of this title, and as such they and their successors by that name shall have, exercise and enjoy all the rights, immunities, powers, privileges and franchises possessed and enjoyed by the same at the time of the acceptance of the provisions of this title, and those herein granted and conferred, and shall be subject to all the duties and obligations pertaining to or incumbent on the same as a corporation at the time of the acceptance of the provisions of this title, and may ordain and establish such acts, laws, regulations and ordinances, not inconsistent with the constitution and laws of this state, as shall be needful for the government, interest, welfare and good order of said body politic, and, under the same name, shall be known in law, and be capable of contracting and being contracted with, suing and being sued, impleading and being impleaded, answering and being answered unto, in all courts and places, and in all matters whatever, may take, hold and purchase, lease, grant and convey such real and personal or mixed property or estate as the purposes of the corporation may require, within or without the limits thereof; and may make, have and use a corporate seal and change and renew the same at pleasure. (Id. sec. 1a.)

Palestine Water & Power Co. v. City of Palestine, 44 S. W. 815; City of Waxahachie v. Missouri, K. & T. Ry. Co. of Texas, 183 S. W. 61.

Art. 765. (573) (502) Property, officers, etc., not affected by this title.—All property, real, personal or mixed, belonging to any city accepting the provisions of this title, is hereby vested in the corporation created by this title, and the officers of said corporation, in office at the date of its acceptance, shall continue in the same, until superseded in conformity with the provisions of this title, from and after it takes effect. (Id. sec. 154.)

Art. 766. (572) (501) Rights, actions, etc., not affected by this title.—All rights, actions, fines, penalties and forfeitures in suits or otherwise, which have accrued under the laws heretofore in force, shall be vested in and prosecuted by the corporation hereby created; and no suit pending shall be affected by the passage and acceptance of this title, but the same shall be prosecuted or defended, as the case may be, by the corporation hereby created. (Id. sec. 153.)

Art. 767. (571) (500) Cemetery lots exempt from forced sale.—The cemetery lots which have, and may hereafter be laid out and sold for said city for private places of burial shall, with their appurtenances, be forever exempt from taxes, executions, attachments or forced sales. (Id. sec. 152.)

Art. 768. (570) (499) City exempt from giving bond in suits.—It shall not be necessary in any action, suit or proceeding in which the city, accepting the provisions of this title, shall be a party, for any bond, undertaking or security to be executed in behalf of the city; but all such actions, suits and proceedings shall be conducted in the same manner as if such bond, undertaking or security had been given, and, for all the purposes of such actions, suits and proceedings, the city shall be liable in the same manner, and to the same extent, as if the bond, undertaking or security in ordinary cases had been duly given and executed. (Id. sec. 151.)

Art. 768a. Condemnation of right of way, etc., for waterworks.—That incorporated cities and towns owning their own waterworks system shall have the right to condemn private property for public use in and outside of the city or town limits of such cities and towns, for the purpose of acquiring rights of way for digging or excavating canals, laying mains, pipe lines, for the purpose of conducting water through the same into the cities or towns for the use of the public. (Acts 1915, ch. 110, sec. 1.)

Art. 768b. Same; compensation.—Said cities or towns shall pay just compensation to the owners of such property upon the award being made. (Id. sec. 2.)

Art. 768c. Same; procedure.—The procedure to condemn property under this law shall be as is now provided by law in the case of condemning property by railroads of this state, and all the laws on such subject shall be applicable hereto. (Id. sec. 3.)

Art. 769. Powers of city, etc., owning waterworks, sewers, gas and electric lights, to own land within or without limits.—Any town or city in this state, which may have been or may hereafter be chartered or organized under the general laws of Texas, or by special act or charter, and which city or town owns or operates waterworks, sewers, gas or electric lights shall have the power and right to own land for such purposes, within or without the limits of such town or city. (Acts 1909, p. 159.)

Art. 770. May purchase, construct and operate systems inside or outside limits, and regulate, etc.—Such town or city may purchase, construct and operate water, sewer and gas and electric light systems, inside or outside of such town or city limits, and regulate and control same, in a manner to protect the interests of such town or city. (Id. sec. 1.)

Art. 771. May sell water, etc., to persons outside, permit connections, etc.—Such town or city shall have the power and right to sell water, gas, electric light or

power and sewer privileges to any person or corporation outside of the limits of said town or city, and to permit them to connect therewith under contract with such town or city, under such terms and conditions as may appear to be for the best interests of such town or city. (Id. sec. 1.)

Art. 772. May prescribe kind of mains and appliances, etc., inspect, etc., make regulations and prescribe penalties.—Such town or city owning or operating such water or gas mains or sewer pipes and electric appliances shall have the right to prescribe the kind of water or gas mains or sewer pipes and electric appliances, within or beyond the limits of such town or city, and to inspect the same and require them to be kept in good order and condition at all times, and to make such rules and regulations, and prescribe penalties, concerning same, as shall be necessary and proper. (Id. sec. 2.)

For other powers of, and restrictions upon, city councils, in reference to waterworks, see article 865; and for power of condemnation for waterworks purposes, public or private, see articles 1003 and 1004.

Art. 772a. May mortgage and encumber light or water systems, etc.—All cities and towns operating under Title 18 of the Revised Civil Statutes of the State of Texas [Title 22] shall have power to mortgage and encumber any light systems or water systems, and the incomes thereof, and everything pertaining thereto, acquired or to be acquired, to secure the payment of funds to purchase same, or to purchase additional water powers, riparian rights, or to build, improve, enlarge, extend or repair such systems or either of them, and as additional security therefor, by the terms of such encumbrance, may grant to the purchaser or purchasers under any sale or foreclosure thereunder a franchise to operate the systems and properties so purchased, for a term not over twenty years after such purchase, subject to all laws regulating same then in force. (Acts 1911, p. 230, sec. 1.)

Art. 772b. Expense of operation and maintenance of encumbered system to be first lien against income; rates to be equal, uniform and sufficient; free service, etc.—Whenever the income of any lighting systems or water systems shall be encumbered under this Act, the expense of operation and maintenance, including all salaries, labor, materials, interest, repairs and extensions, necessary to render efficient service, and every proper item of expense shall always be a first lien and charge against such incomes. The rates charged for services furnished by any of the said systems shall be equal and uniform, and no free service shall be allowed except for city public schools, or buildings and institutions operated by such city or town, and there shall be charged and collected for such services a sufficient rate to pay for all operating, maintenance, depreciation, replacement, betterment and interest charges, and for interest and sinking fund sufficient to pay any bonds issued to purchase, construct or improve any such systems or of any outstanding indebtedness against same. No part of the income of any such system shall ever be used to pay any other debt, expense or obligation of such city or town, until the indebtedness so secured shall have been finally paid. (Id. sec. 2.)

Art. 772c. Contracts, bonds and notes; obligation charge, and not debt.—Every contract, bond or note issued or executed under this Act shall contain this clause: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation." No such obligation shall ever be a debt of such city or town, but solely a charge upon the properties so encumbered, and shall never be reckoned in determining the power of such city or town to issue bonds for any purpose authorized by law. (Id. sec. 3.)

Art. 772d. Management and control of encumbered system to be in council or trustees, etc.—The management and control of any such system or systems during the time same are encumbered, may by the terms of such encumbrance be placed in the hands of the city council of such city or town; but if deemed advisable may be placed in the hands of a board of trustees to be named in such encumbrance, consisting of not more than five members, one of whom shall always be the mayor of such city or town; and the compensation of such trustees shall be fixed by such contract, but shall never exceed five per cent of the gross receipts of any such systems in any one year. The terms of office of such board of trustees, their powers and duties, the manner of exercising same, the election of their successors, and all matters pertaining to their organization and duties may be specified in such contract of encumbrance; but in all matters where such contract is silent, the laws and rules governing the council of such city or town shall govern said board of trustees so far as applicable. Said city council or board of trustees having such management and control shall have power to make rules and regulations governing the furnishing of service to patrons and for the payment for same, and providing for discontinuance of such service to those failing to pay therefor when due until payment is made; and such city council shall have power to provide penalties for the violation of such rules and regulations and for the use of such service without the consent or knowledge of the authorities in charge thereof, and to provide penalties for all interference, trespassing or injury to any such systems, appliances or premises on which same may be located. (Id. sec. 4.)

Art. 772e. Trustee to make sale on default; collection fees; foreclosure proceedings.—Any contract of encumbrance under this Act may name, or provide for the selection of a trustee to make sale upon default in the payment of the principal or interest according to the terms of such contract, and for the selection of his successor if disqualified or failing to act, and may provide for collection fees not exceeding five per cent of the principal; but no collection fees shall accrue, and no foreclosure proceedings shall be begun in any court or through any trustee, and no option to mature any part of such obligation because of default in payment of any installment of principal or interest shall be exercised until ninety days written notice shall be given to each member of the city council of such city or town and to each member of such board

of trustees, if any, that payment has been demanded and default made, which notice shall date from the sending of a letter to each person to be notified, by registered mail, postage and registration fees prepaid, and addressed to them at the postoffice in such city or town; and if the installments of principal and interest then due shall be paid before the expiration of said ninety days, together with the interest prescribed in such contract, not exceeding ten per cent per annum, from the date of default until the date of payment, it shall have like effect as if paid on the date same was originally due. (Id. sec. 5.)

Art. 772f. May encumber light and water systems singly or together, in whole or in part, with or without franchise; sale, how authorized; limit of encumbrance, etc.—In the encumbrance of any properties under this Act, such city or town may encumber any such light systems and water systems, singly or together, and may or may not include in such encumbrance the franchise provided for, and may omit or include in said encumbrance the whole or any part of the properties mentioned in section 1 of this Act [Art. 772a], but no such system shall ever be sold until such sale is authorized by a majority vote of the qualified voters of such city or town; nor shall same be encumbered for more than five thousand dollars ($5,000.00), except for purchase money or to refund any existing indebtedness, until authorized in like manner; such vote in either case to be ascertained at an election, of which notice shall have been given in like manner as in cases of the issuance of municipal bonds by such cities and towns. (Id. sec. 6.)

Art. 773. (384) (343) Limits of corporation to remain the same until extended, etc.—The bounds and limits of said municipality shall be and remain the same as fixed and defined by the provisions of the act of incorporation, substituted by the provisions of this title; provided, that said limits of said corporation may be hereafter extended by adding additional territory to the same, whenever the majority of the qualified electors of said territory shall indicate a desire to be included within the limits of said corporation, in the manner provided in article 781 of this title. (Acts 1875, ch. 100, sec. 2.)

Art. 774. (385) Cities, towns and villages may incorporate under.—Any city or town containing six hundred inhabitants or over may be incorporated as such, with all the powers, rights, immunities and privileges mentioned and described in the provisions of this Title relating to cities and towns, in the manner described in Chapter 14 of this Title for incorporating towns and villages, except that the application to become incorporated shall be signed by at least fifty electors, residents of such city or town, and except that when an election is held according to the provisions of such chapter the words "towns and villages" shall be construed to read and mean "cities and towns." When the entry by the county judge, provided in Article 1041, in said Chapter 14, is made with reference to a city or town of six hundred inhabitants and over, such city or town shall be invested with all the rights and privileges of such cities conferred by this Title. (Acts 1881, p. 63; Acts 1881, p. 115; Acts 1915, ch. 34, sec. 1.)

See validating act of 1895, p. 45, remaining in force by virtue of section 20 of the final title.

Art. 774a. Cities, towns and villages incorporated under laws of former Republic may accept existing laws of state.—That any city, town or village within this State, incorporated under any law, general or special, of the Republic of Texas, regardless of the extent of the boundaries thereof, or the number of its population, may accept the provisions of Chapters one to thirteen, both inclusive, of Title Twenty-two of the Revised Statutes of Texas of 1911, and the amendments of 1911, 1913 and 1915 thereto, relating to cities and towns, in lieu of any existing charter created by any such law of the Republic of Texas, by a two-thirds vote of the council of such city, town or village; which action by the council shall be had at a regular meeting thereof and entered upon the journal of their proceedings, and a copy of the same, signed by the Mayor and attested by the Clerk or Secretary under the corporate seal, filed and recorded in the office of the Clerk of the County Court of the county in which such city, town or village is situated, and the provisions of said chapters one to thirteen, both inclusive, of Title Twenty-two of the Revised Statutes of Texas of 1911 and the amendments of 1911, 1913, and 1915, thereto shall be in force, and all acts theretofore passed incorporating said city, town or village, which may be in force by virtue of any existing charter shall be repealed from and after the filing of said copy of their proceedings as aforesaid, when such city, town or village is so incorporated as herein provided, the same shall be known as a city or town, subject to the provisions of title twenty-two, and all amendments thereto relating to cities and towns and vested with all the rights, powers, privileges, immunities and franchises therein conferred. (Acts 1917, ch. 48, sec. 1.)

Art. 774b. Same; on acceptance to possess powers and liabilities of cities, etc., under laws of this state.—All the inhabitants of each city, town or village so accepting the provisions of chapters one to thirteen of Title twenty-two of the Revised Statutes of Texas, and the amendments thereto, shall continue to be a body corporate, with perpetual succession, by the name and style by which such city, town or village was known before the acceptance of the provisions of such title, and as such they and their successors by that name shall have, exercise and enjoy all the rights, immunities, powers, privileges and franchises possessed and enjoyed by the same at the time of the acceptance of the provisions of such title twenty-two of the Revised Statutes of Texas and the amendments thereto, and those herein granted and conferred, and shall be subject to all the duties and obligations pertaining to or incumbent on the same as a corporation at the time of the acceptance of the provisions of such title, and may ordain and establish such acts, laws, regulations and ordinances, not inconsistent with the constitution and laws of this State, as shall be needful for the government, interest, welfare and good order of said body politic, and, under the same

name, shall be known in law, and be capable of contracting and being contracted with, suing and being sued, impleading and being impleaded, answering and being answered unto, in all courts and places, and in all matters whatever, may take, hold and purchase, lease, grant and convey such real and personal or mixed property or estate as the purposes of the corporation may require, within or without the limits thereof; and may make, have and use a corporate seal and change and renew the same at pleasure. (Id. sec. 2.)

Art. 774c. Same; property rights.—Be it further enacted that all property, real, personal, or mixed, belonging to any such city, town or village, so incorporated under and by virtue of any law of the Republic of Texas, general or special, accepting the provisions of chapters one to thirteen of Title twenty-two of the Revised Statutes of Texas of 1911, and the amendments of 1911, 1913 and 1915, is hereby vested in the corporation thus created, and the council of such city, town or village is hereby authorized and empowered to sell and alienate such property and to appropriate the proceeds of such sale to the acquisition or construction, maintenance or operation of a water, sewer, gas and electric light and power system, or any one or more of such systems, within or without the limits of such city or town, or for any other public improvement within said city or town, as the council thereof may determine. (Id. sec. 3.)

Art. 774d. Same; detachment of uninhabited territory and readjustment of boundaries.—Be it further enacted that whenever there shall exist within the boundaries of any such city, town or village accepting the provisions of chapters one to thirteen of Title twenty-two of the Revised Statutes of Texas, and the amendments thereto, under the provisions of this Act, territory to the extent of at least ten acres, contiguous, uninhabited and adjoining the lines of such city or town, the Mayor and Council of such city or town shall, within one year, from the filing in the office of the Clerk of the County Court of the action of the Council accepting the provisions of this Act, or as soon thereafter as practicable, and before they shall levy any taxes for said city or town, by ordinance duly passed discontinue said territory as a part of said city or town and shall redefine the bounds and limits of such city or town so that they shall conform as nearly as practicable to the requirements of Article 777 of the Revised Statutes of Texas; and when said ordinance[s] has been duly passed, the clerk shall enter an order to that effect on the minutes or records of the city or town council; and from and after the entry of such order, said territory shall cease to be a part of said city or town; provided that should there be situated within the said territory, so discontinued, any property of any description belonging to said city or town, the title to said property, so situated, shall remain in such city or town and may be sold, alienated and disposed of by such city or town, the same as if it were situated within the bounds and limits of such city or town. (Id. sec. 4.)

Art. 775. (386) (340c) Validating incorporations.—That all towns and cities of one thousand inhabitants or more which have heretofore attempted to accept the provisions of this Title and to become incorporated cities of one thousand inhabitants or more, under the general laws of Texas, and have failed to comply with all the requirements of said general laws, or which are not included within the literal meaning of those cities which are authorized to accept the provisions of said general laws, and all towns and villages incorporated under Chapter 14 of this Title or Chapter 11 of Title 18 of the Revised Civil Statutes of 1895, or by special charter, or otherwise, but which now have six hundred inhabitants or more, and which have heretofore attempted to accept the provisions of this Title in lieu of their said town or village charter and become incorporated cities of one thousand inhabitants or more, but which said cities have from and after the dates of their several attempted incorporations and their several efforts to accept the provisions of this Title exercised the functions of cities of the class named, and were by the State of Texas recognized as such cities are hereby declared to be cities of six hundred inhabitants or more; and the several acts whereby they attempted to accept the provisions of said law are hereby, in all things validated; and that all subsequent acts of said cities and towns done and performed as a city of one thousand inhabitants or more, after they had attempted to accept the provisions of said law as aforesaid are hereby validated and declared to be as binding as if said cities had been duly and legally incorporated; provided, that nothing herein shall be construed as validating any act of said cities or the councils thereof, unless same were authorized by the general laws of the State under which they were attempting to act at the several dates when said acts were done; and provided, further, that the provisions of this Article shall not validate the act of any town or city in unlawfully adding additional territory to such town or city without the consent of such inhabitants so added to said town or city. (Acts 1891, p. 26; Acts 1915, ch. 34, sec. 1.)

See Acts 1895, p. 45 (omitted by revisors); McMickle v. Hardin, 61 S. W. 322; Lamar v. S., 95 S. W. 509.

Art. 776. Validating incorporations.—All cities or towns of one thousand inhabitants or over incorporated since March 30, 1895, which have heretofore attempted to accept the provisions of chapter one, title eighteen, of the Revised Civil Statutes of 1895, and which have attempted to be incorporated under the provisions of said general law, but which said attempted incorporation is invalid by reason of the failure of said cities or towns to comply with all the requirements of the law relating to the incorporation of towns or villages, but which said cities or towns have from and after the dates of their several efforts to accept the provisions of law relating to the incorporation of cities or towns of one thousand inhabitants or over exercised the functions of cities or towns of the class named and been recognized as such cities or towns are hereby declared to be cit-

ies of one thousand inhabitants or over; and their incorporation as such is hereby in all things validated; provided, that nothing in this act shall be held to validate the incorporation of cities or towns that had less than one thousand inhabitants at the time of their attempted incorporation as such cities or towns of one thousand inhabitants or over. (Acts 1897, p. 59.)

Art. 776a. Same subject.—That each charter and each act of incorporation adopted by the qualified voters of cities of over five thousand inhabitants that have incorporated under Chapter 147, page 307, Acts of the Regular Session of the 33rd Legislature, 1913, prior to December 15, 1915, and filed in the office of the Secretary of State, the population of which was less than five thousand inhabitants, as shown by the United States Census of 1910, but which, at the time of the adoption of the charter or act of incorporation, was in excess of five thousand inhabitants according to an official census taken under the direction and supervision of the city council, be and the same are hereby validated and are hereby declared to be in full force and effect the same as if adopted in strict compliance with the requirements of said Chapter 147, page 307, Acts of the Regular Session of the 33rd Legislature, 1913, and this Act shall take effect and be in force from and after its passage. (Acts 1918, 4th C. S., ch. 68, sec. 1.)

Art. 777. (386a) Territorial boundaries of cities and towns, etc.—No city or town in this state shall be hereafter incorporated under the provisions of the general charter for cities and towns contained in title twenty-two of the Revised Civil Statutes of this state, with a superficial area of more than two square miles, when such town or city has less than two thousand inhabitants, nor more than four square miles, when such city or town has more than two thousand and less than five thousand inhabitants, nor more than nine square miles, when such city or town has more than five and less than ten thousand inhabitants. It shall be the duty of the mayor and board of aldermen, immediately after they qualify as such officers, to pass an ordinance causing an actual survey of the boundaries of such town to be made according to the boundaries designated in the petition for incorporation, and the field-notes thereof recorded in the minute book of such town or city, and also in the record books of deeds in the county in which such town or city is situated. (Acts 1895, p. 17.)

Thompson v. S., 56 S. W. 603; State v. Larkin, 90 S. W. 912; Merritt v. S., 94 S. W. 372; City of Carthage v. Burton, 111 S. W. 440; Spurlin v. S. ex rel. Graves, 115 S. W. 128; Wilson v. Carter, 161 S. W. 411; State ex rel. Burchill v. City of Polytechnic, 194 S. W. 1136.

Art. 778. (386b) Excessive territory to be relinquished.—It shall be the duty of the mayor and the board of aldermen of any town or city in this state heretofore incorporated under title eighteen of the Revised Civil Statutes of 1895 of this state, and whose boundaries have been established so as to include more territory than is specified in article 777, to immediately cause a resurvey of the boundaries of such city or town to be made, so as not to include more territory than is provided for in article 777; such resurvey to be made and the field-notes thereof to be recorded as provided in article 777. (Id. sec. 2.)

Art. 779. (386c) Validating certain incorporations.—All cities and towns in this State whose charters may be void by reason of a failure to properly define their limits or that may have included in such limits more territory than was provided for in Article 386a, Revised Civil Statutes of Texas, 1895, that shall have, within ninety days from the taking effect of this Act, complied with Article 386b, Revised Civil Statutes, 1885, are hereby declared to be valid; and such charters and incorporations are hereby in all things validated, the same as if such territorial limits had at first been properly established. (Acts 1897, p. 6; Acts 1899, p. 321; Acts S. S. 1901, p. 32; Acts 1903, p. 68; Acts 1915, ch. 34, sec. 1.)

See State v. Larkin, 90 S. W. 912; Short v. Gouger, 130 S. W. 267; Wilson v. Carter, 161 S. W. 411.

Art. 780. (386d) Discontinuing territory.—Whenever there exists within the corporate limits of any city or town organized under the general laws within this state territory to the extent of at least ten acres, contiguous, uninhabited, and adjoining the lines of any such city or town, the mayor and city or town council may by ordinance duly passed discontinue said territory as a part of said city or town; and when said ordinance has been duly passed, the mayor shall enter an order to that effect on the minutes or records of the city or town council; and, from and after the entry of such order, said territory shall cease to be a part of said city or town. (Acts 1895, p. 178.)

Art. 781. (574) (503) Adjoining inhabitants may become part of city, how.—Whenever a majority of the inhabitants qualified to vote for members of the state legislature of any territory adjoining the limits of any city incorporated under, or accepting the provisions of, this title, to the extent of one-half mile in width, shall vote in favor of becoming a part of said city, any three of them may make affidavit to the fact, to be filed before the mayor, who shall certify the same to the city council of said city. The said city council may, by ordinance, receive them as part of said city; from thenceforth the territory so received shall be a part of said city; and the inhabitants thereof shall be entitled to all the rights and privileges of other citizens, and bound by the acts and ordinances made in conformity thereto, and passed in pursuance of this title. (Acts 1875, ch. 100, sec. 155.)

Art. 782. (575) (503a) Segregating territory from city.—Whenever fifty qualified voters of any territory within the limits of any incorporated town shall sign and present a petition to the mayor of such city, praying that such territory, setting the same out by metes and bounds, be declared no longer a part of such town, it shall be the duty of the mayor thereof to order an election within thirty days thereafter, to be holden at the different voting precincts of said town; and if a majority of the legal voters of said town voting at such election cast their votes in favor of discontinuing said territory as a part of said town, the mayor of said city shall declare such territory no longer a part of said city, and shall enter an order to that effect on the minutes

or records of the city council; and from and after the date of such order, said territory shall cease to be a part of said town; provided, no city or town shall thus be reduced to a less area than one square mile or one mile in diameter around the center of the original corporate limits. (Acts 1883, p. 99.)

Art. 783. (576) (503b) Liable for debts, etc.—Whenever any territory shall withdraw as above provided, and such city or town shall at the time of such withdrawal owe any debts by bond or otherwise, such withdrawing territory shall not be released from the payment of its pro rata of such indebtedness; but it shall be the duty of said city council to continue to levy an ad valorem tax each year on the property of said territory of the same rate as is levied upon other property of such city, until the taxes collected from said territory shall equal its pro rata share of the indebtedness of said city or town at the time of the withdrawal. The taxes so collected shall be charged only with the cost of levying and collecting the same, and the same shall be applied exclusively to the payment of said pro rata share of indebtedness. Nothing herein shall be construed to prevent the inhabitants of said territory from paying in full, at any time, their pro rata share of the indebtedness of said city. (Id.)

Art. 783a. Cities on navigable streams and under special charters may extend limits; may acquire land for improvement of navigation, etc.—That from and after the passage of this Act the right, power and authority is hereby given to the city council of all cities situated along or upon navigable streams in the state of Texas, and acting under special charters, to extend the limits of said city for the limited purposes named in this Act, so as to include in said city the said navigable streams and the land lying on both sides thereof for a distance of twenty-five hundred (2500) feet from the thread of said stream to a distance of twenty (20) miles or less in an air line from the ordinary boundaries of said city, either above or below the boundaries of said city or both, by the passage of an ordinance extending the boundaries of said city to include the territory aforesaid, being a strip five thousand feet wide and twenty miles, more or less, in length, or so much thereof as the city council may consider advisable to add to the limits of said city; and from and after the passage of said ordinance the city council of said city shall have the right, power and authority to secure land within the territory so added to said city by purchase condemnation or gift for the improvement of the navigation of said navigable stream or waters, either by the United States or by said city, or by any navigation or other improvement district, and for the purpose of establishing and maintaining wharves, docks, railway terminals, side tracks warehouses or any other facilities or aids whatsoever to either navigation or wharves; and for these purposes the corporate limits of said cities shall, upon passage of said ordinance, be extended from the existing limits so as to include all the land added to said city by said ordinance, provided that said city shall have no right to tax the property over which such boundaries are so extended, unless such property be within the line and within the limits of the general city boundaries or limits; and provided further, that after the passage of said ordinance adding said territory to said city, said city shall have and exercise within said limits the fullest and most complete power of regulation of navigation and of wharfage and of wharfage rates and of all facilities, conveniences and aids to wharfage or navigation consistent with the constitution of this state, and shall further have authority by criminal ordinances or otherwise, to police the navigation of said waters and the use of said wharves and facilities and aids to wharfage and navigation, provided in all condemnation proceedings under this Act the same procedure shall apply that now applies in condemnation of land by cities for the purchases of streets. (Acts 1913, p. 47, sec. 1.)

Art. 783b. Not to include land of other cities or town corporations.—The power here granted shall not authorize the extension of the territory of any city for the limited purposes named so as to include any land which is already part of any other city or town corporation, whether incorporated under the general laws or under special law, or any land at the time belonging to any other city or town. (Id. sec. 2.)

Art. 783c. Cities may lease oil or mineral lands.—Any town or City in this State, which has been, or may hereafter be chartered or organized, under the General Laws of Texas, or by Special Act or Charter, in which said City or town may own oil or mineral lands, shall have the power and right to lease such oil or mineral lands for the benefit of such town or city, provided that such town or city shall not lease for such purposes any street or alley or public square in said town or city, or any land therein dedicated by any person or persons to public uses in such town or city; and provided further that no well shall be drilled within the thickly settled portion of any city or town, nor within two hundred (200) feet of any private residence. (Acts 1919, ch. 117, sec. 1.)

CHAPTER TWO

OFFICERS AND THEIR ELECTION

Art. 784. (387) (344) Municipal government consists of what.—The municipal government of the city shall consist of a city council composed of the mayor and two aldermen from each ward, a majority of whom shall constitute a quorum for the transaction of business, except at called meetings or meetings for the imposition of taxes, when two-thirds of a full board shall be required, unless herein otherwise specified; provided, that where the city or town shall not be divided into wards, the city council shall be composed of the mayor and five aldermen, and the provisions of this title relating to proceedings in a ward shall apply to the whole city or town. The other officers of the corporation shall be a treasurer, an assessor and collector, a secretary, a city attorney, a marshal and city engineer, and such other officers and agents as the city council may from time to time direct; provided, that the office of treasurer, assessor and collector, city attorney, and city engineer may be dispensed with by an ordinance of the city or town council; and the powers

and duties herein prescribed for such officers may be conferred by said council upon other officers. The above named officers shall be elected by the qualified electors of said city, as hereinafter provided for, and shall hold their offices for two years, and until the election and qualification of their successors. (Acts 1881, p. 115.)

Art. 785. (388) (345) Manner of electing officers, etc.—An election shall be held in each of the wards of said city, on the first Tuesday in April, next after the acceptance of the provisions of this title, and annually thereafter, at such place or places as the city council may direct, and of which thirty days' previous notice shall be given. Such election shall be ordered and notice thereof shall be given, and election officers and supervisors appointed, as provided by article 2934. The presiding officers and judges must be qualified voters in the city. The city council shall provide for their compensation, and, by ordinance, regulate and define their powers and duties. (Id. Acts 1905, S. S. p. 533, sec. 56.)

Art. 786. (389) (346) Election, etc., of mayor and aldermen.—At the first election under this title, there shall be elected by the qualified voters of said city, voting by ballot, a mayor, who shall hold his office for two years from the date of his election, and until his successor shall be elected and qualified; and at the first election held under this title there shall be elected by the qualified voters of said city two aldermen from each ward in said city, one of whom shall hold his office for one year, and the other for two years, from the date of their election; and the term for which each shall hold office shall be determined at the first regular meeting after said election by lot; provided, that there shall be one alderman for the long term and one for the short term from each of said wards respectively; and provided, further, that at each annual election thereafter there shall be elected one alderman from each ward, who shall hold his office for two years, and until his successor is duly elected and qualified; and provided, further, that where the city or town shall not be divided into wards, the city council may determine by proper ordinance what number of aldermen shall go out of office in one year, and the mode and manner of deciding which members shall hold for the long term and which for the short term. (Acts of 1895, p. 8.)

Art. 787. (390) (347) Time of holding election, and returns thereof.—At all elections under this title, the ballots of each ward shall be taken separately, the polls being opened in each ward for one day only, from eight o'clock a. m. until six o'clock p. m., with the privilege of a recess of one hour from twelve o'clock to one o'clock. Should the polls not be promptly opened for the reception of votes by eight o'clock a. m., the time thus lost shall be extended beyond the hour of six p. m., so as to secure the full period of nine hours for voting purposes. On closing the polls, the managers of election shall immediately proceed to count and cast up the votes for each candidate and certify and sign the returns in duplicate, one of which shall be sealed up and returned by the presiding officer for future use as a reference in case of a contested election; the other copy shall be sealed up with the name of the presiding officer written across the seals, and by the presiding officer, or in his absence or inability, by one of the judges or clerks, delivered in open session to the city council the next day or as soon thereafter as practicable. The officer so delivering the same shall make oath before the mayor or one of the aldermen that the returns by him delivered have not been altered or opened since being signed and sealed, as aforesaid. As received, the city council shall immediately open the returns from each ward, casting up the votes of the wards for mayor, city attorney, tax assessor and collector, treasurer, city marshal, city engineer and secretary, and for aldermen of the several wards as hereinbefore provided for; and the persons receiving the highest number of votes for the offices of mayor, city attorney, tax assessor and collector, treasurer, city marshal, city engineer, secretary, and aldermen shall be declared elected to their respective offices; provided, that at the first election held under this statute the two persons from the same ward receiving the highest number of votes in the city for aldermen of the wards for which they are candidates shall be declared elected aldermen of such wards respectively in which they were candidates; and at all subsequent elections held thereunder, only one alderman shall be elected from each ward by the qualified voters of such town or city. The newly elected officers may enter upon their duties on the fifth day thereafter, Sundays excepted; provided, that any officer may qualify at any time within thirty days after his election; otherwise the office shall be deemed vacant, and a new election held to fill the same. It shall be the duty of the secretary to notify all persons elected or appointed to office of their election or appointment; and the city council-elect shall meet at the usual place of meeting on the fifth day, Sundays excepted, after their election, or as soon thereafter as possible, and be installed under the provisions of this title. (Id.)

Art. 788. (391) (348) Who are qualified voters for city officers.—Every person not disqualified by law who shall have attained the age of twenty-one years and is entitled to vote for members of the legislature of this state, and is duly registered, and shall have resided within the corporate limits of said city for six months next preceding the election, shall be entitled to vote for the officers of said city; provided, nevertheless, that no person belonging to the regular army of the United States shall be so entitled. (Act March 15, 1875, p. 256, sec. 7.)

Art. 789. (392) (349) Managers of election shall be sworn; their powers and duties.—The managers of election shall be sworn well and truly to conduct the election, without partiality or prejudice, and agreeably to law, and according to the best of their skill and understanding; which oath shall be administered by the mayor or any justice of the peace. The presiding officer and judges thus qualified shall have power to administer oaths necessary to the performance of their official duties. When any person offering a vote shall be objected to by any one qualified to vote at such election,

the managers shall examine him on oath touching the points objected to; and, if he fail in establishing his qualification to their satisfaction, his vote shall be rejected. (Id. sec. 8.)

Art. 790. (393) (394a) Proceedings where vote challenged.—In any election, state, county or municipal, being held in any city or town of ten thousand inhabitants or more according to the last preceding United States census, when the right to vote of any elector offering to vote is challenged, the following proceedings shall be had: The judges of election shall refuse to accept such vote of such elector, unless, in addition to his own oath, he proves by the oath of one well known resident of the ward that he is a qualified voter at such election and in such ward. When such vote is accepted, the judges shall cause the clerk of election to make a minute of the name of the elector and the party testifying under oath as to his qualifications; and such memoranda shall be kept by the clerk of the county court for six months after such election is held, subject to the order of the district judge. Whenever the right of an elector to vote is challenged, the word "challenged" shall be entered on the ballot, if accepted by the judges. Any elector voting at any election who does not possess the legal qualifications shall be punished as now provided by law for illegal voting; and any person swearing falsely as to his own qualifications or those of a challenged elector shall be punished as now provided by law for false swearing. (Acts of 1891, p. 47.)

Art. 791. (394) (350) Proceedings in case of a tie vote, etc.—Whenever it so happens in any election that there is a tie between two or more candidates for the same office all of whom cannot be elected, the city council shall declare such election void as between such candidates only, and immediately order a new election for the office, first giving not less than five days' notice thereof. In the event of a failure to meet on the part of the city council to examine the election returns and declare the result, the mayor shall discharge that duty. (Act March 15, 1875, p. 256, sec. 9.)

Art. 792. (395) (351) Who are eligible to the office of mayor and alderman.—No person shall be eligible to the office of mayor unless he possesses the qualifications of an elector, and shall have resided twelve months next preceding the election within the limits of the city; and no person shall be eligible to the office of alderman unless, in addition to the above qualifications, he be a resident of the ward from which he may be elected at the time of the election; provided, that if any alderman shall remove from the ward in which he was elected, his office shall be deemed vacant, and a new election ordered to fill the same. (Id. sec. 10.)

Art. 793. (566) (495) Member of city council ineligible to other office, and shall not be contractor, surety, etc.—No member of the city council shall hold any other employment or office under the city government while he is a member of said council, unless herein otherwise provided; and no member of the city council, or any officer of the corporation, shall be directly or indirectly interested in any work, business or contract, the expense, price or consideration of which is paid from the city treasury, or by an assessment levied by an ordinance or resolution of the city council, nor be the surety of any person having a contract, work or business with said city, for the performance of which security may be required, nor be the surety on the official bond of any officer of the city. (Acts 1875, ch. 100, sec. 147.)

Art. 794. (562) (491) None but resident voters eligible to office.—No person other than an elector resident of the city shall be appointed to any office by the city council. (Id. sec. 143.)

Art. 795. (563) (492) Resignation of officers.—Resignation by any officer authorized to be elected or appointed by this title shall be made to the city council in writing, subject to their approval and acceptance; provided, that nothing in this article shall apply to appointments by the mayor. Any such appointee wishing to resign shall present his resignation to that officer, in writing, for his action. (Id. sec. 144.)

Art. 796. (564) (493) Power of city council to remove officers.—The city council shall have power to remove any officer for incompetency, corruption, misconduct or malfeasance in office, after due notice and an opportunity to be heard in his defense. In addition to the foregoing power of removal, the city council shall have power at any time to remove any officer of the corporation elected by them, by resolution declaratory of its want of confidence in said officer; provided, that two-thirds of the aldermen elected vote in favor of said resolution. (Id. sec. 145.)

Art. 797. (396) (352) Vacancy, how filled.—In case of a vacancy in the office of mayor or alderman, by refusal to accept or failure to qualify, or by death, resignation or otherwise, the city council shall order a new election to fill such vacancy; and all special elections shall be conducted as is herein provided for in the annual election; provided, that in all special elections to fill vacancies ten days' notice shall be deemed sufficient. In case of a vacancy in any other office in the city than mayor or alderman, by refusal to accept or failure to qualify, or by death, resignation or otherwise, the mayor or acting mayor, shall fill such vacancy by appointment to be confirmed by the city council. (Acts of 1887, p. 41.)

Art. 798. (397) (353) Election to fill vacancy ordered by commissioners' court, when.—Whenever a vacancy occurs, by resignation or otherwise, in the municipal offices of any incorporated town or city in this state, so that the vacancy can not be filled under the charter of said town or city, or under the laws of this state now in force, then, and in that event, it shall be the duty of the commissioners' court of said county in which said town or city is situated, upon a petition of not less than twenty-six taxpaying voters living in said city, to order an election to be held to fill such vacancy, giving notice of not less than ten days in the usual manner provided for such elections; provided, where such town or city has been chartered by special act of the legislature, and such town or city contains more than two hundred and less than five thousand inhabitants, and the offices of such town or city have been vacant for a period of ten years or more, such charter of said

town or city shall become void and forfeited, and no election of officers in such town or city shall be had; but the inhabitants of such town or city may reincorporate under the general laws of this state, relating to towns and cities, in the manner as now, or may hereafter be, prescribed by the laws of this state. (Acts 1897, p. 159. Acts 1875, p. 256.)

State v. Larkin, 90 S. W. 912.

Art. 799. (398) (354) Election, etc., in such case, how conducted, etc.—Said election shall, in all things, be carried on as required by law in similar elections; and the officers so elected shall in like manner be qualified and installed into office. (Act March 15, 1875, p. 256, sec. 2.)

Art. 800. (565) (494) Outgoing officer shall deliver books, etc., to his successor, etc.—Whenever any person shall be removed from any office, or the term for which he was elected or appointed has expired, or he has resigned, or has ceased to act in his official capacity, he shall deliver over to his successor all books, papers and effects in any way appertaining to his office. Every person violating this provision shall be guilty of a misdemeanor, and shall be deemed an offender within the meaning of any law of the state punishing such offenses, and, in addition thereto, he shall, on conviction before the mayor or recorder, be fined in a sum not exceeding five hundred dollars, and imprisoned for any time not exceeding six months or either. Any officer who shall have been intrusted with the collection or custody of funds belonging to said city who shall be in default to said city, besides being liable to criminal prosecution and a civil action for debt, shall thereafter be incapable of holding any office under said city, until the amount of his defalcation shall have been fully paid to said city, with twelve per cent interest. (Acts 1875, ch. 100, sec. 146.)

Art. 801. (399) (355) City council composed of mayor and aldermen, etc.—The city council shall be composed of the mayor and aldermen provided for by this title. The mayor shall be president of the council, and in case of a tie on any question he shall give the casting vote. At the first meeting of each new council, or as soon thereafter as practicable, one of the aldermen shall be elected president pro tempore, who shall hold his office for one year. In case of the failure, inability or refusal of the mayor to act, the president pro tempore shall perform the duties and receive the fees and compensation of the mayor. (Act March 15, 1875, p. 256, sec. 12.)

Art. 802. (553) (482) Wards of city to remain unchanged until, etc.—The wards of each city accepting the provisions of this title shall be and remain unchanged by its acceptance; provided, that the city council shall have power from time to time to cause a division of said city to be made into as many wards as they may deem necessary, and for the good of the inhabitants of said city, and may change the boundaries of the same; but no such division or change shall be made unless it be done at least three months preceding the city election next ensuing; and said wards so established shall contain as far as practicable an equal number of voters. (Acts 1875, ch. 100, sec. 134.)

CHAPTER THREE

DUTIES AND POWERS OF OFFICERS

Art. 803. (400) (356) Officers shall take official oath.—Every person elected by the voters of said city to fill any office, or by the city council, under this title, shall, before entering on the duties of his office, take and subscribe the official oath prescribed in the constitution of this state; and the city council may, by ordinance, require such additional oath as they may deem best calculated to secure faithfulness in the performance of their duties by such officers. (Acts 1875, ch. 100, sec. 13.)

Art. 804. (401) (357) Duties of mayor.—The mayor of the city shall be the chief executive officer of said corporation, and shall be vigilant and active at all times in causing the laws and ordinances for the government of said city to be duly executed and put in force. He shall inspect the conduct of all subordinate officers in the government thereof, and, as far as it may be in his power, shall cause all negligence, carelessness and positive violations of duty to be prosecuted and punished. He shall have power, whenever in his judgment the good of the city may require it, to summon meetings of the city council; and he shall, from time to time, communicate to that body all such information, and recommend all such measures, as may tend to the improvement of the finances, the police, health, security, cleanliness, comfort, ornament and good government of said city. (Acts 1881, p. 115, secs. 1, 2.)

Art. 805. (402) (358) Mayor may summon citizens to act as a special police force, etc.—Whenever the mayor shall deem it necessary, in order to enforce the laws of the city, or to avert danger, or protect life or property, in case of riot or any outbreak or calamity or public disturbance, or when he has reason to fear any serious violation of law or order, or any outbreak, or any other danger to said city, or the inhabitants thereof, he shall summon into service, as a special police force, all or as many of the citizens as in his judgment and discretion may be necessary and proper; and such summons may be by proclamation or order addressed to the citizens generally, or those of any ward of the city, or subdivision thereof; or such summons may be by personal notification. Such special police force, while in service, shall be subject to the orders of the mayor, shall perform such duties as he may require, and shall have the same power while on duty as the regular police force of said city; and any person so summoned and failing to obey, or appearing and failing to perform any duty that may be required by this title, shall be fined in a sum not exceeding one hundred dollars. (Acts 1875, ch. 100, sec. 15.)

Art. 806. (403) (359) Powers of the mayor.—The mayor shall have like power, with a justice of the peace, to administer oaths of office. He shall possess and execute, in the city, in criminal cases, all the powers and duties of a justice of the peace. He shall have authority in case of a riot or any unlawful assemblage, or with a view to preserve peace and good order in said city, to order and enforce the closing of any theater,

ball-room, grog-shop, tippling-house, bar-room or other place of resort, or public room, or building, and may order the arrest of any person violating, in his presence, the laws of the state, or any ordinance of the city; and he shall perform such other duties and possess and exercise such other power and authority as may be prescribed and conferred by the city council. (Id. sec. 16.)

Art. 807. (404) (360) Ordinances and resolutions adopted shall not take effect until, etc.—All ordinances and resolutions adopted by the council shall, before they take effect, be placed in the office of the city secretary; and if the mayor approve thereof, he shall sign the same; and such as he shall not sign, he shall return to the city council, with his objections thereto. Upon the return of any ordinance or resolution by the mayor, the vote by which the same was passed shall be reconsidered; and if, after such reconsideration, a majority of the whole number of aldermen agree to pass the same, and enter their votes on the journal of their proceedings, it shall be in force; and if the mayor shall neglect to approve or object to any such proceedings for a longer period than three days after the same shall be placed in the secretary's office as aforesaid, the same shall go into effect. (Id. sec. 17.)

For provisions as to recorder and clerk of corporation court, see chapter, "Corporation Court."

The Act of 1899, chapter 3, page 40, creating corporation courts (embodied in chapter 5 of this title), abolished the municipal court and offices of judge, recorder and clerk thereof, in every city, town, or village (as theretofore established) after the due and legal organization of the corporation court therein.

Art. 808. May appoint police officers; salary, fees, tenure, etc., bond; powers.—The city council or town council in any city or town in this state, incorporated under the provisions of this title relating to cities and towns, may, by ordinance, provide for the appointment, term of office and qualifications of such police officer, or officers, as may by such city council be deemed necessary. Such police officer or officers so appointed by such city council shall receive a salary or fees of office, or both, as shall be fixed by the city council; and such city council may, by ordinance, provide that such police officer or officers so appointed shall hold their office at the pleasure of the city council and for such term as the city council may from time to time direct. Such police officer or officers, so appointed by such city council, shall give such bond for the faithful performance of his duties, as the city council may require; and such police officer or officers so appointed shall have like powers, rights and authority as are by said title vested in city marshals. (Acts 1907, p. 299.)

Art. 808a. Hours of work of patrolmen in certain cities; proviso.—In all incorporated cities and towns of this State, whether incorporated by general or special law, or under any other law or any provision of the constitution of this State in whatsoever manner, having a population of fifty-thousand inhabitants or more, according to the last United States census, and which maintains a regular police department, the patrolmen thereof, or those performing duties ordinarily performed by patrolmen, shall be required to serve on actual duty as patrolmen not longer than eight hours in every twenty-four hours of the day; provided that in cases of riot or other emergency such patrolmen shall perform such duty and for such time as the directing authority of the departments shall require. (Acts 1917, ch. 182, sec. 1.)

Art. 809. (407) (483a) (363) Duties and powers of the marshal.—The marshal of the city shall be ex officio chief of police, and may appoint one or more deputies; the appointment of which deputies shall only be valid upon the approval of the city council. Said marshal shall, either in person or by deputy, attend upon the recorder's or mayor's court while said court is in session, and shall promptly and faithfully execute all writs and process issued from said court; he shall have like power, with the sheriff of the county, to execute the writ of search warrant; he shall be active in quelling riots, disorder and disturbances of the peace within the limits of said city, and shall take into custody all persons so offending against the peace of the city and shall have authority to take suitable and sufficient bail for the appearance before the recorder's or mayor's court of any person charged with an offense against the ordinances or laws of the city; it shall be his duty to arrest, without warrant, all violators of the public peace and all who obstruct or interfere with him in the execution of the duties of his office or who shall be guilty of any disorderly conduct or disturbances whatever; to prevent a breach of the peace or preserve quiet and good order, he shall have authority to close any theater, bar-room, ball-room, drinking house, or any other place or building of public resort; and in the prevention and suppression of crime and arrest of offenders, he shall have, possess and execute like power, authority and jurisdiction as the sheriff of the county under the laws of the state. He shall receive a salary or fees of office, or both, to be fixed by the city council. The marshal shall give such bond for the faithful performance of his duties as the city council may require; and he shall perform such other duties and possess such other powers, rights and authority as the city council may, by ordinance, require and confer, not inconsistent with the constitution and laws of this state.

Art. 809a. Certain cities may dispense with office of marshal, etc.—A city council or town council of any city or town within this state having less than three thousand inhabitants, according to the last preceding census, may, by an ordinance of said [city] council or town council, as the case may be, dispense with the office of marshal, and at the same time, by such ordinance, confer the duties of said office upon any peace officer of said county; provided, that when the city marshal has been elected by the people, he shall not be removed during his term of office, under the provisions of this article. (Acts 1875, p. 256; Acts 1901, p. 289; Acts 1903, p. 114.)

Art. 810. (408) (364) Duties of the secretary.—It shall be the duty of the city secretary to attend every meeting of the city council, and keep accurate minutes of the proceedings thereof in a book to be provided for that purpose, and to engross and enroll all laws, resolutions and ordinances of the city council, to keep the corporate seal, to take charge of, and preserve and keep in

order, all the books, records, papers, documents and files of said council, to countersign all commissions issued to the city officers and licenses issued by the mayor, and to keep a record or register thereof, and to make out all notices required under any regulation or ordinance of the city. He shall draw all warrants on the treasurer, and countersign the same, and keep an accurate account thereof in a book provided for the purpose. He shall be the general accountant of the corporation, and shall keep in books regular accounts of the receipts and disbursements for the city, and separately, under proper heads, each cause of receipt and disbursement, and also accounts with each person, including officers who have money transactions with the city, crediting amounts allowed by proper authority and specifying the particular transaction to which such entries apply. He shall also keep a register of bonds and bills issued by the city, and all evidence of debt due and payable to it, noting the particulars thereof, and all facts connected therewith, as they occur. He shall carefully keep all contracts made by the city council; and he shall do, and perform, all such other duties as may be required of him by law, ordinance, resolution or order of the city council. He shall receive for his services an annual salary, payable at stated periods, and such additional fees as may be allowed by the city council.

Art. 811. (409) (365) Treasurer shall give bond; his duties, etc.—The treasurer of said city shall give bond in favor of the city in such amount, and in such form as may be required by the city council, and with sufficient security, to be approved by the city council, conditioned for the faithful discharge of his duties. He shall receive and securely keep all moneys belonging to the city, and make all payments for the same upon the order of the mayor, attested by the secretary under the seal of the corporation; provided, that no order shall be paid unless the said order shall show upon its face that the city council has directed its issuance, and for what purpose. He shall render a full and correct statement of his receipts and payments to the city council, at their first regular meeting in every quarter, and whensoever, at other times, he may be required by them so to do; at the end of every half year he shall cause to be published, at the expense of the city, a statement, showing the amount of receipts and expenditures for the six months next preceding, and the general condition of the treasury; and he shall do and perform such other acts and duties as the city council may require; and, for his services, he shall receive such compensation as shall be fixed by the city council. (Id. sec. 22.)

Art. 812. (411) (367) Powers of city council over officers.—The city council shall have power from time to time to require other and further duties of all officers whose duties are herein prescribed, and to define and prescribe the powers and duties of all officers appointed or elected to any office under this title whose duties are not herein specially mentioned, and fix their compensation. They may also require bonds to be given to the said corporation by all officers for the faithful performance of their duties. The city council shall provide for filling vacancies in all offices, not herein provided for; and, in all cases of vacancy, the same shall be filled only for the unexpired term. (Id. sec. 24.)

CHAPTER FOUR

GENERAL POWERS AND DUTIES OF THE CITY COUNCIL

Art. 813. (412) (368) City council, who shall preside over it, etc.—The mayor and aldermen shall constitute the city council of the city. The city council shall meet at such times and places as they shall by resolution direct. The mayor, when present, shall preside at all meetings of the city council, and shall, in all cases, have a casting vote, except in elections. In his absence and absence of president pro tempore, any one of the aldermen may be appointed to preside. (Acts 1875, ch. 100, sec. 25.)

Art. 814. (413) (369) Shall hold stated meetings; may call special meetings; petitions, etc., to, etc.—The city council shall hold stated meetings; and the mayor, of his own motion, or on the application of three aldermen, may call special meetings, by notice to each of the members of said council, the secretary and city attorney, served personally or left at their usual place of abode. Petitions and remonstrances may be presented to the council in writing only; and the council shall determine the rules of its proceedings, and be the judge of the election and qualifications of its own members, and have the power to compel the attendance of absent members, and punish them for disorderly conduct. (Id. sec. 26.)

Art. 815. (567) (496) Attendance, etc., of officers.—Each alderman shall be fined three dollars for each meeting which he fails to attend, unless on account of his own sickness or that of his family. Any member of the city council remaining absent for three regular consecutive meetings of the board, unless prevented by sickness, without first having obtained leave of absence at a regular meeting, shall be deemed to have vacated his office, and the mayor shall proceed to fill the vacancy in accordance with the charter. (Id. sec. 148.)

Art. 816. (569) (498) Salary of officers shall be fixed by city council, etc.—The city council shall, on or before the first day of January next preceding each and every election, fix the salary and fees of office of the mayor to be elected at the next regular election, and shall, at the same time, establish the compensation or salary to be paid to the officers elected or appointed by the city council; and the compensation or salary so established shall not be changed during the term for which said officers shall be elected or appointed. (Id. sec. 150.)

See City of Oak Cliff v. Etheridge, 76 S. W. 602; City of Uvalde v. Burney, 145 S. W. 311; Brown v. City of Amarillo, 180 S. W. 654; City of Brownsville v. Kinder, 180 S. W. 623; City of Brownsville v. Kinder, 204 S. W. 446.

Art. 817. (464) (418) Power to pass, etc., ordinances, etc., and other powers.—The city council shall have power to pass, publish, amend or repeal all ordinances, rules and police regulations, not contrary to the constitution of this state, for the good government, peace and order of the city and the trade and commerce thereof, that may be

necessary or proper to carry into effect the powers vested by this title in the corporation, the city government, or in any department or officer thereof; to enforce the observance of all such rules, ordinances and police regulations, and to punish violations thereof by fines, penalties and imprisonment in the prison, workhouse, or house of correction, or to work on the streets or other public works, or either, in the discretion of the court before whom conviction may be had; but no fine or penalty shall exceed one hundred dollars, nor the imprisonment more than fifteen days for any offense, unless a larger fine and longer period of imprisonment is herein allowed; and for any fine, penalty and costs imposed by the mayor or recorder in the trial of any cause or complaint before him, execution may issue to collect such fine and costs, to be levied and executed in the same manner that executions are from the district court. The same shall be issued by the mayor or recorder to the marshal, who, in levying on property and selling, shall have like power and authority as the sheriff of the county in executions issued from the district court; and the laws of the state, so far as applicable, shall apply to and be in full force and effect as to the executions issued from the mayor's or recorder's court; and any person upon whom any fine or penalty is imposed may be committed until the payment of the same, with costs, and in default thereof may be imprisoned in the city prison or workhouse, or house of correction, or may be required to work on the streets or other public work of the city for such time and in such manner as may be provided by ordinance; provided, such imprisonment shall not exceed fifteen days, unless a longer period is herein allowed. (Id. sec. 74.)

Art. 818. (559) (488) Style of ordinances.—The style of all ordinances shall be, "Be it ordained by the city council of the city of ———" (inserting the name of the city); but it may be omitted when published in the form of a book or pamphlet. (Id. sec. 140.)

Ex parte Keeling, 121 S. W. 605, 130 Am. St. Rep. 884.

Art. 819. (557) (486) Ordinances, when and how published.—Every ordinance imposing any penalty, fine, imprisonment or forfeiture shall, after the passage thereof, be published in every issue of the official paper for ten days; if the official paper be published weekly, the publication shall be made in one issue thereof; and proof of such publication shall be made by the printer or publisher of such paper, making affidavit before some officer authorized by law to administer oaths, and filed with the secretary of the city or town, and shall be prima facie evidence of such publication and promulgation of such ordinances in all courts of the state; and such ordinances so published shall take effect, and be in force, from and after the publication thereof, unless otherwise expressly provided. Ordinances not required to be published shall take effect, and be in force, from and after the passage, unless otherwise provided. If any town or city shall desire to publish its ordinances in pamphlet or book form, it shall not be necessary to republish such ordinances as have been previously published. (Acts 1889, p. 4.)

Art. 820. (560) (489) Ordinances, etc., remain in force until, etc.—All ordinances, regulations or resolutions in force in any city accepting the provisions of this title, and not in conflict with this title, shall remain in force under this title until altered, amended or repealed by the city council. (Acts 1875, ch. 100, sec. 141.)

Art. 821. (558) (487) Published ordinances admissible in evidence.—All ordinances of the city, where printed and published by authority of the city council, shall be admitted and received in all courts and places without further proof. (Id. sec. 139.)

Starks v. S., 42 S. W. 379; S. A. & A. P. Ry. v. Gray, 66 S. W. 229; R'y v. Hall, 81 S. W. 82; Hall v. R'y, 82 S. W. 520; St. Louis Southwestern Ry. Co. of Texas v. Garber, 111 S. W. 227; Woodruff v. Deshazo, 181 S. W. 250; Galveston, H. & S. A. Ry. Co. v. Harling, 208 S. W. 207.

Art. 822. (561) (490) Fines, etc., to be paid into city treasury.—All fines, forfeitures and penalties for the breach or violation of this title, or any regulation, order or ordinance of the city council, shall, when collected, be paid into the city treasury for the use and benefit of said city. (Id. sec. 142.)

Art. 823. (568) Council may remit fine and penalty.—The city or town council shall have power to remit in whole or in part, and on such conditions as may be deemed proper by them, by a vote of two-thirds of the members present, any fine or penalty belonging to the city, which may be imposed or incurred under this title, or under any ordinance or resolution passed in pursuance thereof. (Id. sec. 149.)

Art. 824. (568) May prescribe duties of officers, etc.—The city or town council shall have power to prescribe the duties of all officers and persons appointed by them or elected to any office or place whatever, subject to the provisions of this title. (Id. sec. 149.)

Art. 825. (440) (396) May create and regulate police.—To create, establish and regulate the police of the city; to appoint watchmen and policemen, and prescribe their duties and powers and compensation. (Id. sec. 52.)

City of Oak Cliff v. Etheridge, 76 S. W. 602.

Art. 826. (457) (411) May prevent trespasses, etc., and punish offenders.—To prevent all trespasses, breaches of the peace and good order, assaults and batteries, fighting, quarreling, using abusive, obscene, profane and insulting language, misdemeanors and all disorderly conduct, and punish all persons thus offending. (Id. sec. 67.)

Ex parte McCarver, 46 S. W. 936.

Art. 827. (425) (381) May regulate the carrying of weapons.—To regulate the carrying of weapons, and to prevent the carrying of the same concealed. (Id. sec. 38.)

Art. 828. (441) (397) May suppress riots, etc.—To suppress and prevent any riot, affray, noise, disturbance or disorderly assembly in any public or private place within the city. (Id. sec. 53.)

Art. 829. (443) (399) May punish vagrants, etc.—To restrain and punish vagrants, mendicants, street beggars and prostitutes. (Id. sec. 55.)

Art. 830. (434) (390) May restrain, etc., the sale, etc., of intoxicating liquors.—To restrain, regulate and prohibit the selling or giving away indirectly to evade a tax or penalty, of intoxicating or malt liq-

uors by any person within the city, except by persons duly licensed; to forbid or punish the selling or giving away of any intoxicating or malt liquors to any minor, apprentice or habitual drunkard. (Id. sec. 46.)

Art. 831. (436) (392) May prevent sale of liquors in certain places.—The city council shall have full power, by ordinance, to prevent the sale or giving away of any intoxicating liquors in any house or other place where theatrical or dramatic representations are given, and also to prevent intoxicating liquors of any description from being brought into any house or place where such representations are given, under any pretext whatsoever. (Id. sec. 48.)

Art. 832. (435) (391) May close drinking-houses, etc., on Sunday.—To close drinking houses, saloons, bar-rooms, beer saloons, and all places or establishments where intoxicating or fermented liquors are sold, on Sundays, and prescribe hours for closing them, and also all places of amusement and business. (Id. sec. 47.)

Art. 833. (458) (412) May prevent and punish the keeping of disorderly houses, etc.—To prevent and punish the keeping of houses wherein indecent, loud or immodest dramatic or theatrical representations are given, houses of prostitution within the city, and to adopt summary measures for the removal or suppression of all such establishments. (Id. sec. 68.)

Art. 834. (442) May prohibit and punish the abuse of animals.—To prohibit and punish the abuse of animals. (Id. sec. 54.)

Art. 835. (454) (409) May establish, etc., workhouses, etc.—To erect and establish one or more workhouses or houses of correction, within or without the city limits, make all necessary rules and regulations thereof, and appoint all necessary keepers or assistants. In such workhouse or house of correction may be confined all vagrants, stragglers, idle, suspicious and disorderly persons who may be committed by the mayor or recorder; and any person who shall fail or refuse to pay the fine, penalty or costs imposed for any misdemeanor or breach of any ordinance of the city may, instead of being committed to jail, be kept therein, subject to labor and confinement. (Acts 1879, p. 9, sec. 65.)

Art. 836. (455) (410) May compel convicts to labor on streets, etc.—To compel and force all offenders against any ordinance of the city, found guilty by the recorder or mayor and sentenced to fine and imprisonment, to labor on the streets and alleys of said city or on any public work, under such regulations as may by ordinance be established. (Id. sec. 66.)

Art. 837. (456) (410a) Regulate hiring of convicts.—To compel any person who may be convicted of a violation of any of the ordinances of the city, and who may be committed to jail in default of the payment of the fine and costs adjudged against such person to be hired out to any individual, company or corporation within the county in which said conviction is had (and to remain in said county) for the purpose of paying off and discharging said fine and costs, under such regulations as may be prescribed by ordinance, and to pass such ordinances as may be necessary to the regulation and enforcement of said contract of hiring. (Acts 1887, p. 136.)

Art. 838. (448) (404) May do, etc., to promote health and suppress disease.—To do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease. (Acts 1875, ch. 100, sec. 60.)

Art. 839. (417) (373) May make health and quarantine regulations.—To make regulations to prevent the introduction of contagious disease into the city; to make quarantine laws for that purpose, and to enforce them within the city and within ten miles thereof. (Id. sec. 30.)

Art. 840. (424) (380) May establish hospitals, etc.—To erect or establish one or more hospitals, and control and regulate the same, and to prohibit or to permit and regulate the establishment of private hospitals. (Id. sec. 37.)

Art. 841. (438) (394) May regulate inspection, etc., of provisions, etc.—To regulate the inspection of beef, pork, flour, meal, salt and other provisions, whisky and other liquors to be sold in barrels, hogsheads and other vessels and packages; to appoint weighers, gaugers and inspectors, and prescribe their duties and regulate their fees. (Id. sec. 50.)

Art. 842. (439) (395) May regulate weight and quality of bread.—To regulate the weight and quality of the bread to be sold or used within the city. (Id. sec. 51.)

Art. 843. (437) (393) May regulate butchers, etc.—To make such rules and regulations in relation to butchers as they may deem necessary and proper. (Id. sec. 49.)

Ex parte Wade, 146 S. W. 179; Howell v. City of Sweetwater, 161 S. W. 948; Dibrell v. City of Coleman, 172 S. W. 550; Bowers v. Machir, 191 S. W. 758.

Art. 844. (453) (408) May define nuisances and punish persons guilty thereof, etc.—To abate and remove nuisances and to punish the authors thereof by penalties, fine and imprisonment, and to define and declare what shall be nuisances and authorize and direct the summary abatement thereof. (Id. sec. 64.)

Gulf, C. & S. F. Ry. Co. v. City of Belton, 122 S. W. 413.

Art. 845. (447) (403) May abate nuisances.—To abate all nuisances which may injure or affect the public health or comfort in any manner they may deem expedient. (Id. sec. 59.)

Earle v. City of Henrietta, 41 S. W. 728; Eustis v. City of Henrietta, 43 S. W. 259; Mezlar v. City of Miles, 124 S. W. 972; Bowers v. Machir, 191 S. W. 758.

Art. 846. (450) (405) May compel the cleansing of premises.—To compel the owner or occupant of any grocery, soap, tallow or chandler establishment, or blacksmith shop, tannery, stable, slaughter-house, distillery, brewery, sewers, privy, hide-houses or other unwholesome on [or] nauseous house or place, to cleanse, remove or abate the same, as may be necessary for the health, comfort and convenience of the inhabitants. (Acts 1875, ch. 100, sec. 61; Acts 1879, p. 9, sec. 61.)

Art. 847. (459) (413) May require owner of drain, sink, etc., to fill up, cleanse, etc., the same, and punish for failure to do so.—To require the owner of

private drains, sinks and privies to fill up, cleanse, drain, alter, relay, repair, fix and improve the same as may be ordered by any resolution or ordinance of said city; and in the event of any failure, neglect or refusal to comply with any such order, the party so failing shall be liable to fine and imprisonment. In the event of there being no person in the city on whom such order can be served the city may have such work done and such improvements made on account of the owner thereof; and all costs, charges and expenses shall be a lien on the property, on the filing of a memorandum by the mayor, under the seal of the corporation thereof, and recording the same with the clerk of the district court; and the city may enforce said lien and institute suit in the corporate name and obtain judgment against said party for the amount so due as aforesaid in any court having jurisdiction. (Id. sec. 69.)

Art. 848. (451) (406) May direct the location of certain establishments, etc.— To direct the location of business, tanneries, blacksmith shops, foundries, livery stables and any manufacturing establishment; to direct the location and regulate the management and construction of, restrain, abate and prohibit within the city limits, slaughtering establishments and hide-houses or establishments for keeping or curing hides, establishments for making soap, for steaming or rendering lard, tallow, offal and such other substances as may be rendered; and all other establishments or places where any nauseous, offensive or unwholesome business may be carried on. (Acts 1879, p. 9, sec. 62.)

Art. 849. (452) (407) May regulate the burial of the dead, etc.—To regulate the burial of the dead; to purchase, establish and regulate one or more cemeteries; to regulate the registration of deaths, marriages and births; to direct the returning and keeping of bills of mortality. (Id. sec. 63.)

Art. 850. (462) (416) May prevent, etc., dead animals, etc., being deposited within city limits.—To prevent any person from bringing, depositing or having within the limits of said city any dead carcass, or any other offensive or unwholesome substance or matter, and to require the removal or destruction by any person who shall have placed or caused to be placed upon or near his premises, or elsewhere, of any substance or matter, filth, or any putrid or unsound beef, pork or fish, hides or skins of any kind; and, on his default, to authorize the removal or destruction thereof by some officer of the city, and require the owner of any dead animal to remove the same to such place as may be designated. (Acts 1875, ch. 100, sec. 72.)

Mezlar v. City of Miles, 124 S. W. 972.

Art. 851. (445) (401) May tax, etc., dogs.—To tax, regulate or restrain and prohibit the running at large of dogs, and to authorize their destruction when at large contrary to ordinances, and to impose penalties on the owners or keepers thereof for violations of such ordinances. (Id. sec. 57.)

Art. 852. (449) Sanitary regulations by cities and counties.—To co-operate with the commissioners' court of the county in which the municipality is situated in making such improvements as may, by it and said court, be deemed necessary to improve the public health and promote efficient sanitary regulations, and to arrange for the construction of, and payment for, said improvements. (Acts 1879, p. 9.)

Art. 853. (433) (389) Incorporated cities may establish libraries.—Any incorporated city or town in this state is authorized to establish a free library in such city or town, and to adopt rules and regulations for the proper management thereof, and to appropriate such part of the revenues of such city or town for the management and increase of such free library as the municipal government of such city or town may determine. (Acts 1874, p. 13, sec. 1.)

Art. 854. (419) (375) Control over streets, alleys, etc.; work on streets by inhabitants; vacation of alleys.—Any incorporated city or town containing not more than five thousand (5,000) population in this State shall have the exclusive control and power over the streets, alleys and public grounds and highways of the city, and to abate and remove encroachments or obstructions thereon; to open, alter, widen, extend, establish, regulate, grade, clean and otherwise improve said streets; to put drains or sewers therein, and prevent incumbering thereof in any manner, and to protect same from encroachment or injury; and to cause all able-bodied male inhabitants above twenty-one years of age and not over forty-five years of age, except ministers of the Gospel, to work thereon not to exceed five days in any one year, or furnish a substitute or sum of money not to exceed one dollar ($1.00) for each days work demanded; to employ such substitute and to enforce same by appropriate ordinances, including provisions for fines and penalties; and to regulate and alter the grade of premises; to require the filling up and raising of same; and such city council shall also have power to alter or vacate the alley in any block of ground in the city upon written application of the owner of the block, or if there be more than one owner of such block, then upon the written application of all owners thereof uniting in such application; such alley so vacated shall thereupon revert to and become the property of the owner of the block of which it was a part, or if more than one, then to the owners of the adjoining lots therein, each extending to the center of the alley so vacated. (Acts 1889, p. 1; Acts 1913, p. 326, sec. 1; Acts 1917, ch. 144, sec. 1.)

Palestine Water & P. Co. v. Palestine, 44 S. W. 815; Wilder v. McConnell, 45 S. W. 145; City of Greenville v. Britton, 45 S. W. 970; City of Tyler v. Tyler B. & L. Ass'n, 81 S. W. 2; Ex parte Henson, 90 S. W. 874; Ex parte Drake, 116 S. W. 49; Gulf, C. & S. F. Ry. Co. v. City of Belton, 122 S. W. 413; City of Brownwood v. Brown Telegraph & Telephone Co., 152 S. W. 709; Ex parte Hogg, 156 S. W. 931; City of Terrell v. Terrell Electric Light Co., 187 S. W. 966; Bowers v. Machir, 191 S. W. 758.

Art. 854a. Charter may authorize sale of squares, parks, streets, etc.—The charter or any amendment thereto, may authorize the city council, board of commissioners, board of aldermen or other city government, to sell and cause to be conveyed any land held or claimed for or as a public square or park, and parts of streets and alleys within the limits of the city. The proceeds of any such sale shall be used only for the purpose of acquiring public squares, streets, or alleys. (Acts 1913, p. 326, sec. 1.)

Art. 854b. Charter may authorize closing streets and alleys for use by railroad company, etc.; sale or closing to be submitted to vote.—The charter, or any amendment thereto, may authorize the city council, board of commissioners, board of aldermen, or other city government to close for exclusive use temporarily or perpetually by any railroad company or other corporation having power of eminent domain, any part or parts, of any street or streets, alley or alleys, and to ratify and confirm any prior ordinances closing any street or streets, alley or alleys, or any part or parts thereof, for the use of any railroad company or any such other corporation.

No public square or park shall be sold and no street or alley, nor part or parts of any street or alley closed until the question of the sale of such public square or park for [or] the closing of such street or alley, or the part or parts, of such street or alley, has been submitted to a vote of the qualified voters, of the city or town, and approved by majority of the votes cast at such election. (Id.)

Art. 854c. In what towns and cities act may be enforced.—This Act shall be enforced in towns or cities under 5000 population or cities over 5000 population which have no special charter and in towns or cities incorporated under Title 22, Revised Civil Statutes of 1911, and in cities or towns incorporated under any special law. The power authorized by this article may be conferred upon the city council, board of commissioners, board of aldermen, or other city government, by vote of the qualified voters, as in article 854b, of this Act provided. (Id.)

Art. 855. (426) (382) May prevent the incumbering of streets, etc., and cause unsafe buildings to be removed, etc.—To prevent the incumbering of the streets, alleys, sidewalks and public grounds, with carriages, wagons, carts, hacks, buggies, or any vehicle whatsoever, boxes, lumber, timber, firewood, posts, awnings, signs, or any other substance or material whatever, or in any other manner whatever; to compel all persons to keep all weeds, filth and any kind of rubbish from the sidewalks and streets and gutters in front of the premises occupied by them; to require and compel the owners of property to fill up, grade, gravel, and otherwise improve the sidewalks in front of same.

Art. 856. (550) (479) City council may cause dangerous buildings, etc., to be removed.—Whenever, in the opinion of the city council, any building, fence, shed, awning or any erection of any kind or any part thereof is liable to fall down and endanger persons or property, they may order any owner or agent of the same, or any owner or occupant of the premises on which such building, shed, awning or other erection stands or to which it is attached, to take down and remove the same, or any part thereof, within such time as they may direct; and to punish by fine and imprisonment, or either, any neglect, failure or refusal to comply therewith. The city council shall, in addition, have the power to remove the same at the expense of the city, on account of the owner of the property or premises, and assess the expenses on the land on which it stood or to which it was attached, and shall, by ordinance, provide for such assessment, the mode and manner of giving notice and the means of recovering any such expenses. (Acts 1875, ch. 100, sec. 131.)

Art. 857. (420) (376) May construct bridges, etc., sewers, sidewalks, etc.—To establish, erect, construct, regulate and keep in repair, bridges, culverts and sewers, sidewalks and cross-ways, and to regulate the construction and use of the same, and to abate and punish any obstructions or encroachments thereon; and the cost of construction of sidewalks shall be defrayed by the owner of the lot, or part of lot or block, fronting on the sidewalk; and the cost of any sidewalk constructed by the city shall be collected, if necessary, by the sale of the lot, or part of lot or block on which it fronts, together with the cost of collection, in such a manner as the city council may by ordinance provide; and a sale of any lot or part of lot or block to enforce collection of costs of sidewalks shall convey a good title to the purchaser; and the balance of proceeds of sale, after paying the amount due the city and costs of sale, shall be paid by the city to the owner. (Id. sec. 33.)

Art. 858. (446) (402) May prohibit, etc., the firing of arms, etc., the use of velocipedes, ringing of bells, etc.—To prohibit and restrain the firing of fire-crackers, guns and pistols, use of velocipedes, or use of any pyrotechnic or any other amusements or practices tending to annoy persons passing in the streets or sidewalks, or to frighten horses or teams; to restrain and prohibit the ringing of bells, blowing of horns and bugles, crying of goods, and all other noises, practices and performances tending to the collection of persons on the streets and sidewalks, by auctioneers and others, for the purpose of business, amusement or otherwise. (Id. sec. 58.)

Earle v. City of Henrietta, 41 S. W. 728.

Art. 859. (463) (417) May prevent, etc., the driving of animals into or through the city.—To prevent, regulate and control the driving of cattle, horses and all other animals into or through the city. (Id. sec. 73.)

Art. 860. (444) (400) May establish pounds, etc.—To establish and regulate public pounds, and to regulate, restrain and prohibit the running at large of horses, mules, cattle, sheep, swine, goats, and to authorize the distraining, impounding and sale of the same for the costs of the proceedings and the penalty incurred, and to order their destruction when they can not be sold, and to impose penalties on the owners thereof for a violation of any ordinance. (Id. sec. 56.)

Art. 860a. May prevent keeping animals for breeding purposes.—The city council of any duly incorporated city or town shall have the authority to pass such ordinance or ordinances as may be necessary to prevent any person, corporation or association of individuals from keeping for breeding purposes a jack, bull or stallion within the corporate limits of such city or town, and may prescribe such penalty for the violation of such ordinance or ordinances as they may deem sufficient and necessary for their proper enforcement. (Acts 1919, ch. 75, sec. 1.)

Art. 861. (442) (398) May prevent, etc., horse-racing, etc.—To prevent, prohibit and suppress horse-racing, immoderate rid-

ing or driving in the streets; to compel persons to fasten their horses or other animals attached to vehicles, or otherwise, while standing or remaining in the streets. (Acts 1875, ch. 100, sec. 54.)

Art. 862. (461) (415) May regulate street railways.—The city council shall have power to compel street railway companies to keep their roads in repair, and to make them conform to the grades of the streets upon which their tracks may be laid, whenever said streets shall have been graded by the city, and to restrain the rate of speed so as not to exceed seven miles per hour, and to compel said city railroads to supply ample accommodation for the safe and convenient travel of the people on the street where their track may run; the city council may enforce these regulations by proper ordinances, with suitable penalties for any violation of said ordinances. (Id. sec. 71.)

Art. 863. (460) (414) May control, etc., the laying of railway tracks, etc.—To direct and control the laying and constructing of railroad tracks, turnouts and switches, or prohibit the same in the streets, avenues and alleys, unless the same have been authorized by law, and the location of depots within the city; to require that railroad tracks, turnouts and switches shall be so constructed as to interfere as little as possible with the ordinary travel and use of streets, avenues and alleys, and that sufficient space shall be left on either side of a track for the safe and convenient passage of teams, carriages and other vehicles, and persons; to require railroad companies to keep in repair the streets, avenues or alleys through which their track may run, and, if ordered by the city council, to construct, and keep in repair, suitable crossings at the intersection of streets, avenues and alleys, and ditches, sewers and culverts, when the city council shall deem it necessary; to direct the use and regulate the speed of locomotive engines in said city, or to prevent and prohibit the use or running of the same within the city; provided, that the provisions of this article shall apply to railroads known as steam railroads, and not to city, street or horse railroads. (Id. sec. 70.)

Gulf, C. & S. F. Ry. Co. v. City of Belton, 122 S. W. 413.

Art. 864. (423) (379) May improve public grounds, cemeteries, etc.—To provide for the inclosing, regulating and improving all public grounds and cemeteries belonging to the city, and to direct and regulate the planting and preserving of ornaments and shade trees in the streets, sidewalks or public grounds. (Id. sec. 36.)

Art. 865. (418) (374) To provide city with water, etc.; water system not to be leased without vote, etc.—To provide, or cause to be provided, the city with water; to make, to regulate and establish public wells, pumps and cisterns, hydrants and reservoirs, in the streets or elsewhere within said city or beyond the limits thereof, for the extinguishment of fires and the convenience of the inhabitants, and to prevent the unnecessary waste of water; provided, that any city or town owning, or that may hereafter own, its water system and plant shall not lease or sell the same without first submitting the question of such proposed lease or sale to a vote of the qualified voters who are property taxpayers of such town or city, as shown by the last preceding tax rolls, at a general election, or at one held for that especial purpose, nor unless a majority of those voting shall vote in favor thereof. Before submitting such question to a vote as aforesaid, the proposed contract of lease or sale shall be distinctly set forth in the form of an ordinance or contract, and shall be filed with the city or town secretary or clerk for at least twenty days prior to the day of the election, and shall, at all times, be subject to inspection by the people of such city. (Id. sec. 31; Acts S. S. 1900, p. 17.)

Greenville Water Co. v. Beckham, 118 S. W. 889; Ball v. Texarkana Water Corporation, 127 S. W. 1068. See arts. 769-772 and 1003-4.

Art. 866. (422) (378) May establish market house, etc.—To establish or erect, or cause to be established or erected, markets and market houses, designate, control and regulate market places and privileges, inspect and determine the mode of inspecting meat, fish, vegetables and all produce and every article and thing therein brought for sale. (Acts 1875, ch. 100, sec. 34.)

Ex parte Wade, 146 S. W. 179; Ex parte Hogg, 156 S. W. 931.

Art. 867. (421) (377) May provide light and gas for city.—To provide for lighting the streets and erecting lamp posts and lamps therein, and regulating the lighting thereof, and from time to time create, alter or extend lamp districts; to exclusively regulate, direct and control the laying and repairing of the gas pipes and gas fixtures in the streets, alleys, sidewalks and elsewhere. (Id. sec. 34.)

City of Honey Grove v. Lancaster, 50 S. W. 1053; Crouch v. City of McKinney, 104 S. W. 518.

Art. 868. (461) (415) May assess and collect taxes on street railways.—The city council shall have power to assess and collect the ordinary municipal taxes upon street railways. (Id. sec. 71.)

For general powers of taxation, see chapter 6 of this title.

Art. 869. (427) (383) May tax, etc., certain occupations.—To tax all trades, professions, occupations, and callings, the taxing of which is not prohibited by the constitution of the state; which tax shall not be construed to be a tax on property. (Id. sec. 40.)

See Williams v. Davidson, 70 S. W. 987.

Art. 870. (430) (386) May license, etc., hackmen, and prescribe their compensation, etc.—To license, tax and regulate hackmen, draymen, omnibus drivers and drivers of baggage wagons, porters, and all others pursuing like occupations, with or without vehicles, and prescribe their compensation, and provide for their protection, and make it a misdemeanor for any person to attempt to defraud them of any legal charge for services rendered, and to regulate, license and restrain runners for railroads, stages and public houses. (Id. sec. 43.)

Art. 871. (428) (384) May license, etc., peddlers, theaters, etc.—To license, tax, and regulate, or suppress and prevent hawkers, peddlers, pawnbrokers, and keepers of theatrical or other exhibitions, shows and amusements. (Id. sec. 41.)

See Ex parte Henson, 90 S. W. 874; Ex parte Wade, 146 S. W. 179; Ex parte Hogg, 156 S. W. 931.

Art. 872. (431) (387) May license, etc., billiard tables, etc.—To license, tax,

and regulate billiard tables, pin alleys, ball alleys, saloons, bar-rooms and all places or establishments where intoxicating or fermented liquors are sold; to suppress and restrain disorderly houses, tippling shops and groceries, gambling and gaming houses, lotteries and all fraudulent devices and practices, and prohibit bawdy houses and houses of prostitution or assignation within the limits of the city. (Id. sec. 44.)

Art. 873. (429) (385) May license, etc., circuses, etc.—To license, tax, and regulate, or prohibit, theaters, circuses, the exhibitions of common showmen, and of shows of any kind, and the exhibition of natural or artificial curiosities, caravans, menageries, and musical exhibitions and performances. (Id. sec. 42.)

Art. 874. (432) (388) May authorize proper officer to grant license, etc.—To authorize the proper officer of the city to grant and issue licenses, and to direct the manner of issuing and registering thereof, and the fees and charges to be paid therefor. No license shall be issued for a longer period than one year, and shall not be assignable except by permission of the city council. (Id. sec. 45.)

Art. 875. (414) (370) Shall control the finances and property.—The city council shall have the management and control of the finances and of all property, real, personal and mixed, belonging to the corporation. (Id. sec. 27.)

Art. 876. (577) (504) Rate of interest on city indebtedness.—No indebtedness of any character whatever hereafter incurred by said corporation shall draw a higher rate of interest than ten per cent per annum. (Act Feb. 26, 1874, sec. 156.)

Art. 877. (415) (371) Power to appropriate, money, etc.—The city council shall have power to appropriate money, and provide for the payment of debts and expenses of the city. (Acts 1875, ch. 100, sec. 28.)

Art. 878. (416) (372) Power to provide special funds for special purposes, etc.—To provide by ordinance special funds for special purposes, and to make the same disbursable only for the purpose for which the fund was created; and any officer of the city misappropriating said special fund shall be deemed guilty of malfeasance in office, and shall, on complaint of any one interested in said funds misappropriated, be removed from office, and be incapable thereafter to hold any office in said city. (Id. sec. 29.)

Minor v. Loggins, 37 S. W. 1086; City of Austin v. Cahil, 88 S. W. 536.

Art. 879. (466) (420) To appropriate revenues and for what purposes; to issue bonds, etc.—To appropriate so much of the revenues of the city, emanating from whatever source, for the purpose of retiring and discharging the accrued indebtedness of the city, and for the purpose of improving the public markets and streets, erecting and conducting city hospitals, city hall, waterworks, and so forth, as they may from time to time deem expedient. And, in furtherance of these objects, they shall have power to borrow money upon the credit of the city, and issue coupon bonds of the city therefor in such sum or sums as they may deem expedient, to bear interest not exceeding ten per cent per annum, payable semi-annually at such place as may be fixed by city ordinance; provided, that the aggregate amount of bonds issued by the city council shall, at no time, exceed six per cent of the value of the property within said city subject to ad valorem tax. (Id. sec. 76.)

See ante, art. 616; City of Palestine v. Royall, 40 S. W. 621; City of Tyler v. Jester, 78 S. W. 1059.

Art. 880. (467) (421) City bonds shall specify, what.—All bonds shall specify for what purpose they were issued; and when any bonds are issued by the city a fund shall be provided to pay the interest and create a sinking fund to redeem the bonds; which fund shall not be diverted, nor drawn upon for any other purpose; provided, however, that said sinking fund may, as it accumulates, be invested in bonds of the United States, the state of Texas, or counties in said state; and the city treasurer shall honor no draft upon said fund except to pay interest upon or to redeem the bonds for which it was provided, or for investment in other securities as above provided. (Acts 1889, p. 2.)

See ante, arts. 616-620, 622-626.

Art. 881. (468) (422) Bonds shall be signed, etc., and payable where and when, etc.—Said bonds shall be signed by the mayor and countersigned by the secretary, and payable at such places and at such times as may be fixed by ordinance of the city council, not less than ten nor more than forty years. (Acts 1875, ch. 100, sec. 78.)

Art. 882. May issue bonds for public improvements; regulations as to.—All cities and towns providing for permanent public improvements, as contemplated by article 925, shall have the power to issue coupon bonds of the city therefor in such sum or sums as they may deem expedient, to bear interest not exceeding six per cent per annum; provided, that the aggregate amount of bonds issued for the construction or the purchase of public buildings, water works, sewers and other permanent improvements shall never reach an amount where the tax of twenty-five cents on the one hundred dollars valuation of property will not pay current interest and provide a sinking fund sufficient to pay the principal at maturity; and provided, also, that the amount of bonds issued for street improvement purposes shall never reach an amount where the tax of fifteen cents on the one hundred dollars valuation of property will not pay current interest and provide a sinking fund sufficient to redeem them at maturity; and the amount of bonds legally issued under acts passed prior to the adoption of the present constitution shall not be computed and estimated in the amount of bonds which may be issued for the above named city improvements. (Acts 1909, 2 S. S. p. 444.)

Art. 883. (482) Gulf cities may issue bonds for harbors, etc.—The boards of aldermen, or other constituted municipal authorities of cities bordering on the coast of the gulf of Mexico, are hereby authorized and empowered to appropriate money to improve, and to aid in the improvement of, their harbors and of the bars at the entrance thereof; provided, that they shall not thereby increase their aggregate debt beyond the amount of indebtedness limited by their charters respectively; such appropriations to be

made out of any surplus funds which may at any time be on hand, and by the use or sale of any bonds heretofore authorized to be issued; provided, such bonds are not needed for the purposes for which they were specially authorized; and, also, if necessary therefor, to issue and dispose of bonds with interest coupons attached in such amounts as may be necessary, not to exceed the limit of indebtedness fixed by their charters. (Acts of 1883, p. 48.)

Art. 884. (483) Interest and sinking fund tax to be levied, interest paid and bonds sold at not less than par.—The city council, or other constituted municipal authorities, as the case may be, shall levy an annual ad valorem tax on the property in said city, sufficient to pay the interest and create a sinking fund for the redemption of said bonds, as required by the constitution. The interest on said bonds shall be paid semi-annually, and it shall not exceed five per cent. Said bonds shall not be sold at less than par. (Id.)

Art. 884a. May appropriate net revenues of public utility systems to payment of interest and principal of bonds issued therefor.—That the city council or board of aldermen or other governing body of any city or town in this State, whether operating under special charter or under the general law, may appropriate and apply at the end of each fiscal year so much of the net revenues of its water works system or other public utility system, service or enterprise as said governing body shall deem to the best interest of said city or town, to the payment of the sinking fund and interest due by said city or town, on the bonded indebtedness incurred on account of said water works system or other public utility system, service or enterprise, producing such revenues. (Acts 1917, ch. 200, sec. 1.)

Art. 884b. Appropriation of such net revenues before levying taxes.—That whenever said city council, board of aldermen or other governing body of any city or town in this State, as described in Section one [Art. 884a], shall desire to take advantage of the provisions of this Act, it shall at the end of the fiscal year of said city or town, and before the passage of any ordinance levying taxes for that year, appropriate and set aside out of the net revenues of said water works system, or other public utility system, service or enterprise, such sum or sums as such governing body shall deem to the best interest of the city or town, for the purpose of paying the interest and sinking fund on the bonded indebtedness of such water works system, or other public utility system, service or enterprise producing said revenues, which sum or sums so set aside and appropriated shall be applied on said sinking fund and interest on said bonded indebtedness and for no other purpose. (Id. sec. 2.)

Art. 884c. Where amount sufficient for purpose tax therefor not to be levied.—That where the sum or sums so set aside and appropriated under the preceding sections shall be sufficient to pay in full the amounts needed for such sinking fund and interest for the fiscal year in which said revenues are produced, it shall not be thereafter necessary for the city council to levy any tax for such sinking fund or interest for which this appropriation is made; but when said sum or sums so appropriated shall not be sufficient to meet the required amounts for such sinking fund and interest, then in such event the governing power of said city or town shall include in the general tax ordinance for that year a tax sufficient to meet the deficiency in such sinking fund and interest allowance for that year, provided nothing herein shall be construed to authorize said city or town to exceed the authorized tax limit. (Id. sec. 3.)

Art. 885. (578a) Board of examiners of finances.—It shall be the duty of the mayor of each city or incorporated town within this state, incorporated under the general laws of the state, at the first regular meeting in January of each year of the board of aldermen or city council, by and with the advice and consent of such board of aldermen or city council, to appoint three resident citizens of such city or incorporated town, who shall constitute and compose a board of examiners of the finances of said city or incorporated town. (Acts 1895, p. 41.)

Art. 886. (578b) Duties of board.—It shall be the duty of such examiners when appointed to proceed to examine the books and accounts of the various officers of such city or incorporated town, and to make a true report of the financial condition thereof under oath to the mayor and board of aldermen or city council of such city or incorporated town as soon after their appointment as practicable; provided, that in no instance shall the return of such report under oath be deferred longer than the first regular meeting of the board of aldermen or city council in March of each year. (Id. sec. 2.)

Art. 887. (578c) Compensation.—Such examiners shall receive for their services such compensation as the board of aldermen or city council shall fix each, for every day actually employed in their investigations, not to exceed fifteen days in each year, which sum shall be paid by order of the board of aldermen or city council. (Id. sec. 3.)

Art. 888. (578d) Council to pass on such report.—The annual report of such board of examiners shall be passed upon by the board of aldermen or city council, and spread upon the minutes of their meeting at the first regular meeting of said board or council after the return of such report. (Id. sec. 4.)

Art. 889. (556) (485) Statement of receipts and expenditures, etc., shall be published annually.—The city council shall, at least ten days before the expiration of each municipal year, cause to be published in a city newspaper a correct and full statement of the receipts and expenditures from the date of the last annual report, together with the sources from which the funds were derived, and showing for what purpose disbursed, the condition of the treasury, together with such information as may be necessary to a full understanding of the financial condition of the city. (Acts 1875, ch. 100, sec. 137.)

Art. 890. (465) (419) May pass ordinances to fund debt, etc.—To pass all necessary ordinances to provide for funding the whole or any part of the existing debt of the city, or of any future debt, by cancelling the evidences thereof, and issuing to the holders

or creditors notes, bonds or treasury warrants, with or without coupons, bearing interest at any annual rate not to exceed ten per cent. The council shall also provide by ordinance for issuing the bonds of the city in such sums as may be agreed upon for railroad subsidies heretofore voted, or that may be hereafter voted, in accordance with the laws of this state. (Id. sec. 75.)

City of Tyler v. Jester, 78 S. W. 1059; City of Tyler v. Tyler B. and L. Ass'n., 86 S. W. 750.

Art. 891. (471) May compromise debts and issue bonds.—The mayor and board of aldermen are authorized and empowered, by resolution or ordinance of said board of aldermen by referring to this and the succeeding articles of this chapter relating hereto and adopting the same, to compromise and fund any existing valid indebtedness by the city or town issued, whether bonded or floating, and the coupons due upon the bonded debt; and for this purpose, they are authorized and empowered to issue new bonds, in denomination of not less than fifty nor more than one thousand dollars, in their discretion, with interest coupons payable semiannually at the office of the state treasurer or at such other place as said board of aldermen shall provide; said new bonds to become due and payable in not exceeding thirty years, and to bear such rate of interest, not exceeding six per cent per annum, as in their discretion may best subserve the purpose intended. (Acts 1887, p. 50.)

Art. 892. (472) Barred debts can not be compromised.—No compromise shall be made under the provisions of this chapter, by which any debt shall be funded which is barred by the statute of limitations. (Id.)

Art. 893. (474) Bonds when executed must be registered with comptroller.—The mayor and board of aldermen shall cause to be prepared the necessary blank bonds to give effect to the provisions of this chapter, the cost of which shall be paid out of the treasury of such city or town; said bonds when issued by any city or town shall be signed by the mayor and attested by the secretary (or recorder if there be no secretary), with the seal of such city or town affixed; and such new bonds shall be registered in the office of the state comptroller. (Id.)

See provisions as to submission of bonds to attorney general, etc., article 619 et seq.

Art. 894. (475) Bonds when issued, how disposed of, etc.—Such new bonds may be exchanged for the old bonds, or they may be sold and the proceeds applied to the purchase of such old bonds; provided, that no delivery of such new bonds shall take place, unless a contract has already been entered into for the purchase of a corresponding amount of such old bonds; and provided further, no bonds issued under this chapter as a compromise of existing indebtedness shall be sold at less than par; and each bond shall be made to bear the lowest rate of interest that will give a par value. (Id.)

Art. 895. (476) Tax laws to remain in force.—All laws in force providing for the collection of taxes for the payment of the principal and interest of such existing bonds shall apply and be in force for the collection of taxes for the payment of the principal and interest of such new bonds; provided, that the sinking fund may be used in the purchase and cancellation of such new bonds whenever the same can be bought at not more than their par value. (Id.)

Art. 896. (479) The method of liquidating compromise bonds.—Whenever a compromise of the debt of any city or town shall be effected, as hereinbefore provided, and the bonds are delivered to the creditors, a board of liquidation, consisting of five reputable citizens of such city or town shall be appointed forthwith in the manner following: The mayor of the city or town shall appoint one; the governor of the state shall appoint one; and the district judge of the district in which such city or town shall be situated shall appoint one; the city council of the city or town shall appoint one; and the holders of said indebtedness, or a majority of them, shall appoint one; and each shall fill vacancies in the office of their respective appointee in said board; and, in case of failure, neglect or refusal of any one or all of said officers to appoint a member of said board, or to fill vacancies therein, then the holders of said bonds, or any one or more of them, shall have the right to apply to the district court of the district in which such city or town shall be situated, or to the judge thereof in vacation, for the appointment of a member or members of said board necessary to complete the same; and it shall be the duty of said court or judge to make said appointment. The members of said board shall serve without compensation, and shall hold their offices for the term of four years and until their successors are appointed and qualified. Each member of said board shall take an oath to faithfully perform the duties of his office. A majority of said board shall constitute a quorum for the transaction of business. Said board, or a majority thereof, shall select some solvent depository for all moneys coming under their control, as hereinafter provided, and for whose acts they shall be responsible and shall, in writing signed by them, notify the collector of taxes of said city or town of said selection. It shall thereupon become the duty of such collector to deposit at the close of business each day one-half of all moneys collected by him for the twenty-four hours next preceding, on account of all the taxes of whatever nature levied by said city or town, with the said depository, whose receipt therefor shall be an acquittance to said collector; and said collectors shall be liable on their official bonds for any failure to promptly make such deposits and for ten per cent per month of such amounts, and in addition thereto as penalty; which sums may be recovered by said board of liquidation in a suit therefor; and it shall be their duty to promptly institute such suits. But whenever the total of said deposits shall equal the annual interest on said bonds, it shall be lawful for such collector to discontinue said deposits, until he shall be notified in writing by said board that said deposits are reduced below that sum. Said funds of cities or towns shall be subject to the order of said boards of liquidation, and shall be applied by them to the payment, first, of the interest on said bonds as the same matures, and, secondly, to the payment of the principal thereof, and thirdly, to the payment of interest on any valid bonds issued by such

city and not embraced in any issue of bonds issued under the provisions hereof, and, fourthly, to the payment of the principal of bonds of the character last referred to on the maturity of same. The members of said board shall be liable for the prompt payment of said interest out of said funds, and in case of failure or refusal they shall, in addition, be liable to ten per cent of the amount of such interest as damages to be recovered by any person aggrieved thereby, in any court of competent jurisdiction. Whenever there shall be in the hands of such depositories a sufficient sum to pay two per cent of the principal of said bonds, in addition to one year's interest, it shall be the duty of said board of liquidation to use the same in the purchase of outstanding bonds, provided in article 895; which bonds when so purchased shall be canceled, and shall, together with all coupons which have been paid, be returned to the council of the city or town. Expenses incurred by said board in advertising for purchase of bonds shall be paid out of said funds. Said boards shall make semi-annual reports to the said councils of their acts and of all receipts and disbursements of moneys coming under their control. (Id.)

Art. 897. (477) Laws to enforce collection continued in force, and all defenses to bonds cut off.—The object and intention of these provisions being to enable the cities or towns in this state which have granted subsidy bonds to railroads or other works of internal improvement, or created any other indebtedness whatever, whether bonded or floating, to compromise the same, and thereby reduce the burden of taxation, it is hereby declared, as an inducement to the holders of said bonds to accept the compromise, that whenever such compromise shall be entered into and accepted in good faith either by the holders of the present bonds or by any persons purchasing such new bonds as provided herein, that all laws in force, or which may hereafter be in force, for the assessment and collection of the state taxes shall also be in force and apply to the assessment and collection of the taxes levied to meet the interest and sinking fund of said new bonds; and in any suits instituted to enforce the payment of said new bonds or coupons against any such city or town, no defense either in law or equity shall be admitted in any of the courts of this state, except such as originated upon, or subsequent to, the issuance of such new bonds. (Id.)

Art. 898. (478) Tax collector; liability; governor to appoint, when.—Whenever a collector of taxes shall neglect or refuse to collect the taxes levied for the payment of the interest and sinking fund of such new bonds, he shall be liable on his official bond, at the suit of any persons holding any of said bonds or coupons, for all such damages as said person or persons shall have sustained by reason of his neglect or refusal; nor shall such collector or his sureties be relieved of such liability by his resignation of the office; and whenever any person who may be elected collector of taxes of any city or town shall fail, neglect or refuse to give the bond required by law for the collection of such tax, or whenever the mayor and board of aldermen shall appoint any person who shall fail, neglect, or refuse to give said bond, or whenever they shall fail, neglect, or refuse to appoint some person who will give said bond and collect said tax, then it is hereby made the duty of the governor to appoint some suitable person to collect said taxes, who shall perform all the duties required by these provisions or any other laws of this state relating to the collection of said taxes, from the term of his said appointment until the next general election. (Id.)

Art. 899. (480) Receiver appointed, when.—Any city or town so situated as is herein set forth, which fails to effect a compromise of its debts, or pending the negotiation of a compromise, shall be permitted, on its application setting forth its financial condition and insolvency, to have the district court of the county in which said city or town is situated take charge of the collection and appropriation of all taxes levied and assessed by said city or town, except so much thereof as is necessary to pay the current expenses of the city or town; and to that end, said court, or the judge thereof in vacation, shall appoint a receiver, or may make the assessor and collector of said city or town its receiver, to collect and pay into a named depository all taxes levied by said city or town for the payment of its debts; and said courts shall decide all questions of priority between conflicting claimants of said funds, and shall provide for the ratable and equitable distribution of said funds among all creditors entitled thereto. But it shall not be lawful for any court to appoint a receiver of or concerning any city or town except upon the voluntary application of such city or town. (Id.)

Art. 900. (473) Compromise bonds exempt from taxation and may be used to pay taxes.—The new bonds thus issued by any city or town shall be exempt from the payment of all taxes levied by such city or town; and the taxes levied to pay said new bonds may be paid in said bonds or coupons thereof if matured; provided, said coupons and bonds shall only be received in payment of taxes levied for the purpose of paying such bonds and coupons. (Id.)

Art. 901. (481) Other instances when debts may be compromised and bonds issued, etc.—Cities and towns shall also have authority to fund, compromise, and liquidate their indebtedness and issue bonds therefor, under such conditions, restrictions and limitations as are prescribed under title 18 (bonds—county, municipal, etc.) conferring such authority on counties, cities and towns, and as may be otherwise provided by law.

Art. 902. (555) (484) Official paper, and contract for publishing, etc.—The city council shall, as soon as may be after the commencement of each municipal year, contract as they may by ordinance or resolution determine with a public newspaper of the city as the official paper thereof, and to continue as such until another is elected, and shall cause to be published therein all ordinances, notices, and other matters required by this title or by the ordinance of the city to be published. (Acts 1875, ch. 100, sec. 136.)

For provisions as to bonds of counties, cities, towns, etc., see title 18.

CHAPTER FIVE
CORPORATION COURTS

Art. 903. Corporation court created.—There is hereby created and established in each of the cities, towns and villages of this state, now or hereafter incorporated, whether by general or special act, a court to be known as the corporation court in such city, town or village, which court shall have jurisdiction and organization hereinafter prescribed. (Acts 1899, p. 40, sec. 1.)

See Ex parte Wilbarger, 55 S. W. 969; Ex parte Brown, 64 S. W. 249; Moss v. S., 83 S. W. 829; Ex parte Freedman, 83 S. W. 1125; Jarvis v. Taylor County, 163 S. W. 334; Tippett v. S., 189 S. W. 485.

Art. 904. Jurisdiction.—Said court shall have jurisdiction within the territorial limits of said city, town or village, within which it is established, in all criminal cases arising under the ordinances of the said city, town or village, now in force, or hereafter to be passed, and shall also have jurisdiction concurrently with any justice of the peace in any precinct in which said city, town or village is situated, in all criminal cases arising under the criminal laws of this state, in which the punishment is by fine only, and where the maximum of such fine may not exceed two hundred dollars and arising within the territorial limits of such city, town or village. (Id. sec. 2.)

Art. 905. Judge or recorder elected or appointed, how; term, mayor ex officio recorder, when.—Such court shall be presided over by a judge to be known as the recorder of such court, in such city, town or village, who, in cities, towns or villages incorporated under special charter or charters, shall be elected or appointed in the manner and under the respective provisions of the charter now in force concerning the election or appointment of the magistrate to preside over the municipal court in such city, town or village, and all such provisions are hereby made applicable to the recorder herein provided for; and in cities, towns and villages not incorporated under special charter, such recorder shall be elected by the qualified voters of such city, town or village, in the same manner as the mayor of such city, town or village, and whose term of office shall be the same as such mayor; provided, in such cities, towns and villages not incorporated and acting under special charter, the mayor of such city, town or village shall be ex officio recorder of such court, and shall act as such, unless the city council or board of aldermen of such city, town or village shall, by ordinance, authorize the election of a recorder. (Id. sec. 3.)

Wichita Electric Co. v. Hinckley, 131 S. W. 1192; Jarvis v. Taylor County, 163 S. W. 334; Tippett v. S., 189 S. W. 485.

Art. 906. Recorder elected or appointed, when and how; discretion in council; term of office, etc.; vacancy; council may make mayor ex officio recorder, when.—Every two years there shall be elected or appointed in each city, town or village within this state, now or hereafter incorporated, a recorder, who shall preside over the corporation court hereby created and established, and who shall be elected or appointed as provided in article 905; provided, however, that whenever by the provisions of the charter under which such city, town or village is now incorporated, it is provided that the magistrate now presiding over the municipal court therein is to be elected by the people, then in such case the city council of any such city, town or village may order an election for the recorder, or, in its discretion, may appoint the recorder, who shall hold his office until the next general election for city officers; provided, further, that wherever in any such city, town or village, the office of the presiding magistrate of the municipal court therein shall not have expired when the recorder is elected or appointed therein, the said recorder, first elected or appointed, shall hold his term of office corresponding to the unexpired term of the said magistrate; and every two years thereafter such recorder shall be elected or appointed for a term of two years, and until his successor is elected and qualified. In case of vacancy in the office of recorder or clerk of the court in any city, town or village, such vacancy shall be filled by the council or board of aldermen for the unexpired term only; provided, further, that the board of aldermen may provide by ordinance for the mayor to act as ex officio recorder in all cities and towns not operating under special charter. (Id. sec. 4.)

Wichita Electric Co. v. Hinckley, 131 S. W. 1192; Jarvis v. Taylor County, 163 S. W. 334; Tippett v. S., 189 S. W. 485.

Art. 907. Clerk of corporation court elected by council, when; provided; terms; duties.—There shall be a clerk of said corporation court elected by the council or board of aldermen of each such city, town or village, at the same time at which the recorder is elected; but, in such city, town or village, it may be provided by ordinance that the city secretary shall be ex officio clerk of the said court, and may be authorized to appoint a deputy, who shall have the same powers as the said secretary. The clerk of said court shall hold his office for two years, and until his successor is elected and qualified. In case of an ex officio clerk as aforesaid, he shall hold his office during his term as city secretary. It shall be the duty of said clerk to keep a minute of the proceedings of the said court; to issue all process, and generally to do and perform all of the duties of a clerk of a court as prescribed by law for the clerk of the county court, in so far as the said provisions may be applicable. (Id. sec. 5.)

Art. 908. (406) (362) Right of trial before jury.—Every person brought before the mayor or recorder, to be tried for an offense for which the penalty may be fine or imprisonment, or both, shall be entitled, if he shall demand it, to be tried by a jury of six legal voters of the city, who shall be summoned, impaneled and qualified as jurors in justices' courts under the laws of the state. (Acts 1875, ch. 100, sec. 19.)

Art. 909. Rules of pleading, practice and procedure.—All rules of pleading, practice and procedure now established for the county court shall apply in said corporation court in each such city, town or village, in so far as the same are applicable, except that the proceedings in said court shall be commenced by complaint in the manner and under the regulations, as now provided by law, in cases prosecuted before justices of the peace, and except that the recorder need not charge the jury except upon charges re-

quested in writing by the defendant or his attorney; which such charges he shall have power to give or refuse under the same rules and regulations now applicable to the granting or refusing of such charges by the county judge in criminal cases. Complaints before such court hereby created and established may be sworn to before the recorder, clerk of said court, the city secretary, the city attorney or his deputy, each and all of which officers, for that purpose, shall have power to administer oaths; or it may be sworn to before any other officer authorized by law to administer oaths; provided, that, in all cities, towns and villages in this state not operating under special charters, the rules of pleading, practice and procedure now established for justices courts shall apply to said corporation courts in such cities, towns and villages in so far as the same are applicable. (Acts 1899, p. 42, sec. 6.)

Art. 910. Seal of corporation court.—The said corporation court shall have a seal, having engraved thereon a star of five points in the center, and words "Corporation Court in ————, Texas," the impress of which shall be attached to all proceedings, except subpœnas, issued out of said court, and shall be used to authenticate the official acts of the clerk and of the recorder, where he is authorized or required to use the seal of office. (Id. sec. 7.)

Art. 911. Complaint, how commenced and concluded; prosecution conducted by city attorney or deputy; county attorney may also represent state, but no fees; process.—In all prosecutions in said court, whether under an ordinance or under the provisions of the Penal Code, the complaint shall commence in the name of the State of Texas, and shall conclude, "against the peace and dignity of the State;" and, where the offense is covered by an ordinance, the complaint may also conclude, as "contrary to the said ordinance;" and all prosecutions in such court shall be conducted by the city attorney of such city, town or village, or by his deputy; but the county attorney of the county in which said city, town or village is situated may, if he so desires, also represent the state of Texas in such prosecutions, but, in all such cases, the said county attorney shall not be entitled to receive any fees or other compensation whatever for said services, and in no case shall the said county attorney have the power to dismiss any prosecution pending in said court, unless for reasons filed and approved by the recorder of said court. (Id. sec. 8.)

Art. 912. Council to prescribe rules for collecting fees and costs, practice, etc.; rules in meantime.—The council or board of aldermen of each such city, town or village shall, from time to time, by ordinance, prescribe such rules, not inconsistent with the provisions of this chapter nor other laws of this state, as in the discretion of the council or board of aldermen may be proper to enforce, by execution against the property of the defendant, or imprisonment of the defendant, the collection of all costs and fines imposed by such court as herein created and established, and shall also have power to adopt such rules and regulations concerning the practice and procedure in such court as said council or board of aldermen may deem proper, not inconsistent with the provisions of this chapter nor other law of this state; and, until the passage of such ordinance, all rules and regulations of such city, town or village now in force concerning the municipal courts therein, and the enforcement of collection of fines and costs imposed by such court, shall be applicable to the court hereby created and established. (Id. sec. 9.)

Art. 913. Fines and costs paid into city treasury, etc.—All costs and fines imposed by the said court in any city, town or village, in any prosecution therein, shall be paid into the city treasury of said city, town or village, for the use and benefit of the city, town or village. (Id. sec. 10.)

Art. 914. Costs to be collected as provided by ordinances, but not greater than in justices' courts.—There shall be taxed against, and collected of, each defendant, in case of his conviction before such court, such costs as may be provided for by ordinance of the said city, town or village; but in no case shall the council or board of aldermen of any such city, town or village, prescribe the collection of greater costs than are prescribed by law to be collected of defendants convicted before justices of the peace. (Id. sec. 11.)

Art. 915. Jury and witness fees, and enforcing attendance of witnesses according to Code of Criminal Procedure.—The provisions of the Code of Criminal Procedure now in force regulating the amount and collection of jury and witness fees, and for enforcing the attendance of witnesses in criminal cases tried before a justice of the peace, shall, so far as applicable, govern and be applicable to the trial of cases before the corporation court herein created and established. (Id. sec. 12.)

Art. 916. Judge may punish for contempt as county judge; may take recognizances, admit to bail, etc., under rules in county court.—The judge of said corporation court shall have the power to punish for contempt to the same extent and under the same circumstances as the county judge may punish for contempt of the county court. He shall have power to take recognizances, admit to bail, and forfeit recognizances and bail bonds under such rules and regulations as now govern the taking and forfeiture of the same in the county court. (Id. sec. 13.)

Art. 917. Process how served; defendant entitled to notice of complaint, if demanded.—All process issuing out of said corporation court shall be served by the chief of police or any policeman or marshal of the city, town or village within which it is situated, under the same rules and regulations as are now provided by law for the service by sheriffs and constables of process issuing out of the county court, so far as the same are applicable. But each defendant shall be entitled to at least one day's notice of any complaint against him, if such time be demanded. (Id. sec. 14.)

Art. 918. (551) (480) Writs of mayor, etc., may be executed anywhere in the county.—Writs issued by the mayor or recorder of said city for offenses against the laws may be executed, and the accused person or persons arrested by the marshal or his deputies anywhere within the county in which such city is situated. (Acts 1875, ch. 100, sec. 132.)

Art. 919. (552) (481) Proceedings when a peace bond, etc., given before mayor, etc., has been forfeited.—Whenever any person has been required by the mayor or recorder to give a peace bond, or a bond for good behavior, or any similar bond under this title, and has complied with such orders, and been guilty of a violation or infraction of such bond, and the same is proved or established to the satisfaction of that officer in any trial or complaint, such party so offending may be fined in the sum of two hundred dollars and imprisoned for two months; and the city in its corporate name may sue in any court having jurisdiction for the recovery of the penalty of such bond. (Id. sec. 133.)

Art. 920. Fees of recorder, etc., how prescribed; paid out of city treasury; fines and costs collected and disposed of, how; committals; city liable to officers of appellate court, when; court to be always open.—Unless provided by special charter, the council or board of aldermen of each city, town or village shall, by ordinance, prescribe the compensation and fees which shall be paid to the recorder, city attorney, city secretary and other officers of said court, which compensation and fees shall be paid out of the treasury of the said city, town or village. In all such cases, the fines imposed on appeal, together with the costs imposed in the corporation court, and the court to which the appeal is taken, shall be collected of the defendant and his bondsmen, and such fine and the costs of the corporation court shall, when collected, be paid into the treasury of the city, town or village. When the defendant in such cases is committed to custody, he shall be committed to the custody of the chief of police or city marshal of such city, town or village, to be held by him in accordance with the ordinance of such city, town or village, providing for the custody of prisoners convicted before such corporation court; and said city, town or village shall be liable to the officers of the court to which the appeal is taken for the costs due them when such defendant has fully discharged such fine and costs. Such corporation court shall hold no terms, and shall be at all times open for the transaction of business. (Acts 1899, p. 43, sec. 15.)

Art. 921. Appeals to what courts; trial de novo; appeals how governed.—Appeals from judgments rendered by such corporation courts shall be heard by the county court, except in cases where the county courts have no jurisdiction, in which counties such appeals shall be heard by the district court of such counties, unless in such county there is a criminal district court, in which case the appeal shall be from the corporation courts to the said criminal district court; and, in all such appeals to such county court, district court, or criminal district court, the trial shall be de novo, the same as if the prosecution had been originally commenced in that court. Said appeals shall be governed by the rules of practice and procedure for appeals from justices' courts to the county court, as far as the same may be applicable. (Id. sec. 16.)

See Thielen v. S., 65 S. W. 533; Jarvis v. Taylor County, 163 S. W. 334; Tippett v. S., 189 S. W. 485.

Art. 922. Until organization of corporation courts municipal court as now established has jurisdiction, but thereafter abolished.—Until the due and legal organization of the said court in any city, town or village, as herein provided for, the municipal court in said city, town or village, as now established, shall continue to exercise its powers and jurisdiction. After the due and legal organization of the said corporation court, the said municipal court and the office of the judge and recorder and clerk thereof shall be abolished, and the said municipal court in each city, town or village shall be entirely superseded by the corporation court and such officers herein created and established, as the same shall be and become duly and legally organized. (Id. sec. 17.)

CHAPTER SIX

TAXATION

Art. 923. (484) (425) Ad valorem tax.—The city council shall have power within the city, by ordinance, to annually levy and collect taxes, not exceeding one-fourth of one per cent on the assessed value of all real and personal estate and property in the city not exempt from taxation by the constitution and laws of the state. (Acts 1875, ch. 100, sec. 81; Const. art. 11, sec. 4.)

See People's Nat. Bk. v. City of Ennis, 50 S. W. 632.

Art. 924. (485) May levy and collect tax for improvements, buildings, etc.—The city or town council or board of aldermen of any incorporated city or town within the limits of this state shall have power, by ordinance, to levy and collect an annual ad valorem tax of not exceeding twenty-five cents on the one hundred dollars valuation of taxable property within such city or town for the erection, construction or purchase of public buildings, streets, sewers and other permanent improvements within the limits of such city or town. Within the meaning of this article shall be included building sites and buildings for public free schools and institutions of learning within those cities and towns which have assumed or which may hereafter assume the exclusive control and management of the public free schools and institutions of learning within their limits. (Acts 1885, p. 99.)

Art. 925. (486) (425c) May levy tax for interest and sinking fund on certain bonds; for current expenses, permanent improvements, roads, schools; independent school districts included; boundaries.—The city or town council or board of aldermen of any city or town or commission of any city or town in this State, incorporated under the general laws, shall have the power, by ordinance, to levy and collect an annual ad valorem tax sufficient to meet interest payments and to create a sinking fund on all indebtedness legally incurred prior to the adoption of the constitutional amendment in 1883, regarding the power of a city or town to levy and collect taxes, etc., and may levy and collect twenty-five cents on the one hundred dollar valuation of all property in such city or town for current expenses, and may levy and collect an additional twenty-five cents on the one hundred dollar valuation for the purpose of the erection and equipment or the purchase of public buildings, water works, sewers and other permanent improve-

ments, except building sites and buildings for the public free schools, within the limits of such city or town, and shall have power, by ordinance, to levy and collect a tax not to exceed fifteen cents on the one hundred dollar valuation of property for the construction and improvement of the roads, bridges and streets of such city or town within its limits, and shall have power, by ordinance, to annually levy and collect such ad valorem tax for the support and maintenance of public free schools and for the erection and equipment of public free school buildings in the city or town, where such city or town is a separate and independent school district, as the electors of any such district may determine under the provisions of Chapter 169, Acts of the Thirty-fifth Legislature [Arts. 2876–2880, post]. Within the meaning of this Article shall be included all such separate and independent school districts that the management and control of the public free schools therein has been assumed or may hereafter be assumed by a city or town under the provisions of Chapter 17, Title 48, Revised Civil Statutes of Texas, 1911, and amendments thereto; the boundaries of such districts shall be coincident with the city or town, as incorporated, in such cities and towns as have not extended their lines for school purposes only, and in such cities and towns as have extended their lines or may hereafter extend their lines for school purposes only, under the provisions of Article 2883, Revised Civil Statutes of Texas, 1911, the boundaries of such districts shall be coincident with the boundaries of the city or town as extended for school purposes only, and all such separate and independent districts shall be classified as municipal districts. (Acts 1909. 2 S. S. p. 444; Acts 1891, p. 135; Acts 1917, 3d C. S., ch. 14, sec. 1.)

See City of Palestine v. Royall, 40 S. W. 621; Bodenheim v. Lightfoot, 132 S. W. 468; Houston v. Gonzales Independent School Dist., 202 S. W. 963.

For provisions as to bonds, contained in this act, see article 882.

Art. 926. (487) (426) Cities of 10,000 inhabitants and over to levy and collect tax; validating act.—Cities having more than ten thousand inhabitants may levy, assess and collect taxes not exceeding one and one-half per cent on the assessed value of real and personal estate and property in the city, not exempt from taxation by the constitution and laws of the state; and assessments, levy and collection of taxes made by such cities for the year 1889 are hereby made valid to the amount aforesaid; and such cities are hereby authorized to levy, assess and collect a further tax of twenty-five cents on the one hundred dollars worth of property for the purpose of paying the debts of such city lawfully contracted prior to the first day of January, 1889, not to include any bonded debt. Any funding warrants that may be issued for such debt by any such city shall not be included in the limit of six per cent prescribed by article 879; provided, that this article shall not apply to, or in any manner affect, any city organized under a special charter, and shall not be construed to validate any debt contracted by any city without authority of law existing at the time the same was contracted. (Acts 1889, p. 3.)

See City of Sherman v. Langham, 40 S. W. 140.

Art. 927. (489) (428) Poll tax.—The city council shall have power to levy and collect an annual poll tax, not to exceed one dollar, of every male inhabitant of said city over the age of twenty-one years (idiots and lunatics excepted), who is a resident thereof at the time of such annual assessment. (Acts 1875, ch. 100, sec. 82.)

Art. 928. (490) (429) Occupation tax.—The city council shall have power to levy and collect taxes, commonly known as licenses, upon trades, professions, callings and other business carried on; and each and every person and firm engaging in the following trades, professions, callings and business, among others, shall be liable to pay such license tax; but this enumeration shall not be construed to deprive the city council of the right and power to levy and collect other license taxes, and from other persons and firms, under the general authority herein granted. (Id. sec. 83.)

See Ex parte Terrell, 48 S. W. 504.

Art. 929. (491) (430) Occupations that are subject to taxation.—Every person and firm engaged in selling goods, wares and merchandise; every person or firm keeping a billiard table, ball alley, or nine or ten-pin alley, or any similar game; every person or firm selling goods, wares and merchandise at public auction; every merchandise or cotton broker or commission business; every person or firm pursuing the occupation of hawker or peddler of goods or any article whatever. (Id. sec. 84.)

Art. 930. (492) (431) Same subject.—Nothing herein contained shall in any wise prevent or restrain the city council from collecting the license, and each license tax hereinbefore provided for by this title; each establishment shall be liable to said license tax; and any person or firm pursuing occupations, business, avocations or callings subject to said tax shall pay on each, and no license shall extend to more than one establishment, or include more than one occupation, avocation, business or calling. (Id. sec. 85.)

Art. 931. (493) (432) Power of city council to provide for assessing, etc., taxes.—The city council shall have power to provide by ordinance for the assessing and collecting of the taxes aforesaid, and to determine when taxes shall be paid by corporations, and when by the individual corporators; provided, no tax shall be levied unless by consent of two-thirds of the aldermen elected. (Id. sec. 86.)

Art. 932. (494) (433) Collection of license tax, etc.—The license tax shall be collected by the assessor and collector, and shall be paid to that officer by each and every person and firm owing such license and before engaging in any trade, profession, business, calling, avocation or occupation subject to said tax; and, if any person shall engage in any business, calling, avocation or occupation which by an ordinance of the said city is subject to a license tax, without first having obtained said license, he, she or they shall, on conviction before the mayor or recorder's court, be liable to imprisonment or a fine of ten dollars, or both imprisonment and such fine, for each day such violation of said ordinance may continue; and this article shall apply to all persons owing any license and failing to pay the same; provided, that the city council may collect said license tax by suit in any court having jurisdiction, under such rules and regulations as they may pro-

vide by ordinance; said taxes, commonly known as licenses, laid as herein provided, shall not be construed to be a tax on property within the meaning of the provisions of this title. (Id. sec. 87.)

Art. 933. (554) (483) Occupation license to be suspended or revoked, etc., when.—In all cases where, by any provision of this title, or by ordinance passed in pursuance thereof, a person is required to obtain a license for any calling, occupation, business or avocation, and has, on complaint before the mayor or recorder, been adjudged guilty of violating any rule, regulation, or ordinance of the city council in relation thereto, the mayor or recorder, in addition to fine and imprisonment, or either, may suspend or revoke the license so granted. (Id. sec. 135.)

Wichita Electric Co. v. Hinckley, 131 S. W. 1192.

Art. 934. (495) (434) Real estate includes what.—The term real estate or property, as used in this title, shall be construed to include lots, lands and all buildings or machinery and structures of every kind erected upon and affixed to the same. (Id. sec. 88.)

Art. 935. (496) (435) Personal estate includes what.—The term personal estate or property, as used in this title, shall be construed to include all household furniture, money, goods, capital, chattels, public stocks and stocks of corporations, moneyed or otherwise, and generally all property which is not real. (Id. sec. 89.)

Art. 936. (497) (436) City council may provide for the exemption of property from taxation, etc.—The city council may, by ordinance, provide for the exemption from taxation of such property as they may deem just and proper; provided, nothing contained in this chapter on taxation shall be construed to prevent the city council from imposing, levying and collecting special taxes and assessments for the improvement of the avenues, streets and alleys, as hereinafter provided. (Id. sec. 90.)

Art. 937. (498) (437) Taxes for payment of indebtedness.—The city council may also levy, assess and collect taxes necessary to pay the interest and provide a sinking fund to satisfy any indebtedness heretofore legally made and undertaken; but all such taxes shall be assessed and collected separately from those levied, assessed and collected for current expenses of municipal government, and shall, when levied, specify in the act of levying the purpose therefor; and such taxes may be paid in the coupons, bonds or other indebtedness for the payment of which such tax may have been levied. (Const. art. 11, sec. 6.)

See City of Austin v. Cahil, 88 S. W. 536.

CHAPTER SEVEN

ASSESSMENT AND COLLECTION OF TAXES

Art. 938. (499) (438) Power of city council to provide for collection of taxes.—The city council may and shall have full power to provide, by ordinance, for the prompt collection of all taxes assessed, levied and imposed under this title, and due or becoming due to said city, and are hereby authorized, and to that end may and shall have full power and authority to sell, or cause to be sold, real as well as personal property, and may and shall make all such rules and regulations, and ordain and pass all ordinances, as they may deem necessary to the levying, laying, imposing, assessing and collecting of any of the taxes herein provided. (Acts of 1875, p. 113, sec. 91.)

Art. 939. (500) (439) Power of city council to regulate tax lists, assessment of taxes, etc.—The city council shall have power, by ordinance, to regulate the manner and mode of making out tax lists or inventories and appraisements of property therein, and to prescribe the oath that shall be administered to each person on such rendition of property, and to prescribe how and when property shall thus be rendered, and to prescribe the number and form of assessment rolls, and fix the duties and define the powers of the assessor and collector, and adopt such measures as they may deem advisable to secure the assessment of all property within the limits of said city, and collect the tax thereupon; and may by ordinance provide that any person, firm or corporation having property subject to taxation or being liable for any tax under the provisions of this title, and neglecting to render a list, inventory and appraisement thereof, as required by ordinance of said city, shall be liable to fine and imprisonment. (Id. sec. 92.)

Art. 940. (501) (440) Duty of taxpayers to render inventory of property, etc.—Every person, partnership and corporation owning property within the limits of the corporation shall, within two months after published notice, hand in to the assessor and collector of the city a full and complete inventory of the property possessed or controlled by him, her or them within said limits not exempt from taxation, on the first day of January of the current year, verified as required by ordinance; and any person failing or refusing to comply with the provisions of this article shall be liable to fine and imprisonment, and the city council shall, by ordinance, clearly define the duties of taxpayers herein, and make all necessary rules and regulations to secure the rendition of property and the collection of taxes due thereon. (Acts 1875, ch. 100, sec. 93.)

Art. 941. (410) (366) Assessor and collector, powers, duties, bond, etc.—The assessor and collector shall make up the assessment of all property taxed by the city, and make duplicate rolls thereof, and, on completion of the rolls, shall deliver one of them to the city secretary. He shall collect all taxes due the city, and in the event of nonpayment of any taxes, shall proceed to sell the property to raise the amount of taxes so due; and shall in the performance of his duties, observe the provisions of this title, and the ordinances of the city relating thereto. He shall give bond, in such amount and in such form as the city council may prescribe, with good and sufficient sureties; and the city council may require a new bond whenever, in their opinion, the existing bond is insufficient; and whenever such bond is required, he shall perform no official act until said bond shall be given and approved. He shall, at the expiration of every week, pay to the treasurer all money by him collected, and shall report to the city council, at the first meeting in every month, all moneys so collected and paid; and he shall perform all such other duties, and in such manner and

according to such rules and regulations as the city council may prescribe. The assessor and collector is authorized to require the owners of all property subject to taxation to render a correct account of the same, under oath, to be administered by him. The assessor and collector shall receive such fees and commissions for his services as may be allowed by the ordinances of the city. (Id. sec. 23.)

Art. 942. (502) (442) Duty of assessor and collector to make lists of personal property, etc.—It shall be the duty of the assessor and collector to make out a list of all personal property which has not been given in for assessment according to the provisions of this title, and assess the same in the name of the owner, if he be known; if not, then it shall be assessed by description of the property and as unknown owner; and the value of such property shall be determined by the board of equalization, and the same may be sold as in other cases, if the tax be not paid in the time prescribed by law. (Id. sec. 95.)

Art. 943. (503) (443) Unrendered property shall be ascertained, etc., by assessor.—It shall be the duty of the assessor and collector, at the expiration of the time fixed by ordinance for the rendition of property, to ascertain such property in the city subject to taxation as has not been rendered; and the same shall be by him presented to the board of equalization for valuation by said board; and the same shall be by him entered in a supplement to the assessment roll as unknown, specifying the year for which said tax is not paid within the time prescribed by law; said property shall be sold at the same time and with like effect as other property. (Id. sec. 96.)

Art. 944. (504) (444) Assessment for back taxes.—Whenever the assessor and collector shall ascertain that any taxable property, real or personal, has not been assessed for the past year, he shall assess the same in a supplement to his next assessment roll, at the same rate under which such property should have been assessed for such year, stating the year for which such property should have been assessed; and the taxes thereon shall be collected in the same manner as other assessments. In all cases where any party has omitted to render property for taxation for any former year or years, and such taxes have not been paid, such party shall give such property in for assessment for the years thus omitted and pay such taxes; and the assessor and collector shall enter all such property in a supplement to his next assessment roll, under the head of payments for former years. (Id. sec. 97.)

Art. 945. (505) Appointment and duties of board of equalization.—The city councils of the several cities and towns of this state incorporated under the general laws shall annually, at their first meeting, or as soon thereafter as practicable, appoint three commissioners, each being a qualified voter, a resident and property owner of the city or town for which he is appointed, who shall be styled the board of equalization; and at the same meeting said council shall, by ordinance, fix the time for the meeting of such board of equalization. (Acts 1887, p. 152.)

Art. 946. (506) Annual meetings of said board.—The board of equalization shall convene annually, at the time fixed by the city council, to receive all the assessment lists or books of the assessor of their city, for examination, correction, equalization, appraisement, and approval; and at all meetings of said board the city secretary shall act as secretary thereof. (Id. sec. 2.)

Art. 947. (507) Shall value property.—The board of equalization shall cause the assessor to bring before them, at the time fixed for the convening of said board, all the assessment lists or books of the assessor of their city, for their examination, that they may see if each and every person has rendered his property at a fair market value; and said board shall have power to send for persons and papers, to swear and qualify persons who testify, to ascertain the value of such property; and, if they are satisfied it is too high, they shall lower it to its proper value; and, if too low, they shall raise the value of such property to a proper figure. Said board shall also have power to correct any errors that may appear on the assessor's lists or books. (Id. sec. 3.)

Art. 948. (508) Values to be equalized by board.—The board of equalization shall equalize as near as possible the value of all the improved lots within the corporate limits of their city, having reference to the size and location of said lots and the improvements thereon, and shall equalize the value of unimproved lots as near as possible, having reference to the size and location thereof, and all other property of the same kind shall be made as nearly equal as possible. Any person may file with said board at any time before the final action of said board a complaint as to the assessment of his or any other person's property, and said board shall hear said complaint; and said complainant shall have the right to have witnesses summoned in sustaining said complaint as to the insurance on said property, or the rents and profits it may bring the holder thereof. (Id. sec. 4.)

Art. 949. (509) Unrendered property list to be examined by board.—The city assessor, at the same time that he delivers to said board his lists and books, as provided in article 947, shall also furnish to said board a certified list of the names of all persons who either refuse to swear or qualify or to sign the oath or affirmation as required by law, together with a list of the property of such persons situated within the corporate limits of their city, as made by him through other information; and said board shall examine said lists and appraise the property so listed by the assessor. (Id. sec. 5.)

Art. 950. (510) Notice to property owners.—In all cases where the board of equalization shall find it their duty to raise the value of any property appearing on the lists or books of the assessor, they shall, after having fully examined such lists or books and corrected all errors appearing therein, adjourn to a day not less than ten nor more than fifteen days from the date of adjournment, such day to be fixed in the order of adjournment, and shall cause the secretary of said board to give written notice to the owner of such property or to the person rendering the same of the time to which said

board may have adjourned, and that such owner or person rendering said property may at that time appear and show cause why the value of said property should not be raised; which notice may be served by depositing the same, properly addressed and postage paid, in the city postoffice. (Id. sec. 6.)

Art. 951. (511) Board to lower values, when.—The board of equalization shall meet at the time specified in said order of adjournment, and shall hear all persons the value of whose property has been raised, and, if said board is satisfied they have raised the value of such property too high, they shall lower the same to its proper value. (Id. sec. 7.)

Art. 952. (512) Approval of lists and rolls by board.—The board of equalization, after they have finally examined and equalized the value of all property on the assessor's lists or books, shall approve said lists or books and return them, together with the lists mentioned in article 949, that he may make up therefrom his general rolls as required by law; and, when said general rolls are so made up, the board shall meet again to examine said rolls and approve the same, if found correct. (Id. sec. 8.)

Art. 953. (513) Action of board final.—The action of said board at the meeting provided for in article 951 shall be final, and shall not be subject to revision by said board or by any other tribunal thereafter. (Id. sec. 9.)

Art. 954. (514) Compensation of board.—The members of the board of equalization and the city secretary, while acting as secretary of said board, shall receive such compensation for their services, to be allowed by the city council, as said council may deem just and reasonable. (Id. sec. 10.)

Art. 955. (515) Oath to be taken.—Before said board shall enter upon their duties, they shall be sworn, by any officer authorized by law to administer oaths, to faithfully and impartially discharge all duties incumbent upon them by law as such board. (Id. sec. 11.)

Art. 956. (516) (445) Duty of assessor and collector in regard to collection of taxes.—The assessor and collector, after the completion of the assessment roll, as required by ordinance, shall proceed to collect the taxes therein mentioned within the time, and give such notice as may be prescribed by the city council, and for that purpose shall call once upon every person taxed, or on the agent or attorney of such person at the usual place of his or her residence, office, place of business, or elsewhere, and demand the payment of the tax charged upon his or her person or property, if the person is to be found, and if not, then a written demand, specifying the amount of taxes due, left at the residence with some adult member of the family, shall be a sufficient demand; provided, that if any person thus owing taxes has no residence, office or place of business, and no agent in the city or known to the assessor and collector, then the said demand shall not be necessary, and the ordinary published notice required by ordinance shall be sufficient. (Acts 1875, ch. 100, sec. 98.)

Art. 957. (517) (446) Property of taxpayer shall be levied on and sold for taxes, when.—If any person shall fail, neglect or refuse to pay the taxes imposed on him and his property, within the time prescribed by the ordinances of said city, the assessor and collector shall, by virtue of his tax list and assessment roll, levy upon so much property liable to taxation belonging to such person as may be sufficient to pay his taxes; and the assessor and collector shall give notice of the time and place of sale by advertisement in writing (if not unknown property), the property and amount of taxes, costs and fees due thereupon; such notice shall be published in some newspaper published in said city; and at the expiration of such notice, and on the day therein specified, the assessor and collector shall proceed to sell such property at public auction, in front of the court house door of the city, or such building as may be used for such purpose; provided, that when real estate is offered for sale the smallest portion of grounds (to be taken from the east side of the premises) shall be sold for which any person will take the same and pay the taxes, costs and fees. (Id. sec. 100.)

See Bean v. City of Brownwood, 43 S. W. 1036.

Art. 958. (518) (447) Assessor and collector shall make deed to purchaser to property sold for taxes; effect of deed, right of redemption, etc.—The assessor and collector shall, when any property has been sold for the payment of taxes, make, execute and deliver a deed for said property to the person purchasing the same, and such deed shall be prima facie evidence in all controversies and suits in relation to the right of the purchaser, his heirs and assigns, to the premises thereby conveyed, of the following facts:

First. That the land or lot or portions thereof conveyed was subject to taxation or assessment at the time the same was advertised for sale, and had been listed or assessed in the time or manner required by law.

Second. That the taxes or assessment were not paid at any time before the sale.

Third. That the land, lot, or portion thereof conveyed had not been redeemed from the sale at the date of the deed, and shall be conclusive evidence of the following facts:

1. That the land, lot or portion thereof sold was advertised for sale in the manner and for the length of time required by law.

2. That the property was sold for taxes or assessments as stated in the deed.

3. That the grantee in the deed was the purchaser.

4. That the sale was conducted in the manner prescribed by law.

And in all controversies and suits involving the title to land claimed and held under and by virtue of such deed, the person claiming title adverse to the title conveyed by such deed shall be required to prove, in order to defeat said title, either that the land was not subject to taxation at the date of the sale, that the taxes or assessment had been paid, that the land had never been listed or assessed for taxation and assessment, as required by this title or some ordinance of the city, or that the same had been redeemed according to the provisions of this title, and that such redemption was made for the use and benefit of the person having the right of redemption under the law; but no person shall be permitted to question the title acquired by the

said deed without first showing that he, or the person under whom he claims title, had title to the land at the time of the sale, or that the title was obtained after the sale; provided, however, that the owner of such property shall have the right to redeem the same at any time within two years of the day and date of the sale thereof, upon paying to the purchaser double the amount of taxes for which the same was sold, together with the costs of such sale and double the amount of all taxes paid by the purchaser since such sale. The assessor and collector shall have full power to levy upon any personal property to satisfy any tax imposed by this title; all taxes shall be a lien upon the property upon which they are assessed, and, in case any property levied upon is about to be removed out of the city, the assessor and collector shall proceed to take into his possession so much thereof as will pay the taxes assessed and costs of collection. (Id. sec. 100.)

See Eustis v. City of Henrietta, 39 S. W. 567; Earle v. City of Henrietta, 43 S. W. 16. As to redemption of land sold for taxes, see Acts 1899, p. 50; Marlin v. Green, 79 S. W. 40; also Acts 1907, p. 282; Armstrong v. Mission Independent School Dist., 195 S. W. 895.

Art. 959. (519) (448) Sale may take place at another time than that first advertised, when, and may be continued from day to day.—If, from any cause, the sale of property levied upon or seized for taxes shall not take place at the time first appointed, the assessor and collector shall appoint some other time, give like notice, and proceed to sell such property in the manner prescribed in the first instance; and, in case said property levied upon or seized for taxes cannot be sold on the day advertised, such sale may be postponed from day to day until completed, of which postponement the assessor and collector shall give verbal notice at the expiration of sale each day. (Id. sec. 101.)

Art. 960. (520) (449) Property shall be struck off to city, when.—If, at any sale of real or personal property or estate for taxes, no bid shall be made for any parcel of land or any goods and chattels, the same shall be struck off to the city, and thereupon the city shall receive, in the corporate name, a deed for said property, and shall be vested with the same right as other purchasers at such sale, and shall have power to sell and convey the same. (Id. sec. 102.)

Art. 961. (5198) (4760) Certain provisions of general tax law applicable, except, etc.—The provisions of chapter thirteen of title 126, in reference to the seizure and sale of real and personal property for taxes, penalties and costs due thereon, shall apply as well to collectors of taxes for towns and cities as for collectors of taxes for counties and collectors of taxes for cities and towns shall be governed, in selling real and personal property, by the same rules and regulations in all respects as to time, place, manner and terms and making deeds, as are provided for collectors of taxes for counties, except as in this chapter otherwise provided. (Acts 1876, p. 259, sec. 20.)

Art. 962. (521) (450) Property of infant, etc., may be redeemed, when.—If the real estate of an infant, feme covert, or lunatic be sold under this title, the same may be redeemed at any time within one year after such disability be removed. (Acts 1875, p. 256, sec. 103.)

See Speer's Marital Rights, p. 357.

Art. 963. Redemption of land sold for taxes.—All lands sold under and by virtue of decree and judgment of court, for taxes due any incorporated city or town within this state, may be redeemed by the owner or owners thereof within two years from the date of deed, upon the payment to the purchaser, or his assigns, of double the amount so paid, including costs of court; provided, that purchaser at such foreclosure sale, and his assigns, shall not be entitled to the possession of the property sold for taxes until the expiration of two years from the date of deed. (Acts 1899, p. 50.)

Art. 964. (522) (452) Taxes, etc., collectible in current money only.—Taxes levied to defray the current expenses of the city government, and all license and occupation taxes levied, and all fines, forfeitures, penalties and other dues accruing to cities, shall be collectible only in current money. (Const. art. 11, sec. 4. Acts 1875, p. 256, sec. 105.)

See Wagner v. Porter, 56 S. W. 560.

CHAPTER EIGHT
FIRE DEPARTMENT

Art. 965. (523) (453) City council may regulate and control the erection, etc., of wooden buildings.—The city council, for the purpose of guarding against the calamities of fire, may prohibit the erection, building, placing, moving or repairing of wooden buildings within such limits within said city as they may designate and prescribe; and may within said limits prohibit the moving or putting up of any wooden building from without said limits, and may also prohibit the removal of any wooden building from one place to another within said limits, and may direct, require and prescribe that all buildings within the limits so designated and prescribed, as aforesaid, shall be made or constructed of fire-proof materials, and to prohibit the rebuilding or repairing of wooden buildings within the fire limits when the same shall have been damaged to the extent of fifty per cent of the value thereof, and may prescribe the manner of ascertaining such damage; may declare all the dilapidated buildings to be nuisances and direct the same to be repaired, removed or abated in such manner as they shall prescribe and direct; to declare all wooden buildings in the fire limits which they deem dangerous to contiguous buildings, or in causing or promoting fires, to be nuisances, and require and cause the same to be removed in such manner as they shall prescribe.

Art. 966. (524) (454) May prohibit, etc., dangerous condition of chimneys, etc.—The city council shall have power: To prevent and prohibit the dangerous condition of chimneys, flues, fire-places, stove-pipes, ovens, or other apparatus used in or about any building or manufactory, and to cause the same to be removed or placed in a secure and safe condition when considered dangerous. (Acts 1875, p. 256, sec. 106.)

Art. 967. (525) (455) May prevent deposits of ashes in improper places, etc.—To prevent the deposit of ashes in places

where they would be liable to produce fire, or in any wooden box or barrel, or within any wooden building, and to appoint one or more officers to enter into all buildings and inclosures to examine and discover whether the same are in a dangerous state, and to cause such as may be dangerous to be put in a safe condition. (Id. sec. 107.)

Art. 968. (526) (456) May require the inhabitants to keep fire buckets, etc.—To require the inhabitants to keep and provide as many fire buckets and ladders or other means to reach the roof as they shall prescribe, and to regulate the use thereof in times of fire. (Id. sec. 108.)

Art. 969. (527) (457) May regulate carrying on of business dangerous in promoting fires.—To regulate or prevent the carrying on of manufactories and works dangerous in promoting or causing fires; to prohibit or regulate the building and erection of cotton presses and sheds. (Id. sec. 109.)

Art. 970. (528) (458) May regulate, etc., use of fireworks and firearms.—To regulate or prevent and prohibit the use of fireworks and firearms. (Id. sec. 110.)

Art. 971. (529) (459) May control, etc., the storing of gunpowder, etc.—To direct, control or prohibit the keeping and management of houses or any buildings for the storing of gunpowder and other combustible, explosive or dangerous materials within the city; to regulate the keeping and conveying of the same. (Id. sec. 111.)

Art. 972. (530) (460) May regulate, etc., the building of parapet and party walls.—To regulate and prescribe the manner and to order the building of parapet and party walls. (Id. sec. 112.)

Art. 973. (531) (461) May compel owners of buildings to have scuttles, etc.—To compel the owners or occupants of houses or other buildings to have scuttles in the roofs and stairs or ladders leading to the same. (Id. sec. 113.)

Art. 974. (532) (462) May provide regulations for extinguishment of fires.—To authorize the mayor, officers of fire companies, or any officer of said city, to keep away from the vicinity of any fire all idle, disorderly and suspicious persons, and arrest and imprison the same, and compel all officers of the city and all other persons to aid in the extinguishment of fires and in the preservation of property exposed to danger thereat, and in preventing goods from being stolen. (Id. sec. 114.)

Art. 975. (533) (463) Same subject.—And generally to establish such regulations for the prevention and extinguishment of fires as the city council may deem expedient. (Id. sec. 115.)

Art. 976. (534) (464) May procure fire engines, etc.—The city council may procure fire engines and other apparatus for the extinguishment of fires, and have control thereof, and provide engine-houses for keeping and preserving the same; and shall have power to organize fire, hook and ladder, hose and ax companies, and fire brigade; and the companies so organized, with such assistant engineers as may be provided for, and the chief engineer, shall constitute the fire department of the city. Each company shall have the right to elect its own members and officers. The engineers shall be chosen in such manner as said department may determine, subject to the approval of the city council, who shall define the duties of said officers and pass such ordinances as they may deem proper for the interest and welfare of said department and to contribute to the efficiency thereof; all officers so elected and approved shall be commissioned by the mayor; and the said companies, officers and members shall observe and be governed by the ordinances of said city relating to the fire department; said companies shall have power to adopt their own constitution and by-laws, not inconsistent with the provisions of this title and the ordinances of said city; and said department shall take the care and management of the engines and other implements and apparatus provided and used for the extinguishment of fires; and their powers and duties shall be prescribed and defined by the city council. (Id. sec. 116.)

Art. 977. (535) (465) Building may be torn down or blown up, etc., when, and the damages in such cases.—When any building in the city is on fire, it shall be lawful for the chief or acting chief engineer, with the concurrence of the mayor, to direct such building, or any other building which they may deem hazardous and likely to take fire and communicate to other buildings, to be torn down or blown up or destroyed, and no action shall be maintained against any person or against the city therefor; but any person interested in any such building so destroyed or injured may, within six months, and not thereafter, apply in writing to the city council to assess and pay the damage he has sustained, and, if the city council and the claimant can not agree on the terms of adjustment, then the application of such claimant shall be referred to three commissioners, one to be appointed by the claimant, one by the city council, and the third by both. They shall be sworn faithfully to execute their duty according to the best of their ability, shall have power to subpœna and swear witnesses and shall give all parties a fair and impartial hearing, and give notice of the time and place of meeting; said commissioners shall be qualified voters and owners of real estate in the city, shall take into account the probabilities whether the said building would have been destroyed by fire if it had not been so pulled down and destroyed, and the loss of insurance upon said property, if any, caused by pulling down, blowing up or destroying said building, and may report that no damage should equitably be allowed to such claimant. (Id. sec. 117.)

Art. 978. (536) (466) Damages satisfied, how.—Whenever a report shall be made, and finally confirmed for the appraising of said damages, a compliance with the terms thereof by the city council shall be deemed a full satisfaction of said damages.

Art. 978a. Number of days of service per week.—No member of any paid fire department in any city containing twenty-five thousand inhabitants or more, according to the last United States census, shall be required to be on duty for more than six days in any one week, except in cases of emergency. (Acts 1915, 1st C. S., ch. 9, sec. 1.)

Art. 978b. Same; designation of day of rest.—The city official having supervision of the fire department shall designate the

day of the week upon which each member of such department shall not be required to be on duty. (Id. sec. 2.)

Art. 978c. Members of fire department to receive annual vacation.—Each member of any paid fire department in any city containing more than 30,000 inhabitants, according to the last United States census, shall be allowed fifteen days vacation in each year, with pay, not more than fourteen men to be on vacation at the same time. (Acts 1917, ch. 185, sec. 1; Acts 1917, 1st C. S., ch. 14, sec. 1.)

Art. 978d. Same; designation of vacation days.—The city official having supervision of the fire department shall designate days upon which each member of such department shall be allowed to be on vacation. (Acts 1917, ch. 185, sec. 2; Acts 1917, 1st C. S., ch. 14, sec. 2.)

Art. 978e. Hours of service act not affected.—Nothing in this Act shall be construed to affect Chapter 9, page 22 [Arts. 978a, 978b, ante], Acts of first called session of the Thirty-fourth Legislature. (Acts 1917, ch. 185, sec. 3; Acts 1917, 1st C. S., ch. 14, sec. 3.)

CHAPTER EIGHT A

FIREMEN, POLICEMEN, AND FIRE ALARM OPERATOR'S PENSION FUND

Art. 978½. Board of trustees; members; appointment.—In all incorporated cities and towns in this State, having a population of over 10,000 according to the U. S. census of 1910, having a fully or partly paid fire department or police department, the mayor, of said city or town and two members of the city council, or commissioners, and two citizens of said city or town, to be designated by the mayor, the chief of police, and the chief of the fire department, and their successors in office, are hereby constituted a board of trustees of the Firemen, Policemen, and Fire Alarm Operator's Pension Fund, to provide for the disbursement of the same and to designate the beneficiaries thereof as hereinafter directed, which said board shall be known as the Board of Firemen, Policemen, and Fire Alarm Operator's Pension Fund, Trustees of ....., Texas. (Acts 1919, ch. 10, sec. 1.)

Art. 978½a. Election of board; terms of offices.—The Board hereinabove named shall hold their office until the next general election in such city or town for municipal officers, and until their successors shall have been elected or appointed, and qualified, and at each succeeding general election in such city or town for municipal officers, the persons elected or appointed to such offices, and who shall have qualified, shall constitute such Board for the ensuing two years. (Id. sec. 2.)

Art. 978½b. Organization of board; custody of fund; annual report.—They shall organize as said Board by choosing one of their number as chairman, and by appointing a secretary, and the treasurer of said city or town shall be ex-officio treasurer of said fund. Such Board of Trustees shall have charge of and administer said fund and shall order payments therefrom in pursuance of the provisions of this Act. They shall report annually during the month of .....to the governing authority of such city or town the condition of the Firemen, Policemen, and Fire Alarm Operator's Pension Fund, and the receipts and disbursements on account of the same with a full and complete list of the beneficiaries of said fund and the amounts paid them. (Id. sec. 3.)

Art. 978½c. Statement of desire to participate in fund to be filed with authority to deduct portion of salary for fund.—Each fully paid fireman, policeman, and fire alarm operator and other persons herein designated as members of either of said departments, in the employment of such city or town, who desires himself or his beneficiaries, as hereinafter named, to participate in said fund, shall file a statement in writing with the city clerk of such city or town of his desire to participate in said fund, and authorizing said city or town to deduct 1 per cent of his wages due him by such city or town each month, such money so deducted to become and form a part of the fund hereinafter designated and known as the Firemen, Policemen, and Fire Alarm Operator's Pension Fund. (Id. sec. 4.)

Art. 978½d. Deductions from wages; amount, etc.—There shall be deducted by such city or town from the wages of each fireman, policeman, and fire alarm operator, and other persons herein designated as members of either of said departments, employed by such city or town, 1 per cent of the wages earned by such fireman, policeman, and fire alarm operator, and all other persons designated as members of either of said departments, who has filed his application as provided in Section 4 of this Act, which money so deducted shall be deposited with the treasurer of such city or town to be placed in the fund known as the Firemen, Policemen, and Fire Alarm Operator's Pension Fund; and all donations made to said fund by any person or persons or corporations, and rewards received by any member of either of said departments, and all funds received from any source, shall be deposited by such city or town with the treasurer of such city or town and placed in said fund known as the Firemen, Policemen, and Fire Alarm Operator's Pension Fund. (Id. sec. 5.)

Art. 978½e. Meetings of board; orders on fund; records; quorum; manner of voting.—The Board herein provided for shall hold monthly meetings on the .....of each and every month of each year, and upon the call of its president or chairman at such other times as he deems necessary. It shall issue orders signed by the president or chairman and secretary to the persons entitled thereto of the amount of money ordered paid to such persons from such fund by said Board, which order shall state for what purpose such payment is to be made; it shall keep a record of its proceedings, which records shall be a public record; it shall at each monthly meeting send to the treasurer of said city or town a written or printed list of persons entitled to payment from the fund hereinbefore provided for, stating the amount of such payment, and for what granted, which list shall be certified to and signed by the president or chairman and secretary of such Board, attested under oath. The treasurer of said city or town shall thereupon enter a copy of said list upon the book

to be kept for that purpose, and which book shall be known as the Firemen, Policemen, and Fire Alarm Operator's Pension Fund Board of ....., Texas, and the said Board shall direct payment of the amounts named therein to the persons entitled thereto out of said funds. A majority of all of the members of said board herein provided for shall constitute a quorum, and have power to transact business; provided, however, no money belonging to said fund shall ever be disbursed for any purpose without a vote of a majority of all of the members of the Board of Trustees, which shall be taken by the yeas and nays, and the vote of each member so voting entered upon the proceedings of the board. (Id. sec. 6.)

Art. 978½f. Custody of moneys provided for fund.—All moneys provided for said fund by this Act shall be paid over to and received by the treasurer of such city or town for the use and benefit of the Firemen, Policemen, and Fire Alarm Operator's Fund of such city or town, and the additional duties thus imposed upon such treasurer shall be and comprise additional duties for which he shall be liable under his oath and bond as such city or town treasurer, but he shall receive no compensation therefor. (Id. sec. 7.)

Art. 978½g. Persons entitled to share in fund.—Any person who at the taking effect of this Act and the establishment of said fund, or thereafter, who shall have been duly appointed and enrolled in the fire department, police department, or fire alarm operator's department of any such city or town, to which application is made for participation in said fund by such person and who has filed his written application hereinbefore provided for within thirty days after the taking effect of this Act and the organization of such Board, or who shall file his application as herein provided within thirty days after becoming a member of said fire department, police department, or fire and police alarm operator's department of said city or town, and who shall have allowed the deductions from his salary as herein provided for, as well as the beneficiaries hereinafter named in the event of his death, shall be entitled to participate in said fund as provided in this Act. (Id. sec. 8.)

Art. 978½h. Retirement from service; length of service; pension from fund; amount.—Whenever any member of the fire department, police department or fire alarm department of any such city or town who shall have contributed a portion of his salary, as provided in this Act, shall have served twenty years or more in either of said departments of such city, he may be entitled to be retired from said service upon application, and shall be entitled to be paid from such funds a monthly pension of one-half of the salary received by him at the time of his retirement, provided the board shall approve such application for retirement. (Id. sec. 9.)

Art. 978½i. Same subject; disabilities incurred in line of duty; pension from fund; amount.—Whenever any member of the fire department, police department or fire alarm operator's department of any such city or town, and who is a contributor to said fund as hereinbefore provided, shall become so permanently disabled through injury received, or disease contracted, in the line of duty, as to incapacitate him for the performance of duty, or shall for any cause, through no fault of his own, become so permanently disabled as to incapacitate him for the performance of duty, and shall make written application therefor, and said application shall be approved by a majority of the Board of Trustees hereinbefore provided for, he shall be retired from the service thereof and be entitled to receive from the said fund 50 per cent of the monthly wages received by such fireman, policeman, or fire alarm operator, or other person herein described as a member of either of said departments, at the time he became so disabled; to be paid in monthly installments on the first day of each month. (Id. sec. 10.)

Art. 978½j. Payments from fund; to widows or children; amount.—In case of the death of any member of the fire department, police department or fire alarm operator's department of any such city or town, resulting from disease contracted, or injury received while in the line of duty, or from any other cause through no fault of his own, and who at the time of his death or retirement was a contributor to said fund or a portion of his salary, as hereinbefore provided, before or after retirement from the service thereof, leaving a widow or a child, or children under 18 years of age, the widow shall be entitled to receive from the said Firemen, Policemen, or Fire Alarm Operator's Pension Fund an amount not exceeding 25 per cent of the monthly wages received by such member immediately preceding his death, and the children of said deceased under 16 years of age shall receive in the aggregate 25 per cent of the monthly wages of such deceased immediately prior to his death, to be equally divided between them, and when any child shall reach 16 years of age then such child shall no longer participate in the division of said 25 per cent of the wages of said deceased but the said 25 per cent shall be paid to his remaining children, if any, under 16 years of age, in equal parts until they respectively become 16 years of age, and in no case shall the amount paid to any one family exceed the amount of 50 per cent of the wages earned by the deceased immediately prior to the time of his death; provided that upon re-marriage of any widow or the marriage of any child granted a pension under the provisions of this Act, such pension shall cease, and the pension granted to or for any child or children under the age of 16 years shall cease upon their reaching 16 years of age; provided further that no widow, child, or children, of any deceased member of the said fire department, police department, or fire alarm operator's department of any such city or town, resulting from any marriage contract subsequent to the date of retirement of said member, shall be entitled to a pension under the provisions of this Act. (Id. sec. 11.)

Art. 978½k. Same subject; to father, mother, etc.; amount.—In case of the death of any member of the fire department, police department, or fire alarm operator's department from injuries received or disease contracted while in the line of duty, or from any cause through no fault of his own, who

was a contributor to said fund and entitled to participate in said fund himself, who shall die leaving no wife or children, but who shall leave surviving him a dependent father or mother, brother or sister, which said father, mother, brother or sister, were wholly dependent upon said person for support, then such dependent father, mother, sister and brother who were wholly dependent on him, shall be entitled to receive in the aggregate the sum of 50 per cent of the wages earned by said deceased immediately prior to his death, to be equally divided between those who were wholly dependent on said deceased, so long as they are wholly dependent, and the said Board of Trustees shall have the power and authority to determine the facts as to the dependency of said parties and each of them, and as to how long the same exists, and may at any time upon the request of any contributor to this fund reopen any award made to any of said parties and discontinue such pension as to all or any of said parties as it may deem proper and the findings of said Board in regard to such matter and as to all pensions granted under this Act shall be final and conclusive upon all parties seeking a pension as a dependent of said deceased, or otherwise until such award of the trustees shall have been set aside or revoked. (Id. sec. 12.)

Art. 978½l. Determination as to right to retirement and pensions.—The said board shall consider all cases for the retirement and pension of members of the fire, police, and fire alarm operator's department rendered necessary or expedient under the provisions of this Act, and all applications for pensions by widows and children under 16 years of age, and of dependent father, mother, brother or sister, and the said trustees shall give written notice to persons asking a pension to appear before said board and give such evidence under oath as he, or they, may desire and may introduce testimony of witnesses, and any person who is a member of either of said departments and who is a contributor to said fund, as hereinbefore provided, may appear either in person or by attorney and contest the application for participation in said fund by any person claiming to be entitled to participate therein and may offer testimony in support of such contest and the president or chairman of said board shall have power and authority to issue process for witnesses and administer oath to said witnesses to examine any witness as to any matter effecting retirement or a pension under the provisions of this Act. Such process for witness shall be served by any member of the police, fire, and fire alarm operator's departments and upon the refusal or neglect of any witness to attend and testify when required, he or she may be compelled to attend and testify, as in any judicial proceeding, and any witnesses knowingly making a false statement to the said board on any material matter shall be guilty of perjury and punished accordingly as provided in the laws of this State. (Id. sec. 13.)

Art. 978½m. Medical examination of pensioner.—The said board, in its discretion, at any time may cause any person receiving any pension under the provisions of this Act, who has served less than 20 years, to appear and undergo a medical examination as the result of which the said board shall determine whether the relief in said case shall be continued, increased, decreased, or discontinued. Should any person receiving relief under the provisions of this Act, after due notice, fail to appear and undergo the examination prescribed herein, the said board are authorized in their discretion to reduce or entirely discontinue such relief. (Id. sec. 14.)

Art. 978½n. Who are members of fire, police, etc., forces.—All fire, police, and fire alarm operators and superintendents in the employ of any such city or town, and who have filed their application for participation in said fund and have contributed a portion of their salary, as hereinbefore provided for other members of such fire or police departments, shall be considered, and are hereby declared to be members of the fire, police, and fire alarm operator's department, respectively, of such city or town, and they and their beneficiaries shall have the same rights and privileges as are herein granted to other members of the fire and police departments of such cities. (Id. sec. 15.)

Art. 978½o. Expenditure of public funds.—No funds shall be paid out of the public treasury of any such incorporated city or town, in carrying out any of the provisions of this Act, except on a majority vote of the voters of such town or city. (Id. sec. 16.)

Art. 978½p. Pensions not assignable and exempt from garnishment, etc.—The amount, or amounts, awarded to any person under the provisions of this Act, shall not be liable for the debts of any such person or persons and shall not be assignable and shall be exempt from garnishment or other legal process. (Id. sec. 16a.)

Art. 978½q. When act effective.—No person shall be entitled to receive any compensation under the provisions of this Act until on or after January 1, 1920. (Id. sec. 17.)

Section 18 repeals all conflicting laws.

Art. 978½r. Partial invalidity of act.—If any of the provisions of this Act shall ever be held to be unconstitutional or invalid, such unconstitutionality or invalidity shall in no way affect the constitutionality or validity of any portion of this Act which may be given reasonable effect without the provisions so declared unconstitutional or invalid. (Id. sec. 19.)

CHAPTER NINE.

SANITARY DEPARTMENT

Art. 979. (537) (467) City council may appoint health physician, etc.—The city council shall appoint a health officer, and as many health inspectors as they may deem necessary, and shall prescribe, by ordinance, the powers and duties and compensation of the same. (Acts 1875, p. 256, sec. 119. Acts 1909, p. 340, sec. 20.)

Art. 980. (538) (468) Power to make regulations in regard to pestilence and disease.—The city council shall have power to take such measures as they may deem effectual to prevent the entrance of any pestilence, contagious or infectious diseases into the city; to stop, detain and examine, for

that purpose, any person coming from any place infected, or believed to be infected, with that disease; to establish, maintain and regulate pest-houses or hospitals at some place within the city, or not exceeding five miles beyond its bounds; to cause any person who shall be suspected of being infected with any such disease to be sent to such pest-house or hospital; to remove from the city or destroy any furniture, wearing apparel, or property of any kind which shall be suspected of being tainted or infected with pestilence, or which shall be likely to pass into such a state as to generate or propagate diseases; to abate all nuisances of every description which are or may become injurious to the public health, in any manner that they may deem expedient; and from time to time do all acts, make all regulations, and pass all ordinances which they shall deem expedient for the preservation of health and the suppression of disease in the city. (Acts 1875, p. 256, sec. 120.)

Art. 981. (539) (469) Owner, etc., of public conveyance conveying into city persons sick with contagious disease, liable to punishment, when.—The owner, driver, conductor or person in charge of any stage, railroad car or public conveyance, which shall enter the city, having on board any person sick of a malignant fever, or pestilential, contagious or infectious disease, unless such person became sick on the way and could not be left, shall be deemed guilty of a misdemeanor, punishable with fine and imprisonment; and such owner, driver, conductor or person in charge, shall, within three hours after the arrival of such sick person, report in writing the facts, with the name of such person and the house where he was put down in the city, to the health officer; and every neglect to comply with these provisions shall be a misdemeanor, punishable by fine and imprisonment, or either. (Id. sec. 121.)

Art. 982. (540) (470) Any person liable to punishment, when.—Any person who shall bring, or cause to be brought, into the city any person or property of any kind, tainted or infected with malignant fever, or pestilential, or infectious disease, shall be guilty of a misdemeanor, and punishable by fine and imprisonment, or either. (Id. sec. 122.)

Art. 983. (541) (471) Inn-keeper, physician, etc., shall report persons sick with smallpox, etc.—Every keeper of an inn, hotel, tavern, boarding or lodging house in the city, in which any inmate thereof shall be sick with smallpox, varioloid, yellow fever, or other infectious or pestilential disease, shall, upon such fact coming to his knowledge, forthwith report the same to the health officer. Every physician in the city shall report, under his hand, to the officer above named, the name, residence and disease of every patient whom he shall have sick of any infectious or pestilential disease, within six hours after he shall have visited such patient. A violation of either of the provisions of this article, or any part of either of them, shall be a misdemeanor, punishable by fine and imprisonment, or either. (Id. sec. 123.)

Art. 984. (542) (472) Cities of 35000 inhabitants may cleanse city, abate unhealthful places, etc.; may pass ordinances, impose fines, etc.; notice to owners of property; city may do work and assess cost against property; lien; enforcement.—In cities of 35000 population, or over, the city or town council, city commissioners, or other governing body of a city or town whether acting under a special charter or incorporated under the general laws of the state, shall have power to require the filling up, drainage and regulating of any lot or lots, grounds or yards, or any other places in the city or town which shall be unwholesome, or have stagnant water therein, or from any other cause be in such condition as to be liable to produce disease; also to cause all premises to be inspected and to impose fines on the owners of houses under which stagnant water may be found, or upon whose premises such stagnant water may be found, and to pass such ordinances as they may deem necessary for the purposes aforesaid and for making, filling up, altering or repairing of all sinks, and privies, and directing the mode and material for constructing them in future, and for cleansing and disinfecting the same; and for cleansing of any house, building, establishment, lot, yard or ground from filth, carrion or impure or unwholesome matter of any kind; also to require the owner of any lot or lots within such city or town to keep the same free from weeds, rubbish, brush and any and all other objectionables, unsightly or unsanitary matter of whatever nature, and in the event such owner fails or refuses so to do, within ten days after notice in writing, or by letter addressed to such owner at his postoffice address, or by publication as many as two times within ten consecutive days, if personal service may not be had as aforesaid, or the owner's address be not known, such city or town may do such work or may cause the same to be done and pay therefor and charge the expenses incurred in doing or having such work done or improvements made to the owner of such property, as herein provided; and to punish any owner or occupant violating the provisions of any ordinance so passed, as aforesaid; and the city or town council, city commissioners, or other governing body of such town or city, shall also in addition to the foregoing remedy, have the power to cause any of the improvements above mentioned to be done at the expense of the city or town, on account of the owners, and cause the expense thereof to be assessed on the real estate, or lot or lots upon which such expense is incurred; and, on filing with the county clerk of the county in which the city or town is situated a statement by the mayor or city health officer of such city or town of such expenses, such city or town shall have a privileged lien thereon, second only to tax liens and liens for street improvements to secure the expenditures so made, and ten per cent interest on the amount from the date of such payment. For any such expenditures, and interest, as aforesaid, suit may be instituted and recovery and foreclosure had in the name of the corporation, in any court having jurisdiction; and the statement so made, as aforesaid, or a certified copy thereof, shall be prima facie proof of the amount expended in any such work or improvements. (Acts 1875, p. 256, sec. 124; Acts 1917, ch. 184, sec. 1.)

Art. 985. (543) (473) Health physician may be authorized to do what.—The health officer may be authorized by the city council, when the public interest requires, to exercise for the time being such of the powers and perform such of the duties of the chief of police as the city council may in their discretion direct, and authorized to enter all houses and other places, private or public, at all times, in the discharge of his duties, under this title, having first asked permission of the owners or occupants; the city council shall have power to punish, by fine and imprisonment, or either, any neglect or refusal to observe the orders and regulations of the health officer. (Acts 1875, p. 256, sec. 125.)

Art. 986. Cities to regulate sewer, etc., connections, draining, plumbing.—Every city in this state, whether organized under the general laws of the state or by special act of the legislature, having underground sewers or cesspools, shall pass ordinances regulating the tapping of said sewers and cesspools, regulating house draining and plumbing. (Acts 1897, p. 236. Acts 1909, p. 162, sec. 1.)

Art. 987. Examining and supervising board of plumbers.—Such cities shall create a board for the examination of plumbers, to be known as the examining and supervising board of plumbers, to provide for an inspection of plumbing. (Id. sec. 1.)

Art. 988. Composition of board.—The said board shall consist of the following five persons: A member of the local board of health, if there be such a board of health, and if there be no local board of health, then the city physician or the city health officer, the city engineer, the city inspector of plumbing, a master plumber of not less than ten years active and continuous experience as a plumber, and one journeyman plumber of not less than five years of such active and continuous experience. (Id. sec. 1.)

Art. 989. Term regulated and vacancies filled by mayor and aldermen, etc.—The mayor and the board of aldermen, or the board of commissioners, as the case may be, shall regulate the length of term each member shall serve; they shall fill all vacancies occurring in the examining and supervising board of plumbers, appointments to said vacancies to be for the unexpired term of the member whose place is filled. (Id. sec. 1.)

Art. 990. Inspector of plumbing elected, when and how.—In any such city where there is no city inspector of plumbing provided for by special charter, the board of commissioners, or board of aldermen, as the case may be, shall elect such inspector of plumbing, who shall hold office for a period of time to be fixed by such board; provided, that such city inspector of plumbing may be the city engineer, if the board should see fit to elect him. (Id. sec. 1.)

Art. 991. Board to examine plumbers and plumbing inspectors; licenses and register of.—The examining and supervising board of plumbers, herein created, shall examine and pass upon all persons now engaged in the business of plumbing, whether as a master plumber, employing plumber, or journeyman plumber, in their respective cities, and all persons who may hereafter wish to engage in the business of plumbing as master plumber, employing plumber, or journeyman plumber, within their respective jurisdictions, and also all persons who may apply for the office of plumbing inspector. They shall issue a license to such persons only as shall successfully pass a required examination. They shall also register, in a book to be kept for that purpose, the names and places of business of all persons to whom a plumber's license is issued. (Acts 1897, p. 236.)

Art. 992. Licenses not to issue for more than one year, renewable, etc.—They shall not issue licenses for more than one year, but the same shall be renewed from year to year, upon proper application. (Id. sec. 2.)

Art. 993. License fees; disposition of.—Each applicant for examination for plumber's license shall pay, to such person as the examining and supervising board of plumbers may designate to receive the same, the sum of three dollars for each master plumber examined, and the sum of two dollars for each journeyman plumber examined, which fees may be used by said board to defray any of its legitimate expenses, the residue, if any, to be paid over to the treasurer of the city in which said board shall operate. (Id. sec. 3.)

Art. 994. Members of board to receive no compensation.—Members of the examining and supervising board of plumbers shall receive no compensation for their services on said board. (Id. sec. 3.)

Art. 995. License not transferable.—Said license shall be non-transferable. (Id. sec. 3.)

Art. 996. Examination and fee not required of same person but once.—The examination and examination fee shall not be required of the same person more than once. (Id. sec. 3.)

Art. 997. No license until examination passed.—The licenses shall not be issued to any person to carry on or work at the business of plumbing, or to act as an inspector of plumbing, until he shall have appeared before an examining or supervising board for examination and registration, and shall have successfully passed the required examination. (Acts 1897, p. 236; Acts 1919, ch. 134, sec. 1.)

As to constitutionality of Acts 1897, p. 236, see Davis v. Holland, 168 S. W. 11.

Art. 997a. Application of act.—Provided, that the provisions of this act shall not apply to cities of less than five thousand inhabitants. (Acts 1919, ch. 134, sec. 1.)

Art. 998. [Repealed by Acts 1919, ch. 134, sec. 2.]

CHAPTER TEN

STREETS AND ALLEYS

Art. 999. (544) (474) Power of city council to have streets, etc., graded, etc.—The city council shall be invested with full power and authority to grade, gravel, repair, pave or otherwise improve any avenue, street or alley, or any portion thereof, within the limits of said city, whenever, by a vote of two-thirds of the aldermen present, they may deem such improvement for the public interest; provided, the city council pay one-third and the owner of the property two-thirds thereof, except at the intersection of streets, from lot to lot across the streets either way, shall be paid for by the city alone; and

said costs shall be assessed on the property fronting on said street so improved, to be collected in equal annual payments, not less than five in number; and all moneys collected from these assessments shall be appropriated exclusively to the payment of the bonds issued for the payment of the cost of said improvement. (Acts 1875, ch. 100, sec. 126.)

See City of Belton v. Sterling, 50 S. W. 1027.

Art. 1000. (545) (475) Estimate of cost of improvements shall be made, etc.—Whenever the city council shall determine to make any such improvement, they shall cause an estimate to be made of the probable cost thereof by the city engineer, or by some other officer of the city, or by a committee of three aldermen; and such engineer or other officer or committee shall also report a full list of all lots or fractional lots, giving number and size of the same, and the number of the block in which situated, and the names of the owners thereof, if known, and such other information as may be required by the city council; and if there be any lot or fractional lot the owner of which is not known, the same shall be entered on said list as unknown; it shall be the duty of the officer or committee aforesaid to enter on said list, opposite each lot or fractional lot lying and being on each side of the street, avenue or alley so to be improved as aforesaid, one-third of the estimated expense for such work or improvement on such avenue, street, or alley, fronting, adjoining or opposite such lot or fractional lot; and, on the acceptance and approval of said report and list by the city council, said amount shall be imposed, levied and assessed as taxes, and shall be a lien upon the property until the payment of the same. (Id. sec. 127.)

Art. 1001. (546) (476) Property levied on and sold for taxes for improvements, when and how, etc.—After such action on the part of the city council as above provided for, such officer or committee shall give such notice as may be required by ordinance, of said tax being due and within what time payable, and shall commence forthwith to collect the same. And after the expiration of the period for payment of said tax, said officer or committee shall levy on so much of any property on said list on which said tax has not been paid as will be sufficient to pay the same, and the same notice of sale as is required in sales for other tax shall be given; and, if said tax be not paid before the day of sale, said officer or committee shall sell said property in the name and under the circumstances, and to the extent and subject to the same conditions which are or may be provided by ordinance for sale of real estate in the city, charged with the payment of taxes imposed by the said corporation; and said officer or committee shall execute a deed to the purchaser at any such sale; and all other provisions of this title in reference to a deed drawn by the assessor and collector shall apply to the deed provided for in this article. (Id. sec. 128.)

Art. 1002. (547) (477) Suit against owner of property for improvement tax, when, etc.—In addition to the power and authority granted to the city council to collect said assessment of taxes as aforesaid, they shall have the further power and additional remedy of instituting suit in the corporate name in any court having jurisdiction for the recovery against any owner of property for the amount due for any such work so made as aforesaid; and the city council shall provide, by resolution or ordinance under the provisions of this title, for carrying out and executing the powers in this chapter conferred, and may adopt such resolutions and enact such ordinances and make such regulations as they may deem necessary. (Id. sec. 129.)

See City of Belton v. Sterling, 50 S. W. 1027.

Art. 1003. (548) Condemnation of property.—That whenever a city council of an incorporated city or town shall deem it necessary to take any private property, in order to open, change or widen any public street, avenue or alley, or for the construction of water mains, or supply reservoirs, or stand pipes for water works or sewers, or for the purpose of establishing thereon one or more hospitals or pest-houses, within or without the limits of such city or town, or for the purpose of constructing and maintaining sewer pipes, mains and laterals and connections and also private property upon which to maintain vats, filtration pipes and other pipes, and which to use and occupy as a place for ultimate disposition of sewerage in or out of the town or city limits, whenever it be made to appear that the use of any such private property is necessary for successful operation of such sewer system, and when it be also made to appear that such sewer system is beneficial to the public use, health and convenience, such property may be taken for such purposes by making just compensation to the owner thereof. If the amount of such compensation cannot be agreed upon, it shall be the duty of such city council to cause to be stated in writing the real estate or property sought to be taken, the name of the owner thereof, and his residence, if known, and file such statement with the county judge of the county in which said property is situated. (Acts 1909, p. 9.)

See articles 769-772, 865, 854, 857, 840, 879.

Art. 1004. (548) Condemnation of property by private corporations.—Any company or corporation, chartered under the laws of this state, for the purpose of constructing water works, or furnishing water supply for any town or city, shall have the same right to condemn property necessary for the construction of supply reservoirs or stand pipes for water works, when deemed necessary to preserve the public health, that is given towns and cities under this article. Upon the filing of the statement provided for in this article, it shall be the duty of said judge, in term time or vacation, to appoint three disinterested freeholders and qualified voters of the county, as special commissioners to assess the damages to accrue to the owner by reason of such condemnation. And repealing all laws in conflict herewith. (Acts 1889, p. 3, sec. 2; Acts 1891, p. 171; Acts 1909, p. 9.)

Wilder v. McConnell, 45 S. W. 145; Tolle v. City of New Braunfels, 154 S. W. 345.

Art. 1005. (549) Rules for condemning property for railroads followed.—The commissioners so appointed shall, in their proceedings be governed and controlled by the law in force in reference to the condemnation of the right of way for railroad companies and the assessment of damages there-

for—the city, town, company or corporation occupying the position of the railroad company. And all laws in reference to applications for the condemnation for right of way of railroad companies, including the measure of damages, the right of appeal, and the like, shall apply to an application by a city or town, company or corporation, under this and the preceding article, for the condemnation of property for the purpose of opening, changing or widening streets, avenues or alleys, or for the construction of water mains, sewers, supply reservoirs or stand pipes—the city, town, company or corporation to occupy the position of the railroad company. (Acts 1889, p. 3.)

See post arts. 6506 et seq.

Art. 1005a. Cities under special charters may contract with railway companies for viaducts.—That all cities within this state, acting under special charters granted by the legislature of the state of Texas, are hereby granted all necessary rights and powers to carry out and comply with existing contracts or to hereafter make contracts with railway companies owning or operting [operating] tracks in such cities, to erect and complete by such railway companies, all necessary viaducts, the construction and completion of which shall be at the expense of such railway companies, according to plans and specifications agreed upon between such companies and such cities. (Acts 1911, p. 235, sec. 1.)

Art. 1005b. May abolish and close highways.—All such cities are hereby given authority and power to abolish and close such portions of any highway, street or alley, crossed by railroad tracks, as such cities have or may agree to close and abolish, in consideration of procuring the erection and completion of any viaduct by any railway company or companies. (Id. sec. 2.)

Art. 1005c. May issue viaduct bonds for damages; submission to vote; may give use of streets for viaducts.—Such cities are hereby given full power and authority to issue improvement bonds to be designated "viaduct bonds" to an amount not exceeding ten thousand dollars ($10,000.00) for the purpose of raising sufficient funds to pay for the right of way for viaduct, over such property as may not be owned by such cities or by any of the railway companies affected, and to pay such damages, if any, which may be sustained by abutting property owners. Provided, that the question of issuance of said bonds shall be submitted to a vote of the property tax paying voters, and shall be carried by a majority vote of said voters, such election being called as is provided for on other questions in the charters of cities desiring an election on said bonds. In addition such cities are hereby given authority to give to railway companies the use of any portion of its streets, highways and alleys as may be necessary for a right of way for viaducts. (Id. sec. 3.)

Art. 1005d. Condemnation of land for viaducts.—All such cities are hereby given the right of eminent domain and the power and authority to condemn all land necessary for right of way purposes for viaducts and approaches to same forming a necessary part of such viaduct; and when necessary to condemn, shall pursue the course and take such proceedings as are now provided for in cases where railway companies are authorized to condemn for right of way purposes. (Id. sec. 4.)

Art. 1005e. May enforce contracts for viaducts.—All such cities are hereby given the right and power to compel the construction and completion of such viaducts as railway companies have by contract agreed with any such city to construct and complete or which any railway company or companies may hereafter agree to construct and complete, by mandamus proceedings in the district court of the county where any such viaduct or viaducts are to be completed, or through any other lawful means. (Id. sec. 5.)

CHAPTER ELEVEN
STREET IMPROVEMENTS

Art. 1006. Powers acquired by accepting benefits of this chapter, and by whom.—Towns, cities and villages, incorporated under either general or special law, which shall accept the benefits of this chapter as herein provided, shall have power to improve any street, avenue, alley, highway, public place or square, or any portion thereof, within their limits, by filling, grading, raising, paving or repaving the same in a permanent manner, or by the construction or reconstruction of sidewalks, curbs and gutters, or by widening, narrowing or straightening the same and to construct necessary appurtenances thereto, including sewers and drains. (Acts 1909, 2 S. S. p. 402, sec. 1.)

Art. 1007. Terms defined.—The term "city," whenever used herein, shall include all incorporated towns, cities and villages; that the term "governing body," whenever used herein, shall include the governing or legislative bodies of all incorporated towns, cities or villages, whether known as councils, commissions, boards of commissions, common councils, boards of aldermen, or city councils, or whatever name such bodies may be known or designated under general or special laws; that whenever the term "highway" is used herein, it shall include any street, avenue, alley, highway, or public place or square, or portion thereof, dedicated to public use. (Id. sec. 2.)

Art. 1008. Governing body to order improvement of highways, etc.—The governing body of any city shall have power to order the improvement of any highway therein, or part thereof, and to select the materials and methods for such improvement, and to contract for the construction of such improvements in the name of the city, and to provide for the payment of the cost of such improvements out of any available funds of the city, or as herein provided. (Id. sec. 3.)

Art. 1009. Cost of improvements, how paid, etc.; assessments.—The cost of making such improvements may be wholly paid by the city, or partly by the city and partly by the owners of property abutting thereon; provided, that in no event shall more than three-fourths of the cost of any improvement, except sidewalks and curbs, be assessed against such property owners or their property; but the whole cost of construction of sidewalks and curbs in front of any property

may be assessed against the owner thereof or his property. (Id. sec. 4.)

Art. 1010. What cost assessed against railroad, etc.; special tax lien; enforcible, how.—Subject to the terms hereof, the governing body of any city shall have power to assess against the owner of any railroad or street railroad occupying any highway ordered to be improved, the whole cost of the improvement between or under the rails and tracks of said railroad or street railroad and two feet on the outside thereof, and shall have power, by ordinance, to levy a special tax upon said railroad, or street railroad, and its roadbed, ties, rails, fixtures, rights and franchises, which tax shall constitute a lien thereon superior to any other lien or claim, except state, county and municipal taxes and which may be enforced, either by sale of said property in the manner provided by law in the collection of ad valorem taxes by the city, or by suit against the owner in any court having jurisdiction. The ordinance levying said tax shall prescribe when same shall become due and delinquent, and the method or methods of enforcing the same. (Id. sec. 5.)

Art. 1011. Cost, how assessed; certificate; costs; attorney's fees; liens.—Subject to the terms hereof, the governing body of any city shall have power, by ordinance, to assess the whole cost of constructing sidewalks or curbs, and not to exceed three-fourths of the cost of any other improvement, against the owners of property abutting on such improvement and against their abutting property benefited thereby, and to provide for the time and terms of payment of such assessments and the rate of interest payable upon deferred payments thereon, which rate of interest shall not exceed eight per centum per annum, and to fix a lien upon the property and declare such assessments to be a personal liability of the owners of such abutting property; and such governing body shall have power to cause to be issued in the name of the city assignable certificates, declaring the liability of such owners and their property for the payment of such assessments, and to fix the terms and conditions of such certificate.

If any such certificate shall recite that the proceedings with reference to making such improvements have been regularly had in compliance with law, and that all prerequisites to the fixing of the assessment lien against the property described in said certificate, and the personal liability, shall be prima facie evidence of the facts so recited, and no further proof thereof shall be required in any court.

The ordinance making such assessments shall provide for the collection thereof, with costs and reasonable attorneys fees, if incurred. Such assessments shall be secured by, and constitute a lien on, said property, which shall be the first enforcible claim against the property against which it is assessed, superior to all other liens and claims, except state, county and municipal taxes. (Id. sec. 6.)

Art. 1012. No lien on exempt property; owner personally liable; lien not invalidated, how; enforcement.—Nothing herein contained shall be construed to empower any city to fix a lien by assessment against any property exempt by law from sale under execution; but the owner of such exempt property shall nevertheless be personally liable for the cost of improvements constructed in front of his property, which may be assessed against him. The fact that any improvement is omitted in front of exempt property shall not invalidate the lien of assessments made against other property on the highway improved, not so exempt. The lien created against any property, or the personal liability of the owner thereof, may be enforced by suit in any court having jurisdiction or by sale of the property assessed in the same manner as may be provided by law for the sale of property for ad valorem city taxes. The recital in any deed made pursuant to such sale, that all legal prerequisites to said assessment and sale have been complied with, shall be prima facie evidence of the facts so recited and shall in all courts be accepted without further proof. (Id. sec. 7.)

Art. 1013. Notice and hearing before assessment, etc.; no assessment in excess of benefit.—No assessment of any part of the cost of such improvement shall be made against any property abutting thereon or its owner, until a full and fair hearing shall first have been given to the owners of such property, preceded by a reasonable notice thereof given to said owners, their agents or attorneys. Such notice shall be by advertisement inserted at least three times in some newspaper published in the city, town or village, where such tax is sought to be levied, if there be such a paper there, if not, the nearest to said city, town or village, of general circulation in the county in which said city is located, the first publication to be made at least ten days before the date of the hearing. The governing body may provide for additional notice cumulative of notice by advertisement. Said hearing shall be before the governing body of such cities, at which hearing such owners shall have the right to contest the said assessment and personal liability, and the regularity of the proceedings with reference to the improvement, and the benefits of said improvement to their property, and any other matter with reference thereto. But no assessment shall be made against any owner of abutting property or his property in any event in excess of the actual benefit to such owner, in the enhanced value of his property, by means of such improvement, as ascertained at such hearing.

The governing body of any city making improvements under the terms hereof shall, by ordinance, adopt rules and regulations providing for such hearings to property owners, and for giving reasonable notice thereof. (Id. sec. 8.)

Art. 1014. Governing body may correct mistake, etc., in assessment proceedings, etc.; may reassess, etc.—The governing body of any city shall be empowered to correct any mistake or irregularity in any proceedings with reference to such improvement, or the assessment of the cost thereof against abutting property and its owners, and in case of any error or invalidity, to reassess against any abutting property and its owner the cost or part of the cost of improvements, subject to the terms hereof, not in excess of the benefits in enhanced val-

ue of such property from such improvement, and to make reasonable rules and regulations for a notice to and hearing of property owners before such reassessment. (Id. sec. 9.)

Art. 1015. Suit to set aside or correct assessment.—Any property owner, against whom or whose property any assessment or reassessment has been made, shall have the right, within twenty days thereafter, to bring suit in any court having jurisdiction, to set aside or correct the same, or any proceeding with reference thereto, on account of any error or invalidity therein. But thereafter such owner, his heirs, assigns or successors, shall be barred from any such action, or any defense of invalidity in such proceedings or assessments or reassessments in any action in which the same may be brought in question. (Id. sec. 10.)

Art. 1016. Referendum on adoption of provisions of this chapter; ordinances to carry out same.—The benefits of the provisions of this chapter shall apply to any city, and the terms thereof extend to the same, when the governing body thereof shall submit the question of the adoption or rejection hereof to a vote of the resident property taxpayers, who are qualified voters of said city, at a special election called for the purpose by said city. And said election shall be held as nearly as possible in compliance with the law with reference to regular city elections in said city; but said governing body is hereby empowered, by resolution, to order said election, and prescribe the time and manner of holding the same. Said body shall canvass and determine the results of such election; and if a majority of the voters voting upon the question of the adoption of this chapter, at such election, shall vote to adopt the same, the result of the election shall by said governing body be entered upon their minutes, and thereupon all the terms hereof shall be applicable to and govern such city adopting the same. A certified copy of said minutes shall be prima facie evidence of the result of such election and the regularity thereof; and the facts therein recited shall in all courts be accepted as true. Whenever the provisions of this chapter shall have been adopted by any city, the governing body thereof shall have full power to pass all ordinances or resolutions necessary or proper to give full force and effect thereto and to every part thereof. Whenever one hundred qualified voters in any city shall in writing petition for an election to determine the adoption of this chapter, it shall be the duty of its governing body to order such election. (Id. sec. 11.)

Art. 1017. Provisions of this chapter cumulative; subordinate to special charter.—This chapter shall not repeal any law, general or special, already in existence, pertaining to the making of such improvements, but the provisions of this chapter, and of resolutions or ordinances passed pursuant thereto shall be cumulative of, and in addition to, such existing laws; provided, that in any case in which a conflict may exist or arise between the provisions of this chapter and the provisions of any law granting a special charter to any city in the state, the provisions of such special charter shall control. (Id. sec. 12.)

Art. 1017a. Special assessment or re-assessment where other assessment was erroneous or void; procedure.—In any case in which the public funds of any city or town may have at any time heretofore been, or may hereafter be expended, or its vouchers or certificates issued to any contractor, or any contract made therewith, for the special improvement, raising or lowering the grade of, opening, straightening, widening, paving, constructing, or grading of any street, avenue, alley, sidewalk, gutter or public way, or any part thereof, and if for any reason, no part of the cost of such improvement has been borne by the abutting property or paid by the owner or owners thereof, either because an attempted assessment and enforcement thereof for the same was erroneous or void, or was so declared in any judicial proceeding, the City Council of [or] Commission, or other governing body of any city or town shall have the power to proceed at any time to specially assess, or re-assess, such abutting property with such amount of the cost of such improvement as it deems proper but in no event shall the amount exceed the special benefits such property receives therefrom by enhanced value thereto, the amount of such special benefits to be determined on a basis of the condition of such improvement as it exists at the time of such assessment, or re-assessment; provided, that no such assessment, or re-assessment, shall be made without at least ten days written notice and an opportunity to be heard on such question of special benefits given to the owner or owners of such abutting property, provided that such notice may be served either personally or by publication in some newspaper of general circulation, published in said city or town; and provided, further, that the governing body of any such city or town shall have full power and authority to provide for all procedure, rules and regulations necessary or proper for such notice and hearing and to levy, assess and collect such assessment, or re-assessment; and provided further, that such assessment, or re-assessment shall be and constitute a lien upon such abutting property and a personal charge against the owner or owners thereof, which amount shall not be construed as becoming due, or having become due, before such assessment or re-assessment is properly made in accordance with the provisions with this Act: Provided that such assessment or re-assessment as herein before provided shall be begun within three years after the completion of improvements contiguous to the property against which assessment or re-assessment is made and not thereafter, provided that in cases of re-assessments where the question of validity of the original assessment may be, or may have been, in litigation, the period of time during which it may be, or may have been, in litigation shall not be considered in computing said period of three years within which assessment or re-assessment shall be made; and provided, further, that any such assessment or re-assessment made by the governing body of any city or town with less than 5,000 inhabitants may equal the entire cost of side-walk, curb and gutter, and the cost of any street improvement, exclusive of street intersections, and such governing body of

such town, in making such assessment or re-assessment, shall follow the procedure prescribed in Articles 999 and 1,000 of the Revised Civil Statutes of the State of Texas of 1911, in so far as applicable, but no such assessment or re-assessment shall be made in excess of the special benefits in enhanced value conferred thereby on the property abutting such improvement, or until the owner or owners of such property shall have had notice, as provided above, and opportunity to contest such issue before such governing body under such rules and regulations as may, by ordinance, be prescribed by it, and such assessment, or re-assessment shall be and become due and payable in equal annual installments not less than five in number; provided that the owner of such property shall have the right to appeal from the decision of the governing board of any such town or city to the court of competent jurisdiction within twenty days after such re-assessment shall have been made, and upon failure to do so in said period, such assessment shall be final and conclusive upon such owner and property; and provided further, that the provisions of this Act be cumulative of all powers heretofore granted to any city or town either by general or special Act; and provided, further, that all Charter provisions of all cities and towns in this State heretofore adopted, relative to the subject covered by this bill and they are hereby validated. (Acts 1919, 2d C. S., ch. 47, sec. 1.)

CHAPTER ELEVEN A

PARKS

Art. 1017½. Levy of tax for parks.—The City Council, Board of Commissioners or City Manager of any incorporated city in this State is hereby authorized to levy and collect a tax not to exceed five cents on each $100.00 of assessed valuation of the city for the purchase and improvement of lands for use as City Parks. (Acts 1917, ch. 79, sec. 1.)

Art. 1017½a. Number and location.—The city parks provided for in this Act shall not exceed two in number for each two thousand inhabitants; and it is further provided, that where the City Council, Board of Commissioners or City Manager desires to establish more than one of such city parks it shall be their duty to locate such parks in widely separated portions of the city so as to place them as near as practicable within the convenient reach of all the citizens of the city. (Id. sec. 2.)

Art. 1017½b. Control; maintenance tax.—Said City Council, Board of Commissioners or City Manager shall have full power and control over any and all city parks as provided for in this Act, and they shall have the right to levy and collect an annual tax sufficient in their judgment to properly maintain such parks, not to exceed five cents on each one hundred dollars of assessed valuation of the city. (Id. sec. 3.)

Art. 1017½c. Improvement of parks.—The improvement of lands for use as City Parks, as provided for in Section 1 of this Act [Art. 1017½] authorizes the City Council, Board of Commissioners or City Manager to build and construct pavilions and such other buildings as they may deem necessary, to lay out and open driveways and walks, to pave the same or any part thereof, in such manner and of such material as said City Council, Board of Commissioners or City Manager may deem advisable; to set out trees and shrubbery, construct ditches or lakes, and to make such other improvements as they may deem proper and necessary. (Id. sec. 4.)

Art. 1017½d. Use and management.—City parks established under the provisions of this Act shall remain open for the free use of the public under such reasonable rules and regulations as the City Council, Board of Commissioners or City Manager may prescribe. But no person, firm or association of persons shall have the right to offer for sale or barter, exhibiting anything or conduct any place of amusement where a fee is charged within said parks without first obtaining the consent of the City Council, Board of Commissioners or City Manager or its duly authorized agent or agents, paying for such privilege or concession such sum as may be agreed upon by the person, firm or association of persons and the City Council, Board of Commissioners or City Manager, or its duly authorized agent or agents; and provided further, that all revenues derived from the sale of such rights, privileges or concessions shall go into a fund for the maintenance of said parks. (Id. sec. 5.)

CHAPTER TWELVE

PUBLIC UTILITY CORPORATIONS, RATES AND CHARGES—REGULATION BY COUNCIL, ETC.

Art. 1018. City council may regulate rates.—The city council of all cities and towns in the state of Texas of over two thousand population, incorporated under the general laws thereof, shall have the power to regulate, by ordinance, the rates and compensation to be charged by all water, gas, light and sewer companies, corporations or persons using the streets and public grounds of said city or town, and engaged in furnishing water, gas, light or sewerage service to the public, and also to prescribe rules and regulations under which such commodities shall be furnished, and service rendered, and to fix penalties to enforce such charges, rules and regulations; provided, that the city council or board of aldermen shall not prescribe any rate or compensation which will yield less than ten per cent per annum net on the actual cost of the physical properties, equipments and betterments. (Acts 1907, p. 217, sec. 1.)

Art. 1019. Mayor, etc., not to accept franks, privileges, etc.—It shall be unlawful for the mayor or any member of any city council or board of aldermen, of any such city, or town in this state, to accept directly or indirectly any frank, privilege, free light or water, or sewerage service, or other service, or a lower rate therefor than the regular rate established by said council or board of aldermen, or any gift or anything of value from any of the companies, corporations or persons heretofore mentioned in article 1018 of this chapter. (Id. sec. 2.)

Art. 1020. Council may pass ordinances to protect company, etc.—The city council shall have the power to pass such ordinances as they may deem necessary or proper to protect any of said companies, corpora-

tions or persons, in the free and full enjoyment of all their rights and franchises, to prevent any interference with their property or privileges, and to prevent the free or unauthorized use or waste of the water or other commodity or service furnished, and to prescribe penalties to enforce such ordinances. (Id. sec. 3.)

Art. 1021. Company to make reports.—Any such company, corporation, or person, who may be engaged in furnishing to the inhabitants of any city or town mentioned in article 1018, any water, light, gas or sewerage service, shall, on or before the first day of March of each year, file with the mayor of such city or town a report, in writing, sworn to by the manager, secretary, or president of such corporation, by a member of such company, and by any such person, which report shall show:

(a) The amount of any lien or mortgage upon the properties composing such plant;

(b) All other indebtedness pertaining to such enterprise and the consideration therefor;

(c) The actual cost of the visible physical properties, date when installed and the present value thereof, and herein the lands, machinery, buildings, pipes, poles, circuits, mains, shall each be treated separately;

(d) The annual cost of operating such plant, showing under separate items, the amount paid for actual salaries, amount paid for labor of all kinds, fixed charges, including interest, taxes and insurance, giving each separately, amount paid for fuel, for extensions and repairs, giving each separately, and particularizing the extension and repairs, the cost of maintenance, amount paid for damages, claims or suits for damages, identifying each claim or suit, amount paid for miscellaneous expenses, and, if any machinery or equipment is abandoned, worn out or its use discontinued within the preceding year, the same shall be stated, the original cost thereof shall be given, and the present value thereof shall be stated;

(e) The report shall give the gross earnings from any such plant, including revenues from every source whatever, stating items separately, amount received by each department. (Id. sec. 4.)

Art. 1022. Penalties.—Any such corporation, or any member of such company, or any such person mentioned in this chapter, who shall for thirty days willfully fail or refuse to file the report in the manner provided by this chapter, shall forfeit and pay to any such city or town the sum of one hundred dollars per day for each and every day during which it shall continue in default; or, if any such corporation, or company, or person, shall file any report, knowing that the same does not truly report the facts about the matters mentioned therein, it shall forfeit and pay to such city or town the sum of two hundred and fifty dollars for each such willfully false report; all of which forfeitures and penalties shall be recovered at the suit of such city or town, in any court of competent jurisdiction of the county wherein such city or town is located. (Id. sec. 5.)

Art. 1023. City council of city owning plants may regulate rates; also may establish and operate plants.—The city council of any city or town in the state of Texas, incorporated under the general laws thereof, shall have the power, where such city or town owns the plant, to regulate, by ordinance, the rates and compensation to be charged the public by such city or town for water, sewerage, gas, electricity or other fluid or substance used for lights, heat or power, to establish and operate necessary plants for the manufacture, generation or production thereof, and to sell and distribute the same to the public within and throughout the limits of any such city or town. (Id. sec. 6.)

Art. 1024. This chapter does not repeal, what.—Nothing in this chapter shall be construed as repealing or invalidating any provision of chapter 13 of this title or chapter 5 of title 25. (Id. sec. 7.)

Art. 1024a. Sale or lease of franchise.—Any individual, association, or corporation now or hereafter organized under the laws of this state, including any municipal corporation of this state, engaged in manufacturing, producing, supplying or selling electricity, natural or artificial gas, steam, or water, or owning or operating any street railway system within any incorporated city, town or village within this state, where the rates charged for such service are subject to regulation under the authority of the laws of this state, may, by a majority vote of the qualified voters at an election held for that purpose, of said city, town or village, first obtained, lease, sell or otherwise dispose of its entire plant or business or any part thereof, to any other individual, association or corporation which, at the time of said sale, lease or other disposition of said plant or business, or any part thereof, is doing, or has authority to do, a like business in said incorporated city, town or village; provided, however, that nothing herein contained shall be construed to permit any corporation to engage in any kind of business not authorized by its charter. (Acts 1915, ch. 79, sec. 1.)

Art. 1024b. Test of water supply.—Hereafter the authorities of all cities and towns, and villages, having a population of Five Thousand (5000) inhabitants or less, in this State and all other companies, persons, corporations or receivers, who are supplying drinking water through a water work system to the public, shall, before supplying the same to the public use for drinking water, first cause the supply of water to be chemically tested for any contaminated infusion of sand, dirt or filth, or dangerous bacteria or disease bearing germs. This test to be made according to the direction of the county or city health officers, or both such health officers. (Acts 1919, ch. 133, sec. 1.)

Art. 1024c. Same subject.—It is further enacted that thereafter said water as above supplied shall be subject to such test at any time and the County and City Health Officers where such water supply is furnished, shall make such tests at least once a year and oftener where there is an outbreak of any disease that might be induced through use of impure or unclean water. (Id. sec. 2.)

Art. 1024d. Strainers for wells, etc.—And it shall be the duty of all authorities of any City or town of Five Thousand (5000) inhabitants or less, or persons, firms, or the officers and agents of all incorporated com-

panies, or receivers supplying water for such public use, in cities or towns of Five Thousand (5000) inhabitants or less, to provide proper strainers for all wells and all other sources of supply so that sand and dirt shall not be carried into the water for such public use, and to cause all of the conduits and drain pipes conveying said water to be thoroughly washed out and flushed so as to clean the same at least one time every ninety days. (Id. sec. 3.)

Art. 1024e. Purification of water supply.—It shall also be the duty of any such authorities, persons, firms or receivers or their agents, when any such drinking water as furnished is pronounced unfit or infectious or impregnated with sand, or dirt, or filth, or unclean and dangerous to the public use by the Health Officers of any such city or county as the case may be, to immediately take steps to purify, clean or sanitize the same. (Id. sec. 4.)

Section 5 of this act makes it a misdemeanor to violate the provisions of the act, see Penal Code, art. 695dd.

CHAPTER THIRTEEN

PUBLIC UTILITY CORPORATIONS, RATES AND CHARGES—REGULATION BY COURT

Art. 1025. Extortionate, etc., rates, unlawful; district courts given jurisdiction to regulate, etc., provided, etc.—All extortionate and unreasonable rates charged by public utility corporations, as hereinafter defined, are hereby declared to be unlawful; and the district courts of this state are hereby vested with jurisdiction and full power and authority to regulate, prevent and abolish the same; and, to this end, said courts are given the power and authority, whenever the public interest may require, to fix and establish rates for the service and products of all public utility corporations, and, whenever the public interest may require and to carry out the provisions herein conferred, said courts are hereby expressly authorized to issue injunctions, quo warranto, and all other writs for the purpose of carrying out and making effective the purposes of this chapter, and said writs shall be governed by the rules and regulations now prescribed by law; provided, that no proceeding shall be begun in a district court having for its purpose the fixing of rates of public utility corporations, until and unless the city council of the city or town desiring to invoke the power herein conferred upon the district courts shall comply with the provisions of article 1026 of this chapter. (Acts 1905, p. 348, sec. 1.)

Art. 1026. City council to pass resolutions, etc.; copy to be delivered to president, etc.—If the city council of any city or town, incorporated under the general laws of this state, shall desire to invoke the power of the district court granted in article 1025 of this chapter, such council shall, by a two-thirds vote of all the members elected to said council, pass a resolution setting forth the matters complained of, naming the corporation against which the complaint is made, and in a general way the reasons for such complaint, and shall cause a copy of the same to be delivered to the president, vice president or secretary of said corporation, or cause to be left a copy of said resolution at the principal office of such corporation. (Id. sec. 2.)

Art. 1027. After twenty days, suit in district court, if, etc.—If, within twenty days after the said corporation has been furnished with a copy of the resolution of the city council, the wrongs complained of shall not be corrected to the satisfaction of the city council, a petition setting forth the wrongs and grievances complained of, and stating the relief sought, may be filed in the name of the city or town as plaintiff against the corporation as defendant in any district court of the county in which such city or town may be situated; and process shall be issued upon said petition, and be served upon such corporation, as now provided by law in civil cases, and the case shall be set for trial in the same manner as other civil cases, except that it shall have precedence over all cases of a different character filed in such court as to the time of trial. Process shall issue in said cause at the instance of either party, in the same manner as process is now, or may hereafter issue in civil cases; and the right of trial by jury of the issues involved shall also be given upon the demand of either party, as provided by law. (Id. sec. 3.)

Art. 1028. What to be considered in fixing rates; books to be produced; rate to yield ten per cent, etc., and to stand three years, unless, etc.—Upon the trial of the cause, it shall be the duty of the court or jury, in arriving at a decision as to whether or not the rates complained of are reasonable or extortionate, and in fixing the rates, to consider the cost of construction of the plant of the public utility corporation against which the petition is filed, the cost of the operation of such plant, its maintenance and repairs, the fixed charges that may be against the corporation, amount invested in such plant, and such other matters as may be material to the issues. And the court trying the same shall have the power to order the corporation to make profert of its books and records for inspection in court for its information in determining the question in issue. After a full hearing of all the evidence adduced by the parties, the court or jury shall have power, and it shall be their duty to fix the rates which may be charged by such public utility corporation; provided, that the rates fixed must be sufficient to yield such public utility company not less than ten per cent upon the investment, and the same shall continue in force for a period of three years. The rates fixed shall be entered of record upon the minutes of the court, and shall be held conclusive, as reasonable, fair and just, and shall remain for three years as the rates to be charged by such corporation, unless changed or modified by the judgment of said district court, or by the appellate courts to which either of the parties to said suit may appeal, or have writ of error. (Id. sec. 4.)

Art. 1029. Appeal may be taken, etc.—If either party to the suit shall be dissatisfied with the decisions of the court and the rate thereby established, an appeal may be taken by either party to the court of civil appeals of the supreme judicial district in which such district court may be located;

and said appeal shall be at once returnable to said court of civil appeals, and shall have precedence in such court of all cases of a different character therein pending; and the said parties to said suit may have their writ of error from the supreme court. (Id. sec. 5.)

Art. 1030. Upon judgment fixing rate, decree enforcing same on pain of forfeiture of charter or permit; duty of attorney general or county or district attorney, under, etc.; to institute suit for forfeiture, etc.—When final judgment is rendered in any cause fixing the rates to be charged by said corporation, the court rendering such judgment shall order in its decree the enforcement of the same; and to this end and to carry out and execute such judgment, the court is hereby specially authorized and empowered to provide in its decree that, if the same is not obeyed according to the terms thereof, the said corporation shall forfeit its charter, if the same be a domestic corporation, or its permit to do business in this state, if the corporation be a foreign corporation; and, if said order or decree be violated, it shall be the duty of the attorney general, or county or district attorney under the direction of the attorney general, to institute suit in the district court of the county in which such corporation may have its principal office, or in Travis county, Texas, for the forfeiture of the charter of such corporation, or the cancellation of its permit, as the case may be, and, if said charter be forfeited or permit canceled, the offending corporation shall thereafter be prohibited from carrying on its business within this state. (Id. sec. 6.)

Art. 1031. What public utilities herein included.—The public utilities included within the meaning of this chapter are defined to be water companies, furnishing water to the public; gas companies, furnishing gas to the public; electric light or power companies, furnishing light or power to the public; telephone companies, furnishing telephones to the public; and sewerage companies, conducting sewerage for the public, whether said companies are incorporated under the laws of this state or a foreign state. (Id. sec. 7.)

Art. 1032. Any city incorporated under special charter may avail itself of provisions, but cumulative.—Any city within this state, incorporated under a special law, may, at its option, avail itself of the provisions of this chapter, but the same shall be cumulative of any other method which may now be provided in such special charter, and this chapter shall not repeal any provisions of such special charter. (Id. sec. 8.)

CHAPTER FOURTEEN

TOWNS AND VILLAGES

Art. 1033. (579) (506) May be incorporated, when.—When a town or village may contain more than four hundred and less than ten thousand inhabitants, it may be incorporated as a town or village in the manner prescribed in this chapter. (Acts 1881, p. 63; Acts 1897, p. 193; Acts 1915, ch. 78, sec. 1.)

See State v. Buchanan, 83 S. W. 723.

Art. 1034. (580) (507) Towns and villages incorporated, when.—If the inhabitants of such town or village desire to be so incorporated, at least twenty residents thereof, who would be qualified voters under the provisions of this chapter, shall file an application for that purpose in the office of the judge of the county court of the county, in which the town or village is situated, stating the boundaries of the proposed town or village, and the name by which it is to be known, if it be incorporated, and accompany the same with a plat of the proposed town or village, and including therein no territory except that which is intended to be used for strictly town purposes; provided, that if any town or village be situated on both sides of a line dividing two counties, application may be made to the judge of the county court of either county in which a portion of said town or village is located, in manner and form as is hereinbefore provided; provided, further, that in towns and villages that may be incorporated on territory in two counties, in the trial of the offense before the mayor or recorder for a violation of the laws of the state, or the ordinances of the corporation, an appeal shall be to the county court of the county in which the offense may have been committed, in cases in which said mayor or recorder has not final jurisdiction; but when said mayor or recorder are sitting as an examining court, parties brought before them as such examining court, charged with an offense against the laws of the state, shall be bound over by them to the county court of the county in which said offense is alleged to have been committed, or the district court, as the case may be, and provided, that a new election shall not be ordered in less than one year. (Acts 1889, p. 5; Acts 1897, p. 193.)

See Huff v. Preuitt, 53 S. W. 844; Pinson v. Vesey, 56 S. W. 594; Thompson v. S., 56 S. W. 603; State v. Hoard, 62 S. W. 1054; State v. Buchanan, 83 S. W. 723; Riley v. Town of Trenton, 184 S. W. 344; State ex rel. Burchill v. City of Polytechnic, 194 S. W. 1136.

Art. 1034a. Validating incorporations.—That all towns and villages which have heretofore attempted to be incorporated under the provisions of chapter 11, title 18, of the Revised Civil Statutes of 1895, and also under the provisions of chapter 14, title 22, of the Revised Statutes of 1911, but which said attempted incorporations failed to comply with all the requirements of law, respectively, under which they were attempted to be incorporated, but which said towns and villages have from and after the date of their attempted incorporations, as aforesaid, exercised the functions of incorporated towns and villages; and have been recognized as such towns and villages, be and they are hereby declared to be towns and villages of the class named, and their incorporations, be and the same are hereby declared to be as legal, and valid as if the original acts of incorporation had been in strict compliance with the requirements of the law; and be it further enacted that all acts and proceedings, heretofore done and performed by such towns and villages, within the scope and power of such incorporations under the laws of this state, be and the same are hereby validated and made binding on such incorporations. (Acts 1913, p. 150, sec. 1.)

Art. 1035. Adjoining territory, how added.—Whenever a majority of the inhabitants who are qualified voters of any territory

adjoining the limits of any town or village, incorporated or hereafter incorporated under the provisions of this chapter, shall vote in favor of becoming a part of said town or village, any three of them may make affidavit to such fact, and file such affidavit with the mayor of said town or village, and such mayor shall certify the same to the council of said town or village. Thereupon, such council may, by ordinance, receive such inhabitants as a part of said town or village; thenceforth the territory so received shall be a part of said town or village, and the inhabitants shall be entitled to all the rights and privileges of other citizens and bound by all the acts and ordinances made in conformity thereto, and passed in pursuance of this chapter; provided, however, that the area of no town or village shall ever exceed that of cities or towns, as provided for in article 777, chapter one, title twenty-two, Revised Statutes of Texas. (Acts 1903, p. 116.)

Short v. Gouger, 130 S. W. 267.

Art. 1036. (581) (508) County judge to order election to determine, etc.—If satisfactory proof is made that the town or village contains the requisite number of inhabitants, it shall be the duty of the county judge to make an order for holding an election on a day therein stated, and at a place designated within the town or village, for the purpose of submitting the question to a vote of the people.

See Huff v. Prewitt, 53 S. W. 844; Thompson v. S., 56 S. W. 603; Word J. v. Schow, 68 S. W. 192; S. v. Larkin, 90 S. W. 912.

Art. 1037. (582) (509) Officers appointed to hold election.—The county judge shall appoint an officer to preside at the election, who shall select two judges and two clerks to assist in holding it; and after a previous notice of ten days, by posting advertisement at three public places in the town or village, the election shall be held in the manner prescribed for holding elections in other cases.

Art. 1038. (583) (510) Qualifications of electors.—Every male person who has attained the age of twenty-one years, and who has resided within the limits of the proposed town for the six months next preceding, and is a qualified elector under the laws of the state, shall be entitled to vote at the election.

Art. 1039. (584) (511) Tickets, written or printed.—On each ticket the voter must write, or cause to be written or printed, "corporation" or "no corporation."

Art. 1040. (585) (512) Returns of election.—If a majority of the votes are cast in favor of incorporation, the officers holding the election shall make return thereof to the county judge of the county within ten days after the same was held.

Art. 1041. (586) (513) Duty of county judge to make entry, etc.—The county judge shall, within twenty days after the receipt of the returns, make an entry upon the records of the commissioners' court, that the inhabitants of the town or village are incorporated within the boundaries thereof; which boundaries shall also be designated in the entry, and a certified copy of such entry, together with the plat of the town or village, shall thereupon be recorded in the proper record of deeds of such county. (Acts 1897, p. 193.)

See State v. Larkin, 90 S. W. 912; Lamar v. S., 95 S. W. 509; Ex parte Drake, 116 S. W. 49; Stevens v. City of Dublin, 169 S. W. 188.

Art. 1042. (587) (514) Powers of corporation.—When the entry mentioned in the preceding article has been made, the town shall be invested with all the rights incident to such corporations under this chapter, and shall have power to sue and be sued, plead and be impleaded, and to hold and dispose of real and personal property; provided, such real property is situated within the limits of the corporation.

Art. 1043. (588) (515) Election of mayor, etc.—The county judge shall immediately order an election for a mayor, a marshal and five aldermen.

Art. 1044. (589) (516) Who are eligible for offices.—No person shall be eligible to any of said offices, nor shall any person be qualified to vote at any election to fill any of them, unless he possess the requisites provided by article 1038.

Art. 1045. (590) (517) Commission of mayor, etc.—The county judge shall, immediately after the returns have been made, commission the candidate who received the highest number of votes for the office of mayor, and shall deliver certificates of election to the other officers elected.

Art. 1046. (591) (518) Officers; term of office.—The mayor, aldermen and all other officers elected at the first election under this chapter, regardless of the time of such first election, shall hold their offices until their successors shall have been duly elected and qualified at the next succeeding annual election, according to the provisions of the succeeding article. (Acts 1873, p. 99, sec. 5.)

Art. 1047. (592) (519) Annual election of officers.—The annual election of officers of all towns and villages incorporated under the provisions of this chapter shall take place on such day as may be fixed by law for municipal elections throughout the towns and cities of the state. Should no such uniform day be fixed, then the elections herein provided for shall take place on the first Tuesday in April of each and every year. The mayor, or, in case of his inability or refusal to act, any two aldermen, shall order such annual election by notices posted for at least ten days at three public places within the corporate limits. The returns of such election shall be made to the town or village council, and certificates of election given by the mayor, or person acting as such, to the persons elected to the various offices for such corporation. (Id. sec. 6.)

Art. 1048. (593) (520) Quorum may pass by-laws.—The mayor shall be the president of the board of aldermen, and shall, with three of the aldermen, constitute a quorum for the transaction of business; and the quorum shall have power to enact such by-laws and ordinances not inconsistent with the laws and constitution of the state, as shall be deemed proper for the government of the corporation.

See Mills v. M., K. & T. Ry., 59 S. W. 874; Early v. S., 97 S. W. 82; Stevens v. City of Dublin, 168 S. W. 188.

Art. 1049. (594) (521) May prevent and remove nuisances, regulate markets, etc.—The board of aldermen shall have and exercise exclusive control over the streets,

alleys and other public places within the corporate limits, and shall have the power to cause the male inhabitants between the ages of twenty-one and forty-five years, except ministers of the gospel actually engaged in the discharge of their duties, to work on the streets and public alleys not to exceed five days in any one year, or furnish a substitute, or a sum of money (not to exceed one dollar for each day's work demanded) to employ such substitute. They shall, as far as practicable, prevent any nuisances within the limits of the corporation, and cause such as exists to be removed at the expense of the person by whom they were occasioned or upon whose property they may be found; they may establish markets and may do whatever else may be necessary to give effect to the provisions of this chapter; provided, that, with the consent of the board of aldermen, where streets are continuations of public roads, the commissioners' court shall have power to construct bridges and other improvements thereon which facilitate the practicability of travel on said streets. (Acts 1895, p. 89.)

Art. 1050. (595) (522) Board of aldermen may levy tax.—The board of aldermen shall have power to levy and collect an occupation tax of not more than one-half the amount levied by the state; also to levy taxes on persons and property, real and personal, within the corporation, subject to taxation by the laws of the state; but the tax on persons and property shall not, in any one year, exceed the rate of one-fourth of one per cent on the one hundred dollars valuation. (Acts 1891, p. 171.)

See Morris v. Cummings, 45 S. W. 383; Stevens v. City of Dublin, 168 S. W. 188. See, also, ante, arts. 927, 928.

Art. 1051. (596) (523) Aldermen may prescribe fine, etc.—The board of aldermen shall have power to prescribe the fine to be imposed by the mayor for the violation of any by-law or ordinance, which shall in no case exceed one hundred dollars; but no fine shall be imposed except upon the verdict of a jury, should the defendant demand a trial by jury.

Art. 1052. (597) (524) Vacancies, how filled.—When a vacancy shall occur in any of the offices created by this chapter, or by the board of aldermen under its provisions, the acting aldermen shall fill such vacancy for the unexpired term.

Art. 1053. (598) (525) Additional officers may be appointed.—The board of aldermen shall have power to appoint such officers, other than those mentioned in this chapter, as shall be deemed necessary to carry out the provisions of the same, to prescribe their duties and to fix their compensation; and shall also have power to dismiss them at any time, and appoint others in their stead.

See Early v. S., 97 S. W. 82; Stevens v. City of Dublin, 168 S. W. 188.

Art. 1054. (599) (526) Board must prescribe amount of bonds, etc.—The board shall prescribe the bonds and security which the marshal and such other officers as may be appointed shall give, which shall be executed and approved by the mayor, before the marshal or other officer shall enter upon the discharge of his duties. Said bond shall be payable to the corporation.

Art. 1055. (600) (527) If bond is not given in five days after, etc.—If the bond required in the preceding article is not given within five days after the marshal is elected, or the officer appointed, the board shall have the power to appoint another marshal or officer in the place of the one so elected or appointed.

The Act of 1899, chapter three, page forty, creating corporation courts (embodied in chapter five, title twenty-two) abolished the municipal court and the offices of judge, recorder and clerk thereof, in every city, town or village (as theretofore established) after the due and legal organization of the corporation court therein.

Art. 1056. (607) (534) Powers, duties and fees of marshals.—The marshal shall have the same power within the town that constables shall have within their precincts, and shall be entitled to the same fees. He shall discharge all other duties that may be prescribed by the by-laws and ordinances, not inconsistent with the laws of the state, and shall receive therefor such fees as may be fixed by the board.

See Early v. S., 97 S. W. 82; Stevens v. City of Dublin, 168 S. W. 188. See, also, ante, art. 809.

Art. 1057. (608) (535) Taxes, by whom collected, etc.; sale of property for, etc.—The corporation tax shall be assessed and collected by the marshal; and, if the same be not voluntarily paid, he shall have power to make the collection in the same manner and with like effect as is prescribed in chapter seven of this title, for collection of taxes in cities, so far as is applicable.

Art. 1058. (609) (536) Real estate sold may be redeemed, etc.—Real estate sold for taxes due the corporation may be redeemed as provided in chapter seven of this title.

See Acts 1899, p. 50; Acts 1907, p. 282; ante, art. 957.

Art. 1059. (610) (537) Where purchaser is a non-resident.—Where the purchaser does not reside within the limits of the corporation, the estate may be redeemed by making the payment into the treasury of the corporation for the benefit of the purchaser.

Art. 1060. (611) (538) Ordinances not to be enforced until.—No ordinance or by-law shall be enforced until it has been published at least ten days in three public places in the town or in a newspaper, if one be published in the corporation.

Art. 1061. (612) (539) Where property is liable for taxes and owner is unknown.—When any property shall be liable to assessment for corporation taxes, and the owner is unknown, such property shall be valued by the marshal and assessed by its description, stating that the owner of the property is unknown; unless the taxes are paid, the property shall be sold for the payment thereof, as nearly as may be, in the manner in which such property when duly rendered is required to be sold, and the sale shall be equally valid.

Art. 1062. (613) Charters amended, how.—Towns and villages heretofore incorporated by the congress of the republic or the legislature of the state may, by a resolution of the board of aldermen and a two-thirds vote of the voters at an election held therefor, amend their charters in any particular not in conflict with the constitution of

the state or the Revised Statutes. (Acts 1881, p. 83.)

Art. 1063. (614) Takes effect, when.—In order to amend the charter of any town or village, it shall be necessary, before said amendment shall go into effect, for the board of aldermen to adopt a resolution setting forth the amendment; and a certified copy of the same shall be approved by the attorney general and recorded in the office of the secretary of state before the same shall take effect. (Id.; Acts 1897, p. 64; Acts 1891, p. 95.)

See Ranken v. McCallum, 60 S. W. 975; Stevens v. City of Dublin, 168 S. W. 188.

Art. 1064. (616) (541) Property of any reincorporating city or town vested, how; assumption of indebtedness.—When any town or city shall reincorporate, under chapters one or fourteen of this title, upon a majority vote of the legal voters, tax-paying property owners of said town or city, all property, real and personal, of the old or de facto corporation, shall be vested in the new one; and the new corporation shall assume all the legal indebtedness, contracts and obligations of the old corporation; and, where cities and towns have reincorporated under chapters one or eleven of title eighteen, of the Revised Civil Statutes of 1895, upon a majority vote of the legal voters taxpaying property owners of said city or town, all property real or personal, of the old or de facto corporation, shall be vested in the new corporation; and the new corporation shall assume all the legal indebtedness, contracts, and obligations of the old corporation.

This article held unconstitutional. See Electric Light Co. v. Keenan, 30 S. W. 868, and Ranken v. McCallum, 60 S. W. 977.

Art. 1065. Certain incorporations validated.—All towns and villages which have heretofore attempted to be incorporated under the provisions of this chapter, but which, in said attempted incorporation, failed to comply with all the requirements of said chapter, but which said towns or villages have from and after the date of their several attempted incorporations, as aforesaid, exercised the functions of towns and villages, and been recognized as such towns or villages, be and are hereby declared to be towns and villages of the class named, and their incorporations be and the same are hereby declared to be as legal and valid as if the original acts of incorporation had been in strict compliance with the requirements of the law; provided, that nothing in this article shall be held to validate the incorporation of towns and villages that had less than two hundred inhabitants at the time of [the] this attempted corporations [incorporation] of such towns and villages. (Acts 1895, p. 90.)

See, also, ante, arts. 775, 779.

Art. 1066. Condemnation of railroad right of way and roadbed for streets.—Any town or village in this state, incorporated under this chapter, or by special charter, shall have the right, and they are hereby empowered, to condemn the right of way and roadbed of any railway company whose roadbed runs within the corporate limits of such towns or villages, when deemed necessary and so declared, by a majority vote of the board of aldermen, for the purpose of opening, widening or extending the streets of such town or village; provided, there are less than four railroad tracks. (Acts 1897, p. 216, sec. 1.)

Art. 1067. Proceedings for.—Whenever the board of aldermen of any town or village, incorporated as aforesaid, shall have passed an ordinance or resolution to open, widen or extend a street to any point within its corporate limits, and such street is to be opened, widened or extended over or across any railroad bed and right of way, if such town or village, and the company over whose roadbed and right of way such street is to be opened, widened or extended, cannot agree as to the damages to be paid said railway company for the right of way over and across their roadbed and right of way, it shall be the duty of the mayor of such town or village to state in writing the point on said railroad right of way where said street is desired to be opened, widened or extended, giving the width and length of that portion of the right of way of the railroad sought to be condemned, and describing it so that it can be clearly identified, the object for which it is sought to be condemned, the name and style of the railway company, and file the same with the county judge of the county in which such town or village is situated. Upon the filing of such written statement with the county judge, the same proceedings shall be had for the purpose of condemning the right of way for the street that are now required by law for the condemnation of right of way for the benefit of railroad companies. (Id. sec. 2.)

Art. 1068. Duty of railroad to keep in condition for travel portion of roadbed and right of way crossed by streets; penalty.—It shall be the duty of every railroad company in this state to place and keep that portion of its roadbed and right of way over or across which any public street of any incorporated town or village may run, in proper condition for the use of the traveling public; and, in case of its failure to do so for thirty days after written notice given to the section boss of the section where such work or repairs are needed, by the town marshal of such town or village, it shall be liable to a penalty of twenty-five dollars for each and every week such railroad may fail or neglect to comply with the requirements of this article, recoverable in any court having jurisdiction of the amount involved, in a suit in the name of such town or village. (Id. sec. 3.)

Art. 1069. Condemnation for same purpose by county commissioners.—County commissioners shall have the right, upon petition of twenty freeholders of any community, or unincorporated town or city, to condemn roadbed of railroads for same purpose. (Id. sec. 3e.)

CHAPTER FIFTEEN

COMMISSION FORM OF GOVERNMENT

Art. 1070. Election to determine.—Whenever ten per cent of the qualified voters of any incorporated city or town in this state, having a population of over one thousand inhabitants and less than five thousand inhabitants, incorporated under the provisions of chapter one, title twenty-two of the Revised Statutes of Texas of 1911, or any previous general law, or hereafter incorporated under any general law, or of any incorporated town or village in this state having a population of more than five hundred in-

habitants and less than one thousand inhabitants incorporated under the provisions of chapter fourteen, title twenty-two of the Revised Statutes of Texas of 1911, or any previous general law, or hereafter incorporated under any general law, shall petition in writing the mayor of said city or town, or the mayor of such town or village as the case may be requesting that an election be ordered to determine whether such city or town, or such town or village, shall adopt the commission form of government, the mayor shall order an election within such city or town, or town or village, to determine whether or not the commission form of government shall be adopted. Thirty days' notice of such election shall be given by posting three written or printed notices of same at three public places in such city or town, or in such town or village, and by publishing such notice in some newspaper published therein if there be one. If any unincorporated city or town in the state of Texas, having a population of over one thousand and less than five thousand inhabitants, or any unincorporated town or village in the state of Texas having a population of more than two hundred and less than one thousand inhabitants, shall desire to be incorporated under the commission form of government as herein provided, an election to determine whether such incorporation may be had shall be called by the county judge of the county under the provisions herein governing incorporated cities and towns, and incorporated towns and villages, and notice of such election shall be given as herein provided, and if satisfactory proof is made that the city or town or town or village, contains the requisite number of inhabitants, it shall be the duty of the county judge, to make an order for holding an election on a day therein stated, and at a place designated within the city or town or town or village, for the purpose of submitting the question to a vote of the people. (Acts 1909, p. 189, sec. 1; Acts 1913, p. 36, sec. 1.)

Art. 1071. Qualification of voters; form of ballot.—Every person entitled to vote at any general election under the laws of the state of Texas, regulating general elections, shall be a qualified voter under the provisions of this chapter. The ballots to be used in said election shall have written or printed thereon "For Commission" or "Against Commission." (Acts 1909, p. 189, sec. 2; Acts 1913, p. 36, sec. 1.)

Art. 1072. Judges and clerks; elections, how held; returns; order; effect.—The mayor or county judge, as the case may be, shall appoint two judges of election, one of which shall be designated as the presiding judge, and shall appoint two clerks, to hold said election. The election shall be held and governed by the general laws of the state of Texas except as herein otherwise provided, and the returns shall be made to the mayor or the county judge, as the case may be, within five days after said election shall have been held. If a majority of the votes cast are "For Commission," then the mayor or the county judge, as the case may be, shall enter an order to that effect upon the minutes of the city council, or board of aldermen, or of the commissioners' court, as the case may be, and after the entry of said order said incorporated city or town or incorporated town or village, shall be under the commission form of government, and said unincorporated city or town, or unincorporated town or village, shall be incorporated and under the commission form of government. (Acts 1909, p. 189, sec. 3; Acts 1913, p. 36, sec. 1.)

Art. 1073. Officers to be elected; terms; vacancies, how filled, etc.—At such election held in incorporated cities and towns, and incorporated towns and villages, there shall be elected at the same election held to adopt, or not to adopt, the provisions of this chapter, two commissioners, who shall serve until the first Tuesday in April following, and until their successors shall have been elected and qualified, and in said unincorporated cities and towns, and unincorporated towns and villages, there shall at such elections be elected a mayor and two commissioners, who shall serve until the first Tuesday in April following, and until their successors shall have been elected and qualified. The mayor of the incorporated cities and towns, and incorporated towns and villages, adopting the commission form of government under the provisions of this chapter shall continue to hold his office for the term for which he was elected, and until his successor shall have been elected and qualified. The term of office of the mayor and commissioners, except the first elected under the provisions hereof, shall be two years, and they shall be elected on the first Tuesday in April every two years. In case of the death or resignation of the mayor or commissioners, the others shall fill the place by appointment, provided, however, that shall a vacancy, from death, resignation, or failure to qualify, or any other cause, occur of the mayor and one commissioner at the same time, or of two commissioners at the same time, the vacancy shall be filled by special election called by the county judge of the county upon notice for the time and subject to all the regulations herein for the original election, the result of said election shall be certified by the county judge to the clerk of said commission, and shall be entered upon the minutes. In incorporated cities and towns and incorporated towns and villages, adopting the commission form of government under the provisions hereof, the members of the city council, and board of aldermen shall hold their offices until the commissioners elected hereunder shall have qualified, and after such qualification, the officers of city council, and board of aldermen shall be abolished, and the mayor and commissioners herein provided for shall constitute the "board of commissioners," of said city or town, or town or village. (Acts 1909, p. 189, sec. 4; Acts 1913, p. 36, sec. 1.)

Art. 1074. Clerk; appointment, bond, duties and powers; city attorney, police and other officers; bonds of mayor and commissioners.—Said "board of commissioners" shall appoint a competent person to be clerk, who in addition to the duties of clerk, shall also be treasurer and assessor and collector of taxes of each city or town, or town or village. He shall, before entering upon the duties of his office, enter into a good and sufficient bond with two or more good and sufficient sureties, in double the estimated amount of annual revenues of such city or town or of such town or village, said estimate to be made by the "board of com-

missioners," and said bond to be approved by the "board of commissioners," and filed and recorded in the minutes of said "board of commissioners."

Said clerk shall be invested, and charged with, and shall exercise all the power, rights and duties, conferred upon, and imposed by the general laws, upon the clerk, treasurer, assessor, and collector of taxes, of cities and towns, or town[s] and villages, as the case may be. Said "board of commissioners" shall also have the authority to appoint a city attorney and such police force and such other officers as they may deem necessary, and to fix the salary or other compensation to be received by such clerk, and by such officers, and define their duties, and at any time abolish any office which it creates, and may discharge any officer, clerk or employé which it appoints. The mayor and each commissioner shall enter into a bond in the sum of three thousand dollars each, conditioned for the faithful performance of the duties of their office; said bond of the officers, first elected hereunder, shall be approved within twenty days after the entry upon the minutes of the city council, or board of aldermen, or the commissioner's court, as the case may be, provided for in article 1072 of this chapter, by the county judge, of the county in which such city or town, or town or village, is located, and to be payable to said city or town or town or village, for the use and benefit of said city or town, or said town or village. All subsequent bonds of officers elected hereunder shall be approved by the "board of commissioners." (Acts 1909, p. 189, sec. 5; Acts 1913, p. 36, sec. 1.)

Art. 1075. Powers and duties of board of commissioners.—The "board of commissioners" of all incorporated cities or towns adopting the commission form of government under the provisions of this chapter, having a population of over one thousand and less than five thousand inhabitants, and of all unincorporated cities or towns, having a population of one thousand and less than five thousand inhabitants incorporating under and adopting the commission form of government under the provisions of this chapter, shall have all of the authority and powers, and be subject to all of the duties, granted and conferred under chapters one to thirteen, both inclusive, of title 22 of the Revised Statutes of Texas of 1911, except where same may conflict with some provision of this chapter herein contained. In incorporated towns and villages of more than five hundred and less than one thousand inhabitants, adopting the commission form of government under the provisions of this chapter, and in unincorporated towns and villages of more than two hundred and less than one thousand inhabitants, incorporating and adopting the commission form of government under the provisions of this chapter, the "board of commissioners" shall have all authority and powers conferred under chapter fourteen of title 22 of the Revised Statutes of Texas of 1911 except where same may conflict with some provision contained herein. (Acts 1909, p. 189, sec. 6; Acts 1913, p. 36, sec. 1.)

Art. 1076. Meetings and compensation.—Said "board of commissioners" shall hold at least one regular meeting each month and the mayor or two commissioners may call as many special meetings as may be deemed necessary to attend to the business of said city or town or said town or village; and each of said commissioners and said mayor shall receive for their services five dollars per day for each regular meeting, and three dollars per day for each special meeting; provided, however, that said mayor or either of said commissioners shall not receive pay for more than five special meetings in any one month. In lieu of the per diem provided for herein, said "board of commissioners" of any such town or city with not less than two thousand population may fix a salary to be received by the mayor and commissioners of said city or town, or said town or village, not to exceed, however, the sum of twelve hundred dollars per year in any event, for said mayor, and six hundred dollars per year for each of said commissioners. (Acts 1909, p. 189, sec. 7; Acts 1913, p. 36, sec. 1.)

Art. 1076a. Laws unrepealed; incorporations and bonds validated, etc.—This chapter, nor any provision herein, shall not repeal any laws under which such cities or towns or towns or villages, may now operate and shall not effect the incorporation of any city or town or town or village within the state of Texas, and incorporation of all cities or towns, or towns or villages, heretofore had or attempted to be had, under chapter fifteen of title 22 of the Revised Statutes of Texas of 1911, or any previous general law, are hereby validated, as to area and powers and duties and all acts done under same, and all bonds heretofore issued by such cities or towns, or towns or villages, which have been approved by the attorney general of the state of Texas, and registered by the comptroller of the state of Texas, are hereby in all things, validated and declared to be valid and binding obligations against such city or cities, or such town or towns; but the provisions of this chapter shall apply to all such cities and towns, and towns and villages, from and after its passage, provided; the provisions of this Act shall not effect or take away the right of unincorporated cities and towns, and unincorporated towns and villages, to incorporate under any other general law of this state. (Acts 1913, p. 36, sec. 1.)

CHAPTER SIXTEEN

ABOLITION OF CORPORATE EXISTENCE

Art. 1077. (617a) Abolition of corporation provided.—Cities and towns incorporated under the general laws of the state, and cities and towns of ten thousand inhabitants or less chartered under special law, including those which may have heretofore accepted the provisions of chapter one, of this title, may abolish their corporate existence in the manner hereinafter provided. (Acts 1895, p. 166, secs. 1–7.)

Art. 1078. (617b) Petition and election to abolish, provided, etc.—When one hundred of the property taxpayers, who are qualified voters of any such city or town, desire the abolishment of such corporation, they may petition the county judge to that effect, who shall thereupon order an election to be held in such city or town, as in the case of its incorporation; provided, that when a majority of the property taxpayers, who are

qualified voters, of any such city or town is less than one hundred in number, then the county judge shall order an election as above provided for upon the presentation to him of a petition signed by a majority of the property taxpayers of such city or town, who are qualified voters thereof, paying [praying] for same. (Acts 1899, p. 245.)

Art. 1079. (617c) Qualified voters at such election; duty of county judge.—All persons who are legally qualified voters of the state and county in which any such election is ordered, and are resident property taxpayers in the city or town where such election is to be held, as shown by the last assessment roll of such city or town, shall be entitled to vote at such election; and, if a majority of such qualified voters voting at such election shall vote to abolish such corporation, the county judge shall declare such corporation abolished, and enter an order to that effect upon the minutes of the commissioners' court, and from the date of such order, said corporation shall cease to exist. (Acts 1895, p. 166.)

Warrener v. Lambrecht, 146 S. W. 633.

Art. 1080. Receiver of abolished corporation; appointment; bond, etc.—In all cases where any city or town having theretofore had a valid corporate existence, under the laws of the state of Texas, has abolished said corporate existence in the manner provided by law, and in all cases where any city or town having a valid corporate existence under such laws, may hereafter abolish their corporate existence, any creditor of any such city or town may apply to the judge of the district court of the judicial district, in which such city or town may be situated, for the appointment of a receiver for said corporation; and, after having posted up in at least three public places in the county wherein such city or town is located, one of which shall be in said city or town, written notices stating the substance of the application, when and before whom the same will be heard, such judge, either in term time or vacation, may appoint a suitable person as such receiver for such corporation, and shall fix the amount of bond to be given by such receiver in at least double the probable amount of the indebtedness or value of the property of such city or town, conditioned for the faithful performance of his duties as such officer, and for the paying over and delivery of all money and property coming into his hands as such receiver, to the party or parties entitled to receive same, such bond to be approved by the judge making the appointment; and same, together with the order of appointment, shall be filed with, and recorded in, the minutes of said court by the clerk of the district court of the county wherein such city or town is situated. (Acts 1905, p. 325.)

Art. 1081. Duties of receiver.—A receiver appointed under the preceding article, after having given the required bond, and after having same filed and recorded as therein directed, shall take charge of all the real and personal property, including moneys, minute books, ordinances, etc., except such property as pertains to the public free schools or devoted exclusively to public use, and shall return an inventory of all such property, money, books, etc., so received by him to the next succeeding term of the district court for the county in which such city or town is situated; and, for the purpose of securing such property, money, books, etc., he may, under the order of said court, or the judge thereof, made in vacation, bring suit or suits against any person or persons in possession of such property, books or moneys, or indebted to said city or town, the same as such city or town could were it still incorporated. (Id. sec. 2.)

Art. 1082. Claims against city; proceedings to collect.—Any person, firm or corporation, having any claim against such city or town, shall, within six months from the appointment of said receiver, present to him a statement of the amount of such claim, duly verified, which, if he finds correct, he will mark allowed, and file same in said district court; and at its next regular term, if no protest be filed as hereinafter provided, said claim shall be approved by said court and shall thereafter be considered a valid debt against such city or town; provided, however, that no such claim or account against such city shall be allowed or approved by the receiver of such city without notice of the presentment thereof first having been given, by publication in some newspaper, if any in the town or city where same is filed or presented, for four successive weeks, and in case there be no newspaper published in such town or city, then by posting written or printed notice of the presentment of such claim, to be posted at the courthouse door of the county in which said town or city is situated for four weeks prior to the allowance of said claim or account. And such notice, whether published or posted, shall state the name and residence of the creditor, the amount and date of said claim and account, and for what purpose incurred. In case such receiver finds any claim so presented to him unjust, in whole or in part, he shall endorse his finding thereon, and return same to the claimant, who may file same with the district court, if he desires to accept the finding of the receiver, and such claim for the amount allowed by the receiver may be acted upon by the said court as other claims. In case any protest by any taxpayer of said city or town be filed against any claim filed in said court, together with a bond of sufficient sureties, to be approved by said court, that he will pay all costs of suit in case said claimant establishes his claim in full, in any state court in which he may sue thereon, then such district court shall refuse to approve such claim until it shall have been established by judgment, recovered thereon in a state court of competent jurisdiction; and such suit to establish such claim, or any claim disallowed in part or in whole, may be brought against the receiver, who shall make all legal defenses against such claim; but the court trying said claim is hereby authorized to hear and consider any material defense that may be, or may have been, urged against said claim, except that of limitation, though such claim, prior thereto, may have been reduced to judgment, but such judgment shall be considered, upon such trial as prima facie evidence of the justness of such claim. Any judgment recovered against such receiver upon a claim against such city or town shall be allowed

by the receiver and approved by the district court wherein the receivership is pending; but, in all suits upon claims wherein protest and bond were filed in the district court, the claimant shall be liable for the costs of the suit, unless he recovers judgment for the full amount for which he asked the approval of the said district court; and, in suits upon claims rejected in part by the receiver, the claimant shall be liable for the costs of the suit, unless he establishes his claim for a greater amount than was allowed by the receiver. (Id. sec. 2.)

Art. 1083. Limitation not to run, when.—Limitations shall not run, begin to run, or be plead against any claim against such city or town, at any time prior to six months after the appointment of such receiver. (Id. sec. 3.)

Art. 1084. No receiver for corporation dissolved, when, etc.—No receiver shall be appointed for any such city or town whose corporate existence was dissolved prior to July 17, 1905, where the application therefor was not filed in said court within two years from and after July 10, 1905. (Id. sec. 3.)

Art. 1085. No suit to be brought on protested claims, after what time.—No suit shall be brought against such receiver upon any claim, against the allowance of which a protest has been filed, as herein provided for, at any time after six months from the date of filing such protest, nor after the expiration of six months from the date of the disallowance of any such claim, in whole or in part, where the claim has not been filed in the district court, after such disallowance as hereinbefore provided. (Id. sec. 3.)

Art. 1086. Payment of claims, and priority; sale of property in hands of receiver.—It shall be the duty of the district court of the county in which such town or city is situated, and in which such receivership is pending, to provide for the payment of all claims legally established against such city or town, and to determine the priority of any claims, and to order the sale of all property in the hands of the receiver subject to sale for such purpose, and to direct such receiver to pay such claims. (Id. sec. 4.)

Art. 1086a. Court to levy tax, when, etc.—In case the money and proceeds of property are insufficient to pay such indebtedness, then it shall be the duty of said court, at the request of any creditor, at the first regular term of said court in each year, to levy a tax upon all the property and real and personal estate, situated within the limits of said city or town, as previously incorporated, on the first day of the preceding January, not exempt from taxation under the constitution and laws of this state, sufficient to discharge the indebtedness, but not to exceed the rate allowed by existing law for such purposes in incorporated cities and towns. (Id. sec. 4.)

Art. 1087. County assessor and collector to assess and collect tax; compensation.—Whenever the district court, having jurisdiction in the premises, has heretofore ordered, or may hereafter order, the assessment and collection of taxes for the payment of the indebtedness of such town or city, it shall be the duty of the county tax assessor for the county in which such town or city is situated to assess the taxes so ordered in like manner as taxes in rural school districts; and it shall be the duty of the county tax collector for such county to collect such taxes in like manner as taxes in rural school districts; provided, that this article shall not repeal any part of articles 1081 and 1082. For the services rendered under this article the assessor and collector shall receive the same compensation as for like services for the assessment and collection of taxes in rural school districts; and it shall be the duty of said collector to pay such taxes, when collected, to the receiver of such city or town. (Acts 1905, p. 327; Acts 1909, p. 68.)

Art. 1088. Suit by receiver against delinquent taxpayers.—Suits may be brought by the receiver against delinquents, and a lien shall exist upon all property for such taxes, the same as though the corporate existence of such city or town had never been abolished, and such levy and assessment had been made by its council and assessor. (Acts 1905, p. 327, sec. 4.)

Art. 1089. Compensation of receivers.—Receivers appointed under the provisions of this chapter shall receive such compensation as may be allowed by the court. (Id. sec. 5.)

Art. 1090. Receiver's compensation and costs to be prior claims.—The compensation of the receiver, together with all court costs and expenses, shall constitute a prior claim against such city or town, and shall be first paid out of any money on hand or collected. (Id. sec. 5.)

Art. 1091. Claims paid pro rata according to priority.—In case of taxation, the money collected each year shall be paid pro rata upon all claims according to their priorities, until all claims established and all costs and expenses are fully paid. (Id. sec. 5.)

Art. 1092. Balance turned over to trustees, etc., of public schools.—On final settlement of such receivership, any money or property left on hand shall be turned over to the trustees or other officers in charge of the public free school situated in said city or town for the benefit of such school. (Id. sec. 5.)

Art. 1093. (617e) Public free school management, etc.—Where the public free schools of any such city or town are under the management of trustees appointed or elected by the voters of the city or town, or by the city or town council, at the time its corporation is abolished under the provisions of this chapter, such trustees shall have the management of said schools for the remainder of the term for which they were appointed or elected, subject to the supervision of the commissioners' court, unless such city or town shall sooner become incorporated for school purposes only. (Acts 1895, p. 166.)

Art. 1094. (617f) Collection of municipal or school taxes.—All taxes for municipal or school purposes which shall have been levied at the date of abolishment of such corporation, and which shall have not been paid, shall be collected by the collector of the county in the same manner provided by law for the collection of state and county taxes, and paid into the county treasury; but the portion of such taxes levied for the

purpose of maintaining the public free schools of such city or town shall be paid over to the trustees of public free schools of said city or town and applied by them to the purposes for which they were levied.

Art. 1095. (617g) Public buildings of abolished corporations.—When any corporation is abolished under the provisions of this chapter, and shall at the time of such abolishment own any public buildings, public parks, public works or other property, and the same shall not have been sold or disposed of as provided in this chapter, the same shall be managed and controlled by the commissioners' court of such county for the purposes to which same were originally used and intended; and, for this purpose, the commissioners' court shall have and exercise, with reference thereto, the powers originally conferred by charter upon the mayor and aldermen of such city.

Art. 1096. (615) (540) Corporation may be abolished, how.—When twenty-five of the qualified voters of any incorporated town or village shall desire the abolishment of such corporation they may petition the county judge to that effect, who shall thereupon order an election to be held in such town or village, as in the case of its incorporation; and, if there be a majority of the voters of said corporation, voting at such election in favor of abolishing such corporation, the county judge shall declare the corporation abolished, and enter an order to that effect upon the minutes of the commissioners' court; and, from and after the date of such order, the said corporation shall cease to exist; provided, nothing in this chapter shall be so construed as to repeal or otherwise affect any laws now upon the statutes of this state providing for the incorporation of towns and villages for school purposes; said towns and villages having not less than two hundred inhabitants. (Acts 1897, p. 194.)

CHAPTER SEVENTEEN

CITIES HAVING MORE THAN 5,000 INHABITANTS—ADOPTION AND AMENDMENT OF CHARTER

Art. 1096a. May adopt or amend charter; election; limitations of charter and ordinances; taxation; debts.—That cities having more than five thousand inhabitants may, by a majority vote of the qualified voters of said city, at an election held for that purpose, adopt or amend their charters, subject to such limitations as may be prescribed by the legislature, and providing that no charter or any ordinance passed under said charter shall contain any provision inconsistent with the constitution of the state, or of the general laws enacted by the legislature of this state, said cities may levy, assess and collect such taxes as may be authorized by law, or by their charters; but no tax for any purpose shall ever be lawful for any one year, which shall exceed two and one-half per cent. of the taxable property of such city, and no debt shall ever be created by any city, unless at the same time provision be made to assess and collect annually a sufficient sum to pay the interest thereon and creating a sinking fund of at least two per cent. thereon; and providing further that no city charter shall be altered, amended or repealed oftener than every two years. (Acts 1913, p. 307, sec. 1.)

Art. 1096b. Commission to frame new charter; submission to voters; submission of charter; submission of amendments, etc.—The legislative or governing authority of any incorporated city, having more than five thousand inhabitants may, by a two-thirds vote of its members, or upon petition of ten per cent. of the qualified voters of said city, shall provide by ordinance for the submission of the question, "Shall a commission be chosen to frame a new charter?" The ordinance providing for the submission of such question shall require that it be submitted at the next regular municipal election, if one should be held, not less than thirty nor more than ninety days after the passage of said ordinance; otherwise it shall provide for the submission of the question at a special election to be called and held not less than thirty days, nor more than ninety days after the passage of said ordinance and the publication thereof in some newspaper published in said city. The ballot containing such question shall bear no party designation, and provision shall be made thereon for the election from the city at large of a charter commission of not less than fifteen members or more than one member for each three thousand inhabitants, provided, that a majority of the qualified voters, voting on such question shall have voted in the affirmative. The charter so framed by said commission shall be submitted to the qualified voters of said city at an election to be held at a time fixed by the charter commission not less than forty days nor more than ninety days after the completion of the work of the charter commission; provision for which shall be made by the legislative or governing authority of the city in so far as not prescribed by general law. Not less than thirty days prior to such election the legislative or governing authority of said city shall cause the city clerk or city secretary to mail a copy of the proposed charter to each qualified voter in said city as appears from the tax collector's rolls for the year ending January 31st, preceding said election. If such proposed charter is approved by a majority of the qualified voters, voting at said election, it shall become the charter of said city until amended or repealed; provided, that in preparing the charter, the commission shall, as far as practicable, segregate each subject so that the voter may vote "Yes" or "No" on the same. Provided, that where the legislative or governing authority of any city, or where any mass meeting has selected a charter committee, or charter commission, or where the mayor of any city has appointed a charter committee which has proceeded with the formation of a charter for said city, the provisions of this section as to the selection of the charter commission shall not apply to the first charter election to be held in said city under the terms of this Act. No charter shall be considered adopted until the votes have been counted and an official order entered upon the records of said city by the legislative or governing authority of such city declaring the same adopted. When the legislative or governing authority of any city of more than five thousand inhabitants deems

it preferable to submit amendments to any existing charter and in the absence of a petition hereinbefore provided for, said legislative or governing authority may, on its own motion, and shall upon the petition of at least ten per cent of the qualified voters of said city submit any proposed amendment or amendments to such charter; provided, that the ordinance providing for the submission of any proposed amendment or amendments shall require that it, or they, be submitted at the next regular municipal election, if one shall be held, not less than thirty nor more than ninety days after the passage of said ordinance; otherwise it shall provide for the submission of the amendment or amendments at a special election to be called and held not less than thirty nor more than ninety days after the passage of said ordinance, and the publication thereof in some newspaper published in said city. The legislative or governing authority of said city shall cause the city clerk or city secretary to mail a copy of the proposed amendment or amendments to every qualified voter in said city as appears from the tax collector's rolls for the year ending January 31st, preceding said election. Every such proposed amendment or amendments, if approved by the majority of the qualified voters voting at said election, shall become a part of the charter of said city. Each and every amendment or amendments submitted must contain only one subject and in preparing the ballot for such amendment or amendments, it shall be done in such a manner that the voter may vote "Yes" or "No" on any one amendment or amendments, without voting "Yes" or "No" on all of said amendments; and provided that no amendment or amendments shall be considered adopted until the votes have been counted and an official order has been entered upon the records of said city by the legislative or governing authority of such city, declaring the same adopted. Provided, that no ordinance shall be passed submitting an amendment or amendments until twenty days' notice has been given of such intention by publication for ten days in some newspaper published in said city. By "twenty days" is meant from the first date said notice is published.

Provided, that nothing in this Act shall prevent the qualified voters of any city of over five thousand inhabitants from adopting any charter or amendment thereto, and at the same time electing officers under such charter or amendment. (Id. sec. 2.)

Art. 1096c. Mayor or chief executive to certify copy of adopted charter or amendments to secretary of state; record; judicial notice; cities may sue without security for cost; may appeal without bond.—That, upon the adoption of any such charter or any amendment to any existing charter by the qualified voters, as provided in section 1 of this Act [art. 1096a], it shall be the duty of the mayor or chief executive officer exercising like or similar powers of any such city, as soon as practicable, after the adoption of any such charter or amendment, to certify to the secretary of state an authenticated copy, under the seal of this city, showing the approval by the qualified voters of any such charter or amendment; and the secretary of state shall thereupon file and record the same in a separate book to be kept in his office for such purpose; provided that the secretary of state shall not be allowed to charge any greater fee for the recording of any such charter or amendment than fifteen cents (15c) per hundred words, provided such fee shall not be less than two dollars ($2.00). That it shall be the duty of the city secretary of any such city or other officer exercising like or similar powers, upon the adoption and approval of any such charter, any amendment thereof by the qualified voters as herein provided, to record at length upon the records of the city, in a separate book to be kept in his office for such purpose, any such charter, or amendment so adopted. That, when said charter or any amendment thereof shall be recorded as herein above provided for, it shall be deemed a public act and all courts shall take judicial notice of same and no proofs shall be required of same. That all cities may institute and prosecute suit without giving security for cost, and may appeal from judgments without giving supersedeas or cost bond. (Id. sec. 3.)

Art. 1096d. Full power of local self government; enumerated powers.—That by the provisions of this Act it is contemplated to bestow upon any city adopting the charter or amendment hereunder the full power of local self government, and among the other powers that may be exercised by any such city, the following are hereby enumerated for greater certainty:

The creation of a commission, aldermanic or other form of government; the creation of offices, the manner and mode of selecting officers and prescribing their qualifications, duties, compensation and tenure of office.

The power to fix the boundary limits of said city, to provide for the extension of said boundary limits and the annexation of additional territory lying adjacent to said city, according to such rules as may be provided by said charter.

To hold by gift, deed, devise or otherwise any character of property, including any charitable or trust fund; to plead and be impleaded in all courts, and to act in perpetual succession as a body politic.

To provide that no public property or any other character of property owned or held by said city shall be subject to any execution of any kind or nature.

To provide that no fund of the city shall be subject to garnishment, and the city shall never be required to answer in any garnishment proceedings.

To provide for the exemption from liability on account of any claim for damages to any person or property, or to fix such rules and regulations governing the city's liability as may be deemed advisable.

To provide for the levying of any general or special ad valorem tax for any purpose not inconsistent with the constitution of the state.

To provide for the mode and method of assessing taxes, both real and personal, against any person and corporation, including the right to assess the franchise of any public corporation using and occupying the public streets or grounds of the city separately from the tangible property of such corporation.

To provide for the collection of all taxes,

including the right to impose penalties for delinquent taxes.

The power to control and manage the finances of any such city; to prescribe its fiscal year and fiscal arrangements; the power to issue bonds upon the credit of the city for the purpose of making permanent public improvements or for other public purposes in the amount and to the extent provided by such charter, and consistent with the constitution of the state; provided, that said bonds shall have been first authorized by a majority vote cast by the duly qualified property taxpaying voters voting at an election held for that purpose. Thereafter all such bonds shall be submitted to the attorney general for his approval and the comptroller for registration, as provided by the state law, provided that any such bonds, after approval, may be issued by the city, either optional or serial or otherwise as may be deemed advisable by the governing authority. That, whenever any city has heretofore been authorized, under any special charter, creating such city, to issue any bonds by the terms of such charter, the provisions of this Act shall not be construed to interfere with the issuance of any such bonds under the provisions of any charter under which such bonds were authorized.

To have the exclusive right to own, erect, maintain and operate water works and water works system for the use of any city and its inhabitants, to regulate the same and to have power to prescribe rates for water furnished and to acquire by purchase, donation or otherwise suitable grounds within and without the limits of the city on which to erect any such works and the necessary right of way, and to do and perform whatsoever may be necessary to operate and maintain the said water works or water works system and to compel the owners of all property and the agents of such owners or persons in control thereof to pay all charges for water furnished upon such property and to fix a lien upon such property for any such charges. To provide that all receipts from the water works may, in its discretion, constitute a separate or sacred fund, which shall be used for no other purpose than the extension, improvement, operation, maintenance, repair and betterment of said water works system or water works supply, and to provide for the pledging of any such receipts and revenues for the purpose of making of any of such improvements, and the payment of the principal and providing an interest and sinking fund for any bonds issued therefor, under such regulations as may be provided by the charter adopted by such city.

To prohibit the use of any street, alley, highway or grounds of the city by any telegraph, telephone, electric light, street railway, interurban railway, steam railway, gas company, or any other character of public utility without first obtaining the consent of the governing authorities expressed by ordinance and upon paying such compensation as may be prescribed and upon such condition as may be provided for by any such ordinance. To determine, fix and regulate the charges, fares, or rates of any person, firm or corporation enjoying or that may enjoy the franchise or exercising any other public privilege in said city, and to prescribe the kind of service to be furnished by such person, firm or corporation, and the manner in which it shall be rendered, and from time to time alter or change such rules, regulations and compensation; provided, that in adopting such regulations and in fixing or changing such compensation or determining the reasonableness thereof, no stock or bonds authorized or issued by any corporation enjoying the franchise shall be considered unless proof that the same have been actually issued by the corporation for money paid and used for the development of the corporate property, labor done or property actually received in accordance with the laws and constitution of the state applicable thereto. That, in order to ascertain all facts necessary for a proper understanding of what is or should be a reasonable rate or regulation, the governing authority shall have full power to inspect the books and compel attendance of witnesses for such purpose.

To buy, own, construct within or without the city limits and to maintain and operate a system or systems, of gas, or electric lighting plant, telephones, street railways, sewage plants, fertilizing plants, abattoir, municipal railway terminals, docks, wharfs, ferries, ferry landings, loading and unloading devices and shipping facilities, or any other public service or public utility, and to demand and receive compensation for service furnished for private purposes or otherwise, and to exercise the right of eminent domain as hereinafter provided for the appropriation of lands, rights of way or anything whatsoever that may be proper and necessary to efficiently carry out said objects. That any city shall have the power to condemn the property of any person, firm or corporation now conducting any such business and for the purpose of operating and maintaining any such public utilities, and for the purpose of distributing such service throughout the city or any portion thereof; provided that any city may adopt by its charter such other rules and regulations as it may deem advisable for the acquiring and operation of any such public utilities.

To manufacture its own electricity, gas or anything else that may be needed or used by the public; to purchase and make contracts with any person or corporation for the purchasing of gas, electricity, oil or any other commodity or article used by the public and to sell the same to the public upon such terms as may be provided by the charter.

To have the power to appropriate private property for public purposes whenever the governing authorities shall deem it necessary and to take any private property within or without the city limits for any of the following purposes, to-wit: city halls, police stations, jails, calaboose, fire stations, libraries, school houses, high school buildings, academies, hospitals, sanitariums, auditoriums, market houses, reformatories, abattoirs, railroad terminals, docks, wharves, warehouses, ferries, ferry landings, elevators, loading and unloading devices, shipping facilities, piers, streets, alleys, parks, highways, boulevards, speedways, playgrounds, sewer systems, storm sewers, sewage disposal plants, drains, filtering beds and emptying grounds for sewer

systems, reservoirs, water sheds, water supply sources, wells, water and electric light systems, gas plants, cemeteries, crematories, prison farms, and to acquire lands within and without the city for any other municipal purposes that may be deemed advisable. That the power herein granted for the purpose of acquiring private property shall include the power of the improvement and enlargement of the water works, including water supply, riparian rights, stand pipes, water sheds, the construction of supply reservoirs, parks, squares and pleasure grounds, public wharves and landing places for steamers and other crafts, and for the purpose of straightening or improving the channel of any stream, branch or drain, or the straightening or widening or extension of any street, alley, avenue or boulevard. That, in all cases where the city seeks to exercise the power of eminent domain, it shall be controlled, as nearly as practicable, by the law governing the condemnation of property of railroad corporations in this state, the city taking the position of the railroad corporations in any such case; that the power of eminent domain hereby conferred shall include the right of the governing authority, when so expressed, to take the fee in the lands so condemned and such power and authority shall include the right to condemn public property for such purposes.

To have exclusive dominion, control and jurisdiction in, over and under the public streets, avenues, alleys, highways and boulevards, and public grounds of such city and to provide for the improvement of any public street, alleys, highways, avenues or boulevards by paving, raising grading, filling, or otherwise improving the same and to charge the cost of making such improvements against the abutting property, by fixing a lien against the same, and a personal charge against the owner thereof according to an assessment specially levied therefor in an amount not to exceed the special benefit any such property received in enhanced value by reason of making any such improvement and to provide for the issuance of assignable certificates covering the payments for said cost, provided that the charter shall apportion the cost to be paid by the property owners and the amount to be paid by the city, and provided further, that all street railways, steam railways, or other railways, shall pay the cost of improving the said street between the rails and tracks of any such railway companies and for two feet on each side thereof. The city shall have the power to provide for the construction and building of sidewalks and charge the entire cost of construction of said sidewalks, including the curb, against the owner of abutting property, and to make a special charge against the owner for such cost and to provide by special assessment a lien against such property for such cost; to have the power to provide for the improvement of any such sidewalk or the construction of any such curb by penal ordinance and to declare defective sidewalks to be a public nuisance. That the power herein granted for making street improvements and assessing the cost by special assessment in the manner herein stated shall not be construed to prevent any city from adopting any other method or plan for the improvement of its streets, sidewalks, alleys, curbs or boulevards, as it may deem advisable by its charter.

To open, extend, straighten, widen any public street, alley, avenue or boulevard and for such purpose to acquire the necessary lands and to appropriate the same under the power of eminent domain and to provide that the cost of improving any such street, alley, avenue or boulevard by opening, extending and widening the same shall be paid by the owners of property specially benefited whose property lies in the territory of such improvement and to provide that the cost shall be charged by special assessment and that a personal charge shall be made against any owner for the amount due by him and to provide for the appointment by the county judge or other officer exercising like or similar powers of three special commissioners for the purpose of condemning the said lands and for the purpose of apportioning the said cost, which apportionment of said cost shall be specially assessed by the governing authorities against the owners and the property of the owners lying in the territory so found to be specially benefited in enhanced value by the said special commissioners. That the city shall pay such portion of such cost as may be determined by the said special commissioners, provided the same shall never exceed one-third the cost and the property owners and their property shall be liable for the balance of the same as may be apportioned by said commissioners. That the city may issue assignable certificates for the payment of any such cost against such property owners and may provide for the payments of any such cost in deferred payments, to bear interest at such rate as may be prescribed by the charter not to exceed eight per cent. That the city may adopt any other method for the opening, straightening, widening or extending of its streets as herein provided for as may be deemed advisable and charge the cost of same against the property and the owner specially benefited in enhanced value and lying in the territory of said improvement that its charter may provide. That the authority to adopt any other method shall include the manner of appointing commissioners, the manner of giving notice and the manner of fixing assessments or providing for the payment for any such improvement.

To control, regulate and remove all obstructions or other encroachments or incumbrances on any public street, alley or ground and to narrow, alter, widen or straighten any such streets, alleys, avenues or boulevards and to vacate and abandon and close any such streets, alleys, avenues or boulevards, and to regulate and control the moving of buildings or other structures over and upon the streets or avenues of such city.

That each city shall have the power to define all nuisances and prohibit the same within the city and outside the city limits for a distance of five thousand feet; to have power to police all parks or grounds, speedways, or boulevards owned by said city and lying outside of said city; to prohibit the pollution of any stream, drain or tributaries thereof which constitutes the source of water supply of any city and to provide for policing the same as well as to provide for the protection of any water sheds and the policing of same;

to inspect dairies, slaughter pens and slaughter houses inside or outside the limits of the city from which meat or milk from same is furnished to the inhabitants of the city.

To license, operate and control the operation of all character of vehicles using the public streets, including motorcycles, automobiles or like vehicles, and to prescribe the speed of the same, the qualification of the operator of the same, and the lighting of the same by night and to provide for the giving of bond or other security for the operation of the same.

To regulate, license and fix the charges of fares made by any person owning, operating or controlling any vehicle of any character used for the carrying of passengers for hire or the transportation of freight for hire on the public streets and alleys of the city.

To provide for the establishment of districts within said city wherein saloons may be located or maintained and wherein spirituous, vinous and malt liquors may be sold to be drunk on the premises, and to prohibit the sale of such liquors or the location of such saloons without such defined district, to regulate the location and control the conduct of theaters, moving picture shows, ten pin alleys, vaudeville shows, pool halls, and all places of public amusements.

To license any lawful business, occupation or calling that is susceptible to the control of the police power.

To license, regulate control or prohibit the erection of signs or bill boards as may be provided by charter or ordinance.

To provide for the establishment and designation of fire limits and to prescribe the kind and character of buildings or structures or improvements to be erected therein, and to provide for the erection of fireproof buildings within certain limits, and to provide for the condemnation of dangerous structures or buildings or dilapidated buildings or buildings calculated to increase the fire hazard and the manner of their removal or destruction.

To provide for police and fire departments.

To provide for a health department and the establishment of rules and regulations protecting the health of the city and the establishment of quarantine stations, and pest houses, emergency hospitals and hospitals, and to provide for the adoption of necessary quarantine laws to protect the inhabitants against contagious or infectious diseases.

To provide for a sanitary sewer system and to require property owners to make connections with such sewers with their premises and to provide for fixing a lien against any property owner's premises who fails or refuses to make sanitary sewer connections and to charge the cost against the said owner and make it a personal liability. Also to provide for fixing penalties for a failure to make sanitary sewer connections.

The power to require water works corporations, gas companies, street car companies, telephone companies, telegraph companies, electric light companies, or other companies or individuals enjoying a franchise now or hereafter from the city to make and furnish extensions of their service to such territory as may be required by the charter.

Provided, that in all cities of over twenty-five thousand inhabitants, the city commissioners, or city council, or the governing board or authorities of any such city, when the public service of such city may require the same, shall have the right and power to compel any street railway or other public utility corporation to extend its lines or service into any section of said city not to exceed two miles, all told, in any one year.

To provide for the establishment of public schools and public school system in any such city and to have exclusive control over same and to provide such regulations and rules governing the management of same as may be deemed advisable; to levy and collect the necessary taxes, general or special, for the support of such public schools and public school system.

That, whenever any city may determine to acquire any public utility using and occupying its streets, alleys, and avenues as hereinbefore provided, and it shall be necessary to condemn the said public utility, the city may obtain funds for the purpose of acquiring the said public utility and paying the compensation therefor, by issuing bonds or notes or other evidence of indebtedness and shall secure the same by fixing a lien upon the said properties constituting the said public utility so acquired by condemnation or purchase or otherwise; that said security shall apply alone to the said properties so pledged; that such further regulations may be provided by any charter for the proper financing or raising the revenues necessary for obtaining any public utilities and providing for the fixing of said security.

To enforce all ordinances necessary to protect health, life and property, and to prevent and summarily abate and remove all nuisances and to preserve and enforce the good government, order and security of the city and its inhabitants, and as incident to giving effect to the provisions hereof article 812 of the Penal Code of the state of Texas is hereby amended so as to hereafter read as follows: (Id. sec. 4.)

See Penal Code, art. 812.

Art. 1096e. Effect of enumeration of powers.—The enumeration of powers hereinabove made shall never be construed to preclude, by implication or otherwise, any such city from exercising the powers incident to the enjoyment of local self-government, provided, that such powers shall not be inhibited by the constitution of the state. (Id. sec. 5.)

Art. 1096f. Former powers preserved, etc.—All powers heretofore granted any city by general law or special charter are hereby preserved to each of said cities, respectively, and the power so conferred upon such cities, either by special or general law, is hereby granted to such cities when embraced in and made a part of the charter adopted by such city; and provided, that, until the charter of such city as the same now exists is amended and adopted, it shall be and remain in full force and effect. (Id. sec. 6.)

Art. 1096g. Vested property, actions, rights of action, etc., saved; special assessments, etc.—That the adoption of any charter hereunder or any amendment thereof shall never be construed to destroy any property, action, rights of action, claims and demands of any nature or kind whatever vested in the city under and by virtue of any

charter theretofore existing or otherwise accruing to the city, but all such rights of action, claims or demands shall vest in and inure to the city and to any persons asserting any such claims against the city as fully and completely as though the said charter or amendment had not been adopted hereunder. That the adoption of any charter or amendment hereunder shall never be construed to affect the right of the city, to collect by special assessment any special assessment heretofore levied under any law or special charter for the purpose of paving or improving any street, highway, avenue or boulevard of any city, or for the purpose of opening, extending, widening, straightening or otherwise improving the same, nor affect any right of any contract or obligation existing between the city and any person, firm or corporation for the making of any such improvements and for the purpose of collecting any such special assessment and carrying out of any such contract, the provisions of all charters shall be continued in force. (Id. sec. 7.)

Art. 1096h. Improvement districts, improvements, bonds, etc.; personal charges, liens and special assessments, etc.—Any such city shall have the power to create and establish improvement districts, to levy, straighten, widen, enclose or otherwise improve any river, creek, bayou, stream, or other body of water or streets or alleys, and to drain, grade, fill and otherwise protect and improve the territory within its limits, and shall have the power to issue bonds for making such improvements, such improvement districts to be created and established agreeably to the general laws of the state providing for the creation of such improvement districts and the issuance of such bonds shall be governed by the powers a city possesses in the matter of issuing bonds.

Any such city shall further have the power to straighten, widen, levy, enclose, or otherwise improve any river, creek, bayou, stream, or other body of water, or streets, or alleys, and to drain, grade, fill and otherwise protect and improve the territory within its limits and to provide that the cost of making any such improvements shall be paid for by the property owners owning property in the territory specially benefited in enhanced value by reason of making any such improvements and a personal charge shall be made against any such property owners as well as a lien shall be fixed by special assessment against any such property, and the city may issue assignable certificates or negotiable certificates, as it deems advisable, covering such cost and may provide for the payment of such cost in deferred payments and fix the rate of interest not to exceed eight per cent., and pay [may] provide for the appointment of special commissioners or otherwise for the making and levying of said special assessment or may provide that the same shall be done by the governing authorities and that such rules and regulations may be adopted for a hearing and other proceedings had as may be provided by said charter. (Id. sec. 8.)

Art. 1096i. Penalties for obstruction or incumbrance of streets, etc.; street franchises; submission to voters.—Any such charter may provide a different penalty for the obstruction or incumbrance of its streets, alleys, avenues and highways from that provided by the state law, and provided, further, that no ordinance shall be in conflict with the state law or provide a penalty in conflict therewith save and except in the case of the obstruction and incumbrance of the public streets, alleys, avenues and boulevards of said city.

No charter or any amendment thereof framed or adopted under the provisions of this Act, shall ever grant to any person, firm or corporation any right or franchise to use or occupy the public streets, avenues, alleys or grounds of any such city, but the governing authority of any such city shall have the exclusive power and authority to make any such grant of any such franchise or right to use and occupy the public streets, avenues, alleys and grounds of the city; provided, that if at any time before any ordinance granting a franchise takes effect, a petition shall be submitted to the governing authority signed by five hundred of the bona fide qualified voters of the city, then the governing authority shall submit the question of granting such franchise to a vote of the qualified voters of the city, at the next succeeding general election; provided such election shall occur within twelve months from the date such ordinance takes effect; that, if such election shall not occur within the said twelve months then said ordinance may be submitted if petitioned therefor as herein provided for at a special election to be called by the governing authorities therefor; provided, further that in case said ordinance is submitted at any of said elections, notice thereof shall be published at least twenty days successively in a daily newspaper published in said city prior to the holding of said election. The ballot used at said elections shall briefly describe the franchise to be voted on and the terms thereof and shall contain the words "For the granting of a franchise" and "Against the granting of the franchise." That if a majority of those voting at said election shall vote in favor of granting a franchise the governing body upon canvassing the returns shall so declare and said franchise shall take effect in accordance with its terms, provided, further, however, that no franchise shall extend beyond the period fixed for its termination. (Id. sec. 9.)

Art. 1096j. Validation of charters and amendments to charters adopted under this chapter.—That each charter and each amendment to a charter, and each act of incorporation adopted by the qualified voters of the cities of Ennis, Marshall, Houston, El Paso, Dallas, Beaumont, Waco, McKinney, Terrell, Galveston, Taylor, Corsicana, Amarillo, Houston Heights, Bonham, Denton, Mineral Wells, Sweetwater, Wichita Falls, San Antonio, Brownwood, Orange, Belton and Cleburne, respectively, since the enactment of Chapter 147, page 307, of the Acts of the Regular Session of the Thirty-third Legislature, and filed in the office of the Secretary of State, be and the same are hereby validated and are hereby declared to be in as full force and effect the same as if each had been enacted by the Legislature and approved by the Governor. (Acts 1915, ch. 94, sec. 1.)

Art. 1096k. Same.—That each charter, and each amendment to a charter, adopted by any city of more than five thousand inhabitants in this State, or where such city

has amended or attempted to amend or adopt such charter, since the enactment of Chapter 147, Acts of the Regular Session of the Thirty-Third Legislature, 1913, and all proceedings had with reference thereto, are hereby validated, and are hereby declared to be in full force and effect, the same as if adopted in strict compliance with the requirements of said Chapter 147, Acts of the 33rd Legislature, and this Act shall take effect and be in force from and after its passage. (Acts 1917, 3d C. S., ch. 30, sec. 1.)

Art. 1096*l*. Same subject.—That each charter, and amendment to a charter, adopted by any city of more than Five Thousand inhabitants in this State, or where such city has amended or attempted to amend or adopt such charter, since the enactment of Chapter 147, Acts of the Regular Session of the Thirty-third Legislature, 1913, and all proceedings had with reference thereto, are hereby validated, and are hereby declared to be in full force and effect, the same as if adopted in strict compliance with the requirements of said Chapter 147, Acts of the 33rd Legislature, and this Act shall take effect and be in force from and after its passage. (Acts 1919, ch. 52, sec. 1.)

CHAPTER EIGHTEEN
CONSOLIDATION OF CITIES

Art. 1096½. Certain cities may consolidate.—When two or more cities in this State, over five thousand in population, adjoining and contiguous to each other in the same county, shall be desirous of being consolidated, it shall be lawful for them to adopt or amend their respective charters so as to consolidate under one government and take the name of the larger of said cities, in the manner, and subject to the provisions hereinafter prescribed in this Act. (Acts 1917, ch. 43, sec. 1.)

Art. 1096½a. Petition for election; order; election officers.—Whenever as many as one hundred qualified voters of each of said cities shall petition the city council of their respective cities to order an election for the purpose of voting on the consolidation of such cities into one city, said city councils may at their next regular meetings order an election to be held at the usual voting places of the cities, on the same day, not less than thirty days after such order is made. If said petitions be signed respectively, however, by qualified electors equal to fifteen per cent. of the total vote cast at the last preceding general election for city officials in each of said cities, next preceding the filing of said petitions, the respective councils shall, within ten days after the receipt thereof, order an election to be held. The mayor and city council, or other governing board of each of said cities, shall appoint from among the qualified voters of their respective cities judges and clerks of said elections, and such elections shall be conducted under the ordinances of said cities, and in conformity with the general laws of the State of Texas. (Id. sec. 2.)

Art. 1096½b. Form of ballots.—All persons voting at such election in favor of consolidation shall have written or printed on their ballots the words "For Consolidation," and all persons voting at such election not in favor of consolidation shall have written or printed on their ballots the words "Against Consolidation." (Id. sec. 3.)

Art. 1096½c. Definition of "Consolidation."—The term "consolidation," as used in this Act, shall be held to mean the adoption by the smaller cities of the charter and name of the larger of said cities, and the amendment of the charter of the larger cities so as to include in its boundaries the territory of the smaller city or cities so consolidated with it. (Id. sec. 4.)

Art. 1096½d. Returns of election; certification to Secretary of State; fee for recording; record of election.—In the event that a majority of the qualified voters voting at said election in each of said cities shall vote in favor of consolidation, it will be the duty of the mayor or chief executive officer exercising like or similar powers of each of said cities as soon as practicable after the returns of said elections have been made to certify to the Secretary of State an authenticated copy under the seal of the said cities, showing the approval of the qualified voters of the consolidation of the two cities, and the Secretary of State shall thereupon file and record the same in a separate book to be kept in his office for such purpose; provided, that the Secretary of State shall not be allowed any greater fee for the recording of such certificate than fifteen cents per hundred words, provided such fees shall not be less than two dollars. The returns of such elections shall be recorded at length in the record books of the respective cities, and the consolidation of such cities shall be held thereupon to be consummated. (Id. sec. 5.)

Art. 1096½e. Transfer of books, property, etc., to larger city; abolition of offices; adjustment of liabilities.—After the consummation of such consolidation all record books, public property, money on hand, credits, accounts and other assets of the smaller of the annexed cities shall be turned over to the officers of the larger city, who shall be retained in office as the officials of the consolidated city during the remainder of their respective terms, and by such consolidation the offices existing in the smaller municipality shall be abolished and declared vacant, and the persons holding such offices shall not be entitled, after the consummation of such consolidation, to further remuneration or compensation. All outstanding liabilities of the two cities so consolidated shall be assumed by the consolidated city. (Id. sec. 6.)

Art. 1096½f. Disposition of existing improvement funds.—Whenever at the time of any such consolidation the respective cities shall have on hand any bond funds voted for public improvements and not already appropriated or contracted for such money shall be kept in a separate fund and devoted to public improvements in the territory for which such bonds were voted, and shall not be diverted to any other purpose. (Id. sec. 7.)

TITLE 23
COMMISSIONER OF DEEDS

Art. 1097. (618) (542) Appointment of commissioners and terms of office.—The governor of the state of Texas is hereby authorized to name, appoint, and commission one or more persons in each or any of the

other states of the United States, the District of Columbia, or in each or any of the territories of the United States, or in each or any foreign country, upon the recommendation of the executive authority of said states, District of Columbia, or territories or foreign country, as he may deem expedient, which commissioners shall hold office for two years or until their successors are qualified, and shall have authority to take the acknowledgments and proofs of the execution of any deed, mortgage, or other conveyance of any lands, tenements, or hereditaments, and also to take the privy examination, acknowledgment and declaration of married women as to all such instruments when executed by them. (Acts of 1885, p. 98.)

Art. 1098. (619) (543) Oath of commissioner.—Every commissioner, appointed as aforesaid, before he shall proceed to perform any duty under and by virtue of this title, shall take and subscribe an oath or affirmation, before the clerk of any court of record in the city or county in which such commissioner may reside, well and faithfully to execute and perform all the duties of such commissioner, under and by virtue of this title, or the laws of this state; which oath or affirmation, certified to by the clerk, under his hand and seal of office, shall be filed in the office of the secretary of state in this state. (Act May 8, 1846, sec. 4, P. D. 3765.)

Art. 1099. (620) (544) Commissioner may administer oaths or affirmations; their effect.—Every commissioner appointed by virtue of this title shall have full power and authority to administer an oath or affirmation to any person who shall be willing and desirous to make such oath or affirmation before him; and such oath or affirmation, made before such commissioner, shall be, and is hereby declared to be, as good and effectual, to all intents and purposes, as if taken by any officer in this state competent to take the same. (Id. sec. 3. P. D. 3764.)

Art. 1100. (621) (545) Acknowledgments thus taken; their force.—Any contract, letter of attorney, or other writing, to be used or recorded in this state, and such acknowledgment or proof taken or made in the manner directed by the laws of this state, and certified by any one of said commissioners, before whom the same shall be taken or made, under his seal—which certificate shall be indorsed on, or annexed to, said deed or instrument aforesaid—shall have the same effect, and be as good and valid in law for all purposes, as if the same had been made or taken as now required by law. (Id. sec. 2. P. D. 3763.)

See title 118, chapter 2.

Art. 1101. (622) (546) Commissioners to take depositions.—Every commissioner appointed under this title shall have power and authority to take depositions under a commission issued to him according to law, from any court in this state, to be used as evidence in any cause pending in a court of the same, when returned as prescribed by law. (Id. sec. 5. P. D. 3766.)

Art. 1102. (623) (547) Commissioners' seal.—Every commissioner under this title shall provide for himself a seal with a star of five points in the center, and the words, "Commissioner of the State of Texas," engraved thereon, which seal shall be used to certify all the official acts of such commissioner; and, without the impress of said seal upon any instrument, or to certify any act of such commissioner, said act shall have no validity in this state. (Act Dec. 31, 1861, p. 21, sec. 5. P. D. 3771.)

TITLE 24

CONVEYANCES

Art. 1103. (624) (548) Conveyances must be in writing, signed and delivered.—No estate of inheritance or freehold, or for a term of more than one year, in lands and tenements, shall be conveyed from one to another, unless the conveyance be declared by an instrument in writing, subscribed and delivered by the party disposing of the same, or by his agent thereunto authorized by writing. (Act Feb. 5, 1830; P. D. 997, 3875.)

See Simkins' Contracts and Sales (3d Ed.) pp. 34, 41; Jackman v. Fortson, 39 S. W. 215; Dority v. Dority, 70 S. W. 338; Cauble v. Worsham, 70 S. W. 737; Dority v. Dority, 71 S. W. 950; Gidley v. Lovenberg, 71 S. W. 832; Parsons v. Hunt, 84 S. W. 644; Bringhurst v. Ry., 87 S. W. 893; Poarch v. Duncan, 91 S. W. 1110; Haile v. Haile, 93 S. W. 435; Wallis v. Turner, 95 S. W. 61; Adams v. Weir & Flagg, 99 S. W. 726; Allen v. Allen, 107 S. W. 528; Altgelt v. Escalero, 110 S. W. 989; Rhodes v. Maret, 112 S. W. 433; Menczer v. Poage, 118 S. W. 863; Vaughn v. Pearce, 153 S. W. 171; Texas Moline Plow Co. v. Klapproth, 164 S. W. 399; Houston Oil Co. of Texas v. Payne, 164 S. W. 886; Lindley v. Lindley, 178 S. W. 782; McGough v. Finley, 179 S. W. 918; Popham v. Eggleston, 193 S. W. 181; Miles v. Bodenheim, 193 S. W. 693.

Art. 1104. (625) (549) Purchaser or creditor, without notice, not to be affected.—A conveyance, such as is described in the preceding article, shall not be good and effectual against a purchaser in good faith, without notice thereof and for a valuable consideration, nor against any creditor, unless such conveyance be acknowledged by the party who shall have signed or delivered it, or proved, in the manner required by law, and before some officer authorized by law to take such acknowledgment or proof, and be filed for record with the clerk of the county in which the land, or a part thereof, is situated. (Id.; P. D. 997.)

See Lodwick Lbr. Co. v. Robertson, 102 S. W. 141; Lewis v. San Antonio Belt & Terminal Ry. Co., 208 S. W. 552.

Art. 1105. (626) (550) Conveyance of the greater estate passes the less.—All alienations of real estate, made by any person purporting to pass or assure a greater right or estate than such person may lawfully pass or assure, shall operate as alienations of so much of the right and estate in such lands, tenements or hereditaments as such person might lawfully convey; but shall not pass or bar the residue of said right or estate purporting to be conveyed or assured; nor shall the alienation of any particular estate on which any remainder may depend, whether such alienation be by deed or will, nor shall the union of such particular estate with the inheritance by purchase or by descent, so operate as to defeat, impair or in any wise affect such remainder. (Id.; P. D. 998.)

See Bullock v. Sprowls, 54 S. W. 657; Kennedy v. Pearson, 109 S. W. 280.

Art. 1106. (627) (551) An estate deemed a fee simple, when.—Every estate in lands which shall hereafter be granted, conveyed or devised to one, although other words heretofore necessary at common law to transfer an estate in fee simple be not added, shall be deemed a fee simple, if a less

estate be not limited by express words or do not appear to have been granted, conveyed or devised by construction or operation of law. (Id.; P. D. 999.)

Seay v. Cockrell, 115 S. W. 1160; Emerson v. Pate, 165 S. W. 469.

Art. 1107. (628) (552) Form of conveyance.—The following form, or the same in substance, shall be sufficient as a conveyance of the fee simple of any real estate with a covenant of general warranty, viz.:

"The state of Texas,

"County of ————.

"Know all men by these presents, That I, ——, of the —— [give name of city, town or county], in the state aforesaid, for and in consideration of ——— dollars, to me in hand paid by ———, have granted, sold and conveyed, and by these presents do grant, sell and convey unto the said ———, of the [give name of city, town or county], in the state of ———, all that certain [describe the premises]. To have and to hold the above described premises, together with all and singular the rights and appurtenances thereto in any wise belonging, unto the said ———, his heirs or assigns forever. And I do hereby bind myself, my heirs, executors and administrators to warrant and forever defend all and singular the said premises unto the said ———, his heirs and assigns, against every person whomsoever, lawfully claiming or to claim the same, or any part thereof.

"Witness my hand, this ——— day of ———, A. D. 19—.

"Signed and delivered in the presence of ——— ———."

(Id.; P. D. 1000.)

See Simkins' Contracts and Sales (3d Ed.) p. 33; Dority v. Dority, 70 S. W. 338; Gidley v. Lovenberg, 79 S. W. 832.

Art. 1108. (629) (553) Other forms and clauses valid.—No person shall be obliged to insert the covenant of warranty, or be restrained from inserting any clause or clauses in conveyances hereafter to be made, that may be deemed proper and advisable by the purchaser and seller; and other forms not contravening the laws of the land shall not be invalidated. (Id.; P. D. 1000.)

Art. 1109. (630) (554) Must be witnessed or acknowledged.—Every deed or conveyance of real estate must be signed or acknowledged by the grantor in the presence of at least two credible subscribing witnesses thereto; or must be duly acknowledged before some officer authorized to take acknowledgments, and properly certified to by him for registration.

See post, arts. 6797-6820; Hayes v. Tilson, 45 S. W. 478.

Art. 1110. (631) (555) Conveyance by sheriff or other officer will pass title, when.—Every conveyance of real estate by a commissioner, sheriff or other officer legally authorized to sell, under or by virtue of a decree or judgment of any court within this state, shall be good and effectual to pass the absolute title to such real estate to the purchaser thereof; but nothing herein shall be construed to affect the right, title or interest of any person or persons other than the parties to such conveyance, decree or judgment, and those claiming under them. (Id.; P. D. 1001.)

Art. 1111. (632) (556) Estates in futuro.—An estate or freehold or inheritance may be made to commence in futuro, by deed or conveyance, in like manner as by will. (Id.; P. D. 1002.)

See Mathews v. Moses, 52 S. W. 113; McLain v. Garrison, 88 S. W. 484; Freeman v. Jones, 94 S. W. 1072; Wright v. Giles, 129 S. W. 1163; Belgarde v. Carter, 146 S. W. 964; Low v. Low, 172 S. W. 590.

Art. 1112. (633) (557) Implied covenants.—From the use of the word "grant" or "convey," in any conveyance by which an estate of inheritance or fee simple is to be passed, the following covenants, and none other, on the part of the grantor for himself and his heirs to the grantee, his heirs and assigns, are implied, unless restrained by express terms contained in such conveyance:

1. That previous to the time of the execution of such conveyance the grantor has not conveyed the same estate, or any right, title or interest therein, to any person other than the grantee.

2. That such estate is at the time of the execution of such conveyance free from incumbrances.

Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance.

Hawkins v. Wells, 43 S. W. 817; Taylor v. Lane, 45 S. W. 317; Union Mut. Life Ins. Co. v. Crowl, 67 S. W. 901; Rotan v. Hayes, 77 S. W. 654; Bullitt v. Coryell, 85 S. W. 482; Lowry v. Carter, 102 S. W. 930; Roos v. Thigpen, 140 S. W. 1180; Morris v. Short, 151 S. W. 633; Alston v. Pierson, 158 S. W. 1165; Baldwin v. Drew, 180 S. W. 614; Chapin v. Ford, 194 S. W. 494.

Art. 1113. (634) (558) Incumbrances include what.—The term "incumbrances" includes taxes, assessments and all liens upon real property.

See Hawkins v. Wells, 43 S. W. 817; Roos v. Thigpen, 140 S. W. 1180; Baldwin v. Drew, 180 S. W. 614.

Art. 1114. (635) (559) Conveyance of separate lands of the wife, how made.—The husband and wife shall join in the conveyance of real estate, the separate property of the wife; and no such conveyance shall take effect until the same shall have been acknowledged by her privily and apart from her husband before some officer authorized by law to take acknowledgments to deeds for the purpose of being recorded, and certified to in the mode pointed out in articles 6802 and 6805. (Acts 1897, p. 41.)

See post, arts. 6802-6805; Speer's Marital Rights, p. 243; Simkins' Equity (2d Ed.) p. 270; City of San Antonio v. Grandjean, 41 S. W. 477; Johnson v. State, 51 S. W. 382; Silcock v. Baker, 61 S. W. 939; Dority v. Dority, 70 S. W. 338; Cauble v. Worsham, 70 S. W. 737; Dority v. Dority, 71 S. W. 950; Nolan v. Moore, 72 S. W. 583; King v. Driver, 160 S. W. 415; Morton v. Calvin, 164 S. W. 420; Blakely v. Kanaman, 175 S. W. 674; Red River Nat. Bank v. Ferguson, 206 S. W. 923.

Art. 1115. (636) (560) Conveyance of homestead, how made.—The homestead of the family shall not be sold and conveyed by the owner, if a married man, without the consent of the wife. Such consent shall be evidenced by the wife joining in the conveyance, and signing her name thereto, and by her separate acknowledgment thereof taken and certified to before the proper officer, and in the mode pointed out in articles 6802 and 6805. (Id.)

See post, art. 6802; Const. art. 16, § 50; Speer's Marital Rights, p. 278; Shields v. Aultman Miller & Co., 50 S. W. 219; Alexander v. S., 50 S. W. 716; Waggoner v. Flack, 51 S. W. 330; So. Oil Co. v. Colquit, 69 S. W. 169; Haile v. Haile, 93 S. W. 435; Gilley v. Troop, 146 S. W. 954; Burnett v. Mitchell, 158 S. W. 800; McDowell v. Northcross, 162 S. W. 13; Harle v. Harle, 166 S. W. 674; McGough v. Finley, 179 S. W. 918; Miles v. Bodenheim, 193 S. W. 693; Clark v. Tulley, 200 S. W. 605.

Art. 1116. (637) (561) Failing as a conveyance, shall be valid as a contract.—When an instrument in writing, which was intended as a conveyance of real estate, or some interest therein, shall fail, either in whole or in part, to take effect as a conveyance by virtue of the provisions of this chapter, the same shall nevertheless be valid and effectual as a contract upon which a conveyance may be enforced, as far as the rules of law will permit.

See Simkins' Equity (2d Ed.) p. 687.

TITLE 25

CORPORATIONS—PRIVATE

CHAPTER ONE

PRELIMINARY PROVISIONS

Art. 1117. (638) (562) Corporations classified.—Corporations are either public or private. (Act April 23, 1874, p. 120; P. D. 5932; Acts 1873, p. 42.)

Art. 1118. (639) (563) Public corporations.—A public corporation is one that has for its object the government of a portion of the state. (P. D. 5933.)

Art. 1119. (640) (564) Private corporations.—Private corporations are of three kinds: First, religious; second, corporations for charity or benevolence; and, third, corporations for profit. (P. D. 5934.)

CHAPTER TWO

CREATION OF CORPORATIONS

Art. 1120. (641) (565) Private corporations may be created.—Private corporations may be created by the voluntary association of three or more persons for the purposes and in the manner hereinafter mentioned. (Acts April 23, 1874, p. 120; Acts 1897, p. 188; P. D. 5935.)

See E. & S. Am. M. & I. Co. v. Hardy, 55 S. W. 169; Aycock v. S. A. Brewing Ass'n, 63 S. W. 953; Ramsey v. Tod, 69 S. W. 133; Bank of De Soto v. Reed, 109 S. W. 256.

Art. 1121. (642) (566) For what purposes corporations may be created.—The purposes for which private corporations may be formed are:

1. The support of public worship.

2. The support of any benevolent, charitable, educational or missionary undertaking.

3. The support of any literary and scientific undertaking; the maintenance of a library or promotion of painting, music and other fine arts.

For old subd. 3a, see subd. 16.

4. The encouragement of agriculture and horticulture by associations for the maintenance of public fairs and exhibitions of stock and farm products.

5. The maintenance of a public or private cemetery or crematory.

See Acts 1907, p. 37; Oakland Cemetery Co. v. Peoples' Cemetery Co., 57 S. W. 27.

6. The construction and maintenance of any species of roads and bridges in connection therewith.

7. The construction and maintenance of a bridge which may be used for any or all modes of travel and transportation.

8. The construction and maintenance of a telegraph and telephone line.

9. The establishment and maintenance of a ferry.

10. The establishment and maintenance of a line of stages.

11. The building and navigation of steamboats and vessels and the carriage of persons and property therein.

11a. Private corporations may be created, under the general corporation laws of this State, by the voluntary association of three or more persons, for the purpose of building, constructing and repairing boats, ships and vessels for use in and for the navigation of rivers, lakes, streams and seas, with power to build, construct, maintain and operate such docks, dry docks, marine railways, wharves and other appurtenances as may be necessary for the accomplishment of such purpose. (Acts 1917, ch. 90, sec. 1.)

12. The supply of water to the public.

13. The manufacture and supply of gas, and the supply of light, heat, and electric motor power, or either of them, to the public by any means.

14. The transaction of any manufacturing or mining business, and the purchase and sale of such goods, wares and merchandise used for such business.

Johnson v. Townsend, 124 S. W. 417.

15. The transaction of a printing or publishing business, and in connection therewith, the sale of goods, wares, and merchandise of a stationery and blank book manufacturing business.

16. For the establishment and maintenance of oil companies with the authority to contract for the lease and purchase of the right to prospect for, develop and use coal and other minerals, petroleum and gas; also the right to erect, build and own all necessary oil tanks, cars and pipes necessary for the operation of the business of same. (Acts 1897, p. 188; Acts 1915, ch. 144, sec. 1.)

All private corporations heretofore created under the provisions of Subdivision 16, Article 1121, Chapter 2, Title 25, Revised Statutes of Texas of 1911, shall, in addition to the powers therein enumerated, have the power to contract for the lease and purchase of the right to prospect for, develop and use gas; also erect, build and own all necessary oil tanks, cars and pipes necessary for the operation of the business of same. (Acts 1915, ch. 144, sec. 2.)

For old subd. 16, see subd. 70.

17. The erection or repair of any building or improvement, and the accumulation and loaning of money for said purposes, and for the purchase, sale and subdivision of real property in towns, cities and villages, and their suburbs not extending more than two miles beyond their limits and for the accumulation and loaning of money for that purpose. (Acts 1897, p. 189.)

17a. To contract for the erection, construction, or repair of any building, structure, or improvement, public or private and erect, construct or repair same or any part thereof, and to acquire, own, prepare for use, any materials for said purposes. (Acts 1919, ch. 39, sec. 1.)

18. The transportation of goods, wares and merchandise, or any valuable thing.

19. The promotion of immigration.

20. The construction and maintenance of sewers.

21. For constructing or acquiring, with power to maintain and operate, street rail-

ways and suburban railways and belt lines of railways within and near cities and towns, for the transportation of freight and passengers, with power also to construct, own and operate union depots; and any such company using electricity as the motive power for the operation of its lines shall have the right and authority to supply and sell electric light and power to the public and municipalities; and for the establishment of companies to buy, own, sell and convey right of way upon which to construct railroads; provided, that all street and suburban railways engaged in transporting freight shall be subject to the control of the railroad commission. But no street railway company shall ever be exempted from payment of assessments that may be legally levied or charged against it for street improvement. Any corporation heretofore organized under the general laws of this state, and which now owns or operates with electric power any street or suburban railway within the state, shall be, and the same hereby is, authorized to supply and sell electric light and power to the public or municipalities, and to acquire or otherwise provide the necessary appliances therefor, and may, by proceeding in the manner provided by existing laws, amend its articles of incorporation so as to expressly include such authority. (Acts 1897, p. 189; Acts 1903, p. 62.)

See Denison & S. Ry. v. Ry. Commission, 69 S. W. 62; Galveston, H. & S. A. Ry. Co. v. Houston Electric Co., 122 S. W. 287; Houston B. & T. Ry. Co. v. Hornberger, 143 S. W. 272.

22. The erection and maintenance of market houses and market places.

23. The construction, maintenance and operation of dams, reservoirs, lakes, wells, canals, flumes, laterals, and other necessary appurtenances for the purpose of irrigation, navigation, milling, mining, stock raising and city water works.

See Borden v. Trespalacios Rice & Irr. Co., 82 S. W. 461; Id. 86 S. W. 11; Cotulla v. La Salle Water Storage Co., 153 S. W. 711; Co-operative Vineyards Co. v. Ft. Stockton Irrigated Lands Co., 158 S. W. 1191.

24. The purchase and sale of goods, wares and merchandise, and agricultural and farm products.

24a. Corporations may be created for the purpose of gathering and harvesting cotton; provided that the capital stock of corporations authorized by this Section shall not exceed fifty thousand dollars. (Acts 1911, p. 28.)

24b. Corporations may be created for the purpose of doing a general advertising business. (Acts 1911, p. 28.)

25. The buying and selling of goods, wares and merchandise of any description, by wholesale or wholesale and retail; provided, that no corporation created under this subdivision shall be chartered with a capital stock of less than twenty thousand dollars; and provided, further, that such wholesale and retail business shall not be conducted apart or in separate establishments.

26. The construction of harbors and canals on the coast of the Gulf of Mexico.

27. The growing, selling and purchasing of seeds, plants, trees, etc., for agricultural, horticultural and ornamental purposes, and to purchase and lease all lands necessary for that purpose.

See Miller v. Tod, 67 S. W. 483.

28. The construction or purchase and maintenance of mills, gins, cotton compresses, grain elevators, wharves, and public warehouses for the storage of products and commodities, and the purchase, sale and storage of products and commodities by grain elevator and public warehouse companies, and the loan of money by such elevator or public warehouse companies.

See State v. Shippers' Compress, etc., Co., 69 S. W. 59.

29. The accumulation and loan of money; but these subdivisions shall not permit incorporations with banking or discounting privileges.

30. The construction and maintenance of stock yards and pens.

31. The construction and maintenance of establishments for slaughtering, refrigerating, canning, curing, and packing meat, and loaning or advancing money by such establishments on any class of live stock.

32. The construction and maintenance of establishments for the preserving and canning of fruits, vegetables and fish.

33. The establishment and maintenance of clearing houses.

34. To construct and maintain water power.

35. The constructing of railroads and bridges for railroad companies.

36. To support and maintain bicycle clubs, and other innocent sports. (Acts 1897, p. 189.)

37. To act as trustee, assignee, executor, administrator, guardian or receiver, when designated by any person, corporation or court so to do, and to do a general fiduciary and depository business; to act as surety and guarantor of the fidelity of employés, trustees, executors, administrators, guardians or others appointed to or assuming the performance of any trust, public or private, under appointment by any court or tribunal, or under contract between private individuals or corporations; also on any bond or bonds that may be required to be filed in any judicial proceeding; also to guarantee any contract or undertaking between individuals, or between private corporations, or between individuals or private corporations and the state and municipal corporations or counties, or between private corporations and individuals; to act as executor, and testamentary guardian, when designated as such by decedents; or to act as administrator or guardian, when appointed by any court having jurisdiction; provided, that, when any executor's, administrator's, or guardian's bond, or any bond required to be filed in any judicial proceeding, may be signed as surety by any corporation organized by authority of this subdivision, and if such corporation shall be deemed and considered by the officer charged by law with the duty of accepting and approving such bond as sufficient security for the amount of such bond, such bond may be accepted and approved by the officer charged by law with the duty of accepting and approving the same without being signed by other sureties than such corporation; and any statute or law to the contrary, or requiring any such bond to be signed by two or more good and sufficient sureties, shall be governed and controlled by the provisions

of this subdivision; provided, that nothing herein shall be construed to permit any corporation to go upon any bond of any state or county official in this state; provided, that each corporation organized under this subdivision, shall publish in some newspaper of general circulation in the county where such company is organized, on the first day of February of each year, a statement of its condition on the previous thirty-first day of December, showing under oath its assets and liabilities, that a copy of this statement be filed with the commissioner of insurance and banking, and a fee of twenty-five dollars is paid to that officer for filing the same, and that an examination of its affairs be made at any time by the commissioner of insurance and banking, such examination to be at the expense of the company; provided, the guaranty and fidelity companies organized under the provisions of this subdivision shall have a paid up capital stock of not less than one hundred thousand dollars, and shall keep on deposit with the state treasurer money, bonds, or other securities, in an amount not less than fifty thousand dollars, said securities to be approved by the commissioner of insurance and banking, and that this amount to be kept intact at all times. (Acts 1897, p. 190; Acts 1903, p. 197.)

38. The establishment of transportation companies, with power to buy, construct, lease, own, operate, maintain and convey all kinds of steamships, vessels and other water crafts, and may navigate the same between all parts of the globe, and upon rivers, and construct, buy, lease, own, maintain, operate and convey warehouses, docks, and wharves, and to buy lease, receive, own, hold, and enjoy real and personal property necessary in the transaction of its business; to receive, purchase, hold, use and convey such rights privileges, franchises and property, and to exercise beyond the jurisdiction of this state such power as may be granted to or conferred upon it by any foreign government, state or municipality; to have officers and agents, and to maintain offices at all points at which the company may do business; to act as principal or agent in buying or selling merchandise in all foreign countries; to carry passengers, freight, express and mail. (Acts 1897, p. 191.)

39. For the purpose of doing business in any state or foreign country:

(a) The establishment of land companies to buy, own, sell and convey real estate and minerals, and engage in mining, agriculture and stock raising.

(b) Doing a general business in merchandise and manufactures.

(c) The acquisition, construction, maintenance, operating and owning of power and illuminating plants, and systems of every character.

(d) The acquisition, construction, maintenance, operating and owning of urban and other lines of railway and all other kinds of transportation and communication.

(e) The improvement of harbors and rivers, and the acquisition, construction, ownership and operating of canals, irrigation works, wharves and warehouses, and all kinds of machinery, tools and materials used for all the purposes enumerated in this subdivision; provided, that any corporation organized under the provisions of this subdivision shall only own such real estate in this state as may be necessary for its office; provided, further, that, for every charter granted under the provisions of this act which may include more purposes than are contained in any one paragraph of this subdivision, a separate franchise fee or tax shall be paid to the state of Texas for the additional purposes for which such corporation is organized under the various paragraphs of this subdivision. (Acts 1897, p. 191; Acts 1901, p. 70.)

City of San Antonio v. Salvation Army, 127 S. W. 860.

40. The making, compiling and owning of abstracts of titles to lands, and liens of all characters on any property, or any other abstracts of records of this state or any county thereof, required by law.

41. The improvement of rivers and other waterways in this state, and to render the same navigable for steam vessels and other water crafts, with the authority to charge and collect tolls for the navigation of such rivers and waterways.

42. The protection and preservation and propagation of fish, oysters, and game.

43. The organization and maintenance of volunteer fire companies.

44. The protection of women and children and the prevention of cruelty to animals.

45. The erection and maintenance of sanitariums, with the right to acquire, and own lands and town lots; to improve, cultivate, rent and alienate same; to erect storage dams and otherwise develop irrigation on such lands; to erect, acquire and maintain hotels and bath houses on its property; and in conjunction therewith; to erect and maintain training schools and outdoor sports, on its property for the training and pleasure of its patients, and their families; to maintain and carry on such industrial enterprises in conjunction therewith as shall be necessary, to furnish employment to the patients therein, and their families; provided, such corporation shall not own or control more land than is necessary for the actual conduct and control of a sanitarium. (Acts 1897, p. 191; Acts 1913, p. 114, sec. 1.)

46. The organization of fire, marine, life and live stock insurance companies; provided, that such live stock insurance companies may be organized with an authorized and paid up capital stock of not less than ten thousand dollars; and provided, further, that all insurance companies mentioned in this subdivision shall be in all other respects subject to, and shall comply with, all of the provisions of title 71, of the Revised Statutes of Texas. (Acts 1897, p. 191; Acts 1907, p. 292.)

State v. Burgess, 107 S. W. 366; State v. Burgess, 109 S. W. 922; Indiana & Ohio Live Stock Ins. Co. v. Krenek, 144 S. W. 1181.

47. To construct steam and electric plows for breaking, cultivating and draining of lands.

48. The organization of laborers, workingmen, wage earners and farmers to protect themselves in their various pursuits. (Acts 1897, p. 191.)

49. The promoting and taking stock in manufacturing companies or corporations.

50. The organization of mutual fire, or storm, or lightning insurance companies,

without an authorized capital; provided, that the members of said mutual fire insurance companies applying for such charters shall be resident citizens of the state of Texas, which fact shall be proven by the affidavit of a credible person accompanying the articles of incorporation when filed with the secretary of state, and such affidavit shall state that the person making the same is cognizant of the facts therein stated; provided, further, that no permit to transact business within this state shall be granted to any mutual fire, or storm, or lightning insurance company without an authorized capital, incorporated under the laws of any other state.

51. The raising, buying and selling of live stock.

52. The establishment and carrying on of dairies and creamery companies. (Id. p. 192.)

53. The construction, operation and maintenance of terminal railways; and any such terminal railway company, in addition to the rights conferred by law upon corporations generally, shall have and exercise all rights and powers conferred upon railroad companies by Chapters 8 and 9, Title 115 of the Revised Statutes of Texas, relating to railroads. And when any such terminal railway company is adjacent to any inland navigable stream or water body, it shall have the right and power to construct, erect, operate and maintain all necessary and convenient facilities of every kind and character to accommodate and expeditiously handle the exchange of freight and passenger traffic with any and all steamships, and all other vessels and water craft using such waterways. Such terminal railway company shall also have the right to issue bonds in excess of its authorized capital stock; provided, that its stock and bonds shall be issued under the direction of the Railroad Commission of this State, in accordance with the stock and bond law regulating the issuance of stocks and bonds by railroads; and the commission shall fix the values of the property, rights and franchises of such terminal railway company; and its stock and bonds shall not exceed the amount authorized by the Railroad Commission of Texas; and jurisdiction over the issuance of the bonds herein authorized in hereby expressly vested in the Railroad Commission; provided, that no such terminal company shall have the right to charge any railroad company, steamship, vessel or water craft for terminal facilities a greater amount than may be, from time to time, designated and established by the Railroad Commission, which shall have authority to establish and prescribe such rates and rules for the operation of all such terminal companies as will prevent discrimination by them against any common carrier with respect to either charges or service; provided, further that the provisions of Articles 6656, 6657 and 6658 of the Revised Statutes of Texas shall apply to any and all orders, rulings, judgments and decrees of the Railroad Commission made, entered or held under the provisions of this subdivision in regard to such terminal railway companies. (Acts 1907, p. 300; Acts 1905, p. 211; Acts 1897, p. 130; Acts 1917, ch. 72, sec. 1.)

Houston B. & T. Ry. Co. v. Hornberger, 143 S. W. 272.

54. To build, maintain and operate a line of railroad to mines, gins, quarries, manufacturing plants, breweries and mills, and to condemn land necessary for the right of way for such road, from and between such mine, gin, quarry, manufacturing plant or mill, and the nearest line of railroad; but no corporation created under the provisions of this subdivision shall have the power to condemn private property until said corporation shall declare itself a public highway and common carrier, thus placing said road under the control of the railroad commission of this state.

See Mangan v. Texas Transp. Co., 44 S. W. 998; Aycock v. S. A. Brewing Ass'n, 63 S. W. 953.

55. To excavate, maintain and operate drainage ditches, canals, and flumes, and to condemn land necessary for the right of way and machinery plants for such drainage ditches, canals and flumes. (Acts 1897, p. 192.)

The legislature skipping a number gave to this subdivision the number 57, and so continued the numbering down to subdivision 65. These numbers have been changed so as to run consecutively.

56. For the organization of cotton exchanges, chambers of commerce and boards of trade, with power to provide and maintain suitable rooms for the conduct of their business, and to establish and maintain uniformity in the commercial usages of cities and towns, to acquire, preserve and disseminate valuable business information, and to adopt rules, regulations and standards of classification, which shall govern all transactions connected with the cotton trade, and with other commodities where standards and classification are required, and generally to promote the interest of trade and increase the facilities of commercial transactions. (Acts 1899, p. 58.)

57. For the organization of companies for growing and selling of fruits, vegetables and tobacco. (Acts 1901, p. 70.)

58. For the organization of exchanges, with authority to deal in the stocks of mining companies. (Id.)

59. For conducting the business of undertaker and embalmer. (Id.)

60. The construction, acquiring, maintaining and operating lines of electric, gas or gasoline, denatured alcohol, or naptha motor railways within and between any cities or towns, and interurban railways within and between cities and towns, in this State, for the transportation of freight, or passengers, or both, with power, also to construct, own and operate union depots and office buildings, and such interurban railways shall have the same rights of eminent domain as are now given by law to steam railroads; and any such company shall have the right and authority to acquire, hold and operate other public utilities in and adjacent to the cities or towns within or through which said company operates. But no electric, gas or gasoline, denatured alcohol, or naptha motor railways, incorporated under this subdivision, shall ever be exempt from the payment of assessments that may be legally levied, or assessed against it for street improvements. Corporations created under this subdivision shall be, and are authorized to exercise the right of eminent domain for the purpose of acquiring right-of-way upon which to construct their railway lines, and sites for depots and power plants, upon the same con-

ditions, and in the same manner as railroad corporations are now required to do under the laws of this State, and shall have the same rights, powers and privileges as are now granted to interurban electric railway companies, by Chapter 17, of Title 115, of the Thirty-second Legislature, and all the powers of whatsoever kind, or character, conferred by said chapter; provided no property upon which is located a cemetery shall ever be condemned, unless it shall affirmatively be shown, and so found by the court trying such condemnation suits, that it is necessary to take such property and no other route is possible or practicable; and provided that the electric, gas or gasoline, denatured alcohol or naptha motor railways incorporated under this subdivision, which shall engage in transporting freight shall be subject to the control of the Railroad Commission.

That any corporation heretofore organized under any law of this State, and which now or may hereafter own or operate a line of electric, gas or gasoline, denatured alcohol, or naptha motor railway, within and between any cities or towns in this State, shall be and the same is hereby authorized to own and operate office buildings, and to acquire, hold and operate electric light and power plants in and adjacent to the cities or towns within or through which said company operates, and may, by proceeding in the manner provided by existing laws, amend its articles of incorporation so as to expressly include any or all powers herein authorized.

Any corporation heretofore organized under this subdivision may, by proceeding in the manner provided by existing laws, amend its charter so as to expressly include all powers given under this section as now amended. (Acts 1903, p. 204; Acts 1897, p. 130; Acts 1909, 2 S. S. p. 396; Acts 1913, pp. 67, 349; Acts 1917, ch. 178, sec. 1.)

61. For the organization of companies for the purpose of growing, preparing for market, and selling rice, with power to construct, maintain, and operate such dams, reservoirs, lakes, wells, canals, flumes, laterals, and other appurtenances as may be necessary or convenient for the purpose of irrigating. (Acts 1905, p. 28.)

62. For the organization of companies for the purpose of growing and selling sugar cane with the right to make and refine sugar, molasses, and all by-products of sugar cane, and to sell the same. (Id.)

63. For the organization of companies for constructing, operating and maintaining causeways, or causeways and bridges, which may be used for any and all modes of travel and transportation, with the right to demand, receive and collect charges as fares or tolls. Any company organized under this subdivision, that shall construct a causeway and bridge of at least one mile in length across any bay or arm of the sea contiguous to a city having not less than twenty thousand inhabitants, within this state, shall have authority to borrow money and issue bonds without being limited in the amount of such issue by the provisions of article 1162. (Acts 1905, p. 87.)

64. For the organization of companies to conduct and carry on a general apiary business, and in connection therewith to manufacture bee hives and bee keepers' supplies, and the purchase and sale of such goods, wares and merchandise used, manufactured and produced in such business. (Acts 1907, p. 11.)

65. For the establishment and maintenance of fishing, hunting and boating clubs; the protection, preservation and propagation of fish and game; the purchase and ownership of such lands and bodies of water as may be desirable in connection therewith; the erection of suitable improvements thereon; and the raising of such live stock for profit only as the preserves of such club will maintain; provided, also, that fishing and hunting clubs heretofore chartered in this state, may amend their charters and take advantage of this law by complying with existing regulations for the amendment to charters of private corporations. (Acts 1907, p. 291.)

66. The auditing of books, accounts and transactions of persons, firms or corporations, private, public or municipal. (Id.)

67. To construct, purchase, maintain and operate warehouses at one or more places in the state for the storage of products of the soil, with authority to issue negotiable receipts therefor. Any corporation organized under this subdivision, shall, by provisions of its charter, or by amendment thereof, limit the amount of its capital stock that may be owned or controlled directly or indirectly by one stockholder, and the number of votes that may be cast in any stockholders' meeting by one stockholder to not exceeding one thousand dollars of its capital stock. (Id.)

68. To manufacture and sell denatured alcohol and its by-products. Any corporation organized under this subdivision may, by provision in its charter, or by amendment thereof, limit the amount of its capital stock that may be owned or controlled, directly or indirectly, by one stockholder, and the number of votes that may be cast in any stockholders' meeting by one stockholder. (Id.)

69. To guarantee titles to lands and indemnify the holders thereof against losses by reason of defects in titles. (Id.)

70. The establishment, maintenance, erection or repair of a hotel, office building, opera and play house, apartment house, or steam laundry. (Acts 1907, p. 291; Acts 1897, p. 189.)

71. For the purpose of guaranteeing and assuring the validity of bills of lading and other contracts. (Acts 1907, p. 291.)

72. Private corporations may be created for, or after being created, may be so amended as to include two or more of the following purposes, namely: The construction or purchase and maintenance of mills and gins; the manufacture and supply to the public, by any means, of ice, gas, light, heat, water and electric motor power, or either, in connection with such mills and gins, or either, the harvesting of grain, or the harvesting and threshing of grain; provided, that the authorized capital stock of all incorporations, authorized by this subdivision shall not exceed two hundred and fifty thousand dollars. (Acts 1903, p. 227.)

That corporations organized or chartered under the laws of this state for the manufacture of ice, in addition to the privileges and power now extended to such corporations, shall be authorized to engage in and transact the business of buying, selling and refriger-

ating poultry and poultry products, and buying, selling, canning and refrigerating fruits, produce and dairy products. (Acts 1913, p. 267, sec. 1.)

73. Private corporations may be created for or after being created may so amend their charters so as to include two or more of the following purposes, namely: The supply of water to the public for irrigation, power, municipal or domestic purposes; the manufacture of and supply of ice to the public; the generation of and supply of gas, electric light and motor power to the public; the manufacture, supply and sale of carbonated water to the public; the operation of cotton seed oil mills and the operation of cotton compresses.

Provided, that corporations including more than one of the purposes named in this article shall pay the franchise tax provided by law for each of the purposes so included in their said charters or amendments thereto; and provided further that the authorized capital stock of corporations created under or authorized by this article which shall include irrigation and any one or more of the other purposes named in this article, shall not exceed $1,000,000.00; and that the authorized capital stock of corporations created under or authorized by this article which shall include water works, for the supply of water to the public or municipalities, and any one or more of the other purposes named in this article except irrigation, shall not exceed $500,000.00, and that the authorized capital stock of corporation so authorized by this article for any two or more of the purposes named in this article except irrigation and water works or the supply of water to the public, shall not exceed $200,000.00. (Acts 1907, p. 291, sec. 2; Id. p. 294; Acts 1913, p. 352, sec. 1.)

74. Corporations may be formed and chartered for the purpose of constructing, maintaining and operating canals, drains and ditches outside of the corporate limits of cities and towns in any county in the state of Texas. (Acts 1897, p. 109; Acts 1893, p. 109; Acts 1891, p. 161; Acts 1888, S. S. p. 1; Acts 1887, p. 40; Acts 1885, p. 59.)

75. A private corporation may be formed and chartered for the purpose of conducting livery and transfer business with auto and horses drawn vehicles and for the sale of such vehicles. (Acts 1913, p. 174, sec. 1.)

76. A private corporation may be formed and chartered for the design, purchase and sale of steel and iron and other metal products and the manufacture of any or all of such products, and for the design, sale, construction and erection of engineering and architectural structures, and for contracting for the construction and erection of such structures. (Acts 1915, ch. 109, sec. 1.)

77. A private corporation may be formed and chartered for the establishment and maintenance of garages with authority to purchase, sell, store, house, rent, operate, repair, and otherwise deal in automobiles and other motor vehicles and their accessories, provided that the right to operate shall not conflict with the ordinances of any incorporated city or town in which they shall operate; gasoline and oils necessary to the operation of motor vehicles. (Acts 1919, ch. 7, sec. 1.)

78. A private corporation may be formed and chartered for the establishment and maintenance of drilling companies, with authority to own and operate drilling rigs, machinery, tools and apparatus necessary in the boring, or otherwise sinking of wells in the production of oil, gas or water, or either, and the purchase and sale of such goods, wares and merchandise used for such business, and declaring an emergency. (Acts 1919, ch. 8, sec. 1.)

79. A private corporation may be formed and chartered for the construction, building and manufacture of aeroplanes, including all classes of flying machines, to buy, sell and otherwise deal therein, and to operate, or have operated any such machines for the purpose of carrying passengers and freight, both or either, including United States mail, from and to any point in this State and subject to the laws thereof, to and from any point in any State of the United States, or any foreign country, with the right to acquire by purchase, or otherwise, and to maintain all necessary starting and lighting grounds and fields. (Acts 1919, ch. 9, sec. 1.)

80. Private corporations may be formed for the purpose of accepting, guaranteeing, enforcing, becoming surety upon, buying, selling, contracting with reference to or otherwise dealing in acceptances, bills of exchange, bills of lading and warehouse and other receipts growing out, or to be used in aid, of the transportation, warehousing, distribution, or financing, in either domestic or foreign trade, of readily marketable, staple, non-perishable, agricultural products and so executed or supported as to be secured upon or to represent such products in amounts at least equal in clear market value to the amount of the financial undertaking of such corporations upon or on account of such instruments. Any such corporation may also buy, sell, endorse, contract with reference to, or otherwise deal in, acceptances of approved banking corporations, not secured upon nor representing any such products, but eligible for rediscount to, or for purchase in the open market by, Federal Reserve Banks; provided however the total liabilities to any corporation chartered under this Act of any such banking corporation, on account of any such unsecured acceptances, shall at no time be permitted to exceed ten per cent of the unimpaired capital of such corporation chartered under this Act. No corporation shall be chartered under this Act with authorized capital stock of less than $500,000.00, nor shall the authorized capital stock of any such corporation be reduced by amendment, to less than $500,000.00. By readily, marketable, staple, non-perishable, agricultural products are meant those classes of agricultural products which are subject to such constant dealing in ready markets as to make their values easily and definitely ascertainable and realizable on short notice and which are not ordinarily subject to substantial depreciation in quality within the period of immaturity of the obligations which they secure or by which they are represented. Each corporation chartered under this Act shall invest and keep invested in obligations of the United States of America, the State of Texas, or political sub-divisions or incorporated cities of the State of Texas, not less than one-half of its paid in capital.

No corporation formed under this Act shall enter into any contract or contracts of acceptance, guaranty, endorsement or suretyship when its obligation thereon in connection with its entire existing obligations and indebtedness primary or secondary, fixed or contingent, shall exceed five times its then unimpaired capital and surplus; provided however, if previously authorized in writing so to do by the Commissioner of Insurance and Banking, it shall be lawful for such corporation to enter into such contract or contracts when its obligations thereon in connection with its said entire then existing obligations and indebtedness shall not exceed ten times its said capital and surplus and shall not exceed the limits fixed by the written authorization issued by such Commissioner, and all such contracts and obligations entered into in violation hereof shall be unenforceable against such corporation; provided further that those obligations, to pay which at maturity, any such corporation has been furnished funds by other parties liable thereon, need not be considered in determining the amount of its existing obligations and indebtedness under this paragraph, provided, however that nothing contained in this Act shall prevent the enforcement of any such prohibited obligations by any holder who has acquired the same in due course, for value, before maturity, and without notice of its infirmity.

It shall be lawful for any private corporation formed under Title 25 of the Revised Statutes of Texas and for any banking corporation or trust company (excepting Savings Banks) formed under Title 14 of the Revised Statutes of Texas to hold stock in corporations chartered under this Act and in corporations chartered under the laws of the United States or any state thereof and principally engaged in financing domestic or foreign trade in any such agricultural products, in amounts not to exceed in the aggregate, ten per cent of the capital and surplus of such private corporation, banking corporation or trust company, nor to exceed ten per cent of the capital stock of such corporation in which such stock is to be held; provided, however, no banking corporation or trust company shall acquire stock in such corporation without express written authorization therefor from the Commissioner of Insurance and Banking of the State of Texas, under such rules and regulations as he may provide, except in payment of debt, and if it shall acquire same in payment of debt, it shall promptly dispose of same unless expressly permitted to retain same by such Commissioner of Insurance and Banking.

Corporations formed under this Act shall be subject at all times to the supervision and control of the Commissioner of Insurance and Banking of the State of Texas and shall conform to all lawful regulations of such Commissioner. No such corporation shall begin business until authorized so to do by such Commissioner after satisfactory showing made that such corporation has complied with the law, and thereafter it shall make such reports to such Commissioner and be subject to such periodical visitations and examinations under his direction, and shall pay fees therefor, all as in the case of State Banking corporations under existing law. Said Commissioner shall have such powers with reference to taking charge of such corporations, liquidating same, and for like causes, as are possessed by him with reference to State banking corporations. No partial invalidity of this Act in any other respect shall be effective to impair any of its provisions authorizing the formation of corporations hereunder, defining their powers, and authorizing private corporations, banking corporations and trust companies to hold stock in them, subject to the limitations of this Act. (Acts 1919, 2d C. S., ch. 4, sec. 1.)

For section 2 of this act see post, Penal Code, art. 1007b.

Art. 1122. (643) (567) Charter and what it must set forth.—A charter must be prepared setting forth:

1. The name of the corporation.
2. The purpose for which it is formed.
3. The place or places where its business is to be transacted.
4. The term for which it is to exist.
5. The number of its directors or trustees, and the names and residences of those who are appointees for the first year.
6. The amount of its capital stock, if any, and the number of shares into which it is divided.
7. The charter of a bridge or ferry company shall also state the stream intended to be crossed by the bridge or ferry.
8. The charter of a road company shall also state: First, the kind of a road intended to be constructed; second, the places from and to which the road is intended to be run; third, the counties through which it is intended to be run; fourth, the estimated length of the road. (Acts 1874, p. 120; P. D. 5937.)

See Simkins' Contracts and Sales (3d Ed.) p. 198; Ramsey v. Tod, 69 S. W. 133; Smith v. First Nat. Bk., 95 S. W. 1111; Bank of De Soto v. Reed, 109 S. W. 256; Davis v. Wynne, 190 S. W. 510.

Art. 1123. (644) (568) Charter must be subscribed and acknowledged.—The charter of an intended corporation must be subscribed by three or more persons, two of whom at least must be citizens of this State, and must be acknowledged by them before an officer duly authorized to take acknowledgments of deeds; provided, that all charters may be subscribed by married women who may also be stockholders, officers and directors thereof; and their acts contracts and deeds as such stockholders, officers and directors shall be as binding and effective for all the purposes of said corporation as if they were males; and the joinder and consent of their husbands and privy examinations separate and apart from them shall not be required. (Acts 1887, p. 103; Acts 1919, ch. 132, sec. 1.)

See Speer's Marital Rights, p. 233; Bank of De Soto v. Reed, 109 S. W. 256.

Art. 1124. (679) (603) Business firm shall give notice of intention to incorporate.—Whenever any banking, mercantile or other business firm desires to become incorporated without a change of the firm name, such firm shall, in addition to the notice of dissolution required at common law give notice of such intention to become incorporated, for at least four successive weeks, in some newspaper published at the seat of state government, and in the county in which such firm has its principal business office, if

there be a newspaper in such county, and, if not, then in some newspaper published in some adjoining county; and until such notice shall have been so published for the full period above named, no change shall take place in the liability of such firm or the members thereof.

Art. 1125. (642) Private corporations for profit must subscribe full amount of stock and pay fifty per cent of same, before being chartered.—The stockholders of all private corporations created for profit with an authorized capital stock under the provisions of this chapter, shall be required, in good faith, to subscribe the full amount of its authorized capital stock, and to pay fifty per cent thereof before said corporation shall be chartered. (Acts 1901, p. 18; Acts 1897, p. 192; Acts 1907, p. 309, sec. 1.)

Art. 1126. (642) Secretary of state to receive, file and record charter, on satisfactory evidence of compliance, and payment of fees and franchise tax.—Whenever the stockholders of any such company shall furnish satisfactory evidence to the secretary of state that the full amount of the authorized capital stock has in good faith been subscribed, and fifty per cent thereof paid in cash, or its equivalent in other property or labor done, the product of which shall be to the company of the actual value at which it was taken, or property actually received, it shall be the duty of said officer, on payment of office fees and franchise tax due, to receive, file and record the charter of such company in his office, and to give his certificate showing the record thereof. (Id.)

Art. 1127. (642) Satisfactory evidence defined.—Satisfactory evidence above mentioned shall consist of the affidavit of those who executed the charter, stating therein:

1. The name, residence and postoffice address of each subscriber to the capital stock of such company.

2. The amount subscribed by each, and the amount paid by each.

3. The cash value of any property received, giving its description, location and from whom and the price at which it was received.

4. The amount, character and value of labor done, from whom, and price at which it was received. (Id.)

Art. 1128. (642) Secretary of state may require other evidence.—If the secretary of state is not satisfied, he may, at the expense of the incorporators, require other and more satisfactory evidence before he shall be required to receive, file and record said charter. (Id.)

Art. 1129. (642) Certain corporations exempt from provisions.—Corporations created under subdivisions 21, 29, 37, 53, 54 and 60 of article 1121, as well as corporations formed for the construction, purchase and maintenance of mills and gins, having a capital stock of not exceeding fifteen thousand dollars, mutual building and loan associations, and also waterworks, ice plants, electric light plants and cotton warehouses in cities of less than ten thousand inhabitants are exempt from the provisions of articles 1125 to 1128, inclusive. (Id.)

Art. 1130. (642) Subscriptions and payment of stock required of excepted corporations.—The stockholders of all private corporations such as are designated in the last preceding article, created for profit and with an authorized capital stock under the provisions of this chapter shall be required to pay in at least one hundred thousand dollars in cash of their authorized capital stock, or to subscribe at least fifty per cent, and pay in at least ten per cent of their authorized capital before they shall be authorized to do business in this state; and whenever the stockholders of any such company shall furnish satisfactory evidence to the secretary of state that at least one hundred thousand dollars of its authorized capital stock has been paid in, in cash, or that at least fifty per cent of its authorized capital has been subscribed and ten per cent paid in, it shall be the duty of said officer to receive, file and record the charter of such company in the office of the secretary of state, upon application and the payment of all fees therefor, and to give his certificate showing the record of such charter and authority to do business thereunder. (Acts 1901, p. 18, sec. 1; modified by Act 1907, p. 309.)

Art. 1131. (645) (569) Must be filed with secretary of state, etc.—Such charter shall thereupon be filed in the office of the secretary of state, who shall record the same at length in a book to be kept for that purpose, and retain the original on file in his office. A copy of the charter, or of the record thereof, certified under the great seal of the state, shall be evidence of the creation of the corporation. (Act April 23, 1874, sec. 9; P. D. 5940.)

Bank of De Soto v. Reed, 109 S. W. 256.

Art. 1132. (646) (570) Corporation shall exist from time of filing charter, etc.—The existence of the corporation shall date from the filing of the charter in the office of the secretary of state, and the certificate of the secretary of state shall be evidence of such filing. (Id. sec. 10; P. D. 5941.)

Bank of De Soto v. Reed, 109 S. W. 256.

Art. 1133. (647) (571) Charter may be amended, how.—Any private corporation heretofore organized or incorporated, or which may hereafter be organized or incorporated, for any of the purposes mentioned in this chapter may amend or change its charter or act of incorporation by filing, authenticated in the manner required by this chapter as to an original charter of incorporation, such amendments or changes with the secretary of state; and, in case of a corporation, created by special act of the legislature, said corporation shall cause the amendments or changes to its charter to be authenticated as required in the case of an original charter of incorporation, and filed with the secretary of state, together with the original charter of such company, and such amendments thereto, or changes therein, if any, as have been made by special act of the legislature; and the same shall be recorded by the secretary of state, followed by the proposed amendments or changes thereof. (Id. sec. 10; P. D. 6011b.)

Art. 1134. (648) (572) When amendment shall take effect.—The amendments or changes provided for in the preceding article shall take effect and be in force, from the date of the filing thereof with the secretary of state; and the certificate of the sec-

retary of state shall be evidence of such filing. (Id.)

Art. 1135. (649) (573) Amendments, what void and what valid.—No amendment or change violative of the constitution or laws of this state or any of the provisions of this title shall be of any force or effect; amendments or changes may include additional purpose for which private corporations may be incorporated to that contained in its original or amended charter, as are specified in subdivision 72 of article 1121; but such amendments which so change the original purpose of such corporation as to prevent the execution thereof shall be of no force or effect. (Acts 1903, p. 227; Act April 23, 1874, sec. 10; P. D. 6011b.)

Ramsey v. Tod, 69 S. W. 134.

Art. 1136. (651) Renewal of charter of certain benevolent, etc., corporations, how.—Any private corporation created either by special act of the legislature or under the provisions of the general law for the support of any benevolent, charitable, educational or missionary undertaking, the support of any literary or scientific undertaking, the maintenance of a library, or the promotion of painting, music or other fine arts whose charter may expire or may have expired by limitation, may revive such charter, with all the privileges and immunities and rights of property, real and personal, exercised and held by it at the date of the expiration of its said charter, by filing, with the consent of a majority of its stockholders, a new charter under the provisions of the general law of the state of Texas, reciting therein such original privileges and immunities and rights of property, and by filing therewith a certified copy of such original expired charter. (Acts 1874, p. 120; Acts 1883, p. 98; Acts 1907, p. 301; Acts 1909, p. 226; P. D. 5942.)

See Scott v. F. & M. Nat. Bk., 66 S. W. 485; Ramsey v. Tod, 69 S. W. 134; Starke v. Guffey Petroleum Co., 80 S. W. 1080; Id. 86 S. W. 1.

Art. 1137. (651) Renewal and consolidation of two or more such corporations, etc., how.—Any two or more of such corporations may revive and consolidate their charters under a new corporate name, or under the name of either, with all privileges, immunities and rights of property, real and personal, enjoyed by each at the date of the expiration of their several charters, by, in like manner, filing a charter, which shall recite the fact of consolidation, accompanied by certified copies of said original charters; provided, the provision thereof shall not be construed to relieve any corporation from the payment of occupation taxes, now or hereafter required by law. (Acts 1907, p. 301; Acts 1909, p. 226; Acts 1874, p. 120; Acts 1883, p. 98; P. D. 5942.)

See Scott v. F. & M. Nat. Bk., 66 S. W. 485; Ramsey v. Tod, 69 S. W. 134; Starke v. Guffey Petroleum Co., 80 S. W. 1080; Id. 86 S. W. 1; Texas Seed & Floral Co. v. Chicago Set & Seed Co., 187 S. W. 747.

Art. 1138. (675) (599) Existence of corporation shall not be disputed collaterally.—No person who assumes an obligation to an ostensible corporation, as such, shall resist the enforcement of such obligation, on the ground that there was in fact no such corporation, until that fact shall have been adjudged in a direct proceeding had for the purpose.

Art. 1139. (650) (574) Legislature may alter, reform or amend.—All charters or amendments to charters, under the provisions of this chapter, shall be subject to the power of the legislature to alter, reform or amend the same. (Acts April 23, 1874, sec. 9.)

CHAPTER THREE

POWERS AND DUTIES OF PRIVATE CORPORATIONS, AND DUTIES OF STOCKHOLDERS IN REFERENCE THERETO, ETC.

Art. 1140. (651) (575) General powers of corporations.—Every private corporation, as such, has power:

1. To have succession by its corporate name for the period limited in its charter, not to exceed fifty years, and when no period is limited, for twenty years.

2. To maintain and defend judicial proceedings.

3. To make and use a common seal.

4. To purchase, hold, sell, mortgage or otherwise convey such real and personal estate as the purposes of the corporation shall require, and also to take, hold and convey such other property, real, personal, or mixed, as shall be requisite for such corporation to acquire in order to obtain or secure the payment of any indebtedness or liability due, or belonging to, the corporation.

5. To appoint and remove such subordinate officers and agents as the business of the corporation shall require, and to allow them a suitable compensation.

6. To make by-laws not inconsistent with existing laws for the management of its property, the regulation of its affairs and the transfer of its stock.

7. To enter into any obligation or contract essential to the transaction of its authorized business.

8. To increase or diminish by a vote of its stockholders, cast as its by-laws may direct, the number of its directors or trustees, to be not less than three nor more than twenty-one; provided, that any corporation formed under subdivisions 1, 2 and 3, article 1121, may increase the number of its directors or trustees to not more than twenty-five. (Id.; Acts 1907, p. 301; Acts 1909, p. 225; P. D. 5942.)

See Simkins' Contracts and Sales (3d Ed.) p. 198; Ray v. Foster, 53 S. W. 54; Sabine Tram Co. v. Bancroft, 40 S. W. 837; Gaston & Ayres v. J. I. Campbell Co., 140 S. W. 770; State v. Country Club, 173 S. W. 570; Galveston-Houston Interurban Land Co. v. Dow, 193 S. W. 353; Gulf Pipe Line Co. v. Lasater, 193 S. W. 773; Taylor Cotton Oil Co. v. Early-Foster Co., 204 S. W. 1179.

Art. 1141. (642) Unpaid stock payable when; proof of payment.—The stockholders of all corporations chartered as provided in articles 1125 to 1128, inclusive, as modified by article 1129, shall, within two years from the date of the filing of such charter by the secretary of state, pay in the unpaid portion of the capital stock of such company; proof of which shall, within said time, be made to the secretary of state, in the manner provided in articles 1126 to 1128, inclusive, for the filing of charter. (Acts 1907, p. 309, sec. 2.)

Art. 1142. (642) On default of payment, secretary of state to forfeit charter, how.—In case of the failure to pay the unpaid portion of capital stock, and to make proof thereof to the secretary of state within two years from the date of the filing of the charter, the charter of such company

shall, because thereof, become forfeited; which forfeiture shall be consummated without judicial ascertainment by the secretary of state entering upon the margin of the ledger kept in his office relating to such corporations the word "forfeited," giving the date and reason therefor. (Id.)

Art. 1143. (642) Notification of forfeiture; record of same; relief from forfeiture within six months, conditions of, etc.; revival.—The secretary of state shall notify such corporation by mailing to the postoffice named as its principal place of business, or to any other place of business of such corporation, addressed in its corporate name, a written or printed statement of the date and fact of such forfeiture; a record of the date and fact of such notice must be kept by such officer; provided, that the stockholders of any such corporation whose charter has been forfeited as above provided who shall, within six months from the date of such forfeiture, and not thereafter, pay in full the unpaid capital stock of such company and furnish to the secretary of state proof of such fact as required herein, and, in addition, shall pay the secretary of state, as fees belonging to his office, the sum of five dollars per month for each month and fractional part thereof between the date of forfeiture and settlement, the company shall be relieved from such forfeiture; and said officer shall write on the margin of said ledger the word "revived," giving the date thereof. (Id.)

Art. 1144. (642) On failure to revive, affairs of corporation wound up; provided right to avoid forfeiture within two years, but no prejudice to creditor.—If the stockholders should fail to cause the charter powers of said corporation to be revived, as just provided, then, and in such event, the affairs of such company shall be administered and wound up as on dissolution; provided, however, the stockholders of any such company shall have the right, at any time within the two years given, to make payment of the unpaid portion of the capital stock, to reduce the same so that by reduction, or reduction and payment, the full amount of the capital stock authorized by such reduction shall be paid, and thus avoid a forfeiture of the charter; but no creditor of said company shall in any wise be prejudiced by such reduction of its capital stock in any claim or cause of action such creditor may have against such company or any stockholder or officer thereof. (Id.)

Art. 1145. (652) (576) May increase its capital stock, how.—A corporation may increase its authorized capital by a two-thirds vote of all its stock; provided, that no stock shall be issued except for money paid, labor done or property actually received. And when such vote is given in favor of the increase, the same may be done by the board of directors, trustees, or managing board, of such corporation; and, upon such increase of stock being made in accordance with the above provisions and certified to the secretary of state by the directors, together with satisfactory proof, which shall be the affidavit of the directors showing that the full amount of the increase has been in good faith subscribed, and fifty per cent thereof paid, and in other respects conforming to the proof required as an original application for charter, or showing that such portion thereof has been subscribed or subscribed and paid, as is required for the corporation, thus increasing its stock, and, if the secretary of state is satisfied that the increase of stock has been made in accordance with law and that the requirements of law have been complied with as to the subscription and payment of stock and in other respects, as on an original application for charter, he shall file such certificate of increase; and thereupon the same shall become a part of the capital stock of such corporation. Such certificate shall be filed and recorded in the same manner as the charter. (Acts 1907, p. 309, sec. 3; Acts 1893, p. 123; P. D. 5943.)

Art. 1146. Watering stock prohibited; forfeiture for violation.—No corporation, domestic or foreign, doing business in the state, shall issue any stock whatever, except for money paid, labor done, which is reasonably worth at least the sum at which it was taken by the corporation, or property actually received, reasonably worth at least the sum at which it was taken by the company. Any corporation which violates the provisions of this article shall, on proof thereof in any court of competent jurisdiction, forfeit its charter, permit or license, as the case may be, and all rights and franchises which it holds under, from or by virtue of the laws of this state. (Id. sec. 5.)

Art. 1147. Watered stock and bonds not for money, etc., quo warranto suit to cancel.—Where any corporation has issued and has outstanding any stocks or bonds, given or issued for any purpose, other than money paid to, labor done for, or property actually received by the corporation, it shall be the duty of the attorney general of this state, when convinced that the facts exist which authorize the action, to institute quo warranto or other appropriate judicial proceedings in some court of competent jurisdiction in Travis county, or in any other county of this state where such corporation may be sued, to have any such stocks or bonds issued in violation of the constitution and statutes of this state, canceled, expunged, and held for naught; and, within the meaning of the above, is included any bond or stock given in renewal, or in lieu of any originally issued, for purposes other than those mentioned above, also any issued by any corporation with which the corporation originally issuing any such stock or bonds has merged or been consolidated and given by said issuing corporation, in the place of those originally issued for purposes other than as mentioned above. (Acts 1907, p. 342, sec. 3.)

Art. 1148. Suit may be dismissed or not brought under what conditions.—If any suit authorized under article 1147 has been instituted, the same shall be dismissed at the cost of the defendant, or if not instituted, no action shall be brought, if the defendant corporation shall surrender, or cause to be surrendered, to the court or to

the railroad commission of Texas, for destruction, all such illegal stocks complained of, and also the illegal bonds complained of, with proper and legal releases thereof, suitably executed for record, with such other written evidences and documents as may be necessary to show that such stocks or bonds are no longer outstanding against the corporation. (Id. sec. 4.)

Art. 1149. Remedies cumulative.—The rights and remedies given by the last two articles are cumulative, and shall not affect, change or repeal any other remedies or rights now existing in this state for the enforcement, payment, or collection or fines, forfeitures and penalties. (Id. sec. 6.)

Art. 1150. (652a) Increase in certain cases validated.—That in all cases where the amount of the capital stock of any corporation has heretofore been increased by more than one increase thereof to an amount in excess of double the amount of the original capital, and such increase has been made with the sanction of the secretary of state, under his construction of the law, such increase shall be, and the same is hereby, validated and declared legal. (Acts 1893, p. 123, sec. 2.)

Art. 1150a. Amendments increasing stock in certain cases validated.—That all charter amendments increasing the authorized capital stock of corporations organized under the terms of chapter 117, Acts of the 26th Legislature, approved May 15, 1899, and which were filed in the office of the secretary of state after the taking effect of an act of the legislature passed in 1907, page 309 Session Acts, approved April 25, 1907, and prior to the taking effect of the Revised Civil Statutes of 1911, be and such charter amendments increasing the authorized capital stock of such corporations are in all things as to the said increase of capital stock fully validated; provided that all stock issued or hereafter to be issued under any such amendment or amendments must have been or shall be fully paid up, and such corporations coming within the purview of this Act shall not receive any of the benefits hereof unless such corporation seeking the same shall within twelve months from the taking effect of this Act make to the secretary of state satisfactory proof by the affidavit of their president, treasurer, secretary and directors, and by such other evidence as may be required by the secretary of state, showing that all such stock at the time of making such proof has been fully paid in the manner and to the extent as is required by the constitution and laws of this state, and thereupon shall receive a certificate from the secretary of state, under the seal of the state, that such proof has been made and that such corporation has fully complied with the law and with the provisions of this Act; provided further that this Act is applicable alone to such domestic corporations as were organized under the terms of chapter 117, Acts of the 26th Legislature, approved May 15th, 1899, that by amendment or amendments to their charter increased their authorized capital stock within the dates named above, and no provision hereof shall be availed of or be made applicable to any foreign corporation doing business in this state; and provided further that if at the expiration of twelve months from the taking effect of this Act any amount of stock authorized to be issued under any amendment or amendments to charters mentioned above, shall not have been fully paid up and proof thereof as provided above made to the secretary of state of the fact of such payment, then to the extent that the amount of the authorized capital stock comprehended by such amendment or amendments shall remain unpaid shall not be and remain any part of the authorized capital stock of said corporation, and the same shall be decreased down to the amount actually paid and proven by an amendment to said charter filed and approved under the provisions of chapter 3, title 25, Revised Civil Statutes of 1911; and provided further that nothing in this Act shall be construed to validate any stocks or bonds issued by any such corporation, in violation of section 6, article 12 of the constitution of this state or of any statutes passed thereupon. (Acts 1913, p. 420, sec. 1.)

Art. 1151. (652) Unpaid increase of stock payable when; forfeiture for default.—In case of failure by the stockholders to pay the unpaid portion of an increase of stock within two years from the date of the filing of the certificate of increase in the office of the secretary of state, the charter of such company shall be forfeited: and the provisions of article 1145 of this chapter shall govern the same, as in case of an original creation of a corporation. (Acts 1907, p. 311, sec. 3.)

Art. 1152. (652) May decrease stock, how.—A corporation may decrease its capital stock by such amount as its stockholders may decide by a two-thirds vote of all its outstanding stock, in like manner as is required for an increase as above provided; but no such decrease shall prejudice the rights of any creditor of such corporation in any claim or cause of action such creditor may have against the company, or any stockholder or director thereof; nor shall such decrease become effective until full proof is made by affidavit of the directors to the secretary of state of the financial condition of such corporation, giving therein all its assets and liabilities, with names and post-office addresses of all creditors and amount due each; and the secretary of state may require, as a condition precedent to the filing of such certificate of decrease, that the debts of such corporation be paid or reduced. (Id. sec. 3.)

Art. 1152a. Voting power of fractional shares of stock on decrease.—Whenever any corporation organized under the laws of the State of Texas, shall reduce its capital stock under the provisions of law applying thereto, and by reason thereof fractional shares of its stock shall be issued to or held by any of its stockholders, the holder of any such fractional share or shares shall be entitled to vote the same at any meeting of the stockholders in accordance with the proportionate or ratable value of such share or shares. (Acts 1919, ch. 112, sec. 1.)

Art. 1153. (655) (579) Quorum of directors and annual elections.—A majority of the directors or trustees shall constitute a quorum, and be competent to fill vacancies in the board, and to transact all business of the corporation. An annual election shall

be held for directors or trustees, at such time and place as the by-laws of the corporation may require. (Acts 1907, p. 311, sec. 15; P. D. 5946.)

Art. 1154. (656) (580) President and secretary to be chosen.—The directors or trustees shall choose one of their number president, and shall appoint a secretary and treasurer and such other officers as they may deem necessary for the corporation. (Id. sec. 16; P. D. 5947.)

Standard Underground Cable Co. v. Southern Independent Telephone Co., 134 S. W. 429; Funkhouser v. Capps, 174 S. W. 897.

Art. 1155. (657) (581) By-laws may be adopted, altered, etc.—The directors or trustees may adopt by-laws for the government of the corporation; but such by-laws may be altered, changed or amended by a majority vote of the stockholders at any election or special meeting ordered for that purpose by the directors or trustees, on a written application of a majority of the stockholders or members. (Id. sec. 17; P. D. 5948.)

Art. 1156. (658) (582) May increase number of directors or trustees.—All corporations heretofore created, and now in existence, under any law of this state, are hereby authorized to increase the number of directors or trustees of any such corporation. (Id. sec. 18; P. D. 5949.)

Art. 1157. (659) (583) Failure to elect directors shall not dissolve, etc.—In case it should happen that an election for directors or trustees should not be held on the day appointed by the by-laws of any corporation, such corporation shall not, for that reason, be deemed to be dissolved; but it shall be lawful on any other day to hold a meeting and elect its directors or trustees, in such manner as shall be prescribed by the by-laws thereof. (Id. sec. 19; P. D. 5950.)

Art. 1158. (660) (584) Trustees to be elected to control religious corporation.—The secular affairs of a religious corporation shall be under the control of a board of trustees, to be elected by the members of such corporation; and the title to all property of any such corporation shall vest in such trustees. (Id. sec. 20; P. D. 5951.)

See Banner v. Rolf, 94 S. W. 1125.

Art. 1159. (661) (585) Directors shall have general management, etc.—The directors or trustees shall have the general management of the affairs of the corporation, and may dispose of the residue of the capital stock, at any time remaining unsubscribed, in such manner as the by-laws may prescribe. (Id. sec. 21; P. D. 5952.)

Dycus v. Traders' Bank & Trust Co., 113 S. W. 329; Standard Underground Cable Co. v. Southern Independent Telephone Co., 134 S. W. 429; Southern Kansas Ry. Co. of Texas v. Logue, 139 S. W. 11; Witt v. Nelson, 169 S. W. 381; Funkhouser v. Capps, 174 S. W. 897; Planters' Cotton Oil Co. v. Guaranty State Bank of Mertens, 188 S. W. 38; Cameron v. First Nat. Bank of Galveston, 194 S. W. 469; Peyton v. Sturgis, 202 S. W. 205.

Art. 1160. (662) (586) Directors shall cause record to be kept, etc.—They shall cause a record to be kept of all stock subscribed and transferred, and of all business transactions; and their books and records shall, at all reasonable times, be open to the inspection of any and every stockholder. (Id. sec. 21.)

Southern Kansas Ry. Co. of Texas v. Logue, 139 S. W. 11; Palacios v. Corbett, 172 S. W. 777; Milner v. Brewer-Monaghan Mercantile Co., 188 S. W. 49.

Art. 1161. (663) (587) Shall report to stockholders and make dividends.—They shall, also, when required by one-third of the stockholders thereof, present reports in writing of the situation and amount of business of the corporation, and declare and make such dividends of the profits from the business of the corporation as they shall deem expedient, or as the by-laws may prescribe. (Id. sec. 21.)

Art. 1162. (653) (577) May borrow money.—Corporations shall have power to borrow money on the credit of the corporation and may execute bonds or promissory notes therefor and may pledge the property and income of the corporation. (Acts 1874, p. 120, sec. 13; Acts 1883, p. 98, sec. 13; P. D. 5944; Acts 1917, ch. 39, sec. 1.)

Forty-Acre Spring Live Stock Co. v. West Texas Bank & Trust Co., 111 S. W. 417; Gaston & Ayres v. J. I. Campbell Co., 140 S. W. 770; Galveston-Houston Interurban Land Co. v. Dow, 193 S. W. 353; Peyton v. Sturgis, 202 S. W. 205.

Art. 1163. (664) (588) Existing corporations may accept provisions of this title, etc.—Any corporation heretofore organized, and now in existence, under any general or special law of the republic or state of Texas, may, by a vote of its board of directors, accept any or all of the provisions of this title, and have and exercise all of the rights, power and privileges conferred by this title, by filing a copy of their acceptance with the secretary of state; whereupon, that portion of its charter inconsistent with this title, or the portion accepted, shall cease to be applicable to such corporation; and it shall have the exclusive right to carry out the objects of said corporation, as described in its act of incorporation, or certificate, filed with the secretary of state, if acting under a general law within the limits or boundaries described in said act of incorporation, or certificate, as the case may be, without any limitation as to time, and shall possess all the privileges and franchises conferred by its act of incorporation or certificate filed with the secretary of state, not abandoned in the copy of acceptance of any or all the provisions of this title. (Acts 1883, p. 98, sec. 22; P. D. 5953.)

Art. 1164. (665) (589) Corporation restricted to objects of its creation; may contribute to certain enterprises not political; pending suits.—No corporation, domestic or foreign, doing business in this State shall employ or use its stock, means, assets or other property, directly or indirectly for any purpose whatever other than to accomplish the legitimate business of its creation, or those purposes otherwise permitted by law; provided that nothing in this section shall be held to inhibit corporations from contributing to any bona fide association, incorporated or unincorporated, organized for and actively engaged for one year prior to such contribution in purely religious, charitable or eleemosynary activities, nor to local, district, or statewide commercial or industrial clubs, or associations, or other civic enterprises or organizations not in any manner nor to any extent directly or indirectly engaged in furthering the cause of any political party, or aiding in the election or defeat of any candidate for office, or aiding in defraying the expenses of any candidate for office, or defraying or aiding in defraying the expenses of any political

campaign, or political headquarters, or aiding or assisting the success or defeat of any question to be voted upon by the qualified voters of this State or any subdivision thereof. Provided, that the provisions of this Act shall not in any wise affect any suit now pending in this State on the behalf of the State of Texas for any violation of unlawful contributions by any corporation. (Id. sec. 23; P. D. 5954; Acts 1907, p. 312, sec. 5; Acts 1915, ch. 102, sec. 1; Acts 1917, ch. 15. sec. 1.)

Howe Grain & Mercantile Co. v. Jones, 51 S. W. 24; Schneider v. Sellers, 81 S. W. 126; Starke v. Guffey Petroleum Co., 86 S. W. 1; Deaton Grocery Co. v. International Harvester Co. of America, 105 S. W. 556; State v. Country Club, 173 S. W. 570; McCaleb v. Boerne Electric Power & Mfg. Co., 173 S. W. 1191; Carla Land & Irrigation Co. v. Asherton State Bank, 164 S. W. 1066; Missouri, K. & T. Ry. Co. of Texas v. Bryant, 178 S. W. 685; Planters' Cotton Oil Co. v. Guaranty State Bank of Mertens, 188 S. W. 38; Zurn v. Mitchell, 196 S. W. 544; Crowell & Conner v. Howard, 200 S. W. 911; Hollis Cotton Oil, Light & Ice Co. v. Marrs & Lake, 207 S. W. 367. See, also, Penal Code, art. 1487b.

Art. 1165. (665) (589) Restrictions upon creation of debts.—No corporation, domestic or foreign, doing business in this state, shall create any indebtedness whatever except for money paid, labor done, which is reasonably worth at least the sum at which it was taken by the corporation, or property actually received, reasonably worth at least the sum at which it was taken by the corporation. (Acts 1907, p. 312, sec. 5.)

Art. 1166. Contributions to political parties or candidate, etc., by corporation officers, etc., forbidden.—No corporation, domestic or foreign, doing business in the state shall, directly or indirectly, contribute or pay any part of its assets, property or funds to any political party, or to any officer or campaign manager of any political party, or to any person whatsoever, for or on account of such party, nor to any candidate for any office, before or after nominations are made, or to aid in defraying the expenses of any candidate for office, or to any person for or on account of aid in defraying the expenses of a candidate for office, or to any person whatsoever, for, or on account of aid in maintaining or defraying the expenses of any campaign or political headquarters, or to any person whatsoever, for or on account of the success or defeat of any question to be voted upon by the qualified voters of this state, or any subdivision thereof. (Id. sec. 5.)

Art. 1167. Penalty for violation of either of the last three preceding articles.—Any corporation which shall violate any of the provisions of either of the three last preceding articles, shall, on proof thereof in any court of competent jurisdiction, forfeit its charter, permit or license, as the case may be, and all rights and franchises which it holds under, from, or by virtue of, the laws of this state.

Whenever it appears that the money, assets, property, or funds of a corporation have been issued, paid out, or used, in violation of any of the provisions of either of the three last preceding articles, by any agent, attorney, director, or officer of such corporation, it shall be held and considered the act of the corporation, unless, within one year from the date of such violation, it has caused to be entered through its board of directors on its records in this state, an order repudiating the wrong and permanently dismissing from its service all persons directly or indirectly connected with such violation. (Id. sec. 5.)

Art. 1168. (666) (590) Stock of corporation is personal estate.—The stock of any corporation created under this title shall be deemed personal estate, and shall be transferable only on the books of the corporation in such manner as the by-laws may prescribe. (Id. sec. 24; P. D. 5955.)

First State Bank of Montgomery v. First Nat. Bank of Navasota, 145 S. W. 691; Milner v. Brewer-Monaghan Mercantile Co., 188 S. W. 49.

Art. 1169. (667) (591) Directors may require payment of stock.—The board of directors or trustees of any corporation may require the subscribers to the capital stock of the corporation to pay the amount by them respectively subscribed, in such manner, and in such installments, as may be required by the by-laws. (Id. sec. 25; P. D. 5956.)

First State Bank of Montgomery v. First Nat. Bank of Navasota, 145 S. W. 691.

Art. 1170. (668) (592) Stock forfeited, when and how.—If any stockholder shall neglect to pay any installment, as required by the board of trustees, the directors or trustees may declare his stock and all previous payments forfeited to the use of the company; but no stock shall be forfeited until the directors or trustees have caused a notice in writing to be served on him personally, or by depositing the same in the postoffice, properly directed to him at the postoffice nearest his usual place of residence, stating that he is required to make such payment at the time and place specified in said notice, and that if he fails to make the same his stock and all previous payments thereon will be forfeited for the use of the company; which notice may be served, as aforesaid, at least thirty days previous to the day on which such payment is required to be made. (Id. sec. 26; P. D. 5957.)

Nicholson-Watson, etc., Co. v. Urquhart, 75 S. W. 45; First State Bank of Montgomery v. First Nat. Bank of Navasota, 145 S. W. 691; Commonwealth Bonding & Casualty Ins. Co. v. Hill, 184 S. W. 247.

Art. 1171. (669) (593) Corporation may sue its own members.—All bodies corporate may sue for, recover and receive from, their respective members all arrears or other debts, dues or other demands which are now, or hereafter may be, owing to them, in like mode, manner and form as they might sue for, recover and receive the same from any person not a member of their body. (Id. sec. 27; P. D. 5958.)

Art. 1172. (674) (598) Misnomer shall not vitiate.—No misnomer of any corporation shall defeat or vitiate any gift, grant, conveyance, devise, or bequest to the same. (Id.; P. D. 5965.)

See Cobb v. Bryan, 97 S. W. 513.

Art. 1173. (676) (600) Corporation may convey lands, how.—Any corporation, may convey lands by deed, sealed with the common seal of the corporation, and signed by the president or presiding member or trustee of said corporation, or in common form without seal by its attorney in fact, where the instrument constituting such attorney in fact is executed in said manner first mentioned; and such deed, when acknowledged by such officer or attorney in fact to be the act of the corporation, or

proved in the manner prescribed for other conveyances of lands, may be recorded in like manner and with the same effect as other deeds; and all conveyances by corporations heretofore executed in the manner herein set forth shall be held valid so far as regards the manner of execution. (Acts 1905, p. 230; P. D. 5966.)

See Simkins' Contracts & Sales (3d Ed.) p. 199; Jones v. Hanna, 60 S. W. 279; Alling v. Vander Stucken, 194 S. W. 443.

Art. 1174. (673) (597) Principal office must be kept in state.—Each corporation or joint stock company of every description, whether organized and acting under a special charter or general law of the state, shall keep its principal office within this state. (Id.; P. D. 5962.)

Beattie v. Hardy, 53 S. W. 685.

CHAPTER THREE A

SALE OF CORPORATE STOCK

Art. 1174a. Corporations affected by act; promotion commissions or fees.—Every private corporation, foreign or domestic, organized for profit, which is now attempting or shall hereafter attempt to increase its capital stock, and every proposed corporation attempted to be organized which shall, directly or indirectly, through itself, its agents or employés, or through any person or association of persons, holding companies, sales companies or otherwise, or through any other agents, sell or contract to sell any stock of such corporation or proposed corporation, upon which sale or proposed sale or contract of sale any part of the proceeds derived or to be derived therefrom are used or to be used, directly or indirectly for the payment of any commission, promotion, organization fee or other expenses incident, directly or indirectly, to the sale of its shares of stock, except attorney's fees, charter fees, franchise tax, permit fees and stationery and supplies, shall be subject to the provisions of this act. (Acts 1913, S. S. p. 66, sec. 1.)

Art. 1174b. Corporations affected; mining, oil, or gas companies; townsite companies.—This act shall also apply to any mining, oil or gas corporation increasing its stock or proposed mining, oil or gas corporation attempting to sell stock in which any land or mineral or thing of value is to be procured from, in or under such land that has been or is to be placed as an asset with or in the corporation or proposed corporation, whether any promotion fee is charged or not, and to any townsite corporation or proposed townsite corporation. (Id. sec. 2.)

Art. 1174c. Sale of stock; filing statement; contents of statement; foreign corporation to file copy of charter; employment of experts; statement of townsite company.—Before offering for sale or contracting to sell, directly, or indirectly, any stock of such proposed corporation, or such increased stock of any existing corporation, or before selling any stock in any townsite corporation as provided in section 2 [Art. 1174b], such corporation, or those promoting or having charge of the sale of stock of any proposed corporation, shall file, under oath, in the office of the secretary of state, where, under the law, a charter would be filed in his department, or in the office of the commissioner of insurance and banking, where, under the law, a charter would be filed in his department, together with a filing fee of twenty dollars, the following documents: A statement showing in full detail the plan upon which the corporation proposes to increase its capital stock or upon which the promoters or those having charge of the sale of stock of any proposed corporation proposes to sell its stock and organize the corporation, together with a copy of all the forms of contracts, stock (or deeds, if the same shall come under section 2 hereof) to be used by the corporation or promoters, or those having charge of the sale of stocks of any proposed corporation in connection with such stock sales. The statement shall further show the name, location and domicile of such corporation, and the names of its officers or proposed officers, if any, or promoters, and the addresses of all the parties; the amount of capital stock of any corporation already organized, the proposed increase, or the proposed capital stock of the corporation to be organized, and the price at which the stock is proposed to be sold; and the price at which the stock is proposed to be sold shall not be changed without filing with the secretary or commissioner, as the case may be, a statement of such change, which shall be subject to his approval. Any such corporation or promoters of such proposed corporation shall furnish the secretary or commissioner such other information as may be necessary or proper concerning the sale of its stock.

If it shall be a corporation organized under the laws of any other jurisdiction, it shall file with the secretary or commissioner a copy of its charter, and such other evidence of its authority as the secretary or commissioner may require.

Said statement shall also show the commission, promotion fee and other estimated incidental expenses proposed to be charged for the organization of such proposed corporation, or the increase in the capital stock of any corporation already organized, and how the commissions or fees are to be paid.

If the corporation or proposed corporation comes under section 2 hereof, the officers of the corporation, or the promoters of the proposed corporation shall state the facts upon which they base their estimate of the actual value of the property which is to become an asset of the corporation, and the secretary or commissioner shall require such proof as he may deem proper to establish the actual value of the property.

The secretary or commissioner shall have the right to employ such experts as he may deem necessary, and the experts shall be employed at the expense of the corporation or promoters of a proposed corporation.

No corporation proposed to be organized for the purpose of buying or selling townsites and town lots shall hereafter be granted a charter by the secretary of state, or if a foreign corporation shall not be granted a permit to do business in the state of Texas unless the incorporators of said proposed corporation or officer of such foreign corporation shall file with the secretary of state each and every document, contract and all papers referred to in section 3 of this act, as well as a general statement of the plan of its proposed townsite, and a general statement of

its methods of advertising same, together with a sample copy of its advertising literature, and no charter shall be granted any corporation unless after the compliance with the provisions of this act and in the judgment of the secretary of state, such business of any proposed townsite corporation will be honestly and fairly conducted both to the corporation and to the public. And each and every corporation in this state now existing or hereafter organized desiring to engage in the sale of townsite lots or sites shall, prior to such sale, file with the secretary of state a general plan of said proposed lots to be sold, as well as a copy of any and all proposed contracts to be made with the public in the sale thereof, and a general statement of the literature proposed to be issued, and all matter referred to in section 3 hereof, and if in the judgment of the secretary of state said sale will be conducted both honestly and fairly to the corporation and to the public, a permit to conduct said sale shall be granted. This provision shall not be construed to authorize the creation of any corporation for any purpose not now authorized by the laws of this state. (Id. sec. 3.)

Art. 1174d. Granting or refusing permit; stock previously sold; promotion fee; when permit shall not issue; bond.—The secretary or commissioner, upon the receipt of the information as provided for in section 3 [Art. 1174c], shall grant or refuse such permit.

If the secretary or commissioner shall decide that the sale of stock will be fairly and honestly conducted, both to the corporation and to the public, such permit shall be granted, provided that the commissions, promotion and other incidental expenses, exclusive of the exempted expenses mentioned in section 1 of this act [Art. 1174a], shall not be more than fifteen (15) per cent of the price at which such stock is to be sold as shown by the application or amended application.

Provided, that where any proposed corporation has already sold its stock, or a part thereof, or any part thereof has been subscribed at the time this act shall take effect, this act shall not e[a]ffect stock previously sold or subscribed nor any contracts made in reference to same; but if any of the stock of said proposed corporation remains unsold or unsubscribed, said corporation shall, nevertheless, be entitled to a permit upon complying with the other conditions of this act, including the future sale or subscription of any of its stock.

The commission or promotion fee shall be paid to the agent or promoter as the stock is sold by him and paid for by the purchaser. The stock shall be considered as paid for when paid for in cash, property or labor.

No permit shall be granted unless there shall appear upon the subscription lists and contracts of such corporation or proposed corporation, in bold type, the amount of the commissions, promotion fees and other estimated expenses incident to the sale of such stock, and the interest which the officer, agent, employé or promoter selling or contracting to sell such stock has in such sale; nor shall such permit be granted until the applicants therefor have entered into a bond for not less than one thousand dollars ($1000) nor more than one hundred thousand dollars ($100,000), the same to be fixed by the secretary or commissioner at not more than ten per cent of the stock proposed to be issued. The said bond shall be payable to the secretary or commissioner as the case may be, and his successor in office, conditioned that the facts set forth in the application for such permit, and the proof and statements offered to such secretary or commissioner, upon which the application is based, are true, and that they will comply with the provisions of this act in the sale of the stock of such corporation or proposed corporation. Said bond may be made with individual sureties or a surety company authorized to do business in the state of Texas, and the bond shall be approved by the secretary or commissioner. (Id. sec. 4.)

Art. 1174e. Suit to compel issuance of permit.—If a permit shall be refused by the secretary or commissioner the parties applying therefor may bring suit in the district court of Travis county, Texas, to require said secretary or commissioner to issue such permit. (Id. sec. 5.)

Art. 1174f. Misrepresentations; suit on bond; amount of recovery; successive suits; new bond; list of officers, agents, etc.—Any person who shall be induced to purchase any stock of any corporation or proposed corporation by the officers, agents, employés, promoters or trustees, by reason of any misrepresentation of any material fact concerning such stock, such person or persons shall have the right to bring suit upon the bond above provided for, and such bond shall be subject to, and security for, such person so purchasing the stock, provided that such person shall not be entitled to recover more than the money paid, or the actual value of the property given, or the labor performed in exchange for such stock, with legal interest from the date of the payment or the performance of the services, or the transfer of the property.

One or more recoveries upon such bond shall not vitiate the same, but it shall remain in full force and effect, but no recoveries upon such bond shall ever exceed the full amount of same, and upon suits being filed in excess of the amount of same, the secretary or commissioner may require a new bond, and if the same is not given within thirty days, he may cancel the permit herein provided for.

Whenever any permit has been issued, the corporation or persons receiving the same shall file a list of the names of their or its authorized officers, agents and employés, and the postoffice address of each; and, in case of the change of any of its officers, agents or employés, it shall file a list of such changes with the secretary or commissioner. (Id. sec. 6.)

Art. 1174g. Deposit of net proceeds of sales.—All moneys or other things of value collected by such corporation or the promoters of a proposed corporation, for the sale of its stock or contract for the sale of its stock, shall be deposited by said corporation to its credit, or by the promoters of a proposed corporation, to the credit of its proposed officers or trustees, with the exception of the amount allowed for commissions, promotion fees and other incidental expenses, with a bank, bank and trust company or

trust company incorporated under the laws of this state, or of the United States. (Id. sec. 7.)

Art. 1174h. Books showing sales to be kept; inspection by state officers.—All such corporations, and the organizers or trustees of proposed corporations shall keep a set of books, which shall show the amount of money, or other things of value received by such corporation or proposed corporation, from the sale of its stock, or from contracts of sale of its stock, and such books shall show the number and amounts of stock sold or contracted to be sold, by whom sold, and to whom sold, or contracted to be sold, and the postoffice address of each. Said books shall at all times be open for inspection by the secretary or commissioner, or his duly authorized agent. (Id. sec. 8.)

Art. 1174i. Violation of act; notice to corporation; cancellation of permit; suit to reinstate.—Whenever the secretary or commissioner shall have information that any corporation, or the promoters of the proposed corporation, its officers, agents or employés, are not complying with the terms of this act in the sale of its stock they shall notify such corporation, or the officers, agents or employés or the promoters of the proposed corporation to appear, within twenty days, and show cause why such permit should not be canceled, and after the hearing such secretary or commissioner shall have the right to concel such permit if the proof shall show that such corporation or proposed corporation, or its officers, agents or employés are not complying with the terms of this act, but the parties or corporation holding such permit shall have the right to bring suit, in the district court of Travis county, Texas, against the secretary or commissioner, to reinstate such permit to sell stock. (Id. sec. 9.)

Art. 1174j. Foreign corporations; no permit unless fifty per cent of stock subscribed; loan and insurance companies excepted.—No permit to sell stock shall ever be issued to any foreign corporation which has not at the time of making application for permit at least fifty per cent of its capital stock subscribed and paid in, providing that this shall not apply to any foreign corporation engaged exclusively in the business of lending money in this state, nor to any insurance company that is required by law to obtain a permit from the commissioner of insurance and banking. (Id. sec. 10.)

Art. 1174k. Foreign corporations; power of attorney to receive process.—Each foreign corporation or the promoters of any proposed foreign corporation desiring to sell or contract to sell its stock in this state shall first file with the secretary or commissioner a like power of attorney to that provided for life insurance corporations in article 4773, Revised Civil Statutes of the State of Texas of 1911, and service may be had upon the corporation and the secretary or commissioner, as the case may be, as therein provided for, and the secretary or commissioner, as the case may be, upon receipt of such process as is therein provided for, shall proceed as is provided for him to do in article 4774, Revised Civil Statutes of the State of Texas of 1911, and the secretary or commissioner's acts and conduct in regard to such power of attorney, and such process shall be the same as is provided for in said articles 4774 and 4773, and the effect, force and result of such acts shall be the same as therein provided for. (Id. sec. 11.)

Section 12 of this Act makes it a misdemeanor to violate the provisions of the Act. See Penal Code, art. 999xxxx.

Art. 1174*l*. Organization within two years; refundment to subscribers; extension of time.—At the expiration of two years from the granting of a permit under this act if the proposed corporation has failed to organize, then all subscribers must be refunded the amount paid to the promoter or trustee; provided, however, that the secretary or commissioner may grant an extension of time for the sale of securities. (Id. sec. 12a.)

Art. 1174m. Act cumulative.—This act shall be construed to be cumulative of any other law or laws of this state. (Id. sec. 13.)

Art. 1174n. Corporations and transactions not affected by act.—The terms of this act shall not apply to any national bank, nor to any corporation having a charter granted under any act of the congress of the United States, nor to any state bank, bank and trust company or trust company organized under the laws of this state, nor to any corporation organized under the federal reclamation act, approved June 17, 1902, or the regulations established by the secretary of the department of the interior in pursuance thereof. Nor shall the terms of this act apply to any corporation or the promoters of any corporation organized under the laws of Texas which does not sell or contract to sell its stock to more than twenty-five bona fide purchasers; provided, it does not act as the agent or trustee, holding company or sales company in the promotion of any concern which is included under the terms of this act. Nor shall this act apply to any railroad or railway company or interurban railroad or railway company, or street railroad or railway company. Nor shall this act apply to the sale of stock of a corporation by a bona fide owner of same, who had in good faith bought the same, and who in the purchase and sale of same was and is not acting directly or indirectly as promoter or agent of such corporation. Nor shall this act apply to a bona fide stock or stockbroker in the sale of stock, which stock has been by such corporation sold and issued to a bona fide purchaser prior to the offering of same for sale by such broker; provided that such purchaser or broker was not acting, directly or indirectly, as promoter of such corporation. (Id. sec. 14.)

Art. 1174*o*. Deposit of funds with state treasurer; examination of corporations; expenses.—All moneys collected under the terms of this act by the secretary or commissioner shall be quarterly deposited by him with the state treasurer and credited to the general fund. Whenever the secretary or commissioner shall deem it necessary to examine the books of any corporation or proposed corporation, subject to the provisions of this act, or investigate its financial condition, he shall do so at the expense of the corporation or proposed corporation under investigation, and the corporation or the agents of the corporation or proposed corporation being investigated shall pay to the

secretary or commissioner, or his agent, making the investigation his actual expenses and seven dollars and fifty cents per day for such investigation, which said expenses shall be paid at the termination of such investigation by the concern investigated. (Id. sec. 15.)

Art. 1174p. Definition of terms.—Whenever the word "secretary" is used in this act it shall be considered to mean secretary of the state of Texas, and whenever the word "commissioner" is used in this act it shall be considered to mean commissioner of insurance and banking of the state of Texas. (Id. sec. 16.)

CHAPTER FOUR

LAND—ACQUISITION, ETC., OF, RESTRICTED

Art. 1175. Purchase of land, unless necessary to business or to secure debts, prohibited.—No private corporation shall be permitted to purchase any land under the provisions of this chapter, unless the lands so purchased are necessary to enable such corporation to do business in this state, or except where such land is purchased in due course of business, to secure the payment of debt. (Acts 1893, p. 36; Acts 1897, p. 48.)

Art. 1176. (749c) Excess of land over necessary amount to be alienated, when.—All private corporations authorized by the laws of Texas, as provided in article 1121, to do business in this state, whose main purpose is not the acquisition or ownership of lands, as mentioned in the preceding articles, which have, heretofore, or may hereafter, acquire by lease, purchase or otherwise more land than is necessary to enable them to carry on their business, shall, within fifteen years from the time this law takes effect, or the date said land may be hereafter acquired, in good faith, sell and convey in fee simple all lands so acquired, and which are not necessary for the transaction of their business. (Id.)

See Trustees Houston Schools v. Dow, 63 S. W. 1027; Schneider v. Sellers, 84 S. W. 417.

Art. 1177. (749a) Certain corporations forbidden to acquire lands.—No private corporation heretofore or hereafter chartered or created whose main purpose of business is the acquisition or ownership of land by purchase, lease or otherwise shall hereafter be permitted to acquire any land within this state by purchase, lease or otherwise. (Acts 1893, p. 36, secs. 2–6.)

Art. 1178. (749b) Lands previously acquired, to be alienated when.—All private corporations whose main purpose or business is the acquisition or ownership, by purchase, lease or otherwise, of lands in this state, shall, within fifteen years from the time this law takes effect, make an actual bona fide sale of all lands, or interest therein acquired, before this law takes effect, and shall, within said fifteen years, by proper deed, convey in good faith all their right and title to said land. And lands acquired by corporations in payment of debts due such corporations shall be sold and conveyed as herein provided, within fifteen years from the date of the acquisition of such land.

Art. 1179. Purchase, subdivision and sale of city, etc., lands not prohibited.—Nothing in this chapter shall be construed to prohibit the lease, purchase, sale or subdivision of real property within incorporated towns, cities or villages, and their suburbs not extending more than two miles beyond their corporate limits, by corporations whose charters authorize them to lease, purchase, sell and subdivide real estate, within towns, cities and villages, and their suburbs whether their suburbs be stated to be measured from the limits, merely, or the corporate limits, of such towns, cities and villages; and provided, further, that all such corporations now existing, or which may be hereafter created, shall be authorized to lease, sell, or subdivide real property in any unincorporated city, town or village, or the suburbs thereof, within this state; provided, if there be a courthouse in such city, town or village, such lease, sale or subdivision may extend two miles in any direction from such courthouse. If there be a depot or depots, and no courthouse, then the two miles shall be measured from the depot nearest the center of such city, town, or village; and, in case there be neither courthouse nor depot, then the two miles shall be measured from the center of such city, town or village. (Acts 1893, p. 36; Acts 1897, p. 48.)

Art. 1180. (749d) Forfeiture prescribed; duty of attorney general.—All corporations holding lands contrary to the provisions of this law shall hold the same subject to the forfeiture and escheat proceedings; and it shall be the duty of the attorney general, or other attorney appointed by the governor for that purpose, when he is informed or has reason to believe that any corporation is holding lands in violation of this law, to institute suit in the name of the state of Texas, in the district court of Travis county, or in the district court of any county in Texas where such corporation may have an agent, or in any county where any part of the land may be situated, against such corporation, as is provided in title 51, for the escheat of estates of deceased persons dying without devise thereof and having no heirs. (Acts 1893, p. 36.)

See Colony Co. v. Schuler, 79 S. W. 371.

Art. 1181. (749e) Proceeds of such forfeitures to be covered into the treasury.—If it shall be determined upon the trial of said suit that lands are held contrary to this law, the court trying said cause shall enter judgment condemning such lands and ordering them to be sold as under execution. The proceeds of such sale to be applied: first, to the payment of costs of such suit, and balance to be paid into the state treasury, subject to be paid to the stockholders, or persons entitled to receive the same as owners, upon proper proof made within twelve months from date of sale; and if the legal representatives of such corporation fail to claim the said balance of money realized on sale of said land, then it shall escheat absolutely to the state and be applied to the available school fund of the state of Texas. The court trying said cause shall allow the attorney representing the state a reasonable fee, to be taxed as cost in the suit, but in no case shall the state be liable for costs or fees unless it is successful in said suit. (Id.)

See Schneider v. Sellers, 84 S. W. 417; Colony Co. v. Schuler, 79 S. W. 371.

CHAPTER FIVE

REPORTS BY CERTAIN CORPORATIONS

Art. 1182. Certain corporations to make reports to secretary of state.—Every corporation within this state owning, leasing or operating in this state, in cities or towns of over twenty-five hundred population, according to the last official census of the United States, a street railway, electric lighting or power plant furnishing light or power to the public, gas plant furnishing gas to the public, water plant furnishing water to the public, and sewerage company furnishing sewerage to the public, shall annually, on or before the first day of March of each year, file a report with the secretary of state, upon blank forms to be furnished by the secretary of state, showing the following facts:

1. The authorized capital stock of such corporation, the amount of such stock that has actually been issued, and how much of such stock actually issued is common, and how much preferred, and how much is due upon unpaid stock.

2. The bonded indebtedness of such corporation, and how many bonds have been actually sold, the rate of interest upon such bonds, and when such bonds mature, and the price at which such bonds were sold.

3. Any other fixed lien or mortgage upon such property, and the amount thereof.

4. The floating indebtedness of such corporation, including all bills payable of whatever nature.

5. The value of the visible tangible property of such corporation, giving separate values of lands, machinery, buildings, tracks and equipment, and in gross, all bills receivable and cash on hand.

6. The annual cost of operating such corporation, showing under separate items: (a) amount paid for salaries; (b) amount paid for labor; (c) fixed charges, including interest, taxes and insurance, giving each separately; (d) amount paid for fuel; (e) amount paid for extensions, repairs and maintenance, giving each separately; (f) amount paid for claims or suits for damages; (g) amount paid for miscellaneous expenses.

7. The annual gross earnings of such corporation, including revenues from every source, showing by separate items amount received by departments, such as amount received for light, amount received for sewerage, for power, water, gas, amount received for street railway fares and tickets. (Acts 1905, p. 40, sec. 1.)

Art. 1183. Same subject.—The corporations mentioned in article 1182 shall also make to the secretary of state, upon blanks to be furnished by him, reports as to the price charged the public for sewerage, gas, water, light, power, and the price charged per passenger upon street railways, and if any such corporations have contracts with cities or towns for furnishing water or light, then, the amount of such charge. (Id. sec. 2.)

Art. 1184. Reports to be under oath, etc.—The reports provided for in articles 1182 and 1183 shall be under oath, and shall be made by any officer of the corporation having knowledge of the facts, or its general manager or superintendent. (Id. sec. 3.)

Art. 1185. Copies of reports to be filed with mayor and with county clerk, recorded, etc.—A true copy of the reports required by the provisions of this chapter, sworn to as provided, shall be filed annually, on or before the first day of March of each year, with the mayor of the city or town where the corporation has its principal place of business; and there shall also be filed at the same time a true copy of said reports with the clerk of the county court of the county in which such corporation has its principal place of business; and the same shall be, by said clerk, delivered to the commissioners' court; and such reports shall be recorded in a properly indexed book, to be kept for that purpose, and open to the inspection of the public at all times. (Id. sec. 4.)

Art. 1186. Penalty.—Any such corporation as described in article 1182, which shall for thirty days willfully fail or refuse to file the reports in the manner provided by this chapter, shall forfeit and pay to the state one hundred dollars for each and every day during which it shall continue in default; which shall be recovered by suit in a court of competent jurisdiction by the attorney general of the state of Texas. (Id. sec. 5.)

CHAPTER SIX

BOOKS, RECORDS, ETC.—EXAMINATION OF

Art. 1187. Attorney general, etc., may examine books, etc.—Every corporation doing business in this state by virtue of a permit or charter granted under the laws of this state shall permit the attorney general, or any of his assistants or representatives when authorized in writing by the attorney general, to make examination of all the books, accounts, records, minutes, letters, memoranda, documents, checks, vouchers, telegrams, constitution and by-laws, and other records of said corporation as often as he may deem it necessary. The attorney general, or his assistant or assistants, or representative or representatives, shall present a request in writing to the president, vice-president, treasurer, secretary, manager, agent or other officer of said corporation at the time the attorney general or his assistant or assistants, or representative or representatives, desire to examine said books, accounts, records, minutes, letters, memoranda, documents, checks, vouchers, telegrams, constitution and by-laws and other records belonging to said corporation; and it shall be the duty of the officer or agent of any corporation to whom said request is presented to immediately permit the attorney general, or his authorized assistant or assistants, or representative or representatives, to inspect and examine all the books, records and other documents of said corporation, as hereinabove set forth. (Acts 1907, p. 34, sec. 1.)

Art. 1188. Same subject; not to be made public, etc.; except, etc.—The attorney general, or any of his assistants or representatives when authorized in writing by the attorney general, shall have the power and authority to make diligent investigation into the organization, conduct and management of any corporation authorized to do business within this state, and shall have power to inspect and examine all or any books, accounts, records, min-

utes, letters, memoranda, documents, checks, vouchers, telegrams, constitution and by-laws, and other records of such corporation, and take copies of any or all of such records or documents herein set forth as in his judgment may show or tend to show that said corporation has been or is engaged in acts or conduct in violation of its charter rights and privileges, or in violation of any law of this state; provided, that the attorney general, or his assistant or assistants, or representative or representatives, shall not make public or use said copies or any information derived in the course of said examination of said records or documents as hereinabove set forth, except in the course of some judicial proceedings of which the state is a party, or in a suit by the state to cancel the permit or forfeit the charter of such corporation, or to collect penalties for a violation of the law of this state, or for the information of any of the officers of this state charged with the enforcement of its laws. (Id. sec. 2.)

Art. 1189. Foreign corporation to forfeit permit for refusal, etc.—Any foreign corporation doing business in this state under a permit granted under the laws of this state, or any officer or agent thereof, who shall fail or refuse to permit the attorney general, or his authorized representative or representatives, assistant or assistants, to examine any or all of its books, accounts, records, minutes, letters, memoranda, documents, checks, vouchers, telegrams, constitution and by-laws and other records of said corporation, whether same be situated within this state or in any other state within the United States, or shall fail or refuse to permit said attorney general or his authorized assistant or assistants, or representative or representatives to take copies of same, as provided for in article 1188, shall thereby forfeit its right to do business in this state; and its permit shall be canceled. (Id. sec. 4.)

Art. 1190. Domestic corporation to forfeit charter rights for refusal, etc.—Any domestic corporation chartered under the laws of this state which shall fail or refuse to permit the attorney general, or any of his authorized assistants or representatives, to examine any or all of its books, accounts, records, minutes, letters, memoranda, documents, checks, vouchers, telegrams, constitution and by-laws, and other records of said corporation, whether the same be situated within this state or in any other state within the United States, or shall fail or refuse to permit said attorney general, or any of his authorized assistants or representatives, to take copies of same as provided for by article 1188, shall forfeit its charter rights and privileges. (Id. sec. 5.)

Art. 1191. Venue of suits in Travis county.—All suits to forfeit charters of domestic corporations or to cancel the permits of foreign corporations for violating the provisions of this act shall be prosecuted by the attorney general in the district courts of Travis county; and venue of said suits is hereby given to said courts. (Id. sec. 6.)

Art. 1192. Provisions cumulative.—The provisions of this chapter shall be cumulative of all other laws now in force in this state, and shall not be construed as repealing any other right, power or means afforded by law for securing testimony or inquiring into the charter rights and privileges of corporations. (Id. sec. 7.)

CHAPTER SEVEN

LIEN OF STATE FOR FINES AND PENALTIES, ETC.

Art. 1193. State to have lien on property within state for fines, etc., from date of suit to forfeit charter, etc.—Whenever any corporation created under the laws of this state, or any foreign corporation authorized to do business in this state, shall violate any law of this state, including any law against trusts, monopolies and conspiracies, or combinations or contracts in restraint of trade, for the violation of which fines or penalties or forfeitures are provided, all property of such corporation within this state at the time of such violation, or which may thereafter come within this state, shall, by reason of such violation, become liable for such fines or penalties and for all costs of suit and of collection; and the state of Texas shall have a lien on all such property from the date that suit shall be instituted by the attorney general, or district or county attorney acting under his direction, in any court of competent jurisdiction within this state, for the purpose of forfeiting the charter or canceling the permit of such corporation, or for such fines or penalties. The institution of such suit for such fine, penalties or forfeiture shall constitute notice of such lien. Where any such law has heretofore been violated, or shall be violated, before the taking effect of this act, and a cause of action exists for such fine, penalties or forfeiture, or shall come into existence before the taking effect of this act, and suit shall be filed in such case, the state shall have a lien, to secure the payment of such fine, penalties and costs from the time this act shall take effect, on all property of such corporation within this state or which shall thereafter become or be brought within the state. (Acts 1907, p. 175, sec. 1.)

Art. 1194. Action not to abate by dissolution, etc.; receivership when; writs; liens.—Any action or cause of action for any fine, forfeiture or penalty that the state of Texas has, or may have, against any corporation chartered under the laws of this or any other state, territory or nation, shall not abate or become abated by reason of the dissolution of such corporation, whether voluntary or otherwise, or by the forfeiture of its charter or permit. Whenever a corporation against which the state has heretofore instituted suit, or shall hereafter institute suit, for forfeiture of its charter, or cancellation of its permit, or for fines or penalties under any law of this state, shall dissolve in this or any other state, or shall have a judgment rendered against it in this or any other state, for the forfeiture of its charter, the court in this state in which such suit is pending shall appoint a receiver for the property and business of such corporation within this state, or that may come or be brought within this state during such receivership; or the court may, in any case wherein the state is suing any such corporation for the forfeiture of its

charter, or of its permit to do business in this state, or for fines or penalties, appoint a receiver for such corporation, whenever the interest of the state may seem to require such action. If such dissolution shall take place or judgment of forfeiture be rendered against such corporation before this act takes effect, the court shall, upon the taking effect of this act, appoint a receiver for the property and business of such corporation in this state; and the state shall have the right to writs of attachment, garnishment, sequestration or injunction, without bond, to aid in the enforcement of its rights created by this act; and all property that may come into the possession of any receiver appointed under the provisions of this act, not otherwise exempt by law, shall be subject to the lien herein created, and for the payment of any such fine or penalty. (Id. sec. 2.)

Art. 1195. Attorney general may bring suit to foreclose lien; service.—The attorney general or any district or county attorney acting under his direction, may bring suit in the name of the state of Texas, for the foreclosure of such lien in the district court of any county in the state of Texas; and, in case the suit for foreclosure should be brought against any corporation which has dissolved or had a judgment for the forfeiture of its charter or the cancellation of its permit rendered against it, pending any suit by the state of Texas against such corporation for the forfeiture of its charter or cancellation of its permit, or for penalties or fines, service may be had upon any person within this state who acted and was acting as agent of any such corporation in this state at the time of such dissolution or forfeiture of charter or cancellation of permit. (Id. sec. 3.)

Art. 1196. Rights and remedies cumulative.—The rights and remedies given by this act shall be construed as cumulative of all other laws in force in this state, and shall not affect, change or repeal any other remedies or rights now existing in this state for the enforcement, payment or collection of fines, penalties and forfeitures. (Id. sec. 4.)

Art. 1197. No compromise without trial without consent of attorney general.—In case any suit should heretofore be brought in any of the courts of this state for the recovery of penalties mentioned in this act, the same shall not be settled or compromised without trial upon the merits thereof, without the consent and approval of the attorney general of the state. (Id. sec. 5.)

CHAPTER EIGHT

LIABILITY OF STOCKHOLDERS AND DIRECTORS

Art. 1198. (671) (595) When and how stockholders may be made liable on execution.—If any execution shall have been issued against property or effects of a corporation, except a railway or a religious or charitable corporation, and there can not be found any property whereon to levy such execution, then the execution may be issued against any of the stockholders to an extent equal to the amount of the stock unpaid; but no execution shall issue against any stockholder, except upon an order of the court in which the action, suit or other proceeding shall have been brought or instituted, made upon motion in open court, after a reasonable notice in writing to the person or persons sought to be charged; and, upon such motion, such court may order execution to issue accordingly; or the plaintiff in execution may proceed by action to charge the stockholders with the amount of his judgment, in accordance with the liability of the stockholders. (Acts 1874, p. 120; P. D. 5960.)

McFarland v. Martin & Moodie, 86 S. W. 639; Galvin v. McConnell, 117 S. W. 211; Rowan v. Texas Orchard Development Co., 181 S. W. 871; Seaton v. Majors, 182 S. W. 712.

Art. 1199. (672) (596) Secretary shall furnish names, etc., of stockholders to plaintiff.—The secretary or other officer having charge of the books of any corporation, on demand of the plaintiff in any execution against the corporation, his agent or attorney, shall furnish such plaintiff, his agent or attorney with the names and places of residence of the stockholders as far as known, and the amount of stock held by each, as shown by the books of the corporation. (Id.; P. D. 5961.)

Art. 1200. (670) (594) Directors liable for debts of corporation, when and to what extent.—If the directors of any corporation shall knowingly declare and pay any dividend when the corporation is insolvent, or any dividend the payment of which would render it insolvent, they shall be jointly and severally liable for all the debts of the corporation then existing, and for all debts of the corporation which thereafter, during the time such directors respectively remain in office, shall be contracted. The amount for which they shall be so liable shall not exceed the amount of such dividend; and if any of the directors shall be absent at the time of declaring the dividend, or shall object thereto, at the time such dividend is declared, and shall file their objections in writing with the secretary or other officer of the corporation having charge of the books, they shall be exempted from said liability. (Acts 1874, p. 120, sec. 28; Acts 1871, 2 S. S. p. 66; Acts 1893, p. 123; P. D. 5959.)

CHAPTER NINE

INSOLVENT CORPORATIONS

Art. 1201. Unlawful for insolvent corporations to do business in state.—It shall be unlawful for any insolvent corporation, domestic or foreign, to do business in this state, or to exercise or retain any franchise or permit or charter granted from or by the state. (Acts 1907, p. 341, sec. 1.)

Art. 1202. Attorney general, etc., to bring quo warranto, etc., to forfeit charter or cancel permit; receiver, etc.—It is hereby made the duty of the attorney general of this state, when convinced that any corporation is insolvent, to institute quo warranto or other appropriate proceedings in some court of competent jurisdiction either in Travis county or in any other county in which said corporation may be sued, to forfeit its charter, if a domestic corporation, and to cancel its permit, if a foreign corporation.

It shall be the duty of the several district and county attorneys of this state, to bring and prosecute the proceedings mentioned above whenever directed so to do by the attorney general of Texas; and the court

trying said cause, after the corporation has been shown to be insolvent, may, in its discretion, appoint a receiver or receivers for said corporation and all its properties, with full power to settle its affairs, collect its outstanding debts and divide the moneys and other properties belonging to said company among the stockholders thereof, after paying the debts due and owing by such corporation, and all expenses incident to the judicial proceedings and receivership; and the court may continue the existence of such corporation for three years, and for such further reasonable time as may be necessary to accomplish the objects and purposes of this act. (Id. sec. 2.)

Suit may be dismissed or not brought on what conditions.—If any suit authorized by this article has been instituted the same shall be dismissed at the cost of the defendant; or, if not instituted, the same shall not be begun, if the defendant corporation, through its stockholders, shall pay off its indebtedness or reduce the same by paying, so that it is relieved of insolvency. (Id. sec. 4.)

Art. 1203. Stockholders or creditors may sue to dissolve when; by leave of court, with notice, etc.—Stockholders of any insolvent corporation who own twenty-five per cent of its stock, or creditors of any such insolvent corporation who own twenty-five per cent of its indebtedness, may institute and prosecute a suit for the dissolution of such corporation; provided, that before any petition is filed by either the attorney general, or under his authority, or by stockholders or creditors, as provided in this chapter, leave therefor shall be first granted by the presiding judge of the court in which the proceeding is to be instituted; and, on presentation of any petition, it shall be the duty of such judge, before granting leave to file the same, to carefully examine the same; and he may also require an examination into the facts; and it shall be made to appear with reasonable certainty from said petition, or from the petition and the facts, as the case may be, that the relief sought should be granted; and it is further provided that any such corporation proceeded against shall have ten full days notice prior to the day set for the hearing, on an application for the appointment of a receiver. (Id. sec. 5.)

Art. 1204. Rights and remedies cumulative.—The rights and remedies given by this chapter are cumulative, and shall not affect, change or repeal any other remedies or rights now existing in this state for the enforcement, payment or collection of fines, forfeitures and penalties. (Id. sec. 6.)

CHAPTER TEN

DISSOLUTION OF PRIVATE CORPORATIONS

Art. 1205. (680) (604) Corporation is dissolved, how.—A corporation is dissolved:

1. By expiration of the time limited in its charter.

2. By a judgment of dissolution rendered by a court of competent jurisdiction.

3. Where four-fifths in interest of all the stock outstanding shall vote in favor of a dissolution at a stockholders' meeting called for that purpose on notice signed by a majority of the directors, stating time, place and object of the meeting, served personally, or by mail, at least thirty days next before the meeting. If, at said meeting, four-fifths in interest of all the stockholders of said company shall signify their consent in writing to the dissolution of the corporation, such consent in writing, together with a list of the directors and officers of the company, giving postoffice address and place of residence of each, certified by the president and secretary and treasurer as true and correct action of the stockholders, shall be filed with the secretary of state; or when, without a stockholders' meeting, all the stockholders of the corporation consent in writing to a dissolution, the same shall be certified to as above and filed with the secretary of state. When any such certificate as above mentioned is filed with the secretary of state, he shall issue a certificate that such consent has been filed and that the corporation is dissolved; and said officer shall so note on the ledger in his office. (Acts 1907, p. 311, sec. 4; P. D. 5968.)

4. A corporation is dissolved whenever, under any special provision of law, its charter is forfeited without judicial ascertainment.

5. Where a corporation created under this title or a general law of this state shall fail to commence active operations within three years after filing its charter with the secretary of state, its charter is hereby forfeited, and the corporation is dissolved. (P. D. 5969.)

6. Whenever a corporation upon proper judicial ascertainment is found to be insolvent. (P. D. 5968.)

See Townes' Texas Pleading (2d Ed.) p. 658; Reed v. Sampson, 118 S. W. 749; West End Dock v. State, 173 S. W. 285.

Art. 1206. (682) (606) Unless receiver appointed, president, etc., to be trustees, and close business.—Upon the dissolution of any corporation, unless a receiver is appointed by some court of competent jurisdiction, the president and directors or managers of the affairs of the corporation at the time of its dissolution, by whatever name they may be known in law, shall be trustees of the creditors and stockholders of such corporation, with full power to settle the affairs, collect the outstanding debts, and divide the moneys and other property among the stockholders after paying the debts due and owing by such corporation at the time of its dissolution, as far as such money and property will enable them after paying all just and reasonable expenses; and to this end, and for this purpose they may in the name of such corporation, sell, convey and transfer all real and personal property belonging to such company, collect all debts, compromise controversies, maintain or defend judicial proceedings, and to exercise the full power and authority of said company over such assets and properties; and the existence of every corporation may be continued for three years after its dissolution from whatever cause for the purpose of enabling those charged with the duty to settle up its affairs; and, in case a receiver is appointed by a court for this purpose, the existence of such corporation may be continued by the courts so long as in its discretion it is necessary to suitably settle up the affairs

of such corporation; provided that the dissolution of a corporation shall not operate to abate, nor be construed as abating any pending suit in which such corporation is a defendant, but such suit shall continue against such corporation and judgment shall be rendered as though the same was not dissolved, and in case no receiver has been appointed for said corporation, suit may be instituted on any claim against said corporation, as though the same had not been dissolved, and service of process may be obtained on the president, directors, general manager, trustee, assignee, or other person in charge of the aff[a]irs of the corporation at the time it was dissolved by whatever name they may be known in law, and judgment may be rendered as though the corporation had not been dissolved and the assets of said corporation shall be liable for the payment of such judgment just as if said corporation had not been dissolved. (Acts 1907, p. 311, sec. 4; P. D. 5970; Acts 1919, 2d C. S., ch. 56, sec. 1.)

See San Antonio Gas Co. v. S., 54 S. W. 290; Aldridge v. Pardee, 60 S. W. 789; Favorite Oil Co. of Beaumont & Cleburne v. Jef Chaison Townsite Co., 162 S. W. 423; Lakeside Irr. Co. v. Buffington, 168 S. W. 21; Floore v. Morgan, 175 S. W. 737; Orange Lumber Co. v. Toole, 181 S. W. 823; Seaton v. Majors, 182 S. W. 712; C. R. Miller & Bro. v. Mummert, 196 S. W. 270; Butcher v. J. I. Case Threshing Mach. Co., 207 S. W. 980.

Art. 1207. (683) (607) Trustees responsible to creditors, etc., to what extent.—The trustees mentioned in the preceding article shall be severally responsible to the creditors and stockholders of such corporation to the extent of its property and effects that shall have come into their hands. (P. D. 5971.)

Art. 1208. (684) (608) Liability of stockholders to creditors and to each other.—If any corporation created under this title or any general statute of this state, except railway, or charitable or religious corporations, be dissolved, leaving debts unpaid, suit may be brought against any person or persons who were stockholders at the time of such dissolution, without joining the corporation in such suit; and if judgment be rendered and execution satisfied, the defendant or defendants may sue all who were stockholders at the time of dissolution for the recovery of the portion of such debt for which they were liable; and the execution upon the judgment shall direct the collection to be made from property of each stockholder respectively; and if any number of stockholders defendants in the case shall not have property enough to satisfy his or their portion of the execution, then the amount of deficiency shall be divided equally among all the remaining stockholders, and collections made accordingly, deducting from the amount a sum in proportion to the amount of stock owned by the plaintiff at the time the company dissolved. (P. D. 5972.)

Art. 1209. (685) (609) Stockholder may compel contribution.—If any stockholder pay more than his due proportion of any debt of the corporation, he may compel contribution from the other stockholders by action. (P. D. 5973.)

Art. 1210. (686) (610) Only liable for unpaid stock.—No stockholder shall be liable to pay debts of the corporation beyond the amount unpaid on his stock. (P. D. 5974.)

Art. 1211. Members or officers of defunct corporation not to do business under old corporate name, etc.—When any charter or permit heretofore or hereafter granted under the laws of the state of Texas to any corporation to do business in said state shall have been forfeited, it shall be unlawful for any persons who were members or officers of said defunct corporation at the time of such forfeiture to do business in Texas under the old corporate name of such corporation, or to use the same or like signs or advertisements which were used by such corporation before such forfeiture. (Acts 1905, p. 335.)

CHAPTER ELEVEN

RELIGIOUS, CHARITABLE AND OTHER CORPORATIONS

Art. 1212. (713) (637) Powers and privileges of.—Any religious society, charitable, benevolent, literary, or social association (other than colleges, universities, academies or seminaries), and also any military or fire company, may, by the consent of a majority of its members, become a body corporate under this title, electing directors or trustees, and performing such other things as are directed in the case of other corporations; and when so organized shall have all the powers and privileges, and be subject to all the restrictions in this title contained, for the objects named in the charter, and shall have the same power to make by-laws for the regulation of their affairs as other corporations. (Acts 1899, p. 236; P. D. 6000.)

See arts. 1214-1220; Simkins' Equity (2d Ed.) p. 215 et seq.; Rice v. S., 103 S. W. 1156.

Art. 1213. (713) (637) Directors, etc., not to usurp spiritual functions.—Such directors or trustees shall not usurp or exercise the functions of the officers in charge of the spiritual affairs of any society. (Id.; P. D. 6000.)

See arts. 1214-1220; Simkins' Equity (2d Ed.) p. 215 et seq.; Rice v. S., 103 S. W. 1156.

Art. 1214. Certain orders may incorporate how.—The grand lodge of Texas, Ancient, Free and Accepted Masons, the grand Royal Arch chapter of Texas, the grand commandery of Knights Templars of Texas (Masonic); the grand lodge of the Independent Order of Odd Fellows of Texas, and other like institutions and orders organized for charitable or benevolent purposes may, by the consent of their respective bodies, expressed by a resolution or otherwise, become bodies corporate under this title. (Id.)

Art. 1215. Incorporation of grand body to include what; rights of subordinate bodies.—The incorporation of any such grand body shall include all of its subordinate lodges, or bodies holding warrant or charter under such grand body; and each of such subordinate bodies shall have all the rights of other corporations under and by the name given it in such warrant or charter issued by the grand body to which it is attached, such rights being provided for in the charter of the grand body. (Id.)

Art. 1216. Grand and subordinate bodies may elect their own trustees, etc., other powers.—Such grand bodies and their subordinates may elect their own trustees or directors, or name certain of their officers as such, and perform such other acts and things

as are directed or provided by law in the case of other corporations, and shall have full power to make constitutions and by-laws for the government and regulation of their affairs. (Id.)

Art. 1217. May acquire and hold land and personalty necessary for sites, etc., sell, mortgage, etc.—Such institutions or orders, grand and subordinate, as are mentioned or included within this chapter shall have the right to acquire and hold such lands and personalty as may be necessary or convenient for sites upon which to erect buildings for their use and occupancy, and for homes and schools for their widows, orphans or aged or decrepit or indigent members, and to sell or mortgage the same, such conveyances to be executed by the presiding officer, attested by the secretary and the seal; but the power and authority of such subordinate bodies to sell or to mortgage shall be subject to such conditions and prerequisites as may be from time to time prescribed or established by the grand body to which the subordinate is attached. (Id.)

Art. 1218. Subordinate bodies, subject to grand, etc.—Such subordinate bodies shall, at all times, be subject to the jurisdiction and control of their respective grand bodies, and subject to have their warrants or charters revoked by such grand body. (Id.)

Art. 1219. On demise of subordinate body property vests in grand body, subject, etc.—Upon the demise of any subordinate body so incorporated, all property and rights existing in such subordinate body shall pass to, and vest in, the grand body to which it was attached, subject to the payment of all debts due by such subordinate body; but the grand body shall never be liable for any sum greater than the actual cash value of the effects of such subordinate actually received by it, or its authority. (Id.)

Art. 1220. Grand body may loan certain funds, take liens on real estate, etc.—Any grand body incorporated under this chapter shall have the right and authority to loan any funds held and owned by it for charitable purposes, for the endowment of any of its institutions or otherwise, and may secure such loans by taking and receiving liens on real estate, or in such other manner as it may elect; and upon sale of any real estate under such lien, such grand body may become the purchaser thereof and hold title thereto. (Id.)

Art. 1221. Grand body may provide in charter, what, etc.—Any grand body incorporating under this chapter may provide in its charter for the expiration of its corporate powers at the end of any given number of years; or it may provide in its charter for its perpetual existence, and by its corporate name have perpetual succession of officers and members. (Id.)

Art. 1222. Rights of grand body now chartered.—Any such grand body or subordinate body now having a valid chartered existence may continue under its present charter, or reincorporate under this chapter. (Id.)

Art. 1223. Franchise tax not required.—Bodies incorporated under this chapter shall not be subject to, or required to, pay a franchise tax. (Id.)

Art. 1224. (714) (638) Not required to state capital stock in charter.—No religious, literary, social, scientific, industrial, benevolent or other society, association, company, corporation or institution that does not have a capital stock will be required in its charter to make any statement of the amount of capital stock or amount of each share; but such charter, if it contains the other statements therein required, and also an estimate of the value of the goods, chattels, lands, rights and credits owned by the corporation will be sufficient. (P. D. 6001.)

CHAPTER TWELVE
EDUCATIONAL CORPORATIONS

Art. 1225. (707) (631) Faculty of, and their powers.—The president, professors or principals shall constitute the faculty in academy, college or university corporations, and shall have power to enforce the rules and regulations enacted by the directors or trustees for the government and discipline of the students, and to suspend and expel offenders, as may be deemed necessary. (P. D. 5994.)

Art. 1226. (708) (632) Directors, etc., may make by-laws, etc.—The directors or trustees named in the charter, as required by this title, of any college, academy, university or other corporation to promote education, and their successors, may make all necessary by-laws, elect and employ officers, provide for filling vacancies, appoint and remove professors, teachers, agents, etc., and fix their compensation, confer degrees, and do and perform any and all necessary acts to carry into effect the objects of the corporation. (P. D. 5995.)

Art. 1227. (709) (633) May procure shops, etc., for manual labor purposes.—Such corporations may procure, to be used as a part of the course of education, shops, tools and machinery, land for agricultural purposes, and necessary buildings for carrying on their mechanical and agricultural operations. (P. D. 5996.)

Art. 1228. (710) (634) May convert property into stock or scholarships.—Any such corporation may convert its property, except when held upon some special trust, into stock or scholarships, and file a certificate of their action, as required in the case of an increase of capital stock of a corporation. Such conversion can only take place by the consent of a majority of the stockholders. (P. D. 5997.)

Art. 1229. (711) (635) Limitation as to debts and liability of directors.—The directors of any such corporation, whose property is held not as stock, but upon trust or devise, donation, gift or subscription, shall not contract debts beyond the means of the corporation. If they do contract debts to a larger amount, they shall be held individually liable for the same, after the means of the corporation are exhausted. (P. D. 5998.)

Art. 1230. (712) (636) May change location, etc.—Any such corporation may, by a vote of three-fourths of the directors, or if the same is owned in shares of stock, then by a vote of three-fourths of the stockholders, change the location and name of the institution, and transfer the effects thereof to where removed, or may apply the property thereof to other purposes of education than those named in the original charter filed with the secretary of state. (P. D. 5999.)

CHAPTER THIRTEEN
TELEGRAPH CORPORATIONS

Art. 1231. (698) (622) May set poles, etc., across public roads.—Corporations created for the purpose of constructing and maintaining magnetic telegraph lines are authorized to set their poles, piers, abutments, wires and other fixtures along, upon and across any of the public roads, streets and waters of this state, in such manner as not to incommode the public in the use of such road, streets and waters. (P. D. 5984.)

See G., C. & S. F. Ry. v. S. W. Tel. & Tel. Co., 45 S. W. 151; Id. 61 S. W. 406; Id. 71 S. W. 270; S. A. & A. P. Ry. v. S. W. Tel. & Tel. Co., 55 S. W. 117; Id. 56 S. W. 201; Tel. Co. v. Billingsley, 77 S. W. 255; City of Brownwood v. Brown Telegraph & Telephone Co., 152 S. W. 709; City of Brownwood v. Brown Telegraph & Telephone Co., 157 S. W. 1163; Athens Telephone Co. v. City of Athens, 163 S. W. 371; Roaring Springs Townsite Co. v. Paducah Telephone Co., 164 S. W. 50; Acme Cement Plaster Co. v. American Cement Plaster Co., 167 S. W. [illegible] Athens Telephone Co. v. City of Athens, 182 [illegible] W. 42.

Art. 1232. (699) (623) May enter upon lands, etc.—Such companies are also authorized to enter upon any lands, whether owned by private persons in fee or in any less estate, or by any corporation, whether acquired by purchase or by virtue of any provision in the charter of such corporation, for the purpose of making preliminary surveys and examinations with a view to the erection of any telegraph lines, and from time to time to appropriate so much of said lands as may be necessary to erect such poles, piers, abutments, wires and other necessary fixtures for a magnetic telegraph, and to make such changes of location of any part of said lines as may from time to time be deemed necessary, and shall have a right of access to construct said line, and, when erected, from time to time as may be required, to repair the same, and may proceed to obtain the right of way and to condemn lands for the use of the corporation in the manner provided by law in the case of railway corporations. (Acts 1873, p. 123; P. D. 5985.)

See H. & T. C. Ry. v. Postal Tel. Co., 45 S. W. 179; S. W. Tel. & Tel. Co. v. G. C. & S. F. Ry. Co., 52 S. W. 107; S. A. & A. P. Ry. v. S. W. Tel. & Tel. Co., 55 S. W. 117; G. C. & S. F. Ry. v. S. W. Tel. & Tel. Co., 61 S. W. 406; Railway v. S. W. Tel. & Tel. Co., 71 S. W. 270; Roaring Springs Townsite Co. v. Paducah Telephone Co., 164 S. W. 50.

Art. 1233. (700) (624) One company cannot contract to exclude another.—No corporation shall have power to contract with any owner of land for the right to erect and maintain a telegraph line over his lands to the exclusion of the lines of other companies. (P. D. 5986.)

Art. 1234. (701) (625) Company may own line in or out of state, and may join with other company.—Any corporation created as herein provided may contract, own, use and maintain any line or lines of telegraph, whether wholly within, or wholly or partly beyond, the limits of this state, and shall have power to lease or attach to the line or lines of such corporation other telegraph lines, by lease or purchase, and may join with any other corporation or association in constructing, leasing, owning, using or maintaining their line or lines, upon such terms as may be agreed upon between the directors or managers of the respective corporations, and may own and hold any interest in such line or lines, or may become lessees thereof on such terms as the respective corporations may agree. (P. D. 5987.)

Am. Tel. & Tel. Co. v. Kersh, 66 S. W. 74.

Art. 1234a. (701) (625) Persons, firms and corporations owning local telephone exchange may purchase or join, etc.—Any person or firm or any corporation organized under the laws of the state of Texas owning a local telephone exchange whether wholly within, or partly beyond the limits of the state, shall have power to purchase and may join with any other individual, firm or corporation in constructing, leasing, owning, using, or maintaining any other local telephone exchange, upon such terms as may be agreed upon between such persons, or the directors, or managers of the respective corporations, and may own and hold any interest in such local telephone exchange or may become lessees thereof on such terms as the respective persons, firms or corporations may agree; provided; In the case of the purchase, lease or acquisition of one local telephone exchange by a company owning, another, when both systems are operating in the same incorporated city or town, the consent of such city or town shall be secured. (Acts 1913, p. 92, sec. 1.)

Art. 1235. (702) (626) Cities, etc., may direct as to posts, etc.—The corporate authorities of any city, town or village through which the line of any telegraph corporation is to pass may, by ordinance or otherwise, specify where the posts, piers or abutments shall be located, the kind of posts that shall be used, the height at which the wires shall be run; and such company shall be governed by the regulations thus prescribed; and, after the erection of said telegraph lines, the corporate authorities of any city, town or village shall have power to direct any alteration in the erection or location of said posts, piers or abutments, and also in the height at which the wires shall run, having first given such company or its agents opportunity to be heard in regard to such alteration. (P. D. 5988.)

Art. 1236. (703) (627) Manner of consolidating with another company.—Any telegraph company now organized, or which may hereafter be organized under the laws of this state, may, at any regular meeting of the stockholders thereof, by vote of persons holding a majority of shares of the stock of such company, unite or consolidate with any other company or companies now organized, or which may hereafter be organized, under the laws of the United States, or of any state or territory, by the consent of the company with which it may consolidate or unite; and such company so formed may hold, use and enjoy all the rights and privileges conferred by the laws of Texas on companies separately organized under the provisions of this title, and be subject to the same liabilities. (P. D. 5989.)

Art. 1236a. Consolidating telephone company with another company.—Any telephone company now organized, or which may hereafter be organized under the laws of this state, owning a local telephone exchange may at any regular meeting of the stockholders thereof by vote of persons holding a majority of shares of the stock of such company, unite or consolidate such lo-

cal exchanges with the local exchange of any other company or companies now organized, or which may hereafter be organized under the laws of the United States, or of any state or territory by the consent of the company with which it may so consolidate or unite; and such company so formed may hold, use, and enjoy all the rights and privileges conferred by the laws of the state of Texas, on companies separately organized under the provisions of this Title, and be subject to the same liabilities. Provided; that where two or more local exchanges are operating in the same incorporated city or town, the consent of such city or town shall be secured for such consolidation. Provided further; in case of the purchase, lease, acquisition or consolidation of one local telephone exchange with another, when both systems are operating in the same incorporated city or town, the rates charged for local telephone service after such consolidation, shall not exceed the rates charged by the company charging the lowest rates in such city or town at the time of such purchase, lease, acquisition or consolidation, unless authorized by such city or town. (Acts 1913, p. 92, sec. 2.)

CHAPTER FOURTEEN

TELEPHONE AND TELEGRAPH COMPANIES

Art. 1237. Corporations owning or operating lines, etc., shall arrange for transfers, etc., as follows.—All companies and corporations that own or operate telephone or telegraph lines for the purpose of transmitting messages from one point to another are hereby required to arrange for conversations or transfer of messages as hereinafter provided. (Acts 1907, S. S. p. 462.)

Art. 1238. Telephone companies, etc., shall connect lines at common points, how, etc.—All companies, individuals, firms or corporations doing a telephone business in this state shall be compelled to make physical connections between their toll line at common points, for the transmission of messages or conversations from one line to another; such connection to be made through the switchboard of such individuals, companies, firms or corporations, if any is maintained at such points, so that persons so desiring may converse from points on one of such lines to points on another. (Id. sec. 2.)

Art. 1239. Telegraph companies, etc., shall transmit transferred messages, etc., when.—All telegraph companies or persons, firms, corporations or associations of persons, which are now, or shall hereafter be, engaged in the business of accepting and transmitting messages to and from different points in this state, where the use of a telegraph instrument or instruments is necessary in the conduct of such business, shall, if there be any other persons, firm, corporation or association engaged in such business at the same point or in the same town, city or village, provide means whereby all messages conveyed to such points over the lines of any such companies shall be transferred to the lines of either or all other such companies engaged in such business at such common points, and transmitted to their final destination; and such facilities shall be provided as will guarantee the transfer of such messages in compliance with the provisions of this chapter; provided, that in no case shall any message be transferred from one line to another against the will of the company first handling same when it is possible for such company to deliver said message direct to the party for whom it is intended by way of the line or lines operated and owned by said company; and provided, further, that no telegraph or telephone company shall, under the provisions of this chapter, be compelled to receive from the wires or lines of any other telegraph or telephone company and convey to its final destination any message originating at any point on its own lines. (Id. sec. 3.)

Art. 1240. City council, etc., to hear and determine whether transfers be necessary and just, etc.—The city council in incorporated cities, and the commissioners' court at points where there is no city council, shall, on the application of one hundred resident citizens, or upon its own motion, hear such evidence as they think necessary; and, upon a final hearing they shall determine whether or not it would be necessary for public convenience, and just to the telephone or telegraph companies, to make such connection or arrange for transfer of messages; whereupon they shall enter of record their findings, and shall also set out in their order the conditions upon which such arrangements for conversation or transfer of messages shall be made, and shall decide what proportion of expense shall be paid by each of said connecting lines. (Id. sec. 4.)

Art. 1241. Companies to comply with order of council, etc., or forfeit what; provided, etc., appeals, etc.—Whenever the city council or commissioners' court shall enter an order in compliance with article 1239, requiring telephone or telegraph companies to arrange for conversation or transfer or [of] messages, it shall be compulsory on said company to arrange for such conversation or transfer of messages, and, failing to do so, shall forfeit to the state of Texas, on suit by the county or district attorney, the sum of ten dollars for each and every day they so neglect; provided, that the penalty herein assessed shall not be operative against a company which is prevented from making connections as herein required, through the fault or omission of another company, so long as such fault or omission shall cause such failure on its part to so connect; provided, further, that any company ordered to arrange for conversations or to transfer messages between its line and another line as herein provided shall have the right to appeal from such order to the court having jurisdiction over said matter, and the court shall, if it shall find that appellant had reasonable grounds for prosecuting such appeal, suspend the penalty herein provided for until such appeal is finally determined. (Id. sec. 5.)

CHAPTER FIFTEEN

TO CONSTRUCT UNION DEPOTS

Art. 1242. (744a) Corporations to construct union passenger depots, how formed.—Corporations may be formed for the purpose of acquiring, owning, maintaining and operating union passenger depots in any city or town in which any two or more

railroad companies may own or operate a railroad. Such corporations may be formed in the manner provided in this title. (Acts 1895, p. 187; Acts 1897, p. 42.)

Art. 1243. Powers.—Such corporations shall have power and authority to acquire, own or lease, maintain and operate railroad tracks in any city or town, for the purpose of enabling railroad companies to run their trains to and from the union depot; such tracks not to extend to a greater distance than three miles from such union depot; and such corporations may also add additional stories to their depot buildings, and rent the same for offices, or other purposes; and may also provide on their property buildings for express purposes, and rent the same to express companies. (Id.)

Art. 1244. Authority of railroad commission.—The railroad commission of Texas shall have the same supervision and control over said railroads and tariff rates and depots that it has over any other lines of railroad and depot buildings in this state. (Id.)

Art. 1245. (744b) Stock and bonds, issuance how governed.—The provisions of chapter 16, title 115, of the Revised Civil Statutes of the state of Texas shall govern and control the issuance of stock and bonds of such companies, as far as the same are applicable. (Id. sec. 2.)

Art. 1246. Railway companies may subscribe to and own stock and bonds.—Railway companies existing under the laws of this state, whether under general or special law, and railway companies incorporated under any general or special law of the United States are authorized and empowered to subscribe to the stock, and purchase and own stock and bonds, of any depot company formed under the authority of this act. (Acts 1895, p. 187; Id.)

Art. 1247. Right to condemn, etc., land for depot purposes, etc., may acquire fee simple.—Corporations hereafter or heretofore incorporated for the purposes contemplated by this chapter, either under the provisions of this chapter or under any other general law, may secure, by condemnation, such land or real estate as may be necessary for the business and purposes of such corporation, including all lands necessary for depot buildings, passenger sheds, yards or tracks, requisite to the convenient use of the depot; and such corporations, by such condemnation, may acquire the fee simple title. (Acts 1899, p. 49.)

Art. 1248. Condemnation, governed how.—As far as applicable hereto, the provisions of chapter 8, title 115, of the Revised Civil Statutes of the state of Texas of 1895 [1911] shall apply to, and govern, the proceedings of such corporation in acquiring such land or real estate by condemnation. After the award by commissioners and pending further litigation, the corporation may enter upon, and take possession of, the land sought to be condemned by complying with the terms and conditions of any general laws of this state now or hereafter passed, authorizing any corporation having the right to condemn to so enter upon, and take possession of, such land or real estate. (Id. sec. 2.)

CHAPTER SIXTEEN

CHANNEL AND DOCK CORPORATIONS

Art. 1249. (721) (644a) This chapter embraces, what.—This chapter shall embrace and include the creation of private corporations for the purpose of constructing, owning and operating deep water channels from the waters of the Gulf of Mexico along and across any of the bays on the coast of this state to the mainland, for the purposes of navigation and transportation, and for the construction, owning and operating docks on the coast of this state for the protection and accommodation of ships, boats and all kinds of vessels for navigation and their cargoes. (Acts 1887, p. 91.)

See Bingham Bros. v. Port Arthur, etc., Co., 97 S. W. 686; West End Dock v. S., 173 S. W. 285; Lawson v. Port Arthur Canal & Dock Co., 185 S. W. 600.

Art. 1250. (722) Added powers.—Every such channel corporation shall, in addition to the powers herein conferred, have power:

1. To cause such examination and survey for its proposed channel to be made as may be necessary to the selection of the most advantageous route for such purpose, by its officers, agents or servants; to enter upon any of the waters of such bays and upon any of the lands of this state, or of any person.

2. To take and hold such voluntary grant of real estate and other property as shall be made to it to aid in the construction and maintenance of its deep water channel and works pertinent thereto.

3. To construct its channel across, along, through, or upon, any of the waters of the bays within the jurisdiction of this state, and so far into the mainland as may be necessary to reach a place for its docks that will afford security from cyclones, storms, swells and tidal waves, with such depth as may suit its convenience and the wants of navigation, not less than five feet, and a width of not less than forty feet.

4. To furnish to vessels and boats adapted to the purpose facilities for navigating in and along the entire length of its channel, and to charge and collect a toll therefor, to be prescribed and established by its by-laws, not to exceed one cent per barrel bulk of the capacity of each vessel for each mile of the length of its channel used by the vessel going either way.

5. To borrow such sums of money as may be necessary for constructing, finishing, or operating its channel, and to issue and dispose of its bonds for any amount so borrowed, and to mortgage its corporate property and franchises to secure the payment of any debt contracted for the purposes aforesaid; provided, that damages for any property appropriated by such corporation shall be assessed and paid for as is provided for in case of railroads.

6. To enter upon and condemn and appropriate any lands of any persons or corporation that may be necessary for the uses and purposes of such channel corporation; the damages for any property thus appropriated to be assessed and paid for in the same manner as provided by law in the case of railroads; provided, that no damages shall be assessed against or paid by it for any por-

tion of the route of the channel embraced within and covered by the waters of any bay or lake on the coast of this state, nor for any portion of any island belonging to the state that may be requisite and necessary to the construction and successful operation of its channel; and provided, further, that its right of way shall not be less than the actual width of its channel, and not more than seven hundred feet in width on each side of its channel; provided, that when the land sought to be condemned under this chapter is arable land, such right of way shall not extend further than six hundred feet on each side of the channel from the edge or boundary of said channel. (Act April 23, 1874, sec. 58; P. D. 5991.)

7. To construct, own, and operate its channel so far into the waters of the Gulf of Mexico as may be necessary to obtain an adequate depth of water at its gulf entrance to facilitate the ingress and egress of such vessels as may navigate the same in so far as this state may have the power to grant such right, which shall be in subordination to that of the government of the United States, in so far as that government has the constitutional power to control the same. (Acts 1895, p. 185; Acts 1887, p. 91; Acts 1897, p. 19.)

See Borden v. Trespalacios Rice & Irr. Co., 86 S. W. 11; Bingham Bros. v. Port Arthur, etc., Co., 91 S. W. 848; West End Dock v. S., 173 S. W. 285; Lawson v. Port Arthur Canal & Dock Co., 185 S. W. 600.

Art. 1251. (723) (644c) Dock corporations; added powers.—Every such dock corporation shall, in addition to the powers heretofore conferred, have power:

1. To purchase, take and hold such land or real estate as shall be necessary for the construction and operation of its docks, approaches, entrances, moorings and ways and the construction, use and enjoyment of such warehouses, stores and sheds as may be necessary to the receiving and discharging of freights, goods, wares and merchandise, and the proper protection and preservation thereof; provided, that no such dock corporation shall ever have the right or power to take or condemn to its use any private property without the free consent of the owner thereof, expressed by a sufficient deed in writing.

2. To construct its dock or docks in such manner and of such size and depth as it may deem meet and proper to suit the convenience of such vessels as may see fit to use and occupy the same, and to collect from the vessels using the same, or from their masters, owners or consignees, such sum or sums for the use thereof as may be authorized by its by-laws and agreed to by such masters, owners or consignees.

3. To borrow such sums of money as may be necessary for constructing, completing or operating its dock or docks, and to issue and dispose of its bonds for such amount so borrowed, and to mortgage its corporate property and franchises to secure the payment of any debt contracted for the purposes aforesaid. (Acts 1887, p. 91; Acts 1895, p. 185.)

See Bingham Bros. v. Port Arthur, etc., Co., 91 S. W. 848; West End Dock v. S., 173 S. W. 285; Lawson v. Port Arthur Canal & Dock Co., 185 S. W. 600.

Art. 1252. (724) (644d) Corporations created under this chapter; additional power granted.—Every such corporation shall, in addition to the powers heretofore conferred, have power:

1. To purchase, take and hold such land or real estate as shall be necessary for the construction, maintenance and operation of its harbor approaches, entrances, and ways thereto, and the construction of wharves, piers and warehouses.

2. To construct, own and maintain its harbor by building piers and breakwaters so far into the gulf as may be necessary to obtain sufficient depth of water to facilitate the ingress and egress, and the safety while in port of such vessels as may enter the same, in so far only as the state may have the power to grant such right, which, however, shall be exercised subject and in subordination to the government of the United States, in as far as it may have constitutional power to control the same.

3. To provide facilities to vessels and boats entering its harbor for anchorage, receiving and discharging cargoes and passengers, and to charge and collect fair and reasonable tolls and wharfage therefor, to be prescribed by its by-laws.

4. To borrow money in such amounts and on such terms as may be necessary for constructing and finishing or operating its harbor or piers, and to issue and dispose of its bonds for any amount so borrowed, and to mortgage its corporate franchises to secure the payment of any debt contracted for the purposes aforesaid. (Id.)

Art. 1253. (725) (644f) Rates, tolls and charges subject to legislative control.—All rates, tolls or charges made by any corporation formed under the provisions of this chapter shall be subject to the right of the legislature from time to time to alter, revise, change or amend the same. (Id.)

CHAPTER SEVENTEEN

DEEP WATER CORPORATIONS

Art. 1254. (726) Corporations acting under authority of congress may purchase certain coast lands from the state.—Any corporation organized under the laws of Texas which is now authorized or which may hereafter be authorized by an act of congress of the United States to construct, own, operate or maintain, with private capital, a deep water harbor, navigable channel, docks or wharves on the gulf coast of Texas shall be permitted to purchase from the state of Texas, at two dollars per acre, so much of any public lands, islands, shores or shallow bays belonging to the state of Texas as may be situated within one-half mile from any point or points on the construction works of any jetties or any such deep water channel leading into the main harbor from the open sea; provided, that in no case shall such strip or body of land be more than one-half mile in width; and such company or corporation may also purchase from the state, at the same price per acre, any lands, shores, islands or shallow bays within one fourth mile of each side of every navigable channel that such company or corporation may construct through or across such shallow bays in the prosecution of such work. (Acts 1891, p. 166, sec. 1.)

Art. 1255. (727) May purchase certain other lands.—Any such company or

corporation owning, in whole or in part, any lands fronting or abutting upon any shallow bays in which any such work is being constructed, may purchase at the same price per acre any lands, shores or shallow bays adjoining and lying in front of such lands; provided, that such purchase shall not extend into such bay so as to include land covered with water having an average depth of more than three and one-half feet at mean low tide. That the purchases under the provisions of this article shall not extend a greater distance along the front of the survey on the shore than three miles, nor a greater distance into the bay than one-half mile; provided, that the islands known as Tolly island and Lydia Ann islands, situated in Aransas bay, shall not be subject to purchase under the provisions herein; provided that one-half of the proceeds of the sale of the lands as provided for herein shall belong to the permanent free school fund of this state. (Id. sec. 2.)

Art. 1256. (728) Applications for purchase, how made.—All applications of a purchaser to buy under the foregoing articles shall be made in writing to the commissioner of the general land office, accompanied by one-fifth of the purchase money, and also by a copy of the act of congress authorizing the construction of such deep water harbor, navigable channel, docks or wharves, and a complete plat or map showing the location and design of such improvements; and said plat or map shall also show the public lands, shores, islands and shallow bays applied for, and the depth of such shallow bays in feet, determined by actual survey or as shown by the United States coast survey map. (Id. sec. 3.)

Art. 1257. (729) Regulating surveys, payment of purchase money, forfeiture, etc., under foregoing articles.—Upon the payment of one-fifth of the purchase money as hereinbefore provided, the commissioner of the general land office shall issue a receipt therefor, and attach thereto a copy of the application and plat filed by said purchaser; which said receipt shall be sufficient authority to the proper county surveyor to survey the lands, shores, islands or shallow bays sold; provided, that the remainder of the purchase money may be paid at any time within five years after the date of first payment; and deferred payments shall bear interest at the rate of five per cent per annum, payable annually. If any company or corporation purchasing any land, island or shallow water bays, under these provisions shall fail to secure twenty feet of water over the bar between the Gulf of Mexico and the main harbor within five years from the date of such purchase and maintain said twenty feet of water continuously for two years, then, all such rights shall revert to the state. If the purchaser of any island, shallow water bay, land, or either, under these articles, shall fail to pay the annual interest upon any part of the purchase money when such interest shall become due, or if such purchaser shall fail to pay the principal when the same shall become due, then, all rights acquired under such purchases shall be forfeited, with all payments made thereon, without any judicial ascertainment of such forfeiture; and the commissioner of the general land office shall indorse upon the contract of purchase, that the same is forfeited, whereby all rights so acquired shall be forfeited and revert to the state. If any such corporation shall fail to conform to the act of congress in prosecuting such work, or if such corporation shall fail to secure twenty feet of water at low tide upon the bars and other obstructions between the main harbor and the Gulf of Mexico within five years after the twenty-first day of April, 1891, if such corporation then existed, or within five years of the date of the filing of the charter of any such company as hereafter formed, then, all islands, lands, shallow bays and other rights acquired under this chapter shall be forfeited and shall revert to and vest in the state of Texas. (Id. sec. 4.)

Art. 1258. (730) Right to construct docks, etc., charge tolls subject to railroad commission and general laws regulating rights of said corporations.—Any corporation organized under the laws of this state, which has such authority as mentioned in article 1254 conferred upon it by act of the congress of the United States, may construct, own and maintain upon the gulf coast of Texas, in connection with its deep water harbor and navigable channels, docks and wharves and navigable channels for the accommodation of commerce, and such corporation may charge, demand and receive reasonable and just tolls, and charge for the use of such docks and wharves; but all navigable channels so constructed shall forever remain open and free to all vessels without fee or charge; the tolls and charges for the use of said docks and wharves shall be equal, just and uniform to all vessels, persons and corporations, without discrimination as to amount charged or delay in handling the same; and all such tolls and charges shall be under the control of the legislature of the state of Texas; and, until otherwise directed by the legislature, shall be subject to control and regulation by the railroad commission, under the rules prescribed for the regulation of railroads, so far as applicable. Any railroad, or other means of transportation, which may be constructed between the mainland and any deep water harbor or channel shall be a public highway; and all rates and charges for the transportation of freights and passengers thereon shall be subject to the control and regulation of the railroad commission as a railroad; such railroad or other means of transportation shall receive from each and every ship, boat and vessel, or from the wharf on which the same is discharged, all freights and passengers, and transport and deliver them to the consignee, or any connecting line of railroad, without discrimination as to charges or delay in transportation and delivery, and shall in like manner receive from every person and from every connecting line of railroad all freight and passengers and transport and deliver the same to each and every ship, boat, vessel, person or corporation for delivery to such ship, boat or vessel on like equal and just terms, without discrimination as to charges and delay in transportation or delivery thereof. Nothing herein shall be construed to affect any rights acquired before the enactment of this law. The acceptance of the provisions herein, or

the exercise of any rights or privileges granted herein, by said corporation, or any person or corporation holding under the same, shall be deemed and held to be a contract with the state; that any wilful violation of these provisions or the doing of any act herein prohibited shall work a forfeiture of all rights acquired hereunder, so far as then held or claimed by the person or corporation guilty of such violation. (Id. sec. 5.)

Art. 1259. (731) Rights, power and privileges granted shall not interfere with, what.—The privileges and rights granted herein shall never be exercised so as to, in any way, hinder or interfere with the completion of any railroad heretofore chartered to be built to and upon Harbor island, in and upon the location designated in such charter; nor with any such railroads acquiring and controlling all necessary depot grounds, wharf grounds and deep water fronts that it may or could have acquired legally had not this law been enacted. (Id. sec. 6.)

Art. 1260. (732) Shall file release with secretary of state of right of control by congress.—Before any rights can vest in any corporation by virtue of any purchase of public lands, islands, shores or shallow bays, the said corporation shall file with the secretary of state a release to the state of Texas of all claim or right to have its tolls or charges imposed for any use to be made of such property or structures thereon regulated by any act of congress now existing or hereafter to be passed. (Id. sec. 7.)

CHAPTER EIGHTEEN
DRAINAGE CORPORATIONS

Art. 1261. Authority for incorporation.—Corporations may be formed and chartered under the provisions of this chapter, and under the general incorporation laws of the state of Texas, for the purpose of constructing, maintaining and operating canals, drains and ditches outside of the corporate limits of cities and towns in any county in the state of Texas. (Acts 1897, p. 109, sec. 23.)

Art. 1262. Corporation may contract for drainage and charges subject to control of legislature; lien.—Such corporations shall have full power and authority to make contracts for permanent drainage of any tract of land and the charges therefor, said charges subject to the control of the legislature; and the rights therein shall be secured by a lien herein expressly given upon the lands benefited by said drain or canal other than homesteads. (Id.)

Art. 1263. Drains, etc., to be reported to and approved by commissioners' court.—All drains and canals, so constructed by such corporations, shall be reported to the commissioners' court of the county wherein constructed, and approved by the same. (Id.)

Art. 1264. May acquire lands for business, how.—Any corporation, so organized under the provisions of the general laws of the state of Texas, or the provisions of this chapter for the purpose of drainage, shall have power to acquire lands for the purpose of its business, or in payment of stock or drainage rights, and to hold and dispose of such lands and all other property. (Id. sec. 24.)

Art. 1265. May borrow money for construction, etc., issue bonds; mortgage property, etc.—Such corporation may borrow money for the construction, maintenance and operation of its ditches and canals and laterals, and may issue bonds, and mortgage its corporate property and franchises to secure the payment of any debts contracted for the same. (Id.)

Art. 1266. Lands to be alienated, except.—Land acquired by such corporations, except such as are designated in the next succeeding article, shall be alienated within fifteen years from the date of acquiring same, or be subject to judicial forfeiture. (Id.)

Art. 1267. Excepted lands.—Lands used for the construction, maintenance and operation of canals, drains, ditches and laterals, shall be excepted from the requirements of the last preceding article. (Id.)

CHAPTER NINETEEN
MACADAM AND PLANK ROAD CORPORATIONS

Art. 1268. (687) (611) May enter upon lands, make surveys, etc.—It shall be lawful for any corporation created for the purpose of constructing a macadam or plank road, by its agents and servants, to enter upon any lands, to make surveys, estimates and locations. (Acts 1873, p. 123. P. D. 5975.)

Art. 1269. (688) (612) May condemn land, etc.—If any such corporations shall require, for the construction or repair of its road, or any bridge thereof, any stone, timber or other material, from land adjoining to or near said road, and can not contract for the same with the owner thereof, such corporation may proceed to have the value of the same assessed; and the same proceedings shall be had therefor as is provided by law to be taken by railway corporations in like cases; and all macadam or plank road corporations shall have the right also to condemn, in like manner, and occupy, any quantity of land, not exceeding one acre at any one place, for the purpose of erecting toll-houses thereon. (P. D. 5976.)

Art. 1270. (689) (613) If road is out of repair, charter may be forfeited.—If any road, or any part thereof, after it shall have been completed, shall be suffered to be out of repair, so as to be impassable for the space of two months, unless when the same is being repaired, the company owning such road shall be liable to forfeit its corporate powers and privileges; and such forfeiture may be enforced by suit, as in other cases of forfeiture of charter by incorporated companies. (P. D. 5977.)

Art. 1271. (690) (614) Shall not collect tolls when road is out of repair.—If any such company shall suffer the road to be out of repair, to the injury, hindrance or delay of travelers, for an unreasonable time, such company shall have no right to collect tolls thereon until the same is again repaired. (P. D. 5977.)

Art. 1272. (691) (615) Width of road and how to be constructed.—All macadam or plank roads shall be opened not exceeding sixty feet wide, thirty feet of which shall be cleared of brush and logs; and at least sixteen feet in width shall be made an

artificial road, composed of stone, gravel, wood or other convenient material, in such manner as to secure a firm and substantial road. (P. D. 5978.)

Art. 1273. (692) (616) No toll-gates permitted in town, etc.—No company, or association of individuals, which has been, or may hereafter be, incorporated, for the purpose of making such road, shall erect or keep any toll-gate, or receive any toll within the corporate limits of any incorporated city, town or village, or within one-half mile of such limits. (P. D. 5978.)

Art. 1274. (693) (617) Tolls to be regulated by commissioners' court.—As soon as such road shall have been completed, or any part thereof, not less than five miles together in any part of the road, unless the same is less than five miles long, and so from time to time, as often as five miles in addition shall be completed adjoining any five miles previously constructed, the commissioners' court of the county in which such finished road lies, or, in case the road lies in two or more counties, the commissioners' court of either of said counties, shall, on application of the agent of the company, appoint three judicious house-holders, who shall, on oath, examine the same, and report their opinion to the court in writing; and, if such report shall state that the road, or such part thereof, be completed agreeably to the provisions of this chapter, the court shall by license, in writing, authorize the company to erect gates at suitable distances and demand and receive of persons traveling such road the toll that may be fixed by the commissioners' court. (P. D. 5979.)

Art. 1275. (694) (618) Persons exempt from tolls.—Any person or persons going to or from public worship on the Sabbath, common schools and other institutions of learning, funerals, militia muster, the troops of the United States and of this state, may pass over such road free from toll. (P. D. 5980.)

Art. 1276. (695) (619) Mile posts and rates of toll.—All macadam or plank road companies shall put up a post or stone at the end of each mile, with the number from beginning of said road, fairly cut or painted thereon; and also in a conspicuous place near each gate shall be placed a board with the rates of toll painted thereon; and no toll shall be demanded unless such rates are kept up. (P. D. 5981.)

Art. 1277. (696) (620) Any person may complain of non-repairs; proceedings in such case.—If any macadam or plank road company shall fail to keep their road in repair for five days successively, any person may file a complaint in writing before any justice of the peace of the county, setting forth the nature of the defect complained of, designating the place in the road where it exists; and it shall be the duty of the justice to appoint two disinterested persons as inspectors, to meet at the place complained of, within five days, and, of the time and place of meeting, reasonable notice shall be given to the gate-keeper nearest to the place of meeting; and the inspectors shall then examine into the truth of the matter complained of; and, if they shall find the complaint to be true, they shall send a certified copy of the complaint and of the finding thereon to the keeper of each of the gates between which such defective place shall be, and thereafter no toll shall be received at such gates for the intermediate distance until the part of the road complained of shall be fully repaired; and the inspectors and justice of the peace shall be entitled to two dollars and a half per day for their services, and shall be paid by the company, if the complaint be sustained, and, if it shall fail, then by the complainant. (P. D. 5982.)

Art. 1278. (697) (621) Travelers practicing fraud may be sued, etc.—If any person using any part of said road shall, with intent to defraud such company, falsely represent himself to any toll-gatherer as entitled to exemption from paying toll, or shall make any untrue statement as to the distance he has traveled or intends to travel on the road, or shall practice any fraudulent means, and thereby lessen or avoid the payment of tolls, each and every person concerned in any such fraudulent practices shall, for every such offense, forfeit and pay such company the sum of five dollars, to be recovered by such company in an action of debt before any justice of the peace of the county where the offender may be found. (P. D. 5983.)

CHAPTER NINETEEN A

TOLL ROAD CORPORATIONS

Art. 1278a. Authority for incorporation.—That for the purpose of encouraging the building and maintenance of good roads and highways in the state of Texas, it shall be lawful on and after the passage and taking effect of this act, to create private corporations for the purpose of constructing, building, acquiring, owning, operating and maintaining toll roads within this state. (Acts 1913, p. 143, sec. 1.)

Art. 1278b. How created, etc.—Such corporations shall be created in the manner provided by the general incorporation laws of the state of Texas, as contained in the Revised Civil Statutes of 1911 of this state, and shall be subject to all of the provisions of such laws, except as the same may be herein changed, modified or amended. (Id. sec. 2.)

Art. 1278c. Who may incorporate.—Any number of persons, not less than five, being subscribers to the stock of any contemplated toll road, may be formed into a corporation for the purpose of constructing, building, acquiring, owning, operating and maintaining such toll roads, by complying with the requirements of this Act. (Id. sec. 3.)

Art. 1278d. Only domestic corporation authorized.—No corporation, except one chartered under the laws of the state of Texas, shall be authorized or permitted to construct, build, operate, acquire, own or maintain any toll road within this state. (Id. sec. 4.)

Art. 1278e. Articles of incorporation.—The persons proposing to form a toll road corporation shall adopt and sign articles of incorporation, which shall contain:

1. The name of the proposed corporation.
2. The places from and to which it is intended to construct the proposed toll road, and the intermediate counties through which it is proposed to construct the same.
3. The place at which shall be established

and maintained the principal business office of the proposed corporation.

4. The time of the commencement and the period of continuation of the proposed corporation.

5. The amount of the capital stock of the corporation.

6. The names and places of residence of the several persons forming the association for incorporation.

7. The names of the members of the first board of directors, and in what officers or persons the government of the proposed corporation and the management of its affairs shall be vested.

8. The number and amount of shares in the capital stock of the proposed corporation. (Id. sec. 5.)

Art. 1278f. Articles to be submitted to attorney general; certificate.—The articles of incorporation, when so prepared, adopted and signed, shall be submitted to the attorney general of the state, whose duty it shall be to carefully examine the same; and, if he finds them to be in accordance with the provisions of this Act and not in conflict with the laws of the United States or of this state, he shall attach thereto a certificate to that effect. (Id. sec. 6.)

Art. 1278g. Articles to be filed with secretary of state; affidavit; record; certificate.—When said articles have been examined and certified as provided in the preceding section, the same shall be filed in the office of the secretary of state, accompanied by an affidavit in writing, signed and sworn to by at least three of the directors named in such articles, before some officer of the state authorized by law to administer oaths, which affidavit shall state that the entire amount of the capital stock of such proposed corporation has been in good faith subscribed, and that fifty per cent of the amount subscribed has been actually paid to the directors named in such articles; and the secretary of state shall cause such articles, together with said affidavit, to be recorded in his office, and shall attach a certificate of the fact of such record to said articles, and return the same to such corporation. (Id. sec. 7.)

Art. 1278h. Corporation shall exist from time of filing articles, etc.—The existence of such corporation shall date from the filing of the articles of incorporation in the office of the secretary of state; and the certificate of the secretary of state, under the seal of the state, shall be evidence of such filing. (Id. sec. 8.)

Art. 1278i. When body corporate.—When the articles of incorporation have been filed and recorded as herein provided, the persons named as corporators shall thereupon become and be deemed a body corporate, and be authorized to proceed to carry into effect the objects set forth in such articles, in accordance with the provisions of this Act. (Id. sec. 9.)

Art. 1278j. Continuance of corporation; renewal.—No toll road corporation shall be formed to continue more than fifty years in the first instance, but such corporation may be renewed from time to time, for periods not longer than fifty years, in the manner provided for the renewal of railroad corporations by sections 1, 2, 3 and 4, of article 6414, of the Revised Civil Statutes of 1911 of the state of Texas. (Id. sec. 10.)

Art. 1278k. Amendment of articles.—Any such toll road corporation may amend or change its articles of incorporation in the manner provided for railroad corporations by articles 6418, 6419, 6421 and 6422, of the Revised Civil Statutes of 1911 of the state of Texas. (Id. sec. 11.)

Art. 1278*l*. May own and operate toll roads, etc.—Every such toll road corporation shall have the right to construct, build, acquire, own, operate and maintain toll roads between any points within this state. (Id. sec. 12.)

Art. 1278m. Right of way over state lands, etc.—Every such corporation shall have the right of way for its line of road through and over any lands belonging to this state, and to use any earth, timber, stone or other material upon any such land necessary to the construction and operation of its road through or over said land. (Id. sec. 13.)

Art. 1278n. May enter upon lands, make surveys, etc.—Every toll road corporation shall have the right to cause such examination and survey for its proposed road to be made as may be necessary to the selection of the most advantageous route, and for such purposes may enter upon the lands or waters of any person or corporation, but subject to responsibility for all damage that may be occasioned thereby. (Id. sec. 14.)

Art. 1278*o*. Width of road; cuttings, embankments, etc.—Every such toll road corporation shall have the right to lay out its road, not exceeding two hundred feet in width, and to construct the same; and for the purpose of cuttings and embankments to take as much more land as may be necessary for the proper construction and security of its road, and to cut down any standing trees that may be in danger of falling upon or obstructing such road, making compensation in the manner provided by law. (Id. sec. 15.)

Art. 1278p. May cross railroads, etc.—Every such corporation shall likewise have the right to construct its road across any railroad, street railroad or interurban line within this state, which it may intersect or touch; provided that it shall properly fence such crossings, and restore, in other respects, the property thus intercepted or crossed to its former state. (Id. sec. 16.)

Art. 1278q. May cross streams, highways, canals, etc.—Every such corporation shall have the right to construct its road across any stream of water, water course, street, highway, plank road, turnpike or canal which the route of said road shall intersect or touch; but such corporation shall restore the stream, water course, street, highway, plank road, turnpike or canal thus intersected or touched to its former state, or to such state as not to unnecessarily impair its usefulness, and shall keep such crossings in repair. (Id. sec. 17.)

Art. 1278r. Openings through fences, etc.—Every toll road corporation in this state which may fence its right of way may be required to make openings or crossings through its fence and over its roadbed every five miles thereof, in the manner provided with reference to railroad corporations by articles 6487, 6488, 6489, 6490, 6491, 6492 and 6493 of the Revised Civil Statutes of 1911 of the state of Texas. (Id. sec. 18.)

Art. 1278s. Culverts, sluices, etc.—In no case shall any toll road corporation construct its road without first constructing the necessary culverts or sluices, as the natural lay of the land requires, for the necessary drainage thereof. (Id. sec. 19.)

Art. 1278t. May not obstruct navigable waters.—Nothing in this Act shall be construed to authorize the erection of any bridge or any other obstruction across or over any stream of water navigable by steamboats or sail vessels at the place where any bridge, or other obstruction, may be proposed to be placed so as to prevent the navigation of such stream of water. (Id. sec. 20.)

Art. 1278u. Condemnation of property.—Every toll road corporation shall have and enjoy all of the rights, privileges and immunities conferred by and be subject to all of the provisions of articles 6502 to 6534, inclusive, of chapter eight of the Revised Civil Statutes of 1911 of the state of Texas relating to the condemnation of private lands and property by railroad corporations. (Id. sec. 21.)

Art. 1278v. Traffic rules and regulations; tolls.—Every toll road corporation shall have the power to promulgate, by its board of directors, all necessary and reasonable rules and regulations relating to the manner in which traffic shall move over any toll road operated by it, and to refuse the use of such road to any person who shall fail or refuse to abide by such rules and regulations; and shall be empowered to fix and charge tolls for the use of such roads; provided, that such rules and regulations shall not be contrary to law, and provided that the rate to be charged for each class of vehicle shall be the same to all in each of such classes. (Id. sec. 22.)

Art. 1278w. May not refuse reasonable use of road, etc.—No such corporation shall have the right arbitrarily to refuse the use of such road to any person who shall offer to pay the regular toll therefor, except that such corporation shall be authorized to refuse to permit such road to be used by any vehicle which shall render the same unduly hazardous to the patrons of said road or damaging to the surface thereof, or to any person who shall fail or refuse to abide by the reasonable and necessary traffic regulations promulgated by such corporation. (Id. sec. 23.)

For sections 24 and 25 of this act see post, Penal Code arts. 837s, 837t.

Art. 1278x. Laws repealed.—That all laws and parts of laws in conflict with the provisions of this Act be and the same are hereby repealed. (Id. sec. 26.)

CHAPTER TWENTY

BRIDGE AND FERRY CORPORATIONS

Art. 1279. (718) (642) Distance between bridges and ferries regulated.—Whenever any person or persons shall file with the secretary of state any article of association for the erection and maintenance of a bridge or ferry, it shall not be lawful for any other toll-bridge or toll-ferry to be established on the same stream within the limits specified in said article; provided, that said limits shall not extend more than three miles above and three miles below said bridge or ferry; and provided, further, that this article shall not be so construed as to prohibit bridges and ferries at the crossings of any road on such stream within such limits declared either before or after the erection of such bridge or ferry to be a public road by the commissioners' court of the county in which such crossing is situated. (Acts April 23, 1874, sec. 79; P. D. 6011c.)

Alabama Ferry Co. v. Leathers, 69 S. W. 117.

Art. 1280. (719) (643) Commissioners' court shall regulate toll.—All charges or tolls for crossing any bridge or ferry shall be regulated by the commissioners' court by an order made at a regular term, and spread upon the minutes of said court, as provided in the case of other bridges and ferries. (Id. sec. 80; P. D. 6011d.)

Art. 1281. (720) (644) Owner liable for damages.—All persons or corporate companies owning any toll-bridge or ferry, shall be liable for all damages caused by neglect, delay or the insufficiency of their bridge or ferry-boat, which damages may be recovered before any court of competent jurisdiction. (Id. sec. 81; P. D. 6011e.)

CHAPTER TWENTY-ONE

GAS AND WATER CORPORATIONS

Art. 1282. (705) (629) Privileges of such corporations.—Any gas or water corporation shall have full power to manufacture and sell and to furnish such quantities of water or gas as may be required by the city, town or village where located, for public or private buildings, or for other purposes; and such corporation shall have power to lay pipes, mains and conductors for conducting gas or water through the streets, alleys, lanes and squares in such city, town or village, with the consent of the municipal authorities thereof, and under such regulations as they may prescribe. (P. D. 5992.)

Palestine Water & Power Co. v. City of Palestine, 44 S. W. 815.

Art. 1283. (706) (630) May contract with cities, etc.—The municipal authorities of any city, town or village, in which any gas, light or water corporation shall exist, are hereby authorized to contract with any such corporation for the lighting or supplying with water the streets, alleys, lots, squares and public places in any such city, town or village. (P. D. 5993.)

CHAPTER TWENTY-ONE A

GAS, ELECTRIC CURRENT AND POWER CORPORATIONS

Art. 1283a. Power to incorporate.—That any number of persons, not less than three, may organize themselves into a corporation for the purpose of generating, manufacturing, transporting and selling gas, electric current and power in this State. (Acts 1911, p. 228, sec. 1.)

Art. 1283b. Organization.—The manner and method of organizing such corporations shall be the same as provided by law for the organization of private corporations under chapter 2, Title 21 [25], of the Revised Civil Statutes of the State. (Id. sec. 2.)

See title 25, chapter 2.

Art. 1283c. Powers.—Such corporation shall have the power to generate, make and manufacture, transport and sell gas, electric current and power to individuals, the public and municipalities for light, heat, power and

other purposes, and to make reasonable charges therefor; to construct, maintain and operate power plants and substations and such machinery, apparatus, pipes, poles, wires, devices and arrangements as may be necessary to operate such lines at and between different points in this State; to own, hold, and use such lands, rights of way, easements, franchises, buildings and structures as may be necessary for the purpose of such corporation. (Id. sec. 3.)

Art. 1283d. Condemnation of property; rights of way.—Such corporation shall have the right and power to enter upon, condemn and appropriate the lands, rights of way, easements and property of any person or corporation, and shall have the right to erect its lines over and across any public road, railroad, railroad right of way, interurban railroad, street railroad, canal or stream in this State, and any street or alley of any incorporated city or town in this State, with the consent and under the direction of the governing board of such city or town. The manner and method of such condemnation shall be the same as provided by law in the case of railroads, pipe lines, telephone and telegraph lines; provided, that such lines shall be constructed upon suitable poles in the most approved manner and maintained at a height above the ground of at least twenty-two (22) feet; or pipes may be placed under the ground as the exigencies of the case may require. (Id. sec. 4.)

Art. 1283e. Borrowing money; stock; mortgages.—Such corporation shall have the right to borrow money, to issue stock and preferred stock, to mortgage its franchises and property to secure the payment of any debt contracted for any of the purposes by such corporation, and shall possess all the rights and powers of corporations for profit in this State, wherever the same may be applicable to corporations of this character. (Id. sec. 5.)

Art. 1283f. Discrimination.—It shall be unlawful for any corporation organized under this Act to discriminate against any person, corporation, firm, association or place in the charge for such gas, electric current or power, or in the service rendered under similar and like circumstances. (Id. sec. 6.)

CHAPTER TWENTY-TWO
SEWERAGE COMPANIES

Art. 1284. Corporation may condemn private property for sewers, etc., when, etc.—Every company or corporation heretofore incorporated under the laws of the state of Texas, or that may hereafter be incorporated under the laws of the state of Texas, for the purpose of owning, constructing or maintaining a system of sewerage in any city or town in this state, shall be, and are hereby, authorized and empowered to condemn private property through which to lay, construct and maintain sewer pipes, mains and laterals, and connections, and also private property upon which to maintain vats, filtration pipes and other pipes, such property to be used and occupied as a place for ultimate disposition of sewage, in or out of the town or city limits, whenever it be made to appear that the use of any such private property is necessary for successful operation of such sewer system, and when it be also made to appear that such sewer system is beneficial to the public use, health or convenience; provided, that the right of condemnation herein permitted shall not be invoked nor exercised within the corporate limits of the city or town except as permitted or required by the city or town granting franchise to the company or corporation seeking the right of condemnation. (Acts 1899, p. 263, sec. 1.)

Art. 1285. Method same as for railways.—The method of procedure for the condemnation of property for purposes provided in article 1284 shall be the same, so far as applicable, as now provided by law of this state or that may be hereafter provided for entering and condemnation of rights of way for use in the construction and operation of railroads. (Id. sec. 2.)

CHAPTER TWENTY-THREE
CEMETERY CORPORATIONS

Art. 1286. Incorporation and powers; charter to state what.—Corporations for the purpose of owning and maintaining public or private cemeteries, or for the purpose only of maintaining and caring for cemeteries, may be formed under and in accordance with the provisions of this title, and when so organized, shall have and exercise all the powers conferred by this chapter. In framing a charter for such corporation, if desired to confer upon it the powers specified in this chapter, the charter shall state that the corporation is organized in pursuance of this chapter. (Acts 1907, p. 37, sec. 1.)

Art. 1287. Owners of lots shareholders, etc.—Each owner of a lot or lots which may be embraced in any cemetery subject to the provisions of this chapter shall be a shareholder in any corporation to which the land may belong, and shall be entitled to all rights and privileges of a shareholder, whether the title to the lot or lots was acquired from the corporation, or was owned before its organization. (Id. sec. 2.)

Art. 1288. Directors and officers chosen how; married woman may be, etc.—The directors and officers of any corporation created in pursuance of this chapter shall be chosen under, and in accordance with, the provisions of this title, except that married women may be directors and officers in such corporations, and may perform any duties and execute any deed or contract appertaining to the duties of the office so held, without the concurrence of their husbands. (Id. sec. 3.)

Art. 1289. Power to acquire and hold land, including land dedicated to burial purposes.—Every corporation organized under this chapter shall have the power to acquire, own and hold all lands and other property which may be necessary or suitable to the accomplishment of its purposes, and may acquire lands which have been previously dedicated to burial purposes, by conveyance from the person or persons in whom title may be, or from any person who may hold such land in trust, with the power to transfer it to preserve the trust. (Id. sec. 4.)

Art. 1289a. Purchase, lease, and condemnation of land by associations incorporated or unincorporated.—Cemetery Associations, whether incorporated or unincorporated, shall have the power to purchase, lease, or otherwise acquire, such land as may

be needed by them for the purpose of the proper burial of the dead in the communities in which they may be located, and such power shall extend to the acquisition of such land as may reasonably be needed therefor in the future as well as such land as may be immediately needed at the time of such acquisition. Such land may be acquired also by condemnation proceedings in the manner now provided for the condemnation of lands for right or [of] way purposes by railroad companies; and the acquisition of such lands is hereby declared to be for a public purpose. (Acts 1917, ch. 125, sec. 1.)

Art. 1290. Owners of lots in dedicated land so purchased may participate in organization.—In case the land purchased as herein specified, or any portion of it, has been used as a cemetery, then the owners of lots therein shall have the right to participate in the organization of the corporation, and shall be shareholders therein after the company has been organized. (Acts 1907, p. 37, sec. 4.)

Art. 1291. Divisions of dedicated land so purchased, to be preserved, etc.—Whenever any corporations organized under this chapter shall acquire lands already used for burial purposes, the division of the said ground into lots, streets, etc., existing at the time of its acquisition, shall be preserved so far as is necessary to protect the rights of those who have already acquired lots therein. (Id. sec. 5.)

Art. 1292. Ground to be laid out, plotted, approved, attested, and recorded.—It shall be the duty of any such corporation, after its organization, to cause the ground which it may acquire for cemetery purposes to be laid out in proper avenues and alleys, blocks and lots, as may be found convenient and necessary for the proper use thereof; and the corporation shall cause a plot to be made of said cemetery ground, which shall be approved by the board of directors, and shall be attested by the president and secretary of the corporation, after which it shall be recorded in the county clerk's office of the county. (Id. sec. 5.)

Art. 1293. Corporation may make by-laws and regulations.—Every corporation organized under this chapter shall have the power to make all necessary by-laws as prescribed by this title, and also to make all rules and regulations necessary to govern in the sale of lots and the use of the same by the purchasers thereof. (Id. sec. 6.)

Art. 1294. Directors may make rules to keep lots in order, etc., but, etc.—The board of directors shall have authority to make reasonable rules, requiring the lot owners to keep their lots clean from improper growth, so as to preserve the good order and proper appearance of the grounds, but shall not have power to require of any lot owner a particular character of improvement therein. (Id. sec. 6.)

Art. 1295. Meeting of lot owners to create corporation to take title, etc.; notice of; majority determines action; selection of directors.—When it is desired to create a corporation under this chapter to receive the title to lands theretofore dedicated to the purpose of a cemetery, notice of the time and place of a meeting of the lot owners shall be published in a newspaper in the county, if there be one, for thirty days; and printed notices shall be posted at, and upon, such cemetery for thirty days prior to the time fixed for the meeting. When the lot owners and other persons uniting in the formation of the corporation shall assemble, the majority of those present and voting shall decide upon the question of incorporation, and the conveyance of the land to it. Such meeting shall select the board of directors to be named in the charter, which may consist of lot owners alone, or persons may be chosen as directors who are not owners of lots in the cemetery. (Id. sec. 7.)

Art. 1296. Directors to elect officers.—The board of directors shall elect the officers of such corporation required by this title. (Id. sec. 7.)

Art. 1297. Corporation not required to make reports.—Corporations formed under this chapter shall be exempt from any provision of law requiring periodical reports to be made to any department of the state government. (Id. sec. 8.)

Art. 1298. City council may control location of cemetery and limit price of lots.—The city council of any city in which the cemetery is to be located shall have the power to control the location of any such cemetery, and to prescribe the maximum price at which lots therein shall be sold to the public. (Id. sec. 8.)

Art. 1299. Commissioners' court may limit price of lots of cemetery outside of city.—When any such cemetery is located without the limits of any city, the commissioners' court of such county shall have the power to prescribe the maximum at which lots therein shall be sold. (Id. sec. 8.)

Art. 1300. (715) (639) Powers of.—Cemetery corporations shall have power to divide the land of the cemetery into lots and subdivisions for the purposes of the cemetery, and to tax the property for the purpose of its general improvement. (P. D. 6002.)

Art. 1301. (716) (640) May convey lots for purposes of sepulture.—Such corporation shall have power to convey, by deed or otherwise, any lot or lots of the cemetery for purposes of sepulture. When such lots shall have been surveyed and platted, the survey and plat shall be recorded in the office of the clerk of the county court of the county wherein the same are situated, and shall not afterward be changed or altered. No lots shall be sold or disposed of until such plat shall have been recorded. (P. D. 6003.)

Art. 1302. (717) (641) Owners of lots are members of corporation.—All owners of lots purchased of any such corporation shall become members thereof, and be entitled to vote in the election of its officers and upon any other matters to the same extent as stockholders in other corporations. (P. D. 6004.)

Art. 1302a. Trusts for maintaining private lots in cemeteries authorized; conditions.—Persons desiring to provide a fund for the maintaining and keeping up and beautifying of private blocks or lots in any Cemetery in this State may do so by setting aside for such purposes a reasonable sum of money and by providing by written instrument for a trustee or trustees to handle and invest said sum and spend the resources therefrom, in the following manner.

The written instrument shall give the

terms of the trust, provided not exceeding seventy-five per cent of the net income therefrom shall be devoted to keeping up and beautifying the private blocks and lots designated in the instrument.

The portion of such income not expended annually as set out in the preceding paragraph, the amount not to be less than twenty-five per cent of such income, shall be devoted to the general upkeep and beautifying of the cemetery in which such blocks or lots are located. (Acts 1917, ch. 155, sec. 1.)

Art. 1302b. Same; trustees.—The Trustees provided for may be natural persons designated by name and their successors, or persons holding designated positions and indicated as holders of such positions and successors, or corporations whose charters authorize them to Act in such capacity. (Id. sec. 2.)

Art. 1302c. Same; number of trustees; perpetuation by founder or court.—The founder of said fund may designate therein the number of Trustees and the manner of renewing same. If no method of perpetuating the trustees shall be set out in the instrument or if the trustees therein provided or their successors shall fail to effect such perpetuity, then any court having equity jurisdiction located within the county wherein such cemetery is maintained shall be authorized (upon application of any person interested or of the court's own motion), if facts come within its cognizance to appoint suitable trustee or trustees to the number specified in such instrument to execute such trust. (Id. sec. 3.)

Art. 1302d. Same; not to be regarded as a perpetuity.—Such trust and the administration thereof shall not be regarded and held to be a perpetuity, but as a provision for the discharge of a duty due from the party founding such trust to the persons interred upon such blocks or lots and to the public. (Id. sec. 4.)

CHAPTER TWENTY-FOUR

OIL, GAS, SALT, ETC., COMPANIES

Art. 1303. Purposes of incorporation.—Any number of persons not less than three, may engage themselves into a corporation for the purpose of storing, transporting, buying and selling of oil, gas, salt, brine and other mineral solutions; also sand and clay for the manufacture and sale of clay products. (Acts 1899, p. 202, sec. 1; Acts 1915, ch. 152, sec. 1.)

Art. 1304. Mode of organization.—The manner and method of organizing such corporations shall be the same as provided by law for the organization of private corporations in Chapter 2, Title 25, of the Revised Civil Statutes of 1911, and the provisions of this Act shall apply to all corporations already organized for any purposes of this Act. (Acts 1899, p. 202, sec. 2; Acts 1915, ch. 152, sec. 1.)

Art. 1305. Powers of corporations.—Such corporations shall have power to store and transport oil, gas, brine and other mineral solutions, and also sand, clay and clay products, and to make reasonable charges therefor; to buy, sell and furnish oil and gas for light, heat and other purposes; to lay down, construct, maintain and operate pipe lines, tubes, tanks, pump stations, connections, fixtures, storage houses and such machinery, apparatus, devices and arrangements as may be necessary to operate such pipes and pipe lines between different points in this State; to own, hold, use and occupy such lands, rights of way, easements, franchises, buildings and structures as may be necessary to the purpose of such corporations. For the transportation of sand and clay, corporations shall have the right to construct, maintain and operate aerial tramways, a system consisting of wire cables supported by wooden, concrete or steel towers, over which buckets or carriers are propelled along and over said wire cables; and may own such connections, fixtures, guy lines and all necessary devices, storage houses and such machinery, apparatus and arrangements as may be necessary to operate such aerial tramways between different points in this State; to own, hold, use and occupy such lands, rights of way, easements, franchises, buildings and structures as may be necessary to the purposes of such corporation. (Acts 1899, p. 202, sec. 3; Acts 1915, ch. 152, sec. 1.)

Art. 1306. Right of condemnation.—Such corporation shall have the right and power to enter upon, condemn and appropriate the lands, rights of way, easements and property of any person or corporation, and shall have the right to lay its pipes and pipe lines across and under any public road, provided that no pipes or pipe lines shall be laid parallel with and on any public highway, closer than fifteen feet from the improved section thereof except with the approval and under the direction of the Commissioners Court of the County in which such public highway is located, or under any railroad, railroad right of way, street railroad, canal or stream in this State, and to lay its pipes and pipe lines across or along and under any street or alley in any incorporated city or town in this state, with the consent and under the direction of the board of Aldermen or city council of such city or town. The manner and method of such condemnation shall be the same as is provided by law in the case of railroads; provided, that such pipes or pipe lines shall not pass through or under any cemetery, church or college, school house, residence, business or storehouse, or through or under any building in this state except by the consent of the owner or owners thereof; and provided, further, that all such pipes and pipe lines, when same shall pass through or over the cultivated or improved lands of another, shall be well buried under ground at least twenty inches under the surface, and such surface shall be properly and promptly restored by such corporation unless otherwise consented to by the owners of such land; provided, further, that if such pipes or pipe lines shall be laid over or along any uncultivated or unimproved lands of another, and such lands shall thereafter become cultivated or improved, such pipes or pipe lines, shall be buried by said corporation as hereinbefore provided, within a reasonable time after notice by the owner of such lands, or his agent, to said corporation or any agent thereof; and provided, further, that whenever such pipes or pipe lines shall cross any public road or highway, railroad, street railroad, or street or alley, the said pipes and

pipe lines shall be so buried and covered as not to interfere with the use and occupancy of such road, highway, street or alley by the public, or use and occupancy of such railroad or street railroad by the owner or owners thereof. (Acts 1899, p. 202, sec. 4; Acts 1915, p. 259; Acts 1919, ch. 146, sec. 1.)

Art. 1306a. Same subject.—Every person, firm, corporation, limited partnership, joint stock association, or association of any kind whatsoever owning, operating or managing any pipe line, or any part of any pipe line within the State of Texas for the transportation of crude petroleum that is declared to be a common carrier by and is subject to the provisions of Chapter 30 of the General Laws passed by the Thirty-fifth Legislature approved February 20, 1917, shall have the right and power of eminent domain, in the exercise of which he, it, or they may enter upon and condemn the lands, rights of way, easements and property of any person or corporation necessary for the construction, maintenance or operation of his, its, or their common carrier pipe line, the manner and method of such condemnation and the assessment and payment of the damages therefor to be the same as is provided by law in the case of railroads; and shall have the right to lay his, its or their pipes or pipe lines across and under any public road, provided that no pipes or pipe lines shall be laid parallel with and on any public highway, closer than fifteen feet from the improved section thereof except with the approval and under the direction of the Commissioners Court of the County in which such public highway is located, or under any railroad, railroad rights of way, street railroads, canal or stream in this State, and along and under any street or alley in any incorporated city or town in this State with the consent and under the direction of the board of aldermen or city council of such city or town, and such other rights in the matter of laying pipes and pipe lines as are conferred by Article 1306 of Chapter 24, Title 25 of the Revised Civil Statutes of Texas of 1911 as amended by this Act, upon corporations organized under said Chapter 24, subject, however, to the conditions, limitations and restrictions therein stated. (Id. sec. 2.)

Art. 1306b. Same subject.—Every person, firm, corporation, limited co-partnership, joint stock association or associations of any kind whatsoever owning, operating, or managing any pipe line, or any part of any pipe line within the State of Texas for the transportation of fuller's earth for the public for hire, the same are hereby declared to be common carriers, and shall have the rights and power of eminent domain, and may condemn the necessary sights, rights of way and easements, under the same terms, and subject to the same conditions as are conferred by Sections 1 and 2 of this act, on like persons natural or otherwise, owning, operating or managing crude petroleum pipe line or lines. (Id. sec. 2a.)

Section 3 repeals all conflicting laws.

Art. 1307. Right to borrow money, issue stock, mortgage franchises, etc.; powers; separate incorporation of pipe lines; ownership of stock in other corporations; competition.—Such corporation shall have the right to borrow money to an amount not in excess of its paid up capital stock, as now provided by law, to issue stock and preferred stock, to mortgage its franchises and property to secure the payment of any debt contracted for any purposes of such corporation, and shall possess all the rights and powers of corporations for profit in this State wherever the same may be applicable to corporations of this character. It may also engage in the oil and gas producing business, prospecting for and producing oil and gas and owning and holding lands, leases and other property for said purposes and subject to the provisions of Chapter 4 of this title; provided that no corporation shall exercise these powers while owning or operating oil pipe lines in this State. Any corporation heretofore or hereafter organized under this Chapter, and owning or operating oil pipe lines in this State, shall separately incorporate such oil pipe lines with the consent of a majority in amount of its stockholders and subject to the restrictions hereinafter imposed, whereupon, in addition to other powers which it may possess, it shall then acquire the right and power to engage in said oil and gas producing business. Such separate incorporation shall be accomplished by the organization of another pipe line corporation under this Chapter and the sale and conveyance to it of such oil pipe lines of the organizing company. In case of the ownership also of oil pipe lines beyond the borders of this State additional pipe line corporations may be organized outside of the State and such oil pipe lines located outside of the State may be sold and conveyed to them. In every case herein provided for the organizing corporation may subscribe for and own the capital stock of the organized pipe line corporation without being precluded from engaging in said oil and gas producing business. In lieu of engaging directly in the oil and gas producing business in any State or country a corporation organized under this chapter and authorized to engage in said producing business may own the stock of other corporations engaged therein, provided that it shall not own the stock of more than one producing corporation, or one pipe line corporation, organized under the laws of this or any other single State. Nor shall any corporation organized in any other State or country be permitted to own or operate oil pipe lines or engage in the oil producing business in this State when the stock of such corporation is owned in whole or in part by a corporation organized under this chapter. But the provisions hereof shall not preclude the ownership or operation by any corporation of private pipe lines in and about its refineries, fields or stations, even though such corporation may be engaged in the producing business. And none of these provisions shall be construed as limiting, modifying or repealing any part of the law regulating oil pipe lines, or as authorizing any ownership or transaction the effect of which would be to substantially lessen competition or to violate any law or laws of this State prohibiting trusts and monopolies and conspiracies in restraint of trade or to violate any provision of the anti-trust laws of this State. (Acts 1899, p. 202, sec. 5; Acts 1915, ch. 152, sec. 1; Acts 1917, ch. 31, sec. 1.)

Art. 1308. Discrimination unlawful.—It shall be unlawful for any corporation organized under this Act to discriminate against any person, corporation, firm, association or place in the charge for such storage or transportation, or in the service rendered; but shall receive, store or transfer oil or gas, salt, sand and clay for any person, corporation, firm or association upon equal terms, charges and conditions with all other persons, corporations, firms or associations for like service. (Acts 1899, p. 202, sec. 6; Acts 1915, ch. 152, sec. 1.)

Art. 1308a. Additional powers conferred.—Corporations heretofore or hereafter organized under the provisions of Chapter XXIV of Title 25 of the Revised Civil Statutes of 1911, and which shall file with the Secretary of State a duly authorized acceptance of the provisions of this Act, are hereby declared to have, in addition to the powers enumerated in said chapter, the power to carry on the business therein authorized outside of as well as within this state; to own and operate refineries, casing and treating plants, sales offices, warehouses, docks, ships, tank cars and vehicles necessary in the conduct of their business; and to cause the formation of corporations outside of this state, not exceeding one in any state, territory or foreign country, whose purposes and powers exercised shall be only those conferred by law upon the forming or holding corporation as incorporated under the laws of Texas, and own and hold the stock of such corporations when the effect of such formation or stock holding is not substantially to lessen competition or otherwise to violate laws prohibiting trusts and monopolies and conspiracies in restraint of trade. (Acts 1915, ch. 41, sec. 1.)

Art. 1308b. Corporations for storing salt water, etc.—In the mode provided in Chapter 2 of Title 25 of the Revised Statutes of Texas of 1911 corporations may be created for the purpose of gathering, storing, and impounding water containing salt or other substances produced in the drilling and operation of oil and other wells, and to prevent the flow thereof into streams at times when the latter may be used for irrigation. (Acts 1918, 4th C. S., ch. 49, sec. 1.)

Art. 1308c. Same subject; powers.—Such corporations, in addition to the general powers conferred by such title upon private corporations, may acquire, own, and operate ditches, canals, pipe lines, levees, reservoirs, and their appliances appropriate for the gathering, impounding or storage of such water, and for the protection of such reservoirs from inflow or damage by surface waters; with further power to condemn lands and rights necessary therefor under like procedure as is provided in condemnation by railroads; and also to cross with their ditches, canals, and pipe lines under any highways, canals, pipe lines, railroads, and tram or logging roads; conditioned that the use thereof be not impaired longer than essential to the making of such crossings; provided that, no right is conferred to pass through any cemetery or under any residence, school house or other public building nor to cross any street or alley of any incorporated city or town without the consent of the authorities thereof. (Id. sec. 2.)

Art. 1308d. Same subject; service to producers of water.—In the localities in which they operate and to the extent of the facilities provided, such corporations shall serve all producers of such waters in the gathering, impounding, and storage of such waters in proportion to the needs of such producers, at fair and reasonable charges, and without discrimination between such producers under like conditions. Corporations interested in the proper disposition of such waters may subscribe for, own, and vote stock in the corporations which may be created hereunder. (Id. sec. 3.)

CHAPTER TWENTY-FIVE
BOND INVESTMENT COMPANIES

Art. 1309. Deposit with state treasurer.—Every corporation, company or individual, doing business in this state as a bond investment company, or company to place or sell bonds, certificates or debentures on the partial payment or installment plan, shall, and the same is hereby required to, deposit with the state treasurer, in cash or securities approved by the state treasurer, the sum of five thousand dollars; and, in addition thereto, they shall be required to deposit semi-annually with the state treasurer, in cash or securities, to be approved by said officer, ten per cent of all the net premiums received, until the sum deposited shall amount to the sum of one hundred thousand dollars. (Acts 1897, p. 118, sec. 1.)

See Ex parte Stephens, 94 S. W. 327; Morrill v. Colonial Security Co., 102 S. W. 937.

See post, art. 1313½y.

Art. 1310. Forfeiture of charter in default of deposit; attorney general to sue for; and receivership; duties of receiver, etc.—If any such company, being a domestic corporation, shall fail, for sixty days after the passage of this act, or for sixty days after the organization of such company, to make with the state treasurer the deposit required by this act, it shall be considered to have forfeited its charter; and the attorney general shall, immediately upon receiving information thereof, bring suit in the name of the state, in the district court of Travis county, to have such charter or certificate of incorporation declared forfeited and of no effect, and said court shall declare such charter forfeited, and appoint a receiver for such company, whose duty it shall be, under the order of the court, to distribute to the shareholders the assets of the company. The court shall, out of the assets of the company, make such allowance for compensation for the receiver as shall be equitable and just. (Id. sec. 2.)

For penal provision see P. C. art. 1506.

Art. 1311. In case of failure of corporation, receiver appointed how; duties; deposit used; treasurer to pay out how.—In case of the failure of any company covered by this chapter, the district court of the county or city in which the principal office is located, upon the application of one or more shareholders, shall appoint a receiver for such company, whose duty it shall be to wind up its affairs, liquidate its debts, and distribute its assets, using therefor, upon the order of the court, the deposit previously made, to secure the shareholders, with the state treasurer; and the state treasurer is

hereby authorized to pay out such deposit in accordance with requisitions made upon the state comptroller by said receiver, and approved by the court, upon the warrant of the state comptroller. (Id. sec. 4.)

See Ex parte Stephens, 94 S. W. 327.

Art. 1312. Interchange of cash and securities in deposit; approval of attorney general.—At any time, when requested so to do by any company, such as is mentioned in this chapter, the state treasurer is hereby authorized to permit such company to interchange cash for the securities, or securities for the cash, deposited by such company with the state treasurer, under the provisions of this chapter, such securities always to be approved by the state treasurer on the written advice of the attorney general. (Acts 1901, p. 282.)

Art. 1313. Return of deposit in what case.—Should any such company, such as is mentioned in this act, cease to do business in this state, and shall satisfy the comptroller and the attorney general that it has no liabilities in this state, the comptroller shall issue his warrant to the state treasurer; and the state treasurer is authorized, and it is made his duty, upon such warrant of the comptroller, to return to such company the cash or securities deposited by it under the provisions of this chapter. (Id. sec. 6.)

CHAPTER TWENTY-FIVE A

BUILDING AND LOAN ASSOCIATIONS

Art. 1313a. Who may incorporate; purposes; articles; acknowledgment; contents.—Any number of persons, not less than five who are residents of this state, desiring to organize a building and loan association for the purpose of building and improving homesteads, removing incumbrances therefrom, and loaning money to the members thereof, may, by complying with the provisions of this Act, and entering into articles of association, become a corporate body. Said articles of association shall be signed by persons associating and acknowledged before some person authorized by the laws of this state to take acknowledgments to deeds, and shall set forth:

First, the name assumed by the association, which shall not be the same assumed by any other association incorporated under this Act, nor so similar as to be liable to mislead.

Second, the purpose for which the association is formed.

Third, the amount of its authorized capital stock; and the number of shares into which it is divided; the par value of each share; and the number of shares subscribed for, which shall not be less than fifty in number.

Fourth, the names of the incorporators; their respective residences and the number of shares subscribed by each.

Fifth, the term of its corporate existence, which shall not exceed fifty years.

Sixth, the name of the town, city or village in which such association is to be located. (Acts 1913, S. S. p. 72, sec. 1.)

Art. 1313aa. Approval of articles; copy to commissioner of insurance and banking; recording with county clerk; effect; proviso.—When executed as aforesaid, said articles of association shall be approved by, and filed with the secretary of state, and a copy thereof, duly authenticated under the hand and seal of state, shall be delivered to the commissioner of insurance and banking, who shall file the same in his office, and a like copy thereof shall be recorded in the office of the clerk of the county court of the county in which the principal office of such association is located; whereupon the persons named in the articles of association, their associates and successors, shall become a corporate body for the period for which they were organized, and shall exercise such powers as are herein granted, and such other powers as are necessary to enable such association to carry out the purpose of its organization, not inconsistent with the provisions of this Act; provided, that before such association shall proceed to business it shall adopt by-laws for the regulation and management of its business. Said by-laws shall not become operative until a copy thereof, duly certified by the president and secretary of the association shall have been approved by and filed with the commissioner of insurance and banking, and when so approved and filed the said commissioner of insurance and banking shall issue his certificate of such approval and filing and thereupon said association may proceed to business. The provisions of this Act shall not apply to loan corporations heretofore incorporated under the laws of Texas loaning money on real estate, or improvements thereon, in cities of this state of more than thirty thousand inhabitants and not requiring the borrowers to be members thereof, or holders of shares in such corporations, and which have been doing business for as long as ten years prior to the passage of this Act. (Id. sec. 2.)

Art. 1313b. Board of directors; election.—The corporate powers of every building and loan association heretofore organized under the laws of this state, or which may be incorporated under this Act, shall be exercised by a board of directors of not less than five (5) members, who shall elect from their own number the officers of the association. The mode of electing members of said board of directors and officers, and their respective terms of office shall be prescribed in the by-laws. (Id. sec. 3.)

Art. 1313bb. Bonds of financial officers; directors may require additional sureties; directors not to be sureties.—The secretary and treasurer of such association, and all other officers who sign and endorse checks, have charge of money or securities of such association, shall, before entering upon the duties of their office, each give such bond for the faithful performance of the same as shall be required and approved by the board of directors. Additional sureties or such increase of said bond as they may deem necessary, may be required at any time by the board of directors. Directors shall not be accepted as sureties on such bonds, and shall be individually liable for any loss sustained through their negligence or failure to comply with the provisions of this section. (Id. sec. 4.)

Art. 1313c. Shares; payment in installments; advance payments; series; nature of property in shares; retirement; lien; new shares; increase of cap-

ital stock.—The authorized capital stock of such association shall be divided into shares having a par value of not less than twenty-five dollars, nor more than two hundred dollars, each, payable in periodical installments, called dues, not exceeding two dollars per month on each share; provided, that the by-laws may provide for the advance payment of installment dues and for which there may be issued an advance payment certificate. The shares may be issued in series, or at any time as the by-laws shall determine and subscriptions therefor shall be made payable to the association. Said shares shall be deemed personal property, transferrable on the books of the association in the manner prescribed in the by-laws, and shall be paid off and retired as the by-laws shall direct. Every share shall be subject to a lien for the payment of unpaid dues and such other charges as may be lawfully incurred thereon under the provisions of this Act, and the by-laws may prescribe the manner of enforcing such lien. New shares may be issued in lieu of shares matured, withdraw, retired, or forfeited; but at no time shall the shares issued and in force exceed the aggregate number of shares into which the authorized capital stock is divided as designated in the articles of the association; provided, further, that any building and loan association heretofore or hereafter incorporated under the laws of this state, may, by a resolution adopted by a two-thirds vote of shares represented and voted at any annual meeting, or at any meeting called for that purpose, increase its authorized capital stock and shares, or amend its articles of association or by-laws, in any manner not inconsistent with the provisions of this Act; but no such increase of authorized capital stock nor amendments shall have effect until a copy of such resolution, certified by the president and secretary of such association, shall be filed, approved and recorded in the same manner as is provided in section two of this Act for the filing and recording of original articles of association and the filing and approval of by-laws. (Id. sec. 5.)

Art. 1313cc. Meetings of directors; loans; priority of loans; no loans to persons not members; security; number of payments; duties of commissioner of insurance and banking; loans to non-members.—At such times as the by-laws shall designate, not less frequently than once a month, the board of directors shall hold meetings, at which the funds in the treasury applicable for loans shall be loaned to the members who, in open competition, shall bid the highest premium for priority of right to a loan; or in lieu thereof, such funds may be loaned, either with or without premium, as the borrower may, in writing agree to pay, in which case the priority of right to a loan shall be decided by the priority of the application therefor. The manner in which said premium may be paid shall be prescribed in the by-laws. No loans shall be made by such association to anyone not a member thereof (except as hereinafter provided), nor to any member for an amount greater than the par value of the shares held by such member. Borrowers shall be required to give real estate security, unincumbered except by the prior liens held by such association, accompanied by a transfer and pledged to the association the shares borrowed upon as collateral security for the payment of the loan; provided, that no loan made upon real estate security shall exceed in amount two-thirds of the appraised valuation of such real estate; provided further, that the shares of such association may be received as security for the loan of an amount not to exceed ninety per cent of the withdrawal value of such shares; provided further, that, subject to the approval of the commissioner of insurance and banking, the number of payment of dues, interest and premium required from the borrowing stockholder to pay off his loan and secure a release of his encumbrance may be limited to such a definite number as the by-laws may provide; and provided further, that when the funds in the treasury applicable for loans shall accumulate and be in excess of the amount required for loans to members, they may be loaned to non-members upon real estate securities unincumbered by prior liens in an amount not to exceed fifty per cent of the appraised value of such securities, or may be invested in such securities as are authorized to be accepted by savings banks in this state, but at no time shall such loans and investment exceed twenty per cent of the assets. (Id. sec. 6.)

Art. 1313d. Failure of borrower to offer security; interest, premium and expense; forfeiture of pledge on default; proviso.—If the borrower neglects to offer security satisfactory to the board of directors within the time prescribed by the by-laws, his or her right to the loan shall be forfeited, and he or she shall be charged with interest or premium, if any, for one month, together with any expense incurred and the money appropriated for such loan may be reloaned at the next or any subsequent meeting.

Whenever a borrowing shareholder shall be in arrears in the payment of dues, interest or premium for more than four months the board of directors may, at their discretion, declare the pledged shares forfeited, and the whole amount of the loan due and payable, and its collection, together with the arrears of interest, premium and fines, may be enforced by proceedings upon the security held by the association, in accordance with law; provided, that the withdrawal value of the pledged shares, at the time of the commencement of the foreclosure proceedings shall be credited upon the loan. (Id. sec. 7.)

Art. 1313dd. Payment of loans; amount; credit for part of premium; retention of membership.—Any borrowing shareholder desiring to repay his loan shall have the privilege of doing so at any time, by giving the association thirty days written notice of such intention. The borrower shall be charged with the amount of the original loan, together with all the arrearages of interest, premium and fines and other legal charges, and shall be given credit for the withdrawal value of his shares pledged as security; and the balance shall be received by the association in full satisfaction of said loan; provided, that in cases where the premium is deducted from the loan in a gross sum and the borrower repays the loan before the expiration of the tenth year from the date upon which said loan was made such borrower shall be given credit

for one-tenth of the premium paid for every year of the said ten years then unexpired; provided further, that any borrower desiring to retain his or her shares and membership may repay his loan without claiming credit for the withdrawal value of said shares whereupon said shares shall be retransferred to him or her, and shall be free from any claim by reason of said loan. (Id. sec. 8.)

Art. 1313e. Meaning of "withdrawal value."—By the term "withdrawal value" as used herein is meant: The then value of the stock at the time indicated in the connection in which the words are used less the lawful charges against such shares in favor of the corporation. (Id. sec. 9.)

Art. 1313ee. Neglect to elect officers not to terminate corporation.—No corporation or association created under this Act shall cease or expire from neglect on the part of the corporation to elect officers at the time mentioned in their by-laws, and all officers elected to such corporation shall hold their offices until their successors are duly elected and qualified. (Id. sec. 10.)

Art. 1313f. Purchase of security at judicial or other sale; disposition.—Any loan or building association incorporated by or under this Act is hereby authorized and empowered to purchase at any sheriff's or other judicial sale, or at any other sale, public or private, any real estate upon which such association may have or hold any mortgage, lien or other incumbrance, or in which said association may have an interest for the purpose of collecting any debt due it, or for the protection of its interest in such real estate, and the real estate so purchased to sell, convey, lease or mortgage, at pleasure to any person or persons whomsoever, and to the highest bidder after advertising same in some local paper for four consecutive weeks. (Id. sec. 11.)

Art. 1313ff. Extension of corporate existence by vote of stockholders; report to secretary of state; filing with commissioner of insurance and banking.—Any loan or building association incorporated under this Act, or any prior act, may extend the duration of time for which said association was organized by a vote of two-thirds of the capital stock of such association represented and voting at any annual meeting of the stockholders of such association, or at any special meeting called for that purpose; thereupon the board of directors shall transmit a copy of the proceedings of such annual meeting or of such special meeting, duly attested, to the secretary of state, who shall make a duly authenticated copy thereof, as provided in said section three of this Act, [Art. 1313b], certifying to the extension of time of such corporation, and the same shall be filed with the commissioner of insurance and banking and recorded as provided in said section three of this Act, and any building and loan association incorporated under any prior act, and extending the duration of the time for which it was incorporated, in the manner herein provided, shall be deemed as incorporated under and be invested with all the power given in this Act, the same as though such corporation had been originally incorporated under it. (Id. sec. 12.)

Art. 1313g. Publication of statement of financial condition.—Each association formed under the provisions of this Act shall, at the close of its first year's operations, and annually at the same period in each year thereafter publish in at least one newspaper published in the same place where its principal office may be located, or if no newspaper be published in such place, then in the newspaper published nearest such place, a concise statement, verified by the oaths of its president and secretary, showing the actual financial condition of the association, and the amount of its property and liabilities, specifying the same particularly. (Id. sec. 13.)

Art. 1313gg. Supervision by commissioner of insurance and banking; proviso.—The commissioner of insurance and banking shall have supervision of all building and loan associations doing business in this state, and shall be charged with the execution of the laws of this state relating to such association; provided, that during the absence or disability of the commissioner of insurance and banking his chief clerk or deputy shall be authorized to perform all the duties relating to the control and supervision of such associations and the execution of the laws above described. (Id. sec. 14.)

Art. 1313h. Financial statement; filing with commissioner of insurance and banking; contents; penalty for failure; investigation.—Every building and loan association doing business within this state shall, on the first day of January of each year, or within sixty days thereafter, file with the commissioner of insurance and banking a full and detailed statement of its financial condition on the 31st day of the preceding December, and the business transacted during the preceding year within this state. Said statement shall set forth the amount and character of its assets, liabilities, receipts and disbursements, and shall contain such other information, and be in such form as the commissioner of insurance and banking may prescribe, and shall be subscribed and sworn to by the secretary and treasurer of such association. Any such association refusing or neglecting to file the annual statement herein required within the period hereinbefore prescribed shall forfeit five dollars per day for each and every day such statement shall be withheld, and the commissioner of insurance and banking may maintain an action in the name of the state to recover such penalty, which, upon its collection, shall be paid into the state treasury. And shall within thirty days after such refusal to file such annual statement investigate the affairs of the association, and if found in a failing condition take charge of its affairs. (Id. sec. 15.)

Art. 1313hh. Examination by commissioner of insurance and banking; special examiners; compensation.—Once in each year, or oftener, if in the opinion of the commissioner of insurance and banking it shall be necessary the commissioner of insurance and banking shall make or cause to be made, an examination into the affairs of all building and loan associations doing business in this state. Such examinations shall be full and complete, and in making the same the examiner shall have full access to, and may compel the production of all books, papers and moneys, etc., of the association under ex-

amination, and may administer oaths to and examine the officers of such association or any other person connected therewith, as to its business and affairs.

The commissioner of insurance and banking may appoint such special examiners as may be necessary to carry out the provisions of this Act. Such examiner shall be paid at the rate of eight dollars per day; they shall also receive necessary traveling expenses connected with the duties of their office, which shall be paid by the state treasurer on the warrant of the commissioner of insurance and banking and the approval of the governor. (Id. sec. 16.)

Art. 1313i. Financial unsoundness or mismanagement; duties of commissioner of insurance and banking; suit by attorney general; liquidation; receiver; dissolution.—Whenever it shall appear to the commissioner of insurance and banking that the affairs of any such association are in an unsound condition, or that it is conducting its business in an unsafe or unlawful manner, such commissioner shall at once notify the board of directors of such association, giving them twenty days in which to restore its affairs to a safe and sound condition, or to discontinue its illegal practices. If after twenty days such restoration shall have not been made, or such illegal practices shall have not been discontinued, said commissioner may order one of the examiners, appointed to examine such association, or a special examiner appointed for the purpose, to take possession of all books, records and assets of every description of such association and hold and retain possession of the same pending the further proceedings hereinafter specified. Should the board of directors, secretary or person in charge of such association refuse to permit the said examiner to take possession aforesaid, said commissioner shall communicate such fact to the attorney general, whereupon the attorney general shall at once institute such proceedings as may be necessary to place such examiner in immediate possession of the property of such association. Upon taking possession of the effects of the association as aforesaid, said examiner shall prepare a full and true statement of the affairs and conditions of such association, including an itemized statement of its assets and liabilities, and shall receive and collect all debts, dues and claims belonging to it, and may pay the immediate and reasonable expense of his trust. Said examiner shall be required to execute to the commissioner of insurance and banking a good and sufficient bond, conditioned for the faithful discharge of his duties as custodian of such association, which said bond shall be approved by said commissioner.

The commissioner of insurance and banking shall, within fifteen days next after said examiner has acquired possession of the property of such association, convene a special meeting of the shareholders for the purpose of considering and acting upon the examiner's report of the affairs and conditions of such association as found by him from his examinations thereof. The shareholders may, at said special meeting, by the votes of those owning two-thirds of the shares in force, resolve to go into liquidation, and for that purpose may, by a majority vote of those present, elect from among their number a receiver and fix his compensation. The compensation to be allowed a receiver under this Act shall be an amount reasonably in proportion to the value of the property of the association, and in no event shall exceed $2500.00 per annum. A copy of said resolution, duly certified by the presiding officer and secretary of said special meeting, together with the name and address of the receiver thus elected, shall be filed with the commissioner of insurance and banking. Said receiver shall be charged with a proper distribution of the assets, discharge of all liabilities and final closing up of the business of such association, and before he shall enter upon the duties of his office he shall be required to execute to the association a good and sufficient bond, conditioned for the faithful discharge of his duties, which shall be approved by and filed with said commissioner. Upon the election and qualification of said receiver as aforesaid, the said examiner shall, when so ordered by the commissioner of insurance and banking, turn over and deliver to said receiver all the books, papers, money and effects of every description in his hands belonging to such association. Said receiver shall, upon the completion of said duties intrusted to him, prepare a statement to that effect, reciting therein that all of the liabilities of such association have been completely discharged and its assets and property distributed among all the persons entitled thereto. Said statement shall be subscribed and sworn to by said receiver and filed with the commissioner of insurance and banking, and a notice of such dissolution shall be published for three successive weeks in any newspaper published in the county wherein the principal office of such association is located. Upon the filing of said statement and making publication as aforesaid, such association shall be deemed dissolved. (Id. sec. 17.)

Art. 1313ii. Liquidation by shareholders not possible; injunction and receivership.—If after having called a meeting of the shareholders as herein provided, the commissioner of insurance and banking shall find that liquidation by the shareholders cannot be had or consummated, he shall communicate such fact, together with a statement of the condition of the association to the attorney general, who shall thereupon institute the necessary proceedings to enjoin such association from doing any further business, and for the appointment of a receiver therefor. (Id. sec. 18.)

Art. 1313j. Shareholders in arrears; forfeiture; withdrawal value.—If a shareholder be in arrears in the payment of dues upon unpledged shares, the board of directors may, if the shareholder fails to pay the amount of arrears within thirty days after notice, declare said shares forfeited. The withdrawal value of said shares at the time of forfeiture shall be ascertained and paid to such shareholder upon such notice as the by-laws may prescribe, provided, that fines for the non-payment of dues, interest or premium shall not exceed one per cent per month on each dollar in arrears. (Id. sec. 19.)

Art. 1313jj. Gross earnings; apportionment; reserve; expense fund.—The gross earnings of every building and loan association shall be ascertained at least once

in each year, from which shall be deducted a sufficient amount to meet the operating expenses of such association, and from said earnings only shall such expenses be paid. From the balance of the earnings there shall be set aside at least one per cent annually as a reserve fund, until such fund reaches five per cent of the outstanding loans, at which rate it shall thereafter be maintained and held by annual appropriations from the earnings. From said reserve fund shall be paid all losses sustained by said association from depreciation of securities or otherwise. After providing for expenses of the association, and the reserve fund, as aforesaid, the residue of such earnings shall be transferred and apportioned to the credit of shareholders as the association by its by-laws shall provide. (Id. sec. 20.)

Art. 1313k. Consolidation of associations; non-consenting stockholders; proviso.—At the annual meeting, or at any meeting called for that purpose, any two or more building and loan associations organized under the laws of this state may by two-thirds of the vote of all shareholders of each of the different associations resolve to consolidate into one upon such terms as shall be mutually agreed upon by the directors of such associations. Any shareholder not consenting to such consolidation shall be entitled to receive the withdrawal value of his stock in settlement, or, if a borrower, to have such value applied in part settlement of his loan; provided, that such consolidation shall not take effect until a copy of said resolution, certified by a majority of the board of directors of each association, shall be filed with the secretary of state, and with the commissioner of insurance and banking, and recorded in the manner hereinbefore provided. (Id. sec. 21.)

Art. 1313*l*. Voluntary dissolution; sale of property to other association; filing statement with commissioner of insurance and banking.—At the annual meeting, or at any meeting called for that purpose, any building and loan association of this state may, by a vote of shareholders owning two-thirds of the shares in force, resolve to liquidate and dissolve the corporation. In order to facilitate such dissolution the board of directors may, if they deem advisable, sell and transfer the mortgage securities and other property of such association to another corporation, person or persons, subject, however, to the vested and accrued rights of the mortgagors; provided, that before said resolution shall have effect, a copy thereof, certified by the president and secretary of such association, together with an itemized statement of its assets and liabilities, sworn to by a majority of directors, shall be filed with the commissioner of banking and insurance. After filing a copy of the resolution as aforesaid, it shall be unlawful for such association to issue stock or make any loans, but all of its income and receipts, in excess of actual expense of management, shall be applied to the discharge of its liabilities. (Id. sec. 22.)

For section 23 see Penal Code, art. 693m.

Art. 1313m. Report by commissioner of insurance and banking to governor; printing.—The commissioner of insurance and banking, shall, annually, at the earliest possible date after the statements of such associations are received, make a report to the governor of the general conduct and condition of all building and loan associations doing business in this state, including the information contained in such statements, arranged in tabular form together with such suggestions as he may deem expedient. There shall be printed of said report as many copies as the commissioner of insurance and banking shall deem necessary. (Id. sec. 24.)

Art. 1313n. Fees; limitation of amount.—Every building and loan association organized under the laws of this state shall be subject to and pay to the secretary of state the following fees, which fees shall be paid into the state treasury, to wit: for filing articles of associations, by-laws, amendments, or any other paper, one dollar; for making and certifying to articles of association, by-laws, or any other paper required to be filed with the secretary of state, twenty cents per folio of one hundred words; for making the annual examinations herein provided, one seventy-fifth part of one per cent of the gross amount of assets of such association, which fee shall be paid at the time of filing its annual statement, and shall at the same time pay to the secretary of state an annual franchise tax of ten dollars; provided, that the examination fee of any association shall not be less than twenty dollars nor more than one hundred dollars in any one year; provided, further, that the expense incurred and services, other than examinations performed especially for such association shall be paid in full by such association. (Id. sec. 25.)

Art. 1313*o*. Foreign associations; subject to domestic laws.—The foreign building and loan associations doing business in this state shall conduct the same in accordance with the laws of this state governing domestic building and loan associations, and shall comply with all requirements of said laws, except as herein provided. (Id. sec. 26.)

Art. 1313p. Foreign associations; procuring certificate of authority; prerequisites; agreement as to service of process; deposit.—No foreign building and loan association shall do any business in this state until it shall procure from the secretary of state a certificate of authority to do so. To procure such certificate of authority such foreign association shall comply with the following provisions:

First. It shall file with the secretary of state a certified copy of its articles of incorporation, a copy of its by-laws and rules governing it, and of its certificates and all printed matter issued by it, together with a statement of its financial condition such as is required annually from all building and loan associations organized under the laws of this state.

Second. It shall file with the secretary of state a written instrument, properly executed, agreeing that any summons or process of any court in this state may issue against it from any county in this state, and when served upon the secretary of state, shall be accepted irrevocably as a valid service upon such foreign association; provided, however, that the secretary of state shall mail a copy

of such legal process served upon him to the home office of such foreign association, and the secretary of state shall, within six days, certify to the court from which such summons or process issued the fact of such mailing. The plaintiff shall for each process so served pay to the secretary of state, at the time of such service, a fee of two dollars, which shall be recovered by the plaintiff as part of the taxable costs if he prevail in the suit.

Third. It shall deposit with the secretary of state one hundred thousand dollars ($100,000), either in cash or bonds of the United States, or bonds of any state in the United States, or bonds of any county or municipal corporation in the state of Texas, or mortgages, being first liens on improved and productive real estate located within this state, and worth at least twice the amount of the liens, or furnish surety company bond in said sum of $100,000; which securities or surety company bond shall be approved by the secretary of state. Said deposit shall be held as security for all claims of residents of this state against such foreign associations, and shall be liable for all judgments or decrees thereon; and said securities shall not be released until all shares of such foreign associations held by residents of this state shall have been fully redeemed and paid off, and its contracts and obligations to residents of this state shall have been fully performed and discharged. Such foreign associations may collect and use the interest on any securities so deposited, so long as it fulfills its obligations and complies with the provisions of this Act. It may also exchange them for other securities of equal value, if satisfactory to the secretary of state; provided, that if the business of such associations be solely that of lending money in this state, and that it sells none of its stock except where loans are actually made on real estate in this state for the full amount of the stock so sold, and made at the time of the sale of such stock, then in such event the provisions of this Act requiring a deposit bond of one hundred thousand dollars ($100,000) shall not apply. (Id. sec. 27.)

Art. 1313q. Securities deposited with secretary of state; deposit with state treasurer; withdrawal.—All such securities deposited with the secretary of state shall be immediately deposited by him with the state treasurer, who, with his sureties, shall be responsible for the safe keeping thereof. The state treasurer shall deliver such securities only upon the written order of the secretary of state. (Id. sec. 28.)

Art. 1313r. Foreign associations; certificate to commissioner of insurance and banking; certification to secretary of state.—Whenever such foreign association has complied with the provisions of this Act, the secretary of state shall so certify to the commissioner of insurance and banking, and thereupon such foreign association, shall also furnish to the commissioner of insurance and banking a full and complete financial statement of its affairs duly sworn to by its president and secretary, together with such other information as said commissioner of insurance and banking may require, which said report shall be filed annually thereafter. And if the commissioner of insurance and banking is satisfied that such association is in sound financial condition and shall be satisfied that such foreign association is conducting its business in accordance with the laws of this state, and shall regard it safe, reliable and entitled to public confidence, he shall so certify to the secretary of state, who shall issue certificate of authority and renewals of such certificate of authority upon the payment of the fees as herein provided. (Id. sec. 29.)

Art. 1313s. Foreign associations; fees.—All foreign building and loan associations shall pay to the secretary of state the following fees, which shall be paid into the state treasury, to-wit: For filing each application for admission to do business in this state, fifty dollars ($50.00) for each certificate of authority and annual renewal of the same, twenty-five dollars ($25.00) and an annual franchise tax of two hundred and fifty ($250.00) dollars. (Id. sec. 30.)

Art. 1313t. Foreign associations; satisfaction of judgments from deposited securities; proceedings; deficiency.—If at any time any shareholder of such foreign association residing in this state, shall recover judgment against such foreign association, and which after thirty days shall not have been satisfied the state treasurer, upon an order from the secretary of state, shall proceed to sell at the current market value, sufficient of the bonds, or collect sufficient of the mortgage securities deposited with him to satisfy the amount of such judgment, together with five per cent for his services and expense; provided, that before ordering the state treasurer to dispose of such securities as aforesaid, the secretary of state shall be served with an affidavit by the plaintiff or his attorney, setting forth the recovery of judgment, and that the same has remained unpaid for thirty days, and that no proceedings are pending for appeal or reversal of the same; provided, further, that such foreign association after notice of the service of such affidavits, shall not transact any new business in this state until any deficiency of securities caused by the necessity of satisfying such judgments shall have been made good by further deposit of similar securities with the secretary of state. (Id. sec. 31.)

Art. 1313u. Foreign associations; examination; expense; proviso.—Every foreign building and loan association doing business in this state shall be subject to the same examinations, as are building and loan associations organized under the laws of this state; provided, that the expense of all examinations of such foreign association shall be paid by the association examined, and the money so received shall be paid into the state treasury; provided, it shall not be necessary for such examination to be made but once in each year; provided, further, that such expense shall only include the necessary traveling expenses of such examiner and the sum of eight dollars per day, for each day actually required in making such examinations. (Id. sec. 32.)

Art. 1313v. Foreign associations; revocation of certificate of authority; notice.—Should the secretary of state find, upon examination, that such foreign association does not conduct its business in accordance

with law, or that the affairs of such foreign association are in an unsound condition, or if such foreign association refuses to permit examination to be made, he may revoke the certificate of authority granted such foreign association to do business in this state; provided, that upon the revocation of such certificate of authority, the secretary of state shall mail a notice thereof to the home office of such foreign association, and cause a similar notice to be published in at least one newspaper published in the city of Austin. After publication of said notice it shall be unlawful for any agent of such foreign association to receive any further payments on shares from shareholders residing in this state, except payment on shares on which a loan has been made. (Id. sec. 33.)

Art. 1313w. Foreign associations; compliance with domestic statutes; penalty for violation.—No foreign building and loan association shall be permitted to do business in this state unless the provisions of this Act are fully complied with and all contracts made by such foreign associations while in default shall be absolutely void. Any such association violating any of the provisions of this Act, or failing to comply with any of its provisions, shall be subject to a fine of not less than one hundred dollars, nor more than five hundred dollars, such fine to be recovered by an action in the name of the state of Texas, in any court of competent jurisdiction, and upon the collection thereof, the same shall be paid into the state treasury. (Id. sec. 34.)

Art. 1313x. Unauthorized associations; agency for; penalty.—It shall be unlawful for any person to act as agent for any building and loan association not authorized to do business in this state, or to solicit, sell, or dispose of any shares of any such unauthorized association; and any person or persons acting for any such unauthorized association, or in any manner aiding in the transaction of the business of such association in this state, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than fifty dollars, nor more than five hundred dollars for each offense, and in default of payment of such fine shall be imprisoned in the county jail, for a period not to exceed one year. All fines collected under the provisions of this section shall be paid into the state treasury. (Id. sec. 35.)

Art. 1313y. Repeal.—All laws and parts of laws in conflict with this Act are hereby repealed. (Id. sec. 36.)

CHAPTER TWENTY-FIVE B

CO-OPERATIVE SAVINGS AND CONTRACT LOAN COMPANIES

Art. 1313½. Certified copy of charter to be filed with Commissioner of Insurance and Banking.—Co-operative savings and contract loan institutions organized under the general corporation laws of this State in the manner therein provided, and all such institutions as may be organized hereafter, shall file certified copy of the charter issued to such companies by the Secretary of State with the Commissioner of Insurance and Banking. (Acts 1915, 1st C. S., ch. 5, sec. 1.)

Art. 1313½a. Supervision of companies.—All such corporations shall be under the supervision and control of the Commissioner of Insurance and Banking, and it shall be his duty, at least once every twelve months to cause the books of such corporation to be examined, the expense of such examination to be paid by such corporations in the same manner as now required by law for the examination of insurance companies. (Id. sec. 2; Acts 1918, 4th C. S., ch. 45, sec. 3.)

Art. 1313½b. Capital stock; payment; notes.—The capital stock of all such institutions hereafter organized shall not be less than twenty-five thousand dollars, and not less than one-half of the capital stock must be paid in in actual currency, bank notes, or certified checks; while the remainder may be paid in deferred payments, payable in equal or greater installments annually, for a period of time not exceeding two years; but the deferred payments must be evidenced by the subscriber's note secured by the paid-up stock certificates issued him equal in amount to his deferred payments and by collateral equal to said amount of such character as the corporation shall have the right to invest its funds in, which said notes of the subscriber and the collateral attached thereto must be examined and approved by the Commissioner of Insurance and Banking and certified by him to be ample and sufficient. (Acts 1915, 1st C. S., ch. 5, sec. 3.)

Art. 1313½c. Powers.—Corporations chartered hereunder shall have all the powers of building and loan associations chartered under the laws of this State and in addition shall have authority to engage in the business of issuing contracts or agreements, whether in the nature of bonds, debentures, certificates, or otherwise, providing for the redemption or for the fulfilling of such contracts or agreements by the accumulation of a fund or funds by the contributions made by a subscriber to or the holders of such contracts or agreements; or providing for the maturing or fulfilling of such contracts or agreements in the order of their issue or in series or in some other fixed or arbitrarily determined order or manner; or providing for the payment of moneys or the granting or giving of any consideration of any money or personal property, real or mixed, greater in value or represented to be greater in value than the amount paid in upon such contracts or agreements, together with the actual net earnings accrued and accumulated thereon; or providing for the loaning of the funds contributed by the subscribers to or the holders of such contracts or agreements to such subscribers or holders in any fixed or arbitrarily determined order or manner; or for the making of loans or advance from such funds to or for such subscribers or holders to be repaid in installments; and shall have the right to place or sell bonds, certificates or debentures on the partial payment or installment plan. (Id. sec. 4.)

Art. 1313½d. Investment in securities; deposit; reserve; real estate; appraisal; statement on contracts.—All corporations hereafter chartered shall invest not less than thirty-three and one-third per cent of its capital stock in securities of the kinds in which by law it is permitted to invest or loan its funds and shall deposit the same with the Commissioner of Insurance and Banking for the common benefit of all the

holders of all contracts issued by it. All savings and contract loan companies as herein defined shall keep on deposit with the Commissioner of Insurance and Banking at all times an amount equal to the legal reserve required by this Act on all its outstanding contracts, which amount shall be either in cash or in such securities as it is permitted by law to invest in, which said deposit of capital stock and reserve securities shall be held by the said commissioner in trust for the common benefit of all the holders of contracts issued by such corporations. Any such company may deposit the lawful money of the United States in lieu of the securities above referred to or any portion thereof and may also for the purpose of such deposit convey to said commissioner in trust the real estate in which any portion of said capital or reserve may be lawfully invested, and in such case said commissioner shall hold the title thereto in trust until other securities in lieu thereof shall be deposited with him, whereupon he shall reconvey the same to such company; said commissioner may cause any such securities or real estate to be appraised and valued prior to their being deposited with or conveyed to him in trust as aforesaid; the reasonable expense of which is to be paid by the company.

All contracts issued by any such company shall have upon their face a certificate substantially in the following words: "This contract is registered, and approved securities equal in value to the legal reserve hereon are held in trust by the Commissioner of Insurance and Banking of the State of Texas," which certificates shall be signed by the commissioner and sealed with the seal of his office. (Id. sec. 5.)

Art. 1313½e. Forms of contracts; approval; register of contracts; commutation; valuation; additional deposits; withdrawal; custody of securities.—All contracts, whether bonds, debentures, or whatsoever form or class, shall be first submitted to the Commissioner of Insurance and Banking before their issuance and be approved by him as fair to the purchaser thereof, to the corporation and to its stockholders, and shall have printed thereon some appropriate designating letter or figure, combination of letters or figures or terms identifying the particular form of contract, together with the year of the adoption of such form, and whenever any change or modification is made in the form of contract, the designating letters, figures or terms and year of adoption shall be correspondingly changed.

The Commissioner of Insurance and Banking shall prepare and keep such registers thereof as will enable him to commute the value of such contracts at any time. Upon written proof, attested by the president or vice president and secretary of the company which shall have issued such contracts that any of them have been commuted or terminated, the commissioner shall commute or cancel them upon his register, and until such proof is furnished, all registered contracts shall be considered in force for the purpose of this Act. The net value of every contract according to the standard prescribed herein for the valuation of such contracts, when the first installment shall have been paid thereon, less the amount of such liens as the company may have against it (not exceeding such value) shall be entered opposite the records of each contract in the register aforesaid at the time such record is made. On the first day of January of each year, or within sixty days thereafter, the commissioner shall cause the contracts of each company chartered hereunder or operating hereunder to be carefully valued, and the actual value thereof at the time fixed for such valuation, less such liens as the company may have against it, not exceeding such valuation, shall be entered upon the register opposite the record of such policy or bond, and the commissioner shall furnish a certificate of the aggregate of such valuation.

Each company shall make additional deposits from time to time, in amounts of not less than one thousand dollars, and of such securities as are permitted by this Act to be deposited, so that the market value of the securities deposited shall always be equal to the net value of the contracts issued by said company, less such items as the company may have against them not exceeding such net value. So long as any company shall maintain its deposit as herein prescribed at an amount equal to or in excess of the net value of its contracts, it shall be the duty of the commissioner to sign and affix his seal to the certificate before mentioned on every contract presented to him for that purpose by any such company.

Any company depositing under the provisions of this Act may increase its deposits at any time by making additional deposits of not less than one thousand dollars of such securities as are authorized by this chapter. Any such company whose deposits exceed the net value of the contracts which it has in force, less its liens thereon (not exceeding such value) may withdraw such excess and it may withdraw any such securities at any time by depositing others of equal value and of the character authorized by this Act in their stead, and it may collect the interest, coupons, rents, and other income on the securities deposited, as the same accrues.

The securities deposited under this Act shall be placed and kept by the Commissioner of Insurance and Banking of the State in some secure, safety deposit fireproof box or vault in the city or town in or near the home office of the company, and the officers of the company shall have access to such securities for the purpose of detaching interest coupons and crediting payments and exchanging securities as above provided, under such reasonable rules and regulations as the commissioner may establish. (Id. sec. 6.)

Art. 1313½f. Fees; proceeds, how disposed of.—Every company making deposit under the provisions of this Act shall pay to the Commissioner of Insurance and Banking for each certificate placed on such contracts a fee of ten cents and the fee so received shall be disposed of by the said commissioner as follows:

(1) The payment of the rent or hire of the safety deposit fireproof box as above provided.

(2) Payment for the services of a competent and reliable representative of said commissioner to be appointed by him, who shall have direct charge of the securities and

safety deposit containing same, and through whom and under whose supervision the company may have access to its securities for the purpose above provided. The sum paid such representative shall not exceed the sum of one hundred dollars per annum for each such company.

(3) The balance of such fees shall be paid to or be deposited with the State Treasurer to the credit of the general fund. (Id. sec. 7.)

Art. 1313½g. Capital stock as part of reserve deposits; maintenance of reserve deposits; commissions, etc., to corporate officers prohibited; bonds of officers.—Any company chartered hereunder may include as a part of its reserve deposits the remaining of its capital stock, if the same has been paid in and invested in such securities as such company is permitted by this law to invest in. Deposits of securities hereunder to the value of the reserve on all outstanding contracts shall be added to and maintained from time to time as the reserve values increase, by the company issuing such contracts, or by any company which may assume them, and such securities shall be held by the commissioner and his successors in office in trust for the benefit of such contracts as long as the same shall remain in force. No company chartered hereunder shall pay or contract to pay, directly or indirectly, to its president, vice president, secretary, treasurer, or actuary, any commission or other compensation contingent upon the writing of contracts or upon the continuous payment of installments upon such contracts and should any company violate the provisions of this section, it shall be the duty of the Commissioner of Insurance and Banking to revoke its certificate of authority to transact business until such illegal contract has been abrogated and all funds paid thereunder paid into the company.

All officers of the company having charge or through whose hands pass any funds or securities of any such company shall give bond to the company in the form approved by the Commissioner of Insurance and Banking, and in such amount as may be fixed by the board of directors to be not less than five per cent of the capital stock of any such corporation and in no event less than one thousand dollars. (Id. sec. 8.)

Art. 1313½h. Approval of by-laws, contracts, circulars, etc.; impairment of capital; receiver.—The by-laws, all forms of contracts and all literature in circular or permanent form, which undertake to state the benefits and advantages of the contract to the investor or holder thereof, shall be first submitted to the Commissioner of Insurance and Banking for his examination and approval before such advertisements are promulgated and before such contracts are issued.

If the Commissioner of Insurance and Banking should approve such literature or contracts, then the same may be thereafter issued and sold. If he should disapprove the same, such company may institute a proceeding in any court of competent jurisdiction and venue to review his action thereon.

Any such company chartered hereunder whose capital stock shall become impaired to the extent of thirty-three and one-third per cent thereof computing its liabilities according to the terms of this Act, shall make good such impairment within sixty days by reduction of its capital stock or otherwise, provided its capital stock may never be reduced below the minimum required by this Act, and failure to make good such impairment within said time shall forfeit its right to write new business in this State until such impairment shall have been made good; and provided that the Commissioner of Insurance and Banking may apply to any court of competent jurisdiction for the appointment of a receiver to wind up the affairs of such company when its capital stock shall become impaired to the extent of fifty per cent; provided also that its affairs may be placed in the hands of a receiver by the commissioner and by the State, acting through the Attorney General, when its assets shall not equal its liabilities, in which shall be included its outstanding debts, and its contract reserves, plus 50 per cent of its capital stock. (Id. sec. 9.)

Art. 1313½i. Certificate of authority.—No foreign or domestic company shall transact business under this Act unless it shall first procure from the Commissioner of Insurance and Banking a certificate of authority stating that the requirements of the laws of this State have been fully complied with by it and authorizing it to do business in this State. Such certificate of authority shall expire on the last day of February in each year and shall be renewed annually so long as the company shall continue to comply with the laws of the State, such renewals to be granted upon the same terms and conditions as the original certificate.

In order to obtain a certificate of authority the corporation must deposit with the commissioner certified copy of its articles of association or incorporation, its by-laws, and the detailed statement of its plans for doing business, together with copies of all contracts and agreements proposed to be used in the conduct of its business. It shall be the duty of the commissioner to investigate and thoroughly examine into all such matters and if he finds that the law has been complied with and that the business proposed to be done is not in conflict with the laws and Constitution of this State, he shall grant a certificate authorizing such corporation to do business and such contracts and plans so submitted and approved shall not in any manner be changed or altered until the portion changed is submitted to and approved by the commissioner. (Id. sec. 10.)

Art. 1313½j. Contracts not to be forfeited.—No contract or agreement by any corporation chartered or doing business hereunder shall be forfeited for non-payment but upon a failure to pay upon the same according to the terms thereof for a period of three months, the same may be cancelled and the holder thereof shall be credited with all payments made to the reserve fund as provided in Section 12 hereof [Art. 1313½k] and such payments and such credit shall be payable to the holder in cash or paid-up certificate within sixty days thereafter at the option of the holder provided he surrenders at the time of demand such cancelled contract or agreement. (Id. sec. 11.)

Art. 1313½k. Withdrawal of contracts.—The holder of any contract issued

hereunder may withdraw the same at any time upon ninety days written notice and shall be entitled to receive thereafter on demand the full amount paid into the said loan or reserve fund, provided six consecutive monthly payments of dues have been paid on the contract, in addition to the purchase price of said contract, less 15 per cent if the same is withdrawn after six months and before twelve months. If the same is withdrawn after one year and before two years after date the amount paid into the loan and reserve fund less 10 per cent of such amount, and if withdrawn after two years and before three years after the date hereof he shall receive the full amount paid into said reserve fund, less 5 per cent, and if withdrawn after three years after date hereof, he shall receive the full amount paid into said reserve fund, together with three per cent interest thereon; provided that the certificate holder may at his option accept a paid-up certificate of contract for the amount to the credit of the contract in the reserve fund, plus three per cent interest to the date of withdrawal, which certificate shall bear five per cent annual interest, and be payable not later than the maturity date of the original contract. (Id. sec. 12.)

Art. 1313½*l*. Liability on contracts.—The liabilities of the contracts issued by any corporation transacting business hereunder shall at all times be the amount paid into the loan or reserve fund, together with interest at the rate of three per cent per annum thereon less sixteen and two-thirds per cent paid to loan or reserve fund, which may be deducted for expenses, to become the actual property of the corporation, eighty-three and one-third per cent of amount paid into loan or reserve fund, together with three per cent thereon shall constitute the certificate or contract reserve of the company, which must be invested in approved securities to be deposited with the Commissioner of Insurance and Banking as herein provided. The sixteen and two-thirds per cent of all sums collected and here referred to as the expense deduction shall become the absolute property of the corporation, and shall be carried on its books as an expense and profit deduction. Provided, however, that any corporation may require the payments into the expense fund before any amount shall be paid into the reserve fund of a loaning charge of not exceeding two and four-tenths per cent of the face of the loan value of the contract as the expense of selling and booking the contract. (Id. sec. 13.)

Art. 1313½m. Dividends.—It shall not be lawful for any company organized hereunder to make any dividends, except from surplus profits arising from its business, and in estimating such profits there shall be reserved therefrom the lawful reserve on all unexpired contracts, and also the amount of all unpaid withdrawals or cancelled certificates and all other debts due and payable or to become due and payable by the company. Any dividends made contrary to the provisions of this article shall subject the company making them to a forfeiture of its charter, and the Commissioner of Insurance and Banking shall forthwith revoke its certificate of authority; provided, that he shall give such company at least ten days' notice in writing of his intention to revoke such certificate, stating specifically the reason why he intends to revoke same. (Id. sec. 14.)

Art. 1313½n. Investment of funds.—Corporations chartered hereunder shall invest their funds in the following and no other way:

(1) If building or loan association, in such manner and in such property as building and loan associations are permitted to invest their funds under the building and loan laws of this State.

(2) In the purchase of lands or building lots and erecting buildings and improvements thereon, or in the purchase of lands and improvements, shall be or be contracted to be sold to a certificate holder of the company, payable by the periodical contribution of the certificates of the association or in periodical installments of such period of time as shall be agreed upon and designated in the by-laws of the company; at the expiration of which term all payments having been made, the lands, dwelling and improvements so sold and conveyed to such certificate holder shall become the property of the grantee discharged from further payment.

(3) In loans to certificate holders on bonds secured by mortgage which shall be a first lien on real estate located in the State where the contract holder resides at the time such contract is issued and not to exceed sixty-five per cent of the cash value thereof, payable in certificates of the company or by periodical installments; except where any company holds a mortgage on real estate which is a first lien, such company may increase its loan thereon and secure the same by a second or subsequent mortgage; provided, the total indebtedness to the company, less the amount paid on certificates pledged for such loan shall not exceed sixty-five per centum of the cash value of the real estate loaned on and all mortgages held by such company shall be prior to any other incumbrance on said real estate.

(4) In the redemption of certificates or contracts of the company.

(5) In loans upon the pledged or collateral security of the certificates or contracts of the company not to exceed ninety per cent of the withdrawal value of such contracts.

(6) In loans to persons not certificate or contract holders without pledge or their contracts as collateral security, on bonds secured by mortgage which shall be a first lien on improved real estate in this State not to exceed two-thirds the cash value thereof; provided, however, a purchase money mortgage or vendor's lien given to any company upon real estate sold by it shall not be considered a loan within the meaning of this subdivision.

(7) In the purchase, so long as the present war between the United States of America and the Imperial Government of Germany shall continue, of Liberty Bonds issued by the United States Congress and in such short time certificates of indebtedness as may have been heretofore or as may hereafter be authorized by the United States Congress. (Acts 1915, 1st C. S., ch. 5, sec. 15; Acts 1918, 4th C. S., ch. 45, secs. 1, 2.)

Paragraph 7 was added by Acts 1918, 4th C. S., ch. 45, sec. 2.

Art. 1313½o. May invest in same manner as life insurance companies.—Corporations chartered hereunder may invest in or

loan upon any of the securities in which life insurance companies are permitted to invest in or loan upon in accordance with the terms and provisions of Article 4734, Revised Civil Statutes, 1911. (Acts 1915, 1st C. S., ch. 5, sec. 16.)

Art. 1313½p. Purchase of, or loans on, real estate.—No real estate shall be purchased by any such company or any loan made upon bond and mortgage except upon a report in writing of the loan committee of such corporation signed by them, certifying to the kind and quality, and value of the real estate in question to the best of their judgment; such report shall be filed and preserved among the records of the company and any stockholder shall have access to such reports. (Id. sec. 17.)

Art. 1313½q. Taxation.—Corporations chartered hereunder shall be required to render for State, county and municipal taxation all of their real estate as other real estate is rendered, and all of the personal property of such company shall be valued as other property is valued for assessment in this State in the following manner:

From the total valuation of its assets shall be deducted the reserve, being the amount of the debts of such company by reason of its outstanding certificates or contracts, and from the remainder shall be deducted the assessed valuation of all the real estate owned by the company and the then remainder shall be the assessed taxable valuation of its personal property. For the purpose of State, county and municipal taxation the situs of all personal property belonging to such companies shall be at the home office of such company. (Id. sec. 18.)

Art. 1313½r. Statement by foreign companies.—Any corporation having authority to transact the business permitted by this Act incorporated under the laws of any other State, territory or country desiring to transact such business in this State, shall furnish the Commissioner of Insurance and Banking with a written or printed statement under oath of the president or vice president or treasurer and secretary of such company, which shall show:

(a) The name and locality of the company.
(b) The amount of its capital stock.
(c) The amount of its capital stock paid up.
(d) The assets of the company including:
  (1) The amount of cash on hand and in the hands of other persons, naming such persons and their residences.
  (2) Real estate income, where situated and its value.
  (3) The bonds owned by the company and how they are secured and the rate of interest thereon.
  (4) Debts due the company secured by mortgage describing the property mortgaged and the market value.
  (5) Debts otherwise secured stating how secured.
  (6) Debts due or to become due on certificates or contracts.
  (7) All other moneys and securities.
(e) Amount of liabilities of the company, stating the name of the person or corporation to whom liable.
(f) Contracts surrendered or cancelled and unliquidated and all other matters of liability in suspense.
(g) Provided, however, that the Commissioner of Insurance and Banking may require other additional facts to be shown by such statement. The same character of statement shall be made annually and each company shall be required to file a similar statement not later than March 1st of each year. (Id. sec. 19.)

Art. 1313½s. Same; filing copy of articles, etc.—Such foreign company shall accompany such statement with a certified copy of its articles of incorporation, of all amendments thereto, and copy of its by-laws, together with the name and residence of each of its officers and directors, all of which must be certified to under the hand of the president or secretary of such corporation; he shall also furnish copies of its contracts and a detailed statement of its plans for doing business in the same manner that these are required to be furnished by domestic companies. (Id. sec. 20.)

Art. 1313½t. Capital of foreign companies; reciprocal measures as to deposit of securities.—Such foreign company must as to its capital stock be in conformity with the provisions of this Act relative to domestic companies. Whenever the existing or future laws of any other State or territory of the United States, or of any other country, shall require of companies chartered under this Act any deposit of securities from such other State, territory or country before transacting business therein, then in all such cases such company shall before doing any business in this State be required to make the same deposit of securities with the Treasurer of this State. (Id. sec. 21.)

Art. 1313½u. Deposit of securities by foreign companies; investments.—No company, incorporated or organized under the laws of any other State, territory or country, shall transact business in this State, unless it shall first deposit and keep deposited with the Commissioner of Insurance and Banking of this State for the benefit of all the contract holders of such company, an amount in securities, such as domestic companies may invest in, equal to not less than thirty-three and one-third per cent of its capital stock; provided, however, that if a deposit of approved securities has been made under the laws of the State, territory or country chartering such corporation in such manner as to secure equally all the contract holders of such company, then no deposit shall be required in this State as to said thirty-three and one-third per cent of the capital stock, but a certificate of such deposit under the hand and seal of the officer of such other State with whom the same has been made shall be filed with the Commissioner of Insurance and Banking. The reserves of such company, however, not organized under the laws of this State shall be invested in securities or property of the same classes as that in which home companies are required to invest their reserves and such reserves shall be deposited with the Commissioner of Insurance and Banking in the same manner as that of domestic companies. (Id. sec. 22.)

Art. 1313½v. Power of attorney by foreign companies to accept service.—Each such foreign company shall file with the

Commissioner of Insurance and Banking of this State an irrevocable power of attorney, duly executed, constituting and appointing the Commissioner of Insurance and Banking of this State and his successors in office, or any officer or board which may hereafter be clothed with the powers and duties now devolving upon said commissioner, its duly authorized agent and attorney in fact for the purpose of accepting service for it or being served with citation in any suit brought against it in any court of this State, by any person, or by or to or for the use of the State of Texas, and consenting that the service of any civil process upon him as its attorney for such purpose in any suit or proceeding shall be taken and held to be valid, waiving all claim and right to object to such service or to any error by reason of such service; and said appointment, agency and power of attorney shall by its terms and recitals provide that it shall continue and remain in force and effect so long as such company continues to do business in this State or to collect amounts due on its contracts from citizens in this State, and so long as it shall have outstanding contracts in this State and until all claims of every character held by citizens of this State or by the State of Texas against such company shall have been settled. Said power of attorney shall be signed by the president or vice president and the secretary of such company, whose signature shall be attested by the seal of the company and the officers signing the same shall acknowledge the same before some officer authorized to take acknowledgments; said power of attorney shall be embodied in and be approved and its execution authorized by resolution of the board of directors of such company and a copy of such resolution duly certified by the proper officers of such company shall be filed with the said power of attorney in the office of the Commissioner of Insurance and Banking in this State and shall be recorded by him in a book kept for that purpose there to remain a permanent record of said department. The provisions of Revised Civil Statutes, Article 4773 and Article 4774 shall apply to powers of attorney provided for herein, and the duties of the Commissioner shall be the same as they are provided for in said article of the statute with reference to foreign life insurance companies. (Id. sec. 23.)

Art. 1313½w. Venue of suits; agents; bond; license.—Suit on contracts may be instituted and prosecuted against any company issuing the same in the county where the home office of such company is located or where it may have an agent.

All agents of any company transacting business hereunder must be licensed by the Commissioner of Insurance and Banking and in order to obtain such license, it must be made to appear that such agent or agents are of good moral character and of good repute in their communities for honesty and fair dealing; and they must tender to the Commissioner of Insurance and Banking a bond in form to be furnished by him in any sum not less than one thousand nor more than five thousand dollars, payable to the State of Texas for the use and benefit of any person who may be aggrieved by the action and conduct of such agent in the sale of any contract for the company of which he is licensed as an agent. Such agents must be licensed annually in the same manner that life insurance agents are licensed and such bond must be given by them. Such bond may be sued upon by any person having cause of action against such agent in any court of competent jurisdiction without the necessity of making the State of Texas or the Commissioner of Insurance and Banking a party to the suit; and repeated suits may be brought thereon until the entire amount thereof has been exhausted. (Id. sec. 24.)

For sections 25 and 26 creating offenses for violation of this act see Penal Code, arts. 532c, 532d.

Art. 1313½x. Forfeiture of charter for violation of act; penalties; acceptance of act.—No person, firm, corporation, or association of persons or joint stock company shall hereafter engage in this State in the business provided for in this Act, except in compliance with this Act, and any corporation which does so engage shall have its charter forfeited by suit of the Attorney General and shall be liable to a penalty of not less than one hundred dollars a day nor greater than five hundred dollars a day for each day that it does so engage; all such suits to be brought as other penalty suits which the Attorney General is authorized to bring; * * * provided, however, that existing corporations, individuals, associations and joint stock companies engaged in the business defined in this Act at the time this measure goes into effect shall have twelve months thereafter to adjust their business affairs and bring their business under the terms of this Act; provided, however, that they must within sixty days after this Act goes into effect submit a statement of their business to the Commissioner of Insurance and Banking together with the certificate of their intention to accept the provisions of this Act, and comply therewith. (Id. sec. 27.)

For the part omitted, as indicated by asterisks, see Penal Code, art. 532e.

Art. 1313½y. Bond investment and other companies to be governed by this act; unincorporated organizations to file certificate.—All bond investment companies operating in this State under the terms and provisions of Chapter 25, of Title 25, Revised Civil Statutes of this State, 1911, and all corporations engaging in the business in this State defined in this Act, and all individuals, associations and joint stock companies unincorporated, shall be governed by this Act in the manner herein set forth. Individuals, joint stock associations and associations unincorporated shall instead of a charter file a certificate with the Commissioner of Insurance and Banking acknowledged by them by their officers accepting the provisions of this Act and specifying and setting apart the amount of capital stock to be used in their business. In all other respects they shall be governed by the terms and provisions thereof. (Id. sec. 28.)

Art. 1313½z. Partial invalidity; operation of general laws.—Should any section of this Act be held unconstitutional or void for any reason or as to any particular company, corporation, individual or association, such holding shall not affect the remainder of the Act. The general corporation laws of this State where not in conflict herewith shall govern corporations chartered or

operating under this Act; and the general laws specifying charges which may be made by the Commissioner of Insurance and Banking shall apply to corporations chartered or operating hereunder. (Id. sec. 29.)

CHAPTER TWENTY-FIVE C

LOAN AND INVESTMENT COMPANIES

Art. 1313¾. Term defined.—The term "Loan and Investment Company" as used in this Act means any corporation formed under the provisions of this Act. (Acts 1917, 1st C. S., ch. 37, sec. 1.)

Art. 1313¾a. Incorporation.—Corporations may be organized under and by virtue of this Act in the same manner as corporations for profit under and by virtue of Title 25 of the Revised Statutes, except as otherwise herein provided. (Id. sec. 2.)

Art. 1313¾b. Capital stock.—The aggregate amount of the capital stock of a loan and investment company shall not be less than $25,000.00 in any city having a population of less than 50,000 inhabitants, and shall not be less than $50,000.00 in any city having 50,000 or more inhabitants and shall not be less than $100,000.00 in any city having 150,000 inhabitants or more, according to the last official census. The capital stock of any such corporation shall be divided into shares of the par value of $100.00 each. No corporation organized under this Act shall create more than one class of stock. (Id. sec. 3.)

Art. 1313¾c. Powers.—Every loan and investment company, in addition to the powers conferred upon corporations by the general incorporation law, shall have the following powers:

(a) To lend money and to deduct interest therefor in advance at a rate not to exceed six per centum per annum, and in addition to require and to receive uniform weekly or monthly instalments on its certificates of indebtedness purchased by the borrower simultaneously with the said loan transaction, or otherwise, and pledged with the corporation as security for the said loan, with or without an allowance of interest on such instalments.

(b) To sell or negotiate bonds, notes, certificates of investment and choses in action for the payment of money at any time, either fixed or uncertain and to receive payments therefor in instalments or otherwise, with or without an allowance of interest upon such instalments.

(c) To charge for a loan made pursuant to this section one dollar for each fifty dollars or fraction thereof loaned for expenses, including any examination or investigation of the character and circumstances of the borrower, co-maker or surety and the drawing and taking acknowledgment of necessary papers or other expenses incurred in making the loan; no charge shall be collected unless a loan shall have been made as a result of such examination or investigation. (Id. sec. 4.)

Art. 1313¾d. Restrictions on loans and deposits.—No loan and investment company shall:

(a) Hold at any one time the obligation of any one person, firm or corporation for more than two and one-half per cent, of the amount of capital and surplus of such loan and investment company.

(b) Make any loan under the provisions of this Act for a longer period than one year from the date thereof.

(c) Deposit any of its funds with any bank or trust company unless such bank or trust company has been designated as such depository by a vote of the majority of the directors or of the executive committee, exclusive of any director who is an officer, director or trustee of the depository so designated. (Id. sec. 5.)

Art. 1313¾e. Borrowing of money.—Issuing certificates of investment and the like in the transaction of the business of corporations organized hereunder shall not be construed to be borrowed money within the meaning of Article 1162 of Title 25 of the Revised Statutes. (Id. sec. 6.)

Art. 1313¾f. Supervision of Commissioner of Insurance and Banking.—The provisions of Articles five hundred and twenty-two to five hundred and twenty-five, inclusive, of the Revised Statutes relating to supervision by the Commissioner of Insurance and Banking, so far as applicable, together with any amendments thereof, shall apply to corporations incorporated under this Act. (Id. sec. 7.)

Art. 1313¾g. Provisions of Chapter 25 not to apply.—The provisions of Chapter twenty-five, title twenty-five, revised statutes, shall not apply to corporations organized under the provisions of this Act. (Id. sec. 8.)

CHAPTER TWENTY-SIX

FOREIGN CORPORATIONS

For serving process upon, see article 1861. For venue of suits against, see article 1830.

Art. 1314. (745) Permit to do business, etc., in state must be obtained, and how.—Hereafter, any corporation for pecuniary profit, except as hereinafter provided, organized or created under the laws of any other state, or of any territory of the United States, or of any municipality of such state or territory, or of any foreign government, sovereignty of municipality, desiring to transact business in this state, or solicit business in this state, or establish a general or special office in this state, shall be, and the same is hereby, required to file with the secretary of state a duly certified copy of its articles of incorporation; and, thereupon, the secretary of state shall issue to such corporation a permit to transact business in this state.

May be limited to one or more purposes.—If such corporation is created for more than one purpose, the permit may be limited to one or more purposes.

Showing as to stock by foreign corporations.—Provided, that foreign corporations obtaining permits to do business in this state shall show to the satisfaction of the secretary of state that at least one hundred thousand dollars, in cash, of their authorized capital stock has been paid in, or that fifty per cent of their authorized capital stock has been subscribed, and at least ten per cent of the authorized capital has been paid in, before such permit is issued. (Acts 1901, pp. 18–19; Acts 1889, p. 87, sec. 1.)

See Simkins' Contracts and Sales (3d Ed.) p. 357; Western Paper Bag Co. v. Johnson, 38 S. W. 364; Allen v. Tyson-Jones Buggy Co., 40 S. W. 393; Miller v. Goodman, 40 S. W. 718; Taber v. Interstate B. & L. Ass'n, 40 S. W. 954; Bein v. Wa-

chusetts Shirt Co., 43 S. W. 295; Whitley v. General Electric Co., 45 S. W. 959; Mansur & Tebbetts Imp. Co. v. Beer, 45 S. W. 972; T. & P. Ry. v. Davis, 54 S. W. 381; Lasater v. Purcell Mill & Elevator Co., 54 S. W. 425; Gale Mfg. Co. v. Finkelstein, 54 S. W. 619; Pasteur Vaccine Co. v. Burkey, 54 S. W. 804; Delaware Ins. Co. v. Security Co., 54 S. W. 916; Security Co. v. Panhandle Nat. Bank, 57 S. W. 22; G. C. & S. F. Ry. v. S. W. Tel. & Tel. Co., 61 S. W. 406; Lakeview Land Co. v. S. A. Traction Co., 66 S. W. 766; Chapman v. Hallwood Cash Register Co., 73 S. W. 969; De Witt v. Berger Mfg. Co., 81 S. W. 334; Barnhard Bros. & Spindler v. Morrison, 87 S. W. 376; St. Louis, etc., Fire Proofing Co. v. Beilharz, 88 S. W. 512; King v. Monitor Drill Co., 92 S. W. 1046; Brown v. Guarantee, etc., Co., 102 S. W. 138; Turner v. National Cotton Oil Co., 109 S. W. 1112; Coca Cola Co. v. Allison, 113 S. W. 308; State Bank of Chicago v. Holland, 126 S. W. 564; City of San Antonio v. Salvation Army, 127 S. W. 860; Ft. Worth Glass & Sand Co. v. S. R. Smythe Co., 128 S. W. 1136; S. R. Smythe Co. v. Ft. Worth Glass & Sand Co., 142 S. W. 1157; Kingman Texas Implement Co. v. Borders, 156 S. W. 614; Erwin v. E. I. Du Pont De Nemours Powder Co., 156 S. W. 1097; A. Leschen & Sons Rope Co. v. Moser, 159 S. W. 1018; York Mfg. Co. v. Colley, 172 S. W. 206; Maury-Cole Co. v. Lockhart Grocery Co., 173 S. W. 262; White Sewing Mach. Co. v. Sneed, 174 S. W. 950; Philip A. Ryan Lumber Co. v. Ball, 177 S. W. 226; Studebaker Harness Co. v. Gerlach Mercantile Co., 192 S. W. 545; Eastman v. Tiger Vehicle Co., 195 S. W. 336; Denman v. Kaplan, 205 S. W. 739.

Art. 1315. Permit to do business, affidavit as condition of issuance; requisites of.—As a condition precedent to the issuance by the secretary of state of a permit to any foreign corporation, authorizing it to do business in this state, the president, vice-president, secretary, or treasurer, or two of the directors of such corporation, shall make and subscribe an affidavit in writing stating that such corporation is not a trust or organization in restraint of trade in violation of the laws of this state, has not, within twelve months next preceding the making of such affidavit, become or been a party to any trust agreement of any kind or character whatsoever, which would constitute a violation of any anti-trust law of the state existing at the date of such affidavit, and has not, within that time, entered into, or been in anywise a party to, any combination in restraint of trade, within the United States of America, and that no officer of such corporation has, within the knowledge of affiant, within twelve months next preceding the date of such affidavit, made, on behalf of such corporation or for its benefit, any such contract, or entered into, or become a party to, any such combination in restraint of trade. Such affidavit in writing shall be personally subscribed and sworn to by such affiant or affiants before some officer who is by law duly authorized to administer oaths, and the jurat of such officer shall be attested by his official signature and seal of office; and such affidavit in writing so attested, shall be filed in the office of the secretary of state before the issuance of any such permit. (Acts 1909, S. S. pp. 267–8, Id.)

Art. 1316. Secretary of state to require proof in what case.—It shall be the duty of the secretary of state to require satisfactory proof as to the amount of capital actually invested in this state before issuing any permit to any foreign building and loan company to do business in this state. (Id. p. 267.)

Art. 1317. (745) Rights under permit.—Such corporation, on obtaining such permit, shall have and enjoy all the rights and privileges conferred by the laws of this state on corporations organized under the laws of this state. (Acts 1897, p. 167.)

Art. 1317a. Right to purchase, hold, sell, mortgage, etc., real and personal estate; provisos as to alienation.—Such corporations, under such permits, shall be authorized and empowered to hold, purchase, sell, mortgage or otherwise convey such real estate and personal estate as the purposes of such corporation may require, and also, to take, hold and convey such other property, real, personal or mixed, as may be requisite for such corporation to acquire, in order to obtain or secure the payment of any indebtedness or liability due, or which may become due, or belonging to, the corporation; provided, that, if such corporation so obtaining a permit to do business in this state, shall acquire any real estate under the powers herein conferred, it shall alienate all real property so acquired by it not necessary for the purposes of such corporation, within fifteen years from the time of acquisition, and provided, further, that such corporation shall alienate all real estate acquired by it for the purposes of such corporation, within fifteen years from the expiration of the time for which the permit is issued, or, if such permit be renewed, or such corporation be otherwise authorized to carry on business in this state, then such corporation shall alienate such real estate within fifteen years after the expiration of the time for which such permit is extended, or it is so authorized to carry on business in this state; and provided, further, that, if such corporation shall cease to carry on business in this state, that it shall alienate all such real estate so acquired by it, within fifteen years after the time it shall so cease to carry on business in this state. (Id.)

Art. 1318. (746) No such corporation can maintain any suit, unless.—No such corporation can maintain any suit or action, either legal or equitable, in any of the courts of this state upon any demand, whether arising out of contract or tort, unless at the time such contract was made, or tort committed, the corporation had filed its articles of incorporation under the provisions of this chapter in the office of the secretary of state for the purpose of procuring its permit. (Acts 1897, p. 167.)

Townes' Texas Pleading, p. 254; see Simkins' Equity (2d Ed.) p. 562; Taber v. Interstate B. & L. Ass'n, 40 S. W. 954; T. & P. Ry. v. Davis, 54 S. W. 381; Id. 55 S. W. 562; Gale Mfg. Co. v. Finkelstein, 54 S. W. 619; Pasteur Vaccine Co. v. Burkey, 54 S. W. 804; Security Co. v. Panhandle Nat. Bank, 57 S. W. 22; Lakeview Land Co. v. Traction Co., 66 S. W. 766; Chapman v. Hallwood Cash Register Co., 73 S. W. 969; Barnhard Bros. & Spindler v. Morrison, 87 S. W. 376; Turner v. National Cotton Oil Co., 109 S. W. 1112; State Bank of Chicago v. Holland, 126 S. W. 564; City of San Antonio v. Salvation Army, 127 S. W. 860; S. R. Smythe Co. v. Ft. Worth Glass & Sand Co., 142 S. W. 1157; Kingman Texas Implement Co. v. Borders, 156 S. W. 614; Erwin v. E. I. Du Pont De Nemours Powder Co., 156 S. W. 1097; A. Leschen & Sons Rope Co. v. Moser, 159 S. W. 1018; Maury-Cole Co. v. Lockhart Grocery Co., 173 S. W. 262; White Sewing Mach. Co. v. Sneed, 174 S. W. 950; Latham Co. v. Louer Bros., 176 S. W. 920; Philip A. Ryan Lumber Co. v. Ball, 177 S. W. 226; Peck-Hammond Co. v. Hamilton Independent School Dist., 181 S. W. 697; Studebaker Harness Co. v. Gerlach Mercantile Co., 192 S. W. 545; Russek v. Wind, Ems & Co., 192 S. W. 584; Billingslea Grain Co. v. Howell, 205 S. W. 671.

Art. 1319. (747) Corporations exempted from provisions hereof.—The pro-

visions of this chapter shall not apply to corporations created for the purpose of constructing, building, operating or maintaining any railway, or to such corporations as are required by law to procure certificates of authority to do business from the commissioner of insurance and banking. (Id. sec. 4.)

Pasteur Vaccine Co. v. Burkey, 54 S. W. 804; Kingman Texas Implement Co. v. Borders, 156 S. W. 614.

Art. 1320. (748) Permit to extend for period of ten years.—No permit shall be issued for a longer period than ten years from the date of filing such articles of incorporation in the office of the secretary of state. (Id. sec. 6.)

Art. 1321. (749) Evidence.—Either the original permit or certified copies thereof by the secretary of state shall be evidence of the compliance on the part of any corporation with the terms of this chapter. A certificate of the secretary of state to the effect that the corporation named therein has failed to file in his office its articles of incorporation shall be evidence that such corporation has in no particular complied with the requirements of this chapter. (Id. sec. 7.)

St. Louis, etc., Fire Proofing Co. v. Beilharz, 88 S. W. 512; Turner v. National Cotton Oil Co., 109 S. W. 1112; Kingman Texas Implement Co. v. Borders, 156 S. W. 614.

TITLE 26

COTTON—BALING OF

Art. 1322. Baling of cotton regulated; penalty.—That every person, firm, corporation or association of persons, owning or operating a compress in this state, and their agents and employés, are hereby required, in compressing, recompressing, baling or rebaling cotton bales, to so bind and tie every bale of cotton by them compressed, recompressed, baled or rebaled, that no such bale shall be delivered to any railroad company, or other common carrier, by such person, firm, corporation or association of persons, their agents or employés, unless such bale of cotton shall be free from all or any dangerously exposed ends of bands or buckles, or any dangerously exposed or protruding part of the ties, bands, buckles or splices used in tying or binding such bale of cotton. And any such person, firm, corporation or association of persons, who shall fail to bind or tie any bale of cotton by them compressed, recompressed, baled or rebaled, in the manner above provided, and shall deliver, or cause to be delivered, any such bale of cotton, to any railroad company, or other common carrier, such person, firm, corporation or association of persons, shall forfeit and pay to the state of Texas the sum of not less than fifty dollars nor more than two hundred and fifty dollars, which may be recovered in a civil suit brought in the name of the state of Texas in a court of competent jurisdiction. (Acts 1910, 4 S. S. p. 118, sec. 1.)

Art. 1323. Person, firm, etc., receiving for storage, transportation, etc., cotton not baled as required, liable for injuries to employé; duty of inspection.—Any person, firm, corporation or association of persons, receiving for storage, loading for transportation, or transporting, any such compressed bale or bales of cotton, in this state, containing any dangerously exposed ends of bands or buckles, or any dangerously protruding part or parts of the ties, bands, buckles, or splices used in tying or binding such bale or bales of cotton, shall be liable in damages for injury to any person in the employ of such person, firm, corporation or association of persons, occasioned by reason of such dangerously exposed ends of bands or buckles, or any dangerously exposed or protruding part or parts of the ties, bands, buckles or splices used in tying or binding such bale or bales of cotton, while in the discharge of the duties of such employment. The duty of inspection of such bales of cotton shall be on the employer and not on the employé. (Id. sec. 1.)

Art. 1324. Duty of commissioner of labor.—It shall be especially the duty of the commissioner of labor and his deputies to see that the provisions of articles 1322 and 1323 hereof are observed and enforced; and, in pursuance thereof, he shall obtain and collect evidence of all violations of said provisions upon the part of persons, firms, corporations and associations of persons engaged in the business of compressing cotton, who shall fail to comply with the said provisions. The commissioner of labor shall file annual statements with the governor, showing in detail all expenses incurred by him in connection with his duties under this act. (Id. sec. 2.)

Art. 1324a. Ginners to write or stamp weight of bagging and ties on bale, etc.; violation; misdemeanor.—That the owners, lessees, operators or receivers of all cotton gins, in this state, shall stamp or write, upon each and every bale of cotton ginned by them, in plain figures, the weight of the bagging and ties in which the cotton is wrapped, said figures to be written or stamped with indelible ink, and shall be not less than four inches in height and three inches in width, and shall be preceded by the word, "tare," written or stamped upon the bale with indelible ink, the letters composing said word to be not less than four inches in height and three inches in width. Any person wilfully violating the provision of this section shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than ten, nor more than one hundred dollars. (Acts 1911, p. 47, sec. 1.)

Art. 1324b. Compressors to write or stamp words and figures prescribed by preceding article, when defaced or hidden; violation; misdemeanor.—That the owners, lessees, operators or receivers of all cotton compresses in this state, shall write or stamp upon each and every bale of cotton compressed by them, the word and figures placed upon such bale or bales of cotton by the ginner ginning the same, in compliance with section 1 of this Act [Art. 1324a], in the same manner as provided for ginners in said section 1, should such word and figures be defaced or hidden during the process of compression. Any person wilfully violating the provisions of this section, shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than ten ($10.00) dollars, nor more than one hundred ($100.00) dollars. (Id. sec. 2.)

Art. 1324c. Separate offenses.—Each bale of cotton ginned and each bale of cotton compressed without having placed there-

on the word and figures as provided in sections 1 and 2 [Arts. 1324a, 1324b], respectively, of this Act, shall constitute a separate offense. (Id. sec. 3.)

Art. 1324d. Greater deduction for tare unlawful.—It shall be unlawful for any person, firm, corporation, cotton exchange or board of trade, to make a greater deduction for tare, either from the gross weight of any bale of cotton or the price of same than is shown by the figures placed upon the bale in compliance with section 1 of this Act [Art. 1324a]. (Id. sec. 4.)

Art. 1324e. Violation of preceding article; misdemeanor.—Any person, firm, corporation, cotton exchange, or board of trade, or any agent of any person, firm, corporation, cotton exchange, or board of trade who violates the provisions of section 4 of this Act [Art. 1324d], shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by a fine, of not less than ten nor more than one hundred dollars. (Id. sec. 5.)

Art. 1324f. Separate offenses.—Each bale of cotton from which a greater deduction for tare is made, than is shown by the figures written or stamped upon same, shall constitute a separate offense. (Id. sec. 6.)

TITLE 27

COUNTER CLAIM

Art. 1325. (750) (645) Counter claim may be pleaded, when.—Whenever any suit shall be brought for the recovery of any debt due by judgment, bond, bill or otherwise, the defendant shall be permitted to plead therein any counter claim which he may have against the plaintiff, subject to such limitations as may be prescribed by law. (Acts 1840, p. 62; P. D. 3443.)

See Hurst v. Benson, 65 S. W. 76; Haggard v. Bothwell, 113 S. W. 965; Hardeman-King Lumber Co. v. Hampton Bros., 142 S. W. 867; Hudgins Produce Co. v. J. R. Beggs & Co., 185 S. W. 339; Pate v. Whitley, 196 S. W. 581; Binder v. Millikin, 201 S. W. 239.

Art. 1326. (751) (646) Requisites of the plea.—The plea setting up such counter claim shall state distinctly the nature and the several items thereof, and shall conform to the ordinary rules of pleading. (P. D. 3444.)

See Henderson v. Johnson, 55 S. W. 35; Scott v. Texas Constr. Co., 55 S. W. 37; Hurst v. Benson, 65 S. W. 76; Staggs' Heirs v. Piland, 71 S. W. 763; Ajax-Grieb Rubber Co. v. Hubbard, 181 S. W. 568; Hudgins Produce Co. v. J. R. Beggs & Co., 185 S. W. 339.

Art. 1327. (752) (647) Judgment over in defendant's favor, when.—On the trial of such issue, if the defendant shall establish a demand against the plaintiff exceeding that established against him by the plaintiff, the court shall render judgment for the defendant for such excess. (P. D. 3446.)

See post, art. 1900.

Art. 1328. (753) (648) Judgment for costs, how determined.—Whenever a counter claim is pleaded under the provisions of this chapter, the party in whose favor final judgment is rendered shall also recover his costs, unless it should be made to appear on the trial that the counter claim of the defendant was acquired after the commencement of the suit, in which case, if the plaintiff establishes a cause of action existing at the commencement of the suit, he shall recover his costs. (Id. and Acts 1860, p. 5; P. D. 3445, 3446.)

See Brown v. Montgomery, 47 S. W. 804; O'Maley v. Garriott, 49 S. W. 108; Masterson v. Heitman & Co., 87 S. W. 227; Northcutt v. Hume, 174 S. W. 974.

Art. 1329. (754) (649) Certain and uncertain damages not to be set off against each other.—If the plaintiff's cause of action be a claim for unliquidated or uncertain damages, founded on a tort or breach of covenant, the defendant shall not be permitted to set off any debt due him by the plaintiff; and, if the suit be founded on a certain demand, the defendant shall not be permitted to set off unliquidated or uncertain damages founded on a tort or breach of covenant on the part of the plaintiff. (P. D. 3447.)

See Presnall v. McLary, 50 S. W. 1066; Gillett v. Moody, 54 S. W. 35; Worley v. Smith, 63 S. W. 903; Wheat v. Ball, 68 S. W. 181; Stagg's Heirs v. Piland, 71 S. W. 763; Baldwin v. Richardson, 87 S. W. 746; Curlee v. Rogan, 136 S. W. 1126; Wise v. Ferguson, 138 S. W. 816; Gibson v. Singer Sewing Mach. Co., 147 S. W. 285; Fuller v. Pruitt & Biggs, 157 S. W. 176; Reeves v. White, 161 S. W. 43; Shaw v. Faires, 165 S. W. 501; Avent v. Ormand, 173 S. W. 239; Maury-Cole Co. v. Lockhart Grocery Co., 173 S. W. 262; First Nat. Bank of Gorman v. Mangum, 176 S. W. 1197; Ray v. Cartwright, 180 S. W. 927; Binder v. Millikin, 201 S. W. 239; Commercial State Bank v. Van Hutton, 208 S. W. 363.

Art. 1330. (755) (650) Matters incident to plaintiff's cause of action may be set off.—Nothing in the preceding article shall be so construed as to prohibit the defendant from pleading in set off any counter claim founded on a cause of action arising out of or incident to, or connected with, the plaintiff's cause of action.

See Hurst v. Benson, 65 S. W. 76; Gage v. Hunter, 94 S. W. 1104; Bateman v. Hipp, 111 S. W. 971; Hamilton v. Dismukes, 115 S. W. 1181; Wise v. Ferguson, 138 S. W. 816; Cooksey v. Jordan, 140 S. W. 1175; Duran v. Lucas, 144 S. W. 695; Ajax-Grieb Rubber Co. v. Byars & Thompson, 153 S. W. 921; Fuller v. Pruitt & Briggs, 157 S. W. 176; Gillispie v. Ambrose, 161 S. W. 937; Shaw v. Faires, 165 S. W. 501; Ross v. Jackson, 165 S. W. 513; Brady-Neely Grocer Co. v. De Foe, 169 S. W. 1135; Avent v. Ormand, 173 S. W. 239; Maury-Cole Co. v. Lockhart Grocery Co., 173 S. W. 262; First Nat. Bank of Gorman v. Mangum, 176 S. W. 1197; Guitar v. First State Bank of Hermleigh, 191 S. W. 860; Pate v. Whitley, 196 S. W. 581; Closner & Sprague v. Acker, 200 S. W. 421.

TITLE 28

COUNTIES AND COUNTY SEATS

CHAPTER ONE

CREATION OF COUNTIES

Art. 1331. (756) (651) Legislature may create counties.—The legislature shall have power to create counties for the convenience of the people, subject to the following provisions of this chapter. (Const., art. 9, sec. 1.)

Art. 1332. (757) (652) Must have 900 square miles, unless, etc.—In the territory of the state, exterior to the counties now existing, no new county shall be created with a less area than nine hundred square miles, in a square form, unless prevented by pre-existing boundary lines. Should the state lines render this impracticable in border counties, the area may be less. (Id.)

Art. 1333. (758) (653) Exterior territory may be divided at any time.—The territory referred to in the preceding article may at any time, in whole or in part, be di-

vided into counties in advance of population, and attached, for judicial and land surveying purposes, to the most convenient organized county or counties. (Id.)

Art. 1334. (759) (654) Counties created out of other counties must have 700 square miles.—Within the territory of any county or counties now existing, no new county shall be created with a less area than seven hundred square miles; nor shall any such county now existing be reduced to a less area than seven hundred square miles. (Id.)

Art. 1335. (760) (655) Line of new county shall not approach nearer than 12 miles to an established county seat.—No new counties shall be created so as to approach nearer than twelve miles of the county seat of any county from which it may, in whole or in part, be taken. (Id.)

Art. 1336. (761) (656) Counties with less than 900 square miles may be created, how.—Counties of a less area than nine hundred, but of seven hundred or more, square miles, within counties now existing, may be created by a two-thirds vote of each house of the legislature, taken by yeas and nays, and entered on the journals. (Id.)

Art. 1337. (762) (657) Existing counties may be reduced to 700 square miles, how.—Any county now existing may be reduced to an area of not less than seven hundred square miles by a like two-thirds vote of each house of the legislature, taken by yeas and nays, and entered on the journals. (Id.)

Art. 1338. (763) (658) New county shall pay its part of the liabilities of the old county.—When any part of a county is stricken off and attached to, or created into, another county, the part stricken off shall be holden for, and obliged to pay, its proportion of all the liabilities then existing of the county from which it was taken, in such manner as the law shall provide. (Id.)

Art. 1339. (764) New counties to pay pro rata of indebtedness.—Any county which has heretofore been created, or may hereafter be created, by the legislature of the state of Texas, out of any other county or counties, shall be held liable for, and bound to pay its proportion of all the liabilities of the county or counties from which it was taken, existing at the date of its creation of such new county, according to the proportionate value of the property in the excised territory, and the value of the property remaining in the old county; and a suit to recover the same may be brought by the parent county, either in the district court of such parent county, or in the district court of the newly created county; and the court shall have power to make any order or render any judgment necessary to carry out and satisfy its decree therein; provided, that the provisions of this article shall not apply to any county, the claims against which have already been placed before courts having jurisdiction thereof and tried or dismissed under laws that were at such time constitutional. (Acts of 1893, p. 124.)

Art. 1340. (765) Such indebtedness, how apportioned.—Where any suit has been, or shall be, brought to enforce payment of the indebtedness created by the parent county or counties, or for the pro rata share of the excised territory, the assessment rolls of the parent county or counties for the year in which such new county was created shall be conclusive evidence of the property and value thereof remaining in the parent county and in the excised territory at the date of the creation of such new county; provided, that when the new county was organized and made assessment rolls for the same year as that in which it was created, such rolls shall be taken as conclusive evidence of the property therein and the taxable values thereof at the date of the creation of such new county; and the assessment rolls of the parent county for the same year shall be conclusive evidence of the property and the value thereof remaining in the parent county at the date of the creation of such new county. (Id.)

Art. 1341. (765a) Suits to have precedence; special tax to pay judgments.—All suits brought under this law are hereby declared to be of general public interest, and shall be given precedence upon the dockets of the courts of this state; and, if the plaintiff shall recover, it shall be the duty of the commissioners' court of the newly created county to levy a special tax on all property in the territory taken from the plaintiff county sufficient to pay off the judgment, and, if the first levy be insufficient, to make said levy annually till said judgment is satisfied. and the judgment of the court shall order said commissioners' court to make such levies. (Id.)

Art. 1342. (766) Non-residents to pay to comptroller.—It shall be the duty of the comptroller of public accounts to assess and collect from the nonresidents of unorganized counties such rate of taxation, to pay the pro rata share of the debt due by such unorganized county, as the commissioners' court of the parent county shall levy on property in said parent county to pay such debt, and a certified statement of the commissioners' court making the levy in the parent county, giving the amount of the levy, shall be authority for his action. (Acts of 1889, p. 136.)

Art. 1343. (767) When territory is added, duty of commissioners in organized counties.—When the territory taken is added to, and made a part of, an organized county, it shall be the duty of the commissioners' court of such county to levy and have collected on all property in such territory a tax sufficient to pay their pro rata of the indebtedness, said tax not to exceed the constitutional limit; and it shall be the duty of the commissioners' court of the county to which any unorganized county may be attached for judicial purposes to levy and have collected on all property in such unorganized county owned or held by resident citizens a tax for the purpose of paying such indebtedness. (Id.)

Art. 1344. (768) Tax for pro rata indebtedness.—When any county has organized, it shall be the duty of the commissioners' court of such county to levy and have collected on all property in this county such rate of taxation to pay the pro rata share of the debt due by such county as the commissioners' court of the parent county shall levy on property in said parent county to pay such debt. (Id.)

Art. 1345. (769) Tax collected in unorganized counties by comptroller.—All county taxes due unorganized counties col-

lected by the comptroller shall be kept by him to the credit of such unorganized county until the same shall have been organized; then he shall, upon demand of the treasurer of the former unorganized county, pay the same over to the said treasurer; provided, that in case any unorganized county is indebted to any county from which the same has been created, and which debt existed at the time of its creation, the comptroller shall use so much of said fund as may be necessary to pay the pro rata share of such debt due by such unorganized county; and an order of the commissioners' court of the parent county stating the amount due from the unorganized county shall be authority for the comptroller to draw his warrant for said amount; and the provisions of this article shall apply to all money now held by the comptroller for unorganized counties and to all money hereafter collected. (Id.)

Art. 1346. (770) County bonds held by school funds apportioned between counties, when.—When any new county has been created wholly and entirely out of any existing county, if any bonds were legally issued by the parent county prior to the severance of a part of its territory, such of said bonds and the coupons due thereon as are held by the school fund of the state of Texas shall be apportioned between the parent county and the county or counties created out of the parent county, by the comptroller of public accounts, on the basis now provided by law. (Acts 1891, p. 39.)

Art. 1347. (771) Commissioners' court to levy tax for, pro rated.—It shall be the duty of the commissioners' court of the parent county, or any county created out of the parent county, which has now or may hereafter be organized, to levy and have collected on all property in such county a tax to pay such county's pro rata share of the debt. It shall be the duty of the commissioners' court of any county to which any unorganized county may be attached for judicial purposes to levy and have collected on all property in said unorganized county owned by resident citizens thereof a tax for the purpose of paying said county's part of the debt; and it shall be the duty of the comptroller of public accounts to assess and collect on all property in such unorganized counties owned by nonresidents a tax to pay said counties' pro rata part of said debt; provided, that nothing herein shall be construed to authorize the levy and collection of any tax in excess of that now allowed by the constitution of this state. (Id.)

Art. 1348. (772) (659) Part of existing county shall not be detached, etc., except, etc.—No part of any existing county shall be detached from it and attached to another existing county until the proposition for such change shall have been submitted to a vote of the electors of both counties, and shall have received a majority of those voting on the question in each. (Const. art. 9.)

Art. 1349. (773) (660) Election shall be ordered, when, etc.—An election for the purpose named in the preceding article shall be ordered by the county judge, or county judges, of the county or counties from which it is proposed to detach any portion thereof, or to attach any portion thereto, upon the application in writing of not less than fifty qualified voters of said county or counties.

Art. 1350. (774) (661) Application shall show, what.—The application provided for in the preceding article shall designate particularly, by metes and bounds, the portion of territory proposed to be detached, and shall show the number of square acres contained within said bounds, and the number of square acres remaining in the county or counties from which it is proposed to detach such part or parts, and the distance on a direct line of the county seat of any such county or counties from the nearest boundary line of the territory which it is proposed shall be detached.

Art. 1351. (775) (662) Notices of such election shall contain what.—The notices of such election shall contain, substantially, the boundaries and statements contained in the application, and in the order of election.

Art. 1352. (776) (663) Question to be voted upon.—The question to be voted upon at such election shall be, for or against the proposition, and the ballots shall be, "For the proposition," or "Against the proposition."

Art. 1353. (777) (664) Law governing other elections shall govern this.—Such election shall be governed by the law governing other elections so far as the same may be applicable, and not in conflict with any of the provisions of this chapter.

Art. 1354. (778) (665) Returns of elections, how and to whom made.—The returns of such election shall be made to the county judge, or county judges, of the county or counties in which the election takes place; and such county judge, or county judges, shall estimate the vote and make duplicate statements of the same, and shall certify to such statements officially; and one of said statements, together with a copy of the application certified to by him officially, he shall seal in an envelope, writing his name across the seal, and indorsing upon the package "Election returns of ..... county," and direct and transmit the same by mail or other safe conveyance to the speaker of the house of representatives at the seat of government, in time for the same to be received at as early a day as practicable during the next session of the legislature.

Art. 1355. (779) (666) Another election for same purpose shall not be held for five years.—When any such election has been held in a county, and the proposition to detach a portion thereof has been defeated, no other election for the same purpose shall be ordered or held for the period of five years thereafter.

CHAPTER TWO

ORGANIZATION OF COUNTIES

Art. 1356. (780) (667) Old county shall organize new one.—Whenever any new county shall hereafter be established, it shall be the duty of the county commissioners' court of the county from which the territory of such new county, or the greater part thereof, was taken, at least one month previous to the general election of county officers next after such new county shall have been established, to lay off and divide such new county into convenient precincts for the election of justices of the peace, county commissioners and constables, defining particularly the boundaries of such precincts; and also to designate convenient places in such

new county where elections shall be held; of all which they shall cause a record to be made by the clerk, and a copy thereof shall be transmitted to the county judge of such new county when elected. (Act March 20, 1848. P. D. 1063.)

Art. 1357. (781) (668) Election to be ordered when and by whom.—It shall be the duty of the county judge of every county from which any new county has been so taken, at least one month previous to the general election of county officers next after such new county has been established, to order an election to be held in such new county, on said general election day, for all county officers authorized to be elected by the people of such new county, and to appoint a presiding officer for each place designated in such new county, for holding elections; such order of elections shall specify the number of precincts, their boundaries, and the officers to be elected in such county. Such presiding officers shall hold such elections in accordance with the laws regulating elections, and shall make their returns to the county judge who ordered such election, who shall open and examine such returns and give certificates to the persons elected. (Id. P. D. 1064.)

Art. 1358. (782) (669) County commissioners may act, when.—In all cases where the office of county judge shall be vacant, any two of the county commissioners shall be authorized to perform all the duties required of the county judge by the provisions of this chapter. (Id. P. D. 1065.)

Art. 1359. (783) (670) New county subject to old until organized.—Until a new county is organized in accordance with law, the territory thereof shall remain in all respects subject to the county from which the same has been taken.

Art. 1360. (784) (671) Disorganized counties to be attached to other counties, until, etc.—All legally organized counties that, from any cause, may have lost, or may hereafter lose, their county organization, shall be, for all judicial and surveying purposes, and for the registration of deeds, mortgages and all other instruments that are now, or may hereafter be, required or permitted by law to be recorded, attached to the organized county whose county seat is nearest to the county seat of such disorganized county, and so remain attached until such disorganized county shall again be legally organized. (Act Nov. 5, 1866, p. 90.)

Art. 1361. (785) (672) County attached to another may be organized, how.—When any unorganized or disorganized county has been attached to another county for judicial purposes or other purposes, and desires to be organized or reorganized, a petition expressing such desires, signed by not less than seventy-five qualified voters, residing in such unorganized or disorganized county may be presented to the commissioner's court of the county to which such unorganized or disorganized county is attached, and thereupon it shall be the duty of said court to proceed without delay to the organization or reorganization of such county, as the case may be in the same manner as hereinbefore provided for the organization of new counties. (Act May 1, 1874, p. 188, sec. 2; Acts 1918, 4th C. S., ch. 11, sec. 1.)

Art. 1362. (786) (673) Certificates of election in such cases shall be issued by whom and bonds taken, etc.—It shall be the duty of the county judge of the county conducting the organization of another county to issue the certificates of election to the officers elected in such organized or reorganized county, and to approve the bonds of such officers, and administer to them the oath of office in accordance with law. (Act May 1, 1874, p. 188, sec. 3.)

Art. 1363. (787) (674) Books, etc., shall be delivered to such officers.—It shall be the duty of all officers of the county from which any new county has been created or to which any such newly organized or reorganized county has been attached, and the duty also of all other persons who may have in their possession any books, records, maps or other property belonging to such newly organized or reorganized county, to deliver the same to the proper officers of such newly organized or reorganized county within five days after such officers have been legally qualified as such: and any officer or person who shall wilfully fail to make such delivery upon demand made therefor, shall be guilty of a misdemeanor and punished as provided in the Penal Code. (Id. sec. 4.)

Art. 1364. (788) (675) Elections in unorganized counties.—In all cases where a county is not organized, and there is no officer in the same authorized by law to organize such county, the county judge of the nearest county which is organized may order elections for county officers in any such disorganized county, and appoint the presiding officers and managers and clerks of election, as prescribed by law in other cases. (Act March 26, 1848. P. D. 3624.)

CHAPTER THREE

CORPORATE RIGHTS AND POWERS

Art. 1365. (789) (676) County a body corporate.—Each county which now exists, or which may be hereafter established, shall be a body corporate and politic. (Act May 11, 1846; P. D. 1044.)

First Nat. Bank of Portales, N. M., v. McElroy, 112 S. W. 801; Boaz v. Ferrell, 152 S. W. 200; Comanche County v. Burks, 166 S. W. 470; King County v. Martin, 173 S. W. 960.

Art. 1366. (790) (677) Suits against.—No county shall be sued unless the claim upon which such suit is founded shall have first been presented to the county commissioners' court for allowance, and such court shall have neglected or refused to audit and allow the same, or any part thereof. (P. D. 1045.)

See Townes' Texas Pleading, p. 231; Herring-Hall-Marvin Co. v. Bexar County, 40 S. W. 145; Mills Co. v. Lampasas County, 40 S. W. 552; Brewster Co. v. Presidio County, 48 S. W. 213; Bowie Co. v. Powell, 66 S. W. 237; Anderson v. Ashe, 90 S. W. 873; Bell County v. Flint, 91 S. W. 329; Yantis v. Montague County, 110 S. W. 161; Williams v. Bowie County, 123 S. W. 199; Bogue v. Van Zandt County, 138 S. W. 1065; Boaz v. Ferrell, 152 S. W. 200; Comanche County v. Burks, 166 S. W. 470; Dallam County v. S. H. Supply Co., 176 S. W. 798; Smith v. Wise County, 187 S. W. 705; Dromgoole v. Karnes County, 189 S. W. 975; Potter County v. Boesen, 191 S. W. 787; Cobb & Gregory v. Dies, 203 S. W. 438.

Art. 1367. (791) (678) Inhabitants may be jurors, etc., in such suits.—In all suits instituted by or against any county, the inhabitants of the county so suing or being sued may be jurors or witnesses, if otherwise

competent and qualified according to law. (P. D. 1049.)

See Watson v. Dewitt Co., 46 S. W. 1062.

Art. 1368. (792) (679) Execution shall not issue against county.—No execution shall be issued on any judgment against any county; but, when a judgment shall be rendered against a county, it shall be the duty of the county commissioners' court of such county to settle and pay such judgment in like manner and pro rata as other claims of a similar description are settled and paid by said court. (P. D. 1050.)

Art. 1369. (793) (680) Deeds, grants, etc., to counties valid, etc.—All deeds, grants and conveyances heretofore made, or which may be hereafter made and duly acknowledged, or proven, and recorded as other deeds of conveyance, to any county, or to the courts or commissioners of any county, or any other person or persons, by whatever form of conveyance, for the use and benefit of any county, shall be good and valid to all intents and purposes to vest in such county in fee simple or otherwise all such right, title, interest and estate as the grantor in any such deed or conveyance had at the time of the execution thereof in the lands conveyed and was intended thereby to be conveyed. (P. D. 1051.)

Art. 1370. (794) (681) Commissioners to sell real estate of.—The county commissioners' court may, by an order to be entered in the minutes of said court, appoint a commissioner to sell and dispose of any real estate of the county at public auction; and the deed of such commissioner, made in conformity to the order of said court, under his proper hand and seal, for and in behalf of the county, duly acknowledged and proven and recorded shall be sufficient, to all intents and purposes, to convey to the purchasers all the right, title and interest and estate whatever which the county may have in and to the premises to be conveyed; provided, however, that nothing contained in this article shall authorize the county commissioners' court of any county to dispose of any lands given, donated or granted to such county for the purposes of education in any other manner than shall be directed by law. (P. D. 1052.)

See Logan v. Stephens Co., 81 S. W. 109; Hardin County v. Nona Mills Co., 112 S. W. 822; Spencer v. Levy, 173 S. W. 550.

Art. 1371. (795) (682) Contracts with a county valid.—All notes, bonds, bills, contracts, covenants, agreements or writings, made, or to be made, whereby any person is, or shall be, bound to any county, or to the court or commissioners of any county, or to any other person or persons, in whatever form, for the payment of any debt or duty or the performance of any matter or thing to the use of any county, shall be valid and effectual, to all intents and purposes, to vest in said county all rights, interests and actions which would be vested in any individual, if any such contract had been made directly to him. (P. D. 1053.)

Art. 1372. (796) (683) Suits on notes, etc., by county.—Suits may be commenced and prosecuted on such notes, bonds, bills, contracts, covenants, agreements and writings, in the name of such county, or in the name of the person to whom they were made, for the use of the county, as fully and effectually as any person may or can sue on like notes, bills, contracts, covenants, agreements or writing made to him. (P. D. 1054.)

Art. 1373. (797) (684) Agents to contract for county may be appointed.—The county commissioners' court may appoint an agent or agents to make any contract on behalf of the county for the erection or repairing of any county buildings, and to superintend their erection or repairing, or for any other purpose authorized by law; and the contract or acts of such agent or agents, duly executed and done, for and on behalf of the county, and within his or their powers, shall be valid and effectual to bind such county, to all intents and purposes. (P. D. 1055.)

See Jackson-Foxworth Lumber Co. v. Hutchinson Co., 88 S. W. 412; Allen v. Abernethy, 151 S. W. 348.

Art. 1374. (798) (685) Costs in suit against county.—When the plaintiff in any suit against a county shall fail to recover a greater amount than the county commissioners' court of such county shall have allowed to such plaintiff on the presentation of his claim to such court, such plaintiff shall pay all costs of such suit. (P. D. 1056.)

CHAPTER FOUR

COUNTY LINES

Art. 1375. (799) Survey made.—Whenever it shall appear to the satisfaction of the county court of any county in this state, or notice shall be given such court by the commissioner of the general land office, that the boundary, or any part thereof, of the county is not sufficiently definite and well defined, such court shall appoint an experienced and competent practical surveyor, whose duty it shall be to ascertain, by actual survey, the boundary, or any part thereof, of said county, and to make and establish the lines and corners in a manner herein prescribed; and the court, in the order making the appointment, shall specify the line or lines to be run, and the corners to be established and marked; and shall in all things conform to the law defining the boundaries of said county. (Acts 1879, p. 137.)

Art. 1376. (800) Boundary how marked.—The initial corners of the surveys herein provided for shall be designated by posts, mounds, or stone monuments; the posts shall be of hewn cedar, cypress or bois d'arc, at least eight inches in diameter, five feet long, and set in the ground not less than three feet; the mounds shall be of stone when practicable, otherwise of earth, and not less than two feet high; that at the end of each mile in said boundary a like post, mound, or stone monument shall be established; the initial corners shall be described on the post or monument established there.

Art. 1377. (801) Natural objects to be named.—In the field-notes of the surveys of the lines ordered to be run, the surveyor shall give an accurate description of all prominent natural objects crossed by, or adjacent to, said lines, as well as of the corners and lines of surveys on or near said boundaries.

Art. 1378. (802) Notice to other counties.—It shall be the duty of the court making such order to cause a copy thereof to be sent to the county courts of the counties interested in such boundary, stating the time

and place, which time shall not be later than twenty days after the meeting of the county court of the county notified, for the commencement of the survey, and such notice shall be given at least ten days before the meeting of said county court; and it shall be the duty of the court so notified to appoint an experienced and competent practical surveyor to proceed at the time and place to assist in running and establishing such line.

Art. 1379. (803) Oath and bond of surveyors.—The surveyors herein provided for shall take the oath of office prescribed by law for county surveyors, and shall, before entering upon the duties herein prescribed, enter into bond with two or more sureties to be approved by the county court, in the sum of one thousand dollars, payable to the county judge, or his successors in office, conditioned for the faithful performance of his duty.

Art. 1380. (804) Field-notes to be returned and recorded.—When the line shall have been surveyed and marked as herein provided, it shall be the duty of the surveyor to make due return of the field-notes and map to the county court; which field-notes and map shall be recorded by the clerk, and a certified copy thereof returned to the general land office.

Art. 1381. (805) In the absence of one surveyor the other shall act.—If either of the surveyors appointed to run and mark such line shall fail to attend at the time and place appointed, the one in attendance shall proceed alone to perform the duties assigned him, and make his report to the county court of the county employing him, which, being approved by such court, shall be recorded as evidence of the line in question; and the line so surveyed and marked shall thereafter be regarded as the true boundary line between the counties.

Art. 1382. (806) Commissioner of the land office to direct survey in case of disagreement.—Should the surveyors above provided for fail to agree as to the true boundary line between their respective counties, the facts of such disagreement, with a full statement of the questions at issue between them, shall be by them reported to the commissioner of the general land office, whose duty it shall be to examine the disputed matter at once; and from such data as the maps and archives of his office furnish, shall desighate to such surveyors the line to be run, stating at what specific point they shall begin and to what specific point they shall run, adhering as nearly as possible to the line designated in the act creating such county line, which instructions shall be authority for said surveyors to run such line; and the line so run as above directed shall thereafter be the true dividing line between said counties. (Acts of 1879, p. 137.)

Art. 1383. (807) Expense to be divided between counties.—The expense of surveying and marking such line shall be divided between the counties interested, in proportion to the frontage of each county upon the line, and paid for by each county as proportioned. The surveyors appointed as herein provided shall receive for their services the sum of three dollars per mile for each mile run. The expense of establishing the posts, mounds, or stone monuments shall be paid by the counties interested, and they shall be erected under the supervision and direction of the surveyor.

Art. 1384. (808) Land districts to be surveyed.—Before any county in this state, not already organized as a separate land district under existing law, shall be recognized as such, the county court shall cause the boundary lines of the county to be surveyed and marked and the field-notes and map of such survey, duly recorded, returned to the general land office as provided in this chapter.

Art. 1385. Suit to establish boundary; venue; jurisdiction and powers of court; rule for determination of matter.—Notwithstanding the preceding articles of this chapter, any county in this state may bring suit against any adjoining county or counties, for the purpose of establishing the boundary line between them. Such suit shall be brought in the district court of the county in an adjoining judicial district whose boundaries are not affected by the suit, and whose county seat is nearest the county seat of the county suing. And said court shall try said cause as other causes, and shall have full and complete jurisdiction to determine where such boundary line is located, and, if necessary, shall order the same to be remarked and resurveyed. And if, in the trial of any such cause, it shall be found that the boundary line between the counties involved has never been established and marked, or, if marked, has become indefinite and undefined, said court shall have power to re-establish the same and order it marked. And any boundary line so established by such judgment shall thereafter be regarded as the true boundary line between the counties in question; provided, that if it shall be found in any such cause that the boundary line in question has been heretofore established under the law then in force, the same shall be declared to be the true line, and shall be resurveyed and established as such. (Acts 1897, p. 222.)

Art. 1386. Land commissioner not to place line on map until filing of certified copy of judgment and field-notes.—Provided, further, that it shall be unlawful for the commissioner of the general land office to mark, fix or place on any of the maps in said office any contested county line at any definite point thereon, until a certified copy of the final judgment of the court, herein provided, is filed in the general land office, together with a certified copy of the field-notes of the line so established by such judgment. (Id.)

CHAPTER FIVE

COUNTY SEATS

Art. 1387. (809) Election for county seats.—In the organization of any county or counties now existing, or hereafter to be created by the legislature, it shall be the duty of the county judge holding the election in such new county for county officers thereof to order an election for the location of a county seat therein, which shall be conducted in the same manner as that regulating the election of the officers of such new county; and the place receiving a majority of all the votes cast by the electors voting on the

location of such county seat shall thereafter be the county seat of such county, subject to be removed as other county seats; provided, that when any county has been organized, and no county seat has been located, the county judge of such county shall order an election for the location of a county seat. (Acts of 1883, p. 82.)

Art. 1388. (810) Two-thirds vote necessary, when, to create.—No county seat first established in a newly organized county shall be located at any point more than five miles from the geographical center of any county in this state, unless by a two-thirds vote of all the electors voting on the subject in said county. (Acts of 1881, p. 67.)

Art. 1389. (811) Election for removal of, when.—Hereafter, no county seat situated within five miles of the geographical center of any county shall be removed except by a vote of two-thirds of all the electors in said county voting on the subject; nor shall any county seat be removed from a point more than five miles from the geographical center of any county to any other point more than five miles from such center, nor from a point within five miles of the geographical center to any other point within five miles of such center, except by a two-thirds vote of all the electors in said county voting on the subject; provided, that no person shall be allowed to vote except he be a bona fide citizen of the county in which he offers to vote. A majority of said electors, however, voting at such election may remove a county seat from a point more than five miles from the geographical center of the county to a point within five miles of such center; in either event the center to be determined by a certificate from the commissioner of the general land office, in the manner hereinafter set forth. (Acts of 1879, p. 84.)

Art. 1390. (812) Proceedings for removal of county seat.—When it becomes desirable to remove the county seat of any county, it shall be the duty of the county judge of said county, or, in case of his failure or inability to act, then two of the county commissioners of said county, upon the written application of not less than one hundred freeholders and qualified voters, who are resident citizens of said county thereof, to make an order in writing upon the minutes if [of] said commissioners' court for the holding of an election at various voting precincts in said county on a day therein named, which shall not be less than thirty days nor more than sixty days from date of order, for the purpose of submitting the question to the electors of said county; provided, that, when a county seat has been established for a longer term than ten years, it shall require two hundred freeholders and qualified voters to make said application; provided, further, that in counties having less than three hundred and fifty legal voters, to be determined by the number of votes cast at the last proceeding [preceding] election for the State and county officers, such application may be made by one hundred resident freeholders and qualified voters of said county; and provided, further, that, when a county seat has been established for a longer term than forty years, it shall require a majority of the resident freeholders and qualified voters of said county to make the application, said majority of freeholders and qualified voters to be ascertained by the county judge, or, in case of his refusal or inability to act, then by any two of the county commissioners of said county, from the assessment rolls thereof; and provided, further, that in counties having not more than 150 qualified voters, such application shall be held sufficient when it shall have been signed by a majority of the resident freeholders and qualified voters of said county, said majority of freeholders and qualified voters to be ascertained by the county judge, or in case of his refusal or inability to act, then by any two of the county commissioners of said county, from the assessment rolls thereof. (Acts 1893, p. 164; Acts 1903, p. 118; Acts 1919, 2d C. S., ch. 29, sec. 1.)

Art. 1391. (813) Geographical center, how designated.—The commissioner of the general land office, upon being notified by the county judge of any county that a proposition is submitted to the people of such county, or that it is desirable on the part of the people thereof, that the center of such county should be designated, preliminary to the removal of any county seat, shall, from the maps, surveys and other data on file in his office, designate the center of such county, and shall certify the same to the county judge of such county, who shall cause the same to be spread upon the records of deeds of his county. (Acts 1879, p. 84.)

Art. 1392. (814) Who may vote and form of ballot.—All persons who are qualified electors under the constitution and laws of the state shall be entitled to vote at said election; and, on each ticket, the voter shall write or cause to be written or printed: "For removal to....." [inserting the name of the place]; or, should the voter be in favor of the county seat remaining where the same is already located, he shall write or cause to be written or printed on his ticket: "For remaining at ....." [inserting the name of the place]. (Id.)

Art. 1393. (815) Election how conducted and ordered.—The county judge or commissioners shall order said election in each voting precinct in said county, which shall be conducted, as near as may be, as elections for county officers; and the officers holding the election shall make return thereof to the officer ordering said election, within ten days after the same was held, who shall then proceed to open said returns and count the same, and declare the result, which shall be entered upon the records of said commissioners' court, and shall also state the name of the place from which the same is removed, and the name of the place to which the same is removed; and a certified copy of such entry shall thereupon be, by the county clerk of said county, recorded in the proper record deeds of such county. (Id.)

Art. 1394. (816) County seats removed, when.—When the entry mentioned in the preceding article has been made, the county seat, if the election be held to move the county seat from a point within five miles of the geographical center to a point more or less than five miles from the geographical center, or from a point more than five miles from the geographical center, to any other point more than five miles from such center, shall be removed to the place receiving the votes of two-thirds of all the electors voting on the

subject; and such place shall thereafter be the county seat of such county. But, if the election be held to move the county seat from a point more than five miles from the geographical center to a point within five miles of such center, then the county seat shall be moved to the place receiving a majority of all the electors in the county voting at such election, and such place shall thereafter be the county seat of such county. (Id.)

Art. 1395. (817) No change by election until after five years.—Whenever an election for the location or removal of a county seat shall have been voted on by the electors of any county and the question settled by said electors, it shall not be lawful for a like application to be made for the same purpose within five years thereafter. (Id.)

Art. 1396. (818) (704) Courts shall be held at county seat.—All terms of the district, county and county commissioners' courts shall be held at the county seat. (R. S. 1879, 704.)

Art. 1397. (819) (705) Court house, jail, etc., to be provided.—It shall be the duty of the county commissioners' court of each county, as soon as practicable after the establishment of a county seat, or after its removal from one place to another, to provide a court house and jail for the county, and offices for county officers at such county seat, and keep the same in good repair. (R. S. 1879, 705.)

Art. 1398. (820) When commissioners' court may fix place of holding court.—Until the county seats of new counties are established, as required by the provisions of this chapter, the courts of such new counties shall be held at such place as may be appointed by the county commissioners' court of such county. (Acts 1879, p. 84.)

Art. 1399. (821) (706) Officers shall keep offices at county seats.—The county judge, sheriff, clerks of the district and county courts, county treasurer, assessor of taxes and collector of taxes, county surveyor and county attorney of the several counties of this state shall keep their several offices at the county seats of their respective counties. (Act March 16, 1848. Act May 13, 1848. R. S. 1879, 706. O. & W. 282, 284.)

CHAPTER SIX
COUNTY BOUNDARIES

Art. 1400. (822) Boundaries as established, adopted, and acts creating continued in force.—The county boundaries of the counties in this state as now recognized and established are adopted as the true boundaries of such counties, and the acts creating such counties and defining the boundaries are continued in force.

TITLE 29
COUNTY FINANCES

CHAPTER ONE
GENERAL PROVISIONS

Art. 1401. (823) (934) Duty of commissioners' court to procure ledger, etc.—The several county commissioners' courts shall each procure a well-bound ledger and index, and shall cause to be entered in said book a full, complete and orderly statement of the condition of the finances of the county.

Art. 1402. (824) (935) Duty of county clerk to keep accounts.—It is hereby made the duty of the clerk of the county court to open and keep in said book, which shall be known as a finance ledger, an account with each and every officer of the county, district, or state, who is now, or may hereafter be authorized or required by law to receive or collect any money or other property for the use of, or belonging to, the county. The clerk shall also keep such other accounts as may be necessary to carry out the purposes of this title; that all items shall be entered daily under their respective heads, and said finance ledger shall be at all times subject to the inspection of the public. (Acts 1893, p. 160, sec. 1.)

Generally as to this title, see Powell v. S., 204 S. W. 439.

Art. 1403. (824a) (935a) Same.—It shall be the duty of the said clerk to balance each account so kept, and make a tabular statement, under oath, at each regular term of the commissioners' court for the three months next preceding the month when such court meets in regular session, to be presented to said court during the second day of its term, specifying therein the names of the creditors of said county, and the items of indebtedness, with their respective dates of accrual, and also the names of persons to whom moneys have been paid, with the amounts paid each; the names of persons from whom moneys have been received, with the date of receipt, and for what account received, during the quarter for which such statement is prepared; said statement shall also show the amount to the credit or debit of each fund separately. (Id.)

Art. 1404. (824b) (935a) Same.—It shall be the duty of said clerk, immediately after the first regular term of the commissioners' court in each year, to publish for one time in some weekly newspaper published in his county (or if there be no paper published therein, then by posting four copies of such exhibit, one in each commissioners' precinct, one of which shall be at the court house door, the other three at public places in such precincts), an exhibit showing the aggregate amount received and the aggregate amount paid out of each fund for the four preceding quarters, and the balance to the credit or debit of each fund; also the amount of indebtedness of said county, with their respective dates of accrual, and to whom and for what due; also the amount to the debit or credit of each officer or other persons with whom an account is kept. The cost for publishing the same shall be paid by order of the commissioners' court out of the general fund of the county. (Id.)

Art. 1405. (824c) (935b) Compensation of clerk.—The clerk shall receive annually as compensation for the labor performed in keeping the finance ledger as provided for in article 1402, and making the quarterly statement as provided for in article 1403, the sum of five dollars for each one thousand dollars tax assessed as due the county, to be paid quarterly on order of the commissioners' court out of the general fund of the county; provided, the same be not less than one hundred nor more than two hundred and fifty dollars per annum. (Id.)

Art. 1406. (825) (936) Accounts shall be opened how, and shall be indexed.—Said accounts shall be opened by stating at the top of the page the name of the officer and his office; and all of said accounts shall be properly indexed for convenient reference.

Art. 1407. (826) (937) Account with the tax collector.—The accounts of the tax collector shall be kept as follows: A separate account shall be kept for each separate fund that may be upon the tax rolls; each account shall state the name of the collector, the character of the fund entered therein, and the year for which the same is assessed.

Art. 1408. (827) (938) Receipt of collector for tax rolls.—Whenever the tax rolls are ready for delivery to the tax collector, the court or officer having control of the same shall take from the collector a written receipt for the same, specifying the amount therein assessed and due the county, stating separately the amount assessed to each fund, and shall deliver said receipt to the clerk of the county court, who shall charge the collector with the amount stated in said receipt in the proper account; and said amounts shall be treated as debts due the county by the collector.

Art. 1409. (828) (939) How the collector may discharge his indebtedness.—The collector shall discharge said indebtedness within the time prescribed by law, by filing with said clerk receipts for the same, as follows:

1. The commission due the collector.
2. The assessor's receipt for commissions due such assessor, if any are to be paid by the county.
3. Proper vouchers for such payments as he is now, or may hereafter be, required to pay out of any money on hand.
4. The receipt of the county treasurer for the money paid into the treasury.

Bailey v. Aransas Co., 102 S. W. 1159.

Art. 1410. (829) (940) Collector shall make separate lists of indigent and delinquent taxpayers, etc.—The collector shall make separate lists of the indigent and delinquent taxpayers, showing their names, and the amount due by each taxpayer; and the court shall carefully examine said indigent and delinquent list, and shall make an order and enter the same upon the minutes of the court, stating the names and amounts that are adjudged uncollectible; and the collector shall have credit for the amounts included in said order in the proper accounts.

Art. 1411. (830) (941) No credit shall be entered for delinquent taxes until allowed by the court.—No credit for indigent or delinquent taxes shall be entered in said collector's accounts until an order of the court has been made and entered allowing the same.

Art. 1412. (831) (942) Taxes for each year shall be kept separate.—In keeping accounts with the collector, the taxes assessed for each year shall be kept separate and distinct.

Art. 1413. (832) (943) Tax collector going out of office shall deliver tax rolls to successor, etc.—Whenever a tax collector shall go out of office, he shall deliver to his successor the tax rolls in his possession, and shall receive from his successor a receipt in writing for the amount of taxes due on the tax rolls so delivered, specifying the amount of each fund and each year separately, and also the amount due on the indigent and delinquent list; which receipts he shall deliver to the clerk of the county court, who shall enter them to the credit of the collector presenting them, to the extent that the same are allowed by the court as hereinbefore provided, and shall charge the amounts so credited to the successor in office of such collector, in the proper accounts.

Art. 1414. (833) (944) Collector shall collect occupation tax, and receipt for same.—All occupation taxes due the county shall be collected by the tax collector of the county without assessment, and the collector shall give to the party paying the tax a receipt in writing, stating the name of the person paying the same, the occupation paid for, the time such occupation is to be pursued, and the amount collected for the state and for the county.

Art. 1415. (834) (945) County clerk shall issue occupation license, when.—Upon the presentation of the receipts provided for in the preceding article to the clerk of the county court of the county in which such tax has been paid, such clerk shall issue a license in the name of the state or county, or both, in accordance with the tax paid, to the person paying such tax, authorizing him to pursue the occupation named in such receipt during the time for which he has paid the tax.

Art. 1416. (835) (946) County clerk shall make two reports of licenses issued at end of each month.—Said clerk shall, at the end of every month, make two reports in writing, one of licenses issued on taxes paid to the state, which he shall forward to the comptroller of public accounts, by mail; the other of licenses issued on taxes paid to the county, and file the same in his office.

Art. 1417. (836) (947) What the reports shall state, etc.—The reports required by the preceding article shall state the name of the licensee, the occupation, the time for which the license is issued and the amount of taxes paid therefor, and shall be dated and signed officially by such clerk and attested by his seal of office.

Art. 1418. (837) (948) Clerk shall keep occupation tax account with collector.—The clerk shall keep an occupation tax account with the collector of the county, in which he shall charge the collector with all licenses issued for the county; and the collector shall have credit in said account for his commissions, and the amount paid into the treasury upon filing the proper receipt of the county treasurer with such clerk.

Art. 1419. (838) (949) Clerk shall keep account with sheriff.—An account shall be kept by the clerk with the sheriff of each county, in which such sheriff shall be charged with all judgments, fines, forfeitures and penalties, payable to the county, rendered in the district or county courts of the county, or any other court of his county, and with the collection of which he is, by law, made chargeable.

Art. 1420. (839) (950) How sheriff may free himself from liability under preceding article.—The sheriff may free himself from liability from the charge required in the preceding article by—

1. Producing the receipt of the county treasurer showing the payment of such judgment, fine, forfeiture or penalty.

2. By showing to the satisfaction of the commissioners' court that the same cannot be collected, or that the same has been discharged by imprisonment or labor, or by escape, without his fault or neglect; and none of the credits herein provided for, except those on the receipts of the treasurer, shall be entered without an order of the commissioners' court allowing the same.

Art. 1421. (840) (951) Clerks, etc., shall report fines, judgments and jury fees monthly.—Clerks of the district and county courts, county judges, county treasurers, sheriffs, district and county attorneys, constables and justices of the peace, who shall collect or handle any money for the use of the county, shall make a full and complete report, under oath, in writing, to the commissioners' court, at each regular term thereof, of all fines imposed and collected and all judgments rendered and collected for the use of the county, and all jury fees collected in their respective courts in favor of, or for the use of, the county; and at the same time to present their receipts and vouchers showing what disposition has been made of the money collected, fines imposed and judgments rendered; which reports, receipts and vouchers shall be carefully examined by the said commissioners' court, and, if found to be correct, shall cause the clerk to enter the same on the financial ledger, and, if found to be incorrect, shall summon said officer before them, and have the same corrected; and said reports, receipts and vouchers shall be filed in the county clerk's office. (Acts 1887, p. 36.)

Art. 1422. (841) (952) What the reports shall show.—The reports required by the preceding article shall state fully—

1. The name of the party fined and the amount of the fine, or the name of the party against whom judgment was rendered and the amount of such judgment, as the case may be.

2. The style and number of the cases in which fines have been imposed or judgments rendered, and the date thereof.

3. The amount of jury fees collected, and the style and number of the case in which each jury fee was collected and from whom collected.

Art. 1423. (842) (953) Fines imposed and judgments rendered by justices shall be charged against them, etc.—Fines imposed and judgments rendered by justices of the peace shall be charged against the justice of the peace imposing or rendering the same; and he may discharge said indebtedness by filing with the clerk of the county court the treasurer's receipt for the amount thereof, or by showing to the satisfaction of the commissioners' court that he has used due diligence to collect the same without avail, or that the same have been satisfied by imprisonment or labor.

Art. 1424. (843) (954) District attorney shall make report, etc.—The district attorney of each district shall, at each term of the district court for each county in his district, make a report in writing, to the clerk of the county court, of all moneys received by him since the last term of the district court for such county, for the use of such county.

Art. 1425. (844) (955) County attorney shall make report.—The county attorney of each county in the state shall make a similar report to the one required in the preceding article to the clerk of the county court of his county, at the end of each month.

Art. 1426. (845) Judgment not collectible may be sold.—Whenever the principal and sureties upon any judgment, the proceeds of which revert to, and belong to, any county, are insolvent so that under any existing process of law said judgment or any part thereof can not be collected, the commissioners' court of said county are hereby constituted a board to dispose of such judgment, and are hereby empowered and authorized, by such advertising as they may deem necessary, to offer for sale, as they may deem to be the best interests of the county, all the right of the county to such judgment. And, if by public sale, if the amount bid on the same shall not be deemed sufficient, they shall refuse to accept the same, and dispose of the same in any manner deemed by them most advantageous to the interest of the county, and, upon sale, shall make a proper assignment of said judgment to the purchaser. (Acts 1879, p. 9.)

See Lindsey v. S., 66 S. W. 332; Id., 74 S. W. 750.

Art. 1427. (846) (956) Any officer collecting money for county shall report the same.—When any officer collects money belonging to, and for the use of, any county, he shall, except where otherwise provided in this title, forthwith report the same in writing to the clerk of the county court of the county to which such money belongs, stating fully in such report from whom collected, the amount collected, the time when collected, and by virtue of what authority or process collected.

See Henderson Co. v. Richardson, 40 S. W. 38; Marion County v. Rowell, 207 S. W. 983.

Art. 1428. (847) (957) Money collected by officer shall be charged to him, etc.—When any officer reports to the clerk of the county court any money collected by such officer for the use of the county, the amount of money so collected shall be charged to such officer, and he may discharge himself from such indebtedness by producing the receipt of the proper county treasurer therefor.

Art. 1429. (848) (958) Estray account.—There shall also be kept in the ledger, provided for in article 1401, an estray account, in which shall be entered on the debit side of each application made to the clerk of the county court to estray any animal in his county by entering the date of the application, the name of the person estraying, and a brief description of the animal, or animals, to be estrayed; and the amount of such charge shall be left blank until said person shall file his account of the sale of said animal or animals; and, upon the filing of said account, the net amount due the county from such sale shall be entered in the blank.

Art. 1430. (849) (959) Same subject.—When the receipt of the county treasurer is presented to the clerk, showing any amount paid into the treasury on account of the sale of an estray, the same shall be en-

tered on the credit side of the account, showing the date, name of payer, amount paid and a brief description of the estray, and such amount shall be charged on the debit side of the county treasurer's account.

Art. 1431. (850) (960) Clerk shall keep account with county treasurer.—An account shall also be kept in said ledger by the clerk with the county treasurer, in which such treasurer shall be charged separately with the amount of each fund for which he gives a receipt to the sheriff, collector, or other person paying the same into the treasury; and such treasurer shall have credit for all moneys paid out by him, when the commissioners' court has approved his reports of the same, and for his legal commissions.

See Coe v. Nast, 40 S. W. 235.

Art. 1432. (851) (961) County treasurer shall register claims against the county.—The county treasurer of each county shall keep a well-bound book in which he shall register all claims against his county, when presented to him for registration; and no claim, or any part thereof, against a county shall be paid by such county treasurer, nor shall the same, or any part thereof, be received by any officer in payment of any indebtedness to the county, until it has been duly registered in accordance with the provisions of this title.

Art. 1433. (852) (962) Claim shall be classified.—Claims against a county shall be registered in three classes, as follows:

1. All jury scrip and scrip issued for feeding jurors.

2. All scrip issued under the provisions of the road law or for work done on roads and bridges.

3. All the general indebtedness of the county, including feeding and guarding prisoners, and paupers' claims.

See Clarke & Courts v. San Jacinto Co., 45 S. W. 315; Boesen v. County of Potter, 173 S. W. 462; Broussard v. Wilson, 183 S. W. 814; Brazeale v. Strength, 196 S. W. 247.

Art. 1434. (853) (963) Manner of registering claims.—Each claim shall be entered in the register, stating the class to which it belongs, the name of the payee, the amount, the date of the claim, the date of registration, the number of such claim, by what authority issued, and for what service the same was issued.

See Clarke & Courts v. San Jacinto Co., 45 S. W. 315.

Art. 1435. (854) (964) What shall be written on registered claim.—When a claim has been registered, the treasurer shall write on the face of the same its registered number, the word "registered," the date of such registration, and shall sign his name officially thereto.

Art. 1436. (855) (965) Claim shall be numbered, in what order.—Claims shall be numbered in the order presented, and, if more than one claim is presented at one and the same time, they shall be numbered in the order of their date.

Art. 1437. (856) (966) Order in which claims shall be paid.—The treasurer shall pay off the claims in each class in the order in which they are registered.

See Clarke & Courts v. San Jacinto Co., 45 S. W. 315; Brazeale v. Strength, 196 S. W. 247.

Art. 1438. (857) (967) Classification of county funds.—The funds received by the county treasurer shall be classed as follows:

1. All jury fees, all money received from the sale of estrays, and all occupation taxes; and this class of funds shall be appropriated to the payment of all claims registered in class first, described in article 1433.

2. All money received under any of the provisions of the road and bridge law, including the penalties recovered from railroads for failing to repair crossings, prescribed in article 6494, and all fines and forfeitures; and this fund shall be appropriated to the payment of all claims registered in class second.

3. All money received, not otherwise appropriated herein or by the commissioners' court; and the funds of this class shall be appropriated to the payment of all claims registered in class third. (Const., art 16, sec. 24.)

Art. 1439. (858) (968) Commissioners' court may create other classes of funds, etc.—The commissioners' court shall have power to cause such other accounts to be kept, creating other classes of funds, as it may deem proper, and require the scrip to be issued against the same and registered accordingly.

Art. 1440. (859) (969) Said court may transfer one class of funds to another, except, etc.—The commissioners' court shall have power, by an order to that effect, to transfer the money in hand from one fund to another, as in its judgment is deemed necessary and proper, except that the funds which belong to class first shall never be diverted from the payment of the claims to which the same are appropriated by article 1438, unless there is an excess of such funds.

Art. 1441. (860) (970) County treasurer shall report registered claims each month.—The county treasurer shall, at the end of each month, file in the office of the clerk of the county court of his county a report in writing, showing the total amount of claims registered by him during said months stating each class separately.

Art. 1442. (861) (971) Clerk shall enter report upon ledger, etc.—The clerk with whom the report required by the preceding article is filed shall enter the same upon the ledger under the head of "Registered indebtedness of the county," keeping a separate account of each class of indebtedness, and, from the reports of the treasurer of disbursements made, credit said accounts with the total amount of vouchers of each class of claims paid.

Art. 1443. (862) (972) Party receiving payment of claim shall receipt thereon.—The county treasurer, or any other officer disbursing money for the county, or receiving county claims in payment of dues of any kind, shall require the party receiving payment of, or credit for the same, his agent or attorney, to receipt in writing upon the face of such claim for the amount so paid or received thereon.

Art. 1444. (863) (973) Officer receiving claim in payment of debt to county shall report list of same.—Every officer who shall collect any fine, penalty, forfeiture, judgment, tax or other indebtedness due the county, in claims against the county, shall keep a descriptive list of such

claims, and shall when he reports such collection file with his report a list stating the party in whose favor each claim was issued, the class and registered number thereof, the name of the party paying in such claim, and the amount received, and for what purpose received.

Art. 1445. (864) (974) Claims received by other officer than county treasurer shall be reported to county treasurer.—Claims received for the county by any officer other than the treasurer shall be turned over together with the list mentioned in the preceding article to the county treasurer, who shall give a proper receipt for the same, and the county treasurer shall file said list with his report in the office of the clerk of the county court.

Art. 1446. (865) (975) County treasurer shall keep accounts, etc.—The county treasurer shall keep accurate accounts showing all the transactions of his office in detail; and all warrants by him paid off shall be punched at the time he pays them; and the vouchers relating to and accompanying each report shall be presented to the commissioners' court with the corresponding report, when it shall be the duty of said court to compare the vouchers with the report, and all proper vouchers shall be allowed and the treasurer credited with the amount thereof. (Acts 1889, p. 6.)

See Coe v. Nast, 40 S. W. 235.

Art. 1447. (866) (976) Claim shall be canceled, when and how.—When a claim presented as a voucher has been found by the court to be correct, the court shall cause the same to be canceled by writing or stamping upon the face thereof the word "canceled," and the clerk shall attest the same by his official signature.

Art. 1448. (867) (977) Report of treasurer, order approving; to recite what; credit.—When the commissioners' court has compared and examined the quarterly report of the treasurer, and found the same correct, it shall cause an order to be entered upon the minutes of the court, stating the approval thereof, which order shall recite separately, the amount received and paid out of each fund by the treasurer since the preceding treasurer's quarterly report, and the balance of such fund, if any, remaining in the treasurer's hands, and the court shall cause the proper credit to be made in the accounts of the treasurer, in accordance with said order. (Acts 1897, p. 27.)

Art. 1449. (867) (977) Commissioners to inspect and count cash, etc., in hands of treasurer, etc.—Said court shall actually inspect and count all the actual cash and assets in the hands of the treasurer belonging to the county at the time of the examination of his said report. (Id.)

Art. 1450. (867) (977) Affidavit of compliance, etc.; filing, record and publication of, etc.—Prior to the adjournment of each regular term of the court, the county judge and each of the commissioners shall make affidavit in writing that the requirements of articles 1448 and 1449 have been in all things fully complied with by them at said term of said court, and that the cash and other assets mentioned in said county treasurer's quarterly report made by said treasurer to said court, and held by him for the county, have been fully inspected and counted by them, giving the amount of said money and other assets in his hands; which affidavits of the members shall be filed with the county clerk of the county, and by him recorded in the minutes of the said county commissioners' court of the term at which the same were filed; and the same shall be published in some newspaper published in the county, if there be a newspaper published in the county, for one time, to be paid for at the same rate as other legal notices. (Id.)

See Coe v. Nash, 41 S. W. 473; Poole v. Burnet Co., 76 S. W. 425.

Art. 1451. (868) (978) Commissioners' court shall examine and correct all accounts and reports, etc.—The commissioners' court shall, at each regular term, examine all accounts and reports relating to the finances of the county, and compare the same with the vouchers accompanying them, and cause such corrections to be made as are necessary, in order to make said accounts and reports correct, and shall cause all orders made by them, appertaining to said accounts and reports, to be properly entered upon the minutes of said court and noted upon said accounts and reports.

Art. 1452. (869) (979) Reports and vouchers shall be filed and preserved in county clerk's office.—All reports and vouchers shall be filed in the office of the clerk of the county court, and shall be carefully preserved therein, and shall be briefly noted in the proper account upon the ledger.

Art. 1453. (870) (980) District judge shall appoint committee to examine into the finances of county.—At each term of the district court, the district judge, upon request of the grand jury, may appoint a committee consisting of three citizens of the county, men of good moral character and intelligence, and experienced accountants, to examine into the condition of the finances of the county.

Art. 1454. (871) (981) Duty of such committee.—It shall be the duty of the committee provided for in the preceding article to examine all the books, accounts, reports, vouchers and orders of the commissioners' court relating to the finances of the county that have not been examined and reported upon by a previous committee; to count all the money in the office of the county treasurer belonging to the county, and to make such other examination as to them may seem necessary and proper in order to ascertain the true condition of the finances of the county, and the court shall, if necessary, upon the application of said committee, send for persons and evidence to aid them in their investigation.

Art. 1455. (872) (982) Report of committee.—Said committee shall, at the earliest practicable day after their appointment, make to said district court a report in writing, in detail, stating whether the books and accounts required to be kept by the provisions of this title are correctly kept in accordance with said provisions, and setting forth fully the condition of the finances of the county, the state of each officer's account, and specifying all irregularities, omissions or malfeasance of any kind that they may discover. Said report shall be signed and sworn to by said committee and filed in the office of the clerk of said district court, and the attention of the grand jury called thereto as

soon after the filing of the same as practicable.

Art. 1456. (873) (983) Pay of committee.—Said committeemen shall each be entitled to receive for their services three dollars for each day, not to exceed five days, that they may be engaged in the performance of their duties as such, which fees shall be paid out of the county treasury upon the certificate of the district judge stating the number of days served.

Art. 1457. (874) (984) All reports shall be sworn to.—All reports required under any of the provisions of this title shall be sworn to by the officer making the same, before some officer authorized to administer oaths.

Art. 1458. (875) (985) Monthly reports shall be filed, when.—All monthly reports required by any of the provisions of this title shall be filed in the office of the clerk of the county court of the proper county within five days after the end of each month.

Art. 1459. (876) (986) Warrants issued against county by judge or court shall be attested by clerk, etc.—All warrants or scrip issued against the county treasurer by any judge or court shall be signed and attested by the clerk or judge of the court issuing the same, under his official seal; and no justice of the peace shall have authority to issue warrants against the treasury for any purpose whatever, except as provided in article 1117 [1170] of the Code of Criminal Procedure.

CHAPTER TWO
COUNTY AUDITOR

1. APPOINTMENT, QUALIFICATIONS, BOND

Art. 1460. County auditor appointed in what counties; title; term; salary.—In any county of this State having a population of forty thousand inhabitants or over, according to the last United States census, or having a tax valuation of fifteen million dollars, or over, according to the last approved tax rolls, there shall be appointed an auditor of accounts and finances, the title of said officer to be county auditor, who shall hold his office for two years and until his successor is appointed and qualified, and who shall receive, as compensation for his services, the sum of one hundred ($100.00) dollars, for each million dollars, or major portion thereof, of the assessed tax valuation, the annual salary to be computed from the last approved tax roll preceding his appointment, said annual salary shall not exceed twenty-four hundred ($2400.00) dollars, to be paid monthly out of the general fund of the county upon an order of the commissioners' court. (Acts 1905, p. 381; Acts 1907, p. 315; Acts 1915, ch. 131, sec. 1; Acts 1917, ch. 134, sec. 1.)

As to the constitutionality of Acts 31st Leg., c. 120, exempting a certain named county from the operation of this article, see Hall v. Bell County, 138 S. W. 178 and Bell County v. Hall, 153 S. W. 121.

Art. 1460a. Auditors for other counties where public necessity therefor exists; discontinuance of office.—When the commissioners' court of a county, not mentioned and enumerated in Article 1460, shall determine that an auditor is a public necessity in the dispatch of the county business and shall enter an order upon the minutes of said court, fully setting out the reasons and necessity of an auditor, and shall cause said order to be certified to the judge, or judges, of the district court, or courts, having jurisdiction in the county, said judge or judges, shall, if such reason of the commissioners' court, be considered good and sufficient, appoint a county auditor, as provided in Article 1461, who shall qualify and perform all the duties required of county auditors by the laws of this State; provided said judge or judges, shall have the power to discontinue the office of county auditor at any time after the expiration of one year; when it is clearly shown that such auditor is not a public necessity and his services are not commensurate with his salary received. (Id. sec. 2.)

Art. 1461. Appointment to be made by judges of district court; majority vote; in case of failure to elect governor to call in another district judge; record of action.—The judge or judges of the district court or courts, having jurisdiction in the county, shall appoint the auditor provided for in this Act, at a special meeting held for that purpose, a majority ruling; provided, that in the event there is more than one district judge, and such judges fail to agree upon the selection of some person as auditor, or a majority of said judges fail to agree, then either of said judges shall certify such fact to the Governor of the State, who shall thereupon designate and appoint some other district judge of the State to act and vote with the aforesaid judges in the selection of such auditor. The action shall then be recorded in the minutes of the district court of the county and the clerk thereof shall certify the same to the commissioners' court, which shall cause the same to be recorded in its minutes, together with an order directing the payments of the auditor's salary. (Acts 1905, p. 381, sec. 2; Acts 1915, ch. 120, sec. 1; Acts 1917, ch. 134, sec. 3.)

Art. 1462. Qualifications.—The auditor to be appointed shall be a citizen of the county of at least two years residence, and must be a man of unquestionable good moral character and intelligence, thoroughly competent in public business details; he must be a competent accountant, who has had at least two years experience in auditing and accounting. The judges empowered with this appointment must carefully investigate and consider the qualifications of said person, before appointment; provided, that in the event no citizen of the county can be procured, who is qualified under the provisions of this Article, the said judge or judges may appoint a qualified citizen from another county of this State. (Acts 1905, p. 381, sec. 3; Acts 1917, ch. 134, sec. 4.)

Art. 1463. Bond; oath, requisites of.—The auditor shall, within twenty days of his appointment, and before he enters upon the duties of his office, make a bond with two or more good and sufficient sureties, in the sum of five thousand dollars, payable to the county judge or his successors in office, conditioned for the faithful performance of his duties, to be approved by the commissioners' court. In addition to said bond, he shall make the usual oath of office and an additional one in writing, stating that he is in every way qualified under the provisions and requirements of this chapter, and giving fully

the positions of private or public trust he has heretofore held, and the length of service under each of said employments or appointments. He shall further include in his oath that he will not personally be interested in any contract with the county. (Acts 1905, p. 381, sec. 4.)

2. ASSISTANT AND CLERICAL HELP

Art. 1464. May appoint assistant, with consent of county judge.—The auditor may, at any time, appoint an assistant to act in his stead, and who may discharge the duties of the auditor during his absence or unavoidable detention, said appointment to be made with the consent of the county judge, who shall require said assistant to take the usual oath of office for faithful performance of duty. (Id. sec. 18.)

Art. 1465. May appoint clerical help, with consent of county judge.—The auditor shall also have the power to appoint additional clerical help when needed, with the consent of the county judge, or of the commissioners' court. (Id. sec. 5.)

3. BOOKS AND STATIONERY

Art. 1466. Books and stationery.—The auditor shall, at the expense of the county, provide himself with all necessary ledgers, books, records, blanks and stationery. (Id. sec. 5.)

4. DUTIES AND POWERS OF AUDITOR

Art. 1467. General duties of auditor.—It shall be the duty of the auditor to have a general oversight of all the books and records of all the officers of the county, district or state, who are now, or who may hereafter be, authorized or required by law to receive or collect any money, funds, fees or other property for the use of, or belonging to, the county. (Id. sec. 6.)

Art. 1467a. School ledger; school bond ledger; interest and sinking fund account.—It shall be the duty of the auditor to install in his office, a school ledger and keep in this ledger an accurate account of all funds received and all funds disbursed by the common school districts of his county. He shall also install in his office, a bond register showing all the school bonds issued by the common schools of his county, the rate of interest they bear, the date they were issued, the date they are to be paid, and he shall also keep an interest and sinking fund account of school bonds of each common school district of his county. (Acts 1917, ch. 134, sec. 5.)

Art. 1468. Access to and right to examine accounts, etc., of commissioners' court and trustees of common school districts.—He shall have continual access to and shall examine all the books, accounts, reports, vouchers and other records of any of the officers, the orders of the commissioners' court, relating to finances of the county and also to examine all vouchers given by the trustee of all common school districts of the county and to inquire into the correctness of same. (Acts 1905, p. 381, sec. 6; Acts 1917, ch. 134, sec. 6.)

Art. 1469. Reports, monthly, under article 1421, examination of.—All reports required under article 1421 shall also be carefully examined and reported on by him. (Acts 1905, p. 381, sec. 6.)

Art. 1470. Reports and books of officers, quarterly examination and checking of.—He shall at least once in each quarter check the books and examine all the reports of the tax collector, the treasurer and all other officers, in detail, verifying the footings and correctness of same, and shall stamp his approval thereon, or note any differences, errors or discrepancies. (Id. sec. 6.)

Art. 1471. Report, quarterly, of treasurer, examination of.—He shall carefully examine the quarterly report of the treasurer, of all the disbursements, together with the canceled warrants which have been paid, and shall verify the same with the register of warrants issued as shown on the books of the auditor. (Id. sec. 13.)

Art. 1472. Count, etc., cash in hands of treasurer or depository, how, when, etc.—It shall be the duty of the auditor, without giving any notice beforehand, to examine fully into the condition of, or to inspect and count the cash in the hands of, the county treasurer, or in the bank in which he may have placed same for safe keeping, not less than once in each quarter, and oftener as desired. (Id. sec. 7.)

Art. 1473. Law, see to enforcement of.—The auditor shall see that the law is strictly enforced. (Id. sec. 7.)

Art. 1474. Balances, see that all to credit of funds are on hand.—The auditor shall see that all balances to the credit of the various funds are actually on hand in cash. (Id. sec. 7.)

Art. 1475. Investment of funds, see that none unauthorized.—He shall fully investigate and see that none of said funds are invested in any manner, except as the law may otherwise authorize. (Id. sec. 7.)

Art. 1476. Forms for collection, mode of keeping, etc., accounts; time for reports, shall prescribe.—He shall prescribe and prepare the forms to be used by all persons in the collection of county revenues, funds, fees and all other moneys, and the mode and manner of keeping and stating their accounts, and the time, mode and manner of making their reports to the auditor, also the mode and manner of making their annual report of office fees collected and disbursed, and the amount refunded to the county in excess of those allowed under the general fee bill law. (Id. sec. 8.)

Art. 1477. Regulation for collecting, accounting, etc., may adopt and enforce.—He shall have the power to adopt and enforce such regulations not inconsistent with the constitution and laws, as he may deem essential to the speedy and proper collection, checking and accounting of the revenues and other funds and fees belonging to the county. (Id. sec. 8.)

Art. 1478. Deposits in treasury to be made how.—All deposits that are made in the county treasury shall be upon a deposit warrant issued by the county clerk in triplicate; said warrants shall authorize the treasurer to receive the amount named, for what purpose, and to which fund the same shall be applied. The treasurer shall retain the original; the duplicate shall be signed and returned to the county clerk for the county auditor, and the triplicate signed and returned to the depositor. The auditor shall then enter same upon his books, charging the amounts to the county treasurer and credit-

ing the party depositing same. The treasurer shall not, under any circumstances, receive any money in any other manner than that named herein. (Id. sec. 14.)

Art. 1479. Bids for stationery, etc.; purchase from lowest bidder, etc.—Bids shall be hereafter asked for all supplies of stationery, books, blanks, records, and other supplies for the various officers for which the county is required to pay, and the purchase made from the lowest bidder, after filing said bid with the auditor for record. (Id. sec. 16.)

Art. 1480. Bids for supplies, etc.—Supplies of every kind, road and bridge material, or any other material, for the use of said county, or any of its officers, departments or institutions, must be purchased on competitive bids, the contract to be awarded to the party who, in the judgment of the commissioners' court, has submitted the lowest and best bid. It shall be the duty of the county auditor to advertise for a period of two weeks in at least one daily newspaper, published and circulated in the county, for such supplies and material according to specifications, giving in detail what is needed. Such advertisement shall state where the specifications are to be found, and shall give time and place for receiving such bids. All such competitive bids shall be kept on file by the county auditor as a part of the records of his office and shall be subject to inspection by any one desiring to see them. Copies of all bids received shall be furnished by the county auditor to the county judge and to the commissioners' court; and when the bids received are not satisfactory to the said judge, or county commissioners, it shall be the duty of the county auditor to reject said bids and readvertise for new bids; provided, that in cases of emergency, purchases not in excess of fifty dollars may be made upon requisition, to be approved by the commissioners' court, without advertising for competitive bids. (Id. sec. 17.)

Art. 1481. Claims, etc., to be filed in what time; not to be paid until, etc.—All claims, bills and accounts against the county must be filed in ample time for the auditor to examine and approve same before the meetings of the commissioners' court; and no claim, bill or account shall be allowed or paid until same shall have been examined and approved by the county auditor. (Id. sec. 15.)

Art. 1482. Shall examine and approve claims; to be verified.—It shall be the duty of the auditor to examine such claims, bills and accounts, and stamp his approval thereon. If deemed necessary by the auditor, all such accounts, bills, or claims must be verified by affidavit touching the correctness of the same, before some person authorized to administer oaths. (Id. sec. 15.)

Art. 1483. May administer oaths, when.—The auditor is hereby authorized to administer oaths for the purposes of this chapter. (Id. sec. 15.)

Art. 1484. Restrictions and requirements in audit and approval of claims, requisition, etc., bids for supplies, etc.—He shall not audit or approve any claim against the county, unless the same has been contracted as provided by law, nor any account for the purchase of supplies or material for the use of said county or any of its officers, unless, in addition to other requirements of law, there is attached thereto a requisition signed by the officer ordering same and approved by the county judge; which said requisition must be made out and signed and approved in triplicate by the said officers, the triplicate to remain with the officer desiring the purchase, the duplicate to be filed with the county auditor, and the original to be delivered to the party from whom said purchase is to be made before any purchase shall be made. (Id. sec. 17.)

Art. 1485. Warrants, to countersign, except jury.—All warrants on the county treasurer, except warrants for jury service, must be countersigned by the county auditor. (Id. sec. 12.)

Art. 1486. Register, shall keep, of warrants issued by clerks and judges; who shall report, etc.—He shall keep a register of all warrants issued by the judges or clerks on the county treasurer, and their dates of payment by the treasurer. In order that he may do so, the clerks of the county and district courts, or the judges therefor, who are authorized to issue any warrant on the county treasurer, shall on forms prepared by the auditor daily furnish to the auditor an itemized report specifying the warrants that have been issued, their numbers, their several amounts, the names of the persons to whom payable, and for what purpose. (Id. sec. 12.)

Art. 1487. Accounts, shall keep, with officers named, relieving clerk of finance ledger.—It shall be his duty to keep an account with each and every person named in the preceding sections [articles] and in doing so he shall relieve the county clerk of keeping the finance ledger required in article 1402. His books shall show the detailed items of the indebtedness against all of said officers and the manner of discharging same. (Id. sec. 9.)

Art. 1488. Statements to be required from persons receiving money or property of county.—He shall require all persons who shall have received any moneys belonging to the county, or having the disposition or management of any property of the county, to render statements to him. (Id. sec. 9.)

Art. 1489. Books, general set of, showing transactions of county, shall keep.—He shall keep a general set of books, which shall show all the transactions of the county relating to accounts, contracts, indebtedness of the county, and its receipts and disbursements of all kinds. (Id. sec. 9.)

Art. 1490. Report tabulated, shall make for each regular meeting of commissioners.—He shall make tabulated reports of said funds and accounts for each regular meeting of the commissioners' court. (Id. sec. 9.)

Art. 1491. Reports, quarterly and annual, to be made to commissioners, showing what, etc.—He shall make quarterly and annual reports to the commissioners' court, setting forth all the facts of interest, and showing the aggregate amounts received and disbursed out of each fund, the condition of each and every account on the books, the amount of bonded and other indebtedness of the county, together with such other infor-

mation and suggestions as he may deem proper, or the commissioners' court may require. This annual report shall be made to include all transactions during the year ending July 31 of each year, and shall be completed and filed at a special term of the commissioners' court in September. (Id. sec. 11.)

Art. 1492. Estimate, shall prepare for commissioners; who shall prepare budget.—He shall prepare an estimate of all the revenues and expenses, and annually furnish same to the commissioners' court, which court shall carefully make a budget of all appropriations to be set aside for the various expenses of the county government in each branch and department. (Id. sec. 10.)

Art. 1493. Expenses, shall see that do not exceed appropriations.—He shall carefully keep an oversight of same to see that the expenses of any department do not exceed said budget appropriation, and keep the commissioners' court advised of the condition of said appropriation accounts from time to time. (Id. sec. 10.)

Art. 1494. Account with each appropriation, shall open, etc.—He shall open an account with each appropriation in said budget, and all warrants drawn against same shall be entered to said account. (Id. sec. 10.)

Art. 1494a. Control of finances in counties expending funds for improvements.—That in all counties having a County Auditor, and containing a population of 110,000 or more, as shown by the United States census of 1910, on which the office of County Auditor may hereafter be created, in which there now exists, or in which there may be hereafter created any improvement, navigation, drainage, road or irrigation district, or any other character of district having for its purpose the expenditure of public funds for improvement purposes, whether derived from the issuance of bonds or through any character of special assessment, the County Auditor shall exercise such control over the finances of said districts as is hereinafter provided; provided, that this Act shall include any and all districts now in existence or that may hereafter be legally created, whether specifically named herein or not, providing that said district or districts shall have the purpose or object of expending district funds for improvements of any kind. (Acts 1915, ch. 11, sec. 1.)

Art. 1494b. Purchase of supplies and materials without submission to competition; requisition.—All purchases for supplies and materials, and all contracts for labor on behalf of any of such districts shall be made in accordance with the law governing such districts, provided, that the commissioners or other governing body shall be authorized, without the taking of bids in cases of emergency to make purchases or contracts not to exceed the sum of fifty dollars, upon requisition signed by at least two members of the governing body of such district. A requisition shall be issued therefor, executed in triplicate, one copy to be delivered to the person or corporation from whom the purchase is made, one to be delivered to the County Auditor, and one to remain on file with the governing body of such district before any purchase shall be made. (Id. sec. 2.)

Art. 1494c. Audit of bills for supplies, etc.; warrants.—All bills for supplies, materials, labor, work or anything necessary to the carrying out of the purposes of any such district shall be contracted in accordance with the law creating and governing such district that may now be in existence or that may be hereafter enacted, except as may be otherwise provided herein. It shall be the duty of the proper officers of said districts to file all bills with the County Auditor before payment, and it shall be his duty to audit and approve the same, provided said bills have been contracted in accordance with law and are found by him to be correct, and no bill shall be paid until the same has been audited and approved by the County Auditor as provided by this section. All warrants in payment of bills of any such districts shall be drawn and signed in accordance with the law governing the issuance of warrants of such districts, and shall be countersigned by the County Auditor, and no treasurer or other depository of any of such districts shall pay out any money except upon warrants so duly countersigned. (Id. sec. 3.)

Art. 1494d. Forms; expense of printing; accounts; countersigning warrants for investments.—It shall be the duty of the County Auditor from time to time to prescribe and prepare all necessary forms for the use of any of such districts in the payment of bills, collection and disbursement of money, keeping of accounts, and the making of reports; the expense of necessary printing and stationery used therefor shall be paid by the district. He shall keep an accurate account of all balances on hand in the various funds of said districts, and he shall countersign warrants for the investment of any of the funds of said district only when invested in the manner authorized by law. (Id. sec. 4.)

Art. 1494e. Checking reports; reports to Commissioners Court; keeping books; receipts; inspection of books.—It shall be the duty of the County Auditor to check all reports required by law to be filed by any district officer, and within thirty days after the filing thereof to make a detailed report to the Commissioners Court showing his finding thereon and the condition of such district as shown by said report, and as shown by the records of his office. He shall keep a general set of books, showing all receipts and expenditures of the funds of such districts. It shall not be lawful for the treasurer or other depository to receive money for said district without executing proper receipts upon forms to be provided by the County Auditor. All books, accounts, records, bills and warrants in the possession of any officer of any such district, or in the possession of any other person legally charged with their custody, shall at all times be subject to the inspection of the County Auditor. (Id. sec. 5.)

Art. 1494f. Compensation of Auditor.—The County Auditor shall receive for his services in auditing the affairs of such navigation, drainage, road, improvement or other districts, such compensation as the Commissioners Court may prescribe, which shall be paid by the county out of the general fund and repaid to the county by such districts by warrants drawn upon the proper funds of such district; provided, that in counties having a population of one hundred ten thousand

or more, as shown by the United States census of 1910, in which there may now exist, or in which there may be hereafter created as many as five such districts, the compensation allowed the County Auditor for his services on behalf of such districts shall be not less than the sum of twelve hundred dollars per annum, to be prorated among the districts in such proportion as the commissioners court may determine. (Id. sec. 6.)

Art. 1494g. Assistants and stenographer; pay; oath.—In all counties having a population of 110,000 or more, as shown by the last United States census, or which may hereafter have a population of 110,000 or more, as shown by the last preceding United States census, the County Auditor may appoint two assistants. He may also appoint a stenographer. The rate of pay for said assistants and stenographers shall be the same as fixed by general law for the payment of deputies or assistants to other officers. In addition to the assistants provided for in this section, the County Auditor may appoint, by and with the consent of the County Judge or of the Commissioners Court, such additional assistants as may be necessary to the proper conduct of his office. All of said assistants shall take the usual oath of office, and shall be paid out of the general fund of the county upon the order of the Commissioners Court. (Id. sec. 7.)

Art. 1494h. Repeal.—Any and all laws and parts of laws in conflict with any of the provisions of this Act shall be and the same are hereby repealed. (Id. sec. 8.)

Art. 1494i. [Omitted.] Emergency section.

5. MISCELLANEOUS PROVISIONS

Art. 1495. Provisions of this chapter cumulative, but controlling.—The provisions of this chapter are cumulative, and, where conflicting with any existing law, the provisions of this chapter shall control. (Acts 1905, p. 381, sec. 20.)

Art. 1496. County clerk's duties, how affected.—Where the provisions of this chapter impose upon the auditor like duties as are now required of the county clerk, the provisions of this chapter shall prevail, and to such extent only is the county clerk relieved of his duties. (Id. sec. 20.)

Art. 1497. Removal of auditor, grounds, mode.—Whenever an auditor, appointed under the provisions of this act, has been sufficiently proven guilty of official misconduct, or has proven to be incompetent to faithfully discharge the duties required of him, he may, after due investigation by the same power which appointed him, be removed, and his successor appointed as provided in articles 1461 and 1462. (Id. sec. 19.)

Art. 1498. Bell county exempt from provisions.—Bell county shall be exempt from the provisions of this chapter. (Acts 1909, p. 238.)

TITLE 29A

COUNTY HOSPITAL

Art. 1498a. Power of commissioners' court to establish or enlarge; petition of voters; submission of issue of bonds; powers of commissioners' court.—The commissioners' court of any county shall have power to establish a county hospital and to enlarge any existing hospitals for the care and treatment of persons suffering from any illness, disease or injury, subject to the provisions of this Act. At intervals of not less than twelve months, ten per cent. of the qualified property tax paying voters of a county may petition the commissioners' court of such county to provide for the establishing or enlarging of a county hospital, in which event it shall be the duty of said commissioners' court within the time designated in such petition to submit to the property tax paying voters of the county either at a special or at a regular election, the proposition of issuing bonds in such aggregate amount as may be designated in said petition for the establishing or enlarging of such hospital; and whenever any such proposition shall receive a majority of the votes of the qualified property tax payers voting at such election, said commissioners' court shall establish and maintain such hospital, and shall have the following powers:

To purchase and lease real property therefor, or acquire such real property, and easements therein, by condemnation proceedings, in the manner prescribed by the present law authorizing a condemnation of right of way of railroads.

To purchase or erect all necessary buildings, make all necessary improvements and repairs and alter any existing buildings, for the use of said hospital; provided, that the plans for such erection, alteration or repair shall first be approved by the state health officer, if his approval is requested by the said commissioners' court.

To cause to be assessed, levied and collected, such taxes upon the real and personal property owned in the county as it shall deem necessary to provide the funds for the maintenance thereof, and for all other necessary expenditures therefor.

To issue county bonds to provide funds for the establishing, enlarging and equipping of said hospital and for all other necessary permanent improvements in connection therewith. And to do all other things that may be required by law in order to render said bonds valid. To appoint a board of managers for said hospitals as hereinafter provided.

To accept and hold in trust for the county, any grant or devise of land, or any gift or bequest of money or other personal property or any donation to be applied, principal or income, or both, for the benefit of said hospital, and apply the same in accordance with the terms of the gift. (Acts 1913, p. 71, sec. 1.)

Art. 1498b. Board of managers; appointment; term; vacancy; expenses; removal.—When the commissioners' court shall have acquired a site for such hospital and shall have awarded contracts for the necessary buildings and improvements thereon, it shall appoint five citizens of the county, of whom at least two shall be practicing physicians, and at least one a woman, who shall constitute a board of managers of the said hospital. The term of office of each member of said board shall be two years. Appointments of successors shall be for the full term of two years, except that appointment of persons to fill vacancies occurring by death, resignation or other cause shall be made for the unexpired term. Failure of any

manager to attend three consecutive meetings of the board shall cause a vacancy in his office, unless said absence is excused by formal action of the board of managers. The managers shall receive no compensation for their services, but shall be allowed their actual and necessary traveling and other expenses within the state of Texas, to be audited and paid by the commissioners' court in the same manner as other expenses of the hospital. Any manager may at any time be removed from office by the commissioners' court of the county for cause after an opportunity to be heard. (Id. sec. 2.)

Art. 1498c. Officers; superintendent; physicians; salaries; powers and duties of board.—The board of managers shall elect from among its members a president and one or more vice-presidents, and a secretary and a treasurer. It shall appoint a superintendent of the hospital who shall hold office at the pleasure of said board. Said superintendent shall not be a member of the board of managers, and shall be a qualified practitioner of medicine, physician or other person specially trained for work of such character.

The board of managers shall also appoint a staff of visiting physicians, who shall serve without pay from the county, and who shall visit and treat hospital patients at the request either of the managers or of the superintendent.

Said board of managers shall fix the salaries of the superintendent and all other officers and employés within the limits of the appropriation made therefor by the commissioners' court, and such salaries shall be compensation in full for all services rendered. The board of managers shall determine the amount of time required to be spent at the hospital by said superintendent in the discharge of his duties. The board of managers shall have the general superintendence, management and control of the said hospital, of the grounds, buildings, officers and employés thereof; of the inmates therein, and of all matters relating to the government, discipline, contracts and fiscal concerns thereof; and make such rules and regulations as may seem to them necessary for carrying out the purposes of such hospital. They shall maintain an effective inspection of said hospital and keep themselves informed of the affairs and management thereof; shall meet at the hospital at least once in every month, and at such other times as may be prescribed in the by-laws; and shall hold an annual meeting at least three weeks prior to the meeting of the commissioners' court at which appropriations for the ensuing year are to be considered. (Id. sec. 3.)

Art. 1498d. Out-patient department; dispensary and clinics.—The board of managers may also establish and operate an out-patient department or free dispensary and clinic, at the hospital or in the city nearest to which the hospital is located, with branch dispensaries or clinics in every city or town in the county of five thousand population and over, and they shall appoint a physician or physicians, who shall serve at such dispensaries or clinics, and shall determine the amount of time required to be spent at such dispensaries or clinics by such physicians, and shall fix the salaries, if any, of such physicians. Said board of managers shall also appoint one or more trained visiting nurses to serve in connection with each such dispensary or clinic, and in connection with the hospital, and shall fix their salaries, within the limits of the appropriation made therefor by the commissioners' court. (Id. sec. 4.)

Art. 1498e. School for education, care and treatment of children suffering from tuberculosis.—The board of managers may also establish, at the hospital, or in the city nearest to which the hospital is situated, or in the largest city in the county, a special and separate school for the education, care and treatment of children suffering from tuberculosis. Said school shall be conducted as a branch of the hospital and the pupils and inmates of said school shall be considered as inmates of the hospital and subject to all the provisions of this Act. Said board of managers shall appoint a teacher or teachers, specially qualified, to instruct and care for the pupil-inmates of said school. Said board of managers shall delegate the superintendent of the hospital, a member or members of the staff of visiting physicians, a physician or physicians in attendance upon any county dispensary, or shall employ a physician to attend the inmates of said school, and to supervise their care and treatment, and shall delegate one of the hospital nurses, or a visiting nurse, or shall employ a nurse to assist in the care and treatment of said pupils. (Id. sec. 5.)

Art. 1498f. Duty of state board of health; publications; duty of board.—It shall be the duty of the state board of health, from time to time, to make rules and regulations for the care of persons suffering from communicable disease and for the prevention and spread of such diseases; and to prepare circulars, pamphlets, bulletins and other publications giving information as to the cause, nature, treatment and prevention of disease. The board of managers shall, from time to time, purchase from the state board of health, at the actual cost of printing, printed copies of such rules and regulations, circulars, pamphlets, bulletins and other publications, or shall have same printed, and shall send or deliver such copies to all practicing physicians in the county, to all public schools and to such private schools as request such copies, and to such organizations, churches, societies, unions and individuals as may present written requests for copies of circulars, pamphlets, bulletins and such other publications prepared by the state board of health. (Id. sec. 6.)

Art. 1498g. Duties of board; records; bills and accounts; reports, etc.—The board of managers shall keep in a book provided for that purpose a proper record of its proceedings, which shall be open at all times to the inspection of its members, to the members of the commissioners' court of the county and to any citizen of the county.

The board of managers shall certify all bills and accounts, including salaries and wages, and transmit them to the commissioners' court of the county, who shall provide for their payment in the same manner as other charges against the county are paid.

The board of managers shall make to the commissioners' court of the county, annually, and at such times as the commissioners'

court shall direct, a detailed report of the operation of the hospital, dispensaries and school during the year, showing the number of patients received and the methods and results of their treatment, together with suitable recommendations and such other matter as may be required of them, and shall furnish full and detailed estimates of the appropriations required during the ensuing year for all purposes, including maintenance, the erection of buildings, repairs, renewals, extensions, improvements, betterments or other necessary purposes. (Id. sec. 7.)

Art. 1498h. Duties and powers of superintendent; admission and discharge of patients, etc.; bond.—The superintendent shall be the chief executive officer of the hospital, but shall at all times be subject to the by-laws, rules and regulations thereof, and to the powers of the board of managers.

He shall, with the consent of the board of managers, equip the hospital with all necessary furniture, appliances, fixtures and all other needed facilities for the care and treatment of patients, and for the use of officers and employés thereof, and shall purchase all necessary supplies, not exceeding the amount provided for such purposes by the commissioners' court.

He shall have general supervision and control of the records, accounts and buildings of the hospital, and all internal affairs, and maintain discipline therein, and enforce compliance with and obedience to all rules, by-laws and regulations adopted by the board of managers for the government, discipline and management of said hospital and the employés and inmates thereof. He shall make such further rules, regulations and orders as he may deem necessary, not inconsistent with law or with the rules, regulations and directions of the board of managers. He shall, with the consent of the board of managers, appoint such resident officers and such employés as he may think proper and necessary for the efficient performance of the business of the hospital, and prescribe their duties; and for cause, stated in writing, he may discharge any such officer or employé at his discretion, after giving such officer or employé an opportunity to be heard.

He shall cause proper accounts and records of the business and operations of the hospital to be kept regularly from day to day in books and on records provided for that purpose; and shall see that such accounts and records are correctly made up for the annual report of the commissioners' court, as required by section 7 of this Act [Art. 1498g], and present the same to the board of managers, who shall incorporate them in their report to the said commissioners' court.

He shall receive into the hospital, under the general direction of the board of managers, in order of applications, or according to the urgency of need of treatment, any person found to be suffering from any illness, disease or injury, who has been an actual resident and inhabitant of the county for a period of at least one year prior to his application for admission to said hospital. He shall also receive into the hospital, patients sent by the commissioners' court of any adjacent county, which has contracted with the board of managers of the hospital for the care and treatment of its sick and diseased and injured persons, resident in such counties for a period of at least one year. Such patients shall not be received and cared for unless there is sufficient provision for the care of the sick, diseased and injured of the county in which the hospital is situated. Said superintendent shall cause to be kept proper accounts and records of the admission of all patients, their names, age, sex, color, marital condition, residence, occupation and place of past employment.

He shall cause a careful examination to be made of the physical condition of all persons admitted to the hospital and provide for the treatment of each such patient according to his need; and shall cause a record to be kept of the condition of each patient when admitted, and from time to time thereafter.

He shall temporarily or permanently discharge from said hospital any patient who shall willfully or habitually violate the rules thereof; or who is found not to be sick, diseased or injured; or who is found to have recovered therefrom; or who for any other reason is no longer a suitable patient for treatment therein; and shall make a full report thereof at the next meeting of the board of managers; and the said board shall make such final disposition of the case as they may think proper. From the decision of the board of managers there shall be no appeal.

He shall collect and receive all moneys due the hospital, keep an accurate account of the same, report the same at the monthly meeting of the board of managers, and transmit the same to the county collector within ten days after such meeting.

He shall before entering upon the discharge of his duties, give a bond in such sum as the board of managers may determine, to secure the faithful performance of the duties of his office. (Id. sec. 8.)

Art. 1498i. Admission of patients; applications; duty of superintendent; payments, etc.—Any resident of the county in which the hospital is situated, desiring treatment in such hospital, may apply in person to the superintendent or to any reputable physician for examination, and such physician, if he find that such person is suffering from any illness, disease or injury, may apply to the superintendent of the hospital for his admission. Blank forms for such applications shall be provided by the hospital, and shall be forwarded by the superintendent thereof gratuitously to any reputable physician in the county upon request. So far as practicable, applications for admission to the hospital shall be made upon such forms. The superintendent of the hospital, upon receipt of such application, if it appears therefrom that the patient is suffering from illness, disease or injury, and if there be a vacancy in the said hospital, shall notify the person named in such application to appear in person at the hospital. If, upon personal examination of such patient, or of any patient applying in person for admission, the superintendent is satisfied that such person is suffering from any illness, disease or injury, he shall admit him to the hospital as a patient. All such applications shall state whether, in the judgment of the physician, the person is able to pay in whole or in part for his care and treatment while at the hospital; and every application shall be filed

and recorded in a book kept for that purpose in the order of its receipt. When said hospital is complete and ready for the treatment of patients, or whenever thereafter there are vacancies therein, admission to said hospital shall be made in the order in which the names and applicants shall appear upon the application book to be kept as above provided, in so far as such applicants are certified to by the superintendent to be suffering from any illness, disease or injury. No discrimination shall be made in the accommodations, care or treatment of any patient because of the fact that the patient or his relatives contribute to the cost of his maintenance, in whole or in part, and no patient shall be permitted to pay for his maintenance in such hospital a greater sum than the average per capita cost of maintenance therein, including a reasonable allowance for the interest on the cost of the hospital; and no officer or employé of such hospital shall accept from any patient thereof any fee, payment or gratuity whatsoever for his services. (Id. sec. 9.)

Art. 1498j. Support of patients; duties and powers of superintendent; power of county court.—Whenever a patient has been admitted to said hospital from the county in which the hospital is situated, the superintendent shall cause inquiry to be made as to his circumstances, and of the relatives of such patient legally liable for his support. If he finds that such patient, or said relatives are liable to pay for his care and treatment in whole or in part, an order shall be made directing such patient, or said relatives to pay to the treasurer of such hospital for the support of such patient a specified sum per week, in proportion to their financial ability, but such sum shall not exceed the actual per capita cost of maintenance. The superintendent shall have power and authority to collect such sum from the estate of the patient, or his relatives legally liable for his support, in the manner provided by law for the collection of expenses of the last illness of a deceased person. If the superintendent finds that such patient, or said relatives are not able to pay, either in whole or in part, for his care and treatment in such hospital, the same shall become a charge upon the county. Should there be a dispute as to the ability to pay, or doubt in the mind of the superintendent, the county court shall hear and determine same, after calling witnesses, and shall make such order as may be proper, from which there shall be no appeal. (Id. sec. 10.)

Art. 1498k. Managers to have access; inspection, etc.—The resident officer of the hospital shall admit the managers into every part of the hospital and the premises, and give them access on demand to all books, papers, accounts and records pertaining to the hospital, and shall furnish copies, abstracts and reports whenever required by them. All hospitals established or maintained under the provisions of this Act shall be subject to inspection by any duly authorized representative of the state board of health, or any state board of charities that may hereafter be created, and of the commissioners' court of the county; and the resident officers shall admit such representatives into every part of the hospital and its buildings, and give them access on demand to all records, reports, books, papers and accounts pertaining to the hospital. (Id. sec. 11.)

Art. 1498*l*. Hospital in connection with poor house.—Wherever a county hospital for the care and treatment of persons suffering from any illness, disease or injury exists in connection with, or on the grounds of a county poor house or elsewhere, the commissioners' court shall appoint a board of managers for such hospital, and such hospital, and its board of managers, shall thereafter be subject to all provisions of this Act, in like manner as if it had been originally established hereunder. Any hospital which may hereafter be established by any commissioners' court shall in like manner be subject to all the provisions of this Act. (Id. sec. 12.)

Art. 1498m. More than one hospital.—When deemed advisable by the commissioners' court, and approved by the state board of health, a county may maintain more than one county hospital for the purpose aforesaid. (Id. sec. 13.)

Art. 1498n. Commissioners' court may contract in county having no city of more than 10,000 inhabitants, etc.; co-operation with cities and towns in certain cases.—It shall be lawful for any commissioners' court of any county which has no city with a population of more than ten thousand persons, to contract for a period not exceeding one year, with any regularly incorporated society or hospital or municipality within the county maintaining a hospital, or with any other adjacent county, for the care of any or all of the sick, diseased, or injured inhabitants of the county, upon such terms and conditions as they may by agreement think proper. Where a county has established a hospital as required by section 15 of this Act [Art. 1498*o*], it shall be lawful for the board of managers to contract with any regularly incorporated society or hospital or city or town within the county maintaining a hospital, for the care of some of the sick, injured or diseased persons applying for admission to the county hospital.

It shall be lawful for the commissioners' court of any county to co-operate with and to join the proper authorities of any city or town having a population of ten thousand persons or more in the establishment, building, equipment and maintenance of a hospital in said city or town, and to appropriate such funds as may be determined by said commissioners' court, after joint conference with the authorities of such city or town as may be necessary, and the management of such hospital shall be under the joint control of such commissioners' court, and city authorities. (Id. sec. 14.)

Art. 1498*o*. Duty of commissioners' court in county having city of more than 10,000 inhabitants; submission of issue of bonds to voters, etc.—Where no provision is made as provided in section 14 [Art. 1498n], and no county hospital is now provided for the purpose aforesaid, or where such provision is inadequate, it shall be the duty of the commissioners' court of each county which now has a city with a population of more than ten thousand persons, on or before December 1, 1913, and of any county which may later have a city with a population of more than ten thousand per-

sons, within six months from the time when such city shall have attained such population, such population to be ascertained by such commissioners' court in such manner as may be determined upon resolution thereof, to provide for the erection of such county hospital or hospitals, as may be necessary, for that purpose, and to provide therein a room or rooms, or ward or wards, for the care of confinement cases, and a room or rooms or ward or wards, for the temporary care of persons suffering from mental or nervous disease, and also to make provision in separate buildings for patients suffering from tuberculosis and other communicable diseases, and from time to time to add thereto accommodations sufficient to take care of the patients of the county. This time may be extended by the state board of health for good cause shown. Unless adequate funds for the building of said hospital can be derived from current funds of the county, available for such purpose, issuance of county warrants and script, it shall be the duty of the commissioners' court to submit, either at a special election called for the purpose, or at a regular election, the proposition of the issuance of county bonds for the purpose of building such hospital. If the proposition shall fail to receive a majority vote at such election said commissioners' court may be required thereafter at intervals of not less than twelve months, upon petition of ten per cent. of the qualified voters of said county, to submit said proposition until same shall receive the requisite vote authorizing the issuance of the bonds. (Id. sec. 15.)

Art. 1498p. Adjacent counties may join in certain cases.—Where found to be more practicable, and when approved by the state board of health, two or more adjacent counties, having each a population of less than fifteen thousand persons, may join for the purposes of this Act, and erect one or more hospitals for their joint use, under the terms and conditions above set forth for a single county.

In such cases such combined counties shall have the same powers, and be subject to the same liabilities as a single county, herein provided for; and the district court in either county shall in such case have the same power for the purpose of enforcing this Act, as are herein provided for in case of single counties. (Id. sec. 16.)

TITLE 29B

COUNTY PARKS

Art. 1498¼. Tax levy for parks; election.—That the commissioners court of any county in this State is hereby authorized to levy and collect a tax not to exceed five (5) cents on each $100 of assessed valuation of the county for the purchase and improvement of lands for use as county parks; provided, that no such tax shall be levied and collected until the proposition is submitted to and ratified by the property taxpaying voters of the county at a general election or a special election called for other purposes, provided, a two-thirds majority of the property taxpaying voters of such county, at an election held for that purpose, shall determine in favor of said tax. (Acts 1915, ch. 53, sec. 1.)

Art. 1498¼a. Number of parks; location.—The county parks provided for in this Act shall not exceed four in number in any one county; and it is further provided that where the commissioners court of any county desires to establish two or more of such county parks it shall be their duty to locate such parks in widely separated portions of the county so as to place them as near as practicable within the convenient reach of all the citizens of the county. (Id. sec. 2.)

Art. 1498¼b. Control of parks; tax for maintenance.—Said commissioners court shall have full power and control over any and all county parks as provided for in this Act, and they shall have the right to levy and collect an annual tax sufficient in their judgment to properly maintain such parks. (Id. sec. 3.)

Art. 1498¼c. Area of parks.—County parks, as contemplated by the provisions of this Act, shall consist of not more than one hundred acres. (Id. sec. 4.)

Art. 1498¼d. Improvement of parks.—The improvement of lands for use as county parks, as provided for in Section 1 of this Act [Art. 1498¼] authorizes the commissioners court to build and construct pavilions and such other buildings as they may deem necessary to lay out and open driveways and walks, to pave the same or any part thereof, in such manner and of such material as said commissioners court may deem advisable; to set out trees and shrubbery, construct ditches or lakes, and to make such other improvements as they may deem proper and necessary. (Id. sec. 5.)

Art. 1498¼e. Regulations as to use of parks.—County parks established under the provisions of this Act shall remain open for the free use of the public under such reasonable rules and regulations as the commissioners court may prescribe. But no person, firm or association of persons shall have the right to offer for sale or barter, exhibit anything or conduct any place of amusement where a fee is charged within said parks without first obtaining the consent of the commissioners court or its duly authorized agent or agents, paying for such privilege or concession such sum as may be agreed upon by the person, firm or association of persons and the commissioners court or its duly authorized agent or agents; and provided further, that all revenue derived from the sale of such rights, privileges or concessions shall go into a fund for the maintenance of said parks. (Id. sec. 6.)

TITLE 29C

COUNTY LIBRARIES

Art. 1498½. Commissioners' Court may establish free libraries; joint libraries.—The County Commissioners' Court of the several counties shall have power and authority to establish, maintain, and operate within their respective counties, county free libraries, in the manner and with the functions prescribed in this Act. The said Commissioners' Court shall also have the power and authority to establish in co-operation with another county or counties a joint free

county library for the benefit of the co-operating counties. (Acts 1919, 2d C. S., ch. 75, sec. 2.)

This title consists of Acts 1915, ch. 117, §§ 1-19, as amended by Acts 1917, ch. 57, §§ 2-23, which was amended by Acts 1919, 2d C. S., ch. 75, as set forth below.

Art. 1498½a. Free libraries for parts of counties outside cities and towns maintaining free public libraries.—The Commissioners' Court of any county may establish county free libraries for that part of such county lying outside of incorporated cities and towns already maintaining free public libraries, and for such additional parts of such counties as may elect to become a part of or to participate in such county free library system, as hereafter provided in this Act. On their own initiative, or when petitioned to do so by a majority of the voters of that part of the County to be affected by this Act, the Commissioners' Court shall proceed to establish and provide for the maintenance of such library according to the further provisions of this Act. (Id. sec. 3.)

Art. 1498½b. Location at county seat; service to all parts of county.—The county library shall be located at the county seat, in the court house, unless more suitable quarters are available. The librarian shall endeavor to give an equal and complete service to all parts of the county through branch libraries and deposit stations in schools and other locations where suitable quarters may be obtained, thus distributing printed matter, books, and other educational matter as quickly as circumstances will permit. (Id. sec. 4.)

Art. 1498½c. Appointment of librarian; qualifications.—Upon the establishment of a county free library the Commissioners' Court shall appoint a county librarian who shall hold office for a term of two years subject to removal for cause after a hearing by said court. No person shall be eligible to the office of county librarian unless prior to his appointment he has received from the State Board of library examiners a certificate of qualification for office. (Id. sec. 5.)

Art. 1498½d. Board of library examiners; terms of members; compensation; expenses; meetings; examination of librarians.—A commission is hereby created to be known as the State Board of Library Examiners, consisting of the State librarian, who shall be ex-officio chairman of the Board; the librarian of the State University, who shall be an ex-officio member; and three other well trained librarians of the State who shall at first be selected by the State librarian and the librarian of the State University. The term of each shall be for six years, one of the appointive members retiring every two years. His successor shall be chosen by the remaining members of the board in executive session. The members of said board shall receive no compensation for their services except actual and necessary traveling expenses paid out of the State Library fund. Said board shall arrange for an annual meeting and for such other meetings as may be necessary in the pursuance of its duties. Said board shall pass upon the qualifications of all persons desiring to become county librarians in the State of Texas, and may in writing adopt rules and regulations not inconsistent with the law for its government and for the carrying out of the purposes of this Act. (Id. sec. 6.)

Art. 1498½e. Salaries of librarians and assistants.—The Commissioners' Court shall fix the salaries of the librarian and assistants at the time they fix the salary of the other appointive county officers. (Id. sec. 7.)

Art. 1498½f. Reports by librarians.—The librarian of each county library shall, on or before the 1st day of October in each year, report to the Commissioners' Court and to the State Librarian the operation of the county library during the year ending August 31st preceding. Such report shall be made on blanks furnished by the State library, and shall contain a statement of the condition of the library, its operation during the year, and such financial and book statistics as are kept in well regulated libraries. (Id. sec. 8.)

Art. 1498½g. Supervision; rules and regulations.—The county library shall be under the general supervision of the Commissioners' Court. The county librarian shall have the power to make rules and regulations for the county free library, to establish branches and stations throughout the county, to determine the number and kind of employees of such library, and, with the approval of the Commissioners' Court, to appoint and dismiss such employees. (Id. sec. 9.)

Art. 1498½h. Supervision by State Librarian; visitation.—The county free libraries of the State shall also be under the supervision of the State Librarian, who shall from time to time, either personally or by one of his assistants, visit the county free libraries and inquire into their condition, advising with the librarians and the Commissioners' Court, and rendering such assistance in all matters as the State library may be able to give. (Id. sec. 10.)

Art. 1498½i. Oath and bond of librarian; duties; expenses.—The county librarian shall prior to entering upon the duties of his office file with the county clerk the usual oath of office and a bond conditioned upon the faithful performance of his duties with sufficient sureties, approved by a judge of the county court of the county of which the librarian is to be the county librarian, in such sum as may be determined by the Commissioners' Court. The county librarian shall, subject to the general rules adopted by the Commissioners' Court, build up and manage according to accepted rules of library management a library for the people of the county and shall determine what books and other library equipment shall be purchased. The county librarian and assistants shall be allowed actual and necessary traveling expenses incurred in the business of the library. (Id. sec. 11.)

Art. 1498½j. Levy of tax.—After a county free library has been established, the Commissioners' Court shall annually set aside from the general tax fund of the county, a sum sufficient for the maintenance of said library, but not to exceed five cents on the hundred dollars valuation of all property in such county outside of all incorporated cities and towns already supporting a free public library, and upon all property within all incorporated cities and towns already support-

ing a free public library, and upon all property within all incorporated cities and towns already supporting a free public library which have elected to become a part of such county free library systems provided in this Act for the purpose of maintaining county free libraries and for purchasing property therefor. (Id. sec. 12.)

Art. 1498½k. Donations; title to property.—The Commissioners' Court is authorized and empowered to receive on behalf of the county any gift, bequest, or devise for the county free library, or for any branch or subdivision thereof. The title to all property belonging to the county free library shall be vested in the county, but where gifts or bequests shall be made for the benefit of any branch or branches of the county free library, such gifts or bequests shall be administered as designated by the donor. (Id. sec. 13.)

Art. 1498½l. Library fund; claims.—All funds of the county free library shall be in the custody of the county treasurer, or other county official, who may discharge the duties commonly delegated to the county treasurer. They shall constitute a separate fund to be known as the county free library fund, and shall not be used for any other purposes except those of a county free library. Each claim against the county free library shall be authorized and approved by the county librarian, or in his absence from the county, by his assistant. It shall then be acted upon in the same manner as are all other claims against the county. (Id. sec. 14.)

Art. 1498½m. White persons to have use of library; separate branches for negroes.—Any white person of such county may use the county free library under the rules and regulations prescribed by the County Commissioners' Court and may be entitled to all the privileges thereof; provided, said court shall make proper provision for the negroes of said county to be served through a separate branch or branches of the county free library, which shall be administered by custodian of the negro race under the supervision of the county librarian. (Id. sec. 15.)

Art. 1498½n. Farmers' county libraries to continue; merger.—In any county where a farmers' county library has been established as provided in Chapter 122 of the Acts of the Regular Session of the Thirty-Third Legislature, the same shall continue to operate as a farmers' county library, unless a county free library shall be established as provided for in this Act, in which case the former shall merge with and become a part of the latter. (Id. sec. 16.)

See ante, arts. 14xx—14z.

Art. 1498½o. Cities or towns may receive benefits of county library; discontinuance of connection.—After the establishment of a county free library as provided in this Act, the board of commissioners, city council, or other legislative body of any incorporated city or town in the county, maintaining a free public library, may notify the Commissioners' Court that such city or town desires to become a part of the county free library system, and thereafter such city or town shall be a part thereof, and its inhabitants shall be entitled to the benefits of such county free library, and the property within such town or city shall be included in computing the amount to be set aside as a fund for county free library purposes.

But the board of commissioners, city council, or other legislative body of such incorporated city or town may at any time after two years notify the Commissioners' Court that such city or town no longer desires to be a part of the county free library system and thereafter such city or town shall cease to participate in the benefits of such county free library system, and the property situated in said city or town shall no longer be assessed in computing the fund to be set aside for county free library purposes; provided, however, that the board of commissioners, city council, or other legislative body of such incorporated city or town give the Commissioners' Court six months' notice and publish at least once a week for six successive weeks prior to either giving or withdrawing such notice in a county newspaper designated by the board of commissioners, city council, or other legislative body, and circulated throughout such city or town, notice of such contemplated action, giving date and place of meeting at which such contemplated action is proposed to be taken. (Id. sec. 17.)

Art. 1498½p. Counties may contract with cities or towns maintaining libraries.—The County Commissioners' Court, wherein a county free library has been established under the provisions of this Act, shall have full power and authority to enter into contracts with any incorporated city or town maintaining a free public library, and such incorporated city or town shall through its board of commissioners, city council, or other legislative body, have full power to enter into contracts with such county to secure to the residents of such incorporated city or town the same privileges of the county free library as are enjoyed by the residents of such county outside of such incorporated city or town, or such privileges as may be agreed upon in such contract, upon such consideration to be named in the contract as may be agreed upon, the same to be paid into the county library fund, and thereupon the residents of such incorporated city or town shall have the same privileges with regard to said county free library as are had by the residents of such county outside of such incorporated city or town, or such privileges as may be agreed upon by contract. (Id. sec. 18.)

Art. 1498½q. Contracts between counties; tax; termination of contract.—The Commissioners' Court of any county, wherein a county free library has been established under the provisions of this Act, shall have full power and authority to enter into contracts or agreements with the Commissioners' Court of any other county to secure to the residents of such other county such privileges of such county free library as may, by such contract, be agreed upon, the same to be paid into the county free library fund, and thereupon the inhabitants of such other county shall have the privileges of such county free library as may by such contract be agreed upon; and the Commissioners' Court shall have full power and authority to enter into a contract with the Commissioners' Court of another county wherein a county

free library has been established, under the provisions of this Act, and shall have power to provide for and to set aside a county free library fund, in the manner already set out, for the purpose of carrying out such contract. But the making of such contract, shall not bar the Commissioners' Court of such county from establishing a county free library therein, and upon the establishment of such county free library such contract may be terminated upon such terms as may be agreed upon by the parties thereto, or may continue for the term thereof. (Id. sec. 19.)

Art. 1498½r. Contract for service of established library; election; termination.—Instead of establishing a separate county free library, upon petition of a majority of the voters of the county, the Commissioners' Court shall have the power and are hereby authorized to contract for library privileges from some already established library. Such contract shall provide that said established library shall assume the functions of a county free library within the county with which the contract is made, including incorporated cities and towns therein. Such contract shall also provide that the librarian of such established library shall hold, or secure a county librarian's certificate from the State Board of Library Examiners. The Commissioners' Court may contract to pay annually into the library fund of said established library such sum as may be agreed upon. Said sum shall be paid out of the county library fund provided for in Section 12 of this Act [Art. 1498½j]. Either party to such contract may terminate the same by giving six months notice of intention to do so. Property acquired under such contract shall be subject to division at the termination of the contract upon such terms as are specified in such contract. (Id. sec. 20.)

Art. 1498½s. Joint county libraries.—Where found to be more practicable two or more adjacent counties may join for the purposes of this Act, and establish and maintain a free library under the terms and provisions above set forth for the establishment and maintenance of a county free library. In such cases the combined counties shall have the same powers and be subject to the same liabilities as a single county as provided in this Act. The Commissioners' Courts of the counties which have combined for the establishment and maintenance of a free library shall operate jointly in the same manner as does the Commissioners' Court of a single county in carrying out the provisions of this Act. Should any county desire to withdraw from such combination, it shall be entitled to a division of property in such proportion as agreed upon in the terms of combination at the time such joint action was taken. (Id. sec. 21.)

Art. 1498½t. Discontinuance of library.—After a county free library has been established, it may be disestablished in the following manner: Upon petition of a majority of the voters of that part of the county maintaining a county free library, asking that said county free library system be no longer maintained, it shall become the duty of the Commissioners' Court upon the termination of existing contracts to call in all books and movable property of the defunct county free library, and to have the same sorted, inventoried, and stored under lock and seal in some dry and suitable place in the county court house. (Id. sec. 22.)

Art. 1498½u. Partial invalidity.—In case any section of this Act, and any provision therein is found unconstitutional or invalid for any reason, the same shall in no wise affect the remaining sections and provisions of this Act. (Id. sec. 23.)

TITLE 30

COUNTY TREASURER

Art. 1499. (919) (987) Election and term of office.—At each regular biennial election for state and county officers, there shall be elected in each county, by the qualified voters thereof, a county treasurer, whose term of office shall be two years and until his successor is qualified. (Const. art. 16, sec. 44; Acts 1876, p. 199.)

Art. 1500. (920) (988) Oath and bond of.—The county treasurer, before entering upon the duties of his office, and within twenty days after he has received his certificate of election, shall take the oath of office prescribed by the constitution of this state and shall give a bond payable to the county judge of his county, with at least two good and sufficient sureties, to be approved by the commissioners' court, in such sum as such court may deem necessary, conditioned that such treasurer shall faithfully execute the duties of his office and pay over according to law all moneys which shall come into his hands as county treasurer, and render a just and true account thereof to said court at each regular term of said court, which oath and bond shall be filed and recorded in the office of the clerk of the county court of such county and safely preserved. (Acts May 13, 1846; P. D. 1096.)

See Coe v. Nast, 41 S. W. 473; Connor v. Zackry, 117 S. W. 177.

Old Art. 921, substituted by Acts 1905, p. 263, sec. 31; for which see the title "Education, Public," art. 2768. Also see Acts 1909, p. 22, sec. 154a.

Art. 1501. (922) (990) Shall be required to give new bond, when.—It shall be the duty of the county commissioners' court, whenever they may consider the bonds, or either of the bonds, of a county treasurer, from any cause, insufficient or doubtful, to require such treasurer to give another bond or bonds, or to give additional bond or bonds, as the case may be.

See Coe v. Nast, 41 S. W. 473.

Art. 1502. (923) (991) Office to be declared vacant, when.—Should the person elected treasurer fail to give the bonds required by this title and take the oath of office within twenty days after receiving his certificate of election, it shall be the duty of the county judge to declare the said office vacant; and, should a treasurer fail to give another or an additional bond or bonds when required to do so, as provided in the preceding article, within twenty days after notice of such requirement, he shall be removed from said office in the manner provided by law.

Art. 1503. (924) (992) Vacancy, how filled.—Whenever there shall be a vacancy in the office of the county treasurer, it shall be the duty of the commissioners' court of

the county in which such vacancy occurs to fill such vacancy by appointment, such appointment to be made by a majority vote of the commissioners present, at a regular or special term of such court, and such appointment shall continue in force until the next general election and until a successor is qualified. (Acts 1876, p. 217.)

Art. 1504. (925) (993) Appointee shall take oath and give bonds.—The person appointed to fill the vacancy, as provided in the preceding article, shall, before entering upon the discharge of the duties of such office, and within twenty days after he has been notified of such appointment, take the oath and give the bonds required, as in the case of an election to such office. (Id.)

Art. 1505. (926) (994) Shall receive moneys belonging to county, etc.—It shall be the duty of the county treasurer to receive all moneys belonging to the county from whatever source they may be derived, and to pay and apply the same as required by law, in such manner as the commissioners' court of his county may require and direct. (Act May 13, 1846; P. D. 1097.)

See McDonald v. Farmer, 56 S. W. 555; Trustees of Lytle School District v. Haas, 59 S. W. 830; Watson v. El Paso County, 202 S. W. 126.

Art. 1506. (927) (995) Shall keep true accounts and superintend collection of money, etc.—The county treasurer shall keep a just and true account of the receipts and expenditures of all moneys which shall come into his hands by virtue of his office, and of the debts due to and from his county; and direct prosecutions according to law for the recovery of all debts that may be due his county, and superintend the collection thereof. (Id.; P. D. 1098.)

See Trustees of Lytle School Dist. v. Haas, 59 S. W. 830.

Art. 1507. (928) (996) Shall report to commissioners' court.—The county treasurer shall render a detailed report at every regular term of the commissioners' court of his county of all the moneys received and disbursed by him, of all debts due to and from his county, and of all other proceedings in his office, and shall exhibit to said court at every such term all his books and accounts for their inspection and all vouchers relating to the same, to be audited and allowed. (Id.; P. D. 1099.)

See Coe v. Nast, 41 S. W. 473; Poole v. Burnet Co., 76 S. W. 425.

Art. 1508. (929) (997) Shall deliver money, etc., to successor in office.—He shall deliver the moneys, securities, and all other property of the county in his hands, together with all documents, instruments of writing, papers and books belonging to, or for the use of, the county to his successor in office, and perform all such other acts as may be required of him by said commissioners' court. (Id.: P. D. 1100.)

Art. 1509. (930) (998) Shall not pay out money except, etc.—The county treasurer shall not pay any money out of the county treasury except in pursuance of a certificate or warrant from some officer authorized by law to issue the same; and, if such treasurer shall have any doubt of the legality or propriety of any order, decree, certificate or warrant presented to him for payment, he shall not pay the same, but shall make report thereof to the commissioners' court for their consideration and direction. (Id.; P. D. 1101.)

See Collier v. Peacock, 54 S. W. 1025; McDonald v. Farmer, 56 S. W. 555; Oge v. Froboese, 66 S. W. 688; Denman v. Coffee, 91 S. W. 800; Watson v. El Paso County, 202 S. W. 126.

Art. 1510. (931) (999) Shall examine dockets, accounts, etc.—It shall be the duty of the county treasurer to examine the accounts, dockets and records of the clerks, sheriff, justices of the peace, constables and tax collector of his county, for the purpose of ascertaining whether any moneys of right belonging to his county are in their hands which have not been accounted for and paid over according to law, and shall report the same to the commissioners' court at their next term, to the end that suit may be instituted for the recovery thereof. (Id.: P. D. 1102.)

Art. 1511. (932) (1000) Shall perform such other duties as may be required by law.—The county treasurer shall perform all such other duties as may be required of him by law.

TITLE 31

COURT—SUPREME

CHAPTER ONE

JUDGES OF THE SUPREME COURT

Art. 1512. (933) (1001) One chief and two associate justices.—The supreme court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and the concurrence of two judges shall be necessary to the decision of a case. (Const. art. 5, sec. 2.)

Art. 1513. (934) (1002) Election and tenure of office.—The chief justice and associate justices of the supreme court shall be elected by the qualified voters of the state at a general election. The judges of said court now in office shall hold their office until the expiration of the term for which they were elected, and until their successors are elected and qualified. As soon as practicable after the election of the successors to the present incumbents, the newly elected judges shall cast lots for the term of office. That one who shall draw number one shall hold his office for two years; the one drawing number two shall hold his office for four years, and the one drawing number three shall hold his office for six years; each to hold his office until his successor is elected and qualified; and each justice of the supreme court elected thereafter shall hold his office for six years and until his successor is elected and qualified, and shall each receive an annual salary of four thousand dollars. (Acts 1892, p. 19.)

See title 98, chapter 1. As to salaries, see post, art. 7057.

Art. 1514. (935) (1003) Qualifications of judges.—No person shall be eligible to the office of chief justice or associate justice of the supreme court, unless he be, at the time of his election, a citizen of the United States and of this state, and unless he shall have attained the age of thirty years, and shall have been a practicing lawyer or a judge of a court in this state, or such lawyer and judge together, at least seven years. (Id.)

Art. 1515. (936) (1004) Vacancies, how filled.—In case of a vacancy in the office of chief justice or associate justice of

the supreme court, the governor shall fill the vacancy until the next general election for state officers, and at such general election the vacancy for the unexpired term shall be filled by election by the qualified voters of the state. (Id.)

Art. 1516. (969) (1040) Disqualification of judges.—No judge of the supreme court shall sit in any cause wherein he may be interested in the question to be determined, or where either of the parties may be connected with him by affinity or consanguinity, within the third degree, or where he shall have been of counsel in the cause; and, when the court or any two of its members shall be thus disqualified to hear and determine any cause or causes in said court, the same shall be certified to the governor, who shall immediately commission the requisite number of persons, learned in the law, for the trial and determination of said cause or causes. (Const. art. 5, sec. 11; Act May 12, 1846; P. D. 1575.)

Art. 1517. (970) (1041) Equal division of judges.—Whenever the supreme court shall be equally divided in opinion on hearing any appeal or other matter, it shall be the duty of the chief justice or presiding judge of the court to certify the same to the governor; also, all other causes of disability of said court, as prescribed in the preceding article; whereupon, the governor shall immediately commission the required number of persons learned in the law for the determination of said case or cases: provided, that the person or persons so commissioned shall possess all the qualifications hereinbefore and hereinafter prescribed for judges of the supreme court. (P. D. 1576.)

CHAPTER TWO

TERMS OF THE SUPREME COURT

Art. 1518. (937) (1005) Terms of supreme court.—The supreme court shall hold one term each year at the city of Austin, commencing on the first Monday in October of each year, and may continue until the last Saturday in the next June. (Acts 1892, p. 19.)

Art. 1519. (938) (1010) Adjournment from day to day; want of quorum.—The said court may adjourn from day to day, or for such period as they may think necessary to the ends of justice and the determination of the business before them; and there shall be no discontinuance of any suit, process or matter returned to, or depending in, the supreme court, although a quorum of the court may not be in attendance at the commencement or any other day, of the term; but if a sufficient number of the judges shall not attend on the first day of the term to hold said court, or shall not attend at any day of the term, any judge of the court, or the sheriff attending the same, may adjourn the said court from time to time, for thirty days, at which time, if a majority or quorum shall not attend, it shall be the duty of the judge or sheriff in attendance to adjourn the court to the next regular term time. (Act May 12, 1846. P. D. 1574.)

Art. 1520. (939) Bailiff, appointment and compensation.—The supreme court may appoint a bailiff to attend the sitting of the court, who shall receive an annual salary of three hundred dollars.

CHAPTER THREE

JURISDICTION OF THE SUPREME COURT

Art. 1521. (940) (1011) Appellate jurisdiction of supreme court.—The Supreme Court shall have appellate jurisdiction co-extensive with the limits of the State, which shall extend to all questions of law arising in cases of which the Courts of Civil Appeals have appellate jurisdiction in the following cases when same have been brought to the Courts of Civil Appeals by writ of error or appeal from final judgment of trial courts:

1. Those in which the judges of the Courts of Civil Appeals may disagree upon any question of law material to the decision.

2. Those in which one of the Courts of Civil Appeals holds differently from a prior decision of its own or of another Court of Civil Appeals, or of the Supreme Court upon any such question of law.

3. Those involving the construction or the validity of statutes.

4. Those involving the revenue laws of the State.

5. Those in which the Railroad Commission is a party.

6. In any other case in which it is made to appear that an error of law has been committed by the Court of Civil Appeals of such importance to the jurisprudence of the State, as in the opinion of the Supreme Court requires correction, but excluding those cases in which the jurisdiction of the Court of Civil Appeals is made final by Statute. Upon the showing of such an error the Supreme Court may, in its discretion, grant a writ of error for the purpose of revising the decision upon such question alone, and of conforming its judgment to the decision thereof made by it. Until otherwise provided by rule of the Supreme Court the application for writ of error in such a case shall immediately after the title of the cause and the address to the court, concisely state the question decided by the Court of Civil Appeals in which error is asserted, in order that the Supreme Court may at once see that such a question is presented as is contemplated by this provision. This shall be followed by only such brief and general statement as may be necessary to show that the question was involved in the cause and in the decision of the Court of Civil Appeals. More than one question may be presented in the same application, all being stated in order as above stated. (Acts 1892, p. 19; Acts 1913, p. 107, sec. 1; Acts 1917, ch. 75, sec. 1.)

See Long v. Green & Co., 101 S. W. 786; Pittman v. Byars, 101 S. W. 789; Texas & P. Ry. Co. v. Webb, 114 S. W. 1171; First State Bank of Archer City v. Power, 163 S. W. 581; Groce v. West Lumber Co., 163 S. W. 581; Fink v. San Augustine Grocery Co., 167 S. W. 35; Williams v. Abilene Independent Telephone & Telegraph Co., 168 S. W. 402; Cole v. S., 170 S. W. 1036; Spence v. Fenchler, 180 S. W. 597; Lindsay v. Collings, 182 S. W. 879; Gulf, T. & W. Ry. Co. v. Dickey, 187 S. W. 184; Beene v. Waples, 187 S. W. 191; Houston Oil Co. of Texas v. Village Mills Co., 202 S. W. 725.

Art. 1522. (941) (1011a) Writ of error; certification of questions.—All causes mentioned in Article 1521 may be carried to the Supreme Court either by writ of error or by certificate from the Court of Civil Appeals, as elsewhere provided, but the Court of Civil Appeals may certify any question

of law arising in any of the above cases at any time they may choose so to do, whether before or after decision of the case in said court. (Acts 1892, p. 19; amend. 1895, p. 145; Acts 1913, p. 107, sec. 1; Acts 1917, ch. 75, sec. 1.)

See Crawford v. Ry., 33 S. W. 534; Lee v. I. & G. N. Ry., 36 S. W. 63; Humphreys v. Edwards, 36 S. W. 434; Sun Mut. Ins. Co. v. Roberts, Willis and Taylor Co., 37 S. W. 311; Smith v. H. & T. C. Ry., 38 S. W. 985; Ide v. College Park Elec. Belt Line, 39 S. W. 915; Douglass v. Blount, 56 S. W. 334; Hanway v. G. H. & S. A. Ry., 58 S. W. 724; Harvey v. Sutton, 58 S. W. 833; I. & G. N. Ry. v. Coolidge, 65 S. W. 181; Rotan Gro. Co. v. Rogers, 67 S. W. 883; Gossett v. Ry., 69 S. W. 976; McCord v. Nabours, 78 S. W. 223; Ry. v. McKirby, 86 S. W. 921; Wandelohn v. Rainey, 100 S. W. 1155; Harris v. Stark, 110 S. W. 737; Peach River Lumber Co. v. Montgomery, 124 S. W. 904; Casey v. Bell, 137 S. W. 918; McCord v. Sprinkel, 141 S. W. 945; Edwards v. St. Louis Southwestern Ry. Co. of Texas, 151 S. W. 289; Barre v. Daggett, 153 S. W. 120; Paschal v. Inman, 157 S. W. 1158; First State Bank of Archer City v. Power, 163 S. W. 581; Groce v. West Lumber Co., 163 S. W. 581; Williams v. Abilene Independent Telephone & Telegraph Co., 168 S. W. 402; Cole v. S., 170 S. W. 1036; Lindsay v. Collings, 182 S. W. 879; Beene v. Waples, 187 S. W. 191.

Art. 1522a. When act takes effect; pending proceedings.—Be it further enacted that this Act shall take effect on the first day of July, 1917, and that it shall not affect any business which may be before the Supreme Court at that time, either as to the cases in which application for writs of error have been granted or as to applications for writs of error theretofore filed, or as to matters then pending or thereafter filed with reference to any of such business; provided that if a judgment of the Court of Civil Appeals shall be reversed and the cause remanded such case shall thereafter proceed under the provisions of this Act. (Id. sec. 2.)

Art. 1523. (944) (1011d) Court to make rules, etc.—The supreme court shall, from time to time, make and promulgate suitable forms, rules and regulations for carrying into effect the articles of this title relating to the jurisdiction and practice of the supreme court. (Acts 1892, p. 19.)

Art. 1524. (947) (1014) To prescribe rules of practice.—The supreme court shall have power to make, establish and enforce all necessary rules of practice and procedure, not inconsistent with the laws of this state, for the government of said court and all other courts of the state, so as to expedite the dispatch of business in said courts. (Id.)

Pecos & N. T. Ry. Co. v. Thompson, 140 S. W. 1148; Ft. Worth & D. C. Ry. Co. v. Wilkinson, 152 S. W. 203; El Paso Electric Ry. Co. v. Lee, 157 S. W. 748; Cooney v. Dandridge, 158 S. W. 177; Childress v. Robinson, 161 S. W. 78.

Art. 1525. (945) (1011e) May ascertain jurisdictional facts.—The supreme court shall have the power, upon affidavit or otherwise, as the court may determine, to ascertain such matters of fact as may be necessary to the proper exercise of its jurisdiction. (Id.)

Art. 1526. May issue certain writs.—The Supreme Court, or any justice thereof, shall have power to issue writ of habeas corpus as may be prescribed by law, and the said court, or any justice thereof, may issue writs of mandamus, procedendo, certiorari and all writs necessary to enforce the jurisdiction of said court, and said court may issue writs of quo warranto or mandamus agreeable to the principles of law regulating such writs against any district judge, or Court of Civil Appeals or Judge of the Court of Civil Appeals, or officer of the State Government, except the Governor of the State. (Id.; Acts 1913, p. 107, sec. 1; Acts 1917, ch. 75, sec. 1.)

See post, art. 5732; Townes' Texas Pleading (2d Ed.) p. 180; Simkins' Equity (2d Ed.) pp. 82, 794; Thompson v. Baker, 38 S. W. 21; Travis County v. Jourdan, 42 S. W. 543; McCurdy v. Conner, 66 S. W. 664; Betts v. Johnson, 73 S. W. 4; McFall v. State Board of Education, 110 S. W. 739; Cole v. S., 170 S. W. 1036; Terrell v. Middleton, 187 S. W. 367; Bostic v. County Judge of Rockwall County, 195 S. W. 186.

See Title "Mandamus."

Art. 1527. (948) (1015) May punish contempt.—The supreme court shall have power to punish any person for a contempt of said court, according to the principles and usages of law in like cases, not to exceed one thousand dollars fine, and imprisonment not exceeding twenty days. (Act May 12, 1846; P. D. 1577.)

Art. 1528. (949) (1016) May issue mandamus to compel district judge to proceed to trial.—The said court, or any judge thereof, in vacation, may issue the writ of mandamus to compel a judge of the district court to proceed to trial and judgment in a cause, agreeably to the principles and usages of law, returnable to the supreme court on or before the first day of the term, or during the session of the same, or before any judge of the said court as the nature of the case may require. (P. D. 1579.)

Art. 1529. May issue writs of habeas corpus when, and admit to bail.—The supreme court of Texas, or any one of the justices thereof, shall have power, either in term time or vacation, to issue writs of habeas corpus in all cases where any person is restrained in his liberty by virtue of any order, process or commitment, issued by any court or judge, on account of the violation of any order, judgment or decree, theretofore made, rendered or entered by such court or judge in any civil cause; and said supreme court, or any one of the justices thereof, shall have power, either in term time or vacation, pending the hearing of the application for such writ, to admit to bail any person to whom the writ of habeas corpus may be so granted. (Acts 1905, p. 20.)

CHAPTER FOUR

THE CLERK OF THE SUPREME COURT

Art. 1530. (950) (1017) Appointment, qualification and bond.—There shall be appointed for the supreme court one clerk, who shall reside at the place of holding court, which appointment shall be made by the court, or the judges thereof, and shall be entered of record in the proceedings of the court; and each person so appointed shall, before he enters upon the duties of his office, take and subscribe the oath prescribed by the constitution, before some officer authorized to administer oaths generally, and shall enter into a bond with two good and sufficient sureties, to be approved by the court or judges thereof, payable to the governor and his successors in office, in the penalty of five thousand dollars, conditioned for the faithful performance of the duties of his office, and that he correctly record the judgments, decrees, decisions and orders of the said court, and deliver over to his successor in office all records, minutes, books and papers, and what-

ever belongs to his said office of clerk; which bond and oath shall, without delay, be deposited in the office of the secretary of state, and shall not be void on first recovery, but may be put in suit and prosecuted by any party injured until the amount thereof be recovered. (Acts of 1892, p. 19.)

Art. 1531. (951) (1018) Vacancy in vacation, how filled.—If, in vacation, the office of clerk may become vacant, the appointment shall be made by the chief justice and the associates of said court, or any one of said associates and chief justice; and the person so appointed shall give bond and take the oath as prescribed in the preceding article, the bond to be approved by any judge of the court; which bond and oath shall be deposited in the same manner as though the appointment had been made in term time, and may be prosecuted and put in suit in like manner; copies of said bond, certified under the hand of the secretary of state and the seal of state, shall be received in evidence in any court in this state, in the same manner as the original would be were it presented in court; and the said appointment shall continue until the next regular term of the said court, or until a regular appointment shall be made. (Act May 12, 1846. P. D. 1564.)

Art. 1532. (952) (1019) Term of office and salary.—The clerk of the supreme court shall hold his office for the term of four years from his appointment, but may be removed therefrom for neglect of duty or misconduct in office, by the supreme court, on motion, of which the clerk against whom complaint is made shall have ten days previous notice, specifying the particular charges of negligence or misconduct in office preferred; and in every such case the court shall determine the law and the facts; and whenever the necessity occurs, the supreme court may appoint a clerk pro tempore. The clerk of the supreme court shall receive as compensation for his services a salary of twenty-five hundred dollars per annum, and he shall collect and pay into the treasury of the state all fees and costs to be collected by him over and above the salaries allowed him and his deputies, under such further rules and regulations as shall be prescribed by the comptroller, not in conflict with this chapter; such rules and regulations to be subject to the approval of the judges of the supreme court, to be entered of record in the minutes of said court. (Acts 1892, p. 19.)

Art. 1533. (953) (1020) Seal of court, clerk to procure.—It shall be the duty of the clerk of the supreme court to procure a seal for the use of the court, which shall have a star of five points, with the words "Supreme Court of the State of Texas" engraved thereon. (Act May 12, 1846. P. D. 1569.)

Art. 1534. (954) (1021) Shall file and preserve transcripts and docket causes.—The clerk of the supreme court shall file and carefully preserve the transcripts of all records certified to said court, and all papers relative thereto, and shall docket all causes in the order in which the court shall direct. (P. D. 1583.)

Art. 1535. (955) (1022) Shall record proceedings.—The said clerk shall faithfully record the proceedings and decisions of said court, and certify their judgments to the courts from which the causes were brought. (P. D. 1584.)

Art. 1536. (956) (1023) Deputies, appointment, etc.; bond, compensation, duties.—The clerk of the supreme court may appoint one deputy when authorized to do so by a majority of the judges of the supreme court, which authority shall appear of record in the minutes of said court. Said deputy may discharge all the duties required by law of said clerk, and shall be required to give bond in the same manner and amount as the clerk of said court, and to be approved by the judges of said court. Said deputy shall receive as compensation for his services such sum as shall be unanimously agreed on by the judges of the supreme court, this action to appear of record in the minutes of the court, not to exceed the sum of two thousand dollars per annum, to be paid out of the fees collected by the clerk of said court. If the business of the court shall require it, the judges may, by order entered upon the minutes, authorize the clerk of said court to appoint another deputy who shall have like powers as the first, and shall give bond in such sum as may be specified by the court. The court shall, in its order, fix the compensation of the additional deputy at a sum per month, not to exceed one thousand dollars per annum, to be paid out of the fees of the office collected by the clerk; and the court in said order shall specify the time for which the appointment may be made. The judges of the supreme court may dispense with the services of either or both of said deputies, or for any length of time as in their discretion they may deem to the public interest. (Acts 1903, p. 115.)

Art. 1537. (957) (1024) Clerk to be librarian.—The clerk of the supreme court shall be librarian in charge of the library of said court. (Acts 1892, p. 19.)

Art. 1538. (958) (1025) His duties as such.—It shall be the duty of such librarian to take charge of and keep together and in good order and make catalogues of the books of said libraries, which shall be open to the public use under such rules as may be prescribed by the court for the safe keeping thereof; provided, the books shall not be removed from the library room, except by the judges of the court and by members of the legislature during the session of the legislature, upon their receipt for the same to the clerk. (Id.)

CHAPTER FIVE

STENOGRAPHER

Art. 1539. (952) (1019) Court stenographers and salaries.—The Supreme Court may appoint from time to time for said court as many stenographers as there then may be members of that court. The salary of each stenographer shall be fixed by the court at an amount not exceeding $150.00 per month. Not more than three stenographers shall be appointed. (Acts 1892, p. 22; Acts 1915, ch. 68, sec. 1.)

CHAPTER SIX
THE WRIT OF ERROR—PROCEEDINGS TO OBTAIN, ETC.

Art. 1540. (942) (1011b) Petition for writ of error; requisites of and bond.— Any party desiring to sue out a writ of error before the supreme court shall present his petition addressed to said court, stating the nature of his case and the grounds upon which the writ of error is prayed for, and showing that the supreme court has jurisdiction thereof; and the petition shall contain such other requisites as may be prescribed by the supreme court. (Acts 1892, p. 22; Amend. 1895, p. 144.)

See Schleicher v. Runge, 39 S. W. 279; Coe v. Nast, 41 S. W. 473; McGhee v. Romatka, 47 S. W. 520; Homes v. City of Henrietta, 42 S. W. 1052; McLane v. Evans, 58 S. W. 723; Link v. City of Houston, 60 S. W. 664; George Scalfi & Co. v. S., 74 S. W. 754.

Art. 1541. (942) (1011b) Filing, time of, etc.—The petition shall be filed with the clerk of the court of civil appeals within thirty days from the overruling of the motion for rehearing, and thereupon the said clerk of the court of civil appeals shall note upon his record the filing of said application. (Id.)

See Henningsmeyer v. First State Bank of Conroe, 195 S. W. 1137; also, cases cited under art. 1540.

Art. 1542. (942) (1011b) Petition with record, etc., to be forwarded; provided deposit, etc.—The clerk of the court of civil appeals shall forward to the clerk of the supreme court the said petition, together with the original record in the case, and the opinions of the court of civil appeals, and the motion filed therein, and certified copies of the judgments and orders of the court of civil appeals; provided, that the party applying for the writ of error shall deposit with the clerk of the court of civil appeals a sum sufficient to pay the expressage or carriage of the said record to and from the clerk of the supreme court, which sum shall be charged as costs in the suit. (Id.)

See cases cited under art. 1540.

Art. 1542a. Notice to defendant in error; copy of application to be delivered, etc.—When an application for writ of error from a court of civil appeals to the supreme court shall be filed in a court of civil appeals, the applicant shall, at the same time, deposit with the clerk of the said court of civil appeals a true copy of the application and shall notify the attorney of record of the defendant in error of the deposit of said copy, and, upon application by such attorney or by the defendant in error, the said clerk shall deliver the copy of the application to the defendant in error or attorney of record; and the clerk of said court shall forward the record of the cause with the application for writ of error to the clerk of the supreme court at such time as is now or may be prescribed by law. (Acts 1911, S. S. p. 108, sec. 1.)

Art. 1542b. Defendant in error may file reply, etc.—Within ten days after the filing of the record of the cause in the supreme court the defendant in error may file a reply to the application for writ of error controverting the grounds alleged for granting the said writ, and in such reply may state reasons why the writ of error should not be granted. The supreme court may prescribe and enforce rules governing the proceedings by both parties under this Act. (Id. sec. 2.)

Art. 1542c. Disposition of cause in supreme court when reply filed.—If the defendant in error shall file a reply to the application the supreme court may finally dispose of the cause upon such application in the same manner and to the same extent as if the application had been granted and the cause had been set down for hearing; provided, that the judgment of the court shall be announced in open court as in other cases, and the supreme court shall prepare and file such opinion as may be necessary, the same as if the decision had been made in the regular proceedings of the court. (Id. sec. 3.)

Art. 1543. (943) (1011c) Referring case back to Court of Civil Appeals for findings of fact.—If upon inspection of the petition for writ of error and the record of the cause it shall appear that a Court of Civil Appeals has failed to file conclusions of fact, or has not complied with the requirements of the law in filing such conclusions, and that such conclusions are necessary to enable the Supreme Court properly to determine the rights of the parties, the court may suspend action on the petition for writ of error and return the record to the Court of Civil Appeals with instructions to make and return conclusions of fact upon the points indicated by the Supreme Court. (Acts 1901, p. 122; Acts 1892, p. 19; Acts 1913, p. 107, sec. 1; Acts 1917, ch. 75, sec. 1.)

See Scalfi & Co. v. State, 74 S. W. 754; Cole v. S., 170 S. W. 1036.

Art. 1544. (943) (1011c) Grant of writ of error or answer of questions.—If, upon examination of the petition for writ of error the Supreme Court shall find the case to be one of which it may take jurisdiction, the court shall grant or refuse the writ of error or answer the questions certified by the Court of Civil Appeals, as the case may be. (Id.; Acts 1913, p. 107, sec. 1; Acts 1917, ch. 75, sec. 1.)

See Scalfi & Co. v. S., 74 S. W. 754; Cole v. S., 170 S. W. 1036.

Art. 1545. (942) (1011b) Bond required, when.—If the writ of error be granted and the plaintiff in error has given no bond, then the supreme court in granting the writ shall specify what bond shall be given; and the plaintiff in error shall file said bond in the trial court, to be approved by the clerk of said court, and a certified copy thereof shall at once be transmitted to the supreme court; and, upon the filing of said certified copy, the clerk of the supreme court shall issue the citation in error as may be prescribed by the rules of the supreme court. (Acts 1895, p. 144.)

See cases cited under art. 1540.

Art. 1545a. Good cause to be shown for award of writ of error.—It is made a condition of obtaining a review upon writ of error, by the Supreme Court, of any final judgment of any Court of Civil Appeals, that good cause therefor first be shown in an application for such writ, as heretofore required, the sufficiency of such cause to be determined as herein provided. (Acts 1917, ch. 76, sec. 1.)

Art. 1545b. Designation of three justices of the Courts of Civil Appeals.— Provided the Chief Justice of the Supreme

Court or any two of the Justices thereof are empowered, as soon as this Act shall become a law, by a writing to be recorded in the minutes of the Supreme Court, to designate three of the Justices of the Courts of Civil Appeals to act as hereinafter provided. The powers given to the Chief Justice, or Associate Justices, of the Supreme Court, may be exercised from time to time as long as reason therefor may exist, and the personnel of the designated Justices of the Courts of Civil Appeals may be changed as often as may be found advisable, by relieving one, or more, and designating another, or others, in order to interfere as little as possible with the work of the Courts of Civil Appeals, such action to be in writing and recorded, as before; and not more than one Justice shall be designated to serve at any one time from any one of these courts. (Id. sec. 2.)

Art. 1545c. Justices designated to act on applications for writs of error.—It shall be the duty of the Justices of the Courts of Civil Appeals so designated, upon receiving notice thereof, to assemble together at the Capitol of the State and to take up, consider and act upon such applications for writs of error, whether then pending or afterwards filed as may be referred to them by Supreme Court or any two justices thereof, by granting, refusing or dismissing the same in accordance with the practice of the Supreme Court heretofore prevailing; and such designated Justices may make such orders and give such directions, incidental to the consideration and disposition of applications, as are sanctioned by such practice. (Id. sec. 3.)

Art. 1545d. Effect of granting or denying writ; rehearing; precedents; qualifications of justices.—The granting of an application shall admit the cause into the Supreme Court to be proceeded with by that court as heretofore provided by law. The refusal or dismissal of an application shall have the effect of denying the admission of the cause into the Supreme Court, except that motions for rehearing may be made to such designated justices in the same way as such motions to the Supreme Court have been heretofore allowed; provided, that the refusal or dismissal of any application shall not be regarded as a precedent or authority in any other cause; and, provided, that no one of such justices shall participate in acting upon an application in a cause decided during his incumbency by the court of which he is a member. (Id. sec. 4.)

Art. 1545e. Supreme Court may also act on applications; must act on certain applications.—The Supreme Court shall still have power to act upon applications for writs of error, when deemed expedient, and the same power is hereby conferred upon the Justices of that court, action by any two of whom shall be sufficient. And in any cause in which the Judges of the Courts of Civil Appeals shall have disagreed, or which the Court of Civil Appeals shall have held differently upon the same question of law the holding of another Court of Civil Appeals or of the Supreme Court, or shall have declared void a Statute of the State, the application for writ of error shall be passed upon by the Supreme Court. (Id. sec. 5.)

Art. 1545f. Powers incidental to offices of judges.—The powers herein conferred upon the Chief Justice and Associate Justices of the Supreme Court and of the Courts of Civil Appeals are declared to be incidental to the offices held by them respectively. (Id. sec. 6.)

Art. 1545g. Expenses of designated justices.—Justices of the Courts of Civil Appeals shall be entitled to have their actual and necessary expenses incurred in going to, remaining at and returning from the Capitol in the discharge of the additional duties hereby imposed upon them, paid out of the State Treasury from warrants drawn by the Comptroller, based upon itemized accounts of such expenses, verified by the certified [certificate] or affidavit of the claimant. (Id. sec. 7.)

CHAPTER SEVEN

PROCEEDINGS IN CASES IN THE SUPREME COURT

Art. 1546. (967) (1033) Trial to be on questions of law only.—In all cases of writs of error or questions certified to the supreme court, the trial shall be only upon the question of law upon which the writ of error was allowed, or which was certified to the supreme court from a court of civil appeals; but the supreme court may require at any time the original transcript to be sent up. (Acts 1892, p. 19.)

See Link v. City of Houston, 60 S. W. 664.

Art. 1547. (968) (1039) Briefs filed.—When any cause or suit may be taken to the supreme court by writ of error, the briefs and arguments filed in the courts of civil appeals shall be submitted to the supreme court; and, in addition thereto, the attorney for either party may file additional briefs, under such rules and regulations as may be prescribed by the supreme court. (Id.)

CHAPTER EIGHT

HEARING CAUSES

Art. 1548. (971) (1042) Order of trial of causes.—Causes on the docket of said court may be tried by districts, or in such order as to the judges of said court may seem best calculated to promote the interest and convenience of the parties or their attorneys. (Act Feb. 11, 1850; P. D. 1585.)

Art. 1549. (973) (1044) Death of parties no abatement, when.—If any party to the record, in any cause now pending in, or hereafter taken to, the supreme court or court of civil appeals, by appeal or writ of error, shall have died heretofore, or shall hereafter die, after the appeal bond has been filed and approved, or after the writ of error has been served, and before such cause has been decided by the supreme court or courts of civil appeals, such cause shall not abate by such death; but the court shall proceed to adjudicate such cause and render judgment therein as if all the parties thereto were living, and such judgment shall have the same force and effect as if rendered in the lifetime of all the parties thereto. (Id.)

Coe v. Nast, 41 S. W. 473; Conn v. Hagan, 55 S. W. 323; Binyon v. Smith, 112 S. W. 138.

CHAPTER NINE

JUDGMENT OF THE COURT

Art. 1550. (974) (1047) Judgments in open court; opinions in writing.—In all cases decided by the supreme court, the

judgment or decree of the court shall be pronounced in open court; and the opinion of the court shall be reduced to writing in those cases which the court, in its discretion, may deem of sufficient importance to be reported, and such opinions shall be recorded by the clerk of the court in a book kept by him for that purpose. (Acts 1866, p. 134; P. D. 6417.)

Art. 1551. (975) (1049) Judgment on affirmance or rendition, etc.—Whenever the supreme court, on the trial of a cause brought from any court of civil appeals, shall affirm the judgment or decree of such court, or when said court shall proceed to render such judgment or decree as should have been rendered by the court of civil appeals, and such judgment shall be for the same or a greater amount, or of the same nature as rendered in the court below, said supreme court shall render judgment against plaintiff in error and his sureties on his bond, a copy of which shall always accompany the transcript of the record. (Acts 1892, p. 19; Acts 1907, S. S. p. 467.)

Wininger v. Ft. Worth & D. C. Ry. Co., 143 S. W. 1150.

Art. 1552. (975) (1049) If judgment reversed, may remand to court of civil appeals or district court.—If the judgment of a court of civil appeals shall be reversed, the supreme court may remand the case to the court of civil appeals from which it came for another trial, or the district court, as to the supreme court may seem proper. (Id.)

Wininger v. Ft. Worth & D. C. Ry. Co., 143 S. W. 1150.

Art. 1553. (972) (1043) No reversal or dismissal for want of form.—There shall be no reversal or dismissal for want of form; provided, that the requirements of the law and the rules of the court be sufficiently complied with in presenting the case to enable the court to determine the same upon its merits. In each case, the supreme court shall affirm the judgment, reverse and render the judgment which the courts of civil appeals ought to have rendered, or reverse the judgment and remand the case to the lower court, if it shall appear that the justice of the case demands another trial. (Acts 1892, p. 19.)

Art. 1554. (976) (1050) When judgment shall become final.—The judgment of the supreme court shall be final at the expiration of fifteen days from the rendition thereof, when no motion for rehearing has been filed. (Acts 1897, p. 200; Acts 1892, p. 19; Acts 1901, p. 122.)

See Mo. Pacific Ry. v. Brown, 53 S. W. 1019; Watson v. Boswell, 73 S. W. 985.

Art. 1555. (976) (1050) Mandate to issue, when.—Upon the rendition of final judgment, the clerk of the supreme court, or court of civil appeals, upon payment of costs, shall issue the mandate in the case. (Id.)

See Mo. Pacific R'y v. Brown, 53 S. W. 1019; Watson v. Boswell, 73 S. W. 985.

Art. 1556. (984) (1058) Same subject.—The clerk of the supreme court shall not deliver the mandate of said court until all costs of said court and of the court of civil appeals shall have been paid; subject, however, to the provisions of the next succeeding article. (Acts 1892, p. 19.)

Art. 1557. (976) (1050) Affidavit of inability to pay or secure costs.—If the party against whom the costs are adjudged by the supreme court, or the court of civil appeals, shall make affidavit of his inability to pay the costs, or give security therefor, he may apply to the supreme court, or the court of civil appeals, as the case may be, for an order to require the clerk of the court to issue the mandate in the cause; which motion shall be sustained, unless the clerk of the court, or a party to the record, shall controvert the truth of such affidavit and satisfy the court that such motion should not be granted. (Acts 1897, p. 200; Acts 1901, p. 122.)

Art. 1558. (976) (1050) Mandate to issue to what court.—All mandates from the said court shall issue to the court in which the original judgment was rendered. (Acts 1897, p. 200; Acts 1901, p. 123.)

Art. 1559. No mandate to be taken out after twelve months, in case of reversal and remand; certificate and dismissal.—In cases which are, by the supreme court, or courts of civil appeals, reversed and remanded, no mandate shall be taken out of either of said courts and filed in the court wherein said cause originated, unless such mandate shall be so taken out within the period of twelve months after the rendition of final judgment of the supreme court, or court of civil appeals, or the overruling of a motion for rehearing. And if any cause is reversed and remanded by the supreme court, or court of civil appeals, and if the mandate is not taken out within twelve months as hereinbefore provided, then, upon the filing in the court below of a certificate of the clerk of the supreme court, or court of civil appeals, that no mandate has been taken out, the case shall be dismissed from the docket of said lower court. (Acts 1901, p. 123.)

Scales v. Marshall, 70 S. W. 945; Nat. Bk., etc., v. Kenney, 94 S. W. 328; Texas Co. v. Charles Clark & Co., 196 S. W. 251; Gilmore v. Ladell, 196 S. W. 362.

Art. 1560. (976) (1050) Mandate recalled where judgment set aside.—If, for any cause, the supreme court or court of civil appeals should set aside its judgment, after the mandate has been issued, the clerk of the court shall at once notify the party to whom the mandate was directed to return it at once. (Acts 1897, p. 200; Acts 1901, p. 123.)

CHAPTER TEN

REHEARING

Art. 1561. (977) (1051) Motion for, when and how made.—Any party desiring a rehearing of any matter determined by said court may, within fifteen days after the date of entry of the judgment or decision of the court, file with the clerk of said court his motion in writing for a rehearing thereof, in which motion the grounds relied upon for the rehearing shall be distinctly specified, and the name and residence of the counsel of the opposing party if known, and if not known, then the name and residence of the opposing party as shown in the record; provided, that should the court adjourn within less time than fifteen days after the rendition of the judgment, it may make such rules and regulations in reference to the filing of the motion as to it may seem best for the promotion of the interest of all the parties concerned. (Acts 1874, p. 216, sec. 2; P. D. 6463q.)

Hines v. Morse, 47 S. W. 516.

Art. 1562. (978) (1052) Notice to opposing party or attorney.—Upon the filing of such motion with the clerk of said court, he shall make a certified copy of such motion and transmit the same by mail to the sheriff or any constable of the county in which the attorney, or opposing party, as the case may be, is alleged in said motion to reside, together with a precept commanding him to deliver the copy of the motion to the person named in such precept. (Id. sec. 4; P. D. 6463r.)

Art. 1563. (979) (1053) Service and return of officer.—Upon the receipt of such precept and copy of motion by the officer, it shall be his duty to deliver the copy of the motion to the person named in said precept, if found in his county, and to return said precept to the court, by mail, stating thereon at what time, and to whom, he delivered the copy of the motion, or that the party named in the precept is not to be found in his county, as the case may be. (Id.; P. D. 6463p.)

Art. 1564. (980) (1054) Service on one of several parties.—Service of said motion on any one of several parties or their attorneys to a cause shall be sufficient service on all.

Art. 1565. (981) (1055) When motion heard.—At any time, after five days from the return of such precept served, it shall be lawful for said supreme court to hear and determine such motion for rehearing, and not sooner. (Id.; P. D. 6463p.)

CHAPTER ELEVEN
EXECUTION OF JUDGMENT

Art. 1566. (982) (1056) Process, how tested, directed and executed.—All writs and process issuing from the supreme court shall bear the test of the chief justice or presiding judge of said court, and be under the seal of said court and signed by the clerk thereof, and may be directed to the sheriff or any constable of any county in the state, and shall be by such officer executed according to the demand thereof, and returned to the court from which they emanated; and whenever such writs or process shall not be executed, the clerk of the said court is hereby authorized and required to issue another like process or writ, upon the application of the party suing out the former writ or process to the same or any other county. (Acts 1892, p. 19.)

Art. 1567. (983) (1057) Judgment enforced, how.—Upon the rendition by the supreme court of any such judgment or decree as is contemplated by article 1551, it shall not be necessary for the lower court from which the cause was removed to make any further order or decree therein, but the clerk of said lower court, on receipt of the mandate of the supreme court or court of civil appeals, shall proceed to issue execution thereon as in other cases. (Id.)

Art. 1568. (984) (1058) Execution issued, when.—If the costs have not been paid at the end of fifteen days from the date of judgment or from the overruling of a motion for rehearing, the said clerk may issue an execution for the costs of the supreme court and the court of civil appeals, specifying the amount of each, and attaching to said execution a correct list of all costs accruing in each of said courts. Said execution shall be directed to the sheriff or any constable of the county from which the cause was removed, or to any county in which the person or persons, liable under such execution, or either of them, may have property. It shall be the duty of every sheriff or constable receiving such execution to execute and return the same under the same rules, regulations and liabilities as provided for executions from the district court. (Acts 1892, p. 23.)

Art. 1569. (985) (1059) Execution returnable, when.—All executions for costs of the supreme court, as authorized by law, shall be returned by the sheriff or constable to whom they are directed, within four months from the date thereof. (Acts 1875, p. 70, sec. 2.)

Art. 1570. (986) (1060) Officer failing to make return; remedy by motion.—In case any officer shall fail or refuse to make such return with the amount of such costs, if he has collected the same within the time prescribed herein, or shall make a false or fraudulent return of any such execution, the clerk of said supreme court may issue citation returnable forthwith to such officer to appear before the said supreme court, and show cause, if any he can, why he has not collected and returned such costs and execution; and failing to show cause, said court may enter judgment against such officer and the sureties on his official bond for twice the amount of said costs, together with the cost of such proceeding. (Id.; Acts 1892, p. 19.)

Art. 1571. (986) (1060) Money due clerk of court of civil appeals to be paid by clerk of supreme court; remedy by motion.—It shall be the duty of the clerk of the supreme court, when he shall receive any money due the clerk of any court of civil appeals, to pay the same over to such clerk of the courts of civil appeals; and, if he refuses to do so upon demand, the clerk of the said courts of civil appeals may file in the supreme court a motion against the said clerk so failing; and, upon ten days' notice given to him, the said supreme court may enter judgment against said clerk of the supreme court and the sureties on his official bond for double the amount of the costs so collected by him and due to said clerk of the courts of civil appeals. (Id.; Acts 1892, p. 19.)

CHAPTER TWELVE
REPORTER TO THE SUPREME COURT

Art. 1572. (959) Appointment and removal of reporter.—The Judges of the Supreme Court, after their election to each term of office, shall appoint some person or persons learned in the law, being a licensed attorney, to report the decisions of the Supreme Court, who shall be removable at the pleasure of the court, and who shall be paid for the services required, three thousand dollars per annum, payable monthly on the certificate of the Chief Justice. (Acts 1882, p. 71; Acts 1919, ch. 36, sec. 5.)

Art. 1573. (960) Stationery, how furnished.—The reporter shall be furnished by the state printing board with the necessary stationery for the performance of the duties imposed by the provisions hereof. (Acts 1882, p. 71.)

Art. 1574. (961) Records and manuscript; duties of reporter.—The reporter shall obtain from the clerks of the courts the records of cases to be reported, with the

briefs and opinions in such cases as soon as such cases are finally disposed of and the opinions are recorded, which shall be returned after the report thereof is completed. He shall, without delay, under the direction of the court, prepare such decisions, with appropriate syllabus, and statements when necessary, for publication in book form, and shall, from time to time, deliver the same to the secretary of state for the board of public printing as hereinafter provided. The secretary of state shall receipt for the same and deliver to the expert printer appointed by the board of public printing for publication. (Id.)

Art. 1575. (962) Court to designate the cases to be reported.—The supreme court shall designate, by orders or otherwise, the cases to be reported; and only such cases as are designated shall be reported and published; and only the main propositions made in the briefs and considered by the court in the opinion, with the authorities cited in support of such propositions, shall be incorporated in the report. (Id.)

Art. 1576. (963) Duties of printing board.—As fast as the board of public printing shall receive through the secretary of state the manuscript copy of reported cases for the reporter, said board shall cause the same to be printed, with proper index, tables of cases cited, and of cases reported, at the printing office at the deaf and dumb asylum of Texas, and have one thousand copies bound of each volume of reports. The index, tables of cases cited, and of cases reported shall be prepared by the reporter. The expert printer appointed by the printing board shall, after revising the printing, deliver a revise as the work progresses to the reporter, who shall correct and return to said expert. (Id.)

Art. 1577. (964) Requisites of volume.—The decisions of said courts shall be printed and bound. Each volume shall not contain less than seven hundred pages nor more than eight hundred pages. Each page shall be twenty-six ems pica wide and forty-six ems pica long. The type used shall be long primer and minion of the same size used in volume twenty-three, Wallace's United States supreme court reports. The lines shall be leaded with not thicker than eight to pica leads. The paper, presswork and binding shall be of the same style and at least equal quality in every respect with the volumes of Moore & Walker's reports heretofore published. The volumes containing the supreme court decisions shall be styled "The Texas Reports," and shall be so styled on the title page and back, and the volumes shall be numbered. The name of the reporter may be printed on the back of each volume. Each volume shall be copyrighted in the name of the reporter, who shall immediately on delivery of the edition transfer and assign the same to the state. It shall be electrotyped, and the plates shall be owned by the state and preserved by the secretary of state. (Id.)

Art. 1578. (965) Sale of reports by secretary of state.—When printed and bound, the reports shall be delivered to the secretary of state, who shall sell single copies for two dollars, exclusive of postage or express charges; and he shall also, for the same price sell single copies of any former volume of reports for either of said courts heretofore published under the state's copyright and now owned by the state. The secretary of state shall deliver to the state treasurer the proceeds of all sales so made by him, of which and of his operations hereunder and of the transactions of the said board hereunder he shall make a full statement and showing in his biennial report. (Id.)

Art. 1579. (966) Reports, how printed.—Should the expert printer, whose duty it is to supervise and have promptly executed the printing, binding and delivering of the reports to the secretary of state, fail to have the work executed with promptness and in accordance with the provisions hereof, he shall be removed from his trust and another appointed; and whenever the board of public printing shall ascertain that the work of printing and binding the reports can be done more speedily, better and more economically by contract, or that ample material and means to carry out the provisions hereof are not at their control, they shall at once let the printing and binding of the reports out by contract, requiring security for the performance of the work, and the delivery to the state of the electrotype plates. No copies of reports shall be furnished to any county except upon payment made by such county to the secretary of state, as in sale to private parties. The secretary of state may transmit advance sheets of the reports as the publishing progresses on receiving two dollars for the volume, the purchaser to have the right on returning all the forms of the volume to the secretary of state to have the same bound without further expense, on his paying the expense of transmitting the same to and from the state department. (Id.)

CHAPTER THIRTEEN

COMMISSION OF APPEALS

Art. 1579a. Establishment; members; appointment, etc.—That a court, which shall be styled the Commission of Appeals of the State of Texas, to consist of six persons learned in the law, to be appointed by the Governor, by and with the advice and consent of the Senate, if in session, be, and the same is hereby created. The members of said Commission of Appeals of the State of Texas shall have the same qualifications as are prescribed by law for the Judges of the Supreme Court of the State, and shall receive for their services the same salary, to be paid in the same manner as are the salaries of the Judges of the Supreme Court. The members of said Commission of Appeals shall, before entering upon the discharge of their duties as such, respectively take the oath of office prescribed by the Constitution.

In case of a vacancy on said Commission of Appeals by the death, resignation or removal of any member thereof, during the vacation of the Legislature, it shall be the duty of the Governor to fill the same by appointment, and the persons appointed shall continue in office until the next regular session of the Legislature after the appointment. The concurrence of two of the Judges of any section shall be necessary to the deci-

sion of any question or matter referred to them.

The term for which said Commission shall exist shall be from the first Monday in October, 1918, until the last Saturday in June, 1921. Provided the term of office of the judges now appointed and acting upon said Commission of Appeals shall expire on the last Saturday in June, 1920, and the Governor is hereby empowered to appoint, at any time after this Act shall take effect, the Judges of said Commission for the term beginning the last Saturday in June 1920, and ending the last Saturday in June 1921. Provided, further, that the names of the persons so appointed shall be submitted to the Senate for confirmation, if in session when such appointments are made, or if not in session, then to the first session of the Senate thereafter. (Acts 1918, 4th C. S., ch. 81, sec. 1; Acts 1919, 2d C. S., ch. 34, sec. 1.)

Art. 1579b. Sections of commission; clerk; reference to sections.—Said Commission of Appeals shall be divided into, and it shall sit in, two sections to be known as Section A and Section B, each of which shall consist of three members, and the Governor, in making the appointments to membership on said Commission of Appeals shall designate for which section thereof the appointments are respectively made, and each section of said Commission of Appeals shall be a complete entity in and of itself and shall have all of the power and authority hereinafter conferred upon the Commission of Appeals; but there shall be only one clerk for said Commission of Appeals, and the entire Commission of Appeals shall sit and act together in the making and formulating of the rules of procedure hereinafter provided for. And when authority is given in this Act for the reference of any case to said Commission of Appeals, such case may be referred to either section thereof. (Acts 1918, 4th C. S., ch. 81, sec. 2.)

Art. 1579c. Causes referred by consent.—Said Commission shall have the power to hear and pronounce award upon all Civil cases now and hereafter pending in the Supreme Court, wherein the parties or their attorneys may file consent, in writing, to the reference thereof to said Commission. (Id. sec. 3.)

Art. 1579d. Report on causes referred.—Said Commission shall report its conclusions or award to the Supreme Court in the cases so referred, and may accompany the same with a brief synopsis of the case and their opinion thereon; and the conclusions or award aforesaid shall be and become the judgment of said Supreme Court, and said court shall make and render such further order, judgment, or decree thereon as may be necessary or proper to make said award effective. (Id. sec. 4.)

Art. 1579e. Opinions.—The opinion of said Commission in the cases so referred to it by consent, in writing, shall not be published in the reports of the decisions of the Supreme Court, nor shall the same have any further or other effect than to determine the particular causes wherein rendered, and shall have no force or effect or authority as precedent in other causes, unless otherwise decided by the Supreme Court. (Id. sec. 5.)

Art. 1579f. Reference of causes by Supreme Court.—The Supreme Court is hereby authorized and empowered to refer to said Commission of Appeals of the State of Texas any case or cases now or hereafter pending before said Court, for examination and report thereon; and it shall be the duty of the Supreme Court, in order to relieve the docket of said Court of the great number of cases new [now] encumbering it, from time to time to refer to said Commission of Appeals so many of said cases now and hereafter pending in said Court as may be reasonably considered and acted upon by the same at the several sessions thereof, having respect in such reference to the length of time such cases have been pending as well as to promote an early disposition of the cases on the docket; provided, that when any case is referred by the Supreme Court to said Commission of Appeals, the counsel for both parties shall have notice thereof, and shall have the right to be heard upon the same as if said cause were tried by the Supreme Court, and said Commission of Appeals shall make rules regulating the hearing of causes submitted to them. (Id. sec. 6.)

Art. 1579g. Same; report to Supreme Court.—When said Commission of Appeals has considered and determined upon the proper disposition of any cases referred to the same, according to Section 6 of this Act [Art. 1579f], their opinion shall be submitted, together with a brief synopsis of the case, to the Supreme Court, and the record shall be returned herewith; the report so made may be used by said Supreme Court to facilitate it in reaching a conclusion upon the law and facts of the case. (Id. sec. 7.)

Art. 1579h. Same; opinions.—The opinion of said Commission of Appeals in cases referred to it by the Supreme Court, when adopted by said court, shall be published as the opinion thereof, as in other cases, unless otherwise directed by the Supreme Court. (Id. sec. 8.)

Art. 1579i. Refiling papers; costs.—In cases referred to the Commission of Appeals under this Act, the papers shall not be re-filed with said Commission of Appeals, and only such additional costs as may be essential to carry into effect the provision hereof shall be incurred by the parties to such cases by reason of the reference thereof. (Id. sec. 9.)

Art. 1579j. Sessions; stenographers; clerk.—Said Commission of Appeals shall hold its sessions in Austin, Texas, at the same time and place as the Supreme Court, but the said Commission of Appeals shall continue their work during the vacation of the Supreme Court in mid-summer, subject, however, to the right of said judges of the Commission of Appeals to take a vacation, not to exceed eight weeks, during said period. They shall appoint as many stenographers not exceeding four, as said Commission may find necessary, and such stenographers shall perform the duties required of them by said Commission of Appeals, and each of whom shall receive an annual salary not to exceed fifteen hundred dollars. The salaries of said stenographers shall be paid in monthly installments, on warrants approved by the Chief Justice of the Supreme Court. The clerk of the Supreme Court shall perform the duties of clerk of said Commission of Appeals, and no extra fees shall be allowed the clerk of the Supreme Court, or his deputy, for services rendered said Commission save

and except an additional compensation of fifteen hundred dollars per annum for such services, in addition to the compensation now allowed him by law, to be paid out of the fees of his office. (Id. sec. 10.)

Art. 1579k. Seal; records.—Said Commission of Appeals shall have a seal, being a star with five points and the words, "Commission of Appeals of the State of Texas" around the same. Regular dockets and minutes of all proceedings by or before said Commission of Appeals shall be kept, and the records and proceedings of courts of record, and all cases shall be docketed in the order in which they are transferred or referred by the Supreme Court. (Id. sec. 11.)

Art. 1579l. Writs and process; contempt.—Said Commission of Appeals shall have the right to issue writs of certiorari to perfect the record, and such process as the Supreme Court might issue to make parties, and shall have the power to punish for contempt. (Id. sec. 12.)

Art. 1579m. Practice and procedure.—All laws and rules regulating practice and procedure in the Supreme Court shall be of force in the practice and proceedings of said Commission of Appeals so far as the same are applicable, and all applications for rehearing in cases referred to said Commission of Appeals shall be made before and determined by the Commission of Appeals. (Id. sec. 13.)

Section 14 makes an appropriation. Acts 1919, 2d C. S., ch. 34, sec. 1, also makes an appropriation.

Art. 1579n. To cease, when.—The term for which the Commission of Appeals created hereby shall exist shall be from the first Monday in October, 1918, until the last Saturday in June, 1921. (Acts 1918, 4th C. S., ch. 81, sec. 15; Acts 1919, 2d C. S., ch. 34, sec. 1.)

TITLE 32

COURTS OF CIVIL APPEALS

CHAPTER ONE

JUDGES OF THE COURTS OF CIVIL APPEALS

Art. 1580. (987) One chief and two associate justices.—Each of the courts of civil appeals now or hereafter organized in this state shall consist of a chief justice and two associate justices, and the concurrence of two justices shall be necessary to the decision of a case. (Acts of 1892, S. S. p. 25.)

Art. 1581. (988) Elected alternately, how; term of office.—The chief justice and associate justices of each of the courts of civil appeals shall be elected by the qualified voters of their respective districts, composed of the counties returnable to the several courts, at a general election. Upon their qualification, after the first election after the creation of any court of civil appeals in this state, the justices thereof shall draw lots for the terms of office; and those drawing number one shall hold their offices for the term of two years; those drawing number two shall hold their offices for a term of four years, and those drawing number three shall hold their offices for the term of six years from the date of their election and until their successors are elected and qualified. Each of said offices shall be filled by election at the next general election at which terms as aforesaid would expire; and the person elected shall thereafter hold his office for six years and until his successor is elected and qualified, and shall receive each an annual salary of thirty-five hundred dollars, and no more. (Id.)

Art. 1582. (989) Qualifications of judges.—No person shall be eligible to the office of chief justice or associate justice of the courts of civil appeals, unless he be at the time of his election a citizen of the United States and of this state and a resident of the district for which he is elected, and unless he shall have attained the age of thirty years and shall have been a practicing lawyer or a judge of a court in this state, or such lawyer and judge together, at least seven years. (Id.)

Art. 1583. (990) Vacancies, how filled.—In case of a vacancy in the office of chief justice or associate justice of any court of civil appeals the governor shall fill the vacancy until the next general election for state officers; and, at such general election, the vacancy for the unexpired term shall be filled by election by the qualified voters of the district composed of counties returnable to said court. (Id.)

Art. 1584. (1021) Disqualification of judges.—No judge of the courts of civil appeals shall sit in any cause wherein he may be interested in the question to be determined, or where either of the parties may be connected with him by affinity or consanguinity within the third degree, or where he shall have been of counsel in the cause; and where the court, or any two of its members, shall thus be disqualified to hear and determine any cause or causes in said courts, that fact shall be certified to the governor, who shall immediately commission the requisite number of persons, learned in the law, for the trial and determination of said cause or causes. (Id.)

CHAPTER TWO

TERMS OF THE COURTS OF CIVIL APPEALS

Art. 1585. Terms of court.—The terms of the courts of civil appeals, in and for the several supreme judicial districts in the state of Texas, shall commence on the first Monday in October of each year and shall continue in session until the first Monday in July of each succeeding year. (Acts 1892, S. S. p. 25; Acts 1897, p. 132.)

For division of the state into supreme judicial districts, see title "Apportionment," article 29.

Art. 1586. (993) Places where courts of civil appeals shall be held.—The courts of civil appeals shall be held at the following places, respectively:

1. One of the courts of civil appeals shall be held in the first supreme judicial district, in the city of Galveston, in the county of Galveston.

2. One of the courts of civil appeals shall be held in the second supreme judicial district, in the city of Fort Worth, in the county of Tarrant.

3. One of the courts of civil appeals shall be held in the third supreme judicial district, in the city of Austin, in the county of Travis.

4. One of the courts of civil appeals shall be held in the fourth supreme judicial dis-

trict, in the city of San Antonio, in the county of Bexar.

5. One of the courts of civil appeals shall be held in the fifth supreme judicial district, in the city of Dallas, in the county of Dallas. (Acts 1892, S. S., p. 25.)

6. One of the courts of civil appeals shall be held in the sixth supreme judicial district, in the city of Texarkana, in the county of Bowie; provided, that if said court is located at Texarkana, the citizens thereof will furnish, provide, and equip a suitable room or rooms for said court and the members thereof, and the necessary law library therefor, without cost or expense to the state. (Acts 1907, p. 324, sec. 3.)

The court of civil appeals of the sixth supreme judicial district shall hold its sessions at the city of Texarkana, in the county of Bowie, and its terms shall commence on the first Monday in October of each year, and shall continue in session until the first Monday in July of each succeeding year. Nothing in this Act shall be construed to repeal or otherwise affect the provisions of chapter 174, page 324, Acts of the Thirtieth Legislature creating the sixth supreme judicial district of Texas, except in so far as this Act may change the counties composing said district. (Acts 1911, p. 269, sec. 1, part of subd. 6, amending Rev. Civ. St. 1895, art. 21.)

7. The Court of Civil Appeals for the Seventh Supreme Judicial District shall hold its sessions in the city of Amarillo, in the county of Potter, and its terms shall commence on the first Monday of October, of each year, and shall continue in session until the first Monday in July of each succeeding year. (Acts 1911, p. 269, sec. 3; Acts 1915, ch. 70, sec. 4.)

8. The Court of Civil Appeals of the Eighth Supreme Judicial District shall hold its sessions in the city of El Paso, in the county of El Paso, and its terms shall commence on the first Monday of October of each year and shall continue in session until the first Monday of July in each succeeding year. (Acts 1911, p. 269, sec. 4; Acts 1915, ch. 70, sec. 5.)

9. The Court of Civil Appeals for the Ninth Supreme Judicial District shall hold its sessions in the city of Beaumont, in the county of Jefferson, and its terms shall commence on the first Monday in October of each year, and shall continue in session until the first Monday in July of each succeeding year, provided, however, said court may commence its first session immediately upon the appointment and qualification of the judges thereof, and the organization of the court, and provided further, that if said court is located at Beaumont, the citizens thereof will furnish, provide and equip suitable room or rooms for said court and the members thereof without cost or expense to the State. (Id. sec. 3.)

Art. 1587. (994a) Transfer of causes.—It shall be the duty of the supreme court to equalize, as nearly as practicable, the amount of business upon the dockets of the different courts of civil appeals, by directing the transfer of cases from such of said courts as may have the greater amount of business upon their dockets to those having a less amount of business upon their dockets; such transfers to be made as soon as practicable after the passage of this article, and thereafter at least once each year, in such manner and under such rules and regulations as the supreme court shall provide. And said courts of civil appeals, to which such cases shall be transferred, shall have jurisdiction of all such cases transferred without regard to the districts in which cases were originally tried and returnable on appeal; provided, that cases transferred from any court of civil appeals shall be taken from cases appealed from the counties nearest to the place where the court to which the cases are transferred is held. (Acts 1909, p. 88; Acts 1895, p. 79.)

See Acts 1893, p. 171, sec. 13; see G. C. & S. F. R'y v. Smith, 38 S. W. 750; Taber v. Chapman, 47 S. W. 710; Bond v. Carter, 72 S. W. 1059; Smith v. City Nat. Bank of Wichita Falls, 132 S. W. 527; Witherspoon v. Daviss, 163 S. W. 700.

Art. 1588. (995) Quorum, what, and court adjourned, when.—A majority of the judges of the several courts of civil appeals shall constitute a quorum for the transaction of business. The said courts may adjourn from day to day or for such time as may be deemed proper by the judges thereof. But, if a sufficient number of the judges shall not be present at the first or any day of the term, any judge of the court, or the sheriff attending the same, may adjourn the court from time to time until a quorum shall be in attendance, but the court shall not be finally adjourned for the term. (Acts 1895, p. 79.)

CHAPTER THREE

JURISDICTION OF THE COURTS OF CIVIL APPEALS

Art. 1589. (996) Jurisdiction defined.—The appellate jurisdiction of the courts of civil appeals shall extend to civil cases within the limits of their respective districts:

1. Of which the district courts have original or appellate jurisdiction.

2. Of which the county court has original jurisdiction.

3. Of which the county court has appellate jurisdiction, when the judgment, or amount in controversy, or the judgment rendered, shall exceed one hundred dollars, exclusive of interest and costs. (Acts 1895, p. 79.)

Art. 1590. (996) Judgment conclusive, when.—The judgments of the courts of civil appeals shall be conclusive in all cases on the facts of the case. (Id.)

Art. 1591. (996) Same subject.—The judgments of the courts of civil appeals shall be conclusive on the law and fact, nor shall a writ of error be allowed thereto from the supreme court in the following cases, to-wit:

1. Any civil case appealed from a county court or from a district court, when, under the constitution, a county court would have had original or appellate jurisdiction to try it, except in probate matters and in cases involving the revenue laws of the state or the validity of a statute.

2. All cases of boundary.

3. All cases of slander.

4. All cases of divorce.

5. All cases of contested elections of every character, other than for state officers, except where the validity of the statute is attacked by the decision.

6. The judgments of said courts of civil appeals shall be final in all appeals from interlocutory orders appointing receivers or trustees or such other interlocutory appeals as may be allowed by law.

7. The judgment of said court shall be final in all other cases as to law and facts, except where appellate jurisdiction is given to the supreme court and not made final in said courts of civil appeals. (Acts 1892, p. 25.)

See Townes' Texas Pleading (2d Ed.) p. 104; Speer's Marital Rights, p. 662; Emerson v. Emerson, 35 S. W. 425; Manchester Fire Ins. Co. v. Simmons, 35 S. W. 722; State v. Hanscom, 37 S. W. 601; Johnson v. Hanscom, 38 S. W. 761; Birmingham Drug Co. v. Freeman, 39 S. W. 626; N. Y. & T. Land Co. v. Votaw, 42 S. W. 969; Cox v. Finks, 43 S. W. 1; Stone v. Stone, 43 S. W. 567; Choate v. S. A. & A. P. R'y, 44 S. W. 69; Smith v. Wilson, 44 S. W. 672; Ray v. S. A. & A. P. R'y, 45 S. W. 479; Green v. Warren, 45 S. W. 608; Davis v. McCabe, 46 S. W. 837; Kellett v. Kellett, 59 S. W. 809; Allen v. Hall, 60 S. W. 586; G. C. & S. F. R'y v. Cunnigan, 67 S. W. 889; Kidd v. Rainey, 68 S. W. 507; R'y v. Cooper, 72 S. W. 409; R'y v. Cooper, 73 S. W. 947; R'y v. Mahaffey, 84 S. W. 646; Wilson Hdw. Co. v. Duff, 85 S. W. 786; Lacy v. O'Reilly, 89 S. W. 640; R'y v. Grayson Co. Nat. Bk., 93 S. W. 431; Long v. Green & Co., 101 S. W. 786; Pittman v. Byars, 101 S. W. 789; City of San Antonio v. Tobin, 102 S. W. 403; Texas & P. Ry. Co. v. Webb, 114 S. W. 1171; Miller v. Black, 120 S. W. 559; Record Co. v. Greer, 127 S. W. 1183; Barnes v. Bryce, 140 S. W. 240; Le Baume v. Northern Texas Traction Co., 143 S. W. 301; Mask v. Louisiana & Texas Lumber Co., 145 S. W. 299; Cole v. S., 170 S. W. 1036; McFarland v. Hammond, 173 S. W. 645; Cattlemen's Trust Co. of Ft. Worth v. Willis, 179 S. W. 1115; Lindsay v. Collings, 182 S. W. 879; Camp v. National Equitable Soc. of Belton, 191 S. W. 699; Pease v. S., 208 S. W. 162.

Art. 1592. (997) May issue writs of mandamus, etc.—The said courts and the judges thereof shall have power to issue writs of mandamus and all other writs necessary to enforce the jurisdiction of said courts. (Id.)

Ellis v. Harrison, 56 S. W. 592; Wetz v. Thompson, 63 S. W. 1050; Dunn v. St. L. S. W. Ry., 88 S. W. 532; Houston, B. & T. Ry. Co. v. Hornberger, 141 S. W. 311; Houston Belt & Terminal Ry. Co. v. Hornberger, 157 S. W. 744; Boynton v. Brown, 163 S. W. 599; Witherspoon v. Daviss, 163 S. W. 700; Cooney v. Isaacks, 173 S. W. 901; Rice v. Roberts, 177 S. W. 149; Cattlemen's Trust Co. of Ft. Worth v. Willis, 179 S. W. 1115; Otto v. Wren, 184 S. W. 350; Pollard v. Speer, 207 S. W. 620.

Art. 1593. (998) May inquire into facts touching jurisdiction.—The said courts shall have power, upon affidavit or otherwise as by the courts may be thought proper, to ascertain such matters of fact as may be necessary to the proper exercise of their jurisdiction. (Id.)

Thompson v. Hawkins, 38 S. W. 236; Claiborne v. M. K. & T. Ry., 53 S. W. 837; Ennis Mercantile Co. v. Wathen, 57 S. W. 946; Bath v. Ry., 78 S. W. 993; W. B. Walker, etc., v. Allen, 95 S. W. 585; Applebaum v. Bass, 113 S. W. 173; Rush v. J. E. Thompson & Co., 113 S. W. 546; Texas & P. Ry. Co. v. Hood, 125 S. W. 982; Marschall v. Smith, 132 S. W. 812; Gibson v. Singer Sewing Mach. Co., 145 S. W. 633; National Bank of Commerce v. Lone Star Milling Co., 152 S. W. 663; Rushing v. Citizens' Nat. Bank of Plainview, 160 S. W. 337; A. J. Birdsong & Son v. Allen, 165 S. W. 46; Webster v. International & G. N. Ry. Co., 184 S. W. 295; Texas & P. Ry. Co. v. Beckham Bros. & Co., 202 S. W. 991; Phillips v. Phillips, 203 S. W. 77.

Art. 1594. (999) May punish for contempt.—The said courts shall have power to punish any person for a contempt of said court, according to the principles and usages of law in like cases, not to exceed one thousand dollars fine or imprisonment not exceeding twenty days. (Id.)

Art. 1595. (1000) May mandamus district courts.—The said courts, or any judge thereof, in vacation, may issue the writ of mandamus to compel a judge of the district court to proceed to trial and judgment in a cause, agreeably to the principles and usages of law, returnable on or before the first day of the next term or during the session of the same, or before any judge of the said court, as the nature of the case may require. (Id.)

See Levy v. Gill, 46 S. W. 84; Wetz v. Thompson, 63 S. W. 1050; Dunn v. R'y, 88 S. W. 532; Anderson v. Ashe, 130 S. W. 1044; Cooney v. Isaacks, 173 S. W. 901; Roberts v. Munroe, 193 S. W. 734; Matagorda Canal Co. v. Styles, 207 S. W. 562; Pollard v. Speer, 207 S. W. 620; Gulf, C. & S. F. Ry. Co. v. Muse, 207 S. W. 897.

For further provisions as to jurisdiction of courts of civil appeals, see chapter 20, title 37.

CHAPTER FOUR

CLERKS OF THE COURTS OF CIVIL APPEALS

Art. 1596. (1001) The clerk, his appointment, qualification and bond.—There shall be appointed for each of the courts of civil appeals one clerk, who shall reside at the place of holding court, which appointment shall be made by the court, or the judges thereof, and shall be entered of record in the proceedings of the court; and each person so appointed shall, before he enters upon the duties of his office, take and subscribe the oath prescribed by the constitution before some officer authorized to administer oaths generally, and shall enter into a bond, with two good and sufficient sureties, to be approved by the court, or any judge thereof, payable to the governor and his successors in office, in the sum of five thousand dollars, conditioned for the faithful performance of the duties of his office, and that he will correctly record the judgments, decrees, decisions and orders of said courts, and deliver over to his successor in office all records, minutes, books and papers and whatever belongs to his said office of clerk; which bond and oath shall, without delay, be deposited in the office of the secretary of state, and shall not be void on the first recovery, but may be put in suit and prosecuted by any party injured, until the amount thereof is recovered. (Id.)

Art. 1597. (1002) Temporary appointment to fill vacancy, how and when made.—If, in vacation, the office of clerk may become vacant, the appointment shall be made by the chief justice and the associates of said courts, or by any one of said associates and chief justice; and the person so appointed shall give bond and take the oath as prescribed in the preceding article, the bond to be approved by any judge of the court; which bond and oath shall be deposited in the same manner as though the appointment had been made in term time, and may be prosecuted and put in suit in like manner; copies of said bond, certified under the hand of the secretary of state and the seal of state, shall be received in evidence in any court in the state, in the same manner as the original would be were it presented in court; and the said appointment shall continue until the next regular term of the said court, and until a regular appointment shall be made. (Id.)

Art. 1598. (1003) Term of office, and how removed.—The clerk of each of said courts shall hold his office for a term of two years from his appointment, but may be removed therefrom for neglect of duty or misconduct in office, by the courts of civil appeals, on motion of which the clerk against whom complaint is made shall have ten days' previous notice, specifying the particular charges of negligence or misconduct in office preferred; and in every such case the court shall determine both the law and the facts;

and, whenever the necessity occurs, the court may appoint a clerk pro tempore. (Id.)

Art. 1599. (1004) Seal of court.—It shall be the duty of the clerk of each court of civil appeals to procure a seal for the use of the court, which shall have a star of five points, with the words: "Court of Civil Appeals of the State of Texas," engraved thereon. (Id.)

Art. 1600. (1005) Duties as to records, transcripts, dockets, etc.—The clerks of said courts shall file and carefully preserve the transcripts of all records certified to said court, and all papers relative thereto, and shall docket all causes in the order in which they are filed. (Id.)

Art. 1601. (1006) To record judgments, etc., and to certify decisions to lower court.—The said clerk shall faithfully record the proceedings and decisions of said courts, and certify their judgments to the court from which the causes were brought. (Id.)

Art. 1602. (1007) Deputy clerks, appointment of, and fees.—The clerk of each court may appoint deputies, who, in the name of said clerk, may discharge all the duties required by law of said clerk, and said deputies may be required to give bonds, with sureties, to said clerk, for the faithful discharge of their duties; which deputies shall be paid out of the fees collected by the clerk, not to exceed twelve hundred dollars per annum to each deputy. (Id.)

Art. 1602a. Same subject; salary.—Each of said clerks shall hereafter be authorized to employ a deputy clerk, at an annual salary of $1500.00 per year, payable in equal monthly installments to be paid out of the General revenue of this State. (Acts 1919, ch. 78, sec. 2.)

Art. 1603. (1008) Shall be librarian.—The clerk of each of said courts shall be librarian in charge of the libraries of said court, except the library at Austin, which shall be under the control of the supreme court. (Id.)

Art. 1604. (1009) Library regulations.—It shall be the duty of such librarian to take charge of, and keep together in good order and make catalogues of, the books of such library, which shall be open to the public use, under such rules as may be prescribed by the courts for the safe keeping thereof; provided, the books shall not be removed from the library room, except by the judges of the courts. (Id.)

Art. 1605. (1010) Semi-annual report of costs collected.—The clerks of each of the courts of civil appeals shall, within ten days after the first day of January and July, make a report under oath to said courts showing the amount of costs collected by him during the preceding six months, and also the cases in which the same was collected, and the disposition made of such cause. Such report shall be filed and recorded in the minutes of the court. (Id.)

CHAPTER FIVE

STENOGRAPHER

Art. 1606. (1012) Appointment; oath; salary; bond.—Each Court of Civil Appeals shall be authorized to appoint one stenographer, who shall be a typewriter, who shall discharge such duties as may be required by the court, shall be sworn to keep secret all matters which may come to his knowledge as such stenographer and typewriter, and who shall receive a salary of fifteen hundred dollars per annum and shall give bond with two or more sureties in the sum of two thousand dollars, to be approved by the presiding Judge of said court, payable to the State of Texas, conditioned for the faithful performance of his duties as such stenographer and typewriter. (Acts 1893, p. 165; Acts 1895, p. 79; Acts 1899, p. 115; Acts 1905, p. 19; Acts 1915, ch. 81, sec. 1; Acts 1919, 2d C. S., ch. 43, sec. 1.)

See Arroyo v. S., 69 S. W. 503; Pickle v. Finley, 44 S. W. 480.

CHAPTER SIX

PROCEEDINGS IN CASES IN THE COURTS OF CIVIL APPEALS

Art. 1607. (1014) Case, how brought before the court for trial.—In all cases of appeal or writ of error to the courts of civil appeals, the trial shall be on a statement of facts or agreed statement of the pleadings and proof as agreed upon by the parties or their attorneys, or the conclusions of law and fact, as the case may be, certified to by the judge of the court below; or should the parties fail to agree, then the judge of the court below shall certify the facts; or on a bill of exceptions to the opinion of the judge; or on a special verdict; or on an error in law, either assigned or apparent on the face of the record; and, in the absence of all these, the case shall be dismissed with costs alone, or with costs and damages, at the discretion of the court. And the court shall admit, as part of the record to be examined by them in the trial of a cause, every bill of exceptions not signed by the judge trying the cause below, upon its appearing to the satisfaction of the court that the facts are fairly stated therein; that said bill was prepared in accordance with the law governing the preparation of such bills, and that the judge trying the cause refused to sign the same; and the truth of any such bill of exceptions shall be determined by the court on the copies of the affidavits required by law to be made in such case, such copies to be contained in, and to form a part of, the record transmitted to the court of civil appeals. (Acts 1892, p. 25.)

See Holloway Seed Co. v. City Nat. Bk., 47 S. W. 96; Ennis Mercantile Co. v. Wathen, 57 S. W. 946; Link v. City of Houston, 60 S. W. 664; Elkins v. Kempner, 66 S. W. 576; Adams v. Faircloth, 97 S. W. 507; Rabb v. E. H. Goodrich & Son, 102 S. W. 910; Applebaum v. Bass, 113 S. W. 173; Houston Oil Co. of Texas v. Kimball, 122 S. W. 533; City of Beaumont v. Masterson, 142 S. W. 984; Oar v. Davis, 151 S. W. 794; English v. Allen, 173 S. W. 1172; Zmek v. Dryer, 174 S. W. 659; Texarkana & Ft. S. Ry. Co. v. Brass, 175 S. W. 778; Houston & T. C. Ry. Co. v. Roberts, 194 S. W. 218; Hendrick v. Blount-Decker Lumber Co., 200 S. W. 171; Brown v. Greenspun, 200 S. W. 174; Davis v. Teal, 200 S. W. 1166.

Art. 1608. (1015) Transcript filed, when.—In any appeal or writ of error as provided for in this chapter, the appellant or plaintiff in error shall file the transcript with the clerk of the courts of civil appeals within ninety days from the performance of the appeal or service of the writ of error; provided, that, for good cause, the court may permit the transcript to be thereafter filed upon such terms as it may prescribe. (Id.)

See Blackman v. Harry, 45 S. W. 610; Crary v. Port Arthur Channel & Dock Co., 45 S. W. 842; Hollenbeck v. S., 51 S. W. 373; Dew v. Weeks, 53 S. W. 706; Christensen v. Anderson, 58 S. W. 962; City of San Antonio v. Smith, 65 S. W. 41; Hunt

v. Glasscock, 65 S. W. 209; Faux v. Lamaire, 77 S. W. 439; Applebaum v. Bass, 113 S. W. 173; Smalley v. Paine, 116 S. W. 38; In re Lawrence's Estate, 146 S. W. 701; State v. Lincoln, 147 S. W. 1195; Savage v. S., 148 S. W. 584; Simmang v. Smith, 150 S. W. 494; National Bank of Commerce v. Lone Star Milling Co., 152 S. W. 663; Heflin v. Eastern Ry. Co. of New Mexico, 155 S. W. 188; Cruz v. S., 172 S. W. 235; White v. Barrow, 182 S. W. 1154; Simpson v. Alexander, 183 S. W. 852; Mott v. Scurlock, 185 S. W. 1016; Tyler v. Smith, 187 S. W. 697; Billingsley v. Texas Midland R. R., 208 S. W. 468.

Art. 1609. (1025) New appeal bond allowed, when.—When there is a defect of substance or form in any appeal or writ of error bond, on motion to dismiss the same for such defect, the court may allow the same to be amended by filing in the said courts of civil appeals a new bond, on such terms as the court may prescribe. (Id.)

See Sayles' Practice, p. 1096; post, art. 2201; Hugo v. Seffel, 49 S. W. 369; Evans v. Ashburn, 64 S. W. 998; Williams v. Wiley, 71 S. W. 12; Horstman v. Little, 83 S. W. 679; Wandelohr v. Grayson Co. Nat. Bk., 90 S. W. 180; Dillard v. Wilson, 137 S. W. 152; Butts v. Davis, 146 S. W. 1015; Rounds v. Coleman, 185 S. W. 640.

See art. 2104, amendment of appeal bonds and recognizances generally.

Art. 1610. (1016) Certificate of affirmance, and proceedings thereon.—In case the appellant or plaintiff in error shall fail to file a transcript of the record, as directed in this chapter, then it shall be lawful for the appellee or defendant in error to file with the clerk of said court a certificate of the clerk of the district or county court in which any such appeal or writ of error may have been taken, attested by the seal of his court, stating the time when such appeal was perfected or such citation was served; whereupon, it shall be the duty of the courts of civil appeals to affirm the judgment of the court below, unless good cause can be shown why such transcript was not filed by the appellant or plaintiff in error. If a copy of the bond accompanies such certificate of the clerk of the district or county court, the judgment shall, in like manner, be affirmed against the sureties on such bond. (Id.)

See Blackman v. Harry, 45 S. W. 610; S. A. & A. P. Ry. v. Ray, 47 S. W. 477; Filhol v. L. & H. Blum Land Co., 49 S. W. 669; Harrington v. Blankenship, 52 S. W. 585; Ry. v. Hall, 76 S. W. 590; McCloskey v. McCoy, 89 S. W. 450; Welch v. Weiss, 90 S. W. 160; Wandelohr v. Grayson Co. Nat. Bk., 90 S. W. 180; Thorn v. Lanier, 121 S. W. 715; Santleben v. Richter, 126 S. W. 926; Waterman Lumber & Supply Co. v. Wheeler, 142 S. W. 145; Savage v. S., 148 S. W. 584; Dandridge v. Masterson, 152 S. W. 166; Holland v. Brown & McFarland, 152 S. W. 1195; Mott v. Scurlock, 185 S. W. 1016; Tyler v. Smith, 187 S. W. 697; Texas Portland Cement Co. v. Lumparoff, 204 S. W. 366.

Art. 1611. (1017) Transcript filed and cause heard after affirmance on certificate, when.—In all cases where the courts of civil appeals shall have affirmed the judgment of the court below, under the provisions of the preceding article, said court may, at any time within fifteen days after such affirmance, permit the transcript to be filed by the appellant or plaintiff in error, and the case to be tried on its merits; provided, that appellant or plaintiff in error shall show to the court good cause why the transcript was not filed by him in accordance with the provisions of article 1608, and shall also show to said court that he has given the appellee or defendant in error notice of his intentions to apply for such permission to file said transcript; and, in cases where the court shall adjourn within fifteen days after any judgment shall have been affirmed under the provisions of the next preceding article, the court may permit the appellant or plaintiff in error to file said transcript at such time as may be deemed proper, and have said cause tried on its merits; provided, said appellant or plaintiff in error shall show good cause why said transcript was not filed as herein directed, and shall show to the court that he has given the appellee or defendant in error notice of his intention to apply for permission to file said transcript. (Id.)

See Ry. v. Hall, 76 S. W. 590; Savage v. S., 148 S. W. 584; Raines v. Western Union Tel. Co., 186 S. W. 436.

Art. 1612. (1018) Assignments of error; requisites of.—The appellant or plaintiff in error shall in all cases file with the clerk of the court below all assignments of error, distinctly specifying the grounds on which he relies, before he takes the transcript of record from the clerk's office; provided, that where a motion for new trial has been filed that the assignments therein shall constitute the assignments of error and need not be repeated by the filing of the assignments of error, and provided further, that all errors not distinctly specified are waived, but an assignment shall be sufficient which directs the attention of the court to the error complained of. (Id.; Acts 1913, p. 276, sec. 1.)

See Marsalis v. Thomas, 35 S. W. 795; Patrick v. Laprelle, 37 S. W. 872; Cartmell v. Gammage, 64 S. W. 315; Barrett v. Ind. Tel. Co., 65 S. W. 1128; Wetz v. Wetz, 66 S. W. 869; W. U. Tel. Co. v. Hays, 67 S. W. 1072; Poland v. Porter, 98 S. W. 214; El Paso & S. W. Ry. Co. v. Smith, 108 S. W. 988; Norton v. Galveston, H. & S. A. Ry. Co., 108 S. W. 1044; Yeakley v. Gaston, 111 S. W. 768; Buchanan v. Burnett, 114 S. W. 406; City of San Antonio v. Alamo Nat. Bank, 114 S. W. 909; Willis v. Hatfield, 133 S. W. 929; Citizens' State Bank of Toyah v. O'Neal, 134 S. W. 1183; Jefferson Fire Ins. Co. of Philadelphia v. Greenwood, 141 S. W. 319; Brown v. Brown, 142 S. W. 23; Missouri, K. & T. Ry. Co. of Texas v. Maxwell, 143 S. W. 1147; Oar v. Davis, 151 S. W. 794, Sullivan v. Houston & T. C. R. Co., 151 S. W. 838; Witherspoon v. Crawford, 153 S. W. 633; Crowley v. Finch, 153 S. W. 648; Sewall v. Christie, 155 S. W. 994; El Paso Electric Ry. Co. v. Lee, 157 S. W. 748; Order of United Commercial Travelers of America v. Roth, 159 S. W. 176; Douthitt v. Farrar, 159 S. W. 182; Edwards v. Youngblood, 160 S. W. 288; Conn v. Rosamond, 161 S. W. 73; Childress v. Robinson, 161 S. W. 78; Mitchell v. Robinson, 162 S. W. 443; Edwards v. Youngblood, 162 S. W. 1164; Grand Lodge, F. & A. M. of Texas v. Dillard, 162 S. W. 1173; Cornelius v. Harris, 163 S. W. 346; City of San Antonio v. Bodeman, 163 S. W. 1043; Salliway v. Grand Lodge, A. O. U. W., 164 S. W. 1041; Gulf Refining Co. v. Pegues Mercantile Co., 164 S. W. 1113; Ruth v. Cobe, 165 S. W. 530; Bradshaw v. Kearby & Kearby, 168 S. W. 436; Murphy v. Murphy, 171 S. W. 263; Pollard v. Allen & Sims, 171 S. W. 302; Martin v. Stires, 171 S. W. 836; E. G. Rall Grain Co. v. Burks-Simmons Co., 171 S. W. 1043; St. Louis & S. F. Ry. Co. v. Stapp, 171 S. W. 1080; San Antonio, U. & G. Ry. Co. v. Storey, 172 S. W. 188; Walsh v. Methodist Episcopal Church South of Paducah, 173 S. W. 241; Gulf, C. & S. F. Ry. Co. v. Higginbotham, 173 S. W. 482; English v. Allen, 173 S. W. 1172; Watson v. Patrick, 174 S. W. 632; Zmek v. Dryer, 174 S. W. 659; Gulf, C. & S. F. Ry. Co. v. King, 174 S. W. 960; Missouri, O. & G. Ry. Co. of Texas v. Black, 176 S. W. 755; Nelson v. Boggs, 177 S. W. 1005; Craver v. Greer, 178 S. W. 699; Speer v. Rushing, 178 S. W. 1012; Wilkerson v. Stasney & Holub, 179 S. W. 669; Bonner Oil Co. v. Gaines, 179 S. W. 686; J. B. Farthing Lumber Co. v. Illig, 179 S. W. 1092; Rector v. Continental Bank & Trust Co., 180 S. W. 309; Tennegkeit v. Galveston Electric Co., 182 S. W. 72; Freeman v. Texas & P. Ry. Co., 182 S. W. 1158; Ft. Worth Belt Ry. Co. v. Jones, 182 S. W. 1184; Texas Grain & Elevator Co. v. Dyer, 184 S. W. 1049; Winnsboro Cotton Oil Co. v. Carson, 185 S. W. 1062; Perry Bros. v. McNeill, 189 S. W. 120; Woodley v. Pike, 189 S. W. 746; Grant v. Grant, 190 S. W. 229; First Nat. Bank of Lafayette, Ind., v. Fuller, 191 S. W. 830;

Levy v. Engle Bros. Co., 192 S. W. 548; City of Ft. Worth v. Burton, 193 S. W. 228; Clark v. Briley, 193 S. W. 419; Houston & T. C. Ry. Co. v. Roberts, 194 S. W. 218; Hale County v. Lubbock County, 194 S. W. 678; Turner v. Turner, 195 S. W. 326; Tolivar v. Beaumont Traction Co., 196 S. W. 362; Patterson v. Bushong, 196 S. W. 962; Lee v. Zielinski, 197 S. W. 327; Sessions v. S., 197 S. W. 718; Matheson v. C-B Live Stock Co., 198 S. W. 641; Riggs v. Baleman, 198 S. W. 813; Hassell v. Rose, 199 S. W. 845; Crawford v. El Paso Land Improvement Co., 201 S. W. 233; Shuler v. City of Austin, 201 S. W. 445; Zeiger v. Woodson, 202 S. W. 163; Olguin v. Apodoca, 202 S. W. 367; St. Louis, B. & M. Ry. Co. v. Webber, 202 S. W. 519; Barkley v. Gibbs, 203 S. W. 161; Harlan v. Acme Sanitary Flooring Co., 203 S. W. 412; Hess & Skinner Engineering Co. v. Turney, 203 S. W. 593; City of Sweetwater v. Biard Development Co., 203 S. W. 801; Green v. Hall, 203 S. W. 1175.

Art. 1613. (1022) Docket of causes and disposition of same.—When a cause is carried to the courts of civil appeals by writ of error, it shall be docketed in the order of the date received; and the clerk shall transfer the said cause to the trial docket thirty days after the same has been received and docketed; provided, that the court may, upon motion of either party, of which notice shall be given to the adverse party, extend the time for placing said cause on the trial docket for good cause shown. (Acts 1892, p. 25.)

See Hunt v. Glasscock, 65 S. W. 209; Niday v. Cochran, 106 S. W. 462; Goodhue v. Leckie, 176 S. W. 647.

Art. 1614. (1019) Appearance by brief, etc.—When any cause or suit may be taken up from any inferior court to the court of civil appeals, whether by appeal, writ of error, or otherwise, it shall be lawful for the attorney for both the plaintiff and defendant to file in the papers of said suit or cause, written or printed briefs or argument, if written not to exceed fifteen pages; and the said court shall be required to notice the same as if it were the personal appearance of said attorney, and shall not dismiss any suit or cause where such brief or argument of counsel is filed with the papers for want of other or further prosecution. (Acts 1909, S. S. p. 270.)

See Bowman v. Hoffman, 67 S. W. 152; Waterman Lumber & Supply Co. v. Holmes, 161 S. W. 70; Banks v. McMahan, 162 S. W. 366.

Art. 1615. (1020) Notices to attorneys, how given.—All notices required herein to be given by the court of civil appeals to the parties or their attorneys of record in any case shall be served by the clerk of said court, transmitting said notice to said attorneys by registered letter through the mail properly directed. Registration receipts shall be filed and kept by the clerk with the record of the cause. (Id.)

CHAPTER SEVEN

HEARING CAUSES

Art. 1616. (1022) Hearing of cases, order of.—Causes on the trial docket of said court shall be heard in the order of the date of filing, except as hereinafter provided, unless continued to some future time for good cause shown; and it shall be the duty of the clerk, under the directions of the court, to notify the parties or the attorneys of record of the date when the cause is set for hearing. (Acts 1909, S. S. p. 270.)

See Hunt v. Glasscock, 65 S. W. 209; Goodhue v. Leckie, 176 S. W. 647; Bunn v. City of Laredo, 208 S. W. 675.

Art. 1617. (1023) Cases decided in their order, except, etc., and disposed of, how.—The cases filed in the courts of civil appeals shall be decided in the order in which they are filed at each term of the court, but the following cases shall have precedence of all others in the order named:

1. All cases in which the railway commission is a party.
2. Cases in which the state is a party.
3. Cases which shall be submitted on oral argument for all parties to the cause.
4. Such other cases as the court, by order or rule, may direct.

On the call of cases, the court shall set down the causes for argument for such time as the same can be heard, and notice of which shall be given to counsel as heretofore provided; and said cause shall be determined upon argument or as soon thereafter as practicable, or it shall be set down for further argument, but may be postponed by order of the court to a later day in the term. (Id.)

Art. 1618. (1026) Death does not abate, when.—If any party to the record in any cause hereafter taken to the courts of civil appeals, by appeal or writ of error, or transferred from the supreme court or courts of appeals, shall have died heretofore or shall hereafter die after the appeal bond has been filed and approved or after the writ of error has been served, and before such cause has been decided such cause shall not abate by such death; but the court shall proceed to adjudicate such cause and render judgment therein as if all parties thereto were still living; and such judgment shall have the same force and effect as if rendered in the lifetime of all the parties thereto. (Id.)

See Sayles' Practice, p. 344; Conn v. Hagan, 55 S. W. 323; White v. Manning, 102 S. W. 1160; Bargna v. Bargna, 157 S. W. 754; Hughes v. Hughes, 170 S. W. 847.

CHAPTER EIGHT

CERTIFICATION OF QUESTIONS TO SUPREME COURT, ETC.

Art. 1619. (1043) Questions of law certified to supreme court.—Whenever, in in any case pending before the court of civil appeals, there should arise an issue of law which said court should deem it advisable to present to the supreme court for adjudication, it shall be the duty of the presiding judge of said court to certify the very question to be decided by the supreme court; and, during the pendency of the decision by the supreme court, the cause in which the issue is raised shall be retained for final adjudication in accordance with the decision of the supreme court upon the issue submitted. (Acts 1893, p. 100.)

Sayles' Practice, p. 101; Cleveland v. Carr, 38 S. W. 1123; Farmers' Nat. Bk. v. Templeton, 39 S. W. 914; G. H. & S. A. R'y v. Bantzinger, 48 S. W. 563; Roy v. Whitaker, 48 S. W. 892; Wallis v. Stuart, 50 S. W. 567; W. U. Tel. Co. v. Burgess, 54 S. W. 1021; Wettermark v. Campbell, 56 S. W. 331; Evans v. Daniel, 60 S. W. 309; State v. Country Club, 173 S. W. 570; Wilson v. Giraud, 195 S. W. 848.

Art. 1620. (1040) Dissenting opinion; point of dissent certified to supreme court.—When any one of said courts of civil appeals shall, in any cause or proceeding, render a decision in which any one of the judges therein sitting shall dissent as to any conclusions of law material to the decision

of the case, said judge shall enter the grounds of his dissent of record; and the said court of civil appeals shall, upon motion of the party to the cause, or on its own motion, certify the point or points of dissent to the supreme court. (Acts 1893, p. 89.)

See Sayles' Practice, p. 101; Johnson v. Portwood, 34 S. W. 596; Classen v. Elmendorf, 38 S. W. 160; Eustis v. City of Henrietta, 38 S. W. 165; State v. Fisher, 62 S. W. 540; Kidd v. Rainey, 68 S. W. 507; McCord v. Nabours, 78 S. W. 223; Western Union Telegraph Co. v. Hudson, 124 S. W. 85; Boynton Lumber Co. v. Houston Oil Co. of Texas, 189 S. W. 749; Wilson v. Giraud, 195 S. W. 848.

Art. 1621. (1041) Proceedings on certificate of dissent.—When a certificate of dissent is sent up by any court of civil appeals, it shall be the duty of the clerk to send up a certified copy of the conclusions of fact and law as found by the court, and the questions of law upon which there is a division, and the original transcript, if so ordered by the supreme court; and, thereupon, if the supreme court so direct, the clerk shall set down the same for argument, and notify the attorneys of record. (Id.)

See Sayles' Practice, p. 105; Eustis v. City of Henrietta, 38 S. W. 165; Pohle v. Robertson, 115 S. W. 1166.

Art. 1622. (1042) Decision of supreme court certified back; judgment on.—After the question is decided, the supreme court shall immediately notify the court of civil appeals of their decision, and the same shall be entered as the judgment of said court of civil appeals. (Id.)

See Sayles' Practice, p. 105; Classen v. Elmendorf, 38 S. W. 160; Eustis v. City of Henrietta, 43 S. W. 259; McCord v. Nabours, 78 S. W. 223; Western Union Telegraph Co. v. Hudson, 124 S. W. 85.

Art. 1623. Conflict with decision of another court of civil appeals; question and record transmitted and certified to supreme court.—Wherever, in any cause at any time pending in any of the courts of civil appeals of the several supreme judicial districts of the state of Texas, any one of said courts may arrive at an opinion in the decision of any such cause that may be in conflict with the opinion heretofore rendered, or hereafter rendered, by some other court of civil appeals in this state on any question of law, and such court of civil appeals refuses to concur with the opinion so rendered by such other court of civil appeals, it shall be the duty of such court failing to concur with the opinion in conflict with the opinion so arrived at by such court, through its clerk, to transmit the question of law, duly certified to, involved in the cause wherein said conflict of opinion has arisen, together with the record or transcript in such cause, to the supreme court of the state of Texas for adjudication by the supreme court. (Acts 1899, p. 170.)

See McCurdy v. Conner, 66 S. W. 664; Kidd v. Rainey, 68 S. W. 507; Smith v. Conner, 84 S. W. 815; T. & P. Ry. v. Conner, 100 S. W. 367; First Nat. Bank of Aspermont v. Conner, 172 S. W. 1106; Coultress v. City of San Antonio, 179 S. W. 515; Coultress v. City of San Antonio, 187 S. W. 194; Warren v. Willson, 192 S. W. 529; Stuart v. Meyer, 196 S. W. 615.

Art. 1624. Proceedings on same in supreme court.—When said record shall have been received by the clerk of the supreme court, he shall docket the same; and the supreme court shall set such cause down for hearing at some future day; and the clerk of the supreme court shall at once notify the parties or their attorneys of record of such setting, and such case shall be set for a time sufficiently far in the future to give such attorneys reasonable time to prepare briefs and arguments if they so desire. (Id.)

Art. 1625. Action of supreme court on; effect and finality of.—It shall be the duty of the supreme court, on receiving such record, together with such certified question of law, from the court of civil appeals transmitting the same, to examine such record and such certified question of law, and render an opinion in such cause, as in other cases; which opinion, when so rendered by said supreme court, on the record and question of law presented therein, shall be final, and shall be the law on the question involved, until said opinion shall have been overruled by the said supreme court, or abrogated by legislative enactment, and the courts of civil appeals shall be governed thereby. (Id. sec. 2.)

CHAPTER NINE

JUDGMENT OF THE COURT

Art. 1626. (1027) If judgment reversed, when reformed, when remanded.—When the judgment or decree of the court below shall be reversed, the court shall proceed to render such judgment or decree as the court below should have rendered, except when it is necessary that some matter of fact be ascertained or the damage to be assessed or the matter to be decreed is uncertain, in either of which cases the cause shall be remanded for a new trial in the court below. (Acts 1892, p. 25.)

See Sayles' Practice, p. 1156; H. & T. C. Ry. v. Strycharski, 37 S. W. 415; Patrick v. Smith, 38 S. W. 17; Stevens v. Masterson's Heirs, 39 S. W. 292; State v. Patterson, 42 S. W. 369; Arnold v. Ellis, 48 S. W. 883; St. Louis, Etc., Ry. v. Adams, 58 S. W. 1035; Ry. v. Addison, 70 S. W. 200; Thompson v. Hubbard, 70 S. W. 572; Wolf Cigar Stores v. Kramer, 89 S. W. 995; Eidson v. Reeder, 105 S. W. 1113; Lewright v. Walls, 119 S. W. 721; Tillman v. Erp, 121 S. W. 547; Missouri, K. & T. Ry. Co. of Texas v. Moses, 144 S. W. 1037; Benge v. Panhandle Land Co., 145 S. W. 318; William Miller & Sons Co. v. Wayman, 157 S. W. 197; Bridgewater v. Hooks, 159 S. W. 1004; Ft. Worth & D. C. Ry. Co. v. Copeland, 164 S. W. 857; Dees v. Thompson, 166 S. W. 56; Mitchum v. Chicago, R. I. & G. Ry. Co., 173 S. W. 878; Holmes v. Coalson, 178 S. W. 628; Prudential Life Ins. Co. of Texas v. Smyer, 183 S. W. 825; Ribble v. Roberts, 184 S. W. 278; Mutual Film Corporation v. Morris & Daniel, 184 S. W. 1060; Floyd v. Illinois Bankers' Life Ass'n of Monmouth, Ill., 192 S. W. 607; City of Weatherford Water, Light & Ice Co. v. Veit, 196 S. W. 986.

Art. 1627. (1028) Judgment on affirmance or rendition, etc. Damages adjudged, when. Finality.—Whenever the courts of civil appeals, on the trial of cases brought from an inferior court, shall affirm the judgment or decree of such inferior court, or when said courts shall proceed to render such judgment or decree as should have been rendered by the court below and such judgment shall be for the same or a greater amount, or of the same nature, as rendered in the court below, said courts shall render judgment against the appellant or plaintiff in error and his sureties on the appeal bond, a copy of which shall always accompany the transcript of the record; and said courts of civil appeals shall in their discretion include in their said judgment or decree such damages, not exceeding ten per cent on the amount of the original judgment, as the court may deem proper; and the judgment or decree of said courts rendered as con-

templated in this article shall be final. (Acts 1892, S. S. p. 25, sec. 37.)

See Sayles' Practice, pp. 1105, 1147, 1156, 1159, 1185; Henson v. Byrne, 45 S. W. 382; Russell v. Deutchman, 100 S. W. 1164; Benge v. Panhandle Land Co., 145 S. W. 318; Hicks v. Murphy, 162 S. W. 925.

Art. 1628. (1024) No reversal for want of form.—There shall be no reversal on appeal or writ of error, nor shall the same be dismissed for want of form, provided sufficient matter or substance be contained in the record to enable the court to decide the cause upon its merits. (Acts 1892, S. S. p. 25, sec. 29.)

Art. 1629. (1024) Affirmance with damages in case of delay.—Where the court shall be of opinion that an appeal or writ of error has been taken for delay, and that there was no sufficient cause for taking such appeal, then, and in that case, the appellant or plaintiff in error, if he be the defendant in the court below, shall pay ten per cent on the amount in dispute as damages, together with the judgment, interest and cost of suit thereon accruing. (Id.)

Art. 1630. (1024) Remittitur.—If, in any judgment rendered in the district or county court, there shall be an excess of damages rendered, and before the plaintiff has entered a release of the same in such court in the manner provided by law, such judgment shall be removed to the courts of civil appeals; it shall be lawful for the party in whose favor such excess of damages has been rendered to make such release in the courts of civil appeals in the same manner as such release is required to be made in the district or county court; and, upon such release being filed in the said court, after revising said judgment, said courts of civil appeals shall proceed to give such judgment as the court below ought to have given if the release had been filed therein. (Id.)

New York Life Ins. Co. v. Herbert, 106 S. W. 421.

Art. 1631. (1029a) Suggestion of remittitur.—In all civil cases, now pending, or that may hereafter be appealed to any court of civil appeals of this state, and such court shall be of the opinion that the verdict and judgment of the trial court is excessive, and for that reason only, said cause should be reversed, then it shall be the duty of such court of civil appeals to indicate to the party in whose favor such judgment was rendered, or his attorneys of record, the amount of the excess of such verdict and judgment; and said court shall, at the same time, indicate to such party, or his attorney, within what time he may file a remittitur of such excess; and, if such remittitur shall be so filed, then the court shall reform and affirm such judgment in accordance therewith; if not filed as indicated, then to be reversed. (Acts 1893, p. 89.)

See Sayles' Practice, p. 653; T. & N. O. Ry. v. Syfan, 44 S. W. 1064; G. H. & S. A. Ry. v. Hynes, 50 S. W. 624; G. H. & S. A. Ry. v. Nicholson, 57 S. W. 694; Ry. v. Linthicum, 77 S. W. 40; Ry. v. Stevens, 94 S. W. 395; New York Life Ins. Co. v. Herbert, 106 S. W. 421; Southwestern Telegraph & Telephone Co. v. Gehring, 137 S. W. 754; Texas & N. O. R. Co. v. Marshall, 140 S. W. 508; Galveston, H. & S. A. Ry. Co. v. Craighead, 175 S. W. 1199; Texas & P. Ry. Co. v. Rasmussen, 181 S. W. 212; Houston Chronicle Pub. Co. v. Wegner, 182 S. W. 45; Wilson v. Freeman, 185 S. W. 993, Ann. Cas. 1913D, 1203; Southwestern Portland Cement Co. v. Graves, 208 S. W. 979.

Art. 1632. (1029b) Refusal to remit not subject to comment on subsequent trial.—Whenever any court of civil appeals shall indicate that a verdict is excessive, as provided in the preceding article, and no remittitur shall be filed, as provided in said article, no evidence shall be allowed nor allusion made, in any subsequent trial, of the action of such court of civil appeals in reference to the amount of excess of such verdict. (Id.)

See Sayles' Practice, p. 653.

Art. 1633. (1029) Mandate issued when.—If no writ of error be sued out, or motion for rehearing be filed, within thirty days after the conclusion or decision of the court has been entered in any court of civil appeals, the clerk of the court shall, upon application of either party and the payment of all costs, issue a mandate upon said judgment. (Id.)

See Sayles' Practice, pp. 700, 703, 1165, 1185; McGhee v. Romatka, 47 S. W. 520; Ex parte Gill, 89 S. W. 272; Gammel Statesman Pub. Co. v. Ben C. Jones & Co., 206 S. W. 931.

Art. 1634. (1036) No mandate to issue until costs paid.—On the rendition of any final judgment or decree in the court of civil appeals, the clerk of said court shall not issue and deliver the mandate of the court, nor certify the proceedings to the lower court, until all the costs accruing in the case in the court of civil appeals shall have been paid, subject, however, to the provisions of the next succeeding article. (Acts 1897, p. 18.)

See Ex parte Gill, 89 S. W. 272; Sayles' Practice, pp. 703, 1165, 1185.

Art. 1635. (1036) Affidavit of inability to pay or secure costs.—If the party against whom the costs are adjudged shall make affidavit of his inability to pay the same or give security therefor, he may apply to the court of civil appeals in which the case is pending for an order to require the clerk to issue the mandate or to certify the proceedings, as the case may be; which motion shall be granted by said court, unless the clerk or a party to the record shall controvert the truth of such affidavit and satisfy the court that such motion should not be granted. (Id.)

See Ex parte Gill, 89 S. W. 272; Sayles' Practice, pp. 703, 1165, 1185.

For limitation upon time for taking out mandates in cases of reversal and remanding, in supreme court and courts of civil appeals, see art. 1559.

CHAPTER TEN

CONCLUSIONS OF FACT AND LAW

Art. 1636. (1039) Conclusions of fact and law to be filed, when.—In all cases hereafter decided by the courts of civil appeals, in which the supreme court has jurisdiction of an application for writ of error, it shall be the duty of the court of civil appeals, within thirty days after the decision of the case, to make and file a conclusion of fact and law upon each material point assigned as error in that court. The evidence need not be stated, except when necessary to determine upon the correctness of some ruling of the court. (Acts 1901, p. 121.)

Art. 1637. (1039) Reason for judgment to be stated, when.—In cases where the judgment of the trial court shall be reversed and the cause remanded, the court of civil appeals shall state its reason for the judgment. (Acts 1901, p. 121; Acts 1892, p. 25.)

See Sayles' Practice, pp. 1155, 1172; Higgins v. Matlock, etc., 95 S. W. 571; J. H. Tucker & Co. v.

Freiburg & Kahn, 101 S. W. 837; Baldwin v. Drew, 195 S. W. 636.

Art. 1638. Supplemental findings, motion for; refusal assignable as error.—If either party to a case, hereafter decided by a court of civil appeals, shall be of the opinion that the findings of fact are insufficient upon any material issue assigned in that court as error, such party may, in his motion for rehearing, specify the point upon which there is no finding of fact, or upon which the finding made by the court is insufficient, and ask the court of civil appeals to make and file conclusions of fact upon the points indicated in the motion. If that court shall refuse to make such finding, or if the finding made be insufficient, such action may be assigned as error in the application to the supreme court for a writ of error. (Acts 1901, p. 121.)

Art. 1639. Court shall decide all issues of fact or law, and announce conclusions.—It shall be the duty of the courts of civil appeals to decide all issues presented to them by proper assignments of error by either party in all causes now pending, or which may hereafter be pending before them, whether such issues be of fact or of law, and announce in writing their conclusions so found. (Acts 1905, p. 71.)

See Walker v. Dickey, 98 S. W. 658; Schneider v. Wetz, 100 S. W. 135; J. H. Tucker & Co. v. Freiburg & Kahn, 101 S. W. 837; Foard County v. Sandifer, 151 S. W. 523; Fink v. San Augustine Grocery Co., 167 S. W. 35; Hume v. Carpenter, 188 S. W. 707.

Art. 1640. Supreme court shall return record for supplemental conclusions, when.—If the court of civil appeals has failed to file a conclusion of fact upon any material issue in the case properly assigned in that court, and in the supreme court, and, by reason of such failure, the supreme court is not able to pass upon such assignment, it shall be the duty of said supreme court to return the record to the court of civil appeals, from which it came, with directions to make and file a conclusion of fact upon each of such issues, and to return the same with the record to the supreme court. (Id.)

See Walker v. Dickey, 98 S. W. 658; Schneider v. Wetz, 100 S. W. 135; J. H. Tucker & Co. v. Freiburg & Kahn, 101 S. W. 837.

CHAPTER ELEVEN

REHEARING

Art. 1641. (1030) Motion for rehearing; requisites and notice of.—Any party desiring a rehearing of any matter determined by said courts may, within fifteen days after the date of entry of the judgment or decision of the courts, or the filing of the findings of fact and conclusions of law, file with the clerk of said courts his motion in writing for a rehearing thereof, in which motion the ground relied upon for the rehearing shall be distinctly specified, and the name and residence of the counsel of the opposing party if known, and if not known then the name and residence of the opposing party as shown in the record; provided, that, should the court adjourn within less than fifteen days after the rendition of the judgment, the motion may be made at such time and in such manner as may be prescribed by rules to be made by the supreme court. (Acts 1892, p. 25.)

See Sayles' Practice, pp. 22, 1160; Homes v. City of Henrietta, 46 S. W. 871; Nabours v. McCord, 82 S. W. 661; Corusales v. S., 82 S. W. 1038; Nixon v. Malone, etc., 98 S. W. 380; Padgett v. H. P. Pratt & Son, 180 S. W. 317; Anderson v. First Nat. Bank of La Grange, 191 S. W. 836; Gammel Statesman Pub. Co. v. Ben C. Jones & Co., 206 S. W. 931.

Art. 1642. (1031) Notice, how given.—Upon the filing of such motion with the clerk of said courts, he shall make a certified copy thereof and transmit the same by mail to the sheriff or any constable of the county in which the attorney or opposing party, as the case may be, is alleged in said motion to reside, together with a precept commanding him to deliver the copy of the motion to the person named in such precept. (Id.)

See Sayles' Practice, pp. 1153, 1162.

Art. 1643. (1032) Service of notice and return.—Upon the receipt of such precept and copy of motion by the officer, it shall be his duty to deliver the copy of the motion to the person named in said precept, if found in his county, and to return said precept to the court from which it issued, by mail, stating thereon in what manner he executed the same or that the party named in the precept is not to be found in his county, as the case may be. (Id.)

See Sayles' Practice, pp. 1153, 1162.

Art. 1644. (1033) When motion determined.—At any time, after five days from the return of such precept served, it shall be lawful for said courts to hear and determine motion for rehearing, and not sooner. (Id.)

See Sayles' Practice, p. 1162.

CHAPTER TWELVE

EXECUTION OF JUDGMENT

Art. 1645. (1034) Writ, how tested, directed, executed and returned; and alias issues, when.—All writs and process issuing from the courts of civil appeals shall bear the test of the chief justice or presiding judge of said court, under the seal of said court and signed by the clerk thereof, and shall be directed to the sheriff or any constable of any county in the state, and shall be, by such officer, executed according to the command thereof and returned to the court from which they emanated; and, whenever such writ or process shall not be executed, the clerk of said court is hereby authorized and required to issue another like process or writ upon the application of the party suing out the former writ or process to the same or any other county. (Acts 1892, p. 25.)

See Sayles' Practice, p. 111.

Art. 1646. (1035) Judgment enforced, how, when.—Upon the rendition by the courts of civil appeals of any such judgment or decree as is contemplated by article 1627, it shall not be necessary for the lower court from which the cause was removed to make any further order or decree therein; but the clerk of said lower court, on receipt of the mandate of the supreme court or courts of civil appeals, shall proceed to issue execution thereon as in other cases. (Id.)

See Sayles' Practice, pp. 1159, 1165, 1185; Henson v. Byrne, 45 S. W. 382; Adoue v. Wettermark, 55 S. W. 511; Henry v. Red River Lbr. Co., 102 S. W. 749.

Art. 1647. (1036) Execution to issue, when; mandate.—If neither party shall pay the costs and take out the mandate within thirty days after the time when the same can be issued by law, then it shall be the duty of the clerk to issue execution for the costs

accruing in his court against the party or parties against whom such costs have been adjudged, and to send such execution by mail to the proper officer for collection; but he shall retain the mandate until the costs have been paid or collected, subject, however, to the provisions of article 1635. (Acts 1897, p. 18.)

Art. 1648. (1029) Appellant on reversal to recover costs of appeal.—In any cause reversed by a court of civil appeals, the appellant shall be entitled to an execution against the appellee for costs occasioned by such appeal, including costs for the transcript, said costs to be taxed by the clerk of the said court. (Id.; Acts 1893, p. 89.)

See Sayles' Practice, pp. 700, 703, 1165, 1185; McGhee v. Romatka, 47 S. W. 520; Ex parte Gill, 89 S. W. 272.

Art. 1649. (1037) Return of execution, when.—All executions for costs of the courts of civil appeals, as authorized by law, shall be returned by the sheriff or constable to whom they are directed within four months from the date thereof. (Id.; Acts 1892, p. 25.)

See Sayles' Practice, p. 703.

Art. 1650. (1038) Officer failing to make return; remedy by motion.—In case any officer shall fail or refuse to make such return with the amount of such costs, if he has collected the same, within the time prescribed herein, or shall make a false or fraudulent return of any such execution, the clerk of said court may issue citation returnable forthwith to such officer to appear before said court and show cause, if any he can, why he has not collected and returned said costs and execution; and, failing to show cause, said court may enter judgment against such officer and the sureties on his official bond for twice the amount of said costs, together with the costs of such proceedings. (Id.)

See Sayles' Practice, p. 703.

CHAPTER THIRTEEN

REPORTER TO THE COURTS OF CIVIL APPEALS

Art. 1651. [Repealed by Acts 1919, ch. 36, sec. 4.]

TITLE 33

COURT OF CRIMINAL APPEALS

Arts. 1652-1670.

This title (6 chapters) of the Revised Civil Statutes of 1911 consisted of articles 1652-1670. All of these articles, with the exception of articles 1662-1668, 1670, are duplicated in the Code of Criminal Procedure, Title 2, chapter 2, articles 64-87. To avoid duplication the text of the duplicated articles is omitted here, and articles 1662-1668, 1670 are transferred to the Code of Criminal Procedure.

TITLE 34

COURTS—DISTRICT

CHAPTER ONE

THE JUDGE OF THE DISTRICT COURT

Art. 1671. (1064) (1086) District judge, election of; qualification; residence.—There shall be elected for each judicial district by the qualified voters thereof at a general election for members of the legislature, a judge, who shall be at least twenty-five years of age, shall be a citizen of the United States, shall have been a practicing attorney or a judge of a court in this state, for the period of four years, and shall have resided in the district in which he is elected for two years next before his election, and shall reside in his district during his term of office. (Const., art. 5, sec. 7.)

Art. 1672. (1065) (1087) Term of office.—The judge of the district court shall hold his office for the term of four years, and until his successor shall have duly qualified. (Id. and art. 16, sec. 17.)

Art. 1673. (1066) (1088) Oath of office.—The judge of the district court, and each special judge hereinafter provided for, shall, before entering upon the duties of his office, take the oath of office prescribed by the constitution. (Const., art. 16, sec. 1.)

Art. 1674. (1067) (1089) Vacancy in office, how filled.—Any vacancy in the office of a judge of the district court shall be filled by the governor until the next succeeding general election. (Id. art. 5, sec. 28.)

Art. 1675. (1068) (1090) Disqualification, causes of.—No judge of the district court shall sit in any cause wherein he may be interested, or where he shall have been of counsel, or where either of the parties may be connected with him by affinity or consanguinity within the third degree. (Const., art. 5, sec. 11.)

See Sayles' Practice, pp. 23, 49-50; New Odorless Sewerage Co. v. Wisdom, 70 S. W. 354; Nalle v. City of Austin, 93 S. W. 141; Summerlin v. S., 153 S. W. 890; Stockwell v. Glaspey, 160 S. W. 1151.

Art. 1676. (1069) Disqualification; exchange of district judges; special judge agreed upon, when; appointment by governor.—Whenever any case or cases, civil or criminal, are pending in which the district judge is disqualified from trying the same, no change of venue shall be made necessary thereby; but the judge presiding shall immediately certify that fact to the Governor, whereupon the Governor shall designate some district judge in an adjoining district to exchange and try such case or cases, and the Governor shall notify both of said judges of such order; and it shall be the duty of said judges to exchange districts for the purpose of disposing of such case or cases, and, in case of sickness or other reasons rendering it impossible to exchange, then the parties or their counsels shall have the right to select or agree upon an attorney of the court for the trial thereof; and, in the event the district judges shall be prevented from exchanging districts and the parties and their counsels shall fail to select or agree upon an attorney of the court for the trial thereof, which fact shall be certified to the Governor by the district judge or the special judge, whereupon the Governor shall appoint a person legally qualified to act as judge in the trial of the case. (Acts 1879, p. 1; Acts 1897, S. S. p. 39; Acts 1915, ch. 45.)

See Sayles' Practice, pp. 23, 51, 62, 348; Greer v. S., 65 S. W. 1075; Kruegel v. Nash, 72 S. W. 601; Johnson v. Johnson, 89 S. W. 1192; Seiber v. Johnson Mer. Co., 90 S. W. 516; Woodmen, etc., v. Boehme, 97 S. W. 847; Oates v. State, 121 S. W. 370; Alley v. Mayfield, 131 S. W. 295; Summerlin v. S., 153 S. W. 890; Webb v. Reynolds, 160 S. W. 152; Connellee v. Blanton, 163 S. W. 404; Dunn v. Home Nat. Bank, 181 S. W. 699.

Art. 1677. (1070) Record to be made where special judge is agreed on or appointed.—Whenever a special judge is agreed

upon by the parties for the trial of any particular cause, as above provided, the clerk shall enter in the minutes of the court, as a part of the proceedings in such cause, a record showing:

1. That the judge of the court was disqualified to try the cause; and

2. That such special judge (naming him) was, by consent, agreed upon by the parties to try the cause; and

3. That the oath prescribed by law has been duly administered to such special judge. (Acts 1897, S. S. p. 39; Acts 1876, p. 141.)

See Johnson v. Johnson, 89 S. W. 1102; Oates v. S., 121 S. W. 370; Summerlin v. S., 153 S. W. 890.

Art. 1678. (1071) (1094) Special judge, when and how elected.—Whenever, on the day appointed for a term of the district court, or at any time before the expiration of the term, or the completion of all the business of the court, the judge thereof shall be absent, or shall be unable or unwilling to hold the court, there shall thereby be no failure of the term, and no failure to proceed with the business of the court, but the practicing lawyers of such court present thereat may proceed to elect from among their number a special judge of said court, who shall proceed to hold said court and conduct the business thereof, and shall have all the power and authority of the judge of said court, during such continued absence or inability, and until the completion of any business begun before such special judge. (Acts 1876, p. 140, sec. 1.)

See Sayles' Practice, pp. 53, 62-63, 74; Townes' Texas Pleading (2d Ed.) p. 112; Schwartz v. S., 40 S. W. 976; Greer v. S., 65 S. W. 1075; Scott v. S., 68 S. W. 177; Cox v. Oliver, 95 S. W. 596; Wynn v. R. E. Edmonson Land & Cattle Co., 150 S. W. 310; Creed v. S., 155 S. W. 240; Webb v. Reynolds, 160 S. W. 152; Glover v. Albrecht, 173 S. W. 504; Dunn v. Home Nat. Bank, 181 S. W. 699; De Arman v. S., 189 S. W. 145; Texas & Pacific Coal Co. v. Ready, 198 S. W. 1034; Lowe v. S., 201 S. W. 986.

Art. 1679. (1072) (1095) Electoral body, how constituted.—Such election shall be by ballot, and each practicing lawyer in attendance at such court shall be entitled to participate in such election and shall be entitled to one vote; and a majority of the votes of all the practicing lawyers present and participating shall be necessary to the election of such special judge. (Id. sec. 2.)

Art. 1680. (1073) (1096) Mode of conducting the election.—The mode of conducting such election shall be as follows: The sheriff or constable shall make proclamation at the court house door that the election of a special judge of the court is about to be made by the practicing lawyers present thereat; the clerk shall then make a roll or list of all the practicing lawyers present; and such lawyers shall then proceed to organize and hold the election as hereinbefore provided. (Id. sec. 1.)

Art. 1681. (1074) (1097) Failure or refusal of officers to act.—Should the sheriff or constable and clerk, or either of them, fail or refuse to act, the said practicing lawyers may nevertheless proceed to organize themselves into such electoral body, and appoint a sheriff and clerk pro tempore to do the duties of such officers respectively. (Id. sec. 2.)

Art. 1682. (1075) (1098) Record of the election, etc.—It shall be the duty of the clerk to enter upon the minutes of the court a record of the election of such special judge, showing—

1. The names of all the practicing lawyers present and participating in such election.

2. The fact that the public proclamation was made at the court house door that such election was about to take place.

3. The number of ballots polled at such election and the number polled for each person, and the result of the election.

4. That the oath prescribed by law has been duly administered to the special judge. (Id.)

Art. 1683. (1076) (1099) Effect of such record.—The record of such proceedings, showing a substantial compliance with the requirements of the law in that behalf, shall be conclusive evidence of the election and qualification of such special judge. (Id.)

Art. 1684. (1077) (1100) Other similar elections from time to time.—Like elections may be held from time to time during the term of the court to supply the absence, failure or inability of the judge, or of any special judge, to perform the duties of the office. (Id.)

CHAPTER TWO

THE CLERK OF THE DISTRICT COURT

Art. 1685. (1078) (1100a) Clerk, how elected; term of office.—There shall be a clerk for the district court of each county, who shall be elected at a general election for members of the legislature by the qualified voters of such county, who shall hold his office for two years, and until his successor shall have duly qualified. (Const., art. 5, sec. 9; art. 16, sec. 17.)

Art. 1686. (1079) (1101) Vacancy in office of clerk, how filled.—Whenever a vacancy may, from any cause, occur in the office of the clerk of the district court, the same shall be filled by the judge of the district court of such county; and the clerk so appointed shall give bond and qualify in the same manner as if he had been elected, and shall hold his office until the next general election, and until his successor shall have duly qualified. Where such vacancy occurs in a county having two district courts, the same shall be filled by the judges of such courts; and in such case the governor, upon the certificate of such district judges, shall order a special election to fill such vacancy. (Id.; Acts 1876, p. 233; Acts 1891, p. 5.)

Art. 1687. (1080) District clerk pro tem., appointed, when.—In all cases wherein any district clerk in this state is, or shall hereafter be, a party to any pending or proposed suit, motion or proceeding in his court, the district judge in whose court the same may be pending or proposed, shall, either in term time or in vacation, on application of any person interested, or of his own motion, appoint a clerk pro tempore for the purposes of such suit, motion or proceeding. (Acts of 1887, p. 102.)

Art. 1688. (1081) District clerk pro tem., to qualify and give bond.—Any person so appointed clerk shall take the oath to faithfully and impartially perform the duties of such appointment, and shall also enter into bond, payable to the state of Texas, with one or more good and sufficient sureties,

in such amount as may be required by the judge, to be approved by him, and conditioned for the faithful performance of his duties under such appointment. The person so appointed shall perform all the duties required by law of the clerk in the particular suit, motion or proceeding in which he may be appointed. (Id.)

Art. 1689. (1082) (1102) Bond and oath.—Each clerk of the district court shall, before entering on the duties of his office, give bond, with two or more good and sufficient sureties, to be approved by the commissioners' court of the county, payable to the governor and his successor in office, in the sum of five thousand dollars, conditioned for the safe-keeping of the records and the faithful discharge of the duties of his office, and shall also take and subscribe the oath of office required by the constitution, which shall be indorsed upon the bond; and the bond and oath so taken and approved shall be filed and recorded in the office of the clerk of the county court. A certified copy of such bond may be put in suit, in the name of the governor, for the use of the party injured, and shall not become void on the recovery of part of the penalty thereof, but may be sued on from time to time by the parties injured, until the whole amount of the penalty is recovered. (Acts 1846, p. 203, sec. 20; P. D. 500.)

Art. 1690. (1083) (1103) May appoint deputies.—The clerk of the district court, whether elected or appointed, shall have power to appoint one or more deputies by a written appointment under his hand and the seal of his court, which appointment shall be filed in the office of the clerk of the county court, and shall be by him recorded. (Id. sec. 21; P. D. 501.)

Art. 1691. (1084) (1104) Oath and powers of deputies.—Such deputies shall take the oath of office prescribed by the constitution; they shall act in the name of their principal, and may do and perform all such official acts as may be lawfully done and performed by such clerk in person.

Art. 1692. (1085) (1105) Shall keep office at county seat.—The several clerks of the district courts shall keep their offices at the county seats of their respective counties, and when the clerk does not reside at such county seat he shall have a deputy, or deputies, residing there.

Art. 1693. (1086) (1106) May administer oaths and take depositions.—The several clerks of the district court shall have power to administer oaths and affirmations required in the discharge of their official duties, to take the depositions of witnesses, and generally to perform all such duties as are, or may be, imposed upon them by law. (Acts 1846, p. 202, sec. 24.)

See ante art. 10; post art. 3657; Sayles' Practice, pp. 373, 729, 783.

Art. 1694. (1087) (1107) Shall keep a record of proceedings, judgments and executions.—Such clerks shall also keep a fair record of all the acts done, and proceedings had, in their respective courts; they shall enter all judgments of the court, under the direction of the judge, and shall keep a record of all executions issued and the returns thereon, in record books to be kept for the purpose. (Id.; P. D. 504.)

See Sayles' Practice, pp. 582, 1184, 1219; A. H. Belo & Co. v. Lacy, 111 S. W. 215; Hubbart v. Willis State Bank, 119 S. W. 711; Daniel v. Daniel, 128 S. W. 469.

Art. 1695. (1088) (1108) Other dockets, etc.—They shall also keep such other dockets and books as are, or may be, required by law.

Art. 1696. (1089) (1109) Shall report fines and jury fees.—In addition to the reports required of the clerk of the district court under the several provisions of the Code of Criminal Procedure, it shall be his duty on the last day of each term of the court to make out a statement in writing, which shall set forth all moneys received by him for jury fees and fines, with the names of the parties from whom received, up to the date of such statement, and since his previous statement, if any such has been made; and also the name of each juror who has served at such term, the number of days he served, and the amount due him for such services; which statement shall be examined by the judge holding such court, and, if found to be correct, shall be approved and signed by him. Should the judge consider such statement erroneous, he may make such corrections therein as he may deem necessary, and shall then approve and sign the same. Such statement, when so approved and signed, shall be recorded in the minutes of the court. (Acts 1864, p. 7, sec. 9; P. D. 4014.)

Art. 1697. (1090) (1109a) Shall pay over jury fees and fines.—It shall be the duty of the clerk to pay over to the county treasurer all jury fees and fines received by him, to the use of the county.

Art. 1698. (1091) (1110) Records of suits, etc., in former district courts.—All records of judgments, executions, and all other papers and proceedings in suits heretofore had in the district courts of the several counties of the republic or state of Texas shall be kept in the office of the clerks of the district courts of such counties, and the same proceedings may be had thereon as if such suits had been commenced and such proceedings had in the district courts of this state as now organized. (Acts 1846, p. 204, sec. 26; P. D. 506.)

Art. 1699. (1092) (1111) Records of suits, etc., in former county courts.—All records of judgments, executions, and all other papers and proceedings in suits heretofore had in the county courts of the republic of Texas prior to the first day of February, 1839, and of the county courts of the state as organized under the act entitled, "An act to organize the county courts and to define the powers and jurisdiction thereof," approved October 25, 1866, shall be kept in the office of the clerks of the district courts of such counties, and the same proceedings may be had thereon as if such suits had been commenced and such proceedings had in the district courts as now organized. (Id. p. 204, sec. 27; Acts 1870, p. 48, secs. 1-4.)

Art. 1700. (1093) (1112) Custody and arrangement of books, papers, etc.—The clerks of the district courts shall have the custody of all the minutes, records, books, papers and seals which now are, or may have been heretofore, or may be hereafter, deposited in their respective offices in accordance with law, and it shall be their duty carefully to attend to the arrangement and preservation of the same. (Id. p. 203, sec. 22; P. D. 502.)

Art. 1701. (1094) (1113) Indexes to all judgments.—They shall also provide and keep in their respective offices, as part of the records thereof, full and complete alphabetical indexes of the names of the parties to all suits filed in their said courts; which indexes shall be kept in well-bound books, and shall state in full the names of all the parties to such suits, which shall be indexed and cross-indexed, so as to show the name of each party under the proper letter; and a reference shall be made opposite each name to the page of the minute book upon which is entered the judgment in each case. (Acts 1876, p. 25, sec. 1.)

Art. 1702. (1095) (1114) Shall transfer records to his successor.—Whenever a clerk of the district court shall vacate his office, he shall transfer to his successor all the records, books and papers of the office.

Art. 1703. (1096) Single clerk for district and county courts in certain counties.—In counties having a population of less than eight thousand persons only one clerk shall be elected, who shall perform the duties of district and county clerks. He shall take the oath and give the bond required of clerks of both the district and county courts, and shall have all the powers and perform the duties of such clerks respectively. In determining the number of persons in the county under this article, the estimate shall be made on the basis of five inhabitants for every vote cast for governor in such county at the last preceding general election. (Acts 1879, p. 47; Const., art. 5, sec. 20.)

Art. 1704. (1097) (1116) When acting as district clerk to use seal of said court.—When, in any county, a single clerk shall have been elected, as provided in the preceding article, he shall, in performing the duties of clerk of the district court, use the seal of said court, and authenticate his official acts as clerk of such district court.

CHAPTER THREE

THE POWERS AND JURISDICTION OF THE DISTRICT COURT AND OF THE JUDGE THEREOF

Art. 1705. (1098) (1117) Original jurisdiction of the district court.—The district court shall have original jurisdiction in civil cases—

1. Of all suits in behalf of the state to recover penalties, forfeitures and escheats.
2. Of all cases of divorce.
3. Of all suits to recover damages for slander or defamation of character.
4. Of all suits for the trial of title to land and for the enforcement of liens thereon.
5. Of all suits for trial of right to property levied on by virtue of any writ of execution, sequestration or attachment, when the property levied on shall be equal to or exceed in value five hundred dollars.
6. Of all suits, complaints or pleas whatever, without regard to any distinction between law and equity, when the matter in controversy shall be valued at or amount to five hundred dollars exclusive of interest.
7. Of contested elections. (Const., art. 5, sec. 8.)

See Townes' Texas Pleading (2d Ed.) pp. 124, 130-179; Sayles' Practice, pp. 19, 114, 125, 359, 945; Taylor v. Fryar, 44 S. W. 183; Henslee v. Boyd, 107 S. W. 128; Ramsey v. Bird, 147 S. W. 671; Smith v. Eureka Lumber Co., 149 S. W. 747; Robinson v. Belt, 151 S. W. 598; Wood v. J. M. Radford Grocery Co., 164 S. W. 1070; Kidd v. Prince, 182 S. W. 725; Stewart v. Patterson, 204 S. W. 768.

Art. 1706. (1099) (1118) Jurisdiction in matters of probate.—The district court shall also have appellate jurisdiction and general control in probate matters over the county court established in each county for appointing guardians, granting letters testamentary and of administration, probating wills, for settling the accounts of executors, administrators and guardians, and for the transaction of business appertaining to estates. The district court shall also have such original jurisdiction and general control over executors, administrators, guardians and minors as is, or may be, provided by law. Such court shall also have appellate jurisdiction and general supervisory control over the county commissioners' court, with such exceptions and under such regulations as may be prescribed by law; and shall have general original jurisdiction over all causes of action whatever, for which a remedy or jurisdiction is not provided by law or the constitution, and such other jurisdiction, original and appellate, as may be provided by law. (Const., art. 5, sec. 8; Acts 1846, p. 200, sec. 3; P. D. 1406; amendment 1891.)

See post, arts. 3207, 4044; Townes' Texas Pleading (2d Ed.) pp. 201-206; Herron's Probate Guide, pp. 54-56; Sayles' Practice, pp. 18, 20, 114; Stephens v. Buill, 57 S. W. 312; Japhet v. Pullen, 133 S. W. 441; Shook v. Journeay, 149 S. W. 406; Haverbekken v. Hale, 204 S. W. 1162.

Art. 1707. (1100) (1119) Motions against sheriffs, attorneys, etc.—The district court shall also have power to hear and determine all motions against sheriffs and other officers of the court for failure to pay over moneys, collected under the process of said court, or other defalcation of duty in connection with such process, and of motions against attorneys for moneys collected by them and not paid over. (Acts 1846, p. 201, sec. 5; P. D. 1408.)

See arts. ante 332; post 3775; Townes' Texas Pleading (2d Ed.) p. 125; Sayles' Practice, pp. 20, 131.

Art. 1708. (1101) (1120) To punish contempts.—The district court shall also have power to punish by fine not exceeding one hundred dollars, and by imprisonment not exceeding three days, any person guilty of contempt of such court. (Acts 1846, p. 201, sec. 6; P. D. 1409.)

See Townes' Texas Pleading (2d Ed.) p. 125; Sayles' Practice, pp. 20, 71; Ex parte Morgan, 86 S. W. 755; Ex parte Testard, 115 S. W. 1155, 20 Ann. Cas. 117; Ex parte Ellerd, 158 S. W. 1145, Ann. Cas. 1916D, 361.

Art. 1709. (1103) May transfer probate proceedings to county court.—The judges of the district courts of this state may, by an order made and entered in open court upon the minutes of said court, upon the application in open court of any person interested as administrator, executor, heir, legatee, devisee, distributee, creditor or guardian in the administration of the estate of a deceased person, or in the guardianship of a minor, person of unsound mind or habitual drunkard, pending in such court, transfer such administration or guardianship to the county court of the county in which such district court is there being held for further administration, upon satisfactory evidence that the county judge of said county is legal-

ly qualified to act as such in such administration. (Acts 1881, p. 72.)

See Sayles' Practice, p. 133; Farmers' & Mechanics' Nat. Bank v. Hanks, 137 S. W. 1120.

Art. 1710. (1104) Duty of clerk to transmit papers, records, etc.—Immediately after the termination of the court at which the order of transfer authorized by the foregoing article is made, it shall be the duty of the clerk thereof to transmit all the papers relating to such administration or guardianship, together with a transcript, certified by him under the seal of said district court, or the record of all orders, judgments and decrees of such district court in relation to such estate, to the county clerk of his county, for which services he shall be allowed such fees as are now allowed him by law for similar services, to be paid as expenses of administration. (Id.)

Art. 1711. (1105) Judgments transferred and enforced.—When the clerk of the district court of any county in the state, where the civil and criminal jurisdiction, or either, of the county court has been transferred to the district court, shall receive from the clerk of the county court a certified copy of a judgment rendered in any civil or criminal case in the county court, he shall immediately record such judgments in the minutes of the district court; and, thereupon, the said district court shall have the power to enforce said judgments by execution or otherwise, as other judgments rendered in said district court are or may be enforced. (Acts 1879, p. 11.)

See Sayles' Practice, p. 1183.

Art. 1712. (1106) (1122) To hear and determine all cases of legal or equitable cognizance.—Subject to the limitations stated in this chapter, the district court is authorized to hear and determine any cause which is, or may be, cognizable by courts, either of law or equity, and to grant any relief which could be granted by said courts, or either of them. (Acts 1846, p. 201, sec. 7; P. D. 1410.)

See Townes' Texas Pleading (2d Ed.) p. 125; Sayles' Practice, pp. 20, 115, 131, 359, 586.

Art. 1713. (1107) (1123) To grant all remedial writs.—The judge of the district court shall have authority, either in term time or in vacation, to grant writs of mandamus, injunction, sequestration, attachment, garnishment, certiorari and supersedeas, and all other writs necessary to the enforcement of the jurisdiction of the court. (Acts 1846, p. 200, sec. 4; P. D. 1407.)

See Townes' Texas Pleading (2d Ed.) pp. 125, 180-199; Sayles' Practice, pp. 20, 67, 70-71, 133, 775, 824, 1008, 1071.

Art. 1714. Judge may exercise all powers, etc., in vacation, by consent of parties, except, etc.—The judges of the district courts may in vacation, by consent of the parties, exercise all powers, make all orders, and perform all acts, as fully as in term time, and may, by consent of the parties, try any case without a jury and enter final judgment, except in divorce cases. All such proceedings shall be conducted under the same rules as if done in term time; and the right of appeals and writ of error shall apply as if the acts had been done in term time. (Acts 1909, S. S. p. 352.)

Finney v. Walker, 144 S. W. 679; Trayhan v. S., 180 S. W. 646; Lucid v. McDowell, 206 S. W. 203.

Art. 1715. (1108) (1124) May alternate, etc.—Any judge of the district court may hold courts for or with any other district judge; and the judges of the several district courts may exchange districts whenever they may deem it expedient to do so. (Acts 1846, p. 202, sec. 15; P. D. 1418.)

See Sayles' Practice, pp. 23, 53; Marx v. Weir, 130 S. W. 621; Hart v. S., 134 S. W. 1178; Connellee v. Blanton, 163 S. W. 404.

Art. 1716. (1109) (1125) May appoint attorney to represent pauper.—The judge of the district court shall also have power to appoint counsel to attend to the cause of any party who may make affidavit that he is too poor to employ counsel to attend to the same. (Id. sec. 11; P. D. 1414.)

See Sayles' Practice, p. 67.

Art. 1717. (1110) (1126) Other powers and authority.—In addition to the foregoing powers and jurisdiction, the district courts and the judges thereof shall have such authority as is, or may be, vested in them by law.

CHAPTER FOUR

THE TERMS OF THE DISTRICT COURT

Art. 1718. (1111) (1127) Terms of court.—The several judges of the district courts shall hold the regular terms of their said courts at the county seat of each county in the district twice in each year, unless additional terms should be prescribed by law, and shall hold such special terms as may be required by law. (Const., art. 5, sec. 7.)

See Sayles' Practice, pp. 20, 64; Ry. v. Bender, 75 S. W. 561; Chant v. S., 166 S. W. 513.

Art. 1719. (1112) Terms of court in unorganized counties.—Whenever any unorganized county within this state has become organized, or may hereafter become organized, there being no time fixed by law for holding district court in such counties, the district judge in whose judicial district such county is situated shall fix times to hold at least two terms of court each year in each of such counties, by a written declaration, to be forwarded by the district judge to the district clerk of the county, and by him spread on the minutes of the district court. When the times are so fixed they shall not be changed, except by an act of the legislature. (Acts 1882, p. 4.)

See Sayles' Practice, pp. 20, 65.

Art. 1720. Special terms may be held when; time; jury commissioners; grand and petit juries, etc.—Whenever it may become advisable, in the opinion of a district judge, to hold a special term or terms of the district court in any county in his district, such special term or terms may be held; and such district judge may convene such special term at any time which may be fixed by him. Such district judge may appoint jury commissioners, who may select and draw grand and petit jurors in accordance with the law. Such jurors may be summoned to appear before such district court at such time as may be designated by the judge thereof; provided, that in the discretion of the district judge, a grand jury need not be drawn or impaneled. (Acts 1879, p. 42. Acts 1905, p. 116, secs. 1, 2.)

Ex parte Young, 95 S. W. 98; Ex parte Boyd, 96 S. W. 1079; Jowell v. Coffee, 132 S. W. 886; Mayhew v. S., 155 S. W. 191; Chant v. S., 166 S. W. 513; Browder v. Memphis Independent School Dist., 172 S. W. 152; Vasquez v. S., 172 S. W. 225; Brow-

der v. Memphis Independent School Dist., 180 S. W. 1077; Trabue v. Ash, 200 S. W. 415; Pollard v. Speer, 207 S. W. 620.

Art. 1721. Grand jury, selection, etc., duties.—The grand jury selected, as provided for in the last preceding article, shall be duly impaneled, and shall proceed to the discharge of its duties as at a regular term of the district court. (Id. sec. 3.)

Art. 1722. Indictment at special term, arraignment on.—Any person indicted by the grand jury impaneled at a special term of the district court may be placed upon trial at such special term. (Id. sec. 4.)

Art. 1723. (1117) No new civil cases to be brought to special term.—No new civil cases can be brought to a special term of the district court. (Id.)

See ante arts. 1720-1722.

Art. 1724. (1118) Juries, how summoned, business transacted, etc.—The juries for any special term shall be summoned in accordance with the law regulating juries at regular terms of court; and at any special term all proceedings may be had in any case which could be had at any regular term of such court; and all process issued to a previous regular term or to such special term, and all orders, judgments and decrees, and all proceedings had in any case, criminal or civil, which would be lawful if had at a regular term, shall have the same force and effect; and any proceeding had may be appealed from under the same rules, regulations and limitations as provided for in appeals from regular terms of court. (Id.)

See ante arts. 1720-1722.

Art. 1725. (1119) (1128) Adjournment of term, when and how made.—Should the judge of any district court not appear at the time appointed for holding the same, and should no election of a special judge be had, the sheriff of the county, or in his default any constable of the county, shall adjourn the court from day to day for three days; and if the judge should not appear on the morning of the fourth day, and should no special judge have been elected, the sheriff or constable, as the case may be, shall adjourn the court until the next regular term thereof. (Acts 1846, p. 203, sec. 9; P. D. 1412.)

See Sayles' Practice, pp. 20, 23, 53, 64, 391.

Art. 1726. Extension of term of court when, etc., effect as to term in another county.—Whenever any district court shall be in the midst of the trial of any cause when the time for the expiration of the term of said court, as fixed by law, shall arrive, the judge presiding shall have the power and may, if he deems it expedient, extend the term of said court until the conclusion of such pending trial. In such case, the extension of such term shall be shown in the minutes of the court before they are signed. In case of the extension of the term of court, as herein provided, no term of court shall fail because thereof in any other county, but the term of court therein may be opened and held as now provided by law, when the district judge fails to appear at the opening of a term of court. (Acts 1909, p. 114.)

CHAPTER FIVE

MISCELLANEOUS PROVISIONS RELATING TO THE DISTRICT COURT

The Criminal district courts created for a number of the counties in the state are, in some instances, given jurisdiction of divorce cases, and of some other minor civil matters. For the text of the acts creating these courts, see the Code of Criminal Procedure, arts. 97a to 97¾o.

Art. 1727. (1120) (1129) Minutes to be read and signed.—The minutes of the proceedings of each preceding day of the session shall be read in open court on the morning of the succeeding day, except on the last day of the session, on which day they shall be read, and if necessary corrected and signed in open court by the judge. (Acts 1846, p. 202, sec. 12; P. D. 1415.)

See Sayles' Practice, p. 74; Taylor v. Goodrich, 40 S. W. 515; Moore v. S., 81 S. W. 48; Daniel v. Daniel, 128 S. W. 469; Sowers v. Yeoman, 129 S. W. 1153.

Art. 1728. (1121) (1130) Minutes of proceedings before a special judge.—When a special judge has presided during the term, or a portion thereof, or in the trial of a particular case, he shall sign the minutes of such proceedings as were had before him.

See Sayles' Practice, p. 74.

Art. 1729. (1122) (1131) Seal of the court.—Each of the several district courts shall be provided with a seal, having engraved thereon a star of five points in the center and the words, "District Court of ———— County, Texas," the impress of which shall be attached to all process, except subpœnas issued out of such court, and shall be used to authenticate the official acts of the clerk. (Acts 1846, p. 201, sec. 8; P. D. 1411.)

See post arts. 2180, 3641.

Art. 1730. (1123) (1132) When clerk has no seal.—When no such seal has been provided for the court, the clerk may use a scroll until a seal can be procured. (Id.; P. D. 1411.)

TITLE 35

COURTS—COUNTY

CHAPTER ONE

THE COUNTY JUDGE

Art. 1731. (1124) (1133) County judge, election, qualifications, term of office.—There shall be elected in each county by the qualified voters thereof, at each general election, a county judge, who shall be well informed in the law of the state, who shall hold his office for two years, and until his successor shall have duly qualified. (Const. art. 5, sec. 15; art. 16, sec. 17; Acts 1876, p. 17, sec. 1.)

Art. 1732. (1125) (1134) Oath of office.—The county judge shall, before entering on the duties of his office, execute a bond with two or more good and sufficient sureties, to be approved by the commissioners' court of his county, in a sum of not less than one thousand dollars nor more than five thousand dollars, the amount of said bond to be determined and fixed by the county commissioners' court, payable to the treasurer of his county, conditioned that he will pay over to the person or officer entitled to receive it, all moneys that may come into his hands as county judge, within thirty days after he shall have received the same, and take the oath of office prescribed in the constitution, and the further oath required of the several members of the commissioners' court. (Acts 1883, p. 50.)

Art. 1733. (1126) (1135) Shall keep office at the county seat.—The county

judge shall keep his office at the county seat of the county and shall attend at said office from day to day. He shall not absent himself from the county or the state without the permission of the commissioners' court, to be entered on the minutes of the court, nor shall he so absent himself with such permission for a longer period than ninety days. (Acts 1883, p. 8.)

Art. 1734. (1127) (1136) May practice law in certain counties.—County judges in those counties wherein the civil or criminal jurisdiction of the county courts has been, or may hereafter be, diminished, shall have the right to practice as attorneys in all justices' and county courts, in cases wherein the courts over which they preside have neither original nor appellate jurisdiction, provided they are licensed lawyers. (Acts 1879. S. S. ch. 16.)

See ante art. 334.

Art. 1735. (1128) (1137) Vacancy, how filled.—Any vacancy in the office of the county judge may be filled by the commissioners' court of the county in which such vacancy may occur until the next general election. (Const. art. 5, sec. 28; Acts 1876, p. 17, sec. 1.)

Art. 1736. (1129) (1138) Disqualification; causes of.—No judge of the county court shall sit in any case wherein he may be interested, or where he shall have been of counsel, or where either of the parties may be connected with him by affinity or consanguinity within the third degree. (Const. art. 5, sec. 11; Acts 1876, p. 19, sec. 6.)

See ante art. 1675; Herron's Probate Guide, pp. 64-65; Sayles' Practice, pp. 23, 49-50; McInnes v. Wallace, 44 S. W. 537; Baker v. McRimmon, 48 S. W. 742; Myers v. Bloon, 50 S. W. 217; Gaines v. Hindman, 74 S. W. 583; Kalklosh v. Bunting, 88 S. W. 389; Jirou v. Jirou, 136 S. W. 493.

Art. 1737. (1130) Special county judge may be appointed by parties.—When a judge of the county court is disqualified by any of the causes above stated, the parties may, by consent, appoint a proper person to try such case. (Acts 1893, p. 75.)

See Sayles' Practice, pp. 23, 54, 1066, 1071.

Art. 1738. (1131) Governor to appoint special county judge, etc.—Whenever a judge of the county court is disqualified to try a civil case pending in the county court, and the parties shall fail at the first term of the court to agree upon a special judge, it shall be the duty of the judge to certify to the governor that he is disqualified to try such case, and the failure of the parties to agree upon a proper person to try the same, whereupon the governor shall proceed to appoint some person, learned in the law, to try such case. But when a county judge is disqualified to act in probate matters in any cause, he shall forthwith certify his disqualification in such case to the governor, whereupon the governor shall appoint some person to act as special judge in said case, who shall act from term to term until such disqualification ceases to exist. (Id.)

See Sayles' Practice, pp. 23, 54, 430, 1066, 1071; Townes' Texas Pleading (2d Ed.) p. 113.

Art. 1739. (1132) Governor to appoint by telegram.—Whenever any case or cases are called, or pending, in which the county judge, or the special judge chosen, as hereinbefore provided, shall be a party, or have an interest, or have been attorney, or of counsel, or otherwise disqualified from sitting in and trying the same, no transfer of, or removal of, shall be made necessary thereby; but the parties, or their counsel, shall have the right to select and agree upon an attorney of the court for the trial thereof; and, if the parties, or their attorneys, shall fail to select or agree upon an attorney for the trial of such case at or before the time it is called for trial, or if the trial of the case is pending and the county judge should become unable to act, or is absent, and a special judge is selected who is disqualified to proceed with the trial, and the parties fail to select or agree upon a special judge who is qualified at once, it shall be the duty of the county judge, or special judge presiding, to certify the fact to the governor immediately, by telegram, mail, or otherwise, whereupon the governor shall appoint a special judge, not so disqualified, to try the same. The evidence of such appointment by the governor may be transmitted by telegram, or otherwise. The special judge, after taking the oath of office prescribed by the constitution, shall proceed to the trial or disposition of such case immediately, if the trial is pending, otherwise when called or reached, as in other cases. Any special judge agreed upon or appointed to try causes shall receive the same pay for his services as is now provided by law for county judges. (Id.)

See Sayles' Practice, pp. 51, 54, 62-63, 1071.

Art. 1740. (1132a) Minutes of court to show proceedings.—Whenever a special judge is agreed upon by the parties, or is appointed by the governor, for the trial of any particular cause, as above provided, the clerk shall enter in the minutes of the court as a part of the proceedings in such cause a record showing:

1. That the judge of the court was disqualified to try the cause; and

2. That such special judge [naming him] was, by consent, agreed upon by the parties to try the cause; or

3. That the parties having failed to agree upon a proper person to try the cause, and the judge of the court having certified that fact to the governor, he had appointed such special judge [naming him] to try the cause; and

4. That the oath prescribed by law has been duly administered to such special judge; provided, that all cases heretofore transferred by the county court to the district court on account of the disqualification of the county judge shall be considered lawful, and the district courts to which such causes have been transferred shall retain jurisdiction thereof. (Id.)

See Sayles' Practice, pp. 51, 54, 74; Townes' Texas Pleading (2d Ed.) p. 113; Merrick v. Rogers, 46 S. W. 370.

Art. 1741. Special judges when and how elected; powers.—Should any county judge fail to appear at the time appointed for holding the court, or should he, during the term, be absent, or unable or unwilling to hold the court, a special county judge may be elected in the same manner as is provided for the election of a special judge of the district court, in articles 1678 to 1681, inclusive, so far as applicable, and the special county judge so elected shall have all the power and

authority of the county judge while in the trial and disposition of all the cases pending in said court during the absence, inability, or such refusal of the county judge elected. And similar elections may be held, from time to time, during the term, to supply the absence, failure or inability of the county judge, or any special judge, to perform the duties of the office. (Acts 1897, p. 7.)

See Ellis Co. v. Thompson, 66 S. W. 48; Porter v. S., 86 S. W. 767; Hooper v. S., 136 S. W. 790; Ford v. Simmons, 171 S. W. 1077.

Art. 1742. Record of election of special judge.—When a special county judge shall have been so elected, it shall be the duty of the clerk to enter upon the minutes of the court, a record such as is provided for the district court in article 1682, and such record shall have the same force and effect provided for the record of the district court in similar cases in article 1683. (Id.)

For appointment of special county judge in railroad condemnation cases, see art. 6507.

CHAPTER TWO

THE CLERK OF THE COUNTY COURT

Art. 1743. (1133) (1142) County clerk, election and term of office.—There shall be a clerk of the county court for each county, who shall be elected at a general election for members of the legislature, by the qualified voters of such county, who shall hold his office for two years, and until his successor shall have duly qualified. (Const. art. 5, sec. 20; art. 16, sec. 17.)

Art. 1744. (1134) (1143) Vacancy in office, how filled.—Whenever a vacancy may, from any cause, occur in the office of clerk of the county court, the same shall be filled by the commissioners' court of the county, and the clerk so appointed shall give bond and qualify in the same manner as if he had been elected, and shall hold his office until the next general election, and until his successor shall have duly qualified. (Const. art. 5, sec. 20.)

Art. 1745. (1135) County clerk pro tem. appointed, when.—In all cases wherein any county clerk in this state is, or shall hereafter be, a party to any pending or proposed suit, motion or proceeding in his court, the county judge in whose court the same may be pending or proposed shall, either in term time or in vacation, on application of any person interested, or of his own motion, appoint a clerk pro tempore for the purposes of such suit, motion or proceeding. (Acts 1887, p. 102.)

Art. 1746. (1136) County clerk pro tem. to qualify and give bond.—Any person so appointed clerk shall take the oath to faithfully and impartially perform the duties of such appointment, and shall also enter into bond, payable to the state of Texas, with one or more good and sufficient sureties, in such amount as may be required by the judge, to be approved by him, and conditioned for the faithful performance of his duties under such appointment. The person so appointed shall perform all the duties required by law of the clerk in the particular suit, motion or proceeding in which he may be appointed. (Id.)

Art. 1747. (1137) (1144) Bond and oath.—Each clerk of the county court shall, before entering on the duties of his office, give bond with two or more good and sufficient sureties, to be approved by the commissioners' court of the county, payable to the governor and his successors in office, in a sum to be fixed by the commissioners' court, not less than two thousand nor more than ten thousand dollars, conditioned for the safe keeping of the records, and the faithful discharge of the duties of his office, and shall also take and subscribe the oath of office required by the constitution, which shall be indorsed upon the bond, and the bond and oath so taken and approved shall be recorded in the county clerk's office, and shall be deposited in the office of the clerk of the district court. A certified copy of such bond may be put in suit in the name of the governor for the use of the party injured, and shall not become void on the recovery of part of the penalty thereof, but may be sued on from time to time by the parties injured, until the whole amount of the penalty is recovered. (Acts 1876, p. 10, sec. 2; P. D. 500.)

Art. 1748. (1138) (1145) May appoint deputies.—The clerk of the county court, whether elected or appointed, shall have power to appoint one or more deputies, by a written appointment under his hand and the seal of his court, which appointment shall be recorded in the office of such clerk of the county court, and shall be deposited in the office of the clerk of the district court. (Id. sec. 3.)

Art. 1749. (1139) (1146) Oath and power of deputies.—Such deputies shall take the oath of office prescribed by the constitution. They shall act in the name of their principal, and may do and perform all such official acts as may be lawfully done and performed by such clerk in person. (Id. sec. 4.)

Art. 1750. (1140) (1147) Clerk shall keep office at county seat.—The several clerks of the county court shall keep their offices at the county seat of their respective counties; and, when the clerk does not reside at such county seat, he shall have a deputy or deputies residing there. (Id.)

Art. 1751. (1141) (1148) Take acknowledgments and proofs of deeds for record, etc.—The clerks of the county court shall have power and it shall be their duty, when applied to for that purpose, to take separate acknowledgment of married women in all cases where such acknowledgment is required or permitted by law to be taken, to the execution of any deed or other instrument in writing, or conveyance executed by them, and to take the acknowledgment of all other persons to deeds or other written instruments or conveyances and to take proof by witnesses of all such deeds, written instruments or conveyances which are required or permitted by law to be so acknowledged or proven for record; and it shall also be their duty to record, in accordance with the registration laws now or hereafter in force, all such deeds, mortgages, deeds of trust or any other instrument in writing, or judgments, which may be permitted or required by law to be recorded. (Id. sec. 5.)

Art. 1752. (1142) (1149) Issue marriage licenses, and take oaths, depositions, etc.—Such clerks shall also be authorized to issue all marriage licenses, to administer all oaths and affirmations, and to take affidavits and depositions to be used as provided by law in any of the courts. (Id. sec. 6.)

See ante art. 10; post art. 3657.

Art. 1753. (1143) (1150) Ex officio clerk of commissioners' courts.—Such clerks shall be ex officio clerks of the commissioners' courts of their respective counties; and it shall be their duty to attend upon each term of said court, to issue all notices, writs, and other process required by said courts, to keep the records, books, papers and proceedings of said courts, and see that the same are properly indexed, arranged and preserved, and generally to do and perform such other duties as are, or may be, imposed on them by law as clerks of such courts. (Acts 1876. p. 10, sec. 1; p. 52, sec. 8.)

Art. 1754. (1144) (1151) Have custody of records of deeds, etc.—They shall be ex officio recorders for their several counties, and as such shall record in suitable books to be procured for that purpose all deeds, mortgages and other instruments required or permitted by law to be recorded; they shall be the keepers of such record books, and shall keep the same properly indexed, arranged and preserved, and shall do and perform such other duties as are or may be by law required of them as recorders. (Acts 1876, p. 10, sec. 1.)

See post art. 6786.

Art. 1755. (1145) (1152) Custody of records, etc., of said court.—They shall be the keepers of the records, books, papers and proceedings of their respective county courts in civil and criminal cases and in matters of probate, and see that the same are properly indexed, arranged and preserved, and shall do and perform such other duties in that behalf as are, or may be by law, imposed on them. (Id.)

Art. 1756. (1146) (1153) Keep a record of proceedings, judgments, etc.—The several clerks of the county courts shall keep a fair record of all the acts done and proceedings had in their respective courts; they shall enter all judgments of the court, under the direction of the judge, and shall keep a record of all executions issued, and of the returns thereon in record books to be kept for that purpose. (Id.: P. D. 504.)

Art. 1757. (1147) (1154) Index to all judgments.—It shall be the duty of the several clerks of the county courts to provide and keep in their respective offices, as part of the records thereof, full and complete alphabetical indexes of the names of the parties to all suits filed in their said courts, which indexes shall be kept in well bound books, and shall state in full the names of all the parties to such suits, which shall be indexed and cross-indexed, so as to show the name of each party under the proper letter; and a reference shall be made opposite each name to the page of the minute book upon which is entered the judgment in each case. (Acts 1876, p. 25, sec. 1.)

Art. 1758. (1148) (1155) Other dockets, indexes, etc.—They shall also keep such other dockets, books and indexes as are, or may be, required by law; and all books and records and file papers, belonging to the office of county clerks in this state, shall at all reasonable times be open to the inspection and examination of any citizen, who shall have the right to make copies of the same. (Acts 1905, p. 114.)

Art. 1759. (1149) (1156) Report fines and jury fees.—In addition to the reports required of the clerk of the county court under the several provisions of the Code of Criminal Procedure, it shall be his duty on the last day of each term of the county court to make out a statement in writing, which shall set forth all moneys received by him for jury fees and fines, with the names of the parties from whom received up to the date of such statement, and since his previous statement, if any such has been made; and also the name of each juror who has served at such term, the number of days he served, and the amount due him for such service; which statement shall be examined by the judge holding such court, and, if found to be correct, shall be approved and signed by him. Should said judge consider said statement erroneous, he may make such corrections therein as he may deem necessary, and shall then approve and sign the same; which statement, when so approved and signed, shall be recorded in the minutes of the court. (Acts 1876, p. 23, sec. 24.)

Art. 1760. (1150) (1157) Shall pay over jury fees and fines.—It shall be the duty of the clerk to pay over to the county treasurer all jury fees and fines received by him to the use of the county.

Art. 1761. (1151) (1158) Shall transfer records to his successor.—Whenever a clerk of the county court shall vacate his office, he shall transfer to his successor all the records, books and papers of the office.

Art. 1762. (1153) (1160) When acting as county clerk to use seal of county court.—Where in any county a single clerk shall have been elected, as provided in article 1703, he shall, in performing the duties of clerk of the county court, use the seal of said court and authenticate his official acts as clerk of such county court.

CHAPTER THREE

THE POWERS AND JURISDICTION OF THE COUNTY COURT AND OF THE JUDGE THEREOF

Art. 1763. (1154) (1161) Exclusive original jurisdiction.—The county court shall have exclusive original jurisdiction in civil cases when the matter in controversy shall exceed in value two hundred dollars, and shall not exceed five hundred dollars, exclusive of interest. (Const., art. 5, sec. 16; Acts 1876, p. 172, sec. 3.)

See Sayles' Practice, pp. 115, 856; Lillord v. Freestone Co., 57 S. W. 338; McRimmon & Co. v. Hart, 87 S. W. 881.

Art. 1764. (1155) (1162) Concurrent original jurisdiction.—The county court shall have concurrent jurisdiction with the district court when the matter in controversy shall exceed five hundred and not exceed one thousand dollars, exclusive of interest. (Id.)

See Long v. Green & Co., 101 S. W. 786; Sayles' Practice, pp. 115, 856.

Art. 1765. (1156) (1163) Forfeited bonds in criminal cases.—The county court shall also have jurisdiction to enter final

judgment on all forfeited bonds taken in criminal cases pending in said court. (Acts 1876, p. 172, sec. 3.)

Art. 1766. (1157) (1164) Jurisdiction denied in certain cases.—The county court shall not have jurisdiction of any suit to recover damages for slander or defamation of character, nor of suits for the recovery of lands, nor of suits for the enforcement of liens upon land, nor of suits in behalf of the state for escheats, nor of suits for divorce, nor of suits for the forfeiture of the charters of incorporations and incorporated companies, nor of suits for the trial of the right to property levied on by virtue of any writ of execution, sequestration or attachment, when the property levied on shall be equal to or exceed in value five hundred dollars. (Const., art. 5, sec. 16; art. 5, sec. 8; Acts 1876, p. 172.)

See Sayles' Practice, pp. 128, 945, 995; Townes' Texas Pleading (2d Ed.) p. 128.

Art. 1767. (1158) (1165) Appellate jurisdiction.—The county court shall have appellate jurisdiction in civil cases over which the justices' courts have original jurisdiction, when the judgment of the court appealed from or the amount in controversy shall exceed twenty dollars, exclusive of costs. (Const., art. 5, sec. 16; Acts 1876, p. 172, sec. 3.)

See post arts. 2391, 2392; Sayles' Practice, pp. 138, 1051, 1062, 1070; Townes' Texas Pleading (2d Ed.) p. 210; R'y v. Schlather, 78 S. W. 953; Freeman v. W. B. Walker & Sons, 175 S. W. 1133.

Art. 1768. (1159) (1166) Certiorari to justices' courts.—The county court shall also have power to hear and determine cases brought up from the justices' courts by certiorari under the provisions of the title relating thereto.

See ante art. 742; Sayles' Practice, pp. 19, 138, 1070.

Art. 1769. (1160) (1167) Motions against sheriffs and other officers.—The county court shall also have power to hear and determine all motions against sheriffs and other officers of the court for failure to pay over moneys collected under the process of said court, or other defalcation of duty in connection with such process. (Acts 1876, p. 33, sec. 26.)

See Sayles' Practice, pp. 19, 131.

Art. 1770. (1161) (1168) To punish contempts.—The county court shall also have power to punish, by fine not exceeding one hundred dollars, and by imprisonment not exceeding three days, any person guilty of contempt of such court. (Acts 1846, p. 200, sec. 6; P. D. 1409.)

See Sayles' Practice, pp. 19, 71; Ex parte Hubbard, 140 S. W. 451.

Art. 1771. (1162) (1169) Both law and equity powers.—Subject to the limitation stated in this chapter, the county court is authorized to hear and determine any cause which is, or may be, cognizable by courts, either of law or equity, and to grant any relief which could be granted by said courts, or either of them. (Id. sec. 7; P. D. 1410.)

See Sayles' Practice, pp. 19, 116, 131, 359, 586.

Art. 1772. (1163) (1170) To grant remedial writs.—The county judge shall have authority, either in term time or in vacation, to grant writs of mandamus, injunction, sequestration, attachment, garnishment, certiorari and supersedeas, and all other writs necessary to the enforcement of the jurisdiction of the court. (Const., art. 5, sec. 16; Acts 1876, p. 19, sec. 5.)

See post art. 3206; Townes' Texas Pleading (2d Ed.) p. 129; Herron's Probate Guide, p. 45; Sayles' Practice, pp. 19, 70, 71, 775, 824, 1008, 1071.

Art. 1773. (1164) (1171) To appoint attorney for pauper.—The county judge shall also have power to appoint counsel to attend to the cause of any party who may make affidavit that he is too poor to employ counsel to attend to the same. (Acts 1846, p. 200, sec. 11; P. D. 1414.)

See Sayles' Practice, p. 67.

Art. 1774. (1165) (1172) Additional authority where expressly granted.—In addition to the foregoing powers and jurisdiction, the county court and the county judge shall have such authority as is or may be vested in them by law.

Art. 1775. (1166) Changed jurisdiction recognized; eminent domain retained.—Where the jurisdiction of the county court of the several counties of this state has been taken away, altered or changed by existing laws, the same shall remain as established, until otherwise provided by law; provided, however, that jurisdiction shall obtain in all matters of eminent domain over which the county courts have jurisdiction by the general laws of this state. (Acts 1885, p. 77.)

For jurisdiction of county court to adjudicate heirship, see chapter 25, title 52.

CHAPTER FOUR

THE TERMS OF THE COUNTY COURT FOR CIVIL AND PROBATE BUSINESS

Art. 1776. (1167) Terms of the county court.—The county court shall hold at least four terms for both civil and criminal business annually as may be provided by the legislature, or by the commissioners' court of the county under authority of law, and such other terms each year as may be fixed by the commissioners' court; provided, the commissioners' court of any county having fixed the times and number of terms of the county court, shall not change the same again until the expiration of one year. Said court shall dispose of probate business either in term time or vacation under such regulation as may be prescribed by law. Prosecutions may be commenced in said courts in such manner as is, or may be provided by law, and a jury therein shall consist of six men. Until, or unless otherwise provided, the terms of the county court shall be held on the first Monday in February, May, August and November, and may remain in session three weeks. (Const. amendment 1883, art. 5, sec. 29.)

See post arts. 3218, 3219, 3238; Herron's Probate Guide, p. 64; Sayles' Practice, pp. 19, 66; Potts v. S., 108 S. W. 695.

Art. 1777. (1168) Commissioners' court may fix.—The county commissioners' courts of the several counties in this state may, at a regular term thereof, by an order entered upon the records of said courts, provide for more terms of the county court for the transaction of civil, criminal and probate business, and fix the times at which each of the four terms required by the constitution, and the terms exceeding four, if any, shall be held, not to exceed six annually, and may fix the length of said terms; provided, that, when the commissioners'

court shall have fixed the number of terms of the county court by an order entered of record, said court shall not change the number of terms of the county court for one year from the date of entry of the original order fixing the terms of the county court. (Acts 1885, p. 53.)

See Sayles' Practice, p. 66; Frickie v. S., 51 S. W. 394; Potts v. S., 108 S. W. 695.

Art. 1778. (1169) Adjournment of term when county judge fails to appear.—Should the county judge fail to appear at the time appointed for holding the county court and should no election of a special judge be had, the sheriff of the county, or, in his default, any constable of the county, shall adjourn the court from day to day for three days; and, if the judge should not appear on the fourth day and should no special judge have been appointed, the sheriff or constable, as the case may be, shall adjourn the court until the next regular term thereof. (Acts 1846, p. 200, sec. 9; P. D. 1412.)

See Sayles' Practice, pp. 23, 64, 391, 1070; Potts v. S., 108 S. W. 695.

CHAPTER FIVE

MISCELLANEOUS PROVISIONS RELATING TO THE COUNTY COURT

Art. 1779. (1170) (1175) Minutes of the court to be read and signed.—The minutes of the proceedings of each preceding day of the session shall be read in open court on the morning of the succeeding day, except on the last day of the session, on which day they shall be read, and, if necessary, corrected, and signed in open court by the county judge. (Acts 1846, p. 200, sec. 12.)

See Sayles' Practice, p. 74.

Art. 1780. (1171) (1176) Minutes of proceedings before special judge.—When a special county judge has presided during the term, or a portion thereof, he shall sign the minutes of such of the proceedings as were had before him.

See Sayles' Practice, p. 74.

Art. 1781. (1172) (1177) Seal of the court.—Each of the several county courts shall be provided with a seal, having engraved thereon a star of five points in the center, and the words, "County Court of ———— County, Texas," the impress of which shall be attached to all process, except subpœnas, issued out of such court, and shall be used to authenticate the official acts of the clerk and of the county judge, where he is authorized or required to use a seal of office. (Acts 1876, p. 23, sec. 22; P. D. 1411.)

See post arts. 2180, 3641; Sayles' Practice, pp. 73, 295.

Art. 1782. (1173) (1178) When clerk has no seal, may use scroll.—When no such seal has been provided for the court, the clerk may use a scroll until a seal can be procured. (Acts 1846, p. 200, sec. 12; P. D. 1411.)

See Sayles' Practice, p. 295.

Art. 1783. (1174) (1179) Probate day to be designated.—On the first day of the term for civil business, the county court shall, by an order entered on the minutes, designate a day for taking up the probate business; and the probate docket shall thereupon be called in its regular order, unless otherwise ordered by the court. (Acts 1876, p. 22, sec. 20.)

See post art. 3220.

Art. 1784. (1175) (1180) Proceedings when case is transferred to the district court.—Whenever a cause shall be transferred from the county court to the district court, the clerk shall immediately make out a transcript of all the proceedings had in said cause in the county court, and shall transmit the same, duly certified as such, together with a bill of the costs which have accrued in said court, and all the original papers in the cause, to the clerk of the district court. (Acts 1876, p. 19, sec. 6.)

Art. 1785. (1176) Jurisdiction taken away; judgments to be transferred.—It shall be the duty of the clerks of the county courts of the several counties in this state, where the civil and criminal jurisdiction, or either, of the county court has been transferred to the district court, to make out a certified copy of all judgments remaining unsatisfied, which have been rendered in civil or criminal cases in the county court, and transmit the same to the clerk of the district court of their respective counties. (Acts 1879, p. 10.)

TITLE 36

COURTS—COUNTY AT LAW, ETC.

CHAPTER ONE

COUNTY COURT OF DALLAS COUNTY, AT LAW

Art. 1786. Creation of county court of Dallas county, at law.—There is hereby created a court to be held in Dallas county, to be called the "County Court of Dallas County, at Law." (Acts 1907, p. 115, sec. 1.)

Art. 1787. Jurisdiction of said court.—The County Court of Dallas County at Law shall have original and concurrent jurisdiction with the County Court of Dallas County in all matters and causes, civil and criminal, original and appellate, over which, by the general laws of the State, county courts have jurisdiction, except as provided in Section 3 of this Act [Art. 1788]; but this provision shall not affect jurisdictions of the commissioners court, or of the county judge of Dallas county as the presiding officer of such commissioners court, as to roads, bridges, and public highways, and matters of eminent domain which are now within the jurisdiction of the commissioners court or the judge thereof. (Acts 1907, p. 115, sec. 2; Acts 1917, ch. 115, sec. 1.)

Art. 1788. Jurisdiction retained by county court of Dallas county.—The County Court of Dallas County shall retain, as heretofore, the general jurisdiction of a probate court; it shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of executors, administrators and guardians; transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition and distribution of es-

tates of deceased persons; and to apprentice minors as provided by law; and the said court, or the judge thereof, shall have the power to issue writs of injunction, mandamus, and all writs necessary to the enforcement of the jurisdiction of said court; and also to punish contempts under such provisions as are or may be provided by general law governing county courts throughout the State. The county judge of Dallas county shall be the judge of the County Court of Dallas County. All ex officio duties of the county judge shall be exercised by the said judge of the County court of Dallas County except in so far as the same shall, by this Act, be committed to the judge of the County Court of Dallas County, at Law. (Acts 1907, p. 115, sec. 3; Acts 1917, ch. 115, sec. 2.)

Art. 1789. Terms of county court of Dallas county, at law; practice, etc.—The terms of the county court of Dallas county, at law, and the practice therein, and appeals and writs of error therefrom, shall be as prescribed by laws relating to county courts. The terms of the county court of Dallas county, at law, shall be held as now established for the terms of the county court of Dallas county, until the same may be changed in accordance with the law. (Acts 1907, p. 115, sec. 4.)

Art. 1790. Judge to be elected when, etc.; qualifications; term.—There shall be elected in said county, by the qualified voters thereof, at each general election, a judge of the county court of Dallas county, at law, who shall be well informed in the laws of the state, who shall hold his office for two years, and until his successor shall have duly qualified. (Id. sec. 5.)

Art. 1791. Bond and oath of judge.—The judge of the county court of Dallas county, at law, shall execute a bond and take the oath of office, as required by the law relating to county judges. (Id. sec. 6.)

Art. 1792. Special judge elected or appointed, how.—A special judge of the county court of Dallas county, at law, may be appointed or elected as provided by laws relating to county courts and to the judges thereof. (Id. sec. 7.)

Art. 1793. May issue writs.—The county court of Dallas county, at law, or the judges thereof, shall have power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari and supersedeas, and all writs necessary to the enforcement of the jurisdiction of said court, and to issue writs of habeas corpus, in cases where the offense charged is within the jurisdiction of said court, or of any other court or tribunal inferior to said court. (Id. sec. 8.)

Art. 1794. Clerk of; seal; sheriff to attend when, etc.—The county clerk of Dallas county shall be the clerk of the county court of Dallas county, at law. The seal of the said court shall be the same as that provided by law for county courts, except that the seal shall contain the words, "County Court of Dallas County, at Law;" the sheriff of Dallas county shall, in person or by deputy, attend the said court when required by the judge thereof. (Id. sec. 9.)

Art. 1795. Appointment of jury commissioners; selection, etc., of juries.—The jurisdiction and authority now vested by law in the county court for the appointment of jury commissioners and the selection and service of jurors shall be exercised by the county court of Dallas county, at law. (Id. sec. 10.)

Art. 1796. Vacancy in office of judge, how filled.—Any vacancy in the office of the judge of the county court of Dallas county, at law, may be filled by the commissioners' court of Dallas county until the next general election. (Id. sec. 11.)

Art. 1797. Fees and salary of judge.—The judge of the county court of Dallas county, at law, shall collect the same fees as are now established by law relating to county judges, all of which shall be by him paid monthly into the county treasury; and he shall receive an annual salary of three thousand dollars per annum, payable monthly, to be paid out of the county treasury by the commissioners' court. (Id. sec. 12.)

Art. 1798. Salary of county judge of Dallas county.—The county judge of Dallas county shall hereafter receive from the county treasury, in addition to the fees allowed him by law, such a salary, for the ex officio duties of his office, as may be allowed him by the commissioners' court, not less than twelve hundred dollars per year. (Id. sec. 13.)

Art. 1798a. County Court of Dallas County, at Law, No. 2, created.—There is hereby created a court to be held in Dallas county, Texas, to be known and designated as the "County Court of Dallas County, at Law, No. 2." (Acts 1917, ch. 101, sec. 1.)

Art. 1798b. Jurisdiction.—The County Court of Dallas County at Law, No. 2, shall have exclusive concurrent civil and criminal jurisdiction of all cases, original and appellate, over which by the laws of the State of Texas, the existing County Court of Dallas County at Law, of Dallas county, Texas, would have original and appellate jurisdiction; provided all civil and criminal cases appealed from the several justice's courts of Dallas county shall be by the county clerk, filed in the County Court of Dallas County, at Law, and the County Court of Dallas County, at Law, No. 2, alternately as said appealed cases are received by said clerk from the several justices of the peace in said county, except in cases wherein the judge of either of said courts, at law, has granted the writ of certiorari, in which case the same shall be docketed in the court so granting said writ, and shall not be transferred from said court. (Id. sec. 2.)

Art. 1798c. Courts how designated; transfer of cases.—The County Court of Dallas County at Law shall be known and designated as the "A" Court and the County Court of Dallas county at Law, No. 2, shall be known and designated as the "B" Court. The county clerk shall number consecutively all cases filed in said courts, affixing immediately following the number of all cases falling in the County Court of Dallas County, at Law, the letter "A," and immediately following the number of all cases falling in the County Court of Dallas County, at Law, No. 2, the letter "B," and he shall make up the trial docket of each of said courts with respect to said numbers. The judge of either of said courts shall have the power to transfer to the other court any case pending upon the docket of his court, except in cases where the writ of certiorari

has been granted; provided there shall never be transferred from the docket of one of said courts to that of the other a sufficient number of cases to reduce the number of cases on the docket of the court from which said case was transferred to a less number than the number of cases pending upon the docket of the court to which the same is transferred, without the consent of the judge to which said case is transferred. It shall be the duty of the judge to whose court said case is transferred to receive and try the case, and he shall not have the power to retransfer the same back to the court from which it came except he be disqualified to try the same, in which case it shall be his duty to retransfer the said case. (Id. sec. 3.)

Art. 1798d. Jurisdiction of other county courts.—Nothing in this Act shall be construed as in anywise altering or changing the present jurisdiction provided by law of the County Court of Dallas County, at Law, nor of the County Court of Dallas County, except that the jurisdiction of the County Court of Dallas County at Law, is hereby made concurrent with the jurisdiction of the County Court of Dallas County, at Law, No. 2, as relates to the civil and criminal jurisdiction of said County Court of Dallas County at Law, as prescribed by the laws of the State of Texas. (Id. sec. 4.)

Art. 1798e. Power to issue writs.—The said County Court of Dallas County, at Law, No. 2, or the judge thereof, shall have the power to issue writs of injunction, sequestration, attachment, garnishment, certiorari, supersedeas, and all other writs and process necessary to the enforcement of its jurisdiction; and also power to punish for contempts under such provisions as are or may be provided by the general laws governing county courts throughout the State. (Id. sec. 5.)

Art. 1798f. Terms of court.—The terms of the County Court of Dallas County, at Law, No. 2, and the practice therein and appeals and writs of error therefrom, shall be as prescribed by the law relating to the county courts. The terms of the County Court of Dallas County, at Law, No. 2, shall be held five times each year on the second Monday in January, March, May, September and November, and each term of said court shall extend over a period of two months; provided, further there shall be a term of said court convened by the judge thereof not later than two weeks after he has qualified as such, as provided by law, and such term when so convened, shall continue until the beginning of the ensuing term, as provided herein. (Id. sec. 6.)

Art. 1798g. Judge; qualifications; salary.—There shall be elected in said county by the duly qualified voters thereof at each general election a judge of the County Court of Dallas County, at Law, No. 2, who shall be a licensed attorney in this State, well informed in the laws of the State, who shall have resided in, and been actively engaged in the practice of law in Dallas county for a period of not less than four years prior to such general election, who shall hold his office for two years and until his successor shall be duly qualified. The judge of said court shall receive a salary of three thousand ($3,000.00) dollars per annum, payable monthly out of the county treasury by the commissioners' court. (Id. sec. 7.)

Art. 1798h. Special judge.—A special judge of the County Court of Dallas County, at Law, No. 2, may be appointed or elected as provided for by the laws relating to county courts and the judges thereof. (Id. sec. 8.)

Art. 1798i. Jurors.—The jurisdiction and authority now vested by law in the county court for the appointment of jury commissioners and the selection and service of jurors shall be exercised by the County Court of Dallas County, at Law, No. 2. (Id. sec. 9.)

Art. 1798j. Vacancy.—Any vacancy in the office of the County Court of Dallas County, at Law, No. 2, shall be filled by the commissioners' court of Dallas county until the next regular election. (Id. sec. 10.)

Art. 1798k. Fees.—The judge of the County Court of Dallas County, at Law, No. 2, shall collect the same fees as are now stipulated by law relating to the judge of the County Court of Dallas County, at Law, all of which shall be by the county clerk paid monthly into the county treasury of Dallas county, in accordance with the orders of the commissioners' court. (Id. sec. 11.)

Art. 1798*l*. Transfer of cases.—It shall be the duty of the judge of the County Court of Dallas County, at Law, to immediately transfer from the docket of the County Court of Dallas County, at Law, to the docket of the County Court of Dallas County, at Law, No. 2, one-half of the civil cases pending upon said docket, which shall be done by beginning with the oldest case pending upon the docket of his court and transferring every second case without reference to whether any particular case be pending upon the jury or non-jury docket of said court. (Id. sec. 12.)

CHAPTER TWO

COUNTY COURT OF TARRANT COUNTY FOR CIVIL CASES

Art. 1799. Creation of county court of Tarrant county for civil cases.—There is hereby created a court to be held in Tarrant county, Texas, to be known and designated as the "County Court of Tarrant County for Civil Cases." (Acts 1909, p. 48, sec. 1.)

Art. 1800. Jurisdiction of said court.—The county court of Tarrant county for civil cases shall have jurisdiction of all civil matters and causes, original and appellate, over which by the general laws of the state of Texas, the county court of said county would have jurisdiction, except as provided in article 1801; and all civil cases pending in the county court of said county, other than probate matters, and such as are provided in said article, shall be, and the same are hereby, transferred to the county court of Tarrant county for civil cases; and all civil writs and process heretofore issued by, or out of, said county court, other than those pertaining to matters over which by said article jurisdiction remains in the county court of Tarrant county, [shall be] and the same are, returnable to the county court of Tarrant county for civil cases. The jurisdiction of the county court of Tarrant county for civil cases, and of the judge thereof, shall extend to all matters of eminent domain of which jurisdiction has heretofore vested in the county court of Tarrant county, or the

judge thereof; but this provision shall not affect the jurisdiction of the commissioners' court or of the county judge of Tarrant county as the presiding officer of said court as to roads, bridges and public highways, and matters of eminent domain which are now within the jurisdiction of the commissioners' court or of the judge of the county court of Tarrant county. (Id. sec. 2.)

Art. 1801. Jurisdiction retained by county court of Tarrant county.—The county court of Tarrant county shall retain, as heretofore the jurisdiction of all criminal cases, its jurisdiction as a juvenile court, its jurisdiction in matters pertaining to liquor licenses, forfeitures and bonds, the general jurisdiction of a probate court; it shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of administrators, executors and guardians, transact all business pertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition and distribution of estates of deceased persons, and shall apprentice minors as provided by law. The county judge of Tarrant county shall be the judge of the county court of Tarrant county; and all ex officio duties of the county judge shall be exercised by the said judge of the county court of Tarrant county, except in so far as the same shall, by this chapter, be committed to the judge of the county court of Tarrant county for civil cases. (Id. sec. 3.)

Art. 1802. Both courts may issue writs.—Both the said county court of Tarrant county and the county court of Tarrant county for civil cases, or either of the judges thereof, shall have the power to issue writs of injunction, sequestration, attachment, garnishment, certiorari, supersedeas and all other writs necessary to the enforcement of the jurisdiction of said courts, and also power to punish for contempts under such provisions as are, or may be, provided by the general laws governing county courts throughout the state, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of said courts, or of any court or tribunal inferior to said courts. (Id. sec. 4.)

Art. 1803. Terms, practice, etc., of county court of Tarrant county for civil cases.—The terms of the county court of Tarrant county for civil cases, and the practice therein, and appeals and writs of error therefrom, shall be as prescribed by law relating to the county courts. The terms of the county court of Tarrant county for civil cases shall be held not less than four times each year; and the commissioners' court of Tarrant county shall fix the time at which said court shall hold its terms, until the same may be changed according to law. (Id. sec. 5.)

Art. 1804. Judge to be elected when, etc.; qualifications; term; vacancies how filled.—At each general election there shall be elected by the qualified voters of Tarrant county a judge of the county court of Tarrant county for civil cases, who shall be well informed in the laws of this state, who shall hold his office for two years, and until his successor shall have been duly elected and qualified; provided, that no person shall be eligible for judge of the county court of Tarrant county for civil cases, unless he shall be a citizen of the United States and of this state, who shall have been a practicing lawyer of this state, or a judge of a court in this state, for four years next preceding his election, and who shall have resided in the county of Tarrant for two years next preceding his election. All vacancies in said office shall be filled by appointment by the governor until the next general election thereafter. (Id. sec. 6.)

Art. 1805. Bond and oath of judge.—The judge of the county court of Tarrant county for civil cases shall execute a bond and take the oath of office as required by the law relating to county judges. (Id. sec. 7.)

Art. 1806. Special judge elected or appointed how.—A special judge of the county court of Tarrant county for civil cases may be appointed or elected as provided by law relating to county courts and to the judges thereof. (Id. sec. 8.)

Art. 1807. Clerk of; seal; sheriff to attend when, etc.—The county clerk of Tarrant county shall be the clerk for the county court of Tarrant county for civil cases. The seal of said court shall be the same as that provided for county courts, except that the seal shall contain the words, "County Court of Tarrant County for Civil Cases." The sheriff of Tarrant county shall, in person or by deputy, attend the court when required by the judge thereof. (Id. sec. 9.)

Art. 1808. Selection, etc., of juries by the two courts jointly.—The jurisdiction and authority now vested by law in the county court of Tarrant county for the selection and service of jurors shall be exercised by the two courts jointly and not separately. (Id. sec. 10.)

Art. 1809. Fees; salary of judge of county court of Tarrant county for civil cases.—The judge of the county court of Tarrant county for civil cases shall collect the same fees provided by law for county judges in similar cases, all of which shall be paid by him monthly into the county treasury; and he shall receive a salary of three thousand dollars annually, to be paid monthly out of the county treasury by the commissioners' court. (Id. sec. 11.)

Art. 1810. Removal of judge.—The judge of the county court of Tarrant county for civil cases may be removed from office in the same manner and for the same causes as any other county judge may be removed under the laws of this state. (Id. sec. 12.)

Art. 1811. Salary of county judge of Tarrant county.—The county judge of Tarrant county shall hereafter receive from the county treasury in addition to the fees allowed him by law, such a salary, for the ex officio duties of his office, as may be allowed him by the commissioners' court. (Id. sec. 13.)

CHAPTER THREE

COUNTY COURT OF ARMSTRONG COUNTY

Arts. 1811—1 to 1811—5. [Omitted.]
See post, Appendix I, at end of Civil Statutes.

CHAPTER FOUR

COUNTY COURT OF BEXAR COUNTY, FOR CIVIL CASES

Art. 1811—6. Creation of county court of Bexar county for civil cases.—That there is hereby created a court to be held in Bexar county, Texas, to be called the "County Court of Bexar County for Civil Cases." (Acts 1911, p. 15, sec. 1.)

Art. 1811—7. Jurisdiction of said court.—The county court of Bexar county for civil cases shall have exclusive jurisdiction of all civil matters and causes, original and appellate, over which, by the general laws of the State of Texas, the county court of said county would have jurisdiction, except as provided in section 3 of this Act [Art. 1811—8], and all civil cases other than probate matters, and such as are provided in section 3 of this Act, be, and the same are hereby transferred to the county court of Bexar county for civil cases; and all civil writs and processes, heretofore issued by or out of said county court, other than pertaining to matters over which, by section 3 of this Act, jurisdiction remains in the county court of Bexar county, be, and the same are hereby made returnable to the county court of Bexar county for civil cases. (Id. sec. 2.)

Art. 1811—8. Jurisdiction retained by county court of Bexar county.—The county court of Bexar county shall retain, as heretofore, the jurisdiction of all criminal cases, the forfeiture of bonds in criminal cases and all proceedings in relation thereto; of all cases of eminent domain; the general jurisdiction of a probate court; it shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of administrators, executors and guardians; transact all business pertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition and distribution of estates of deceased persons, and to apprentice minors as provided by law. The county judge of Bexar county shall be the judge of the county court of Bexar county, and all ex officio duties of the county judge shall be exercised by the said judge of the county court of Bexar county, except in so far as the same shall, by this Act, be committed to the judge of the county court of Bexar county for civil cases. The county judge of Bexar county shall retain authority to try all applications for liquor licenses, and shall approve all liquor bonds as may be provided by law. He shall also retain jurisdiction of the juvenile court. (Id. sec. 3.)

Art. 1811—9. Both courts may issue writs.—The said county court of Bexar county for civil cases or the judge thereof, shall have the power to issue writs of injunctions, sequestration, attachment, garnishment, certiorari, supersedeas, mandamus, and all other writs necessary to the enforcement of the jurisdiction of said court; and also power to punish for contempt under such provisions as are or may be provided by the general law governing county courts throughout the state, and to issue writs of habeas corpus in cases within the jurisdiction of said court. (Id. sec. 4.)

Art. 1811—10. Terms, practice, etc.—The terms of the county court of Bexar county for civil cases, and the practice therein, and appeals and writs of error therefrom, shall be as prescribed by laws relating to county courts. The terms of the county court of Bexar county for civil cases shall be held as follows: Beginning on the first Mondays in January, March, May, July, September and November of each year, and may continue until the business thereof is disposed of. (Id. sec. 5.)

Art. 1811—11. Judge to be elected when, etc.; qualifications; term.—There shall be elected in said county by the qualified voters thereof, at each general election, a judge of the county court of Bexar county for civil cases, who shall be learned in the laws of the state, who shall hold his office for two years, and until his successor shall have been duly qualified. (Id. sec. 6.)

Art. 1811—12. Bond and oath of judge.—The judge of the county court of Bexar county for civil cases shall execute a bond in the sum of $5,000.00, and take the oath of office as required by the law relating to county judges. (Id. sec. 7.)

Art. 1811—13. Special judge elected or appointed how.—A special judge of the county court of Bexar county for civil cases may be appointed or elected as provided by laws relating to county courts, and to the judges thereof. (Id. sec. 8.)

Art. 1811—14. Clerk of; seal; sheriff to attend when, etc.—The county clerk of Bexar county shall be the clerk of the county court of Bexar county for civil cases. The seal of said court shall be the same as that provided for county courts, except that the seal shall contain the words "County Court of Bexar County for Civil Cases." The sheriff of Bexar county shall in person or by deputy attend the court when required by the judge thereof. (Id. sec. 9.)

Art. 1811—15. Selection, etc., of juries.—The jurisdiction and authority now vested by law in the county court of Bexar county for the selection and service of jurors shall be exercised by each of the two courts within their jurisdiction. (Id. sec. 10.)

Art. 1811—16. Vacancies in office of judge, how filled; appointment of first judge.—Any vacancy in the office of the judge of the court created by this Act may be filled by the commissioners court of Bexar county until the next general election. The commissioners court of Bexar county shall, as soon as may be, after this Act shall take effect, appoint a judge of the county court of Bexar county for civil cases, who shall serve until the next general election, and until his successor shall be duly elected and qualified. (Id. sec. 11.)

Art. 1811—17. Fees; salary of judge.—The judge of the county court of Bexar county for civil cases shall collect the same fees provided by law for county judges in similar cases, all of which shall be paid by him monthly into the county treasury, and he shall receive a salary of three thousand dollars ($3,000.00) annually, to be paid monthly out of the county treasury by the commissioners court. The county judge of Bexar county shall receive in addition to the other fees allowed by law, a salary for the ex officio

duties of his office of not less than $100.00 per month. (Id. sec. 12.)

Art. 1811—18. Removal of judge.—The judge of the county court of Bexar county for civil cases may be removed from office in the same manner, and for the same causes as any other county judge may be removed under the laws of this state. (Id. sec. 13.)

CHAPTER FIVE

COUNTY COURT OF CASTRO COUNTY

Arts. 1811—19 to 1811—29. [Omitted.]
See post, Appendix I, at end of Civil Statutes.

CHAPTER SIX

COUNTY COURT OF DEAF SMITH, PARMER, RANDALL, (CASTRO) AND LUBBOCK COUNTIES AND THE UNORGANIZED COUNTIES OF BAILEY AND LAMB

Arts. 1811—30 to 1811—34. [Omitted.]
See post, Appendix I, at end of Civil Statutes.

CHAPTER SEVEN

COUNTY COURT AT LAW OF HARRIS COUNTY, TEXAS

Art. 1811—35. County court of Harris county for civil cases created.—That there is hereby created a court to be held in Harris county, [to be called the county court of Harris county for civil cases.] (Acts 1911, p. 4, sec. 1.)

The bracketed part of this article is superseded by art. 1811—36.

Art. 1811—36. Name changed; seal.—The county court of Harris county for civil cases shall hereafter be known as the county court at law of Harris county, Texas, and the seal of said court shall hereafter be the same as that provided by law for county courts, except that the seal shall contain the words: "County Court at Law of Harris County, Texas." (Acts 1913, p. 10, sec. 1.)

Art. 1811—37. Change of name not to affect court, except, etc.; judges, officers, process and returns.—The change in the name of said court shall in no way or manner, other than is provided in this Act, affect the officers or judge of said court, their compensation or tenure of office, and shall, in no way or manner, affect the process of said court already issued. The judge and officers now serving said county court of Harris county for civil cases, shall continue to serve said court under its changed name to the same effect to all things as if the name had not been changed. All process heretofore issued out of said county court for civil cases and all returns thereon shall in all things be treated and considered as if the name of said court had not been changed. (Id. sec. 2.)

Art. 1811—38. Jurisdiction of said court.—The [county court of Harris county for civil cases] shall have jurisdiction in all civil matters and causes, original and appellate, over which, by the general laws of the state of Texas, the county court of said county would have jurisdiction, except as provided in section three (3) of this Act [Art. 1811—40], and all civil cases other than probate matters and such as are provided in section three (3) of this Act, be and the same are hereby transferred to the [county court of Harris county for civil cases], and all civil writs and processes heretofore issued by or out of said county court other than pertaining to matters over which, by section three (3) of this Act, jurisdiction remains in the county court of Harris county be and the same are hereby made returnable to the [county court of Harris county for civil cases]. The jurisdiction of the [county court of Harris county for civil cases] and of the judge thereof shall extend to all matters of eminent domain of which jurisdiction has been heretofore vested in the county court of Harris county or in the county judge thereof, but this provision shall not effect [affect] the jurisdiction of the commissioners court or of the county judge of Harris county as the presiding officer of such commissioners court, as to roads, bridges, and public highways, and matters of eminent domain which are now within the jurisdiction of the commissioners court or the judge thereof. (Acts 1911, p. 4, sec. 2.)

Art. 1811—39. Jurisdiction continued, etc.; additional jurisdiction; appeals; criminal jurisdiction, etc.—The said court to be hereafter known as the county court at law for Harris county shall have all the jurisdiction heretofore conferred upon [Art. 1811—38] it under the name of the county court of Harris county for civil cases, and its judge shall have all the powers heretofore conferred upon the judge of the county court of Harris county for civil cases; and in addition to the said jurisdiction the said county court at law of Harris county shall have all of the, and the same jurisdiction over criminal matters that is now vested in the county courts having jurisdiction in civil and criminal cases under the constitution and laws of Texas, and all appeals from justices, mayors, recorders, or other inferior courts within Harris county, shall hereafter lie to said county court at law of Harris county instead of as heretofore, to the criminal district court of Harris county, and the judge of said court shall have, in addition to the powers now conferred upon him, the same powers, rights and privileges, as to criminal matters as are now vested in and enjoyed by the judges of county courts having criminal jurisdiction; provided, however, that said court shall have no jurisdiction over any of those matters the jurisdiction over which is now in the county court of Harris county or the judge thereof. (Acts 1913, p. 10, sec. 3.)

Art. 1811—40. Jurisdiction retained by county court of Harris county.—The county judge [court] of Harris county shall retain as heretofore, the general jurisdiction of a probate court; it shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of executors, administrators and guardians, transact all business pertaining to deceased persons, and to hear and determine all matters affecting juvenile offenders, minors, idiots, lunatics, person non compos mentis, and common drunkards, including the settlement, partition and distribution of estates of deceased persons, and shall have jurisdiction to hear and determine all matters relating to or arising out of the granting or revoking of liquor licenses, and all matters appertaining thereto; and to apprentice minors as provided by

law, and the said court, or the judge thereof, shall have the power to issue writs of injunctions, mandamus, and all writs necessary to the enforcement of the jurisdiction of said court, and also to punish contempts under such provisions as are or may be provided by general law governing county courts throughout the state; but said county court of Harris county shall have no other jurisdiction, civil or criminal. The county judge of Harris county shall be the judge of the county court of Harris county, and all ex officio duties of the county judge shall be exercised by the said judge of the county court of Harris county, except in so far as the same shall by this Act be committed to the judge of the [county court of Harris county for civil cases]. (Acts 1911, p. 4, sec. 3.)

Art. 1811—41. Both courts may issue writs.—Both the said county court of Harris county and the [county court of Harris county for civil cases] or either of the judges thereof, shall have the power to issue writs of injunction, sequestration, attachment, garnishment, certiorari, supersedeas and all other writs necessary to the enforcement of the jurisdiction of said courts; and also power to punish for contempts under such provisions as are or may be provided by the general laws governing county courts throughout the state, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of said courts or of any court or tribunal inferior to said courts. (Id. sec. 4.)

Art. 1811—42. Terms, practice, etc.—The [terms of the county court of Harris county for civil cases] and the practice therein and appeals and writs of error therefrom shall be as prescribed by laws relating to county courts. [The terms of the county court of Harris county for civil cases shall be held as now established for the terms of the county court of Harris county until the same be changed in accordance with the law.] (Id. sec. 5.)

Art. 1811—43. Terms of court.—Said court shall hold six terms a year, beginning respectively on the first Monday in January, in March, in May, in July, in September, and in November of each year, and each term shall continue until the business is disposed of. (Acts 1913, p. 10, sec. 7.)

Art. 1811—44. Judge to be elected, when; qualifications; term.—There shall be elected in said county by the qualified voters thereof, at each general election, a judge of the [county court of Harris county for civil cases,] who shall be well informed in the laws of the state, who shall hold his office for two years and until his successor shall have duly qualified. (Acts 1911, p. 4, sec. 6.)

Art. 1811—45. Bond and oath of judge.—The judge of the [county court of Harris county for civil cases,] shall execute a bond and take the oath of office as required by the law relating to county judges. (Id. sec. 7.)

Art. 1811—46. Special judge.—A special judge of the [county court of Harris county for civil cases] may be appointed or elected as provided by law relating to county courts and to the judges thereof. (Id. sec. 8.)

Art. 1811—47. Clerk; seal; sheriff to attend when, etc.—The county clerk of Harris county shall be the clerk of the [county court of Harris county for civil cases. The seal of the said court shall be the same as that provided by law for county courts, except that the seal shall contain the words "County Court of Harris County for Civil Cases."] The sheriff of Harris county shall, in person or by deputy, attend the said court when required by the judge thereof. (Id. sec. 10.)

Art. 1811—48. Vacancy in office of judge, how filled, etc.—Any vacancy in the office of the judge of the court created by this Act may be filled by the commissioners court of Harris county until the next general election. The commissioners court shall, as soon as may be after this Act shall take effect, appoint a judge of the [county court of Harris county for civil cases] who shall serve until the next general election and until his successor shall be duly elected and qualified. (Id. sec. 11.)

Art. 1811—49. Fees; salary of judge.—The judge of the [county court of Harris county for civil cases] shall collect the same fees as are now established by law relating to county judges, all of which shall be by him paid monthly into the county treasury, and he shall receive an annual salary of three thousand dollars per annum, payable monthly, to be paid out of the county treasury by the commissioners court. (Id. sec. 12.)

Art. 1811—50. Salary of county judge of Harris county.—The county judge of Harris county shall hereafter receive from the county treasury, in addition to the fees allowed him by law, such a salary for the ex officio duties of his office as may be allowed him by the commissioners court not less than fifteen hundred dollars per year. (Id. sec. 13.)

Art. 1811—51. Clerk of criminal district court of Harris county to act as clerk in criminal matters, etc.; fees.—The county clerk of Harris county shall have no authority in criminal matters pending in said county court at law for Harris county. The clerk of the criminal district court of Harris county shall act as the clerk of the said county court of law for Harris county in all criminal matters, but only in criminal matters, and he shall sign all papers emanating from said court, including the minutes of said court in criminal matters, whenever its clerk's signature is necessary, as ex officio clerk of said county court at law for Harris county, using the seal of said court. The fees of said clerk as to those criminal matters, the jurisdiction over which is hereby vested in said county court at law, shall be the same in all respects, including amount, manner of payment and collection, as if the criminal district court of Harris county had retained jurisdiction over said matters. (Acts 1913, p. 10, sec. 4.)

Art. 1811—52. Transfer of misdemeanor criminal cases.—All misdemeanor criminal cases now pending in the criminal district court of Harris county, as well as all criminal cases on appeal to the said district court from the various subordinate courts of Harris county shall, immediately upon the taking effect of this Act, be transferred to the county court at law of Harris county, and the same are hereby so transferred, and upon said county court at law is hereby conferred jurisdiction of such cases. (Id. sec. 5.)

Art. 1811—53. Judge to retain fees and costs in criminal cases.—In addition to the compensation now provided by law, the judge of said county court at law of Harris county, shall tax up, receive and collect in each case, the same fees and costs in criminal cases over which said county court has jurisdiction, as are now provided by the general laws of the state, for judges of county courts having criminal jurisdiction, such fees to be retained by him as compensation for the additional jurisdiction conferred upon his court. (Id. sec. 6.)

CHAPTER SEVEN A

COUNTY COURT AT LAW, NO. 2, OF HARRIS COUNTY, TEXAS

Art. 1811—53a. Court created.—There is hereby created a court to be held in Harris County, Texas, to be called the "County Court at Law No. 2 of Harris County, Texas." (Acts 1915, 1st C. S., ch. 8, sec. 1.)

Art. 1811—53b. Jurisdiction.—Said County Court at Law No. 2 of Harris County, Texas, shall have, and it is hereby granted original and appellate jurisdiction, in all matters and causes of a civil and criminal nature, concurrent with and in all things equal to that heretofore conferred upon the County Court at Law of Harris County, Texas. (Id. sec. 2.)

Art. 1811—53c. Powers of judge; concurrent jurisdiction.—The judge of said County Court at Law No. 2 of Harris County, Texas, shall have and exercise all the powers and shall be subject to all the limitations and obligations heretofore or hereafter conferred or imposed upon the judge of the County Court at Law of Harris County, Texas. Said County Court at Law No. 2 of Harris County, Texas, shall have concurrent jurisdiction with the County Court at Law of Harris County over criminal matters, and shall have the same jurisdiction over criminal matters, that is now vested in county courts having jurisdiction in civil and criminal cases under the Constitution and laws of Texas. And said County Court at Law No. 2 of Harris County shall have concurrent jurisdiction with the County Court at Law of Harris County in all appeals from justices, mayors, recorders or other inferior courts within Harris County; and the judge of said court shall have the same powers, rights and privileges as to criminal matters as are now vested in and enjoyed by the judges of county courts having criminal jurisdiction; provided, however, that said court shall have no jurisdiction over any of those matters the jurisdiction over which is now vested in the County Court of Harris County, or the judge thereof. (Id. sec. 3.)

Art. 1811—53d. Qualifications of judge; appointment; oath; bond; fees and salary.—The judge of the County Court at Law No. 2 of Harris County, Texas, shall be well informed in the law; he shall have been a duly licensed and practicing member of the bar of this State for not less than two years; he shall be appointed by the Governor of the State of Texas as soon as may be after this Act takes effect; he shall take the oath of office and execute an official bond as now required by the law relating to county judges, and he shall collect the same fees in civil cases as are now provided by law in case of county judges, all of which he shall pay monthly into the county treasury, and in lieu of such fees he shall receive a salary of three thousand dollars per annum to be paid out of the county treasury by the Commissioners Court of Harris County in monthly installments of two hundred and fifty dollars each. In addition to the compensation hereinbefore provided the judge of the County Court at Law No. 2 of Harris County shall tax up, receive and collect in each criminal case the same fees and costs as are now provided by the General Laws of the State for the judges of county courts having criminal jurisdiction, such fees to be retained by him as compensation for the exercise of the criminal jurisdiction herein conferred upon his court. (Id. sec. 4.)

Art. 1811—53e. Clerk; fees.—The county clerk of Harris County shall be the clerk of said County Court at Law No. 2 of Harris County in civil matters and causes; and shall receive and collect the same fees which he now receives and collects as clerk of the County Court at Law of Harris County, Texas. The clerk of the Criminal District Court of Harris County, Texas, shall be clerk of said County Court at Law No. 2 in all criminal matters and causes, and shall receive and collect such fees as he now receives and collects in criminal matters as clerk of the County Court at Law of Harris County. (Id. sec. 5.)

Art. 1811—53f. Seal.—The seal of the County Court at Law No. 2 of Harris County, Texas, shall be the same as that provided by law for county courts, except that such seal shall contain the words "County Court at Law Number Two of Harris County, Texas," and said seal shall be judicially noticed. (Id. sec. 6.)

Art. 1811—53g. Sheriffs and constables.—The sheriff of Harris County, either in person or by deputy, shall attend said court when required by the judge thereof; and the various sheriffs and constables of this State executing process issued out of said court shall receive the fees now or hereafter fixed by law for executing process issued out of county courts. (Id. sec. 7.)

Art. 1811—53h. Special judge.—A special judge of said court may be appointed or elected in the manner and instances now or hereafter provided by the law relating to county courts and the judges thereof. (Id. sec. 8.)

Art. 1811—53i. Power to issue writs.—Said court shall have power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, habeas corpus in criminal misdemeanor cases, and all writs necessary to the enforcement of its jurisdiction; and, within the limitations placed upon county courts, to punish contempts thereof. Writs of injunction granted in civil cases by the judge of said County Court at Law No. 2 and by the judge of said County Court at Law shall be made returnable to the court in which the petition for injunction shall be filed, as hereinafter provided. (Id. sec. 9.)

Art. 1811—53j. Jurisdiction of County Court at Law.—The jurisdiction, civil and criminal, of the County Court at Law of

Harris County, Texas, shall not in anywise be impaired or affected by this Act. (Id. sec. 10.)

Art. 1811—53k. Terms.—The terms of the court hereby created shall begin on the first Monday of the months of June, August, October, December, February and April of each year. The sessions of said court shall be held in such place as may be provided therefor by the Commissioners Court of Harris County. (Id. sec. 11.)

Art. 1811—53*l*. Transfer of cases.—As soon as may be, after this Act takes effect, the clerk of the County Court at Law of Harris County, Texas, shall transfer to the docket of the County Court at Law No. 2 of Harris County, Texas, one-half of the civil cases then pending in said County Court at Law. In making such transfer, said Clerk shall first transfer to said County Court at Law No. 2 the case having the smallest file number on the docket of said County Court at Law. The case having the next highest file number shall remain on the docket of said County Court at Law. The case having the third smallest file number shall be transferred. In like manner said clerk shall go through the docket of said County Court at Law, transferring to the docket of said County Court at Law No. 2 every second civil case thereafter. The clerk shall note such transfer when made, on the minutes of the County Court at Law of Harris County, Texas. New civil and new criminal cases filed with said clerk after such transfer has been made, irrespective of the court or judge to which the petitions in such civil cases shall be addressed, shall, in like manner, be filed by the said clerk, one civil and one criminal case in said County Court at Law No. 2, and one civil and one criminal case in said County Court at Law. The first new civil case and the first new criminal case, filed with said clerk after such transfer has been made, shall both be filed in said County Court at Law No. 2. (Id. sec. 12.)

Art. 1811—53m. Same.—The judges of said County Court at Law and of said County Court at Law No. 2, in their discretion, either in term time or in vacation, by an order entered upon the minutes of their respective courts, may transfer to the court of the other any case or cases then pending in their respective courts. And when such case or case[s] shall be so transferred the court to which such transfer shall be made shall have the same right and authority to try and finally dispose of the same as the court making such transfer. (Id. sec. 13.)

Art. 1811—53n. Practice.—The practice in said County Court at Law No. 2, and in cases of appeal and writs of error therefrom and thereto, shall be the same as is now, or may hereafter be prescribed for county courts. (Id. sec. 14.)

Art. 1811—53*o*. Process in transferred cases.—All process issued out of the County Court at Law of Harris County, Texas, prior to the time when the clerk thereof shall transfer cases from the docket of said courts, as provided in Section 12 of this Act [Art. 1811—53*l*] in cases transferred as therein provided, shall be returned to and filed in the court hereby created, and shall be equally as valid and binding upon parties to such transferred cases as though such process had been issued out of the County Court at Law No. 2 of Harris County, Texas. Likewise, in cases transferred by the judges of either of said courts, as provided in Section 13 of this Act [Art. 1811—53m], all process extant at the time of such transfer shall be returned to and filed in the court to which such transfer is made, and shall be as valid and binding as though originally issued out of the court to which such transfer may be made. (Id. sec. 15.)

Art. 1811—53p. Appointment of judge; election.—As soon as this Act shall take effect the Governor of the State shall appoint a judge of the County Court at Law No. 2 of Harris County, who shall serve until the next general election and until his successor shall be duly elected and qualified. And any vacancy thereafter occurring in the office of the judge of the County Court at Law No. 2 of Harris County, created by this Act, shall be filled by the Commissioners Court of Harris County, the appointee thereof to hold office until the next succeeding general election, and until his successor shall have qualified. There shall be elected by the qualified voters of Harris County at each general election hereafter, a judge of the County Court at Law No. 2 of Harris County, who shall hold his office for two years, and until his successor shall be duly qualified. (Id. sec. 16.)

CHAPTER EIGHT

COUNTY COURT OF HARRISON COUNTY

Arts. 1811—54 to 1811—64. [Omitted.]

See post, Appendix I, at end of Civil Statutes.

CHAPTER NINE

COUNTY COURT OF JASPER COUNTY

Arts. 1811—65 to 1811—75. [Omitted.]

See post, Appendix I, at end of Civil Statutes.

CHAPTER TEN

COUNTY COURT OF KENDALL COUNTY

Arts. 1811—76 to 1811—80. [Omitted.]

See post, Appendix I, at end of Civil Statutes.

CHAPTER ELEVEN

COUNTY COURT OF OLDHAM COUNTY

Arts. 1811—81 to 1811—91. [Omitted.]

See post, Appendix I, at end of Civil Statutes.

CHAPTER TWELVE

COUNTY COURT OF STONEWALL COUNTY

Arts. 1811—92 to 1811—96. [Omitted.]

See post, Appendix I, at end of Civil Statutes.

CHAPTER THIRTEEN

COUNTY COURT OF WHEELER COUNTY

Arts. 1811—97 to 1811—107. [Omitted.]

See post, Appendix I, at end of Civil Statutes.

CHAPTER FOURTEEN

COUNTY COURT OF ZAPATA COUNTY

Arts. 1811—108 to 1811—118. [Omitted.]

See post, Appendix I, at end of Civil Statutes.

CHAPTER FIFTEEN

COUNTY COURT OF JEFFERSON COUNTY AT LAW

Art. 1811—119. Court created.—There is hereby created a court to be held in Beaumont, Jefferson County, Texas, to be called the County Court of Jefferson County at Law. (Acts 1915, ch. 29, sec. 1.)

The County Court of Jefferson County at Law No. 2, created by Acts 1918, 4th C. S., ch. 61, p. 138, secs. 1-19, abolished, and the act creating said court and all acts and parts of acts in conflict were repealed by Acts 1919, 2d C. S., ch. 14, sec. 11, post, Code Cr. Proc. art. 97¾o. Said Acts 1919, 2d C. S., ch. 14 creates the Criminal Court of Port Arthur, in lieu of said County Court No. 2 (Code Cr. Proc. arts. 97¾j-97¾nn).

Art. 1811—120. Jurisdiction.—The County Court of Jefferson County at Law shall have jurisdiction in all matters and cases, civil and criminal, original and appellate, over which by the general laws of the State the County Court of said County would have jurisdiction, except as hereinafter provided in Section 3 of this Act [Art. 1811—121], and all cases pending in the County Court of said County other than probate matters such as are provided in Section 3 of this Act shall be and the same are hereby transferred to the County Court of Jefferson County at Law, and all writs and process, civil and criminal, heretofore issued by or out of said County Court, other than those pertaining to matters which are hereby exempt by this Act that are to remain in the County Court of Jefferson County, shall be and the same are thereby made returnable to the County Court of Jefferson County at Law. The jurisdiction of the County Court of Jefferson County at Law, and to the Judge thereof, shall extend to all matters of eminent domain of which jurisdiction as heretofore vested in the County Court or in the County Judge; but this provision shall not affect the jurisdiction of the Commissioners Court or the County Judge of Jefferson County as the presiding officer of said Commissioners Court as to roads, bridges and public highways, or matters of eminent domain which are now in the jurisdiction of the Commissioners Court or the Judge thereof. (Acts 1915, ch. 29, sec. 2; Acts 1919, ch. 27, sec. 2.)

Art. 1811—121. Jurisdiction of other courts.—The County Court of Jefferson County shall retain, as heretofore, the general jurisdiction of the Probate Court and all jurisdiction conferred by law now over probate matters; and the Court herein created shall have no other jurisdiction than that named in this Act, and the County Court of Jefferson County as now and heretofore existing shall have all jurisdiction which it now has, save and except that which is given the County Court of Jefferson County, at Law, in this Act, but the County Court as now existing shall have no other jurisdiction, civil or criminal. The County Judge of Jefferson County shall be the Judge of the County Court of said county, and all ex-officio duties of the County Judge shall be exercised by said Judge of the County Court of Jefferson County, except in so far as the same shall by this Act be committed to the County Court of Jefferson County at Law. (Acts 1915, ch. 29, sec. 3; Acts 1919, ch. 27, sec. 3.)

Art. 1811—122. Terms of court.—There shall be twelve terms of the County Court of Jefferson County at law held annually and the practices therein and the appeals and the writs of error thereto and therefor shall be as prescribed by the laws relating to County Courts. The said terms of the County Court of Jefferson County at law, shall be held as follows: Beginning on the first Monday of the first month after this Act shall become effective and shall continue in session until the last Saturday in said month when it shall adjourn, and open again on the first Monday in the next month and shall continue in session until the last Saturday in said month, and so on during the entire year, and the terms thereof shall be held at the Courthouse of Jefferson County, Texas. (Acts 1915, ch. 29, sec. 4; Acts 1919, ch. 27, sec. 4.)

Art. 1811—123. Election of judge; tenure; qualifications.—There shall be elected in Jefferson County by the qualified voters thereof at each general election a Judge of the County Court of Jefferson County at Law, who shall be well informed in the laws of the State, and who shall hold his office for two years and until his successor shall have been duly elected and qualified. No person shall be elected judge of said Court who has not been a resident citizen of Jefferson County, Texas, for at least two years prior to his election, and shall possess all of the qualifications for the office that are now required by the general laws of the State for County Judges. (Acts 1915, ch. 29, sec. 5; Acts 1919, ch. 27, sec. 5.)

Section 6 relates to criminal business. See Code Cr. Proc. art. 40a.

Art. 1811—124. Appointment of judge.—When this Act shall become effective the present Judge of the County Court of Jefferson County at Law, shall continue to be the Judge of said Court and shall hold his office until the next general election of county officers or until his successor is elected and qualified. (Acts 1915, ch. 29, sec. 7; Acts 1919, ch. 27, sec. 7.)

Art. 1811—125. Disqualification of judge.—When the Judge of the County Court of Jefferson County at Law, is disqualified to try any case pending in the County Court of Jefferson County at Law, the parties or their attorneys in such a case may agree on the selection of a Special Judge to try such case, but if the parties or their attorneys fail to agree upon the selection of a Special Judge to try such case, it shall be the duty of the Judge of the County Court of Jefferson County at Law, to certify to the Governor that he is disqualified to try such case and the failure of the parties or their attorneys to agree upon the selection of a Special Judge to try such a case. Whereupon, the Governor shall proceed to appoint a Special Judge, learned in the law, to try such case. (Acts 1915, ch. 29, sec. 8; Acts 1919, ch. 27, sec. 8.)

Art. 1811—126. Issuance of writs.—The County Court of Jefferson County at Law, or the Judge thereof, shall have power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas and all writs necessary to the enforcement of jurisdiction of said Court, and to issue writs of habeas corpus in such cases where the offense charged is within the jurisdiction of said Court, or of any other Court in said county of inferior jurisdiction to said County Court at Law. (Acts 1915, ch. 29, sec. 9; Acts 1919, ch. 27, sec. 9.)

Art. 1811—127. Clerk, seal, and sheriff.—The County Clerk of Jefferson County, Texas, shall be the Clerk of the County Court of Jefferson County at Law, and the seal of said Court shall be the same as provided by law for County Courts, except the seal shall contain the words "County Court of Jefferson County at Law," and the Sheriff of Jefferson County shall in person or by Deputy attend said Court when required by the Judge thereof, and the County Clerk of Jefferson County, Texas, is hereby authorized, if it becomes necessary, in his judgment, to appoint a Deputy to specially attend to the matters pertaining to the County Court of Jefferson County at Law, and said Deputy shall receive a salary of one hundred and fifty ($150.00) dollars per month, to be paid out of county treasury of Jefferson County on the order of the Commissioners Court of said county. (Acts 1915, ch. 29, sec. 10; Acts 1919, ch. 27, sec. 10.)

Art. 1811—128. Selection of jurors.—The Jurisdiction or authority now vested by law in the District Courts of this State for the drawing, selection and service of jurors shall be exercised by the County Court of Jefferson County at Law, provided a panel of not exceeding twenty-four jurors shall be drawn for any one week of said Court, and juries selected in the trial of any case shall not exceed six. (Acts 1915, ch. 29, sec. 11; Acts 1919, ch. 27, sec. 11.)

Art. 1811—129. Vacancy in office of judge.—Any vacancy in the office of the Judge of the County Court of Jefferson County at Law, may be filled by the County Commissioners Court, and when so filled the Judge shall hold office until the next general election and until his successor is elected and qualified. (Acts 1915, ch. 29, sec. 12; Acts 1919, ch. 27, sec. 12.)

Art. 1811—130. Salary of judge; fees collected and accounted for.—The Judge of the County Court of Jefferson County at Law, shall receive a salary of thirty-six hundred ($3600.00) dollars per annum, to be paid out of the county treasury of Jefferson County, Texas, on the order of the Commissioners Court of said county, and said salary shall be paid monthly in equal installments. The Judge of the County Court of Jefferson County at Law, shall assess the same fees as are now prescribed by law relating to County Judge's fees, all of which shall be collected by the Clerk of the Court and shall be paid into the county treasury on collection. No part of which shall be paid to the said Judge, but he shall draw a salary as above specified in this section. (Acts 1915, ch. 29, sec. 13; Acts 1919, ch. 27, sec. 13.)

Art. 1811—131. Appeals from lower courts.—All cases appealed from the Justices Courts and Recorders Courts in Jefferson County, Texas, shall be made direct to the County Court of Jefferson County at Law, under the provisions heretofore governing such appeals. (Acts 1915, ch. 29, sec. 14; Acts 1919, ch. 27, sec. 14.)

Art. 1811—132. Fees of County Judge.—The County Judge of Jefferson County, at the time this Act goes into effect, shall receive the same compensation in ex-officio salary and fees as he would have received had this Act, creating the County Court of Jefferson County at Law, not been enacted, said Compensation to be computed and allowed and ordered paid by the Commissioners Court of said County out of the general fund of said county. (Acts 1915, ch. 29, sec. 15; Acts 1919, ch. 27, sec. 15.)

Art. 1811—132a. Special judge; election; compensation.—In the event of the failure from any cause of the Judge of this Court to open the same at the time prescribed by law, then a majority of the practicing attorneys present in said Court shall proceed to elect a Special Judge in the same manner as prescribed by law for the election of Special Judges of the District Courts, who shall preside over said Court until such regular Judge shall be able to hold the same, and said Special Judge shall be entitled to receive a fee of three ($3.00) dollars for each case tried and finally disposed of by him, the same to be paid by the County Treasurer upon the order of the Commissioners Court of Jefferson County, Texas. (Id. sec. 16.)

Art. 1811—132b. Act not repealed.—Nothing in this Act shall be construed in any manner to affect or repeal the Court at Law, created for the city of Port Arthur in Jefferson County, Texas, passed by the Fourth Called Session of the Thirty-fifth Legislature and known as House Bill No. 112. (Id. sec. 16a.)

CHAPTER SIXTEEN

EL PASO COUNTY COURT AT LAW

Art. 1811—133. Court created.—There is hereby created a court to be held in El Paso county, Texas, to be known and designated as the "El Paso County Court at Law." (Acts 1917, ch. 93, sec. 1.)

Art. 1811—134. Jurisdiction.—The El Paso County Court at Law shall have jurisdiction of all civil matters and causes, original and appellate over which by the general laws of the State of Texas the county court of said county would have jurisdiction, except as provided in Section 3, of this Act; and the El Paso County Court at Law and the County Court of said County shall have concurrent jurisdiction in all criminal matters and causes, original and appellate over which by the general laws of this State the County Court at Law now has jurisdiction, except as provided in Section 3, of this Act [Art. 1811—135]; and all civil and criminal writs and processes heretofore issued by and out of said County Court at Law be and the same are hereby, made returnable to the El Paso County Court at Law or the County Court of El Paso County, Texas, whichever may have jurisdiction, or in which said court, the writs or processes may be pending; the jurisdiction of El Paso County Court at Law

and the judge thereof shall extend to all matters of eminent domain of which jurisdiction has heretofore rested in the County Court of El Paso County, Texas, or the judge thereof, but this provision shall not effect the jurisdiction of the commissioners court of the county judge of El Paso County as presiding judge of said court as to roads, bridges and public highways and matters of eminent domain which are now within the jurisdiction of the commissioners court or of the Judge of the County Court of El Paso County, Texas. (Acts 1917, ch. 93, sec. 2; Acts 1918, 4th C. S., ch. 14, sec. 1.)

Art. 1811—135. Jurisdiction.—The County Court of El Paso County, Texas, shall retain, as heretofore, its jurisdiction as a juvenile court, its jurisdiction in matters pertaining to liquor licenses, forfeitures and bonds and the general jurisdiction of a probate court; it shall probate wills, appoint guardians of minors, idiots and lunatics, persons non compos mentis and drunkards, grant letters testamentary and of administration, settle accounts with administrators, executors and guardians, transact all business pertaining to deceased persons, and to apprentice minors as provided by law, and to have concurrent jurisdiction with the County Court at law in all criminal matters in causes, original and appellate, over which by the general laws of the State of Texas the County Court of said county would have jurisdiction if no County Court at Law had been created. The County Judge of El Paso County, Texas, shall be the Judge of the County Court of El Paso County, Texas, and all ex-officio duties of the County Judge shall be exercised by said Judge of the said County Court of El Paso County, except insofar as the same shall by this Act be committed to the Judge of the El Paso County Court at Law. The Judge of the County Court and the Judge of the County Court at Law shall have authority to transfer any criminal causes from one court to another by order duly made and entered upon the minutes of the Court. (Acts 1917, ch. 93, sec. 3; Acts 1918, 4th C. S., ch. 14, sec. 2.)

Art. 1811—136. Power to issue writs.—Both the said County Court of El Paso county and the El Paso County Court at Law or either of the judges thereof shall have the power to issue writs of injunction, sequestration, attachments, garnishment, certiorari, supersedeas and all other writs necessary to the enforcement of the jurisdiction of said courts; and also power to punish for contempt under such provisions as are, or may be provided by the general laws governing county courts throughout the State, and to issue writs of habeas corpus, in cases where the offense charged is within the jurisdiction of said courts or of any court or tribunal inferior to said courts. (Acts 1917, ch. 93, sec. 4.)

Art. 1811—137. Terms of court.—The terms of the El Paso County Court at Law and the practice therein and appeals and writs of error therefrom shall be, as prescribed by law relating to county courts. The terms of the El Paso County Court at Law shall be held not less than four times each year, and the commissioners court of El Paso county shall fix the time at which said court shall hold its terms, until the same shall be changed according to law. (Id. sec. 5.)

Art. 1811—138. Appointment of judge; election; qualifications of judge.—The Governor shall appoint some suitable person who is a resident citizen of El Paso county as judge of the El Paso County Court at Law, as herein constituted, who shall hold such office until the next general election after his appointment, and until his successor shall have been elected and qualified, and all vacancies in said office shall also be filled by appointment by the Governor until the next general election thereafter. At the first general election in said county and at each general election thereafter there shall be elected by the qualified voters a judge of the El Paso County Court at law, who shall be well informed in the laws of this State, who shall hold his office for two years and until his successor shall have been duly elected and qualified; provided that no person shall be eligible for judge of the El Paso County Court at Law by election, unless he shall be a citizen of the United States and of this State; who shall have been a practicing lawyer of this State or a judge of a court in this State for at least four years next preceding his election, and who shall have resided in the county of El Paso for two years next preceding his election. (Id. sec. 6.)

Art. 1811—139. Bond and oath of judge.—The judge of the El Paso County Court at Law shall execute a bond and take the oath of office as required by law relating to county judges. (Id. sec. 7.)

Art. 1811—140. Special judge.—A special judge of the El Paso County Court at Law may be appointed or elected as provided by laws relating to county courts and the judges thereof. (Id. sec. 8.)

Art. 1811—141. Clerk; seal; sheriff.—The county clerk of El Paso county shall be the clerk for the El Paso County Court at Law; the seal of said court shall be the same as that provided for county courts, except that the seal shall contain the words "El Paso County Court at Law." The sheriff of El Paso county shall, in person or by deputy, attend the court when required by the judge thereof. (Id. sec. 9.)

Art. 1811—141a. Official shorthand reporter; appointment; term of office; oath; duties.—For the purpose of preserving a record in all cases for the information of the court, jury and parties, the Judge of the County Court at Law of El Paso, county, Texas shall appoint an official shorthand reporter for such court, who shall be well skilled in his profession, shall be a sworn officer of the court and shall hold his office at the pleasure of the court; and the provisions of Chapter Eleven of Title 37 of the Revised Civil Statutes of Texas of 1911 relating to the appointment of Stenographers for the district courts shall, and it is hereby made to, apply in all its provisions, insofar as they are applicable, to the official shorthand reporter herein authorized to be appointed by the Judge of the County Court at Law of El Paso County, Texas and he shall be entitled to the same fees and shall perform the same duties and shall take the same oath as are in said Chapter Eleven of Title 37 provided for the stenographers of district courts of this State, and also be governed by any other Laws cov-

ering the stenographers of district courts of this State. (Acts 1918, 4th C. S., ch. 14, sec. 3.)

Art. 1811—142. Juries.—The jurisdiction and authority now vested by law in the County Court of El Paso County, for the selection and service of jurors shall be exercised by each of said courts, but juries summoned for either of said courts may by order of the judge of the court in which they are summoned be transferred to the other court for service therein and may be used therein as if summoned for the court to which they may be thus transferred. (Acts 1917, ch. 93, sec. 10.)

Art. 1811—143. Compensation of judge.—The Judge of the County Court at Law of El Paso County, Texas, shall be entitled to the following compensation for his services as Judge of the County Court at Law; there shall be taxed and collected by the El Paso County Court at Law the same fees provided by the law for county Judges in similar cases, all of which shall be paid by the clerk monthly into the county treasury, and the judge of said court shall receive a salary of Three Thousand Dollars annually to be paid monthly out of the county treasury upon order of the commissioners court. (Acts 1917, ch. 93, sec. 11; Acts 1918, 4th C. S., ch. 14, sec. 4.)

Art. 1811—144. Removal of judge.—The judge of the El Paso County Court at Law may be removed from office in the same manner and for the same causes as any other county judge may be removed under the laws of this State. (Acts 1917, ch. 93, sec. 12.)

See ante, art. 1811—143.

Art. 1811—145. Salary of county judge.—The county judge of El Paso county shall hereafter receive from the county treasury, in addition to the fees allowed him by law, such a salary, for the ex-officio duties, not exceeding in the aggregate of fees and salary that which the existing laws provide for. (Id. sec. 13.)

Art. 1811—145a. Repeal; partial invalidity of act.—All laws and parts of laws in conflict herewith be, and the same are hereby repealed, and it is further enacted that if any of the provisions of this Act shall be held void or in conflict with any provisions of the Constitution of this State the fact that such provisions may be held void shall in no wise affect any other provisions of this Act. (Acts 1918, 4th C. S., ch. 14, sec. 5.)

CHAPTER SEVENTEEN

COUNTY COURT OF EASTLAND COUNTY AT LAW

Art. 1811—146. Court created.—There is hereby created a Court to be held in Eastland County, Texas, to be called "The County Court at Law for Eastland County." (Acts 1919, 2d C. S., ch. 16, sec. 1.)

Art. 1811—147. Jurisdiction.—The County Court at Law for Eastland County, shall have jurisdiction in all matters and causes, civil and criminal, original and appellate, including the general jurisdiction of the Probate Court, over which the general laws of the State of Texas, the County Court would have jurisdiction; it shall probate wills, appoint guardians of minors, idiots, lunatics, persons no[n] compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of executors, administrators and guardians; transact all business appertaining to deceased persons, minors, idiots, lunatics, and drunkards, including the settlement, partition and distribution of estates of deceased persons; and the apprentice of minors as provided by law, except as is provided in Section 3 of this bill [Art. 1811—148]. The said Court or the judge thereof, shall have power to issue writs of injunction, mandamus, and all writs necessary to the enforcement of the jurisdiction of said court; and also to punish contempts under such provisions as are or may be provided by general law governing County Courts throughout the State. The jurisdiction of the County Court at Law for Eastland County and the Judge thereof, shall extend to all matters of eminent domain, of which the jurisdiction has heretofore invested in the County Court or the County Judge; but this provision shall not [a]effect the jurisdiction of the commissioners court or the county judge of Eastland County, Texas, as the presiding officer of such commissioners' Court, as to roads, bridges and public highways in matter of eminent domain which are now within the jurisdiction of the Commissioners' Court or the Judge thereof. The County Judge of Eastland County shall be the judge of the County Court at Law for Eastland County, Texas. All ex-officio duties of the county judge shall be exercised by the county judge of Eastland County, except in so far as same shall, by this Act be committed to the judge of the County Court at Law for Eastland County, Texas. (Id. sec. 2.)

Art. 1811—148. Jurisdiction of County Judge of Eastland County retained.—The County Judge of Eastland County, Texas shall retain as heretofore, all jurisdiction given under the general laws governing county judge in all the administration of the affairs of said county and as the presiding officer of said commissioners' court and nothing in this act shall be construed so as to confer upon the county court at Law for Eastland County, Texas or the judge thereof, any jurisdiction of the financial or fiscal affairs or taxation matters of said Court, the control or management of the roads, bridges, etc., or as the presiding officer of the commissioners' court. (Id. sec. 3.)

Art. 1811—149. Terms of court; practice; appeals and writs of error.—The terms of the County Court at Law for Eastland County, Texas, and the practice therein, and appeals and writs of error therefrom, shall be as prescribed by law relating to county courts. The terms of County Courts at Law for Eastland County, Texas, shall be held as now established by the terms of the County Court of Eastland County, until the same shall be changed in accordance with the law. (Id. sec. 4.)

Art. 1811—150. Judge; election; term of office.—There shall be elected in said county by the qualified voters, thereof, at said election, judge of the County Court at Law for Eastland County, Texas, who shall be well informed in law of the State who shall hold his office two years and until his successor shall have duly qualified. (Id. sec. 5.)

Art. 1811—151. Bond and oath of judge.—The judge of the County Court at Law for Eastland County, shall execute a bond and take the oath of office as required by law for county judges, and may be appointed or elected as provided by law relating to county court and judges thereof. (Id. sec. 6.)

Art. 1811—152. Issuance of writs.—The County Court at Law for Eastland County or the judge thereof, shall have power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari and supersedeas, and all writs necessary to the enforcement of the jurisdiction of said court, and to issue writs of habeas corpus, in cases where the offense charged is within the jurisdiction of said court, or of any other court or tribunal inferior to said court. (Id. sec. 7.)

Art. 1811—153. Clerk; seal; sheriff.—The County Clerk of Eastland County shall be the Clerk of the County Court at Law for Eastland County. The seal of the said court shall be the same as that provided by law for county courts, except that the seal shall contain the words "County Court at Law for Eastland County, Texas"; the sheriff of Eastland County shall, in person or by deputy, attend the said court when required by the judge thereof. (Id. sec. 8.)

Art.1811—154. Juries.—The jurisdiction and authority now vested by law in the County Court for the appointment of jury commissioners and the selection and service of jurors shall be exercised by the County Court at Law for Eastland County, Texas. (Id. sec. 9.)

Art. 1811—155. Vacancy in office of judge.—Any vacancy in the office of the judge of the county court at Law for Eastland County, may be filled by the Commissioners' Court of Eastland County until the next general election. (Id. sec. 10.)

Art. 1811—156. Fees and salary of Judge.—The Judge of the County Court at Law for Eastland County, shall collect the same fees as are now established by law, relating to county judges and such ex-officio compensations for holding county court as the Commissioners' Court of said county shall prescribe and authorize. The County Judge of Eastland County, Texas, shall hereafter receive all such fees as are allowed him under the general laws and such salary for the ex-officio duties of his office as may be allowed him by the commissioners' court of said county. (Id. sec. 11.)

TITLE 37

COURTS—DISTRICT AND COUNTY—PRACTICE IN

CHAPTER ONE

INSTITUTION OF SUITS

Art. 1812. (1177) (1181) Suits commenced by petition filed with clerk.—All civil suits in the district and county courts shall be commenced by petition filed in the office of the clerk of such court. (Acts 1846, p. 363, sec. 3; P. D. 1425.)

See Sayles' Practice, pp. 25, 73, 283, 419, 775; Wood v. G. C. & S. F. R'y, 40 S. W. 24; Webb v. Allen, 40 S. W. 342; Wigg v. Dooley, 66 S. W. 306; Insurance Co. v. Davis, 84 S. W. 260; Ranson v. Leggett, 90 S. W. 668; Wiggins v. First Nat. Bank of Denton, 175 S. W. 735; Camp v. First Nat. Bank of Alpine, 195 S. W. 217; Godshalk v. Martin, 200 S. W. 535.

Art. 1813. (1178) (1182) Duty of the clerk on receiving petition.—When a petition is filed with the clerk, it shall be his duty to indorse thereon the day on which it was filed and the number of the suit; and he shall enter the suit in a docket to be kept by him for that purpose, to be called the clerk's file docket. (Id. sec. 6; P. D. 1428.)

See Sayles' Practice, pp. 25, 284, 419; Valdez v. Cohen, 56 S. W. 375; A. H. Belo & Co. v. Lacy, 111 S. W. 215.

Art. 1814. (1449) (1445) No paper to be considered filed, unless, etc.—No paper shall be considered as filed in the proceedings of any cause, unless the clerk shall have indorsed thereon the day on which it was filed, and have signed his name officially thereto. (Id. sec. 35; P. D. 1445.)

See Herron's Probate Guide, p. 67; Sayles' Practice, pp. 286, 673.

Art. 1815. (1179) (1183) Clerk's file docket.—The clerk's file docket shall be so kept as to show in a convenient form the number of the suit, the names of the attorneys, the names of the several parties to the suit, and the object thereof, and, in a brief form, the return on the process made by the sheriff or constable, and all the subsequent proceedings had in the case, specifying the time when they were had. (Id. sec. 6; P. D. 1428.)

See Ranson v. Leggett, 90 S. W. 668; A. H. Belo & Co. v. Lacy, 111 S. W. 215.

Art. 1816. (1180) (1184) Civil suits not to be instituted on Sunday, etc., except.—No civil suit shall be commenced nor shall any process be issued or served on Sunday except in cases of injunction, attachment, garnishment, sequestration, or distress proceeding. (Id. sec. 2; Acts 1897, p. 84; P. D. 1424; Acts 1919, ch. 99, sec. 1.)

See post art. 4606; Sayles' Practice, pp. 25, 285, 775, 858; Schow v. City Nat. Bk. of Gatesville, 40 S. W. 167; Norvell v. Pye, 95 S. W. 666; Michael v. Michael, 100 S. W. 1018.

CHAPTER TWO

PLEADING IN GENERAL

Art. 1817. (1181) (1185) System of pleading.—The pleadings in all civil suits in the district and county courts shall be by petition and answer. (Acts 1840, p. 88, sec. 1; P. D. 979.)

See Townes' Texas Pleading (2d Ed.) p. 375; Bradshaw v. Lyles, 119 S. W. 918.

Art. 1818. (1182) (1186) Pleadings to be in writing, signed and filed.—The pleadings in said courts shall be in writing and signed by the party, or by his attorney, and filed with the clerk of the court.

Bradshaw v. Lyles, 119 S. W. 918.

Art. 1819. (1183) (1187) Pleadings defined.—The pleading shall consist of a statement in logical and legal form, of the facts constituting the plaintiff's cause of action, or the defendant's ground of defense.

See Sayles' Practice, p. 359; Ranson v. Leggett, 90 S. W. 668; W. L. Moody & Co. v. Rowland, 99 S. W. 1112; Bradshaw v. Lyles, 119 S. W. 918; Lumsden v. Jones, 205 S. W. 375.

Art. 1820. (1184) (1188) Pleadings of an intervenor.—The pleadings of an intervenor shall conform to the requirements of pleadings on the part of the plaintiff and defendant, respectively, so far as they may be applicable.

Art. 1821. (1185) (1189) Pleadings in particular cases.—In addition to the requirements of the several articles of this title relating to pleading, the pleadings of the parties, respectively, shall contain any other matter, not included in the preceding articles, which may be required by any law authorizing or regulating any particular action or defense.

See Townes' Texas Pleading (2d Ed.) p. 376.

Art. 1822. (1186) (1190) Pleading charters and acts of incorporation.—In pleading the charter or act of incorporation of any corporation, public or private, it shall not be necessary to set out at length such charter or act of incorporation, but it shall be sufficient to allege that such corporation was duly incorporated; and such allegation by either party shall be taken as true, unless denied by the affidavit of the adverse party, his agent or attorney. (Acts 1860, p. 116, sec. 1; P. D. 1518; Acts 1883, p. 103.)

See Bury v. Mitchell Co., 74 S. W. 341; Sayles v. First State Bank & Trust Co. of Abilene, 199 S. W. 823.

Art. 1823. (1187) (1191) Pleading special act of the legislature.—Whenever any pleading is founded, in whole or in part on any private or special act or law of the congress of the republic of Texas, or of the legislature of this state, it shall not be necessary for the party pleading the same to set out such private or special act or law, but it shall be sufficient to recite the title thereof, and the date of its approval, and to allege in substance so much of such act or law as may be pertinent to the cause of action or defense.

Art. 1824. (1188) (1192) Pleadings may be amended.—All parties to a suit may, in vacation. amend their pleadings, may file suggestions of death and make representative parties, and make new parties, and file such other pleas with the clerk of the court in which such suit is pending as they may desire. And any party may in vacation intervene in any suit pending such amendments and pleas, subject to be stricken out at the next term of the court on motion of the opposite party to the suit for sufficient cause shown or existing, to be determined by the court; provided, that it shall be the duty of the party filing such pleading to notify the opposite party or their attorneys of the filing of such papers within five days from the filing of the same. All amendments to pleadings, pleas and pleas of intervention, must, when court is in session, be filed under leave of the court, upon such terms as the court may prescribe, before the parties announce ready for trial, and not thereafter. (Acts 1889, p. 9.)

See Sayles' Practice, p. 71; Townes' Texas Pleading (2d Ed.) pp. 376, 448-462; McRae v. White, 42 S. W. 793; Polk v. King, 48 S. W. 601; Hurd v. Tex. Brewing Co., 51 S. W. 883; Fid. & Cas. Co. of N. Y. v. Carter, 57 S. W. 315; W. U. Tel. Co. v. Campbell, 91 S. W. 312; Colorado Canal Co. v. McFarland, etc., 94 S. W. 400; McCormick v. Jester, 115 S. W. 278; Pecos & N. T. Ry. Co. v. Porter, 156 S. W. 267; Thomas Goggan & Bros. v. Morrison, 163 S. W. 119; Jackson v. Blair, 165 S. W. 522; Kimbrell v. Chase, 170 S. W. 861; Cooney v. Eastman, 183 S. W. 96; Vaden v. Buck, 184 S. W. 318; Kenedy Pasture Co. v. S., 196 S. W. 287; Stuart v. Meyer, 196 S. W. 615; Skelton & Wear v. Wolfe, 200 S. W. 901; De Berry v. Chambers, 200 S. W. 1141; Lefevre v. Lefevre, 205 S. W. 842.

Art. 1825. (1189) (1193) Time of filing amendment.—Such leave shall be given, and such amendment filed, for a reasonable time before the case is called for trial, so as not to operate as a surprise to the opposite party. (Acts 1846, p. 363, sec. 34; P. D. 54.)

See White v. Provident Nat. Bk., 65 S. W. 498; Cooney v. Eastman, 183 S. W. 96; Vaden v. Buck, 184 S. W. 318; Braxton v. Voyles, 189 S. W. 965; Lefevre v. Lefevre, 205 S. W. 842.

Art. 1826. (1190) (1194) Pleadings amended after arrest of judgment, etc.—Whenever a judgment has been arrested or a new trial granted, because of the insufficiency of the pleadings of the party in whose favor the judgment was rendered, the court may allow such pleadings to be amended as if no such trial had been had or judgment rendered. (Id. sec. 114; P. D. 1475.)

See Sayles' Practice, p. 630.

CHAPTER THREE

PLEADINGS OF THE PLAINTIFF

Art. 1827. (1191) (1195) Requisites of the petition.—The petition shall set forth clearly the names of the parties and their residences, if known, with a full and clear statement of the cause of action, and such other allegations pertinent to the cause, as the plaintiff may deem necessary to sustain his suit, and without any distinction between suits at law and in equity, and shall also state the nature of the relief which he requests of the court. (Acts 1846, p. 363, sec. 5; P. D. 1427; Acts 1913, p. 256, sec. 1; Acts 1915, ch. 101, sec. 1.)

See Townes' Texas Pleading (2d Ed.) p. 379, et seq.; Sayles' Practice, pp. 24, 76, 131, 359, 586; Tyler v. Blanton, 78 S. W. 564; R'y v. Huffman, 81 S. W. 536; Trinity & B. V. Ry. Co. v. Sanders, 120 S. W. 272; Ft. Worth & D. C. Ry. Co. v. Wilkinson, 152 S. W. 203; Pugh v. Werner, 166 S. W. 698; Southwestern Telegraph & Telephone Co. v. Andrews, 169 S. W. 218; O'Neal v. Bush & Tillar, 173 S. W. 869; Order of Aztecs v. Noble, 174 S. W. 623; Day v. Cooper, 175 S. W. 485; Holmes v. Coalson, 178 S. W. 628; Day v. Van Horn Trading Co., 183 S. W. 85; Cooney v. Eastman, 183 S. W. 96; Friend v. Thomas, 187 S. W. 986; Thomas v. Kean, 190 S. W. 847.

Art. 1828. (1192) (1196) Defensive matters pleaded by plaintiff.—When the defendant sets up a counter claim against the plaintiff, the plaintiff may plead thereto under the rules prescribed for the pleadings of defensive matter by the defendant so far as the same may be applicable; and whenever, under such rules, the defendant is required to plead any matter of defense under oath, the plaintiff shall, in like manner, be required to plead such matters under oath when relied on by him. (Acts 1913, p. 256, sec. 2; Acts 1915, ch. 101, sec. 2.)

Townes' Texas Pleading (2d Ed.) p. 465, et seq.; Reed v. Brewer, 37 S. W. 418; Wooley v. Bell, 68 S. W. 71; State Nat. Bk. v. Stewart, 88 S. W. 295; Western Union Telegraph Co. v. Douglass, 133 S. W. 877; Day v. Cooper, 175 S. W. 485; Thomas v. Kean, 190 S. W. 847.

Art. 1829. (1193) (1197) Denial of special defenses presumed.—It shall not be necessary for the plaintiff to deny any special matter of defense pleaded by the defendant, but the same shall be regarded as denied unless expressly admitted. (Acts 1913, p. 256, sec. 3; Acts 1915, ch. 101, sec. 3.)

Townes' Texas Pleading (2d Ed.) p. 466, et seq.; Cook v. Greenberg, 34 S. W. 687; Bauman v. Chambers, 41 S. W. 471; Kuteman v. Carroll, 70 S. W. 563; Brown v. United Moderns, etc., 87 S. W. 357; R'y v. Avis, 93 S. W. 424; Hamilton v. Dismukes, 115 S. W. 1181; Postal Telegraph Cable Co. of Texas v. Harriss, 121 S. W. 358; Postal Telegraph Cable Co. of Texas v. Harriss, 122 S. W. 891; Wilson v. Burch, 162 S. W. 1018; Galveston, H. & S. A. Ry. Co. v. Pennington, 166 S. W. 464; Pugh v. Werner, 166 S. W. 698; Texas & P. Ry. Co. v. Martin Bros., 167 S. W. 792; Texas & P. Ry. Co.

v. Tomlinson, 169 S. W. 217; Southwestern Telegraph & Telephone Co. v. Andrews, 169 S. W. 218; Memphis Cotton Oil Co. v. Tolbert, 171 S. W. 309; Day v. Cooper, 175 S. W. 485; Houston Packing Co. v. Dunn, 176 S. W. 634; Brazile v. Blaylock, 177 S. W. 155; Orient Ins. Co. of Hartford, Conn., v. Harmon, 177 S. W. 192; Galveston, H. & S. A. Ry. Co. v. Wallraven, 182 S. W. 21; Canode v. Sewell, 182 S. W. 421; Kansas City, M. & O. Ry. Co. v. Cole, 183 S. W. 137; Caffarelli Bros. v. Bell, 190 S. W. 223; Thomas v. Kean, 190 S. W. 847; St. Paul Fire & Marine Ins. Co. v. Clark, 200 S. W. 229.

CHAPTER THREE A

VERIFICATION OF PLEADINGS

Arts. 1829a, 1829b. [Repealed by Act March 22, 1915, ch. 101, p. 155, sec. 5.]

CHAPTER FOUR

VENUE OF SUITS

Art. 1830. (1194) (1198) Venue, general rule.—No person who is an inhabitant of this state shall be sued out of the county in which he has his domicile, except in the following cases, to-wit: (Acts Dec. 10, 1863; P. D. 1423.)

Townes' Texas Pleading (2d Ed.) p. 301; Lumpkin v. Blewitt, 111 S. W. 1072; Boehrens v. Brice, 113 S. W. 782; Kirby Lumber Co.'s Receivers v. McLendon, 120 S. W. 227; Finney v. Walker, 144 S. W. 679; Birge v. Lovelady, 145 S. W. 1194.

Acts 1913, p. 424, entitled, "An act to amend article 1830, title 37, Revised Statutes 1911, by striking out exception 4 and adding in lieu thereof the following: 1. Where there are two or more defendants residing in different counties in which case the suit may be brought in any county where any one of the defendants reside; provided that the transfer or assignment of any note or chose of action shall not give a subsequent holder the right to institute suit on any such note or chose in action in any other county or justice precinct than the county or justice precinct in which such suit could have been prosecuted if no assignment of transfer had been made," sets out the entire article at length following the enacting clause. The title of the amendatory act does not seem to contemplate an amendment of the subdivisions of the article other than the fourth. The subdivisions of the article, other than the fourth, seem to have been inaccurately copied into the new act, and the errors are of a substantial nature. It would seem that the new act is void in so far as it purports to re-enact the provisions not directly involved in the amendment. The act, following the title as above set forth, is as follows:

"Be it enacted by the Legislature of the state of Texas:

"Article 1830. No person who is an inhabitant of this state shall be sued out of the county in which he has domicile except in the following cases, to wit:

"1. Where the defendant is a married woman in which case she may be sued in county in which the husband has his domicile.

"2. Where the defendant is a transient person in which case he may be sued in any county in which he may be found.

"3. Where the defendant or all of several defendants reside without the state or where the residence of defendant is unknown, in which case the suit may be brought in the county in which the plaintiff resides.

"4. Where there are two or more defendants residing in different counties, in which case the suit may be brought in any county where any one of the defendants reside. Provided that the transfer or assignment of note or chose of action shall not give any subsequent holder the right to institute suit on such note or chose of action in any other county or justice precinct than the county or justice precinct in which such suit could have been prosecuted if no assignment or transfer had been made.

"5. Where a person has contracted in writing to perform an obligation in any particular county in which case suit may be brought suit may be brought either in such county, or where the defendant has his domicile.

"6. Where the suit is against an executor, administrator or guardian, as such, to establish a money demand against the estate which he represents, in which case the suit may be brought in the county in which such estate is administered.

"7. In all cases of fraud and in cases of defalcation of public officer, in which cases may be instituted in the county in which the fraud was committed, or where the defalcation occurred, or where the defendant has his domicile.

"8. Any suit for damages growing out of the suing out of any writ of attachment or sequestration, or for the levy of such writ, may be brought in any county from which such writ was issued or in any county where such levy was made, in whole or in part, within this state.

"9. Where the foundation of the suit is some crime, or offense, or trespass, for which a civil action in damages may lie in which case case [suit] may be brought in the county where such crime, offense, or trespass was committed, or in the county where the defendant has his domicile.

"10. Where the suit is for the recovery of any personal property in which case the suit may be brought in any county in which the property may be, or in which the defendant resides.

"11. Where the defendant has inherited an estate concerning which the suit is commenced, in which case suit may be in the county where such estate principally lies.

"12. Where the suit is for the foreclosure of other liens in which case suit may be brought in the county in which the property subject to such lien, or a part thereof, may be situated.

"13. Suit for the partition of lands or other property may be brought in the county where such lands or other property or a part thereof may be, or the county in which one or more of the defendants resides.

"14. Suits for the recovery of land or damages thereto, suits to remove an incumbrance on the title to land, suits to quiet the title to land, and suits to prevent or stay waste on land, must be brought in the county in which the land, or a part thereof, may lie.

"15. In breach of warranty of title to land, where the vendors liable thereon live in different counties, the plaintiff may bring his action in any county where either of such vendors reside and join all other vendors in one and the same suit.

"16. Suit for divorce from the bonds of matrimony shall be brought in the county in which the plaintiff whether husband or wife shall have resided for six months next preceding the bringing of the suit.

"17. When suit is brought to enjoin execution of the judgment or to stay proceedings in any suit in which case the suit shall be brought in the county in which such judgment was rendered or in which such suit is pending.

"18. Suits to revise the proceedings of the county court in matters of probate must be brought in the district court of the county in which such proceedings were had.

"19. Suits against any county shall be commenced in some court of competent jurisdiction within such county.

"20. Suits for mandamus against the heads of any departments of state government shall be brought in the district court of the county in which seat of government may be.

"21. Suits in behalf of the state for the forfeiture of the charter of private corporation, chartered by act of the legislature shall be commenced in the district court of the county in which the seat of government may be.

"22. Suits brought by the state for the purpose of forfeiting the charter of a private corporation, organized under the laws of this state and for the purpose of cancelling the permit authorizing a foreign corporation to transact business in this state, and for the purpose of restraining corporations from exercising powers not conferred upon them by the laws of this state, and for the purpose of preventing persons from engaging in business in the state of Texas contrary to the laws thereof, may be instituted in the proper court of the county in which the seat of government may be.

"23. Suits on behalf of the state to forfeit land fraudulently or colorably alienated by railway companies in fraud of the rights of the state, under the laws granting lands to railway companies, shall be brought in the county in which the seat of government may be.

"24. Suits against any private corporation, association, or joint stock company may be commenced in any county in which the cause of action or a part thereof arose or in which such corporation, association or company has an agent or representative or in which his principal office is situated. And suits against a railroad corporation, or against any assignee, trustee or receiver, operating its railway, may also be brought in any county through or into which the railroad of such corporation extends or is operated. Suits against receivers of person and corporation may also be brought as provided for in article 2147.

"25. Whenever any passenger, freight, baggage or other property has been transported by two or more railroad companies, express companies, steamship or steamboat companies, transportation companies, or common carriers of any kind or name whatsoever, or by an assignee, lessee, trustee, or receiver thereof, or partly by one or more such companies, or common carriers, and partly by one or more assignees, lessees, trustees or receivers thereof, operating or doing business as such common carriers in this state or having agents or representatives in this state, suits for damage or loss or for any other cause of action arising out of such carriage, transportation or contract in relation thereto, may be brought against any one or all of such common carriers, assignees, lessees, trustees or receivers so operating or doing business in this state, or having agents, representatives in this state in any court of competent jurisdiction, in any county in which either of such common carriers, assignees, lessees, trustees or receivers operates or doing business, or has an agent or representative; provided, however, that if damages may be recovered in such suits against more than one defendant not partners in such carriage, transportation or contract, the same shall on request of either party be apportioned between the defendants, by the verdict of the jury or if no jury is demanded there [then] by the judgment of the court.

"26. All suits against railroad corporations, or against any assignee, trustee or receiver operating any railway in the state of Texas for damages arising from personal injuries resulting in death or otherwise shall be brought either in the county in which the injury occurred or in the county in which the plaintiff resided at the time of the injury; provided, that if the defendant railroad corporation does not run or operate its railway in or through the county in which the plaintiff resided at the time of the injury and has no agent in said county then then said suit shall be brought either in the county in which the injury occurred or in the county nearest that in which the plaintiff resided at the time of the injury in which the defendant corporation runs or operates its road or has an agent; and provided, further, that, in case the plaintiff is a non-resident of the state of Texas, then such suit may be brought in any county in which the defendant corporation may run or operate its railroad or may have an agent; provided, that when an injury occurs within one-half mile from the boundary line dividing two counties, suit may be brought in either of said counties.

"27. Suits by mechanics, laborers, and operatives, for their wages, due by railroad companies may be instituted and prosecuted in any county in this state where such labor was performed, or in which the cause of action, or part thereof occurred [accrued] or in the county in which principal office of such railroad company is situated; and in all such suits service of process may be made in the manner now required by law.

"28. Foreign, private or public corporations, joint stock companies or associations not incorporated by the laws of this state and doing business within this state, may be sued in any court within this state having jurisdiction over the subject matter, in any county for [where] the cause of action or a part thereof accrued, or in any county where such company may have an agency or representative, or in the county in which the principal office of such company may be situated, or when the defendant corporation has no agent or representative in the state, then in the county where the plaintiff, or either of them reside.

"29. Suits against fire, marine or inland insurance companies may also be commenced in any county in which any part of the insured property was situated; and suits against life and accident insurance companies or associations may also be commenced in the county in which the persons insured or any of them resided at the time of such death or injury.

"30. Whenever in any law authorizing or regulating any particular character of action the venue is expressly prescribed the suit may be commenced in the county to which jurisdiction may be so expressly given."

1. Exceptions; married women.—Where the defendant is a married woman, in which case she may be sued in the county in which her husband has his domicile. (P. D. 1423.)

See Speer's Marital Rights, p. 556; Townes' Texas Pleading (2d Ed.) p. 303.

2. Transient persons.—Where the defendant is a transient person, in which case he may be sued in any county in which he may be found.

See Townes' Texas Pleading (2d Ed.) p. 303.

3. Non-residents and persons whose residence is unknown.—Where the defendant, or all of several defendants, reside without the state, or where the residence of the defendants is unknown, in which case the suit may be brought in the county in which the plaintiff resides.

See Townes' Texas Pleading (2d Ed.) p. 304; Behrens Drug Co. v. Hamilton, 48 S. W. 5; J. D. Hudgins v. Low, 94 S. W. 411; Brooks v. Bonner, 149 S. W. 564; Holcomb v. Williams, 194 S. W. 631.

4. Several defendants residing in different counties; effect of assignment.—Where there are two or more defendants residing in different counties, in which case the suit may be brought in any county where any one of the defendants reside. Provided that the transfer or assignment of note or chose of action shall not give any subsequent holder the right to institute suit on such note or chose of action in any other county or justice precinct than the county or justice precinct in which such suit could have been prosecuted if no assignment or transfer had been made. (P. D. 1423. Acts 1913, p. 424.)

See Townes' Texas Pleading (2d Ed.) p. 306, et seq.; Dublin Cot. Oil Co. v. Robinson, 50 S. W. 1054; T. & P. Ry. v. Edmisson, 52 S. W. 635; Cardwell v. Masterson, 66 S. W. 1121; Lasatur v. Waites, 67 S. W. 518; Russell & Co. v. Heitman & Co., 86 S. W. 75; Milam v. Hill, 69 S. W. 447; J. D. Hudgins v. Low, 94 S. W. 411; Gardner v. Planters' Nat. Bank of Honey Grove, 118 S. W. 1116; Vaughn v. Farmers' & Merchants' Nat. Bank of Alvord, 126 S. W. 690; Breed v. Higginbotham Bros. & Co., 141 S. W. 164; Dickson v. Scharff, 142 S. W. 980; Stephens v. First Nat. Bank of New Boston, 146 S. W. 620; Kleine Bros. v. Gidcomb, 152 S. W. 462; Hendrix v. Brazzell, 157 S. W. 280; First State Bank of Mt. Calm v. Fain, 157 S. W. 454; Anderson v. Jackson, 168 S. W. 54; Harper v. Winfield State Bank, 173 S. W. 627; Joy v. Citizens' Life Ins. Co., 178 S. W. 590; San Angelo Cotton Oil Co. v. Houston County Oil Mill & Mfg. Co., 185 S. W. 887; Merchants' Reciprocal Underwriters of Dallas v. First Nat. Bank of Canadian, 192 S. W. 1098; McCauley v. McElroy, 199 S. W. 317; Estes v. Ferguson, 203 S. W. 941.

5. Contract in writing to be performed in a particular county.—Where a person has contracted in writing to perform an obligation in any particular county, in which case suit may be brought either in such county, or where the defendant has his domicile. (P. D. 1423.)

See Townes' Texas Pleading (2d Ed.) p. 311; Seley v. Williams, 50 S. W. 399; Darragh v. O'Connor, 69 S. W. 644; Yett v. Green, 86 S. W. 787; Bell Co. Brick Co. v. Cox & Co., 76 S. W. 608; Flynt v. Coal and Coke Co., 77 S. W. 831; Callender, etc., Co. v. Short, 78 S. W. 366; Bewley v. Mrs. E. Schultz & Son, 115 S. W. 294; Ogburn-Dalchau Lumber Co. v. Taylor, 126 S. W. 48; Witherspoon v. Duncan, 131 S. W. 660; Whisenant v. Schawe, 141 S. W. 146; First State Bank of Mt. Calm v. Fain, 157 S. W. 454; Thomas Goggan & Bros. v. Morrison, 163 S. W. 119; Royal Amusement Co. v. Columbia Piano Co., 170 S. W. 278; People's Ice & Mfg. Co. v. Interstate Cotton Oil Refining Co., 182 S. W. 1163; Texas Moline Plow Co. v. Biggerstaff, 185 S. W. 341; Holcomb v. Williams, 194 S. W. 631; Sanders v. George M. Hester Cotton Co., 195 S. W. 269; Howard v. Barthold & Casey, 206 S. W. 378; Kelsey v. Early Grain & Elevator Co., 206 S. W. 849; Cecil v. Fox, 208 S. W. 954.

6. Executors, administrators, etc.—Where the suit is against an executor, administrator or guardian, as such, to establish a money demand against the estate which he represents, in which case the suit must

be brought in the county in which such estate is administered. (Id.)

See Townes' Texas Pleading (2d Ed.) p. 313; Herron's Probate Guide, p. 163; Jones v. McRae, 41 S. W. 403; McKay v. Marshall Nat. Bk., 42 S. W. 868; Morton v. Morris, 56 S. W. 559; Milam v. Hill, 69 S. W. 448; Dickson v. Scharff, 142 S. W. 980; Joy v. Citizens' Life Ins. Co., 178 S. W. 590; Williams v. Harris, 193 S. W. 403; Nunn v. Titche-Goettinger Co., 196 S. W. 890.

7. Cases of fraud, and defalcation.—In all cases of fraud, and in cases of defalcation of public officers, in which cases suit may be instituted in the county in which the fraud was committed, or where the defalcation occurred, or where the defendant has his domicile. (Id.)

See Townes' Texas Pleading (2d Ed.) p. 314; Simkins' Equity (2d Ed.) p. 432; Lindsey v. S., 66 S. W. 332; Hunt Co. Oil Co. v. Scott, 67 S. W. 451; Howe Grain, etc., Co. v. Galt, 73 S. W. 828; Trinity Valley Tr. Co. v. Stockwell, 81 S. W. 793; Winter v. Terrell, 95 S. W. 761; Galveston Shoe & Hat Co. v. Rowe, 109 S. W. 1101; Oakes & Witt v. Thompson, 125 S. W. 320; American Warehouse Co. v. Ray, 150 S. W. 763; Kleine Bros. v. Gidcomb, 152 S. W. 462; Thomason v. Rogers, 155 S. W. 1040; Ferrell v. Millican, 156 S. W. 230; Lloyd v. Robinson, 160 S. W. 128; Royal Amusement Co. v. Columbia Piano Co., 170 S. W. 278; Cloyd v. Sacra, 175 S. W. 456; Holmes v. Coalson, 178 S. W. 628; Fox v. Fox, 179 S. W. 883; Neal v. Barbee, 185 S. W. 1059; Calloway v. Booe & Collier, 195 S. W. 1174; Richardson v. Beckham Nat. Bank, 202 S. W. 142.

8. When attachment sued out or levied.—Any suit for damages growing out of the suing out of any writ of attachment or sequestration, or for the levy of any such writ, may be brought in any county from which such writ was issued, or in any county where such levy was made, in whole or in part, within this state. (Acts 1889, p. 48.)

See Townes' Texas Pleading (2d Ed.) p. 316.

9. Cases of crime, offense, or trespass.—Where the foundation of the suit is some crime, or offense, or trespass, for which a civil action in damages may lie, in which case the suit may be brought in the county where such crime, or offense, or trespass was committed, or in the county where the defendant has his domicile. (P. D. 1423.)

See Townes' Texas Pleading (2d Ed.) p. 316; Wettermark v. Campbell, 56 S. W. 331; Baldwin v. Richardson, 87 S. W. 353; Lasater v. Waites, 68 S. W. 500; Winter v. Terrell, 95 S. W. 761; Nixon v. Malone, 98 S. W. 380; Parr v. Thompson, 100 S. W. 792; Winslow v. Gentry, 154 S. W. 260; Thomas Goggan & Bros. v. Morrison, 163 S. W. 119; Carver Bros. v. Merrett, 184 S. W. 741; Neal v. Barbee, 185 S. W. 1059.

10. Suits for personal property.—Where the suit is for the recovery of any personal property, in which case the suit may be brought in any county in which the property may be, or in which the defendant resides. (Id.)

See Townes' Texas Pleading (2d Ed.) p. 322; Commercial Tel. Co. v. Territorial Bk. & T. Co., 86 S. W. 66.

11. Concerning inheritances.—Where the defendant has inherited an estate, concerning which the suit is commenced, in which case suit may be brought in the county where such estate principally lies. (Id.)

12. Foreclosure of mortgage or other liens.—Where the suit is for the foreclosure of a mortgage or other lien, in which case suit may be brought in the county in which the property subject to such lien, or a portion thereof, may be situated. (Id.)

Ogburn-Dalchau Lumber Co. v. Taylor, 126 S. W. 48; Capps v. Edwards, 180 S. W. 137; Holcomb v. Williams, 194 S. W. 631; Barcus v. J. I. Case Threshing Mach. Co., 197 S. W. 478.

13. Suits for partition.—Suits for the partition of lands or other property may be brought in the county where such lands or other property or a part thereof, may be, or in the county in which one or more of the defendants reside, and any such suit for partition of lands or any other property may be brought and prosecuted in the county of the residence of any one or more of the defendants, notwithstanding any one or more of such defendants may assert an adverse interest in such property, or claim to be the owner thereof, or seek to recover the title to the same, provided that nothing herein shall be construed to fix venue of any suit whose real purpose is to recover the title to land other than in the county where such land, or part thereof, may lie, but whenever on the trial of the case, the co-tenancy of the parties or any of them is established, or becomes an issue of fact, it shall not be held that the real purpose of the suit was to try the title of the land. (Acts 1919, ch. 93, sec. 1.)

See Townes' Texas Pleading (2d Ed.) p. 323; Simkins' Equity (2d Ed.) p. 808.

14. Suits concerning lands.—Suits for the recovery of lands or damages thereto, suits to remove incumbrances upon the title to land, suits to quiet the title to land, and suits to prevent or stay waste on lands, must be brought in the county in which the land, or a part thereof, may lie. (P. D. 1423.)

Townes' Texas Pleading (2d Ed.) p. 324; G., C. & S. F. Ry. v. Foster, 44 S. W. 198; Knight v. H. & T. C. Ry., 55 S. W. 558; Wolf v. Sahm, 120 S. W. 1114; Houston Oil Co. of Texas v. Bayne, 141 S. W. 544; Lester v. Gatewood, 166 S. W. 389; Clarke v. A. B. Frank Co., 168 S. W. 492; Palmer v. Jaggaers, 180 S. W. 907; Commonwealth Bonding & Casualty Ins. Co. v. Bowles, 192 S. W. 611; Holcomb v. Williams, 194 S. W. 631; Mitchell v. Porter, 194 S. W. 981.

15. Breach of warranty.—In breach of warranty of title to lands, where the vendors liable thereon live in different counties, the plaintiff may bring his action in any county where either of such vendors reside, and join all other vendors in one and the same suit. (Acts 1887, p. 69.)

See Townes' Texas Pleading (2d Ed.) p. 328.

16. Suits for divorce.—Suits for divorce from the bonds of matrimony shall be brought in the county in which the plaintiff, whether husband or wife, shall have resided for six months next preceding the bringing of the suit. (Acts 1873, p. 117.)

Townes' Texas Pleading (2d Ed.) p. 329; Speer's Marital Rights, p. 663; Schneider v. Rabb, 97 S. W. 463; McLean v. Randell, 135 S. W. 1116.

17. Injunctions, etc.—When the suit is brought to enjoin the execution of a judgment or to stay proceedings in any suit, in which case the suit shall be brought in the county in which such judgment was rendered or in which such suit is pending. (Acts 1846; P. D. 3932.)

See Townes' Texas Pleading (2d Ed.) p. 329; Foust v. Warren, 72 S. W. 405; Turner v. Patterson, 118 S. W. 565; Lyons Bros. Co. v. Corley, 135 S. W. 603; Lester v. Gatewood, 166 S. W. 389; Kieschnick v. Martin, 208 S. W. 948.

18. To revise proceedings of the county court in probate matters.—Suits to revise the proceedings of the county court in matters of probate must be brought in the district court of the county in which such proceedings were had. (Acts 1876, p. 128, secs. 128, 130.)

See Townes' Texas Pleading (2d Ed.) p. 330; Herron's Probate Guide, p. 163.

19. Suits against counties.—Suits against any county shall be commenced in some court of competent jurisdiction within such county. (Acts 1846; P. D. 1047.)

See Townes' Texas Pleading (2d Ed.) p. 331.

20. Heads of departments.—Suits for mandamus against the heads of any of the departments of the state government shall be brought in the district court of the county in which the seat of government may be. (P. D. 1407.)

See Townes' Texas Pleading (2d Ed.) p. 331.

21. Forfeiture of charters granted by the legislature.—Suits in behalf of the state for the forfeiture of the charters of private corporations chartered by act of the legislature, shall be commenced in the district court of the county in which the seat of government may be. (Acts 1876, p. 312, sec. 2.)

22. Forfeiture of charters, under general incorporation law, for certain purposes.—Suits brought by the state for the purpose of forfeiting the charter of a private corporation, organized under the laws of this state, and for the purpose of canceling the permit authorizing a foreign corporation to transact business in this state, and for the purpose of restraining corporations from exercising powers not conferred upon them by the laws of this state, and for the purpose of preventing persons from engaging in business in the state of Texas, contrary to the laws thereof, may be instituted in the proper court of the county in which the seat of government may be. (Acts 1903, p. 118.)

23. Suits to set aside fraudulent alienations of lands granted to railway companies.—Suits on behalf of the state to forfeit land fraudulently or colorably alienated by railway companies in fraud of the rights of the state, under the laws granting lands to railway companies, shall be brought in the county in which the seat of government may be. (Const., art. 14, sec. 5.)

24. Private corporations, associations, etc.—Suits against any private corporation, association or joint stock company may be commenced in any county in which the cause of action, or a part thereof, arose, or in which such corporation, association or company has an agency or representative, or in which its principal office is situated. And suits against a railroad corporation, or against any assignee, trustee or receiver operating its railway, may also be brought in any county through or into which the railroad of such corporation extends or is operated. Suits against receivers of persons and corporations may also be brought as provided for in article 2147. (Acts 1874, p. 31; P. D. 6011f, 6011h; Act to adopt and establish R. C. S., passed Feb. 21, 1879; Acts 1887, p. 122.)

See Townes' Texas Pleading (2d Ed.) p. 332; G., C. & S. F. Ry. v. Foster, 44 S. W. 198; Gay Ranch Co. v. Rowland, 50 S. W. 1086; Lask v. Morris Co. Bk., 54 S. W. 806; G. B. & K. C. Ry. v. T. & N. O. Ry., 64 S. W. 692; G. W. T. & P. Ry. v. Browne, 66 S. W. 341; Ry. v. Weatherby, 92 S. W. 58; Mangum v. Lane, etc., Co., 95 S. W. 605; Galveston Shoe & Hat Co. v. Rowe, 109 S. W. 1101; Floresville Oil & Mfg. Co. v. Texas Refining Co., 118 S. W. 194; Padgitt v. Ft. Worth & R. G. Ry. Co., 136 S. W. 442; St. Louis & S. F. R. Co. v. Kiser, 136 S. W. 852; Planters' Cotton Oil Co. v. Whitesboro Cotton Oil Co., 146 S. W. 225; Kell Milling Co. v. Bank of Miami, 155 S. W. 325; Texas Moline Plow Co. v. Biggerstaff, 185 S. W. 341; Texas Kalamazoo Silo Co. v. Alley, 191 S. W. 774; Mitchell v. Porter, 194 S. W. 981; Cuero Cotton Oil & Mfg. Co. v. Feeders' Supply Co., 203 S. W. 79; Baker-Hanna & Co. v. Kempner, 204 S. W. 350; Cummer Mfg. Co. v. Lilly, 204 S. W. 1010; Garrett v. J. A. Hughes Grain Co., 208 S. W. 758.

25. Suits for damages against two or more railroads, etc., companies or receivers, etc.—Whenever any passenger, freight, baggage or other property has been transported by two or more railroad companies, express companies, steamship or steamboat companies, transportation companies, or common carriers of any kind or name whatsoever, or by any assignee, lessee, trustee or receiver thereof, or partly by one or more such companies, or common carriers, and partly by one or more assignees, lessees, trustees or receivers thereof, operating or doing business as such common carriers in this state, or having agents or representatives in this state, suit for damage, or loss, or for any other cause of action arising out of such carriage, transportation or contract in relation thereto, may be brought against any one or all of such common carriers, assignees, lessees, trustees or receivers so operating or doing business in this state, or having agents or representatives in this state, in any court of competent jurisdiction, in any county in which either of such common carriers, assignees, lessees, trustees or receivers operates or does business, or has an agent or representative; provided, however, that, if damages be recovered in such suits against more than one defendant not partners in such carriage, transportation or contract, the same shall, on request of either party, be apportioned between the defendants, by the verdict of the jury, or, if no jury is demanded, then by the judgment of the court. (Acts 1899, p. 214; Acts 1905, p. 29.)

See post art. 1862; Ry. v. Still, 61 S. W. 980; Ry. v. Jones, 62 S. W. 1075; Ry. v. Cushing, 64 S. W. 795; Ry. v. Middleton, 65 S. W. 378; Ry. v. Lynch, 75 S. W. 486; Ry. v. White & Co., 76 S. W. 947; Ry. v. Murtishaw, 78 S. W. 953; Ry. v. Forbis, 79 S. W. 1074; Ry. v. White & Co., 80 S. W. 77; Ry. v. Pitts & Son, 83 S. W. 727; Ry. v. Dolan, 85 S. W. 302; Ry. v. Bumpas, 85 S. W. 1046; Ry. v. Williams, 86 S. W. 38; Ry. v. Allen, 87 S. W. 168; Ry. v. Wester, 96 S. W. 769; Ry. v. Marrs, 101 S. W. 1177; Texas Cent. R. Co. v. McCall, 166 S. W. 925; Gulf, C. & S. F. Ry. Co. v. King, 174 S. W. 960; Ft. Worth & D. C. Ry. Co. v. Kemp, 207 S. W. 605.

26. Suits for personal injuries, against railroad corporations, assignees, receivers, etc.—All suits against railroad corporations, or against any assignee, trustee or receiver operating any railway in the state of Texas, for damages arising from personal injuries, resulting in death or otherwise, shall be brought either in the county in which the injury occurred, or in the county in which the plaintiff resided at the time of the injury; provided, that if the defendant railroad corporation does not run or operate its railway in, or through, the county in which the plaintiff resided at the time of the injury, and has no agent in said county, then said suit shall be brought either in the county in which the injury occurred, or in the county nearest that in which the plaintiff resided at the time of the injury, in which the defendant corporation runs or operates its road, or has an agent; and provided, further, that, in case that the plaintiff is a non-resident of the state of Texas, then such suit may be brought in any county in which the defendant corpo-

ration may run or operate its railroad, or may have an agent; provided, that, when an injury occurs within one-half mile from the boundary line dividing two counties, suit may be brought in either of said counties. (Acts 1901, p. 31.)

See Ry. v. Lynch, 75 S. W. 486; Ry. v. Rogers, 82 S. W. 822; Ry. v. Elder, 99 S. W. 856; Pecos & N. T. Ry. Co. v. Thompson, 167 S. W. 801; Texas & P. Ry. Co. v. Conway, 182 S. W. 52; St. Louis Southwestern Ry. Co. of Texas v. Smitha, 190 S. W. 237.

27. Mechanics, laborers and operatives for their wages.—Suits by mechanics, laborers and operatives, for their wages due by railroad companies, may be instituted and prosecuted in any county in this state where such labor was performed, or in which the cause of action, or part thereof, accrued, or in the county in which the principal office of such railroad company is situated; and, in all such suits, service of process may be made in the manner now required by law. (Acts 1879, p. 8.)

See Townes' Texas Pleading (2d Ed.) p. 343.

28. Foreign, private or public corporations, etc.—Foreign, private or public corporations, joint stock companies or associations, not incorporated by the laws of this state, and doing business within this state, may be sued in any court within this state having jurisdiction over the subject matter, in any county where the cause of action, or a part thereof, accrued, or in any county where such company may have an agency or representative, or in the county in which the principal office of such company may be situated; or, when the defendant corporation has no agent or representative in the state, then in the county where the plaintiffs, or either of them, reside. (Acts 1887, p. 131.)

See Townes' Texas Pleading (2d Ed.) p. 343; McCord-Collins, etc., Co. v. Levi, 50 S. W. 606; T. & P. Ry. v. Edmisson, 52 S. W. 635; Lask v. Morris Co. Bk., 54 S. W. 806; Westinghouse, etc., Co. v. Troell, 70 S. W. 324; Ry. v. Weatherby, 92 S. W. 58; Bay City Iron Wks. v. Reeves & Co., 95 S. W. 739; Southern Pac. Co. v. Godfrey, 107 S. W. 1135; Coca Cola Co. v. Allison, 113 S. W. 308; Southern Pac. Co. v. Blake, 128 S. W. 668; St. Louis & S. F. R. Co. v. Kiser, 136 S. W. 852; Indiana & Ohio Live Stock Ins. Co. v. Krenek, 144 S. W. 1181; Mitchell v. Porter, 194 S. W. 981.

29. Fire, marine, life and accident insurance companies.—Suits against fire, marine or inland insurance companies may also be commenced in any county in which any part of the insured property was situated; and suits against life and accident insurance companies or associations may also be commenced in the county in which the persons insured, or any of them, resided at the time of such death or injury. (Acts 1874, p. 107; P. D. 6011f.)

30. Venue prescribed by particular law.—Whenever, in any law authorizing or regulating any particular character of action, the venue is expressly prescribed, the suit shall be commenced in the county to which jurisdiction may be so expressly given. (Act Dec. 10, 1863; P. D. 1423.)

See generally Sayles' Practice, pp. 24, 243, 248, 250-280, 777, 934, 945; Townes' Texas Pleading (2d Ed.) p. 345; T. & P. Ry. v. Hornbeck, 39 S. W. 564; Alamo F. Ins. Co. v. Hetherington, 39 S. W. 958; Seley v. Whitfield, 46 S. W. 865; Middleton v. Pipkin, 56 S. W. 240; Harrold v. S., 71 S. W. 407; Nat. Bk. of Beeville v. Bk. of Cuero, 77 S. W. 240; Pearson v. West, 77 S. W. 944; Karner v. Ross, 95 S. W. 46; Paine v. Carpenter, 111 S. W. 430; Dickson v. Scharff, 142 S. W. 980; International Travelers' Ass'n v. Branum, 169 S. W. 389; Commonwealth Bonding & Casualty Ins. Co. v. Bowles, 192 S. W. 611; Holcomb v. Williams, 194 S. W. 631; Mitchell v. Porter, 194 S. W. 981.

See generally for decisions under article 1830, Ward v. Odem, 153 S. W. 634; Beckwith v. Powers, 157 S. W. 177; Theodore Keller Co. v. Mangum, 161 S. W. 19; Sublett v. Hurst, 164 S. W. 448; Durango Land & Timber Co. v. Shaw, 165 S. W. 490; Anderson, Clayton & Co. v. Terry, 167 S. W. 1; Rhome Milling Co. v. Cunningham, 171 S. W. 1081; Crowell Independent School Dist. v. First Nat. Bank of Benjamin, 174 S. W. 878; Hillyer-Deutsch Lumber Co. v. Clark, 185 S. W. 1038; Roaring Springs Independent School Dist. v. McAbee, 187 S. W. 431; San Antonio Life Ins. Co. v. Trammell, 188 S. W. 718; Graves v. McCollum & Lewis, 193 S. W. 217; Hull v. First Guaranty State Bank of Overton, 199 S. W. 1148; Griffith v. Gohlman, Lester & Co., 200 S. W. 233; Houston & T. C. R. Co. v. City of Ennis, 201 S. W. 256; Reliance Life Ins. Co. v. Robinson, 202 S. W. 354; Slaughter v. Oakes, 203 S. W. 405; Cummer Mfg. Co. v. Kellam Bros., 203 S. W. 463; Browne Grain Co. v. Walker, 206 S. W. 859.

Art. 1831. Issuing process and taking depositions, no waiver of plea; use of deposition; cause transferred when; costs.—Issuing process for witnesses and taking depositions shall not constitute a waiver of a plea of privilege, but depositions taken in such case may be read in evidence in any subsequent suit between the same parties concerning the same subject-matter in like manner as if taken in such subsequent suit. (Acts 1907, p. 248.)

Art. 1832. If plea sustained, no dismissal, but transfer.—If a plea of privilege is sustained, the cause shall not be dismissed, but the court shall transfer said cause to the court having jurisdiction of the person of the defendant therein; and the costs incurred prior to the time such suit is filed in the court to which said cause is transferred shall be taxed against the plaintiff. (Id.)

Stevens v. Polk County, 123 S. W. 618; McCoy v. Pafford, 150 S. W. 968; Holmes v. Coalson, 178 S. W. 628; Dalhart Ice & Electric Co. v. Tinsley, 180 S. W. 619; Roaring Springs Independent School Dist. v. McAbee, 187 S. W. 431; Hinkle v. Thompson, 195 S. W. 311; Camp v. Gourley, 201 S. W. 671.

Art. 1833. When plea sustained, order changing venue, record transmitted.—Whenever a plea of privilege to the venue, to be sued in some other county than the county in which the suit is pending, shall be sustained, the court shall order the venue to be changed to the proper court of the county having jurisdiction of the parties and the cause; and the clerk shall make up a transcript of all the orders made in said cause, certifying thereto officially under the seal of the court, and transmit the same, with the original papers in the cause, to the clerk of the court to which the venue has been changed; provided, that nothing herein shall prevent an appeal from the judgment of the court sustaining a plea of privilege. (Id.)

Stevens v. Polk County, 123 S. W. 618; Harris Millinery Co. v. Bryan, 125 S. W. 999; Moorhouse v. King County Land & Cattle Co., 139 S. W. 883; McCoy v. Pafford, 150 S. W. 968; Holmes v. Coalson, 154 S. W. 661; Hickman v. Swain, 167 S. W. 209; Woelfel v. McKean, Eilers & Co., 175 S. W. 476; Holmes v. Coalson, 178 S. W. 628; Dalhart Ice & Electric Co. v. Tinsley, 180 S. W. 619; Hinkle v. Thompson, 195 S. W. 311; Camp v. Gourley, 201 S. W. 671.

Art. 1834. (1195) (1199) When water course or highway is county boundary.—In all cases where any part of a river, water course, highway, road or street shall be the boundary line between two counties, the several courts of each of said counties shall have concurrent jurisdiction in all cases

over such parts of said river, water course, highway, road or street as shall be the boundary of such county, in the same manner as if such parts of said river, water course, highway, road or street were within the body of such county. (Acts 1846, May 11; P. D. 1421.)

See Sayles' Practice, p. 278.

CHAPTER FIVE

PARTIES TO SUITS

Art. 1835. (1196) (1200) Suits by and against counties, cities, etc.—All suits brought by or against any of the counties or incorporated cities, towns or villages shall be by or against it in its corporate name. (Act Aug. 30, 1876; P. D. 1045.)

See Townes' Texas Pleading (2d Ed.) p. 232; Sayles' Practice, pp. 24, 164, 165.

Art. 1836. (1197) (1201) Suits by executors, etc.—Suits for the recovery of personal property, debts or damages, and suits for title or for the possession of lands, or for any right attached to, or growing out of, the same, or for any injury or damage done thereto, may be instituted by executors, administrators or guardians appointed in this state, in like manner as they could have been by their testator or intestate; and judgment in such cases shall be as conclusive as if rendered in favor of, or against, such testator or intestate; but such judgment may be set aside by any person interested for fraud or collusion on the part of such executor or administrator. (Acts 1846, p. 363, sec. 44; P. D. 1447.)

See post art. 3235; Townes' Texas Pleading (2d Ed.) p. 247; Herron's Probate Guide, pp. 69, 70; Sayles' Practice, pp. 24, 177.

Art. 1837. (1198) (1202) Suits for land against decedents.—In every suit against the estate of a decedent involving the title to real estate, the executor or administrator, if any, and the heirs shall be made parties defendant. (Acts 1870, p. 141, sec. 229; P. D. 5697.)

See Sayles' Practice, pp. 24, 179.

Art. 1838. (1199) (1203) Suits for injuries resulting in death.—In cases arising under the provisions of title 70, relating to injuries resulting in death, the parties entitled thereto may bring their suit for such damages as provided in said title.

See post arts. 4698, 4699; Sayles' Practice, pp. 24, 216.

Art. 1839. (1200) (1204) Suits for wife's separate property.—The husband may sue either alone or jointly with his wife for the recovery of any separate property of the wife; and, in case he fail or neglect so to do, she may, by the authority of the court, sue for such property in her own name. (Acts 1840, p. 3, sec. 9; P. D. 4636.)

See post art. 4621; Sayles' Practice, pp. 24, 169; Speer's Marital Rights, p. 560; Townes' Texas Pleading (2d Ed.) p. 249; Schwalst v. Neely, 50 S. W. 608; Bishop v. Gestean, 136 S. W. 1141; Texarkana Telephone Co. v. Burge, 192 S. W. 807.

Art. 1840. (1201) (1205) Against husband and wife, for necessaries, etc.—The husband and wife shall be jointly sued for all debts contracted by the wife for necessaries furnished herself or children, and for all expenses which may have been incurred by the wife for the benefit of her separate property. (Acts 1848, p. 77, sec. 4; P. D. 4643.)

See post art. 4624; Simkins' Contracts and Sales (3d Ed.) p. 489; Sayles' Practice, pp. 24, 173; Speer's Marital Rights, p. 573.

Art. 1841. (1202) (1206) For wife's debts, etc.—The husband and wife shall also be jointly sued for all separate debts and demands against the wife, but, in such case, no personal judgment shall be rendered against the husband. (Id. p. 363, sec. 41; P. D. 9.)

See Speer's Marital Rights, p. 576; Sayles' Practice, pp. 24, 173; Bute v. Brainerd, 53 S. W. 1017; Tannehill v. Tannehill, 171 S. W. 1050.

Art. 1842. (1203) (1207) Several obligors to any contract may be joined, but, etc.—The acceptor of any bill of exchange, or any other principal obligor in any contract, may be sued either alone or jointly with any other party who may be liable thereon; but no judgment shall be rendered against such other party not primarily liable on such bill or other contract, unless judgment shall have been previously, or shall be at the same time, rendered against such acceptor or other principal obligor, except where the plaintiff may discontinue his suit against such principal obligor as hereinafter provided. (Acts 1846, p. 363, secs. 4, 45, 46; 1840, p. 144, sec. 6; P. D. 1426, 1448-9, 225; amended on revision, 1879.)

See post art. 1897; Sayles' Practice, pp. 24, 167, 233; Provident Nat. Bk. v. Hartnett Co., 97 S. W. 689; Webb v. Gregory, 108 S. W. 478; Milmo Nat. Bank v. Cobbs, 115 S. W. 345; Breed v. Higginbotham Bros. & Co., 141 S. W. 164; Middleton v. Nibling, 142 S. W. 968; Elliott v. First State Bank of Ft. Stockton, 152 S. W. 808; Dunn v. Home Nat. Bank, 181 S. W. 699; Carver Bros. v. Merrett, 184 S. W. 741; Slaughter v. Morton, 185 S. W. 905; Garrett v. Dodson, 199 S. W. 675; Parlin & Orendorff Implement Co. v. Frey, 200 S. W. 1143; Dodd v. W. T. Rawleigh Co., 203 S. W. 131; Snyder v. Slaughter, 208 S. W. 974.

Art. 1843. (1204) (1208) Parties conditionally liable may be sued, when.—The assignor, indorser, guarantor and surety upon any contract, and the drawer of any bill which has been accepted, may be sued without the necessity of previously, or at the same time, suing the maker, acceptor or other principal obligor, when he resides beyond the limits of the state, or in such part of the same that he can not be reached by the ordinary process of law, or when his residence is unknown and cannot be ascertained by the use of reasonable diligence, or when he is dead, or actually or notoriously insolvent.

Art. 1844. (1204) (1208) Sheriff, constable, etc., sued for damages, may make indemnitors parties, etc.—Whenever a sheriff, constable or a deputy of either, has been sued for damages for any act done in his official character, and has taken an indemnifying bond for such acts so done by him, upon which said act a suit for damages is based, the said sheriff, constable or his deputy shall have the right to make the parties, principal and surety on such bond of indemnity, parties defendant in such suit for damages, and the cause may be continued for the purpose of obtaining service on such parties so made in said cause. (Id.; Act 1885, p. 90.)

See post art. 6335; Sayles' Practice, pp. 24, 169, 188, 222, 389, 804; Miller v. Sullivan, 35 S. W. 362; Shropshire v. Smith, 37 S. W. 470; Parlin & Orendorff Co. v. Cantrell, 40 S. W. 416; Smith v. Ojerholm, 44 S. W. 41; Williams v. Planters & Mechanics Nat. Bank of Houston, 45 S. W. 690; Bopp v. Hansford, 45 S. W. 744; Muenster v. Tremont Nat. Bank, 46 S. W. 277; Smith v. Richardson Lbr. Co., 49 S. W. 574; Strickland v. Sandmeyer, 52 S.

W. 87; Smith v. Ojerholm, 53 S. W. 341; M. K. & T. Ry. v. Starr, 55 S. W. 393; Acers v. Acers, 56 S. W. 196; Scalfi & Co. v. State, 73 S. W. 441; Bank v. Robertson, 86 S. W. 643; Wilson v. Dickey, 133 S. W. 437; First Nat. Bank of Midland v. Powell, 149 S. W. 1096.

Art. 1845. (1205) Sureties on official bonds, when joined.—In any suit brought by the State of Texas, or any county of said State, or any city, or any independent school district of said state against any officer, who has held an office for more than one term, or against any depository which has been such depository for more than one term, or has given more than one official bond, the sureties on each and all such bonds may be joined as defendants in one and the same suit, whenever it is alleged in the petition that it is difficult to determine when the default sued for occurred and which set of sureties on such official bonds is liable therefor. (Acts 1891, p. 86; Acts 1919, ch. 19, sec. 1.)

See Sayles' Practice, pp. 24, 187; Hawkes v. Robertson, 40 S. W. 548.

Art. 1846. (1206) When different officials and their bondsmen may be joined.—In any suit by the state of Texas upon the official bond of any state officer, any subordinate officer who has given bond, payable either to the state or to such superior officer, to cover the default sued for, or any part thereof, together with the sureties on his official bond, may be joined as defendants in one and the same suit with such superior officer and his bondsmen whenever it is alleged in the petition that both of such officers are liable for the money sued for, to the end that all equities may be adjusted between them in one suit. (Acts 1891, p. 86.)

See Sayles' Practice, pp. 24, 187.

Art. 1847. (1207) Suit in the name of the state for the use of others.—Whenever any official bond is made payable to the state of Texas, or any officer thereof, and a recovery thereon is authorized by, or would inure to the benefit of, parties other than the state, suit may be instituted on such bond in the name of the state alone for the benefit of all parties entitled to recover thereon. (Id.)

Art. 1848. (1208) (1209) Additional parties may be brought in, when.—Before a case is called for trial, additional parties may, when they are necessary or proper parties to the suit, be brought in by proper process, either by the plaintiff or the defendant, upon such terms as the court may prescribe; but such parties shall not be brought in at such a time or in such a manner as unreasonably to delay the trial of the case.

See Sayles' Practice, pp. 24, 221; Townes' Texas Pleading, p. 290; Reed v. Coffey, 40 S. W. 1027; Ry. v. McKnight, 89 S. W. 755; Mugg & Dryden v. Ry., 91 S. W. 876; Carder v. Johnson, 109 S. W. 944; Coleman v. Garvin, 158 S. W. 185; Adams v. First Nat. Bank of Waco, 178 S. W. 993; Ferrell-Michael Abstract & Title Co. v. McCormac, 184 S. W. 1081; Grand Lodge Colored K. P. of Texas v. Cleo Lodge No. 222, Colored K. P., 189 S. W. 764.

For provisions authorizing unincorporated joint stock companies or associations to sue and be sued in their company names, see title "Partnerships—Limited" and "Joint Stock Companies."

Art. 1849. (1209) (1210) Parties may appear by attorney.—Any party to a suit may appear and prosecute or defend his rights therein, either in person or by an attorney of the court.

See Sayles' Practice, pp. 24, 218; Harkins v. Murphy & Bolanz, 112 S. W. 136.

For provisions as to the appointment of attorney to defend suit by publication where no answer is filed, etc., and as to appointment of guardian ad litem for minors, lunatics, etc., see articles 1941 and 1942.

CHAPTER SIX

PROCESS AND RETURNS

Art. 1850. (1212) (1213) Citation to issue, when.—When a petition shall be filed with the clerk, and the other regulations hereinafter prescribed shall be complied with, it shall be his duty to issue forthwith a writ of citation for the defendant. (Acts 1854, p. 53, sec. 9; P. D. 1430.)

See Sayles' Practice, pp. 27, 283, 289, 775; Williams v. Sapieha, 61 S. W. 115; Tyler v. Blanton, 78 S. W. 564; Brummer v. Moran, 102 S. W. 474; Friend v. Thomas, 187 S. W. 986.

Art. 1851. (1213) (1214) One citation to each county where there is a defendant.—If there be several defendants, residing in different counties, one citation shall issue to each of such counties.

See Sayles' Practice, pp. 27, 290.

Art. 1852. (1214) (1215) Citation shall contain what.—Such citation shall be directed to the sheriff or any constable of the county where the defendant is alleged to reside or be, and shall command him to summon the defendant to appear and answer the plaintiff's petition at the next regular term of the court, stating the time and place of holding the same. It shall state the date of the filing of the plaintiff's petition, the file number of the suit, the names of all the parties and the nature of the plaintiff's demand, and shall contain the requisites prescribed in article 2180; provided that where under the law it is necessary to accompany such citation with a certified copy of plaintiff's petition it shall not be necessary for the citation to state the nature of plaintiff's demand. (Acts 1854, p. 53, sec. 9; 1846, p. 363, sec. 10; 1866, p. 199, sec. 1; P. D. 1430–31; revision April, 1879; Acts 1919, ch. 124, sec. 1.)

See Sayles' Practice, pp. 290, 296; Dunn v. Hughes, 36 S. W. 1084; Guinan v. City of Waco, 54 S. W. 611; Valdez v. Cohen, 56 S. W. 375; Leavitt v. Brazelton, 66 S. W. 465; McAnally v. Vickry, 79 S. W. 858; Carson Bros. v. McCord-Collins Co., 84 S. W. 391; Medlin v. Seidman, 88 S. W. 250; Mut. L. Ins. Co. of N. Y. v. Uecher, 101 S. W. 872; Carlton v. Mayner, 103 S. W. 411; Duke v. Spiller, 111 S. W. 787; Unknown owner v. S., 118 S. W. 803; Crenshaw v. Hempel, 130 S. W. 731; Hodges v. S., 165 S. W. 613; Browder v. Memphis Independent School Dist., 180 S. W. 1077; Friend v. Thomas, 187 S. W. 986; Simms v. Miears, 190 S. W. 544; Simms v. Miears, 192 S. W. 623; Smith v. Buckholts State Bank, 193 S. W. 730; Hoff v. Clark, 200 S. W. 431; Sypert v. Rogers Lumber Co., 201 S. W. 1102; Bridges v. Hollifield, 208 S. W. 756.

Generally (Acts 1852-1864) see Beaumont, S. L. & W. Ry. Co. v. Daniel, 186 S. W. 383.

Art. 1853. (1215) (1216) Defendant out of county to have copy of petition.—Where the defendant is to be served without the county in which the suit is pending, a certified copy of the plaintiff's petition shall accompany the citation; and, should there be more than one defendant to be served without the county, a certified copy of the petition shall be made out for each of them.

See Sayles' Practice, pp. 27, 297; White v. Rowlett, 34 S. W. 151; Pruitt v. S., 49 S. W. 366; Delaware, etc., Construction Co. v. Bank of Gilmer, 77 S. W. 628; Tyler v. Blanton, 78 S. W. 564; Bickford v. Refugio Land & Irrigation Co., 143 S. W. 1188.

Art. 1854. (1216) (1217) Citation where sheriff is a party.—Where it appears

from the petition that the sheriff is a party to the suit, or is interested therein, the citation shall be addressed to any constable of his county. (Acts 1846, p. 363, sec. 21; P. D. 1437.)

See Sayles' Practice, pp. 27, 298.

Art. 1855. (1217) (1218) Duty of officer receiving citation.—It shall be the duty of the sheriff or constable to whom any citation shall be delivered to indorse thereon the day and hour on which he received it, and to execute and return the same without delay. (Id. sec. 14; P. D. 1433.)

See Sayles' Practice, p. 299.

Art. 1856. (1218) (1219) Service of citation within the county.—Unless the process should otherwise direct, the citation shall be served, if within the county in which the suit is pending, by the officer executing it delivering to the defendant, or, if there be more than one, then to each defendant in person, a true copy of the citation.

See Sayles' Practice, pp. 297, 300, 935; Moore v. McClure, 64 S. W. 810; Scott v. Ray, 141 S. W. 1002.

Art. 1857. (1219) (1220) Service without the county.—If served without the county in which the suit is pending, the officer shall also deliver to the defendant and each of them, in person, the certified copy of the petition accompanying the citation. (Acts 1846, p. 363, sec. 14; P. D. 1433.)

See Tyler v. Blanton, 78 S. W. 564; Brummer v. Moran, 102 S. W. 474; Sayles' Practice, pp. 27, 297, 935.

Art. 1858. (1220) (1221) Citation in suits against counties.—In suits against any county, the citation shall be served on the county judge of such county. (Id. p. 320, sec. 5; P. D. 1048.)

See Sayles' Practice, pp. 27, 301; Townes' Texas Pleading (2d Ed.) p. 232.

Art. 1859. (1221) (1222) Against cities, towns, etc.—In suits against any incorporated city, town or village, the citation may be served on the mayor, clerk, secretary or treasurer thereof. (Acts 1854, p. 53, sec. 9; P. D. 1430.)

See Sayles' Practice, pp. 27, 301.

Art. 1860. (1222) (1223) Against incorporated companies and joint stock associations.—In suits against an incorporated company or joint stock association, the citation may be served on the president, secretary or treasurer of such company or association, or upon the local agent representing such company or association in the county in which suit is brought, or by leaving a copy of the same at the principal office of the company during office hours; provided, that if the president, secretary or treasurer does not either of them reside in the county in which suit is brought, and such company or association has no agent in the county in which suit is brought, then the citation may be served upon any agent representing such company or association in the state; and, in suits against receivers of railroad companies, service may be had upon the receiver, upon the general or division superintendent, or upon any agent of the receiver who resides in the county in which suit it [is] brought; provided, that, if there be no agent of the receiver in the county in which suit is brought, then service may be had upon any agent of the receiver in the state. (Acts 1903, p. 66; Acts 1874, p. 32, sec. 2; 1874, p. 10, sec. 2; 1854, p. 53, sec. 9; Id. p. 55, sec. 4; P. D. 1430, 4888; 1887, p. 122, sec. 9.)

See Sayles' Practice, p. 301; Ry. v. Kelly, 83 S. W. 855; Webb v. Texas Christian University, 107 S. W. 86; Latham Co. v. J. M. Radford Grocery Co., 117 S. W. 909; American Nat. Ins. Co. v. Rodriguez, 152 S. W. 871; Miller v. First State Bank & Trust Co. of Santa Anna, 184 S. W. 614.

Art. 1861. (1223) Foreign corporations, how served.—In any suit against a Foreign, Private or Public Corporation, Joint Stock Company or Association, or Acting Corporation or Association, citation or other process may be served on the President, Vice-President, Secretary or Treasurer, or General Manager, and in any such suit upon any cause of action arising within the State of Texas citation or other process may also be served upon any local or traveling agent, or traveling salesman, within the State, of such Corporation, Joint Stock Company or Association, or acting Corporation or Association. (Acts 1885, p. 79; Acts 1919, ch. 115, sec. 1.)

See Sayles' Practice, pp. 27, 304; Frick Co. v. Wright, 55 S. W. 608; Westinghouse Mfg. Co. v. Troell, 70 S. W. 324; Western Cottage Piano & Organ Co. v. Anderson, 79 S. W. 516; Wm. Cameron & Co. v. Jones, 90 S. W. 1129; Bay City Iron Wks. v. Reeves & Co., 95 S. W. 739; Latham Co. v. J. M. Radford Grocery Co., 117 S. W. 909; Werner Stave Co. v. Smith, 120 S. W. 247; El Paso & S. W. Co. v. Chisholm, 180 S. W. 156.

Art. 1862. In suits against foreign corporations, cumulative mode.—Service may be had on foreign corporations, having agents in this state, in addition to the means now provided by law, by serving citation upon any train conductor who is engaged in handling trains for two or more railway corporations, whether said railroad corporations are foreign or domestic corporations, if said conductor handles trains over foreign or domestic corporations' track across the state line of Texas, and on the track of a domestic railway corporation within the state of Texas, or upon any agent who has an office in Texas, and who sells tickets or makes contracts for the transportation of passengers or property over any line of railway or part thereof, or steamship or steamboat of any such foreign corporation or company. For the purpose of obtaining service of citation on foreign railway corporations, conductors who are engaged in handling trains, and agents engaged in the sale of tickets or the making of contracts for the transportation of property, as described in this article, are hereby designated as agents of said foreign corporations or companies upon whom citation may be served. (Acts 1905, p. 30, sec. 2.)

See R'y v. Wester, 96 S. W. 769; see ante, art. 1830.

Art. 1862a. Service on foreign railway corporations.—Service may be had on foreign railway corporations in addition to the means now provided by law by serving citation upon any train conductor who is engaged in handling trains for two or more railway corporations where one of said railway corporations is a foreign railway corporation and the other railway corporation is a domestic corporation, if said conductor handles and operates trains over such foreign and domestic corporations' tracks across the State line of Texas, and on the track of the domestic corporation within the State of Texas, or upon any agent who has an office in Texas who sells tickets or makes contracts for the transportation of passen-

gers or property over any line of railway, or part thereof, of such foreign railway corporation or company. (Acts 1919, ch. 156, sec. 1.)

Art. 1862b. Same subject.—For the purpose of obtaining service of citation on foreign railway corporations, conductors who are engaged in handling trains and employed by a foreign railway corporation and a domestic corporation, and who operate such trains across the State line of Texas, and agents engaged in the selling of tickets or making contracts for the transportation of property, as described in Section 1 of this Act [Art. 1862a], are hereby designated as agents of such foreign railway corporations or companies upon whom citation may be had. (Id. sec. 2.)

Art. 1863. (1224) (1224) Against partners.—In suits against partners, the citation may be served upon one of the firm; and such service shall be sufficient to authorize a judgment against the firm and against the partner actually served. (Acts 1858, p. 110, sec. 2; P. D. 1514.)

See Sayles' Practice, pp. 27, 304; Blumenthal v. Youngblood, 59 S. W. 290; Owen v. Kuhn, Loeb & Co., 72 S. W. 432; Scalfi & Co. v. S., 73 S. W. 441; Wright Bros. v. Leonard, 183 S. W. 780; Miller v. First State Bank & Trust Co. of Santa Anna, 184 S. W. 614.

Art. 1864. (1225) (1225) Return of citation.—The return of the officer executing the citation shall be indorsed on, or attached to, the same; it shall state when the citation was served and the manner of service, conforming to the command of the writ, and shall be signed by him officially. (Acts 1848, p. 106, sec. 11; P. D. 1507.)

See Sayles' Practice, pp. 27, 306; Frick Co. v. Wright, 55 S. W. 608; Robinson v. Horton, 81 S. W. 1044; Miller v. Davis, 180 S. W. 1140; Friend v. Thomas, 187 S. W. 986.

Art. 1865. (1226) (1226) Return of citation not served.—When the citation has not been served, the return shall show the diligence used by the officer to execute the same and the cause of failure to execute it, and where the defendant is to be found, in so far as he has been able to ascertain.

See Sayles' Practice, pp. 27, 307.

Art. 1866. (1227) (1227) Alias process.—When any process has not been returned, or has been returned without service, or has been improperly served, it shall be the duty of the clerk, upon the application of any party to the suit, his agent or attorney, to issue other process to the same or any other county, as the party applying may direct. (Acts 1846, p. 363, sec. 19; P. D. 1435.)

See Sayles' Practice, pp. 27, 307.

Art. 1867. (1228) (1228) Time of service of citation.—The citation shall be served before the return day thereof; and, in order to compel the defendant to plead at the return term of the court, the citation must be served at least ten days before the first day of such return term, exclusive of the days of service and return. (Acts 1891, p. 94.)

See Sayles' Practice, pp. 27, 308, 413.

Art. 1868. (1229) (1229) Same subject.—If the citation be issued too late, or if it can not be served at least ten days befor the first day of such return term, exclusive of the days of service and return, the officer to whom it is delivered shall nevertheless proceed to serve the same at any time before the return day thereof; and such service shall compel the defendant to plead at the next succeeding term of the court. (Id.)

See Sayles' Practice, pp. 27, 308, 413.

Art. 1868a. Time of answer in suit against soldier or sailor.—If the citation issued be served upon a defendant after he is an enlisted sailor or soldier of the United States, he shall not be required to answer to the merits of the demand during the time he is actively engaged as a sailor or a soldier in the war between the United States and Germany; provided that he shall be required to make such answer within a period of ninety days from the signing of a treaty of peace between the United States and Germany or after being discharged from service, provided that the date and place of enlistment of the defendant, and the name of the command in which he is serving, shall be proved by sworn answer or otherwise to the court within ninety days from the date of service, and in either of such events, the cause shall remain upon the docket during the period of the war, unless the defendant shall agree by written answer that the cause may be taken up and disposed of sooner, and provided that the provisions of this Act shall apply only to such soldier and sailor defendants as are, in the discretion of the trial court, necessary parties defendant to the pending litigation, and then only to such debts as were contracted by such soldier or sailor prior to his enlistment or draft into the army or navy of the United States. (Acts 1917, 3d C. S. ch. 5, sec. 1.)

Art. 1869. (1230) (1230) Citation to defendant without state.—Where the defendant is absent from the State, or is a non-resident of the State, the clerk shall, upon the application of any party to the suit, his agent or attorney, address a notice to the defendant requiring him to appear and answer the plaintiff's petition at the time and place of holding court, naming such time and place. Its style shall be, "The State of Texas," and it shall give the date of the filing of the petition, the file number of the suit, the names of all the parties and shall state that a copy of the plaintiff's petition accompanies the notice, but such notice shall not be required to state plaintiff's cause of action. It shall be dated and filed, and attested by the clerk, with the seal of the court impressed thereon; and the date of its issuance shall be noted thereon; a certified copy of the plaintiff's petition shall accompany the notice. (Acts 1875, p. 170, sec. 2; Acts 1919, ch. 136, sec. 1.)

See Sayles' Practice, pp. 27, 309; Townes' Texas Pleading (2d Ed.) p. 45; Galloway v. State Nat. Bk. of Ft. Worth, 56 S. W. 236; Donovan v. Hinzie, 60 S. W. 994; Barber Supply Co. v. Freeze, 74 S. W. 303; Carpenter v. Anderson, 77 S. W. 291; Perry-Rice Grocery Co. v. Craddock Grocery Co., 78 S. W. 966; L. & N. Ry. v. M. K. & T. Ry., 88 S. W. 413; Ry. v. Emerson, 49 S. W. 1105; Wm. Cameron & Co. v. Jones, 90 S. W. 1129; Bilby v. Rodgers, 125 S. W. 616; McCanless v. Gray, 153 S. W. 174; Baker v. Hahn, 161 S. W. 443; Givens v. Givens, 195 S. W. 877; Mann v. Brown, 201 S. W. 438.

Art. 1870. (1231) (1231) By whom served.—Such notice may be served by any disinterested person competent to make oath of the fact. (Acts 1875, p. 170, sec. 2.)

Art. 1871. (1232) (1232) Service in such cases.—Service in such cases shall be made by the person executing the same de-

livering to the defendant in person a true copy of such notice, together with the certified copy of the plaintiff's petition accompanying the same. (Id.)

Art. 1872. (1233) (1233) Return of such service.—The return of service in such cases shall be indorsed or attached to the original notice; it shall state when the same was served and the manner of service, and shall be signed and sworn to by the party making such service before some officer authorized by the laws of this state to take affidavits; and such affidavit shall be certified under the hand and official seal of such officer. (Id.)

See L. & N. Ry. v. M. K. & T. Ry., 88 S. W. 413; McCanless v. Gray, 153 S. W. 174.

Art. 1873. (1234) (1234) Effect of such service.—Where a defendant has been served with such notice, he shall be required to appear and answer in the same manner and under the same penalties as if he had been personally served with a citation within this state.

See Wilson v. Nat. Bk. of Cleburne, 63 S. W. 1067; McCanless v. Gray, 153 S. W. 174; Grubbs v. Marple, 185 S. W. 597.

Art. 1874. (1235) (1235) Citation by publication.—Where any party to a suit, his agent or attorney, shall make oath at the time of the institution of such suit, or at any time during its progress that any party defendant therein is a non-resident of the State, or that he is absent from the State, or that he is a transient person, or that his residence is unknown to affiant, the clerk shall issue a citation for such defendant, addressed to the sheriff or any constable of the county in which such suit is pending. Such citation shall contain a brief statement of the cause of action, and shall command the officer to summon the defendant by making publication of such citation in some newspaper published in his county, if there be a newspaper published therein, but if not, then in the nearest county where a newspaper is published, once in each week for four consecutive weeks previous to the return day thereof. (Acts 1848, p. 106, sec. 13; Acts 1875, p. 170, sec. 1; Acts 1879, ch. 96, p. 103; P. D. 25; Acts 1917, ch. 13, sec. 1; Acts 1919, ch. 109, sec. 1.)

See Sayles' Practice, pp. 27, 318-322, 775; Borden v. City of Houston, 62 S. W. 426; Netzorg v. Geven, 62 S. W. 789; Humphrey v. Beaumont Inv. Co., 93 S. W. 180; McCanless v. Gray, 153 S. W. 174; Odom's Unknown Heirs v. Crews, 163 S. W. 366; Mabee v. McDonald, 175 S. W. 676; Gordon v. Reeder, 202 S. W. 983.

Art. 1875. (1236) (1236) For unknown heirs or stockholders of defunct corporation.—Where any property of any kind in this State may have been granted or may have accrued to the heirs as such, of any deceased person, or to the stockholders of any defunct corporation, any party having a claim or cause of action against them relative to such property, if their names be unknown to him, may bring his suit or action against them, their heirs or legal representatives, describing them as the heirs of such ancestor, naming him or unknown stockholder of such corporation and if the plaintiff, his agent, or attorney shall make oath at the time of the institution of such suit, or at any time during its progress that the names of such heirs or stockholders are unknown to the affiant, the clerk shall issue a citation for such heirs or stockholders, addressed to the sheriff or any constable of the county in which such suit is pending. Such citation shall contain a brief statement of the cause of action, and shall command the officer to summon the defendant by making publication of such citation in some newspaper published in his county, if there be a newspaper published therein, but if not, then in the nearest county where a newspaper is published, once in each week for four consecutive weeks previous to the return day thereof. Provided that in cases of citation by publication as provided for in this and in the foregoing articles, it shall not be necessary to state in the citation the details and particulars of the cause of action; provided that in suits by publication involving land it shall be sufficient in making the brief statement of the cause of action in such citations to state the kind of suit, the number of acres of land involved in the suit, or the number of the lot and block of any other plat description that may be of record if the land is situated in a city or town, the survey on which the land is situated, the county in which said land is situated, and the special pleas, if any, which are relied upon in such suit. (Acts 1866, p. 125, sec. 1; Acts 1848, p. 106, sec. 26; P. D. 5460, 26; Acts 1917, ch. 13, sec. 2; Acts 1919, ch. 109, sec. 2.)

See Sayles' Practice, pp. 182, 320-322; Cates v. Alston's Heirs, 61 S. W. 979; Blaske v. Settegast, 123 S. W. 220; Houston Oil Co. of Texas v. Davis, 132 S. W. 808; Hopkins v. Cain, 143 S. W. 1145; Gibson v. Oppenheimer, 154 S. W. 694; Perez v. Maverick, 202 S. W. 199.

Art. 1876. (1237) (1237) Citation by publication to contain same requisites as other writs.—The citations provided for in the two preceding articles shall contain the requisites prescribed in article 2180. (Revision 1879.)

See articles 1941 and 2175.

Art. 1877. (1264) (1264) Publication of citation in suits involving title to land.—In all suits involving the title to land, wherein service of citation is by publication, the publication of citation shall be made in the county in which the land is situated; provided, there be a newspaper published in such county, and if there be no newspaper published in such county, then in the county nearest to the county wherein the land is situated. (Acts 1909, S. S. p. 324; Acts 1846, p. 363, sec. 12.)

See Sayles' Practice, pp. 323, 413; Reed v. Brewer, 37 S. W. 418; Cockrell v. S., 55 S. W. 579; Houston Oil Co. of Texas v. Davis, 132 S. W. 808.

Art. 1878. (1238) (1238) Return of citation by publication.—The return of the officer executing such citation shall be indorsed or attached to the same, and shall show when the citation was executed and the manner thereof, specifying the dates of such publication, shall be accompanied by a printed copy of such publication, and shall be signed by him officially.

See Sayles' Practice, p. 323; Maury v. Keller, 53 S. W. 59; Hopkins v. Cain, 143 S. W. 1145.

Art. 1879. (1239) (1239) Mistake in return may be corrected.—Any mistake or informality in a return may be corrected by the officer at any time under the direction of the court. (Acts 1846, p. 363, sec. 18; P. D. 53.)

See Sayles' Practice, p. 311; Fleming v. Pringle, 51 S. W. 553; R'y v. Kelly, 83 S. W. 855; Brewster v. S., 88 S. W. 858; Delaware Ins. Co. v. Hutto, 159 S. W. 73.

Art. 1880. (1240) (1240) Acceptance of service of process.—The defendant may accept service of any process, or waive the issuance or service thereof by a written memorandum signed by him or by his duly authorized agent or attorney, and filed among the papers of the cause; and such waiver or acceptance shall have the same force and effect as if the citation had been issued and served as provided by law. (Acts 1846, p. 363, secs. 12, 13; P. D. 1508, 1432.)

See post art. 2008; Sayles' Practice, pp. 26, 27, 82, 311; Binyon v. Smith, 112 S. W. 138.

Art. 1881. (1241) (1241) Entering appearance in open court.—The defendant may, in person, or by attorney, or by his duly authorized agent, enter an appearance in open court; and such appearance shall be noted by the judge upon his docket and entered in the minutes, and shall have the same force and effect as if citation had been duly issued and served as provided by law. (Id.)

See Tammen v. Schaefer, 101 S. W. 468; Sayles' Practice, pp. 312, 1245; F. T. Ramsey & Son v. Cook, 151 S. W. 346.

Art. 1882. (1242) (1242) Answer constitutes appearance.—The filing of an answer shall constitute an appearance of the defendant so as to dispense with the necessity for the issuance or service of citation upon him. (Id.)

See Sayles' Practice, pp. 82, 312; Western, etc., Organ Co. v. Anderson, 79 S. W. 516; Harris Millinery Co. v. Melcher, 142 S. W. 100; Houston & T. C. R. Co. v. Walker, 167 S. W. 199; National Equitable Society of Belton v. Tennison, 174 S. W. 978; Smith v. First Nat. Bank of Waco, 187 S. W. 233; Arnold v. Pike, 191 S. W. 207.

Art. 1883. (1243) (1243) Motion constitutes appearance, when.—Where the citation, or service thereof, is quashed on motion of the defendant, the case may be continued for the term, but the defendant shall be deemed to have entered his appearance to the succeeding term of the court.

See Sayles' Practice, pp. 82, 313; St. Louis & S. F. R. Co. v. Blocker, 138 S. W. 156; F. T. Ramsey & Son v. Cook, 151 S. W. 346; Kelly v. A. B. Crouch Grain Co., 174 S. W. 630.

Art. 1884. (1244) (1244) Reversal of judgment on appearance.—Where the judgment is reversed on appeal or writ of error taken by the defendant for the want of service, or because of defective service of process, no new citation shall be issued or served, but the defendant shall be presumed to have entered his appearance to the term of the court at which the mandate shall be filed.

See Sayles' Practice, pp. 82, 314.

Art. 1885. (1245) (1245) No judgment without service of process, etc.—No judgment shall, in any case, be rendered against any defendant unless upon service, or acceptance, or waiver of process, or upon an appearance by the defendant, as prescribed in this chapter, except where otherwise expressly provided by law. (Acts 1846, p. 65, sec. 18.)

See Sayles' Practice, pp. 82, 315.

CHAPTER SEVEN

ABATEMENT AND DISCONTINUANCE OF SUIT

Art. 1886. (1246) (1246) Suit not to abate where plaintiff dies, if, etc.—Where in any suit the plaintiff shall die before verdict, if the cause of action be one which survives, the suit shall not abate by reason of such death, but the executor or administrator, and if there be no administration, and no necessity therefor, then the heir of such deceased plaintiff may appear, and, upon a suggestion of such death being entered of record, in open court, may be made plaintiff in such suit, and the suit shall proceed in his name. (Acts 1846, p. 363, sec. 38; P. D. 6.)

See Townes' Texas Pleading (2d Ed.) p. 650 et seq.; Sayles' Practice, pp. 28, 331; Yarbrough v. De Martin, 67 S. W. 177; Beck v. Avondino, 50 S. W. 207; Kelly v. Rochelle, 93 S. W. 164; Lowrey v. Haynes, 98 S. W. 1068; Parriss v. Jewell, 122 S. W. 399; McAllen v. Crafts, 166 S. W. 3.

Art. 1887. (1247) (1247) Scire facias to executor, etc.—If, upon such death, no such appearance and suggestion be made at the first term of the court thereafter, it shall be the duty of the clerk, upon the application of the defendant, his agent or attorney, to issue a scire facias for the executor, administrator or heir of such decedent requiring him to appear and prosecute such suit; and if, after service of such scire facias as required in the case of citations, such executor, administrator or heir shall not enter his appearance on or before the appearance day of the succeeding term of the court, the defendant may, on motion, have the suit discontinued. (Id.)

See Sayles' Practice, p. 332; Beck v. Avondino, 50 S. W. 207; McAllen v. Crafts, 166 S. W. 3.

Art. 1888. (1248) (1248) Death of defendant.—Where in any suit the defendant shall die before verdict, if the cause of action be one which survives, the suit shall not abate by reason of such death, but, upon a suggestion of such death being entered of record in open court, or upon a petition of the plaintiff, representing that fact, being filed with the clerk, it shall be his duty to issue a scire facias for the executor or administrator, and, in a proper case, for the heir of such deceased defendant, requiring him to appear and defend the suit; and, upon the return of such service, the suit shall proceed against such executor, administrator or heir, and such judgment may be rendered therein as may be authorized by law. (Id. sec. 39; P. D. 7.)

See Herron's Probate Guide, p. 89; Sayles' Practice, p. 332; Nixon v. Malone, 98 S. W. 380; Taylor v. Ullmann, Stern & Krause, 188 S. W. 746; Lauraine v. Ashe, 191 S. W. 563; Williams v. Harris, 193 S. W. 403.

Art. 1889. (1249) (1249) Where executor, etc., dies.—Where an executor or administrator shall be a party to any suit, whether as plaintiff or defendant, and shall die or cease to be such executor or administrator before verdict, the suit shall not thereby abate, but may be continued by or against the person succeeding him in the administration, or by or against the heir, where there is no administration and no necessity therefor, upon like proceedings being had as provided in the two preceding articles, or the suit may be discontinued, as provided in article 1882 (1887). (P. D. 6, 7.)

See post art. 3721; Sayles' Practice, p. 333; Magness v. Berry, 69 S. W. 987.

Art. 1890. (1250) (1250) Surviving parties.—Where there are two or more plaintiffs or defendants, and one or more of them die, if the cause of action survive to the surviving plaintiffs and against the surviving defendants, the suit shall not abate by reason of such death, but, upon suggestion of such death being entered upon the rec-

ord, the suit shall, at the instance of either party, proceed in the name of the surviving plaintiffs or against the surviving defendants, as the case may be. (Id. sec. 36; P. D. 4.)

See Townes' Texas Pleading (2d Ed.) p. 656; Sayles' Practice, p. 333.

Art. 1891. (1251) (1251) Death between verdict and judgment.—Where in any suit either party shall die between verdict and judgment, the judgment shall be entered as if both parties were living. (Id. sec. 37; P. D. 5; Revision, 1879.)

See Sayles' Practice, p. 334.

Art. 1892. (1252) (1252) Marriage of plaintiff feme sole.—A suit instituted by a feme sole shall not abate by her marriage; but, upon a suggestion of such marriage being entered on the record, the husband may make himself a party to such suit and prosecute the same as if he and his wife had been originally plaintiffs in such suit. (Id. sec. 40; P. D. 8.)

See Sayles' Practice, pp. 172, 334; Speer's Marital Rights, pp. 555, 559; Ry. v. Wright, 75 S. W. 565.

Art. 1893. (1253) (1253) Marriage of defendant feme sole.—A suit instituted against a feme sole shall not abate by her marriage, but, upon a suggestion of such marriage being entered on the record, in open court, or upon a petition representing that fact being filed with the clerk, it shall be his duty to issue a scire facias to the husband of such defendant; and upon the return thereof executed, the husband shall be made a party to such suit, and it shall proceed as if such husband and wife had originally been defendants in such suit. (Id. sec. 41; P. D. 9.)

See Speer's Marital Rights, p. 559; Sayles' Practice, p. 335.

Art. 1894. (1254) (1254) Suit to the use of another.—When a plaintiff, suing for the use of another person shall die before verdict, the person for whose use such suit was brought, upon such death being suggested on the record in open court, may prosecute the suit in his own name, and shall be responsible for costs in the same manner as he would have been had the suit been commenced by him. (Id. sec. 42; P. D. 10.)

See Sayles' Practice, p. 335.

Art. 1895. (1255) (1255) Death of party to suit for injuries resulting in death.—In cases arising under the provisions of title 70, the suit shall not abate by the death of either party pending the suit, but in such case, if the plaintiff dies, where there is only one plaintiff, some one or more of the parties entitled to the money recovered may be substituted and the suit prosecuted to judgment in the name of such party or parties, for the benefit of the persons entitled; if the defendant dies, his executor, administrator or heir may be made a party, and the suit prosecuted to judgment as provided for in previous articles of this chapter. (Acts 1860, p. 32, sec. 4; P. D. 18.)

See post arts. 4701-4703.

Art. 1896. (1256) (1256) Where some of defendants not served.—Where there are several defendants in a suit, and some of them are served with process in due time and others not so served, the plaintiff may either discontinue as to those not so served and proceed against those that are, or he may continue the suit until the next term of the court and take new process against those not served; and no defendant against whom any suit may be so discontinued shall be thereby exonerated from any liability under which he was, but may at any time be proceeded against as if no such suit had been brought and no such discontinuance entered. (Acts 1846, p. 363, sec. 45; P. D. 1448.)

See Sayles' Practice, pp. 28, 338, 390; Welch v. Phelps & Bigelow Windmill Co., 37 S. W. 175; Scalfi & Co. v. S., 73 S. W. 441; Scalfi v. Graves, 74 S. W. 795; Webb v. Gregory, 108 S. W. 478; Varn v. Arnold Hat Co., 124 S. W. 693.

Art. 1897. (1257) (1257) Discontinuance as to principal obligor.—Where a suit is discontinued as to a principal obligor, no judgment can be rendered therein against an indorser, guarantor, surety or drawer of an accepted bill who is jointly sued, unless it is alleged and proven that such principal obligor resides beyond the limits of the state, or in such part of the same that he can not be reached by the ordinary process of law, or that his residence is unknown and can not be ascertained by the use of reasonable diligence, or that he is dead or actually or notoriously insolvent. (Id.; P. D. 1449, 1426, 225.)

See ante art. 1842; Sayles' Practice, pp. 167, 333; Welch v. Phelps, etc., Windmill Co., 37 S. W. 175; Muenster v. Tremont Nat. Bk., 46 S. W. 277; Id., 49 S. W. 362; Patterson v. Walker, 135 S. W. 612; Breed v. Higginbotham Bros. & Co., 141 S. W. 164; First Nat. Bank of Merkel v. Thurmond, 159 S. W. 164; Garrett v. Dodson, 199 S. W. 675; Snyder v. Slaughter, 208 S. W. 974.

Art. 1898. (1258) (1258) Discontinuance in vacation.—The plaintiff may enter a discontinuance on the docket in vacation, in any suit wherein the defendant has not answered, on the payment of all costs that have accrued thereon. (Id. sec. 28; P. D. 1440.)

See Townes' Texas Pleadings, p. 663; Sayles' Practice, p. 339; Williams v. Williams, 38 S. W. 261; Seeligson v. Gifford, 103 S. W. 416; Hill v. Patterson, 191 S. W. 621.

Art. 1899. (1259) (1259) Discontinuance as to defendants served, etc.—The court may permit the plaintiff to discontinue his suit as to one or more of several defendants who may have been served with process, or who may have answered when such discontinuance would not operate to the prejudice of the other defendants; but no such discontinuance shall, in any case, be allowed as to a principal obligor, except in the cases provided for in article 1897.

See Sayles' Practice, p. 339; Scalfi & Co. v. S., 73 S. W. 441; Scalfi v. Graves, 74 S. W. 795; Breed v. Higginbotham Bros. & Co., 141 S. W. 164; Hill v. Patterson, 191 S. W. 621.

Art. 1900. (1260) (1260) Discontinuance when defendant has filed counter claim.—Where the defendant has filed a counter claim seeking affirmative relief, the plaintiff shall not be permitted, by a discontinuance of his suit, to prejudice the right of the defendant to be heard on such counter claim.

See ante art. 1327; Sayles' Practice, pp. 340, 354, 578; Townes' Texas Pleading (2d Ed.) p. 664; Williams v. Williams, 38 S. W. 261; Wetsell v. Hopkins, 67 S. W. 1075; Blank v. Robertson, 78 S. W. 564; Cooksey v. Jordan, 140 S. W. 1175; United Motor Dallas Co. v. Hendricks, 168 S. W. 878; Apache Cotton Oil & Mfg. Co. v. Watkins & Kelly, 189 S. W. 1083; Hill v. Patterson, 191 S. W. 621.

Art. 1901. (1261) (1261) Requisites of scire facias and returns.—The scire facias and returns thereon, provided for in this chapter, shall conform to the requisites

of citations and the returns thereon, under the provisions of chapter six of this title.

See Sayles' Practice, p. 344.

CHAPTER EIGHT

PLEADINGS OF THE DEFENDANT

Art. 1902. Answer may include several matters; due order of pleading; general denial.—The defendant in his answer may plead as many several matters, whether of law or fact, as he shall think necessary for his defense, and which may be pertinent to the cause; provided, that he shall file them all at the same time and in due order of pleading; provided, that a general denial of matters pleaded by the adverse party which are not required to be sworn to shall be sufficient to put the same in issue. (Acts 1846, p. 363, sec. 29; P. D. 1441; Acts 1913, p. 256, sec. 4; Acts 1915, ch. 101, sec. 4.)

See Townes' Texas Pleading (2d Ed.) p. 514 et seq.; Cranfill v. Hayden, 55 S. W. 805; Wallace v. First Nat. Bk., etc., 65 S. W. 180; Pyron v. Graef, 72 S. W. 101; R'y v. Lynch, 73 S. W. 65; Hoffman v. Lemm, 106 S. W. 712; Collin County Nat. Bank v. Turner, 111 S. W. 670; Harris Millinery Co. v. Melcher, 142 S. W. 100; Garner v. Jamison, 162 S. W. 940; Howard's Unknown Heirs v. Skolant, 162 S. W. 978; Pugh v. Werner, 166 S. W. 698; Page v. Vaughan, 173 S. W. 541; Spencer v. Levy, 173 S. W. 550; Order of Aztecs v. Noble, 174 S. W. 623; R. R. Dancy & Co. v. Rosenberg, 174 S. W. 831; Hovey v. Sanders, 174 S. W. 1025; Day v. Cooper, 175 S. W. 485; Texarkana & Ft. S. Ry. Co. v. Rea, 180 S. W. 945; American Mfg. Co. v. O. C. Frey Hardware Co., 180 S. W. 956; Cooney v. Eastman, 183 S. W. 96; Mutual Film Corporation v. Morris & Daniel, 184 S. W. 1060; Rexall Drug Co. v. Butler Bros., 185 S. W. 989; Galveston & W. Ry. Co. v. City of Galveston, 186 S. W. 368; Thomas v. Kean, 190 S. W. 847; Houston & T. C. R. Co. v. City of Ennis, 201 S. W. 256.

Art. 1903. Requisites of plea of privilege; prima facie proof; controverting plea by plaintiff; service; hearing; appeal.—A plea of privilege to be sued in the county of one's residence shall be sufficient, if it be in writing and sworn to, and shall state that the party claiming such privilege was not, at the institution of such suit, nor at the time of the service of such process thereon, nor at the time of filing such plea, a resident of the county in which such suit was instituted and shall state the county of his residence at the time of such plea, and that none of the exceptions to the exclusive venue in the county of one's residence mentioned in Article 1830 or Article 2308 of the Revised Statutes exist in said cause; and such plea or privilege when filed shall be prima facie proof of the defendant's right to change of venue. If, however, the plaintiff desires to controvert the plea of privilege, he shall file a controverting plea under oath, setting out specifically the fact or facts relied upon to confer venue of such cause on the court where the cause is pending. Upon the filing of such controverting plea the judge or the justice of the peace shall note on same a time for a hearing on the plea of privilege; provided, however, that the hearing thereon shall not be had until a copy of such controverting plea, including a copy of such notation thereon, shall have been served on each defendant, or his attorney, for at least ten full days exclusive of the day of service and day of hearing. If the parties agree upon a date for such hearing it shall not be necessary to serve the copy above provided for. Either party may appeal from the judgment sustaining or overruling the plea of privilege, and if the judgment is one sustaining the plea of privilege and an appeal is taken, such appeal shall suspend the transfer of the venue and a trial of the cause pending the final determination of such appeal. (Acts 1907, p. 248; Acts 1917, ch. 176, sec. 1.)

Stevens v. Polk County, 123 S. W. 618; Beckwith v. Powers, 157 S. W. 177; Anderson, Clayton & Co. v. Terry, 167 S. W. 1; Holmes v. Coalson, 178 S. W. 628; Dalhart Ice & Electric Co. v. Tinsley, 180 S. W. 619; Gensberg v. Neely, 187 S. W. 247; J. M. Radford Grocery Co. v. Flynn, 202 S. W. 332; Lucid v. McDowell, 206 S. W. 203; Morrison v. Richards, 207 S. W. 205; Ray v. W. W. Kimball Co., 207 S. W. 351; Harris v. Moller, 207 S. W. 961; Cecil v. Fox, 208 S. W. 954; Murphy v. Dabney, 208 S. W. 981.

Art. 1904. (1263) (1263) Answer to be filed, when.—In all cases in which the citation has been personally served at least ten days before the first day of the term to which it is returnable, exclusive of the day of service and return, the answer of the defendant shall be filed in the county and district courts, on or before the second day of the return term, and before the call of the appearance docket on said second day. (Acts 1846, p. 363, secs. 10, 12; Acts 1876, p. 22, sec. 18; P. D. 1506, 1508; Acts 1891, p. 94; Acts 1893, p. 31.)

See Sayles' Practice, p. 413; Western Union Telegraph Co. v. Skinner, 128 S. W. 715.

Art. 1905. (1264) (1264) Answer in cases of citation by publication.—In all cases in which service of citation has been made by publication, the answer shall be filed on or before the appearance day of the term to which the citation is made returnable, the same as in cases of personal service. (Acts 1846, p. 363, sec. 12; Acts 1909, S. S. p. 324; Acts 1917, ch. 14, sec. 1.)

Art. 1906. (1265) (1265) Certain pleas to be verified by affidavit.—An answer setting up any of the following matters, unless the truth of the pleadings appear of record, shall be verified by affidavit:

1. That the suit is not commenced in the proper county.

2. That the plaintiff has not legal capacity to sue.

3. That the plaintiff is not entitled to recover in the capacity in which he sues.

4. That there is another suit pending in this state between the same parties for the same cause of action.

5. That there is a defect of parties, plaintiff or defendant.

6. A denial of partnership as alleged in the petition, whether the same be on the part of the plaintiff or defendant.

7. That the plaintiff or the defendant, alleged in the petition to be duly incorporated, is not duly incorporated as alleged.

8. A denial of the execution by himself or by his authority of any instrument in writing, upon which any pleading is founded, in whole or in part, and charged to have been executed by him or by his authority, and not alleged to be lost or destroyed. Where such instrument in writing is charged to have been executed by a person then deceased, the affidavit will be sufficient if it state that the affiant has reason to believe and does believe that such instrument was not executed by the decedent or by his authority.

9. A plea denying the genuineness of the

indorsement or assignment of a written instrument, as required by article 588.

10. That a written instrument upon which a pleading is founded is without consideration, or that the consideration of the same has failed in whole or in part.

11. That an account which is the foundation of the plaintiff's action, and supported by an affidavit, is not just; and, in such case, the answer shall set forth the items and particulars which are unjust. (Act to adopt and establish R. C. S., passed Feb. 21, 1879.)

12. That the contract sued upon is usurious. (Acts 1846, p. 363, sec. 31; P. D. 1, Id. sec. 52; P. D. 228, Id. sec. 88; P. D. 1444, Id. sec. 30; P. D. 1442, Id. sec. 86; P. D. 1443; Acts 1840, p. 144, sec. 5; P. D. 224; Acts 1874, p. 52, sec. 1; P. D. 6829c; Acts 1883, p. 4.)

See post arts. 3712, 4983; Sayles' Practice, pp. 223, 281, 456, 458; First Nat. Bk. of Wamego, Kan., v. Oliver, 41 S. W. 414; Lindley v. Nunn, 42 S. W. 311; Willis & Bro. v. Smith, 43 S. W. 325; Laux v. Laux, 50 S. W. 213; Warren v. Gentry, 50 S. W. 1025; Hunt v. Siemers, 53 S. W. 387; Jones v. Meyer Bros. Drug Co., 61 S. W. 553; Irwin v. Bexar Co., 63 S. W. 550; Adams v. Ry., 79 S. W. 79; Waggoner v. Snody, 82 S. W. 356; Young v. Meredith, 85 S. W. 32; State Nat. Bk. v. Stewart, 88 S. W. 295; Ry. v. Seale, 89 S. W. 997; Ry. v. Parks, 90 S. W. 343; Bateman v. Ward, 93 S. W. 508; Bolden v. Hughes, 107 S. W. 91; Clymer v. Terry, 109 S. W. 1129; Baggett v. Sheppard, 110 S. W. 952; Kaack v. Stanton, 112 S. W. 702; McCormick v. Jester, 115 S. W. 278; Missouri, K. & T. Ry. Co. of Texas v. Allen, 115 S. W. 1179; Steely v. Texas Improvement Co., 119 S. W. 319; International & G. N. R. Co. v. Wynne, 122 S. W. 50; International & G. N. R. Co. v. Bradt, 122 S. W. 59; Western Union Telegraph Co. v. Douglass, 133 S. W. 877; Dalton v. Dalton, 143 S. W. 241; Ginners' Mut. Underwriters of San Angelo, Tex., v. Wiley & House, 147 S. W. 629; A. S. Cameron Steam Pump Works v. Lubbock Light & Ice Co., 147 S. W. 717; Casey v. Texarkana & Ft. S. Ry. Co., 151 S. W. 856; American Loan & Mortgage Co. v. Bangle, 153 S. W. 662; Commercial Bank of Chicotah, Okl., v. First State Bank & Trust Co. of Santa Anna, 153 S. W. 1175; Kirby Lumber Co. v. Cunningham, 154 S. W. 288; Anderson v. St. Louis, B. & M. Ry. Co., 156 S. W. 358; Sovereign Camp Woodmen of the World v. Ruedrich, 158 S. W. 170; Webb v. Reynolds, 160 S. W. 152; Houston & T. C. R. Co. v. Corsicana Fruit Co., 170 S. W. 849; El Paso & Southwestern Co. v. La Londe, 173 S. W. 890; Green v. Hoppe, 175 S. W. 1117; Quanah, A. & P. Ry. Co. v. R. D. Jones Lumber Co., 178 S. W. 858; Browne v. McGuire, 181 S. W. 479; Teel v. Brown, 185 S. W. 319; Tyler Box & Lumber Mfg. Co. v. City Nat. Bank of Paris, 185 S. W. 352; Royal Neighbors of America v. Heard, 185 S. W. 882; Schaff v. Nash, 193 S. W. 469; Sayles v. First State Bank & Trust Co. of Abilene, 199 S. W. 823; Smith v. Smith, 200 S. W. 540; Iowa City State Bank v. Milford, 200 S. W. 883; North American Dredging Co. of Nevada v. S., 201 S. W. 1065; Davis v. White, 207 S. W. 679; Webb v. Reynolds, 207 S. W. 914.

Art. 1907. (1266) (1266) Plea of payment, counter claim, etc.—In every action in which a defendant shall desire to prove any payment, counter claim or set-off, he shall file with his plea an account stating distinctly the nature of such payment, counter claim or set-off, and the several items thereof; and, on failure to do so, he shall not be entitled to prove the same, unless it be so plainly and particularly described in the plea as to give the plaintiff full notice of the character thereof. (Acts 1840, p. 62, sec. 2; P. D. 3444.)

See Simpkins' Equity (2d Ed.) p. 845; Townes' Texas Pleading (2d Ed.) p. 422; Michigan Stove Co. v. Michigan Hdw. Co., 58 S. W. 734; Scott v. Texas Constr. Co., 55 S. W. 37; Henderson v. Johnson, 55 S. W. 35; Wooley v. Bell, 68 S. W. 71; Horvets v. Dunman, 102 S. W. 462; Richey Grocery Co. v. Warnell, 103 S. W. 419; Ajax-Grieb Rubber Co. v. Hubbard, 181 S. W. 568; Hudgins Produce Co. v. J. R. Beggs & Co., 185 S. W. 339; Watts v. McCloud, 205 S. W. 381.

Art. 1908. (1267) (1267) General denial need not be repeated.—Where the defendant has pleaded the general denial, and the plaintiff shall afterward amend his pleading, it shall not be necessary for the defendant to plead such denial a second time, but such original denial shall be presumed to extend to all matters subsequently set up by the plaintiff.

See Townes' Texas Pleading (2d Ed.) p. 532 et seq.

Art. 1909. (1268) (1268) Pleas to be filed in due order, etc.—Pleas shall be filed in the due order of pleading, and shall be heard and determined in such order under the direction of the court. (Acts 1846, p. 363, sec. 32; P. D. 2.)

See Pryor v. Jolly, 40 S. W. 960; Weekes v. Sunset Brick & Tile Co., 56 S. W. 243; St. Louis, S. F. & T. Ry. Co. v. Seale, 148 S. W. 1099; J. D. Fields & Co. v. Allison, 171 S. W. 274; San Antonio Drug Co. v. Red Cross Pharmacy, 199 S. W. 324; Houston & T. C. R. Co. v. City of Ennis, 201 S. W. 256.

Art. 1910. (1269) (1269) Certain pleas to be determined during the term at which filed.—Pleas to the jurisdiction, pleas in abatement, and other dilatory pleas and demurrers, not involving the merits of the case, shall be determined during the term at which they are filed, if the business of the court will permit. (Id. sec. 33; P. D. 3.)

See Sayles' Practice, p. 421; Chatham Machinery Co. v. Smith, 44 S. W. 592; Aldridge v. Webb, 46 S. W. 224; Weeks v. Sunset Brick & Tile Co., 56 S. W. 243; Darrah v. McKay, 56 S. W. 611; Watson v. Mirike, 61 S. W. 538; Puckett v. Page, 100 S. W. 346; McCormick v. Jester, 115 S. W. 278; Waldrep v. Roquemore, 127 S. W. 248; Pecos & N. T. Ry. Co. v. Thompson, 140 S. W. 1148; Harris Millinery Co. v. Melcher, 142 S. W. 100; St. Louis, S. F. & T. Ry. Co. v. Seale, 148 S. W. 1099; Smith v. First Nat. Bank of Waco, 187 S. W. 233; San Antonio Drug Co. v. Red Cross Pharmacy, 199 S. W. 324; Houston & T. C. R. Co. v. City of Ennis, 201 S. W. 256.

CHAPTER NINE

CHANGE OF VENUE

Art. 1911. (1270) (1270) By consent of parties.—The court may, upon the written consent of the parties thereto, or their attorneys, filed with the papers of the cause by an order entered on the minutes, transfer the same for trial to the court of any other county having jurisdiction of the subject matter of such suit. (Acts 1876, p. 25, sec. 1.)

See Sayles' Practice, p. 347; Townes' Texas Pleading (2d Ed.) p. 359; Jones v. Bourbonnais, 60 S. W. 986; Tammen v. Schaefer, 101 S. W. 468; Merchants' Reciprocal Underwriters of Dallas v. First Nat. Bank of Canadian, 192 S. W. 1098.

Art. 1912. (1271) (1271) Granted on application, when.—A change of venue may be granted in any civil cause upon application of either party, supported by his own affidavit and the affidavit of at least three credible persons, residents of the county in which the suit is pending, for any of the following causes:

1. That there exists in the county where the suit is pending so great a prejudice against him that he can not obtain a fair and impartial trial.

2. That there is a combination against him instigated by influential persons, by reason of which he cannot expect a fair and impartial trial.

3. For other good and sufficient cause, to

be determined by the court. (Acts 1874, p. 67, sec. 1; P. D. 5885a.)

See Sayles' Practice, p. 347; Townes' Texas Pleading (2d Ed.) p. 359; Trimble v. Burroughs, 95 S. W. 614; Freeman v. Ortiz, 136 S. W. 113; Crawford v. Wellington Railroad Committee, 174 S. W. 1004.

Art. 1913. (1272) (1272) Shall be granted, unless, etc.—Where application for a change of venue is made in conformity to the requirements of the preceding article, the same shall be granted, unless the credibility of the persons making the application for a change of venue, or their means of knowledge, or the truth of the facts set out in the said application, are attacked by the affidavit of a credible person; and, if such application is thus attacked, the issue thus formed shall be tried by the judge, and the application granted or refused, as the law and the facts shall warrant. (Id. sec. 4; P. D. 5885d; Acts 1893, p. 2.)

See Sayles' Practice, p. 347; Townes' Texas Pleading (2d Ed.) p. 359; T. A. Robertson & Co. v. Russell, 111 S. W. 205; Freeman v. Ortiz, 136 S. W. 113; Sands v. Sedwick, 174 S. W. 894; Crawford v. Wellington Railroad Committee, 174 S. W. 1004; Wolnitzek v. Lewis, 183 S. W. 819; Stewart v. Patterson, 204 S. W. 768.

Art. 1914. (1273) (1273) To what county.—Upon the grant of a change of venue, as provided in the two preceding articles, the cause shall be removed to some adjoining county, the court house of which is nearest to the court house of the county in which the suit is pending, unless it be made to appear in the application that such nearest county is subject to some objection sufficient to authorize a change of venue therefrom in the first instance; but the parties may, by consent, agree that it shall be changed to some other county, and the order of court shall conform to such agreement. (Id. sec. 2; P. D. 5885b.)

See Townes' Texas Pleading (2d Ed.) p. 359 et seq.; T. A. Robertson & Co. v. Russell, 111 S. W. 205.

Art. 1915. (1274) (1274) In case of new counties.—Where a suit may be pending in the district or county court of any county, out of the territory of which a new county has been, or may be hereafter, made, in whole or in part, if the defendants, or any one of them, shall file a motion in the court where such suit is pending, to transfer the same to such new county, naming it, together with an affidavit stating that neither he nor any one of the defendants now resides in the territorial limits of the county where such suit is pending, and that neither he nor any one of the defendants resided in said territorial limit at the time of the institution of such suit, and shall further swear that at the date of the filing of such suit, said defendant was a resident citizen within the territorial limits of the new county, the court shall grant a change of venue to such new county, unless the suit could be properly brought in the county in which the same is pending under some provision of article 1830. (Acts 1876, p. 74, sec. 1.)

See Townes' Texas Pleading (2d Ed.) p. 366.

Art. 1916. (1275) (1275) Duty of clerk on change of venue.—When an order for a change of venue has been granted by the court, the clerk shall immediately make out a correct transcript of all the orders made in said cause, certifying thereto officially under the seal of the court, and transmit the same, with the original papers in the cause, to the clerk of the court to which the venue has been changed.

See Bunker 2444.

CHAPTER TEN

CONTINUANCE

Art. 1917. (1276) (1276) Continuance not to be granted, except, etc.—No application for a continuance shall be heard before the defendant files his defense, nor shall any continuance be granted except for sufficient cause supported by affidavit, or by consent of the parties, or by operation of law. (Acts 1848, p. 106, sec. 15; P. D. 1509.)

See Sayles' Practice, pp. 30, 389, 394; G. C. & S. F. R'y v. Brown, 75 S. W. 807; Miller v. Burgess, 154 S. W. 591; International & G. N. Ry. Co. v. Jones, 175 S. W. 488.

Art. 1918. (1278) (1278) Application for continuance, requisites of.—On applying for a continuance, if the ground of such application be the want of testimony, the party applying therefor shall make affidavit that such testimony is material, showing the materiality thereof, and that he has used due diligence to procure such testimony, stating such diligence, and the cause of failure, if known; that such testimony can not be procured from any other source; and, if it be for the absence of a witness, he shall state the name and residence of the witness, and what he expects to prove by him; and he shall also state that the continuance is not sought for delay only, but that justice may be done; provided, that, on a first application for continuance, it shall not be necessary to show that the absent testimony can not be procured from any other source. (Acts 1897, p. 117; Acts 1873, p. 58; Acts 1848, p. 109; P. D. 1509.)

See Sayles' Practice, pp. 390, 398, 400, 402-407; E. Tex. L. & I. Co. v. Tex. Lbr. Co., 52 S. W. 645; Ins. Co. of North Am. v. Wicker, 55 S. W. 740; Patton v. Williams, 79 S. W. 357; Sullivan-Sanford Lumber Co. v. Cooper, 126 S. W. 35; City of San Antonio v. Stevens, 126 S. W. 666; Clay County Oil & Pipe Line Co. v. Markowitz, 139 S. W. 924; Pease v. S., 155 S. W. 657; Wauhop v. Sauvage's Heirs, 159 S. W. 185; Kansas City Southern Ry. Co. v. Carter, 166 S. W. 115; St. Louis Southwestern Ry. Co. of Texas v. Williams, 170 S. W. 1069; McKinnon v. Porter, 192 S. W. 1112.

Art. 1919. (1279) (1279) Business not disposed of continued by operation of law.—If from any cause the court shall not be held at the time prescribed by law, or if the business before the court be not determined before the adjournment thereof, such business, of whatsoever nature, remaining undetermined, shall stand continued until the next succeeding term of the court. (Acts 1846, p. 363, sec. 95; P. D. 1462.)

See Sayles' Practice, pp. 30, 391; Crosby v. Di Palma, 141 S. W. 321.

Art. 1919a. Death of judge not to adjourn term; recess; motions; bills of exceptions, etc.—That where any judge of any district or county court shall die during the session of court that has been duly convened for the term, and the time provided by statute for holding said court be not expired, the death of said judge shall not operate to adjourn said court for the term, but said court shall be deemed at recess for not exceeding six days, and if the successor to the deceased judge be not appointed or elected by proper authorities to fill said office during said recess, or if such person appointed or elected

to such office does not qualify and assume the duties of office during said recess, then only the court shall be deemed to have adjourned.

If a successor to such judge shall qualify and assume office during said recess, he may continue to hold said court for the term as provided, and all motions undisposed of shall hold their status and shall be heard and determined by him, and statements of facts and bills of exception shall be approved by him. (Acts 1913, p. 260, sec. 1.)

Art. 1919b. Expiration of recess before successor qualifies, etc.; motions to stand continued, etc.; bills of exceptions, etc.—Be it further enacted, that should the time for holding any such court expire or the recess expire before any such person shall qualify to succeed such deceased judge, then all motions including those in arrest of judgment or for new trial pending shall stand as continued in force until such successor has qualified and assumed office, and he shall have power to act on them at the succeeding term of court, or on an earlier day in vacation on notice to all parties to the motion, and the same shall have same effect as rendered in term time, and the time of allowing statement of facts and bills of exception from such order shall date from the time the motion was decided. (Id. sec. 2.)

CHAPTER ELEVEN
STENOGRAPHIC REPORTERS

Art. 1920. District judges shall appoint official reporters, when.—For the purpose of preserving a record in all cases for the information of the courts, jury and parties, the judges of the district courts in all judicial districts of this state composed of only one county, or only a portion of one county, and of all other district courts sitting in the same counties therewith, shall appoint official shorthand reporters for such courts, who shall be well skilled in their profession, who shall be sworn officers of the courts and shall hold their office during the pleasure of the court. In all other judicial districts the district judges thereof shall appoint official shorthand reporters, and the terms of this Act shall apply to such appointment. (Rev. Civ. St. 1911, art. 1920, superseded. Acts 1911, p. 264, sec. 1.)

Acts 1911, p. 264, expressly repeals Acts 1909, S. S. p. 374, ch. 39, and thus supersedes articles 1920-1928, 1932, 1933, 2070-2073, as they appeared in Rev. Civ. St. 1911.

Art. 1921. Examination and certificate of reporters.—Before any person is appointed an official shorthand reporter under the provisions of this Act, he shall be examined as to his competency by a committee to be composed of at least three members of the bar practicing in said court, such committee to be appointed by the judge thereof. The test of competency of any applicant for the position of official shorthand reporter shall be as follows: The applicant shall write in the presence of such committee at the rate of at least one hundred and seventy-five words per minute for five consecutive minutes from questions and answers submitted to him, and in computing the number of words written the words "question" and "answer" appearing in the official shorthand reporter's transcript shall not be counted, and shall transcribe the same with accuracy. If the applicant passes this test satisfactorily, a majority of the committee shall furnish him with a certificate of that effect, which shall be filed among the records of the court, and shall be recorded by the clerk of the court in the minutes thereof. Upon the occasion of subsequent appointments the presentation of a certified transcript from the clerk of the court of the certificate above mentioned shall be taken as prima facie evidence of the applicant's competency; provided, however, that if the applicant shall have been official stenographer of any district court of this state for not less than two years prior to the filing of his application for said appointment, then such examination by said committee, as herein provided, shall not be necessary. (Rev. Civ. St. 1911, art. 1921, superseded. Acts 1911, p. 264, sec. 2.)

Art. 1922. Oath of reporters.—Before any person shall assume the duties of official shorthand reporter under the provisions of this Act he shall, in addition to the oath required of officers by the constitution, subscribe to an oath to be administered to him by the clerk of any district court, to the effect that he will well and truly, and in an impartial manner keep a correct record of all evidence offered in any case which may be reported by him, together with the objections and exceptions thereto which may be interposed by the parties to such suit, and the rulings and remarks of the court in passing on the admissibility of such testimony. (Rev. Civ. St. 1911, art. 1922, superseded. Acts 1911, p. 264, sec. 3.)

Art. 1923. Duties of reporter.—It shall be the duty of the official shorthand reporter to attend all sessions of the court; to take full shorthand notes of all the oral testimony offered in every case tried in said court, together with all objections to the admissibility of testimony, the rulings and remarks of the court thereon, and all exceptions to such rulings; to preserve all shorthand notes taken in said court for future use or reference for four years, and to furnish to any person a transcript in question and answer form of all such evidence or other proceedings or any portion thereof, upon the payment to him of the compensation hereinafter provided. (Rev. Civ. St. 1911, art. 1923, superseded. Acts 1911, p. 264, sec. 4.)

Art. 1924. Same subject; preparation of transcript; compensation.—In case an appeal is perfected from the judgment rendered in any case, the official shorthand reporter shall transcribe the testimony and other proceedings recorded by him in said case in the form of questions and answers, certifying that such transcript is true and correct, and shall file the same in the office of the clerk of the court within such reasonable time as may be fixed by written order of the court. Said transcript shall be made in duplicate; for which said transcript the official shorthand reporter shall be paid the sum of fifteen cents per folio of one hundred words for the original copy and no charge shall be made for the duplicate copy, said transcript to be paid for by the party ordering the same on delivery, and the amount so paid shall be taxed as costs. (Rev. Civ. St. 1911, art. 1924, superseded. Acts 1911, p. 264, sec. 5.)

For duties of reporter as to preparation of statement of facts, see post, arts. 2071, 2072, 2077. Sec-

tions 6 and 7, part of section 8, and all of section 13, of Acts 1911, p. 264, are set forth post, under chapter 19.

Art. 1925. Compensation; transcripts for poor persons; affidavits.—The Official Shorthand Reporter of each judicial district in Bexar, Harris, Grayson, Travis, Dallas, El Paso, McLennan, Jefferson, Wichita, Galveston, Bowie and Hill Counties and the official shorthand reporter of the 1st, 2nd, 4th, 5th, 9th, 12th, 16th, 18th, 21st, 23rd, 26th, 33rd, 34th, 46th, 70th, 75th, 79th, and 81st Judicial Districts shall receive a salary of $1800.00 per annum in addition to the compensation for transcript fees as provided for in this Act, said salary shall be paid monthly by the commissioners court of the county, out of the general fund of the county, upon the certificate of the District Judge. Provided, however, in other judicial districts composed of one county the Official Shorthand Reporter shall receive a per diem compensation of five dollars for each and every day he shall be in attendance upon the court for which he is appointed, in addition to the compensation for transcript fees as provided for in this act, said compensation shall be paid monthly by the commissioners court of the county in which the court sits, out of the general fund of the county, upon the certificate of the district judge; provided further, however, that in the Twenty-second, Twenty-fifth, and Twenty-sixth Judicial Districts, and the Criminal District Court of Travis and Williamson Counties, the Official Shorthand Reporter shall receive a salary of $1800.00 per annum, in addition to the compensation for transcript fees as provided for in this Act, said salary shall be paid monthly by the counties of the district in proportion to the number of weeks provided by law for holding court in the respective counties; and provided, further, that in all other judicial districts in this State composed of two or more counties the Official Shorthand Reporter shall receive a salary of $1500.00 per annum, in addition to the compensation for transcript fees as provided for in this Act, such salary shall be paid monthly by the counties of the district in proportion to the number of weeks provided by law for holding court in the respective counties. Provided, that in a district wherein any county in the district the term may continue until the business is disposed of, each county shall pay in proportion to the time court is actually held in such county. (Acts 1911, p. 264, sec. 8; Acts 1917, ch. 189, sec. 1; Acts 1917, 1st C. S., ch. 27, sec. 1; Acts 1918, 4th C. S., ch. 79, sec. 1; Acts 1919, ch. 111, sec. 1.)

Acts 1919, ch. 111, sec. 1, amends sec. 8, chapter 119, general laws, regular session, 32d Leg. 1911, as amended by Chapter 189, regular session 35th Leg. This article is a part of said sec. 8, as amended. For the remainder said sec. 8, as amended, see post, art. 2071, and Code Cr. Proc. art. 845a.

Art. 1925a. Same subject; repeal.—That all laws and parts of laws in conflict with Section 8, Chapter 119, of the General Laws of the State of Texas, passed by the Regular Session of the Thirty-second Legislature of the State of Texas, 1911, and as amended by Chapter 189 of the Regular Session of the Thirty-fifth Legislature, 1917, and as amended by Chapter 27 of the First Called Session of the Thirty-fifth Legislature, 1917, and as amended by Chapter 79 of the Fourth Called Session of the Thirty-fifth Legislature, 1918, be and the same are hereby expressly repealed. (Id. sec. 2.)

Art. 1925b. Same subject; reporter of Fourth Judicial District.—The official Court Reporter of the Fourth Judicial District of Texas shall receive a salary of Eighteen Hundred ($1800) dollars per annum, in addition to the compensation for transcript fees as provided for by law, said salary to be paid monthly by the commissioners' courts of the several counties constituting said Fourth Judicial District, each county paying its pro rata one-fourth portion of said salary. (Acts 1919, ch. 100, sec. 1.)

Art. 1926. Reporters to make transcript for any person; compensation.—At the request of any party to the suit it shall be the duty of the official shorthand reporter to make a transcript in typewriting of all the evidence and other proceedings or any portion thereof, in question and answer form, as provided in section 5 of this Act [Art. 1924], which transcript shall be paid for at the rate of fifteen cents per folio of 100 words by and be the property of the person ordering the same. (Rev. Civ. St. 1911, art. 1926, superseded. Acts 1911, p. 264, sec. 9.)

Art. 1927. Stenographer's fee to be taxed as costs, when; payable into general fund of county, etc.—Hereafter the clerk of all courts having official shorthand reporters, as provided for in this Act, shall tax as costs in each civil case, where an answer is field [filed], except suits for the collection of delinquent taxes, a stenographer's fee of three dollars, which shall be paid as other costs in the case and which shall be paid by said clerk, when collected, into the general funds of the county in which said court sits. (Rev. Civ. St. 1911, art. 1927, superseded. Acts 1911, p. 264, sec. 10.)

Art. 1928. Appointment of deputies; oaths; examination.—The official shorthand reporter may, with the consent of the court, appoint one or more deputies, when necessary, to assist him in the discharge of his duties; provided, however, that before any such deputy shall enter upon the discharge of his duties as official shorthand reporter he shall subscribe to the same oath hereinbefore provided for the official shorthand reporters, and shall also be required to stand such examination as to his proficiency as may be required by the court. (Rev. Civ. St. 1911, art. 1928, superseded. Acts 1911, p. 264, sec. 11.)

Art. 1929. [Superseded by Acts 1911, p. 264.]

See arts. 1920-1928, 1932, 1933, 2070, 2071, 2073.

Art. 1930. (1295) (1295) Special stenographer appointed, when.—Where there shall be no official stenographer, the court may, and upon application of either party shall, employ a competent stenographer or other person to take down the testimony in a cause, for the purpose of preserving a statement of the evidence given on the trial.

See ante arts. 1920 et seq.; Sayles' Practice, p. 618; Killfoil v. Moore, 45 S. W. 1024; Mansfield v. Hogsett, 60 S. W. 785; Cox v. Patten, 66 S. W. 64; Elliott v. Ferguson, 97 S. W. 517; R'y v. Quinn, 100 S. W. 1036; Id. 102 S. W. 723.

Art. 1931. (1296) (1296) Compensation of special stenographer.—In such case, reasonable compensation, not to exceed

twenty cents per hundred words, shall be allowed such stenographer, to be fixed by the court and taxed in the bill of costs.

See ante arts. 1920 et seq.; Mansfield v. Hogsett, 60 S. W. 785; Cox v. Patten, 66 S. W. 64.

Art. 1932. Stenographer in civil case in county court; appointment; oath; compensation; other provisions applicable.—Whenever either party to a civil case pending in the county court shall apply therefor, the judge of the court shall appoint a competent stenographer to report the oral testimony given in such case, provided there is a competent stenographer present. Such stenographer shall take the oath herein prescribed, and shall receive compensation of to be not less than $5.00 per day, which shall be taxed and collected as costs; in such cases the provisions of this Act with respect to the preparation of the statement of facts, the time to be allowed therefor, and for the presentation to the opposite party, and the approving and filing thereof by the court, shall apply to all statements of facts in civil causes tried in the county court, and all provisions of law governing statements of facts and bills of exception to be filed in district courts and the use of same on appeal, shall apply to civil causes tried in the county courts. (Rev. Civ. St. 1911, art. 1932, repealed. Acts 1911, p. 264, sec. 12.)

Art. 1933. In felony cases reporter to keep stenographic record, to be made when and how; transcript for appointed attorney, when, and compensation for same.—In the trial of all criminal cases in the district court in which the defendant is charged with a felony, the official shorthand reporter shall keep an accurate stenographic record of all the proceedings of such trial in like manner as is provided for in civil cases, and should an appeal be prosecuted in any judgment of conviction, whenever the state and defendant can not agree as to the testimony of any witness, then and in such event, so much of the transcript of the official shorthand reporter's report with reference to such disputed fact or facts shall be inserted in the statement of facts as is necessary to show what the witness testified to in regard to the same, and constitute a part of the statement of facts, and the same shall apply to the preparation of bills of exception; provided, that such stenographer's report when carried into the statement of facts or bills of exception, shall be condensed so as not to contain the questions and answers, except where, in the opinion of the judge, such questions and answers may be necessary in order to elucidate the fact or question involved. Provided, that in all cases where the court is required to and does appoint an attorney to represent the defendant in a criminal action, that the official shorthand reporter shall be required to furnish the attorney for said defendant, if convicted, and where an appeal is prosecuted, with a transcript of his notes as provided in section 5 of this Act [Art. 1924], for which said service he shall be paid by the state of Texas, upon the certificate of the district judge, one-half of the rate provided for herein in civil cases. (Rev. Civ. St. 1911, art. 1933, repealed. Acts 1911, p. 264, sec. 14.)

CHAPTER TWELVE

TRIAL OF CAUSES

Art. 1934. (1280) (1280) Appearance day.—The second day of each term of the district or county court is termed appearance day. (Acts 1891, p. 94.)

See Gardell v. Gardell, 94 S. W. 457; Sayles' Practice, pp. 323, 412, 431, 879, 1053, 1080; Schattenberg v. Houston E. & W. T. Ry. Co., 168 S. W. 8.

Art. 1935. (1281) (1281) Call of the appearance docket.—It shall be the duty of the court on appearance day of each term, or as soon thereafter as may be practicable, to call, in their order, all the cases on the docket which are returnable to such term.

See Gardell v. Gardell, 94 S. W. 457; Sayles' Practice, pp. 412, 431, 879.

Art. 1936. (1282) (1282) Judgment by default.—Upon the call of the appearance docket, or at any time after appearance day, the plaintiff may take judgment by default against any defendant who has been duly served with process and who has not previously filed an answer. (Acts 1846, p. 363, sec. 12; P. D. 1508.)

See Wandelohr v. Bank, 102 S. W. 746; Sayles' Practice, 413, 431, 879; Gillaspie v. City of Huntsville, 151 S. W. 1114; Schattenberg v. Houston E. & W. T. Ry. Co., 168 S. W. 8.

Art. 1937. (1283) (1283) Where some defendants answer and others do not.—Where there are several defendants, some of whom have answered and others have made default, an interlocutory judgment by default may be entered against those who have not answered, and the cause may proceed against the others; but only one final judgment shall be given in the suit. (Id. sec. 47; P. D. 1450.)

See Wandelohr v. Bank, 102 S. W. 746; Sayles' Practice, pp. 414, 593, 879; Blankenship & Buchanan v. Herring, 132 S. W. 882; Atkinson v. Shelton, 160 S. W. 316; Mallory v. Mantius, 174 S. W. 692; Hodges v. Moore, 186 S. W. 415.

Art. 1938. (1284) (1284) Damages on liquidated demands, how assessed.—Where a judgment by default is rendered against the defendant, or all of several defendants, if the cause of action is liquidated and proved by an instrument in writing, the damages shall be assessed by the court, or under its direction, and judgment final shall be rendered therefor, unless the defendant shall demand and be entitled to a trial by jury. (Id.)

See Sayles' Practice, pp. 413, 429.

Art. 1939. (1285) (1285) On unliquidated demands, etc.—If in such case the cause of action is unliquidated or be not proved by an instrument in writing, the court shall hear evidence as to the damages and shall render judgment therefor, unless the defendant shall demand and be entitled to a trial by jury. (Id.)

See Sayles' Practice, pp. 413, 429.

Art. 1940. (1286) (1286) Jury to assess damages, when.—If the defendant shall demand and be entitled to a trial by jury, the judgment by default shall be noted and a writ of inquiry awarded, and the cause shall be entered on the jury docket. (Id.)

Art. 1941. (1346) (1212, 1345) Procedure in case of service by publication where no answer, etc.—Where service of process has been made by publication, and no answer has been filed nor appearance entered within the time prescribed by law, the court shall appoint an attorney to defend the suit in behalf of the defendant, and judg-

ment shall be rendered as in other cases; but, in every such case, a statement of the evidence, approved and signed by the judge, shall be filed with the papers of the cause as part of the record thereof. The court shall allow such attorney a reasonable compensation for his services, to be taxed as part of the costs of the suit. (Acts 1846, p. 363, sec. 128; 1866, p. 125, sec. 1; P. D. 1488, 26.)

See Sayles' Practice, pp. 218, 324-5, 676; Williams v. Sapieha, 61 S. W. 115; Crosby v. Bonnowsky, 69 S. W. 212; Owen v. Kuhn, Loeb & Co., 72 S. W. 432; Garney v. S., 88 S. W. 873; McLane v. Kirby & Smith, 116 S. W. 118; Perez v. Maverick, 202 S. W. 199.

For general provisions as to suits against nonresidents, see chapter 23 of this title, and especially art. 2175.

Art. 1942. (1211) (1211) Guardian ad litem for minors, lunatics, etc.—In all cases when a minor, lunatic, idiot or a non compos mentis may be a defendant to a suit, and it shall be shown to the court that such minor, lunatic, idiot or person non compos mentis has no guardian within the state, it shall be the duty of the court to appoint a guardian ad litem for such minor, lunatic, idiot or person non compos mentis for the purpose of defending such suit, and to allow him a reasonable compensation for his services, to be taxed as a part of the costs of suit. (Acts 1895, p. 80; Acts 1846, p. 374; P. D. 1446.)

See Sayles' Practice, pp. 24, 218, 688; Townes' Texas Pleading (2d Ed.) pp. 250, 661; McCallon v. Cohen, 39 S. W. 973; Tutt's Heirs v. Morgan, 46 S. W. 122; Duke v. Wheeler, 67 S. W. 439; Crosby v. Bannowsky, 68 S. W. 47; Butner v. Norwood, 81 S. W. 78; Lindly v. Lindly, 113 S. W. 750; Koppe v. Groginsky, 132 S. W. 984; Grogan v. Spaulding, 155 S. W. 1014; Simmons v. Arnim, 172 S. W. 184; Bundick v. Moore-Cortes Canal Co., 177 S. W. 1030.

Art. 1943. (1287) (1287) Suits called in their order, etc.—All suits in which final judgments shall not have been rendered by default, as hereinbefore provided, shall be called for trial in the order in which they stand on the docket to which they belong, unless otherwise ordered by the court. (Acts 1846, p. 363, sec. 93; P. D. 1461.)

See Ranson v. Leggett, 90 S. W. 668; Gardell v. Gardell, 94 S. W. 457; Sayles' Practice, pp. 395, 419; Bartlett v. S. M. Jones Co., 103 S. W. 705.

Art. 1944. (1288) (1288) To be tried when called, unless, etc.—Every suit shall be tried when it is called, unless it be continued or postponed to a future day of the term, or be placed at the end of the docket to be called again for trial in its regular order. (Id.)

See Sayles' Practice, pp. 32, 395, 419.

Art. 1945. (1289) (1289) Day set for jury docket.—The court shall, by an order entered on the minutes, designate a day of the term for taking up for trial the causes on the jury civil docket at all subsequent terms, until changed by a like order; but, in case of change, it shall not take effect until the succeeding term of said court. In all cases in which juries have been demanded by either party, all questions of law, demurrers, exceptions to pleadings, etc., shall, as far as practicable, be heard and determined by the court before the day designated for the trial of said jury causes and all jurors shall be summoned to appear on the day of the term so designated. (Acts 1881, p. 5.)

See Sayles' Practice, pp. 149, 420, 435; Pryor v. Jolly, 40 S. W. 960.

Art. 1946. (1290) (1290) Call of non-jury docket.—The docket of cases in which jury trials have not been granted shall be taken up at such times and in such manner as not unnecessarily to interfere with the dispatch of business on the jury docket.

See Sayles' Practice, pp. 32, 421.

Art. 1947. (1291) (1291) Issues of law and dilatory pleas, when tried.—When a case is called for trial, the issues of law arising on the pleadings, and all pleas in abatement, and other dilatory pleas remaining undisposed of, shall be determined; and it shall be no cause for the postponement of a trial of the issues of law that a party is not prepared to try the issues of fact. (Acts 1846, p. 363, sec. 33; P. D. 3.)

See Weekes v. Sunset Brick & Tile Co., 56 S. W. 243; Waldrep v. Roquemore, 127 S. W. 248; Western Union Tel. Co. v. Ashley, 137 S. W. 1165; Breed v. Higginbotham Bros. & Co., 141 S. W. 164; City of Ft. Worth v. Cotton, 198 S. W. 1015.

Art. 1948. (1292) (1292) Trial by the court.—The rules hereinafter prescribed for the trial of causes before the jury shall govern in trials by the court so far as may be applicable.

See Greer v. Featherston, 69 S. W. 69; Rodriguez v. Priest, 126 S. W. 1187.

Art. 1949. (1293) (1293) Agreed case.—The parties may in any case submit the matter in controversy between them to the court upon an agreed statement of facts made out and signed by them or their counsel, and filed with the clerk, upon which judgment shall be rendered as in other cases; and, in such case, the statement so agreed to and signed and certified by the court to be correct, and the judgment rendered thereon, shall constitute the record of the cause. (Acts 1858, p. 110, sec. 12; P. D. 1516.)

See Sayles' Practice, pp. 426, 1144; Thaison v. Sanchez, 35 S. W. 478; Scott v. Slaughter, 77 S. W. 949; Texas Mexican Ry. Co. v. Scott, 129 S. W. 1170; Chickasha Milling Co. v. Crutcher, 141 S. W. 355; Lingo Lumber Co. v. Garvin, 181 S. W. 561; Lutcher v. Fuller, 200 S. W. 553.

Art. 1950. (1294) (1294) Cases brought up from inferior courts, tried de novo.—In all cases brought up from inferior courts, whether by appeal or certiorari, the case shall be tried de novo. (Acts 1846, p. 363, secs. 59, 60; P. D. 1459, 1460.)

See White Dental Mfg. Co. v. Hertzberg, 50 S. W. 122; Sayles' Practice, pp. 1066, 1079; Taylor v. Lee, 139 S. W. 908; Gulf, C. & S. F. Ry. Co. v. Lemons, 152 S. W. 1189; Parker v. Watt, 178 S. W. 718.

Art. 1951. (1297) (1297) Order of proceedings on trial by jury.—In suits tried by a jury the trial shall proceed in the following order, unless the court should, for good cause, to be stated in the record otherwise direct:

1. The plaintiff or his counsel shall read his petition to the jury.

2. The defendant or his counsel shall read his answer.

3. If there be any intervenor he or his counsel shall read his pleadings.

4. The party, plaintiff, or defendant, upon whom rests the burden of proof on the whole case under the pleadings, shall then be permitted to state to the jury briefly the nature of his claim or defense and facts relied on in support thereof.

5. Such party shall then introduce his evidence.

6. The adverse party shall then be permitted to state briefly the nature of his defense or claim and the facts relied on in support thereof.

7. He shall then introduce his evidence.

8. The intervenor, if any, shall, in like manner, be permitted to make his statement, and shall then introduce his evidence.

9. The parties shall then be confined to rebutting testimony on each side.

See Clements v. McCain, 49 S. W. 122; Sayles' Practice, pp. 443-4, 484; Cunningham v. M. W. & B. G. Daves, 141 S. W. 808; Byrd Irr. Co. v. Smyth, 157 S. W. 260.

Art. 1952. (1298) (1298) Additional testimony allowed, when.—The court may at its discretion, at any time before the conclusion of the argument, where it appears to be necessary to the due administration of justice, allow a party to supply an omission in testimony, on such terms and under such limitations as the court may prescribe.

See Sayles' Practice, p. 485; W. U. Tel. Co. v. Roberts, 78 S. W. 522; Ry. v. Lowe, 97 S. W. 1087; Wright v. Giles, 129 S. W. 1163; Keahey v. Bryant, 134 S. W. 409; Byrd Irr. Co. v. Smyth, 157 S. W. 260; Owensboro Wagon Co. v. San Antonio Tie & Lumber Co., 199 S. W. 701.

Art. 1953. (1299) (1299) Order of argument.—After the evidence is concluded, the parties may submit the case to the jury in argument; the party having under the pleadings the burden of proof on the whole case shall be entitled to open and conclude the argument; where there are several other parties having separate claims or defenses, and represented by different counsel, the court shall prescribe the order of argument between them.

See Sayles' Practice, pp. 444, 515, 519; Hillboldt v. Waugh, 47 S. W. 829; Rodriguez v. Priest, 126 S. W. 1187; Bell v. Campbell, 143 S. W. 953; Byrd Irr. Co. v. Smyth, 157 S. W. 260; Caldwell v. Auto Sales & Supply Co., 158 S. W. 1030; First State Bank of Amarillo v. Cooper, 179 S. W. 295; J. W. Carter Music Co. v. Bailey, 179 S. W. 547; Houston & T. C. R. Co. v. Montgomery, 185 S. W. 633; Knight Realty Co. v. Williams, 193 S. W. 168.

Art. 1954. Charge and instructions before argument.—Before the beginning of the argument, the court shall read to the jury the charges and instructions, if any, under the provisions of this title relating thereto. (Acts 1853, p. 19, sec. 99; P. D. 1464; Acts 1913, p. 113, sec. 2.)

See Sayles' Practice, pp. 340, 578.

Art. 1955. (1301) (1301) Nonsuit may be taken, when.—At any time before the jury have retired, the plaintiff may take a nonsuit, but he shall not thereby prejudice the right of an adverse party to be heard on his claim for affirmative relief; when the case is tried by the judge such nonsuit may be taken at any time before the decision is announced. (Acts 1853, p. 19, sec. 99; P. D. 1464.)

See ante art. 1900; Townes' Texas Pleading (2d Ed.) p. 663; Long v. Behan, 48 S. W. 556; Wetsell v. Hopkins, 67 S. W. 1075; Blank v. Robertson, 78 S. W. 564; W. B. Walker & Sons v. Hernandez, 92 S. W. 1067; Clevenger v. Cariker, 110 S. W. 795; Free v. Robert Burgess & Son, 133 S. W. 421; Kidd v. McCracken, 150 S. W. 885; Leverette v. Rice, 151 S. W. 594; Pye v. Wyatt, 151 S. W. 1086; Jackson v. Furst, Edwards & Co., 154 S. W. 243; Towell v. Towell, 164 S. W. 23; United Motor Dallas Co. v. Hendricks, 168 S. W. 878; Apache Cotton Oil & Mfg. Co. v. Watkins & Kelly, 189 S. W. 1083; Hill v. Patterson, 191 S. W. 621; Weil v. Abeel, 206 S. W. 735.

Art. 1956. (1302) (1302) Foreman of jury.—The court may appoint one of the jury to be the foreman thereof; and, in case no foreman is appointed by the court, the jury may elect a foreman from their number, who shall preside at their deliberations and see that the same are conducted with regularity and in order.

See Sayles' Practice, p. 559.

Art. 1957. (1303) (1303) Jury may take papers with them, except, etc.—The jury may take with them in their retirement the charges and instructions in the cause, the pleadings and any written evidence, except the depositions of witnesses. But, when part only of a paper has been read in evidence, the jury shall not take the same with them, unless the part so read to them is detached from that which was excluded. (P. D. 1464.)

See Sayles' Practice, pp. 530, 559; Green v. Gresham, 53 S. W. 382; Ry. v. Wilson, 84 S. W. 274; Frugia v. Trueheart, 106 S. W. 736; Wiggs v. Southwestern Telegraph & Telephone Co., 110 S. W. 179; Texas & N. O. R. Co. v. Turner, 182 S. W. 357; Trinity & B. V. Ry. Co. v. Lunsford, 183 S. W. 112; City of Ft. Worth v. Young, 185 S. W. 983.

Art. 1958. (1304) (1304) Jury to be kept together.—The jury may either decide the case in court or retire for deliberation. If they retire, they shall be kept together in some convenient place, under the charge of an officer, until they agree upon a verdict, or are discharged by the court; but the court may, in its discretion, permit them to separate temporarily for the night and at their meals, and for other proper causes.

See Holliday v. Sampson, 95 S. W. 643; Sayles' Practice, p. 560.

Art. 1959. (1305) (1305) Duty of officer in charge of jury.—The officer having the jury under his charge shall not suffer any communication to be made to them, or make any himself, except to ask them if they have agreed upon a verdict, unless by order of the court; and he shall not, before their verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon.

Texas Midland R. Co. v. Byrd, 115 S. W. 1163, 20 L. R. A. (N. S.) 429, 20 Ann. Cas. 137.

Art. 1960. (1306) (1306) Caution to the jury.—If the jury are permitted to separate, either during the trial or after the case is submitted to them, they shall be admonished by the court that it is their duty not to converse with, or suffer themselves to be addressed by, any other person, on any subject connected with the trial.

See Sayles' Practice, p. 560; Texas Midland R. Co. v. Byrd, 115 S. W. 1163, 20 L. R. A. (N. S.) 429, 20 Ann. Cas. 137.

Art. 1961. (1307) (1307) Jury may communicate with the court.—When the jury wish to communicate with the court, they shall make their wish known to the officer having them in charge, who shall inform the court thereof, and they may be brought into open court, and through their foreman shall state to the court, either verbally or in writing, what they desire to communicate.

See Sayles' Practice, p. 361; Texas Midland R. Co. v. Byrd, 115 S. W. 1163, 20 L. R. A. (N. S.) 429, 20 Ann. Cas. 137; Oates v. Maxcy, 206 S. W. 535.

Art. 1962. (1308) (1308) May ask further instruction.—The jury may, after having retired, ask further instruction of the court touching any matter of law. For this purpose, they shall appear before the judge in open court in a body and, through their foreman, state to the court, either verbally or in writing, the particular question of law upon which they desire further instruction,

and the court shall give such instruction in writing; but no instruction shall be given except upon the particular question on which it is asked. (Id.; P. D. 1464.)

See Sayles' Practice, pp. 530, 562; Texas Midland R. Co. v. Byrd, 115 S. W. 1163, 20 L. R. A. (N. S.) 429, 20 Ann. Cas. 137; Cheek v. W. H. Nicholson & Co., 146 S. W. 594; Corpus Christi St. & Interurban Ry. Co. v. Kjellberg, 185 S. W. 430; Oates v. Maxcy, 206 S. W. 535.

Art. 1963. (1309) (1309) May have witness recalled.—If the jury disagree as to the statement of any particular witness, they may, upon applying to the court, have such witness again brought upon the stand; and he shall be directed by the judge to detail his testimony to the particular point of disagreement, and no other, and as nearly as he can in the language used upon his examination.

See Sayles' Practice, p. 562; Griffin v. Barbee, 68 S. W. 698; Holliday v. Sampson, 95 S. W. 643; San Antonio Traction Co. v. Badgett, 158 S. W. 803.

Art. 1964. (1310) (1310) May have deposition, etc., re-read.—If the jury disagree as to any portion of a deposition or other paper not carried with them in their retirement, the court may, in like manner, permit such portion of the deposition or paper to be again read to the jury.

See Sayles' Practice, p. 562.

Art. 1965. (1311) (1311) Disagreement of jury.—The jury may, after the cause is submitted to them, be discharged by the court when they can not agree and both parties consent to their discharge, or when they have been kept together for such time as to render it altogether improbable that they can agree.

Art. 1966. (1312) (1312) May be discharged by the court.—They may also be discharged by the court when any calamity or accident may, in the opinion of the court, require it; and they shall be so discharged when, by sickness or other cause, their number is reduced below the number constituting a jury in such court. (Const. art. 5, sec. 13.)

See post art. 5215; Sayles' Practice, pp. 441, 562.

Art. 1967. (1313) (1313) Final adjournment of court discharges.—The final adjournment of the court before the jury have agreed upon a verdict discharges them.

See Sayles' Practice, p. 562.

Art. 1968. (1314) (1314) Case to be tried again.—Where a jury has been discharged as herein provided, without having rendered a verdict, the cause may be again tried at the same or another term.

See Sayles' Practice, p. 563.

Art. 1969. (1315) (1315) Court may proceed with other business.—The court may, during the retirement of the jury, proceed to any other business and adjourn from time to time, but shall be deemed open for all purposes connected with the case before the jury.

CHAPTER THIRTEEN

CHARGES AND INSTRUCTIONS TO THE JURY

Art. 1970. (1316) (1316) Unless waived court shall charge jury or submit issues of fact; failure to give time for examination, etc.—In all civil cases the judge shall, unless the same be expressly waived by the parties to the suit, prepare and in open court, deliver a written charge to the jury on the law of the case, or submit issues of fact to the jury if said cause is submitted to the jury on special issue of fact at the time, in the manner and subject to the restrictions hereafter provided, provided that failure of the court to give reasonable time to the parties or their attorneys for examination of the charge shall be reviewable upon repeal [appeal] upon proper exception. (Acts 1903, p. 55; Acts 1853, p. 19, sec. 99; P. D. 1464; Acts 1913, p. 113, sec. 3.)

See Sayles' Practice, p. 529; Schwartzlose v. Mehlitz, 81 S. W. 68; R'y v. Votaw, 81 S. W. 130; Wallace v. Shapard, 94 S. W. 151; Sharmon v. Newsome, etc., 101 S. W. 1020; Ft. Worth & D. C. Ry. Co. v. Walker, 106 S. W. 400; Adams v. Burrell, 127 S. W. 581; Steiner v. Anderson, 130 S. W. 261; Wood v. J. M. Radford Grocery Co., 164 S. W. 1070; Quanah, A. & P. Ry. Co. v. Galloway, 165 S. W. 546; National Novelty Import Co. v. Griffin & Griffin, 168 S. W. 85; Gulf, T. & W. Ry. Co. v. Culver, 168 S. W. 514; Heath v. Huffhines, 168 S. W. 974; Eldridge v. Citizens' Ry. Co., 169 S. W. 375; International & G. N. Ry. Co. v. Parke, 169 S. W. 397; Weatherford, M. W. & N. W. Ry. Co. v. Smith, 170 S. W. 133; Galveston, H. & S. A. Ry. Co. v. Kellogg, 172 S. W. 180; Ratliff v. Wakefield Iron & Coal Land Improvement Co., 172 S. W. 198; Gordon Jones Const. Co. v. Lopez, 172 S. W. 987; Galveston, H. & S. A. Ry. Co. v. Patterson, 173 S. W. 273; Texas & P. Ry. Co. v. Hall, 173 S. W. 548; Consolidated Kansas City Smelting & Refining Co. v. Schulte, 176 S. W. 94; Thornton v. Daniel, 185 S. W. 585; Gulf, T. & W. Ry. Co. v. Dickey, 187 S. W. 184; Whaley v. McDonald, 194 S. W. 409; Sullivan v. Masterson, 201 S. W. 194; Ablon v. Electric Express & Baggage Co., 206 S. W. 717.

Art. 1971. (1317) (1317) Requisites of charge; submission to parties; objections, etc.—The charge shall be in writing and signed by the judge; after the evidence has been concluded the charge shall be submitted to the respective parties or their attorneys for inspection and a reasonable time given them in which to examine it and present objections thereto, which objections shall in every instance be presented to the court before the charge is read to the jury, and all objections not so made and presented shall be considered as waived; before the argument is begun, the judge shall read his charge, and all special charges given by him to the jury in the precise words in which they were written; he shall not charge or comment on the weight of evidence; he shall so frame the charge as to distinctly separate the questions of law from the questions of fact; he shall decide on and instruct the jury as to the law arising on the facts, and shall submit all controverted questions of fact only to the decision of the jury. (Id. Acts 1913, p. 113, sec. 3.)

See Sayles' Practice, pp. 530, 535-6; Byers v. Maxwell, 54 S. W. 789; Meadows v. Truesdell, 56 S. W. 932; Lake v. Copeland, 72 S. W. 99; R'y v. Parks, 76 S. W. 741; Schwartzlose v. Mehlitz, 81 S. W. 68; Davis v. Hardwick, 94 S. W. 359; Tyler Ice Co. v. Tyler Water Co., 95 S. W. 649; Ramsey & Montgomery v. Empire Timber & Lumber Co., 134 S. W. 294; Coley v. S., 150 S. W. 789; May v. Anthony, 151 S. W. 602; Mutual Life Ins. Ass'n of Donley County v. Rhoderick, 164 S. W. 1067; Texas & N. O. R. Co. v. Francis, 165 S. W. 40; Quanah, A. & P. Ry. Co. v. Galloway, 165 S. W. 546; Southern Kansas Ry. Co. of Texas v. Crutchfield, 165 S. W. 551; Saunders v. Thut, 165 S. W. 553; St. Louis Southwestern Ry. Co. of Texas v. Wadsack, 166 S. W. 42; McKenzie v. Imperial Irr. Co., 166 S. W. 495; Wofford v. Lane, 167 S. W. 180; International & G. N. Ry. Co. v. Sharpe, 167 S. W. 814; National Novelty Import Co. v. Griffin & Griffin, 168 S. W. 85; Gulf, T. & W. Ry. Co. v. Culver, 168 S. W. 514; Texas & P. Ry. Co. v. Brown, 168 S. W. 866; Heath v. Huffhines, 168 S. W. 974; Cleburne St. Ry. Co. v. Barnes, 168 S. W. 991; Eldridge v. Citizens' Ry. Co., 169 S. W. 375; International & G. N. Ry. Co.

v. Parke, 169 S. W. 397; Weatherford, M. W. & N. W. Ry. Co. v. Smith, 170 S. W. 133; W. R. Case & Sons Cutlery Co. v. Folsom, 170 S. W. 1066; Pecos & N. T. Ry. Co. v. Grundy, 171 S. W. 318; Beard v. International & G. N. Ry. Co., 171 S. W. 553; Moore v. Cooper Mfg. Co., 171 S. W 1034; Galveston, H. & S. A. Ry. Co. v. Kellogg, 172 S. W. 180; Gunter v. Merchant, 172 S. W. 191; Ratliff v. Wakefield Iron & Coal Land Improvement Co., 172 S. W. 198; Texas Midland R. R. v. Fogleman, 172 S. W. 558; Jefferson Cotton Oil & Fertilizer Co. v. Pridgen & Congleton, 172 S. W. 739; Missouri, K. & T. Ry. Co. of Texas v. Smith, 172 S. W. 750; Galveston, H. & S. A. Ry. Co. v. Patterson, 173 S. W. 273; Texas & P. Ry. Co. v. Hall, 173 S. W. 548; Pierce-Fordyce Oil Ass'n v. Farrow, 173 S. W. 1007; St. Louis, S. F. & T. Ry. Co. v. West, 174 S. W. 287; Atchison, T. & S. F. Ry. Co. v. Skeen, 174 S. W. 655; Reed v. Missouri, K. & T. Ry. Co. of Texas, 174 S. W. 956; Gulf, C. & S. F. Ry. Co. v. Graham, 175 S. W. 472; Kell v. Ross, 175 S. W. 752; Consolidated Kansas City Smelting & Refining Co. v. Schulte, 176 S. W. 94; Fidelity-Phœnix Fire Ins. Co. v. O'Bannon, 178 S. W. 731; Ft. Worth & D. C. Ry. Co. v. Alcorn, 178 S. W. 833; McLaughlin v. Terrell Bros., 179 S. W. 932; International & G. N. Ry. Co. v. Bland, 181 S. W. 504; Walker v. Haley, 181 S. W. 559; Gilbert v. Fuhrman, 182 S. W. 51; Thornton v. Daniel, 185 S. W. 585; Loeb v. Texas & N. O. R. Co., 186 S. W. 378; Gulf, T. & W. Ry. Co. v. Dickey, 187 S. W. 184; Fireman's Ins. Co. v. Jesse French Piano & Organ Co., 187 S. W. 691; Roberts v. Houston Motor Car Co., 188 S. W. 257; Hawks v. Longbotham, 188 S. W. 734; Northern Texas Traction Co. v. Nicholson, 188 S. W. 1028; Thorne v. Dashiell, 189 S. W. 986; Carr v. Pecos Valley State Bank, 189 S. W. 988; Rabinowitz v. Smith Co., 190 S. W. 197; Atchison, T. & S. F. Ry. Co. v. Smith, 190 S. W. 761; Pearce v. Supreme Lodge, Knights and Ladies of Honor, 190 S. W. 1156; Rishworth v. Moss, 191 S. W. 843; Ross v. Moore, 191 S. W. 853; Cummens v. Owen Bros. Const. Co., 192 S. W. 792; Jones v. Galveston, H. & S. A. Ry. Co., 193 S. W. 373; Whaley v. McDonald, 194 S. W. 409; Cameron v. First Nat. Bank of Galveston, 194 S. W. 469; Rhome Milling Co. v. Glasgow, 194 S. W. 686; Texas Midland R. R. v. Combs, 195 S. W. 1178; Brewster v. City of Forney, 196 S. W. 636; Heidenheimer, Strassburger & Co. v. Houston & T. C. R. Co., 197 S. W. 886; Rockhill Country Club Co. v. Nix, 198 S. W. 155; Byrne v. Texas Lumber & Loan Co., 198 S. W. 600; Mason v. Olds, 198 S. W. 1040; Hendrick v. Blount-Decker Lumber Co., 200 S. W. 171; Buckholts State Bank v. Graf, 200 S. W. 858; Sullivan v. Masterson, 201 S. W. 194; San Antonio, U. & G. R. Co. v. Dawson, 201 S. W. 247; Shuler v. City of Austin, 201 S. W. 445; Kirlicks v. Texas Co., 201 S. W. 687; Perez v. Maverick, 202 S. W. 199; Schaff v. Scoggin, 202 S. W. 758; First Nat. Bank of Crockett v. Hardtt, 204 S. W. 712; Ablon v. Electric Express & Baggage Co., 206 S. W. 717.

Art. 1972. (1318) (1318) Charge need not be excepted to.—Such charge shall be filed by the clerk and shall constitute a part of the record of the cause, and shall be regarded as excepted to, and subject to revision for errors therein, without the necessity of taking any bill of exception thereto.

See Sayles' Practice, pp. 505, 529.

Art. 1973. (1319) (1319) Parties may ask instructions; time for examination and objection.—Either party may present to the judge, in writing, such instructions as he desires to be given to the jury; and the judge may give such instructions, or a part thereof, or he may refuse to give them, as he may see proper, and he shall read to the jury such of them as he may give; provided, such instructions shall be prepared and presented to the court and submitted to opposing counsel for examination and objection within a reasonable time after the charge is given to the parties or their attorneys for examination. (Acts 1846, p. 363, sec. 100; P. D. 216; Acts 1913, p. 113, sec. 3.)

See Sayles' Practice, p. 551; Belcher v. M. K. & T. R'y., 50 S. W. 559; Bailey v. Hartman, 85 S. W. 829; Quanah, A. & P. Ry. Co. v. Galloway, 165 S. W. 546; St. Louis Southwestern Ry. Co. of Texas v. Wadsack, 166 S. W. 42; National Novelty Import Co. v. Griffin & Griffin, 168 S. W. 85; Gulf, T. & W. Ry. Co. v. Culver, 168 S. W. 514; Heath v. Huffhines, 168 S. W. 974; Cleburne St. Ry. Co. v. Barnes, 168 S. W. 991; Quanah, A. & P. Ry. Co. v. Chumbley, 169 S. W. 1107; Weatherford, M. W. & N. W. Ry. Co. v. Smith, 170 S. W. 133; W. R. Case & Sons Cutlery Co. v. Folsom, 170 S. W. 1066; Sanger v. First Nat. Bank of Amarillo, 170 S. W. 1087; Moore v. Cooper Mfg. Co., 171 S. W. 1034; Galveston, H. & S. A. Ry. Co. v. Kellogg, 172 S. W. 180; Ratliff v. Wakefield Iron & Coal Land Improvement Co., 172 S. W. 198; Texas Midland R. R. v. Fogleman, 172 S. W. 558; Galveston, H. & S. A. Ry. Co. v. Patterson, 173 S. W. 273; Texas & P. Ry. Co. v. Hall, 173 S. W. 548; Reed v. Missouri, K. & T. Ry. Co. of Texas, 174 S. W. 956; Gulf, C. & S. F. Ry. Co. v. Graham, 175 S. W. 472; Consolidated Kansas City Smelting & Refining Co. v. Schulte, 176 S. W. 94; Ft. Worth & D. C. Ry. Co. v. Alcorn, 178 S. W. 833; J. B. Farthing Lumber Co. v. Illig, 179 S. W. 1092; Gulf, T. & W. Ry. Co. v. Dickey, 187 S. W. 184; Rishworth v. Moss, 191 S. W. 843; Brewster v. City of Forney, 196 S. W. 636; Shipley v. Missouri, K. & T. Ry. Co. of Texas, 199 S. W. 661; Sullivan v. Masterson, 201 S. W. 194; Ablon v. Electric Express & Baggage Co., 206 S. W. 717.

Art. 1974. (1320) (1320) Endorsement by judge on special instructions refused; as bill of exceptions; presumption on appeal; endorsement when instruction given or modified.—When a special instruction is requested and the provisions of this law have been complied with and the trial judge refuses the same, he shall endorse thereon; "Refused," and sign the same officially, and such charge, when so endorsed, shall constitute a bill of exceptions and it shall be conclusively presumed on appeal that the party asking said charge presented the same at the proper time and excepted to its refusal, and that all of the requirements of law have been observed, and the same shall entitle the party requesting such charge to have the action of the trial judge in refusing the same reviewed on appeal without preparing a formal bill of exceptions.

If the trial judge modify such special charge, he shall endorse on said charge: "Modified as follows: (stating in what particular he has modified the charge) and given, and exception allowed plaintiff (or defendant as the case may be)" and sign the same officially. Such charge when so endorsed shall constitute a bill of exceptions and it shall be conclusively presumed that the party asking said charge presented the same at the proper time, excepted to the modification thereof, and that all of the requirements of law have been observed, and the same shall entitle the party requesting such charge to have the action of the trial judge in modifying the same reviewed without preparing a formal bill of exceptions. (Id.; Acts 1913, p. 113, sec. 3; Acts 1917, ch. 177, sec. 1.)

See R'y v. Worchester, 100 S. W. 990; R'y v. Hall, 102 S. W. 740; Sayles' Practice, pp. 505, 529; Missouri, K. & T. Ry. Co. of Texas v. Hurdle, 142 S. W. 992; Mutual Life Ins. Ass'n of Donley County v. Rhoderick, 164 S. W. 1067; Quanah, A. & P. Ry. Co. v. Galloway, 165 S. W. 546; National Novelty Import Co. v. Griffin & Griffin, 168 S. W. 85; Gulf, T. & W. Ry. Co. v. Culver, 168 S. W. 514; Heath v. Huffhines, 168 S. W. 974; Cleburne St. Ry. Co. v. Barnes, 168 S. W. 991; Missouri, O. & G. Ry. Co. of Texas v. Love, 169 S. W. 922; Gulf, C. & S. F. Ry. Co. v. Battle, 169 S. W. 1048; Weatherford, M. W. & N. W. Ry. Co. v. Smith, 170 S. W. 133; Sanger v. First Nat. Bank of Amarillo, 170 S. W. 1087; Galveston, H. & S. A. Ry. Co. v. Kellogg, 172 S. W. 180; Scarbrough v. Wheeler, 172 S. W. 196; Ratliff v. Wakefield Iron & Coal Land Improvement Co., 172 S. W. 198; Galveston, H. & S. A. Ry. Co. v. Patterson, 173 S. W. 273; Texas & P. Ry. Co. v. Hall, 173 S. W. 548; Consolidated Kansas City Smelting & Refining Co. v. Schulte, 176 S. W. 94; Interna-

tional & G. N. Ry. Co. v. Bland, 181 S. W. 504; Gulf, T. & W. Ry. Co. v. Dickey, 187 S. W. 184; Dixon v. Winters, 201 S. W. 1103; Texas Refining Co. v. Alexander, 202 S. W. 131; Robinson v. Galveston, H. & S. A. Ry. Co., 203 S. W. 395; Continental Casualty Co. v. Chase, 203 S. W. 779; Barrios v. S., 204 S. W. 326; Ablon v. Electric Express & Baggage Co., 206 S. W. 717.

Art. 1975. (1321) (1321) Jury may carry charge, etc., with them.—The charge and instructions given to the jury may be carried with them by the jury in their retirement, and an additional charge or instructions may be given them upon any question of law arising in the case, in conformity with the preceding rules, upon the application of the jury therefor in open court. (Acts 1853, p. 19, sec. 99; P. D. 1464.)

See Sayles' Practice, pp. 550, 559, 562; Bailey v. Hartman, 85 S. W. 829; Holliday v. Sampson, 95 S. W. 643; Missouri, K. & T. Ry. Co. of Texas v. Moore, 105 S. W. 532; Hermann v. Schroeder, 175 S. W. 788.

CHAPTER FOURTEEN

THE VERDICT

Art. 1976. (1322) (1322) Rendition of verdict.—When the jury have agreed upon their verdict, they shall be conducted into court by the officer having them in charge, and their names shall be called by the clerk, and they shall deliver their verdict to the clerk.

See Sayles' Practice, p. 563.

Art. 1977. (1323) (1323) Must be in writing and signed.—The verdict shall be in writing, and shall be signed by the foreman; and where, pending a trial in the district court, any juror may die or be disabled from sitting and the verdict is rendered by the remaining jurors, the verdict shall be signed by all of such remaining jurors. (Act Aug. 1, 1876; P. D. 1464.)

See post arts. 5215, 5217; Dunlap v. Milling Co., 95 S. W. 43; Sayles' Practice, pp. 441, 559, 563; Carwile v. William Cameron & Co., 114 S. W. 100; Quanah, A. & P. Ry. Co. v. R. D. Jones Lumber Co., 178 S. W. 858; City of Henderson v. Fields, 194 S. W. 1003.

Art. 1978. (1324) (1324) Verdict received and noted on docket.—The clerk shall read the verdict aloud, and shall inquire of the jury if such is their verdict; if any juror disagrees to the verdict, the jury shall be sent out again, but if no disagreement is expressed, and neither party requires the jury to be polled, the court shall, except in the cases hereinafter provided for, receive the verdict and enter a minute thereof on the docket, and the jury shall be discharged.

See Sayles' Practice, pp. 74, 564; Carwile v. William Cameron & Co., 114 S. W. 100.

Art. 1979. (1325) (1325) Jury may be polled.—When the verdict is announced, either party may require the jury to be polled, which is done by the clerk or judge asking each juror separately if such is his verdict; if any jury answers in the negative, the jury shall again be sent out for further deliberation; but if each juror concurs in the verdict the same shall be received and noted in the docket, except in the cases provided for in the two succeeding articles, and the jury shall be discharged.

See Sayles' Practice, p. 564.

Art. 1980. (1326) (1326) Defective or mistaken verdict.—If the verdict is informal or defective, the court may direct it to be reformed at the bar; and, where there has been a manifest miscalculation of interest, the court may direct a computation thereof at the bar; and the verdict may, if the jury assents thereto, be reformed in accordance with such computation.

See Roche v. Dale, 95 S. W. 1100; Sayles' Practice, p. 564; Malcolm v. Sims-Thompson Motor Car Co., 164 S. W. 924; W. R. Case & Sons Cutlery Co. v. Folsom, 170 S. W. 1066; North American Dredging Co. v. Pugh, 196 S. W. 255; Hughes-Buie Co. v. Vasquez, 202 S. W. 525.

Art. 1981. (1327) (1327) Not responsive to the issues.—If the verdict is not responsive to the issue submitted to the jury, the court shall call their attention thereto, and send them back for further deliberation.

See Sayles' Practice, pp. 564, 575; M. K. & T. R'y v. Burrough, 46 S. W. 403; Oriental Investment Co. v. Barclay, 64 S. W. 80; Roche v. Dale, 95 S. W. 1100; Waco Cement Stone Works v. Smith, 162 S. W. 1158; North American Dredging Co. v. Pugh, 196 S. W. 255; Hughes-Buie Co. v. Vasquez, 202 S. W. 525; Wheeler v. Moore, 208 S. W. 678.

Art. 1982. (1328) (1328) Verdicts either general or special.—The verdict of a jury is either a general or a special verdict.

See Sayles' Practice, p. 566; Southerland v. T. & P. Ry., 40 S. W. 194; Ry. v. Kellerman, 87 S. W. 401; Hengy v. Hengy, 151 S. W. 1127.

Art. 1983. (1329) (1329) General verdict.—A general verdict is one whereby the jury pronounce generally in favor of one or more parties to the suit upon all or any of the issues submitted to them.

See Sayles' Practice, p. 566; G. H. & S. A. Ry. v. Michalke, 27 S. W. 480.

Art. 1984. (1330) (1330) Special verdict defined.—A special verdict is one wherein the jury find the facts only on issues made up and submitted to them under the direction of the court. (Acts 1846, p. 363, sec. 108; P. D. 1469.)

See Sayles' Practice, p. 567.

Art. 1984a. Submission of special issues.—In all jury cases the court, upon request of either party, shall submit the cause upon special issues raised by the pleadings and the evidence in the case. Such special issues shall be submitted distinctly and separately, and without being intermingled with each other, so that each issue may be answered by the jury separately. In submitting special issues the court shall submit such explanations and definitions of legal terms as shall be necessary to enable the jury to properly pass upon and render a verdict on such issues, and the court may submit said cause upon special issues without request of either party, provided that if the nature of the suit is such that it cannot be determined on the submission of special issues, the court may refuse the request to do so, but the action of the court in refusing may be reviewed on proper exception in the appellate court, and this article shall be construed in connection with article 1985 of chapter 14, title 37, Revised Statutes. (Acts 1913, p. 113, sec. 1.)

Art. 1985. (1331) (1331) Special verdict, requisites of; failure to submit issue not reversible error unless request, etc.—The special verdict must find the facts established by the evidence, and not the evidence by which they are established; and it shall be the duty of the court, when it submits a case to the jury upon special issues, to submit all the issues made by the pleading. But the failure to submit any issue shall not be deemed a ground for reversal of the judg-

ment, upon appeal or a writ of error, unless its submission has been requested in writing by the party complaining of the judgment. Upon appeal or writ of error, an issue not submitted and not requested by a party to the cause, shall be deemed as found by the court in such manner as to support the judgment; provided, there be evidence to sustain such a finding. (Acts 1897, S. S. p. 15.)

See Finley v. Lewis, 39 S. W. 974; Stinnett v. City of Sherman, 43 S. W. 847; Phœnix Ins. Co. v. Sherman, 43 S. W. 930; Id. 1063; Kahler v. Carruthers, 45 S. W. 160; Lancaster v. Richardson, 45 S. W. 409; Phœnix Ins. Co. v. Moore, 46 S. W. 1131; Devine v. U. S. Mortg. Co. of Scotland, 48 S. W. 585; Armstrong v. Elliott, 48 S. W. 605; Leary v. People's B. L. & S. Ass'n, 49 S. W. 633; Less v. Ghio, 49 S. W. 635; Brown v. Woodmen of the World, 49 S. W. 893; Randolph v. Hudson, 50 S. W. 128; So. Cot. Oil Co. v. Wallace, 54 S. W. 639; Matula v. Lane, 55 S. W. 504; Read v. Henderson, 57 S. W. 78; City of Whitewright v. Taylor, 57 S. W. 311; Breneman v. Mayer, 58 S. W. 725; Yeager v. Neil, 64 S. W. 701; Scott v. F. & M. Nat. Bk., 66 S. W. 485; T. & Ft. S. Ry. v. Spencer, 67 S. W. 196; Hardin v. Jones, 68 S. W. 836; Rotan Grocery Co. v. Noble, 81 S. W. 686; Aultman, etc., Mach. Co. v. Cappleman, 81 S. W. 1243; York v. Hilger, 84 S. W. 1117; Holly & Co. v. Simmons, 85 S. W. 325; Union Carpet Lining Co. v. Miller & Co., 86 S. W. 651; Featherston v. Brown, 88 S. W. 470; Mecaskey v. Morris, 89 S. W. 1085; Moore v. Pierson, 93 S. W. 1007; Id., 94 S. W. 1132; Edelstein v. Brown, 95 S. W. 1126; Adams v. Burrell, 127 S. W. 581; Herman v. Smith, 141 S. W. 1087; Givens v. Carter, 146 S. W. 623; Fant v. Sullivan, 152 S. W. 515; Jones v. Edwards, 152 S. W. 727; Chambers v. Rawls, 158 S. W. 208; Hicks v. Murphy, 162 S. W. 925; Texas Co. v. Alamo Cement Co., 168 S. W. 62; J. M. Guffey Petroleum Co. v. Dinwiddie, 168 S. W. 439; Selden-Breck Const. Co. v. Kelley, 168 S. W. 985; Ramsey v. Bird, 170 S. W. 1075; Gardenshire v. Gardenshire, 172 S. W. 726; Gordon Jones Const. Co. v. Lopez, 172 S. W. 987; Crawford v. Wellington Railroad Committee, 174 S. W. 1004; Grove v. Keeling, 176 S. W. 822; Higginbotham v. Weaver, 177 S. W. 532; Foster v. Bennett, 178 S. W. 1001; Quanah, A. & P. Ry. Co. v. Collier, 179 S. W. 96; King v. Collins, 179 S. W. 899; Foster v. Atlir, 181 S. W. 520; Bennett v. Rio Grande Canal Co., 182 S. W. 713; Missouri, K. & T. Ry. Co. of Texas v. Norris, 184 S. W. 261; Postex Cotton Mill Co. v. McCamy, 184 S. W. 569; Crosby v. Stevens, 184 S. W. 705; Foos Gas Engine Co. v. Fairview Land & Cattle Co., 185 S. W. 382; Grayson v. Boyd, 185 S. W. 651; Merchants' Ice Co. v. Scott & Dodson, 185 S. W. 651; Madden v. Shane, 185 S. W. 908; Kansas City, M. & O. Ry. Co. of Texas v. Oates, 185 S. W. 1014; Myers v. Grantham, 187 S. W. 532; Ochoa v. Edwards, 189 S. W. 1022; Kansas City, M. & O. Ry. Co. of Texas v. Finke, 190 S. W. 1143; Hill v. Hill, 193 S. W. 726; Southwestern Portland Cement Co. v. Latta & Happer, 193 S. W. 1115; Strawn Coal Co. v. Trojan, 195 S. W. 256; Heidritter v. Keith Lumber Co., 197 S. W. 885; Quarles v. Hardin, 197 S. W. 1112; San Antonio, U. & G. R. Co. v. Dawson, 201 S. W. 247; Lasater v. Jamison, 203 S. W. 1151; Gass v. Sweeney, 204 S. W. 249; Westchester Fire Ins. Co. v. Goodman, 205 S. W. 142; Frick v. International & G. N. Ry. Co., 207 S. W. 198; Panhandle & S. F. Ry. Co. v. Huckabee, 207 S. W. 329; Davis v. White, 207 S. W. 679; Wheeler v. Moore, 208 S. W. 678; El Paso Electric Ry. Co. v. Carruth, 208 S. W. 984.

Art. 1986. (1332) (1332) Special verdict conclusive.—A special verdict found under the provisions of the two preceding articles shall, as between the parties, be conclusive as to the facts found. (P. D. 1469.)

See Sayles' Practice, p. 567; Root v. Baldwin, 52 S. W. 586; Robertson v. Kirby, 61 S. W. 967; Scott v. F. & M. Nat. Bk., 66 S. W. 485; Casey-Swasey Co. v. Manchester Fire Ass. Co., 73 S. W. 864; Ry. v. Kellerman, 87 S. W. 401; Adams v. Burrell, 127 S. W. 581; Fant v. Sullivan, 152 S. W. 515; Crawford v. Wellington Railroad Committee, 174 S. W. 1004; Blackwell v. Vaughn, 176 S. W. 912; McLemore v. Bickerstaff, 179 S. W. 536; West Texas Supply Co. v. Dunivan, 182 S. W. 425; Essex v. Mitchell, 183 S. W. 399; Grisbam v. Grisham, 185 S. W. 959; First Texas State Ins. Co. v. Burwick, 193 S. W. 165; Hale County v. Lubock County, 194 S. W. 678; Stone v. Bare, 198 S. W. 1102; Sanger v. Futch, 208 S. W. 681.

Art. 1987. (1333) (1333) Jury to render general or special verdict as directed.—The jury shall render a general or special verdict as may be directed by the court. (Acts 1879, p. 119; Acts 1899, p. 190.)

See Sayles' Practice, pp. 425, 513, 567, 569, 575, 1121, 1144; Southerland v. Ry., 40 S. W. 194; Stinnett v. City of Sherman, 43 S. W. 847; Gillespie v. Crawford, 42 S. W. 621; Williams v. Planters & Mechanics Nat. Bank of Houston, 45 S. W. 690; G. H. & S. A. Ry. v. Jackson, 50 S. W. 1012; G. H. & S. A. Ry. v. Jackson, 51 S. W. 330; G. H. & S. A. Ry. v. Jackson, 54 S. W. 1023; G. H. & S. A. Ry. v. Lynch, 55 S. W. 389; G. H. & S. A. Ry. v. Botts, 55 S. W. 514; Griffis v. Payne, 55 S. W. 757; Gonzales v. Adue, 56 S. W. 543; Belknap v. Groover, 56 S. W. 249; Breneman v. Mayer, 58 S. W. 725; Woodmen of the W. v. Locklin, 67 S. W. 332; Greer v. Featherson, 69 S. W. 69; Home Circle Soc. v. Shelton, 85 S. W. 320; City of Houston v. Kapner, 95 S. W. 1103; Riggins v. Trickey, 102 S. W. 918; Carwile v. William Cameron & Co., 114 S. W. 100; Meisner v. Taylor, 120 S. W. 1014; Kemp v. Everett, 126 S. W. 897; Adams v. Burrell, 127 S. W. 581; Gulf States Brick Co. v. Beaumont Rice Mills Co., 128 S. W. 931; Sutherland v. Kirkland, 134 S. W. 851; Texas & N. O. R. Co. v. Highland Dairy Co., 137 S. W. 137; Wood v. Smith, 141 S. W. 795; Eaton v. Klein, 141 S. W. 823; Hengy v. Hengy, 151 S. W. 1127; Jones v. Edwards, 152 S. W. 727; Guadalupe County v. Poth, 153 S. W. 919; Cooney v. Dandridge, 158 S. W. 177; Kyle v. Blanchette, 158 S. W. 796; Arlington Heights Realty Co. v. Citizens' Ry. & Light Co., 160 S. W. 1109; Landers v. McCutchan, 161 S. W. 960; Long v. Smith, 162 S. W. 25; Cornelius v. Harris, 163 S. W. 346; Dennis v. Kendrick, 163 S. W. 693; Cisco Oil Mill v. Van Geem, 166 S. W. 439; Seedig v. First Nat. Bank of Clifton, 168 S. W. 445; Walsh v. Methodist Episcopal Church South of Paducah, 173 S. W. 241; Todd v. St. Louis Southwestern Ry. Co. of Texas, 173 S. W. 617; Crawford v. Wellington Railroad Committee, 174 S. W. 1004; Schofield v. Texas Bank & Trust Co., 175 S. W. 506; Commonwealth Bonding & Casualty Ins. Co. v. Cator, 175 S. W. 1074; Blackwell v. Vaughn, 176 S. W. 912; Craver v. Greer, 178 S. W. 699; McLemore v. Bickerstaff, 179 S. W. 536; Wilkerson v. Stasney & Holub, 179 S. W. 669; Craver v. Greer, 179 S. W. 862; Essex v. Mitchell, 183 S. W. 399; Fireman's Ins. Co. v. Jesse French Piano & Organ Co., 187 S. W. 691; Producers' Oil Co. v. Snyder, 190 S. W. 514; Varley v. Nichols-Shepard Sales Co., 191 S. W. 611; Levy v. Engle Bros. Co., 192 S. W. 548; Texas & N. O. R. Co. v. Turner, 193 S. W. 1087; Hale County v. Lubbock County, 194 S. W. 678; Rossetti v. Benavides, 195 S. W. 208; Texas & P. Ry. Co. v. Jones, 196 S. W. 357; Ft. Worth & R. G. Ry. Co. v. Tuggle, 196 S. W. 910; Zeiger v. Woodson, 202 S. W. 163; Celaya v. City of Brownsville, 203 S. W. 153; Continental Casualty Co. v. Chase, 203 S. W. 779; Beavers v. Supreme Home of Ancient Order of Pilgrims, 204 S. W. 718; Pantaze v. Farmer, 205 S. W. 521; Penelope Real Estate Co. v. Dawson, 206 S. W. 702; Griner v. Trevino, 207 S. W. 947; Sanger v. Futch, 208 S. W. 681.

Art. 1988. (1333) (1333) Verdict to comprehend whole issue or all the issues submitted.—The verdict shall comprehend the whole issue or all the issues submitted to the jury. (Id.)

See citations under art. 1987.

Art. 1989. (1333) (1333) Judge, on request, to state conclusions of fact and law separately, statement to be filed.—Upon a trial by the court, the judge shall, at the request of either of the parties, state in writing the conclusion of fact found by him, separately from the conclusions of law; which conclusions of fact and law shall be filed with the clerk and shall constitute a part of the record. (Id.)

See citations under art. 1987.

Art. 1990. (1333) (1333) Court to render judgment on special verdict or conclusions, unless set aside, etc.—In all cases where a special verdict of the jury is rendered, or the conclusions of fact found by the judge are separately stated, the court

shall, unless the same be set aside and a new trial granted, render judgment thereon. (Id.)

See citations under art. 1987.

Art. 1991. (1333) (1333) Exceptions to conclusions or judgment noted in judgment; appeal, etc.; transcript.—It shall be sufficient for the party, excepting to the conclusions of law or judgment of the court, to cause it to be noted on the record in the judgment entry that he excepts thereto; and such party may thereupon take his appeal or writ of error without a statement of facts or further exceptions in the transcript; but the transcript shall in such cases contain the special verdict or conclusions of fact and law aforesaid, and the judgment rendered thereon. (Id.)

See citations under art. 1987.

Art. 1992. (1333) (1333) No submission of special issues unless requested.—A case shall not be submitted to a jury on special issues by the court, unless one or all parties to the suit request such submission. (Id.)

See citations under art. 1987.

See recital in Acts 1899, pp. 190, 191, sec. 2, as to original article 1333.

Art. 1993. (1334) (1334) Verdict not void for want of form.—No special form of verdict is required; and where there has been a substantial compliance with the requirements of the law in rendering a verdict, the judgment shall not be arrested or reversed for mere want of form therein. (Acts 1846, p. 363, sec. 104; P. D. 1465.)

See Sayles' Practice, p. 573.

CHAPTER FIFTEEN

JUDGMENTS

Art. 1994. (1335) (1335) Judgments how framed.—The judgment of the court shall conform to the pleadings, the nature of the case proved and the verdict, if any, and shall be so framed as to give the party all the relief to which he may be entitled either in law or equity. (Acts 1846, p. 363, sec. 115; Acts 1846, p. 200, sec. 7; P. D. 1476, 1410.)

See Sayles' Practice, pp. 584-586; Wagner v. Ins. Co., 50 S. W. 569; Kalteyer v. Wipff, 52 S. W. 64; N. Y. L. Ins. Co. v. English, 70 S. W. 441; Henne & Meyer v. Moultrie, 77 S. W. 607; Carwile v. William Cameron & Co., 114 S. W. 100; Burks v. Burks, 141 S. W. 337; Houston v. Darnell Lumber Co., 146 S. W. 1061; Ft. Worth & D. C. Ry. Co. v. Wilkinson, 152 S. W. 203; Fant v. Sullivan, 152 S. W. 515; Trammell v. Rosen, 157 S. W. 1161; Kirkland v. Matthews, 162 S. W. 375; Armstrong v. Hix, 175 S. W. 430; McLemore v. Bickerstaff, 179 S. W. 536; Bank of Garvin v. Freeman, 181 S. W. 187; Texas & P. Ry. Co. v. Jones, 196 S. W. 357; Turner-Cummings Hardwood Co. v. Phillip A. Ryan Lumber Co., 201 S. W. 431; Lewis v. Farmers' & Mechanics' Nat. Bank of Ft. Worth, 204 S. W. 888.

Art. 1995. (1336) (1336) For or against one or more plaintiffs, etc.—Judgment may, in a proper case, be given for or against one or more of several plaintiffs, and against or for one or more of several defendants or interveners.

See Sayles' Practice, p. 592.

Art. 1995a. Contribution between tort feasors on payment of judgment.—That from and after the passage of this Act, any person against whom, with one or more others, a judgment is rendered in any suit on action arising out of, or based on tort, except in causes wherein the right of contribution or of indemnity, or of recovery, over, by and between the defendants is given by statute or exists under the common law, shall, upon payment of said judgment, have a right of action against his co-defendant or co-defendants and may recover from each a sum equal to the proportion of all of the defendants named in said judgment rendered to the whole amount of said judgment; provided that if any of the persons co-defendant as above mentioned, be insolvent, then recovery may be had in proportion of such defendants as are not insolvent; and the right of recovery over against such insolvent defendant or defendants in judgment, shall exist in favor of each defendant in judgment in proportion as he has been caused to pay by reason of such insolvency. (Acts 1917, ch. 152, sec. 1.)

Art. 1996. (1453) (1449) Several counts, some good and others bad.—Where there are several counts in the petition, and entire damages are given, the verdict or judgment, as the case may be, shall be good, notwithstanding one or more of such counts may be defensive. (Acts 1846, p. 363, sec. 105; P. D., 1460.)

Art. 1997. (1337) (1337) But one final judgment.—Only one final judgment shall be rendered in any cause, except where it is otherwise specially provided by law.

See Sayles' Practice, p. 593; Hume v. Schintz, 40 S. W. 1067; Levy v. Gill, 46 S. W. 84; Lauchheimer & Sons v. Coop, 86 S. W. 57; R'y v. Smith, 99 S. W. 171; Blankenship & Buchanan v. Herring, 132 S. W. 882; Dawson v. Dawson, 140 S. W. 513; Danner v. Walker-Smith Co., 154 S. W. 295; State v. Dayton Lumber Co., 164 S. W. 48; Southwestern Telegraph & Telephone Co. v. Long, 183 S. W. 421; Gulf, C. & S. F. Ry. Co. v. Atlantic Fruit Distributors, 184 S. W. 294.

Art. 1998. (1338) (1338) Judgment may pass title, etc.—Where the judgment is for the conveyance of real estate, or for the delivery of personal property, the decree may pass the title to such property without any act to be done on the part of the party against whom the judgment is rendered. (Acts 1846, p. 363, sec. 120; P. D. 1481.)

See Sayles' Practice, p. 594.

Art. 1999. (1339) (1339) Court shall enforce its own decrees, and may in certain cases do so by contempt process.—The court shall cause its judgments and decrees to be carried into execution; and, where the judgment is for personal property, and it is shown by the pleadings and evidence and the verdict, if any, that such property has an especial value to the plaintiff, the court may award a special writ for the seizure and delivery of such property to the plaintiff; and the court may, in addition to the other relief granted in such case, enforce its judgment by attachment, fine and imprisonment. (Acts 1846, p. 200, sec. 17; P. D. 1420.)

See Sayles' Practice, pp. 595, 1183; Lackey v. Campbell, 54 S. W. 46; Hammond v. Decker, 102 S. W. 453; Kalmans v. Baumbush, 187 S. W. 697.

Art. 2000. (1340) (1340) Judgment of foreclosure of liens.—Judgments for the foreclosure of mortgages and other liens shall be that the plaintiff recover his debt, damages and costs, with a foreclosure of the plaintiff's lien on the property subject thereto, and, except in judgments against executors, administrators and guardians, that an order of sale shall issue to the sheriff or any constable of the county where such property may be, directing him to seize and sell the

same as under execution, in satisfaction of the judgment; and, if the property can not be found, or if the proceeds of such sale be insufficient to satisfy the judgment, then to make the money, or any balance thereof remaining unpaid, out of any other property of the defendant, as in case of ordinary executions. (Acts 1846, p. 303, sec. 119; P. D. 1480.)

See Simkins' Equity (2d Ed.) p. 374; Sayles' Practice, p. 596; Morris v. Morgan, 45 S. W. 1002; Slaughter v. City of Dallas, 103 S. W. 218; Ryan v. Raley, 106 S. W. 750; McDaniel v. Staples, 113 S. W. 596; Bailey v. Block, 125 S. W. 955; Bailey v. Block, 134 S. W. 323; Coleman Nat. Bank v. Futch, 146 S. W. 957; McPhaul v. Byrd, 174 S. W. 644; Rudolph v. Hively, 188 S. W. 721.

Art. 2001. (1341) (1340a) Writ of possession awarded.—When any order foreclosing a lien upon real estate is made in a suit having for its object the foreclosure of such lien, in any court having jurisdiction, such order shall have all the force and effect of a writ of possession, as between the parties to such suit of foreclosure and any person claiming under the defendant to such suit by any right acquired pending such suit; and the court shall so direct in the judgment providing for the issuance of such order; and the sheriff or other officer executing such order of sale shall proceed by virtue of said order to place the purchaser of the property sold under the same in possession thereof within thirty days after the day of sale. (Acts 1885, p. 10.)

See Simkins' Equity (2d Ed.) p. 375; Sayles' Practice, pp. 587, 597; Masterson v. S., 42 S. W. 1003; Morris v. Morgan, 45 S. W. 1002; Johnson v. Fraser, 92 S. W. 49.

Art. 2002. (1342) (1341) Judgment on appeal, etc., from county court.—Judgments on appeal or certiorari from any county court sitting in probate shall be certified to such county court for observance. (Acts 1846, p. 363, sec. 60; P. D. 1460.)

See post arts. 3639, 4297; Sayles' Practice, 597.

Art. 2003. (1343) (1342) On appeal, etc., from justices' court.—Judgments on appeal or certiorari from any justice's court shall be enforced by the county court.

See Sayles' Practice, pp. 597, 1068, 1079, 1080, 1185.

Art. 2004. (1344) (1343) Judgments against executors, etc.—Where a recovery of money is had against an executor, administrator or guardian, as such, the judgment shall state that it is to be paid in the due course of administration, and no execution shall issue on such judgment, but the same shall be certified to the county court, sitting in matters of probate, to be there enforced in accordance with law. (Acts 1846, p. 363, sec. 118; P. D. 1479.)

See Sayles' Practice, pp. 598, 1191.

Art. 2005. (1345) (1344) Against executors acting independently of probate court.—The preceding article shall not apply to judgments against an executor who has been appointed and is acting under a will dispensing with the action of the county court in reference to such estate; but such judgment shall be enforced against the property of the testator in the hands of such executor, by execution, as in other cases.

See post arts. 3363, 3450; Herron's Probate Guide, pp. 112, 113; Sayles' Practice, pp. 598, 1191.

Art. 2006. (1347) (1346) Against partners when all not sued.—Where the suit is against several partners jointly indebted upon contract, and the citation has been served upon some of such partners, but not upon all, judgment may be rendered therein against such partnership and against the partners actually served, but no personal judgment or execution shall be awarded against those not served. (Acts 1858, p. 110, sec. 2; P. D. 1514.)

See Sayles' Practice, p. 304; Blumenthal v. Youngblood, 59 S. W. 290; Staacke Bros. v. Walker & Chilcoat, 73 S. W. 408; Scalfi & Co. v. S., 73 S. W. 441; State v. Cloudt, 84 S. W. 415.

Art. 2007. (1348) (1347) Confession of judgment.—Any person indebted, or against whom a cause of action exists, may without process, appear in person or by attorney, and confess judgment therefor in open court; but in such case a petition should be filed and the justness of the debt or cause of action be sworn to by the person in whose favor the judgment is confessed. (Acts 1846, p. 363, sec. 116; P. D. 1477.)

See Sayles' Practice, p. 605; Lanier v. Blount, 45 S. W. 202; Hunt v. Wright, 139 S. W. 1007.

Art. 2008. (1349) (1347a) The acceptance of service and waiver of process.—The acceptance of service and waiver of process, provided for in article 1880, and the entry of appearance in open court as provided for in article 1881, or the confession of judgment as provided for in article 2007, shall not in any action be authorized by the contract or instrument of writing sued on, or any other instrument executed prior to the institution of such suit, nor shall such acceptance or waiver of service be made until after suit brought. (Acts 1885, p. 33.)

See Sayles' Practice, pp. 312, 606; O'Neal v. Clymer, 52 S. W. 619; Logan v. Robertson, 83 S. W. 395; Hunt v. Wright, 139 S. W. 1007; Howard v. Barthold & Casey, 206 S. W. 378.

Art. 2009. (1350) (1348) Confession of, by attorney.—When the judgment is confessed by attorney, the power of attorney shall be filed, and a recital of the contents of the same be made in the judgment. (Id.)

See Sayles' Practice, pp. 312, 606; Hunt v. Wright, 139 S. W. 1007.

Art. 2010. (1351) (1349) Releases errors, but may be impeached, etc.—Every judgment by confession duly made shall operate as a release of all errors in the record thereof, but such judgment may be impeached for fraud or other equitable cause. (Id. sec. 117; P. D. 1478.)

See Sayles' Practice, pp. 312, 607.

Art. 2011. (1352) (1350) Other judgments, when authorized by law.—The court may render such other judgment and in such form as may be authorized by law.

CHAPTER SIXTEEN

REMITTER AND AMENDMENT OF JUDGMENT

Art. 2012. (1353) (1351) Remitter of excess in verdict.—Any party in whose favor a verdict has been rendered may in open court remit any part of such verdict; and such remitter shall be noted on the docket and entered in the minutes, and execution shall thereafter issue for the balance only of such judgment, after deducting the amount remitted. (Acts 1846, p. 363, sec. 133; P. D. 52.)

See Sayles' Practice, p. 651.

Art. 2013. (1354) (1352) Remitter of excess in judgment in open court.—Any person in whose favor a judgment has been

rendered may in open court remit any part of such judgment; and such remitter shall be noted on the docket and entered in the minutes, and execution shall thereafter issue for the balance only of such judgment, after deducting the amount remitted. (Id.)

See Sayles' Practice, p. 651; Evans v. Smith, 54 S. W. 1050; Wheeler v. Duke, 67 S. W. 909; Shepherd & Davenport v. McEvoy, 144 S. W. 285.

Art. 2014. (1355) (1353) Remitter in vacation.—Any party may make such remitter in vacation by executing and filing with the clerk a release in writing, signed by him or by his attorney of record, and attested by the clerk with the seal of his office. Such release shall constitute a part of the record of the cause, and any execution thereafter issued shall be for the balance only of the judgment, after deducting the amount remitted. (Id.)

See Sayles' Practice, p. 652; G. B. & K. C. R'y v. Eastham, 54 S. W. 648; Evans v. Smith, 54 S. W. 1050; Wheeler v. Duke, 67 S. W. 909; Shepherd & Davenport v. McEvoy, 144 S. W. 285; Atchison, T. & S. F. Ry. Co. v. Boyce, 171 S. W. 1094.

Art. 2015. (1356) (1354) Mistakes in judgments corrected in open court.—Where there shall be a mistake in the record of any judgment or decree, the judge may, in open court, and after notice of the application therefor has been given to the parties interested in such judgment or decree, amend the same according to the truth and justice of the case, and thereafter the execution shall conform to the judgment as amended. (Acts 1846, p. 200, sec. 13; P. D. 49.)

See Simkins' Equity (2d Ed.) p. 526; Sayles' Practice, p. 655; Morse v. S., 50 S. W. 342; Mansel v. Castles, 54 S. W. 299; McLane v. S. A. Nat. Bk., 68 S. W. 63; Gause v. S., 131 S. W. 605; Partridge v. Wooton, 137 S. W. 412; Shepherd & Davenport v. McEvoy, 144 S. W. 285; Brown v. Gatewood, 150 S. W. 950; Thompson v. Field, 164 S. W. 1115; Dickensheets v. Hudson, 167 S. W. 1097; Mallory v. Mantius, 174 S. W. 692; Moore v. Toyah Valley Irr. Co., 179 S. W. 550; Bennett v. S., 194 S. W. 148.

Art. 2016. (1357) (1355) Misrecitals, etc., corrected in vacation or term time, in certain cases.—Where, in the record of any judgment or decree of any court, there shall be any mistake, miscalculation or misrecital of any sum or sums of money, or of any name or names, and there shall be among the records of the cause any verdict or instrument of writing whereby such judgment or decree may be safely amended, it shall be the duty of the court in which such judgment or decree shall be rendered, and the judge thereof in vacation, on application of either party, to amend such judgment or decree thereby, according to the truth and justice of the case; but the opposite party shall have reasonable notice of the application for such amendment. (Acts 1846, p. 363, sec. 132; P. D. 51; Revision, 1879.)

See Simkins' Equity (2d Ed.) p. 526; Sayles' Practice, pp. 657, 675; Morse v. S., 50 S. W. 342; Acconsi v. Stowers Furniture Co., 83 S. W. 1104; Ellis v. Nat. City Bk., 94 S. W. 437; Taylor v. Doom, 95 S. W. 4; H. E. & W. T. R'y v. Skeeter Bros., 98 S. W. 1064; Gause v. S., 131 S. W. 605; Shepherd & Davenport v. McEvoy, 144 S. W. 285; Brown v. Gatewood, 150 S. W. 950; Thompson v. Field, 164 S. W. 1115; A. J. Birdsong & Son v. Allen, 166 S. W. 1177; Raike v. Clayton, 175 S. W. 498; Moore v. Toyah Valley Irr. Co., 179 S. W. 550; Mouser v. First Nat. Bank of El Campo, 197 S. W. 1000.

Art. 2017. (1358) (1356) Correction made in vacation to be certified to clerk, etc.—The judge making such correction in vacation shall embody the same in a judgment, and shall certify thereto and deliver the same to the clerk, who shall enter the same in the minutes. Such judgment shall constitute a part of the record of the cause, and any execution thereafter issued shall conform to the judgment as corrected.

See Sayles' Practice, p. 657; Shepherd & Davenport v. McEvoy, 144 S. W. 285; Raike v. Clayton, 175 S. W. 498.

Art. 2018. (1359) (1357) Correction or remitter operates to cure error.—A remitter or correction made as provided in any of the six preceding articles shall, from the making thereof, cure any error in the verdict or judgment by reason of such excess. (Acts 1846, p. 363, sec. 133; P. D. 52.)

See Sayles' Practice, p. 662; Shepherd & Davenport v. McEvoy, 144 S. W. 285.

CHAPTER SEVENTEEN

NEW TRIALS AND ARREST OF JUDGMENT

Art. 2019. (1370) (1368) New trials, etc., may be granted.—New trials may be granted and judgments may be set aside or arrested on motion for good cause, on such terms and conditions as the court shall direct. (Acts 1846, p. 363, sec. 109; P. D. 1470.)

See Sayles' Practice, p. 621; Town v. Guerguin, 57 S. W. 565; State v. Quillen, 115 S. W. 660; First Nat. Bank of Ft. Worth v. Henwood, 183 S. W. 5.

Art. 2020. (1371) (1369) Motion for new trial, etc., requisites of.—Every such motion shall be in writing and signed by the party or his attorney, and shall specify the ground upon which it is founded, and may be amended under leave of the court, and no grounds other than those specified shall be heard or considered. (Id. sec. 112; Acts 1905, p. 21; P. D. 1473.)

See Sayles' Practice, p. 622; Townes' Texas Pleading (2d Ed.) p. 640; City of Austin v. Forbis, 89 S. W. 405; G. C. & S. F. R'y v. Blue, 102 S. W. 128; Missouri, K. & T. R. Co. of Texas v. Hawkins, 109 S. W. 221; State v. Quillen, 115 S. W. 660; Chicago, R. I. & G. Ry. Co. v. Swann, 127 S. W. 1164; Ft. Worth v. Lopp, 134 S. W. 824; Houston & T. C. R. Co. v. Gray, 137 S. W. 729; Dallas Consol. Electric Street Ry. Co. v. Kelley, 142 S. W. 1005; San Antonio & A. P. Ry. Co. v. Wells, 146 S. W. 645; San Antonio Traction Co. v. Cassanova, 154 S. W. 1190; Whitaker v. Browning, 155 S. W. 1197; R. G. Andrews Lumber Co. v. Missouri, K. & T. Ry. Co. of Texas, 158 S. W. 1194; City of Ft. Worth v. Curry, 160 S. W. 134; Harlingen Land & Water Co. v. Houston Motor Co., 160 S. W. 628; Texas Co. v. Earles, 164 S. W. 28; St. Louis Southwestern Ry. Co. of Texas v. Waits, 164 S. W. 879; Galveston, H. & S. A. Ry. Co. v. Bosher, 165 S. W. 93; City of Ft. Worth v. Charbonneau, 166 S. W. 387; Weatherford, M. W. & N. W. Ry. Co. v. Thomas, 175 S. W. 822; Texas & P. Ry. Co. v. Tucker, 183 S. W. 1188; Kaker v. Parrish, 187 S. W. 517; Houston Electric Co. v. Pearce, 192 S. W. 558; Trinity & B. V. Ry. Co. v. Geary, 194 S. W. 458; Jones v. Wichita Valley Ry. Co., 195 S. W. 890; Dorsey v. United Brotherhood of Friends, 202 S. W. 350; Morales v. Cline, 202 S. W. 754; Missouri, K. & T. Ry. Co. of Texas v. Patterson, 204 S. W. 1026; Farrand v. Houston & T. C. R. Co., 205 S. W. 845; Smith v. Texas Power & Light Co., 206 S. W. 119; Missouri, K. & T. Ry. Co. of Texas v. R. G. Andrews Lumber Co., 206 S. W. 823.

Art. 2021. (1371) (1369) Misconduct of jury, etc., as ground of motion; evidence.—Where the ground of the motion is misconduct of the jury or of the officer in charge of same, or because of any communication made to the jury, or because the jury received other testimony, the court shall hear evidence thereof; and it shall be competent to prove such facts by the jurors or others, by examination in open court; and, if the misconduct proven, or the testimony

received, or the communication made, be material, a new trial may, in the discretion of the court, be granted. (Id.)

See citations under art. 2020.

Art. 2022. (1452) (1448) New trials granted where damages too small, etc.—New trials may be granted as well when the damages are manifestly too small as when they are too large. (Id. sec. 111; P. D. 1472.)

See Sayles' Practice, pp. 632, 644; Burns v. Mer. & Plan. Oil Co., 63 S. W. 1061.

Art. 2023. (1373) (1371) Time of making motion.—All motions for new trials, in arrest of judgment, or to set aside a judgment, shall be made within two days after the rendition of verdict, if the term of court shall continue so long; if not, then before the end of the term. (Id. sec. 112; P. D. 1473.)

See Sayles' Practice, pp. 418, 580, 625; Gonzales v. Adue, 56 S. W. 544; Head v. Altman, 159 S. W. 135; Nocona Nat. Bank v. Goin, 159 S. W. 189; First Nat. Bank of Ft. Worth v. Henwood, 183 S. W. 5; Hale County v. Lubbock County, 194 S. W. 678.

Art. 2024. (1372) (1370) Not more than two new trials, except, etc.—Not more than two new trials shall be granted to either party in the same cause, except when the jury have been guilty of some misconduct or have erred in matter of law. (Id. sec. 109; P. D. 1470.)

See Sayles' Practice, p. 627; Wright v. Swayne, 140 S. W. 221; Drew v. American Automobile Ins. Co., 207 S. W. 547.

Art. 2025. (1374) (1372) Determined when.—All motions for new trials, in arrest of judgment, or to set aside a judgment, shall be determined at the term of the court at which such motion shall be made. (Id.)

See Sayles' Practice, pp. 391, 418, 626; Town v. Guerguin, 57 S. W. 565; Luther v. W. U. Tel. Co., 60 S. W. 1026; Clements v. Buckner, 80 S. W. 235; Bradford v. Malone, 130 S. W. 1013; Cooney v. Isaacks, 173 S. W. 901; Dyess v. Rowe, 177 S. W. 523; Grubbs v. Marple, 185 S. W. 597.

Art. 2026. (1375) (1373) Bill of review in suits by publication.—In cases in which judgment has been rendered on service of process by publication, where the defendant has not appeared in person or by an attorney of his own selection, a new trial may be granted by the court upon the application of the defendant for good cause shown, supported by affidavit, filed within two years after the rendition of such judgment. (Id. sec. 129; P. D. 1489.)

See Sayles' Practice, p. 649; Glaze v. Johnson, 65 S. W. 662; Tinsley v. Corbett, 66 S. W. 910; McLane v. Bank, 68 S. W. 63; State v. Dashiell, 74 S. W. 779; Rose v. Darby, 76 S. W. 799; Bean v. Dove, 77 S. W. 242; Brown v. Dutton, 85 S. W. 454; Polk v. Herndon, 93 S. W. 531; Bracht v. Bracht, 107 S. W. 895; Wolf v. Sahm, 120 S. W. 1114; Kruegel v. Cobb, 124 S. W. 723; Fred v. Fred, 126 S. W. 900; Bargna v. Bargna, 127 S. W. 1156; Crosby v. Di Palma, 141 S. W. 321; Strickland v. Baugh, 169 S. W. 181; Wiseman v. Cottingham, 174 S. W. 281; Davenport v. Rutledge, 187 S. W. 988.

Art. 2027. (1376) (1374) Petitions, etc., necessary in such cases.—In the cases mentioned in the preceding article, a petition shall be filed and service of process made upon the parties adversely interested in the judgment, as in other cases. (Id.)

See Sayles' Practice, p. 649.

Art. 2028. (1377) (1375) Execution, etc., not suspended, unless, etc.—In the cases mentioned in the two preceding articles, process on such judgment shall not be suspended, unless the defendant or party applying therefor shall give bond, with two or more good and sufficient sureties, to be approved by the clerk in double the amount of the judgment, or value of the property adjudged, payable to the plaintiff in the judgment, conditioned that the party will prosecute his petition for new trial to effect, and will perform such judgment as may be rendered by the court, should its decision be against him. (Id.)

See Sayles' Practice, pp. 649, 1184.

Art. 2029. (1378) (1376) Sale under such execution not avoided, but, etc.—Where, in such case as is mentioned in the three preceding articles, property has been sold under the judgment and execution before the process was suspended, the defendant, should he defeat the plaintiff's action, shall not recover the property so sold, but shall have judgment against the plaintiff in the judgment for the proceeds of such sale. (Id.)

See Sayles' Practice, p. 649; Brown v. Dutton, 85 S. W. 454.

CHAPTER EIGHTEEN
COSTS AND SECURITY THEREFOR

Art. 2030. (1421) (1420) Each party responsible to officers for his own costs.—Each party to any suit shall be responsible to the officers of the court for the costs incurred by himself; and no sheriff or constable shall be compelled to execute any process in civil cases coming from any county other than the one in which he is an officer, unless the fees allowed him by law for the service of such process shall be paid in advance; provided, that when affidavit is filed, as provided for in article 2052 of this chapter, the clerk issuing the process shall indorse thereon the words, "pauper oath filed," and sign his name officially below them; and the sheriff or constable in whose hands such process is placed for service shall serve the same as in other cases. (Acts 1887, p. 102.)

See Sayles' Practice, pp. 677-8; Allen v. Hazzard, 77 S. W. 268; Wichita Mill & Elevator Co. v. State, 122 S. W. 427.

Art. 2031. (2491) (2427) Each party liable for costs incurred by him.—Each party to a suit shall be liable for all costs incurred by him; and, in case the costs can not be collected of the party against whom the same have been adjudged, execution may issue against any party in such suit for the amount of costs incurred by such party, but no more.

See Wichita Mill & Elevator Co. v. S., 122 S. W. 427; Connellee v. Blanton, 163 S. W. 407.

Art. 2032. (1422) (1420a) Officers may demand payment of costs up to adjournment of each term.—It shall be lawful for the clerks of the district and county courts and justices of the peace to demand payment of all costs due in each and every case pending in their respective courts, up to the adjournment of each term of said courts. (Acts 1879, p. 90.)

See Sayles' Practice, p. 678; Scott v. Hunt, 49 S. W. 210; Connellee v. Blanton, 163 S. W. 407.

Art. 2033. (1423) (1420b) May put bill of costs in hands of officer for collection, when. Same to have force of execution. Appeal not to prevent issuance of execution for costs.—Should any party against whom costs have been taxed under the provisions of this chapter fail or refuse

to pay the same within ten days after demand for payment, it shall be lawful for the clerk or justice of the peace to make out a certified copy of the bill of costs then due, as herein provided for, and place the same in the hands of the sheriff or constable for collection; and such certified bill of costs shall have the force and effect of an execution. The removal of a case by appeal shall not prevent the district clerk, county clerk or justice of the peace from issuing his execution for costs at the end of the term at which the appeal is taken. (Id.)

Art. 2034. (1424) (1420c) Officer to levy for costs, when. Costs demanded of attorney, when. Fees for collecting costs, when allowed.—It shall be lawful for the sheriff or constable upon demand and failure to pay said bill of costs, to levy upon a sufficient amount of property of the person from whom said costs may be due to satisfy the same, and sell such property according to the law governing sales under execution; provided, where such party is not a resident of the county where such suit is pending, then payment of such costs may be demanded of his attorney of record; and neither the clerk nor justice of the peace shall be allowed to charge any fee for making out such certified bill of costs, nor shall the sheriff or constable be allowed any fees for collecting said costs, unless he is compelled to make a levy; and, in case of levy or sale, he shall charge and collect the same fees as are allowed for collecting money under other executions. (Id.)

See Sayles' Practice, p. 679.

Art. 2035. (1425) (1421) Successful party to recover of his adversary.—The successful party to a suit shall recover of his adversary all the costs expended or incurred therein, except where it is or may be otherwise provided by law. (Id. sec. 122; P. D. 1483.)

See Sayles' Practice, pp. 680, 689; Hussey v. Heim, 42 S. W. 859; Tutts' Heirs v. Morgan, 46 S. W. 122; Morrow v. Terrell, 50 S. W. 734; Masterson v. Heitman & Co., 87 S. W. 227; Brown v. Humphrey, 95 S. W. 23; Beaumont Rice Mills v. Bridges, 101 S. W. 511; Bruce v. Knodell, 103 S. W. 433; Rudolph v. Snyder, 106 S. W. 763; Hastings v. Townsend, 136 S. W. 1143; Ft. Worth & R. G. Ry. Co. v. Robertson, 138 S. W. 107; Altgelt v. Callaghan, 144 S. W. 1166; Cohen v. Strange, 175 S. W. 1107; Navarro v. Lamana, 179 S. W. 922; Havard v. Carter-Kelley Lumber Co., 181 S. W. 756; Thornton v. Goodman, 185 S. W. 926.

See art. 3722.

Art. 2036. (1426) (1422) Taxes on law proceedings.—All taxes imposed on law proceedings shall be included in the bill of costs. (Id. sec. 124; P. D. 1484.)

Art. 2037. (1427) (1423) Fees of only two witnesses to any fact.—There shall not be allowed in any cause the fees of more than two witnesses to any one fact. (Id. sec. 127; P. D. 1487.)

See Sayles' Practice, p. 689; T. & P. Ry. v. White, 48 S. W. 530; Cabell v. Orient Ins. Co., 55 S. W. 610.

Art. 2038. (1428) (1424) Costs of motions.—On all motions, the court may give or refuse costs at its discretion, except where it is otherwise provided by law. (Id. sec. 121; P. D. 1482.)

See Sayles' Practice, pp. 689, 691; Cox v. Patten, 66 S. W. 64; Moore v. Rogers, 99 S. W. 1023; Parker v. Watt, 178 S. W. 718.

Art. 2039. (1429) (1425) Costs where exception is sustained.—Where a pleading is excepted to, if such exception be sustained, all the costs of such exception and of the pleading adjudged to be insufficient, shall be taxed against the party filing such insufficient pleadings. (Id. secs. 122, 123; P. D. 1483, 12.)

See Sayles' Practice, p. 691.

Art. 2040. (1430) (1426) Where exception overruled.—If such exception be overruled, all costs of such exception shall be taxed against the party taking the exception. (Id.)

See Sayles' Practice, p. 691.

Art. 2041. (1431) (1427) Costs of several suits, etc.—Where any plaintiff shall bring in the same court several suits against the same defendant for causes of action which should have been joined, he shall recover the costs of one action only; and the costs of the other actions shall be adjudged against him, unless sufficient reasons appear to the court for instituting several actions. (Id. sec. 49; P. D. 1452.)

See Townes' Texas Pleading (2d Ed.) p. 227; Sayles' Practice, p. 358.

Art. 2042. (1432) (1428) Where demand reduced by payments, etc.—Where the plaintiff's demand is reduced by payment to an amount which would not have been within the jurisdiction of the court, the defendant shall recover his costs. (Acts 1860, p. 5, sec. 1; P. D. 3446.)

See Sayles' Practice, p. 681; Reed v. Walker, 130 S. W. 607; Tatum v. Small, 186 S. W. 244.

Art. 2043. (1433) (1429) Costs in action of assault and battery, etc.—In all civil actions for assault and battery, slander and defamation of character, if the verdict or judgment shall be for the plaintiff, but for a less sum than twenty dollars, the plaintiff shall not recover his costs, but each party shall be taxed with the costs incurred by him in such suit. (Acts 1846, p. 363, sec. 106; P. D. 1467.)

See Sayles' Practice, p. 682.

Art. 2044. (1434) (1430) Cost of new trials.—The costs of all new trials may either abide the event of the suit or may be taxed against the party to whom the new trial is granted, as may be adjudged by the court at the time of granting such new trial. (Id. sec. 113; P. D. 1474.)

See Sayles' Practice, p. 683.

Art. 2045. (1435) (1431) Where judgment is arrested, etc.—When the judgment is arrested or the verdict set aside because of the insufficiency of the pleadings of the party in whose favor the verdict or judgment was rendered, the cost thereof shall be taxed against the party whose pleadings shall have been so adjudged insufficient. (Id. sec. 114; P. D. 1475.)

See Sayles' Practice, p. 683.

Art. 2046. (1436) (1432) On appeal and certiorari.—In cases of appeal or certiorari taken by the party against whom the judgment was rendered in the court below, if the judgment of the court above be against him, but for a less amount, such party shall recover the costs of the court above, but shall be adjudged to pay the costs of the court below; if the judgment be against him for the same or a greater amount than in the court below, the adverse party shall recover the costs of both courts. (Acts 1870, p. 87, sec. 12; P. D. 6349.)

See Sayles' Practice, pp. 683, 1080; Ball v. Chase 49 S. W. 934; Ladonia Dry Goods Co. v. Conyers, 58 S. W. 967; American Ex. Co. v. Adams, 92 S.

W. 1039; Cunningham v. Skinner, 97 S. W. 509; Julius Kessler & Co. v. Burchell, 99 S. W. 173; Missouri, K. & T. Ry. Co. of Texas v. Milliron, 115 S. W. 655; St. Louis Southwestern Ry. Co. of Texas v. King, 122 S. W. 925; McIntyre v. Emerson, 132 S. W. 947; Clayton v. McMakin, 136 S. W. 568; Nail v. Wolfe City Nat. Bank, 158 S. W. 1166; Hartford Fire Ins. Co. v. Pires, 165 S. W. 565; Morrison v. Brooks, 189 S. W. 1094; Nations v. Williams, 203 S. W. 1176.

Art. 2047. (1437) (1433) Same subject.—In cases of appeal or certiorari taken by the party in whose favor the judgment was rendered in the court below, if the judgment of the court above be in his favor for a greater amount, such party shall recover the costs of both courts; if the judgment be in his favor, but for the same or a less amount than in the court below, he shall recover the costs of the court below and pay the cost of the court above. (Id.)

See Sayles' Practice, pp. 683, 1080; Bimel Carriage Co. v. Roselle, 48 S. W. 888; Ry. v. Wheeler, 90 S. W. 481.

Art. 2048. (1438) (1434) Court may otherwise adjudge costs.—The court may, for good cause, to be stated on the record, adjudge the costs otherwise than as provided in the preceding articles of this chapter.

See Sayles' Practice, pp. 680, 683; Morrow v. Terrell, 50 S. W. 734; Ladonia Dry Goods Co. v. Conyers, 58 S. W. 967; Cox v. Patten, 66 S. W. 64; City of Houston v. Stewart, 90 S. W. 49; Ry. v. Wheeler, 90 S. W. 481; American Ex. Co. v. Adams, 92 S. W. 1039; Brown v. Humphrey, 95 S. W. 23; Beaumont Rice Mills Co. v. Bridges, 101 S. W. 511; Bruce v. Knodell, 103 S. W. 433; Missouri, K. & T. Ry. Co. of Texas v. Milliron, 115 S. W. 655; St. Louis Southwestern Ry. Co. of Texas v. King, 122 S. W. 925; Clayton v. McMakin, 136 S. W. 568; Hastings v. Townsend, 136 S. W. 1143; Ft. Worth & R. G. Ry. Co. v. Robertson, 138 S. W. 107; Williamson v. McElroy, 155 S. W. 988; Nail v. Wolfe City Nat. Bank, 158 S. W. 1166; Hartford Fire Ins. Co. v. Pires, 165 S. W. 565; Simmons v. Arnim, 172 S. W. 184; Cohen v. Strange, 175 S. W. 1107; Navarro v. Lamana, 179 S. W. 922; Havard v. Carter-Kelly Lumber Co., 181 S. W. 756.

Art. 2049. (1439) (1435) Clerk may require security for costs.—The clerk may require from the plaintiff in a suit security for costs before issuing any process therein, but he shall file the petition and enter the same properly on the docket. (Acts 1848, p. 184, sec. 23; P. D. 3833.)

See Sayles' Practice, p. 352; Glameyer v. Hamilton, 60 S. W. 471; Frazier v. Moore, 67 S. W. 427.

Art. 2050. (1440) (1436) Defendant or any officer may require security.—The plaintiff in any civil suit may, at any time before final judgment, upon motion of the defendant or any officer of the court interested in the costs accruing in such suit, be ruled to give security for the costs; and, if such rule be entered against the plaintiff and he fail to comply therewith on or before the first day of the next term of the court, the suit shall be dismissed. (Acts 1848, p. 106, sec. 1.)

See Sayles' Practice, pp. 352, 355; The Oriental v. Barclay, 41 S. W. 117; Gonzales v. Batts, 50 S. W. 403.

Art. 2051. (1441) (1437) Judgment on cost bond.—All bonds given as security for costs shall authorize judgment against all the obligors in such bond for the said costs, to be entered in the final judgment of the cause. (Id. sec. 2.)

See Sayles' Practice, p. 353; Bodeman v. Reinhard, 54 S. W. 1051; Glameyer v. Hamilton, 60 S. W. 471; Ramsel v. Miller, 202 S. W. 1050.

Art. 2052. (1442) (1438) Affidavit of inability to give.—A party who is required to give security for costs may file with the clerk or justice of the peace an affidavit that he is too poor to pay the costs of court and is unable to give security therefor; and it shall thereupon be the duty of the clerk or justice of the peace to issue process and to perform all other services required of him, in the same manner as if the security had been given; provided, any party to the suit, the clerk or justice of the peace, shall have the right to contest by proof the inability of the party to pay the costs or his inability to give security for the same. (Acts 1879, p. 91; Acts 1846, p. 363; Acts 1907, p. 4; P. D. 1429.)

See Oriental Hotel, etc., v. Barclay, 41 S. W. 117.

Art. 2052a. Contest of affidavit, and trial of same.—Such contest may be tried before the trial of the cause, at such time as may be designated by the court; provided that notice of such contest shall be given by noting it on the docket at the term of the court at which the affidavit of inability to give security is filed. (Id.)

See Oriental Hotel, etc., v. Barclay, 41 S. W. 117.

Art. 2053. (1442) (1438) Deposit in lieu of cost bond.—In lieu of a bond for costs, the party required to give the same may deposit with the clerk of the court, or with the justice of the peace, such amount of money as the court or justice of the peace from time to time may designate as sufficient to pay the costs that have accrued. (Acts 1907, p. 4.)

See Oriental Hotel, etc., v. Barclay, 41 S. W. 117.

Art. 2054. (1443) (1439) No security to be required of executors, etc.—Executors, administrators and guardians appointed by the courts of this state shall not be required to give security for costs in any suit brought by them in their fiduciary character. (Acts 1848, p. 106, sec. 4; P. D. 1503.)

See Sayles' Practice, pp. 354, 685; Houston Printg. Co. v. Moulden, 41 S. W. 381; Lanius v. Fletcher, 99 S. W. 169.

Art. 2055. (1444) (1440) No security required of state.—The state shall not, in any case, be required to give security for costs.

Art. 2056. (1445) (1441) Security may be required of intervenors, etc.—The provisions of this chapter relating to security for costs by the plaintiff shall also apply to an intervenor, and to a defendant who seeks a judgment against the plaintiff on a counter claim after the plaintiff shall have discontinued his suit under the provisions of this title relating to discontinuance.

See Sayles' Practice, p. 354.

Art. 2057. (1446) (1442) Costs may be secured by other bonds, etc.—When the costs are secured by the provisions of an attachment or other bond filed by the party required to give security for costs, no further security shall be required.

See Sayles' Practice, p. 354.

CHAPTER NINETEEN

BILLS OF EXCEPTIONS AND STATEMENTS OF FACTS

Art. 2058. (1360) (1358) Exception to rulings taken, when.—Whenever, in the progress of a cause, either party is dissatisfied with any ruling, opinion or other action of the court, he may except thereto at the time the same is made or announced, and at his request time shall be given to embody

such exception in a written bill. (Acts 1846, p. 363, sec. 101; P. D. 217.)

See Sayles' Practice, p. 501; Culver v. S., 62 S. W. 922; Adams v. Ry., 70 S. W. 1006; Ry. v. Mercer, 78 S. W. 562; Moree v. S., 83 S. W. 117; Home Circle Soc. v. Shelton, 85 S. W. 320; Baum v. McAfee, 125 S. W. 984; Sowers v. Yoeman, 129 S. W. 1153; Jacobs v. Nussbaum & Scharff, 133 S. W. 484; St. Louis Southwestern Ry. Co. of Texas v. Wadsack, 166 S. W. 42; Gulf, T. & W. Ry. Co. v. Culver, 168 S. W. 514; Texarkana & Ft. S. Ry. Co. v. Casey, 172 S. W. 729; Shaw v. Garrison, 174 S. W. 942; International & G. N. Ry. Co. v. Bland, 181 S. W. 504; Loeb v. Texas & N. O. R. Co., 186 S. W. 378; Perez v. S., 206 S. W. 192.

Art. 2059. (1361) (1359) Requisites of bills of exceptions.—No particular form of words shall be required in a bill of exceptions; but the objection to the ruling or action of the court shall be stated with such circumstances, or so much of the evidence as may be necessary to explain it, and no more, and the whole as briefly as possible.

See Sayles' Practice, p. 504; Kansas City, M. & O. Ry. Co. v. West, 149 S. W. 206; St. Louis Southwestern Ry. Co. of Texas v. Wadsack, 166 S. W. 42; Gulf, T. & W. Ry. Co. v. Culver, 168 S. W. 514; Sanger v. First Nat. Bank of Amarillo, 170 S. W. 1087; Shaw v. Garrison, 174 S. W. 942; Weatherford, M. W. & N. W. Ry. Co. v. Thomas, 175 S. W. 822; International & G. N. Ry. Co. v. Bland, 181 S. W. 504; Loeb v. Texas & N. O. R. Co., 186 S. W. 378; Counts v. Southwestern Land Co., 206 S. W. 207.

Art. 2060. (1362) (1360) May refer to statement of facts.—Where the statement of facts contains all the evidence requisite to explain the bill of exceptions, it shall not be necessary to set out such evidence in the bill of exceptions; but it shall be sufficient to refer to the same as it appears in the statement of facts.

See Sayles' Practice, p. 505; Jamison v. Dooley, 79 S. W. 92; Northern Texas Traction Co. v. Yates, 88 S. W. 283; Pecos & N. T. Ry. Co. v. Porter, 158 S. W. 564; St. Louis Southwestern Ry. Co. of Texas v. Wadsack, 166 S. W. 42; Houston, E. & W. T. Ry. Co. v. Cavanaugh, 173 S. W. 619; Shaw v. Garrison, 174 S. W. 942; International & G. N. Ry. Co. v. Bland, 181 S. W. 504; Loeb v. Texas & N. O. R. Co., 186 S. W. 378.

Art. 2061. (1363) (1361) Charges regarded as approved unless excepted to.—The ruling of the court in the giving, refusing or qualifying of instructions to the jury shall be regarded as approved unless excepted to as provided for in the foregoing articles. (Acts 1846, p. 363, sec. 101; P. D. 217; Acts 1913, p. 113, sec. 3.)

See Sayles' Practice, pp. 505, 529.

Art. 2062. (1364) (1362) No bill of exceptions where ruling appears of record.—Where the ruling or other action of the court appears otherwise of record, no bill of exceptions shall be necessary to reserve an exception thereto.

See Sayles' Practice, p. 506; Stevens v. Herron, 87 S. W. 326; Missouri, K. & T. Ry. Co. of Texas v. Beasley, 155 S. W. 183; Cooper Grocery Co. v. Blume, 156 S. W. 1157; Western Union Tel. Co. v. Forest, 157 S. W. 204; El Paso Electric Ry. Co. v. Lee, 157 S. W. 748; Brewer v. A. M. Blythe & Co., 158 S. W. 786; Benton v. Kuykendall, 160 S. W. 438; Childress v. Robinson, 162 S. W. 1172; Gulf, T. & W. Ry. Co. v. Culver, 168 S. W. 514; Gulf, C. & S. F. Ry. Co. v. Battle, 169 S. W. 1048; Shaw v. Garrison, 174 S. W. 942; American Nat. Life Ins. Co. v. Rowell, 175 S. W. 170; Holmes v. Coalson, 178 S. W. 628; Mason v. Olds, 198 S. W. 1040; King-Collie Co. v. Wichita Falls Warehouse Co., 205 S. W. 748; Counts v. Southwestern Land Co., 206 S. W. 207; Valdespino v. Dorrance & Co., 207 S. W. 649.

Art. 2063. (1365) (1363) Bill to be presented to the judge.—It shall be the duty of the party taking any bill of exceptions to reduce the same to writing, and present the same to the judge for his allowance and signature.

But see post arts. 2075, 2076; Sayles' Practice, p. 506; King v. Sassaman, 54 S. W. 304; Harper v. S., 55 S. W. 178; S. A. & A. P. Ry. v. Holden, 55 S. W. 603; W. U. Tel. Co. v. Rowe, 98 S. W. 228; International & G. N. R. Co. v. Tate, 170 S. W. 1061; Shaw v. Garrison, 174 S. W. 942; Gulf, C. & S. F. Ry. Co. v. Graham, 175 S. W. 472; Dunn v. Epperson, 175 S. W. 729; Jolley v. Brown, 191 S. W. 177; City of Henderson v. Fields, 194 S. W. 1003.

Art. 2064. (1366) (1364) Submitted to opposing counsel, etc.—It shall be the duty of the judge to submit such bill of exceptions to the adverse party or his counsel, if in attendance on the court, and if the same is found to be correct, it shall be signed by the judge without delay and filed with the clerk.

See Sayles' Practice, p. 511; Maury v. Keller, 53 S. W. 59; Baum v. McAfee, 125 S. W. 984; Shaw v. Garrison, 174 S. W. 942; Jolley v. Brown, 191 S. W. 177.

Art. 2065. (1367) (1365) If found incorrect.—Should the judge find such bill of exceptions to be incorrect, he shall suggest to the party, or his counsel who drew it, such corrections as he may deem necessary therein; and if they are agreed to, he shall make such corrections and sign the same and file it with the clerk. (Acts 1846, p. 363, sec. 101; P. D. 217.)

See Weatherford v. S., 91 S. W. 591; Baum v. McAfee, 125 S. W. 984; Shaw v. Garrison, 174 S. W. 942; Jolley v. Brown, 191 S. W. 177.

Art. 2066. (1368) (1366) On disagreement, judge to make out bill, etc.—Should the party not agree to such corrections, the judge shall return the bill of exceptions to him with his refusal indorsed thereon, and shall make out and sign and file with the clerk such a bill of exceptions as will, in his opinion, present the ruling of the court in that behalf as it actually occurred.

See Washington v. S., 125 S. W. 917; Baum v. McAfee, 125 S. W. 984; Hickey v. S., 138 S. W. 1051; Shaw v. Garrison, 174 S. W. 942; Jolley v. Brown, 191 S. W. 177; Weige v. S., 196 S. W. 524.

Art. 2067. (1369) (1367) Bystanders bill, how obtained.—Should the party be dissatisfied with the bill of exceptions filed by the judge, as provided in the preceding article, he may, upon procuring the signatures of three respectable bystanders, citizens of this state, attesting the correctness of the bill of exceptions as presented by him, have the same filed as part of the record of the cause; and the truth of the matter in reference thereto may be controverted and maintained by affidavits, not exceeding five in number on each side, to be filed with the papers of the cause, within ten days after the filing of such bill of exceptions, and to be considered as a part of the record relating thereto. When the court refuses to sign a correct bill of exceptions, such proceedings may be had in the court of civil appeals, as is prescribed in article 1607. (Acts 1846, p. 363, secs. 101, 102; Acts 1892, p. 25.)

See Sayles' Practice, p. 513; Culver v. S., 62 S. W. 922; Moree v. S., 83 S. W. 1117; Dehougne v. W. U. Tel. Co., 84 S. W. 1066; Taylor v. S., 87 S. W. 1039; Ray v. Pecos & N. T. R'y, 88 S. W. 461; Weatherford v. S., 91 S. W. 591; Rabb v. E. H. Goodrich & Son, 102 S. W. 910; Washington v. S., 125 S. W. 917; Baum v. McAfee, 125 S. W. 984; Conger v. S., 140 S. W. 1112; Glover v. Pfeuffer, 163 S. W. 984; Kenedy Mercantile Co. v. Western Union Tel. Co., 167 S. W. 1094; Shaw v. Garrison, 174 S. W. 942; Marshall v. S., 175 S. W. 154; Jolley v. Brown, 191 S. W. 177; Weige v. S., 196 S. W. 524; Williams v. S., 205 S. W. 913.

Art. 2068. (1379) (1377) Statement of facts, how prepared.—After the trial of any cause, either party may make out a written statement of the facts given in evidence on the trial, and submit the same to the opposite party, or his attorney, for inspection. If the parties, or their attorneys, agree upon such statement of facts, they shall sign the same; and it shall then be submitted to the judge, who shall, if he find it correct, approve and sign it; and the same shall be filed with the clerk. Where it is agreed by the parties to the suit, or their attorneys of record, that the evidence adduced upon the trial of the cause is sufficient to establish a fact or facts alleged by either party, the testimony of the witnesses and the deeds, wills, records, or other written instruments, admitted as evidence relating thereto, shall not be stated or copied in detail into a statement of facts; but the facts thus established shall be stated as facts proved in the case; provided, an instrument, such as a note or other contract, mortgage or deed of trust, that constitutes the cause of action on which the petition, or answer, or cross-bill, or intervention, is founded may be copied once in the statement of facts. When there is any reasonable doubt of the sufficiency of the evidence to constitute proof of any one fact under the preceding rule, there may then be inserted such of the testimony of the witnesses and written instruments, or parts thereof, as relate to such facts. (Acts 1892, p. 42.)

See ante art. 1933g; Sayles' Practice, p. 609; Meyer v. Mattes, 37 S. W. 963; Pace v. Price, 45 S. W. 203; Texas Cent. R'y Co. v. Flanary, 45 S. W. 214; Walker v. Boyd, 48 S. W. 602; Guerro v. S., 53 S. W. 119; Graves v. George, 54 S. W. 262; Stubbs v. Landa Cot. Oil Co., 66 S. W. 213; Greer v. Featherston, 69 S. W. 69; R'y v. Keen, 73 S. W. 1074; Bath v. R'y, 78 S. W. 993; Palmo v. S. W. Slayden & Co., 92 S. W. 796; W. B. Walker & Sons v. Allen, 95 S. W. 585; Baker v. S., 97 S. W. 81; Mundine v. S., 97 S. W. 490; G. H. & S. A. R'y v. Quinn, 100 S. W. 1036; Colorado & S. Ry. Co. v. Hamm, 103 S. W. 1125; Runck v. Timon, 105 S. W. 224; Serop v. S., 154 S. W. 557; Simpson v. S., 154 S. W. 999; Texas Cent. R. Co. v. McCall, 166 S. W. 925; Rea v. Fields, 172 S. W. 191; Camden Fire Ins. Ass'n v. Missouri, K. & T. Ry. Co. of Texas, 175 S. W. 816; Lingo Lumber Co. v. Garvin, 181 S. W. 561; Joachim v. Hamilton, 186 S. W. 251; Galaviz v. S., 198 S. W. 946; Dugan v. Smith, 200 S. W. 548; Pruitt v. Blesi, 204 S. W. 714.

Art. 2069. (1380) (1378) When the parties disagree.—If the parties do not agree upon such statement of facts, or if the judge do not approve or sign it, the parties may submit their respective statements to the judge, who shall, from his own knowledge, with the aid of such statements, make out and sign and file with the clerk a correct statement of the facts proven on the trial; and such statement shall constitute a part of the record. (Id.)

See Sayles' Practice, p. 612; R'y v. Burnell, 95 S. W. 741; Mundine v. S., 97 S. W. 490; Mayo v. Goldman, 97 S. W. 1061; Middlehurst v. Collins-Gunther Co., 99 S. W. 1025, 1027; Colorado & S. Ry. Co. v. Hamm, 103 S. W. 1125; Houston Oil Co. of Texas v. Myers, 150 S. W. 762; Toland & Co. v. Turner, 152 S. W. 852; Serop v. S., 154 S. W. 557; Simpson v. S., 154 S. W. 999; Camden Fire Ins. Ass'n v. Missouri, K. & T. Ry. Co. of Texas, 175 S. W. 816; Commissioners' Court of Trinity County v. Miles, 187 S. W. 378; Dugan v. Smith, 200 S. W. 548.

Art. 2070. Statement of facts prepared from transcript of official reporter, when and how, etc.; in duplicate; original sent up; reporter to prepare on request, etc.; fees.—Upon the filing in the office of the clerk of the court by the official shorthand reporter of his transcript as provided in section 5 of this Act [Art. 1924], the party appealing shall prepare or cause to be prepared from the transcript filed by the official shorthand reporter, as provided in section 5 of this Act, a statement of facts, in duplicate, which shall consist of the evidence adduced upon the trial, both oral and by deposition, stated in succinct manner and without unnecessary repetition, together with copies of such documents, sketches, maps and other matters as were used in evidence. It shall not be necessary to copy said statement of facts in the transcript of the clerk, on appeal, but the same shall, when agreed to by the parties and approved by the judge, or in the event of a failure of the parties to agree and a statement of facts is prepared and certified by the judge trying the case be filed in duplicate with the clerk of the court, and the original thereof shall be sent up as a part of the record in the cause on appeal. Provided, however, that the official shorthand reporter shall, when requested by the party appealing, prepare from the transcript filed by the official shorthand reporter, as provided in section 5 of this Act, a statement of facts in narrative form, in duplicate, and deliver the same to the party appealing, for which said statement of facts he shall be paid by the party appealing the sum of fifteen cents per folio of 100 words for the original copy, and no charge should be made for the duplicate copy, and such amount shall not be taxed as costs in the case. (Acts 1907, 1 S. S. p. 509, sec. 5. Acts 1905, p. 219, sec. 5. Acts 1903, p. 84. Acts 1909, S. S. p. 374, sec. 6. Acts 1911, p. 264, sec. 6.)

Acts 1911, p. 264, expressly repeals Acts 1909, ch. 39, p. 374, and thus supersedes the articles of the Revised Statutes made up from sections of the repealed act. See ante, arts. 1920-1928, 1932, 1933, and post, arts. 2071-2073. See Mosher v. S., 136 S. W. 467; Chickasha Milling Co. v. Crutcher, 141 S. W. 355; Heflin v. Eastern Ry. Co. of New Mexico, 153 S. W. 188; Texas Cent. R. Co. v. McCall, 166 S. W. 925; Canode v. Sewell, 170 S. W. 271; Buffalo Bayou Co. v. Lorentz, 170 S. W. 859; Gulf, C. & S. F. Ry. Co. v. Prazat, 170 S. W. 859; Ft. Worth Pub. Co. v. Armstrong, 175 S. W. 1113; Hornbeck v. Barker, 192 S. W. 276; Texas Portland Cement Co. v. Lumparoff, 204 S. W. 366; Gulf, C. & S. F. Ry. Co. v. Kriegel, 264 S. W. 489.

Art. 2071. Transcript for party appealing without bond; affidavit; falsity; punishment.—In any civil case where the appellant or plaintiff in error has made the proof required to appeal his case without bond, such appellant or plaintiff in error may make affidavit of such fact, and upon the making and filing of such affidavit the Court shall order the Official Shorthand Reporter to make a transcript as provided in other cases, but the Official Shorthand Reporter shall receive no pay for the same; provided, that should any such affidavit by such appellant or plaintiff in error be false he shall be prosecuted and punished as is now provided by law for making false affidavits. (Acts 1911, p. 264, sec. 8; Acts 1917, ch. 189, sec. 1; Acts 1917, 1st C. S., ch. 27, sec. 1; Acts 1919, ch. 111, sec. 1.)

This article was a part of sec. 8 of Acts 1911, p. 264. See ante, art. 1925, and note thereunder.

Art. 2072. Laws repealed; not to prevent preparation of statements of fact by parties.—That chapter 39, page 374, Acts of the First Called Session of the Thirty-first

Legislature of the state of Texas, providing for the appointment of court stenographers, prescribing their duties and regulating their charges and compensation, and all other laws or parts of laws in conflict with this Act be, and the same are hereby expressly repealed; provided, however, that nothing in this Act [Arts. 1920–1928, 1932, 1933, 2070, 2071, 2073] shall be so construed as to prevent parties from preparing statements of facts on appeal independent of the transcript of the notes of the official shorthand reporter. (Acts 1911, p. 264, sec. 13.)

Art. 2073. Time for preparing and filing statements of fact and bills of exceptions; judge may extend, provided, etc.; when parties fail to agree on statement, etc.; proviso.—When an appeal is taken from the judgment rendered in any cause in any district or county court, the parties to the suit shall be entitled to any [and] they are hereby granted thirty days after the day of adjournment of court in which to prepare or cause to be prepared, and to file a statement of facts and bills of exception; and upon good cause shown, the judge trying the cause may extend the time in which to file a statement of facts and bills of exception. Provided, that the court trying such cause shall have the power in term time or vacation, upon the application of either party, for good cause, to extend the several times as hereinbefore provided for the preparation and filing of the statement of facts and bills of exception, but the same shall not be so extended so as to delay the filing of the statement of facts, together with the transcript of record, in the appellate court within the time prescribed by law, and when the parties fail to agree upon a statement of facts, and that duty devolves upon the court, the court shall have such time in which to do so after the expiration of thirty days, as hereinbefore provided, as the court may deem necessary, but the court in such case shall not postpone the preparation and filing of same, together with the transcript of the record, in the appellate court within the time prescribed by law. Provided, if the term of said court may by law continue more than eight weeks, said statement of facts and bills of exception shall be filed within thirty days after final judgment shall be rendered, unless the court shall by order entered of record in said cause extend the time for filing such statement and bills of exception. Provided, further, that when the parties fail to agree upon a statement of facts, the judge shall not be required to prepare such statement of facts, unless the party appealing, by himself or attorney, within the time allowed for filing, shall present to the judge a statement of facts, and shall certify thereon, over his signature, that to the best of his knowledge and belief, it is a full and fair statement of all the facts proven on the trial. Provided that any statement of facts filed before the time for filing the transcript in the appellate court expires, shall be considered as having been filed within time allowed by law for filing same. (Id. sec. 7.)

See, also, post, Code Crim. Proc. art. 844a, containing provisions omitted from Rev. Civ. St. 1911.

Art. 2074. (1382) (1379a) Statement of facts not filed in time, when considered by court.—Whenever a statement of facts shall have been filed after the time prescribed by law, and the party tendering or filing the same shall show to the satisfaction of the courts of civil appeals that he has used due diligence to obtain the approval and signature of the judge thereto, and to file the same within the time in this chapter prescribed for filing the same, and that his failure to file the same within said time is not due to the fault or laches of said party or his attorney, and that such failure was the result of causes beyond his control, the courts of civil appeals shall permit said statement of facts to remain as part of the record, and consider the same in the hearing and adjudication of said cause the same as if said statement of facts had been filed in time. (Acts 1887, p. 17.)

See Sayles' Practice, p. 614; Bingham v. S., 37 S. W. 753; Akes v. Sanford, 39 S. W. 952; Ellis v. Cunningham, 41 S. W. 522; Blackburn v. Blackburn, 42 S. W. 132; Owen v. Cibolo Creek Mill & Mining Co., 43 S. W. 297; Moody v. First Nat. Bk. of Athens, 51 S. W. 523; Strickland v. Sandmeyer, 52 S. W. 87; Carter v. Thompson, 52 S. W. 92; Stubbs v. Cot. Oil Co., 66 S. W. 213; Sisk v. Joyce, 68 S. W. 50; Anderson v. Walker, 68 S. W. 981; R'y v. Perkins, 73 S. W. 1067; Wilson v. Tyler Coffin Co., 82 S. W. 664; Baker v. S., 97 S. W. 81; Mundine v. S., 97 S. W. 490; Applebaum v. Bass, 113 S. W. 173; Salinas v. Garcia, 131 S. W. 1194; Mosher v. S., 136 S. W. 467; Chickasha Milling Co. v. Crutcher, 141 S. W. 355; Water & Light Co. of El Campo v. El Campo Light, Ice & Water Co., 150 S. W. 259; Brown v. Gatewood, 150 S. W. 950; Hicks v. Murphy, 150 S. W. 955; Rea v. Fields, 172 S. W. 191.

Art. 2075. Time for judge to file conclusions, etc.—The judge of any district or county court shall have ten days after adjournment of the term at which a cause may be tried in such court in which to prepare his findings of fact and conclusions of law in cases tried before the court, when demand is made therefor. (Acts 1903, p. 32; Acts 1907, S. S. p. 446, sec. 1.)

See ante art. 2063, which the above act evidently repeals; Sampson v. S., 78 S. W. 926; Wallace v. S., 81 S. W. 966; Canal Co. v. Sims, 82 S. W. 531; Martin v. S., 82 S. W. 657; Mundine v. S., 97 S. W. 490; Emery v. Barfield, 156 S. W. 311; Richardson v. S., 158 S. W. 517; Houston Oil Co. of Texas v. Ragley-McWilliams Lumber Co., 162 S. W. 1183; Kaufman v. S., 163 S. W. 74; August v. Gamer Co., 166 S. W. 1197; Schofield v. Texas Bank & Trust Co., 175 S. W. 506; Averill v. Wierhauser, 175 S. W. 794; Bruce v. Stark, 175 S. W. 795; International & G. N. Ry. Co. v. Mudd, 179 S. W. 686; Morgan v. S., 180 S. W. 610; Goodman v. W. S. Peck & Co., 192 S. W. 785; Texas & N. O. R. Co. v. Turner, 193 S. W. 1087; De Bruin v. Santo Domingo Land & Irrigation Co., 194 S. W. 654; Beavers v. Supreme Home of Ancient Order of Pilgrims, 204 S. W. 718; Stewart & Threadgill v. El Paso & S. W. Co., 207 S. W. 594; Lester v. Oldham, 208 S. W. 575.

Art. 2076. Where term of office expires before adjournment, etc.—Any judge of a district or county court whose term of office may expire before the adjournment of the term of such court at which a cause may be tried, or during the period prescribed for the filing of the statement of facts and bill of exceptions, or conclusions of fact and law, may approve such statement of facts and bill of exceptions, or file such findings of fact and conclusions of law, in such causes as provided in this chapter. (Acts 1903, p. 32; Acts 1907, S. S. p. 446, modified by Act 1909, S. S. p. 374, sec. 7.)

See citations under art. 2075.

Art. 2077. [Superseded by Acts 1911, p. 264.]

See ante, arts. 1933a-1953n. For requirement as to statement of the evidence in case of judgment on service by publication, see article 1941 of this title.

CHAPTER TWENTY

APPEAL AND WRIT OF ERROR

Art. 2078. (1383) (1380) Appeals, etc., to the courts of civil appeals, allowed in what cases.—An appeal or writ of error may be taken to the court of civil appeals from every final judgment of the district court in civil cases, and from every final judgment in the county court in civil cases of which the county court has original jurisdiction, and from every final judgment of the county court in civil cases of which the court has appellate jurisdiction, where the judgment or amount in controversy exceeds one hundred dollars, exclusive of interest and costs. (Acts 1892, p. 42.)

See Sayles' Practice, pp. 108, 1082, 1139; Birmingham Drug Co. v. Freeman, 39 S. W. 626; Carter v. Carter, 40 S. W. 1030; Shepard v. City Council of Hubbard City, 42 S. W. 862; Stone v. Stone, 43 S. W. 567; Buckler v. Turbeville, 43 S. W. 810; People's Cemetery Ass'n v. Oakland Cemetery Co., 60 S. W. 679; Fidelity Funding Co. v. Hirshfield, 91 S. W. 246; Haywood v. Scarborough, 92 S. W. 815; Ex parte Reeves, 103 S. W. 478; Waters-Pierce Oil Co. v. State, 106 S. W. 326; Hope v. Long, 122 S. W. 40; Naylor v. Naylor, 128 S. W. 475; Dawson v. Dawson, 140 S. W. 513; Meyers v. Riley, 150 S. W. 479; Holmes v. Coalson, 154 S. W. 661; Gardner v. Gardner, 154 S. W. 1064; Lane v. Hewgley, 156 S. W. 911; Moore v. Cobe, 156 S. W. 1142; Swearingen v. Swearingen, 165 S. W. 16; Southwestern Traction Co. v. Melton, 166 S. W. 363; Wichita Valley Ry. Co. v. Leatherwood, 170 S. W. 262; Tipton v. Railway Postal Clerks' Inv. Ass'n, 173 S. W. 562; Cisco Oil Mill v. Shepherd, 176 S. W. 822; Gulf Nat. Bank v. Bass, 177 S. W. 1019; Hart-Parr Co. v. Alvin-Japanese Nursery Co., 179 S. W. 697; Herron v. Tolbert, 180 S. W. 650; Driskill v. Boyd, 181 S. W. 715; Muela v. Moye, 185 S. W. 331; Abilene Independent Telephone & Telegraph Co. v. Southwestern Telegraph & Telephone Co., 185 S. W. 356; Leary v. International Coal & Wood Co., 185 S. W. 665; Ætna Club v. Jackson, 187 S. W. 971; McFarlane v. Greenameyer, 199 S. W. 304; Merchants' Transfer Co. v. Hildebrand, 200 S. W. 551; Burgemeister v. S., 203 S. W. 770.

Generally (this chapter) see Simpson v. Alexander, 183 S. W. 852.

Art. 2079. (1383) (1380) Appeal from interlocutory order appointing receiver, or trustee, etc.—An appeal shall lie from an interlocutory order of the district court appointing a receiver or trustee in any cause; provided, such appeal be taken within twenty days from the entry of such order. An appeal under such cases shall take precedence in the appellate court; but the proceedings in other respects in the court below shall not be stayed during the pendency of the appeal, unless otherwise ordered by the appellate court. (Id.)

See citations under art. 2078.

Art. 2079a. Appeal from interlocutory order overruling motion to vacate order appointing receiver or trustee, etc.—An appeal shall lie from an interlocutory order of the district court overruling a motion to vacate an order appointing a receiver or trustee in any case, provided such appeal be taken within twenty days from the entry of such order appealed from. An appeal in such cases shall take precedence in the appellate court; but the proceedings in other respects in the court shall not be stayed during the pendency of the appeal, unless otherwise ordered by the appellate court. (Acts 1917, ch. 168, sec. 1.)

Art. 2080. Appeals from interlocutory orders granting or dissolving temporary injunctions.—Appeals shall also lie from the district and county courts to courts of civil appeals, from orders granting or dissolving temporary injunctions, in cases and the manner provided for in articles 4644 and 4645 of the Revised Civil Statutes. (Acts 1909, p. 354, secs. 2, 3.)

For jurisdiction of courts of civil appeals, see chapter 3, title 32.

Art. 2081. (1384) (1384) "Appellant" and "appellee" defined.—The party taking an appeal is called the "appellant"; and the adverse party is called the "appellee."

Art. 2082. (1385) (1385) "Plaintiff in error" and "defendant in error" defined.—The party suing out a writ of error is called the "plaintiff in error"; and the adverse party is called the "defendant in error."

Art. 2083. (1386) (1386) "Appellate court" and "court below" defined.—The term "appellate court" includes the supreme court or court of civil appeals having jurisdiction of a cause on appeal or writ of error. The term "court below" includes the district or county court from which such appeal or writ of error is taken. (Acts 1892, p. 42.)

Art. 2084. (1387) (1387) Appeal perfected, how.—An appeal may, in cases where an appeal is allowed, be taken during the term of the court at which the final judgment in the cause is rendered by the appellants giving notice of appeal in open court within two days after final judgment, or two days after judgment overruling a motion for a new trial, which shall be noted on the docket and entered of record, and by his filing with the clerk an appeal bond, where bond is required by law, or affidavit in lieu thereof, as hereinafter provided, within twenty days after the expiration of the term. If the term of court may by law continue more than eight weeks, the bond or affidavit in lieu thereof shall be filed within twenty days after notice of appeal is given, if the party taking the appeal resides in the county, and within thirty days, if he resides out of the county. (Id.)

See Sayles' Practice, pp. 1084, 1087, 1093, 1184; Demonet v. Jones, 42 S. W. 1033; Sanger v. Burke, 44 S. W. 871; Cox v. Paschal, 54 S. W. 774; Wesley v. Kuteman, 62 S. W. 1074; Pendley v. Berry, 65 S. W. 32; Farwell v. Babcock, 65 S. W. 509; Nat. Bank of Cleburne v. Carper, 67 S. W. 188; Griffin v. S., 87 S. W. 155; Nash v. Noble, 114 S. W. 848; Estes v. Estes, 118 S. W. 174; Carney v. Menefee, 118 S. W. 1083; Gulf States Brick Co. v. Beaumont Rice Mills Co., 128 S. W. 931; Merkel v. Garrett, 128 S. W. 1195; Brown v. Allen, 135 S. W. 601; Smith v. Van Slyke, 138 S. W. 810; Beversdorff v. Dienger, 141 S. W. 533; Moore v. Moore, 141 S. W. 1084; Butts v. Davis, 146 S. W. 1015; Savage v. S., 148 S. W. 584; Martin v. Rutherford, 153 S. W. 156; Allen v. Kitchen, 156 S. W. 331; Trim v. Planters' Cotton Oil Co., 163 S. W. 103; James v. Golson, 165 S. W. 896; Underwood v. Midland Furniture & Hardware Co., 166 S. W. 86; Bolton v. U. S. Fidelity & Guaranty Co., 166 S. W. 1194; Kolp v. Shrader, 168 S. W. 464; Scott v. Fields, 170 S. W. 139; Dilworth v. Ed. Steves & Sons, 174 S. W. 279; Beversdorff v. Dienger, 174 S. W. 576; Texas Seed & Floral Co. v. Chicago Set & Seed Co., 178 S. W. 731; Elkins v. Houlihan, 179 S. W. 894; Hartsough-Stewart Const. Co. v. Harty & Vogelsang, 183 S. W. 1; Mott v. Scurlock, 185 S. W. 1016; Birchfield v. Bourland, 187 S. W. 422; Ætna Club v. Jackson, 187 S. W. 971; Davenport v. Kelly, 196 S. W. 858; Lewis v. McDowell, 199 S. W. 1179; Phillips v. Phillips, 203 S. W. 77; Edens v. Cleaves, 206 S. W. 722; Farmer v. McKinley, 208 S. W. 408.

Art. 2085. (1388) (1388) By parties of whom no appeal bond is required.—In cases where the appellant is not required

by law to give bond on appeal, the appeal is perfected by the notice provided for in the preceding article.

See post arts. 2105, 2106; Sayles' Practice, p. 1087; City of San A. v. Smith, 65 S. W. 41; Russell v. Koennecke, 190 S. W. 253.

Art. 2086. (1389) (1389) Writ of error sued out, when.—The writ of error may, in cases where the same is allowed, be sued out at any time within six months after the final judgment is rendered and not thereafter. (Acts 1892, p. 42; Acts 1919, ch. 85, sec. 1.)

See Sayles' Practice, p. 1088; Perry v. Warner, 40 S. W. 170; Cooper v. Yoakum, 43 S. W. 871; Carleton v. Ashworth, 45 S. W. 203; Evans v. San Antonio Traction Co., 166 S. W. 408; Kolp v. Shrader, 168 S. W. 464; St. Louis & S. F. Ry. Co. v. Stapp, 171 S. W. 1080.

Art. 2087. (1390) (1390) By petition.—The party desiring to sue out a writ of error shall file with the clerk of the court in which the judgment was rendered a petition in writing signed by him or by his attorney, and addressed to such clerk. (Acts 1846, p. 363, sec. 140; P. D. 1495.)

See Sayles' Practice, p. 1090.

Art. 2088. (1391) (1391) Requisites of petition.—The petition shall state the names and residences of the parties adversely interested, shall describe the judgment with sufficient certainty to identify it, and shall state that he desires to remove the same to the court of civil appeals for revision and correction. Where the plaintiff in error desires the issuance of a supersedeas, he shall state the facts which entitle him thereto, and pray for the issuance thereof. (Acts 1892, p. 42.)

See Sayles' Practice, pp. 1090, 1099; Weems v. Watson, 39 S. W. 135; Yarnell v. Burnett, 61 S. W. 153; Padgitt v. Ft. Worth & R. G. Ry. Co., 136 S. W. 442; J. M. Radford Grocery Co. v. Owens, 159 S. W. 453; Farmers' State Bank of Newlin v. Bell, 176 S. W. 922.

Art. 2089. (1392) (1392) Error bond.—The plaintiff shall also, at the time of filing such petition, file with the clerk a writ of error bond, or affidavit in lieu thereof, as hereinafter provided. (Acts 1846, p. 363.)

See Sayles' Practice, p. 1096.

Art. 2090. (1393) (1393) Citation in error.—Upon the filing of the petition and bond mentioned in the three preceding articles, it shall be the duty of the clerk forthwith to issue a citation for the defendant in error, and if there be several defendants residing in different counties, one citation shall issue to each of such counties. (Id.)

See Sayles' Practice, p. 1092; Thompson v. Thompson, 41 S. W. 679; Yarnell v. Burnett, 61 S. W. 153; Rounds v. Coleman, 185 S. W. 640.

Art. 2091. (1394) (1394) Form and requisites of citation.—The style of such citation shall be "The State of Texas;" and it shall be dated and tested by the clerk as other writs, and the date of its issuance shall be noted thereon. It shall be directed to the sheriff or any constable of the county where the defendant is alleged to reside or be, and shall command him forthwith to summon the defendant to appear and defend such writ before the court of civil appeals within sixty days from date of service of said citation, stating the place of holding the same, according to the provisions of the law regulating the returns of appeals and writs of error from the county in which the judgment was rendered. It shall state the date of the filing of the petition in error, the names of the parties according to such petition, and the description of the judgment as therein given. Such citation shall be made returnable within ten days from the issuance of the same, if defendant resides in the county, and within twenty days, if he resides out of the county. (Acts 1892, p. 42.)

See Sayles' Practice, pp. 1092-3; Pratt v. Interstate Savings & Trust Co., 122 S. W. 281; Brillhart v. Beever, 198 S. W. 973.

Art. 2092. (1395) (1395) Service and return of.—It shall be the duty of the sheriff or constable receiving such citation to indorse the day and hour on which he receives it, and to execute and return it forthwith. Service shall be made by delivering to the defendant in error, and, if more than one, then, to each of them, in person, a true copy of such citation. The return of such officer shall be indorsed on or attached to the original writ and shall state when and how the same was served, and shall be signed by him officially. (Acts 1846, p. 363; P. D. 1495.)

See Oge v. Froboese, 63 S. W. 654; Aspley v. Alcott, 90 S. W. 885; W. T. Gainer & Co. v. Roberts-Johnson & Rand Shoe Co., 149 S. W. 735; Mims v. Foster, 177 S. W. 513.

Art. 2093. (1396) (1396) Return and what shall show.—The citation shall be returned as prescribed in article 2091, and where the same has not been served, the return shall show the diligence used by the officer to execute the same, and a failure to execute it, and where the defendant is to be found, so far as he has been able to ascertain. (Acts 1892, p. 42.)

Art. 2094. (1397) (1397) Alias citation.—If the citation is returned not executed, the clerk shall forthwith issue an alias or pluris citation, as the case may be, which shall conform to the requisites prescribed for the issuance of citation in the first instance, and shall, in addition, indicate how many previous citations have been issued. (Acts 1846, p. 363; P. D. 1495.)

See Vineyard v. McCombs, 99 S. W. 544.

Art. 2095. (1398) (1398) Service on the attorney of record.—If it appears from the allegations in the papers of the cause that the party is a nonresident of the state, or if it appears from the return of the sheriff or constable that the party can not be found in the county of his residence, the citation shall direct the officer to summon the defendant by making service on his attorney of record, if there be one. (Id.)

See Oge v. Froboese, 63 S. W. 654; National Cereal Co. v. Earnest, 84 S. W. 1101; Aspley v. Alcott, 90 S. W. 885; Vineyard v. McCombs, 93 S. W. 482; Pratt v. Interstate Savings & Trust Co., 122 S. W. 281; Houston v. Darnell Lumber Co., 135 S. W. 1065; Mims v. Foster, 177 S. W. 513; First Nat. Bank of Knox City v. Lester, 179 S. W. 684; Jolly v. Brown, 188 S. W. 972.

Art. 2096. (1399) (1399) Service in other modes.—Service of the citation may be also made in either of the modes provided in chapter six of this title, so far the same are applicable.

See Binyon v. Smith, 112 S. W. 138.

Art. 2097. (1400) (1400) Cost bond on appeal or writ of error.—The appellant or plaintiff in error, as the case may be, shall execute a bond, with two or more good and sufficient sureties, to be approved by the clerk, payable to the appellee or defendant in error, in a sum at least double the probable amount of the costs of the suit in the court of civil appeals, supreme court and the court

below, to be fixed by the clerk, conditioned that such appellant or plaintiff in error shall prosecute his appeal or writ of error with effect, and shall pay all the costs which have accrued in the court below, and which may accrue in the court of civil appeals and the supreme court. (Acts 1892, p. 42.)

See Sayles' Practice, pp. 1094, 1097; Prusircki v. Ramzinski, 81 S. W. 549; Horstman v. Little, 83 S. W. 679; Logan v. Gay, 92 S. W. 255; Tison v. Gass, 94 S. W. 376; Biggins v. Gulf, C. & S. F. Ry. Co., 110 S. W. 561; Allen v. Kitchen, 156 S. W. 331; Walter Box Co. v. Blackburn, 157 S. W. 220; Ætna Club v. Jackson, 187 S. W. 971; Doolen v. Hulsey, 188 S. W. 1009.

Art. 2098. (1401) (1401) Appeal, etc., by party unable to give cost bond.—Where the appellant or plaintiff in error is unable to pay the costs of appeal, or give security therefor, he shall nevertheless be entitled to prosecute his appeal; but, in order to do so, he shall be required to make strict proof of his inability to pay the costs, or any part thereof. Such proof shall be made before the county judge of the county where such party resides, or before the court trying the case, and shall consist of the affidavit of said party, stating his inability to pay the costs; which affidavit may be contested by any officer of the court or party to the suit, whereupon it shall be the duty of the court trying the case, if in session, or the county judge of the county in which the suit is pending, to hear evidence and to determine the right of the party, under this article, to his appeal. (Acts 1871, p. 74, sec. 1; Acts 1879, ch. 81, p. 90; P. D. 6180.)

See Sayles' Practice, p. 1097; Simon v. Blanchett, 37 S. W. 346; Lambert v. W. U. Tel. Co., 47 S. W. 476; Cox v. Hightower, 47 S. W. 1048; Claiborne v. Ry., 53 S. W. 837; Proctor v. S. A. St. Ry., 62 S. W. 938; Pendley v. Berry, 65 S. W. 32; Majors v. Goodrich, 68 S. W. 290; Emerson v. Ry., 82 S. W. 1060; Smith v. Buffalo Oil Co., 85 S. W. 481; Accousi v. Stowers Furniture Co., 87 S. W. 861; Smith v. Buffalo Oil Co., 87 S. W. 659; Kalklash v. Bunting, 88 S. W. 389; Murray v. Robuck, 89 S. W. 781; Tison v. Gass, 94 S. W. 376; Wood v. Ry., 97 S. W. 323; Biggins v. Gulf, C. & S. F. Ry. Co., 110 S. W. 561; Spell v. Wm. Cameron & Co., 121 S. W. 515; Bargna v. Bargna, 123 S. W. 1143; Young v. Pearman, 125 S. W. 360; Smith v. Queen City Lumber Co., 129 S. W. 1145; Washington v. Haverty Furniture Co., 136 S. W. 832; Wilder v. Houston & T. C. Ry. Co., 150 S. W. 492; Dixon v. Lynn, 154 S. W. 656; Allen v. Kitchen, 156 S. W. 331; Missouri Pac. Ry. Co. v. Cheek, 159 S. W. 427; Jesse French Piano & Organ Co. v. Elliott, 166 S. W. 29; Ætna Club v. Jackson, 187 S. W. 971; Ridling v. Fannin County, 190 S. W. 251; Horn v. Missouri, K. & T. Ry. Co. of Texas, 201 S. W. 1101; Phillips v. Phillips, 203 S. W. 77.

Art. 2099. (1402) (1402) Appeal or writ of error, perfected, when.—When the bond, or affidavit in lieu thereof, provided for in the two preceding articles, has been filed and the previous requirements of this chapter have been complied with, the appeal or writ of error, as the case may be, shall be held to be perfected.

See Sayles' Practice, pp. 1087-8; Leavitt v. Brazelton, 66 S. W. 465; Logan v. Gay, 92 S. W. 255; Tison v. Gass, 94 S. W. 376; Binyon v. Smith, 112 S. W. 138; Dillard v. Wilson, 137 S. W. 152; Allen v. Kitchen, 156 S. W. 331; Scott v. Fields, 170 S. W. 139; Ætna Club v. Jackson, 187 S. W. 971; Jolly v. Brown, 188 S. W. 972; Lynch v. Bernhardt, 201 S. W. 1051.

Art. 2099a. Revival against successor of officer against whom judgment in mandamus or injunction has been rendered and appeal perfected; motion to make successor a party.—Hereafter when any suit in mandamus or injunction is brought against any person holding any public office, in this State, in his official capacity, and after final trial and judgment in the trial court, and notice of appeal to the Court of Appeals or Supreme Court has been given in such cause, and if such person for any reason should vacate such public office, such suit shall not abate but his successor to such office may be made a party thereto by a motion setting out such facts and showing in such motion that he has demanded such successor to such office to do or to refrain from doing such official act as such suit is based upon and such successor has failed or refused to comply with such demand and duly verified, by any person or his attorney, who is a party to such suit, and file the same in the court in which such suit is pending, giving the name and location of such successor. (Acts 1917, ch. 158, sec. 1.)

Art. 2099b. Clerk shall cause motion to be served on parties.—That in all such cases when such motion is filed the clerk of the court shall immediately proceed to have same duly served on all parties to such suit as in motion of other cases, unless same is waived. (Id. sec. 2.)

Art. 2099c. Court shall proceed to determination of case and render judgment and enforce same; costs.—That in all such cases, after service is duly perfected or waived by the parties, the court in which such suit is pending shall proceed to hear and determine same, and render such judgment, order or decree as may be right and proper, and same as if such successor was the original official party thereto, and such judgment, order or decree, shall be enforced by the court and such successor shall be bound thereby; provided that such successor in such cases shall not be liable for any costs in such cause that has accrued prior to the time he was made a party thereto. (Id. sec. 3.)

Art. 2100. (1403) (1403) Appeal, etc., on cost bond or affidavit does not suspend execution.—The bond, or affidavit in lieu thereof, provided in the three preceding articles, shall not have the effect to suspend the judgment, but execution shall issue thereon as if no such appeal or writ of error had been taken.

See Sayles' Practice, p. 1099; Jameson v. O'Neall, 145 S. W. 680; Allen v. Kitchen, 156 S. W. 331; Ætna Club v. Jackson, 187 S. W. 971; Kirby v. Morris, 198 S. W. 995.

Art. 2101. (1404) (1404) Supersedeas bond.—Should the appellant or plaintiff in error, as the case may be, desire to suspend the execution of the judgment, he may do so by giving, instead of the bond or affidavit in lieu thereof mentioned in the four preceding articles, or in addition to such bond, a bond with two or more good and sufficient sureties, to be approved by the clerk, payable to appellee or defendant in error, in a sum at least double the amount of the judgment, interest and costs, conditioned that such appellant or plaintiff in error shall prosecute his appeal or writ of error with effect; and in case the judgment of the supreme court or the court of civil appeals shall be against him, he shall perform its judgment, sentence or decree, and pay all such damages as said court may award against him. (Acts 1892, p. 42.)

See Sayles' Practice, pp. 1097, 1099; Patrick v. Laprelle, 37 S. W. 872; Crary v. Port Arthur

Channel and Dock Co., 45 S. W. 842; Fenton v. F. & M. Nat. Bk., 65 S. W. 199; Adoue v. Wettermark, 68 S. W. 553; Griffin v. State, 87 S. W. 155; Waters-Pierce Oil Co. v. S., 106 S. W. 326; Ft. Worth Driving Club v. Ft. Worth Fair Ass'n, 121 S. W. 213; Ætna Club v. Jackson, 187 S. W. 971; Doolen v. Hulsey, 188 S. W. 1009; Lynch v. Bernhardt, 201 S. W. 1051.

Art. 2102. (1405) (1405) Supersedeas bond, where judgment is for land or other property.—Where the judgment is for the recovery of land or other property, the bond shall be further conditioned that the appellant or plaintiff in error shall, in case the judgment is affirmed, pay to the appellee or defendant in error the value of the rent or hire of such property in any suit which may be brought therefor. (Acts 1846, p. 363, sec. 137; P. D. 1492.)

See Sayles' Practice, p. 1101; Crary v. Dock Co., 45 S. W. 842; Fenton v. Bank, 65 S. W. 199; Griffin v. S., 87 S. W. 155; Doolen v. Hulsey, 188 S. W. 1009; Roberson v. Tom, 206 S. W. 723.

Art. 2103. (1406) (1406) Judgment stayed and execution superseded.—Upon the filing of the bonds mentioned in the two preceding articles, the appeal or writ of error shall be held to be perfected, and the execution of the judgment shall be stayed, and should execution have been issued thereon, the clerk shall forthwith issue a supersedeas. (Id. sec. 140; P. D. 1495.)

See Sayles' Practice, pp. 1087-8, 1099, 1184; Ft. Worth Driving Club v. Ft. Worth Fair Ass'n, 121 S. W. 213; Haley v. Walker, 141 S. W. 166.

Art. 2104. Amendment of appeal bond.—When an appeal has been or shall be taken from the judgment of any of the courts of this state by filing a bond or entering into a recognizance within the time prescribed by law in such cases, and it shall be determined by the court to which appeal is taken that such bond or recognizance is defective in form or substance, such appellate court may allow the appellant to amend such bond or recognizance by filing a new bond on such terms as the court may prescribe. (Acts 1905, p. 224.)

See articles 1608, 1609, and 2395.

Art. 2105. (1407) (1407) State, county, etc., not to give bond.—Neither the state of Texas, nor any county in the state of Texas, nor the railroad commission of Texas, nor the head of any department of the state of Texas, prosecuting or defending in any action in their official capacity, shall be required to give bond on any appeal or writ of error taken by it, or either of them, in any civil case. (Acts 1897, p. 27; Acts 1909, S. S. p. 284.)

Art. 2106. (1408) (1408) Of executors, etc.—Executors, administrators and guardians appointed by the courts of this state shall not be required to give bond on any appeal or writ of error taken by them in their fiduciary capacity. (Acts 1848, p. 106, sec. 4; P. D. 1503.)

See post art. 3633; Herron's Probate Guide, pp. 163-164; Sayles' Practice, pp. 1056, 1102; Simon v. Blanchett, 37 S. W. 346; Daniels v. Mason, 37 S. W. 1061; Tutts' Heirs v. Morgan, 42 S. W. 578; Cox v. Paschal, 54 S. W. 774; Kleinsmith v. Northcut, 56 S. W. 557; Duke v. Wheeler, 67 S. W. 439; Holman v. Klatt, 78 S. W. 1088; Tison v. Gass, 94 S. W. 376; Biggins v. Gulf, C. & S. F. Ry. Co., 110 S. W. 561; Casey v. Texarkana & Ft. S. Ry. Co., 151 S. W. 856; Reeves v. Fuqua, 183 S. W. 34; Lynch v. Bernhardt, 201 S. W. 1051.

Art. 2107. (1409) (1409) Executor, etc., may take appeal or writ of error.—In case of the death of any party entitled to an appeal or writ of error, the same may be taken by his executor, administrator or heir.

See Sayles' Practice, p. 1103.

Art. 2108. (1410) (1410) Transcript to be made out and delivered.—When an appeal or writ of error has been perfected, the clerk of the court shall, upon the application of either party, make out, and deliver to him, a transcript of the record of the cause. (Acts 1846, p. 363, sec. 139; P. D. 1494.)

See Sayles' Practice, pp. 1103, 1112; Crary v. Dock Co., 45 S. W. 842; Dillard v. Wilson, 137 S. W. 152; In re Lawrence's Estate, 146 S. W. 701.

Art. 2109. (1411) (1411) Transcript to contain all proceedings, except, etc.—The transcript shall, except in the cases hereinafter provided, contain a full and correct copy of all the proceedings had in the cause. (Id.)

See R'y v. Armstrong & Brown, 83 S. W. 28; Shook v. Lanfer, 84 S. W. 277; Carlton v. Krueger, 115 S. W. 619; Baum v. McAfee, 117 S. W. 883; Bilby v. Rodgers, 125 S. W. 616; Gutheridge v. Gutheridge, 159 S. W. 452; J. M. Radford Grocery Co. v. Owens, 159 S. W. 453; Palomas Land & Cattle Co. v. Good, 184 S. W. 805; Steger v. May, 202 S. W. 989.

Art. 2110. (1412) (1412) Citation and return omitted, when.—If the pleadings or the judgment show an appearance of the defendant, in person or by attorney, the citation and returns shall not be copied into the transcript.

See Sayles' Practice, p. 1104; G. B. & K. C. R'y v. Eastham, 54 S. W. 648; Bilby v. Rodgers, 125 S. W. 616; Gutheridge v. Gutheridge, 159 S. W. 452; Palomas Land & Cattle Co. v. Good, 184 S. W. 805; Steger v. May, 202 S. W. 989.

Art. 2111. (1413) (1413) Omission of unimportant proceedings, when.—The parties may, by an agreement in writing, with the approval of the judge, direct the clerk in making up the transcript for the appellate court to omit therefrom any designated portion of the proceedings not deemed material to the disposition of the cause in such appellate court; and, in such case, the transcript shall not embrace such portions of the proceedings. (Acts 1858, p. 110, sec. 12; P. D. 1516.)

See Sayles' Practice, p. 1104; Baum v. McAfee, 117 S. W. 883; Gutheridge v. Gutheridge, 159 S. W. 452; Reeves v. Fuqua, 183 S. W. 34.

Art. 2112. (1414) (1414) Agreed statement of pleadings and proof.—The parties may, without the necessity of setting out all the proceedings at length, agree upon such a brief statement of the case and of the facts proven, with or without copies of any part of the proceedings as shall, in their opinion, enable the appellate court to determine whether there has been any error in the judgment; and, if the judge shall approve and sign such statement, the same shall be filed among the papers of the cause and shall constitute a part of the record, and, on appeal or writ of error shall be copied into the transcript in lieu of such proceedings themselves. (Id.)

See Sayles' Practice, pp. 1108, 1144; M. K. & T. R'y v. Fisher, 47 S. W. 284; Eastland v. Williams Estate, 45 S. W. 412; Graves v. George, 54 S. W. 262; Colorado & S. Ry. Co. v. Hamm, 103 S. W. 1125; Chickasha Milling Co. v. Crutcher, 141 S. W. 355; Gutheridge v. Gutheridge, 159 S. W. 452.

Art. 2113. (1415) (1415) Transcript must contain what.—The transcript shall, in all cases, contain a copy of the final judgment, notice of appeal, petition for writ of error and citation in error, with return of

service thereon, bond on appeal or writ of error, or affidavit in lieu thereof, and assignments of errors or such of them as there may be, and also a copy from the fee book of all the costs that have accrued in the cause. (Id.)

See Sayles' Practice, pp. 1105, 1114.

Art. 2114. (1416) (1416) Clerk's certificate and indorsement.—The clerk shall certify to the correctness of the transcript, and sign the same officially with the seal of the court attached. Such certificate shall state whether the same be a transcript of all the proceedings in the cause, or the transcript provided for in articles 2110, 2111 and 2112. (Acts 1846, p. 363, sec. 139; P. D. 1494.)

See Sayles' Practice, p. 1109.

Art. 2115. (1417) (1416a) Briefs filed in courts below and notice given.—Not less than five days before the time of filing of the transcript in the court of civil appeals the appellant or plaintiff in error shall file with the clerk of the district court a copy of his brief, which shall be by the clerk deposited with the papers of the cause, with the date of filing indorsed thereon; and the clerk shall forthwith give notice to the appellee or defendant in error, or his attorney of record, of the filing of such brief, and that in twenty days after such notice the appellee or defendant in error shall file a copy of his brief with the clerk of said court below, and with the clerk of the court of civil appeals four copies. (Acts S. S. 1892.)

See Sayles' Practice, p. 1126; Paris, etc., R'y v. Killingsworth, 43 S. W. 1046; Jones v. Erwin, 45 S. W. 39; S. A. & A. P. R'y v. Holden, 54 S. W. 751; Hunt v. Glasscock, 65 S. W. 209; Elkins v. Kempner, 66 S. W. 576; Bowman v. Hoffman, 67 S. W. 152; R'y v. Brock, 77 S. W. 953; Ft. Worth & D. C. Ry. Co. v. Moore, 106 S. W. 190; Niday v. Cochran, 106 S. W. 462; Bowden v. Patterson, 108 S. W. 177; Missouri, K. & T. Ry. Co. of Texas v. Milliron, 115 S. W. 655; Connor v. Zachry, 115 S. W. 867; Texas & P. Ry. Co. v. Martin, 132 S. W. 834; Wiseman v. Maddox, 135 S. W. 756; Amarillo Brick & Tile Co. v. First Trust & Savings Bank of Alton, 140 S. W. 364; Hernandez v. Pastran, 140 S. W. 508; American Nat. Bank v. Petry, 141 S. W. 1040; State Fair of Texas v. Cowart, 165 S. W. 1197; Pagach v. First Nat. Bank of Rosebud, 166 S. W. 50; Anderson v. Ineeda Laundry & Dye Works, 167 S. W. 33; Knight v. Simons, 168 S. W. 1018; Texas & P. Ry. Co. v. Cave, 173 S. W. 988; International & G. N. Ry. Co. v. Jones, 175 S. W. 488; Goodhue v. Leckie, 176 S. W. 647; Speer v. Rushing, 178 S. W. 1012; Kirby Lumber Co. v. Smith, 185 S. W. 1068; Harwood-Barley Mfg. Co. v. McCulloch, 188 S. W. 263; Hensley v. Pena, 190 S. W. 247; Missouri, K. & T. Ry. Co. of Texas v. Jefferson, 201 S. W. 211.

Art. 2116. (1418) (1417) Case appealed, etc., to remain on docket till, etc.—Where a cause shall be removed by appeal or writ of error to the appellate court, the cause shall remain or be replaced on the docket to await the mandate of the appellate court.

See Sayles' Practice, p. 1167.

Art. 2117. (1419) (1418) Proceedings on return of mandate.—Upon the return of the mandate, if the judgment of the court below be reversed by the appellate court, the cause shall stand for trial in its order on the docket.

CHAPTER TWENTY-ONE

CERTAIN INTERLOCUTORY PROCEEDINGS, ETC.

1. MOTIONS

Art. 2118. (1456) (1452) Motion docket.—The clerk shall keep a motion docket, in which he shall enter every motion filed in his court, the number of the suit in which it is made, if it relates to a suit pending, the names of the parties and their attorneys, with a brief statement of the nature of the motion. (Act May 13, 1846, sec. 53; P. D. 1453.)

See Sayles' Practice, p. 673.

Art. 2119. (1457) (1453) Service of motion, how made.—Whenever, in the commencement or progress of any suit, it shall be necessary to serve any notice on any party to such suit, such notice may be served either by an officer authorized by law to serve original process of the court in which the suit is brought or may be pending, or by any person who would be a competent witness upon the trial of such suit; every such notice may be served in like manner as an original writ, either on the party or his attorney of record; and the return of such notice, when made by an officer, or when made by any other person, and verified by the affidavit of such person, shall be received as evidence of the fact of service, subject to be repelled by contrary proof. (Acts 1846, p. 363, sec. 96; P. D. 1463.)

See Sayles' Practice, p. 672; Townes' Texas Pleading (2d Ed.) p. 646; Young v. Jackson, 110 S. W. 74.

Art. 2120. (1458) (1454) Notice of motion in pending suits.—Notice of motions in a suit pending is given by the filing of the motion and entry thereof in the motion docket during the term.

See Sayles' Practice, pp. 673-4; Townes' Texas Pleading (2d Ed.) p. 645; Beck v. Avondino, 50 S. W. 207; Frazier v. Moore, 67 S. W. 427; Tammen v. Schaefer, 101 S. W. 468; Crosby v. Di Palma, 141 S. W. 321.

Art. 2121. (1459) (1455) Motions disposed of, when.—All motions relating to a suit pending which do not go to the merits of the case may be disposed of at any time before the trial of the cause. (Id. sec. 54; P. D. 1454.)

See Townes' Texas Pleading (2d Ed.) p. 647; Sayles' Practice, p. 675.

Art. 2122. (1460) (1456) Notice of motion not in pending suit.—Where a motion does not relate to a pending suit, and where the time of service is not elsewhere prescribed, the adverse party shall be entitled to three days' notice of the motion. (Acts 1846, p. 200, sec. 5; P. D. 1408.)

See Sayles' Practice, pp. 673-4; Townes' Texas Pleading (2d Ed.) p. 645; Beck v. Avondino, 50 S. W. 207.

Art. 2123. (1461) (1457) Disposed of, when.—All motions not relating to a suit pending shall be taken up and disposed of in their order as other suits are required to be. (Acts 1846, p. 363, sec. 55; P. D. 1455.)

See Sayles' Practice, pp. 420, 675; Townes' Texas Pleading (2d Ed.) p. 647.

2. AUDITORS

Art. 2124. (1494) (1471) Auditor appointed, when.—Whenever, in any suit, it shall appear that an investigation of accounts or examination of vouchers is necessary for the purposes of justice between the parties, the court shall appoint an auditor or auditors to state the accounts between the parties and to make report thereof to the court as soon as may be. (P. D. 3760.)

See Simkins' Equity (2d Ed.) p. 835; Sayles' Practice, p. 667.

Art. 2125. (1495) (1472) Report to be verified by affidavit.—The report of the auditor shall be verified by his affidavit, stat-

ing that he has examined carefully the state of the account between the parties, and that his report contains a true statement thereof, so far as the same has come to his knowledge.

Art. 2126. (1496) (1473) Shall be admitted in evidence, but, etc.—The report of the auditor shall be admitted in evidence, but may be contradicted by evidence from either party where exceptions to such report, or of any items thereof, shall have been filed before the trial. (Id.)

See Eagle Mfg. Co. v. Hanaway, 40 S. W. 13; Lumpkin v. Jaquess, 71 S. W. 618.

Art. 2127. (1497) (1474) Compensation of.—The court shall award reasonable compensation to such auditor, which shall be allowed and taxed in the bill of costs, as in other cases.

3. RECEIVERS

Art. 2128. (1465) When receivers may be appointed.—Receivers may be appointed by any judge of a court of competent jurisdiction in this state, in the following cases:

1. In an action by a vendor to vacate a fraudulent purchase of property; or by a creditor to subject any property or fund to his claim; or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff or any party whose right to or interest in the property or fund or the proceeds thereof is probable, and where it is shown that the property or fund is in danger of being lost, removed or materially injured.

2. In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, when it appears that the mortgaged property is in danger of being lost, removed or materially injured, or that the condition of the mortgage has not been performed, and the property is probably insufficient to discharge the mortgage debt.

3. In cases where a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

4. In all other cases where receivers have heretofore been appointed by the usages of the court of equity. (Acts 1887, p. 119.)

See Simkins' Equity (2d Ed.) p. 851; Sayles' Practice, p. 959; Webb v. Allen, 40 S. W. 342; Stone v. Stone, 43 S. W. 567; People's Inv. Co. v. Crawford, 45 S. W. 738; Williams v. Odell, 47 S. W. 151; San Antonio Gas Co. v. State, 54 S. W. 290; Jones v. Meyer Bros. Drug Co., 61 S. W. 553; Farwell v. Babcock, 65 S. W. 509; De Berrera v. Frost, 77 S. W. 637; Cotulla v. Am. Freehold Land Mortgage Co. of London, 86 S. W. 339; Cotton v. Rand, 92 S. W. 266; Haywood v. Scarborough, 92 S. W. 815; J. A. Wotring & Son v. Ind. Imp. Co., 100 S. W. 358; Rische v. Rische, 101 S. W. 849; West v. Hermann, 104 S. W. 428; Ripy v. Redwater Lumber Co., 106 S. W. 474; Shaw v. Shaw, 111 S. W. 223; Shaw v. Shaw, 112 S. W. 124; Hardy Oil Co. v. Burnham, 124 S. W. 221; Sanborn v. Nelson, 134 S. W. 855; Sachs v. Goldberg, 135 S. W. 600; Ferguson v. Dickinson, 138 S. W. 221; Houston Ice & Brewing Co. v. Clint, 159 S. W. 409; Williams v. Watt, 171 S. W. 266; Texas Mexican Ry. Co. v. S., 174 S. W. 298; Canadian Country Club v. Johnson, 176 S. W. 835; Toomey v. First Mortgage Trust Co., 177 S. W. 539; Hart-Parr Co. v. Alvin-Japanese Nursery Co., 179 S. W. 697; Bond-Reed Hardware Co. v. Walsh, 181 S. W. 248; Houston & B. V. Ry. Co. v. Hughes, 182 S. W. 23; Abilene Independent Telephone & Telegraph Co. v. Southwestern Telegraph & Telephone Co., 185 S. W. 356; Kokernot v. Roos, 189 S. W. 505; Wardlaw v. Savage, 191 S. W. 1176; Gulf Pipe Line Co. v. Lasater, 193 S. W. 773; Guaranty State Bank & Trust Co. v. Thompson, 195 S. W. 960; Arnold v. Meyer, 198 S. W. 602; Claunch v. Claunch, 203 S. W. 930.

Art. 2129. (1466) Who disqualified to act as receiver.—No party, attorney, or any person interested in any way in an action for the appointment of a receiver shall be appointed receiver therein, nor shall any person be appointed receiver in any case where the property lies within this state, unless the person appointed at the time of his appointment is a bona fide citizen of the state of Texas and qualified to vote; and, during the pendency of said receivership, the person or persons so appointed receiver shall keep and maintain actual residence within this state. And if in any action for the appointment of a receiver, the property sought to be placed in the hands of a receiver is situated partly in this state and partly without, then no person shall be appointed receiver of that part of the property situated in this state, unless such person at the time is a bona fide citizen of this state and qualified to vote; and, during the pendency of said receivership, the person or persons so appointed receiver shall keep and maintain actual residence within this state. (Acts 1889, p. 55.)

See Simkins' Equity (2d Ed.) p. 858; Sayles' Practice, p. 963.

Art. 2130. (1467) When appointment void.—If any person should be appointed receiver of property situated in this state, or a part of which is situated in this state and a part without, who is not at the time a bona fide citizen of this state and entitled to vote, all such appointments shall be absolutely null and void in so far as the property situated within this state is concerned. (Id.)

See Simkins' Equity (2d Ed.) p. 858; Sayles' Practice, p. 963.

Art. 2131. (1468) Quo warranto to forfeit charter.—If any corporation owning property in this state and chartered by this state shall have a receiver of its property situated in this state appointed who is not at the time of appointment a bona fide citizen of this state and qualified to vote, said corporation shall thereby forfeit its charter; and it shall be the duty of the attorney general to at once prosecute a suit by quo warranto against said corporation so offending to forfeit its charter; and the court trying the cause shall forfeit the charter of said corporation upon proof that a person has been appointed receiver of its property situated in this state who is not qualified to act under the provisions of this article. (Id.)

See Simkins' Equity (2d Ed.) p. 858; Sayles' Practice, pp. 963, 993.

Art. 2132. (1469) Oath and bond of receiver.—When a receiver is appointed, he shall, before he enters upon his duties, be sworn to perform them faithfully, and shall execute a bond, with three or more good and sufficient sureties, to be approved by the court appointing him, in such sum as the court shall see proper to fix, conditioned that he will faithfully discharge all of the duties of receiver in the action [naming it] and obey the orders of the court therein. (Acts 1887, p. 120.)

Art. 2133. (1470) Receiver's power.—The receiver shall have power, under the control of the court, to bring and defend actions in his own name as receiver, to take charge and keep possession of the property, to receive rents, collect, compound for, compromise demands, make transfers, and gen-

erally to do such acts respecting the property as the court may authorize. (Id.)

See Sayles' Practice, p. 966; Cotulla v. American Freehold Land Mortgage Co. of London, 86 S. W. 339.

Art. 2134. (1471) Funds, how invested.—The funds in the hands of a receiver may be invested upon interest by order of the court, but no such order shall be made except upon consent of all the parties to the action. (Id.)

See Sayles' Practice, p. 978.

Art. 2135. (1472) Application of funds in hand of receiver and claims preferred.—All moneys that come into the hands of a receiver as such receiver shall be applied as follows: First, to the payment of all court costs of the suit; second, to the payment of all wages of employés due by the receiver; third, to the payment of all debts due by the receiver for materials and supplies purchased during the receivership by the receiver for the improvement of the property in his hands as receiver; fourth, to the payment of all debts due for betterments and improvements done during the receivership to the property in his hands as such receiver; fifth, to the payment of all claims and accounts against the receiver on contracts made by the receiver during the receivership, and for all claims for stock and personal injury claims against said receiver accruing during said receivership, and all judgments rendered against said receiver for personal injuries and for stock killed; sixth, all judgments recovered against the person or persons or corporations in suits brought before the appointment of a receiver in the action. And said claims shall have a preference lien on all of the moneys coming into the hands of the receiver which are the earnings of the property in his hands; and the court shall see that the money coming into the hands of the receiver as earnings of the property in his hands is paid out on the claims against said receiver in the order of their preference as named above; and it shall be the duty of the receiver to pay the funds in his hands which are the earnings of the property while in his hands as receiver on the claims against him in the order of preference named above. (Acts 1889, p. 55.)

See Sayles' Practice, p. 971; F. & M. Nat. Bk. v. Waco El. Ry. & L. Co., 36 S. W. 131; Vollmer v. S. A. & G. S. Ry., 47 S. W. 378; Kampmann v. Sullivan, 63 S. W. 173; Waters-Pierce Oil Co. v. U. S. & M. Trust Co., 99 S. W. 212; United States & Mexican Trust Co. v. Western Supply & Mfg. Co., 109 S. W. 377; General Electric Co. v. Canyon City Ice & Light Co., 136 S. W. 78; Houston Ice & Brewing Co. v. Clint, 159 S. W. 409; Gulf Pipe Line Co. v. Lasater, 193 S. W. 773.

Art. 2136. (1473) Proceedings in suits where receiver is discharged.—If a receiver is discharged pending suits against him for causes of action growing out of, and arising during, the receivership, the cause of action shall not abate, but may be prosecuted to final judgment against the receiver; and the plaintiff in the action may, if he sees proper, make the party or corporation to whom the receiver has delivered the property that was in his hands as receiver a party to the suit; and, if judgment is finally rendered in favor of the plaintiff against the receiver, the court shall also enter up judgment in favor of the plaintiff against the party to whom the property was delivered by the receiver. (Id.)

See Sayles' Practice, pp. 345, 976.

Art. 2137. (1474) When property in the hands of receiver subject to execution.—If any person should sue a receiver and obtain judgment against such receiver, and said receiver shall have in possession moneys subject to the payment of such judgment, and the plaintiff owning the judgment shall apply to the court appointing the receiver for an order to pay said judgment, and if the court appointing the receiver should refuse to order said judgment paid, when there is money in the hands of said receiver subject to the payment of the judgment, then, it shall be the duty of the court rendering the judgment to order an execution to issue on said judgment against said receiver upon the filing by the plaintiff in the court where the judgment was rendered an affidavit stating the facts that the plaintiff had applied to the court appointing the receiver for an order for said receiver to pay said judgment, and that it was proved to the court that there was money in the hands of the receiver at that time which was subject to the payment of the judgment, and that the court appointing the receiver refused to order the receiver to pay the judgment; said execution when so issued shall be levied upon any property in the hands of the receiver, and shall be sold as under ordinary execution; and a sale of the property will convey the title of the same to the purchaser. (Id.)

See Sayles' Practice, pp. 976, 1208.

Art. 2138. (1475) Judgments a first lien on property, and property charged with lien after receivership.—All judgments rendered against a receiver for causes of action arising during the receivership shall be a lien upon all of the property in the hands of the receiver superior to the mortgage lien; and if the property should be turned back into the possession of the party or corporation who were owning same at the time of the appointment of a receiver, or any one else for them, or as their assigns or purchasers, the party or corporation so receiving said property from said receiver shall take said property charged with all of the unpaid liabilities of the receiver occurring during the receivership, to the value of the property delivered by the receiver. (Id.)

See Sayles' Practice, p. 972.

Art. 2139. (1476) Persons to whom property delivered liable for debts.—If a receiver is discharged by the court before all of the liabilities of the receiver arising during the receivership are settled in full, then the person, persons, or corporation to whom the receiver delivers the property that was in his hands as receiver shall be liable to the persons having claims against said receiver for the full amount of the liabilities. (Id.)

See Sayles' Practice, p. 972.

Art. 2140. (1477) Effect of discharge of receiver.—The discharge of a receiver shall not work an abatement of the suit against a receiver, nor shall it in any way affect the right of the party to sue the receiver if he sees proper. (Id.)

See Sayles' Practice, p. 976.

Art. 2141. (1478) Property redelivered by receiver without sale still liable for debts; suits do not abate, but new party may be made.—All parties and corporations whose property has been placed in the hands of a receiver by order of the court,

and which was not sold by the receiver, and which property has been delivered back to the original parties or corporation, without any sale of said property, shall be liable and held to pay all of the unpaid liabilities of the receiver in causes of action arising out of and during the receivership; and, if there are any suits pending against the receiver at the date of discharge, on causes of action arising during the receivership, the plaintiff shall have the right to make the party or corporation to whom the receiver delivered the property which was in his hands as receiver a party defendant along with the receiver; and, if any judgment is rendered against the receiver for causes of action arising out of and during the receivership, then, the court shall also, at the same time, (if the party or corporation receiving back the property have been made parties defendant) render judgment in favor of the plaintiff against defendants for the amount so found for plaintiff and all costs; and plaintiff shall have the right to foreclose his lien on the property delivered back by said receiver to said party or corporation. (Id.)

See Sayles' Practice, p. 973.

Art. 2142. (1479) Judgments and unsued claims have preference lien over mortgage.—If, at the date of the discharge of the receiver, there are any judgments or claims not sued on against a receiver arising during the receivership, and which judgments and claims not sued on are unpaid at the date of the discharge of said receiver, said unpaid judgments and unpaid claims not sued on shall be a preference lien on all of the property that was in the hands of the receiver superior to the mortgage lien; and the person or corporation to whom the receiver has delivered the property that was in his hands as receiver shall be liable for all unpaid judgments and unpaid claims not sued on to the value of the property that was delivered by the receiver to said person or corporation. (Id.)

See Sayles' Practice, p. 974.

Art. 2143. (1480) Receiver and person to whom property is delivered both liable and may be sued for unpaid claim.—Any person having a claim against a receiver not sued on at the date of the discharge of the receiver shall have the right to sue said receiver, either alone or jointly, with the person or corporation to whom the receiver delivered said property that was in his hands as such receiver; and, if any judgment is rendered against said receiver, a judgment shall also be rendered against the person or corporation for the same amount that is rendered against the receiver, not to exceed the value of the property so received by said person or corporation. (Id.)

See Sayles' Practice, pp. 345, 973, 976.

Art. 2144. (1481) Receiver to give bond on appeal.—In any case in which any receiver is sued in any of the courts of this state, and such receiver desires to take an appeal from any judgment which may be rendered against him in any justice or county court, or to take an appeal or writ of error from any judgment which may be rendered against him in any district court, before such appeal or writ of error shall be perfected or allowed such receiver shall enter into bond with two or more good and sufficient sureties, to be approved by the clerk of the court or justice of the peace, payable to the appellee or the defendant in error, in a sum at least double the amount of the judgment, interest, and cost, conditioned that such receiver shall prosecute his appeal or writ of error with effect; and, in case the judgment of the court to which such appeal or writ of error be taken shall be against him, that he will perform its judgment, sentence, or decree, and pay all such damages and costs as said court may award against him. In the event that the judgment of the court to which such appeal or [writ of] error is taken shall be against such receiver, judgment shall, at the same time, be entered against the sureties on his said bond, and execution thereon may issue against such sureties within twenty days after the rendition of such judgment. (Id.)

See Sayles' Practice, pp. 965, 1102.

Unconstitutional. See Dillingham v. Putnam, 14 S. W. 303; National Equitable Soc. v. Alexander, 210 S. W. 602.

Art. 2145. (1482) Railroad funds, where deposited.—When a line of railroad operated by a receiver lies wholly within this state, all money which comes into the hands of the receiver, whether from operating the road or otherwise, shall be kept and deposited in such place within this state as the court may direct, until properly disbursed; but, if any portion of the road lies in another state the receiver shall be required to deposit in this state at least such share of the funds in his hands as is proportioned to the value of the property of the company within this state. (Acts 1887, p. 122.)

See Sayles' Practice, p. 975.

Art. 2146. (1483) Receiver may sue or be sued without leave; effect of judgment against.—When any property of any kind within the limits of this state has been placed, by order of court, in the hands of a receiver, who has taken charge of such property, such receiver may, in his official capacity, sue or be sued in any court of this state having jurisdiction of the cause of action, without first having obtained leave of the court appointing such receiver to bring said suit; and, if a judgment is recovered against said receiver, it shall be the duty of the court to order said judgment paid out of any funds in the hands of said receiver as such receiver. (Id.)

See Sayles' Practice, p. 965; Paine v. Carpenter, 111 S. W. 430; Houston Ice & Brewing Co. v. Clint, 159 S. W. 409; Arlington Heights Realty Co. v. Citizens' Ry. & Light Co., 160 S. W. 1109; Commonwealth Bonding & Casualty Ins. Co. v. Bowles, 192 S. W. 611.

Art. 2147. (1484) Suits against receiver, where brought.—Actions may be brought against the receiver of the property of any person where said person resides. Actions may be brought against receivers of a corporation in the county where the principal office of said corporation may be located, and against receivers of railroad companies in any county through or into which the road is constructed, and service of summons may be had upon the receiver, or upon the general or division superintendent of the road, or upon any agent of said receiver who resides in the county in which the suit is brought. (Id.)

See ante art. 1830, sec. 23; Sayles' Practice, p. 333; Townes' Texas Pleading (2d Ed.) p. 332 et seq.; Paine v. Carpenter, 111 S. W. 430; Kirby Lumber Co.'s Receivers v. McLendon, 120 S. W. 227;

Commonwealth Bonding & Casualty Ins. Co. v. Bowles, 192 S. W. 611; Mitchell v. Porter, 194 S. W. 981; Mitchell v. Hancock, 196 S. W. 694.

Art. 2148. (1486) Inventory to be made and returned by receiver.—The receiver, as soon after his appointment as possible, shall return to the court appointing him a true and correct inventory of all property received by him as such receiver. (Id.)

See Sayles' Practice, p. 978.

Art. 2149. (1487) Jurisdiction to appoint receiver confined to courts of this state in certain cases.—When a person resides in this state and a receiver is applied for, or if the property sought to be placed in the hands of a receiver is situated within the limits of this state, no court other than one within the limits of this state shall have power to appoint any receiver of said property. (Id.)

See Sayles' Practice, p. 962.

Art. 2150. (1488) Receiver of corporation, where applied for.—If the property sought to be placed in the hands of a receiver is a corporation whose property lies within this state, or partly within this state, then the action to have a receiver appointed shall be brought in this state in the county where the principal office of said corporation is located. (Id.)

See Sayles' Practice, pp. 280, 962; Wills Point Mercantile Co. v. So. Rock Island Plow Co., 71 S. W. 293; Commercial Telephone Co. v. Territorial Bk. & T. Co., 86 S. W. 66; Commonwealth Bonding & Casualty Ins. Co. v. Bowles, 192 S. W. 611.

Art. 2151. (1489) Where there are betterments, general creditors have rights to be protected.—When a receiver of a corporation has, under the order of the court, made improvements upon the property of said corporation, and has also, under the order of the court appointing him, purchased rolling stock, machinery, and made other improvements whereby the value of the property of said corporation has been increased, or has extended such road, or acquired any property in connection with said road, and has paid for same out of the current receipts of the corporation that came into his hands as receiver, then, if there be any floating debts against said corporation, said corporation shall be made to contribute to the floating indebtedness to the full value of the money so spent by said receiver as aforesaid; and, if there are any liens of any kind upon the property of said corporation in the hands of such receiver, and said property is sold under the order of the court, and said liens foreclosed, then it shall be and is hereby made the duty of the court appointing such receiver, if there be any unpaid debts or judgments, or claims against the corporation itself, to detain in the hands of the clerk of the court money to the full value of the improvements made by said receiver of said property out of the proceeds of the sale of the property sold, and pay the same over to any person or persons who has or may have a claim, debt, or judgment against said corporation; and the court, in ordering the sale of the property, shall require sufficient cash money to be paid in at date of sale to cover the full value of the improvements so made by said receiver out of the current funds received by him from the property while receiver. (Id.)

See Sayles' Practice, p. 975.

Art. 2152. (1490) Judgments and other claims have preference over mortgage.—All judgments, claims, or causes of action when determined, existing against any corporation at the time of the appointment of a receiver, shall be paid out of the earnings of such corporation while in the hands of the receiver, to the exclusion of mortgage action; and the same shall be a lien on such earnings. (Id.)

See Simkins' Equity (2d Ed.) p. 867; Sayles' Practice, p. 971; Farmers, etc., Bk. v. Electric Ry. & L. Co., 36 S. W. 131; Randolph v. Farmers' Loan & Trust Co., 44 S. W. 70; United States & Mexican Trust Co. v. Western Supply & Mfg. Co., 109 S. W. 377; First Nat. Bank of Houston v. J. I. Campbell Co., 133 S. W. 311; First Nat. Bank of Houston v. J. I. Campbell Co., 140 S. W. 430; Gaupel v. Lakeside Sugar Refining Co., 158 S. W. 1038; Gulf Pipe Line Co. v. Lasater, 193 S. W. 773.

Art. 2153. (1491) Receivership of corporations limited to three years.—No corporation shall be administered in any court for a longer period than three years from the date of such appointment; and within three years such court shall wind up the affairs of such corporation, unless prevented by appeal of litigation. (Id.)

See Sayles' Practice, p. 978.

Art. 2154. (1492) Application for receiver, by whom made.—No receiver shall ever be appointed of any joint stock, incorporated company, or of any co-partnership or private person, on the petition of such joint stock, incorporated company, partnership or person; provided, that any stockholder or stockholders of such joint stock or incorporated company may have his or their action against such company, and may have a receiver appointed as in ordinary cases; and provided, further, that nothing herein shall prevent a member of any co-partnership from having a receiver appointed whenever a cause of action arises between the co-partners. (Id.)

See Simkins' Equity (2d Ed.) p. 852; Sayles' Practice, p. 961; Rische v. Rische, 101 S. W. 849; Floore v. Morgan, 175 S. W. 737; Kokernot v. Roos, 189 S. W. 505.

Art. 2155. (1493) Rules of equity shall govern in receivership proceedings.—In all matters relating to the appointment of receivers, and to their powers, duties and liabilities, and to the powers of the court in relation thereto, the rules of equity shall govern whenever the same are not inconsistent with the provisions of this chapter and the general laws of the state. (Id.)

See Haywood v. Scarborough, 92 S. W. 815; San Jacinto Oil Co. v. Culberson, 96 S. W. 110; Id. 101 S. W. 197; Falfurrias Immigration Co. v. Spielhagen, 127 S. W. 164.

4. MASTERS IN CHANCERY

Art. 2156. (1485) Master in chancery, qualifications, duties and appointments.—The court shall, in every case of the appointment of receiver, also after his qualifying, appoint a master in chancery, who shall be a citizen of this state, and not an attorney for either party to the action, nor related to either party, who shall perform all of the duties required of him by the court, and shall be under orders of the court, and have such power as a master of chancery has in a court of equity. (Id.)

See Sayles' Practice, p. 977; San Jacinto Oil Co. v. Culberson, 96 S. W. 110; San Jacinto Oil Co. v. Culberson, 101 S. W. 197; San Benito Cameron County Drainage Dist. v. Farmers' State Guaranty Bank, 192 S. W. 1145.

5. SUBSTITUTION OF LOST RECORDS AND PAPERS

Art. 2157. (1498) (1475) Lost records and papers supplied, on motion.—Whenever the records and papers of a cause, or any part thereof, may be lost or destroyed, either before or after the trial, the same may be supplied by either party, on motion before the court, upon three days' notice to the adverse party or his attorney. (Acts 1850, p. 160, sec. 1; P. D. 4969.)

See post art. 6778 et seq.; Sayles' Practice, pp. 674, 718, 1077; Bradburn v. S., 65 S. W. 519; Strohmeyer v. Wing, 77 S. W. 977; Lovett v. Zeiss, 133 S. W. 497; Crosby v. Di Palma, 141 S. W. 321; Browne Grain Co. v. Farmers' & Merchants' Nat. Bank of Abilene, 173 S. W. 942; Wiggins v. First Nat. Bank of Denton, 175 S. W. 735; Hassell v. Rose, 199 S. W. 845; Massingill v. Moody, 201 S. W. 265.

Art. 2158. (1499) (1476) Motion, requisites of.—Such motion shall be in writing and signed by the party or his attorney, and shall be verified by affidavit. It shall state the loss or destruction of such record or papers, and shall be accompanied by certified copies of the originals, if they can be had, and if not, then substantial copies thereof as near as may be. (Id.. sec. 2; P. D. 4970.)

See Sayles' Practice, p. 719; Lovett v. Zeiss, 133 S. W. 497; Browne Grain Co. v. Farmers' & Merchants' Nat. Bank of Abilene, 173 S. W. 942; Wiggins v. First Nat. Bank of Denton, 175 S. W. 735; Hassell v. Rose, 199 S. W. 845; Massingill v. Moody, 201 S. W. 265.

Art. 2159. (1500) (1477) If substitutes agreed to.—If the adverse party admit the correctness of such copies, and the court be satisfied that they are correct copies in substance of the originals, an order shall be made substituting such copies for the originals.

See Sayles' Practice, p. 719; Strohmeyer v. Wing, 77 S. W. 977; Lovett v. Zeiss, 133 S. W. 497; Browne Grain Co. v. Farmers' & Merchants' Nat. Bank of Abilene, 173 S. W. 942; Wiggins v. First Nat. Bank of Denton, 175 S. W. 735; Hassell v. Rose, 199 S. W. 845; Massingill v. Moody, 201 S. W. 265.

Art. 2160. (1501) (1478) If not agreed to, court may hear proof, etc.—If their correctness be not admitted, or if the court do not find them to be correct, the parties shall submit their respective statements to the judge; and he shall hear proof as to the contents of such lost records and papers, and correct copies thereof shall be made up under the direction of the judge.

See Lovett v. Zeiss, 133 S. W. 497; Browne Grain Co. v. Farmers' & Merchants' Nat. Bank of Abilene, 173 S. W. 942; Wiggins v. First Nat. Bank of Denton, 175 S. W. 735; Hassell v. Rose, 199 S. W. 845; Massingill v. Moody, 201 S. W. 265.

Art. 2161. (1502) (1479) Adverse party may supply.—The adverse party may, in the same proceedings, supply any other portions of such records and papers desired by him.

Art. 2162. (1503) (1480) Parties may agree on brief statement, etc.—The parties may, by consent in writing, with the approval of the judge, agree on a brief statement of the matters contained in such lost records and papers; and the court may, by an order, substitute such statement for the lost originals.

Art. 2163. (1504) (1481) Substituted copies constitute record.—Such substituted copies or brief statement of their contents, as the case may be, made up under the preceding articles of this subdivision, shall be filed with the clerk, and shall constitute a part of the record of the cause, and shall have all the force and effect of the originals. (Revision, 1879.)

6. DEPOSIT OF MONEY, ETC., IN COURT

Art. 2164. (1462) (1458) Custody of money and other articles deposited.—Whenever, during the progress of any cause, any money, debt, scrip, instrument of writing or other article, shall be paid or deposited in court to abide the result of any legal proceedings the officer having custody thereof shall seal up the identical money, or other article received by him, in a secure package and deposit it in some safe or bank vault, keeping it always accessible and subject to the control of the court; and he shall also keep in his office, and as a part of the records thereof, in a well-bound book, a correct statement showing each and every item of money and property so received by him, on what account received, and what disposition he has made of the same. (Acts 1876, p. 7, sec. 1.)

See Sayles' Practice, pp. 619, 808; Groesbeck, etc., Comp. Co. v. Oliver, 97 S. W. 1092; Lanham v. Dies, 98 S. W. 897.

Art. 2165. (1463) (1459) Officer shall deliver funds, etc., to his successor.—On the expiration of his term of office, such officer shall turn over to his successor all such trust funds and other property, and the record aforesaid, and shall take his receipt therefor. (Id. sec. 2.)

Art. 2166. (1464) (1460) Not to exempt officer and his sureties from liabilities, etc.—The provisions of articles 2164 and 2165 shall not exempt any officer or his sureties from liability on his official bond, for any neglect or other default, in regard to the funds therein mentioned. (Id. sec. 5.)

See Lanham v. Dies, 98 S. W. 897.

CHAPTER TWENTY-TWO

SUIT BY NEXT FRIEND

Art. 2167. (3498u) When minor may sue by next friend.—Any minor, lunatic, idiot or non compos mentis, having a sufficient cause of action, and who has no legal guardian, can bring suit in any of the courts of this state by next friend; and such next friend shall have the same rights concerning such suit and the matter therein involved as if he were guardian of such minor, lunatic, idiot or non compos mentis; provided, he shall not be relieved from giving security for costs or affidavit in lieu thereof, and cannot collect the proceeds of any moneyed judgment he may recover, except as herein specified. (Acts 1893, p. 3, sec. 1; Acts 1909, p. 176.)

See Sayles' Practice, pp. 220, 352; Lumsden v. Ch. R. I. & T. R'y, 56 S. W. 605; Harbison v. Harbison, 56 S. W. 1006; G. H. & S. A. R'y v. Washington, 63 S. W. 538; Taylor v. San Antonio, etc., Co., 93 S. W. 674; Biggins v. Gulf, C. & S. F. Ry. Co., 110 S. W. 561; James v. James, 164 S. W. 47; Thompson v. Thompson, 202 S. W. 175.

Art. 2168. (3498v) Next friend may compromise, etc.—Such next friend or the attorney of record of such minor, lunatic, idiot or non compos mentis may enter into such agreed judgment or compromise in such suit as the court may approve; and the decree entered upon such agreement or compromise, when approved by the court, shall be forever binding on said minor, lunatic,

idiot or non compos mentis, and can divest title out of the minor, lunatic, idiot or non compos mentis or vest it in such minor, lunatic, idiot or non compos mentis, when the court is satisfied such decree is for the best interest of the minor, lunatic, idiot or non compos mentis, under all circumstances; and the court may hear evidence touching upon such agreement or compromise before approving the same. (Id. sec. 2.)

See Lumsden v. R'y, 56 S. W. 605; Harbison v. Harbison, 56 S. W. 1006; James v. James, 164 S. W. 47; Jones v. Chronister Lumber Co., 204 S. W. 704.

Art. 2169. (3498w) May collect certain personal judgments, etc.—Whenever, in any suit in this state, any minor, lunatic, idiot or non compos mentis recovers a personal judgment for money or other personal property in which the interest of the said minor, lunatic, idiot or non compos mentis does not exceed the value of five hundred dollars, and said minor, lunatic, idiot or non compos mentis has no guardian, such next friend, or any person authorized by the court to do so by an order entered upon record, may take charge of said money or property for the benefit of said minor, lunatic, idiot or non compos mentis, upon giving bond in such sum as shall be ordered by the court, which shall not be less than double the value of the property, conditioned that he will pay over said money and lawful interest thereon and deliver said property and its increase to the minor when he becomes of age, or to the lunatic, idiot or non compos mentis when he is restored to sanity or to the legally qualified guardian of such persons when demanded, and that he will pay or deliver the same to such person appointed by the court when ordered by the court to do so, and that he will use such money or property for the benefit of the minor, lunatic, idiot or non compos mentis as ordered by the court. It is provided, further, that the terms of this article shall apply to all money or other personal property now in the hands of the clerks of the courts of this state belonging to such persons; provided, further, that in any such case without regard to the amount involved, the judge of the court in which the judgment is rendered shall have authority upon an application and hearing, in term time or vacation, to provide by decree for an investment of the funds accruing under such judgment as he may deem advisable and to the best interest of the beneficiary or beneficiaries. If such decree shall be made in vacation, it shall be recorded in the minutes of the succeeding term of the court. (Id. sec. 3.)

Parriss v. Jewell, 122 S. W. 399; Naylor v. Naylor, 128 S. W. 475.

Art. 2170. (3498x) Disposition of such collections; compensation, etc.—Such person who takes such money or property shall receive no fees or commissions for caring for or handling the same, but shall receive such compensation for caring for or handling the same as may be allowed by the court, and shall make such disposition thereof at all times as the court may order; and he may be required to return such money or property into court upon the order of the court, when the court may make such further disposition of the same as is deemed best for the minor, lunatic, idiot, or non compos mentis. (Id. sec. 4.)

Art. 2171. (3498y) Claims against such judgments, how adjusted.—Whenever any attorney or other person has any interest in such recovery or judgment, the court may hear evidence as to such interest, and, if deemed just, shall order such claim, or such part as is deemed just, to be paid to such person who is entitled to receive the same. (Id. sec. 5.)

CHAPTER TWENTY-THREE

SUITS AGAINST NON-RESIDENTS

Art. 2172. (1504a) Actions maintainable against non-residents.—An action may be brought and prosecuted to final decree, judgment, or order, by any person claiming a right or interest in or to any property in this state, against any person or persons who are non-residents of this state, or whose place of residence is unknown, or who are transient persons, who claim an adverse estate, or interest in, or who claim any lien or incumbrance on said property, for the purpose of determining such estate, interest, lien, or incumbrance, and granting the title to said property, or settling the lien or incumbrance thereon. (Acts 1893, p. 77.)

See Sayles' Practice, pp. 210, 320; Cates v. Alston's Heirs, 61 S. W. 979; Norvell v. Pye, 95 S. W. 666.

Art. 2173. (1504b) Actual possession not necessary; service, etc.— Such action may be maintained by any such person whether he is in actual possession of such property or not; and service on the defendant or defendants may be made by publication of the writ or notice of the same, as is now or hereafter may be provided by law for publication of citation against non-residents, or persons unknown, or transient persons. (Id.)

See Sayles' Practice, pp. 320, 322; Irwin v. Bexar Co., 63 S. W. 550; Wilson v. Nat. Bk. of Cleburne, 63 S. W. 1067.

Art. 2174. (1504c) Requisites of pleadings.—The pleadings in such case shall set forth the title of the complainant; and such proceedings shall be had in such action as may be necessary to fully settle and determine the question of right or title in and to said property between the parties to said suit, and to decree the title or right of the party entitled thereto; and the court may issue the appropriate order to carry such decree, judgment or order into effect. (Acts 1893, p. 77; Acts 1919, ch. 58, sec. 1.)

See Sayles' Practice, p. 210.

Art. 2175. (1504d) Judgment by default can not be rendered.—No judgment by default shall be taken in such case by reason of the failure of the defendant to answer; but the facts entitling the plaintiff to judgment shall be exhibited to the court on the trial; and a statement of the facts shall be filed as may be provided by law in suits against non-residents of this state where no appearance has been made by them. (Acts 1893, p. 77.)

See Sayles' Practice, pp. 210, 325; Wilson v. Nat. Bk. of Cleburne, 63 S. W. 1067; Bilby v. Rodgers, 125 S. W. 616.

See articles 1875 and 1941.

Art. 2176. (1504e) Procedure if suit be to extinguish lien.—In case said suit shall be for the extinguishment of any lien or claim for money on said property that may be held by the defendant, the amount thereof, with interest, shall be ascertained

by the court; and the same shall be deposited in the registry of the court, subject to be drawn by the defendant or defendants entitled thereto; but in such case no decree shall be entered, until said sum is deposited; which fact shall be noted in said decree. (Id.)

Art. 2177. (1504f) Judgment in such cases receivable in evidence.—The judgment of the court in the cases mentioned shall be received in evidence, under the rules governing evidence that may be established by law; and said judgment shall be binding on the parties thereto concerning the matters determined therein. (Id.)

See Norvell v. Pye, 95 S. W. 666.

CHAPTER TWENTY-FOUR
ATTORNEY'S FEES, RECOVERY OF

Art. 2178. Attorney's fees recoverable in certain cases; procedure; costs.—Hereafter, any person in this state having a valid, bona fide claim against any person or corporation doing business in this state, for personal services rendered or for labor done, or for material furnished, or for overcharges on freight or express, or for any claim for lost or damaged freight, or for stock killed or injured by such person or corporation, its agents or employés may present the same to such person or corporation or to any duly authorized agent thereof, in any county where suit may be instituted for the same; and if, at the expiration of thirty days after the presentation of such claim, the same has not been paid or satisfied, he may immediately institute suit thereon in the proper court; and if he shall finally establish his claim, and obtain judgment for the full amount thereof, as presented for payment to such person or corporation in such court, he shall be entitled to recover the amount of such claim and all costs of suit, and, in addition thereto, a reasonable amount as attorney's fees; provided, he has an attorney employed in the case, not to exceed twenty dollars, to be determined by the court or jury trying the case. (Acts 1909, p. 93.)

Art. 2179. Remedy cumulative.—Nothing in this chapter shall be construed to repeal, or in any manner affect, any provision of the law now in force, giving a remedy to persons having claims of the character mentioned in this chapter, but the same shall be considered as cumulative of all other remedies given to such person or persons. (Id.)

CHAPTER TWENTY-FIVE
MISCELLANEOUS PROVISIONS

Art. 2180. (1447) (1443) Process, requisites of.—The style of all writs and process shall be "The State of Texas;" and, unless otherwise specially provided by law, every such writ and process shall be directed to the sheriff or any constable of the proper county, shall be made returnable on the first day of the next term of the court after the issuance thereof, and shall be dated and attested by the clerk with the seal of the court impressed thereon; and the date of its issuance shall be noted on the same. (Const. art. 5, sec. 12; Acts 1866, p. 199, sec. 1; Acts 1846, p. 363, sec. 10; P. D. 1431.)

See Sayles' Practice, pp. 290, 295, 297, 791, 902, 1186, 1218; Caufield v. Jones, 45 S. W. 741; Robinson v. Horton, 81 S. W. 1044; Carson Bros. v. McCord-Collins Co., 84 S. W. 391; Medlin v. Seideman, 88 S. W. 250; Hardy Oil Co. v. Markham State Bank, 131 S. W. 440; Ollora v. State, 131 S. W. 570; St. Louis, B. & M. Ry. Co. v. Hamilton, 163 S. W. 666; Hoff v. Clark, 200 S. W. 431.

Art. 2181. (1451) (1447) Vouchers, wager of battle, etc., repealed.—All vouchers, views, essoins, and also trials by wager of battle and wager of law shall stand repealed. (Acts 1846, p. 363, sec. 107; P. D. 1468.)

See Riggins v. S., 60 S. W. 877; Ry. v. Cluck, 77 S. W. 403.

Art. 2182. (1454) (1450) Suits consolidated, when.—Whenever several suits may be pending in the same court, by the same plaintiff, against the same defendant, for causes of action which may be joined, or where several suits are pending in the same court, by the same plaintiff, against several defendants, which may be joined, the court in which the same are pending may, in its discretion, order such suits to be consolidated. (Id. sec. 48; P. D. 1451.)

See Sayles' Practice, p. 356; Halliburton v. Martin, 66 S. W. 675; Bolden v. Hughes, 107 S. W. 91; Hallam v. Moore, 126 S. W. 908; Brasfield v. Young, 153 S. W. 180; Rust v. Texas & P. Ry. Co., 180 S. W. 95; Pena v. Baker, 207 S. W. 426.

Art. 2183. (1455) (1451) Officers failing, etc., punished for contempt and liable for damages.—Every clerk, sheriff, constable, or other officer, neglecting or refusing to perform any duty required of him under the provisions of this title shall, in addition to the punishment prescribed in the Penal Code, be punished as for a contempt of court, and shall also be liable to damages at the suit of any person injured. (Id. sec. 20; P. D. 1436.)

TITLE 38
COURTS—JUVENILE

CHAPTER ONE
DEPENDENT AND NEGLECTED CHILDREN

See, also, post, title "Juveniles."

Art. 2184. "Dependent child" or "neglected child" defined.—For the purposes of this chapter the words "dependent child" or "neglected child" shall mean any child under sixteen years of age who is dependent upon the public for support or who is destitute, homeless or abandoned; or who has not proper parental care or guardianship, or who habitually begs or receives alms, or who is found living in any house of ill fame or with any vicious or disreputable person, or whose home, by reason of neglect, cruelty or depravity on the part of its parents, guardian or other person in whose care it may be, is an unfit place for such child. Any child, within the provisions of this chapter whose parents or guardian permits it to use except for medicinal purposes or to become addicted to the use of intoxicating liquors, or whose parents or guardian rears, keeps or permits it in or about any saloon or place where intoxicating liquors are sold, or any gambling house or house of ill fame, shall be deemed to be without proper parental care or guardianship. (Acts 1907, p. 135, sec. 1.)

Art. 2185. County and district courts given jurisdiction over.—The county and district courts of the various counties of this state shall have original jurisdiction in

all cases coming within the terms of this chapter, and shall, at all times, be deemed in session for the disposition of same, and when so sitting it may be known as the "juvenile court." In all trials under this chapter, any person interested therein may demand a jury as in other cases; or the judge of the court, of his own motion, may order a jury to try such cases. Unless such jury is demanded, it shall be deemed to be waived. Any person interested in any case under this chapter shall have the right to appear therein and be represented by counsel. (Id. sec. 2.)

Art. 2186. Who may institute proceedings in interest of child, and how.—Any person who is a resident of the county having knowledge of a child in his county who appears to be a "dependent" or "neglected" child may file with the clerk of the county or district court of his county a petition in writing, setting forth the facts constituting the child "dependent" or "neglected;" which petition shall be verified by the affidavit of the petitioner. It shall be sufficient, if the affidavit shall be upon information and belief. Such petition shall set forth the name of the parent or parents of such child, if known, and their residence; and if such child has no parent living, then the name and residence of the guardian of such child, if it has one. (Id. sec. 3.)

Art. 2187. Hearing; citation, etc.; service, etc.; representative; parents' rights forfeited, when.—Upon the filing of such petition, the judge of said court shall fix the day and time for the hearing of such petition. If it shall appear that one or both of such parents, or guardian, if there be no parents, reside in said county, the clerk of said court shall immediately issue citation; which citation shall include a copy of the petition, which shall be served on such parent, parents or guardian, if any, if either can be found in said county, not less than two days before the time fixed for said hearing requiring them to appear on said day and hour to show cause, if any, why such child should not be declared by said court to be a "dependent" and "neglected" child; and such citation shall be served by the sheriff or any constable of the county. In case it shall appear from the petition that neither of said parents are living, or do not reside in said county, and that said child has no guardian residing in said county, or in case one or both of said parents, or the guardian in case there be no parents, shall indorse on said petition a request that the child be declared a "dependent child," then the citation herein provided for shall not be issued; and the court may thereupon proceed to a hearing of the case. In case neither of the parents or guardian is found, then the court shall appoint some suitable person to represent said child in said cause. In case any child is adjudged to be dependent or neglected under this chapter, then such parents or guardian shall hereafter have no right over or to the custody, services or earnings of said child except upon such conditions in the interest of such child as the court may impose, or where, upon proper proceedings, such child may lawfully be restored to the parents or guardian. (Id. sec. 4.)

Art. 2188. Hearing; facts to be ascertained; witnesses; county attorney to appear for petition or file same, etc., when.—Upon such hearing of such case the child shall be brought before said court; whereupon, it shall be the duty of said court to investigate the facts, and to ascertain whether the child is a "dependent child," its residence, and, as far as possible, the whereabouts of its parents or near adult relatives, when and how long the child has been maintained, in whole or in part, by private or public charity, the occupation of the parents, if living, whether they are supported by the public or have abandoned the child, and to ascertain, as far as possible, if the child is found dependent, the cause thereof. The court may compel the attendance of witnesses on such examination; and it shall be the duty of the clerk to issue all process and the sheriff and other officers of the court to serve the same as in other cases. It shall be the duty of the county attorney, when requested by the court, to appear in any such examination in behalf of the petition. It shall be the duty of the county attorney of such county, upon the request of the court or any petitioner, to file a petition and to conduct any necessary proceedings in any case within the provisions of this chapter. (Id. sec. 5.)

Art. 2189. Adjudication; order disposing of child as deemed best for its welfare.—Upon the hearing of such case, if the said child shall be found to come within any of the provisions of article 2184, it shall be adjudged a "dependent child;" and an order may be entered making disposition of said child as to the court seems best for its moral and physical welfare. It may be turned over to the care and custody of any suitable person or any suitable institution in the county or state organized for the purpose of caring for "dependent children," and which is able and willing to care for same. And when such child is so turned over to the custody of such person or institution, such person or institution shall have the right to the custody of said child, and shall be at all times responsible for its education and maintenance, subject at all times to the orders of the court. (Id. sec. 6.)

Art. 2190. Child to be ward of custodian; his authority; maintenance, etc., visitation; reports; change of guardianship; child may remain with parents, etc., when, etc.—In any case where the court shall award any "dependent child" to the care of any individual or institution in accordance with the provisions of this chapter, the child, unless otherwise ordered, shall become a ward and be subject to the guardianship of the institution or individual to whose care it is committed. Such institution or individual shall, with the consent of the court, have authority to place such child in a suitable family home, the head of such family being responsible for the maintenance and education of said child. Any institution or individual receiving any such child under the order of the court shall be subject to visitation or inspection by any person appointed by the court for such purpose; and the court may, at any time, require from any institution or person a report containing such information as the court shall deem proper or

necessary, to be fully advised as to the care, education, maintenance and moral and physical training of the child, as well as the standing and ability of such institution or individual to care for such child. The court may change the guardianship of such child, if, at any time, it is made to appear to the court such change is to the best interest of the child. If, in the opinion of the court, the causes of the dependency of any child may be removed under such conditions or supervisions for its care, protection and maintenance as may be imposed by the court, so long as it shall be for its best interests, the child may be permitted to remain in its own home and under the care and control of its own parent, parents or guardian, subject to the jurisdiction and direction of the court; and when it shall appear to the court that it is no longer to the best interests of such child to remain with such parents or guardian, the court may proceed to a final disposition of the case. (Id. sec. 7.)

CHAPTER TWO

DELINQUENT CHILDREN

See, also, post, title "Juveniles."

Arts. 2191-2198.

Acts 1907, p. 137, §§ 1-8, constituting the above articles of the Revised Civil Statutes, were also carried into the Revised Criminal Statutes as arts. 1197-1204 of the Code of Criminal Procedure. The latter articles were amended by Acts 1913, ch. 112, secs. 1-10, thus working a supercession of the articles of the Revised Civil Statutes above referred to. The act as amended appears in the Code of Criminal Proc. as arts. 1197-1204.

Arts. 2199, 2200.

Acts 1907, p. 137, ch. 65, sec. 9, from which the above articles were constructed, was amended, prior to the revision of 1911, by Acts 1909, ch. 55, p. 101, and the revisers carried the amendatory act into the Revised Code of Criminal Procedure as art. 1205. The latter article was expressly repealed by Acts 1913, ch. 112, sec. 13. This repeal would seem to work a supercession of these articles.

Art. 2201.

This artice is superseded by Acts 1913, ch. 112, sec. 12. Code Cr. Proc. as art. 1207.

Art. 2201a. Dependent or delinquent girls may be committed by juvenile court, etc.; mentally deficient or diseased girls; examination.—Whenever any girl between the ages of seven and eighteen years shall be brought before any juvenile court upon petition of any person in this state or the humane society or any institution of a similar purpose or character, charged with being a dependent or delinquent child as these terms are defined in the statutes of this state, the court may, if in the opinion of the judge, the girls' training school is the proper place for her, commit such girl to said girls' training school during her minority; provided, that no girl shall be committed to the girls' training school who is feeble-minded, epileptic or insane, and that any girl committed to said girls' training school who is afflicted with a venereal, tubercular or other communicable disease, shall be assigned to a distinct and separate building of the institution and shall not be allowed to associate with the other wards until cured of said disease or diseases.

No girl shall be admitted to the institution until she has been examined by the training school physician, and such physician issuing a certificate showing her exact state or condition in reference to said qualifications hereinabove enumerated. (Acts 1913, p. 289, sec. 5.)

This article, and article 2201b, are duplicated in the Code of Cr. Proc. as arts. 1207a, 1207b.

For sections 1-4, 7, 8, 10, 11 of this act, see post, arts. 5234b-5234i.

Art. 2201b. Duties of court; transcript; conveyance to school, etc.—It shall be the duty of the court committing any girl to the girls' training school, in addition to the commitment, to annex a carefully prepared transcript of the trial to aid the officials of the institution in better understanding and classifying the girl. The court shall also designate some reputable woman to convey the girl to the institution. The cost of conveying any girl committed to this institution shall be paid by the county from which she is committed, provided that no compensation shall be allowed beyond the actual and necessary expenses of the party conveying and the girl conveyed. (Id. sec. 6.)

TITLE 39

CRIMINAL DISTRICT COURTS

Arts. 2201c-2235g.

This title (5 chapters) of the Revised Civil Statutes of 1911 consisted of articles 2202-2235, and subsequent laws. It related to the criminal district courts of Galveston and Harris Counties, and the criminal district court of Dallas County. Many of these articles, particularly articles 2202-2205, 2207, 2208, 2212-2214, 2216-2228, have been superseded by subsequent acts. In order to avoid duplication the articles of this title still in force, and all subsequent acts relating to all criminal district courts, are set forth in the Code of Criminal Procedure as articles 97a-97¾o thereof.

TITLE 40

COURTS—COMMISSIONERS'

CHAPTER ONE

ORGANIZATION

Art. 2236. (1532) (1509) Election and term of office of county commissioners.—Each county shall be divided into four commissioners precincts, in each of which precincts there shall be elected by the qualified voters thereof one county commissioner, who shall hold his office for two years, and until his successor is elected. (Const., art. 5, sec. 18. Acts 1876, p. 51, sec. 3.)

Cofield v. Britton, 109 S. W. 493; Tom v. Klepper, 172 S. W. 721.

Art. 2237. (1533) (1510) Court composed of whom and the presiding officer thereof.—The said commissioners, together with the county judge, shall compose the commissioners' court, and the county judge, when present, shall be the presiding officer of said court. (Id.; Acts 1876, p. 51, sec. 2.)

See Racer v. S., 73 S. W. 968; Cofield v. Britton, 109 S. W. 493; Cobb & Gregory v. Dies, 203 S. W. 438.

Art. 2238. (1534) (1511) Three members constitute a quorum, except, etc.—Any three members of the said court, including the county judge, shall constitute a quorum for the transaction of any business, except that of levying a county tax. (Id. sec. 12.)

Art. 2239. (1535) (1512) Oath and bond of county commissioners.—Before entering upon the duties of his office, the county judge and each commissioner shall take the oath of office prescribed by the constitution, and shall also take an oath that he will not

be directly or indirectly interested in any contract with, or claim against, the county in which he resides, except such warrants as may issue to him as fees of office, which oath shall be in writing and taken before some officer authorized to administer oaths, and, together with the certificate of the officer who administered the same, shall be filed and recorded in the office of the clerk of the county court in a book to be provided for that purpose; and each commissioner shall execute a bond, with two or more good and sufficient sureties, to be approved by the judge of the county court of his county, in the sum of three thousand dollars, payable to the treasurer of his county, conditioned for the faithful performance of the duties of his office. (Acts 1887, p. 58.)

See Knippa v. Stewart Iron Wks., 66 S. W. 322; Polk v. Roebuck, 184 S. W. 513.

Art. 2240. (1536) (1513) Vacancy in office of commissioner, how filled.—In case of vacancy in the office of commissioner, the county judge shall appoint some suitable person living in the precinct where such vacancy occurs, to serve as commissioner for such precinct until the next general election. (Acts 1876, p. 51, sec. 18.)

CHAPTER TWO
POWERS AND DUTIES

Art. 2241. (1537) (1514) Certain powers of the court specified.—The said courts shall have power and it shall be their duty:

1. To lay off their respective counties into precincts, not less than four, nor more than eight, for the election of justices of the peace and constables, and shall fix the times and places of holding the various justices courts in their counties, and shall establish places in such precincts where elections shall be held; also shall establish justices precincts and justices courts for unorganized counties as provided by law.

2. To establish public ferries whenever the public interest may require.

3. To lay out and establish, change and discontinue public roads and highways.

4. To build bridges and keep the same in repair.

5. To appoint road overseers and apportion hands.

6. To exercise general control and superintendence over all roads, highways, ferries and bridges in their counties.

7. To provide and keep in repair court houses, jails and all necessary public buildings.

8. To audit and settle all accounts against the county and direct their payment.

9. To provide for the support of paupers and such idiots and lunatics as can not be admitted into the lunatic asylum, residents of their county, who are unable to support themselves. By the term resident as used herein, is meant a person who has been a bona fide inhabitant of the county not less than six months and of the state not less than one year.

10. To provide for the burial of paupers.

11. To punish contempts by fine not to exceed twenty-five dollars or by imprisonment not to exceed twenty-four hours, and in case of fine, the party may be held in custody until the fine is paid.

12. To issue all such notices, citations, writs and process as may be necessary for the proper execution of the powers and duties imposed upon such court and to enforce its jurisdiction. (Const., art. 5, sec. 18; Acts 1876, p. 51, secs. 4, 9, 10; 1885, p. 89; Acts 1911, p. 236.)

Bland v. Orr, 39 S. W. 558; Galveston Co. v. Ducie, 45 S. W. 798; McDonald v. Farmer, 56 S. W. 555; Knippa v. Stewart Iron Wks., 66 S. W. 322; Alabama Ferry Co. v. Leathers, 69 S. W. 117; Tarrant Co. v. Butler, 80 S. W. 656; Parsons v. Hunt, 81 S. W. 120; Stratton v. Commissioners' Court of Kinney County, 137 S. W. 1170; Edwards v. McGuire, 165 S. W. 477; Polk v. Roebuck, 184 S. W. 513; Moore v. Coffman, 189 S. W. 94; Jeff Davis County v. Davis, 192 S. W. 291; Jackson v. McAllister, 196 S. W. 671; Lasater v. Lopez, 202 S. W. 1039; Padgett v. Young County, 204 S. W. 1046.

Art. 2242. (1538) Power to levy taxes.—Said court shall have the power to levy and collect a tax for county purposes, not to exceed twenty-five cents on the one hundred dollars valuation, and a tax not to exceed fifteen cents on the one hundred dollars valuation to supplement the jury fund of the county, and not to exceed fifteen cents for roads and bridges on the one hundred dollars valuation, except for the payment of debts incurred prior to the adoption of the amendment to the constitution, September 25, A. D. 1883; and for the erection of public buildings, streets, sewers, water works and other permanent improvements, not to exceed twenty-five cents on the one hundred dollars valuation in any one year, and except as in the constitution otherwise provided; provided, however, the court may levy an additional tax for road purposes not to exceed fifteen cents on the one hundred dollars valuation of the property subject to taxation, under the limitations and in the manner provided for in article 8, section 9, of the constitution, and in pursuance of the laws relating thereto. (Const., art. 8, sec. 9. Amendment 1899, Acts 1907, p. 40.)

Stratton v. Commissioners' Court of Kinney County, 137 S. W. 1170.

Art. 2243. (1539) (1516) Certain tax shall not exceed, etc.—No tax levied for the purpose of paying debts incurred prior to the eighteenth day of April, A. D., 1876, shall exceed two and one-half mills on the dollar, and no tax levied for the erection or repair of public buildings shall exceed two and one-half mills on the dollar for any one year. (Const., art. 8, sec. 9. Amendment 1899.)

Art. 2244. (1540) (1517) Tax shall not be levied, except, etc.—No county tax shall be levied except at a regular term of the court, and when all the members of said court are present. (Id. sec. 12.)

Staten v. S., 141 S. W. 525; Edmanson v. S., 142 S. W. 887.

Art. 2245. (1541) (1518) Power to fill certain vacancies.—The said court shall have power to fill vacancies in the following named county offices, viz.: County judge, clerk of the county court, sheriff, county attorney, county treasurer, county surveyor, county hide inspector, assessor of taxes, collector of taxes, justices of the peace and constables.

Art. 2246. (1542) (1519) How vacancy shall be filled, etc.—Such vacancies shall be filled by a majority vote of the members of said court present and voting, and the person chosen to fill any vacancy shall hold the office until the next general election.

Art. 2247. (1543) (1520) Shall send indigent sick to hospital, when.—In case there is a regular established public hospital in the county, the commissioners' court shall provide for sending the indigent sick of the county to such hospital; and, if more than one such hospital exists in the county, the indigent patient shall have the right to select which one of them he shall be sent to. (Acts 1876, p. 51, sec. 21.)

Art. 2248. (1544) Commissioners' court may designate health districts of unincorporated towns.—The commissioners' court of any county in which an unincorporated town or village may be situated shall have power to designate the lines of such town or village, and may appoint a board of health for such town, consisting of three persons, not less than two of whom shall be regular practicing physicians. Said court, when such appointments are made, shall immediately notify the state health officer. (Acts 1899, p. 306; Acts 1889, p. 139; Acts 1901, S. S. p. 29.)

Art. 2249. (1545) Proceedings after health districts designated.—After the appointment provided for in the foregoing article, said board shall elect one of their number as presiding officer; and it shall be the duty of such presiding officer, if the premises of any citizen residing within the prescribed limits of said town or village are in an unclean or unhealthy condition, to notify him of the fact, and that he must proceed at once to clean the same. (Acts 1889, p. 139; Const., art. 8, sec. 9. Amendment 1889.)

Art. 2250. (1546) Failure to comply with notice provided for in preceding article unlawful.—Any person living in the prescribed limits of said town or village, having received the notice provided for in the foregoing article and failing to comply therewith, shall be deemed guilty of a misdemeanor and punished as provided for in the Penal Code. (Id.)

Art. 2251. (1547) May co-operate with cities and towns in sanitary regulations.—The municipal authorities of towns and cities, and commissioners' courts of the counties wherein such towns and cities are situated, may co-operate with each other in making such improvements connected with said towns, cities and counties as may be deemed by said authorities and courts necessary to improve the public health and to promote efficient sanitary regulations; and, by mutual arrangement, they may provide for the construction of said improvements and the payment therefor. (Acts 1879, p. 9.)

Art. 2252. (1547a) May construct bridges in corporate limits.—Whenever the commissioners' court of any county shall deem it to the interest of the county to erect any bridge or bridges within the corporate limits of any city or town, said court may make contracts therefor, and erect said bridges to the same extent and under the same conditions now prescribed by law for the construction of bridges outside of the limits of any city or town. (Acts 1895, p. 164.)

See ante, art. 610.

Art. 2253. (1547b) May co-operate with cities in such construction.—If said commissioners' court and the city council of any city or town desire to co-operate in the erection of a bridge within the corporate limits of any city or town, they may jointly erect such bridge upon such terms and conditions as may be mutually agreed upon; and either or both of the city and county may issue its bonds to pay for its proportional part of the debt; provided, that no such contract shall be made or entered into or bonds issued under the provisions of this law, unless a proposition therefor shall be submitted to the property taxpaying voters of the county at an election to be held by virtue of an order of the commissioners' court for the purpose, and a majority of such voters shall vote at such election in favor of such proposition; and the same laws governing other elections shall govern said election, canvass and return, and the county judge of said county shall declare by proclamation the result thereof by publication in some newspaper in said county. (Id.)

Art. 2254. (1547c) May issue bonds for such bridge purposes.—And, for the purposes herein mentioned, counties in this state may execute and issue its bonds, in the manner, under the conditions and to the same extent as they are now, or may be hereafter, authorized to issue for the erection of bridges outside of the corporate limits of cities and towns. (Id.)

Art. 2255. (1547d) Bridges in cities and towns, shall keep in repair.—It shall be the duty of the commissioners' courts of counties owning bridges, situated within the corporate limits of cities and towns, to keep the same in repair in the same manner as they are required by law to keep such bridges as are not so situated within the limits of a city or town; provided, that this article shall not be held to affect or diminish the liability of town and city corporations for injuries caused by the defective condition of such bridges situated within the city limits. (Acts 1897, p. 212.)

For power of commissioners in reference to condemnation for opening, etc., streets in unincorporated towns, etc., see art. 1069.

Art. 2256. Stationery, etc., may contract for.—The commissioners' court of each and every county may, by an order entered of record, be authorized and empowered to contract, as hereafter prescribed, with some suitable person or persons to supply the county with all blank books, all legal blanks and all stationery of every kind and description, as may be required by law to be furnished the county officials. (Acts 1907, p. 252.)

Art. 2257. Bids to be advertised for, how.—It shall be the duty of the commissioners' court to advertise, at least once in every two years, for sealed proposals to furnish said blank books, legal blanks, all stationery and such other printing as may be required for the county for the term of such contract. Said advertisement shall be made by the county clerk, who shall notify, by registered letter, each newspaper published and each job printing house in the county, and at least three stationery and printing houses in the state, of the time said contract is to be awarded, and of the probable amount of supplies needed. (Id. sec. 2.)

Art. 2258. Contract to be declared null and new bids advertised for, when.—Should supplies, when furnished by the successful bidder under this chapter, not be of

the quality designated in the contract and bond hereafter provided for, then, and in any such event, the commissioners' court may declare such contract null and void, and at the next regular or call session of said court again advertise for sealed proposals as in the first instance; and the commissioners' court shall have the right to again advertise for proposals as often and whenever from any cause supplies are not received under the previous contract. (Id. sec. 2.)

Art. 2259. May reject any and all bids.—The commissioners' court shall have the right to reject any and all bids. (Id. sec. 3.)

Art. 2260. Preference to citizen, etc., of county, when.—All bids being equal and quality the same, every contract must be awarded to a citizen or taxpayer of the county in which the contract is let. (Id. sec. 3.)

Art. 2261. May receive separate bids.—The commissioners' court may receive separate bids for the several classes herein mentioned. (Id. sec. 3.)

Art. 2262. Stationery to be classified.—The stationery shall be divided into four classes: Class "A" shall embrace all blank books and all work requiring permanent and substantial binding. Class "B" shall embrace all legal blanks, letter heads and other printing, stationery and blank papers. Class "C" shall embrace typewriter ribbons, pens, ink, mucilage, pencils, penholders, ink stands and wares of like kind. Class "D," poll tax receipts and all election supplies of whatever nature and description, not furnished by the state. Each and every bid shall be upon some particular class, separate and apart from any other class. To the lowest bidder on class "A" shall be awarded the contract for all work of that class; to the lowest bidder on articles in class "B" shall be awarded the contract for supplying the articles embraced in that class; to the lowest bidder for articles in class "C" shall be awarded the contract for supplying articles in that class; and to the lowest bidder for articles in class "D" shall be awarded the contract for supplying articles in that class. (Id. sec. 3.)

Art. 2263. Bond with bid, requisites of bond.—Each bid shall be accompanied by the bond of the bidder, with two or more good and sufficient sureties, conditioned that, should the contract be awarded to him, that he will, without delay, upon being notified of such award, enter into a written contract, according to the law and with his proposal, and will give bond as may be required, for the faithful performance of said contract. (Id. sec. 4.)

Art. 2264. No commissioner or other officer to be interested in contract.—No member of the commissioners' court or any county officer shall be, either directly or indirectly, interested in any such contract. (Id. sec. 5.)

Art. 2265. Contracts to be made in open court, with lowest bidder; bids to be spread on minutes.—All contracts shall be made in open court, with the lowest bidder, and all bids shall be spread in full on the minutes of the court. (Id. sec. 5.)

Art. 2266. Contracts in writing, etc.; amount of bond, sureties, conditions, etc.—The successful bidder or bidders shall enter into a written contract with the court, and shall give bond in the sum of two hundred and fifty dollars, for each class or contract; said contract shall be signed by the successful bidder, with two or more good and sufficient sureties, and shall be conditioned for the faithful compliance with his bid and with the law, and shall be made payable to the county judge or his successors in office. (Id. sec. 6.)

Art. 2267. Suit on bond, venue of.—Any suit on the bond of any contractor or bidder for failure to comply with the conditions of his contract shall be brought in the court having lawful jurisdiction of the amount alleged, in the county which is a party to the contract. (Id. sec. 6.)

Art. 2268. Affidavit that bidder is not member of a trust, etc.—Attached to every bid made in accordance with the provisions of this chapter, shall be an affidavit by the manager, secretary or other agent or officer of the bidder, to the effect that affiant has knowledge of the relations of the bidder with the other firms in the same line of business and that the bidder is not a member of any trust, pool or combination of any kind and has not been, for the six months last past, directly or indirectly concerned in any pool or agreement or combination to control the price of supplies bid on, or to influence any person to bid or not to bid thereon. (Id. sec. 7.)

Art. 2268a. Commissioners shall not make contracts in excess of $2000 without submission to competition; exception.—The Commissioner's Court of this State, shall make no contract calling for or requiring the expenditure or payment of Two Thousand ($2000) dollars or more out of any fund or funds of any county, or subdivision of any county, without first submitting such proposed contract to competitive bids; notice of the time and place, when and where such contract will be let, shall be published in some newspaper published in said county or subdivision once a week for two weeks prior to the time set for letting said contract; or if there is no newspaper published either in said county or said subdivision, then notice of the letting of said contract shall be given by causing a notice thereof to be posted at the Court House door of such county for fourteen days prior to the time of letting such contract; provided that in case of public calamity, where it becomes necessary to act at once to appropriate money to relieve the necessity of the citizens or to preserve the property of the county, this provision may be waived; provided, that all contracts made by or with said court calling for or requiring the expenditure of any amount of money less than Two Thousand ($2000) dollars and exceeding five hundred ($500) dollars, shall be let by competitive bids at a reguar term of court, except in case or urgent necessity or present calamity; provided, that the provisions of this Act shall not apply to any work done under direct supervision of the County Commissioners and paid for by the day. (Acts 1917, ch. 141, sec. 1.)

Art. 2268b. Contracts made without compliance with act void; injunction; repeal.—A contract made by the Commission-

er's Court without complying with the terms of this Act shall be void and shall not be enforceable in any court of this State, and the performance of same and the payment of any money thereunder may be enjoined by any citizen of such county or subdivision. This Act shall not be construed so as to repeal any part of Title 29, Chapter 2, Revised Statutes of 1911, and shall be cumulative to said title and chapter. (Id. sec. 2.)

Art. 2269. Commissioners may repeal order, when.—The commissioners' court of each county may, by order of record after contracts have been in force for the time specified in such contract, repeal said order. (Acts 1907, p. 252, sec. 7a.)

Art. 2270. (1548) (1521) May provide building, etc., for county court.—Said courts may, when necessary, provide buildings, rooms or apartments at the county seats, other than the court house, for holding the sessions of the county courts. (Acts 1876, p. 211.)

Art. 2271. (1550) (1523) Duty as to school lands.—It shall be the duty of the commissioners' court to provide for the protection, preservation and disposition of all lands heretofore granted, or that may hereafter be granted, to the county for education or schools. (Const. art. 7, sec. 6.)

Gallup v. Liberty County, 122 S. W. 291.

Art. 2272. (1551) (1524) Shall provide seals for the district and county courts.—Said court shall provide the seals required by law for the district and county courts of their respective counties.

Art. 2273. (1549) (1522) Other powers, etc., of the court.—Said courts shall have all such other powers and jurisdiction, and shall perform all such other duties, as are now or may hereafter be prescribed by law.

Art. 2273a. Court rooms for Justices of the Peace.—Hereafter the Commissioners' Courts of the respective counties affected hereby, shall provide and furnish suitable places in the Court House of their respective Counties for the holding of Court by Justices of the Peace in the Precinct where such Court House is situated, where there are more than seventy-five thousand inhabitants in such Justice Precinct. (Acts 1919, ch. 94, sec. 1.)

Art. 2273b. Soldiers records.—The commissioners' court of each county of this State is hereby authorized, and it shall be their duty, to purchase out of the general fund of the county a well bound book, to be used by the county clerk in recording the official discharge of each soldier, sailor or other person resident of the county, serving at home or abroad in the army or navy of the United States in the war with Germany and Austria Hungary lately concluded by armistice. (Acts 1919, ch. 96, sec. 1.)

Art. 2273c. Same subject.—It is hereby made the duty of the county clerk of each county to record in a well bound book the official discharge of each soldier, sailor or other person resident in the county who served at home or abroad in the army or navy forces of the United States in the war with Germany and Austria-Hungary lately concluded by armistice; and for such services the county clerk shall be allowed by the commissioners' court, out of the general fund of the county, not to exceed fifteen cents for each one hundred words so recorded. (Id. sec. 2.)

Art. 2273d. Rest rooms in court houses.—The commissioners' court in each county in this State may maintain a rest-room for women in the court house, or if for any reason a suitable rest-room for women cannot be had in the court house, they may maintain a rest-room at some convenient place near the court-house. The rest-room may be comfortably furnished with lounge, chairs, mirror, lavatory, tables and such other furnishings as may be needed to make the room attractive and comfortable for women who may be in attendance on the court or who who may for other reasons be in town.

The commissioners' court may assist the business and professional men, the various women's clubs and other organizations in paying the salary of a matron for the rest-room; providing the county judge shall appoint such matron with the consent of the commissioners' court; providing that in counties having a population according to the last United States census of less than 25,000, the expense and furnishing of the rest room shall not exceed $125.00, nor shall the commissioners' court expend more than $15.00 per month for the maintenance of the rest-room, including the compensation paid by the county to the matron; counties having a population according to the last United States census of more than 25,000 and less than 50,000 may expend not to exceed $200.00 in furnishing a rest-room and may expend for its maintenance not to exceed $25.00 per month, including the compensation paid by the county to the matron; and those counties having more than 50,000 may expend in furnishing a rest-room not to exceed $300.00, and may expend for its maintenance, including the compensation paid by the county to the matron, any amount not to exceed $50.00 per month. (Acts 1919, ch. 102, sec. 1; Acts 1919, 2d C. S., ch. 68, sec. 1.)

CHAPTER THREE

TERMS AND MINUTES OF THE COURT

Art. 2274. (1552) (1525) Regular terms of the court.—The regular terms of the commissioners' court shall commence and be held at the court house of their respective counties on the second Monday of each month throughout the year and may continue in session one week; provided, however, that the provision of this Act shall not be construed to be mandatory upon the court to hold more than one session of the court each quarter if the business of the court does not demand a session, and any session may adjourn at any time the business of the court is disposed of. (Acts 1876, p. 53, sec. 13. Acts 1911, p. 198.)

See Poole v. Burnet Co., 76 S. W. 425; Staten v. S., 141 S. W. 525; Altgelt v. Gutzeit, 187 S. W. 220.

Art. 2275. (1553) (1526) Special terms of the court.—Special terms of said courts may be called by the county judge or any three of the county commissioners, and may continue in session until the business is completed. (Act July 22, 1876, p. 53, sec. 13.)

Art. 2276. (1554) (1527) Minutes of the court.—The court shall cause to be procured and kept in the clerk's office suitable books in which shall be recorded the proceed-

ings of each term of the court; which record shall be read over and signed by the county judge, or the member of the court presiding, at the end of each term and attested by the clerk. (Id. sec. 11.)

See Waggoner v. Wise Co., 43 S. W. 836; Gordon v. Denton Co., 48 S. W. 737; Marshall v. Simmons, 159 S. W. 89; Douglass v. Myrick, 159 S. W. 422; Bishop v. S., 167 S. W. 363; Woods v. Eberling, 169 S. W. 932; King v. Marion County, 202 S. W. 1052.

Art. 2277. (1555) (1528) Minutes of proceedings in vacation.—The clerk shall also record all the proceedings of said court authorized to take place in the vacation between the terms; and such record, so made in vacation, shall be read over and signed on the first day of the term of said court next after such proceedings took place. (Id.)

CHAPTER FOUR

MISCELLANEOUS PROVISIONS

Art. 2278. (1556) (1529) Seal of the court.—Each commissioners' court shall have a seal, whereon shall be engraved a star with five points, the words, "Commissioners' Court, ——— county, Texas," [the blank to be filled with the name of the county], which seal shall be kept in the office of the clerk of said court, and shall be used in authentication of all official acts of said court, or of the presiding officer or clerk of said court, in all cases where a seal may be necessary for the authentication of any of said acts. (Acts 1876, p. 53, sec. 7.)

See Brown v. Pope, 65 S. W. 42.

Art. 2279. (1557) (1530) The clerk of the court and his duties.—The clerk of the county court shall be ex officio clerk of the commissioners' court; and it shall be the duty of such clerk to attend upon each term of said commissioners' court; to preserve and keep in his possession all books, papers, records and effects belonging thereto, to issue all notices, writs and process necessary for the proper execution of the powers and duties imposed upon such commissioners' court, and to perform all such other duties as may be prescribed by law. (Id. sec. 8.)

Art. 2280. (1558) (1531) Clerk shall issue process.—All notices, citations, writs and process issued from said court shall run in the name of "The State of Texas," and shall be directed to the sheriff or any constable of a county, and shall be dated and signed officially by the clerk, and shall have the seal of the court impressed thereon, except subpœnas, which need not be under seal. (Id. sec. 9.)

See Graves v. Rudd, 65 S. W. 63.

Art. 2281. (1559) (1532) Process shall be executed when, etc.—All process of said court, when not otherwise directed by law, shall be executed at least five days before the return day thereof, which return day shall be specified in the process. Subpœnas for witnesses may be executed and returned forthwith when necessary. (Id. sec. 9.)

Art. 2282. Notices posted how instead of publication, when.—Whenever the commissioners' court of the county shall be unable to secure the publication of any notice or report required by law to be given or made by such court in the manner and for the fee or fees provided by law therefor, such notice or report may be made and published in the following manner: The court shall cause to be made four true copies of such notice or report containing the same subject matter as is required to be set out in such notice or report under the law providing for the issuance and publication. One of said copies shall be posted at the court house door of the county, and one of said copies shall be posted at some public place in each of the commissioners' precincts of said county for thirty days prior to the next succeeding term of the commissioners' court of said county, and no two of such copies shall be posted in the same town or city. (Acts 1899, p. 39.)

CHAPTER FOUR A

COMMISSIONERS' COURT OF HUNT COUNTY

Art. 2282a. Additional powers of the court.—That in addition to the authority and duties now or hereafter conferred or imposed by the general law of the state upon county commissioners courts, that the commissioners' court of Hunt county, Texas, shall be further authorized and empowered to exercise a general supervision over the affairs of said county and to issue such orders not conflicting with the general laws of the state which the court may deem expedient and wise for the proper administration of the county affairs, and shall cause all laws and regulations governing the duties and conduct of the officers and offices of the said county to be faithfully observed and executed. (Acts 1911, p. 40, sec. 1.)

Art. 2282b. Special terms of court.—That in addition to the regular terms of the said commissioners court as prescribed by the general statutes, the court may hold as many special terms as they may deem proper. (Id. sec. 2.)

Art. 2282c. Commissioners to devote entire time.—That the county commissioners of Hunt county shall devote their entire time to the discharge of the regular and ex officio duties and responsibilities of their office during their terms of office under the supervision and direction of the commissioners' court, and they shall faithfully execute and cause to be faithfully executed the orders of said court. (Id. sec. 3.)

Art. 2282d. Compensation of commissioners and county judge; traveling expenses.—That each commissioner shall receive as entire compensation for his services under the terms of this Act sixteen hundred dollars, and no more, for each year during his term of office, to be paid in monthly installments out of the county funds; and the county judge shall receive for his services as a member of the commissioners court the sum of three hundred dollars annually, to be paid in monthly installments out of the county funds. This salary shall be in addition to his salary and fees of office as county judge. That each commissioner shall be limited to the sum of two hundred dollars each year for actual expense of traveling within the county in the performance of his duties, to be paid out of the county funds on vouchers showing an itemized account of the expenditure and the purpose therefor. (Id. sec. 4.)

Art. 2282e. Submission of act to voters; form of ballot, etc.—The terms of this Act shall apply and extend to the county of Hunt, when the commissioners court shall submit the question of the adoption or rejection hereof to the vote of the qualified voters of said county at a special election called for that purpose, and the said court is hereby empowered by resolution to order said election, and said election shall be held as nearly as possible in compliance with the law governing general elections; that in said election those in favor of the adoption of this Act shall have printed on their ballots, "For the County Commissioners Act," and those opposed to the adoption shall have printed on their ballots, "Against the County Commissioners Act." The commissioners court shall canvass the returns and determine the result as in a regular election, and if a majority of the voters voting upon the adoption of this Act at such election shall vote to adopt the same, the result of the election shall be entered upon the minutes of the said court, and thereupon all the terms hereof shall be applicable and govern said county. A certified copy of said minutes shall be prima facie evidence of the result of said election and the regularity thereof, and the facts therein recited shall in all courts be accepted as true. (Id. sec. 5.)

TITLE 41

COURTS—JUSTICES'

CHAPTER ONE

ELECTION AND QUALIFICATION OF JUSTICES

Art. 2283. (1560) (1533) Justices, election, bond and term of office.—There shall be elected by the qualified voters of each justice's precinct in the several counties of this state, at each biennial election, one justice of the peace, who shall hold his office for two years, and until his successor shall be elected and qualified. He shall enter into bond, payable to the county judge and his successors in office, in the sum of one thousand dollars, conditioned that he will faithfully and impartially discharge and perform all the duties required of him by law, and that he will promptly pay over to the party entitled to receive it all moneys that may come into his hands during his term of office. This law shall apply to all justices of the peace appointed by the county commissioners' court. (Acts 1885, p. 90.)

Art. 2284. (1561) Appointed, how, in unorganized counties.—The county commissioners' courts of the several counties in this state to which unorganized counties are attached for judicial purposes shall have and are hereby given power to appoint a justice of the peace and a constable for each of the unorganized counties attached to said county for judicial purposes, in accordance with the provisions of the law now in force authorizing such appointments in organized counties. (Acts 1879, p. 89.)

Art. 2285. (1562) Additional justices of the peace for unorganized counties.—Whenever, in any unorganized county of the state of Texas, a necessity may exist for the appointment of more than one justice of the peace and constable for such county, and such fact is made known and set forth in a petition signed by one hundred qualified voters of said county, addressed to the county commissioners' court of the organized county to which such unorganized county is attached for judicial purposes, asking the appointment of such officers, it shall be the duty of such commissioners' court to lay off and designate as many justices' precincts in such unorganized county as may be necessary, not exceeding four, and such commissioners' court shall have and is hereby empowered to appoint one justice of the peace and one constable for each justice's precinct in such unorganized county, in accordance with the provisions of the law now in force authorizing such appointments in organized counties; and such justices' precincts shall be and they are hereby constituted election precincts in such unorganized county. (Acts 1885, p. 88.)

Art. 2286. (1563) (1534) Two justices in certain precincts.—Where, in any justice's precinct, there may be a city of eight thousand or more inhabitants, there shall be elected two justices of the peace. (Id.; Acts 1876, p. 154.)

Art. 2287. (1564) (1535) Commission and qualification.—Each justice of the peace shall be commissioned as justice of the peace of his precinct and ex officio notary public of his county, and shall take the oath of office prescribed in the constitution, and give the bond prescribed by law. (Const., art. 4, sec. 20; Acts 1876, p. 165, sec. 28.)

Brown v. S., 118 S. W. 139; Smith v. S., 156 S. W. 645.

Art. 2288. (1565) (1536) Vacancy, how filled.—Where any vacancy shall occur in the office of a justice of the peace, the same shall be filled by some person appointed by the commissioners' court of the county, who shall hold his office until the next general election, and until his successor shall be elected and qualified. (Const., art. 6, sec. 28; Acts 1876, p. 165, sec. 2.)

Art. 2289. (1566) (1537) Nearest justice to hold court, when.—During the period of such vacancy, or whenever the justice of the peace in any precinct shall be absent, or unable or unwilling to perform the duties of his office, the nearest justice of the peace in the county may perform the duties of the office until such vacancy shall be filled, or such absence, inability or unwillingness shall cease. (Acts 1876, p. 164, sec. 25.)

See Stewart v. Smallwood, 102 S. W. 159; Brown v. S., 118 S. W. 139; Chance v. Pace, 151 S. W. 843.

Art. 2290. (1567) (1538) Justice disqualified, when.—No justice of the peace shall sit in any cause where he may be interested, or where he may be related to either party within the third degree of consanguinity or affinity. (Id. sec. 24.)

CHAPTER TWO

POWERS AND JURISDICTION

Art. 2291. (1568) (1539) Jurisdiction in civil cases.—The courts of justices of the peace shall, in addition to the powers and duties elsewhere provided for, have and exercise original jurisdiction in civil matters of all cases where the amount in controversy is two hundred dollars, or less, exclusive of interest, of which exclusive original jurisdiction is not given to the district or county

courts, and of all cases of forcible entry and detainer. They shall also have power to foreclose mortgages and enforce liens on personal property, where the amount in controversy is within their jurisdiction, as above provided. (Const., art. 5, sec. 19; Acts 1876, p. 155, secs. 3. 4.)

See Sayles' Practice, pp. 18, 117.

Art. 2292. (1569) (1540) To enter forfeitures of bail bonds.—Justices of the peace shall also have power to enter forfeitures of bail bonds given for the appearance of parties or witnesses in their courts, and to render judgments thereon without regard to the amount of such bond. (Acts 1876, p. 155, sec. 3.)

Art. 2293. (1570) (1541) To punish for contempts.—They shall have power to punish any party guilty of a contempt of court by fine not to exceed twenty-five dollars and by imprisonment not exceeding one day. (Id.)

Art. 2294. (1571) (1542) To issue writs of garnishment, etc.—They shall have the same power in cases within their jurisdiction as judges and clerks of the district and county courts have to issue writs of attachment, garnishment and sequestration. (Id. sec. 26.)

Art. 2295. (1572) (1543) Other jurisdiction conferred by law.—They shall also have and exercise jurisdiction over all other matters not hereinbefore enumerated that are, or may be, cognizable before a justice of the peace under any law of this state. (Id. sec. 3.)

Art. 2296. (1573) (1544) No jurisdiction in certain cases.—Justices' courts have no jurisdiction of suits in behalf of the state to recover penalties, forfeitures and escheats, of suits for divorce, of suits to recover damages for slander or defamation of character, suits for the trial of title to land, or of suits for the enforcement of liens on land. (Const., art. 5, sec. 8.)

Art. 2297. (1574) (1545) To proceed with unfinished business.—Every justice of the peace shall have power, and it shall be his duty, to proceed with all unfinished business of his office in like manner as if such business had been originally commenced before him. (Acts 1876, p. 157, sec. 6.)

CHAPTER THREE

TERMS OF THE COURT

Art. 2298. (1575) (1546) Monthly terms.—Each justice of the peace shall hold a term of his court for civil business once in each month, and may transact such business out of term time as is, or may be, authorized by law. (Acts 1876, p. 157, sec. 25; Acts 1870, p. 87, sec. 13; P. D. 6357.)

Art. 2299. (1576) (1547) Times and places of holding.—Justices of the peace shall hold the regular terms of their courts at their respective offices at such times as may be prescribed by the commissioners' court of the county. (Const., art. 5, sec. 19; Acts 1881, p. 10.)

Art. 2300. (1577) (1548) May hold from day to day, etc.—The justices may hold the courts from day to day until all business shall be disposed of, or they may adjourn the court or the trial of any case to a particular day. (Acts 1876, p. 87.)

Art. 2301. (1578) (1549) Failure of term.—If from any cause the regular term of a justice's court shall not be opened on the day fixed therefor by law, the court shall be considered as adjourned until the next regular term thereof. (Id. sec. 25.)

CHAPTER FOUR

DOCKETS, BOOKS AND PAPERS

Art. 2302. (1579) (1550) Justice's docket.—It shall be the duty of every justice of the peace to keep a civil docket, in which he shall enter—

1. The title of all suits commenced before him.
2. The time when the first process was issued against the defendant, when returnable, and the nature thereof.
3. The time when the parties, or either of them, appeared before him, either with or without citation.
4. A brief statement of the nature of the plaintiff's demand or claim, and the amount claimed, and a brief statement of the nature of the defense made by the defendant, if any.
5. Every adjournment, stating at whose request and to what time.
6. The time when the trial was had, stating whether the same was by a jury or by the justice.
7. The verdict of the jury, if any.
8. The judgment rendered by the justice, and the time of rendering the same.
9. All applications for setting aside judgment or granting new trials, and the order of the justice thereon, with the date thereof.
10. The time of issuing execution, to whom directed and delivered, and the amount of debt, damages and costs; and, when any execution is returned, he shall note such return on said docket, with the manner in which it was executed.
11. All stays and appeals that may be taken, and the time when taken, the amount of the bond and the name of the sureties. (Acts 1876, p. 156, sec. 5.)

See Gulf, H. & S. A. Ry. Co. v. Scott, 115 S. W. 870: James McCord Co. v. Rea, 178 S. W. 649.

Art. 2303. (1580) (1551) Fee book.—He shall also keep a fee book in which shall be taxed all costs accruing in every suit commenced before him. (Id. sec. 27.)

Art. 2304. (1581) (1552) Other books.—He shall also keep such other dockets, books and records as may be required by law.

Art. 2305. (1582) (1553) Custody of books, papers, etc.—Each justice of the peace shall arrange and safely keep the dockets, books and papers transmitted to him by his predecessors, and all papers filed in any case in his court, subject at all reasonable times to the inspection of any party interested therein.

Art. 2306. (1583) (1554) Books and papers to be delivered to successor.—When a justice of the peace shall vacate his office, it shall be his duty to deliver up to his successor all dockets, books and papers pertaining to his said office; and it shall be the duty of any person having possession of dockets, books or papers belonging to the office of any justice of the peace, to deliver the same over to such justice on demand. (Acts 1876, p. 156, sec. 6.)

Art. 2307. (1584) (1555) Delivery of, may be enforced.—Should any person, having such dockets, books or papers, refuse to deliver the same on such demand, he may, upon motion, be attached and imprisoned by order of the county judge in term time or in vacation, until he shall make such delivery; but such motion shall be supported by affidavit, and three days' notice thereof shall be given to the party against whom such motion is made. (Id.)

CHAPTER FIVE

VENUE

Art. 2308. (1585) (1556) Suits to be brought in the county of defendant's residence, except, etc.—Every suit in the court of a justice of the peace shall be commenced in the county and precinct in which the defendant, or one or more of the several defendants, resides, except in the following cases and such other cases as are or may be provided by law:

(1) Cases of forcible entry and detainer must be brought in the precinct where the premises, or a part thereof, are situated.

(2) Suits against executors, administrators, and guardians as such must be brought in the county in which such administration or guardianship is pending, and in the precinct in which the county seat is situated.

(3) Suits against counties must be brought in such county and in the precinct in which the county seat is situated.

In the following cases the suit may, at the plaintiff's option, be brought either in the county and precinct of the defendant's residence, or in that provided in each exception.

(4) Suits upon a contract in writing promising performance of any particular place, may be brought in the county and precinct in which such contract was to be performed, provided that in all suits to recover for labor actually performed, suit may be brought and maintained, where such labor is performed, whether the contract for same be oral or in writing.

(5) Suits for the recovery of rents may be brought in the county and precinct in which the rented premises, or a part thereof are situated.

(6) Suits for damages for torts may be brought in the county and precinct in which the injury was inflicted.

(7) Suits against transient persons may be brought in any county and precinct where such defendant is to be found.

(8) Suits against non-residents of the State, or persons whose residence is unknown, may be brought in the county and precinct where the plaintiff resides.

(9) Suits for the recovery of personal property may be brought in any county and precinct in which the property may be.

(10) Suits against private corporations, associations and joint stock companies may be brought in any county and precinct in which the cause of action or a part thereof arose, or in which such corporation, association or company has an agency or representative, or in which its principal office is situated.

(11) Suits against railroad and canal companies, or the owners of any line of mail stages or coaches, for any injury to person or property upon the road, canal or line of stages or coaches of the defendant, or upon any liability as a carrier, may be brought in any precinct through which the road, canal or line of stages or coaches may pass, or in any precinct where the route of such railroad, canal, stages or coaches may begin or terminate.

(12) Suits against fire, marine, or inland insurance companies may also be brought in any county and precinct in which any part of the insured property was situated; and suits against life and accident insurance companies or associations may also be brought in the county and precinct in which the persons insured, or any of them resided at the time of such death or injury.

(13) Suits against the owners of a steamboat or other vessel may be brought in any county or precinct where such steamboat or vessel may be found, or where the cause of action arose or the liability was contracted or accrued. In every suit commenced in a county or precinct in which the defendants or one of them may reside it shall be affirmatively shown in the citation or pleading (if any) that such suit comes within one of the exceptions named in this Act. (Acts 1876, p. 154, sec. 8; Acts 1917, ch. 124, sec. 1.)

See Eastham v. Harrell, 46 S. W. 389; McQuigg v. Nabors, 56 S. W. 212; Aspermont Drug Co. v. Crowdus Drug Co., 80 S. W. 258; Wartman v. Empire Loan Co., 101 S. W. 499; Kramer v. Lilley, 118 S. W. 735; Eaton v. International Travelers' Ass'n of Dallas, 136 S. W. 817; Anderson, Clayton & Co. v. Terry, 167 S. W. 1; Noble v. Broad, 167 S. W. 1; Harris v. Salvato, 175 S. W. 802; Dalhart Ice & Electric Co. v. Tinsley, 180 S. W. 619; Neal v. Barbee, 185 S. W. 1059; Wright v. M. M. Graves Co., 198 S. W. 998.

Art. 2309. (1586) (1557) Residence of a single man.—The residence of a single man is where he boards. (Acts 1876, p. 154, sec. 8.)

Art. 2310. (1587) (1558) Where two justices in one precinct.—Where, in any precinct, there may be more than one justice of the peace, the suit may be brought before either of them. (Id.)

Art. 2311. (1588) (1559) Where two or more justices in one city or town.—Where, in any incorporated city or town, there may be more than one justice of the peace, suit may be brought before either of them. (Id.)

Art. 2312. (1589) (1560) Where justice is disqualified.—If there be no justice of the peace qualified to try the suit in the proper precinct, the suit may be commenced before the nearest justice of the peace of the county who is not disqualified to try the same. (Id.)

See McQuigg v. Nabors, 56 S. W. 212; Aspermont Drug Co. v. Drug Co., 80 S. W. 258; Dalhart Ice & Electric Co. v. Tinsley, 180 S. W. 619.

Art. 2313. (1590) (1561) Change of venue on affidavit.—If any party to a suit before any justice of the peace shall make an affidavit, supported by the affidavit of two other credible persons, citizens of the county, to the effect that they have good reason to believe, and do believe, that such party cannot have a fair and impartial trial before such justice or in such justice's precinct, it shall be the duty of such justice to transfer such suit to the court of the nearest justice of the peace within the county not subject to the same or some other disqualification. (Id. sec. 9.)

Art. 2314. (1591) (1562) By consent.—The venue may also be changed to the court

of any other justice of the peace of the county, upon the written consent of the parties or their attorneys, filed with the papers of the cause.

Art. 2315. (1592) (1563) When justice is disqualified.—If any justice of the peace shall be disqualified from sitting in any civil case pending, or which may hereafter be brought before him, or should such justice of the peace be sick or absent from the precinct, the parties to said suit may agree upon some person who is qualified to try said case; and, in the event said parties fail to agree upon some person to try said cause at the first term of the court after service is perfect, it shall be the duty of the county judge in whose county said case is pending, upon the application of the justice of the peace in whose court said cause is pending, or upon the application of either party to said suit, to appoint some person who is qualified to try said cause; and the fact of the disqualification of the justice of the peace and the selection by agreement or appointment of some other person to try said cause shall be noted on the docket of said justice in said cause. (Amend. 1895, p. 26.)

Art. 2316. (1593) (1563a) The term "nearest justice" defined.—By the term "nearest justice," as used in this chapter, is meant the justice whose place of holding his court is nearest to that of the justice before whom the proceeding is pending or should have been brought.

Art. 2317. (1594) (1564) Order of transfer.—The order of transfer in such cases shall state the cause of the transfer, and the name of the court to which the transfer is made, and shall require the parties and witnesses to appear before such court in its next ensuing term.

Art. 2318. (1595) (1565) Duty of justice in case of transfer.—When such order of transfer is made, it shall be the duty of the justice who made the order immediately to make out a true and correct transcript of all the entries made on his docket in the cause, and certify thereto officially, and to transmit the same, with a certified copy of the bill of costs taken from his fee book, and the original papers in the cause, to the justice of the precinct to which the same has been transferred.

CHAPTER SIX
SECURITY FOR COSTS

Art. 2319. (1596) (1566) Rules of district courts, etc., apply as to security for costs.—The rules governing the district and county courts in reference to requiring security for costs, and the effect of the rule for costs and the penalty for non-compliance therewith shall also govern the justices' courts, in so far as they can be applied to proceedings therein. (Acts 1876, p. 154, sec. 27.)

See ante, arts. 2050-2057.

CHAPTER SEVEN
PARTIES

Art. 2320. (1597) (1567) Same rules as to parties as in district courts, etc.—The rules relating to parties in the district and county courts shall also govern the justices' courts, in so far as they can be applied thereto.

See ante arts. 1835-1849, 1942.

CHAPTER EIGHT
PROCESS AND SERVICE

Art. 2321. (1598) (1568) Process of justice's court, requisites of.—Every writ or process from the courts of justices of the peace shall be issued by the justice, and shall be in writing and signed by him officially. The style thereof shall be "The State of Texas." It shall, except where otherwise specially provided by law, be directed to the sheriff or any constable of the proper county, and shall be made returnable to some regular term of such court; and the date of its issuance shall be noted thereon. (Acts 1876, p. 158, sec. 10.)

Art. 2322. (1599) (1569) Citation to be issued, when.—When a claim or demand is lodged with a justice of the peace for suit, it shall be his duty to issue forthwith a writ or citation for the defendant; and, if there be several defendants residing in different counties, one citation shall be issued to each of such counties. (Id.)

Art. 2323. (1600) (1570) Citation shall contain what.—The citation shall be directed to the sheriff or any constable of the county where the defendant is represented to be, and shall, in addition to the requirements of article 2321, require the officer to summon the defendant to appear and answer the plaintiff's suit at some regular term of the court, stating the time and place of holding the same. It shall state the names of all the parties to the suit, and the nature of the plaintiff's demand. (Id.)

Art. 2324. (1601) (1571) Justice may depute person to serve process.—The justice of the peace may, in case of an emergency, depute any person of good character to serve any process; and the person so deputed shall, for such purpose, have all the authority of a sheriff or constable; but in every such case the justice shall indorse on the process a statement in writing, signed by him officially, to the effect that he has deputed such person to serve such process; and such person shall also take and subscribe an affidavit, to be indorsed on or attached to the process, to the effect that he will, to the best of his ability, execute the same according to law. (Id.)

Art. 2325. (1602) (1572) Rules of district courts, etc., govern as to issuance and service of process.—All the rules governing the issuance and service and the return of citations, issued out of the district and county courts, and providing for acceptance of service, and entering appearance, shall, except where otherwise provided by law, govern also the justices' courts, in so far as they can be applied to the proceedings of said court. (Id.)

See Valdez v. Cohen, 56 S. W. 375; Carpenter v. Anderson; 77 S. W. 291; Brown v. Dutton, 85 S. W. 454.

CHAPTER NINE
PLEADINGS

Art. 2326. (1603) (1573) Pleadings oral but entered on docket.—The pleadings in the justices' courts shall be oral, except where otherwise specially provided; but a

brief statement thereof may be noted on the docket. (Acts 1876, p. 154, secs. 5, 12.)

See Low v. Griffin, 41 S. W. 73; Rector v. Orange Rice Mill Co., 102 S. W. 402; Batla v. Goodell, 115 S. W. 622; Wichita Falls & W. Ry. Co. of Texas v. Hamman, 143 S. W. 942; A. J. Birdsong & Son v. Allen, 165 S. W. 46; Freeman v. W. B. Walker & Sons, 175 S. W. 1133; Texas Southeastern Ry. Co. v. Brown, 186 S. W. 273; Western Union Tel. Co. v. Huffstutler, 188 S. W. 455; Vaughan Lumber Co. v. Bybee & Wood, 191 S. W. 827; Heidenheimer, Strassburger & Co. v. Houston & T. C. R. Co., 197 S. W. 886; Fidelity Lumber Co. v. Bean, 203 S. W. 782.

Art. 2327. (1604) (1574) Pleadings to be in writing and under oath.—An answer or other pleading setting up any of the following matters shall be in writing and signed by the party or his attorney and verified by affidavit:

1. That the suit is not commenced in the proper county or precinct.

2. That the plaintiff has not legal capacity to sue.

3. That the plaintiff is not entitled to recover in the capacity in which he sues.

4. That there is another suit pending in this state between the same parties for the same cause of action or counter claim.

5. That there is a defect of parties plaintiff or defendant.

6. That the plaintiffs or defendants suing or sued as partners or receiver are not partners or receiver as alleged.

7. That the plaintiff or defendant suing or sued as a corporation is not a corporation as alleged.

8. That a written instrument purporting to be signed by him and relied on by the other party was not executed by him or by his authority.

9. That the indorsement or assignment of a written instrument pleaded by the adverse party was not executed by the party by whom it purports to have been executed, or by his authority.

10. That a written instrument pleaded by the adverse party is without consideration, or that the consideration of the same has failed, in whole or in part.

11. That an account pleaded by the adverse party and duly verified by affidavit, as provided in article 3712, is not just; and, in such case, the answer shall set forth the items and particulars which are unjust.

12. That the contract sued upon is usurious. (Acts 1891, p. 85.)

Art. 2328. (1605) (1575) Pleadings amendable.—The pleadings may be amended in accordance with the rules governing amendments of pleadings in the district and county courts, so far as the same are applicable.

See ante arts. 1824-1826.

CHAPTER TEN

CONTINUANCE

Art. 2329. (1606) (1576) Cause may be continued, etc.—Any justice of the peace may, for good cause shown, supported by affidavit, continue any suit pending before him to the next regular term of his court, or postpone the same to some other day of the term. (Act Aug. 17, 1876, sec. 11.)

CHAPTER ELEVEN

APPEARANCE AND TRIAL

Art. 2330. (1607) (1577) Appearance day.—The first day of each term of the justice's court after the return of process duly served in any cause shall be appearance day; but where the service was made by publication the first day of the second term after such publication shall be appearance day. (Acts 1876, p. 154, sec. 18.)

See Irwin v. Bexar Co., 63 S. W. 550; Brown v. Dutton, 85 S. W. 454; Davenport v. Rutledge, 187 S. W. 988.

Art. 2331. (1608) (1578) Proceedings where defendant fails to appear.—If the defendant who has been duly served with a citation shall fail to appear at, or before, ten o'clock a. m., on appearance day, the justice shall proceed in the following manner:

1. If the plaintiff's cause of action be liquidated and proved by an instrument of writing purporting to have been executed by the defendant, or be upon an open account duly verified by affidavit, the justice shall, whether the plaintiff appear or not, render judgment in his favor against the defendant for the amount of such written obligation or sworn account, after deducting all credits indorsed thereon.

2. If the plaintiff's cause of action is not so liquidated, and the plaintiff appears in person or by agent or attorney, the justice shall proceed to hear the testimony; and, if it shall appear therefrom that the plaintiff is entitled to recover, judgment shall be rendered against the defendant for such amount as the testimony shows the plaintiff entitled to; otherwise, judgment shall be rendered for the defendant. (Id.)

Art. 2332. (1609) (1579) Appearance noted.—If the defendant appear, the same shall be noted on the docket, and the cause shall stand for trial in its order.

Art. 2333. (1610) (1580) Jury trial may be demanded.—Either party may demand a jury as hereinafter provided. (Const., art. 1, sec. 15.)

Art. 2334. (1611) (1581) Court shall try case, when.—If neither party shall demand, and be entitled to, a jury trial, the cause shall be tried by the justice without a jury. (Act Aug. 17, 1876.)

Art. 2335. (1612) (1582) Call of the non-jury docket.—The docket of cases to be tried by the justice shall be called regularly; and the cases shall be tried when called, unless the same should be continued or postponed to some later period in the term. (Id. sec. 41.)

Art. 2336. (1613) (1583) Plaintiff failing to appear may be non-suited.—If the plaintiff shall fail to appear when the cause is called in its order for trial, the justice may, on motion of the defendant, dismiss the suit. (Id. sec. 18.)

Art. 2337. (1614) (1584) Proceedings, evidence, etc., to conform to rules governing district courts, etc.—Upon a trial before the justice, the proceedings shall conform as near as may be to the rules governing the district and county courts; and all the rules of evidence and the provisions for procuring the attendance of witnesses, for taking the depositions of witnesses and parties, and for taking and determining the exceptions thereto, prescribed for the government of the district and county courts, shall, when not in conflict with the provisions of this title, govern the proceedings in justices' courts, so far as the same may be applicable. (Id. secs. 14–16.)

Art. 2338. (1615) (1585) Judgment on trial without jury.—After hearing the evidence, the justice trying the case without a jury shall give judgment for the party who may appear to be justly entitled thereto. (Id. sec. 11.)

CHAPTER TWELVE
TRIAL BY JURY

Art. 2339. (1616) (1586) Jury trial may be demanded.—Either party to any suit in the justice's court shall be entitled to a trial by jury, upon making demand therefor and complying with the provisions of this chapter relating thereto. (Acts 1876, p. 159, sec. 11.)

Art. 2340. (1617) (1587) Time of demand and deposit of jury fee.—Either party desiring a jury shall, on or before the first day of the term at which the case is to be tried, make a demand for a jury, which shall be noted by the justice in his docket; and shall also deposit a jury fee of three dollars, which shall also be noted on the docket; and the case shall be set down as a jury case.

Art. 2341. (1618) (1588) Jury trial day to be fixed.—The justice shall, on the first day of the term, fix a day for taking up the jury cases, if any, pending for trial at such term, and he may fix said first day of the term for that purpose.

Art. 2342. (1619) (1589) Summons for jury to be issued, when, etc.—Whenever at any term of a justice's court there may be any jury cases pending for trial, it shall be the duty of the justice to issue a writ directed to the sheriff or any constable of the county, commanding him to summon six legally qualified jurors, or a greater number, should the justice deem it necessary, to attend as a jury before such justice at a day and place to be named in the writ.

Art. 2343. (1620) (1590) Oath to sheriff, etc., summoning jury.—The justice, on delivering such writ to the officer, shall administer to him the following oath: "You do solemnly swear that you will, to the best of your skill and ability, and without bias or favor toward any party, summon such jurors as may be ordered by the court; that you will select none but impartial, sensible and sober men, having the qualifications of jurors under the law; that you will not, directly or indirectly, converse or communicate with any juryman touching any case pending for trial; and that you will not, by any means, attempt to influence, advise or control any juryman in his opinion in any case which may be tried by him. So help you God." (Acts 1876, p. 80, sec. 12.)

Art. 2344. (1621) (1591) Duty of the officer.—The officer receiving such writ shall immediately proceed to execute the command thereof by summoning the required number of jurors to appear before the justice at the day and place named in the writ.

Art. 2345. (1622) (1592) Summons to juror, how served.—Such summons shall be by an oral notice by the officer to the juror that he is required to appear as a juror before such justice at the day and place named.

Art. 2346. (1623) (1593) Venire of jurors to be called.—At the time fixed for taking up the jury cases, the justice shall proceed to call the names of the jurors so summoned.

Art. 2347. (1624) (1594) Excuses for juror.—The court may hear any reasonable excuse of a juror, supported by oath or affirmation, and may excuse him for the trial of any particular case, or for one or more days of the term.

Art. 2348. (1625) (1595) Defaulting jurors to be fined.—When any person, so summoned as a juror, shall fail or refuse to attend, it shall be the duty of the justice to enter a fine nisi against him for an amount not exceeding five dollars, to the use of the county, to be made final, with costs, unless such person shall, after being cited to do so, show some good and sufficient excuse for such failure, to be judged of by the justice.

Art. 2349. (1626) (1596) Other jurors to be summoned when necessary.—If the number of jurors present and not excused be less than six, or less than the justice shall deem necessary, he shall order the sheriff or constable to summon a sufficient number of others, having like qualifications, to make up the required number.

Art. 2350. (1627) (1597) Call of jury docket.—When the required number of jurors is present, the jury cases shall be called in their order on the docket.

Art. 2351. (1628) (1598) Challenge to the array, when.—When the parties to a jury case have announced themselves ready for trial, either party may challenge the array of jurors.

Art. 2352. (1629) (1599) Challenge to the array, how made, and proceedings therein.—The cause of such challenge and the manner of making it, and the decision thereof, and the proceedings, when such challenge is sustained, shall be as provided for similar proceedings in the district and county courts in the title "Juries."

See post arts. 5188-5192.

Art. 2353. (1630) (1600) Drawing jury.—If no challenge to the array is made, the justice shall write the name of all the jurors present on separate slips of paper, as nearly alike as may be, and shall place them in a box and mix them well, and shall then draw the names one by one from the box, and write them down as they are drawn, upon several slips of paper, and deliver one slip to each of the parties, or their attorneys. (Acts 1876, p. 82, sec. 22.)

Art. 2354. (1631) (1601) Challenge for cause.—If either party desires to challenge any juror for cause, such challenge shall now be made. (Id.)

Art. 2355. (1632) (1602) Challenge for cause, proceedings on, same as in district court, etc.—The causes of such challenge, and the manner of making it, and the decision thereof, and the proceedings, when such challenge is sustained, shall be as provided for similar proceedings in the district and county courts.

See post arts. 5193-5196.

Art. 2356. (1633) (1603) Peremptory challenges, when and how made.—When a juror has been challenged for cause, his name shall be erased from the slips furnished to the parties; and, if there be remaining on such slips as many as six names, the parties shall proceed to make their peremptory challenges, if they desire to make any, which shall be governed by the same rules as are prescribed for the district and county courts.

See post art. 5197.

Art. 2357. (1634) (1604) The jury.—When the parties have made their peremptory challenges, or when they decline to make any, they shall deliver their slips to the justice, who shall call off the first six names on the slips that have not been erased, who shall constitute the jury to try the case. The jurors not called shall retire.

Art. 2358. (1635) (1605) When jury is left incomplete.—Where, by peremptory challenges, the jury is left incomplete, the justice shall direct the sheriff or constable to summon others to complete the jury; and the same proceedings shall be had in selecting and impaneling such jurors as are had in the first instance. (Acts 1876, p. 82, sec. 22.)

Art. 2359. (1636) (1606) Jurors to be sworn.—When the jury has been selected, such of them as have not been previously sworn for the trial of civil cases shall be sworn by the justice.

Art. 2360. (1637) (1607) Oath of jurors.—The form of the oath shall be in substance as follows: "You and each of you do solemnly swear that, in all cases between parties which shall be to you submitted, you will a true verdict render, according to the law and the evidence. So help you God." (P. D. 3984.)

Art. 2361. (1638) (1608) Mode of proceeding on trial before jury same as in district courts, etc.—The mode of proceeding on the trial before the jury shall be the same, so far as applicable, as is prescribed for the district and county courts in the chapters relating thereto, except that the justice shall not deliver any charge to the jury.

See title 37, chapter 12.

Art. 2362. (1639) (1609) Verdict for specific articles, to assess their value separately.—Where the suit is for the recovery of specific articles, the jury shall, if they find for the plaintiff, assess the value of each of such articles separately, according to the proof. (Acts 1876, p. 163, sec. 19.)

Art. 2363. (1640) (1610) Pay of jurors.—Before the verdict is rendered, the justice shall pay to each juror fifty cents out of the jury fee deposited in the case.

CHAPTER THIRTEEN

THE JUDGMENT

Art. 2364. (1641) (1611) Judgment upon verdict of jury.—Where the case has been tried by a jury and a verdict has been returned by them, the justice shall announce the same in open court and note it in his docket, and shall proceed to render judgment thereon.

Art. 2365. (1642) (1612) Case tried without a jury, decision in open court.—When the case has been tried by the justice without a jury, he shall announce his decision in open court and note the same in his docket, and shall proceed to render judgment thereon. (Acts 1876, p. 154, sec. 17.)

Art. 2366. (1643) (1613) Judgment.—The judgment shall be recorded at length in the justice's docket, and shall be signed by such justice. It shall clearly state the determination of the rights of the parties in the subject matter of controversy and the party who shall pay the costs, and shall direct the issuance of such process as may be necessary to carry the judgment into execution.

See Ry. v. Garnett, 92 S. W. 1040; American Soda Fountain Co. v. Mason, 119 S. W. 714; Lewis v. Kelley, 146 S. W. 1197; Hollinger v. Hancock, 152 S. W. 238.

Art. 2367. (1644) (1614) Costs.—The successful party in the suit shall recover his costs, except in cases where it is otherwise expressly provided. (Id. secs. 11, 14.)

Art. 2368. (1645) (1615) Judgment for specific articles.—Where judgment is for the recovery of specific articles, their value shall be separately assessed, and the judgment shall be that the plaintiff recover such specific articles, if they can be found, and if not, then their value as assessed, with interest thereon at the rate of six per cent from the date of the judgment. (Id. sec. 19.)

See Nolan v. Sevine, 81 S. W. 990.

Art. 2369. (1646) (1616) Court may, in certain cases, enforce judgment by attachment, fine, etc.—The court shall cause its judgments to be carried into execution, and where the judgment is for personal property, and the verdict, if any, that such property has an especial value to the plaintiff, the court may award a special writ for the seizure and delivery of such property to the plaintiff, and may, in addition to the other relief granted in such case, enforce its judgment by attachment, fine and imprisonment. (Acts 1846, p. 200, sec. 17; P. D. 1420.)

Art. 2370. (1647) (1617) No judgment without citation, unless.—No judgment, other than judgment by confession, shall be rendered by the justice of the peace against any party who has not entered an appearance or accepted service, unless such party has been cited either personally or by publication, or been served by the notice to serve a non-resident provided for in article 1869 of these statutes; which said article 1869 is now made applicable to the justices courts. (Acts 1870, p. 87, sec. 9; Acts 1876, p. 163, sec. 19; Acts 1909, p. 89; P. D. 6341.)

See Carpenter v. Anderson, 77 S. W. 291; Brown v. Dutton, 85 S. W. 454; National Bank of Commerce of Amarillo v. A. Walker Brokerage Co., 198 S. W. 174.

Art. 2371. (1648) (1618) Confession of judgment.—Any party may appear in person, or by an agent or attorney, before any justice of the peace, without the issuance or service of process, and confess judgment for any amount within the jurisdiction of the justice's courts; and such judgment shall be entered on the justice's docket, as in other cases; but, in such cases, the plaintiff, his agent or attorney, shall make and file an affidavit in writing, signed by him, to the justness of his claim. (Acts 1876, p. 154, sec. 17.)

Art. 2372. (1649) (1619) Warrant of attorney to be filed.—Where such judgment is confessed by an agent or attorney, the warrant of attorney shall be filed with the justice and noted in the judgment. (P. D. 1477.)

Art. 2373. (1650) (1620) Same rules as govern district courts, etc.—The rules governing the district and county courts in relation to judgments shall apply also to the justices' courts, in so far as they may not conflict with some provisions of this title.

See ante title 37, chs. 15, 16.

CHAPTER FOURTEEN
NEW TRIALS, ETC.

Art. 2374. (1651) (1621) Judgments by default, etc., may be set aside.—Any justice of the peace shall have power, at any time within ten days after the rendition of a judgment by default or of dismissal, to set aside such judgment, on motion in writing, for good cause shown, supported by affidavit. Notice of such motion shall be given to the opposite party at least one full day prior to the hearing thereof. (Acts 1876, p. 154, sec. 19.)

See Sherman Steam Laundry Co. v. Carter, 60 S. W. 328; Raley v. Sweeney, 60 S. W. 573; L. H. Lummus Sons Co. v. Wade, 95 S. W. 17; Alvord Nat. Bank v. Waples-Platter Grocer Co., 118 S. W. 232; Dickensheets v. Hudson, 167 S. W. 1097; Irwin v. Cunningham, 177 S. W. 986.

Art. 2375. (1652) (1622) New trials may be granted.—Any justice of the peace may, at any time within ten days after the rendition of any other judgment in any suit tried before him, grant a new trial therein on motion in writing, showing that justice has not been done him in the trial of the cause. (Id. sec. 17.)

See 1st Nat. Bk., etc., v. Rowland, 99 S. W. 1043.

Art. 2376. (1653) (1623) Motion to be sworn to, except, etc.—If the grounds of the motion be other than that the verdict or judgment is contrary to the law or the evidence, or that the justice erred in some matter of law, the motion shall be supported by affidavit. (Id.)

See Parker v. Boyd, 42 S. W. 1031; Smith v. Carroll, 66 S. W. 863.

Art. 2377. (1654) (1624) Notice.—All motions to set aside a judgment, or to grant a new trial, under the two preceding articles, shall be made within five days after the rendition of the judgment, and one day's notice thereof shall be given to the opposite party or his attorney. (Id. secs. 19, 17.)

See Raley v. Sweeney, 60 S. W. 573; Davis v. West Texas Bank & Trust Co., 116 S. W. 393.

Art. 2378. (1655) (1625) Where motion granted, cause continued, unless, etc.—Where a judgment is set aside, or a new trial is granted, the cause shall be continued to the next regular term of the court, unless otherwise agreed by the parties with the consent of the justice. (Id. sec. 17.)

Art. 2379. (1656) (1626) But one new trial to either party.—But one such new trial shall be granted to either party. (Id.)

See Smith v. Carroll, 66 S. W. 863.

CHAPTER FIFTEEN
EXECUTION

Art. 2380. (1657) (1627) Judgments enforced by execution, etc.—The judgments of the courts of justices of the peace shall be enforced by execution or other appropriate process.

Art. 2381. (1658) (1628) Execution.—Such execution or other process shall conform to the requirements of article 2321. It shall describe the judgment and shall require the sheriff or constable of the proper county to execute the same, according to its terms, whether the same be to make a sum of money, or to deliver personal property, or to deliver possession of real estate, or to do some other thing; and, if for money, it shall state the rate of interest; and it shall also require the officer to make the costs which may have been adjudged against the defendant in execution, and the further costs of executing the writ. A certified copy of the costs, taxed against the defendant in execution according to the fee book up to the issuance of the execution, shall be attached to the writ.

Art. 2382. (1659) (1629) Returnable in sixty days.—Such execution or other process shall be returnable in sixty days. (Acts 1876, p. 163, sec. 22.)

Art. 2383. (1660) (1630) Taxation of costs.—Within ten days after the rendition of any final judgment of the justice's court, it shall be the duty of the justice to tax up the costs in such suit, and to enter the same in his fee book.

Art. 2384. (1661) (1631) Execution to issue after ten days.—On the eleventh day after the rendition of any final judgment, if the case has not been appealed, and no stay of execution has been granted, it shall be the duty of the justice to issue an execution for the enforcement of such judgment and the collection of the costs. (Id. sec. 23.)

See Burns v. Skelton. 68 S. W. 527.

Art. 2385. (1662) (1632) Within the ten days, when.—Such execution may be issued at any time before the eleventh day, upon the filing of an affidavit by the plaintiff in the judgment, or his agent or attorney, to the effect that the defendant is about to remove his property out of the county, or is about to transfer or secrete his property for the purpose of defrauding his creditors. (Id.)

Art. 2386. (1663) (1633) Issued to another county to be attested by clerk.—Where an execution from a justice's court is sent to a county other than that in which the judgment was rendered, it shall be accompanied by a certificate of the county clerk, and attested by his official signature and seal of office that the officer issuing the same is an acting justice of the peace in said county; and the cost of procuring such certificate shall be collected as a part of the costs of executing the writ. (Acts 1842, p. 51, sec. 13; P. D. 3784.)

Art. 2387. (1664) (1634) Dormant judgments, etc.—If no execution is issued within twelve months after the rendition of the judgment, the judgment shall become dormant, and no execution shall issue thereon, unless such judgment be revived; but where the first execution has issued within the twelve months, the judgment shall not become dormant unless ten years shall have elapsed between the issuance of executions thereon, and execution may issue at any time within ten years after the issuance of the preceding execution. (Acts 1866, p. 118, secs. 1, 3; P. D. 7005, 7007).

See Burns v. Skelton, 68 S. W. 527; Gale Mfg. Co. v. Dupree, 146 S. W. 1048; Spiller v. Hollinger, 148 S. W. 338.

Art. 2388. (1665) (1635) The rules governing executions generally apply, except, etc.—The rules prescribed for the issuance, levy and return of executions shall apply to the justices' courts where not in conflict with some provision of this chapter. (Act Aug. 17, 1876, sec. 22.)

See post arts. 3714 et seq.; Collins v. Hines, 100 S. W. 359.

CHAPTER SIXTEEN
STAY OF EXECUTION

Art. 2389. (1666) (1636) Stay of execution.—At any time within ten days after the rendition of any judgment in a court of a justice of the peace, such justice may grant a stay of execution thereon for three months from the date of such judgment, if the person against whom such judgment was rendered shall, with one or more good and sufficient sureties, to be approved by the justice, appear before him and acknowledge themselves and each of them bound to the successful party in such judgment for the full amount thereof, with interest and costs, which acknowledgment shall be entered in writing on the docket, and signed by the persons binding themselves as sureties; provided, no such stay of execution shall be granted, unless the party applying therefor shall first file with the justice an affidavit in writing that he has not the money with which to pay such judgment, and that the enforcement of same by execution prior to three months would be a hardship upon him, and would cause a sacrifice of his property which would not likely be caused should said execution be stayed. (Acts 1887, p. 10.)

Art. 2390. (1667) (1637) Judgment and execution on.—Such acknowledgment shall be entered by the justice in his docket, and shall constitute a judgment against the defendant and such sureties, upon which execution shall issue in case the same is not paid on or before the expiration of such day. (Id.; Acts 1876, p. 154.)

CHAPTER SEVENTEEN
APPEAL

Art. 2391. (1668) (1638) Appeal may be taken.—Any party to a final judgment in the justice's court may appeal therefrom to the county court where such judgment, or the amount in controversy, shall exceed twenty dollars exclusive of costs, and in such other cases as may be expressly provided by law. (Acts 1876, p. 154, sec. 21.)

See Ry. v. Wheeler, 90 S. W. 481; Sayles' Practice, pp. 138, 1051, 1062; American Soda Fountain Co. v. Mason, 119 S. W. 714; Sapp v. Anderson, 135 S. W. 1068; Lewis v. Kelley, 146 S. W. 1197; Cage v. King, 159 S. W. 174; Freeman v. W. B. Walker & Sons, 175 S. W. 1133; City Nat. Bank v. Watson, 178 S. W. 657.

Art. 2392. (1669) Taken to district court, when.—In all counties in which the civil and criminal jurisdiction, or either, of the county courts has been transferred to the district courts, appeals and writs of certiorari may be prosecuted to remove a case tried before a justice of the peace to the district court, in the same manner and under the same circumstances under which appeals and writs of certiorari are allowed by general law to remove causes to the county court. (Acts 1879, p. 125.)

See Sayles' Practice, p. 1051.

Art. 2393. (1670) (1639) Bond for appeal; appeal perfected.—The party appealing, his agent or attorney, shall, within ten days from the date of the judgment, file with the justice a bond, with two or more good and sufficient sureties, to be approved by the justice, in double the amount of the judgment, payable to the appellee, conditioned that appellant shall prosecute his appeal to effect, and shall pay off and satisfy the judgment which may be rendered against him on appeal. When such bond has been filed with the justice, the appeal shall be held to be thereby perfected and all parties to said suit or to any suit so appealed shall make their appearance at the next term of court to which said case has been repealed without further notice. (Acts 1883, p. 91; Acts 1915, ch. 113, sec. 1.)

See Sayles' Practice, pp. 412, 1052, 1058; Blanks v. Stamps, 43 S. W. 18; Williams v. Vaughan, 43 S. W. 850; H. & T. C. Ry. v. Red Cross Stock Farm, 45 S. W. 375; Edwards v. Morton, 46 S. W. 792; Dickey v. Cox, 55 S. W. 360; Bond v. Rintleman, 59 S. W. 48; Clifford v. Kohr, 61 S. W. 424; Coman v. Lincoln, 61 S. W. 443; McMahon v. City Bank of Sherman, 61 S. W. 952; S. A. & A. P. Ry. v. Addison, 65 S. W. 38; Slayton & Co. v. Horsey, 78 S. W. 919; Carter v. Wyrick, 98 S. W. 644; Davis v. West Texas Bank & Trust Co., 116 S. W. 393; American Soda Fountain Co. v. Mason, 119 S. W. 714; Hall Music Co. v. Hall, 120 S. W. 904; Gottlich v. Gregory & Walton, 132 S. W. 843; Keahey v. Bryant, 134 S. W. 409; Cariker v. Dill, 140 S. W. 843; Cox v. Franz, 144 S. W. 695; Tevebaugh v. Smith Land Co., 146 S. W. 647; Conner v. Lowey, 149 S. W. 199; Southwestern Land Corporation v. Neese, 161 S. W. 1090; Dupree v. Massey, 180 S. W. 668; Texas & P. Ry. Co. v. Midland Mercantile Co., 181 S. W. 270; Galveston, H. & S. A. Ry. Co. v. Burris, 186 S. W. 381; Piquero & Smith v. Carlin, 208 S. W. 956.

Art. 2394. (1671) (1639a) Affidavit of inability to give bond.—Where the appellant is unable to pay the costs of appeal, or to give security therefor, he shall nevertheless be entitled to prosecute his appeal; but, in order to do so, he shall be required to make strict proof of his inability to pay the costs, or any part thereof. Such proof shall be made before the county judge of the county where such party resides or before the court trying the same, at any time within ten days from and after the date of the judgment rendered therein, and shall consist of the affidavit of said party stating his inability to pay the costs; which affidavit may be contested by any officer of the court or party to the suit; whereupon, it shall be the duty of the court trying the case, or the justice of the peace of the precinct in which said case was tried, or the county judge of the county in which the suit is pending, to hear evidence and to determine the right of the party to his appeal. (Acts 1887, p. 113.)

See Sayles' Practice, p. 1057; Hutcheson v. Blewett, 58 S. W. 150; Thames v. Chitwood, 60 S. W. 345; Hart v. Wilson, 156 S. W. 520; Strickland v. Wofford, 156 S. W. 916; Hardin v. Hamilton, 204 S. W. 679.

Art. 2395. (1672) (1639b) When appeal perfected on affidavit.—When the bond, or the affidavit in lieu thereof, provided for in the two preceding articles, has been filed, and the previous requirements of this chapter have been complied with, the appeal shall be held to be perfected. (Id.; Acts 1883, p. 91.)

See Ry. v. Wheeler, 90 S. W. 481; Sayles' Practice, p. 1052; Cariker v. Dill, 140 S. W. 843; Houston & T. C. R. Co. v. Aycock, 201 S. W. 664; Piquero & Smith v. Carlin, 208 S. W. 956.

Art. 2396. (1673) (1640) Duty of justice in case of appeal.—Whenever an appeal has been granted from the justice's court to the county court, it shall be the duty of the justice who made the order immediately to make out a true and correct copy of all the entries made on his docket in the cause, and certify thereto officially, and transmit the same, together with a certified copy of the bill of costs taken from his fee book, and the original papers in the cause, to the clerk

of the county court of his county. (Acts 1876.)

See Sayles' Practice, pp. 684, 1059, 1078; Edwards v. Morton, 46 S. W. 793; Karnes Co. v. Ray, 57 S. W. 76; Tedford v. Shell, 100 S. W. 970; Missouri, K. & T. Ry. Co. of Texas v. Hamilton, 108 S. W. 1002; Missouri, K. & T. Ry. Co. of Texas v. Milliron, 115 S. W. 655; Gulf, H. & S. A. Ry. Co. v. Scott, 115 S. W. 870; American Soda Fountain Co. v. Mason, 119 S. W. 714; Texas & P. Ry. Co. v. Hood, 125 S. W. 982; Wells v. Driskell, 131 S. W. 87; Cariker v. Dill, 140 S. W. 843; Consumers' Fertilizer Co. v. J. M. Badt & Co., 157 S. W. 226; James McCord Co. v. Rea, 178 S. W. 649; Houston & T. C. R. Co. v. Aycock, 201 S. W. 664.

As to amendment of appeal bond, etc., see article 2104.

Art. 2397. (1674) (1641) Transcript, etc., to be transmitted to county court.—Such transcript and papers shall, if practicable, be transmitted to the clerk of the county court on or before the first day of the next term of such court; but, if there be not time to make out and transmit the same to the first term, they may be so transmitted on or before the first day of the second term of the court. (Id.)

See Sayles' Practice, pp. 412, 1059; American Soda Fountain Co. v. Mason, 119 S. W. 714; Cariker v. Dill, 140 S. W. 843; Consumers' Fertilizer Co. v. J. M. Badt & Co., 157 S. W. 226; Beck v. Arkansas Motor Co., 180 S. W. 942; Houston & T. C. R. Co. v. Aycock, 201 S. W. 664; Piquero & Smith v. Carlin, 208 S. W. 956.

CHAPTER EIGHTEEN

GENERAL PROVISIONS

Art. 2398. (1675) (1642) Certiorari to remove cause to county court.—Any cause tried before a justice of the peace, wherein the amount in controversy, or the judgment, exceeds twenty dollars, exclusive of costs, may be removed from such justice's court to the county court by certiorari, under the rules prescribed in the title and chapter relating thereto.

See ante art. 742 et seq.; Sayles' Practice, p. 1070.

Art. 2399. (1676) (1643) Duty of justice on service of writ of certiorari.—Whenever a writ of certiorari to remove any cause from the justice's court to the county court shall be served on any justice of the peace, it shall be his duty immediately to make out a certified copy of the entries made on his docket, and of the bill of costs, as provided in case of appeals in article 2396, and transmit the same, together with the original papers in the cause, to the clerk of the county court in the manner and within the time prescribed in that and the succeeding article.

See ante arts. 744, 751; Sayles' Practice, p. 1078.

Art. 2400. (1677) (1644) Rules governing district courts, etc., to apply, except, etc.—Whenever the mode of proceeding in any particular case or matter is not prescribed by the provisions of this title, or of some other law or title specially relating thereto, the same shall be governed by the provisions of the title relating to the mode of proceeding in the district and county court in civil cases, in so far as the same are applicable.

See Sayles' Practice, p. 1069; McRae v. White, 42 S. W. 793; Brown v. Dutton, 85 S. W. 454; Kramer v. Lilley, 118 S. W. 735; Pye v. Wyatt, 151 S. W. 1086; Houston & T. C. R. Co. v. Aycock, 201 S. W. 664.

TITLE 42

DEBT—PUBLIC

Art. 2401. (3835a) (3677) Bonds and obligations declared valid.—All outstanding bonds or other obligations issued under the provisions of either of the following acts of the legislature are hereby recognized as valid and binding obligations upon the state; and the principal and interest thereof shall be paid in accordance with the terms of the laws under which they were respectively issued:

1. An act entitled An act providing for the issuance and sale of the bonds of the state for the purpose of meeting the appropriations made for maintaining ranging companies on the frontier, approved August 5, 1870.

2. An act entitled An act to provide money to pay the floating indebtedness of the state, approved March 4, 1874; an act supplementary and amendatory thereof, entitled An act to further provide for the sale of bonds to pay the public debt, approved April 13, 1874; and an act supplemental to the last named act, entitled An act supplemental to an act to further provide for the sale of bonds to pay the public debt, approved April 13, 1874, approved April 27, 1874.

3. An act entitled An act to provide for the payment of the bonds of the state of Texas that will become due and that are retireable in the years 1876 and 1877; and to make adequate provision for the floating indebtedness of the state, and to make an appropriation to carry into effect the provisions of the same, approved July 6, 1876.

4. An act to provide for the issuance and sale of bonds for the purpose of retiring the outstanding bonds of the state, and to supply deficiencies in the revenue, and to provide the mode and manner of the sale of said bonds, approved April 21, 1879.

5. An act to provide for the payment of the bonds of the state, carry into effect the provisions of the same, approved July 6, 1876, which was approved April 5, 1889.

6. An act to provide for the retirement of the past due bonds of the state of Texas, for the payment of interest thereon, and the issuance of other bonds at a lower rate of interest in lieu thereof, approved May 2, 1893. (Sen. Jour. 1895, p. 480.)

Art. 2402. (3835b) (3678) Laws to remain in force until obligations are discharged.—All the provisions of the several acts mentioned in the preceding article, in so far as the same may affect the public credit, the rights of the public creditors thereunder, the payment of the principal and interest due or hereafter accruing on any bonds or obligations issued thereunder, or the creation and disposition of any sinking fund provided for therein shall remain in full force and effect as laws of this state until the principal and interest of all bonds or obligations issued or accrued under such acts are fully paid off and discharged. (Id. 481.)

Art. 2402a. Officers of educational or eleemosynary institutions not to contract certain debts or divert funds.—That it shall hereafter be unlawful for any regent,

or regents, director or directors, officer or officers, member or members, of any educational or eleemosynary institution of the state of Texas, to contract or provide for the erection or repair of any building, or other improvement or the purchase of equipment or supplies of any kind whatsoever for any such institution, not authorized by specific legislative enactment, or by written direction of the governor of this state acting under and consistent with the authority of existing laws, or to contract or create any indebtedness or deficiency in the name of or against this state, not specifically authorized by legislative enactment, or to divert any part of any fund provided by law to any other fund or purpose than that specifically named and designated in the legislative enactment creating such fund, or provided for in any appropriation bill. (Acts 1913, S. S., p. 32, sec. 1).

Art. 2402b. Debts and contracts invalid.—That any and all contracts, debts or deficiencies created contrary to the provisions of this act shall be wholly and totally void, and shall not be enforceable against this state. (Id. sec. 2.)

Art. 2402c. Penalty for violation; removal; misdemeanor.—That any regent, director, officer or member of any governing board of any educational or eleemosynary institution, who shall violate this act shall be at once thereafter removed from his position with such institution, and shall not thereafter be eligible to hold said position, and in addition thereto shall be guilty of a misdemeanor, and shall be punished by imprisonment in the county jail for a period of not less than ten days, nor more than six months, the venue of such case to be in the county in which may be located the institution affected by such acts of such offender. (Id. sec. 3.)

Art. 2402d. Laws repealed.—That all laws and parts of laws in conflict herewith be, and the same are in all things repealed. (Id. sec. 4.)

TITLE 43

DENTISTRY

Arts. 2403-2416. [Superseded and omitted.]

These articles are superseded by Acts 1919, ch. 31, post, the Penal Code, arts. 759-770a.

TITLE 44

DEPOSITORIES

CHAPTER ONE

STATE DEPOSITORIES

Art. 2417. State Depository Board; quorum; State Treasurer to act as secretary.—The State Treasurer, the Attorney General, and the Commissioner of Insurance and Banking, are hereby constituted the State Depository Board, and any two of such members shall constitute a quorum. The State Treasurer shall also perform the duties of Secretary of the board. (Acts 1905, p. 387; Acts 1907, p. 183; Acts 1911, p. 2; Acts 1919, ch. 145, sec. 1.)

Articles 2417-2439, as contained in Revised Statutes, 1911, consisted of Acts 1905, p. 387, and Acts 1907, p. 183. Some of these articles were subsequently amended by Acts 1911, p. 2; Acts 1911, 1st C. S. ch. 15; Acts 1913, p. 330, and Acts 1915, ch. 30. Acts 1918, 4th C. S. ch. 3, sec. 1, added article 2439a. Acts 1919, ch. 145, sec. 1, amends all of the articles in this chapter. The enacting clause of said Acts 1919, ch. 145, reads as follows: "That Chapter 1, of Title 44, embracing Articles 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425,, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438 and 2439 of the Revised Civil Statutes of 1911, and all amendments thereto be amended so as to hereafter read as follows." This amending act contains only articles 2417-2435, leaving articles 2436-2439 uncared for. The text of these articles as contained in said Acts 1919, ch. 145, does not correspond to the same articles as contained in Revised Civil Statutes, 1911; but the subject matter of the articles as contained in said Acts 1919, ch. 145, covers all of the subject matter of the articles as contained in Revised Civil Statutes 1911, and the subsequent amendments thereto. The effect of this amendment is to supersede all of the articles as contained in Revised Civil Statutes 1911, and the subsequent amendments thereto, and to substitute therefor articles 2417-2435, as set forth here. Section 2 of said Acts 1919, ch. 145, repeals all conflicting laws.

Art. 2418. Soliciting bids for keeping state funds.—It shall be the duty of the State Treasurer, between the first and fifth day of January next after each general election, to mail to each state and national bank doing business in this State a circular letter soliciting bids for keeping state funds, for a term of two years next after the succeeding March 1, upon the condition prescribed in this chapter. Said circular letter shall state the conditions to be complied with by the bidders as hereinafter provided, and what each bid shall set forth. The State Treasurer shall make three certified lists of the banks to which such letter was mailed, each to be accompanied by a copy of such letter, one of which he shall deliver to the Attorney General, one to the Commissioner of Insurance and Banking, and the other he shall keep on file in his office for the inspection of any person desiring to see the same. (Acts 1919, ch. 145, sec. 1.)

Art. 2419. Contents of bids.—Said bids shall state the amount of paid up capital stock of said bank, the maximum of State funds, to be not less than ten thousand dollars, it will accept, the rate of interest it will pay on the average daily balance to the credit of the State Treasurer in such bank, and shall contain a provision that the books and accounts of such bank, if designated as a State Depository, shall be open at all times, to the inspection of the State Depository Board, any member, or any accredited representative thereof.

Said bid shall be sealed in an envelope, marked "Bid for keeping of State Funds," and shall be mailed to the State Treasurer in time to reach his office on or before noon of the succeeding first Monday in February. (Id.)

Art. 2420. Opening and listing bids.—When the State Treasurer receives such bids he shall endorse thereon the date of receipt of same, and shall on the first Monday in February open the same in the presence of the State Depository Board; and thereupon said board shall make a list of said banks, in the order of the rate of interest offered; that is, the bank offering the highest rate of interest shall be listed first, the one offering the next highest rate next, and so on until all such banks are listed, provided that said board may reject any or all bids, and no bids for less than three percent on the average

daily balance of State funds shall be considered. (Id.)

Art. 2421. Further solicitation of bids.—In case at any time the banks being used as State depositories, as provided in this chapter, are not sufficient to handle all of the funds of the State, and no other bank that has offered an accepted rate of interest has qualified according to the provisions of this chapter, then such board may cause the State Treasurer to send out a circular letter embodying the requirements prescribed in Article 2418 above, to all banks authorized to bid, not then acting as State depositories, giving the date when bids must be in the hands of the State Treasurer, which shall not be less than thirty days from the date of mailing such letter, and bids shall be received, and opened, on the date set out in said letter, in the same manner and upon the same conditions, and a list of the banks bidding shall be made in the order of the rates of interest offered, as provided in the preceding article. (Id.)

Art. 2422. Selection of banks and notice thereto to qualify.—After such list has been made said board shall select from the list the number of banks offering the highest rate of interest on average daily balance that will in the judgment of said board be necessary to keep all State funds, and notify them to qualify as prescribed in this chapter; and if, at any time, it should develop that more depositories are required, said board shall select another list of banks next in order on said list and notify them to qualify as depositories under this chapter, or, in its discretion, said board may advertise for bids as provided in the preceding article. (Id.)

Art. 2423. Qualification by banks selected; deposit of bonds; giving of surety bond.—When a bank has been notified to qualify as a depository it shall, within thirty days after such notice, deposit with the State Treasurer, in an amount one-fifth greater than the maximum amount of state funds said bank proposes to keep, United States, State, Federal Land Bank, located in Texas, county, independent school district, common school district, or municipal bonds, or vendor's lien or mortgage lien notes, secured by a first lien on real estate of value at least double the amount of said notes exclusive of improvements; or shall execute a bond signed by some surety company, authorized to do business in Texas in an amount not less than double the amount of State funds deposited in said bank, said bond to be payable to the State Treasurer and to be in such form as may be provided by the depository board and subject to the approval of said board, but before any State, county, independent school district, common school district, or municipal bonds, shall be received as collateral security, they shall be submitted to the Attorney General and by him approved, and such bonds shall be registered under the same rules and regulations as required for bonds in which the permanent school funds are invested, and provided that such bonds, except United States bonds, shall be worth not less than par. In case vendor's lien or mortgage notes are offered for deposit they shall be accompanied by an abstract of title to the land securing the payment thereof, and an opinion of a reputable attorney, residing in the county where such land is located, approving such title and the Depository Board shall make such investigation in regard to the value of the land securing the payment of such notes as is deemed proper, and it may require such payment or deposit as is deemed proper to cover the expense of investigating the title to and value of the land securing the payment thereof. Said Depository Board shall have the right to reject with or without cause any abstract, opinion thereon, or any notes, or other securities that may be offered. Provided that a bond executed by any surety company may in its discretion be rejected by the board whenever in the judgment of said board the same should be rejected, and the action of the board in rejecting said bond shall not be subject to revision. (Id.)

Art. 2424. Failure of bank selected to qualify; liquidated damages.—In case any bank that has submitted a bid for keeping State funds shall fail to qualify within thirty days after being notified to do so, it shall forfeit to the State, as liquidated damages, the difference between the interest rate offered and the lowest rate of interest the State is compelled to receive on its funds, under the provision of this chapter for six months, on the maximum amount that said bank proposed to keep, provided that no bank shall be compelled to qualify, or be subject to any penalty, that was not notified to qualify within four months after the bid was opened. (Id.)

Art. 2425. Deposit of funds in depositories; interest on deposits; failure of State Treasurer to deposit.—After the depositories have qualified as provided in the preceding articles, it shall be the duty of the State Treasurer to deposit the funds belonging to the State in such depositories, and he shall at all times keep the funds in the bank or banks in the order of the rate of interest offered, so that the State shall receive the highest rate of interest possible on such funds; provided that the depositories selected in the beginning of a biennium shall retain their preference over depositories subsequently selected. No depository shall be entitled to keep on deposit more than its paid up capital stock, and permanent surplus. If the State Treasurer shall fail to deposit said funds in accordance with the provisions of this chapter, he shall be liable to the State for five per cent a month on the funds he fails to deposit; provided that he may retain in the State Treasury from time to time with the express consent of said board, sufficient funds to meet the current demands on the Treasury. (Acts 1905, p. 388; Acts 1911, ch. 3, sec. 1; Acts 1911, 1st C. S. ch. 15, sec. 1; Acts 1913, p. 330, sec. 1; Acts 1915, ch. 30, sec. 1; Acts 1919, ch. 145, sec. 1.)

Art. 2426. Custody and disposition of securities deposited by depositories; additional security.—The securities above mentioned shall be delivered to the State Treasurer and receipted for by him and retained by him in the vaults of the State Treasury and if, in any case or at any time, such bonds are not satisfactory security, in the opinion of the State Depository Board, for the deposits made under this chapter,

they may require such additional security to be given as will be satisfactory to them; and said State Depository Board shall, from time to time, inspect such bonds and see that the same are actually kept in the vaults of the State Treasury; and in the event that said bank or banks selected as state depositories shall fail to pay deposits or any part thereof, on the check of the State Treasury, he shall have power to forthwith convert such bonds into money, and disburse the same according to law upon the warrants drawn by the State Comptroller upon the funds for which said bonds are security. Any bank making deposit of bonds with the State Treasurer under the provisions of this chapter may cause such bonds to be endorsed or stamped, as they may deem proper, so as to show that they are deposited as collateral, and are not transferable, except upon the conditions of the chapter. (Acts 1905, p. 388; Acts 1919, ch. 145, sec. 1.)

Art. 2427. Payment of interest on deposits.—Any State Depository receiving State funds under the provisions of this chapter shall pay to the State Treasurer at the end of each month, interest on the average daily balances for said month at the rate of interest agreed on, which shall in no event be less than the rate of three per cent per annum, which interest shall become part of the general revenue. (Id.)

Art. 2428. All funds to be paid into State Treasury or State Depositories; forfeiture for failure.—All officers of this State charged with the collection of, or who shall come into the possession of State funds or other funds required to be kept by the State Treasury shall remit, or pay such funds into the State Treasury or the State Depository designated by the State Treasury as herein provided daily as the same are collected and any officer failing to so deposit such funds shall forfeit to the State five per cent per month on the amount of such funds for the time such funds are withheld as liquidated damages, and shall be subject to all other penalties now prescribed by law; provided that such officers as are required by law to remit to some other officer or department, shall instead of remitting to the State Treasury remit as is required by law, within the time herein fixed for making remittances to the State Treasury. (Id.)

Art. 2429. Designation of depositories as receiving depositories; deposit of funds with.—The State Depository Board may in its discretion designate certain depositories as receiving depositories and authorize such officers and other persons who come into possession of funds belonging to the State to deposit such funds in any such depositories as are found most convenient for the State Treasurer, but unless specially authorized to deposit in such depositories such persons shall remit such funds to the State Treasury. In either event, such funds may be remitted in cash by registered letter, by post office money order, express money order of any express company doing business in Texas, or by check or draft on any bank, provided the liability of the persons so remitting shall not cease until the cash proceeds of such remittances, or cash, if sent by registered letter, is actually received by the Treasurer or the duly authorized State Depository in the due course of business. (Acts 1905, p. 388; Acts 1919, ch. 145, sec. 1; Acts 1919, 2d C. S. ch. 25, sec. 1.)

Section 2 of Acts 1919, 2d C. S. ch. 25, repeals all conflicting laws.

Art. 2430. Receipts to be issued for deposits; excess of deposits.—In all cases where State funds are deposited in State depositories by the persons paying the same, such depository shall issue and deliver to such person a triplicate receipt thereof, one of which shall be preserved by the party making such deposit and the others shall be forwarded to the State Treasurer and the Comptroller respectively, and if any State depository shall receive or have on hand State funds in excess of the amount of deposit awarded it by the provisions of this chapter, the same shall be considered in computing the average daily balances and draw the same interest; but such depository shall on the first business day of each month and oftener if requested by the State Treasurer, remit all State funds in excess of the amount it is entitled to keep to the State Treasury; and in case any State depository shall fail or refuse to remit this excess, or in case it shall fail to remit any other funds on deposit when requested to do so by the State Treasurer under the provisions of this Act shall forfeit its right to act as State Depository and the State Treasurer shall at once close his account with said depository and notify all collectors and others charged with the duty of collecting public funds for the State of Texas, and the Attorney General of the State shall cause such action to be taken, if any, as shall be necessary to protect the State's interest in the premises. (Acts 1905, p. 388; Acts 1919, ch. 145, sec. 1.)

Art. 2431. All state funds to be deposited in depositories.—All state funds shall be deposited and kept in State depositories designated under this chapter, subject to the regulations of this chapter; provided that the State Treasurer may with the consent of the Depository Board retain in the State Treasury at Austin sufficient funds to meet the current expenses of the government in case he finds it advisable to do so. (Id.)

Art. 2432. Equalization of deposits among depositories; investment of excess funds in United States Treasury certificates of indebtedness.—It shall be the duty of the State Treasurer to keep the funds in the depositories paying the highest rate of interest and to maintain as nearly as possible a fair and equal balance of money on hand in all state depositories paying the same rate of interest in proportion to the amount each is entitled to receive, by drawing warrants alternatively thereon or by apportioning the warrants so drawn. The State Depository Board is hereby authorized and empowered whenever there are excess funds in the State Treasury for which there is no immediate use to subscribe for such amount of United States Treasury Certificates of Indebtedness as their judgment may dictate, and the interest earned thereon shall become part of the general revenue fund. (Acts 1918, 4th C. S., ch. 3, sec. 1; Acts 1919, ch. 145, sec. 1.)

Art. 2433. Depositories to collect checks, etc., for state and to issue drafts on "Reserve Banks."—All State deposito-

ries shall collect without cost to the State all checks, drafts and demands for money and on the demand of the State Treasurer shall issue to him or his order, free of charge, a draft or exchange on a bank designated by the United States or State Authorities as a "Reserve Bank" in any banking center of this State, which draft may be in any sum designated by the State Treasurer not exceeding the amount of the State deposit in said depository, provided that the said Treasurer shall give to such depository ten days notice of his intention to draw on funds therein, before drawing more than one fifth of the amount such depository is entitled to keep, but this limitation shall not apply to deposit made during the preceding thirty days. (Id.)

Art. 2434. Rules and regulations for depositories.—The State Depository Board of the State of Texas shall have the right to make such rules and regulations governing the establishment and conduct of State depositories, and the handling of funds therein as the public interest may require, not inconsistent with the provisions of this chapter, which said rules and regulations shall be in writing and entered upon the minutes of said board. (Id.)

Art. 2435. Advertisement for bids from banks to act as clearing houses, etc., for state funds.—If in the opinion of the State Depository Board it is advisable to have the State's business cleared through a bank other than one of the regular State Depositories, it may advertise for bids, from all state and national banks having a capital stock of not less than fifty thousand dollars, for the clearing and safe keeping of State funds, in the manner herein prescribed for the selection of State depositories, and the bank offering the highest rate of interest, to be not less than two per cent per annum, on the average daily balances on deposit shall be selected and notified to qualify by the deposit of securities or the giving of bond in an amount to be fixed by the Depository Board in the manner herein prescribed for the qualification of other depositories, and collections and clearings may be handled through such depository, and after giving such depositories a reasonable time for clearing and collection, the State Treasurer shall transfer such funds to available depository paying the highest rate of interest on average daily deposits. (Id.)

Arts. 2436-2439. [Superseded.]

See note to art. 2417 ante.

CHAPTER TWO
COUNTY DEPOSITORIES

Art. 2440. Commissioners' Court to receive proposals from banks; advertisement.—The commissioners' court of each county in this State is authorized and required at the February term thereof, next following each general election to receive proposals from any banking corporation, association or individual banker in such county that may desire to be selected as the depository of the funds of such county. Notice that such bids will be received shall be published by and over the name of the county judge, once each week for at least twenty days before commencement of such terms, in some newspaper published in said county; and if no newspaper be published therein, then in any newspaper published in the nearest county; and, in addition thereto, notice shall be published by posting same at the courthouse door of said county. (Acts 1905, p. 392; Acts 1907, p. 208, sec. 20; Acts 1917, ch. 11, sec. 1.)

Art. 2441. Bids when and how presented; to state what; deposit; failure to comply with bid.—Any banking corporation, association or individual banker in such county desiring to bid, shall deliver to the county judge, on or before the first day of the term of the commissioners' court at which the selection of a depository is to be made, a sealed proposal, stating the rate of interest that said banking corporation, association, or individual banker, and deposit offers to pay on the funds of the county for the term between the date of such bid and the next regular time for the selection of a depository. Said bid shall be accompanied by a certified check for not less than one-half of one per cent. of the county revenue of the preceding year as a guarantee of the good faith on the part of the bidder, and that, if his bid should be accepted, he will enter into the bond hereinafter provided; and upon the failure of the banking corporation, association or individual banker in such county that may be selected as such depository, to give the bond required by law, the amount of such certified check shall go to the county as liquidated damages, and the county judge shall readvertise for bids. (Acts 1905, p. 392, sec. 21; Acts 1917, ch. 4, sec. 1.)

Art. 2442. Bids to be opened when; award of contract; interest how computed and paid; disposition of proceeds; return of deposits.—It shall be the duty of the commissioners' court at 10 o'clock a. m., on the first day of each term, at which, by Article 2440, bids are required to be received, to publicly open such bids and cause each bid to be entered upon the minutes of the court, and to select as the depository of all the funds of the county the banking corporation, association or individual banker offering to pay the largest rate of interest per annum for said funds; provided, the commissioners' court may reject any and all bids. The interest upon such county funds shall be computed upon the daily balances to the credit of such county with such depository, and shall be payable to the county treasurer monthly, and shall be placed to the credit of the jury fund or to such funds as the commissioners' court may direct. When selection of a depository has been made, the checks of bidders whose bids have been rejected shall be immediately returned. The check of the bidder whose bid is accepted shall be returned when his bond is filed and approved by the commissioners' court, and not until such bond is filed and approved. (Acts 1905, p. 392, sec. 22; Acts 1917, ch. 11, sec. 1.)

Art. 2443. Bond of depository; surety company; substitute security; venue of suits.—Within five days after the selection of such depository, it shall be the duty of the banking corporation, association or individual banker so selected to execute a bond or bonds, payable to the county judge and

his successors in office, to be approved by the commissioners' court of said county, and filed in the office of the county clerk of said county, with not less than five solvent sureties, who shall own unincumbered real estate in this State not exempt from execution under the laws of this State of as great value as the amount of said bond (or of as great value as the amount of all of said bonds when more than one bond); and said bond or bonds shall in no event be for less than the total amount of revenue of such county for the next preceding year for which the same are made; provided, that nothing herein shall prevent the making of such bond or bonds by a surety company or companies, as provided by law, and payable as herein provided. And provided further, that the commissioners' court may accept in lieu of such real estate or surety company security, bonds of the United States, or of the State of Texas, or of any county, city, town or independent school district in the State, which shall be deposited as the commissioners' court may direct, the penalty of said bond or bonds not to be less than the total amount of the annual revenue of the county for the years for which said bond or bonds are given, and shall be conditioned for the faithful performance of all the duties and obligations devolving by law upon such depository, and for the payment upon presentation of all checks drawn upon said depository by the county treasurer of the county and that said county funds shall be faithfully kept by said depository and accounted for according to law. Any suits arising thereon shall be tried in the county for which such depository is selected. (Acts 1905, p. 393; Acts 1909, p. 165, sec. 23; Acts 1917, ch. 11, sec. 1.)

Art. 2443a. Additional or special bond; failure to furnish; substitution of bonds.—Whenever, after the creation of a county depository as this chapter provided, there shall accrue to the county or any subdivision thereof, any funds or moneys from the sale of bonds or otherwise, the county commissioners' court of such county at its first meeting after such special funds shall have come into the treasury, or depository of such county, or so soon thereafter as may be practicable, may make written demand upon the duly accredited and established depository of the county for a special and additional bond as such depository in a sum equal to the whole amount of such special fund, to be kept in force so long as such fund remains in such depository, provided that such extra or special bond may be canceled and a new bond contemporaneously substituted therefor as such special fund may have been reduced, provided that such special bond shall at all times be sufficient in amount to cover such special fund then on hand, and provided that upon the failure of such depository to furnish such additional bond within thirty days from the date of such demand, the county commissioners' court may cause such special funds to be withdrawn upon the drafts of the county treasurer from such depository, and cause the same to be deposited in some solvent national bank or state bank whose combined capital stock and surplus is in excess of such special fund, and to leave the same or so much thereof as may not have been expended with such National bank or State bank of last deposit, until such time that such county depository may have filed with the county commissioners' court the required additional bond, when such special fund or so much thereof as shall not have been expended shall be forthwith returned to and deposited with such county depository; provided that the requiring of such additional or special bond shall be optional with such county commissioners' court; provided that any depository bond made under the provisions of this Act may be substituted for any prior existing depository bond at the time in operation or existence wherever the same may be agreeably done by and between such depository and the securities on such other existing depository bond. (Id. sec. 2.)

Art. 2444. Order designating depository; period; transfer of funds; penalty; deposits by tax collectors; interest; liability on bond of depository; effect of deposit of funds; what are "county funds."—As soon as said bond be given and approved by the commissioners' court, and the State Comptroller of Public Accounts, an order shall be made and entered upon the minutes of said court designating such banking corporation, association, or individual banker, as a depository of the funds of said county until sixty days after the time fixed for the next selection of a depository; and, thereupon, it shall be the duty of the county treasurer of said county, immediately upon the making of such order, to transfer to said depository all the funds belonging to said county, as well as all funds belonging to any district or other municipal subdivision thereof not selecting its own depository, and immediately upon the receipt of any money thereafter, to deposit the same with said depository to the credit of said county, district and municipalities; and, for each and every failure to make such deposit, the county treasurer shall be liable to said depository for ten per cent., upon the amount not so deposited, to be recovered by civil action against such treasurer and the sureties on his official bond in any court of competent jurisdiction in the county. And thereupon, it shall also be the duty of the tax collector of such county to deposit all taxes collected by him, or under his authority, for the State and such county and its various districts and other municipal subdivisions, in such depository or depositories, as soon as collected, pending the preparation of his report of such collections and settlement thereon, which shall bear interest on daily balances at the same rate as such depository or depositories have undertaken to pay for the use of county funds, and the interest accruing thereon shall be apportioned by the tax collector to the various funds earning the same. The bond of such county depository or depositories shall stand as security for all such funds. If the tax collector of such county shall fail or refuse to deposit tax money collected as herein required, he shall be liable to such depository or depositories for ten per cent upon the amount not so deposited and shall in addition be liable to the State and county and its various districts and other municipal subdivisions for all sums which would have been earned had this provision been complied with, which interest may be recovered in a suit by the State.

Upon such funds being deposited as herein

required the tax collector and sureties on his bonds shall thereafter be relieved of responsibility for its safe-keeping. All moneys subject to the control of the county treasurer or payable on his order belonging to districts or other municipal subdivisions, selecting no depository are hereby declared to be "county funds" within the meaning of this chapter and shall be deposited in accordance with its requirements and shall be considered in fixing the amount of the bond of such depository. (Acts 1905, p. 393, sec. 24; Acts 1917, ch. 11, sec. 3.)

Art. 2445. If no bids, etc., funds deposited, where; interest; bond.—If for any reason there shall be submitted no proposals by any banking corporation, association or individual banker to act as county depository, or in case no bid for the entire amount of the county funds shall be made, or in case all proposals made shall be declined, then in any such case the commissioners' court shall have the power, and it shall be their duty, to deposit the funds of the county with any one or more banking corporation, association or individual banker, in the county or in adjoining counties, in such sums and amounts and for such periods of time as may be deemed advisable by the court, and at the such rate of interest, not less than one and one-half per cent per annum, as may be agreed upon by the commissioners' court and the banker or banking concern receiving the deposit, interest to be computed upon daily balances due the county treasurer; and any banker or banking concern receiving deposits under this article shall execute a bond in the manner and form provided for depositories of all the funds of the county, with all the conditions provided for same, the penalty of said bonds to be not less than the total amount of county funds to be deposited with such banker or banking concern. (Acts 1905, p. 393, sec. 25; Acts 1917, ch. 11, sec. 3.)

Art. 2446. If two or more depositories; clearing house to be selected.—When the funds of any county shall be deposited with two or more depositories, the commissioners' court shall select and name by order one of said depositories to act as a clearing house for the others, at which all county warrants shall be finally paid. (Acts 1905, p. 393, sec. 26.)

Art. 2447. Treasurer's checks payable at county seat, etc., penalty.—It shall be the duty of the depository to provide for the payment, upon presentment at the county seat of the county, of all checks drawn by the county treasurer upon the funds of said county, as long as funds of said county treasurer shall be in the possession of the depository subject to such checks; and, for every failure to pay such check or checks at the county seat of such county upon presentment, said depository shall forfeit and pay to the holder of such check ten per cent of the amount thereof; and the commissioners' court shall revoke the order creating such depository; provided, however, the amount of its bid shall not be returned, but shall be forfeited to the county. (Id. sec. 27.)

Art. 2448. If depository not located at county seat, requirements.—If any depository selected by the commissioners' court be not located at the county seat of such county, said depository shall file with the county treasurer of such county a statement designating the place at said county seat where, and the person by whom, all deposits may be received from the treasurer for such depository, and where and by whom all checks will be paid; and such depository shall cause every check to be paid upon presentation at the place so designated so long as the said depository has sufficient funds to the credit of said county applicable to its payment. (Id. sec. 28.)

Art. 2449. Warrants, how paid, etc., and charged; statement; bonds, etc.—It shall be the duty of the county treasurer, upon the presentation to him of any warrant drawn by the proper authority, if there shall be money enough in the depository belonging to the funds upon which said warrant is drawn and out of which the same is payable, to draw his check as county treasurer upon the county depository in favor of the legal holder of said warrant, and to take up said warrant and to charge same to the fund upon which it is drawn; but no county treasurer shall draw any check upon the funds with said depository, unless there is sufficient money belonging to the fund upon which said warrant is drawn to pay the same; and no money belonging to said county shall be paid by said depository, except upon check of the county treasurer; and it shall be the duty of such depository to make a detailed statement to the county commissioners' court at each regular term of said court, showing the daily balances of the preceding quarter. In case any bonds, coupons, or other indebtedness of any county, by the terms thereof, are payable at any particular place other than the treasury of the county, nothing herein contained shall prevent the commissioners' court of any such county from causing the treasurer to place a sufficient sum at the place where such debts shall be payable at the time and place of their maturity. (Id. sec. 29.)

Art. 2450. If no depository selected, etc., may select at subsequent term, etc.; period.—If for any reason, no selection of a depository be made at the time provided by law, the commissioners' court may, at any subsequent time after twenty days' notice, select a depository in the manner provided for such selection at the regular time; and the depository so selected shall remain the depository until the next regular time for selecting a depository, unless the order selecting and naming such depository be revoked for lawful reasons. (Id. sec. 30.)

Art. 2451. New bond may be required; penalty, if not given.—If the commissioners' court shall at any time deem it necessary for the protection of the county, it may require any depository to execute a new bond; and, if said new bond be not filed within five days from the time of the service of a copy of said order upon said depository, the commissioners' court may proceed to the selection of another depository in the manner provided for the selection of a depository at the regular time for such selection. (Id. sec. 31.)

Art. 2452. Treasurer not responsible for negligence of depository; but, etc.—The county treasurer shall not be responsible for any loss of the county funds through the failure or negligence of any depository; but nothing in this chapter shall release any

county treasurer for any loss resulting from any official misconduct or negligence on his part, or from any responsibility for the funds of the county, until a depository shall be selected and the funds deposited therein, or for any misappropriation of such funds by him. (Id. sec. 32.)

Art. 2453. Bids from adjoining county, when; requirements.—If there be no bank situated within the county that seeks to select a county depository, then the county commissioners' court shall advertise for bids in the adjoining counties in the manner hereinbefore provided in article 2450; provided, that when a depository has been selected by the county commissioners' court in the manner set forth in this act, said county depository shall, within five days after notice of such selection has been given to said depository, file with the county treasurer of such county a statement designating the place at said county seat where, and the person by whom, all deposits may be received from the treasurer for such depository, and where and by whom all checks will be paid. (Id. sec. 33.)

CHAPTER THREE

CITY, ETC., DEPOSITORIES

Art. 2454. Council to take bids for depository, when and how; bids to state what; not to be opened until.—The city council of every city in the state of Texas incorporated under the general laws thereof, or incorporated under special charter, at its regular meeting in July of each year, is authorized to receive sealed proposals for the custody of the city funds, from any banking corporation, association, or individual banker, doing business within the city, that may desire to be selected as the depository of the funds of the city. The school funds, from whatsoever source derived, of incorporated cities is part of the city funds and is subject to the provisions of this chapter. Notice that such bids will be received shall be published by the city secretary not less than one nor more than four weeks before such meeting, in some newspaper published in the city. Any banking corporation, association, or individual banker, doing business in the city desiring to bid, shall deliver to the city secretary, on or before the day of such meeting designated by said published notice, a sealed proposal, stating the rate per cent upon daily balances that such banking corporation, association, or individual banker, offers to pay to the city for the privilege of being made the depository of the funds of the city for the year next following the date of such meeting; or, in the event that such selection shall be made for a less term than one year, as hereinafter provided, then for the time between the date of such bid and the next regular time for the selection of a depository as aforesaid. All such proposals shall be securely kept by the secretary, and shall not be opened until the meeting of the council for the purpose of passing upon same; nor shall any other proposals be received after they shall have been opened. (Acts 1905, pp. 260, 395. Acts 1907, p. 132, sec. 34.)

Art. 2455. Award; bond.—Upon the opening of the sealed proposals submitted, the city council shall select as the depository of the funds of the city the banking corporation, association, or individual banker, offering to pay to the city the largest amount for such privileges; provided, however, the council shall have the right to reject any and all bids, and readvertise for new proposals. Within five days after the selection of such depository, it shall be the duty of the banking corporation, association, or individual banker, so selected, to execute a bond, payable to the city, to be approved by the mayor with the concurrence of the city council, and filed with the city secretary, with not less than three solvent sureties, who shall own unencumbered real estate in the county in which said city is located, of as great value as the amount of said bond; or said depository may make said bond in some approved fidelity and surety company, the penalty of said bond to be at least double the total revenues of the city for the preceding fiscal year, and conditioned for the faithful performance of all duties and obligations devolving by law or ordinance upon said depository, and for the payment upon presentation of all checks drawn upon said depository by the city treasurer, whenever any funds shall be in said depository applicable to the payment of said check, and that all funds of the city shall be faithfully kept by said depository, and with the interest thereon accounted for according to law; and for a breach of said bond, the city may maintain an action in its name. (Acts 1905, pp. 260, 396, sec. 35).

Art. 2456. Order designating depository; transfer of funds; penalty; penalty for failure to give bond; new bids, etc.—As soon as said bond shall be given and approved, an order shall be made by the council designating said banking corporation, association, or individual banker, as the depository of the funds of the city until the time fixed by this chapter for another selection, and such order shall be entered upon the minutes. It shall be the duty of the city treasurer, immediately upon the making of said order, to transfer to said depository all the funds in his hands belonging to the city, and, immediately upon the receipt of any money thereafter, he shall deposit the same with said depository to the credit of the city; and, for each and every failure to make such deposit, the treasurer and his bondsmen shall be liable to said depository for ten per cent. per month upon the amount not so deposited, to be recovered by civil action in any court of competent jurisdiction. If any banking corporation, association, or individual banker, after having been selected as such depository, shall fail to give bond within the time provided by this chapter, then the selection of such banking corporation, association, or individual banker, as the depository of the city funds shall be set aside and be null and void, and the city council shall, after notice published in the manner hereinbefore provided, proceed to receive new bids and select other depository. (Acts 1905, p. 261. Id. sec. 36.)

Art. 2457. Warrants how paid, etc., and charged; checks payable where; bonds, etc., payment of.—It shall be the duty of the city treasurer, upon presentation to him of any warrant drawn by the proper authority, if there shall be enough money in the

depository belonging to the fund upon which said warrant is drawn and out of which the same is payable, to draw his check as city treasurer upon the city depository in favor of the legal holder of said warrant, and to take up said warrant and charge the same to the fund upon which it is drawn; but in no case shall the city treasurer draw any check upon any fund in the city depository, unless there is sufficient money belonging to the fund upon which said warrant is drawn to pay the same. No money belonging to the city shall be paid out of the city depository, except upon the checks of the city treasurer; and all such checks shall be payable by said depository at its place of business in the city. In case any bonds or coupons or other indebtedness of the city are payable by the terms of such bonds, coupons or other indebtedness, at any particular place other than the city treasury, nothing herein contained shall prevent the city council from causing the treasurer to withdraw from the depository and to place at the place where such bonds, coupons or other indebtedness shall be payable at the time of their maturity, a sufficient sum to meet the same. (Acts 1905, p. 261. Id. sec. 37.)

Art. 2458. If no depository selected, etc., may select at subsequent meeting, etc., period; new bond; penalty if not given; treasurer not responsible, except.—If, for any reason no selection of a depository is made at the time fixed by this chapter, the city council may at any subsequent meeting, after notice published as hereinbefore provided, receive bids and select a depository in the manner herein set out, and the banking corporation, association, or individual banker, so selected shall remain the depository until the next regular term for the selection of a depository, unless the order selecting it be revoked for the causes specified in this chapter. If the city council shall at any time deem it necessary for the protection of the city, it may, by resolution, require the depository to execute a new bond; and, upon failure to do so within five days after the service of a copy of the resolution on said depository, the city council may proceed to select another depository in the manner hereinbefore provided. The city treasurer shall not be responsible for any loss of the city funds through the negligence, failure or wrongful act of such depository, but nothing in this chapter shall release said treasurer from responsibility for any loss resulting from any official misconduct on his part or from responsibility for the funds of city at any time when, for any reason, there shall be no city depository, or until a depository shall be selected and the funds deposited therein, or for any misappropriation of such funds in any manner by him. (Acts 1905, p. 261. Id. sec. 38.)

Art. 2459. Restrictions upon drawing, etc., of checks and payment of checks; treasurer's reports.—No check shall be be drawn upon the city depository by the treasurer, except upon a warrant signed by the mayor and attested by the secretary. No warrant shall be drawn by the mayor and secretary upon any of the special funds created for the purpose of paying the bonded indebtedness of said city, in the hands of the city treasurer, or in the depository, for any purpose whatsoever other than to pay the principal or interest of said indebtedness, or for the purpose of investing said special fund according to law. No city treasurer shall pay or issue a check to pay any money out of any special fund created for the purpose of paying any bonded indebtedness of said city other than for the purpose of paying interest due on said bonds, the principal of said bonds, or for the purpose of making an investment of said fund according to law. The treasurer shall report to the council, on or before its first regular meeting of July in each year, the amount of receipts and expenditures of the treasury, the amount of money on hand in each fund, and the amount of bonds falling due for the redemption of which provision must be made; also the amount of interest to be paid during the next fiscal year, and such other reports as the existing law requires of him. (Acts 1905, p. 262. Id. sec. 39.)

Art. 2460. Application of provisions of this chapter; definition of terms.—All provisions of this chapter shall apply to towns and villages incorporated under the general laws of Texas, as well as to cities so incorporated, and the term, "city council," as herein used, shall be construed to include the board of aldermen of such towns and villages; the terms, "city secretary" and "secretary," shall be construed to include the clerk or secretary of such towns and villages; the term, "city treasurer," shall be construed to include the treasurer of such towns and villages, and the term, "city," shall be construed to include towns and villages. (Acts 1905, p. 262. Id. sec. 40.)

TITLE 45

DESCENT AND DISTRIBUTION

For Descent of Homestead, see title "Homestead."

Art. 2461. (1688) (1645) Where intestate leaves no husband or wife.—Where any person, having title to any estate of inheritance, real, personal or mixed, shall die intestate, as to such estate, and shall leave no surviving husband or wife, it shall descend and pass in parcenary to his kindred, male and female, in the following course, that is to say:

1. To his children and their descendants.

2. If there be no children nor their descendants, then to his father and mother, in equal portions. But if only the father or mother survive the intestate, then his estate shall be divided into two equal portions, one of which shall pass to such survivor, and the other half shall pass to the brothers and sisters of the deceased, and to their descendants; but, if there be none such, then the whole estate shall be inherited by the surviving father or mother.

3. If there be neither father nor mother, then the whole of such estate shall pass to the brothers and sisters of the intestate, and to their descendants.

4. If there be none of the kindred aforesaid, then the inheritance shall be divided into two moieties, one of which shall go to the paternal and the other to the maternal kindred, in the following course, that is to say: To the grandfather and grandmother in equal portions, but, if only one of these be living, then the estate shall be divided into two

equal parts, one of which shall go to such survivor, and the other shall go to the descendant or descendants of such deceased grandfather or grandmother. If there be no such descendants, then the whole estate shall be inherited by the surviving grandfather or grandmother. If there be no surviving grandfather or grandmother, then the whole of such estate shall go to their descendants, and so on without end, passing in like manner to the nearest lineal ancestors and their descendants. (Acts 1848, March 18; P. D. 3419.)

See Herron's Probate Guide, pp. 22-25; Oxsheer v. Nave, 40 S. W. 7; Jernigan v. Lauderdale, 73 S. W. 39; Witherspoon v. Jernigan, 76 S. W. 445; Yates v. Craddock, 184 S. W. 276; Vaughan v. Southwestern Surety Ins. Co., 195 S. W. 261.

Art. 2462. (1689) (1646) Where intestate leaves husband or wife.—Where any person having title to any estate of inheritance, real, personal or mixed, shall die intestate as to such estate, and shall leave a surviving husband or wife, the estate of such intestate shall descend and pass as follows:

1. If the deceased have a child or children, or their descendants, the surviving husband or wife shall take one-third of the personal estate, and the balance of such personal estate shall go to the child or children of the deceased and their descendants. The surviving husband or wife shall also be entitled to an estate for life, in one-third of the land of the intestate, with remainder to the child or children of the intestate and their descendants.

2. If the deceased have no child or children, or their descendants, then the surviving husband or wife shall be entitled to all the personal estate, and to one-half of the lands of the intestate, without remainder to any person, and the other half shall pass and be inherited according to the rules of descent and distribution; provided, however, that if the deceased have neither surviving father nor mother, nor surviving brothers and sisters, or their descendants, then the surviving husband or wife shall be entitled to the whole of the estate of such intestate. (P. D. 3422.)

See Herron's Probate Guide, pp. 25-27; Speer's Marital Rights, p. 734; Minter v. Burnett, 38 S. W. 350; Bullock v. Sprowls, 54 S. W. 657; Scales v. Marshal, 60 S. W. 337; White v. Holman, 60 S. W. 437; Lone Acre Oil Co. v. Swayne, 78 S. W. 380; Swayne v. Lone Acre Oil Co., 86 S. W. 740; Binyon v. Smith, 112 S. W. 138; Murchison v. Murchison, 203 S. W. 423; State v. Yturria, 204 S. W. 315, L. R. A. 1918F, 1079.

Art. 2463. (1690) (1647) No distinction on account of source of property, except in cases of adoption.—There shall be no distinction in regulating the descent and distribution of the estate of a person dying intestate between property which may have been derived by gift, devise or descent from the father, and that which may have been derived by gift, devise or descent from the mother; and all the estate to which such intestate may have had title at the time of death shall descend and vest in the heirs of such person in the same manner as if he had been the original purchaser thereof; provided, however, that if such intestate was the legally adopted heir of another, and dies, leaving no surviving husband or wife, and no children, then so much of his estate as was obtained by gift, devise or descent, from the person adopting him, shall descend to the person and his heirs who adopted such intestate. (Act March 20, 1861; P. D. 3420; Revision, 1879).

See ante arts. 1-8; Herron's Probate Guide, pp. 3, 27; Speer's Marital Rights, p. 735.

Art. 2464. (1691) (1648) Rule as to whole and half blood.—In cases before mentioned, where the inheritance is directed to pass to the collateral kindred of the intestate, if part of such collateral be of the whole blood, and the other part of the half blood only of the intestate, those of half blood shall inherit only half so much as those of the whole blood; but if all be of the half blood they shall have whole portions. (Act March 18, 1848; P. D. 3424.)

See Herron's Probate Guide, pp. 27-28.

Art. 2465. (1692) (1649) No corruption of blood, forfeiture of estate, etc.—No conviction shall work corruption of blood or forfeiture of estate, nor shall there be any forfeiture by reason of death by casualty; and the estate of those who destroy their own lives shall descend or vest as in the case of natural death. (Const., Bill of Rights, sec. 21; Act March 18, 1848; P. D. 3418.)

Art. 2466. (1693) (1650) Persons not in being.—No right of inheritance shall accrue to any person whatsoever other than to children or lineal descendants of the intestate, unless they be in being and capable in law to take as heirs at the time of the death of the intestate. (Act March 18, 1848; P. D. 3423.)

See Herron's Probate Guide, p. 28; Karnes Co. v. Ray, 57 S. W. 76.

Art. 2467. (1694) (1651) Advancements brought into hotchpotch.—Where any of the children of a person dying intestate, or their issue, shall have received from such intestate in his lifetime any real, personal or mixed estate by way of advancement, and shall choose to come into the partition and distribution of the estate with the other distributees, such advancement shall be brought into hotchpotch with the whole estate, and such party returning such advancement shall thereupon be entitled to his proper portion of the whole estate; provided, that it shall be sufficient to account for the value of the property so brought into hotchpotch at the time it was advanced. (P. D. 3426.)

See Herron's Probate Guide, pp. 28-30; Oxsheer v. Nave, 40 S. W. 7; Burgess v. McCommas, 129 S. W. 382; Delano v. Delano, 189 S. W. 972; Butler v. Lollar, 199 S. W. 1176.

Art. 2468. (1695) (1652) Per capita and per stirpes.—When the intestate's children, or brothers and sisters, uncles and aunts, or any other relations of the deceased standing in the first and same degree alone come into the partition, they shall take per capita—that is to say, by persons; and, when a part of them being dead and a part living, the descendants of those dead have right to partition, such descendants shall inherit only such portion of said property as the parent through whom they inherit would be entitled to if alive. (Acts 1887, p. 49.)

See Herron's Probate Guide, pp. 30-31; Jernigan v. Lauderdale, 73 S. W. 39; Witherspoon v. Jernigan, 76 S. W. 445; Craig v. McFadden, 191 S. W. 203.

Art. 2469. (1696) (1653) Rule as to community estate.—Upon the dissolution of

the marriage relation by death, all property belonging to the community estate of the husband and wife shall go to the survivor, if there be no child or children of the deceased or their descendants; but if there be a child or children of the deceased, or descendants of such child or children, then the survivor shall be entitled to one-half of said property, and the other half shall pass to such child or children, or their descendants. But such descendants shall inherit only such portion of said property as the parent through whom they inherit would be entitled to if alive. (Acts 1887, p. 76.)

See Herron's Probate Guide, pp. 31-33, 237 et seq.; Speer's Marital Rights, p. 736; Faris v. Simpson, 69 S. W. 1029; Wiess v. Goodhue, 83 S. W. 178; Schwartz v. West, 84 S. W. 282; Tomlinson v. H. P. Drought & Co., 127 S. W. 262; Savings & Loan Co. v. Bristoll, 131 S. W. 641; Adels v. Joseph, 148 S. W. 1154; Hill v. Noland, 149 S. W. 288; Harle v. Harle, 166 S. W. 674; Lee v. Frater, 185 S. W. 325; Briggs v. McBride, 190 S. W. 1123; Harle v. Harle, 204 S. W. 317.

Art. 2470. (1697) (1654) Passes charged with debts.—In every case, the community estate passes charged with the debts against it. (P. D. 5498.)

See post arts. 3592-3594; Speer's Marital Rights, p. 737; Belt v. Celti, 93 S. W. 1001.

Art. 2471. (1698) (1655) Jus accrescendi abolished.—Where two or more persons hold an estate, real, personal or mixed, jointly, and one joint owner dies before severance, his interest in said joint estate shall not survive to the remaining joint owner or joint owners, but shall descend to, and be vested in, the heirs or legal representatives of such deceased joint owner in the same manner as if his interest had been severed and ascertained. (Act March 18, 1848; P. D. 3429.)

See Herron's Probate Guide, p. 35; Ross v. Armstrong, 25 Texas Supp. 366.

Art. 2472. (1699) (1656) Illegitimate children and issue of void marriages.—Where a man, having by a woman a child or children, shall afterward intermarry with such woman, such child or children, if recognized by him, shall thereby be legitimated and made capable of inheriting his estate. The issue also of marriages deemed null in law shall nevertheless be legitimate. (P. D. 3429.)

See Herron's Probate Guide, pp. 35-36; Speer's Marital Rights, pp. 118, 737.

Art. 2473. (1700) (1657) Bastards inherit from mother.—Bastards shall be capable of inheriting from and through their mother, and of transmitting estates, and shall also be entitled to distributive shares of the personal estates of any of their kindred, on the part of their mother, in like manner as if they had been lawfully begotten of such mother. (P. D. 3428.)

See Herron's Probate Guide, pp. 35-6; Ford v. Boone, 75 S. W. 353; Berry v. Powell, 105 S. W. 345; Perkins v. Perkins, 166 S. W. 915; Yates v. Craddock, 184 S. W. 276; Lee v. Frater, 185 S. W. 325.

Art. 2474. (1701) (1658) Alienage no bar to inheritance.—In taking title to land by descent, it shall be no bar to a party that any ancestor through whom he derives his descent from the intestate, is or hath been an alien. (P. D. 44-46.)

See Herron's Probate Guide, pp. 36-7.

TITLE 46

DETECTIVES

EMPLOYMENT OF ARMED FORCES OF DETECTIVES, OR OTHER NON-RESIDENT PERSONS PROHIBITED

Art. 2475. (1701a) Employment of non-resident detectives prohibited.—No person, corporation, or firm shall be permitted to employ any armed force of detectives, or other persons not residents of this state, in the state of Texas. (Acts 1893, p. 159.)

Art. 2476. (1701b) Penalty.—Any person, firm, or corporation employing such forces contrary to the provisions of preceding article shall be liable to pay to the state of Texas, as a penalty, not less than twenty-five nor more than one thousand dollars, to be recovered before any court of competent jurisdiction in this state; provided, that nothing herein shall be construed to deprive any person, firm, or corporation of the right of self-defense, or in defense of the property of said person, firm, or corporation by such lawful means as may be necessary to such defense. (Id.)

TITLE 47

DRAINAGE

See Title 73; Title 83; and Title 96.

CHAPTER ONE.

DRAINAGE BY COUNTIES, SEPARATELY, OR CO-OPERATING, ASSESSMENTS.

Art. 2477. Commissioners' court authorized to construct drains, etc.—The commissioners' court of any county in this state, at any regular or called session thereof, may, in the manner hereinafter provided, and shall have power, whenever the same shall be conducive to the public health, convenience or welfare, or where and whenever the same will be of public benefit or utility, to cause to be straightened, widened, altered, deepened, any creek, bayou or other stream or water course, and shall cause to be constructed and maintained, as hereinafter provided, any ditch, drain or water course within any of the said counties, and shall have power to make the said improvement, if necessary, by removing from any adjacent lands or any stream or water course, any timber, bush, tree or other substance liable to or causing the obstruction thereof, and shall also have power to construct in connection with any such ditch or drain, any side, lateral, spur, or branch ditch or water course necessary to the accomplishment of the purposes of this chapter; provided, however, that no ditch, drain, outlet or water course shall be deepened, widened, constructed or maintained, without a sufficient outlet being provided for all water that may collect therein; provided, further, that the word "ditch," in this chapter, hereafter shall be construed to embrace any ditch, drain or water course that may be constructed under the provisions of this chapter. (Acts 1895, p. 151. Acts 1897, p. 95.)

Art. 2478. Prerequisites to construction; petition; bond.—Before the commissioners' court of such county shall establish any ditch, drain or water course, there shall

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be filed with the clerk of the county court of said county, a petition signed by at least five persons who are land owners and whose land will be liable to be affected by, or assessed for, the expense of the construction of the same, setting forth the necessity thereof, with a general description of the proposed starting point, route and terminus of the said ditch; and said petitioners shall give a bond, not to exceed one hundred dollars, with good and sufficient sureties, payable to the said county, to be approved by the clerk of the said court, conditioned to pay all expenses in case the commissioners' court shall fail to establish said proposed ditch, drain or water course. (Id. sec. 2.)

Art. 2479. Jury of view, appointment of.—As soon as said petition is filed, said court shall, if in regular session, or at their next regular session, appoint a jury of three freeholders and householders of the county, not interested in the construction of the proposed work, and not of kin to any of the parties interested therein, who shall constitute a jury of viewers, who shall meet at a time and place specified by the said court in the order making said appointment, preparatory to commencing their duties as hereinafter specified; and it shall be the duty of the said clerk of the said county court thereupon to issue to the said viewers a certified copy of the petition and order of said court; and said viewers shall proceed at the time set in said order, with a surveyor, who shall be a civil engineer and surveyor, to make an accurate survey of the line of said ditch, drain or water course, from its source to its outlet; and they shall cause stakes or monuments to be set along said line at intervals of one hundred feet, together with such intermediate stakes as may be necessary, and numbered progressively at each one hundred feet; and they shall establish permanent bench marks along said line, at intervals of one mile or less, as may be necessary. (Id. sec. 2.)

Art. 2480. Oath of viewers.—The said viewers, before proceeding to act as such, shall take the following oath, before any officer authorized to administer oaths, to-wit: "I do solemnly swear that I will lay out the ditch or drain now directed to be laid out by the order to us directed by the commissioners' court, according to law, without favor or affection, malice, or hatred, to the best of my ability, skill and knowledge. So help me God." (Id. sec. 8.)

Art. 2481. Duties and powers of jury of viewers, with surveyor; survey; map; profile; table; estimate; specifications.—The viewers shall prepare a map showing the location of said ditch, drain or water course, together with the position of stakes or monuments, with numbers corresponding with those on the ground, and the position of bench marks, with their elevation referred to on assumed or previously determined datum. The map should also show the lines and boundaries of adjacent property, and the position of county roads and railroads which may be affected by said ditch or drain, and such information should be obtained as will lead to the determination of the benefits or damages which will accrue from the construction of the same; and they shall prepare a profile of the line of said ditch, drain or water course, which shall show the assumed datum and the grade line of the bottom of the same, and the elevation of each stake or monument and other important features along the line, such as top of bank and bottom of all ditches or water course and surface of water, top of rail and bottom of tie, foot of embankment, bottom of borrow pits of all railroads, and center of road and bottom and top of ditches of highways. And they shall, in tabular form, give the depth of cut, width at bottom, and width at the source, outlet, and at each one hundred feet stake or monument of said ditch, drain or water course; and they shall make a computation of the total number of cubic yards of earth to be excavated and removed from said ditch, drain or water course, and an estimate of the total cost of construction of the whole work, and they shall prepare specifications in detail for the execution of the same; and they shall have power, when they find it necessary, to provide for running said ditch under ground through drain tiles or other materials as they may deem best, by specifying size of tile or other kind of material to be used in such underground work, and shall include the cost of same in the estimate of the total cost of the work. (Id. sec. 2.)

Art. 2482. Estimate to be made by viewers, in special case.—Whenever a public ditch, drain, or water course is located wholly or in part of the bed of a private ditch, already or partially constructed, the viewers shall make an estimate of the number of cubic yards of earth already excavated, and the cost of the same on each tract of land, and deduct the same from the assessment thereon. (Id. sec. 3.)

Art. 2483. To report whether proposed ditch or drain will be of public utility.—The jury of viewers shall report whether or not the proposed ditch or drain will be of public utility. (Id. sec. 2.)

Art. 2484. Assessment of benefits by viewers.—The jury of viewers shall set apart and apportion to each parcel of land and to each corporation, road or railroad, and to the county when public highways are benefited, a share of said work in proportion to the benefits which will result to each from such improvement and the cost of the construction of each share or allotment separately. And they shall describe each parcel of land to be assessed in the construction of said ditch, giving the number of acres in each tract assessed and an estimate of the number of acres benefited, the amount that each tract will be benefited by the construction of said work, and the amount of each tract as assessed therefor; and they shall also ascertain and give the names of the owners of the lands that are assessed in the construction of said ditch, drain or water course, as far as they may be able to ascertain by reasonable inquiry and search of the public records. (Id. sec. 2.)

Art. 2485. Notice by viewers to land owners as to time when they will lay out ditch, etc., and when they will assess damages.—The said jury of viewers, as provided for in this chapter, shall issue a notice in writing to the land owner through those lands such proposed ditch or drain may run, or to his or their agent or attorney, of the time when they shall proceed to lay out such ditch, or when they will assess the damage incidental to the construction of

same, which notice shall be served upon such owner, his agent or attorney, at least five days before the day named therein; if such owner is a non-resident of the county, the notice shall be given by publication in a newspaper published in the county as notices are required to be given to non-resident defendants as to actions in the district or county court. And such ditch or drain may be constructed four weeks after such publication, the cost of publishing the same to be paid as directed by the commissioners' court. (Id. sec. 5.)

Art. 2486. Land owners may appear before viewers and oppose.—All persons whose land may be affected by such ditch, drain or water course shall have the right to appear before said viewers and freely express their opinions on all matters pertaining thereto; and the owner of any such lands may, at the time stated in said notice, or previously thereto, present to the jury a statement in writing of any objections thereto or dissatisfaction therewith, and any claim for damages which he may have by reason of the making of said ditch or drain; and a failure to make such claim in writing, as herein specified, for damages or compensation shall be deemed and held a waiver of all right thereto; which said claim or objection shall be returned to the commissioners' court, in connection with the report of the said viewers. (Id. sec. 6.)

Art. 2487. Assessment of benefits by viewers, how made.—All lands benefited by public ditch, drain or water course shall be assessed in proportion to the benefit to the said lands by the construction thereof, whether it passed through said lands or not; and the viewers, in estimating the benefit to lands in controversy by said ditch, shall not consider what benefit such lands will receive after some other ditch or ditches shall be constructed, but only the benefits that may be received by reason of the construction of the public ditch as it affords an outlet for the drainage of such lands; and, in the making of the said assessment, should the viewers find that the construction of said ditch or drain would, to any extent, construct or constitute a public road of utility to the county in that section, or be a material benefit in the drainage of any public road then constructed, they will assess as against the county such sum as will represent the benefit so accruing to the public; provided, that all assessments for benefits accruing to counties or county roads shall be approved by the commissioners' courts of such counties. (Id. sec. 4.)

Art. 2488. Benefits to public roads or railroads.—When any ditch established under this chapter drains either in whole or in part any public road or railroad, or benefits any such road or railroad, so that the roadbed or travel or track of any such road will be made better by the construction of any such ditch, then the jury of viewers shall apportion to any such county, if the same be a public road, or to such railroad, if the same be a railroad, such portion of the costs and expenses thereof as herein provided for to private individuals. (Id. sec. 14.)

Art. 2489. Reports signed by majority of viewers, sufficient.—In all reports made by any jury of viewers, the same shall be sufficient if signed by a majority of said viewers. (Same as R. S. art. 1701q. Id. sec. 16.)

Art. 2490. Report to be accompanied by what; public record, etc.—They shall submit with their report a copy of the map and profile of the line of said ditch, drain or water course, and a copy of the specifications for the construction of the same, which, together with the report, shall become a public record, and shall be placed in the custody of the county clerk, to be preserved as such. (Id. sec. 2.)

Art. 2491. Compensation of viewers.—The said jury of viewers shall each receive the sum of three dollars per day as compensation for said work for each day so actually engaged. The said surveyor and engineer shall receive such compensation as shall be fixed by the commissioners' court. (This sec. same as R. S. art. 1701r. Id. sec. 17.)

Art. 2492. Hearing before commissioners; their duties.—The commissioners' court, at the time set for the hearing of said petition, shall hear and determine the same in connection with all remonstrances or objections thereto; and, if they find that the said viewers' report is made in accordance with the provisions of this title, and it be in favor of the proposed work, and if they find the proposed ditch or drain to be of public utility, or conducive to public health, or of public benefit or convenience, they shall enter an order on the minutes establishing the same, as specified in the said report, and order the same to be constructed according to the said report, and shall then or thereafter take such further action and make such other and further orders and decrees in the premises as may be proper or necessary to secure the execution of said work. But should said viewers report adversely to the said work the board shall dismiss the petition and tax the costs as against the said petitioners. (Id. sec. 7.)

Art. 2493. Assessment, etc., of benefits less damages, by commissioners' court; lien; separate roll.—When any drain or ditch shall have been established by order of the commissioners' court, under this chapter, they shall proceed to levy and assess against the person or persons, company or corporation, shown by the report of the jury of viewers to be beneficially affected by the proposed improvement, and against each separate tract of land shown to be beneficially affected, the cost of such improvement, in proportion to the benefits to be derived, less the amount of damages to such person, company or corporation by reason of the construction of such proposed drain, ditch or water course, as shown by the report of said appraisers or adjudged by decree of court; which said assessment shall constitute a lien respectively upon the lands affected, and a separate roll of said assessments shall be made by the state and county tax assessor for the said county; and the same shall at all times be open to the inspection of the public. (Acts 1897, p. 100. Acts 1895, p. 151. Acts 1899, p. 242, sec. 18.)

Art. 2494. Assessment divided into installments.—The assessments aforesaid shall be divided into five equal annual installments, each installment to be one-fifth of the amount assessed against each person, company or corporation or owners, respectively, of the

lands affected by said assessment; and the first installment shall be payable within the same periods as provided by law for the payment of the state and county ad valorem taxes, the other four equal annual installments to be collected annually thereafter in the same manner; provided, that, upon failure to pay any two of said assessments, the whole sum shall become due and payable. (Acts 1897, p. 100. Acts 1895, p. 151. Id. sec. 18.)

Art. 2495. Appeal from commissioners' court to county court, conditions of.—Any person or corporation aggrieved thereby may appeal from the final order of the commissioners' court made in said proceedings and entered upon their record to the county court of that county within ten days thereafter, by filing within ten days thereafter a transcript of said proceedings in said county court, and also filing within the said ten days, with the clerk of the said court, an appeal bond, with at least two good sureties, to be approved by the said county clerk, conditioned that he will prosecute such appeal to effect and pay all costs that may be adjudged against him in said court; and the said appeal shall be heard and determined upon the following issues, to-wit:

1. Whether said ditch shall be conducive to the public health, convenience or welfare.
2. Whether the route thereof is practicable.
3. Whether the assessments made for the construction of such ditch are in proportion to the benefits to be derived therefrom.
4. The amount of damages, if any, to be allowed to any person or persons, or corporation; and, if more than one person appeal, the judge of the said court shall order the said cases to be consolidated and tried together, and the rights of each party shall be separately determined by the said court and jury, if any, in its verdict and final determination; and the cause so appealed and conducted in said county court shall have precedence over all other causes on the docket of a different nature, and shall be tried and determined as other civil cases in said court. Either party to such action may appeal to such appellate court as has jurisdiction of said cause; and said action shall be returnable at once to said appellate court at either of its terms, and said action so filed shall have precedence in said appellate court of all cases of a different character therein pending. (Acts 1897, p. 98, sec. 9. Acts 1895, p. 151.)

Art. 2496. Burden of proof on such appeal.—In the trial of all cases so appealed from the order of the commissioners' court, the burden of proof shall rest upon the complainant. (Acts 1897, p. 98, sec. 10.)

Art. 2497. Collection of assessments.—The state and county tax collector shall proceed to collect said assessments in the same manner provided for the collection of state and county ad valorem taxes, and shall enforce the same, either by advertisement and sale, or by suit, as now provided by law. (Acts 1897, p. 100. Acts 1895, p. 151. Acts 1899, p. 243, sec. 18.)

Art. 2498. Lien, remedies, etc., for collecting assessments.—All liens, remedies, and modes of procedure by the laws of the state of Texas, now provided for the collection of ad valorem taxes and taxes upon real estate, shall obtain and be in force and apply for the collection for the assessments herein provided for the construction of the said drains. (Acts 1895, p. 151; Acts 1897, p. 101, sec. 22.)

Art. 2499. A special fund, how disbursed.—All funds arising from such assessments shall be a special fund for the construction of such drain, ditch or water course, and, by order of the commissioners' court, shall be set apart for the same, and placed in the county treasury as a special fund for said purpose, to be paid to the contractor or contractors, person, company or corporation performing said work, upon the order of the commissioners' court, as provided in this chapter. (Acts 1897, p. 100. Acts 1895, p. 151. Acts 1899, p. 243, sec. 18.)

Art. 2500. Damages paid out of county treasury.—All damages that the said jury of viewers or commissioners' court shall assess, or which may be found to have been suffered by judgment or decree of court, shall be paid out of the county treasury upon the order of said commissioners' court. (Acts 1897, p. 100. Acts 1895, p. 151. Acts 1899, p. 243, sec. 18.)

Art. 2501. Damages assessed against county, paid by same, how.—Any sum assessed against any county on account of any public drain shall be paid by said county on the order of the commissioners' court. (Acts 1897, p. 100. Acts 1895, p. 151. Acts 1899, p. 243, sec. 18.)

Art. 2502. Construction let to lowest responsible bidder, etc.—When the commissioners' court of any county shall have, by proper order, established any drain or ditch, the construction of the same shall be let by the said commissioners' court to the lowest responsible bidder, after suitable advertising, as a whole, or in such sections or subdivisions as the board may deem most advantageous. (Acts 1895, p. 151. Acts 1897, p. 100, sec. 20.)

Art. 2503. Contractor to give bond.—The said contractor or contractors shall be required to give a good and sufficient bond, with two or more good and sufficient sureties, to be approved by the said commissioners' court in an amount to be fixed by the said court, as in their judgment may be best for the faithful construction of the said work. (Id. sec. 20.)

Art. 2504. Land owner may do what part of work, conditions.—Any persons through whose lands the proposed work shall pass, upon application to the commissioners' court, before the contract is let, shall be entitled to do so much of the proposed work as is upon, or passes through, his lands; provided, such application shall be made twenty days before the advertisement for the said contract; and provided, he shall undertake to do such work upon equally favorable terms with those offered by any one else; and provided, further, that he shall execute such a bond as is required of the said contractor. And if such person should fail to construct such work as hereinbefore provided by the said contractor, within the time required by the commissioners' court, then all right to construct the same shall be forfeited and cease and determine; and the commissioners' court shall let the construction of the same as in this act provided. (Id. sec. 20.)

Art. 2505. Work done under direction of engineer; report.—Such work to be done under the direction and supervision of the said engineer, who shall report the same to the commissioners' court for their final action. (Id. sec. 20.)

Art. 2506. Engineer to give estimates.—The engineer employed by the said county to superintend the construction of the said drains and ditches shall, upon the completion of each and every two hundred feet of any ditch, give to the contractor or contractors his certificate as such engineer, the said certificate showing the amount of work done and an estimate of the amount due for the construction of the same, less ten per cent thereof; which said certificate shall be delivered to the said contractor as an evidence of the amount of work constructed, and of the amount due therefor. (Id. sec. 19.)

Art. 2507. Contractor paid out of road and bridge fund; how returned from assessment collected, etc.—The commissioners' court shall pay the said contractor or contractors, or persons constructing the said drain, out of any funds in the county treasury not otherwise appropriated and belonging to the road and bridge fund of the said county, upon the report of the said engineer, by said court approved, from time to time as the said contract progresses, and according to such terms as they may agree upon with such contractor. The said money so drawn from the road and bridge fund of the said county shall be returned from the assessment collected upon the said drain when the same shall be put into the county treasury. Said reimbursement to be made to the said fund by order of the commissioners' court. (Id. sec. 21.)

Art. 2508. Where drain extends into two or more counties, procedure.—Whenever the route of the proposed ditch, drain or water course extends into two or more counties, then a petition shall be signed by at least five freeholders, one or more of whom are land owners in the county other than that of the filing of the petition, and whose lands will be liable to be assessed for the construction of such ditch, and file the same with the clerk of the commissioners' court, the said petition to be filed in the county containing the head or source of the proposed ditch, at least ten days before any regular meeting of the commissioners' court of that county; and thereupon the clerk of such court shall transmit to the clerk of the court of such other county or counties interested therein a certified copy of such petition; and it shall be the duty of the commissioners' court of each county interested in the proposed work, at their first regular session after such petition is filed, to appoint three disinterested freeholders and householders of their respective counties as viewers, in like manner as is provided for the appointment of viewers on a ditch in but one county, to meet and act jointly at such time and place as the board of commissioners of the county where the petition is filed may designate; and such joint viewers shall have the same power and perform the same duties as is provided in this title for the viewers on a ditch in one county; and they shall file a report of their proceedings with the clerk of each of said counties so interested at least two weeks before the next regular session of the board of commissioners, whereupon the clerk of each county shall give notice in the manner provided for as to ditches in one county; and the time for the hearing thereof shall be set by the respective courts of each county; provided, further, that, in an action of a joint board of viewers, the approval and report of a majority of the whole board shall be necessary to constitute a valid report of said board. (Id. sec. 12.)

Art. 2509. Joint viewers to co-operate under orders, etc.—The joint board of viewers, as herein provided for of the counties interested in said joint ditch, shall proceed to establish the same in the manner specified for ditches in but one county; and in all matters pertaining to such joint ditch, the board of commissioners shall act in the same manner, so far as is practicable, as is required by this title for ditches in but one county, and they shall act jointly, and the same shall be determined by the respective orders of the said respective commissioners' courts, and such further proceedings had thereon, as herein provided for in but one county. (Id. sec. 13.)

Art. 2510. Ditch to be kept open by land owner.—Every person or corporation through whose lands any public ditch is constructed shall be required to keep the same open, free and clear from all obstructions upon his or its premises, by him or it placed therein, and, in case of failure to do so, shall be liable to pay all reasonable and necessary expenses of removing such obstructions. (Id. sec. 11.)

CHAPTER TWO

DRAINAGE BY COUNTIES, SEPARATELY—TAXATION

Art. 2511. Commissioners' court authorized to construct drains, etc., within any of the counties of the state.—The commissioners' court of any county in this state, at any regular or called session thereof, may in the manner hereinafter provided, and shall have power whenever the same shall be conducive to the public health, convenience or welfare, or where and whenever the same will be of public benefit and utility, to cause to be straightened, widened, altered, deepened, any creek, bayou or other stream or water course, and shall cause to be constructed and maintained, as hereinafter provided, any ditch, drain or water course within any of the said counties, and shall have power to make the said improvement, if necessary, by removing from any adjacent lands, or any stream or water course, any timber, bush, tree or other substance liable to or causing the obstruction thereof, and shall also have power to construct, in connection with any such ditch or drain, any side, lateral, spur or branch ditch or water course necessary to the accomplishment of the purposes of this chapter; provided, however, that no ditch, drain, outlet or water course shall be deepened, widened, constructed or maintained without a sufficient outlet being provided for all water that may collect therein; provided, further, that the word "ditch" in this chapter hereafter shall be construed to embrace any ditch, drain or water course that may be constructed under the provisions of this act. (Acts 1899, p. 95, sec. 1.)

Art. 2512. Prerequisites to construction; petition; bond.—Before the commissioners' court of said county shall cause to be straightened, widened, altered or deepened, any creek, bayou or other stream, or water course, there shall be filed with the county court of said county a petition, signed by at least fifteen qualified voters, freeholders and property taxpaying citizens of the county, setting forth the necessity thereof, with a general description of the creek, bayou or other stream or water course proposed to be straightened, widened, altered, deepened or improved, also the starting point, route and terminus of said ditch, drain or water course; and the said petitioners shall enter into a bond not to exceed the sum of five hundred dollars, with five good and sufficient sureties, payable to the said county, to be approved by said commissioners' court, conditioned to pay all the expenses of preliminary surveys, jury of view, setting of stakes and monuments, bench marks, preparation of maps, plats, profiles, estimates and specifications for said work and the filing of the same, in the event the election to be held for the purpose of determining whether a tax shall be levied to cover the cost of such improvement, as hereinafter provided, shall be against the levy of such tax. (Id. sec. 2.)

Art. 2513. Jury of view, appointment of.—As soon as said petition and bond is filed, said court shall, if in regular session or at their next regular session, appoint a jury of three freeholders and householders of the county, who shall constitute a jury of view, who shall meet at a time and place specified by said court in the order making said appointment, preparatory to the commencement of their duties as hereinafter specified; and it shall be the duty of said clerk of the said court thereupon to issue to said viewers a notice of the filing of said petition, and of the order of the court appointing them. (Id. sec. 2.)

Art. 2514. Duties and powers of jury of view, with county surveyor; estimates; surveys; map; table; specifications.—They shall proceed at the time set in said order, with the county surveyor, to make an estimate of the work necessary to straighten, alter, widen or deepen any ditch, drain or water course, and to make an accurate survey of the line of said ditch, drain or water course from its source to its outlet; and they shall establish permanent bench marks along said line, at intervals of one mile or less, as may be necessary; and they shall prepare a map showing the location of said ditch, drain or water course, together with the position of stakes or monuments with numbers corresponding with those on the ground; and they shall, in tabulated form, give the depth of cut, width at bottom and width at top and at the source and outlet of said ditch, drain or water course; and they shall make a computation of the total number of cubic yards of earth to be excavated and removed from said ditch, drain or water course, and an estimate of the total cost of construction of the whole work; and they shall prepare specifications in detail for the execution of the same; and they shall have power, when they find it necessary, to provide for running said ditch under ground through drain tiles or other materials as they may deem best, by specifying the size of tile or other kind of materials to be used in such underground work and shall include the cost of the same in the estimate of the total cost of the work. (Id. sec. 2.)

Art. 2515. Right to enter on land for preliminary survey, etc., may condemn, how.—The commissioners' court and jury of view, acting under its orders, are hereby authorized to enter upon, for the purposes of preliminary surveys, setting of stakes, etc., the property of any person, company or corporation through which such ditch, drain or water course runs, and they (the commissioners' court) shall have power to condemn property for said purposes in same manner as prescribed for condemnations for right of way for railroad companies. (Id. sec. 5.)

Art. 2516. Notice by viewers to land owner of time when they will lay out ditch, etc., or when commissioners' court will assess damages.—The said jury of viewers, as provided for in this chapter, shall issue a notice in writing to the land owner through whose land such proposed ditch or drain may run, or to his or their agents or attorneys, of the time when they shall proceed to lay out such ditch or drain, or when the commissioners' court will assess the damages incidental to the construction of the same; which notice shall be served upon such owner, his agent or attorney, at least five days before the day named therein; if such owner is a non-resident of the county, the notice shall be given by publication in a newspaper published in the county as notices are required to be given to non-resident defendants in actions in the district or county court. (Id. sec. 3.)

Art. 2517. Report to be accompanied by what; public record, etc.—They shall submit with their report a copy of the map and profile of the line of said ditch, drain or water course, and copy of the specifications for the construction of the same, which, together with the report, shall become a public record and shall be placed in the custody of the county clerk to be preserved as such. (Id. sec. 2.)

Art. 2518. Appeal to county court from commissioners' judgment estimating damages; bond.—Any person, company or corporation dissatisfied with the judgment of the commissioners' court estimating the amount of damages to accrue to them by reason of the proposed ditch or drain, by filing exceptions to said judgment in writing ten days after rendition, which exceptions shall be entered upon the records of the county court of the county, and also filing within said ten days and with the clerk of said court an appeal bond, with at least two good sureties to be approved by the said county clerk, conditioned that he or they will prosecute such appeal to effect and pay all costs that may be adjudged against them, may appeal from said judgment to the county court. (Id. sec. 4.)

Art. 2519. Hearing on appeal suspended until election approving construction.—Said appeal shall not be heard in the county court until after the matter of the establishment and construction of such ditch or drain shall have been determined upon by

the election to be held as hereinafter provided, and the result of said election shall be in favor of the construction of such ditch or drain. (Id. sec. 4.)

Art. 2520. Only damages determined on appeal.—Upon such appeal there shall be heard and determined only the question of damage. (Id. sec. 4.)

Art. 2521. Consolidation of cases on appeal; precedence.—If more than one person shall appeal, the judge of said court shall order the said cases to be consolidated and tried together; and the rights of each party shall be separately determined by the said court and jury, if any, in its verdict and final determination; and the cause so appealed and conducted in said county court shall have precedence over all other causes on the docket of different nature and shall be tried and determined as other civil cases in said court. (Id. sec. 4.)

Art. 2522. Burden of proof on appeal to county court.—In the trial of all cases appealed from the commissioners' court, the burden of proof shall rest upon the complainant. (Id. sec. 4.)

Art. 2523. Appeal from county court when, etc., precedence.—Either party to such action may appeal to such appellate court as has jurisdiction of said cause, provided the amount of the judgment appealed from shall exceed one hundred dollars; and said actions shall be returnable at once to said appellate court at either of its terms; and said action so filed shall have precedence in said appellate court of all cases of different character therein pending. (Id. sec. 4.)

Art. 2524. Election to be ordered, in what case, to authorize tax, etc.; regulations as to.—When the said commissioners' court shall have concluded that said ditch or drain is a public necessity and conducive to the public health, convenience or welfare, or that the straightening, cleaning, widening, altering and deepening any stream, creek, bayou or other water course, shall be a public necessity, and conducive to the public health, convenience or welfare, they shall proceed to order an election for the whole county, or any subdivision thereof, to be defined in their order, to determine whether there shall be levied upon the property within said county or such subdivision, by the said commissioners' court, a drainage tax not to exceed fifteen cents on the one hundred dollars valuation of the property within the county or such subdivision, which said order shall fix the amount to be levied; said election to be held at a time to be fixed by order of the court, not less than twenty or more than ninety days from the date of the order therefor.

It shall not be necessary to give any formal notice of such election, except the county judge shall issue his election proclamation, and the fact that such election is to be held shall be published in some newspaper of the county as fully as practicable, and tickets for the election shall be printed by the county, and sent to each voting precinct by the county judge before the election opens, and as long before such time as practicable. The expenses of the election shall be paid by the county. If the election be ordered within ninety days of a general election, it shall be held on the day of the general election, and in the manner of holding such general election; but otherwise, the commissioners' court shall order a special election to determine whether said tax shall be levied, which shall be conducted as other elections, and the officers to conduct the same shall be appointed as in other cases. (Id. sec. 6.)

Art. 2525. Election, further regulations as to.—Only qualified voters who pay a property tax in the county and who live in the county, shall be permitted to vote at such election. The tickets printed and to be voted shall have written or printed on them the words, "For the tax," and, "Against the tax," and those who favor the tax shall vote the ticket, for the tax, and those opposed to the tax shall vote the ticket, against the tax. (Id. sec. 7.)

Art. 2526. If election carried, result announced, levy of drainage tax authorized, requirements.—If at any such election a majority of the qualified voters, voting therefor, shall vote for such tax, it shall not be necessary to make further proclamation of that fact than to count the votes, as in other cases, and officially announce the result; and the commissioners' court shall thereby be authorized and required to levy a drainage tax, in the same manner that other taxes are levied, in the amounts specified in said order for such election, never to exceed fifteen cents on the one hundred dollars worth of property; the levy shall be made at the same time other county taxes are levied, if such election is held in time therefor, but otherwise, it may be made at any time before the rolls are made out and settlement effected. (Id. sec. 8.)

Art. 2527. If election carried no petition for repeal in less than five years.—If at the election the proposition for said tax shall carry, no petition for its repeal shall be granted in less than five years following. (Id. sec. 8.)

Art. 2528. If election defeated another petition may be granted in one year.—If it fails to carry, another petition may be granted in one year, but no sooner. (Id. sec. 8.)

Art. 2529. Order granting second, etc., petition may fix what rate.—The order granting the second or any subsequent petition may fix a greater or less rate of levy, not to exceed fifteen cents on the one hundred dollars worth of property. (Id. sec. 8.)

Art. 2530. Commissioners may lower rate without petition, when, etc.—If no greater rate is levied for any one year than mentioned in the preceding article, the commissioners' court may lower the rate for the next year without a petition therefor. (Id. sec. 8.)

Art. 2531. Election to repeal, levy to be ordered upon proof of what.—An election to repeal the levy may be ordered and held as in other cases, but there must be satisfactory proof presented to said commissioners' court that there is great dissatisfaction with such tax, and that it is probable that a majority of the citizens of the county who are authorized to vote will vote for the repeal of the law, and unless such proof be made, the petition to repeal shall not be granted. (Id. sec. 8.)

Art. 2532. Repeal not to affect contract.—Whenever a contract for the construction of ditches shall have been entered

into, no repeal shall affect or annul such contract; and the taxes necessary to pay the amount due and to become due on such contracts shall be levied and collected and disbursed as if there had been no repeal of the tax. (Id. sec. 7.)

Art. 2533. Assessment and collection of tax; report, accounting and disbursement, etc.—It shall be the duty of the tax assessor and tax collector of each county to assess and collect the taxes herein provided as in other cases; and the tax collector shall report to the county treasurer the amount of taxes collected under the provisions of this chapter; and it shall be the duty of the county treasurer to keep a separate account of all taxes paid over to him by the collector under the provisions of this chapter and it shall also be the duty of the county treasurer to pay all warrants drawn by the clerk of the county court under an order directed by the commissioners' court of the county drawn upon said funds, and make his report of said funds as in other cases. (Id. sec. 9.)

Art. 2534. Liens, remedies, etc., for collecting assessments.—All liens, remedies and modes of procedure, by the laws of the state of Texas now provided for the collection of ad valorem taxes and taxes upon real estate, shall obtain and be in force and apply for the collection for the assessments provided in this chapter for the construction of said drains. (Id. sec. 12.)

Art. 2535. Taxes collected to be known as drainage fund.—All taxes and money collected under the provisions of this chapter shall be known as the drainage fund. (Id. sec. 14.)

Art. 2536. Construction to be let to lowest responsible bidder, when.—When the commissioners' court of any county shall have, by proper order, established any drain or ditch, the construction of the same shall be let by the said commissioners' court to the lowest responsible bidder, after suitable advertising, as a whole, or in such sections or subdivisions as the board may deem most advantageous. (Id. sec. 10.)

Art. 2537. Contractor's bond.—The said contractor or contractors shall be required to give a good and sufficient bond, with two or more good and sufficient sureties, to be approved by the said commissioners' court, in an amount to be fixed by the said court, as in their judgment may be best, for the faithful construction of said work. (Id. sec. 10.)

Art. 2538. Work to be done under direction, etc., of engineer, report, etc.—Such work to be done under the direction and supervision of the said engineer, who shall report the same to the commissioners' court for their final action. (Id. sec. 10.)

Art. 2539. Landowner may do what part of work; conditions.—Any person through whose lands the proposed work shall pass, upon application to the commissioners' court before the contract is let, shall be entitled to do so much of the proposed work as is upon or passes through his lands. Such application shall be made twenty days before the advertisement for the said contract; and provided, he shall undertake to do such work upon equally favorable terms with those offered by any one else; and provided, further, that he shall execute such a bond as required by the said contractor. And if such person should fail to construct such work, as hereinbefore provided by the said contractor, within the time required by the commissioners' court, then all right to construct the same shall be forfeited and cease and determine; and the commissioners' court shall let the construction of the same as in this chapter provided. (Id. sec. 10.)

Art. 2540. Contractor, etc., paid out of fund so collected, how, etc.—The commissioners' court shall pay the said contractor or contractors or persons constructing the said drain out of any funds in the county treasury collected as aforesaid, upon the report of the said engineer, by said court approved, from time to time as the said contract progresses, and according to such terms as they may agree upon with such contractor. (Id. sec. 11.)

Art. 2541. Commissioners to audit claims and order payment.—It shall be the duty of the commissioners' court to audit all claims against the county for work and expenses under the provisions of this chapter; and for all claims allowed, said commissioners' court shall, by an order duly entered upon the minutes of said court, direct the clerk of the county court to issue a warrant payable out of the drainage fund and directed to the county treasurer for the amount allowed by said court. (Id. sec. 13.)

CHAPTER THREE

DRAINAGE BY DISTRICTS, INCLUDED IN ONE OR MORE COUNTIES—BONDS

Art. 2542. County commissioners' court may establish drainage districts, to be included in one or more counties; incidental powers; election for bonds.—The county commissioners' courts of the several counties of this state may hereafter establish drainage districts in their respective counties; and such districts may be included in any county, or in any number of adjoining counties, and may or may not include, within their boundaries and limits, villages, towns and municipal corporations, or portions thereof. Such districts when so established may, under the direction of the commissioners' court or the district trustees, construct and maintain canals, drains and waterways for the purpose of drainage, or in aid thereof, to hold elections for the purpose of voting bonds and to issue bonds in payment therefor, which shall never be in amount greater than that of one-fourth of the assessed value of the real property of said district; and generally to do such things as shall be necessary to the completion and maintaining of a good and efficient drainage system in such district or districts, as authorized by the constitution of the state of Texas and the provisions of this chapter. This chapter shall be cumulative of, and additional to, all other general laws upon the subject of drainage not in conflict herewith. (Acts 1905, p. 212, sec. 1.)

Art. 2543. On petition, etc., district may be created when, etc.—Upon the petition of fifty or a majority of the resident property taxpayers of any county in this state, whose land shall be affected thereby, to the county commissioners' court of any county, the commissioners' court shall thereafter have power, at any regular or special session, to create a drainage district within

such county; and, when the same shall appear to be for the public health, benefit or utility of such proposed drainage district, may authorize the said district or districts to construct and maintain drainage canals and ditches with laterals, spurs, branches, inlets and outlets within such proposed district or districts; provided, that in all cases of such proposed improvements, provisions shall be made for the disposal, final discharge and outlet of all waters that may be collected within such canal, streams, ditches and drains to be so made, constructed or improved. (Id. sec. 2.)

Art. 2544. Petition, requirements as to; jury of view; surveyor, etc.; survey; report with profile and map, showing benefits, etc., to be filed, etc.—Such petition shall be filed with the clerk of the county court of such county and shall set forth the necessity of such proposed drainage district, including the proposed boundaries thereof, the initial point, route and terminus of such drains and the probable cost thereof. The commissioners' court shall, at its first session, either regular or special, after the filing thereof, or, if the same be filed during the session, at once appoint a jury of three freeholders of the county, not kin to any of the petitioners therein, who shall constitute a jury of view. Such jury of view shall meet at a time and place specified by said court, and shall, at such time as directed, proceed with the county surveyor, or any other civil engineer appointed by the said court, to make an accurate survey of the proposed district and drain course for the purpose of ascertaining the advisability of such improvements and estimating the cost thereof. And said jury of view and engineers shall make report thereof to the said commissioners' court with a profile and map of the territory included, showing each parcel of land benefited and to be affected by such improvements within such proposed district, except that when a town, village or municipal corporation, or a part thereof, be included, any recognized map thereof may be filed, giving the number of estimated acres in each tract and the names of the owners thereof as far as they be able to ascertain by reasonable inquiry and search of the public records; and to further report as to the public utility and advisability of such proposed improvements. Such report, together with the maps and records thereof, shall be filed in the office of the clerk of the county court and become a public record therein and shall be preserved as such. (Id. sec. 3.)

Art. 2545. Oath of viewers and engineer.—Before said viewers and engineer shall proceed to act as such, they shall take and sign the following oath before any officer authorized to administer oaths, to-wit: "I do solemnly swear that I will view the proposed drainage district now directed by the order of the commissioners' court without favor or affection, malice or hatred, to the best of my knowledge, skill and ability. So help me God." And said oath shall be filed with the records of said case. (Id. sec. 5.)

Art. 2546. Compensation of viewers and engineer.—The jury of viewers shall each receive the sum of three dollars per day, and the engineer not less than five dollars per day, compensation, as may be fixed by the commissioners' court, while actually engaged on said work. (Id. sec. 14.)

Art. 2547. Landowners, etc., resident, notified; hearing; remonstrances, etc.; order establishing district and directing improvements; objections thereto.—All resident land owners of such proposed district shall be notified by the clerk of said court in writing or otherwise, as may be directed by the county commissioners' court, of the substance of the report of said jury of view, and shall be notified ten days in advance of the time and place when the same shall be acted upon by said commissioners' court, except that when a town or municipal corporation, or a portion thereof, is included in such district, publication for five days prior to the ten days of notice herein required, in any newspaper published therein, shall be deemed sufficient notice thereof to all persons residing in said town, village or municipal corporation, of such action. And all persons and corporations, whose lands may be affected by such improvements, shall have the right to appear before said commissioners' court, and to be heard upon all matters pertaining thereto, and, if dissatisfied with the action taken by said commissioners' court, shall file objections thereto in writing, which shall become a part of the records in such case; and a failure to make such objections, or a failure to make a claim in writing for damages or compensation, shall be deemed and held as a waiver of right and of all objections thereto. At the time set for the hearing of said petition and report of jury of view, the commissioners' court shall hear and determine all remonstrances and objections thereto; and, if it be found that such proposed improvements shall be for the public health, convenience, benefit or utility of such proposed district, they shall enter an order on the minutes establishing the same, either as specified in the petition or in the report, and shall order said district to be established and the improvements to be constructed according thereto, or according to a further and more fully particularized report and survey to be made thereafter under the direction of said court; or the board may dismiss the petition and tax the costs already accrued against the said petitioners, in whole or in part, as the justice of the case may require; and the collection thereof may be enforced as hereafter provided for as to other and additional costs. (Id. sec. 4.)

Art. 2548. Name or number for such district.—Each district shall be named or numbered or both by the county commissioners' court, and shall be so designated upon the public record of such county or counties, and the name or number or both thereof shall be designated upon the bonds of such district when issued. (Id. sec. 19.)

Art. 2549. District may sue and be sued; judicial knowledge of.—Such district may, through its trustees, sue and be sued; and all courts in this state shall take judicial notice of any and all drainage districts established under this chapter. (Id. sec. 19.)

Art. 2550. Appeal to county court; procedure and issues on.—Any persons or corporation aggrieved by the final order of the commissioners' court, made in said proceedings and entered upon the record there-

of, may appeal to county court of such county by filing written notice of said appeal stating fully the reasons for such appeal, and filing therewith an appeal bond with two or more good sureties within ten days thereafter, to be approved by the county clerk, conditioned that he will prosecute such appeal to effect and will pay all costs that may be adjudged against him in said court. Such appeal shall be heard and determined upon the following issues, towit:

1. Whether said proposed drainage improvement district will be conducive to the public health, utility or benefit of said district.

2. Whether such proposed improvements are practicable.

3. The question of the sufficiency of damages, if any, allowed to such appellant by the commissioners' court. If more than one person appeal to the county court, all of said cases may be consolidated and tried together, and the right of each party separately determined; and the verdict and judgment therein shall be a final determination thereof, except as to the damages. All appeals in such cases shall have precedence in the right to trial, and shall be tried and determined as all other civil cases in said court, and may be tried in vacation or term time. In the trial of such cases so appealed from the order of the commissioners' court, the burden of proof shall rest upon the complainant. (Id. sec. 6.)

Art. 2551. Election to be held in what case; if carried, improvements made and bonds issued.—When it shall have been determined by the commissioners' court, after all appeals and protests have been finally disposed of, except as to damages, that such drainage districts shall be established and such proposed improvements made, the proposition shall be submitted to a vote of the property taxpayers who are qualified electors and actual residents within the limits of such proposed district; and, if such proposition shall receive a two-thirds vote in favor thereof all such drainage improvements according to such proposition shall be made and the bonds thereof issued as authorized by this chapter, under the further direction of the county commissioners' court. (Id. sec. 7.)

Art. 2552. Time and place of election, state election law applies.—The commissioners' court shall determine the time and place of holding the elections: and the manner of holding the same shall be governed by the laws of the state regulating general or special elections. (Id. sec. 8.)

Art. 2553. Proposition and ballots, requirements as to.—The proposition to be submitted for the issuance of bonds for such improvements shall specify the purpose for which the same are to be issued, the amount thereof, the time payable and rate of interest. All ballots to be voted in said election shall have written or printed thereon the words, "For the drainage and bonds" and "Against the drainage and bonds." (Id. sec. 9.)

Art. 2554. Bonds, period, terms and requirements as to.—Any and all bonds issued under the provisions of this chapter shall not extend in point of time beyond forty years, shall not draw a rate of interest greater than five and one-half per cent, shall not be sold for less than par, and shall be registered by the comptroller and approved by the attorney general of the state of Texas. (Id. sec. 16.)

Art. 2555. Expenses of jury of viewers, election, etc., how paid.—All just sums, charges, costs and expenses of the jury of viewers, engineer, election and the proceedings generally, not otherwise herein provided for, shall be paid in the following manner: If the proposition be carried at the election, the same shall be paid out of the proceeds of the sale of the bonds so voted; if the proposition be lost at the election, then, by an order of the commissioners' court, the total amount of such costs and expenses shall be paid by the county out of the road and bridge fund, or, if there be no road and bridge fund, out of the general funds of said county. (Id. sec. 15.)

Art. 2556. Tax, improvement, for interest and sinking fund.—Whenever any such district drainage bonds shall have been issued, the commissioners' court shall levy and cause to be assessed and collected improvement taxes upon all property, whether real, personal, mixed or otherwise, subject to taxation, within the limits of such district, and sufficient in amount to pay the interest on such bonds as it shall fall due, together with an additional amount to be annually placed in a sinking fund, sufficient to discharge and redeem said bonds at their maturity. (Id. sec. 10.)

Art. 2557. Sinking fund, investment of; attorney general's approval.—If advisable, the sinking fund shall, from time to time, be invested in such bonds of the state, counties, municipalities and districts of the state as shall be approved by the attorney general. (Id. sec. 17.)

Art. 2558. Trustees, elected when; duties.—Whenever a drainage district shall have been created and the bonds voted, under the provisions of this chapter, there may be elected by the resident electors of such district, a board of trustees, consisting of three qualified electors who are property owners therein; and such board shall thereafter be elected biennially so long as may be required, and shall serve without compensation. The duties of such board of trustees shall be to look after the drainage interests of such district generally, and to aid and to advise the commissioners' court in regard thereto. (Id. sec. 17.)

Art. 2559. Trustees, commissioners may act as, if, etc.—If the property holders, or a majority thereof, of any such district shall express their desire that the county commissioners of such county shall perform the duties and services above provided to be performed by the trustees, then the county commissioners' court of such county shall do and perform all the things in connection therewith necessary to be performed for the purpose or purposes of carrying into effect the object and intent of this chapter. (Id. sec. 18.)

Art. 2560. Money and bonds in keeping of county treasurer.—All moneys and bonds of such district or districts shall be in the keeping of, and handled by, the county treasurer of such county or counties wherein such district or districts shall be located. (Id. sec. 18.)

Art. 2561. Specifications for bids; advertisement; contract.—Whenever a drainage district shall have been created, and the bonds thereof voted for proposed drainage improvements therein as hereinbefore provided, the district trustees shall, if the same has not then already been done, cause to be prepared by a competent civil engineer a complete tabulated statement, schedule and specifications of the kind, character and amount of construction, excavation and other work to be done, and all such other matters as shall be necessary for full and intelligent estimates and bids thereon by contractors or others desiring to bid for the work and construction thereof; and, thereafter, the district trustees shall advertise for bids upon the whole of said work or any part thereof, and shall let contracts therefor in the manner required by general laws, subject, however, to the approval of the county judge of said county. (Id. sec. 18.)

Art. 2562. Payments for construction, how made.—No money shall be paid out of the county treasury for such construction work nor for any other purpose in connection therewith, except upon warrants drawn by the district trustees and countersigned by the county judge of such county. (Id. sec. 18.)

Art. 2563. Eminent domain, right of conferred.—The right of eminent domain is hereby conferred upon the drainage district, acting through its trustees or commissioners' court, as the case may be, for the purposes herein indicated; and condemnation and all proceedings in relation thereto shall be had and conducted as provided by the railroad laws of this state. (Id. sec. 19.)

Art. 2564. Road, public, assessment against county for benefits to, etc.—Whenever any such improvements shall drain a public road or in any way improve, better or benefit the same, the jury of viewers shall estimate the value of such proposed improvements to such public road, in a stated sum or amount, and such sum or sums, when approved and allowed by the county commissioners' court, shall be paid by the county, and such amount shall not be included in the estimated total cost of such work for which bonds are to be issued by such district. Any estimated sum properly chargeable against a public road shall be paid out of the road fund, or any other fund of such county available for road purposes. (Id. sec. 11.)

Art. 2565. Obstructions in drains prohibited; provisions as to removing.—It shall be the duty of every person or corporation whose lands are benefited and through whose lands any such drainage ditch, canal or improvements are constructed, to keep same reasonably free upon such lands, and are hereby strictly prohibited from, in any manner, obstructing the same or causing the obstructing of the same, so as to prevent free flow of waters therein. For the purpose of preventing and removing obstructions therein, a special fund may be created by said district, to be expended for such purposes under the direction of the trustees of said district, or the county commissioners' court; and such fund may be created in such manner as the residents of said districts may lawfully direct. (Id. sec. 13.)

Art. 2566. Where course of improvements extend into, etc., two or more counties, procedure, rights, etc.—Whenever the course or route of such drainage improvements properly extend into or through two or more counties, the commissioners' courts of the several counties shall act in harmony, each furnishing the other with copies of reports, petitions, estimates and other data, and may arrange for a joint jury of view, survey, etc., but in all such cases the final consummation of the proposition shall be determined by the respective orders, proceedings and results of each county interested; provided, that whenever the natural and most practical course for a final outlet and discharge of any such drainage district lies within or passes through one or more adjoining counties, the commissioners' court of the county or counties making such drainage improvements shall have the power, and they are hereby authorized to purchase or condemn the right of drainage way into or through such adjoining county or counties by the usual mode of condemnation proceedings authorized by the general laws of the state, and shall construct and complete the drainage outlet and discharge contemplated by this chapter; provided, however, that the lands and territories in such adjoining county or counties and adjacent to such drainage improvements so constructed and made by the initial counties shall never be made to artificially drain thereinto, unless they shall pay to said initial county its just and rightful proposition [proportion] of the cost and maintenance thereof. (Id. sec. 12.)

CHAPTER FOUR

DRAINAGE BY DISTRICTS, ONE OR MORE IN EACH COUNTY—BONDS

Art. 2567. Drainage districts established, how; scope; may make improvements; bonds for.—The county commissioners courts of the several counties of this state may hereafter establish one or more drainage districts in their respective counties in the manner hereinafter provided, and may or may not include within the boundaries and limits of such districts, villages, towns and municipal corporations, or any portion thereof, but no land shall at the same time be included within the boundaries of more than one drainage district created under this Act. Such drainage district, when so established, may make drainage improvements therein and issue bonds in payment therefor as hereinafter provided. (Acts 1911, p. 245, sec. 1, superseding Art. 2567, Rev. Civ. St. 1911.)

Art. 2568. Petition for drainage district; requisites; notice; fees.—Upon the presentation to the county commissioners court of any county in this state of a petition (accompanied by the deposit provided for in section 30 of this Act [Art. 2602]), signed by twenty-five of the freehold resident taxpayers, or in the event there are less than seventy-five freehold resident citizen taxpayers in the proposed district, then by one-third of such freehold resident citizen taxpayers of any proposed drainage district, whose lands may be affected thereby, praying for the establishment of a drainage

district, and setting forth the necessity, public utility and feasibility and proposed boundaries thereof, and designating a name for such drainage district, which name shall include the name of the county. The said commissioners court shall at the same session when said petition is presented, set said petition down for hearing at some regular or special session of said court, called for the purpose, not less than thirty nor more than sixty days from the presentation of said petition, and shall order the clerk of said court to give notice of the date and place of said hearing by posting a copy of said petition, and the order of the court thereon, in five public places in said county, one of which shall be at the court house door of said county, and four of which shall be within the limits of said proposed drainage district. The said clerk shall receive as compensation for such service one dollar for each such notice and five cents per mile for each mile necessarily traveled in posting such notices. Such notices shall be posted for twenty days prior to the date of said public hearing. Provided, however, that in all cases wherein drainage districts have heretofore been established, or wherein a hearing has been heretofore had on the petition and action thereon has been taken by the county commissioners court, or wherein a public hearing is now pending upon a petition for a drainage district, and the notices thereof and therefor have been so posted for twenty days, in either or all of such cases, the notices for such public hearing as well as the notices for the hearing upon the engineer's report provided for in section 10 of this law [Art. 2576], shall be and they are hereby held, deemed and declared to be and to have been due and legal and valid notices of such public hearing or hearings under the full meaning, intent and purpose of this law. (Acts 1911, p. 245, sec. 2, superseding Art. 2568, Rev. Civ. St. 1911.)

Art. 2569. Hearing of petition; contest; exclusive and final jurisdiction of commissioners' court over subject matter, except, etc.—Upon the day set by said county commissioners court for the hearing of said petition any person whose land would be affected by the creation of said district may appear before said court and contest the creation of such district or contend for the creation of said district, and may offer testimony to show that said district is or is not necessary, and would or would not be of any public utility either sanitary, agricultural or otherwise, and that the creation of such drainage district would or would not be feasible or practicable. Said county commissioners court shall have exclusive jurisdiction to hear and determine all contests and objections to the creation of such district, and all matters pertaining to the same, and said court shall have exclusive jurisdiction in all subsequent proceedings of the district when organized, except as hereinafter provided, and may adjourn hearing on any matter connected therewith from day to day, and all judgments rendered by said court in relation thereto shall be final, except as hereinafter otherwise provided. (Acts 1911, p. 245, sec. 3, superseding Art. 2569, Rev. Civ. St. 1911.)

Art. 2570. Findings of commissioners' court and record of same.—If at the hearing of such petition it shall appear to the court that the drainage of such district is feasible and practicable, and that it is needed, that the drainage would be conducive to the public health or would be a public benefit or a public utility, then the court shall so find and cause its findings to be entered of record. But if the court should find that the drainage of such district is not feasible and practicable, or that the drainage of such district is not needed, and that it would not be conducive to health or a public benefit, or would not be a public utility, then the court shall enter such finding of record and dismiss the petition at the cost of the petitioners. (Acts 1911, p. 245, sec. 4, superseding Art. 2570, Rev. Civ. St. 1911.)

Art. 2571. If finding for petitioners, civil engineer appointed; assistants; pay.—After the hearing of the petition as provided in sections 3 and 4 of this Act [Arts. 2569, 2570], if the court should find in favor of the petitioners for the establishment of a district according to the boundaries as set out in said petition or as modified by said court, then the court shall appoint a competent civil engineer, who shall receive a sum of not more than ten ($10) dollars per day for his services for the time he is actually engaged in the work for which he is appointed, together with necessary team hire, and said engineer is authorized to employ two assistants who shall each receive the sum of not more than two ($2) dollars per day for the time they are actually engaged in the work. (Acts 1911, p. 245, sec. 5, superseding Art. 2571, Rev. Civ. St. 1911.)

Art. 2572. Bond of civil engineer.—Before entering upon his official duties the civil engineer shall enter into a bond in the sum of five hundred ($500) dollars, with two or more sureties, to be approved by the commissioners court and payable to the county judge, for the use and benefit of the drainage district, conditioned on the faithful discharge of his official duties under the provisions of this Act. (Acts 1911, p. 245, sec. 6, superseding Art. 2572, Rev. Civ. St. 1911.)

Art. 2573. Survey and location of canals, drains, etc.; designation of streams, etc.; report.—The engineer shall within such time as may be prescribed by the commissioners' court, go upon the land proposed to be drained and protected by levees, and make a careful survey thereof, and from such survey make preliminary plans, locating approximately the necessary canals, drains, ditches, laterals and levees, and shall designate the stream or streams and bayous necessary to be cleaned, deepened and straightened, and estimate the costs thereof in detail as to each improvement contemplated, and shall also estimate the probable cost of maintaining same per year, and shall at once make a detailed report of his work to the commissioners' court. (Acts 1913, S. S., p. 89, sec. 1, amending Acts 1911, p. 245, sec. 7, which superseded Art. 2573, Rev. Civ. St. 1911.)

Art. 2574. Outlets; procuring information; co-operation with levee and drainage board.—The engineer is authorized and empowered to go upon lands and premises located outside of such drainage district, and into another and different county, if necessary, for all purposes of the survey, and to ascertain and procure proper and nec-

essary outlets for the proposed canals, drains, and ditches necessary to the drainage of the proposed district. It shall be the duty of the engineer to obtain all possible information regarding the lands within the proposed district, and the outlets therefrom from the office of the state levee and drainage commission and from other sources, and to co-operate with the state levee and drainage board in the discharge of his duties. (Acts 1913, S. S., p. 89, sec. 1, amending Acts 1911, p. 245, sec. 8, which superseded Rev. Civ. St. 1911, art. 2574.)

Art. 2575. Report to be accompanied by map, showing what.—Such report of the engineer shall be accompanied by a map showing the initial or beginning point, as well as the outlets, of all canals, drains, ditches and laterals, and shall show the length, width, depth and slopes of the banks of the cut or excavation, and the estimated number of cubic yards of earth to be removed from each, and shall show the location and size of all levees and the estimated number of cubic yards of earth necessary to construct the same; a copy of the official land office map of the county, with the boundaries of the drainage district, and the beginning points and outlets of all canals, drains, ditches and laterals, and other data required by this section shown thereon shall be deemed a sufficient compliance with this section. (Acts 1911, p. 245, sec. 9, superseding Art. 2575, Rev. Civ. St. 1911.)

Art. 2576. Hearing before county commissioners; notice; objections.—When such report of the engineer shall have been filed with the clerk of the county commissioners court it shall be the duty of said court at its next regular or special session to set such report down for hearing at some subsequent regular or special sessions not less than twenty nor more than thirty days from the date of such sitting, and to instruct the clerk of said court to give notice of said hearing by posting notices in the same manner and for the same compensation as provided for in section 2 of this Act [Art. 2568] in regard to the original notices of the filing of the petition. At the hearing on said engineer's report, any freehold taxpayer of said district, whose lands may be affected by said drainage improvements, whether he be a resident of such district or not, may appear and object to any and all of said canals, drains, ditches and levees, for the reason that they are not located at the proper places, or that they are not sufficient in number or capacity to properly drain said territory. (Acts 1911, p. 245, sec. 10, superseding Art. 2576, Rev. Civ. St. 1911.)

Art. 2577. Action of court on report.—If there should be no objection to said report, or if there should be objection thereto, and the court should find that the objections are not well taken, the report shall be approved and the fact of such approval entered of record on the minutes of said court; but the commissioners court shall not be confined to the number of drains, ditches, canals or levees, or to the initial point or outlets of same, as located and shown by said report of the engineer, and may change the location of any of said improvements, or may add to the number of the same or reduce the number of same and order the engineer to locate any additional canals, drains, ditches or levees which may be constructed for the purpose of conducting waters from the lands of said district, or to prevent the overflow of waters from streams or otherwise onto the lands of said district proposed to be drained, or otherwise in aid of said purpose, as directed by the court, and the commissioners court, if it deem it necessary, may refer the entire report back to the engineer for a compliance with the orders of the court and require a further report, (provided, that notices shall be given as provided in section 10 of this law [Art. 2576], and shall state that the public hearing shall be upon such report of the engineer and also upon any changes or modifications that may be made by the county commissioners court. Provided, further, that in all such public hearings heretofore had under sections 10 and 11 of this law [Arts. 2576, 2577], wherein twenty days or more notice was given, such notices and hearings shall be, and the same are hereby held, deemed and declared to be and to have been legal, regular and valid notices and headings in all respects under the full intent, meaning and purpose of the law). (Acts 1911, p. 245, sec. 11, superseding Art. 2577, Rev. Civ. St. 1911.)

Art. 2578. Election to be ordered after approval of engineer's report.—After the approval of the report of the engineer as presented, or as modified by the county commissioners court, as provided for in the preceding section of this Act [Art. 2577], the county commissioners court shall order an election to be held within such proposed drainage district at the earliest possible legal time, at which election there shall be submitted the following propositions, and none other: "For the drainage district and the issuance of bonds and levy of tax in payment therefor." "Against the drainage district and the issuance of bonds and levy of tax in payment therefor." (Acts 1911, p. 245, sec. 12, superseding Art. 2578, Rev. Civ. St. 1911.)

Art. 2579. Notice of election; requisites.—Notice of such election, reciting the establishment of the drainage district, stating the amount of bonds, which shall not exceed the engineer's estimate and the cost of any additional work which may become necessary by any change or modification made by the commissioners court, as provided for in section 11 of this Act [Art. 2577], stating the time and place or places of holding the election, shall be given by the county clerk by posting notices thereof in four public places in such proposed drainage district and one at the court house door of the county in which such proposed drainage district is situated. Such notices shall be posted for twenty days previous to the date of the election, and shall contain the proposition to be voted upon as set forth in section 12 of this Act [Art. 2578], and shall also specify the purposes for which said bonds are to be issued. Provided, that the said notices of election in all drainage districts wherein such elections have heretofore been held or are now pending, and wherein twenty days notice was had, shall be and the same are hereby held, deemed and declared to be and to have been legal and valid notices of such elections, under the full meaning, intent and purpose of this law.

(Acts 1911, p. 245, sec. 13, superseding Art. 2579, Rev. Civ. St. 1911.)

Art. 2580. Regulations for holding elections.—The manner of conducting said election shall be governed by the election laws of the state of Texas, except as herein otherwise provided. None but resident property taxpayers who are qualified voters of said proposed district shall be entitled to vote at any election on any question submitted to the voters thereof by the county commissioners court at such election. The county commissioners court shall name a polling place for such election at each voting precinct or part of a precinct embraced in said drainage district, each of which shall be in the proposed drainage district, and shall also select and appoint the judges and other necessary officers of the election, and shall provide one and a half times as many ballots for said election as there are qualified resident taxpaying voters within such drainage district, as shown by the tax rolls of said county. Said ballot shall have printed thereon the words, and no others: "For the drainage district and issuance of bonds and levy of tax in payment therefor." "Against the drainage district and issuance of bonds and levy of tax in payment therefor." (Acts 1911, p. 245, sec. 14, superseding Art. 2580, Rev. Civ. St. 1911.)

Art. 2581. Same subject.—Every person who offers to vote in any election held under the provisions of this Act shall first take the following oath before the presiding judge of the polling place wherein he offers to vote, and the presiding judge is hereby authorized to administer same: "I do solemnly swear (or affirm) that I am a qualified voter of ..... county, and that I am a resident property taxpayer of the proposed drainage district voted on at this election, and I have not voted before at this election." (Acts 1911, p. 245, sec. 15, superseding Art. 2581, Rev. Civ. St. 1911.)

Art. 2582. Returns; canvass; order establishing drainage district; name and number of district.—Immediately after the election the presiding judge at each polling place shall make return of the result in the same manner as provided for in general elections for state and county officers, and return the ballot boxes to the county clerk, who shall keep same in a safe place and deliver them together with the returns from the several polling places to the commissioners court at its next regular session or special session called for the purpose of canvassing the vote, and the county commissioners court shall at such session canvass the vote, and if it be found that two-thirds majority of the resident property taxpayers voting thereon shall have been cast in favor of the drainage district and the issuance of bonds and levy of tax, then the court shall declare the result of said election to be in favor of said drainage district, the levy of tax, issuance of bonds, and shall enter the same in the minutes of the court substantially as follows:

"In the matter of the petition of..... and ..... others, praying for the establishment of a drainage district in said petition described and designated as ..... County Drainage District No. ....., be it known that an election called for that purpose in said district, held on the ..... day of ....., A. D., 19.., a two-thirds majority of the resident property taxpayers voting thereon, voted in favor of the creation of said drainage district, and the issuance of bonds and the levy of tax, now, therefore, it is considered and ordered by the court that said drainage district be, and the same is hereby established by the name of ..... County Drainage District No. ...., within the following metes and bounds," (which field notes shall be copied into the record).

All drainage districts hereafter created shall bear the name of the county in which they may be located, as a part of their names, and shall be numbered consecutively as created and established by order of the commissioners court. Provided, however, that all districts heretofore established and otherwise named, but which have not, so far, issued bonds, may by an order of the county commissioners court of such county, have such district or districts renamed and numbered in accordance with the requirements of this Act. (Acts 1911, p. 245, sec. 16, superseding Arts. 2582, 2583, Rev. Civ. St. 1911.)

Art. 2583. [Superseded. See Art. 2582.]

Art. 2584. Drainage districts may sue and be sued; judicial notice.—All drainage districts established under this Act may, by and through the drain commissioners, sue and be sued in all courts of this state, in the name of such drainage district, and all courts of this state shall take judicial notice of the establishment of all such districts. (Acts 1911, p. 245, sec. 64, superseding Art. 2584, Rev. Civ. St. 1911.)

Art. 2585. Drainage commissioners appointed; qualifications; pay; term; elected when.—After the establishment of any drainage district as herein provided, the Commissioners' Court shall appoint three drainage commissioners, all of whom shall be residents of the county or an adjoining county, who shall be freehold taxpayers of the district and legal voters of the county of their residence, whose duty shall be as hereinafter provided, and who shall each receive for their services the sum of not more than $2.50 per day for the time actually engaged in the work of said district; provided the compensation, if any, shall have been definitely fixed in the order of the court; and before any amount shall be paid said commissioners, or either of them, shall make a detailed report to the Commissioners' Court of the time actually consumed in the work for said district, and of the work done, and such report shall be audited and approved by the Commissioners' Court. Said drainage commissioners shall hold office for the term of two years, and until their successors have qualified, unless sooner removed by a majority vote of the County Commissioners for malfeasance or nonfeasance in office. Upon expiration of the term of office of said drainage commissioners, or in case of the resignation of any such commissioners, the Commissioners' Court shall appoint their successor by a majority vote; provided that after the election establishing a drainage district, is [if] a majority of the real property-tax-payers of such district residing in such county, present a petition to the County Commissioners' Court, praying for an election in said district for the purpose of electing three drainage commissioners there-

for, the County Commissioners' Court shall immediately order an election to be held in said district for said purpose at the earliest legal time, and an election shall be held and the returns thereof made as hereinbefore provided for other elections, and the same qualifications hereinbefore provided for voting at other elections shall apply in said election. The Commissioners' Court shall canvass said returns and declare the result at their next regular or special session, and the three persons receiving the highest number of votes shall be declared elected. In the event the third highest vote be tied, the Commissioners' Court shall elect the third drainage commissioners from among those receiving the third highest vote. Such Commissioners so elected, when duly qualified by this Act, shall be the legal and rightful Drainage Commissioners for such district within the full meaning, intent and purpose of this law. All Drainage District Commissioners elected as herein provided shall hold their offices, until the next regular election for State and County officers, and shall then and thereafter be elected every two years at such general election. (Acts 1911, p. 245, sec. 17, superseding Art. 2585, Rev. Civ. St. 1911; Acts 1918, 4th C. S., ch. 54, sec. 1.)

Art. 2586. Oath of drainage commissioners.—Before entering upon their duties each drainage commissioner shall take and subscribe before the county judge an oath to faithfully discharge the duties of their office without favor or partiality, and to render a true account of their doings to the court by which they are appointed whenever requested to do so, which oath shall be filed by the clerk of the commissioners court and preserved as a part of the records of said drainage district. (Acts 1911, p. 245, sec. 18, superseding Art. 2586, Rev. Civ. St. 1911.)

Art. 2587. Bond of drainage commissioners.—Before entering upon their duties each of the drainage commissioners shall make and enter into a good and sufficient bond in the sum of one thousand dollars, payable to the county judge, for the use and benefit of said drainage district, conditioned upon the faithful performance of their duties. (Acts 1911, p. 245, sec. 19, superseding Art. 2587, Rev. Civ. St. 1911.)

Art. 2588. Organization of drainage commissioners; quorum, etc.—The drainage commissioners shall organize by electing one of their number chairman and one secretary, and two of whom shall constitute a quorum, and a concurrence of two shall be sufficient in all matters pertaining to the business of said district, except the letting of contracts and the drawing of warrants on the treasury, which shall require the concurrence of all of said commissioners. (Acts 1911, p. 245, sec. 20, superseding Art. 2588, Rev. Civ. St. 1911.)

Art. 2589. Drainage commissioners may employ counsel, etc.—The drainage commissioners are hereby empowered and authorized to employ counsel to represent such district in the preparation of any contract or the conducting of any proceedings in or out of court, and to be the legal adviser of such drainage commissioners upon such terms and for such fees as may be agreed upon by them and approved by the county judge, and such commissioners shall draw a warrant or warrants in payment for such legal services. (Acts 1911, p. 245, sec. 62, superseding Art. 2589, Rev. Civ. St. 1911.)

Art. 2590. Right of eminent domain; outlets beyond boundary, etc.—The right of eminent domain is hereby conferred upon all drainage districts, established under the provisions of this Act, for the purpose of condemning and acquiring the right of way over and through any and all lands, private or public, except property used for cemetery purposes, necessary for making the canals, drains and levees, and all improvements necessary to the drainage of the district, and the authority hereby conferred shall authorize and empower such drainage district to condemn all lands, private or public, necessary for making the necessary outlets to any such canals, drains or ditches beyond the boundary of such drainage district, and in any county or counties within the state of Texas, with the exception set forth in this section. All such condemnation proceedings shall be instituted under the direction of the drainage commissioners, and in the name of the drainage district, and the assessing of damages shall be in conformity to the statutes of the state of Texas for condemning and acquiring the right of way by railroads, and all such compensation and damages for the right of way by condemnation proceedings as provided in this section shall be paid by said district out of the "Construction and Maintenance Fund" of said district. Provided, that, no appeal from the finding and assessment of damage by the commissioners appointed for that purpose shall have the effect of causing the suspension of work by the drainage commissioners in prosecuting the work of drainage in all of its details; provided, that no right of way can be condemned through any part of an incorporated city or town without the consent of the lawful authorities of such city or town. (Acts 1911, p. 245, sec. 37, superseding Art. 2590, Rev. Civ. St. 1911.)

Art. 2591. May acquire right of way, how, etc.—The drainage commissioners of any district are hereby empowered to acquire the necessary right of way for all canals, drains, ditches and levees and other necessary improvements contemplated by this Act, by gift, grant, purchase or condemnation proceedings, and if acquired by purchase shall be subject to approval by the county commissioners court. (Acts 1911, p. 245, sec. 38, superseding Art. 2591, Rev. Civ. St. 1911.)

Art. 2592. Civil engineer; term; to make map and profiles; requisites.—After the establishment of any such district the drainage commissioners shall employ a competent civil engineer upon a salary not to exceed ten dollars per day for the time actually engaged in work, together with necessary team hire, and whose term of office shall be at the will of said drainage commissioners, which civil engineer shall proceed to make a map of such district, showing the boundary lines thereof, with the original surveys therein, and also to make maps and profiles of the several canals, drains, ditches and levees located in such district, which said maps and profiles shall also show any part of any such canals, drains or ditches extending beyond the limits of such district made necessary in

order to procure necessary outlets for any such canals, drain or ditches; but a copy of the land office map of the county, as it applies to such district, showing the name and number of each survey, and showing the area or number of acres contained in such district, shall be a sufficient compliance with such order in so far as making a map of the district is required, and any recognized map of any city or town which may be embraced within the boundaries of said district shall be sufficient as to such city or town. Provided, however, that where boundary lines of such drainage district or any of them crosses an original survey the map shall show how many acres of such original survey are included within such drainage district. (Acts 1911, p. 245, sec. 21, superseding Art. 2592, Rev. Civ. St. 1911.)

Art. 2593. Further requisites of maps and profiles.—The map and profiles of each drain, ditch and levee required by the provisions of this Act to be made shall show the relation that each canal, drain, ditch or levee bears to each tract of land through which it passes and the shape into which it divides each tract, and where the canal, drain, ditch or levee cuts off any tract less than twenty acres of land, the map shall show the number of acres so divided therefrom, and the number of acres in the whole tract, showing the shape of such small tract and its relation to the canal, ditch, drain or levee. And such profile map shall also show the number of cubic yards necessary to be excavated in order to make each canal, drain or ditch, and to build any levee located in such district, and give the estimated cost of each, and when said map, profile and estimates shall have been completed by the engineer as herein provided, he shall sign the same in his official capacity and file them with the clerk of said county commissioners court. (Acts 1911, p. 245, sec. 22, superseding Art. 2593, Rev. Civ. St. 1911.)

Art. 2594. No trespass to go upon land for examination and location, etc.; preventing entry, etc., misdemeanor.—The drainage commissioners of any district and the civil engineer from the time of their appointment, are hereby authorized to go upon any lands lying within said district for the purpose of examining the same, locating the canals, drains, ditches and levees, making plans, surveys, maps and profiles, and are hereby authorized to go upon any lands beyond the boundaries of such district and in any county for the purpose of examining the same, and locating the necessary outlets for any of the canals, drains or ditches of such district, together with all necessary teams, help, tools and instruments, without subjecting themselves to action of trespass, and any person who shall wilfully prevent or prohibit any of such officers from entering any land for such purposes shall be guilty of a misdemeanor, and upon conviction may be fined in any sum not exceeding twenty-five dollars for each day he shall so prevent or hinder such officer from entering upon any land, and any justice of the peace in the county shall have jurisdiction of all such offenses. (Acts 1911, p. 245, sec. 41, superseding Art. 2594, Rev. Civ. St. 1911.)

Art. 2595. Drainage bonds; order for issuance; amount.—After the establishment of any such drainage district and after the making and filing of such maps, profiles and estimates as provided for in section 22 of this Act [Art. 2593], the commissioners' court shall make an order directing the issuance of drainage bonds for such district, sufficient in amount to pay for such proposed improvements, together with all necessary actual and incidental expenses connected therewith; provided, however, that said bonds shall not exceed in amount one-fourth of the assessed valuation of the real property in such district, as shown by the last annual assessment thereof made for said drainage district, nor exceeding the amounts specified in said order and notice of election. (Acts 1913, S. S., p. 89, sec. 1, amending Acts 1911, p. 245, sec. 23, which superseded Art. 2595, Rev. Civ. St. 1911.)

Art. 2595a. Change in district or improvement after election; notice.—When, after an election has been held establishing the district, a tax has been authorized or levied and bonds authorized to be issued or have been issued, as provided in this Act, the drainage commissioners shall consider it necessary to make any changes of said drainage district or in any of the improvements therein which shall be of advantage to the district, and which changes will not increase the cost of such proposed system of work in said district beyond the amount of bonds authorized when said district was established, such changes or additions may be made by the drainage commissioners by entering in their minutes a notation of such changes made, together with the maps and profiles provided by the engineer of the district showing such changes; and notice of such changes shall be given by causing a copy of such notation, showing the book and page of the minute of such drainage commissioners in which same has been recorded, to be published once in each week for two successive weeks in some newspaper of general circulation, published in the English language, within the county in which such drainage district is situated. (Acts 1913, S. S., p. 89, sec. 1, amending Acts 1911, p. 245.)

Art. 2595b. Additional bonds; election; order for issuance.—When it shall appear to the drainage commissioners that changes or additions may be made in the preliminary survey of the engineer, which shall be of advantage to the district but which shall make necessary the issuance of more bonds of the district, the drainage commissioners shall certify to the county commissioners' court of the county in which the drainage district has been established the fact that such changes are by the drainage commissioners deemed advisable, accompanying, such certificate by maps and profiles prepared by the engineer of the district, showing such proposed changes and the estimated cost thereof, and at the first regular session of the commissioners court after the filing of such certificate with the maps and profiles, such commissioners' court shall give notice of an election to determine whether or not such changes in such district and improvements shall be made, and shall order such election to be held within such time and the returns of the election made as heretofore provided for in case of an original election, and if a two-thirds majority of the property tax pay-

ing voters of the district voting thereon favor such change in such district, or improvements, and the issuance of bonds, the court shall enter the same of record and order such bonds to be issued as in the manner otherwise provided in this act. (Id.)

Art. 2596. Bonds; validation of bonds issued under former acts; issuance of bonds not sold.—All bonds issued under the provisions of this Act shall be issued in the name of the drainage district, signed by the County Judge and attested by the Clerk of the County Court, with the seal of the county commissioners' court affixed thereto. Such bonds shall be issued in denominations of not less than one hundred dollars and not more than one thousand dollars each, and shall bear interest at a rate not to exceed six (6) per cent per annum, payable annually or semi-annually. Such bonds shall by their terms provide the time, place or places, manner and conditions of their payment, the rate of interest thereon and its payment, as may be determined and ordered by the County Commissioners' Court, provided that none of such bonds shall be made payable more than forty years after the date thereof. Provided, however, in all drainage districts heretofore created, and which have issued and registered bonds with the State Comptroller, under the provisions of Chapter 40 of the Acts of the Thirtieth Legislature of Texas, approved March 23rd, 1907, and under the Acts of the Thirty-first Legislature, Chapter 13, House Bill No. 89 [Rev. Civ. St. 1911, arts. 2567–2625]. That all proceedings had and done under such laws in connection with and leading up to the creation of such drainage districts, and the issuance of such bonds so registered, except such bonds as were issued and registered with the State Comptroller under Chapter 40 of the Thirtieth Legislature of Texas, which were in excess of the estimate considered by the County Commissioners' Court when the election was ordered and held, be and the same are hereby held, deemed and declared to be and to have been regular, valid and legal proceedings under the full intent and purpose of the law; and all such bonds so issued thereunder are hereby held, deemed and declared to be valid and binding obligations upon such drainage district or districts so issuing the same.

Provided further that where any district has authorized the issuance of drainage bonds providing for a rate of interest less than hereinbefore provided, which said bonds have not been sold, when so authorized by an election held for that purpose in such drainage district, the County Commissioners' Court may issue such bonds to bear interest at a rate not to exceed six (6) per cent per annum. (Acts 1911, p. 245, sec. 24; Acts 1915, ch. 33, sec. 1.)

Art. 2597. Submission of validity of bonds to attorney general; data; examination; certificate.—Any drainage district in the state of Texas desiring to issue bonds in accordance with this Act shall, before such bonds are offered for sale, forward to the attorney general a copy of the bonds to be issued, a certified copy of the order of the commissioners court levying the tax to pay interest and provide a sinking fund, and a statement of the total bonded indebtedness of such drainage district as such, including the series of bonds proposed and the assessed value of property for the purpose of taxation, as shown by the last official assessment by the county, together with such other information as the attorney general may require, whereupon it shall be the duty of the attorney general to carefully examine said bonds in connection with the facts and the constitution and laws on the subject of the execution of said bonds, and if as the result of such examination the attorney general shall find that such bonds were issued in conformity with the constitution and laws, and that they are valid and binding obligations upon such drainage district by which they are issued, he shall so officially certify. (Acts 1911, p. 245, sec. 25, superseding Art. 2597, Rev. Civ. St. 1911.)

Art. 2597a. No suit contesting validity of district or bonds, except, etc.; invalidity of this not to affect other provisions.—No suit shall be permitted to be brought in any court of this state contesting or enjoining the validity of the formation of any drainage district created under the provisions of this Act or bonds issued hereunder except in the name of the state of Texas by the attorney general upon his own motion, or upon the motion of any party affected thereby upon good cause shown. If for any reason the provisions of this section shall be held invalid, the same shall not in any manner affect the other provisions of this Act. (Acts 1911, p. 245, sec. 24a.)

Art. 2598. Registration of bonds, etc.; certificate preserved of record; effect as evidence, etc.—When said bonds have been examined by the attorney general and his certificate attached thereto they shall be registered by the state comptroller in a book to be kept for that purpose, and the certificate of the attorney general to the validity of such bonds shall be preserved of record for use in the event of litigations. Such bonds, after receiving the certificate of the attorney general, and having been registered in the comptroller's office as herein provided, shall thereafter be held in every action, suit or proceeding in which their validity is or may be brought in question, prima facie, valid and binding obligations. And in every action brought to enforce collection of said bonds the certificate of the attorney general or a duly certified copy thereof shall be admitted and received in evidence of the validity of such bonds, together with the coupons thereto attached; provided, that the only defense that can be offered against the validity of such bonds shall be forgery or fraud. But this article shall not be construed to give validity to any such bonds as may be issued in excess of the limit fixed by the constitution, or contrary to its provisions, but all such bonds shall, to the extent of such excess, be held void. (Acts 1911, p. 245, sec. 26, superseding Art. 2598, Rev. Civ. St. 1911.)

Art. 2599. Record of bonds; to be open to inspection.—Before issuing any bonds under the provisions of this Act the county commissioners court shall provide a well bound book, in which a record shall be kept by the county clerk of all bonds issued, with their numbers, amount, rate of interest and date of issue, when due, where payable and amount received for the same, and the annual rate per cent assessment made each year to pay the interest on said bonds and provide

a sinking fund for their payment. And said book shall at all times be open to inspection of all parties interested in said districts either as tax payers or bond holders, and upon the payment of any bond an entry thereof shall be made in said book. The county clerk shall receive for his services in recording all bonds and other instruments of the drainage district the same fees as are provided by law for other like records. (Acts 1911, p. 245, sec. 27, superseding Art. 2599, Rev. Civ. St. 1911.)

Art. 2600. Sale of bonds; disposition of proceeds; issuance of unsold bonds at discount.—When such bonds shall have been registered, as provided for in the preceding sections of this Act, the County Judge shall, under the direction of the County Commissioners' Court, advertise and sell said bonds on the best terms and for the best price possible to be obtained, but in no event shall said bonds be sold for less than the face par value thereof together with the accrued interest thereon, and as said bonds are sold, all moneys received therefor shall be turned over and paid by the County Judge to the County Treasurer or to the Treasurer of such drainage district as the case may be and shall be by him placed to the credit of such drainage district in the construction and maintenance thereof; provided, that where drainage districts already organized have authorized the issuance of bonds bearing interest at a rate not exceeding five per cent, the county judge may sell said bonds at not less than ninety per cent of their par face value and accrued interest. (Acts 1911, p. 245, sec. 28; Acts 1915, ch. 33, sec. 1.)

Art. 2601. Bond of county judge before sale; compensation.—Before the county judge shall be authorized to sell any of the drainage bonds, he shall execute a good and sufficient bond, payable to the commissioners of such drainage district, to be approved by such drainage commissioners, for an amount not less than the amount of the bonds issued, conditioned upon the faithful discharge of his duties; and the county judge shall be allowed one-half of one per cent of the amount received on the sale of any bonds sold by him in full payment of his services in that behalf. (Acts 1913, S. S. p. 89, sec. 1, amending Acts 1911, p. 245, sec. 29, which superseded Art. 2601, Rev. Civ. St. 1911.)

Art. 2602. Construction and maintenance fund; interest and sinking fund; expenses how paid; defeat of proposition affecting payment.—All legal and just expenses, debts, and obligations arising and created, after the filing of the original petition with the County Commissioners' Court and necessarily incurred in the creation, establishing, operation and maintenance of such district organized under the provisions of this Act, other than that of the bonds and the interest thereon, shall be paid out of the "Construction and Maintenance Fund" of such district which said fund shall consist of all money, effects, property and proceeds received by such district from any and all sources whatsoever, except that portion of the tax collections which shall be necessary to pay the interest on the bonded indebtedness as it shall fall due and the cancellation and retirement of the bonds as they shall mature, which said funds shall be placed into and paid out of the "Interest and Sinking Fund" of such drainage district.

Provided, that should the proposition of the creation of such drainage district and the issuance of the bonds be defeated at the election called to vote upon the same, then all expenses created up to and including said election shall be paid in the following manner: When the original petition praying for the establishing of a drainage district is filed with the County Commissioners' Court, it shall be accompanied by ($200.00) Two Hundred Dollars in cash, which shall be deposited with the Clerk of said Commissioners' Court and by him held until after the result of the election is officially made known. Should the result of such election be in favor of the establishment of said district, then the said $200.00 shall be by said clerk returned to the petitioners, their agent or attorney; but should the result of such election be against the establishment of such drainage district, then the said clerk shall pay out of the said $200.00 upon vouchers approved and signed by the County Judge, all costs and expenses pertaining to said proposed district up to and including said election, and the balance thereof, if any, shall be returned to the petitioners, their agent or attorney. (Acts 1911, p. 245, sec. 30; Acts 1915, ch. 33, sec. 1.)

Art. 2603. Tax for interest, sinking fund, and expenses; reports and estimates; sale of remaining bonds; readjustment of funds; investment of sinking fund.—Whenever any such drainage district bonds shall have been voted, the County Commissioners' Court shall levy and cause to be assessed and collected taxes upon all property within such drainage district whether real, personal or otherwise, and sufficient in amount, annually, to pay the interest on such bonds as it shall fall due, together with an amount to be annually placed in a sinking fund with which to redeem and retire such bonds as they shall mature, and said taxes when so collected shall be placed in the "Interest and Sinking Fund" for such district. And in all drainage districts heretofore created, or that may hereafter be created, under the provisions of this law, the County Commissioners Court shall at the same time levy and cause to be assessed and collected, taxes upon all property within such district, whether real, personal or otherwise, sufficient in amount to maintain, keep in repair, and to preserve the improvements in such district so made and constructed and to pay all legal, just and lawful debts, demands and obligations, if any, against such district, which said levy shall never, in any one year, exceed one-half of one per cent on the total assessed valuation of such district for such year and such taxes when so collected shall be placed in the "Construction and Maintenance Fund" for such district. Provided, however, that the commissioners of such drainage district shall annually, on or before the first day of July in each year prepare and file with the County Commissioners' Court a full detailed report of the condition of the improvements theretofore made in such district, with an estimate of the probable cost of maintenance and needed repairs during the ensuing year, together with an inventory of all funds, effects, property and ac-

counts belonging to such drainage district, and a list of all lawful demands, debts and obligations, if any, against such district, which report shall be verified by the drainage commissioners, and shall be carefully investigated and considered by the County Commissioners' Court before any levy of taxes shall be made as herein provided.

Provided further, that should there remain any of the bonds so voted and issued by such district and which are not required for the completion of the improvements so made or to be made in such district, then and in that event, by and with the consent of the County Commissioners' Court duly made of public record, such remaining bonds or a portion thereof, may be sold for the purposes herein named and the proceeds from the sale thereof placed in the "Maintenance and Construction Fund" of such district to be used for the maintenance and preservation of the improvements therein. Provided, further that any such drainage district where any money in either the "Maintenance and Construction Fund" or the "Interest and Sinking Fund" has been improperly paid out for the benefit of either of the funds of such district, the County Commissioners Court may cause the County Treasurer to make proper transfer of such amount in the accounts of such district, to the end that each of said funds shall be held for the purposes for which it was created. The sinking fund may, from time to time, be invested in such bonds and securities as shall be approved by the Attorney General of the State of Texas, for the benefit of such district. (Acts 1911, p. 245, sec. 31; Acts 1915, ch. 33, sec. 1.)

Art. 2603a. Assessment, equalization, and collection of taxes; lien; when due; penalty.—In the assessment and collection of the taxes authorized by this Act, and in all matters pertaining thereto or connected therewith, the County Tax Assessor and the County Tax Collector shall have the same powers and shall be governed by the same rules, regulations and proceedings as are provided by the laws of this State for the assessment and collection of County and State Taxes, unless otherwise provided for in this law. And the County Commissioners' Court shall constitute a board of equalization for such drainage district or districts, and all laws governing boards of equalization for county and State taxing purposes shall govern such board or boards for drainage districts.

The taxes authorized to be levied and collected under the provisions of this Act shall be a lien upon all property against which the same are or may be assessed, and it shall be the duty of the County Commissioners' Court and said court shall have the authority, to fix the time and determine the date when such taxes shall become due and payable, otherwise such taxes shall become due and payable at the same time as State and county taxes mature and fall due. And upon the failure to pay such taxes when due, the penalty provided by the laws of Texas for failure to pay State and County Taxes at maturity shall in every respect apply to the taxes herein authorized to be levied, assessed and collected. (Acts 1915, ch. 33, sec. 1.)

Art. 2604. Additional tax books; assessment of property in drainage district; penalty; forfeiture.—The county commissioners' court [shall] provide all necessary additional books for the uses of the assessor and collector of taxes and the county clerk of such drainage district, and charge the cost of same to the said drainage district. It shall be the duty of the county tax assessor, when ordered to do so by the county commissioners' court, to assess all property within such drainage districts, and list the same for taxation in the books or rolls furnished him by said commissioners court for that purpose, and return said books or rolls at the same time when he returns the other books or rolls of the state and county taxes for correction and approval; and if the said commissioners court shall find said books or rolls correct, they shall approve the same and order the county clerk to issue a warrant against the county treasurer in favor of said tax assessor to be paid from the funds of said drainage district. The tax assessor shall receive for said services such compensation as the said county commissioners court shall deem proper to compensate him for the amount of work done. Should the tax assessor fail or refuse to comply with the order of the commissioners court requiring him to assess and list for taxation all the property in such drainage districts as herein provided, he shall be suspended from the further discharge of his duties by the commissioners court of his county, and he shall be removed from office in the mode prescribed by the law for the removal of any county officers. (Acts 1911, p. 245, sec. 32, superseding Art. 2604, Rev. Civ. St. 1911.)

Art. 2605. Collector charged with assessment rolls; compensation; bond required; penalty for failure to give.—The tax collector of the county shall be charged by the county commissioners court with the assessment rolls of the drainage district, and he shall be allowed such compensation for the collection of said taxes as he is now allowed for the collection of other taxes. The county commissioners court shall require the tax collector of the county to give an additional bond or security in such a sum as they may deem proper and safe to secure the collection of said taxes; and should any collector of taxes fail or refuse to give such additional bond or security as herein provided, when requested by the commissioners court within the time provided by law for such purposes, he shall be suspended from office by the commissioners court of his county, and immediately thereafter be removed from office in the mode prescribed by law. (Acts 1911, p. 245, sec. 33, superseding Art. 2605, Rev. Civ. St. 1911.)

Art. 2606. Collector to report delinquents to commissioners' court; duty of court.—It shall be the duty of the tax collector to make a certified list of all delinquent property upon which the drainage tax has not been paid and return the same to the county commissioners court, which shall proceed to have the same collected by the sale of such delinquent property in the same manner as is now provided for the sale of property for the collection of state, county taxes, and at the sale of any property for any delinquent drainage tax the drainage commissioners may become the purchasers of the same for the benefit of the drainage district. (Acts 1911, p. 245, sec. 34, superseding Art. 2606, Rev. Civ. St. 1911.)

Art. 2607. Treasurer to keep accounts with drainage district, rendered when; payments on vouchers.—It shall be the duty of the county treasurer to open an account with the drainage district and to keep an accurate account of all moneys received by him belonging to such district and of all amounts paid out by him. He shall pay out no money except upon a voucher signed by the drainage commissioners and countersigned by the county judge, and he shall carefully preserve on file all orders for the payment of money, and as often as required by the said drainage commissioners or the county commissioners court he shall render a correct account to them of all matters pertaining to the financial condition of such district. (Acts 1911, p. 245, sec. 35, superseding Art. 2607, Rev. Civ. St. 1911.)

Art. 2608. Treasurer's bonds; depository; bonds of depository and treasurer; compensation; surety company bonds; powers of drainage commissioners.—The county treasurer shall be the treasurer of such district, and shall execute a good and sufficient bond, payable to the drainage commissioners of such district, in a sum equal to the amount of bonds issued, conditioned for the faithful performance of his duty as treasurer of such district, which bond shall be approved by said drainage commissioners; provided, however, that such drainage commissioners, in their discretion, may provide for a district depository for the funds of such district, by complying in all respects with the laws of the designation of county depositories, and in case such depositary shall be designated by the drainage commissioners and shall give a good and sufficient bond, approved by the drainage commissioners as is provided by law for depositories of county funds, then the county treasurer, as treasurer of such drainage district, shall be required to give bond for the faithful discharge of the duties of his office in accordance with the provisions of the general statute relating to such county treasurers in counties where county depositories have been provided for county funds.

The treasurer shall be allowed as compensation for his services as treasurer one fourth of one per cent upon all money received by him for the account of such drainage district and one eighth of one per cent upon all moneys by him paid out upon the order of said district, but he shall not be entitled to any commissions on any moneys received by him from his predecessor in office belonging to such drainage district; provided, that the county judge, county treasurer, county depository, contractor and all bonded officers of such district or districts may be officially bonded in some surety company approved by said drainage commissioners.

All powers vested in the commissioners' court as to the designation of county depositories are hereby vested in the drainage commissioners as to the funds of drainage districts. (Acts 1913, S. S. p. 89, sec. 1, amending Acts 1911, p. 245, sec. 36, which superseded Arts. 2608, 2609, Rev. Civ. St. 1911.)

Art. 2608a. Separate tax assessor and board of equalization; election; appointment; powers and duties.—After any drainage district shall have been created and established, as in this Act provided, the commissioners' court of the county in which such district is established may, upon petition of twenty-five resident freeholders of such drainage district, order an election to be held within the boundaries of such district, giving notice thereof as provided for other elections under the provisions of this Act, to determine whether or not such district shall have a separate tax assessor, separate tax collector and separate board of equalization for the assessment and collection of taxes for district purposes; and if at said election two-thirds of the property taxpayers of such district participating in such election, shall vote in favor of such change, then the commissioners' court of the county shall appoint a suitable person as tax assessor of such district, and a suitable person for tax collector of such district, each of whom shall give bond as otherwise provided for such officers and shall exercise all the powers and duties conferred upon county tax assessors and county tax collectors under the provisions of this Act, and the drainage commissioners of such district shall exercise all of the powers conferred upon the commissioners' court of the county by this Act, with relation to the equalization of taxes, and the general laws of this state, relating to the assessment, collection and equalization of taxes shall apply to the assessment, collection and equalization of taxes, for such drainage district, in so far as such general laws are applicable to such taxation. (Acts 1913, S. S. p. 89, sec. 1, amending Acts 1911, p. 245.)

Art. 2608b. Levy of annual tax for maintenance of improvements; limitation of amount.—In all such improvement districts which have heretofore been created under any law of this state or that may hereafter be created, the commissioners' courts of the respective counties, or the commissioners of said districts where said districts have voted to take charge of the assessing, collecting and equalizing of taxes of said district, shall be and are hereby authorized to levy and cause to be assessed and collected for the maintenance and keep-up of the levees and improvement districts an annual tax not to exceed five cents on the one hundred dollars valuation upon all property within said improvement district, whether real, personal or mixed, and said tax shall be used for the purpose of maintenance, repairs and keep ups of said levees and improvements within the district. (Id.)

Art. 2609. [Superseded. See Art. 2608.]

Art. 2610. Contract let to lowest bidder, etc., how, etc.; proviso.—Contracts for making and constructing canals, drains, ditches and levees, straightening and cleaning water courses and other necessary work in connection with any drainage district shall be let by the drainage commissioners to the lowest bidder after giving notice by advertising the same in one or more newspapers of general circulation in the State of Texas, once a week for four consecutive weeks, and by posting notices for at least twenty days, in five public places in the county, one of which shall be at the court house door, and at least two of which shall be within said drainage district, and the contract for each drain, canal, ditch or levee, may be let separately or all together; provided, that all the improvements included in the report of the

drainage engineer and adopted by the county commissioners court, as provided for in sections 21 and 22 of this Act [Arts. 2592, 2593] shall be constructed. (Acts 1911, p. 245, sec. 43, superseding Art. 2610, Rev. Civ. St. 1911.)

Art. 2611. Bids, how presented, etc.—Any person or corporation or firm desiring to bid on the construction of any work advertised for as provided for in the preceding section of this Act [Art. 2610] shall, upon application to the drainage commissioners, be furnished with a copy of the engineer's report showing the location, profiles and estimates of such work as provided for in this Act, and all bids or offers to do any of such work shall be in writing and sealed and delivered to the chairman of the drainage commissioners, together with a certified check for at least five per cent of the total amount bid, which shall be forfeited to the district in case the bidder refuses to enter into a proper contract if his bid is accepted. Any and all bids may be rejected if deemed too high. (Acts 1911, p. 245, sec. 44, superseding Art. 2611, Rev. Civ. St. 1911.)

Art. 2612. Contracts, how made.—All contracts made by the drainage commissioners shall be reduced to writing and signed by the contractors and drainage commissioners and approved by the county judge, and a copy of same filed with the county clerk for reference. (Acts 1911, p. 245, sec. 45, superseding Art. 2612, Rev. Civ. St. 1911.)

Art. 2613. Bond of contractor.—The party, firm or corporation to whom any such contract is let shall give bond, payable to the drainage commissioner of said district, in the amount of the contract price, conditioned that he, they or it, will faithfully perform the obligations, agreements and covenants of their contracts, and that in default thereof will pay to said district all damages sustained by reason thereof. Said bond shall be approved by such drainage commissioners and the county judge. (Acts 1911, p. 245, sec. 46, superseding Art. 2613, Rev. Civ. St. 1911.)

Art. 2614. Engineer to furnish profile, etc., to contractor, supervise work, etc.; report.—The drainage engineer shall furnish the contractor with a sectionized profile of the work contracted for, showing the depth, width and slope of all canals, drains, ditches and levees, and the number of cubic yards to be removed and other work to be done by the contractor, and such work shall be done by the contractor under the supervision of the drainage engineer, who shall indicate to the said contractor the points at which the laterals shall intersect the main canal, and no earth shall be deposited by the contractor so as to interfere with the construction of such laterals or other contemplated work in said drainage district, or the building of bridges or other work on the public roads, and when the work is completed according to contract the engineer shall make a detailed report of the same to the drainage commissioners showing whether the contract has been fully complied with according to its terms, and if not, in what particular it has not been so complied with. (Acts 1911, p. 245, sec. 47, superseding Art. 2614, Rev. Civ. St. 1911.)

Art. 2615. Inspection of work by drainage commissioners; payment of contract price.—The drainage commissioners shall have the right, and it is hereby made their duty at all times during the progress of the work being done under contract to inspect the same, and upon the completion of any contract they shall draw a warrant on the county treasurer for the amount of the contract price in favor of the contractor or his assignee, which warrant shall, when approved by the county judge, be paid out of the drainage fund of such district. (Acts 1911, p. 245, sec. 57, superseding Art. 2615, Rev. Civ. St. 1911.)

Art. 2616. Payment as work progresses.—If the drainage commissioners shall deem it advisable in order to obtain more favorable contracts, they may advertise and contract for work to be paid for in partial payments as the work progresses, but such partial payments shall not exceed in the aggregate seventy-five per cent of the total amount to be paid under the contract, the amount of work completed to be shown by a certified report by the engineer and no payment to be made for work not completed. (Acts 1911, p. 245, sec. 58, superseding Art. 2616, Rev. Civ. St. 1911.)

Art. 2617. Bridges and culverts across, etc., railways, etc.—The drainage commissioners are hereby authorized and empowered to make all necessary bridges and culverts across or under any railroad track and right of way of such railway to enable them to construct and maintain any canal, drain or ditch necessary to be constructed as a part of the drainage system of such district, such bridges or culverts to be paid for by the drainage district; provided, however, that notice shall first be given by such drainage commissioners to railway authorities authorized to build or construct bridges and culverts, and the railway company shall be allowed thirty days to build such bridges or culverts at their own expense, if it should so desire, according to its own plans, provided such bridge or culvert shall be constructed as to not interfere with the free and unobstructed flow of the water passing through the canal or drain, and shall be placed at such points as are designated by the drainage engineer. (Acts 1911, p. 245, sec. 48, superseding Art. 2617, Rev. Civ. St. 1911.)

Art. 2618. Bridges and culverts over canals, drains, etc.—The drainage commissioners are hereby authorized and required to build all necessary bridges and culverts across and over all canals, drains, ditches, laterals and levees made and constructed under the provisions of this Act whenever the same crosses a county or a public road, and shall pay for the same out of the drainage fund; and they are hereby authorized to draw warrants on the county treasurer therefor, which warrant must be approved by the county judge. (Acts 1911, p. 245, sec. 49, superseding Art. 2618, Rev. Civ. St. 1911.)

Art. 2618a. Surplus after completion; additional or supplemental improvements, etc.; report of engineer.—After the full and final completion of all the improvements contracted for, including all bridges, culverts, etc., and after the payment of all expenses incurred under the provisions of this Act, and there is left remaining a surplus of money or bonds to the credit of such drainage district, the drainage commissioners of such district may cause the engineer of said district to make a detailed report of any

additional or supplemental drains, ditches or levees or other character of surface drainage improvements, including tile drainage, that may be needed in such district, and make report thereof to the commissioners court of such county, as is provided in sections 7, 8 and 9 of this Act [Arts. 2573, 2574, as amended, and 2575]; but the estimated costs of such additional improvements shall in no event exceed the amount of surplus money or bonds to the credit of such districts; and when such report of the engineer shall have been filed with the clerk of the county commissioners court, said report shall be acted upon as provided in sections 10 and 11 [Arts. 2576, 2577] of this Act. (Acts 1911, p. 245, sec. 50.)

Art. 2618b. Election for submission of proposition of additional improvements.—After the approval of the report of the engineer or as modified by the court, the county commissioners court shall order an election to be held within such drainage district at the earliest possible legal time, at which election there shall be submitted the following proposition, and none other: "For the additional improvements and payment therefor out of the moneys on hand," and "Against the additional improvements and payment therefor out of the moneys on hand." (Id. sec. 51.)

Art. 2618c. Notice of election.—Notice of such election briefly reciting the character and scope of such proposed additional improvements, stating the estimated cost of same, and stating the time and places of holding such election, shall be given by the county clerk in the same manner and for the length of time prescribed in section 13 [Art. 2579] of this Act. (Id. sec. 52.)

Art. 2618d. Conduct of election, etc.—The manner of conducting said election shall be governed by the election laws of Texas, except as herein otherwise provided, and none but resident property tax payers, who are qualified voters shall participate in said election. The county commissioners court shall name the polling places for such election, and shall appoint the judges and other necessary election officers, and shall provide sufficient ballots for said election, which shall have printed thereon the proposition to be voted upon, and every person who offers to vote at such election shall first take the oath prescribed in section 15 [Art. 2581] of this Act. (Id. sec. 53.)

Art. 2618e. Return, canvass, etc.—Due return of such election shall be made as is provided in section 16 of this Act [Art. 2582], and the commissioners court, at its next regular or special session shall canvass the vote, and if it be found that a majority of the resident property tax payers voting thereon shall have been cast in favor of such additional improvements, then the court shall declare the result of said election to be in favor of such additional improvements, and enter its order in accordance therewith. (Id. sec. 54.)

Art. 2618f. Contracts for additional improvements, etc.—Contracts for making and constructing such additional improvements shall be made and let as is provided in sections 43 and 44 of this Act [Arts. 2610, 2611], and any person, firm or corporation desiring to bid on such work shall be governed by section 44 of this Act [Art. 2611], and such contract shall be made and bond entered into by contractor as is provided in sections 45 and 46 [Arts. 2612, 2613] of this Act. (Id. sec. 55.)

Art. 2618g. Provisions applicable to additional improvements.—The provisions of this Act relative to the construction of the improvements under the original contract and the authority of the commissioners court and drainage commissioners, shall apply to the construction of such additional improvements and the authority of the court and drainage commissioners in connection therewith, in so far as applicable, and payment therefor. (Id. sec. 56.)

Art. 2619. Canals, drains, etc., public property of district; rights of land owners, etc.—All canals, drains, ditches and levees made and water courses cleaned or constructed by any district shall be the public property of such district, and every person owning land within said district shall have the right to drain into one or more of such public drains, and for such purpose shall be permitted at his own expense to make drains according to the natural slope of the land through such other lands as intervene between his land and the nearest public drain or water-course, or along a public highway; provided, that no such drain through another's property or along a public highway shall be made until authorized by the drainage commissioners, who shall, after notice by the party desiring to make such drain, go upon the premises and act as a jury of view and determine the place where such drain may be made. (Acts 1911, p. 245, sec. 39, superseding Art. 2619, Rev. Civ. St. 1911.)

Art. 2620. No drainage into canal, etc., without acquiring right; how, etc.—Whenever a drainage district has been established under the provisions of this Act, no private individual, company or corporation or adjoining drainage district shall have the right to artificially drain adjacent lands located outside of such drainage district into any canals, drains or ditches until they have acquired the legal right to do so as herein provided. Whenever any private individual, company or corporation or adjoining drainage district shall desire to secure an outlet for drainage by making a connection with any canal, drain or ditch already constructed by an established drainage district, he, they or it shall make written application to the drainage commissioners of such established district for permission to make such connection, which application shall show the width, depth and length of such connecting drains or ditches, and when such application has been filed with the drainage commissioners of the established district, the civil engineer shall make an estimate of the quantity of water which such connecting drains or ditches would probably empty into such established canals or drains, and whether such established drains or canals have sufficient capacity to carry such excess of water without risk of damage thereto or the adjacent territory. And the engineer shall make a report showing the result of his examination and estimate, and the drainage commissioners of the established district may, if they deem advisable, authorize such connection, on condition, however, that such private individual, company or corporation or adjoin-

ing drainage district shall first pay into the county treasury for the benefit of the construction and maintenance fund of such established drainage district a sum of money which bears the same ratio to the cost of the original canal or drain from the point of connection to its outlet, that the water to be emptied therein by the connecting drain or canal bears to the water then tributary to and being carried by the original canal or drain as estimated by the drainage engineer, unless the drainage commissioners for the established district shall otherwise agree with such parties making application for such connection. (Acts 1911, p. 245, sec. 59, superseding Art. 2620, Rev. Civ. St. 1911.)

Art. 2621. Permitting on condition of enlargement, when necessary.—Whenever it becomes necessary or advantageous for an individual, corporation or drainage district, established or to be established under this Act, to secure drainage outlets through one or more drainage districts already established as provided in the preceding sections of this Act, and when it shall appear from the report of the engineer of such established district that the canals, drains or outlets of such established district are not of sufficient capacity to carry the excess of water that would be discharged therein by reason of such connection, or that such additional discharge of water would danger the initial canals and drains or the lands and property adjacent thereto; then and in that case the county court in which the initial district is situated, shall nevertheless authorize such individual, corporation, company or drainage district, as the case may be, to make such connection and secure the desired outlet only on condition, however, that he, they or it, shall first at their own cost and expense make the necessary enlargement of the canals and drains, with which it is proposed to make connections, and such increased capacity shall be amply sufficient to carry any increase of water that may be caused by such connections without danger to said canals and drains or to lands adjacent thereto. (Acts 1911, p. 245, sec. 60, superseding Art. 2621, Rev. Civ. St. 1911.)

Art. 2622. Enlargement of canals, drains, etc., how done, etc.—The work of enlarging such canals and drains shall be done under the supervision and direction of the engineer of the initial district, whose salary shall by order of the county court be paid by the person, company, corporation or district doing such work to secure connection, as aforesaid. When the work of enlarging the initial canals and drains is fully completed to the satisfaction of the said engineer, he shall make a report to the county court, under his official certificate, showing the kind and character of work done and to what extent any of the canals and drains have been enlarged, and shall show that the increased capacity of the same is sufficient to carry any excess of water that may be added thereto by reason of such connection, and the engineer shall as a part of his report show the number of days he was actually employed in supervising said work, and also show the amount due him for such services, and on the approval of such report the court shall make an order authorizing the connections desired with such canals and drains, on payment of the amount shown to be due the engineer by said report. (Acts 1911, p. 245, sec. 60, superseding Art. 2622, Rev. Civ. St. 1911.)

Art. 2623. Drainage commissioners to keep canals, drains, etc., in repair.—It shall be the duty of the drainage commissioners to keep the canals, drains, ditches and levees and other improvements made under the provisions of this Act in repair, and they shall have general authority to supervise and control the construction and maintenance of same. (Acts 1911, p. 245, sec. 42, superseding Art. 2623, Rev. Civ. St. 1911.)

Art. 2624. Semi-annual report of drainage commissioners; publication.—The drainage commissioners shall make semi-annual reports of their acts and doings as such commissioners, including a financial statement showing with accuracy of date and amount, and detail, the receipts and disbursements of all funds subject to their orders as such commissioners, and shall file same with the clerk of the county court of the county in which such drainage district is established, on or before the first days of January and July of each year; which report shall further show in detail the kind, character and amount of work done by the district, the cost of same and the amounts paid out in orders and for what purposes, and to whom paid and other data necessary to show the condition of the improvements made under the provisions of this Act. Such drainage commissioners shall further cause the publication of a true copy of their report as filed with the clerk of the county court, in some newspaper published in the county in which such drainage district is situated, once in each week for two successive weeks immediately following the first day of January and July of each year. (Acts 1913, S. S., p. 89, sec. 1, amending Acts 1911, p. 245, sec. 61, which superseded Art. 2624, Rev. Civ. St. 1911.)

Art. 2625. Officers not to be interested in contracts, etc.; violation misdemeanor.—Neither the county judge or any county commissioner or drainage commissioner nor the drainage engineer shall be directly or indirectly, interested for themselves or as agents for any one else in the contract for the construction of any work to be performed by such drainage district, and if said officers or either of them shall directly or indirectly, become interested in any contract for such work, or in any fee paid by such drainage district whereby he shall receive any money consideration or other thing of value, he shall be guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment in the county jail for not less than six months nor more than one year. (Acts 1911, p. 245, sec. 63, superseding Art. 2625, Rev. Civ. St. 1911.)

CHAPTER FIVE

DISSOLUTION OF DRAINAGE DISTRICTS

Art. 2625a. Drainage district may dissolve; frequency of elections.—Any drainage district heretofore organized, or that may hereafter be organized, under the General Laws of this State, may voluntarily abolish its corporate existence in the manner here-

inafter provided; provided, however, that when an election has been or may be held in the manner hereinafter provided for, which has resulted, or may result, in the failure to abolish such drainage district, no other election shall be held in said district under the provisions of this chapter seeking the dissolution of the same within two years after the results of such election shall have been declared. (Acts 1913, S. S. p. 41, sec. 1; Acts 1915, ch. 75, sec. 1.)

Art. 2625b. Petition for election; form of submission.—Upon the presentation to the county commissioners court of any county in this state, at a regular session thereof, of a petition accompanied by the deposit provided for in section 7 of this Act [Art. 2625g], signed by fifty of the freehold resident citizen taxpayers in any drainage district organized, or that may hereafter be organized, under the general laws of this state, or in the event there are less than one hundred freehold resident citizen taxpayers in said district, then by one-third of such freehold citizen taxpayers in said district, praying for the abolition of such drainage district, the county commissioners court shall order an election to be held within such drainage district at the earliest possible legal time, at which election there shall be submitted the following propositions, and none other: "For the abolition of the drainage district." "Against the abolition of the drainage district." (Acts 1913, S. S. p. 41, sec. 2.)

Art. 2625c. Notice of election; posting.—Notice of such election, stating the time and place or places of holding the election, shall be given by the county clerk by posting notices thereof in four public places in such drainage district and one at the court house door of the county in which such drainage district is situated. Such notices shall be posted for twenty days previous to the date of the election, and shall contain the proposition to be voted on, as set forth in section 2 [Art. 2625b] of this Act. (Id. sec. 3.)

Art. 2625d. Conduct of election; qualification of voters; polling places; officers of election; ballots.—The manner of conducting of said election shall be governed by the election laws of the state of Texas, except as herein otherwise provided. None but resident property taxpayers who are qualified voters of said drainage district shall be entitled to vote at any election on any question submitted to the voters thereof by the commissioners court at such election.

The county commissioners court shall name a polling place for such election at each voting precinct, or part of a precinct, embraced in said drainage district, each of which shall be in said drainage district, and shall also select and appoint the judges and other necessary officers of the election and shall provide one and a half times as many ballots for said election as there are qualified resident taxpaying voters within such drainage district, as shown by the tax rolls of said county. Such ballot shall have printed thereon the words, and no others: "For the abolition of the drainage district." "Against the abolition of the drainage district." (Id. sec. 4.)

Art. 2625e. Oath to voters.—Every person who offers to vote in any election held under the provisions of this act, shall first take the following oath before the presiding judge of the polling place wherein he offers to vote, and the presiding judge is hereby authorized to administer same: "I do solemnly swear (or affirm) that I am a qualified voter of ..... county and that I am a resident property taxpayer of the drainage district, the abolition of which is voted on at this election, and I have not voted before at this election." (Id. sec. 5.)

Art. 2625f. Returns and canvass; declaration of result; form.—Immediately after the election the presiding judge at each polling place shall make return of the result in the same manner as provided for in general elections for state and county officers, and return the ballot box to the county clerk, who shall keep same in a safe place and deliver them, together with the returns from the several polling places, to the commissioners court at its next regular session or special session called for the purpose of canvassing the vote and the county commissioners court shall at such session canvass the vote, and if it be found that two-thirds majority of the resident property taxpayers voting thereon shall have cast their vote in favor of abolishing the said drainage district, then the court shall declare the result of said election to be in favor of abolishing said district, and shall enter the same in the minutes of the court, substantially as follows:

"In the matter of the petition of ..... and ..... others, praying for the abolition of the drainage district in said petition described and designated as ..... County Drainage District No. ...., be it known that at an election called for that purpose in said district, held on the .... day of ....., A. D. 191...., a two-thirds majority of the resident property taxpayers voting thereon voted in favor of the abolition of said drainage district now, therefore, it is considered and ordered by the court that said drainage district be, and the same is hereby abolished. (Id. sec. 6.)

Art. 2625g. Cash deposit accompanying petition; disposition; expenses of election.—When the original petition praying for the abolition of a drainage district is filed with the county commissioners court, it shall be accompanied by two hundred dollars in cash, which shall be deposited with the clerk of said court, and by him held until after the result of the election for the abolition of said drainage district has been declared and entered of record by the commissioners court, as hereinbefore provided, and should the result of said election be in favor of the abolition of said district, then the said two hundred dollars shall be by said clerk returned to the signers of said original petition, or their agent or attorney, and the costs and expenses of holding said election shall be a charge against said drainage district to be collected as other debts in the manner hereinafter stated in this act, but should the result of said election be against the abolition of said drainage district, then the said clerk shall pay out of the said two hundred dollars upon vouchers signed by the county judge all costs and expenses of said election and shall return the balance, if any, of said two hundred dollars to the signers of said original petition, or their agent or attorney. (Id. sec. 7.)

Art. 2625h. Sale of property; payment of debts; levy of tax; amount; effect as to outstanding bonds; retirement by tax levy.—When any drainage district is abolished as provided in the preceding sections of this Act, all the property belonging thereto shall be turned over to the county treasurer, and the commissioners court of the county shall provide for the sale and disposition of the same; the commissioners court shall also provide for the settlement of the debts due by the said drainage district, including the costs and expenses of holding said election, and for this purpose shall have the power to levy and cause to be assessed and collected a tax against the real and personal property within said drainage district, in the same manner as now provided by law for the levy and collection of taxes for the payment of the annual interest and providing a sinking fund for the payment of bonds issued by such drainage districts, under chapter 118 of the General Laws of the state of Texas, passed at the regular session of the thirty-second legislature [Art. 2603], and the method provided in said Act for the levy, assessment and collection of taxes for said districts shall be applicable in the levy, assessment and collection of taxes under this Act; provided that the levy of said tax shall be for such an amount only as will be necessary for the payment of all valid debts and obligations of every character existing against said district, except bonds issued and held by purchasers, which bonds shall be paid in accordance with the terms thereof, by levy and collection of an annual tax as provided by the said drainage Act; and nothing in this Act shall be construed as in any manner affecting or impairing the rights of the holders of bonds issued by any drainage district in this state; and, provided further, that in case of the abolition of any drainage district under the provisions of this Act against which there exists outstanding bonds in the hands of purchasers, the commissioners court of said county shall immediately enter into negotiations with the holders of said bonds, and if, according to the terms thereof, or by agreement between said court and the holders of said bonds, the said bonds can be retired at an earlier date than stipulated on their face, and such retirement is considered by said commissioners court as feasible and practicable, then said court shall have the power to levy and cause to be assessed and collected, in the manner above provided, such a tax, either annually, or all at once (not exceeding the constitutional limit) as will pay off as speedily as possible all indebtedness both bonded and otherwise, of said drainage district. (Id. sec. 8.)

Art. 2625i. Property turned over to county treasurer as trustee; bond; superseding former bond.—Upon the dissolution of any drainage district in this state as provided by this Act, all the property of said district of every kind and description shall, immediately upon the filing and approval of his bond as hereinafter provided, be turned over to the county treasurer, who shall virtute officii, become trustee for such defunct organization. Said treasurer shall execute a good and sufficient bond, payable to the county judge and his successors in office, in a sum not less than double the value of the property belonging to said district and the amount of the bonds outstanding, conditioned for the faithful performance of his duty as treasurer and trustee of such district, and for the paying over and delivering of all money and other property coming into his hands is such treasurer and trustee, to the party or parties entitled thereto, such bond to be approved by the county judge, and same to be recorded in the minutes of the commissioners court; and when so approved said bond shall supersede the bond theretofore given by said treasurer, as treasurer of said district provided that said treasurer may be officially bonded in some surety company approved by said county commissioners court. (Id. sec. 9.)

Art. 2625j. Treasurer to sue for and recover property or indebtedness.—The said treasurer, as ex-officio trustee of said defunct drainage district, after having given the required bond as herein provided, shall take charge of all the property of said district, including the money in his hands as treasurer, said money to be held by him as treasurer of such district, and all books, notes, accounts and choses in action of every kind and as such trustee he may bring suit or suits against any person or persons in possession of such property, or indebted to such drainage district, the same as such drainage district could if still organized. (Id. sec. 10.)

Art. 2625k. Presentation and allowance of claims; notice; approval by commissioners court; payment.—Any person, firm, or corporation having any claim against such district shall within six months after the approval of the bond of the trustee, present to him such claim, duly verified and if the trustee find the same correct, he shall allow such claim and thereupon the claimant shall file the same with the clerk of the commissioners court not less than twenty days before the beginning of the next regular session of said court, and said clerk shall immediately issue a notice to all persons interested in said district of the filing of said claim, which notice shall be posted in three public places in said district, and also one at the court house door of said county, not less than twenty days before the next regular session of said court.

The commissioners court in regular session shall pass upon said claim, and if it be found correct they shall approve the same, which order of approval shall be entered upon the minutes of said court, and thereupon said claim shall become a valid and subsisting claim against said district, and upon filing same with said treasurer shall be paid by him, in order of its filing, out of the money in his hands as treasurer of said district. Provided, however, that all outstanding bonds against said district before its dissolution and all claims which have been allowed by the drainage commissioners and countersigned by the county judge as required by chapter 118 of the Acts of the Legislature of 1911 [Arts. 2595, 2607], shall not be required to be allowed and approved as herein provided, but shall be considered as valid and subsisting claims against said district without approval, but subject to be contested in accordance with the provisions of section [Art. 2625n] 14 of this act. (Id. sec. 11.)

Art. 2625*l*. Disallowance of claims by trustee; suit thereon; disallowance in part; waiver.—In case the trustee finds any claim presented to him unjust in whole or in part, he shall indorse thereon his refusal to allow same, and if it be refused in whole the owner thereof may institute suit against said trustee for said claim in any court of competent jurisdiction in said county, and if established by judgment as in other cases, said judgment shall be filed with the said treasurer and shall be paid in its order as other claims.

If said claim be refused by the trustee in part and allowed in part, and the owner thereof sees fit to waive his claim to the part so refused, he shall file said claim in the commissioners court as provided in section 11 hereof [Art. 2625k]. But if he does not waive his right to the portion of said claim so refused, he shall withdraw said claim from the trustee and may bring suit thereon as hereinabove provided. (Id. sec. 12.)

Art. 2625m. Appeal from disallowance of claim by commissioners court.—If the owner of any claim acted upon by the commissioners court as provided by section 11 of this Act [Art. 2625k] is not satisfied with the judgment of said court thereon, he may appeal therefrom as in cases of appeal from judgment of justice's court. (Id. sec. 13.)

Art. 2625n. Protest by taxpayers against claims; bond; suit thereon; filing judgment with treasurer; defenses.—In case any protest by any taxpayer of said drainage district be filed with the trustee against any claim which was allowed by the former drainage commissioners before the dissolution of said district, and which was unpaid at the time of dissolution, together with a bond with sufficient sureties, to be approved by said trustee and made payable to him, conditioned that such contestant will pay all costs of suit in case said claimant establishes his claim in full in any state court in which he may sue thereon, which bond shall be in double the amount of said claim; and upon the filing of said bond, the treasurer shall refuse to pay said claim and the owner thereof may bring suit therefor against the trustee in any court of competent jurisdiction, as in other suits of a civil nature as now provided by law. In all such suits the contestant and his bondsmen shall be made parties thereto, and in case of recovery by the claimant judgment shall be rendered against said contestant and his bondsmen for all costs incurred in said suit.

Upon the recovery of the judgment herein mentioned the owner thereof shall file the same with the said treasurer and same shall be paid by him in its due order as other claims established against said district.

In case of all suits as herein provided the trustee shall make all defenses that may be or may have been urged against said claim by the contestant. (Id. sec. 14.)

Art. 2625*o*. Trustee may employ counsel; expenses of management to be charged against trust estate; allowance; preference; action and appeal.—The trustee shall have the right to employ legal counsel in prosecuting and defending all suits brought by or against him in his capacity as trustee, or in the care and management of the business of said defunct district, and all reasonable expenses incurred by him in the care, control and conduct of the business of such drainage district, and employment of counsel therefor, or in conducting or defending suits in his capacity as such trustee shall be charged by him against said trust estate and shall be presented to the commissioners court of said county annually at a regular term thereof, and upon due notice posted as required in case of claims against said drainage district; and upon approval by said court the same shall become a valid and subsisting claim against said drainage district and shall be a preferred claim, and may be retained by said trustee out of the funds in his hands as treasurer of said district.

If the commissioners court reject said claim in whole or in part, and the trustee is dissatisfied with said ruling he may appeal therefrom, as in cases of appeal from judgments of justice's court. (Id. sec. 15.)

Art. 2625p. Compensation of trustee; of county assessor and collector; provision for.—The trustee and treasurer named in this Act shall receive only one compensation for services in both capacities; he shall be allowed one per cent upon all moneys received by him for the account of such drainage district, and one per cent upon all moneys paid out as provided in this Act; but he shall not be entitled to such commission on money in his hands as treasurer of said drainage district at the time of the dissolution thereof, as of money coming into his hands, nor on money turned over by him at the expiration of his trusteeship. And the county assessor and the county collector of taxes shall receive the same compensation for the assessing and collecting of taxes under this Act as is now provided by chapter 118, Acts of the Legislature of 1911 [Art. 2605], and their compensation for such service shall be provided for in the order of the commissioners court assessing such taxes. (Id. sec. 16.)

Art. 2625q. Pro rata payment on claims; not applicable to bonds.—The money collected by taxation under the provisions of this Act, including the money in the hands of the treasurer at the time of the dissolution of said drainage district, shall be paid pro rata upon all claims according to their priorities, except outstanding bonds, the payment of which shall be made as provided for by the law under which they were issued, unless they can be sooner retired as provided for in this Act. (Id. sec. 17.)

Art. 2625r. Final settlement by trustee; approval by commissioners court; distribution of surplus; discharge of trustee.—When all claims established against such drainage district have been paid and all costs and expenses incurred in the control and management thereof have been satisfied, the trustee shall file his account for final settlement with the commissioners court of said county, which shall contain a full and complete account of all moneys received and paid out, all property of every kind that has come into his hands as trustee, and the disposition thereof, and all other matters pertaining to the management of the affairs of said district; and upon approval thereof, the commissioners court shall direct the trustee to turn over any property or money remain-

ing in his hands to the person or persons entitled thereto as found by said commissioners, and on his compliance with said order he shall so report to the court and thereupon the court shall enter an order discharging said treasurer and trustee and his bondsmen and closing said trust estate. (Id. sec. 18.)

TITLE 48

EDUCATION—PUBLIC

CHAPTER ONE

UNIVERSITY OF TEXAS

Art. 2626. (3836) University funds.—The following shall constitute a permanent fund for the university of Texas, to be used for the benefit of said university:

1. All lands and other property heretofore set apart and appropriated for the establishment and maintenance of the university of Texas under any previous law.

2. One million acres of the unappropriated public domain of the state set apart for that purpose by the present constitution, and one million acres of land set apart by act of April 10, 1883.

3. All bonds that have heretofore or that may hereafter be purchased with the proceeds of the sales of the university lands.

4. All proceeds of the sales of university lands that are now, or may hereafter be, placed in the treasury of the state.

5. In addition to the foregoing, all grants, donations and appropriations that may be hereafter made, or that may be received from any other source. (Const. art. 5, secs. 10–15. Act Feb. 11, 1858, p. 148. P. D. 3573.)

See Acts 1879, extra session, ch. 18.

Art. 2627. (3837) Shall be held in trust and invested.—Such portions of the funds specified in the preceding article as are now in the possession of the state, or that may hereafter be received, shall be held in trust by the state for the use and maintenance of said university; and all such funds as are susceptible of investment, and that have not heretofore been invested, shall be invested for the benefit of such university in the manner provided in the constitution and laws on that subject. (Id.)

Art. 2628. (3838) Title by donation may be vested, how.—Any person, association of persons or body corporate making a donation of property for the purposes of establishing or assisting in the establishment of a professorship or scholarship in the university or any of its branches, either temporarily or permanently, may vest the legal title to the property in any person or persons, body corporate, or the state of Texas, to be held in trust for said purpose, under such directions, limitations and provisions as may be declared in writing in the donation which are not inconsistent with the objects and proper management of said institution or its branches. (Acts of 1889, p. 143, sec. 1.)

Art. 2629. (3839) Donor may direct transmission of title.—It shall be lawful for the person or persons or body corporate to declare and direct the manner in which said title to said property shall thereafter pass or be transmitted from the person or persons or body corporate receiving it to others in continued succession, to be held and appropriated to the use aforesaid, and it shall be lawful for the donor or donors to declare and direct the person or class of persons who shall receive the benefit of said donation, together with the manner in which the person or persons who shall receive said benefits shall be from time to time selected, as it may become necessary to carry out the objects of the donation; provided, said declarations and directions are not inconsistent with the objects and proper management of said institution of its branches. (Id. sec. 2.)

Art. 2630. (3840) Shall vest in the state in trust, when.—In the event there is a failure to transmit the title to the property or to bestow its use in the manner as declared and directed in the donation, or in the event they, or either of them, should become impracticable from the change of circumstances, the title to the property, unless otherwise directed expressly by the donor, shall vest in the state of Texas, to be held in trust to carry into effect the purposes of the donation as nearly as may be practicable by such agencies as may be provided therefor. (Id. sec. 3.)

Art. 2631. (3841) Must be subject to laws, etc.—The title to said property donated shall be received, and the trust conferred in the donation shall be assumed, subject to laws that may be passed and carried into effect from time to time which may be necessary to prevent the loss of, or damage to, the property donated, or an abuse or neglect of the trust so as to defeat, materially change, or prevent the objects of the donation. (Id. sec. 4.)

Art. 2632. (3842) Copies to be filed with board, etc.—Copies of said donation shall be procured and filed with the board which may have control of the university or any of its branches to which the donation applies, which board shall report the condition and management of the property and the manner in which the trust is being administered, as part of the matters reported pertaining to said institution. (Id. sec. 5.)

Art. 2633. (4263a) Control of university lands confided to regents.—The board of regents of the university of Texas are invested with the sole and exclusive management and control of the lands which have heretofore been, or which may hereafter be, set aside and appropriated to, or acquired by, the university of Texas, with the right to sell, lease and otherwise manage, control and use the same in any manner, and at such prices and under such terms and conditions as may to them seem best for the interest of the university, not in conflict with the constitution of this state; provided, that such land shall not be sold at a less price per acre than the same class of land of other funds may be sold at under the statutes. (Acts 1895, p. 19.)

Art. 2634. Control of mineral lands confided to regents.—Said board of regents are invested with the sole and exclusive management and control of all mineral lands within the domain which has been, or may hereafter be, appropriated, set aside or acquired by the university of Texas; and said board of regents are hereby empowered and authorized to sell, lease, manage and control

said mineral lands belonging to said university as may seem best to them for the interest of the university; and they are further empowered with authority to explore and have explored and develop said mineral lands and to make any contract with any persons whomsoever for the exploration and development of said mineral lands, and pay the expenses for such exploration or development out of the proceeds of the lease or sale of said land. (Acts 1901, p. 266, sec. 1.)

Art. 2635. (4263b) Duty of commissioner of land office.—The commissioner of the general land office is hereby directed to furnish to the said board of regents complete and accurate maps, and all other data necessary, to show the location and condition of every tract of said university lands, and shall at all times furnish to said board such additional information as they may require, and shall at all times render to said board such assistance as may be possible and as they shall request in the discharge of the duties hereby imposed on said board. (Acts 1895, p. 19.)

Art. 2636. (3843) Government of university, how vested.—The government of the university shall be vested in a board of [eight] regents, [selected from different portions of the state, who shall be nominated by the governor and appointed by and with the advice and consent of the senate.] (Acts 1881, p. 94; amend. 1895, p. 169.)

The bracketed portions of this article are superseded by arts. 4042a-4042c.

Art. 2637. [Superseded. See Arts. 4042a–4042c.]

Art. 2638. (3845) Shall have right to use seal.—The regents and their successors in office shall have the right of making and using a common seal and altering the same at pleasure. (Id. sec. 7.)

Art. 2639. (3846) How organized.—The regents shall elect a chairman of the board of regents from their own number, who shall hold his office during the pleasure of the board. They shall establish the departments of a first-class university, determine the offices and professorships, appoint a president, who shall, if they think it advisable, also discharge the duties of a professor, appoint the professors and other officers, fix their respective salaries, and they shall enact such by-laws, rules and regulations as may be necessary for the successful management and government of the university; they shall have power to regulate the course of instruction and prescribe, by and with the advice of the professors, the books and authorities used in the several departments, and to confer such degrees and to grant such diplomas as are usually conferred and granted by universities. (Id. sec. 8; amend. 1895, p. 169.)

Art. 2640. (3848) May remove officers.—The regents shall have power to remove any professor, tutor or other officer connected with the institution, when, in their judgment, the interest of the university shall require it. (Id. sec. 10.)

Art. 2641. (3849) Admission fee limited.—The fee of admission to the university shall never exceed thirty dollars, and it shall be open to all persons in the state who may wish to avail themselves of its advantages, and to male and female on equal terms, without charge for tuition, under the regulations prescribed by the regents, and all others under such regulations as the board of regents may prescribe. (Id. sec. 11.)

Art. 2642. (3850) Treasurer.—The treasurer of the state shall be the treasurer of the university. (Id. sec. 12.)

Art. 2643. (3851) Available fund.—The regents shall have authority to expend the interest which has heretofore accrued, and may hereafter accrue, on the permanent university fund, for the purposes herein specified, and for the maintenance of the branches of the university. (Id. sec. 18.)

Art. 2644. (3852) Expenditures, how made.—All expenditures may be made by the order of the board of regents, and the same shall be paid on warrants from the comptroller based on vouchers approved by the chairman of the board or by some officer or officers of the university designated by him in writing to the comptroller, and countersigned by the secretary of the board, or by some other officer or officers of the university designated by said secretary in writing to the comptroller. (Acts 1911, p. 99, sec. 1, amending Art. 3852, Rev. Civ. St. 1895.)

Art. 2645. (3853) No religious qualification required for admission.—No religious qualification shall be required for admission to any office or privilege in the university; nor shall any course of instruction of a sectarian character be taught therein. (Acts 1881, p. 80, sec. 20.)

Art. 2646. Elementary agriculture to be taught.—The board of regents shall require the teaching of elementary agriculture in the summer session of the university, as provided in chapter 10 of this title. (Acts 1909, p. 221, sec. 2.)

Art. 2647. Shall confer teachers' diplomas, when.—The university shall also confer teachers' diplomas and certificates in such cases and under such circumstances and conditions as are prescribed in chapter 14 of this title. (Acts 1909, 2 S. S. p. 394.)

Art. 2648. Law licenses to issue on diplomas.—Law licenses shall be granted upon the diplomas of the law department of the university, as prescribed by article 317. (Acts 1905, p. 150.)

Art. 2649. (3854) Annual report to board of education.—The board of regents shall report to the board of education annually, and to each regular session of the legislature, the condition of the university, setting forth the receipts and disbursements, the number and salary of the faculty, the number of students, classified in grades and departments, the expenses of each year, itemized, and the proceedings of the board and faculty fully stated. (Acts 1881, p. 80, sec. 21.)

Art. 2650. (3855) Board of visitors.—There shall be appointed by the legislature at each regular session a board of visitors, who shall attend the annual examinations of the university and its branches and report to the legislature thereon. (Id. sec. 22.)

Art. 2651. (3856) Expenses of regents and visitors to be paid.—The reasonable expenses incurred by the board of regency and visitation in the discharge of their duties shall be paid from the available university fund.

Art. 2652. (3857) Governor to have issued manuscript bonds.—The governor is authorized and directed to have issued manuscript bonds of the state of Texas to be sold

or exchanged at par for the permanent university fund at any time when there is on hand in cash any reasonable amount of such funds not less than five thousand dollars. (Acts 1889, p. 81.)

Art. 2653. (3858) Character of bonds.—Said bonds shall be of such denomination as the governor may direct, and shall be redeemable at the pleasure of the state, and shall bear interest at the rate of five per centum per annum, payable annually at the state treasury on the first day of March of each year. (Id. sec. 2.)

Art. 2654. (3859) Form of bonds.—The bonds issued under this chapter shall recite the title and date of passage of the act of 1889, page 81, shall be signed by the governor and treasurer and countersigned by the comptroller, and shall be registered in the office of the state treasurer; and, after said bonds have been registered, the governor shall offer said bonds to the board of education as an investment for the permanent university fund then on hand in cash which are by law authorized to be invested; and, if the board of education takes said bonds, the treasurer and comptroller shall make the proper entry, showing the facts of the transaction and the necessary transfer of such fund on their books; and, if the board of education shall not take said bonds thus offered, the same shall be destroyed and canceled and of no effect whatever. (Id. sec. 3.)

CHAPTER TWO

AGRICULTURAL AND MECHANICAL COLLEGE

Art. 2655. (3860) Agricultural and mechanical college made a branch of the university of Texas.—The agricultural and mechanical college of Texas, established by an act of the legislature passed April 17, 1871, located in the county of Brazos, and by the constitution made and constituted a branch of the university of Texas, for instruction in agriculture, the mechanical arts and the natural science connected therewith, shall be managed and controlled as herein provided. (Const. art. 7, sec. 13; 12 U. S. Stat., p. 503; 14 Id. p. 203; Act March 9, 1875, p. 72. P. D. 5693 et seq.)

Art. 2656. (3861) Leading object of the college.—The leading object of this college shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanical arts, in such manner as the legislature may prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life. (12 U. S. Stat., p. 503; Act Cong. July 2, 1862, sec. 4.)

Art. 2657. (3862) Board of directors.—The government of the agricultural and mechanical college of Texas shall be vested in a board of [eight] directors, one of whom shall be the commissioner of agriculture, [who shall reside in different portions of the state, who shall be appointed by the governor, by and with the advice and consent of the senate.] (Acts 1881, p. 75; amended Acts 1899, p. 21.)

The bracketed portions of this article are superseded by arts. 4042a-4042c.

Art. 2658. (3863) Directors how appointed, term of office.—[The board of directors shall be divided into classes, numbered one, two, three and four, as determined by the governor shall hold their office two, four, six and eight years, respectively, from the date of their appointment] and until their successors are appointed and qualified. [Two members shall be appointed at each session of the legislature to supply the vacancies made by the provisions of this article, and in the manner provided for in the preceding article, who shall hold their office for eight years respectively.] (Amended Acts 1899, p. 21.)

The bracketed portions of this article are superseded by arts. 4042a-4042c.

Art. 2659. [Superseded. See Art. 4042b.]

Art. 2660. (3865) Quorum, what constitutes.—Said board shall elect from their number a president of the board, who shall call said board together for the transaction of business whenever he deems it expedient, and a majority of said board shall constitute a quorum for the transaction of business. (Acts 1881, p. 75.)

Art. 2661. (3866) Expenses of directors, how paid.—Said directors shall serve without compensation, but shall receive their actual expenses incurred in attending the meetings of the board or in the transaction of any business of the college imposed by said board. (Id. Amended Acts 1899, p. 21.)

Art. 2662. (3867) Certificate of appointment to be sent.—The secretary of state shall forward a certificate to each director within ten days after his appointment, notifying him of the fact of such appointment, and, should any director so appointed and notified fail for ten days to give notice to the governor of his acceptance, his appointment shall be deemed void, and his place filled as in case of vacancy. (Acts 1881, p. 75.)

Art. 2663. (3868) Number of students to receive instruction free of charge.—There shall be maintained and instructed at said college annually, free of charge to them, three students from each senatorial district in this state, one of whom shall be appointed by the senator of such district, and the other two by the representatives thereof. One-half of said students so appointed shall be compelled to take an agricultural, and the other half a mechanical, course of study, to be assigned thereto by the president of said college; and, in order to pay their expenses, the comptroller, on proper vouchers being filed in his office by the directors, is authorized to draw his warrant on the state treasurer against any appropriation made for that purpose. (Id.)

Art. 2664. (3869) Board shall appoint president, professors, etc., of the college, etc.—The board of directors shall, when necessary, appoint the president and professors of the college and such other officers as, from time to time, they may think proper to keep the college in successful operation, and may, from time to time, abolish any office that is in their judgment unnecessary. (Acts of 1875, p. 74.)

Art. 2665. Board to employ expert entomologist.—The president and board of directors of the college shall employ an expert entomologist, one or more, as may be deemed necessary, whose duty it shall be to devise, if possible, means of destroying the Mexican

boll weevil, boll worm, caterpillar, sharpshooter, chinch bug, peach bug, fly and worm and other insect pests, and to perform the duties of professor of entomology in the college. (Acts 1899, p. 9, sec. 1.)

Art. 2666. To establish department of instruction in valuing, etc., cotton.—Said board shall establish at and in connection with the said college a school or department for the instruction in the theory and practical arts of grading, classing and determining the spinable value of cotton, whose main purpose shall be to train students in the theory and practical art of cotton classing in all its branches from the field to the factory. (Acts 1909, p. 220, sec. 1.)

Art. 2667. To provide summer school for said department.—In addition to the regular school provided for above, said board shall provide for a special summer school of at least two months each year for the training of special students, and there shall be no entrance examination for said special summer schools. (Id. sec. 2.)

Art. 2668. Power to make necessary provisions.—The board of directors is invested with full power and authority to make provisions for said school or department, and to purchase the necessary equipment, and generally to do and perform all acts necessary to establish and maintain said school or department. (Id. sec. 3.)

Art. 2669. To establish department for instruction in manufacture of cotton.—Said board shall establish at and in connection with the said college a school or department for instruction in the theory and practical art of textile and kindred branches of industry, whose main purpose shall be to train students in the theory and practice of cotton manufacturing, in all its branches, from the raw cotton to the finished fabric, and said board shall do and perform all acts necessary to establish and maintain said school or department. (Acts 1903, p. 74, sec. 1.)

Arts. 2670-2673. [Repealed. See Arts. 14a–14ii.]

Art. 2674. (3870) May make by-laws, etc.—Said board of directors of said college shall also, from time to time, make such by-laws, rules and regulations for the government of said college as they may deem meet and proper for that purpose, and shall regulate the course of study, the rates of tuition, the manner of performing labor, and the kind of labor to be performed by the students of said college, and shall also prescribe the course of discipline necessary to enforce the faithful discharge of the duties of the professors, officers and students. (Acts 1875, p. 74.)

Art. 2675. (3871) By-laws, etc., shall be printed.—It shall be the duty of the board to have printed, for the benefit of the people of the state and officers and students of the said college, such by-laws, rules and regulations as they are authorized by the preceding article to prescribe. (Id.)

Art. 2676. Elementary agriculture to be taught.—The board of directors shall require the teaching of elementary agriculture for teachers in the summer sessions of the college as provided in chapter 10 of this title. (Acts 1909, p. 221, sec. 3.)

Art. 2676a. To employ civil engineer who understands terracing farm land, etc.—That the board of directors of the agricultural and mechanical college of the state of Texas be, and they are hereby authorized and empowered, to employ a civil engineer, having a practical and scientific knowledge of the conservation of moisture and soil fertility, who understands the practical art of terracing farm land to preserve the moisture and soil fertility and to prevent the washing away and the destruction of the properties of the soil. (Acts 1911, p. 155, sec. 1.)

Art. 2676b. Qualifications of engineer; salary; duties; equipment.—The board of directors of the agricultural and mechanical college shall, when this law takes effect, or as soon thereafter as practicable, employ a man possessing the qualifications mentioned in section 1 of this Act [Art. 2676a], who shall be a graduate of the agricultural and mechanical college of the state of Texas, and if such graduate can not be secured, such person to be employed must possess the requisite qualifications mentioned in section 1 of this Act, and must have had five years actual experience in terracing farm lands in some southern state. Such person so employed shall receive a salary not exceeding two thousand ($2,000.00) dollars per annum, and shall make his headquarters and be located at the agricultural and mechanical college of Texas, where he shall instruct the students of said institution by lecture and practical demonstration, in the best method of conservation of moisture and soil fertility, and the practical art of terracing farm lands to prevent erosion of the soil and the washing away of the lands, and he shall devote one-half of his time, as near as may be, to such instruction, and the other half of his time shall be spent in field work, giving practical demonstrations in terracing, to farmers' institutes and other farmers' organizations, and the president of the agricultural and mechanical college shall require him to go over the state upon the application of farmers desiring expert instruction in terracing farm lands, and in conserving the moisture and soil fertility, he shall be furnished with necessary instruments and equipment to demonstrate to the farmers and students the best methods of terracing and conserving moisture and soil fertility, and shall actually teach and instruct them in such manner as will enable them to do the work successfully. (Id. sec. 2.)

Art. 2676c. Appropriation.—The sum of two thousand ($2,000.00) dollars is hereby appropriated out of the general revenue, not otherwise appropriated, to pay the salary of an expert terracer for the fiscal year ending August 31, 1912, and two thousand ($2,000.00) dollars to pay said salary for the fiscal year ending August 31, 1913. (Id. sec. 3.)

Art. 2676cc. Expenditures, how made.—All expenditures for the Agricultural and Mechanical College of Texas may be made by the order of the board of directors, and the same shall be paid on warrants from the Comptroller based on vouchers approved by the president of the board of directors, or by some officer or officers of the College designated by him in writing to the Comptroller. (Acts 1915, ch. 55, sec. 1.)

Art. 2676d. Board of Directors to appoint State Forester; salary; duties.—That there shall be appointed by the Board of Directors of the Agricultural and Mechanical College of Texas a State Forester, who shall be a technically trained forester of not less than two years' experience in professional forestry work; his compensation shall be fixed by said board at not to exceed three thousand ($3,000) dollars per annum, and he shall be allowed reasonable traveling and field expenses incurred in the performance of his official duties. He shall, under the general supervision of said board, have direction of all forest interests and all matters pertaining to forestry within the jurisdiction of the State. He shall appoint, subject to the approval and confirmation of said board, such assistants and employés as may be necessary in executing the duties of his office and the purposes of said board, the compensation of such assistants and employés to be fixed by the said board. He shall take such action as may be deemed necessary by said board to prevent and extinguish forest fires, shall enforce all laws pertaining to the protection of forest and woodlands, and prosecute for any violation of such laws; collect data relative to forest conditions, and to cooperate with land owners as described in Section 2 of this Act. [Art. 2676e]. He shall prepare for said board annually a report on the progress and condition of State forestry work, and recommend therein plans for improving the State system of forest protection, management and replacement. (Acts 1915, ch. 141, sec. 1.)

Art. 2676e. Same; co-operation with municipalities, etc.—That the State Forester shall, upon request, under the sanction of the Board of Directors, and whenever he deems it essential to the best interests of the people of the State, co-operate with counties, towns, corporations or individuals in preparing plans for the protection, management and replacement of trees, woodlots and timber tracts under an agreement that the parties obtaining such assistants pay at least the field expenses of the men employed in preparing said plans. (Id. sec. 2.)

Art. 2676f. Same; gifts; purchase of land.—That the Governor of the State is authorized, upon the recommendation of the Board of Directors, to accept gifts of land to the State, same to be held, protected and administered by said board as State forests, and to be used so as to demonstrate the practical utility of timber culture and water conservation, and as refuges for game. Such gifts must be absolute except for the reservation of all mineral and mining rights over and under said lands, and a stipulation that they shall be administered as State forests.

The Board of Directors shall have the power to purchase lands in the name of the State, suitable chiefly for the production of timber, as State forests, using for such purposes any special appropriation or any surplus money not otherwise appropriated, which may be standing to the credit of the State forestry fund.

The Attorney General of the State is directed to see that all deeds to the State of land mentioned in this section are properly executed before the gift is accepted or payment of the purchase money is made. (Id. sec. 3.)

Art. 2676g. Same; proceeds of sale of products.—That all moneys received from the sale of wood, timber, minerals or other products from the State forests, and penalties for trespassing thereon, shall be paid into the State Treasury, and shall constitute a State forestry fund, and the moneys in said fund are hereby appropriated for purposes of forestry in general, under the direction of the Board of Directors. (Id. sec. 4.)

Art. 2676h. Appropriation.—That for the maintenance, use and extension of the work under the Board of Directors, and for forest fire protection, there is hereby appropriated the sum of ten thousand ($10,000) dollars annually out of any moneys in the State Treasury not otherwise appropriated, to be placed to the credit of the State forestry fund. (Id. sec. 5.)

Art. 2676i. Co-operation with federal authorities.—That the Board of Directors may co-operate with the Federal Forest Service under such terms as may seem desirable. (Id. sec. 6.)

JOHN TARLTON AGRICULTURAL COLLEGE

Art. 2676¼. College established.—That the John Tarlton College, located at Stephenville, in Erath county, is hereby taken over by the State, under the terms and conditions set forth elsewhere in this Act, and the same established as a Junior Agricultural College, to be known as the John Tarlton Agricultural College, a co-educational State institution of agriculture and home economics. (Acts 1917, ch. 33, sec. 1.)

See, also, post, arts. 2724a-2724i.

Art. 2676¼a. Government of college.—The government and direction of policies of said John Tarlton Agricultural College shall be vested in the Board of Directors of the Agricultural and Mechanical College of Texas. The said Board is hereby given authority to accept such lands, buildings and gifts of money as may be made a consideration in the acceptance of said college, and it is understood that this Act shall not become effective until the conditions set forth in the following sections have been accepted and complied with. (Id. sec. 2.)

Art. 2676¼b. Donations.—The donations and conditions referred to in Section 2 [Art. 2676¼a] are as follows: The citizenship of Stephenville and Erath county hereby donate to the State of Texas what is known now as the John Tarlton College, consisting of a main or administrative building, a dormitory for girls, and a Fine Arts building, all modern new brick buildings and estimated to be worth, including the equipment, $85,000; and also a campus of forty acres of land, located in about 400 yards of the railroad station at Stephenville, and within less than one mile of the court house of Erath County, valued at approximately $40,000; also 500 acres of land located near the campus of the John Tarlton College nearly all tillable and now cultivated and being good farming land within one mile of the town of Stephenville, and valued at approximately $50,000.00; also the sum of $75,000 to be used by the Board of Directors of the Agricultural and Mechanical College as a student loan fund to be lent to students who cannot otherwise attend said college, at a rate of interest not to exceed 5

per cent per annum, on such terms and conditions as may be deemed advisable by said governing board. (Id. sec. 3.)

Art. 2676¼c. Acceptance of donations. The Board of Directors of the Agricultural and Mechanical College is hereby given authority to accept the land, money and buildings referred to in Section 3 [Art. 2676¼b], and it shall be the duty of the citizens of Stephenville and Erath county to furnish a good and merchantable title to all of said property, and the said Board is hereby given authority to sign and execute all deeds and other official papers necessary in connection with the acceptance of the offer of the citizens of Stephenville and Erath county, and when all of said formalities have been complied with it shall be the duty of the Board of Directors of the Agricultural and Mechanical College to make an official report to the Governor of this State, setting forth the fact that all promises and pledges of said citizens of Stephenville and Erath county, have been complied with, and on receipt of said report the Governor of this State shall formally accept in writing, the said John Tarlton Agricultural College as a Junior Agricultural College as a part of the educational system of Texas. (Id. sec. 4.)

Art. 2676¼d. Rank of college; courses of study; students.—The said John Tarlton Agricultural College shall rank as a Junior Agricultural College, which for the purposes of this Act is designated as an institution offering four year courses, beginning with the Junior year of a four year High School and extending to and including the Sophomore year of a standard four year college, provided that nothing in this Act shall preclude the offering of such preparatory courses or short courses as may be deemed advisable. The said John Tarlton Agricultural College shall be co-educational and instruction shall be offered in Agriculture, including the arts and sciences connected therewith; and home economics, including the arts and sciences connected therewith. (Id. sec. 5.)

Art. 2676¼e. Power of eminent domain.—The Board of Directors of said College, as constituted by Section 2 of this Act [Art. 2676¼a], is hereby vested with the power of eminent domain to acquire for the uses of said College such lands as may be necessary or proper for carrying out its purposes, by condemnation proceedings, such as are now provided for railroad companies by Articles 6506 to 6530, inclusive, of the Revised Statutes of Texas of 1911. (Id. sec. 6.)

GRUBBS VOCATIONAL COLLEGE

Art. 2676½. College established; donations.—That there is hereby established a Junior Agricultural Mechanical and Industrial College, to be known as the Grubbs Vocational College, to be located at or near the town of Arlington, Tarrant county, Texas, provided the citizens of said town and county shall first donate to the State for the use and benefit of said college at least one hundred acres of good tillable land with perfect title, together with the college property, known as the Carlisle Military School property, with all buildings, dormitories, barracks, etc., belonging thereto. (Acts 1917, ch. 97, sec. 1.)

Art. 2676½a. Shall be under direction of directors of Agricultural and Mechanical College; local board of managers.—Be it further enacted that said Junior Agricultural, Mechanical and Industrial College shall be under the direction of the board of directors of the present Agricultural and Mechanical College in connection with a local board of managers composed of five members to be appointed by the Governor by and with the advice and consent of the Senate, who shall serve for two years from the date of their appointment. (Id. sec. 2.)

Art. 2676½b. Vacancies in board of managers.—In all cases of vacancy in said local board of managers the appointment shall also be made from time to time as provided in the Sections of this Act, provided that if the Legislature shall not be in session, the Governor may fill such vacancy by appointment until the next session of the Legislature, when if the Senate shall not confirm the appointment some other person shall be named. (Id. sec. 3.)

Art. 2676½c. Board of managers subject to approval of directors of Agricultural and Mechanical College.—That the board of local managers hereinbefore provided for shall be subject to the approval of the board of directors of the Agricultural and Mechanical College, with which this Junior College shall be closely affiliated, perform all the duties required in the efficient and successful management of said institution in like manner as other governing boards of the same character. (Id. sec. 4.)

Art. 2676½d. Organization of board of managers.—That the board of managers shall meet as soon after their appointment as convenient at Arlington, Texas, and organize by the election of a presiding officer, a Secretary and a Treasurer, whose duties shall be the same as the officials of other similar boards in this State, except that their action in all matters and especially in the formulation of courses of study, shall be subject to approval, modification or rejection by the Board of Directors of the Agricultural and Mechanical College. (Id. sec. 5.)

Art. 2676½e. Powers of board of managers; purposes of school.—That the board of managers shall have and possess all powers necessary subject to the supervision of the board of directors of the Agricultural and Mechanical College of Texas as to accomplish and carry out the provisions of this Act the establishment of a Junior Agricultural, Mechanical and Industrial College for the education of white boys and girls in this State in the arts and sciences in which such boys and girls may acquire a good literary education of academic grade, at least, together with a knowledge of agriculture, horticulture, floriculture, stock raising and domestic arts and sciences, including the several branches and studies usually taught in the established institutions of like character with such limitations as may be imposed by the governing board of the Agricultural and Mechanical College of Texas, having in view the training of the youth for the more important industrial activities of life, while acquiring facilities for the acquirement of a good practical literary education not below the academic grade. (Id. sec. 6.)

Art. 2676½f. Faculty of institution; tuition; courses of instruction; rules, etc.—That the board of managers in connection with the board of directors of the Agricultural and Mechanical College of Texas, shall appoint a president and professors of the Grubbs Vocational College and such officers as they may think proper and necessary to put the same into successful operation and to make such rules and regulations for the government of said officers and the proper management of said institution as they may deem advisable. They shall regulate rates of tuition with the course of discipline necessary to enforce the faithful discharge of the duties of all officers, professors and students. They shall in connection with the faculty divide the courses of instruction into departments so as to secure a thorough education of the academic grade and the best possible industrial training, selecting careful and efficient professors in each department, giving preference to Texas teachers, if available, and shall adopt all such rules, by-laws and regulations as they may deem necessary to carry out all the purposes and objects of said institution. (Id. sec. 7.)

Art. 2676½g. Compensation of board of managers.—The board of managers shall receive such compensation as may be determined upon by the board of directors of the Agricultural and Mechanical College of Texas. (Id. sec. 8.)

Art. 2676½h. Entrance requirements.—The terms upon which pupils may be admitted, including the entrance requirements, shall be determined by the board of managers and the board of directors of the said Agricultural and Mechanical College of Texas, and in that respect they are empowered to fix or remit tuition, fees and charges as they may deem best for said institution and the people for whose benefit it is established. (Id. sec. 9.)

Art. 2676½i. Salaries of officers, professors, and employés.—The board of managers and the board of directors of the Agricultural and Mechanical College shall determine and fix the salary of each officer, professor and employé, provided that the salaries of professors in any department shall not exceed that which is now fixed for the professors of the Agricultural and Mechanical College or the College of Industrial Arts, with which this institution is closely affiliated. (Id. sec. 10.)

REPEALED ACTS CREATING BRANCH COLLEGES

Act Feb. 20, 1917, ch. 29, created the West Texas Agricultural and Mechanical College, to constitute a branch of the Agricultural and Mechanical College of Texas. This act was repealed by Act Oct. 11, 1917, 3d C. S., 35th Legislature, which annulled and canceled all acts, contracts, etc., growing out of the former act.

Act April 9, 1917, ch. 204, created the North-East Texas Agricultural College, to constitute a branch of the Agricultural and Mechanical College of Texas. This act was repealed by Act Oct. 11, 1917, 3d C. S., 35th Legislature, which annulled and canceled all acts, contracts, etc., growing out of the former act.

PERPETUAL FUND

Art. 2677. (3872) Perpetual fund.—The money arising from the sale of the one hundred and eighty thousand acres of land donated to this state by the United States under the provisions of an act of congress passed on the second day of July, 1862, and an amended act of congress of July 23, 1866, shall constitute a perpetual fund, under the conditions and restrictions imposed by the above recited acts, for the benefit of said college; and the investment of the same, heretofore made in the bonds of the state, shall continue until the legislature shall, by law, direct it to be invested otherwise in furtherance of the interests of said college and in accordance with the terms on which it was received. (12 U. S. Stat., p. 503; 14 U. S. Stat., p. 203. Act March 9, 1875, p. 73, sec. 8. P. D. 5793.)

Art. 2678. (3873) Accrued interest on bonds, how invested.—The interest heretofore collected by the state board of education in accordance with the provisions of the act of August 21, 1876, due at the end of the fiscal year of 1876, on the bonds belonging to said agricultural and mechanical college and invested in six per cent state bonds, shall also constitute a part of the perpetual fund of said college until the legislature shall otherwise provide. (Act Aug. 21, 1876, p. 283, sec. 1.)

Art. 2679. (3874) Duty of state board of education.—It shall be the duty of the state board of education to collect the semi-annual interest on the bonds mentioned in the two preceding articles as the same becomes due, and place the same in the treasury of the state to the credit of said college fund. (Const. art. 7, sec. 8. Act Aug. 21, 1876, p. 283, sec. 2. Act March 9, 1875.)

Art. 2680. (3875) Money, how drawn from the treasury, and for what purpose.—The interest on the bonds which were purchased with the proceeds of the said land scrip, and also the interest on the bonds in which the accrued interest of the said bonds was invested, as heretofore set out in this chapter, is set apart exclusively for the use of said college, and shall be drawn from the treasury by the board of directors on vouchers audited by said board, or approved by the governor and attested by the secretary of the board. (Act March 9, 1875, p. 73, sec. 8. See Acts 1879, Extra Session, ch. 18.)

Art. 2681. (3876) Duty of comptroller to issue warrant, when.—On such vouchers being filed with the comptroller, it shall be his duty to draw his warrant on the state treasurer for the same, from time to time, as the same may be needed to pay the directors, professors and officers of the college. (Id.)

CHAPTER TWO A

SCHOOL OF MINES AND METALLURGY

Art. 2681a. School created; location; to be under supervision of board of regents of university; faculty, etc.—A school of miners [mines] and metallurgy is hereby created for the state of Texas; said [school] to be located and established in or near the city of El Paso provided citizens of the city of El Paso shall make and execute unto the state of Texas a deed to the tract of land comprising twenty-one acres of land, more or less, now comprised in the reservation of the El Paso military institute, adjacent to the Fort Bliss military reservation, together with the buildings and improvements thereon situated, to be used for the site and exclusive occupancy of said school. Said

school shall be under the supervision of the board of regents of the university of the state of Texas and the faculty of said school shall be appointed by the board of regents of the university of Texas within ninety days after this act shall take effect, and such appointees shall hold their positions for a term of two years and until their successors are appointed and qualified. (Acts 1913, p. 427, sec. 1.)

Art. 2681b. Purpose of school.—The principal purpose of said school of miners [mines] shall be to teach such branches in mining and metallurgy as will give a thorough technical knowledge of miners [mines] and mining, and all subjects pertaining thereto, including physics and mining, engineering, mathematics, chemistry, geology, mineralogy, metallurgy, the subject of shop work and draining, [drawing] the technical knowledge and properties of mine gases, assaying, surveying, drafting of maps and plans, and such other subjects pertaining to mining engineering as may add to the safety and economical operation of miners [mines] within this state. (Id. sec. 2.)

Art. 2681bb. Branch of University of Texas.—The School of Mines and Metallurgy, established by Chapter 178 Acts of the General Laws of the 33rd Legislature of 1913, located in the City of El Paso, El Paso County, Texas, be and the same is hereby made and constituted a branch of the University of Texas for instruction in the arts of mining and metallurgy as now provided for by law. The University of Texas through it's Board of Regents shall take over the management and control of said School of Mines and Metallurgy and its properties and shall assume and pay off all of it's debts and obligations, if any. (Acts 1919, ch. 53, sec. 1.)

Art. 2681c. Shall have separate faculty, etc.—The school of miners [mines] and metallurgy herein provided for, shall have a separate and distinct faculty. (Acts 1913, p. 427, sec. 3.)

Art. 2681d. Powers of faculty.—The faculty of the school of miners [mines] and metallurgy shall have the power, under the direction of the board of regents herein provided, to confer degrees and issue diplomas and fix a standard of grades for all students attending said school of miners [mines], and the faculty will also have the power to make such rules and regulations for the proper control and management of the school as they may deem necessary. (Id. sec. 4.)

Art. 2681e. Shall have what courses.—The school of miners [mines] and metallurgy shall have regular courses leading to degrees, and such other special courses as the faculty may deem necessary. The regular course shall extend over a period of two years. (Id. sec. 5.)

Art. 2681f. Annual reports.—At the close of each school year the board of regents shall require the faculty of said school to make a report to them of the workings and progress of said school, and the board of regents in turn shall make a report to the governor in detail, exhibiting the progress, condition, and wants of the several departments of instruction in said school. The course of study in each and the number and names of the officers and students, the amount of receipts and disbursements, together with the nature, cost and results of all important experiments and investigations, and such other matters, including special industrial and economical statistics as may be thought useful. The board of regents shall cause the same to be printed for the use of the legislature and the people of the state, and shall cause one copy of same to be transmitted by mail to the secretary of the interior and one copy to the commissioner of labor at Washington City, and one copy to the commissioner of labor and chief mine inspector of the state. (Id. sec. 7.)

Art. 2681g. Terms of tuition; moneys, how disposed of.—The board of regents as herein provided shall fix the terms and tuition to be charged students in this school, and all moneys received from said tuition as [or] in any way from said school, over and above that necessary for the actual maintenance and carrying on of said school shall be returned to the state treasury to reimburse the state for the appropriation now made. (Id. sec. 8.)

Art. 2681h. Appropriation.—For the purpose of putting this school in operation there is hereby appropriated out of any money in the state treasury, not otherwise appropriated, the sum of fifteen thousand dollars for the use and benefit of said school of miners [mines] and metallurgy, and the state comptroller is hereby empowered, authorized and directed to issue warrants upon the state treasury to the state treasurer for the payment of the sum herein appropriated to the said board of regents, herein created, for the location, support, and maintenance of said school of miners [mines] and metallurgy. (Id. sec. 9.)

CHAPTER THREE

TEXAS INDUSTRIAL INSTITUTE AND COLLEGE FOR THE EDUCATION OF WHITE GIRLS OF THE STATE OF TEXAS IN THE ARTS AND SCIENCES

Art. 2682. Name of institute.—The industrial institute and college located at Denton, in Denton county, Texas, for the education of white girls in the arts and sciences shall be known as the Texas industrial institute and college for the education of white girls of the state of Texas in the arts and sciences. (Acts 1901, p. 306, sec. 1.)

Art. 2683. Board of regents, how appointed.—[The governor shall nominate and appoint, by and with the consent of the senate, seven persons to serve as a board of regents for said college, who shall serve as such for two years,] and until their successors are appointed and qualified. [In all cases of vacancy, the appointment to fill such vacancy and the reappointment to fill the position shall, from time to time, be made by the governor, as hereinbefore provided, but, if the legislature be not in session, the governor may fill such vacancy by appointment until the next session of the legislature, when, if the senate shall not confirm the appointment, the appointment of some other person shall be made as hereinbefore provided.] (Id. secs. 2 and 3.)

As to bracketed parts of this article see arts. 4042a-4042c.

Art. 2684. Board to elect president; meetings; how called; duties of secretary, etc.—The board of regents shall have

the power incident to their position, and in the same and to the same extent, so far as may be applicable, as is conferred by law on the regents of the university of Texas. Said board of regents shall elect a president, a secretary and a treasurer, whose terms of office shall be two years. The president so elected shall convene the board of regents of said industrial institute and college to consider any business connected with the same, whenever he shall deem it expedient to do so; it shall be the duty of the secretary to record in a well bound book all of the proceedings had by said board, and he shall be paid such salary as the board may prescribe; it shall be the duty of the treasurer to receive and disburse all moneys under the direction of the board. He shall be required to give bond in such sum as may be prescribed by the board. (Id. sec. 4.)

Art. 2685. What shall be taught in the institute.—The board of regents shall possess all the powers necessary to accomplish and carry out the provisions of this chapter, the establishment and maintenance of a first-class industrial institute and college for the education of white girls in this state in the arts and sciences, at which such girls may acquire a literary education, together with a knowledge of kindergarten instruction; also a knowledge of telegraphy, stenography and photography; also a knowledge of drawing, painting, designing and engraving, in their industrial application; also a knowledge of general needle-work, including dressmaking; also a knowledge of bookkeeping; also a thorough knowledge of scientific and practical cooking, including a chemical study of food; also a knowledge of practical housekeeping; also a knowledge of trained nursing, caring for the sick; also a knowledge of the care and culture of children; with such other practical industries as, from time to time, may be suggested by experience, or tend to promote the general object of said institute and college, to wit: Fitting and preparing such girls for the practical industries of the age. (Id. sec. 5.)

Art. 2686. General duties of regents.—The board of regents herein mentioned shall appoint a president and professor of the said industrial institute and college, and such other officers as they may think proper to continue the same in successful operation, and to make such rules and regulations for the government of said officers as they may deem advisable. They shall regulate rates of tuition, together with course of discipline necessary to enforce the faithful discharge of the duties of all officers, professors and students. They shall divide the course of instruction into departments, so as to secure a thorough education and the best possible instruction in all of said industrial studies, selecting careful and efficient professors in each department, and shall adopt all such rules, by-laws and regulations as they may deem necessary to carry out all the purposes and objects of said institution. (Id. sec. 6.)

Art. 2687. Compensation of regents.—The board of regents shall receive such compensation as is now allowed to the board of regents for the university of Texas, to be paid out of the appropriation for this industrial institute and college. (Id. sec. 7.)

Art. 2688. Number of students apportioned to counties.—The board of regents shall apportion to each county its quota of pupils or students, on the basis of the number of the educatable white girls in the state and several counties; and the several superintendents of education of the several counties shall, after having given notice in some newspaper of the county, and three weeks after such publication, under such regulations as the board of regents may adopt, appoint such number of white girls to such industrial institute and college as such county may be entitled to. (Id. sec. 10.)

Art. 2689. Board of regents to fix salaries.—The board of regents shall determine and fix the salary of each officer, employé and professor, in said industrial institute and college; provided, that the salaries of professors in any one department shall not exceed that which is now fixed for the professors of the agricultural and mechanical college. (Id. sec. 11.)

Art. 2690. Elementary agriculture to be taught.—The board of regents shall require the teaching of elementary agriculture for teachers in the summer sessions of the college as provided in chapter 10 of this title. (Acts 1909, p. 221.)

Art. 2690a. Teachers' diplomas conferred.—The college shall also confer teachers' diplomas in such cases and under such circumstances and conditions as are prescribed in chapter 14 of this title. (Acts 1909, 2 S. S., p. 394.)

CHAPTER THREE A

STATE NORMAL SCHOOL BOARD OF REGENTS

Art. 2690aa. Board how known and composed.—That immediately after the passage of this Act there shall be appointed a board to be known as the state normal school board of regents [said board to be composed of the state superintendent of public instruction and five other members to be selected as provided in section 2 of this Act (Art. 2690b)]. (Acts 1911, S. S., p. 74, sec. 1.)

Bracketed parts superseded by arts. 4042a-4042c.

Art. 2690b. Members to be appointed, etc.—Immediately after this Act shall go into effect, the governor shall, by and with the advice and consent of the senate, appoint four persons of good education and of high moral character, known to be friendly to the normal schools of Texas, who, together with the state superintendent of public instruction, shall constitute the state normal school board of regents for the control and management of the state normal schools for white teachers in Texas. (Id. sec. 2.)

See arts. 4042a-4042c.

Art. 2690c. State superintendent of public instruction ex officio president; chief clerk of state department of education ex officio secretary, etc.—The state superintendent of public instruction shall be ex officio president of the state normal school board of regents, and the chief clerk of the state department of education shall be ex-officio secretary of the said board of regents; and it shall be his duty to make and keep a record of the proceedings of all the meetings of the board, and to perform such other

clerical duties as said board may impose upon him, but it is specifically provided that the said chief clerk shall not be entitled to a vote in the transaction of the business of the board. (Id. sec. 3.)

See arts. 4042a-4042c.

Art. 2690d. Terms of appointive members, etc.—[All appointive members of the board of regents shall be appointed for a term of two years,] and shall hold office until their successors are appointed and qualified, [and all vacancies on the board of regents caused by death, resignation or otherwise, shall be filled by appointment as provided in section 2 of this Act (Art. 2690b); provided, that if such vacancies occur when the legislature is not in session the governor shall fill such vacancies by appointment subject to ratification by the senate at the next session of the legislature]. (Id. sec. 4.)

Bracketed parts superseded by arts. 4042a-4042c.

Art. 2690e. Duties of board; nomination of professors, teachers, etc.; obligations to be incurred.—The board of regents shall be charged with the responsibility of the general control and management of all state normal schools for white teachers now established or that may be established in the future in Texas, and shall have authority to erect, equip and repair buildings; to purchase libraries, furniture, apparatus, fuel and other necessary supplies; to employ and discharge presidents or principals, teachers, treasurers and other employés; and to fix the salaries of the persons so employed, it being made the duty of the principal of each of the state normal schools to nominate annually to the board of regents such professors, teachers, officials and assistants as in his opinion will promote the best interests of the institution; provided, that no obligations may at any time be incurred that can not be discharged by the amount of money appropriated by the legislature for such purposes, except as provided in section 7 [Art. 2690g] of this Act. (Id. sec. 5.)

Art. 2690f. To visit normal schools, etc.—It shall be the duty of the board of regents to visit each state normal school under its control and management at least once during each scholastic year for the purpose of making an inspection of its work and gathering such information as will enable said board to perform its duties intelligently and effectively. (Id. sec. 6.)

Art. 2690g. Powers of board.—The board of regents herein provided for shall have authority to determine what departments of instruction shall be maintained in the state normal schools for white teachers, and what subjects of study shall be pursued in each department; providing that said board shall not change departments of instruction provided by law; provided, that no department shall be established for the support of which no provision has been made by the legislature. The board shall also have authority to fix the rate of incidental fees to be paid by students attending the state normal schools for white teachers, and to prescribe rules for the collection of such fees and for the disbursement of such funds. (Id. sec. 7.)

Art. 2690h. Annual report, etc.—The board of regents shall make an annual report to the governor of Texas, showing the general condition of the affairs of each state normal school for white teachers, and making such recommendations as the board may deem best for the future management and welfare of the state normal schools for white teachers. (Id. sec. 8.)

Art. 2690i. Admission of students; certificates and diplomas.—The board of regents shall have authority to determine the conditions on which students may be admitted to the state normal schools, and what grades of certificates may be issued to students attending said schools and on what conditions certificates and diplomas may be issued to students, and by what authority said certificates and diplomas shall be signed. (Id. sec. 9.)

Art. 2960j. Meetings of board; salaries; expenses.—The board of regents shall meet each year in the office of the state superintendent of public instruction, at Austin, Texas, on the first Monday in May, or as soon thereafter as practicable, for the transaction of business pertaining to the affairs of the state normal schools, and at such other times and places as may in the opinion of a majority of the members of the board be deemed necessary for the welfare of the state normal schools. The appointed members of the board of regents shall receive a salary of five dollars per day for the time spent attending the meetings provided for in this Act, and in addition thereto the amount of their traveling expenses, said compensation to be paid to the several members of the board out of the appropriation for the support and maintenance of the state normal schools as the board may direct. (Id. sec. 10.)

Art. 2690k. Appropriations, how disbursed; rules for control and management, etc.; statement to legislature.—All appropriations made by the legislature for the support and maintenance of state normal schools for white teachers, for the purchase of land or buildings for the use of such schools, for the erection or repair of buildings, for the purchase of apparatus, libraries or equipment of any kind or for any other improvement of any kind, shall be disbursed under the direction and authority of the board of regents; and said board shall have power to formulate and establish such rules for the general control and management of the state normal schools for white teachers, for the auditing and approving of accounts, and for the issuance of vouchers and warrants as in their opinion may be necessary for the efficient administration of such schools. Provided, that such board shall file in each house of the legislature, at each of its regular biennial sessions, a statement of the receipts and expenditures of each of said normal schools, showing the amount of salaries paid to the various teachers, contingent expenses, expenditures for improvements, etc., together with such recommendations as the board may see proper to submit relative to the appropriation for said schools to be made by the legislature. (Id. sec. 11.)

Art. 2690l. Laws repealed.—All laws and parts of laws in conflict with any of the provisions of this Act shall be and are hereby repealed. (Id. sec. 12.)

Art. 2690m. Powers to purchase or condemn land for sites.—Power and authority is hereby conferred upon the state normal school board of regents of the state of Texas, to acquire by purchase or condemnation for the use and benefit of any of the state normal schools which now are or may hereafter be, under the control and management of said board, such lands within the counties where any of such schools are now, or may hereafter be located, as said board of regents may deem expedient for sites on which to erect buildings for the use of any of said state normal schools, and for the extension of the campus, and for other purposes necessary in the conduct of any of said normal schools of the state of Texas. (Acts 1913, p. 347, sec. 1.)

Art. 2690n. May request attorney general to file petition for condemnation.—If the said board of regents, in seeking to acquire any lands for any of the purposes aforesaid, and the owner or owners of said land cannot agree for the sale and purchase thereof, the said board of regents shall request the attorney general to file a petition in the district court of the county in which the land sought to be condemned is situated, describing the land and stating the purposes for which it is desired by said board of regents, and praying that the value of such land be ascertained judicially and a decree be entered vesting title thereto in the state of Texas for the use and benefit of said state normal school, for whose benefit the land is sought to be acquired, upon the payment of the value so ascertained. (Id. sec. 2.)

Art. 2690o. Citation; how served and returned, etc.—Upon the filing of any such petition by the attorney-general, the clerk of the court shall issue a citation to the owner or owners of the land as in other civil cases, which citation shall be served and returned as in civil cases, and the cause shall be entered on the civil docket in the name of the state normal school board of regents of the state of Texas as plaintiff, and the owner or owners of the land, as defendant. (Id. sec. 3.)

Art. 2690p. Trial by jury; appeal, etc.—At the first term of court after service of situation [citation] upon the owner, as provided in the preceding section, the cause, unless continued on motion thereof, shall be tried by a jury upon a single issue as to the value of the land, and the decision of such jury shall in all cases be final; provided the parties to said proceeding shall have the right to appeal as in other civil cases. (Id. sec. 4.)

Art. 2690q. May waive jury; trial by court or appraisers, etc.—Nothing in the preceding section contained shall be construed to prevent the parties from waiving a jury and submitting to the court the issue as to the value of the land in question, or from selecting by agreement three persons to ascertain the value of such land, under their oaths and the direction of the court; and the finding and decision of the court or of such persons shall be in all cases be final; provided the parties to said proceedings shall have the right to appeal as in civil cases. (Id. sec. 5.)

Art. 2690r. Decree vesting title; payment of value of land, costs, etc.—When the value of the land has been ascertained in either of the modes above prescribed, and the court is satisfied with such valuation it shall enter a decree vesting the title of such lands in the state of Texas for the use and benefit of the state normal school for whose benefit the land is sought to be acquired, to be held, owned, possessed and enjoyed by the state of Texas, for the purposes hereinbefore stated. No such decree shall be entered until the value of the land so ascertained, together with all reasonable cost and expense of the owner in attending such proceeding, shall be paid to him or into court for his benefit and subject to his order, such costs and expenses to be assessed by the court in which such proceeding is had including reasonable attorneys fee to be fixed by the court. (Id. sec. 6.)

CHAPTER FOUR

SAM HOUSTON NORMAL INSTITUTE

Art. 2691. [Superseded. See Arts. 2690aa–2690m.]

Art. 2692. (3880) Number of students to receive free tuition, etc.—Not less than two students from each senatorial district, and six from the state at large, shall be received in said institution as state students, who shall receive tuition, board and lodging free to the extent of the appropriation that may be made, but in no case shall the current expenses of the institute exceed the sum or sums appropriated. The board of education shall make all necessary rules and regulations for the admission of students and the manner of their appointment or selection. No student shall be received who is not a resident of this state and at least of the age of sixteen years and of good moral character. (Acts of 1879, p. 182, sec. 3.)

See arts. 2690e, 2690g, 2690i.

Art. 2693. (3881) Obligation of students.—All students attending said institute at expense of the state, as provided in the foregoing article, shall sign a written obligation in a book to be kept at the institute for that purpose, binding said students to teach in the public free schools of their respective districts at least one year next after their discharge from the normal school and as much longer than one year as the time of their attendance at said school shall exceed one year, for which teaching said student shall receive the same compensation allowed other teachers of said schools; and said board of education shall make rules by which students may receive certificates of qualification as teachers, authorizing them to teach without further examination. (Id. sec. 4.)

Art. 2694. (3882) Pay students.—The board of education may authorize other students to be admitted into said institute, who shall be required to pay tuition, in whole or in part, as may be prescribed by the board. (Id. sec. 5.)

Art. 2695. Manual training, domestic sciences and agriculture to be taught.—Manual training, domestic sciences and agriculture shall be taught in the institute under the requirements of the state board of education, as prescribed in chapter 10 of this title, and elementary agriculture shall be taught in the summer sessions of said institute for teachers as prescribed in said chapter. (Acts 1909, p. 221, secs. 1 and 3.)

Art. 2696. Diplomas; teachers' certificates.—Diplomas and teachers' certificates

of the Sam Houston normal institute shall authorize the holders to teach in the public schools of Texas as provided in chapter 14 of this title. (Acts 1905, p. 263, sec. 121.)

Art. 2697. [Superseded. See Art. 2690e.]

Art. 2698. (3884) Annual appropriation from available school fund.—It shall be the duty of the comptroller of public accounts, annually, to set apart out of the available free school fund the sum of fourteen thousand dollars for the support of said normal school and place the same to its credit, and which may be drawn upon by the board of education for the current expenses of said school on vouchers audited by said board or approved by the governor and attested by the secretary; and, on filing said vouchers, the comptroller shall draw his warrant on the state treasurer for the same. The board of education is authorized to receive from the agent of the trustees of the Peabody education fund such sums as he may tender for the aid of said institute, and shall disburse the same in such manner as will best subserve the interests of said institute. (Acts 1879, p. 182, sec. 7.)

CHAPTER FIVE

NORTH TEXAS STATE NORMAL COLLEGE

Art. 2699. Name of college; under control of state board of education.—The normal college located at Denton, Texas, shall be known as the North Texas State Normal College. Said college shall be conducted for a session of not less than thirty-six weeks each year, upon improved methods and plans for first class schools designed for the special training of teachers, [and said school shall be under the control and management of the state board of education.] (Acts 1899, p. 74, sec. 2.)

Bracketed parts superseded by arts. 2690aa-2690m.

Art. 2700. [Superseded. See Arts. 2690aa–2690m.]

Art. 2701. Funds set apart for college.—It shall be the duty of the comptroller of public accounts to set apart annually, out of the general revenue, the sum of twenty thousand dollars for the maintenance of said normal school, together with such other sums as may be appropriated by the legislature for defraying a part of the expenses of the students appointed from year to year by senators and representatives, such sum or sums to be placed to the credit of such state normal school, and which shall be paid out upon warrants approved by the governor and attested by the state board of education. The board of education is hereby authorized to receive from the agent of the Peabody education fund such sums as he may tender for the aid of the said state normal school, to be disbursed in such manner as may be prescribed by the donor. (Acts 1899, p. 74, sec. 4. Amended Acts 1901, p. 10.)

Art. 2702. Qualifications of students; shall be obligated to teach.—Tuition in said normal shall be free to all students who are at least sixteen years of age, of good moral character, and who wish to prepare themselves for the profession of teaching. All state students attending such college shall sign a written obligation, in a book to be kept for that purpose, binding said students to teach in the public schools of this state for as long a period of time as they attend said college, for which teaching they shall receive the same compensation as other teachers; [and said board of education shall make rules by which students may receive diplomas and certificates as qualifications as teachers, authorizing them to teach without further examination.] (Acts 1899, p. 74, sec. 4. Amended Acts 1901, p. 10.)

Bracketed parts superseded by art. 2690i.

Art. 2703. [Superseded. See Arts. 2690f, 2690h.]

Art. 2704. [Superseded. See Arts. 2690aa–2690m.]

Art. 2705. Manual training, etc., to be taught.—Manual training, domestic sciences and agriculture shall be taught in the college under the requirements of the [state board of education,] as prescribed in chapter 10 of this title, and elementary agriculture shall be taught in the summer sessions of said college for teachers as prescribed in said chapter. (Acts 1909, p. 221, secs. 1 and 3.)

Bracketed parts superseded by art. 2690i.

Art. 2706. Diplomas; teachers' certificates.—Diplomas and teachers' certificates of the North Texas state normal college shall authorize the holders to teach in the public schools of Texas as provided in chapter 14 of this title. (Acts 1905, p. 263, sec. 121.)

CHAPTER SIX

SOUTHWEST TEXAS STATE NORMAL SCHOOL

Art. 2707. Name of school; under control of state board of education.—The institution established at San Marcos, in Hays county, Texas, shall be known as the Southwest Texas state normal school, [and the same shall be under the management and control of the state board of education.] (Acts 1899, p. 175, sec. 1; Acts 1901, p. 33, sec. 1.)

Bracketed parts superseded by art. 2690e.

Art. 2708. Admission of pupils; same rules as in S. H. N. I.—[The board of education shall have the same power and control as to admission of the pupils to the Southwest Texas normal school as it has to the admission of the pupils to the Sam Houston normal institute,] and the rules and regulations provided by law for the government of the Sam Houston normal institute shall apply in all respects so far as applicable to the government and control of the Southwest Texas normal school. (Acts 1901, p. 33, sec. 2.)

Bracketed parts superseded by art. 2690i.

Art. 2709. Local board of trustees, duties and powers.—[The state board of education shall appoint a local board of three trustees for the said Southwest Texas normal school, who shall be residents of the city of San Marcos, and who shall perform such duties as may be required by the state board of education, and such other duties as are required by law of the local board of the Sam Houston normal institute, and shall receive the same compensation; and the state board of education shall exercise all of the powers and control over the Southwest Texas normal school that said board is authorized by law to exercise over the Sam Houston normal institute] and the salaries of teachers shall never exceed what is al-

lowed by law for teachers in the Sam Houston normal. (Id. sec. 3.)

Bracketed part superseded by arts. 2690aa-2690m.

Art. 2710. Manual training, etc., to be taught.—Manual training, domestic sciences and agriculture shall be taught in the school [under the requirements of the state board of education, as prescribed in chapter 10 of this title,] and elementary agriculture shall be taught in the summer sessions of said school for teachers as prescribed in said chapter. (Acts 1909, p. 221, secs. 1 and 3.)

Bracketed parts superseded by arts. 2690aa-2690m.

Art. 2711. Diplomas; teachers' certificates.—Diplomas and teachers' certificates of the Southwest Texas state normal school shall authorize the holders to teach in the public schools of Texas, as provided in chapter 14 of this title. (Acts 1905, p. 263, sec. 121.)

CHAPTER SEVEN

WEST TEXAS STATE NORMAL COLLEGE

Art. 2712. Name and location.—This college shall be known as the West Texas state normal college, and shall be located at Canyon City, Randall county, Texas. (Acts 1909, p. 235.)

Art. 2713. [Superseded. See Arts. 2690aa–2690m.]

Art. 2714. Powers and duties of state board as to.—[The state board of education shall name the departments to be established in said West Texas state normal college, and shall elect the president, professors, instructors and other employés necessary for the management of the same, and shall fix the salaries and compensation of those employed] provided, that the said West Texas state normal college shall be strictly first class in every particular and not below the standards set for the other normal schools of this state; [provided, further, that the state board of education shall have authority to regulate the fees required of students and the salaries allowed all persons in any manner employed in connection with the said normal school.] (Id. sec. 8.)

Bracketed parts superseded by arts. 2690aa-2690m.

Art. 2715. Same.—[The state board of education shall name the fees, if any are to be paid by students, and shall fix the requirements for entrance into said normal college, and shall prescribe the conditions of certification and graduation of students of said normal college,] provided, that the requirements to obtain certificates, the length of time they shall be valid and the conditions of cancellation of same, shall be those prescribed for other certificates of the same grades issued by the state. (Id. sec. 9.)

Bracketed part superseded by arts. 2690e, 2690l.

Art. 2716. Same rights as to appointment of students, etc., as other normal schools.—Students shall be appointed to said West Texas state normal college by the same authorities and in the same way that students are appointed to other normal schools in this state; and such students shall share equally with students appointed to other normal schools in any scholarship funds that may be appropriated to the normal schools of this state, for the year 1910–11, and any subsequent year or years. (Id. sec. 13.)

Art. 2717. Manual training, etc., to be taught.—Manual training, domestic sciences and agriculture shall be taught in the school under the requirements of the [state board of education,] as prescribed in chapter 10 of this title, and elementary agriculture shall be taught in the summer sessions of said school for teachers as prescribed in said chapter. (Acts 1909, p. 221, secs. 1 and 3.)

Bracketed parts superseded by arts. 2690e, 2690l.

CHAPTER SEVEN A

SOUTH TEXAS STATE NORMAL COLLEGE AND STEPHEN F. AUSTIN STATE NORMAL COLLEGE

Art. 2717¼a. Colleges created.—That two State Normal Schools for the education of white teachers are hereby established at places in Texas located as follows: One in the territory composed of all of that part of the State of Texas lying south of the twenty-ninth parallel of latitude with the counties of Kinney, Uvalde and Medina added, and the name of said Normal School shall be "South Texas State Normal College;" the other in the territory composed of all that part of the State of Texas lying east of the ninety-sixth meridian, and the name of said Normal College shall be "Stephen F. Austin State Normal College." (Acts 1917, ch. 191, sec. 1.)

Art. 2717¼b. When ready for reception of students.—Said two Normal Schools shall be created and ready for reception of students on October 1st, 1918. (Id. sec. 2.)

Art. 2717¼c. Locating committee; local claims and donations.—The Governor of Texas, the State Superintendent of Public Instruction and the State Normal School Board of Regents are hereby designated a locating committee to locate the said two normal colleges; provided that if any one member of this said committee resides within the territory in which either of these normals is to be located that member shall not take part in the locating of said normal in the territory in which he lives. The majority of said committee shall constitute a quorum for the transaction of business, and no member of said committee who has material or pecuniary interest of any kind in any town or place offered for the location of said normals shall be qualified or authorized to act on said committee. Provided that if any member of said locating board shall die, resign or refuse to act before both of said Normal Colleges are located, the Governor shall be, and is hereby authorized and empowered to appoint any person or persons on said committee, who shall become members thereof, and are hereby authorized and empowered to assist the remaining members of said committee in the locating of said Normal Schools.

In considering the claims of any place that may apply for the location of either of said colleges, said committee shall consider the healthfulness, accessibility, general physical conditions and environments, together with the general moral tone, educational system and social qualities of the people of said place. No donation or bonus of any kind or character shall be considered by said locating committee of either of said colleges, except such donations of land as may be offered by any place as a site for the building or buildings of said colleges, and in no event shall a building site of less than fifty (50) acres be

considered or accepted. After the passage of this Act, any city or town within either of said Normal School Districts named in Section One of this Act [Art. 2717¼a], desiring the location of said college in that respective district, may file its application with the chairman of said locating committee, together with the description of the land it has to offer, requesting the committee to view the site said city or town has to offer; and it shall be the duty of said committee to visit said cities or towns making such requests, and to view the sites they have to offer, and as soon as practical after said committee shall have viewed all sites offered, such locating committee shall meet and select a location for each of said normal colleges; provided that said locating committee shall locate said normal colleges not later than August 1st, 1917, and for the purpose of traveling expenses and other expenses of said Board, including clerk hire, there is hereby appropriated out of the funds of the treasury, not otherwise appropriated, the sum of one thousand ($1,000.00) dollars. Such committee may employ a clerk at a salary not to exceed one hundred ($100.00) dollars per month, for such services as may be needed. Said Committee, as soon as the locations are made for said colleges, shall make a full report of all of its actions in carrying out the provisions of this Act in regard to location, including an itemized statement of all moneys paid out, and also an itemized descriptive list of all donations of land made and accepted for said normal colleges. (Id. sec. 3.)

Art. 2717¼d. Duties of Attorney General.—It shall be the duty of the Attorney General of the State of Texas, to examine and approve all abstracts of title, to be furnished by the owner, to any and all real estate, that may be donated either for the site for the buildings of said colleges or for any other purpose, and the abstracts of the title to the real estate of the building sites of such colleges which may be selected by said locating committee shall be so examined by the said Attorney General, and approved by him before any location is finally made; provided, however, that nothing herein shall prevent said locating committee from selecting a location and announcing same conditioned upon the approval of the title thereto, by the Attorney General. After examination and approval of the title to the lands donated for said colleges the Attorney General shall cause to be prepared and duly executed proper deed or deeds of conveyance to said land selected, which deed or deeds shall be held in escrow by the State Treasurer conditioned upon the erection and opening of said colleges. (Id. sec. 4.)

Art. 2717¼e. Construction of buildings.—As soon as funds are available under proper appropriation, the State Normal School Board of Regents shall proceed to secure plans and specifications for a building or buildings and equipment of each of said colleges, which building or buildings and equipment of each college shall be sufficient to accommodate at least four hundred pupils, and to let the contract for such building or buildings and equipments to the lowest responsible bidder or bidders; said State Normal School Board of Regents shall meet October 1st, 1917, or as soon thereafter as practical for the purpose of receiving said plans and specifications for said building or buildings and equipments to be completed on or before October 1st, 1918, on which date the said colleges shall be opened and ready for the reception of students. (Id. sec. 5.)

Art. 2717¼f. Control and regulations of colleges.—The control and regulation of said colleges is hereby vested in the State Normal School Board of Regents under the law now in force governing said Board, or which may hereafter be enacted, and such Board of Regents shall meet as soon as practical after the first day of January, 1918, and make rules and regulations for the organization and maintenance of said colleges, and to elect such officers and teachers and instructors and employés as may be necessary for properly carrying out the work of said colleges. (Id. sec. 6.)

Art. 2717¼g. Appropriations; disbursements.—The sum of one hundred and fifty thousand ($150,000.00) dollars is hereby appropriated out of any funds in the State Treasury not otherwise appropriated, to be expended in the payment of accounts legally contracted in constructing and equipping the building or buildings of said South Texas State Normal College; and the sum of one hundred and fifty thousand ($150,000.00) dollars is hereby appropriated out of any funds in the State Treasury not otherwise appropriated, to be expended in the payment of accounts legally contracted in constructing and equipping the building or buildings of said Stephen F. Austin State Normal College; said accounts to be paid upon warrants issued by the Comptroller of Public Accounts after the accounts shall have been audited and approved by the State Normal School Board of Regents, and the sum of thirty thousand ($30.000.00) dollars is hereby appropriated out of any funds in the State Treasury not otherwise appropriated, for the maintenance of said South Texas State Normal College for the fiscal year ending August 31, 1919; and the sum of thirty thousand ($30.-000.00) dollars is hereby appropriated out of any funds in the State Treasury not otherwise appropriated, for the maintenance of said Stephen F. Austin Normal College for the fiscal year ending August 31, 1919; and the Legislature shall, after the taking effect of this Act, from time to time, and after the fiscal year ending August 31st, A. D. 1919, make such appropriation for the maintenance and government of said colleges as may be necessary, which shall be paid out upon vouchers drawn in such manner as may be approved by the laws now in force governing the State Normal School Board of Regents, or which may hereafter be enacted. (Id. sec. 7.)

CHAPTER SEVEN B

EAST TEXAS NORMAL COLLEGE

Art. 2717½. Purchase of college.—That the State Normal School Board of Regents is hereby authorized and empowered to purchase the aforesaid property of said East Texas Normal College insofar as the appropriations herein made provides for a pur-

chase, in the event said Board shall find the facts stated herein substantially true, and that said property including said five acres of land and brick dormitory thereon, is reasonably worth the said sum of $175,000.00. But if in the opinion of said Board said property is not reasonably worth said sum of $175,000.00, then they are authorized in their discretion to purchase said property by paying therefor such pro rata part of $80,000.00 as the value of said property, as they may determine it, shall bear to said sum of $175,000.00, provided, that said citizens of Commerce shall donate to the state of Texas, for and as part of said Normal school said five acres of ground and the city of Commerce shall enter into a valid contract to furnish free of charge to the state for said Normal school all water used by said institution. In the event said purchase of said property, said Board shall cause the title thereto to be examined by the Attorney General, and if approved, then shall take deeds covering all of said land and bill of sale covering said Library and other personal property belonging to said East Texas Normal College, in which deeds and bills of sale, said property shall be conveyed to the Governor of the State of Texas, and his successors in office for the use and benefit of the State of Texas, and said school. (Acts 1917, ch. 195, sec. 1.)

Art. 2717½a. Creation of college; name.—There is hereby created a normal school to be one of the State Normals of this state to be located at Commerce, in Hunt County, Texas, and to consist in original equipment of the properties and buildings, and furnishing and equipment to be purchased as herein provided from the owners of the East Texas Normal College heretofore referred to. (Id. sec. 2.)

Art. 2717½b. Management and control.—Said normal college shall be conducted as the other State Normals of this State are conducted; shall be under the management and control of the State Normal School Board of Regents, and all laws of this state applicable to State Normal schools, both in creating rights and prescribing limitations, and in all other respects shall be applicable to the said East Texas Normal College. (Id. sec. 3.)

Art. 2717½c. Expenditure of appropriation.—The appropriation herein provided shall not be paid over in the consummation of the purchase of the properties here referred to prior to the 31st day of August A. D., 1918, nor shall the properties referred to become the property of the State until the deeds are received after the date above named and the money paid therefor. It is further provided, that the said Board, after the purchase of said property as aforesaid, shall have authority to permit the school to continue under its present management and as a private institution under the direction of the State Normal School Board of Regents; and the citizens of Commerce obligate themselves to pay for the maintenance of said institution under its present management until the 36th Legislature makes an appropriation for its support and maintenance, at which time the Board of Regents shall then take complete charge and operate the same as the State's school. (Id. sec. 4.)

CHAPTER SEVEN C

SUL ROSS NORMAL COLLEGE

Art. 2717¾. College established; donation of site, etc.—That there shall be established at Alpine, in Brewster County, Texas, a normal school to be known as "Sul Ross Normal College," provided, that citizens of Brewster County shall, within sixty days after this Act takes effect, convey or cause to be conveyed to the State of Texas, by an immediate and perfect title, a building site, to be located somewhere within three miles of the county court house of said county, which tract of land shall be located and designed by the State Normal School Board of Regents of the State of Texas. No donation or bonus of any kind or character shall be considered by said State Normal School Board of Regents, except such donations of land as may be offered as a site for the buildings or building of said college, and such buildings as may be located on the land donated, and in no event shall a building site of less than one hundred (100) acres be considered or accepted, provided, that if the donation and proposition mentioned herein is not fully complied with by the citizens of Brewster County to the satisfaction of the State Normal School Board shall be open to such other places in the Twenty-fifth Senatorial District as the State Normal School Board of Regents may deem most satisfactory and advantageous to the State. (Acts 1917, ch. 197, sec. 1.)

Art. 2717¾a. Duties of Attorney General as to examination and approval of title.—It shall be the duty of the Attorney General of the State of Texas, to examine and approve all abstracts of title, to be furnished by the owner of any and all real estate that may be donated, either for a site for the buildings or said college or for any other purpose in connection with the establishment of said school, the abstracts of title to the real estate of the building site of said college which may be selected by said State Normal School Board of Regents shall be so examined by the Attorney General and approved by him before any location is finally made; provided, however, that nothing herein shall prevent said State Normal School Board of Regents from selecting a location and announcing same conditioned upon the approval of the title thereto, by the Attorney General. After examination and approval of the title to the lands donated for said college, the Attorney General shall cause to be prepared and duly executed proper deed or deeds of conveyance to said lands selected, which deed or deeds shall be held in escrow by the State Treasurer conditioned upon the erection and opening of said college. (Id. sec. 2.)

Art. 2717¾b. Erection of buildings.—As soon as funds are available under proper appropriations, the State Normal School Board of Regents shall proceed to secure plans and specifications for a building or buildings, and equipment of said State Normal College, which building or buildings and equipment shall be sufficient to accommodate at least five hundred pupils, and to let the contract for such building or buildings and equipments to the lowest responsible bidder or bidders; said State Normal School Board of Regents shall meet October 1, 1917, or as soon thereafter as practical for the purpose

of receiving said plans and specifications for said building or buildings and equipments to be completed on or before October 1, 1918, on which date the said Sul Ross Normal College shall be opened and ready for the reception of Students. (Id. sec. 3.)

Art. 2717¾c. Control and regulation of college.—The control and regulation of said Sul Ross Normal College is hereby vested in the State Normal School Board of Regents under the laws now in force governing said Board, or which may hereafter be enacted, and such Board of Regents shall meet as soon as practical after the first day of January, 1918, and make rules and regulations for the organization and maintenance of said college, and to elect such officers and teachers and instructors and employés as may be necessary for properly, carrying out the work of said college. (Id. sec. 4.)

Art. 2717¾d. President of college.—It shall be the duty of the State Normal School Board of Regents to elect a president of the Sul Ross Normal College at any time after sixty days after the location of such Normal College shall have been made; provided, that he shall be elected at least six months before the date fixed for the opening of said normal college; and he shall draw his salary from the date of his acceptance of said election. (Id. sec. 5.)

Art. 2717¾e. Appropriations.—The sum of two hundred thousand ($200,000) dollars is hereby appropriated out of any funds in the State Treasury, not otherwise appropriated, to be expended in the payment of accounts legally contracted in constructing and equipping the building or buildings of the Sul Ross Normal College; said accounts to be paid upon warrants issued by the Comptroller of Public Accounts after the accounts shall have been audited and approved by the State Normal School Board of Regents, and the sum of forty thousand ($40,000) dollars is hereby appropriated out of any funds in the State Treasury, not otherwise appropriated, for the maintenance of said Sul Ross Normal College for the fiscal year ending August 31, 1919, and for the payment of the president's salary for the year August 31, 1918; and the Legislature shall, after the taking effect of this Act, from time to time after the fiscal year ending August 31, A. D. 1919, make such appropriations for the maintenance and government of said Sul Ross Normal College as may be necessary which shall be paid out upon vouchers drawn in such manner as may be approved by the laws now in force governing the State Normal School Board of Regents, or which may hereafter be enacted. (Id. sec. 6.)

CHAPTER EIGHT

PRAIRIE VIEW STATE NORMAL AND INDUSTRIAL COLLEGE

Art. 2718. (3885) Under what management.—The normal school for colored teachers at Prairie View shall be under the control and supervision of the board of directors of the agricultural and mechanical college, and said board of directors shall in all respects have the same powers and perform the same duties in reference to this college as they are clothed with in reference to the agricultural and mechanical college, located in Brazos county. (Acts 1879, p. 181.)

Art. 2719. (3886) How many to be admitted.—Said board of directors shall admit one student from each senatorial district, who shall be appointed by the senator representing said district, and one student from each representative district, who shall be appointed by the member of the legislature representing said district; provided, that, where there are more than one representative in a district, each representative of such district shall appoint one student, said students to be taken from the colored population of this state, which said students shall not be less than sixteen years of age at the time of their admission; provided, the said school shall hereafter be called and known as Prairie View state normal and industrial college. (Id. sec. 2. Amended Acts 1899, p. 325.)

Art. 2720. (3887) Duties of board.—Said board shall appoint a principal teacher and such assistant teacher or teachers of said school and such other officers of said school as may be necessary, and shall make such rules, by-laws and regulations for the government of said school as they may deem necessary and proper, and shall regulate the course of study and the manner of performing labor to be performed by the students, and shall provide for the board and lodging and instruction to the students, without pecuniary charge to them, other than that each student shall be required to pay one-third of the cost of said board, lodging and instruction, quarterly, in advance; and said board of directors shall regulate the course of discipline necessary to enforce the faithful discharge of the duties of all officers, teachers, students and employés of said school, and shall have the same printed and circulated for the benefit of the people of the state and the officers, teachers, students and employés of said school. (Id. Amended Acts 1899, p. 325.)

Art. 2721. (3888) Admissions, obligations of students, etc.—The board of directors may provide for receiving such a number of students of both sexes as, in the judgment of said board, the school can best accommodate, and shall require all students admitted to said school to sign a written obligation, in a proper book kept for that purpose, binding said student to teach in the public free schools for the colored population of their respective districts at least one year next after their discharge from the normal school, and as much longer than one year as the time of their connection with said normal school shall exceed one year; for which teaching said discharged students shall receive the same rate of compensation allowed other teachers of such schools with like qualifications. (Id.)

Art. 2722. Four years' course of studies to be maintained.—There shall be maintained a four-year college course of classical and scientific studies at said college, to which graduates of the normal course shall be admitted without examination, and to which others may be admitted after having passed a satisfactory examination in the branches comprised in the normal course; provided, that no state student shall be admitted to the privileges of the said course; and provided, further, that the diploma conferred on the completion of the said course shall entitle the holder without other or further examination to teach in any of the col-

ored public free schools of the state. (Acts 1901, p. 35.)

Art. 2723. (3889) Appropriations for.—It shall be the duty of the comptroller of public accounts annually to set apart out of the interest accruing from the university fund, appropriated for the support of public free schools, the sum of six thousand dollars for the support of said normal school, and place said fund to the credit of said normal school, and the same may be drawn by the board of directors on vouchers audited by the board or approved by the governor and attested by the secretary; and, on filing such vouchers, the comptroller shall draw his warrant on the state treasury for the same from time to time as the same may be needed. (Acts 1879, p. 181; Id. sec. 4.)

Art. 2724. (3890) Rules for teacher's certificate without further examination.—The board shall make rules by which students can obtain certificates of qualification as teachers that will entitle them to teach without other or further examination. (Id. sec. 1.)

CHAPTER EIGHT A

JOHN TARLETON COLLEGE OF STEPHENVILLE, ERATH COUNTY, TEXAS

Art. 2724a. Board of regents, how known.—Within thirty days after the passage of this Act, there shall be appointed a board of regents, to be known as the board of regents of John Tarleton College of Stephenville, Erath county, Texas, said board to be composed of six members, selected and appointed as provided in section 2 [Art. 2724b] of this Act. (Acts 1913, p. 49, sec. 1.)

By Act Feb. 20, 1917, ch. 33, the "John Tarlton College, located at Stephenville, in Erath county," is made a junior agricultural college, to be known as the John Tarlton Agricultural College. This article, and arts. 2724b-2724i, are probably superseded by said Act Feb. 20, 1917, ch. 33. See ante, arts. 2676¼-2676¼e.

Art. 2724b. Board, how appointed; qualifications.—Within thirty days after this Act shall go into effect, the governor of the state of Texas, the superintendent of public instruction of the state of Texas, and the county judge of Erath county, Texas, shall appoint six persons of good education and high moral character, known to be friendly to public education in the state of Texas, and to this institution, resident citizens of Erath county, Texas, who shall constitute the board of regents for the John Tarleton College of Stephenville, Erath county, Texas. (Id. sec. 2.)

Art. 2724c. Terms of members of board; subsequent appointments; vacancies.—The members of the first board of regents provided for in sections 2 [1] and 3 [2] of this Act [Arts. 2724a, 2724b] shall be appointed for, and shall serve for, the following terms: Two of them until December 1, 1914, or until their successors are appointed and qualified; two of them until December 1, 1916, or until their successors are appointed and qualified; and two of them until December 1, 1918, or until their successors are appointed and qualified. And regularly every two years thereafter, beginning December 1, 1914, or as soon thereafter as practicable, there shall be appointed two members of said board, as provided for in sections 2 and 3 hereof, who shall hold their office for a period of six years, and until their successors are appointed and duly qualified. All vacancies in said board, caused by death, resignation, removal from state, county, or otherwise, shall be filled by appointment as provided for in section 2 [Art. 2724b] hereof, which special appointment shall continue only until the expiration of the regular term for which the predecessor of such special appointee would have held. (Id. sec. 3.)

Art. 2724d. Duties and powers of board.—Said board of regents shall be charged with the responsibility of the general control and management of said institution, its educational interests, funds, endowments and properties of every description whatsoever, that have heretofore been vested in and controlled and managed by the original board provided for in said will; and shall have authority to erect, equip and repair buildings, purchase libraries, apparatus, fuel and all other necessary supplies incident to the conduct of said institution; to employ and discharge presidents or principals, teachers and other employés, and to fix the salaries of all persons employed and to do any and all other acts necessary to the conduct and promotion of said institution as provided for by the terms of said will. (Id. sec. 4.)

Art. 2724e. Further powers.—Said board of regents herein provided for shall have authority to determine what curriculum of instruction shall be maintained in said institution and what subjects of study shall be pursued therein, and shall have authority to fix the rate of tuition and all incidental fees to be paid by the students; and to prescribe and create all rules governing beneficiaries attending said institution; and shall have authority to determine the conditions on which students may be admitted to the same, the grade and character of certificates or diplomas that may be issued to students, and on what conditions they may be issued and by what authority they may be signed. (Id. sec. 5.)

Art. 2724f. Funds and property; president; secretary and treasurer; bond; seal; other powers, etc.—The said board of regents herein provided for, shall be charged with the control, management and investment of the funds, endowments and properties of said institution now held by it, or that may hereinafter be acquired by it; and it is hereby authorized to select one of its number president, and another of its number secretary and treasurer; said secretary and treasurer to have immediate custody and control of the books, records, moneys, notes, bonds and funds of said institution, and shall be required to give bond payable to the governor of the state of Texas, in such amount as may be fixed by said governor, for the faithful discharge of his duties and the safe keeping of said funds. Said board shall be authorized and is hereby invested with the power to adopt a seal and receive and accept title to all properties hereafter coming into the possession of said institution, by conveyance, foreclosure, gift, devise or otherwise, and over said seal and the signature of the president and secretary and

treasurer, shall be authorized to contract and make all conveyances of real estate for said institution. Said board of regents shall be clothed with power to sue and be sued, plead and be impleaded, and to maintain all actions at law and in equity in the interest of and in the name of said institution; and to defend all suits and actions brought against the same; and shall have power further, to make all contracts incident and pertaining to said institution, its properties or its funds, and the investment hereof. (Id. sec. 6.)

Art. 2724g. Meetings of board; compensation; expenses, etc.—The said board of regents herein provided for shall meet at such times and places at Stephenville, Texas, in said city as may be determined upon by its president, who shall preside over its deliberations. The appointed members of said board shall serve without salary or remuneration, but shall be paid their actual and necessary traveling expenses when on business for said institution away from their respective homes. All of which expenses shall be paid upon the order of the president of the board attested by the secretary and treasurer. (Id. sec. 7.)

Art. 2724h. Reports, etc.—Said board of regents shall make an annual report on the first Monday in July of each and every year to the governor of the state of Texas, the superintendent of public instruction of the state of Texas, and the county judge of Erath county, Texas, and at such other times as said officers may require, showing the general condition of the affairs of said institution, an accurate statement of the conditions of the permanent fund of said institution and the available fund of said institution, and a statement of all expenses, collections and disbursements of every character whatever, which annual report shall be in writing and subscribed and sworn to by the president and the secretary and treasurer of said board. (Id. sec. 8.)

Art. 2724i. Authority, management, control and title vested in board, etc.—All authority, management, control and title vested by the will of the said John Tarleton, deceased, in said governor of the state of Texas, the superintendent of public instruction of the state of Texas, and the county judge of Erath county, Texas, and their successors in office, to the moneys, funds and properties of the John Tarleton college and the management and control of the said institution is hereby divested out of the said original board, composed of the governor of the state of Texas, the superintendent of public instruction of the state of Texas, and the county judge of Erath county, Texas, and is hereby vested in the board of regents herein provided for and said board of regents is hereby clothed with all powers that were originally by said will under the laws of this state vested in said officers of this state, and their successors, and said board of regents is hereby authorized and empowered to hold the title to the properties of said institution which now belong to it, or which may be hereafter acquired by it, as fully and as completely as said original board could have done under the terms and powers conferred by said will and the laws of this state. (Id. sec. 9.)

CHAPTER NINE

AVAILABLE PUBLIC FREE SCHOOL FUND

Art. 2725. What shall constitute school fund.—Besides other available school funds provided by law, one-fourth of all occupation taxes and one dollar poll tax levied and collected for the use of public free schools, exclusive of the delinquencies and cost of collection, the interest arising from any bonds or funds belonging to the permanent school fund, and all the interest derivable from the proceeds of sales of land heretofore set apart for the permanent school fund, which have hitherto, or may hereafter, come into the state treasury, all moneys arising from the lease of school lands, and such an amount of state tax, not to exceed twenty cents on the one hundred dollars valuation of property, as may be, from time to time, levied by the legislature, shall constitute the available school fund, which fund shall be apportioned annually to the several counties of this state, according to the scholastic population of each, for the support and maintenance of the public free schools. (Acts 1905, p. 263, sec. 10.)

Art. 2726. County school fund; income from lease of land.—Besides other available school funds provided by law, the proceeds of any leasing or renting of lands, heretofore granted by the state of Texas to the several counties thereof for educational purposes, shall be appropriated by the commissioners' courts of said counties in the same manner as is provided by law for the appropriation of the interest on bonds purchased with the proceeds of the sale of such lands; and the proceeds arising from the sale of timber on said lands, or any part thereof, shall be invested in like manner as the constitution and law requires of proceeds of sales of such lands; and it shall be unlawful for the commissioners' court of any county to apply said proceeds, or any part thereof, to any other purpose, or to loan the same, except as above required. (Id. sec. 12.)

Art. 2726a. State aid appropriation.—For the purpose of promoting the country public school interests of the State and of aiding the people in providing adequate school facilities for the education of their children, $1,000.00, or such part thereof as may be necessary, is hereby appropriated out of any money in the State Treasury not otherwise appropriated for the school year ending August 31, 1918, and $1,000,000, or such part thereof as may be necessary, for the year ending August 31, 1919, to be used in accordance with the provisions of this Act in maintaining country schools. (Acts 1917, ch. 80, sec. 1.)

Art. 2726b. Distribution of aid.—The State Board of Education is hereby authorized and directed to supplement the State apportionment to any district coming within the provisions of this Act with an amount not more than $500 in any one year, the amount to be determined by the Board upon the merits and needs of the school.

All applications for State aid under this Act shall be made upon the form prescribed by the State Board of Education and furnished by the State Department of Education. Before any application is presented to the State Board of Education for its con-

sideration, the State Superintendent shall make careful investigation regarding its completeness, and his certificate that each district applying for State aid meets substantially the requirements of the law shall be required by the Board before aid in any amount is granted. (Id. sec. 2.)

Art. 2726c. Standards and requirements.—Any school district meeting the following standards shall be entitled to receive State aid:

(1) Location. Each such school receiving State aid shall be well located on a plot of ground not less than one acre in extent, properly drained and suitably laid out.

(2) School House. There shall be provided a suitable school house, erected in accordance with the school house building law of Texas, or meeting substantially the requirements thereof.

(3) Equipment. Each such school shall be provided with necessary desks, seats and blackboards; and with such library, books, maps and globes as recommended in the State course of study, as in the opinion of the State Superintendent said school may be able to purchase.

(4) Teachers. Teachers employed in country schools shall furnish to the State Superintendent satisfactory evidence of professional training to their credit, and all teachers must render efficient service of a high grade.

(5) Attendance. In order to receive State aid, the school district must not have a scholastic enrollment of more than three-hundred pupils, exclusive of transfers, and the attendance record of all such districts for the previous year must not be less than fifty per cent of the entire time that the school was in session, and said district must maintain an attendance record during the year in which it receives such aid of at least seventy-five per cent, unless it can be shown to the satisfaction of the State Board of Education that the non-attendance is due to one or more of the following causes: (1) attendance elsewhere; (2) completion of the course; (3) extreme poverty of the family; (4) physical or mental incapacity; (5) lack of transportation facilities beyond a two and one-half mile limit; and provided that no school receiving aid under the provisions of this Act shall be located in a town or city having more than one thousand population according to the last Federal census.

(6) Local Tax. The school district must have levied and be collecting a local school tax of not less than fifty cents on the one hundred dollars valuation; and that in no case shall the assessed valuation be less than the valuation of the county assessor, as a requirement before the district can derive benefits from this fund; provided, that for the school year 1917–1918 any district which having voted the required tax, whether being collected for that year or not, shall be entitled to receive the benefits of this Act; provided, that the State Board of Education shall, when it is necessary to extend the term of school, for one time only, apportion any amount not to exceed two hundred dollars, whether any tax has been levied or not, and State aid may be continued upon condition that the district levy and collect the required local tax.

(7) Subjects. Each country school shall teach the common school subjects as prescribed by law. (Id. sec. 3.)

Art. 2726d. General power of State Board of Education.—The State Board of Education shall be authorized and it shall be their duty to make such rules and regulations, not inconsistent with the terms of this Act, as in its opinion may be necessary to carry out the provisions and intentions of this Act. (Id. sec. 4.)

Art. 2726e. Duties of Superintendent of Public Instruction.—It shall be the duty of the State Superintendent of Public Instruction to go in person or to send one of the rural school supervisors authorized by this Act to assist the school communities who may desire the privileges of this Act in their efforts to meet the necessary requirements in order that they may participate in the distribution of the funds herein appropriated. Before approving any application he shall make a thorough investigation in person or through his representative of the grounds, buildings, equipment and possibilities of each school applying for State aid by appropriation from the State Board of Education. (Id. sec. 5.)

Art. 2726f. Second aid.—Before State aid shall be granted a second time to the same district, it shall be necessary that all reports as required of the school officials of said district shall have been received and approved; that the State Superintendent of Public Instruction or one of the rural school supervisors shall have visited said district and the State Superintendent of Public Instruction has advised the State Board of Education that in his judgment the school officials of such district have made diligent efforts to meet the requirements and standards as set forth in this Act, that the district receiving State aid has made satisfactory progress under existing conditions, and that, in his opinion further aid would prove a good and desirable investment for the State in promoting the educational interests of the people of such district, provided that no school shall be granted State aid a second time until all applications on file for first aid from schools entitled to aid under this Act shall have been acted upon. (Id. sec. 6.)

Art. 2726g. Warrants and reports.—Warrants for all money granted under the provisions of this Act shall be transmitted by the State Superintendent of Public Instruction to treasurers or depositories of school districts to which State aid is granted in the same manner as warrants for State apportionment are now transmitted, and it shall be the duty of all treasurers or depositories to make annually itemized reports under oath to the State Superintendent of Public Instruction of the expenditure of all money granted under the provisions of this Act. (Id. sec. 7.)

Art. 2726h. Apportionment privileges.—Country schools shall be entitled to share in the distribution of State and county available school funds, and in all other school funds in the same manner as other school districts; and in case high school grades are maintained the community schools shall still be entitled to participate in the distribution of any State aid that may be extended by the Legislature of Texas for vocational or industrial purposes to high

schools of the State, though it accept the provisions of this Act. (Id. sec. 8.)

Art. 2726i. Rural school supervisors.—For the purpose of carrying out the provisions of this Act in a business like manner and in order that State aid may be administered judiciously to the schools of the State, the State Board of Education is hereby authorized to appropriate four thousand dollars annually out of the appropriation herein provided to pay the salaries to rural school supervisors, who shall be appointed by the State Superintendent of Public Instruction because of their special fitness to help, aid and assist rural communities in meeting the requirements and maintaining the standards set forth in the provisions of this Act; and the State Board of Education is further authorized and directed to appropriate four thousand dollars additional, or such part thereof as may be necessary, out of the appropriation provided for in this Act to defray the traveling expenses of the rural school supervisors in making personal visits to communities applying for State aid and in performing the supervisory duties made incumbent upon the Department of Education by the provisions of this Act. (Id. sec. 9.)

Art. 2726j. Conflicting laws and opinions.—All laws or parts of laws in conflict with this Act are hereby repealed, and in case it is held that any section or provision of this Act is unconstitutional, such ruling shall not impair other parts and provisions of this Act. (Id. sec. 10.)

CHAPTER NINE A

STATE AID

Art. 2726¼. Appropriation.—For the purpose of promoting the public school interests of rural schools and those of small towns, and of aiding the people in providing adequate school facilities for the education of their children, $2,000,000.00, or such part thereof as may be necessary, is hereby appropriated out of any money in the State Treasury not otherwise appropriated for the school year ending August 31, 1920, and $2,000,000.00, or such part thereof as may be necessary, for the year ending August 31, 1921, to be used in accordance with the provisions of this Act in aiding rural schools and those of small towns. (Acts 1919, ch. 65, sec. 1.)

Art. 2726¼a. Schools entitled to aid.—State aid under the provisions of this Act may be distributed in such a way as to assist all schools of not more than 500 scholastic enrollment to maintain the school for such length of term, not to exceed nine months, as may be desired by the district board of trustees, the granting of such aid to be subject to the following conditions:

(1) A Common School District receiving this aid must not contain less than nine square miles.

(2) A Common School District or Independent School District receiving this aid must have had an average attendance the preceding year at least twenty times as many scholastics as the number of teachers employed, and must maintain during the year in which aid is received, an average attendance of at least 75% of the enrollment during the time that the school is in session, unless cause for such non-attendance, satisfactory to the State Board of Education can be shown.

(3) Any Common or Independent School District receiving this aid must make such heating and ventilating arrangements, provide such sanitary closets, and keep school premises in such condition as can be approved by the Rural School Inspector sent by the State Department of Education.

(4) No Common School District or Independent School District which refuses to conform to a plan of consolidation formulated by the County Superintendent and approved by the County Board of Trustees and by the State Superintendent, shall receive aid from this fund for any school session following the school year in which such refusal is made. School districts, in sparsely settled communities, where consolidation is impracticable, are to be excepted from this provision of this act; provided that the decision as to whether such consolidation is not advantageous shall rest with the County Board of Trustees and shall be approved by the State Superintendent. It is expressly provided that in case of schools where compliance with the preceding conditions is impossible, or would work undue hardship, the State Superintendent shall have power, with the approval of the State Board of Education, to grant funds to such schools.

(5) No Common or Independent School District which has received aid from this fund for one scholastic year, shall be granted such aid a second time unless it shall provide for the maintenance of its schools by voting a tax for maintenance of schools of fifty cents on the hundred dollars of property valuation; in no case shall the assessed valuation for the Common School District be less than the valuation of the County Assessor; and in no case shall the assessed valuation in towns be less than the assessed valuation of town property for other purposes.

Schools of not more than 500 scholastic enrollment, complying with the foregoing conditions, shall send to the State Superintendent, on blanks provided by the State Department of Education, a list of teachers employed in the school, with a statement as to the monthly salary of each teacher, it being shown in this blank that the trustees lack sufficient funds to maintain the school for the desired length of term. The State Superintendent of Public Instruction, with the approval of the State Board of Education may then grant to the school such an amount of this fund as may be necessary to maintain the school for the desired length of term: provided that this period be not longer than nine scholastic months; and provided that such aid be not granted in excess of an amount sufficient to pay the teachers the maximum salary permitted by State law to those holding certificates of the grades held by the teachers of the school district to which such aid is granted. Provided all school districts meeting the requirements of this Act, and not having sufficient available school funds to maintain their schools six months in the year, shall be given the preference in the distribution of this fund, until all the public schools in the State can be maintained at least six months in the year. And provided further, that school districts in which the State of Texas owns real estate in value equal to 10% or more of the whole real es-

tate values in such district, state aid may be given such school district without reference to scholastic population in an amount not to exceed the amount the owners of such real estate would pay to such school district if owned by private persons; provided that this aid shall not be extended until the district has levied the constitutional limit of local taxes and has not sufficient funds to run its school nine months in the year. (Acts 1919, ch. 65, sec. 2; Acts 1919, 2d C. S., ch. 66, sec. 1.)

Art. 2726¼b. Applications for aid.—All applications for state aid under this Act shall be made upon the form published by the State Board of Education and furnished by the State Department of Education. Before any application is presented to the State Board of Education for its consideration, the State Superintendent shall make careful investigation regarding compliance with conditions, and his certificate that each district to which aid is granted, meets substantially the requirements of the law, shall be required by the board before aid in any amount is granted. (Acts 1919, ch. 65, sec. 3.)

Art. 2726¼c. Additional aid; schools entitled to.—In addition, state aid to the amount of not more than $500.00 for any one district may be granted, from the appropriation authorized by this Act, to school districts under the following conditions:

(1) Location. Each such school receiving this State aid shall be well located on a plot of ground not less than one acre in extent, properly drained and suitably laid out.

(2) School House. There shall be provided a suitable school house, erected in accordance with the schoolhouse building law of Texas or meeting substantially the requirements thereof.

(3) Equipment. Each such school shall be provided with necessary desks, seats, and blackboards; and with such library, books, maps, and globes as recommended in the State course of study, as in the opinion of the State Superintendent said school may be able to purchase.

(4) Teachers. Teachers employed in country or small town schools shall furnish to the State Superintendent satisfactory evidence of professional training to their credit, and all teachers must render efficient service of a high grade.

(5) Attendance. In order to receive State aid under these conditions, the school district must have a scholastic enrollment of not more than 500 scholastic enrollment, exclusive of transfers, and must maintain an attendance record during the year in which it receives such aid of not less than seventy-five per cent of the enrollment unless causes for such non-attendance satisfactory to the State Board of Education can be shown.

(6) Local Tax. The School district must have levied and be collecting a local school tax for maintenance of not less than fifty cents on the hundred dollars valuation; provided that in no case shall the assessed valuation in rural districts be less than the valuation of the county assessor, and provided that in small town districts, in no case shall the property valuation for school purposes be less than that for any other taxation upon town property; provided that any school district which has not received aid for one year shall receive such aid for one time only even though no such tax has been voted by said district.

(7) Subjects. Each country school or small town school shall teach the common school subjects as prescribed by law. (Id. sec. 4.)

Art. 2726¼d. Disposition of funds not expended as provided by previous sections.—Such part of this fund as may not be expended under the preceding provisions of this Act may be granted to schools of not more than 500 scholastic enrollment, for the following purposes:

(1) Schools making provision for transportation of pupils to and from consolidated schools may be granted from this fund a sum equal to one-half of the total cost of transportation, provided that the provisions of the contract for said transportation be approved by the State Superintendent.

(2) State aid from this fund may be granted, in accordance with rules approved by the State Board of Education, for the purpose of providing for an annual increase of salary to teachers of rural schools and schools of small towns, who remain in the same position; provided (1) that such aid shall not exceed one-half of the amount of the annual increase paid by the school, (2) that such teachers shall furnish recommendations as to satisfactory work from their local boards, (3) that such aid shall not be granted for the increase of salaries of teachers who do not attend a summer school for at least two months not less frequently than one summer out of every three, and (4) that the maximum salary paid such teachers shall not exceed the average of the salary paid to teachers of similar acquirements and experience in the three largest cities of the state.

(3) Any school which acquires by purchase or by gift a library of a value of not less than $200 consisting of books approved as a school library by the regulations of the State Department of Education, may receive from this fund a sum not exceeding one-half of the value of said library.

(4) Provided that State aid not exceeding $500.00 for any one school may be granted under this Section in any one year. (Id. sec. 5.)

Art. 2726¼e. General powers of State Board of Education.—The State Board of Education shall be authorized and it shall be their duty to take such action and to make such rules and regulations, not inconsistent with the terms of this Act, as, in its opinion, may be necessary to carry out the provisions and intentions of this Act. (Id. sec. 6.)

Art. 2726¼f. Duties of Superintendent of Public Instruction.—It shall be the duty of the State Superintendent of Public Instruction to go in person or to send one of the rural school supervisors authorized by this Act to assist the school communities who may desire the privileges of this Act in their efforts to meet the necessary requirements in order that they may participate in the distribution of the funds herein appropriated.

Before approving any application he shall make a thorough investigation in person or through his representative of the grounds, buildings, equipment and possibilities of each school applying for State aid by appropriation from the State Board of Education. (Id. sec. 7.)

Art. 2726¼g. Second aid.—Before State aid shall be granted a second time to the same district, it shall be necessary that all reports as required of the school officials of said district shall have been received and approved; that the State Superintendent of Public Instruction or one of the rural school supervisors shall have visited said district and the State Superintendent of Public Instruction has advised the State Board of Education that in his judgment the school officials of such district have made diligent efforts to meet the requirements and standards as set forth in this Act, that the district receiving state aid has made satisfactory progress, under existing conditions, and that, in his opinion further aid would prove a good and desirable investment for the State in promoting the educational interests of the people of such district, provided that no school shall be granted State aid a second time until all applications on file for first aid from schools entitled to aid under this Act shall have been acted upon. (Id. sec. 8.)

Art. 2726¼h. Warrants and reports.—Warrants for all money granted under the provisions of this Act shall be transmitted by the State Superintendent of Public Instruction to treasurers or depositories of school districts to which State aid is granted in the same manner as warrants for State apportionment are now transmitted, and it shall be the duty of all treasurers or depositories to make annually itemized reports under oath to the State Superintendent of Public Instruction of the expenditures of all money granted under the provisions of this Act. (Id. sec. 9.)

Art. 2726¼i. Apportionment privileges.—Country schools and small town schools shall be entitled to share in the distribution of State and county available school funds, and in all other school funds in the same manner as other school districts; and in case high school grades are maintained the community shall still be entitled to participate in the distribution of any State aid that may be extended by the Legislature of Texas for vocational or industrial purposes to high schools of the State, though it accept the provisions of this Act. (Id. sec. 10.)

CHAPTER TEN

STATE BOARD OF EDUCATION

Art. 2727. Members.—The governor, secretary of state and comptroller shall constitute a state board of education, which shall hold its sessions at the seat of government. The governor shall be ex officio president of the board, and a majority of the members shall constitute a quorum for the transaction of business. (Acts 1905, p. 263, sec. 21.)

Art. 2728. Secretary.—The state superintendent shall be ex officio secretary of the state board of education, and shall keep a complete record of all its proceedings, which shall be signed by the president of the board and attested by the superintendent. (Id. sec. 22.)

Art. 2729. Shall make apportionment.—The state board of education shall, on or before the first day of August in each year, based on the estimate theretofore furnished said board by the comptroller, make an apportionment for the succeeding scholastic year of the available state school fund among the several counties of the state, and the several cities and towns and school districts constituting separate school organizations, according to the scholastic population of each; and, thereupon, the state superintendent of public instruction, as secretary of such board, shall certify to the treasurer of each county, city or town, and of each school district constituting a separate school organization, the total amount of available school fund so apportioned to each such county, city or town or school district, which certificate shall be signed by the governor, as president of such board, countersigned by the comptroller, and attested by the state superintendent of public instruction, as secretary of such board. (Acts 1909, 2 S. S., p. 432, sec. 4.)

Art. 2730. Authority over state normal schools.—The state board of education shall require the teaching of manual training, domestic science and agriculture in the state normal schools at Huntsville, Denton, San Marcos and Canyon City, and in such other normal schools for white teachers as may hereafter be established by law, respectively, as a part of the regular curricula of said normal schools. The state board of education is hereby empowered and required to provide rooms, appliances and teachers for giving instruction in the subjects of manual training, domestic science and agriculture in said state normal schools. The state board of education is further empowered and instructed to employ a teacher or teachers that have been trained and equipped to give instruction in these subjects in the said state normal schools; provided, that the state board of education is hereby authorized to fix the salaries of the presidents, principals, professors, instructors, teachers and other employés in said normal schools. (Acts 1909, p. 221, sec. 1.)

Art. 2731. Summer sessions of schools.—The state board of education shall require the teaching of elementary agriculture for teachers in the summer sessions of the state normal schools at Huntsville, Denton and San Marcos, and the boards of directors of the agriculture and mechanical college at Bryan, of the college of industrial arts for girls at Denton, and of the state university at Austin, shall require the teaching of elementary agriculture for teachers in the summer sessions of these several institutions. (Id. sec. 3.)

Art. 2732. Shall duplicate appropriations of school districts.—It shall be the duty of the state board of education to duplicate by an appropriation out of money provided by the Acts of the Thirty-First Legislature, chapter 113, any amount not less than five hundred dollars and not more than two thousand dollars, that shall have been appropriated and set apart by the trustees of any common school district or independent school district, for the purpose of establishing, equipping and maintaining departments in their respective schools for giving instruction in agriculture, including such courses in manual training and domestic economy as are subsidiary to agriculture; provided, such appropriation or donation shall not be made more than twice to the same school; and provided, that in granting such appropriations to high schools the state

board of education shall consider the geographical location of the school applying, with a view of locating, if possible, one school in each of the senatorial districts of the state. The board of trustees of a school seeking aid in establishing, equipping and maintaining in their high schools a department for the teaching of agriculture, including such courses in manual training and domestic economy as are subsidiary to agriculture, shall provide ample room and laboratories for instructions in botany, zoology and such other elementary sciences as are necessary to instruction in secondary agriculture, and shall provide a tract of land conveniently located which shall be sufficiently large and well adapted to the production of farm and garden plants, and shall employ a teacher who has received special training in agriculture and allied branches. The state superintendent of public instruction shall make accurate and full investigation of the school property, appliances and ground possessed by any board of trustees that may seek aid under the provisions of this chapter, and he shall also inquire into the qualifications of the teacher or teachers who are to give instruction in agriculture, manual training and domestic economy in the school or schools seeking aid under the provisions of this chapter, and shall make a report of the result of his investigation to the state board of education, together with his conclusions and recommendations touching the same. The state board of education shall grant aid to those high schools that have complied with the provisions of this chapter and that have been recommended by the state superintendent of public instruction and that shall give evidence that, after the state aid is withdrawn, the district will continue to maintain the department for instruction in agriculture out of its own funds. (Id. sec. 5.)

Art. 2733. Board may create school districts at eleemosynary institutions.—The state board of education is hereby authorized and empowered to create new school districts at such of the several eleemosynary institutions of this state, including the state orphan asylum, or at any and all orphan homes or like institutions now existing, or that may hereafter be established by the Odd Fellows, Masons, Knights of Pythias and other fraternal organizations; provided only, that the number of children within the scholastic age in each instance be sufficient to justify such action. The territorial limits in each case shall be co-extensive with the property line of the institution. (Acts 1905, p. 263, sec. 176.)

Art. 2734. Trustees for such districts.—Upon the exercise of the power here granted, the state superintendent of public instruction shall appoint a board of three trustees for each district so created; and such trustees need not be residents of such district, and the fact shall be duly certified to local authorities for information and observance; and upon the creation of such districts the trustees shall take and certify the census of the children within the scholastic age, and the funds shall thereafter be apportioned directly to such district; and the law pertaining to independent districts shall govern so far as applicable, though the state board of education may make special regulations and orders for the government of such districts as they may deem expedient. (Id. sec. 177.)

Art. 2735. Transfer of funds.—Upon the creation of a district as above provided, it shall be the duty of the county school superintendent to transfer to such district whatever amount of money may have been apportioned for the current school year to the old district, for and in behalf of the children included in the new district; provided only, such children may not have had the advantage of such fund in the old district. (Id. sec. 178.)

BOARD AUTHORIZED TO INVEST SCHOOL FUND

Art. 2736. Authorized to invest state permanent school fund.—The board of education is authorized and empowered to invest the permanent public free school funds of the state in bonds of the United States, the state of Texas, the bonds of the counties of the state, and the independent or common school districts, road precinct, drainage, irrigation, navigation, and levee districts of said state, and the bonds of incorporated cities and towns, and the bonds of road precincts of any county of Texas, and the bonds of drainage, irrigation, navigation, and levee districts of any county or counties of Texas. (Acts 1905, p. 263, sec. 2. Amended 1909, p. 216.)

Art. 2737. Duties of parties offering bonds for sale.—Hereafter when any county bonds, or the bonds of any incorporated city, independent or common school district, road precinct, drainage, irrigation, navigation and levee districts are offered for sale, the party offering, or proposing to sell, such bonds shall first submit them to the attorney general of the state, who shall carefully inspect and examine the same in connection with the law under which they were issued, and shall diligently inquire into the facts and circumstances so far as may be necessary to determine the validity thereof; and, upon being satisfied that such bonds were issued in conformity with law, and that they are valid and binding obligations upon the county or incorporated city, or common school district, road precinct, drainage, irrigation, navigation and levee districts, by which they were issued, he shall thereupon certify to their validity; and his certificate to that effect, so procured by the party offering such bonds for sale, shall be submitted to the comptroller or board of education, with the bonds so offered for sale; and, should the same be purchased as an investment for the permanent public free school fund from the county or incorporated city or common school district, road precinct, drainage, irrigation, navigation and levee districts issuing the same, or from any person authorized by said county or incorporated city or common school district, road precinct, drainage, irrigation, navigation and levee districts to act for it in the negotiations or sale of such bonds, they shall thereafter be held in every action or proceeding in which their validity is, or may be, called in question, to be valid and binding obligations of the county, or incorporated city, or common school district, road precinct, drainage, irrigation, navigation and levee districts issuing the same, unless fraudulently issued, or issued in violation of the constitutional limitation; and, in every such ac-

tion, a certificate of the attorney general as aforesaid (which shall be carefully preserved by the comptroller), shall be admitted and received as prima facie evidence of the validity of the bonds and coupons thereto, which may have been so purchased; and it is further provided, that the commissioners' courts of the counties of this state are hereby authorized to invest the permanent school fund belonging to their counties in the manner provided in this article for the investment of the state fund. (Id. sec. 3.)

Art. 2738. Board must examine bonds.—Nothing in the preceding article shall be so construed as to relieve the comptroller or board of education from the duty of a careful examination of the bonds offered as an investment for the permanent public free school fund of the state, an investigation of the facts tending to show the validity thereof; and such board of education may decline to purchase same, unless satisfied that they are a safe and proper investment for such fund; and no bonds shall be purchased as an investment for the permanent public free school fund that do not bear as great a rate of interest as at least three per cent per annum; and no county bond or bonds of any incorporated city, independent or common school district, road precinct, drainage, irrigation, navigation and levee districts shall be purchased as an investment for the permanent public free school fund when the indebtedness of such county, incorporated city, independent or common school district, road precinct, drainage, irrigation, navigation and levee districts, inclusive of the bonds so offered, shall exceed seven per cent of the assessed value of the real estate in such county or incorporated city, independent or common school district, road precinct, drainage, irrigation, navigation and levee districts; and, if any default be made in the payment of interest due upon such bonds, the board of education may at any time prior to the payment of such overdue interest, elect to treat the principal as also due, and the same shall thereupon, at the option of the board of education, become due and payable; and the payment of both such principal and interest shall in all such cases be enforced in such manner as is or may be provided by law, and the right to enforce such collection shall never be barred by any law or limitation whatever. (Id. sec. 4.)

Art. 2739. Estoppel.—In all cases where the proceeds of the sales of any bonds have been received by the proper officers of the county, or incorporated city, independent or common school district, road precinct, drainage, irrigation, navigation and levee districts, or by the party acting for it in negotiating the sale thereof, such county or incorporated city, independent or common school district, road precinct, drainage, irrigation, navigation and levee districts shall thereafter be estopped from denying the validity of such bonds so issued, and the same shall be held to be valid and binding obligations of the county or incorporated city, independent or common school district, road precinct, drainage, irrigation, navigation and levee districts for the amount of bonds sued on and interest thereon, at the rate mentioned therein, deducting such amounts, if any, as have been previously paid thereon. (Acts 1905, p. 263, sec. 5. Amended Acts 1909, p. 216.)

Art. 2740. Bonds must be offered to state board.—Whenever any county, or incorporated city, independent or common school district, road precinct, drainage, irrigation, navigation and levee districts of this state issues any bonds, and they have been approved by the attorney general, as is required by the previous articles of this chapter, the county judge of the county, or the mayor of the incorporated city, or the president of the board of trustees of the independent or common school district, or the county judge or party authorized by law to sell the bonds of road precincts, or drainage, irrigation, navigation, or levee districts, as the case may be, shall notify the state board of education of all bids received for such bonds; and the county judge, or mayor, or president of the board of trustees, as the case may be, shall give the state board of education an option of ten days in which to purchase such bonds; provided, that the board of education will pay the price offered for such bonds by the best bona fide bidder; and, if the board of education shall fail to purchase such bonds within the prescribed time, then the county judge, or mayor, or president of the board of trustees, as the case may be, shall sell the bonds to the best bona fide bidder. In the event the state board of education shall pay a premium out of the permanent school fund on any bonds purchased as an investment for the permanent school fund, then the principal of such bonds and an amount of the interest first accruing on such bonds equal to the premium so paid, shall be and be treated as the principal in such investment, and, when such first interest is collected, such sum of the same shall be returned to the permanent school fund, and if they purchase said bonds for less than par, the discount they receive in the purchase of said bonds shall be paid to the available school fund when the bonds are paid off and discharged. The price paid for bonds shall be endorsed thereon at the time the same are purchased; provided, that where said board shall refuse to purchase bonds from the county, city, or independent or common school district, road precinct, drainage, irrigation, navigation and levee districts, or the parties to whom said bonds were issued, then in no event shall said board purchase said bonds from any subsequent owner or holder of the same. (Id. sec. 6.)

Art. 2741. Payment of interest on bonds to be waiver.—The payment of any interest upon any bonds heretofore purchased with public school funds, or belonging thereto, shall be deemed and held a waiver of any supposed error, irregularity or want of authority affecting, or tending to affect, the validity of any such bonds, and the same shall thereafter be held to be valid and binding obligations upon the county by which they appear or purport to have been issued, notwithstanding any such supposed error, irregularity or want of authority as aforesaid. (Acts 1905, p. 263, sec. 7.)

Art. 2742. Jurisdiction in district court of Travis county.—The district court of Travis county shall have jurisdiction of any suit upon bonds or obligations belonging to the permanent public school funds, or purchased therewith, concurrent with that

of any other court having jurisdiction in said case. (Id. sec. 8.)

Art. 2743. Extent of these provisions.—The provisions of this chapter shall extend to any bonds or securities other than the bonds of the state or of the United States, in which the public school funds are, or may hereafter be, invested, as now or hereafter authorized or prescribed by law, and also to any bonds or securities purchased with any of the permanent funds set apart for the support, maintenance and improvement of any of the asylums or other institutions of this state. (Id. sec. 9.)

CHAPTER ELEVEN

DUTIES OF COMPTROLLER AND TREASURER AS TO SCHOOL FUNDS

Art. 2744. Shall keep separate account of school fund.—The comptroller shall keep a separate account of the available state school fund arising from every source, and shall, on or before the meeting of the state board of education on or before the first day of August of each year, make an estimate of the amount of available school fund to be received from every source, and to be available for the succeeding scholastic year, and report the same to the state board of education. (Acts 1909, 2 S. S., p. 432, sec. 1.)

Art. 2745. Shall draw warrants.—The comptroller shall, on the first working day of each month, certify to the state superintendent of public instruction the total amount of money collected from every source during the preceding month and on hand to the credit of the available school fund, and shall draw his warrant on the state treasurer, and in favor of the treasurer of the available school fund of each county, city or town, and each school district having control of its public schools, for the amount stated in, and upon receipt of, the certificate therefor issued to him on the first day of each month by the state superintendent of public instruction, and shall register such warrants and transmit them to the state treasurer. (Id. sec. 2.)

Art. 2746. Report.—The comptroller shall, on or before the meeting of each regular session of the legislature, report to the legislature an estimate of the amount of the available school fund to be received for the succeeding two years, and the several sources from which the same accrues, and which may be subject to appropriation for the establishment and support of public schools. (Acts 1905, p. 263, sec. 15.)

Art. 2747. Shall keep account of school funds.—The state treasurer shall receive and hold as a special deposit all money belonging to the available school fund, and keep an account of the same. He shall register every warrant drawn by the comptroller on such fund in favor of the treasurer of the available school fund of any county, city, or town, or school district having control of its public schools, and transmit such warrants to the superintendent of public instruction. On presentation to him for payment properly endorsed, he shall pay such warrants each in the order in which presented. (Acts 1909, 2 S. S., p. 432, sec. 3.)

Art. 2748. Shall report condition of funds.—The state treasurer shall, thirty days before each regular session of the legislature, and ten days before any special session, at which any legislation can be had respecting the public schools, report to the governor the condition of the permanent and available school funds, the amount of each, and the manner of its disbursement; and he shall also make any additional report required by the board of education. (Acts 1905, p. 263, sec. 19.)

Art. 2749. Shall not use school funds for other purposes.—The treasurer shall not, under any circumstances, use any portion of the permanent or available school funds in payment of any warrant drawn against any other fund whatever. (Id. sec. 20.)

CHAPTER ELEVEN A

COUNTY SCHOOL TRUSTEES

Art. 2749a. Powers of trustees; election; tenure; appointment by commissioners court in certain counties; duties of State Superintendent of Public Instruction as to elections.—The general management and control of the public free schools in each county of the State shall be vested in five county school trustees elected from the county, one of whom shall be elected from the county at large by the qualified voters of the common school districts of the county, and one from each commissioner's precinct by the qualified voters of each commissioners' precinct, who shall hold office for a term of two years, or until their successors are elected or appointed and qualified. The time for the election of county school trustees shall be the same as that for the election of trustees of the common school districts, the first Tuesday in April of each year; the order for the election of county school trustees to be made by the county judge at least thirty days prior to the date of said election, and there shall be one voting place designated by the order for each common school district. The election officers appointed to hold the election for trustees in each common school district shall hold the election at the same place therein for the county school trustees. The county school trustees now in office shall continue in office for the terms for which they were chosen and qualified. The first election under this Act shall be held on the first Tuesday in April, 1916, at which time there shall be elected two county school trustees for a term of two years, and the second election under this Act shall be held on the first Tuesday in April, 1917, at which time there shall be elected in each county three county school trustees; and each year thereafter there shall be elected alternately two county school trustees and three county school trustees in each county. If there be any county in Texas at the time of the taking effect of this Act which has no county school trustees as provided for in Chapter 26, Acts of the Thirty-second Legislature, Regular Session, the county commissioners court thereof shall appoint five county school trustees, two to serve until the election and qualification of their successors in 1916 and three to serve until the election and qualification of their successors in 1917; and the qualified electors of the common school districts of each county shall annually thereafter elect county school trustees as are

required under the provisions of this Act. The State Superintendent of Public Instruction is hereby directed and required to prepare a proper form of the ballot to be used in the election of county school trustees, and such other explanation of the laws as, in his judgment, may be necessary, and transmit the same to the county judge of each county at least sixty days prior to the date of the election of county school trustees. (Acts 1915, ch. 36, sec. 2.)

See post, arts. 2849a-2849o.

Art. 2749b. Classification of schools; course of study for schools.—It shall be the duty of the county school trustees to classify the schools of the county in accordance with such regulations as may be prescribed by the State Superintendent of Public Instruction into elementary schools and high schools for the purpose of promoting the efficiency of the elementary schools and of establishing and promoting high schools at convenient and suitable places. In classifying the schools and in establishing high schools the county school trustees shall confer and advise with the County Superintendent of Public Instruction and the school trustees of each district at interest, and shall give due regard to schools already located, to the distribution of population, and to the advancement in their studies. The county trustees shall not so classify any school as to deprive any child of scholastic age of its right to receive instruction in the grades to which it belongs in the public school of the district in which it resides, unless arrangements are made by the county school trustees for the said child to attend a school of proper classification free of charge in another district which is within reasonable walking distance of the home of said child; that is, a school of proper classification which is not more than three miles from the home of said child; the distance to be computed according to the route or road commonly traveled in going from the home of said child to the school building, or unless the county school trustees shall arrange for the free transportation daily of said child to and from the school of proper classification, in which case the expense of such transportation shall be paid for by the district trustees out of the funds of the district in which the child actually resides; and it is hereby made the duty of the County Superintendent of Public Instruction and of the county school trustees to see that every child of scholastic age is properly provided for as herein required, and the State Superintendent of Public Instruction is hereby directed and required to transmit definite and specific instructions to the County Superintendent of Public Instruction, the county school trustees and the district school trustees with respect to the proper observance and administration of this law, to the end that no child shall be deprived of its right to attend school. The county school trustees shall, in co-operation with the County Superintendent of Public Instruction, prescribe a course of study for the public schools of the county conforming to the law and the requirements of the State Superintendent of Public Instruction. (Id. sec. 3.)

Art. 2749c. Subdivision of county into school districts and change of district lines; annual meeting of district school trustees; call of other meetings; consolidation of common school districts; record of proceedings; duties of state superintendent; transfer of school children.—The county school trustees are authorized to exercise the authority heretofore vested in the county commissioners court with respect to subdividing the county into school districts, and to making changes in school district lines. The county school trustees shall call an annual meeting of the district school trustees of the county, to be held at the county seat at some convenient season in August or September of each year, at which meeting shall be considered by the said county school trustees and the district school trustees in joint meeting, presided over by the chairman of the county school trustees, questions dealing with the location of high schools and the teaching of high school subjects, the classification of schools and such other matters as may pertain to the location, conduct, maintenance and discipline of schools, the terms thereof and other matters of interest in school affairs of the county, and the county school trustees shall be guided in their action by the result of the deliberation of such meeting, not inconsistent with law. The county school trustees may also call other meetings of the district school trustees, when deemed necessary by them, or on the petition of a majority of such district school trustees. The county school trustees shall have authority to consolidate two or more common school districts into a larger common school district where a majority of the qualified electors of each common school district at interest shall petition the county school trustees for consolidation in order that a high school may be established for the children of high school advancement in the common school districts so consolidated. The County Superintendent, as secretary of the county school trustees, shall keep an accurate and complete record in a well-bound book provided for that purpose, the field notes of all changes made in school district lines, and of all proceedings of the county school trustees, including the consolidation of school districts. A certified copy of such change in a school district line and also of the record in effecting the consolidation of school districts shall be made and transmitted by the County Superintendent to the county clerk, and it shall be the duty of the county clerk to record the field notes and certified copy of such change in a well-bound book to be designated as the "Record of School Districts." It is hereby made the duty of the State Superintendent of Public Instruction to prepare and transmit all necessary instructions and forms for use of the county school trustees and the people of common school districts in effecting the consolidation of school districts for high school purposes. In providing better schooling for the children and in carrying out the provisions of Section 2 of this Act [Art. 2749a] the County Superintendent of Public Instruction shall, on the recommendation of the county school trustees, transfer children of scholastic age from one school district to another, and the amount of funds to be transferred with each child of scholastic age shall be the amount to which the

district from which the child is transferred is entitled to receive. (Id. sec. 4.)

Art. 2749d. Supervisory powers of district court.—The district court shall have general supervisory control of the actions of the county board of school trustees in creating, changing and modifying school districts. (Id. sec. 4a.)

Art. 2749e. Trustees as body corporate; powers; title to school property.—The county school trustees of each county shall constitute a body corporate, by the name of the county school trustees of ——— County, State of Texas, and in that name may acquire and hold real and personal property, sue and be sued, and may receive bequests and donations or other moneys or funds coming legally into their hands, and may perform other acts for the promotion of education in the county. The title to any school property belonging to the county, the title of which has heretofore been vested in the county judge and his successors in office, or any school property that may be acquired, shall vest in the county school trustees and their successors in office for public free school purposes. (Id. sec. 7.)

Art. 2749f. County school superintendent as secretary and executive officer; record of proceedings.—The county school trustees shall designate the County Superintendent as their secretary and executive officer, and it shall be the duty of the County Superintendent to keep a true and correct record of all the proceedings of said county school trustees in a well-bound book, which shall be open to public inspection. (Id. sec. 8.)

Art. 2749g. Apportionment of school funds.—Upon receiving notice from the State Superintendent of Public Instruction of the amount of State available school funds apportioned to the county, exclusive of all independent districts having each more than one hundred and fifty scholastics, it shall be the duty of the county school trustees, acting with the County Superintendent, to apportion all available State and county funds to the school districts as prescribed by law. (Id. sec. 9.)

Art. 2749h. Appeals.—All appeals from the decisions of the County Superintendent of Public Instruction shall lie to the county school trustees and from the said county trustees to the State Superintendent of Public Instruction, and thence to the State Board of Education. (Id. sec. 10.)

Art. 2749i. Meetings; compensation.—The county school trustees shall hold meetings once each quarter, on the first Monday in August, in November, in February and in May, or as soon thereafter as practicable, and at other times when called by the president of the county school trustees or at the instance of any two members of the county school trustees and the County Superintendent, the meeting place to be at the county seat and in the office of the County Superintendent of Public Instruction. Each county school trustee shall be paid three ($3.00) dollars per day for the time spent in attending meetings provided for in this section, such payments to be made from the general fund of the county by warrants drawn on order of the commissioners court, after approval of the account, properly sworn to, by the president of the county school trustees; provided, that no county school trustee shall receive more than thirty-six dollars for any one year. (Id. sec. 11.)

Art. 2749j. County superintendent to keep record of terms of office of trustees of common school districts; qualifications of county school trustees; election; oath; organization.—The County Superintendent of Public Instruction, as secretary of the county board of education, shall be required to keep an accurate record of the terms of office of the school trustees of each common school district and of the county school trustees, and shall furnish to the county judge at least sixty days prior to the date of the election of district and county school trustees the number of trustees to be elected in each common school district and the number of county school trustees to be elected from each commissioners precinct or in the county at large, as the case may be. The county school trustees shall be qualified voters of the precinct or county from which they are elected, and four of them shall reside in different commissioners' precincts. They shall be of good moral character, able to read and speak the English language, shall be persons of good education, and shall be in sympathy with public free schools. The county school trustees shall be elected as prescribed in Section 2 of this Act [Art. 2749a], and the returns of the election for county school trustees shall be made to the county clerk within five days after such election shall have been held, to be delivered by him to the commissioners court at its first meeting thereafter to be canvassed and the results declared as in cases of other elections; and the county clerk, on behalf of the commissioners court, shall issue to the county school trustees their commissions and impress thereon the seal of the said court. The oath of office prescribed by the Constitution of the State for State and county officers must be taken by the county school trustees before the commission shall be issued, the said oath of office to be filed in the office of the county clerk. At the regular meeting in May, and after the qualification of new members the county school trustees shall organize by electing one of their number president. (Id. sec. 12.)

Art. 2749k. Vacancies; quorum.—All vacancies in the office of county school trustees shall be filled by election by the remaining county school trustees. Three of the county school trustees shall constitute a quorum, and all questions shall be decided by a majority vote. (Id. sec. 13.)

Art. 2749l. Repeal; partial invalidity.—All laws and parts of laws in conflict with this Act are hereby repealed, and in case it is declared by the courts that any part of this Act is unconstitutional, such decision shall not impair other parts and provisions of this Act. (Id. sec. 15.)

CHAPTER TWELVE

COUNTY SUPERINTENDENT AND OTHER OFFICERS

Art. 2750. Office established.—The office of county superintendent of public instruction is hereby created; and the commissioners' court of every county in the state, having three thousand scholastic population as shown by the preceding scholastic census,

shall provide for the election of a county superintendent of public instruction at each general election, who shall be a person of educational attainments, good moral character, and executive ability, and who shall be provided by the commissioners' court with an office in the court house, and with necessary office furniture and fixtures. He shall be the holder of a teacher's first grade certificate, or teacher's permanent certificate, and he shall hold his office for the term of two years, and until his successor is elected and qualified. In every county that shall attain three thousand scholastic population or more, the commissioners' court shall appoint a county superintendent of public instruction, with qualifications above described, who shall perform the duties of such office until a county superintendent shall have been elected as hereinbefore provided, and shall have qualified; provided, that in counties having less than three thousand scholastic population, whenever more than twenty-five per cent of the qualified voters of said county, as shown by the vote for governor at the last preceding general election, shall petition the commissioners' court therefor, the commissioners' court shall order an election for said county to determine whether or not the office of county superintendent shall be created in said county; and, if a majority of the qualified property taxpaying voters, voting at said election, shall vote for the creation of the office of county superintendent in said county, the commissioners' court, at its next regular term, after the holding of said election, shall create the office of county superintendent, and name a county superintendent, who shall qualify under this chapter, and hold such office until the next general election, and until his successor shall have been elected and qualified. (Acts 1905, p. 263, sec. 36. Amended Acts 1907, p. 210.)

Art. 2751. Shall give bond.—The county superintendent of public instruction, before entering upon the discharge of his duties, shall take the oath of office prescribed by the constitution, and shall enter into a bond in the sum of one thousand dollars, with good and sufficient sureties, to be approved by the county commissioners' court, and to be filed with the county clerk of his county. Said bond shall be made payable to the county commissioners' court and their successors in office, in trust for the available school fund of the county, and be conditioned upon the faithful performance of the duties of his office. In case said bond should be forfeited and collected, the sum so collected shall become a part of the available school fund of the county. (Acts 1905, p. 263, sec. 38.)

Art. 2752. Shall have immediate supervision of schools.—The county superintendent of public instruction shall have, under the direction of the state superintendent of public instruction, the immediate supervision of all matters pertaining to public education in his county. He shall confer with the teachers and trustees and give them advice when needed, visit and examine schools, and deliver lectures that shall tend to create an interest in public education. He shall spend as much as four days in each week visiting the schools while they are in session, when it is possible for him to do. He shall have authority over all of the public schools within his county, except such of the independent school districts as have a scholastic population of five hundred or more. In such independent school districts as have less than five hundred scholastic population, the reports of the principals and treasurers to the state department of education shall be approved by the county superintendent before they are forwarded to the state superintendent; and all appeals in such independent school districts shall lie to the county superintendent, and from the decisions of the county superintendent to the state superintendent of public instruction, and to the state board of education. (Id. sec. 37. Amended Acts 1907, p. 210.)

Art. 2753. Shall conduct county teachers' institute.—The county superintendent shall organize and hold, with such assistance as may be necessary, within the first four months of the scholastic year, one institute of five consecutive days for white and for colored teachers, respectively, and he shall require the attendance of white teachers upon the institute for white teachers and the attendance of colored teachers upon the institute for colored teachers; provided, that a failure to comply with these requirements shall be a sufficient cause for his removal from office; provided, further, that the county superintendent of public instruction shall be authorized to cancel the certificate of any teacher who wilfully and persistently absents himself from attendance upon the county teachers' institute; provided, that the board of school trustees in any independent school district, having five hundred or more scholastic population, may authorize the superintendent or principal to organize and hold institutes for the teachers of such district, in lieu of the county institute; and the work of the teachers in said city institutes shall be counted toward the extension of their certificates; provided, that the plan, scope and quality of the work of said city institutes shall be approved by the state superintendent of public instruction. (Id.)

Art. 2754. [Repealed. See note under Art. 2786.]

Art. 2755. Shall apportion funds among school districts.—The county superintendent, or county judge who is ex officio county superintendent, upon the receipt of the certificate issued by the board of education for the state fund belonging to his county, shall apportion the same to the several school districts, not including the independent school districts of the county, making a pro rata distribution as per the scholastic census, and shall at the same time apportion the income arising from the county school fund to all the school districts, including the independent school districts of the county, making a pro rata distribution as per scholastic census. Within thirty days after such apportionment by the county superintendent of education, or county judge who is ex officio county superintendent of education, the trustees of each district shall, if possible, agree upon a division of the funds of the district among the schools thereof, and shall fix the term for which the schools of the district shall be maintained for the year. Should they agree upon a division of the funds of the district or upon the length of the term for

which the schools of the district shall be maintained, they shall at once certify their agreement to the county superintendent, or county judge who is ex officio county superintendent, who shall not approve any contracts with teachers of the district until such agreement is received. Should the trustees fail to agree upon a division of the funds of the district, or upon the length of the term for which the schools of the district shall be maintained, they shall at once certify their disagreement to the county superintendent, or the county judge who is ex officio county superintendent, who shall proceed to fix the school term of such school district and declare the division of the school fund of the district among the schools thereof, endeavoring as far as practicable to provide, for the schools of such district, school terms of the same length. (Acts 1905, p. 263, sec. 94. Amended Acts 1907, p. 204.)

Art. 2756. Shall approve contracts and vouchers.—The county superintendent shall approve all vouchers legally drawn against the school fund of his county. He shall examine all the contracts between the trustees and teachers of his county, and if, in his judgment, such contracts are proper, he shall approve the same; provided, that in considering any contract between a teacher and trustees he shall be authorized to consider the amount of salary promised to the teacher. He shall distribute all school blanks and books to the officers and teachers of the public schools, and shall make such reports to the state superintendent as may be required by that officer. Immediately after qualifying, he shall appoint a county board of examiners, consisting of three resident white teachers holding first grade certificates, who shall serve during the pleasure of the county superintendent of public instruction, subject to the provisions hereafter made. He shall discharge such other duties as may be prescribed by the state superintendent. (Acts 1905, p. 263, sec. 39.)

Art. 2757. Authorized to administer oaths.—The county superintendents are hereby empowered to administer oaths necessary in transacting any business relating to school affairs; provided, that they shall receive no compensation for administering said oaths. (Id. sec. 41.)

Art. 2758. Salaries.—The county superintendents of public instruction herein provided for shall receive from the available school fund of their respective counties annual salaries as follows:

In every county of 2000 or less in which the office of county superintendent has been created or may be created after this Act shall have gone into effect the county superintendent shall receive an annual salary of $1,000.00 (One Thousand Dollars).

In every county that has a scholastic population of 2000 or less than 3000 a county superintendent shall receive an annual salary of $1200.00.

In every county that has a scholastic population of 3000 and less than 4000 the county superintendent shall receive an annual salary of $1400.00.

In every county that has a scholastic population of 4000 and less than 5000 the county superintendent shall receive an annual salary of $1500.00.

In every county that has a scholastic population of 5000 and less than 6000 the county superintendent shall receive an annual salary of $1600.00.

In every county that has a scholastic population of 6000 and less than 7000 the county superintendent shall receive an annual salary of $1700.00.

In every county that has a scholastic population of 7000 and less than 9000 the county superintendent shall receive an annual salary of $1800.00.

In every county that has a scholastic population of 9000 and less than 10,000 the county superintendent shall receive an annual salary of $2000.00.

In all counties that have a scholastic population of 10,000 or more the county superintendent shall receive an annual salary of $2100.00, provided that in making the annual per capita apportionment to the schools, the county school trustees shall also make an annual allowance out of the State and County available funds for salary and expenses of the office of the county superintendent of public instruction, and the same shall be pro rated to the schools coming under the supervision of the county school superintendent. The compensation herein provided for shall be paid monthly upon the order of the county school trustees, provided that the salary for the month of September shall not be paid until the county superintendent presents a receipt from the State superintendent of public instruction, showing that he has made all reports required of him. It is further provided, however, that no county superintendent of public instruction shall be allowed to exceed two hundred dollars annually for office and traveling expenses. (Acts 1905, p. 263, sec. 40; Acts 1907, p. 210; Acts 1918, 4th C. S., ch. 41, sec. 1.)

Art. 2759. Authority of county superintendent as to transfers.—Each year after the scholastic census of the county is completed, the county superintendent shall, if any district has fewer than twenty pupils of scholastic age, either white or colored, have authority to consolidate said district as to said white or colored schools with other adjoining districts, and to designate the board of trustees which shall control the white or colored school of such consolidated district. But this shall be done before the apportionment is made, and the apportionment shall be made with respect to such consolidation. (Acts 1905, p. 263, sec. 54.)

Art. 2760. Application of parent or guardian.—Any child lawfully enrolled in any district, or independent district, may be transferred to the enrollment of any other district, or independent district, in the same county, upon the written application of the parent or guardian or person having the lawful control of such child, filed with the county superintendent; but no child shall be transferred more than once; provided, the party making application for transfer shall state in said application that it is the bona fide intention of applicant to send child to the school to which transfer is asked. Upon the transfer of any child, its portion of the school funds shall follow and be paid over to the district, or independent district, to which such child is transferred; provided, no

transfer shall be made after August first, after the enrollment was made. (Id. sec. 91.)

Art. 2761. To district in adjoining county.—Any child specified in the preceding article, and its portion of the school fund, may be transferred to an adjacent district in another county, in the same manner as is provided in said article for the transfer of such child or children from one district to another in the same county; provided, that it must be shown to the county superintendent that the school in the district in which such child or children resides on account of distance or some uncontrollable and dangerous obstacle is inaccessible to such child or children. (Acts 1907, p. 242, sec. 91a.)

Art. 2761a. Emergency transfers.—In the case of conditions resulting from public calamity in any section of the State such as serious floods, prolonged drouth, or extraordinarily border disturbances, resulting after the scholastic census has been taken, in such sudden changes of the scholastic population of any county as would work a hardship in the support of the public free schools of the said county, the State apportionment of any child of school age may, on the approval of the State Board of Education, be ordered by the State Superintendent of Public Instruction to be transferred to any other county or independent school district in any other county of the State; provided that the facts warranting such transfer shall be sent to the State Superintendent by the county or district board of trustees of schools to which transfer is to be made with a formal request for the transfer before the first of August of the year in which such unusual conditions occur. The State Superintendent shall in such case notify the County Superintendent of the county to which the funds are to be transferred and the County Superintendent of the county from which the funds are to be transferred that final apportionments of school funds cannot be made under these circumstances before August 15th. All arrangements for said emergency transfers must be completed by the fifteenth of August following the unusual conditions causing the emergency. Children whose state funds are thus transferred to any county shall be included in the number of children for whom the county school apportionment of the said county is made. Any county Judge serving as ex-officio county superintendent, county superintendent, district, city or town superintendent or other school officer who refuses to comply with the provisions of this Act shall be deemed guilty of a misdemeanor and shall on conviction, be fined in any sum not less than $50.00 nor more than $500.00, or shall be confined in the county jail for not more than sixty days, or shall be punished by both such fine and imprisonment. (Acts 1919, 2d C. S., ch. 36.)

Art. 2762. By agreement of trustees.—Except as herein provided, no part of the school fund apportioned to any district or county shall be transferred to any other district or county; provided, that districts lying in two or more counties, and situated on the county line, may be consolidated for the support of one or more schools in such consolidated district; and, in such case, the school funds shall be transferred to the county in which the principal school building for such consolidated district is located; and provided, further, that all the children residing in a school district may be transferred to another district, or to an independent district, upon such terms as may be agreed upon by the trustees of said districts interested. (Acts 1905, p. 263, sec. 92.)

COUNTY JUDGE EX OFFICIO COUNTY SUPERINTENDENT

Art. 2763. County judge shall be, when.—In each county in this state having no school superintendent, the county judge shall be ex officio county superintendent of public instruction, and shall perform all the duties required of the county superintendent in this chapter. (Id. sec. 42.)

Art. 2764. Shall give bond.—The county judge shall give a bond in the sum of one thousand dollars, to be approved by the county commissioners' court, and filed with the county clerk, said bond made payable to the commissioners' court and their successors in office, and conditioned for the faithful performance of his duties. He shall also take the oath of office prescribed by the constitution. (Id. sec. 43.)

Art. 2765. Compensation.—In a county where the county judge acts as superintendent of public instruction, he shall receive for his services as superintendent such salary as may be provided by the commissioners' court, not to exceed the sum of six hundred dollars per annum. (Id. sec. 44.)

Art. 2766. Shall take constitutional oath.—County superintendents, county judges, and all school officers, shall take the oath prescribed by the constitution to faithfully and impartially discharge the duties of their respective offices. (Id. sec. 45.)

TREASURERS OF SCHOOL FUNDS

Art. 2767. Funds must be kept in depositories.—The terms, county treasurer, and county treasury, as used in all provisions of law relating to school funds, shall be construed to mean the county depository; and the state department of education shall be notified of the treasurer of the school funds in a given county by the commissioners' court filing in said department a copy of the bond of said depository to cover school funds; provided, that no commission shall be paid for receiving and disbursing school funds. (Acts 1905, p. 263. Added Acts 1909, p. 17, sec. 154a.)

Art. 2768. Bond.—Within twenty days after the receipt of a certificate of its selection, it shall be the duty of the county depository to execute a bond, with two or more good and sufficient sureties, payable to the county judge and his successors in office, for the faithful performance of his duties under this title; said bond shall be in an amount equal to the probable amount of available school fund and of the permanent county fund, which may come into his hands, to be estimated by the county superintendent, or county commissioners' court in a county having no superintendent, and shall be conditioned that the depository will safely keep and faithfully disburse the school fund according to law, and pay such warrants as may be drawn on said fund by competent authority. (Acts 1905, p. 263, sec. 31. Art. 921, R. S. 1895.)

Art. 2769. Depository shall keep accounts.—The county treasurer, upon receiving notice from the state superintendent of the amount apportioned to the county, shall report the same to the county superintendent, who shall immediately apportion the same to the several districts, according to the scholastic census; and the county superintendent shall immediately notify the county treasurer of the amount apportioned to each district. It shall also be the duty of the county treasurer to keep a separate account with each district, showing the amount apportioned, according to the certificate of apportionment, and the amount paid out to each school and district; provided, in no case shall the county treasurer pay out any part of the school fund without the approval of the county superintendent. (Acts 1905, p. 263, sec. 34.)

Art. 2770. Balances.—All balances of the general school fund not appropriated for the current year shall be carried over by the treasurer as part of the general school fund for the county for the succeeding year, and unexpended balances to the credit of any district shall be carried over for the benefit of such school district; provided, that, if any such balance shall exceed five dollars per capita, according to the last scholastic census, then such excess over five dollars per capita shall be re-apportioned to the school districts of the county. (Id. sec. 35.)

Art. 2771. Treasurer of independent district; best bidder of interest on average daily balances; tenure; bond.—In an independent district of more than 150 scholastics, whether it be a city which has assumed control of the schools within its limits or a corporation for school purposes only, the treasurer of the school fund shall be that person or corporation who offers satisfactory bond and the best bid of interest on the average daily balances for the privilege of acting as such treasurer. The treasurer when thus selected shall be required to serve until his successor shall have been duly selected and qualified, and he shall be required to give bond in double the estimated amount of the receipts coming annually into his hands. Said bond shall be made payable to the president of the board and his successors in office, conditioned for the faithful discharge of the treasurer's duties and the payment of the funds received by him upon the draft of the president of the school board drawn upon order duly entered of the board of trustees. Said bond shall be further conditioned that the treasurer shall safely keep and faithfully disburse all funds coming into his hands as treasurer, and shall faithfully pay over to his successor all balances remaining in his hands. It shall be approved by the school board and the State Department of Education shall be notified of the treasurer by the president of the school board filing a copy of said bond in said department. (Acts 1905, p. 263, sec. 165; Added Acts 1909, p. 17, sec. 154a; Acts 1917, ch. 160, sec. 1.)

Art. 2772. Purposes for which funds may be expended.—The public free school funds shall hereafter not be expended except for the following purposes:

(a) The State and county available funds shall be used exclusively for the payment of teachers' and superintendents' salaries, fees for taking the scholastic census, and interest on money borrowed on short time to pay salaries of teachers and superintendents, when these salaries become due before the school funds for the current year become available; provided that no loans for the purpose of payment of teachers shall be paid out of funds other than those for the then current year.

(b) Local school funds from district taxes, tuition fees of pupils not entitled to free tuition and other local sources may be used for the purposes enumerated for State and county funds and for purchasing appliances and supplies, for the payment of insurance premiums, janitors and other employés, for buying school sites, buying, building and repairing and renting school houses, and for other purposes necessary in the conduct of the public schools to be determined by the Board of Trustees, the accounts and vouchers for county districts and communities, to be approved by the County Superintendent; provided, that when the State available school fund in any city or district is sufficient to maintain the schools thereof in any year for at least eight months, and leave a surplus, such surplus may be expended for the purposes mentioned herein. (Acts 1905, p. 263, sec. 83. Acts 1919, ch. 122, sec. 1.)

Art. 2773. Treasurers shall make reports.—Each treasurer receiving or having control of any school fund of an independent school district shall keep a full and separate itemized account with each of the different classes of school funds coming into his hands, and shall on or before the first day of October of each year, file with the Board of Trustees of such independent school district and with the State superintendent of Public Instruction an itemized report of the receipts and disbursements of the school funds for the preceding school year ending August 31st, which report shall be on a form prescribed and furnished by the Department of Education. The Board of Trustees shall notify the Superintendent of Public Instruction of their approval of said report within thirty days after receipt of same, should same be approved, and the State Superintendent of Public Instruction shall notify the Board of Trustees of objections or of recommendations concerning same should he desire to make any. All vouchers showing items of the report shall be filed with the Board of Trustees and the State Superintendent of Public Instruction may demand same when passing on said report or for the purpose of investigating same. (Acts 1905, p. 263, sec. 49; Acts 1919, ch. 149, sec. 1.)

CHAPTER THIRTEEN

SCHOLASTIC CENSUS

Art. 2774. Time and manner of taking census.—The County Superintendent of Public Instruction shall, and the Board of Trustees of the independent school districts, on the first day of January of each year, or as soon as practicable thereafter, appoint one of the trustees of each school district, or some other qualified person, to take the scholastic census, who shall be known as the census trustee of the district. "It shall be the duty of the census trustee to take, between the first day of March and the first day of April, after his appointment, a census of all the

children that will be over seven and under eighteen years of age on the first day of the following September," and who are residents of the school district on said first day of April, and to make report under oath to the County Superintendent on or before the first day of June next thereafter. In taking the said census he shall visit each home, residence, habitation and place of abode, and shall, by actual observation and interrogation, enumerate the children thereof in the following manner: He shall use for each parent, or guardian or person having control of any such children, a prescribed form showing the name, color, and nationality of the person rendering such children, the name and number of the school district in which the children reside, and the name, sex and date of birth of each child of which he is a parent or guardian, or of which he has control, and which child will be over seven and under eighteen years of age on the first day of September next following. The census trustee shall require such form to be subscribed and sworn to by the person rendering the children, and he is hereby authorized to administer oaths for this purpose. When the census trustee visits any home or house or place of abode of a family, and fails to find either the parent or any person having legal control, it shall be the duty of the census trustee to leave the prescribed census blank for the use of parents at such home or place of abode, with a note to the parent or guardian having legal control of such child or children, requiring that the form be filled out, sworn and subscribed to before the census trustee, or any officer authorized to administer oaths, and that the blank, when so filled out, shall be delivered by the parent or person having legal control of the child or children to the census trustee. (Acts 1905, p. 263, sec. 89; Acts 1915, ch. 121, sec. 1.)

Art. 2775. Duty of census trustee.—Only children of the same family shall be listed on one form; and, if one person has under his control children of different family name, he should use a separate form for each family name. The census trustee shall arrange the forms for white and colored children separately, in alphabetical order, according to the family name of the children reported thereon. He shall also make, on a prescribed form, separate census rolls for the white and colored children of his district, showing the name, age, sex and color of each child, and the name of the parent, guardian or person having control of said child, by whom it is reported. He shall also make a summary of his rolls showing the number of children of each race that will be of the different ages over seven and under seventeen on the first day of next September, which shall continue to be the scholastic age, as is now provided by law, he shall make oath to his rolls and summaries, and to the faithful and accurate discharge of his duties, deliver the rolls, together with the forms arranged in alphabetical order, to the county superintendent on or before June first next after his appointment. (Acts 1905, p. 263, sec. 89.)

Art. 2776. Duty of county superintendent as to.—The rolls and summaries of the census trustee shall be preserved by the county superintendent in his office for three years after they are filed. The county superintendent shall make, on prescribed forms, separate consolidated rolls for the white and colored children of his county, showing the name, age and sex of each, together with the number of the district in which it lives, and the name of the parent or guardian, arranging the names of the children according to the alphabetical order of their family names. In making these consolidated rolls, he shall scrutinize carefully the work of the census trustees, and shall have power to summon witnesses, take affidavits and correct any errors he may find in any census trustee's roll, and he shall carefully exclude all duplicates. If he deems it necessary, he may reject any roll, and appoint another census trustee to take the census of the district, in which case he shall not approve the warrant to pay the census trustee, whose work has been rejected, for his services. When the county superintendent has prepared his consolidated census rolls, one for each race, he shall make a duplicate of each, and he shall make affidavit to the correctness of both originals and duplicates. The originals he shall, on or before July first, forward to the state superintendent of public instruction at Austin, and the duplicates shall be filed with the county clerk and become permanent records of his office. The county superintendent shall forward with his consolidated rolls and abstract on the prescribed form, under oath, showing the number of children of each race, of the different years of the school age, and the total number of children of each race and the total of both races in his county. In making his consolidated rolls and in investigating the work of any census trustee, the county superintendent shall refer to the forms and rolls of previous years, when necessary, and they shall be carefully preserved for this purpose. (Id.)

Art. 2776a. Scholastic census in common county line districts; duplicates to county superintendent and treasurer; duty of superintendent in district where special tax; warrants, etc.—The scholastic census of all common county line school districts in the state of Texas shall be taken under the supervision of the authorities of the county having control of such school district and reported by such county to the state department of education, as is provided by law governing the taking of the scholastic census of the state, except that the census trustee taking the census of a common county line school district shall make a separate roll of the scholastic population contained in the territory of each county having territory in such common county line school district which shall be separate and distinct from the general census roll of such a district and be returned together with the general census roll, as provided by law, to be made by the census trustees, and the county superintendent of public instruction of the county having control of the school of such a district, shall make up a duplicate of the copy containing separately the scholastic population of each county having territory in such a district and send such duplicate to the county superintendent and county treasurer of the county where such scholastic population reside, to be by them used for the purpose apportioning the county available school funds, and in case such a district has voted a special tax for the purpose of school maintenance or the payment of interest and sinking fund on

school bonds, the county superintendent of each of the said counties shall, from time to time, as such taxes have been collected by his county, draw his warrant against the county treasurer or county depository of such county for such amount of available county school funds or special tax, or either or both, as the case may be, as shall be on hand in the hands of the treasurer or depository, as the case may be, in favor of the county treasurer or depository of the county having control and management of the schools of such district, and upon the presentation of such warrant it shall become the duty of the treasurer or depository of the county against whom the warrant was drawn to pay over to the treasurer or depository of the county having control of the schools of the district such amount of money as is called for in such warrant. The said warrant shall be drawn in favor of the school district embracing the territory in the counties involved and in favor of the county treasurer or depository of the county having control of the schools of the districts and be credited to such school district, and the funds of such school district shall be used as is provided by law for the use of the different kinds of school funds. (Acts 1911, p. 200, sec. 3.)

Art. 2777. Duty and powers of state superintendent as to.—The state superintendent shall have authority to investigate the census of any county, to correct errors, and, in extreme cases when he believes gross errors have occurred, or that fraud has been practiced, he may, with the approval of the state board of education, reject any county's roll and require the census of the county to be retaken. (Acts 1905, p. 263, sec. 89.)

Art. 2778. Compensation of census trustees.—For their services, the census trustees shall receive four cents per capita of the children of scholastic age taken by them in county districts, and three cents per capita in towns of twenty-five hundred inhabitants and upwards to five thousand inhabitants, and two cents per capita in cities of more than five thousand inhabitants; and the county superintendent shall receive one cent per capita of the scholastic population reported by him; but these amounts shall not be paid until the census of the county is accepted by the state superintendent, and shall be forfeited as follows: The trustee's compensation, if his work is rejected by the county superintendent, and the census of his district ordered retaken, and both the county superintendent's and the trustee's compensation, if the census of the county is rejected and ordered by the state superintendent and the state board of education to be retaken. (Id.)

Art. 2779. Above articles apply to cities and towns, except, etc.—The provisions of this chapter shall apply to the taking of the scholastic census in cities and towns constituting independent districts, except as specially provided herein below, to-wit: The census trustee shall be appointed by the president of the board of trustees, and a census trustee may be appointed for each ward or school subdistrict, at the discretion of the president of the school board making such appointment. The forms for the parent and the rolls shall show the street and house number, or location of the house or place in which each child resides. (Id.)

CHAPTER THIRTEEN A
COMPULSORY EDUCATION

Art. 2779a. Attendance requirements and provisions.—Every child in this State who is eight years and not more than fourteen years old shall be required to attend the public schools in the district of its residence, or in some other district to which it may be transferred, as provided by law, for a period of not less than sixty days for the scholastic year, beginning September 1, 1916, and for a period of not less than eighty days for the scholastic years beginning September 1, 1917, and for the scholastic year 1918–19, and each scholastic year thereafter a minimum attendance of 100 days shall be required. The period of compulsory school attendance at each school shall begin at the opening of the school term unless otherwise authorized by the district school trustees and notice given by the trustees prior to the beginning of such school term; provided, that no child shall be required to attend school for a longer period than the maximum term of the public school in the district where such child resides. (Acts 1915, ch. 49, sec. 1.)

Art. 2779b. Exemptions.—The following classes of children are exempt from the requirements of this Act:

(a) Any child in attendance upon a private or parochial school or who is being properly instructed by a private tutor.

(b) Any child whose bodily or mental condition is such as to render attendance inadvisable, and who holds definite certificate of a reputable physician specifying this condition and covering the period of absence.

(c) Any child who is blind, deaf, dumb or feeble-minded, for the instruction of whom no adequate provision has been made by the school district.

(d) Any child living more than two and one-half miles by direct and traveled road from the nearest public school supported for children of the same race and color of such child, and with no free transportation provided.

(e) Any child more than 12 years of age who has satisfactorily completed the work of the fourth grade of a standard elementary school of seven grades, and whose services are needed in support of a parent or other person standing in parental relation to the child, may, on presentation of proper evidence to the County Superintendent of Public Instruction, be exempted from further attendance at school. (Id. sec. 2.)

Art. 2779c. Public aid to indigent parents.—If any parent, guardian or custodian of any child or children who are not exempt from attendance by some of the foregoing provisions of this bill shall make satisfactory proof to the board of trustees that they are financially unable to furnish such child or children with the necessary books with which to attend school, the County Superintendent of Public Instruction of the county where such parent, guardian or custodian resides, shall furnish, upon the recommendation of the district trustees, text books for such purposes to such child or children, which books

shall be furnished and paid for upon the certificate of such officers by the board of county commissioners of the county in which such child or children reside, and which said payment for books shall be made out of the general fund of the county. (Id. sec. 3.)

Art. 2779d. Excuses for absences.—Any child not exempted from the provisions of this Act may be excused for temporary absence due to personal sickness, sickness or death in the family, quarantine, severe storm which has destroyed bridges and made the regular means of travel dangerous, or for unusual causes acceptable to the teacher, principal or superintendent of the school in which said child is enrolled; provided that the excuses are in writing and signed by the parent or guardian of said child; but any case so excused may be investigated by the authorities discharging the duties of attendance officer for the school from which said child is so excused. (Id. sec. 4.)

For section 5 of this Act, see Penal Code, sec. 1513f.

Art. 2779e. Attendance officer; election; appointment in independent school districts; salary; performance of duties by other officers.—The county school trustees of any county having a scholastic population of more than three thousand may elect a school attendance officer for said county upon petition of at least fifty resident freeholders of said county setting forth reasons good and valid in the judgment of the county school trustees why said county shall have an attendance officer; provided, that a public hearing shall be had on said petition after due notice of such hearing shall have been given by publishing said notice in a newspaper published at the county seat for three consecutive weeks, if there be such a newspaper, and if there be no such newspaper, then by posting written or printed notices in at least three public places within the county, one of which notices shall be posted at the courthouse door of said county, and if, after said hearing of said county board of trustees, in their judgment said county board of trustees believe that a school attendance officer is necessary to the proper enforcement of the provisions of this Act, and that the schools of said county will be benefited by having said attendance officer, the said board may elect such officer as herein provided.

The board of trustees of any independent district having a scholastic population of more than two thousand may, after being petitioned and having hearing on said petition, as provided in this section for election of county attendance officer, elect an attendance officer for said independent district, if, in the judgment of said board of trustees, said attendance officer is necessary to the proper enforcement of the provisions of this Act.

Any attendance officer that may be elected by the county school trustees of any county, or by the board of school trustees of any independent school district, may have his salary paid from the available school funds belonging to said county or district, not exceeding two dollars per day for the time actually employed in discharging his duty as such attendance officer; and in any county or independent district where such attendance officer is not elected as provided for in this section, the duties of said attendance officer shall devolve upon the school superintendents and peace officers of such county or district who shall perform the duties of such attendance officer without additional pay. Counties or independent school districts which may avail themselves of the option to elect school attendance officers may elect the probation officer or some officer or officers of the juvenile court of said county to serve as such attendance officer for said county or for said independent district or independent districts located in said county. (Id. sec. 6.)

Art. 2779f. Powers and duties of attendance officer.—The person or persons performing the duties of attendance officer or officers for any county or district shall have power to investigate all cases of unexcused absences from school, to make and file in the proper court complaint in due form against any person or persons violating the provisions of this Act, to administer oaths and to serve legal process, to enforce the provisions of this Act, to keep records of all cases of any kind investigated by him in the discharge of his duties, and to make reports of his work as the State Superintendent may require, providing that nothing in this Act shall be construed to authorize any attendance officer to invade or enter without permission of the owner or tenant thereof, or the head of any family residing therein, any private home, or private residence, or any room or apartment thereof, except to serve lawful process upon any parent, guardian or other person standing in parental relation to any child affected by this Act, or to forcibly take corporal custory of any child anywhere without the permission of the parent or guardian thereof, or other person standing in parental relation to such child, except in obedience to valid process issued by a court of competent jurisdiction, and provided that otherwise than as hereinbefore provided, such attendance officer shall have the power to enforce the provisions of this Act. (Id. sec. 7.)

Art. 2779g. Duties of school superintendents; list of school children; forms and blanks; reports by teachers.—It shall be the duty of the County Superintendent of Public Instruction to furnish to the Superintendent of Schools of each school district in the county, and to the principal of the school in case there be no superintendent, a complete list of all children of scholastic age belonging in said district, as shown by the last scholastic census and the record of transfers to and from said district. The superintendents and principals of the various schools of said county shall, within five days from the date that the provisions of the compulsory attendance act applies to said school, report to said County Superintendent the names of all children subject to the provisions of this Act who have not enrolled in said school, and it shall be the duty of the Superintendent, principal or other official of private, denominational or parochial schools to furnish to said County Superintendent a list of all children of scholastic age enrolled in the school presided over by said official and the district in which said child was enumerated in the public school census. From the reports received from the Superintendents and principals of the public schools and from the officials of the private, denominational and parochial schools, the County Superintendent shall

make up a complete list of all children within scholastic age enrolled in the various districts of said county who have not enrolled in some school and are complying with the compulsory attendance act, and said list shall be furnished to the authorities to whom has been delegated the power to enforce the provisions hereof for said county or district, which authorities shall proceed to carry out their respective duties as prescribed in Section 6 of this Act [Art. 2779e]. All notices, forms and blanks to be used by any of the Superintendents, principals or officials of any school shall be prescribed by the State Superintendent of Public Instruction. It shall be the duty of any teacher giving instruction to any child within compulsory attendance age to report promptly to the attendance officer or other person acting in his stead as herein provided, any unexcused absences, for his action. (Id. sec. 8.)

For section 9 of this act see Penal Code, art. 1207c.

Art. 2779h. Repeal; partial invalidity.—All laws and parts of laws in conflict with this Act are hereby repealed, and in case it is declared by the courts that any section or provision of this Act is unconstitutional, such decision shall not impair other sections or provisions of this Act. (Id. sec. 10.)

CHAPTER FOURTEEN

TEACHERS' CERTIFICATES AND EXAMINATIONS

Art. 2780. Shall present valid certificate.—Any teacher desiring to teach in any city, town or district in this state shall, before contracting with any board of trustees, or with any city school board, exhibit a teacher's certificate, valid in the city, town or school district; and any teacher who shall teach in any public school in this state without having a valid certificate shall not receive from the free school funds any compensation for such services. (Acts 1905, p. 262, sec. 101.)

Art. 2781. Salaries of teachers.—Trustees in making a contract with a teacher shall determine the salary to be allowed, or wages to be paid, upon the following rates of tuition: to a teacher holding a first grade certificate not more than two dollars and fifty cents; to one holding a second grade certificate, not more than two dollars; and to one holding a third grade certificate, not more than one dollar and fifty cents per month per capita shall be allowed for pupils within the scholastic age; and it shall not be lawful for trustees or teachers to demand, as a condition of admittance into school, the payment of extra tuition of pupils of scholastic age; provided, that in no event shall a teacher holding a permanent certificate receive from the public free school fund more than eighty-five dollars per month, or one holding a first grade certificate receive from the public free school fund more than seventy-five dollars per month, or one holding a second grade certificate more than sixty dollars per month, or one holding a third grade certificate, more than forty dollars per month; provided, that this restriction shall not apply to salaries of teachers in a district which levies a local tax for school purposes. (Id. sec. 73.)

Art. 2781a. Salaries of women teachers.—All women teaching in the State Schools of the State of Texas shall be paid the same compensations as are paid to men for performing the same kind, grade and quantity of service, and that all women performing public service for the State of Texas shall be paid the same compensation for their service as is paid to men performing the same kind, grade and quantity of service, and that there shall be no distinction in compensation on account of sex. (Acts 1919, ch. 89, sec. 1.)

Art. 2782. Instructions must be given in English.—It shall be the duty of every teacher in the public free schools of this state to use the English language exclusively, and to conduct all recitations and school exercises exclusively in the English language; provided, that this provision shall not prevent the teaching of any other language as a branch of study, but, when any other language is so taught, the use of said language shall be limited to the recitations and exercises devoted to the teaching of said language as such branch of study. (Acts 1905, p. 262, sec. 102.)

Art. 2783. Prescribed studies; summer normal schools and county teachers' institutes.—All public schools in this state shall be required to have taught in them orthography, reading in English, penmanship, arithmetic, English grammar, modern geography, composition, physiology, and hygiene, including the effects of alcoholic stimulants and narcotics on the human system, mental arithmetic, Texas history, United States history, civil government, elementary agriculture, cotton grading and other branches as may be agreed upon by the trustees or directed by the State Superintendent of Public Instruction; provided, that the subject of elementary agriculture shall not be required to be taught in independent school districts having a scholastic population of three hundred or more, unless so ordered by the school boards; provided, further, that suitable instruction shall be given in the primary grades once each week regarding kindness to animals of the brute creation and the protection of birds and their nests and eggs; provided, further, that in the meaning of this Act elementary agriculture shall include with the present adopted text certain practical field studies and laboratory experiments as prescribed by the county school trustees in conformity to law and the requirements of the State Superintendent of Public Instruction; provided, further, that each summer normal institute and each county teachers' institute shall employ at least one instructor, who shall be selected because of his special preparation to give instruction in the subject of agriculture. (Acts 1905, p. 262, sec. 100; Acts 1907, p. 316; Acts 1915, ch. 83, sec. 1.)

Art. 2784. Shall keep records and make reports.—Teachers shall keep daily registers, in which the attendance, names, ages and studies of the pupils shall be recorded, and such other matters as may be prescribed by the state superintendent. Said registers shall be open to the inspection of all parents, school officers and all other persons who may be interested. All teachers shall make monthly reports on such subjects as may be designated by the state su-

perintendent or county superintendent, to be approved by a majority of the trustees of the district, and shall file the same with the county superintendent when they present their vouchers for their month's salaries. They shall make such reports at the end of the school term as may be prescribed by the state superintendent, and, until such term reports are made, the trustees shall not approve vouchers for last month's salaries, nor shall the county treasurers pay the same. All monthly and term reports shall be made under oath, and county superintendents are hereby empowered to administer oaths for such purposes. County superintendents and county judges shall receive no compensation for administering oaths necessary in transacting any business relating to school affairs. (Acts 1905, p. 263, sec. 103.)

Art. 2785. Shall attend summer normals and county institutes.—It shall be the duty of all teachers in the public schools of this state to attend the summer normal and county institutes as far as possible. (Id. sec. 104.)

Art. 2786. County board of examiners; appointment, etc.; county superintendent to forward examination papers, etc.; fees; county board may issue second-grade certificates; examinations; duties of state superintendent.—There shall be in each organized county in this state, a county board of examiners composed of two persons to be appointed by the county superintendent or the ex officio county superintendent. A person to be eligible to appointment on the county board of examiners must be the holder of a teachers' first-grade certificate, or a certificate of higher grade. The members of the county board of examiners shall serve during the pleasure of the county superintendent and shall meet at the call of the county superintendent. The county superintendent shall forward to the state superintendent, to be submitted to the state board of examiners, the examination papers of applicants for certificates together with the reports of the county board of examiners on a prescribed form furnished by the state department of education, with a fee of $1 paid to him by each of the applicants.

The passage of this law shall not be construed to prohibit the county board of examiners from issuing county second-grade certificates, provided the examination shall meet the requirements for second-grade certificates, but not more than one county second-grade certificate shall ever issue to the same individual.

The state board of examiners shall, at their next meeting after the receipt of said papers and reports together with the fees, examine the papers and shall make a report to the state superintendent recommending that certificates be issued or be not issued, according to the grades made.

The county board of examiners of each county shall, if necessary, hold an examination on the first Friday and Saturday following in the months of June, July, August, September and December of each year, and in case of emergency the state superintendent of public instruction may authorize a special examination, at which applicants for certificates may be examined. Said board of examiners shall use the questions prescribed by the state department of education, and shall conduct the examinations in accordance with the rules and regulations prescribed by the state department of education and the county superintendent of public instruction.

To each applicant who has made the required grades, the state superintendent shall forward the report, together with the certificate recommended by the state board of examiners; and to each applicant who has failed to make the required grades, the state superintendent shall forward the report of the state board of examiners without a certificate. (Acts 1911, p. 189, sec. 1 [122].)

Acts 1911, p. 189, amends sections 114-121 of chapter 124, Acts 29th Leg. (Acts 1905, p. 263, Rev. Civ. St. 1911, Arts. 2787, 2788, 2797-2805), and sections 122-124 of the same act, as amended by chapter 7 of the 2d Called Session of the 31st Legislature (Acts 1909, p. 394, Rev. Civ. St. 1911, Arts. 2806, 2808-2810), and repeals sections 105-110, 125, 126, of such chapter 124 (Rev. Civ. St. 1911, Arts. 2786, 2789-2793), and chapters 68 and 149 of Acts 30th Leg. (Acts 1907, p. 144, Rev. Civ. St. 1911, Art. 2807; Acts 1907, p. 289, Rev. Civ. St. 1911, Arts. 2811, 2812). The amended sections are numbered from 105 to 125, inclusive, and are included in this compilation as Arts. 2786-2788, 2788a, 2797-2799, 2802, 2804, 2804a, 2804b, 2805, 2805a, 2806-2811, 2811a.

Art. 2787. Applicant for certificate; examinations in writing and English language.—Any person desiring to be examined for a teachers' certificate authorizing him or her to contract to teach in the public free schools of Texas, shall make application to the county superintendent, stating the class of certificate desired, and shall present to the county superintendent a statement of three good and well known citizens, or such proof as he may require of his qualifications, except the examination grades required for the class of certificate desired. After investigation, the county superintendent shall give the applicant a written recommendation to the county board of examiners requiring them to examine the applicant for a certificate of the class mentioned; but no person shall receive such recommendation without first depositing with the county superintendent the sum of two dollars ($2.00) as an examination fee, and the recommendation given by the county superintendent shall show the receipt of said fee. The county board of examiners shall not permit any person to enter the examination who does not first present the written recommendation of the county superintendent; provided that all examinations provided for herein and elsewhere in the Texas school laws shall be conducted in writing and in the English language. (Acts 1911, p. 189, sec. 1 [105].)

Art. 2788. Applicant must show good moral character and knowledge of English.—No person shall receive a certificate authorizing his employment in the public free schools of Texas without showing to the satisfaction of the county superintendent that he is a person of good moral character, and has ability to speak and understand the English language sufficiently to use it easily and readily in conversation and in giving instruction in all subjects prescribed for the class of certificate for which he applies. The county superintendent, unless he knows the fact personally, shall require satisfactory proof of the applicant as herein required before issuing his recommendation to the county board of examiners. (Acts 1911, p. 189, sec. 1 [106].)

Art. 2788a. No certificate to person under sixteen.—No certificate shall be granted to a person under sixteen years of age. (Acts 1911, p. 189, sec. 1 [124].)

Arts. 2789-2793. [Repealed. See note under Art. 2786.]

Art. 2794. State board of examiners.—The state superintendent of public instruction shall be authorized to appoint a state board of examiners, consisting of not less than three competent teachers, living in the state, to serve during his pleasure, and he may increase or decrease the number, as varying conditions may make necessary. (Acts 1905, p. 263, sec. 111.)

Art. 2795. When papers shall be forwarded.—The county superintendent, shall, upon the request of any applicant for a second grade, first grade or permanent certificate, made in writing before the adjournment of the board of examiners, forward to the state superintendent, to be submitted to the state board of examiners herein provided, such applicant's papers, and the report of the county board of examiners thereon, together with a fee of one dollar paid him by the applicant; provided, that this shall not in any manner interfere with the issuance of the proper county certificate to said applicant. (Id. sec. 112.)

This article and the following article seem to be wholly or partly superseded by art. 2786.

Art. 2796. Examination of papers.—The state board of examiners shall, at their next meeting after the receipt of said papers and report, together with said fee of one dollar, examine said papers, and report thereon; and, if they believe that the papers are fairly and accurately graded, they shall make a report to the state superintendent, and shall recommend that the county certificate issued upon said examination be made valid in all the counties of the state, and they shall notify said applicant of their action, who may forward his county certificate to the state superintendent of public instruction, who may issue in lieu thereof another certificate of equal rank, valid in all the counties of the state; and the state superintendent shall preserve a record of certificates thus issued by him. (Id. sec. 113.)

Art. 2797. Kinds of certificates.—Teachers' certificates authorizing the holders thereof to contract to teach in the public free schools of this state shall be of two kinds, as follows: (1) Temporary certificate; (2) permanent certificate.

Temporary certificates shall be of the following classes: (1) A second-grade certificate; and (2) a first-grade certificate.

Permanent certificates shall be of the following classes: (1) A state permanent certificate; and (2) a state permanent primary certificate. (Acts 1911, p. 189, sec. 1 [107].)

Art. 2798. County superintendent to keep record of certificates, etc.—The county superintendent shall keep a record of all certificates held by persons teaching in the public free schools of the common school districts and of the independent school districts of his county. Any person who desires to teach in a public free school of a common school district shall present his certificate for record before the approval of his contract. Any person who desires to teach in the public schools of an independent school district shall present his certificate to the county superintendent for record before his contract with the board of trustees of the independent school district shall become valid. (Acts 1911, p. 189, sec. 1 [123].)

Art. 2799. Examinations for first and second grade certificates; certificates, how long valid.—An applicant for a second-grade certificate shall be examined in spelling, reading, writing, arithmetic, English grammar, geography, Texas history, elementary physiology and hygiene with special reference to narcotics, school management and methods of teaching, United States history and elementary agriculture. An applicant for a first-grade certificate shall be examined in the subjects prescribed for a second-grade certificate, and in addition thereto, in English composition, civil government, algebra, physical geography, elements of geometry and general history.

Second and first-grade certificates shall be valid, unless canceled by lawful authority, until the fourth anniversary of the thirty-first day of August of the calendar year in which the examination was held, and to receive such certificates applicants shall make on examination on the prescribed subjects an average grade of not less than seventy-five per cent, and on each subject a grade of not less than fifty per cent; provided, that if the applicant makes a general average on the prescribed subjects of not less than eighty-five per cent and on each subject a grade of not less than fifty per cent, such certificates shall be valid unless canceled by lawful authority until the sixth anniversary of the thirty-first day of August of the calendar year in which the examination was held. (Acts 1911, p. 189, sec. 1 [108].)

Arts. 2800, 2801. [Superseded. See Art. 2799 and note under Art. 2786.]

Art. 2802. Examination for state permanent primary certificate; holder may build to permanent certificate; holder of state first-grade may build to state permanent primary; examination, etc.—An applicant for a state permanent primary certificate shall be examined in the subjects prescribed for a second-grade certificate and in addition thereto, the subjects of civil government, English composition, physical geography, the history of education, elementary psychology applied to teaching, and English and American Literature.

The holder of a state permanent primary certificate may build to a state permanent certificate during the first six years of the validity of said certificate by taking the examination in the following additional subjects: Algebra, physics, elementary geometry, general history, chemistry, solid geometry, plane trigonometry, elementary double-entry bookkeeping; provided, that a person holding a state permanent primary certificate secured by building on a state first-grade certificate shall not be required to be re-examined in the subjects of algebra, physics, elementary geometry and general history in building to a state permanent certificate.

The holder of a state first-grade certificate may build to a state permanent primary certificate by taking the examination in the fol-

lowing additional subjects: History of education, elementary psychology applied to teaching, English and American literature. The applicant in building from a state first-grade certificate to a state permanent primary certificate shall take the examination in one or more of the additional subjects at the same examination. The applicant, in order to be entitled to receive such certificate, shall make a general average of eighty-five per cent on the prescribed subjects and a grade of not less than fifty per cent on each subject. An applicant for a state permanent certificate shall be examined on the subjects prescribed for second and first-grade certificates, and in addition thereto in the history of education, psychology, English and American literature, chemistry, solid geometry, physics, plane trigonometry, and elementary double-entry bookkeeping. The applicant, in order to be entitled to receive such certificate, shall make on the prescribed subjects an average grade of not less than eighty-five per cent and a grade of not less than fifty per cent on each subject. (Acts 1911, p. 189, sec. 1 [109].)

Art. 2803 [Superseded. See Art. 2802 and note under Art. 2786.]

Art. 2804. Building to higher grade certificates.—A person holding a second-grade certificate may build to a first-grade certificate or to a permanent primary certificate during the validity of the said second-grade certificate by taking the examination in the prescribed additional subjects and making the required grades, said person having the privilege of being examined in one or more subjects at any one examination in building on his second-grade certificate. A permanent record of his examination shall be made in the state department of education, and upon the surrender of the lower class certificate the higher class of certificate shall be issued.

The holder of a first-grade certificate may build to a state permanent primary certificate or to a state permanent certificate during the validity of the said first-grade certificate by taking the examinations in the prescribed additional subjects, said person having the privilege of being examined in one or more subjects at any one examination in building on a first-grade certificate. A permanent record of his examination shall be made in the state department of education, and upon the surrender of the first-grade certificate, the state permanent primary certificate or the state permanent certificate, as the case may be, shall be issued.

The holder of a state permanent primary certificate may build to a state permanent certificate during the first six years of the validity of said state permanent primary certificate by taking the examination in the additional prescribed subjects, and making the required grades, said person shall have the privilege of being examined in one or more subjects at any one examination in building on his state permanent primary certificate. A permanent record of his examination shall be made in the state department of education, and upon the surrender of the lower class certificate, the higher class certificate shall be issued. (Acts 1911, p. 189, sec. 1 [110].)

Art. 2804a. Certificate holders eligible to teach in what grades, etc.—The holder of a second-grade certificate or of a permanent primary certificate shall be eligible to contract to teach in only the elementary grades of the public schools of Texas; that is, the grades below the high school. The holder of a state first-grade certificate, or a state permanent certificate shall be eligible to contract to teach in any public free school of Texas. (Acts 1911, p. 189, sec. 1 [110a].)

Art. 2804b. Certificates valid, how long.—A state permanent primary certificate, or a state permanent certificate shall be valid during the life of the holder, unless canceled by lawful authority. (Acts 1911, p. 189, sec. 1 [110b].)

Art. 2804c. Extension of certificates of persons serving in army.—All teachers' certificates held by persons who are enlisted or may hereafter be enlisted in the United States army service during the war with Germany or any other foreign foe shall, upon honorable discharge be extended by the State Superintendent of Public Instruction, upon proper application, for a period equal to that in which the applicant was engaged in the army service. (Acts 1918, 4th C. S., ch. 65, sec. 1.)

Art. 2805. Normal college certificates.—A teacher holding a diploma from a Texas state normal college may teach in the public schools of this state during good behavior and such diploma shall rank as a state permanent certificate. A teacher holding a first-grade certificate from a Texas state normal college may teach in the public schools of this state until the sixth anniversary of the thirty-first day of August of the calendar year in which the certificate was issued, and a teacher holding a second-grade certificate from a Texas state normal college may teach in the public schools of this state until the fourth anniversary of the thirty-first day of August of the calendar year in which the certificate was issued. A teacher holding a diploma from the Peabody normal college, at Nashville, Tennessee, shall be entitled upon recording the diploma in the state department of education, to receive therefrom a state permanent certificate valid during the life of the holder, unless canceled by lawful authority. (Acts 1911, p. 189, sec. 1 [114].)

Art. 2805a. Summer normal institutes; certificates, etc.—The state superintendent of public instruction is authorized to provide for the organization and work of summer normal institutes in Texas, in which examinations may be held for the certification of teachers, and the certificates obtained through these examinations shall be of the same class and governed by the same laws as to the length of time of their validity as are other state certificates obtained through the regular examinations prescribed by the state department of education. (Acts 1911, p. 189, sec. 1 [115].)

Art. 2806. Teachers' certificates; classification of schools.—A teacher's diploma conferred by the University of Texas upon a student who has satisfactorily completed at least four full courses in the Department of Education, and who has satisfied the requirements for the degree of Bachelor of Arts, when presented to the State Department of Education with satisfactory evidence of hav-

ing done the required work in education, shall entitle the holder to receive a State permanent certificate valid for life unless cancelled by lawful authority.

A person who has satisfactorily completed four full courses in the College of Arts and one full course in the Department of Education of the University of Texas, or in any college or university, or in any junior college in Texas ranked as first class by the State Superintendent of Public Instruction, upon the recommendation of the State Board of Examiners, shall, upon presentation of satisfactory evidence of having done the required work, be entitled to receive from the State Department of Education a State first-grade certificate valid until the fourth anniversary of the thirty-first day of August of the calendar year in which the certificate was issued, unless cancelled by lawful authority.

Any school applying for approval under the provisions of this Act shall pay a fee of twenty-five dollars, and each applicant for teacher's certificate on college credentials shall pay a fee of one dollar to cover the expenses of inspection and standardization of approved colleges.

It shall be the duty of the State Superintendent of Public Instruction to appoint a suitable person or persons of recognized college standing, who shall make a thorough inspection of the equipment and standards of instruction maintained in each school applying for approval under this Act, and who shall make a detailed report to the State Board of Examiners for their consideration before any recommendation is made to the State Superintendent of Public Instruction for his approval.

The State Superintendent shall have each school receiving the benefits of this Act thoroughly inspected from year to year as to its standards and facilities of instruction, and he shall have authority to suspend any school from the benefits of this Act which fails for any reason to maintain the approved standards of classification. (Acts 1911, p. 189, sec. 1 [116]; Acts 1917, ch. 8, sec. 1.)

Art. 2807. Certificates based on course in college of industrial arts, etc.—Any person who has completed a regular course leading to graduation in the college of industrial arts, at Denton, and who has completed two full courses in education, may on furnishing satisfactory evidence of having done the required work, receive from the state department of education a state first-grade certificate valid until the sixth anniversary of the thirty-first day of August of the calendar year in which the certificate was issued, unless canceled by lawful authority; provided, that when the holder of said first-grade certificate has taught successfully in the public schools of Texas for a period of three years and has furnished satisfactory evidence thereof to the state department of education, she may receive, upon the surrender of the said first-grade certificate, a state permanent certificate valid for life, unless canceled by lawful authority. (Acts 1911, p. 189, sec. 1 [119].)

Acts 1911, p. 189, sec. 2, repeals chapter 68 of Acts 30th Leg. (Acts 1907, p. 144), and thus supersedes Art. 2807, as it appeared in Rev. Civ. St. 1911. See note under Art. 2786.

Art. 2808. Certificates based on college degrees, etc.—Any person who holds a diploma conferring on him the degree of bachelor of arts, or any equivalent bachelor's degree, or any higher academic degree, from any college or university of the first-class, and who has completed four full courses in education and pedagogy, may receive from the state superintendent of public instruction a permanent state certificate, which shall be valid anywhere in this state during good behavior; provided, that any person who holds a diploma conferring on him the degree of bachelor of arts, or any equivalent bachelor's degree, or any higher academic degree, from any college or university of the first class, who has not had four full courses in education, but who has taught three years in the state, may receive from the state superintendent of public instruction, a permanent state certificate, which shall be valid anywhere in this state during good behavior. The institutions to be recognized as colleges or universities of the first-class shall be determined by the state superintendent of public instruction upon the recommendation of the state board of examiners. (Acts 1911, p. 189, sec. 1 [117].)

Art. 2809. Certificates based on diploma from state normal college or life certificate in another state.—The holder of diploma from a state normal college, or of a life certificate, in another state, upon becoming a citizen of Texas, may receive from the state department of education, a state permanent certificate; provided, the state board of examiners recommends to the state superintendent of public instruction that the requirements for the diploma or life certificate are equal in all respects to the requirements for a state normal college diploma or life certificate in Texas. (Acts 1911, p. 189, sec. 1 [120].)

Art. 2810. City certificates.—A city or town which has a scholastic population of five hundred or more, and has become an independent school district, and which levies a local tax for educational purposes or maintains a system of free schools for nine months in each year, and which has employed a superintendent of city schools, may have a city board of examiners. Said board of examiners shall in all cases consist of a city superintendent of the city schools, together with two other persons who shall be appointed by him, and who shall be teachers, and the superintendent shall not be subject to examination. The city board of examiners is hereby authorized to issue certificates valid only in the city in which they are issued. Such certificates shall be of two kinds, as follows: temporary, permanent, certificates.

Temporary and permanent certificates shall be of three classes for each kind as follows: Temporary certificates shall be second grade, first grade, and high school. Permanent certificates shall be primary, first grade and high school. A temporary city certificate shall be good for any period not exceeding four years, to be determined by the board of trustees of such city or town. A permanent city certificate shall be good during good behavior, and shall not be issued to any person who has not been engaged successfully in teaching in the schools of Texas for a period of at least three years. The further regulation of the issuance of such certificate shall be provided for by the board

of trustees of such cities or towns; provided, that no city or town shall make the requirements for its temporary certificates inferior to the requirements prescribed by law for county or state certificates of the corresponding grades, or the requirements for its permanent certificates less than those prescribed by law for permanent county or state certificates of corresponding grades. Nothing in this chapter shall interfere with the validity of outstanding certificates in such cities or towns, or prevent the extension of such certificates upon such conditions as may be prescribed by the board of trustees regarding professional reading, attendance upon city institutes, or other means of professional growth. Cities and towns authorized by the provisions of this chapter to have a city board of examiners, may, at the discretion of the superintendent of the city schools, employ a teacher of any special branch not included in the requirements for a state certificate without requiring an examination or a teachers' certificate; and nothing in this chapter shall prevent the board of trustees of any city or town [from recognizing the certificates] issued in any other such city or town in this state, and validating the same in the city or town so recognizing. (Acts 1911, p. 189, sec. 1 [118].)

Art. 2811. State kindergarten certificates; state permanent kindergarten certificates.—A diploma of graduation from a state educational institution in Texas which maintains, or may hereafter establish and maintain, a department for training kindergarten teachers, such diploma certifying that the holder thereof has, in addition to the regular course, completed the kindergarten course, consisting of not less than two years training with daily practice in the kindergarten, shall, upon being presented with satisfactory evidence of having done the required work to the state department of education, entitled the holder to receive a state kindergarten certificate authorizing its holder to contract to teach in any public kindergarten school of Texas, valid until the fourth anniversary of the thirty-first day of August of the calendar year in which the certificate was issued, unless canceled by lawful authority. The state superintendent of public instruction is hereby authorized to issue to graduates of approved kindergarten training schools and departments state kindergarten certificates valid for the time mentioned in this section; provided, that no kindergarten training school or department be approved by the state superintendent of public instruction unless the standard indicated above has been fully met, and it shall be the duty of the authorities of such schools and departments to furnish satisfactory evidence with respect to this matter to the state department of education. The holder of a state kindergarten certificate, after having successfully taught in the kindergarten schools of this state for a term of three years, may upon presentation of satisfactory evidence thereof to the state department of education, receive a state permanent kindergarten certificate valid for life, unless canceled by lawful authority. (Acts 1911, p. 189, sec. 1 [121].)

See post, arts. 2909½-2909½b.

Art. 2811a. Outstanding certificates; teachers in special branches.—Nothing in this Act shall be construed to impair the validity of outstanding city, county or state certificates. Cities and towns may, at the discretion of the superintendent, employ a teacher of any special branch not included in the requirements for a state certificate without requiring a teachers' certificate. (Acts 1911, p. 189, sec. 1 [125].)

Arts. 2812, 2813. [Repealed. See Art. 2811 and note under Art. 2786.]

Art. 2814. Cancellation of certificate; appeal; reinstatement.—Any certificate may be cancelled for cause by the authority issuing it; and the State Superintendent of Public Instruction shall have power to cancel any certificate upon satisfactory evidence that the holder thereof is conducting his school in violation of the laws of the State or is a person unworthy to instruct the youth of this State; provided, if any teacher holding a certificate to teach in the public schools of this State, shall enter into a written contract with any board of trustees to teach in any public school of this State, and shall, after making such contract and without the consent of the trustees, abandon said contract, except for good cause, such abandonment shall be considered sufficient grounds for the cancellation of said teacher's certificate, and the same may be cancelled upon the complaint of said trustees, or either of them; provided, that before any certificate shall be cancelled, the holder thereof shall be notified, and shall have an opportunity to be heard, and he shall have the right of appeal from such decision to the State Superintendent, and the State Board of Education; provided, that when the State Superintendent shall have cancelled the certificate, the appeal shall be to the State Board of Education; and provided further that the State Superintendent shall have the authority, upon satisfactory evidence being presented, to reinstate any teacher's certificate theretofore cancelled under the provisions of this Article, and upon a refusal of the Superintendent to so reinstate such certificate, the applicant shall have the right of appeal to the State Board of Education. (Acts 1905, p. 297, sec. 127; Acts 1917, ch. 157, sec. 1.)

CHAPTER FIFTEEN

COMMON SCHOOL DISTRICTS

Art. 2815. Establishment of districts.—It shall be the duty of the county commissioners courts of all organized counties not already subdivided, to subdivide their respective counties into convenient school districts; and any county hereafter organized shall be so subdivided before the beginning of the next ensuing school year after its organization; provided, the county commissioners' court may reduce the area of any common school district and create such additional school districts as may be necessary for the best interests of the school children; provided, that no school district shall be reduced to contain less than nine square miles of territory; and no new district shall hereafter be created, having a less area than nine square miles; and provided, further, that the area of a school district having an outstanding bonded indebtedness shall never be reduced until after such bonded indebtedness shall have been fully discharged. The

commissioners' court shall designate said school districts by number; provided, that all school districts in this state heretofore laid out and attempted to be established by the proper officers of any county, and heretofore recognized by said county authorities as school districts of said county, are hereby validated in all respects, as though they had been duly and legally established in the first instance.

Provided, further, that in counties containing a population of less than ten thousand, no common school district shall be organized or surveyed in such a manner that the geographical center of the same will be more than four miles from the farthest line of said common school district. (Acts 1905, p. 263, sec. 50. Amended Acts 1909, p. 17. Acts 1913, p. 259, sec. 1, amending Art. 2815, Rev. Civ. St. 1911.)

Art. 2815a. Common county line districts.—The boards of county school trustees of the several counties of the State of Texas shall have full power and authority to create common school districts, to contain territory within two or more counties of this State. In creating a common county line school district the boards of county school trustees of each county having territory in the school created, shall each pass an order describing the territory desired to be created into such school district by metes and bounds, giving the course and direction with the exact length of each line contained in such description and locating each corner called for upon the ground, and shall also give the acres of each survey and parts of survey of lands contained in such district, together with a map showing the conditions upon the ground as described in the field notes, giving the number of acres of land contained in each survey and parts of survey contained in each county; also showing the exact position and location of the county line in the territory created into a common county line school district. The said order of each board of county school trustees shall also designate and name some one of the counties having territory included in the description of such common county line school district to manage and have control of the public school in such common county line school district.

The said common county line school district shall have no authority or power until the said order of the board of county school trustees has been passed by the board of county school trustees of each county having territory included in such common county line school district; provided, that no common county line school district shall be created with a less area than nine square miles, and shall be laid out in as near the shape of a square as possible, and in no event shall the length of such district be greater than the width plus one-half of the width of such district. (Acts 1909, ch. 12; Acts 1911, p. 200, sec. 1; Acts 1917, ch. 196, sec. 1.)

Acts 1911, p. 200, amends chapter 12 of Acts 31st Leg. (Acts 1909, p. 17, Rev. Civ. St. 1911, art. 2815), by adding thereto sections 50a, 50b, 50c, 154b, 154c, 154d (Arts. 2776a, 2815a, 2815b, 2856a, 2856c, 2864a, in this compilation). See Art. 2849f.

Art. 2815b. Rights, powers and privileges of common county line districts; management; taxes; bonds, etc.—Common county line school districts, as provided for in section 50a [Art. 2815a], shall have all the rights, powers and privileges of common school districts within the counties of this state, and for all school purposes, shall be managed and controlled by the county named in the order creating such district, and should such common county line school district desire to levy the special tax authorized by law to be levied for the purpose of the maintenance of its schools, or should such common county line school district desire to issue bonds in accordance with the limitations for such purpose provided by law for common school districts to obtain the power to levy such tax or issue such bonds, or both, as the case may be, except that in the event an election has been held in such common county line school district as provided by law and it has been determined by a majority vote, as required by law, that such district shall levy such special tax or issue such bonds, the commissioners court of the county placed in charge and control of such district shall pass an order levying such tax or issuing such bonds, or both, as the case may be, against the territory included within such county where the commissioners court in control of the school is located, and such order levying said tax or issuing said bonds and levying a tax to pay the interest and sinking fund, shall be passed by the commissioners court of each county having territory in such district, and the said commissioners court of each of such counties shall continue to levy the said tax at such rate as is determined and certified by the county superintendent of the county having control of said schools until such tax be diminished or abrogated, as provided by law, or such bonds, if such a district has outstanding bonds, have been fully and finally paid and discharged. The tax assessor shall assess the taxes levied by the commissioners court of his county against the territory included in such county line school district for each and every year that such tax is levied, and it shall be the duty of the tax assessor to make up a separate tax roll covering the special tax on territory in his county included in the county line school district, and deliver together with the general tax rolls of his county, which shall guide the tax collector in collecting the local taxes for such school district, and it shall be the duty of the tax collector to collect such special tax for such county line school district in his county for every year that such tax has been levied in such districts and keep a separate account covering the territory of his county included in county line school districts, for the purpose of determining how much tax has been collected, and shall be paid by his county to the county line school district, shall not be changed or abolished, except by the consent of the commissioners court of each county having territory contained in such a district, and then, shall not be changed so that such a district will contain less than sixteen square miles of area, and in the case such a district has outstanding bonds, the same shall not be changed or abolished in any way until after such bonds are finally paid and discharged. (Acts 1911, p. 200, sec. 2.)

Art. 2815c. Land taken into city or town constituting independent school district to constitute part of city district; adjustment of bonded indebtedness, etc.—

Whenever the limits of any incorporated city or town within this State, which city or town constitutes an independent school district, shall be so extended or enlarged, or shall have been so extended or enlarged, as to embrace within the limits of such incorporated city or town the whole or any part of any independent or common school district adjacent to such incorporated city or town, that portion of such adjacent independent or common school district so embraced within the corporate limits of such incorporated city or town, shall thereafter become a part and portion of the independent school district constituted by such incorporated city or town.

Provided, however, that if such independent or common school district so brought, in whole or in part, within the limits of such incorporated city or town, shall have an outstanding bonded indebtedness, then such incorporated city or town shall become bound and liable for the payment of such proportion of the bonded indebtedness of such independent or common school district as the assessed value of the portion of such independent or common school district so brought within the incorporated limits of such city or town, shall bear to the whole assessed value, of such independent or common school districts so encroached upon, as such assessed values are shown upon the last preceding county tax assessment rolls; and thereafter, such incorporated city or town shall pay either directly or through the officer of such independent or common school district, the proportion of the interest and principal of such bonded indebtedness for which they so become liable.

If within the portion of such independent or common school district so brought within the limits of an incorporated city or town there should be situated any real property belonging to such independent or common school district, such city or town may acquire the same upon such terms as may be mutually agreed upon between the city council of such city and the authorities of such independent or common school district.

Provided, further, however, that none of the provisions of this article shall be applicable where it shall be determined at an election held within such incorporated city or town by majority vote of those voting thereon that the territory or any portion thereof to be taken into the limits of such incorporated city or town shall not thereby become a part and portion of the independent school district constituted by such incorporated city or town, but shall be taken into the city limits for municipal purposes only, and shall remain for school purposes, a portion of the adjacent independent or common school district as though said city limits had not been extended. (Acts 1917, 1st C. S., ch. 28, sec. 1; Acts 1919, 2d C. S., ch. 44, sec. 1.)

Art. 2815d. Town or village incorporated for free school purposes only liable for proportion of bonded indebtedness of part of common school district within limits.—In all cases where any town or village has heretofore been incorporated or may hereafter be incorporated for free school purpose only and which shall include within the limits thereof any portion or portions of any common school district which has an outstanding bonded indebtedness, then such town or village, incorporated for school purposes only, shall become bound and liable for the payment of such proportion of the bonded indebtedness of the common school district as the assessed value of the portion of such common school district included within the limits of the district so incorporated for free school purposes only, shall bear to the entire assessed value of the common school district from which the same was taken, as such assessed values are shown upon the last preceding county tax assessment roll; and thereafter such incorporated town or village shall pay either directly or through the officers of such common school district, the proportion of the interest and principal of such bonded indebtedness for which it is liable. (Acts 1917, 1st C. S., ch. 28, sec. 1a; Acts 1919, 2d C. S., ch. 44, sec. 1a.)

Art. 2816. Commissioners' court may change district lines.—It shall be the duty of the commissioners' court, at any time they deem necessary, to redistrict a part or all of said county; and they may at any time consolidate two or more adjacent school districts, or may subdivide any school district or districts. The commissioners' court of any organized county, to which any unorganized county is attached for judicial purposes, may, and, upon the written petition of not less than ten resident citizens of such unorganized county, shall create such unorganized county into one or more school districts, and shall cause an order to that effect to be entered upon the minutes of said court. (Acts 1905, p. 263, sec. 51.)

Art. 2817. Court shall give metes and bounds of each district.—School districts shall be so made as to be as convenient as possible to the scholastic population; and said courts shall give the metes and bounds of each district, and shall designate the same carefully by giving the whole surveys and parts of surveys with acreage of whole surveys and approximate acreage of parts of surveys in each district, and the county clerk shall carefully record the same; and each district shall be given a number, which number shall be painted in large letters or figures over the doors of the schoolhouses, said signs to be provided by the district trustees of each district. (Id. sec. 53.)

Art. 2817a. Validation of districts.—All common school districts in this State heretofore laid out and attempted to be established by the proper officers of any county and heretofore recognized by said county authorities as school districts of said county are hereby validated in all respects as though they had been duly and legally established in the first instance. (Acts 1915, 1st C. S., ch. 28, sec. 1.)

CONSOLIDATION OF DISTRICTS FOR SCHOOL PURPOSES

Art. 2817¼. Petition to county judge; order for election; canvass of returns; declaration of consolidation; consolidation of common school districts with independent districts; procedure; district defined.—When any number of contiguous Common School Districts within this State, desiring to consolidate for school purposes, present a petition to the county judge of the county wherein such districts are situated, signed by twenty or a majority of the legally

qualified voters of each district so desiring to consolidate, the county judge shall issue an order for an election to be held in each of the Common School Districts so petitioning, which elections shall be held on the same date. The county judge shall give notice of the date of such elections by publication of the order in some newspaper published in the county, for twenty days prior to the date on which such elections are order, or by posting a notice of such elections in each of the districts, or by both such publication and posted notices.

The Commissioners' Court of the county in which such elections are held shall at its next meeting canvass the returns of such elections, and if the votes cast in each and all districts show a majority in favor of the consolidation of such common school districts, the Commissioners' Court shall declare such common school districts consolidated, said districts being contiguous territory.

It is herein provided that in the same manner as is described in Section 1, common school districts may be consolidated with contiguous Independent School Districts, and that when common school districts are so consolidated with an independent school district, the district so created shall be known by the name of the independent school district included therein, and the management of the new district shall be under the existing board of trustees of the Independent District, and that all the rights and privileges granted to independent districts by the laws of this State shall be given to the consolidated independent districts created under the provisions of this Act.

The term "District" as hereinafter used shall be construed to mean "consolidated common school district," or "consolidated independent school district," as the case may be. (Acts 1919, 2d C. S., ch. 65, sec. 1.)

Art. 2817¼a. Assumption of outstanding bonds and tax levy therefor; election to determine.—If at the time of such proposed consolidation there are outstanding bonds of any one or more of the districts proposed to be consolidated, then at an election held for that purpose on some future day, there shall be, or at the election held for the purposes of consolidation, there may be submitted to the qualified tax paying voters of such proposed consolidated district the question as to whether or not the said consolidated district shall assume and pay off the said outstanding bonds and whether or not a tax shall be levied therefor, provided that if said election on the question of assuming said outstanding bonds is held on the day upon which the election on the question of consolidation is held, in that event, there shall be separate notices, ballots, and ballot boxes and tally sheets for the two separate elections. If a majority of said voters should vote at either of said elections to assume and pay off said bonded indebtedness, then said bonded indebtedness shall become valid and subsisting obligations of said consolidated district, and the proper officers thereof shall annually thereafter levy sufficient taxes to pay the interest thereon as it accrues and to create a sinking fund which in addition to the sinking funds already accumulated in the original bonded district or districts will pay off and retire the said outstanding bonds when they shall become due. (Id. sec. 2.)

Art. 2817¼b. Trustees of consolidated district; appointment; election; terms and oath of office; officers of board; vacancies.—The Board of County School Trustees at its next meeting after such consolidation of school districts is declared shall appoint a board of seven trustees for the consolidated district. The terms of office of three of the trustees so appointed shall expire on the first day of May next following their appointment, and the terms of office of the other four trustees shall expire on the first day of May of the succeeding year, the trustees so appointed to determine by lot which three trustees shall serve the short term and which four of their number shall serve the long term, and each year thereafter alternately three trustees and four trustees shall be elected by the qualified voters of the district on the first Saturday of April of every year, which trustees so elected shall enter upon the discharge of their duties on the first day of May next following. District trustees shall qualify by taking the oath of office required of all State Officers in this State, which oaths shall be filed with the county superintendent of the county wherein the district is situated. The board of trustees after being qualified shall immediately organize by electing one of their number president and another secretary, a report of which organization shall be filed with the county superintendent. Trustees so elected shall each serve for two years from the first day of May of the year in which they are elected or until their successors are elected and qualified, and in case a vacancy is created in any board of district trustees by resignation or otherwise, the board of county school trustees shall fill such vacancy by appointment, which appointment shall extend to the time of the next regular election for district trustees. (Id. sec. 3.)

Art. 2817¼c. Officers to conduct election of trustees; compensation; notice of holding of election; qualifications of trustees.—The board of trustees of the district shall appoint three persons, qualified voters of the district, to hold election for district trustees, who shall make returns thereof to the board of trustees of the district within five days after such election shall have been held, the three persons holding such election shall receive as compensation for their services the sum of two dollars each, to be paid out of the general fund of the county in which said election was held. The board of trustees when ordering such election and appointing persons to hold election shall give notice of the time and place where such election will be held, which notice shall be posted in three public places in the district twenty days prior to the date in which such election is ordered to be held. If at the time and place for holding such election, any or all of the persons so appointed to hold such election are absent or refuse to act, then the electors present may select of their number a person or persons to act in the place of those absent or refusing to act.

No person shall be eligible to serve as school trustee who is unable to read and write the English Language understandingly, and who has not been a resident of the State

one year and of the district six months prior to the election for trustees. (Id. sec. 4.)

Art. 2817¼d. District superintendent; election; term of office; duties; teachers; employment; term; contracts.—The board of trustees so elected shall employ a district superintendent for the district, who shall be elected for one year or for two years as the trustees may determine, and who, in addition to his duties as superintendent, shall be a teacher in one of the elementary schools or the high school of the district. Acting in collaboration with the district superintendent, the board of trustees shall employ teachers for the several elementary schools of the district, or for the departments of the high school, which teachers shall be elected for one year or two years as the trustees decide, and they shall serve under the direction and supervision of the district superintendent. Contracts between the trustees and the district superintendent and teachers shall be in writing and subject to the approval of the county superintendent of the county wherein such district is situated. (Id. sec. 5.)

Art. 2817¼e. Visitation of schools by district superintendent; records and reports.—It shall be the duty of the district superintendent to visit personally and inspect the several schools of the district and advise with the teachers therein, and he shall be responsible to the district trustees and to the county superintendent for the proper conduct of the school work and the management of the schools of the district. The district superintendent shall spend at least one-fourth of his time in visiting and inspecting the schools of the district, and he shall make recommendations from time to time to the district trustees and to the county superintendent for any changes which in his judgment are necessary for the proper management of the schools of the district. The district superintendent shall keep such records and make such reports as are required of him by the district trustees and the county superintendent, and the county superintendent shall refuse to approve vouchers drawn against the school funds of the district until such reports are made by the district superintendent. (Id. sec. 6.)

Art. 2817¼f. Establishment of elementary schools; instruction in.—The district trustees shall recognize or establish elementary schools within the bounds of the district as the need for such elementary schools shall appear. They shall, in so far as is practicable, provide uniform school buildings and equipment for the several elementary schools so recognized or established, and they shall arrange an annual wage schedule for the teachers employed in such elementary schools as nearly uniform as is possible. It is herein expressly provided that the instruction in the elementary schools of the district shall embrace, not more than the first seven grades or years of work as outlined in the course of study issued by the State Superintendent of Public Instruction for this State, and approved by the County Superintendent of the county wherein such elementary schools are situated. (Id. sec. 7.)

Art. 2817¼g. Establishment of high schools; courses of instruction; transportation of pupils.—The trustees of the district may recognize or establish not more than one high school for white children and one high school for colored children within the limits of the district, which high schools shall be located with reference to the convenience of the majority of the high school pupils of either race. It is herein provided that the instruction in such high schools may embrace any or all of the four years or grades or work above the seventh grade, as outlined by the State Superintendent of Public Instruction for this State and approved by the county board of trustees of the county wherein such high schools are situated. It is herein further provided that such high school may be located and conducted in connection with some of the elementary schools of the district as may be decided by the trustees of the district.

When in their judgment it is deemed necessary or expedient, the trustees of the district may provide for the transportation of pupils to and from any elementary school or high school of the district whereupon such pupils may be in attendance, and trustees are hereby empowered to employ transportation vehicles and drivers for such service, paying the cost thereof out of the local maintenance fund of the district or out of such other funds as may be appropriated for this purpose. (Id. sec. 8.)

Art. 2817¼h. Taxing and bonding powers of consolidated district; free textbooks; appeals from such districts.—It is herein expressly provided that taxing and bonding powers as are provided for elsewhere in the laws of this State are hereby guaranteed to the district consolidating under the provisions of this Act, either common school districts or independent school districts, and it is further provided that rural school aid shall be extended to any or all of the schools of the districts so consolidating which comply with the laws and rulings governing the distribution of State aid to rural schools and independent districts. It is further guaranteed that the law providing free text books to the free schools of this State shall apply to the districts consolidating under the provisions of this Act. Appeals form consolidated common school districts shall be made to the county superintendent and Board of Education. (Id. sec. 9.)

Section 10 repeals all conflicting laws.

TRUSTEES

Art. 2818. Election and qualification.—On the first Saturday in April of each year, the qualified voters of each school district, at a school district meeting for that purpose, shall elect three trustees for said district, who shall enter upon the discharge of their duties on the first of May next following. They shall immediately thereafter organize by electing one of their number president and one secretary of the board of trustees. The term of office of said trustees shall be divided into two classes, and they shall draw for the different classes; the one drawing number one shall serve for one year, and those drawing numbers two and three shall serve for two years, and until their successors shall have been elected or appointed, and shall have qualified. On the first Saturday in April of each year thereafter, there shall be an election in each school district for the election of a trustee or trustees, as

the case may be, and the trustee or trustees so elected shall serve for two years and until his or their successor or successors shall have been elected or appointed and shall have been qualified. The trustees so elected or appointed shall, before entering upon the discharge of their duties, qualify by taking the oath as provided by the constitution, and shall, as soon as practicable, file said oath with the county superintendent or county judge; provided, that nothing herein shall interfere with the term of office of trustees already chosen in accordance with the provisions of the law. (Acts 1905, p. 263, sec. 67.)

Art. 2819. Election officers; returns; compensation; notice of election; appointment of substitutes; eligibility of school trustees.—The board of trustees of the common school district shall appoint three persons, qualified voters of the district, to hold such election and shall make returns thereof to the board of trustees of the common school district within five days after such election shall have been held. The three persons holding said election shall receive as compensation for their services the sum of one dollar each, to be paid out of the general fund of the county in which said election was held. The board of trustees, when ordering such election and appointing persons to hold election, shall give notice of the time and place where such election will be held, which notice shall be posted at three public places within the district at least twenty days prior to the date of holding said election. If, at the time and place for holding such election, any or all of the persons so appointed to hold such election are absent or refuse to act, then the electors present may select of their number a person or persons to act in the place of those absent or refusing to act. No person shall be eligible to service as a school trustee who cannot read and write and has not been a resident of the school district for six months prior to the election held for trustee. (Acts 1905, p. 263, sec. 68; Acts 1915, ch. 132, sec. 1.)

The title of the act purports to amend articles 2819, 2820, chapter 15, title 48, and articles 2887 and 2889, chapter 18, title 48, Rev. St. 1911. Sec. 1, after the enacting clause, follows the title, except that the number "2819" is erroneously stated as "2918," though the correct number is employed in setting forth the article in its amended form. Sec. 2 repeals all laws in conflict.

Art. 2820. Returns of election.—The returns of the election of the trustees to be elected as heretofore provided for the control and management of the schools of the district shall be made to the board of trustees where such election is held, and the board of trustees shall meet and canvass the returns of said election within five days after returns have been made and declare the result of said election and issue to the persons so elected their commissions as such trustees, and shall notify the county judges or the county superintendent, if the county has a superintendent. (Acts 1905, p. 263, sec. 93; Acts 1907, p. 204; Acts 1915, ch. 132, sec. 1.)

Art. 2821. Qualifications of trustees; suit to remove trustee not qualified; appointment of temporary trustee; vacancy.—The trustees elected must be able to read and write intelligently the English language, and read, comprehend and interpret the laws of the State of Texas relating to the public school system; and in the event of trustee elected, in the opinion of the county superintendent or the county judge, who is ex-officio county superintendent, is not qualified to serve under the provisions of this article, it shall be the duty of the county superintendent, or such county judge who is ex-officio county superintendent, to refuse to recognize such person who has been so elected as as such school trustees, and to make written request within twenty days after such election, of the county attorney, or district attorney in case there be no county attorney, to institute and prosecute with dispatch such suit, in the name of the State of Texas, for the removal of such trustee, in the district court of the county where such trustee resides, at the option of the county attorney or district attorney in case there be no county attorney; provided it shall be lawful under the provisions of this Article, upon good cause shown within the discretion of the court where such suit is pending, to enjoin and restrain such person from acting as such trustee during the pendency of such suit for his removal. It shall be lawful under the provisions of this Article to summon such trustee so elected before the court in the trial of such cause, and there make examination of him as to his qualifications to serve as such trustee as defined by this Article, and, in case such trustee, after having been duly cited to answer in said cause and summoned as herein above provided to appear for examination, shall fail, neglect or refuse to obey said summons and fail to appear for the purpose of examination, and fail or refuse to submit to such examination, such failure, neglect or refusal shall be prima facie evidence of his disqualification under the terms of this Article, and because thereof the court trying such cause, shall be authorized to render thereupon judgment by default against such trustee so defaulting removing him from his said office of school trustee, and declaring the same vacant. It shall be the duty of the county board of education of the county where such trustee has been elected to appoint some suitable person, who is qualified as herein defined, to act as such trustee during the pendency of such suit to remove such trustee so elected, if he shall be enjoined from so acting, and, in case such trustee so elected shall be removed by such suit brought by the county attorney, or district attorney in case there be no county attorney, then such trustee, so appointed by the county board of education of said county, shall continue to serve until the next regular election of school trustees for such district; provided, however, that such trustee so appointed may be removed for the causes and in the manner provided by this Article. In case of vacancy in said office of trustee, by resignation or otherwise, the county board of education of the county shall appoint a suitable person qualified under the provisions of this Article to so act as such trustee until the next regular election of school trustees for such district; and in case such county board of education, under the provisions hereof, should appoint some person not qualified, suit for his removal shall be brought by the county attorney, or district attorney in case there be no county attorney, of the State, in the name of the State of Texas, in

the manner and upon the same terms and conditions as has been herein provided for in case of the election of persons who are not qualified to act as such trustees. (Acts 1905, p. 263, sec. 93; Acts 1907, p. 204; Acts 1917, ch. 199, sec. 1.)

Art. 2822. District trustees a body corporate.—The trustees of school districts provided for in the preceding articles of this chapter, and their successors in office, shall be a body politic and corporate in law, and shall be known by and under the title and name of district trustees of district number —, and county of ———, state of Texas; and as such may contract and be contracted with, sue and be sued, plead or be impleaded, in any court of this state of proper jurisdiction, and may receive any gift, grant, donation or devise made for the use of the public schools of the district. All reports and other official papers shall be headed with the number of district and name of county. (Acts 1905, p. 263, sec. 69.)

Art. 2823. Shall have management and control of schools.—The trustees of school districts shall have the management and control of the public schools and public school grounds. It shall be unlawful for any person or persons to loiter or loaf upon any public school grounds in this state during the session of such school, after being warned by the person in charge of such school to leave such grounds; and such person or persons so found shall be guilty of a misdemeanor, and, upon conviction therefor, shall be fined in any sum not less than five and not to exceed twenty-five dollars. They shall have the power to employ and dismiss teachers, but in case of dismissal, teachers shall have the right of appeal to the county and state superintendents. (Id. sec. 70.)

Art. 2824. Make contracts for the district.—School trustees shall determine how many schools shall be maintained in their school district, and at what points they shall be located; provided, that not more than one school for white children and one school for colored children shall be established for each sixteen square miles of territory or major fraction thereof, within such district; they shall determine when the schools shall be opened and when closed; they shall contract with teachers and manage and supervise the schools, subject to the rules, and regulations of the county and state superintendents; they shall approve all teachers vouchers, and all other claims against the school fund of their district; provided, that trustees, in making contracts with teachers, shall not create a deficiency debt against the district. (Id. sec. 71.)

Art. 2825. Contracts with teachers.—Trustees of a district shall make contracts with teachers to teach the public schools of their district, but the compensation to a teacher, under written contract with the trustees, shall be approved by the county superintendent before the school is taught, stating that the teacher will teach such school for the time and money specified in the contract; and the board of trustees shall have authority, whenever the average daily attendance exceeds thirty-five pupils, to employ one competent assistant to every thirty-five pupils of such excess and fractional part thereof exceeding fifteen pupils; and all children within the scholastic age residing in such district, though they may have settled in such district since the scholastic census was taken, shall be entitled to receive all the benefits of the schools of such district; and in a district that levies a special school tax, the trustees shall have the right to increase the salaries of teachers and the scholastic age, and may also have the schools taught longer than six months, if it is deemed advisable. (Id. sec. 72.)

Art. 2826. Check for payment of teacher.—The amount contracted by trustees to be paid a teacher shall be paid on a check, drawn by a majority of the trustees, on the county treasurer, and approved by the county superintendent. The check shall in all instances be accompanied by the affidavit of the teacher that he is entitled to the amount specified in the check, as compensation under his contract as a teacher. (Id. sec. 74.)

LOCAL TAX

Art. 2827. Special tax authorized.—The commissioners' court of any county in this state shall have power to levy a special tax for the further maintenance of public free schools, and the erection within each school district of a schoolhouse or schoolhouses; provided, a majority of the qualified property taxpaying voters of the district, voting at an election to be held for the purpose, shall vote such tax, not to exceed in any year fifty cents on the one hundred dollars valuation of the property subject to taxation in such district; provided, that all property assessed for school purposes shall be assessed at the rate of value of property as said property is assessed for state and county purpose. (Id. sec. 57. Amended Acts 1909, p. 17.)

Art. 2828. Petition for tax election.—Whenever twenty or more, or a majority of the property taxpaying voters of a district, wish to tax themselves for the purpose of supplementing the state school fund appropriated to said district, they shall make application to the county judge, who shall issue an order for an election to be held in said district, to determine whether such tax shall be levied. Said application shall designate either the specific rate of tax to be levied, or a rate of tax not exceeding fifty cents on the one hundred dollars valuation of property, and the order of said judge shall state:

1. When said election shall be held.
2. At what point or points the polls shall be opened.
3. The rate of tax to be voted on; provided, that no election shall be held to determine the levy of a tax exceeding fifty cents on the one hundred dollars valuation of property, but the proposition may be for a specific tax rate within this limit or for a school tax not exceeding fifty cents on the one hundred dollars valuation of taxable property in the district.

The county judge shall order the sheriff to give notice of such election, by posting three notices in the district for three weeks before the election, and the sheriff shall obey such order. Not more than one such election shall be held in the same scholastic year. (Id. sec. 38. Amended Acts 1909, p. 17.)

Art. 2829. Presiding officer; ballots.—The county judge shall appoint a presiding officer for each voting place to hold said election, who shall make due return thereof as is required by law for holding a general election; and each person, who favors taxation for school purposes, shall have written or printed on his ticket, "For School Tax," and each person opposed to such taxation shall have written or printed on his ticket, "Against School Tax." The ballots shall be prepared by the county judge, and the county shall bear the expense of having them printed. (Id. sec. 59. Amended Acts 1909, p. 17.)

Art. 2830. Hours of election.—All polls for school district elections shall be opened at eight o'clock a. m., and shall be closed at six o'clock p. m., and none of the officers holding such election shall be entitled to compensation therefor. (Id. sec. 60. Amended Acts 1909, p. 17.)

Art. 2831. Who entitled to vote.—All persons who are legally qualified voters of this state, and of the county of their residence, and who are resident property taxpayers in said district, shall be entitled to vote in such school district election; and, if at such election a majority shall vote for the tax, it shall be declared by the commissioners' court to have carried in said district, and entered upon the records of said court to have been carried; and in all cases the returning officer shall make a full and complete return, as in other elections, to said court, within five days after said election is held, and said return shall be opened and counted at the first meeting of said court and the result declared. (Id. sec. 61. Amended Acts 1909, p. 17.)

Art. 2832. Challenge of voters.—Any one person may challenge a voter; but if the challenged party takes an oath that he is a qualified voter of the state and county, and that he is a resident property taxpayer in said district, he shall be entitled to vote. (Id. sec. 62.)

Art. 2833. Election to abrogate, increase or diminish tax.—At any time after the expiration of two years after any district has levied a school tax on itself, twenty property taxpaying qualified voters, or a majority of such voters of the district, may have an election held, upon the proper petition to the county judge, to determine whether such tax shall be abrogated, increased or diminished. Such election shall be held and conducted as elections provided for in article 2829, and persons entitled to vote at such elections shall possess the qualifications prescribed in article 2831. (Id. sec. 63.)

Art. 2834. Form of ballot.—If the election be to abrogate or diminish the school tax, each voter favoring the abrogation or diminution shall have written or printed upon his ticket, "For abrogating school tax," or, "For diminishing school tax to — cents," as the case may be; and each voter opposing the abrogation or diminution shall have written or printed on his ballot, "Against abrogating school tax," or, "Against diminishing school tax to — cents," as the case may be; and a majority vote shall be necessary to abrogate or diminish the school tax. (Id. sec. 64.)

Art. 2835. Form of ballot for increase.—If the election be to determine whether the tax shall be increased, each voter favoring the increase of the school tax shall have written or printed on his ballot, "For increase of school tax;" and each voter opposing such increase shall have written or printed on his ballot, "Against increase of school tax;" and, if a majority of the votes cast be in favor of increasing the tax, it shall be increased. (Id. sec. 65. Amended Acts 1909, p. 17.)

Art. 2836. Levy of tax.—The county commissioners' court shall, at the time of levying the taxes for county purposes, also levy upon such school district the rate of tax said district has voted upon itself, or, if the proposition shall have been, "for a school tax not exceeding fifty cents on the one hundred dollars valuation of taxable property in the district," the commissioners' court shall levy such a rate within that limit as shall have been determined by the board of trustees of said district and the county superintendent, and certified to said court by the county superintendent. It shall be the duty of the tax assessor to assess said tax as other taxes are assessed, and to make an abstract showing the amount of special taxes assessed against each school district in his county, and to furnish the same to the county superintendent, on or before the first day of September of the year for which such taxes are assessed; and the taxes levied upon the real property in said districts shall be a lien thereon, and the same shall be sold for unpaid taxes in the manner and at the time of sales for state and county taxes. A special tax voted in any district after the levy of county taxes shall be levied at any meeting of the commissioners' court prior to the delivery of the assessment rolls by the assessor. The tax assessor shall assess, and the tax collector shall collect, said district taxes as other taxes are assessed and collected. The tax assessor shall receive a commission of one-half of one per cent for assessing such tax, and the tax collector a commission of one-half of one per cent for collecting the same. The tax collector shall pay all such taxes to the county treasurer; and said treasurer shall credit each school district with the amount belonging to it, and pay out the same in accordance with the law. (Id. sec. 66. Amended Acts 1909, p. 17.)

SCHOOLHOUSE BONDS

Art. 2837. Election for issuance of bonds.—When twenty or more, or a majority, of the qualified taxpaying voters of a school district shall petition the county judge, he shall order an election in the school district from which the petition came, to determine whether or not a majority of the legally qualified property taxpaying voters of that district desire the issuance of bonds as indicated in the petition, and the annual levy of a tax sufficient to pay the current interest on said bonds and provide a sinking fund sufficient to pay the principal at maturity. Said election shall be ordered, held, and the returns counted and published as in other school elections in accordance with the laws of this state, and it shall not be necessary to vote upon a specific rate of tax, but the rate shall be determined as provided in ar-

ticle [2841]. (Id. sec. 76. Amended Acts 1909, p. 17.)

Art. 2838. Ballots.—Whenever the county judge in any county in the state of Texas shall have found it lawful and necessary to order an election for schoolhouse bonds, as provided herein, said county judge shall prepare proper ballots for use in said school district election, and the county shall bear the expense of having such ballots printed; and each person who favors the issuance of bonds and the levy of a tax therefor, shall have written or printed on his ballot, "For the Bonds," and each person opposed to such taxation shall have written or printed on his ballot, "Against the Bonds." (Id. sec. 80. Amended Acts 1909, p. 17.)

Art. 2839. Issuance and sale of bonds.—If, after the results of said election are known, it shall appear that a majority of the votes therein have been cast in favor of the issuing of schoolhouse bonds, the commissioners' court of the county in which said school district is located shall issue said bonds on the faith and credit of said school district, which bonds shall bear not more than five per cent interest per annum, and shall run not more than forty years; provided, that when the houses are to be built of wood the time of the bonds herein provided for shall not be more than twenty years. The said bonds shall be examined by the attorney general of the state of Texas, and registered by the comptroller of public accounts of the state of Texas. They shall be sold to the highest bidder, and the purchase money shall be placed in the county treasury to the credit of said school district, and the money shall be disbursed upon warrants issued by the trustees of said district, approved by the county superintendent, in payment of accounts legally contracted in buying, building, equipping or repairing the schoolhouse or schoolhouses for such district, or in the purchase of sites therefor; provided, that the commissioners' court may invest the county permanent school fund in such school district schoolhouse bonds, and the state board of education shall have the right to purchase such bonds on the same conditions as it may purchase other bonds. (Id. sec. 77. Amended Acts 1909, p. 17.)

Art. 2840. Form of bond.—The said school district schoolhouse bonds shall express on their face: The state of Texas, the name of the county, and the number or corporation name of the district issuing said bonds; provided, the bonds shall not run more than forty years, and shall bear not more than five per cent interest per annum, and shall never be sold below par. (Id. sec. 81. Amended Acts 1909, p. 17.)

Art. 2841. Levy of bond tax.—When the commissioners' court shall provide for the issuance of such bonds, and each year thereafter so long as the bonds or any of them are outstanding, said court shall levy a tax not to exceed twenty-five cents on the one hundred dollars valuation of taxable property of said school district, sufficient to pay the interest on the bonds and to produce a sinking fund, which, together with the interest thereon when placed at interest, shall be sufficient to pay the principal of said bonds at maturity. The rate of such tax shall be determined by the trustees of the district and the county superintendent, and certified by the county superintendent to the commissioners' court; provided, that the rate of the bond tax, together with the rate of special local tax of the district for the maintenance of schools therein, shall never exceed fifty cents on the one hundred dollars valuation of taxable property of said school district; but, if the rate of bond tax certified by the county superintendent to the commissioners' court, together with the rate of maintenance tax previously voted in the district, shall at any time exceed fifty cents on the one hundred dollars, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and fifty cents. Said school district bond tax shall be assessed and collected in the manner provided by law for the assessment and collection of the special local tax for the maintenance of public free schools; provided, that the rate of school tax certified to the commissioners' court by the county superintendent shall be the rate to be levied by the commissioners' court in the school district, until a change in such rate shall be recommended by the county superintendent and board of trustees of the district within the limits prescribed by law. (Id. sec. 78. Amended Acts 1909, p. 17.)

Art. 2842. Tax must be levied until bonds are paid.—After said bonds shall have been issued and sold, and said tax shall have been levied sufficient to pay said bonds and the interest thereon as provided above, it shall not be lawful to hold an election in said district to determine whether or not said tax shall be discontinued or lowered until said bonds, together with the interest thereon, shall have been fully paid; nor shall the limits and boundaries of said common school district ever be decreased until after said bonds and the accrued interest thereon shall have been fully paid. (Acts 1905, p. 263, sec. 79.)

Art. 2843. Expenditure of proceeds of bonds.—The funds arising from the sale of said common school district bonds of any district, and placed to the credit of said district in the treasury of said county, shall be apportioned to the use of the public free schools of said district for the purpose of building and equipping schoolhouses, in accordance with the method and manner provided by law for the division of the funds for the maintenance of public free schools therein. (Id., p. 263, sec. 82.)

SCHOOL PROPERTY

Art. 2844. Trustees to contract for building.—The trustees of a school district shall contract for the erection of the buildings and superintend the construction of the same; and the county superintendent shall draw his warrant or warrants upon the school fund so appropriated only upon the accounts first approved by them. (Id. sec. 84.)

Art. 2845. Lien may not be acquired.—No mechanic, contractor, material man, or other person, can contract for, or in any other manner have or acquire, any lien upon the house so erected or the land upon which the same is situated; and all contracts with such parties shall expressly stipulate for a waiver of such lien. (Id. sec. 85.)

Art. 2846. Sale of school property.—The trustees of any school district, upon the

order of the commissioners' court, prescribing the terms thereof, when deemed advisable, may make sale of any property belonging to said school district, and apply the proceeds to the purchase of necessary grounds, or to the building or repairing of schoolhouses, or place the proceeds to the credit of the available school fund of the district. (Id. sec. 86.)

Art. 2847. Control of school property.—All schoolhouses erected, grounds purchased or leased for a school district, and all other property belonging thereto, shall be under the control of the district trustees of such district. (Id. sec. 87.)

Art. 2848. Protection of houses of respective races.—A schoolhouse constructed in part by voluntary subscription by colored parents or guardians, and for a school for colored children, shall not be used for white children without the consent of the trustees of the district, and a like rule shall protect the use of schoolhouses erected in part by voluntary subscription of white parents or guardians for the benefit of white children. (Id. sec. 88.)

Art. 2849. Title to property.—All conveyances, devises and bequests of property for the benefit of the public schools made by any one for any county, city or town, or district, shall, when not otherwise directed by the grantor or devisor, vest said property in the county judge of the county, or the board of school trustees of the city or town, or the trustees of the school district, or their successors in office, as the trustees for those to be benefited thereby, and the same, when not otherwise directed, shall be administered by said officers under such rules as may be established by the state superintendent. (Id. sec. 132.)

CHAPTER FIFTEEN A

PUBLIC HIGH SCHOOLS IN COMMON SCHOOL DISTRICTS

Art. 2849a. Schools authorized.—That public high schools are hereby authorized to be established in the common school districts of Texas, said high schools to be an integral part of the public free school system of the state. (Acts 1911, p. 34, sec. 1.)

Art. 2849b. Classification of high schools.—In accordance with the provisions of this Act, the public high schools of the State shall, upon satisfactory evidence, be ranked by the State Department of Education as high schools of the first class, high schools of the second class and high schools of the third class. A high school of the first class shall be a high school which maintains at least four years or grades of work above the seventh grade or years, may include in its curriculum the first seven grades or years of work, shall employ at least two teachers to teach high school subjects, who shall each hold a State first grade certificate or certificate of higher grade, and shall be maintained for not less than eight scholastic months during each school year. A high school of the second class shall be a high school which maintains at least three years or grades of work above the seventh grade or year, may include in its curriculum the first seven years or grades of work, shall employ at least two teachers to teach high school subjects, who shall each hold a State first grade certificate or certificate of higher grade, and shall be maintained for not less than eight scholastic months during each school year. A high school of the third class shall be a high school which maintains at least two years or grades of work above the seventh grade or year, may include in its curriculum the first seven years or grades of work, shall employ at least one teacher to teach high school subjects, who shall hold a State first grade certificate or certificate of higher grade, and shall be maintained for not less than seven scholastic months during each school year. Each class of high schools herein defined shall be entitled to receive a certificate of approval or classification from the State Department of Education. High schools which fail to come up to the standard herein prescribed as to teachers, number of grades or years of work and length of annual session, shall not be prohibited by this Act, but such high schools shall not be entitled to receive a certificate of approval, or classification from the State Department of Education. A grade or year of work as herein mentioned shall consist of not less than thirty-two weeks of five days each. (Acts 1911, p. 34, sec. 2; Acts 1915, ch. 36, sec. 5.)

Art. 2849bb. Subjects of study in high schools.—Besides the subjects prescribed by law to be taught in the public schools of Texas, such additional subjects as agriculture, manual training, domestic economy or other vocational branches shall be included in the course of study in all high schools provided for herein which are located outside of incorporated towns and cities, and special attention shall be given to teaching said subjects. (Id. sec. 6.)

Art. 2849c. Duty of state board of education as to appropriations; departments of domestic economy, manual training and agriculture; duties of board of trustees of high school and state superintendent of public instruction, etc.—It shall be the duty of the state board of education to duplicate by an appropriation out of money provided for by this Act an amount not less than five hundred ($500.00) dollars, nor more than fifteen hundred ($1,500.00) dollars, that shall have been set apart by the trustees of a public high school of the first class or of the second class, the establishment of which is herein authorized, or any such high school that has already been established in either a common school district or an independent district, for establishing, equipping and maintaining a department of agriculture; an amount of not less than five hundred ($500.00) dollars, nor more than one thousand ($1,000.00) dollars, that shall have been set apart by the trustees of any such high school for establishing, equipping and maintaining a department of domestic economy; and an amount of not less than five hundred ($500.00) dollars, nor more than one thousand ($1,000.00) dollars that shall have been set apart by the trustees of any such high school for establishing, equipping and maintaining a department of manual training; an amount of not less than five hundred ($500.00) dollars, nor more than one

thousand ($1,000.00) dollars that shall have been set apart by the trustees of a public high school of the third class in a common school district for establishing, equipping and maintaining a department of agriculture; provided, that not more than two thousand ($2,000.00) dollars shall be appropriated by the state board of education for the purpose mentioned to any one high school during the same scholastic year; and provided further, that such appropriation shall not be made more than twice to the same school. The board of trustees of the high school, applying for state aid for establishing, equipping and maintaining a department of agriculture, domestic economy or manual training, shall provide ample room and laboratories for the teaching of each subject or subjects, and in connection with the department of agriculture in the high school, shall provide a tract of land, conveniently located, which shall be sufficiently large and well adapted to the production of farm and garden plants, and shall employ a teacher who has received special training for giving efficient instruction in the subject. The state superintendent of public instruction shall make accurate and full investigation of the school property, appliances and ground possessed by any board of trustees that may apply for state aid under the provisions of this Act, and shall make a report of the result of his investigation to the state board of education, together with his recommendations touching the same. The state board of education shall grant aid to those high schools that have complied with the provisions of this Act, that shall give evidence that, after the state aid is withdrawn, the high schools will continue to maintain the department for instruction in agriculture, domestic economy or manual training, and that have been recommended by the state superintendent of public instruction. (Acts 1911, p. 34, sec. 3.)

Art. 2849d. County school trustees to manage; how elected; terms, etc.—The general management and control of the high schools in each county of the state, provided for in this Act, shall be vested in five county school trustees, elected from the county at large, at the time the trustees of the common school districts are elected, the first Saturday in April of each year, the order for their election to be made at the same time and by the same authority that orders the election of the trustees of the common school districts. The first election under this Act shall be held on the first Saturday in April subsequent to the taking effect of this Act, at which election five county school trustees shall be chosen, who shall decide by lot at their first meeting which two shall hold office for one year, and which three shall hold office for two years, and two of whom shall hold office for one year, or until their successors are elected and qualified, and three of whom shall hold office for two years, or until their successors are elected and qualified; and regularly thereafter on the first Saturday in April of each year an election shall be held for such county school trustees, two being elected at the expiration of the term of those first holding for one year, and three being elected at the expiration of [the term of] those first holding for two years; provided, if this Act does not take effect prior to the first Saturday of April, 1911, the county school trustees, herein provided for, shall be appointed by the commissioners court of each county, to serve until the election and qualification of their successors in 1912. (Id. sec. 4.)

Art. 2849e. To classify into primary, intermediate and high schools, etc.; course of study, etc.—It shall be the duty of the county school trustees to classify the schools of the county into primary schools, intermediate schools and high schools, for the purpose of promoting the efficiency of the primary and intermediate school and of establishing high schools wherever practicable. In classifying the schools and in establishing high schools, the county school trustees shall confer and advise with the county superintendent of public instruction and the district school trustees of the county, and shall give due regard to schools already located, to the distribution of the population and to the advancement of the children in their studies. The said county school trustees shall, in cooperation with the county superintendent of public instruction, prescribe a course of study for the public schools of the county conforming to the law and the requirements of the state department of education. (Id. sec. 5.)

Art. 2849f. Rights and powers formerly in commissioners' court vested in county school trustees.—All rights and powers pertaining to the public free schools of the county that have heretofore been vested in the commissioners court and that are not prescribed by this Act, shall hereafter be vested in the county school trustees. In determining the location of high schools, the county school trustees shall, by and with the consent of the majority of the trustees of each district affected, effect the consolidation of as many common school districts as practicable, and shall negotiate with the school trustees of such common school districts as have no high schools for the free tuition of eligible children in the high schools, thereby giving high school privileges and opportunities, so far as possible, to all children of scholastic age residing in the rural districts. The county school trustees are also empowered to negotiate with the trustees of independent school districts that have high schools for the free tuition of eligible children who reside in adjacent or convenient common school districts not maintaining high schools. (Id. sec. 6.)

Art. 2849g. County school trustees body corporate; powers; title of school property.—The county school trustees of each county shall constitute a body corporate, by the name of the County School Trustees of ..... County, State of Texas, and in that name may acquire and hold real and personal property, and sue and be sued, and may receive bequests and donations or other moneys or funds coming legally into their hands, and may perform other acts for the promotion of education in the county. The title to any school property belonging to the county, the title of which has heretofore been vested in the county judge and his successors in office, or any school property that may be acquired, shall vest in the county school trustees and their successors in office for public free school purposes. (Id. sec. 7.)

Art. 2849h. County school superintendent as secretary and executive officer; record of proceedings.—The county school trustees shall designate the county superintendent as their secretary and executive officer; and it shall be the duty of the county superintendent to keep a true and correct record of all the proceedings of said county school trustees in a well bound book, which shall be furnished him by the commissioners court, and such record shall be open to public inspection. (Id. sec. 8.)

Art. 2849i. To apportion funds.—Upon receiving notice from the state superintendent of public instruction, of the amount of state available school funds apportioned to the county, exclusive of all independent districts, having each more than 150 scholastics, it shall be the duty of the county school trustees, acting with the county superintendent, to apportion all available state and county funds to the school districts as prescribed by law. (Id. sec. 9.)

Art. 2849j. Appeals.—All appeals from the decisions of the county superintendent of public instruction shall lie to the county school trustees, and from the said county school trustees to the state superintendent of public instruction, and thence to the state board of education. (Id. sec. 10.)

Art. 2849k. Meetings; expenses of trustees.—The county school trustees shall hold meetings once each quarter on the first Monday in August, in November, in February and in May, or as soon thereafter as practicable, and at other times when called by the president of the board of trustees. Each county school trustee shall be paid his actual expenses incurred in attending the meetings provided for in this section, such payments to be made from the general fund of the county, by warrants drawn on order of the commissioners court after approval of itemized accounts, properly sworn to; provided, that no member shall receive more than three ($3.00) dollars per day, nor more than twenty-four ($24.00) dollars during any scholastic year. (Id. sec. 11.)

Art. 2849l. Qualifications of trustees; organization; president.—The county school trustees shall be qualified voters and freeholders of the precinct or county from which they are elected. They shall be of good moral character, able to read and speak the English language, shall be persons of good education and shall be in sympathy with public free schools. Four of the county school trustees shall each reside in different commissioners precincts, and a majority of them shall reside in common school districts. Within twenty days after their election and qualification, the county school trustees shall meet and organize by electing one of their number president. The county school trustees shall be elected and shall qualify in the same manner as other county officers are elected and qualified. (Id. sec. 12.)

Art. 2849m. Vacancies; quorum.—All vacancies in the office of county school trustees shall be filled by election by the remaining county school trustees. Three of the county school trustees shall constitute a quorum, and all questions shall be decided by a majority vote. (Id. sec. 13.)

Art. 2849n. Appropriation; expenditures, etc., to be itemized and reported, etc.—The sum of fifty thousand ($50,000.00) dollars, or such part thereof as is necessary, is hereby appropriated out of any money in the state treasury, not otherwise appropriated, for the year ending August 31, 1912, and fifty thousand ($50,000.00) dollars, or such part thereof as is necessary, for the year ending August 31, 1913, for the purpose of carrying out the provisions of section 3 of this Act [Art. 2849c]. The expenditure of all money granted under the provisions of this Act, together with the sum furnished by the board of trustees of the high school for the same purpose, shall be itemized and reported under oath to the state superintendent of public instruction by the treasurers, or depositories, of the board of trustees of the high schools receiving aid under the provisions of this Act. (Id. sec. 14.)

Art. 2849o. Laws repealed.—All laws and parts of laws in conflict with this Act are hereby repealed. (Id. sec. 15.)

CHAPTER SIXTEEN
INDEPENDENT DISTRICTS

Art. 2850. Application to county judge for elections.—At any time hereafter, it shall be lawful for any town or village which may desire to incorporate for school purposes only, to make application to the county judge for the organization of an independent school district, as provided for by the general statutes governing such cases, and for the election of a board of trustees, as provided in this title, and on receipt of such application it shall be the duty of the county judge to proceed as required in articles.... and .... of this chapter. (Acts 1905, p. 263, sec. 172.)

Art. 2851. Incorporation.—A town or village authorized to incorporate under this chapter, or having two hundred inhabitants or over, may form an incorporation for free school purposes only, which may include within its bounds a town or village incorporated for municipal purposes, the same not having assumed control of the public schools within its limits; provided, that the territory so incorporated for free school purposes shall not exceed an area of twenty-five square miles; provided, that said corporation shall be laid out in a square as near as is practicable with reference to the location of the school building; and, when so desiring an election may be held under the provisions of this title and chapter; and if, at such election, a majority of the votes cast be in favor of the incorporation, it shall be the duty of the county judge to make return thereof, and cause a record of the result of such election to be made, the same as provided for by articles 1040 and 1041, Revised Statutes of Texas, upon which entry being made, such town or village shall be regarded as duly incorporated for the purpose of establishing and maintaining free schools therein, and shall, upon notice to the state board of education by the board of trustees hereinafter provided for, receive such pro rata share of the available school fund as its scholastic population may entitle it to. And provided also that all school incorporations hereafter formed under the provisions of this chapter shall have the right to levy and collect taxes and issue bonds for school purposes, the same as school incorporations heretofore formed. When a town or village is included

in a corporation for free school purposes, and such town or village shall afterwards be incorporated for municipal purposes, it shall not thereby acquire a right to take the control of the schools within its limits out of the hands of the school corporation. (Id. sec. 149.)

Art. 2851a. Schools in independent district assumed or controlled by city or town within district; order for election to determine.—When a town or village incorporated for free school purposes only under the general law, and hereinafter designated as an "Independent School District," and a city or town forming a part of such Independent School District which is incorporated for municipal purposes, under the general law, and hereinafter referred to as an "Incorporated city or town," shall be desirous of having the public schools within such independent district assumed by or under the control of such city or town, the same shall be done in the following manner to-wit:

Whenever as many as fifty or a majority of the resident qualified voters of such Independent School District shall petition the Board of Trustees of such Independent School District to order an election for the purpose of voting on the proposition of whether or not the public free schools in said district shall be assumed and controlled by such incorporated city or town, said board of trustees shall order an election, to be held at the usual voting place or places, within such independent school district and which election shall be ordered and held in conformity with the law governing bond and tax elections in independent school districts, except the qualified electors voting thereat need not be property tax payers, but must be qualified to vote under the laws of this State regulating general elections; provided that the petition on which said election is ordered shall be signed by a majority of the qualified voters of such district living without the limits of such incorporated town or city. (Acts 1919, 2d C. S., ch. 9, sec. 1.)

Art. 2851b. Ballots to be used at election.—All persons voting at such election in favor of the incorporated city or town assuming control of the schools of such independent school district shall have written or printed on their ballots the words "for assuming control of the public free schools of ..... Independent School District by the city of .... Texas," and all persons voting at such election not in favor of the incorporated city or town assuming control of the schools shall have written or printed on their ballots the words "against assuming control of the public free schools of ..... Independent School District by the city of .....Texas." (Id.)

Art. 2851c. "Assuming control of the schools" defined.—The term "assuming control of the schools" as used in this act shall be held to mean the assumption of the control and management of the schools of such independent school district by the incorporated city or town in conformity with the provisions and requirements of Chapter 17, Title 48, Revised Civil Statutes 1911, except as herein otherwise provided. (Id.)

Art. 2851d. Certificate of result of election; ordinance assuming control; extension of boundaries of city or town for school purposes; assumption of bonded indebtedness; tax levy to pay.—In the event a majority of the qualified voters voting at the election in such independent school district, shall vote in favor of the incorporated city or town assuming control of the schools of such independent school district, it shall be the duty of the Board of Trustees of such district to certify the results of such election to the City Council, City Commission or other governing authority of such incorporated city or town, together with a certified copy of the record showing all the proceedings had in the incorporation of such independent school district and all boundary extensions thereto, if any, together with a well defined map accurately showing the territory described in such record, and if upon investigation by the City Council, City Commission or other governing authority of such incorporated city or town, it is found that the election for assuming control of the schools of such independent school district has been in all respects lawfully held and the returns thereof duly and legally made, then the said City Council, City Commission or other governing authority shall, by ordinance duly passed and entered of record assume control and management of the public free schools within its limits; provided, that if the boundaries of such independent school districts do not coincide with the boundaries of the incorporated city or town, then the City Council, City Commission or other governing authority, shall on the same day pass an ordinance extending its corporate line for school purposes only so that the same shall coincide with and embrace the same territory within such independent school district, and provided further, that if such independent school district shall have an outstanding bonded indebtedness, then the incorporated city or town shall become bound and liable for the payment of such bonded indebtedness and the City Council, City Commission, or other governing authority thereof, shall levy and cause to be assessed and collected, upon all property subject to taxation within the limits of such incorporated city or town or within the limits of such corporation as extended for school purposes only if the boundaries of the former independent school district were not the same as the boundaries of the incorporated city or town, taxes for the purpose of paying the interest on such bonds and provide a sinking fund sufficient to redeem the same at maturity, and such tax thereafter shall be annually levied and collected so long as such bonds, or any of them, are outstanding and unpaid; and provided further that the assumption of the control of the schools of such independent school district shall not abrogate or affect any maintenance tax theretofore authorized in such independent school district and such tax shall thereafter be annually levied, assessed and collected by the proper authorities of such incorporated city or town, until increased or changed by the qualified voters in conformity with the provisions and requirements of Chapter 17, Title 48, Revised Statutes 1911, as amended by Chapter 169 Acts Regular Session Thirty-fifth Legislature. (Id.)

Art. 2851e. Existing trustees.—Nothing in this Act shall be construed as affecting

the term or terms of office of any trustee previously elected in such independent school district and serving as such at the time of the assumption of the control of the district schools by the incorporated city or town, as herein provided, and such trustees shall be vested with the same authority as is conferred by law upon school trustees in cities and towns constituting separate and independent school districts, and shall thereafter be elected in the same manner as school trustees for such cities and towns, in accordance with the provisions of Chapter 18, Title 48, Revised Statutes 1911. (Id.)

Art. 2852. Board of trustees.—It shall be the duty of the county judge to order an election of seven school trustees for such town or village so incorporated for school purposes, who shall be elected in the same manner and at the same time, and whose term of office shall be the same as that of trustees of districts. (Acts 1905, p. 263, sec. 160.)

Art. 2853. Powers of the board.—The trustees elected in accordance with the preceding article shall be vested with the full management and control of the free schools of such incorporated town or village, and shall in general be vested with all the powers, rights and duties in regard to the establishment and maintaining of free schools, including the powers and manner of taxation for free school purposes that are conferred by the laws of this state upon the council or board of aldermen of incorporated cities and towns. (Id. sec. 161.)

Art. 2854. Exclusive control.—All such towns and villages shall have exclusive control of the public free schools within their limits. (Id. sec. 152.)

Art. 2855. Districts validated.—Independent school districts heretofore organized which have not the required population in the town proper, but have such population in the whole independent district, shall be validated by this chapter. (Id. sec. 150.)

Art. 2856. General laws apply to all districts.—All school districts, heretofore provided for by special act of the legislature, are placed under the general laws relating to incorporated school districts, and all provisions of any and all such special acts in conflict with the general laws are hereby specifically repealed, except in so far as those acts relate to the boundaries established by the acts incorporating such districts. All incorporated districts, having each fewer than one hundred and fifty scholastics according to the latest census, shall be governed in the general administration of their schools by the laws which apply to common school districts; and all funds of such districts shall be kept in the county depositories and paid out on order of the trustees approved by the county superintendent. (Id. sec. 154a. Added Acts 1909, p. 17.)

Art. 2856a. County line districts.—Independent school districts may be created, containing territory within two or more counties of the state of Texas, in the same way and manner that towns and villages are created under title 18 of the Revised Statutes of 1895 [title 22, Rev. St. 1911]; provided, that the map required by said title 18 shall show the correct location and position of the county line or county lines involved in such incorporation proceedings. Said incorporated free school district containing territory in two or more counties shall have all the rights, powers, and privileges granted under the general laws of the state to incorporations for the free school purposes only. The same modes, manners, and methods of government and procedure provided by the general law for independent school districts incorporated for free school purposes only shall govern the management and control of the incorporated school districts for free school purposes containing territory within two or more counties. (Acts 1911, p. 200, sec. 4.)

Art. 2856b. Change or abolishment of district.—All independent school districts incorporated for free school purposes within the state of Texas may be changed or abolished in the same way that is provided for the change or abolishment of a town and village or city and town as provided in title 18 of the Revised Statutes of 1895; provided that no such district shall be diminished, changed, or abolished while it has an outstanding debt, either of bonds or otherwise, as authorized by law, against it. (Id., sec. 6.)

TAXES AND BONDS

Art. 2857. Local taxes; bonds.—Trustees of a district that has been, or may hereafter be, incorporated under general or special laws, for school purposes only, shall have power to levy and collect an annual ad valorem tax not to exceed fifty cents on the one hundred dollars valuation of taxable property of the district, for the maintenance of schools therein, and a tax not to exceed twenty-five cents on the one hundred dollars for the purchase of sites and the purchasing, construction, repairing or equipping public free school buildings within the limits of such incorporated districts; provided that the amount of maintenance tax, together with the amount of bond tax of the district, shall never exceed fifty cents on the one hundred dollars valuation of taxable property. Said trustees shall have power to issue coupon bonds of the district for building purposes, to be made payable not exceeding forty years from date, in such sums as they shall deem expedient, to bear interest not to exceed five per cent per annum; provided, that when such buildings are to be wooden the bonds herein provided for shall not run for a longer period than twenty years; provided, that the aggregate amount of bonds issued for the above named purpose shall never reach such an amount that the tax of twenty-five cents on the hundred dollars valuation of property in the district will not pay current interest and provide a sinking fund sufficient to pay the principal at maturity; and provided, further, that no such tax shall be levied and no such bonds issued until after an election shall have been held, wherein a majority of the taxpaying voters voting at said election shall have voted in favor of the levying of said tax, of the issuance of said bonds, or both, as the case may be; provided, that the specific rate of tax need not be determined in the election. (Acts 1905, p. 263, sec. 154. Amended Acts 1909, p. 17.)

Art. 2858. Election to be ordered by trustees.—The election provided for in the

preceding article may be ordered by the trustees on the written petition of at least twenty taxpaying voters of said town or village, at any time not less than thirty days from the date of the order; which order shall state the date and place when said election shall be held, the amount of tax to be levied, or the amount of bonds to be issued, as the case may be; and the trustees shall also name and appoint therein the manager or managers of said election, which shall be held as nearly as may be possible in conformity with the general election law of the state; provided, that, when a proposition to levy such a tax shall be defeated, no election for that purpose shall be ordered until after the expiration of one year. (Acts 1905, p. 263, sec. 157.)

Art. 2859. Notice of election.—Public notice of said election shall be given by the said trustees, by placing notices of the same in three different portions of such incorporated district at least twenty days before said election; which notice shall state the time and place of the election, and the amount of the tax to be levied, or the amount of bonds to be issued, or both, as the case may be. (Id. sec. 158.)

Art. 2860. Who may vote; ballots.—No person shall vote at said election unless he be a qualified voter under the constitution and laws of this state, and a taxpayer in such incorporated district; and those in favor of the levying of such tax, or the issuance of such bonds, shall write or print upon their ballots, "For the Tax," and those against the levying of such tax, or the issuance of such bonds, shall write or print on their ballot, "Against the Tax;" and due returns thereof shall be made to said trustees within ten days, and the result thereof shall be recorded by said trustees in a well bound book to be kept for that purpose. (Id. sec. 159.)

Art. 2861. Collection of taxes.—The assessor and collector of taxes of the district shall have the same power and shall perform the same duties with reference to the assessment and collection of taxes for free school purposes that are conferred by law upon the city marshal of an incorporated town or village, and he shall receive such compensation for his services as the board of trustees may allow, except in cities and towns otherwise provided for, not to exceed four per cent of the whole amount of taxes received by him; and he shall give bond in double the estimated amount of taxes coming annually into his hands, payable to the president of the board or his successors in office, conditioned for the faithful discharge of his duties, and that he will pay over to the treasurer of the board all the funds coming into his hands by virtue of his office as such assessor and collector; provided, that, in the enforced collection of taxes, the board of trustees shall perform the duties which now devolve in such a case upon the city council of an incorporated city or town; the president of the board of trustees shall perform the duties which devolve in such a case upon the mayor of an incorporated city or town; and the county attorney of the county in which the independent school district is located shall perform the duties which in such a case devolve upon the city attorney of an incorporated city or town under the provisions of chapter 103, General Laws, regular session, twenty-fifth legislature. (Id. sec. 166.)

Art. 2862. Assessment and collection of taxes by county officers.—When a majority of the board of trustees of an independent school district prefer to have the taxes of their district assessed and collected by the county assessor and collector, same shall be assessed and collected by said county officers, and turned over to the treasurer of the independent school district for which such taxes have been collected; provided, that the property of such districts having their taxes assessed and collected by the county assessor and collector shall not be assessed at a greater value than that assessed for county and state purposes: provided, further, that when the county assessor and county collector are required to assess and collect the taxes of independent school districts, they shall, respectively, receive one per cent for assessing and collecting same. (Id. sec. 165.)

Art. 2863. Trustees authorized to invest sinking funds.—Trustees of towns and villages that have been, or may hereafter be, incorporated for school purposes only, that have issued, or may hereafter issue, bonds under the provisions of this chapter, may, as it accumulates, invest the sinking funds in bonds of the United States, of the state of Texas, of counties of this state, or in bonds of cities and towns and independent school districts of this state, that have been approved by the attorney general. (Id. sec. 155.)

Art. 2864. Refunding bonds.—Where bonds have been legally issued, or may be hereafter issued, by any town or village incorporated for free school purposes only, new bonds, bearing the same or a less rate of interest, may be issued in conformity with this chapter in lieu thereof; provided, no election shall be necessary to authorize the issuance of such new bonds; and provided, further, that the state treasurer shall, upon order of the state board of education, exchange bonds not matured held by him for the permanent school fund for the new refunding bonds issued by the same incorporation under the provisions of this chapter, in case the rate of interest on the new bonds is not less than the rate of interest on the bonds for which they are exchanged. (Acts 1905, p. 263, sec. 156.)

Art. 2864a. Second election to reduce tax, etc.—All incorporated school districts for free school purposes only, within the state of Texas, which have heretofore held elections wherein it has been determined by a majority vote at such elections that a tax of not exceeding 50c on the $100.00 valuation of all property within such districts shall be levied for the maintenance of public schools within such districts and subsequent to such election another election is held in such school district for the purpose of determining whether or not bonds shall be issued for school building purposes, or the equipment of school buildings and the levy of a tax sufficient to pay interest and sinking fund on such bonds, such second election shall reduce the tax authorized to be levied in the first election not to exceed 50c on the $100.00 valuation to such an amount not exceeding 25c tax on the $100.-00 valuation of all property within said district as may be necessary to raise funds to

pay interest and sinking fund on such bonds so long as such bonds are an outstanding obligation against such district; provided that in no event the total tax authorized for such districts shall exceed 50c on the $100.00 valuation of property contained in such district, and in no event shall the tax of 25c on the $100.00 valuation for the purpose of paying interest and sinking fund on outstanding bonds of such a district be reduced because of the maintenance tax blow [below] such an amount as is necessary to raise a sufficient sum to pay interest and sinking fund on such outstanding bonds. (Acts 1911, p. 200, sec. 5.)

CHANGE OF BOUNDARIES

Art. 2865. Extension of boundaries.—Whenever the territory heretofore incorporated, or which may hereafter be incorporated, for free school purposes, shall contain less than twenty-five square miles, and thereafter the majority of the inhabitants, qualified to vote for members of the legislature, of any territory adjoining the limits of the town or village so incorporated, shall desire such territory to be added to and become a part of such incorporated town or village for free school purposes only, and a majority of such qualified voters sign a petition to that effect, any three of such qualified voters may file with the board of trustees of such incorporated town or village the said petition, making affidavit of the facts set forth in said petition, fully describing by metes and bounds the territory proposed to be annexed and showing its location with reference to the existing territory of the town or village already incorporated; provided, that said territory proposed to be added must be contiguous to one line of said corporation, and upon filing of said petition, affidavits and descriptions, with the president of the board of trustees, it shall be his duty to submit the same to the board, and, if upon investigation by the board it is found that the proposed addition will not increase the corporate limits so that the whole, when so increased, will exceed twenty-five square miles, then the said board of trustees, by resolution duly entered upon its minutes, may receive such proposed territory as an addition to, and become a part of, the corporate limits of such town or village; a copy of which resolution, containing a description of the added territory, shall be filed for record in the county clerk's office of the county in which said town or village is situated, after which the territory so received shall be a part of said incorporated town or village; and the inhabitants thereof shall thenceforth be entitled to all the rights and privileges, and subject to the same liabilities of taxation as other citizens, and all property within said limits shall thenceforth be subject to such taxation as may have been, or may hereafter be, provided by said incorporation for free school purposes only. (Acts 1905, p. 263, sec. 153.)

Art. 2866. Change in boundaries by commissioners' court.—The commissioners' court of any county shall have the authority to change the boundaries of any independent district situated in said county, when in the judgment of said court the public good demands such change; provided, that, before any change is made in the boundary lines of any independent district, the president of the board of trustees of the independent district to be affected by the proposed change shall be notified, and said board of trustees shall have the right to be heard in case there is opposition to the change; provided, further, that this provision shall apply only to school districts incorporated for school purposes only; and, provided, further, that no change shall be made that would reduce the total value of taxable property in any independent district against which there are outstanding bonds legally issued. (Id. sec. 52.)

CHAPTER SEVENTEEN

EXCLUSIVE CONTROL BY CITIES AND TOWNS—INDEPENDENT DISTRICTS

Art. 2867. City or town may assume control of schools.—Any city or town in this state may acquire the exclusive control of the public free schools within its limits. (Acts 1905, p. 263, sec. 134.)

Art. 2868. Same.—Any city or town which has heretofore, under the act of March 15, 1875, or any subsequent law, assumed control of the public free schools within its limits, and has continued to exercise the same until the present time, or may hereafter determine so to do by a majority vote of the property taxpayers of said city or town voting at an election held for that purpose, may have exclusive control of the public free schools within its limits. (Id. sec. 133.)

Art. 2869. Election to determine question.—The mayor of said city or town shall, upon the written application of not less than fifty of the qualified electors of such city or town, order, within twenty days of such application, an election by the qualified electors of such city or town, to be conducted as other municipal elections, to decide, by a majority of the votes cast by the qualified electors of such city or town at such election, whether such city or town shall acquire the exclusive control of the public free schools and institutions of learning within its limits; provided, that one election, and no more, shall be held hereafter in any one calendar year to determine whether such city shall acquire the exclusive control of the public free schools within its limits. (Id. sec. 135.)

Art. 2870. Shall receive pro rata of school funds.—Such city or town, after notice to the state board of education that it has determined to assume control of the public free schools within its limits, shall receive such pro rata of the available school fund as its scholastic population may entitle it to. (Id. sec. 139.)

Art. 2871. General laws shall govern.—Schools thus organized and provided for by incorporated cities and towns shall be subject to the general laws, so far as the same are applicable; but each city or town having control of schools within its limits shall constitute a separate school district, and may provide for the organization of schools and the appropriation of its school funds in such manner as may be best suited to its population and condition. (Id. sec. 144.)

Art. 2872. Property vested in trustees.—In every city or town in this state which has assumed, or may hereafter assume, the exclusive control and management of public free schools within its limits, and which has determined, or may hereafter determine, that

such exclusive control and management of the public free schools within its limits shall be in a board of trustees, and organized under an act of the sixteenth legislature, approved April 3, 1879, and acts amendatory thereto, the title to all houses, lands and other property owned, held, set apart, or in any way dedicated to the use and benefit of the public free schools of such city or town, including property heretofore acquired, as well as that which may hereafter be acquired, shall be vested in the board of trustees and their successors in office, in trust for the use and benefit of the public free schools in such city or town; and such board of trustees shall have and exercise the exclusive control and management of such school property, and shall have and exercise the exclusive possession thereof for the purposes aforesaid; provided, that where trustees are named other than the municipal corporation itself, in any instrument conveying, donating, bequeathing or devising any money or other property, real or personal, for the benefit of any city or town, this law shall not interfere, in any manner, with the title or authority of such trustees to or over such money or other property. And such board of trustees shall constitute a body corporate, and shall have full power to protect the title, possession and use of all such property within the limits of such city or town, and may bring and maintain such suit or suits in law or in equity in any court of competent jurisdiction when necessary to recover the title or possession of any such property that may be adversely held or seized, or to prevent any trespass upon or injury to such property; provided, that the provisions of this article shall not apply to lands belonging to the state upon which houses for school purposes have been built without authority from the state. (Id. sec. 136.)

Art. 2873. Sale of school property.—Any houses or lands held in trust by any city or town for public free school purposes may be sold for the purpose of investing in more convenient and desirable school property, with the consent of the state board of education, by the board of trustees of such city or town; and, in such case, the president of the school board shall execute his deed to the purchaser for the same, reciting the resolution of the state board of education giving consent thereto and the resolution of the board of trustees authorizing such sale. (Id. sec. 146.)

Art. 2874. Schoolhouse bonds to be issued by city council.—Towns or cities which have assumed, or may hereafter assume control and management of the public free schools within their limits may also provide for building sites and buildings for such public free schools and institutions of learning, in the manner, and under the restrictions and limitations provided in article [925] Revised Statutes, relating to cities and towns. (Id. sec. 147.)

CITY SCHOOL TAXES

Art. 2875. Local maintenance tax.—After a city or town has assumed control of the public free schools within its limits, the council or board of aldermen shall also submit the question to the property taxpayers as to whether or not the additional amount as provided for hereinafter shall be raised by taxation. (Id. sec. 140.)

Art. 2876. Election for levy of annual tax for maintenance and buildings; discontinuance of tax.—The city or town council or board of aldermen of any city or commission of any city, town or village, whether incorporated under any act of the Congress of the Republic or the Legislature of the State of Texas, or under any act of incorporation whatever, shall have power by ordinance to annually levy and collect such ad valorem taxes for the support and maintenance of public free schools and for the erection and equipment of public free school buildings in the city or town where such city or town is a separate and independent school district; provided that no such tax shall be levied until an election shall have been held, at which none but property tax payers, as shown by the last assessment rolls, who are qualified voters of such independent school districts shall vote and a majority of those voting shall vote in favor thereof. The proposition submitted may be for such a rate of ad valorem tax not exceeding such per cent as may be voted by a majority vote of all votes cast at any such election. One election and no more, shall be held thereafter in any one calendar year to ascertain whether a school tax shall be levied. If the proposition is carried the school tax shall be continued to be annually levied and collected for at least two years, and thereafter, unless it be discontinued at an election held to determine whether the tax shall be continued or discontinued, at the request of fifty property tax payers of such independent school district. When the tax is continued no election to discontinue it shall be held for two years; when the tax is discontinued no election to levy a tax shall be held during the same year. (Acts 1905, p. 263, sec. 141; Acts 1917, ch. 169, sec. 1.)

The act amends arts. 2877, 2878, 2879, and 2880, ch. 17, tit. 48, Rev. Civ. St. 1911, so as to read as set forth above and in the four following articles. The legislative scheme was to repeal art. 2876 as it appears in the Revised Civil Statutes, and to move up articles 2877, 2878, 2879, and 2880 so that they would bear, in their amended form, the numbers 2876, 2877, 2878, and 2879, leaving 2880 as the repealing article.

Art. 2877. Levy of tax.—If the vote of the taxpayers is in favor of said tax, then it shall be the duty of the council or board of aldermen annually thereafter, to levy upon the taxable property in the limits of such district, in accordance with the usual assessment of taxes for municipal purposes, such additional tax as may be necessary for the support and maintenance of the public schools and for the erection and equipment of public school buildings for nine months in the year not to exceed the rate of tax voted. (Acts 1905, p. 263, sec. 142; Acts 1917, ch. 169, sec. 1.)

Art. 2878. Levy in city or town assuming exclusive control of schools.—In a city or town that has assumed the exclusive control of the public free schools within its limits and has decided under the laws providing therefor, that a special tax shall be levied for the support and maintenance of such public free schools and the erection and equipment of public free school buildings, the mayor and council or board of aldermen of such city or town shall annually assess and levy such tax by ordinance duly passed

and approved in the same manner as is required in the assessment and levy of taxes for general purposes in such city or town. In a city or town which has voted upon and directed the levy of a special tax the mayor or council or board of aldermen or commission of such city or town shall annually levy such rate of tax for public school purposes and for the erection and equipment of public school buildings not exceeding the rate of tax voted for the support and maintenance of the public free schools and for the erection and equipment of public school buildings for the term as required by law; but in a city or town that has voted upon and decided at an election held for that purpose that a specified rate of tax shall be assessed and levied in such city or town for the support and maintenance of its public free schools, and for the erection and equipment of public school buildings the mayor and council or board of aldermen or commission of such city or town shall have no discretion in fixing the rate at which such tax shall be levied, but shall assess and levy the same at the rate fixed in the proposition as submitted and adopted by the qualified voters of such city or town at the election held for that purpose. (Acts 1905, p. 263, sec. 143; Acts 1917, ch. 169, sec. 1.)

Art. 2879. Levy in city or town constituting independent school district.—In a city or town that may now or hereafter constitute an independent school district, and where a special tax for school purposes has been voted by the people or provided by special charter, it shall be the duty of said board of trustees to determine what amount of said tax, within the limit voted by the people or fixed by special charter will be necessary for the maintenance and support of the school and for the erection and equipment of public school buildings for each current year; and it shall become the duty of the city council, board of aldermen or city commission upon the requisition of the said board of trustees to annually levy and collect said tax, as other taxes are levied and collected: and said tax, when collected, shall be placed at the disposal of the said school board, by paying over monthly to the treasurer of said board the amount collected for the support and maintenance of the school and for the erection and equipment of public school buildings in such district, to be used for the maintenance and support of the public free schools and for the erection and equipment of public school buildings in such district. (Acts 1905, p. 263, sec. 138; Acts 1917, ch. 169, sec. 1.)

Art. 2880. Repeal.—All of Article 2876, Chapter 17, Title 48 of the Revised Civil Statutes of the State of Texas, 1911, is hereby repealed. (Acts 1905, p. 308, sec. 168; Acts 1917, ch. 169, sec. 1.)

Art. 2881. Assessment and collection.—In an independent school district constituted of a city or town having a city assessor and collector of taxes, such assessor and collector of taxes shall assess and collect the taxes for school purposes; provided, that in a city or town having an assessor and collector of taxes, the levy of taxes for school purposes shall be based upon the same assessment of property upon which the levy for other city purposes is based. It is further provided, that, in such a city or town, the assessor and collector of taxes shall receive no other compensation for collecting school taxes than the compensation paid him for assessing and collecting city taxes; and taxes for school purposes in such a city or town shall be assessed and collected as other city taxes are assessed and collected. (Acts 1905, p. 263, sec. 165.)

Art. 2882. Funds to be turned over to school treasurer.—The pro rata of the available school fund of the state appropriated and set apart to such city or town shall be, by the proper officer or department of the state, paid over directly to such treasurer of the board of trustees, who shall execute the proper receipts therefor: and all moneys and funds arising from the assessment and collection of any special tax in such city or town for public free school purposes shall be by the assessor and collector, or other proper officer of such city or town whose duty it is to collect the taxes, turned over directly to the treasurer of the board of trustees of such city or town, who shall execute and deliver his receipt to such collector; and the mayor and council or board of aldermen of such city or town shall have no power or control of such funds. (Id. sec. 137.)

Art. 2883. Extension of city limits for school purposes.—Any city or town that has taken charge of the public free schools within its limits, or that shall hereafter take charge of the same, may, by ordinance, extend its corporation lines for school purposes only, on a petition signed by a majority of the resident qualified voters of the territory, which is to be taken into said city or town for school purposes only, and recommended by a majority vote of the trustees of the public free schools of said city or town; provided, that the proposed change shall not deprive the scholastic children of the remaining part of the common school district or districts which may be affected by the proposed change, of the opportunity of attendance upon school. The added territory shall bear its pro rata part according to taxable values of any school debt or debts that may be owed or contracted by said city or town to which it shall have been added, and shall not bear any part of any other debt that may be owed or contracted by such city or town. The property of the added territory shall bear its pro rata part of all school taxes, but of no other taxes. The added territory shall not affect the city's debts or business relations in any manner whatever, except for school purposes as provided above. The officers whose duty it is to assess and collect school taxes within the city limits shall also assess and collect school taxes within the territory added for school purposes as herein provided. (Id. sec. 148.)

CHAPTER EIGHTEEN

INDEPENDENT DISTRICT SCHOOL TRUSTEES

Art. 2884. Acts of certain boards validated.—The official acts and proceedings of, and contracts, bonds issued and authorized to be issued by boards of trustees in independent school districts heretofore elected and appointed and operating under former acts of the legislature of this state, and particularly under an act approved March 30,

1899, entitled "An act to provide a uniform method of electing school trustees in independent districts," are hereby validated, ratified and confirmed. The provisions of this title concerning trustees shall not apply to the city of Fort Worth, nor to the city of Dallas. (Acts 1905, p. 263, sec. 173.)

Art. 2885. Change from appointment to election in cities.—Towns and cities which have heretofore chosen their trustees by appointment of the city council or board of aldermen, under the provisions of article 4018, Revised Statutes, [1895,] shall be authorized to continue to choose their trustees in this manner; that is, by the appointment of the board of aldermen of said city or town; provided, that seven trustees shall be appointed at first, four of whom shall serve for one year, and three for two years; and, at regular intervals of one year thereafter, four trustees and three trustees, alternately, shall be appointed each year for a term of two years; and, further provided, that on a petition of twenty-five per cent of the voters of any such city or town, to be ascertained by the ballots cast at the last regular city election in said city or town, the mayor of such city or town shall order an election to determine whether or not the school affairs of such city or town shall be directed by a school board elected in accordance with the provisions of this chapter; and, in case of an affirmative vote, an election shall at once be ordered by the said mayor, for the purpose of choosing a school board consisting of seven trustees, as provided in article [2886]. (Id. sec. 171.)

Art. 2886. Board of seven trustees.—In each independent district that shall be hereafter organized, the county judge of the county in which said independent district is situated shall order an election for seven trustees, who shall constitute the school board of such independent district, and all of whom shall serve without compensation. (Id. sec. 162.)

Art. 2887. Board of school trustees shall order election; election officers; compensation; election, how held; canvass.—All elections shall be ordered by the board of trustees of each independent school district; and such order shall be made at least ten days before the date of election; and a notice of the order shall be posted at three different places in the district. The board of school trustees, at the time of ordering such election, shall appoint three persons to hold the election, and shall designate the places where the polls shall be open. And each of said members of such election board so appointed shall receive as their compensation the sum of one dollar each, to be paid out of the general fund of the county in the same manner as other claims are paid. All such elections shall be held in accordance with the State law governing elections; and returns of such elections shall be made to the board of school trustees in the same manner as election returns are made under such State law. The board of school trustees shall canvass such returns, declare the result of such election, and issue certificates of election to the persons shown by such returns to be elected. (Acts 1905, p. 263, sec. 164; Acts 1915, ch. 132, sec. 1.)

Art. 2888. Who shall be declared elected.—All the qualified voters of each independent district shall be entitled to vote at a trustees' election; and the seven candidates receiving the largest number of votes at the first election held hereunder shall be entitled to serve as trustees as hereinbefore provided; and, at all subsequent trustees' elections, the three or four candidates, as the case may be, receiving the largest number of votes shall be entitled to serve as trustees for the full term for which they are elected. (Acts 1905, p. 263, sec. 169.)

Art. 2889. Term of office of school trustees.—The terms of office of the seven trustees chosen at the first election shall be divided into two classes, and the members shall draw for the different classes; the four members drawing the numbers one, two, three and four shall serve for one year or part thereof; that is, until the first of April thereafter, and until their successors are elected and qualified; and the three members drawing the numbers five, six and seven shall serve two years; that is, until the second of April thereafter, and until their successors are elected and qualified; and regularly thereafter on the first Saturday in April of each year, four trustees and three trustees, alternately, shall be elected for a term of two years, to succeed the trustees whose term shall at that time expire. (Acts 1905, p. 263, sec. 163; Acts 1915, ch. 132, sec. 1.)

Art. 2890. Oath of office.—Before any trustee enters upon the discharge of the duties of his office, he shall swear that he will faithfully and impartially discharge the duties of such office; and his affidavit to that effect shall be filed after the first election with the county judge, and after all subsequent elections with the president or chairman of the school board. (Acts 1905, p. 263, sec. 167.)

Art. 2891. Organization of board.—The trustees chosen under this chapter shall meet within twenty days after the election, or as soon thereafter as possible, for the purpose of organizing. A majority of said board shall constitute a quorum to do business; and they shall choose from their number a president; and they shall choose a secretary, a treasurer, assessor and collector of taxes, and other necessary officers and committees. (Id. sec. 165.)

Art. 2892. Board shall adopt rules and regulations.—Said board of trustees shall adopt such rules, regulations and by-laws as they may deem proper; and the public free schools of such independent district shall be under their control; and they shall have the exclusive power to manage and govern said schools, and all rights and titles to property for school purposes heretofore vested in the mayor, city councils or school trustees by articles [3995, 4013 and 4032,] Revised Statutes, [1895,] or other statutes, general and special, except such cities as are exempted by this title, shall be vested in said board of trustees and their successors in office; and their claims shall apply to any action or suit now pending, or which may hereafter arise, to which said board are parties. (Id. sec. 168.)

Art. 2893. Vacancies.—When a vacancy occurs in the board of school trustees in any

independent school district, the remaining members of such board shall fill the vacancy by electing a person to fill the office for the unexpired portion of the term of the prior incumbent thereof. (Id. sec. 170.)

Art. 2894. Cities, towns, independent or common school districts may prescribe other studies, etc.; age of admission, etc.—Any city, or town, or independent, or common school district having voted a tax, in addition to the pro rata of the available school fund received from the state, may prescribe such other studies as the board of school trustees may deem proper, and the board of school trustees of any city, or town, or independent or common school district shall admit any person, who, themselves, or whose parents or legal guardians reside within said city, or town, or independent, or common school district to the benefits of the public school who are over seven and not over twenty-one years of age at the beginning of the scholastic year. (Acts 1905, p. 263, sec. 145. Acts 1913, p. 175, sec. 1, amending Art. 2894, Rev. St. 1911.)

Art. 2895. May elect superintendent or principal for two years.—The board of trustees of any city or town or of any independent district provided for in this chapter, may elect a superintendent or principal of schools of such city or town, or of such independent district, for a term not to exceed two years. (Acts 1905, p. 263, sec. 174.)

CHAPTER NINETEEN

GENERAL PROVISIONS

Art. 2896. School shall not be sectarian.—No part of the public school fund shall be appropriated to or used for the support of any sectarian school. (Acts 1905, p. 263, sec. 130.)

Art. 2897. Provisions to be made for both races.—All available public school funds of this state shall be appropriated in each county for the education alike of white and colored children, and impartial provisions shall be made for both races. (Id. sec. 95.)

Art. 2898. Who are "colored."—The terms "colored race" and "colored children," as used in the preceding articles, and elsewhere in this title, include all persons of mixed blood descended from negro ancestry. (Id. sec. 96.)

Art. 2899. Where children may attend school.—Every child in this state of scholastic age shall be permitted to attend the public free schools of the district or independent district in which it resides at the time it applies for admission, notwithstanding that it may have been enumerated elsewhere, or may have attended school elsewhere part of the year; provided, that white children shall not attend the schools supported for colored children, nor shall colored children attend the schools supported for white children. (Id. sec. 128.)

Art. 2900. Scholastic age.—All children, without regard to color, over seven years of age and under seventeen years of age at the beginning of any scholastic year, shall be entitled to the benefit of the public school fund for that year. (Id. sec. 129.)

Art. 2901. Scholastic year.—The scholastic year shall commence on the first day of September of each year and end on the thirty-first day of August thereafter. (Id. sec. 97.)

Art. 2902. Admission of overs and unders; suspension of pupils.—The trustees of schools shall have the power to admit pupils over and under scholastic age, either in or out of the district, on such terms as they may deem proper and just; provided, that in admitting pupils over and under the scholastic age, the school shall not be overcrowded to the neglect and injury of pupils within the scholastic age; and they may suspend from the privileges of schools any pupil found guilty of incorrigible conduct, but such suspension shall not extend beyond the current term of the school. (Id. sec. 75.)

Art. 2903. When schools shall be opened.—Public schools shall be taught for five days in each week. Schools shall not be closed on legal holidays unless so ordered by the trustees. A school month shall consist of not less than twenty school days, inclusive of holidays, and shall be taught for not less than seven hours each day, including intermissions and recesses. (Id. sec. 98.)

Art. 2903a. History of Texas shall be taught.—That on and after the third day of September, 1917, the history of Texas shall be taught in all public schools of this State, which history shall be taught in the history course of all public schools in this State, and in this course only. (Acts 1917, ch. 112, sec. 1.)

Art. 2903b. Same; number of hours per week; notice to local superintendents.—The said history course shall be not less than two hours in any one week and as much more time as the State Superintendent of Public Instruction, in his discretion, thinks is necessary. The State Superintendent of Public Instruction shall, within ten days after this act goes into effect, notify the different county and city school superintendents as to how said history course shall be divided. (Id. sec. 2.)

For section 3 of this act see Penal Code, art. 1513i.

Art. 2903c. Acquisition of land for playgrounds; agricultural tracts, etc.—That the County School Trustee shall have the power to purchase and lease real property for all the Common Schools Districts, and the Independent School District of their County having less than 150 scholastics, and the Trustees of all Independent School Districts, having 150 scholastics or more shall have power to purchase and lease real property for their District, for the purpose of supplying playgrounds, agricultural tracts and sites upon which to build school houses and such other buildings as are necessary for the schools of said Districts, and to acquire such real property and easements therein, by condemnation proceedings in the manner prescribed by the present law authorizing a condemnation of right of way of railroads. (Acts 1917, ch. 125, sec. 1.)

Art. 2904. Trustees and teachers shall not handle books.—No member of the board of trustees of any public school, nor teacher in any of the public schools of this state, nor county or city superintendent of public schools shall, during the term of his office as trustee or superintendent, or during the time of his employment as teacher, act as agent or attorney for any text-book publishing company selling text-books in this state. Nor

shall any person interested in the publication of text-books, or of selling the same to be used in the public schools of this state, be eligible to serve as school trustee, county or city superintendent of schools, or as teacher in any of the public schools of this state. If, after election as trustee, county or city superintendent or employment as teacher, any person, filling such position accepts the agency or attorneyship of any text-book publishing company, the acceptance of such agency or attorneyship shall work a forfeiture of the office or place in the public schools held at the time of the acceptance of such agency or attorneyship. (Acts 1905, p. 263, sec. 175.)

Art. 2904a. [See Penal Code, arts. 1038a–1038f.]

Art. 2904aa. Instruction in patriotism and civics.—The daily program of every public school in this state shall be so formulated by the teacher, principal, or superintendent as to include at least ten minutes for the teaching of lessons of intelligent patriotism, including the needs of the State and Federal Governments, the duty of the citizen to the State, and the obligation of the State to the State to the citizen. (Acts 1918, 4th C. S., ch. 17, sec. 1; Acts 1918, 4th C. S., ch. 38, sec. 1.)

Art. 2904aaa. Flags and flag poles for buildings.—That the board of trustees of each and every common, independent or municipal school district be and is hereby required to provide for a suitable United States flag and flag pole for each school building in the district, and the expense incurred in carrying out this provision of the law shall be paid out of the funds of the district. (Acts 1918, 4th C. S., ch. 17, sec. 2; Acts 1918, 4th C. S., ch. 38, sec. 2.)

Art. 2904aaaa. Duties of school officers.—It shall be the duty of the State Superintendent of Public Instruction to issue to each county and city superintendent of Public Instruction in this State the necessary instructions as to the enforcement of this law, and it shall be the duty of the county and city superintendents of Public Instruction in every county in this State to see that the provisions of this law and the instructions of the State Superintendent of Public Instruction relative to this law are carried out. The county Superintendent of Public Instruction shall not approve for payment any vouchers drawn on the funds of the district until such district shall have complied with the provisions of this Act; nor shall the president of any school board of any independent or municipal school district in this State approve vouchers for the payment of any account until the provisions of this law have been complied with in every particular. (Acts 1918, 4th C. S., ch. 17, sec. 3; Acts 1918, 4th C. S., ch. 38, sec. 3.)

Art. 2904aaaaa. English language to be used exclusively in school work and text-books.—Every teacher, principal, and superintendent employed in the public free schools of this state shall use the English language exclusively in the conduct of the work of the schools, and all recitations and exercises of the school shall be conducted in the English language, and the trustees shall not prescribe any texts for elementary grades not printed in the English language; provided, that this provision shall not prevent the teaching of Latin, Greek, French, German, Spanish, Bohemian, or other language as a branch of study in the high school grades as outlined in the state course of study. (Acts 1918, 4th C. S., ch. 80, sec. 1.)

CHAPTER NINETEEN A
PUBLIC SCHOOL BUILDINGS

Art. 2904b. Windows not to face pupils.—That in the public school buildings of Texas no window admitting light shall be so placed in a class room or study hall that it must be faced by pupils when seated at their desks. (Acts 1913, p. 244, sec. 1.)

Art. 2904c. Height of windows, etc.—That all window openings admitting light into class rooms or study halls shall not come lower than a point three and a half feet from the floor, and shall extend to a point within six inches of the ceiling. (Id. sec. 2.)

Art. 2904d. Area of window surface; distance of windows.—That the area of clear window surface for the admission of light into any class room or study hall shall not be less than one-sixth of the area of the floor space in said class room or study hall, and no part of the said class room or study hall in which pupils are seated or required to study shall be at a greater distance from the window than twice the height of the top of the window above the floor, except in cases in which adequate skylights are provided. (Id. sec. 3.)

Art. 2904e. Light to come from left, etc.—That the main light in all one room schools shall come from the left of the pupils as they sit at their desks, and in all larger buildings this condition shall be approximated as nearly as architectural demands and the demands of ventilation will permit. (Id. sec. 4.)

Art. 2904f. Sufficient heating apparatus.—That all school houses shall be provided with sufficient heating apparatus. (Id. sec. 5.)

Art. 2904g. Stoves, radiators, etc., to be protected, etc.—That all stoves, radiators or other sources of direct heat located within the class rooms or study halls shall be so jacketed, ventilated or otherwise protected that the desks upon the side next to the stove, radiator or other source of heat shall not be more than five degrees Fahrenheit hotter than the desks upon the opposite side of the room. (Id. sec. 6.)

Art. 2904h. Automatic temperature regulator.—That all stoves, radiators, or other sources of direct or indirect heat supplying heat for a class room or study hall shall be equipped with an automatic temperature regulator that will regulate the temperature of said class room or study hall automatically to within two degrees of any set standard. (Id. sec. 7.)

Art. 2904i. Ventilation.—That every class room or study hall shall be provided with an efficient apparatus whereby in cold weather a supply of thirty cubic feet per minute of fresh, warm air shall be supplied to each pupil in such manner as not to place any pupil in a disagreeable draft, and shall be provided with exhaust flue or flues, with inlets at or near the floor line, so arranged as to effectively carry out of the room the cold and impure air without placing any pupil in a disagreeable draft. (Id. sec. 8.)

Art. 2904j. Interior wood work; sanitation.—That all interior wood work in school buildings shall be without such unnecessary fluting, turning or carvings as catch dust and microbes, and all floors shall have their surfaces made impervious to water and germs by a coat of boiling paraffine oil or other floor dressing having similar effect, applied immediately after the floor is laid. (Id. sec. 9.)

Art. 2904k. Flights of stairs.—That all school buildings of two or more stories shall be provided with not less than two widely separated flights of stairs, and no stair shall have winding treads, but every tread shall be full width and turns be made flat landings not less than four feet wide. (Id. sec. 10.)

Art. 2904l. Hand rails; landings.—That all stairs shall have a hand rail on each side and of such size and so placed that it can be held easily by the pupils using these stairs, and all stairs shall have at least one landing not less than four feet wide between floors. (Id. sec. 11.)

Art. 2904m. Doors to open outward.—That all outside doors and all doors leading from class rooms or study halls shall be so hung as to open outward. (Id. sec. 12.)

Art. 2904n. Building permits.—That no public school building shall be constructed in the state of Texas at an expense of more than four hundred dollars, until the board of school trustees of the district or city or town in which the work is to be done shall have first secured a school building permit from the officer legally authorized to grant such permit, certifying that the plans and specifications of said proposed building conform to the hygienic, sanitary and protective regulations established by this Act for public school buildings in Texas. The petition for said permit shall be made in writing, and shall set forth such details of the plans and specifications as are necessary to pass upon the legality of the lighting, hearing, [heating] ventilation, sanitation and fire protection in such proposed building. For buildings in a common school district the county superintendent of public instruction of the county in which the school is to be located, and for buildings of an independent school district, or in a city or town that has assumed control of its schools, the superintendent of public schools in that district or city or town is hereby authorized, empowered and required to examine all plans for all proposed public school buildings, costing over four hundred dollars, and to grant permits only for such buildings, as conform to the requirements of this Act, and to make a report to the state department of education of all such permits granted, transmitting all evidence. (Id. sec. 13.)

Art. 2904o. Payments before permit unauthorized.—That no person charged with the duty of disbursing school funds or of authorizing disbursement of school funds in the state of Texas shall pay or authorize the payment of any vouchers, or in any other manner pay out any sum of public money for the construction of any school building at an expense of more than four hundred dollars until the board of school trustees of said district or city or town has secured from the properly constituted authority a legal permit for such work, and that any disbursing officer failing to observe the provisions of this Act shall be held liable for such amount as is paid out on account of such building, as is not legally permitted. (Id. sec. 14.)

Art. 2904p. Duty of state department of education; bulletin.—That the state department of education shall immediately upon the passage of this Act, have prepared and sent to every county superintendent of public instruction, to every superintendent of schools in an independent school district, or city or town, and to every board of school trustees in Texas a bulletin setting forth this law, indicating the reasons for each of the regulations, and indicating ways in which the provisions of this Act can be easily, effectively and economically met in the construction of school buildings. (Id. sec. 15.)

Art. 2904q. To what buildings applicable.—The provisions of this Act shall apply only to buildings constructed after this Act takes effect. (Id. sec. 16.)

CHAPTER NINETEEN B

FREE TEXT BOOKS IN SCHOOL DISTRICTS

Art. 2904¼. Purchase of text-books by State Board of Education and distribution of same for use in public free schools without cost.—The State Board of Education is hereby authorized and empowered and it is made its duty to purchase books from the contractors of text books used in public free schools of this State and to distribute the same without other cost to the pupils attending such schools within this State in the manner and upon the conditions hereinafter set out. (Acts 1919, ch. 29, sec. 1.)

This act supersedes Acts 1915, ch. 134, relating to the purchase of text-books for free distribution by common and independent school districts.

Art. 2904¼a. Money necessary to purchase books to be annually set apart out of free school fund of State.—In order to carry out the provisions of this Act, the State Board of Education shall annually, at a meeting designated by them each year, set apart out of the available free school fund of the State an amount sufficient to purchase and distribute the necessary school books for the use of the pupils of this State for the scholastic year ensuing. (Id. sec. 2.)

Art. 2904¼b. State Text Book Fund; how constituted.—The State Text Book Fund of this State shall consist of the fund set aside by the State Board of Education from the available school fund as is provided for in Section 2 of this Act [Art. 2904¼a], together with all funds accruing from the sale of disused books and all moneys derived from the purchase of books from boards of school trustees by private individuals, by schools, or from any other source. (Id. sec. 3.)

Art. 2904¼c. Report of funds required for purchase of books; amount to be set aside from school fund; funds set aside not to revert to school fund.—The State Board of Education shall require from the State Superintendent, on July first of each year, a report as to the funds necessary for the purchase and distribution and other necessary expenses of school books for the regular school session of the following year, and said Board of Education shall have the power to set apart from the available school

fund the estimated amount with 25 per cent additional, this additional sum to be used only to meet emergencies or necessities caused by unusual increase in scholastic attendance or by unusual and unforeseen expenses and school conditions. Funds transferred to the Text Book fund shall remain permanently in this fund, until expended and shall not lapse to the State at the close of the fiscal year; provided, that the State Superintendent of Public Instruction shall be required to include in the aforementioned report to the State Board of Education a statement as to the amount of this fund which is unexpended, and said amount shall be considered by the Board in determining the necessary expenditures for text books for the following year. (Id. sec. 4.)

Art. 2904¼d. Purchase and distribution of books by State Superintendent of Public Instruction.—The purchase and distribution of free text books for the State shall be under the management of the State Superintendent of Public Instruction, subject to the approval of the State Board of Education. All details of plans for purchase and distribution of books not definitely covered by the provisions of this law shall be subject to the laws of the State and approval of the State Board of Education. (Id. sec. 5.)

Art. 2904¼e. Book contractors to maintain depositories for supplies of books; orders for books from.—All parties with whom book contracts have been made shall establish and maintain in some city in the State a depository where a stock of their goods to supply all immediate demands shall be kept; all contractors not maintaining their own individual or separate State agencies or depositories shall maintain a joint agency or depository to be located at some suitable and convenient distributing point, at which general depository each contractor joining in said agency shall keep on hand a sufficient stock of books to supply the schools of the State. Boards of School Trustees of every school district of the State, or their legally appointed representatives, shall be entitled to order directly from the State agency or depository herein provided for, and designated by said contractor or contractors as established to comply with conditions of this Act, text-books for use in the schools under the control of said trustees, such books to be purchased in accordance with the terms of this Act, and to be delivered by said depository, all packing, shipping, freight, express, mailing or other charges to be paid by said contractor or depository, to railway station at the town or city in which school is situated, or to railway station designated in the requisition; provided, that the depository shall not be required to fill orders by express or parcel post except such orders as may be defined by the State Superintendent of Public Instruction as emergency orders. The cost above established freight rate for filling such emergency orders may be added to the price of the books so shipped; provided further that if book contractors have complied with orders from the State Department of Education and have made prompt shipments as required by their contracts, that if the receivers of said shipments fail or refuse to take the shipments from the transportation companies, that the contractors will not be responsible for any demurrage in case of such failure.

Any person, school not controlled by the State, or dealer in any county in the State may order books from the said State agency, or depository and the books so ordered shall be furnished at the same rate and discount as are granted to the State; provided that in such case the State depository or agency may require that the price of books so ordered shall be paid in advance. Upon the failure of any contractor to furnish the books as provided in the contract and in this Act, the county judge in the county wherein such books have not been furnished, shall report the fact to the Attorney General and he shall bring suit on account of such failure in the name of the State of Texas in the district court of Travis county, and shall recover on the bond given by such contractor for the full value of the books not furnished as required, and in addition thereto the sum of one hundred dollars, and each day of failure to furnish the books shall constitute a separate offense, and the amounts so recovered shall be placed to the credit of the State Text Book Fund. (Id. sec. 6.)

Art. 2904¼f. School trustees to be custodians of books; distribution to pupils.—The school trustees of each district shall be designated as the legal custodians of the books, and shall have the power to make such arrangements for the distribution of books to the pupils as they may deem most effective and economical; provided that no district shall have the power to make any regulation in regard to text books, which is at variance with the provision of this Act, or with the regulation of the State, made by the State Superintendent of Public Instruction and approved by the State Board of Education. (Id. sec. 7.)

Art. 2904¼g. Books to remain state property; delegation by trustees of power to requisition and distribute books.—Books shall remain the property of the State, and after purchase through requisition according to the provisions of this Act, shall remain in the charge of the district school trustees, as the legal custodians of the books. The district school trustees shall have the power to delegate to their employés such power as to requisitions and distribution of books and the management of books, as in their judgment may be best; provided, that such plans shall not be at variance with the provisions of this law, or with the State Rules for Free Text Books, formulated by the State Superintendent of Public Instruction and approved by the State Board of Education. (Id. sec. 8.)

Art. 2904¼h. Bonds of custodians of books.—One or more members or employés of each district board of trustees shall enter into bond in the sum of fifty per cent in excess of the value of the books consigned to them by the State, payable in Austin, Texas, to the Governor of the State of Texas, or his successors in office, said bond to be approved by the county judge of the county in which the school is situated, and by the State Superintendent of Public Instruction and deposited with the State Superintendent, conditioned on the faithful discharge of his duties under his employment and under this Act, and that he or they will faithfully account

for all books coming into his or their possession and for all moneys received from the sales thereof; provided that all moneys accruing from the forfeiture of the bonds shall be deposited by the Governor to the credit of the State Text Book Fund. (Id. sec. 9.)

Art. 2904¼i. Requisitions for books; manner of making.—Requisitions for books shall be made in the following manner. On the first day of April each teacher shall make report to the principal, of the maximum attendance of his or her grade, or school, if not a graded school. If the school has only one teacher, said report as to the maximum attendance of pupils of each grade of work shall be made by the teacher to the board of school trustees and to the county superintendent. In case of unorganized counties, or counties having an exofficio county superintendent, reports shall be made to the State Superintendent. Reports as to the maximum attendance for the school shall be made not more than one week subsequent to the first school day of April by the principal to the city or town superintendent or by the principal to the county superintendent if the school is not situated in a city or town. The city or town superintendent of schools shall compile reports of principals and make report to the State Superintendent of Public Instruction. The county superintendent shall make such report to the State Superintendent of Public Instruction as to the maximum attendance of each rural school of his county as will designate the number of text books of each grade and kind, to which each rural school of his county shall be entitled. Reports as to the maximum attendance of each school under their direction shall be made to the State Superintendent of Public Instruction by the aforesaid superintendents of cities, towns, and counties, not later than April 25th, provided that should the school close before this date, it shall be the duty of the teacher to file with the county superintendent and with the board of school trustees reports complying with the provisions of this Act. Blank forms for reports and for requisitions of text books shall be furnished to all boards of school trustees by the State Department of Education. Requisitions for books shall be based on said reports as to the maximum number of scholastics in attendance the preceding school session, plus an additional fifteen per cent, and such requisitions shall be made through the State Superintendent of Public Instruction and by him furnished to the State Depository designated by contractors of books not later than June 1st of each year; provided that in cases of unforeseen emergency the State depository shall fill small orders for books on requisition approved by the chairman of the district board of school trustees, such requisition subsequently to be sent promptly for approval to the State Department of Education. One copy of each text-book used in the work taught by the teacher shall be issued by the school trustees, or their representatives, to each teacher as a desk copy, such books to be returned to the trustees or their representatives at the close of the session. (Id. sec. 10.)

Art. 2904¼j. Payment for books requisitioned.—Bills for text books purchased by the State on requisitions as provided for in Section 10 of this Act shall be paid by warrants on the State Treasury made by the State Department of Education and approved by the State Superintendent of Public Instruction. Such payment shall be made within ninety days from date of delivery and if payment be delayed thereafter, 6 per cent per annum shall be added until date of payment. The State Department of Education shall issue to each school district warrants to the value of five per cent of the contract price of books supplied to said district, this sum to be paid from the Free Text Book Fund, to cover the cost of care of the books and the cost of distribution of the books to the pupils of said districts. (Id. sec. 11.)

Art. 2904¼k. Reports as to use, care, and condition of books by teachers and school officers; inspection of books.—Teachers and school officers must make such reports as to the use, care and condition of free text books as may be required by the local trustees or by the State Department of Education. The salary for any month of any teacher or employé who neglects to make such report at the proper time, may be withheld until each report be received in a condition satisfactory in form and content. Text books shall be subject to inspection by any inspector or agent authorized by those having charge of the local text book service, or authorized by the State Superintendent of Public Instruction, subject to the approval of the State Board of Education; provided that inspectors authorized by the State Department of Education shall be those in regular employment as high school inspectors, rural school inspectors, or inspectors of vocational education. (Id. sec. 12.)

Art. 2904¼l. Rules for requisition, etc., of books; teachers, etc., not to sell, etc., school supplies.—Specific rules as to the requisition, distribution, care, use, and disposal of books may be made by the State Superintendent of Public Instruction subject to the approval of the State Board of Education; provided that such rules shall not conflict with the provisions of this Act, or with the uniform text book law under the terms of which contracts for supplies, books are made with the publisher or with the terms of said contract. No teacher or employé of the school engaged in the distribution of text books under this law as the agent or employé of the State, or of any county or district in the State shall, in connection with this distribution, sell or distribute, or in any way handle, any kind of school furniture or supplies, such as desks, stoves, blackboards, crayon, erasers, pens, ink, pencils, tablets, etc. (Id. sec. 13.)

Art. 2904¼m. Labels for books; records of books issued; care of books.—All books shall have printed labels pasted on both inside covers; said label to be supplied by the State Department of Education. Each school shall number all books, placing the number on these labels. All teachers shall keep a record of the number of all books issued to each pupil. All books must be covered by the pupil, under the direction of the teacher. Books must be returned to the teacher at the close of the session, or when the pupil withdraws from school. Each pupil, or its parent or guardian, shall be responsible to the teacher for all books not

returned by the pupil and said pupil not returning all books delivered to him or her shall not be entitled to the benefits of this Act until said books are paid for by said parent or guardian.

Local boards of trustees shall make provision for the fumigation of books before the re-issue of the books. Covers of all books shall be removed before re-issue, and the pupil to whom the book is issued shall replace cover, under the direction of the teacher. (Id. sec. 14.)

Art. 2904¼n. Purchase of books by pupils, etc.—Books may be bought from the local boards of trustees by pupils or parents of pupils attending the public schools of the State, said boards to furnish the books at the retail contract price. Any book may be purchased from the State depository designated by the contractor holding the contract for said book, by State Institutions or by private schools, or church schools, such purchase to be made on the same terms as those given to the State for the same book. All money accruing from sales of books by district boards of school trustees shall be forwarded to the State Text Book Fund not later than one month after the sale. (Id. sec. 15.)

Art. 2904¼o. Purchase of books from pupils.—For the next two school sessions after the passage of this Act, all district boards of school trustees or their legally appointed representatives, shall be empowered to pay to any pupil one-half of the exchange price of any adopted text book in use the preceding year, on delivery to the teacher of the said book, provided that the same privilege of surrendering to the State the adopted books in previous use during the scholastic year preceding the change of books and receiving therefor one-half of the exchange price of books, shall be accorded to cities, towns, or districts, which, previously to the passage of this Act have owned and furnished free text books to the pupils. Bills for the re-payment to the school district of such purchases shall be attested as correct before a notary public by the chairman of the district board of trustees, or by his legally appointed representatives approved by the State Superintendent of Public Instruction, and paid on warrants on the Text Book Fund issued by the State. Each district shall be allowed warrants to the amount of five per cent of the aggregate exchange price of all books turned over by the district to the book contractors and accepted by them in exchange for new books, this sum being set apart to pay cost of handling and packing books, and transportation to the nearest railway station. (Id. sec. 16.)

Art. 2904¼p. Disposition of books unfit for use.—The State Superintendent of Public Instruction with the approval of the State Board of Education, may provide for the disposition of such text books as are no longer in a fit condition to be used for purposes of instruction, provided that the district board of trustees shall retain a sufficient number of each text book to be used as exchange copies in case of change of the adopted text book, and provided that whenever it should become practicable to sell such old text books for use in the manufacture of paper, pulp or similar substances, the highest price obtainable shall be secured by bids and money accruing from the sale shall be deposited to the credit of the State Text Book Fund. In case of the disuse of books in fair condition, inspectors of the State Department of Education may require the continuance of the use of said books. (Id. sec. 17.)

Art. 2904¼q. Complaints as to text-book service.—Complaints in regard to text-book service shall be made both to the State Superintendent and to the State depository designated by contractors of the books. In case such complaint does not receive reasonably prompt attention, complaint shall be taken to the county judge, who shall proceed in accordance with the provisions of this Act (Section 6). Trustees of unorganized counties shall make complaint to the county judge of the county to which said unorganized county is attached for judicial purposes. (Id. sec. 18.)

Art. 2904¼r. Requisitions for supplementary books.—In making requisitions for supplementary books, teachers shall designate their first, second, third choice, etc., to the limit of the sets of supplementary books adopted, and such reports shall be furnished to the State Superintendent. And said supplementary books shall be issued according to rules prescribed by the State Superintendent of Public Instruction. Requisitions for supplementary books may be made at convenient times during the session, but must be made within one month in advance of the time the books will be needed. (Id. sec. 19.)

Art. 2904¼s. Notice to book contractors of operation of act.—Immediately upon the taking effect of this Act, it shall be the duty of the State Superintendent of Public Instruction to notify all parties holding contracts for the sale of text-books for use in the public schools of this State to the effect that the State of Texas has taken over the contracts now existing and will purchase books thereunder according to their terms. (Id. sec. 20.)

For section 21 of this act see Penal Code, art. 1513dd.

Art. 2904¼t. Time when act becomes operative.—The furnishing to the pupils and patrons of the schools of this State of free text books shall not begin under the terms of this Act until the commencement of the scholastic term of 1919–1920. (Id. sec. 22.)

Art. 2904¼u. Expenses due to operation of act.—All necessary expenses incurred by the operation of this Act incident to the enforcement of this law shall be paid from the State text book fund herein provided for upon bills approved by the State Superintendent of Public Instruction and shall be paid upon warrants drawn by the Comptroller upon the Treasury of the State. (Id. sec. 23.)

Art. 2904¼v. Partial invalidity of act.—Should any sections or any part of this Act be declared unconstitutional it shall not affect any other part of this Act. (Id. sec. 24.)

Art. 2904¼w. Annual ad valorem tax; amount.—There is levied and shall be collected for public free school purposes for the year 1919 and annually thereafter an ad valorem tax of thirty-five (35c) cents on the one hundred ($100.00) dollars valuation of all real property situated, and on all property owned, in the State, on the first day of January of each and every year, and on all prop-

erty sent out of the State prior to the first day of January for the purpose of evading the payment of taxes thereon and afterwards returned to the State, except so much thereof as may be exempted by the Constitution and Laws of this State or the United States, which said taxes shall be collected in the same manner as other ad valorem taxes, and all of said taxes are hereby appropriated for such purpose for the years ending August 31, 1920, and August 31, 1921. (Acts 1919, 2d C. S., ch. 23, sec. 1.)

Art. 2904¼x. Same subject; amount apportioned for purchase of text books.—The State Board of Education shall annually, at a meeting designated by them each year, set apart out of the funds raised under the provisions of this Act an amount sufficient, not to exceed fifteen (15c) cents on the one hundred ($100.00) dollars valuation on all property mentioned in Section one hereof, to purchase and distribute the necessary school books for the use of the pupils of the public free schools of this State. (Id. sec. 2.)

Section 3 of this act repeals all conflicting laws.

CHAPTER TWENTY

THE TEXAS STATE TEXTBOOK COMMISSION

Arts. 2905-2909. [Superseded by Arts. 2909a–2909*oooo*.]

Art. 2909a. Name of commission; how constituted; appointment; eligibility; vacancy; meetings; appearance of representatives of publishers before commission.—That a permanent Textbook Commission for the State of Texas is hereby authorized and styled "The Texas State Textbook Commission." The Commission shall be constituted as follows: The State Superintendent of Public Instruction, The President of the College of Industrial Arts and the President of the South West Texas State Normal, The President of the University of Texas, The President of the A. and M. College, acting together as a committee shall at a date not later than the 1st day of August, 1918, and biennially thereafter not later than the 1st day of August, submit to the Governor of this State the names of 15 teachers, five of which shall be women, of recognized scholarship and professional standing who have been actively and continuously engaged in teaching or supervising in the public schools of this State for the past five years and who have primary permanent or permanent certificates, said 15 teachers shall represent as nearly as possible every phase of the public school work, and it shall be the duty of the Governor to select seven therefrom who shall with the Governor and the Superintendent of Public Instruction constitute the text book commission of this State: provided, that at least two of those who are selected to serve on the Board shall be women; and provided further that one member of said Board shall have had at least three years' experience in teaching in the schools of Texas below the High Schools within the past five years. The term of office or the appointive members shall be for a period of not more than two years and shall be concurrent with the term of office of the official making the appointment. No person who has acted as a text-book agent for any author or publishing house, or who has been an author or associate author of any book published by any house, or who has directly or indirectly been concerned in the authorship of any text-book or in any publishing house shall be eligible to appointment on the Text-book Commission, any vacancy occurring on said Board from any cause shall be filled by appointment by the Governor, from the list of teachers submitted under the provisions of this Act. The Commission shall meet at such times and places as may be designated by the chairman, and it shall adopt such rules and regulations for the transaction of its business as it may deem proper, not contrary to the provisions of this Act; provided, that no legal representative or temporary employé or other special agent employed by any author or publisher shall be allowed to present the merits of a book to the members of the Commission, individually or collectively, except as hereafter defined, and any contract entered into by said Commission when so represented shall be void; but the Commission may allow the authors of books or publishers or any regular or permanent employé to appear before the Commission and represent the merits of books when said Commission is in session, and not otherwise, and under such restrictions and regulations as are provided by the State Text-book Commission and are in accord with the provisions of this Act. (Acts 1907, 1 S. S., p. 448; Acts 1911, S. S., p. 88, sec. 1; Acts 1917, 1st C. S., ch. 44, sec. 1.)

Art. 2909aa. Persons submitting bids or books to file affidavit with secretary of state; members of board not to be interested, etc.; disqualification.—Each individual, firm or corporation submitting bids to the board for its consideration, or presenting books for adoption under the provisions of this Act, shall file with the secretary of state an affidavit giving the names of all people employed to aid in any way whatsoever in securing the contract, and that no member of the board is in any manner interested, directly or indirectly, in such individual, firm or corporation. If the fact should be disclosed that any member of the board is so interested, it shall work a disqualification of such member of the board, and he shall not be permitted to serve on the board; or if it should further be disclosed that any member of the board is or has been interested in any book or series of books as the author or associate author, or that any such member of the board is related, directly or indirectly, to any person who is author, or associate author or in any way pecuniarily interested in any book or series of books published by any house bidding for this contract, or offered for use in the public schools of this state, or that any member of the board is interested in any such book or series of books in any manner, such fact shall likewise work as a disqualification of such member, and he shall not be permitted to serve upon the board. (Acts 1911, S. S., p. 88, sec. 2.)

Art. 2909b. Members of Commission to make affidavit of disinterest.—Each member of the Commission, before entering upon his duties as a member of the Commission, shall make out and file with the Secreta-

ry of State an affidavit that he is not and has not been directly or indirectly interested in, or connected with, or employed by, any publishing house, person, firm or corporation submitting any books for adoption, or in any books offered for adoption, or in any books adopted, nor is he connected in business with any person or agent representing such house, person, firm or corporation to whom any contract may be awarded by said Commission during the term and duration of said contract, and that he is not connected in any business with any person or agent representing such house, firm or corporation, and that he will not become so interested and will not accept any position as agent or representative of any person, firm or corporation who may submit any books for adoption or two whom any contract may be awarded by said Board during the term and duration of said contract. (Acts 1907, 1 S. S., p. 448; Acts 1911, S. S. p. 88, sec. 3; Acts 1917, 1st C. S., ch. 44, sec. 2.)

Governor as chairman of Commission; secretary; meetings; minutes of proceedings; public inspection.—The Governor shall be chairman of the Commission, and the State Superintendent shall be its secretary, who shall keep a complete record of all proceedings of the Commission. The Commission shall meet at such times and places as may be designated by the chairman for the purpose of considering and extending contracts, the making of new adoptions, and the keeping and operation of a complete system of uniform textbooks for the public free schools of this State in accordance with the provisions of this act. The Commission shall keep a minute book for its proceedings and on every action of the Commission an "aye" and "no" vote of the members thereof shall be required, and such minute book shall be kept in the office of the Superintendent of Public Instruction, and shall be open to public inspection, and no adopted text at any time shall be superseded or substituted except by the affirmative vote of two thirds of the members of the Commission present and voting. (Id. sec. 3.)

Time of meeting; continuance of present contracts; consideration of advisability of change; terms of new contract; investigation of publications; frequency of changes.—It shall be the duty of the Commission to meet not later than September 1, 1918, and as often thereafter as may be necessary, for the purposes of considering the advisability of continuing or discontinuing at the expiration of all current contracts any or all of the State adopted textbooks in use in the public schools of Texas, and of making such adoptions as are provided for in Section 5 of this Act. Before making any change in the adopted series, however, the Commission shall, upon thorough investigation, satisfy itself that a change is desirable in the interests of the children in the schools, and if in the judgment of the Commission, no text on any subject or subjects is offered that is better suited to the requirements of the schools than the present adopted text or texts, then it shall be lawful for the Commission to renew any contract for such period of time as may be deemed advisable, not to exceed a period of six years; provided no book or books in the present list of State adopted Textbooks shall be changed if the contractor furnishing same will when said Commission meets agree to enter into contract and bond to continue to furnish such book or books at the price and of the quality and upon the conditions specified in the current contract for a period of time not less than one year and not more than six years, as may be determined by the Commission. If no text or texts on any prescribed subject or subjects are submitted by any particular publisher or publishers that meet the requirements of the schools, as may be determined by the Commission, then it shall be the duty of the chairman of the Commission to instruct the secretary of the Commission to investigate the book markets for the purpose of securing bids with a view to providing at the most reasonable price or prices possible the best available texts, on any and all subjects that are to be adopted by the Commission for the schools of Texas. Provided, that it shall not be lawful for the Textbook Commission hereby created to change the books in more than one subject or text, in any one year; and provided further, that persons holding present contracts shall continue to furnish said books of as good quality and as low price, as at present, and upon the same conditions as contained in existing contracts. (Id. sec. 4.)

Art. 2909bb. Uniform system of text books; branches covered; character of books; dead languages; applicable to all public schools in state.—The Textbook Commission authorized by this Act shall have authority to select and adopt a uniform system of textbooks to be used in the public free schools of Texas, and the books so selected and adopted shall be printed in the English language and shall include and be limited to textbooks on the following subjects: Spelling, a graded series of reading books, a course in language lessons, English grammar, English composition, oral English, history of English Literature, history of American literature, geography, arithmetic, mental arithmetic, physiology, and hygiene, civil government, algebra, physical geography, history of the United States (in which the construction placed on the Federal Constitution by the fathers of the Confederacy shall be fairly represented), history of Texas, agriculture, a graded system of writing and of drawing books, plane geometry, solid geometry, physics, chemistry, general history, and Latin; provided that the series of readers adopted by the Commission shall have a full page cut of the manual alphabet as used by the Texas School for the Deaf; provided that none of said textbooks shall contain anything of a partisan or sectarian character, and that nothing in this Act shall be construed to prevent the teaching of German, Bohemian, Spanish, French, Latin or Greek in any of the public schools as a branch of study, but the teaching of one or more of these languages shall not interfere with the use of textbooks herein prescribed; and the study of a language known as a dead language, such as Latin or Greek, shall never be made compulsory as a requirement for the completion of any regular course of study in use in any public school in this State without providing an equivalent course for graduation equal in all other respects to such a course, containing such dead language or

languages, which shall not include the same; provided, however, that nothing herein shall be construed to prevent the use of supplementary books as herein provided. The Commission as herein provided for shall adopt text books in accordance with provisions of this Act for every public free school in this State, and no public free school in this State shall use any text book unless same has been previously adopted or approved by this Commission; and the Commission shall prescribe rules under which all text books adopted or approved shall be introduced or used by or in the public free schools of the State. (Acts 1907, 1 S. S., p. 448; Acts 1911, S. S., p. 88, sec. 4; Acts 1917, 1st C. S., ch. 44, sec. 5.)

Art. 2909c. Supplementary books; when to be used.—The Textbook Commission shall have authority to adopt a series of supplementary readers for the elementary grades and such other supplementary books as it may deem advisable for use in the public free schools of the State. Each bidder presenting such book or books shall state at what price it or they are offered, provided, however, that no supplementary books shall be purchased and used to the exclusion of the books prescribed under the provisions of Section 5 of this Act [Art. 2909bb], but full use must be made in good faith of the books selected by said Commission under Section 5 before any of the supplementary books provided for in this Section shall be required to be purchased and used; and no other supplementary readers shall be required to be purchased and used in good faith. (Acts 1907, 1 S. S., p. 448; Acts 1911, S. S., p. 88, sec. 5; Acts 1917, 1st C. S., ch. 44, sec. 6.)

Changes and additions to list of books adopted; reservation in contract; exchange terms.—The textbook commission may at any time require such changes, amendments or additions to the book or books adopted as in their judgment will be for the best interest of the public schools of this State; and contracts for books under the provisions of this Act shall be made upon the distinct condition that the commission provided for in this Act may, during the time for which books are adopted under this Act, upon giving one year's previous notice to the publishers thereof, order such changes, amendments and additions to the book or books so adopted as such textbook commission may determine; provided, also that if in the judgment of the commission such changes or revisions make it impractical for the revised books to be used in the same class with the old books, the publishers will be required to give the same exchange terms as were given when the books were first adopted, and such exchange period shall extend two years from the time the revised books are first put into use in the schools; provided, that nothing in this Section shall be construed so as to give said commission power or authority to abandon any book or books originally contracted for. (Id. sec. 7.)

Art. 2909cc. Advertisement for bids; requisites of bids; deposit; forfeiture.—When books are to be selected and adopted under the provisions of this Act the chairman of the commission shall for thirty days by notices in the public press and by written notices mailed to all persons, firms or corporations in whose behalf such notices may be requested, in which notices the time and place of such selection shall be set out and thus advertised that sealed bids will be received at the time and place fixed in said notice and not later than September 1, 1918. Each bid shall state specifically at what price each book will be furnished, and shall be accompanied by specimen copies of each book offered, and it shall be required that each bidder deposit with the treasurer of the State of Texas such sum of money as the commission may require, to be not less than five hundred dollars, nor more than twenty-five hundred dollars, according to the value of the books each bidder may propose to supply. Such deposits shall be forfeited to the State absolutely if such bidder so depositing shall fail to make and execute such contract and bond as herein required within such times as the commission may require, which time shall be specified in the notice advertised. (Acts 1907, 1 S. S., p. 448; Acts 1911, S. S., p. 88, sec. 6; Acts 1917, 1st C. S., ch. 44, sec. 8.)

Art. 2909d. Sealing and opening of bids; affidavit as to payment of taxes; affidavit of bidder as to disinterest of members of Commission.—All bids submitted under Section 8 [Art. 2909cc] of this Act shall be sealed and deposited with the chairman of the commission to be delivered by him in the commission in session and for the purpose of considering the same, and shall be opened in the presence of the commission; provided that the commission shall not consider a bid of any publisher of school books who has failed to pay the tax due and payable the State of Texas under Chapter 148 of the Acts of the Twenty-ninth Legislature, and who has failed to make the affidavit required by this Act. Each individual, firm or corporation submitting bids to the commission for its consideration, or presenting books for adoption under the provisions of this Act, shall file with the Secretary of State an affidavit giving the names of all people employed to aid in any way whatsoever in securing the contract, and that no member of the commission is in any manner interested, directly or indirectly, in such individual, firm or corporation. If the fact should be disclosed that any member of the commission is so interested, it shall work a disqualification of such member of the commission, and he shall not be permitted to serve on the commission; or if it should further be disclosed that any member of the commission is or has been interested in any book or series of books as the author or associate author, or in any way pecuniarily interested in any book or series of books published by any house bidding for this contract, or offered for use in the public schools of this State, or that any member of the commission is interested in any such book or series of books in any manner, such fact shall likewise work as a disqualification of such member, and he shall not be permitted to serve upon the commission. (Acts 1907, 1 S. S., p. 448; Acts 1911, S. S., p. 88, sec. 7; Acts 1917, 1st C. S., ch. 44, sec. 9.)

Art. 2909dd. Meeting for consideration of bids; investigations; adoption of books; postponement of selection.—It shall be the duty of the commission to meet at the time and place mentioned in the no-

tice and advertisement, and it shall then and there open and examine the sealed proposals received; and it shall be the duty of the commission to make a full and complete investigation of all the books and bids accompanying the same. The textbooks shall be selected and adopted after a careful examination and consideration of all books presented and the books selected and adopted shall be those which in the opinion of the commission are most acceptable for use in the schools, quality, mechanical construction, paper, print, price, authorship, literary merit and other relevant matters being given such weight in making its decision as the commission may deem advisable. The commission shall proceed without delay to adopt for use in the public schools of this State textbooks on all the branches hereinbefore mentioned; provided, that if the bid submitted to said commission should not be satisfactory to said commission, they may postpone the selection of such books or a part thereof to such time as they may select, and after the same is readvertised new bids may be received and acted on by such commission as provided for in this act; provided, that no textbook shall be adopted until it has been read and carefully examined by at least a majority of the commission. (Acts 1907, 1 S. S., p. 448; Acts 1911, S. S., p. 88, sec. 8; Acts 1917, 1st C. S., ch. 44, sec. 10.)

Art. 2909e. Stipulations of contract as to exchange of books.—The commission shall stipulate in the contract where a change shall be made from the books in use that the contractor or contractors shall take in exchange the respective books adopted by the commission then in use in part payment for the new books; and all bidders under this Act shall specify what allowance they will make for the said respective books adopted by the State and then in the hands of the patrons of the public schools when offered in exchange for the new books adopted under this Act; provided, that said allowances and condition for the exchange of the old books shall be enforced only during the two scholastic years following a change in books, and no book shall be taken in exchange which was not in use in the public schools during the scholastic year next preceding the change, or which was not so purchased by book dealers for the session next preceding such exchange; and provided that the commission shall prescribe and promulgate the conditions of exchange, and upon failure to comply with such conditions by any contractor, suit shall be instituted against such contractor in accordance with Section 28 of this Act [Art. 2909n], and that said conditions of exchange shall be made a part of each contract authorized under this Act. (Acts 1907, 1 S. S., p. 448; Acts 1911, S. S., p. 88, sec. 9; Acts 1917, 1st C. S., ch. 44, sec. 11.)

Art. 2909ee. Stipulations in contract as to changes, amendments and additions.—Every contract entered into with a publisher for the adoption of any book or books shall contain a provision that the commission herein provided for may, during the life of the contract, upon giving one year's previous notice to the publishers of such book or books, order such changes, amendments and additions to the book or books so selected and adopted as in the discretion of said commission shall keep them up to date and abreast of the times; provided that such revisions shall not be made oftener than once in two years. (Acts 1907, 1 S. S., p. 448; Acts 1911, S. S., p. 88, sec. 10; Acts 1917, 1st C. S., ch. 44, sec. 12.)

Art. 2909f. Bond of contractor; duties of Attorney General; suits on bond; new bond.—The bidder to whom any contract may have been awarded, shall execute a good and sufficient bond payable to the State of Texas, in the sum of not less than Twenty-Thousand Dollars, ($20,000.00), for each basal book adopted under the provisions of this Act; and a good and sufficient bond payable to the State of Texas in the sum of not less than Three Thousand Dollars ($3,000.00), for each supplementary Text-book adopted under the provisions of this Act; provided further, that the Commission is hereby given authority to require bond in such further and additional sums as it may deem advisable, said bond to be approved by the Commission; such bond to be conditioned that the contractor shall faithfully perform all the conditions of the contract; the contract and bond shall be prepared by the Attorney General, and be payable in Travis County, Texas, and shall be deposited in the office of the Secretary of State. The Bond shall not be exhausted by a single recovery thereon, but may be sued upon from time to time, until the full amount thereof is recovered; and the Texas State Text-book Commission, may, at any time, on twenty days' notice, require a new bond to be given, and the event the contractor shall fail to furnish such new Bond, the Contract of such Contractor, may, at the option of the Texas State Text-book Commission, be forfeited. (Acts 1907, 1 S. S., p. 448; Acts 1911, S. S., p. 88, sec. 11; Acts 1917, 1st C. S., ch. 44, sec. 13; Acts 1919, 2d C. S., ch. 53, sec. 1.)

Art. 2909ff. Prices to be paid for books; discrimination; liquidated damages; recovery at suit of Attorney General.—The commission shall not in any case contract with the publisher for any book or books to be used in the public schools of this State at a price in excess of the lowest price at which said publisher or publishers furnish or have offered to furnish and distribute the same book or books under contract with any other State, county or school district in the United States, and all contracts with publishers for the furnishing of books hereunder shall further stipulate and bind such publishers that they will not hereafter during the life of the respective contracts furnish or offer to furnish and distribute the same book or books under contract with any other state, county or school district in the United States at a lower price than that at which said publishers agree to furnish and distribute the same books under the contracts executed pursuant to this act, unless such publishers respectively shall immediately give such lower price to the beneficiaries of the contracts executed hereunder, provided, that in the event any such contract is made it shall be the duty of the Attorney General to institute suit upon the bond hereinabove provided for, for a recovery on behalf of the State of the liquidated damages due under and as provided for in Section 28 of this Act [Art. 2909n], and proof of a

violation of this provision in any particular shall be prima facie evidence of liability in any such suit brought hereunder, and in case that any contractor who has a contract to furnish a book or books for the State under the provisions of this Act shall at any time during the period of this adoption contract with any other State, county or school district in the United States to furnish and distribute the same book or books at a lower price than fixed in accordance with the provisions of this Act, under similar conditions of sale and distribution as may be decided by the Texas State Text Book Commission such lower price shall immediately be given to the State of Texas, and for the breach of any of the conditions and stipulations contained herein or in the respective contracts, the contract may be forfeited and the contractors shall be liable to the State of Texas in liquidated damages in the full amount of the bond; and it shall be the duty of the Attorney General to bring suit on the bond of such contractors for such liquidated damages as provided for in Section 28 [Art. 2909n] hereof. (Acts 1907, 1 S. S., p. 448; Acts 1911, S. S., p. 88, sec. 12; Acts 1917, 1st C. S., ch. 44, sec. 14.)

Art. 2909g. Disqualification of contractor violating anti-trust law; affidavit and statement; filing copies of agreements with other publishers.—No book or books shall be purchased from any person, firm or corporation who is a member of or connected with any trust; and in the event it be established that this provision has been violated, such violation shall be held to be fraud and collusion as contemplated under Section 28 of this Act [Art. 2909n], and the Attorney General shall bring suit upon the bond of such person, firm, or corporation and upon proof of such violation shall recover the liquidated damages as provided for in said Section 28 hereof, as defined by the laws of this State, and a sworn affidavit that said person or corporation is not connected either directly or indirectly with a trust shall be required, and said affidavit shall be filed with said commission. Before proceeding to adopt books as provided under the provisions of this Act, the commission shall require all persons, firms, and corporations bidding for a contract to file with the commission a sworn statement on or before the date selected by the commission for receiving sealed bids, stating whether said person, firm, or corporation is interested, or whether said person, firm or any member thereof or any individual stockholder of such corporation is interested or acting as a director, trustee or stockholder, either directly or indirectly or through a third party, in any manner whatsoever, in any other publishing house, and this statement shall be sworn to by such person, a member of such firm or the president, secretary, and each one of the directors of said corporation. All firms or persons bidding for a contract for supplying books shall present a sworn statement signed by all its members showing the names of all members of said firm, and whether any other person, firm or corporation has any financial interest in said firm, and also whether any individual member or members of said firm have any financial interest in any other publishing firm or corporation of publishers; provided further, that the commission shall require all corporations, or person, or firms to file with the governor attested copies of all written agreements entered into and existing between them and others engaged in the publishing business, and if in the opinion of the commission such written agreements or other facts adduced are violations of the anti-trust law of the State of Texas, or opposed to public policy, the bids of such houses shall not be considered by the commission. (Acts 1907, 1 S. S., p. 448; Acts 1911, S. S., p. 88, sec. 13; Acts 1917, 1st C. S., ch. 44, sec. 15.)

Art. 2909gg. Contract to stipulate against liability of state.—It shall be a part of the terms and conditions of every contract made in pursuance of this Act that the State of Texas shall not be liable to any contractor thereunder for any sum whatsoever, but all such contractors shall receive compensation solely and exclusively from the proceeds of the sale of school books as provided in this Act. (Acts 1907, 1 S. S., p. 448; Acts 1911, S. S., p. 88, sec. 14; Acts 1917, 1st C. S., ch. 44, sec. 16.)

Art. 2909h. Execution of contract; duplicate; record.—Each contract shall be duly signed by the publishing house or its authorized officers and agents; and if it is found to be in accordance with the award and all the provisions of this Act, and if the bond herein required is presented and duly approved the commission shall approve said contract and order it to be signed on behalf of the State by the Governor in his capacity as chairman. All contracts shall be made in duplicate, one copy to remain in custody of the Secretary of State and be copied in full in the minutes of the meeting of the commission in a well bound book, and the other copy to be delivered to the company or its agent. (Acts 1907, 1 S. S., p. 448; Acts 1911, S. S., p. 88, sec. 15; Acts 1917, 1st C. S., ch. 44, sec. 17.)

Art. 2909hh. Disposition of deposits made by bidders.—When any person has been awarded a contract and he has filed his bond and contract with the commission and the same has been approved, the commission shall make an order on the Treasurer of the State reciting such fact, and thereupon the Treasurer shall return the deposit of such bidder to him; but if any successful bidder shall fail to make and execute the contract and bond as hereinbefore provided, the Treasurer, shall place the deposit of such bidder in the State Treasury to the credit of the available school fund, and the commission shall readvertise for other bids to supply such books which said bidder may have failed to supply. All unsuccessful bidders shall have their deposit returned to them by the State Treasurer as soon as the commission has decided not to accept their bids. (Acts 1907, 1 S. S., p. 448; Acts 1911, S. S., p. 88, sec. 16; Acts 1917, 1st C. S., ch. 44, sec. 18.)

Art. 2909i. Proclamation as to letting of contract; custody of standards adopted.—As soon as the State shall have entered into the contract for the furnishing of books for use of the public schools of this State under the provisions of this Act, it shall be the duty of the commission to issue its proclamation of such facts to the people of the State; and the State superintendent of public instruction shall carefully label and

file away the copies of the books adopted as furnished for examination to the board; and such copies of such book shall be securely kept and the standard of quality and mechanical excellence of the book or books so furnished under this Act shall be maintained in said books so furnished under contract authorized by this Act during the continuance of the contract. (Acts 1907, 1 S. S., p. 448; Acts 1911, S. S., p. 88, sec. 17; Acts 1917, 1st C. S., ch. 44, sec. 19.)

Art. 2909ii. Circular letter to local school officers.—As soon as practical after the adoption of the textbooks provided for in this Act, the superintendent of public instruction shall address a circular letter to the county superintendent and to the president of the school boards in independent school districts, which circular letter shall contain a list of all the books adopted with their respective prices, together with such other information as he may deem advisable. (Acts 1907, 1 S. S., p. 448; Acts 1911, S. S., p. 88, sec. 18; Acts 1917, 1st C. S., ch. 44, sec. 20.)

Art. 2909j. Contractor to maintain stock of books within state at convenient distributing points; agencies; mode of distribution; failure to furnish books; penalty; unorganized counties.—All parties with whom the contract have been made shall establish and maintain in some city in the State a depository where a stock of their goods to supply all immediate demands shall be kept; all contractors not maintaining their own individual or separate State agencies or depositories shall maintain a joint agency or depository to be located at some suitable and convenient distributing point, at which general depository each contractor joining in said agency shall keep on hand a sufficient stock of books to supply sub-depositories, and every contractor shall establish and maintain in every county in the State having an enrollment of five hundred pupils or more in the public schools as shown in the last preceding report of the county superintendent, on file in the office of the State Superintendent of Public Instruction, one or more agencies, one of which shall be at the county seat. At each county seat, as above provided, and in every city in the State containing five hundred inhabitants or over shall be maintained an agency of each contractor carrying a sufficient stock of all books contracted for to supply all immediate demands; provided, that in all counties not entitled to a depository under the conditions as provided for in this Act contractors shall supply such adopted books under such rules and regulations as may be approved by the Texas State Text Book Commission. Any person, dealer or school board in any county in the State may order from the central agency, and the books so ordered shall be furnished at the same rate and discount as are granted to agents at the county seat; provided that the price of books so ordered shall be paid in advance. Upon the failure of any contractor to furnish the books as provided in the contract, and in this Act, the county judge in the county wherein such books have not been furnished shall report the fact to the Attorney General, and he shall bring suit on account of such failure in the name of the State of Texas in the district court of Travis County, and shall recover on the bond given by such contractor for the full value of the books not furnished as required, and in addition thereto the sum of one hundred dollars, and each day of failure to furnish the books shall constitute a separate offense, and the amounts so recovered shall be placed to the credit of the available school fund of the State. Any unorganized county shall be furnished from the same agency as the county to which said unorganized county is attached for judicial purposes in the same manner as such organized county. (Acts 1907, 1 S. S., p. 448; Acts 1911, S. S., p. 88, sec. 19; Acts 1917, 1st C. S., ch. 44, sec. 21.)

Art. 2909jj. Price to be marked on books.—The contract price of each book shall be plainly printed on the back of each book, together with the following notice "The price marked hereon is fixed by the State, and any deviation therefrom should be reported to the State Superintendent of Public Instruction." First two years of the contract for new books the exchange price of each book shall be printed thereon, also. (Acts 1907, 1 S. S., p. 448; Acts 1911, S. S., p. 88, sec. 20; Acts 1917, 1st C. S., ch. 44, sec. 22.)

Art. 2909k. Use of books compulsory; exception; restriction as to authorship.—The books adopted by the Commission under the provisions of this Act shall be introduced and used as textbooks to the exclusion of all others in public free schools of this State for such period of years as may be determined by the commission, not to exceed six years in any case; provided nothing in this Act shall be construed to prevent or prohibit the patrons of the public schools throughout the State from procuring books in the usual way in the event that no contracts are made. Provided that said Commission shall not contract for any book of which any member of the nominating committee, or any member of said Commission is, or may be author. (Acts 1907, 1 S. S., p. 448; Acts 1911, S. S., p. 88, sec. 21; Acts 1917, 1st C. S., ch. 44, sec. 23.)

Art. 2909kk. [Superseded by Act June 5, 1917, 1st C. S., ch. 44.]

Arts. 2909l-2909mm. [Superseded by Act June 5, 1917, 1st C. S., ch. 44, secs. 24–27, set forth post as arts. 1513a–1513d, Penal Code.]

Art. 2909n. Cancellation of contract; suit on bond of contractor.—The State may at its election cancel any contract entered into by virtue of the provisions of this Act for fraud, or collusion, or material breach of contract upon the part of either party of the contract, or any member of the commission, or any person, firm or corporation or their agents making said bond or contract; and for the cancellation of any such contract the attorney general is hereby authorized to bring suit in the proper court of Travis County, and in case of the cancellation of any contract as provided for, the damages are fixed at not less than the amount of said bond, to be recovered as liquidated damages in the same suit cancelling said contract; and on account of the difficulty of determining the damages, that might accrue by reason of such fraud collusion or material breach, and cancellation of such contract, the full amount of the bond given by the contractor shall be considered as liquidated damages to be recovered out of said bond by the

State at the suit of the attorney general, and every contract that shall contain a clause to this effect. (Acts 1907, 1 S. S., p. 448; Acts 1911, S. S., p. 88, sec. 26; Acts 1917, 1st C. S., ch. 44, sec. 28.)

Art. 2909nn. Designation of Secretary of State to receive service of process.—Any person, firm or corporation with whom a contract has been entered into under the provisions of this Act shall designate the secretary of state of Texas as its or their agent, upon whom citation and all other writs and processes may be served in the event any suit shall be brought against such person, firm or corporation. (Acts 1907, 1 S. S., p. 448; Acts 1911, S. S., p. 88, sec. 27; Acts 1917, 1st C. S., ch. 44, sec. 29.)

Art. 2909o. Compensation of teachers acting as members of Commission; appropriation; employment of stenographer.—The teachers selected upon said commission under the provisions of this Act shall receive as compensation for their services the sum of five dollars per day each while on active duty and actual traveling expenses in going to and from the place of meeting, and in attending to the business of the commission, to be paid upon warrants drawn by the comptroller under the direction and approval of the chairman of the commission; and the sum of four thousand dollars for the fiscal year ending August 31, 1918, and one thousand dollars for each year thereafter, or so much thereof as may be necessary, is hereby appropriated out of the general revenue of this State, not otherwise appropriated, for the purpose of paying the same and cost and expense of putting into effect the provisions of this Act; provided, that the superintendent of public instruction be and is hereby fully authorized to employ one stenographer to assist in the clerical work of the State Text-book Commission, the pay of said stenographer to be paid out of the appropriation herein made. (Acts 1907, 1 S. S., p. 448; Acts 1911, S. S., p. 88, sec. 28; Acts 1917, 1st C. S., ch. 44, sec. 30.)

Art. 2909oo. Effect of adoption of constitutional amendment.—In the event the proposed amendment to Article 7 of the Constitution of Texas, to be voted on in November 1918, is adopted and thereafter put into actual operation and effect before the expiration of any textbook contracts awarded hereunder, or if for any other reason before the expiration of any text book contracts awarded hereunder, it is decided to furnish free text books by the State of Texas for use in the Public Schools the books covered by such contracts shall be continued in use until the expiration of such contracts at the prices contracted for and under all the other terms and conditions of this Act, and in submitting any bid or bids under the terms of this Act every bidder shall agree that the books embraced in said bid shall be sold and delivered to the State of Texas at the prices offered in said bid and that the State shall receive the same discount from such prices that the Central Depository is allowing any subdepository in the State of Texas at the time that the State takes over the furnishing of free books for use in the Public Schools. (Id. sec. 31.)

Art. 2909ooo. Books to be manufactured in Texas; price.—That on and after this Act shall become effective, all text books which shall be hereafter adopted or contracted for by the Text Book Board of the State of Texas, for use in the public schools of Texas, under the provisions of Chapter 11, of the General Laws of the Thirty-second Legislature, passed at the First Called Session thereof, and approved August 31, 1911, be and the same are hereby required to be printed, bound, completed and finished within the State of Texas; and, provided further, that all typesetting and other mechanical labor connected with the printing of said books or revision or new edition thereof shall be performed within the State of Texas; provided, that no text book shall be adopted or contracted for by said board at a higher price than a similar book of equal or better quality would cost if manufactured elsewhere. (Acts 1915, ch. 112, sec. 1 [sec. 30].)

Art. 2909oooo. Same; permit to manufacture outside of state where cost is substantially lower.—Provided, that the Governor and Text Book Board shall be authorized to permit publishers of adopted, or presented for adoption, books to contract for the printing, binding and completion of such books outside of the State when said publishers present satisfactory proof to said board that they can contract for editions of equal size and quality at a substantially lower price outside of the State, and contractors within the State will not substantially meet said competitive prices. (Id. [sec. 30a].)

CHAPTER TWENTY-ONE

TEACHING OF COTTON CLASSIFICATION

Art. 2909p. State board of education to require teaching in what schools, etc.—That the state board of education is authorized and instructed to require the teaching of cotton classification in all the state normal schools, industrial schools, summer normal schools, teachers' institutes, and in all public schools; provided, that the subject of cotton classification shall not be required to be taught in independent school districts having a scholastic population of three hundred or more, or in districts where the cotton acreage is less than 10 per cent of the total acreage planted to farm products, unless so ordered by the school board or trustees. (Acts 1913, p. 129, sec. 1.)

Art. 2909q. What grades shall be taught; standards.—The grades of cotton taught in all the schools as required in section 1 of this Act [Art. 2909p], shall be those established and provided for by the United States department of agriculture and known as official types or "standards." (Id. sec. 2.)

Art. 2909r. State superintendent of public instruction to furnish information.—It shall be the duty of the state superintendent of public instruction to furnish full information to all schools required to teach the classification of cotton, as to how to obtain the types or "standards" provided for in this Act. (Id. sec. 3.)

Art. 2909s. Duty of commissioners' court.—The county commissioners' court of all counties coming under the provisions of this Act shall provide for at least one set of the official types or "standards" to be placed in charge of the county superintendent of public instruction, or ex-officio county su-

perintendent of public instruction, whose duty it shall be to use them for the purposes of instruction in classification of cotton; to lend them to summer normal schools and teachers' institutes held in his county, and to have types of same made for the various schools in his county applying for same, provided, that such schools shall pay the cost of making said types. (Id. sec. 4.)

Art. 2909t. School boards and trustees shall furnish samples, etc.; duty of county superintendent of public instruction.—The school board or trustees of every school district required by the provision of this Act to teach cotton grading, shall furnish the county superintendent of public instruction with samples of the different grades of cotton from which a set of types or "standards" shall be made by comparing them with the official types or "standards" and the county superintendent of public instruction shall certify that the same has been carefully compared with the official types or standards in his office, and shall correctly label same, showing the grade thereof; provided, that nothing in this section shall prevent school boards or trustees from purchasing the official types or standards direct from the United States department of agriculture. (Id. sec. 5.)

Art. 2909u. Duty of state normal school and industrial schools.—The state normal school and the state industrial schools shall procure the official types or standards from the United States department of agriculture and pay for same out of the appropriation made by the legislature for their support and maintenance. (Id. sec. 6.)

Art. 2909v. Same subject; competent instructor.—The state schools named in section 6 of this Act [Art. 2909u], shall employ a competent instructor to each the practical art of grading and classing cotton, and the handling of cotton in all of its branches from the field to the factory. (Id. sec. 7.)

Art. 2909w. Summer normals and county institutes to employ instructors.—Summer normals and county institutes shall make provision for the employment of instructors in cotton classification in the same way that they employ instructors in other required branches. (Id. sec. 8.)

Art. 2909x. Certificates for proficiency; examinations, etc.—Students of any school in this state where cotton grading or classing is required to be taught shall be entitled to a certificate of proficiency after passing such examination as may be prescribed by the faculty of the school or by the county superintendent of public instruction of the county in which he proposes to teach, provided, that the applicant must be able to class 60 per cent or more of the samples presented compared with the types or standards of the department of agriculture. (Id. sec. 9.)

Art. 2909y. Act when operative.—This Act shall become operative on and after September first, nineteen hundred and fourteen (1914). (Id. sec. 10.)

CHAPTER TWENTY-TWO

FREE KINDERGARTENS

Art. 2909½. Establishment; petition; school census and apportionment of school funds not affected; expense, how paid; part of school system.—The trustees of any school district in the State of Texas, upon the petition of the parents or guardians of twenty-five or more children under the scholastic age down to and including five years, residing within said district, shall establish and maintain a kindergarten as a part of the public free schools of said district, for the training of children under the scholastic age down to and including five years, residing in said district, and shall establish such courses of training, study and discipline, and such rules and regulations governing such kindergartens as said trustees shall deem best. Provided that any such petition for the establishment and maintenance of a free kindergarten shall be presented to the trustees of said district between the First day of June and the First Day of August in any year. Provided further, that nothing in this Act shall be construed to change the law relating to the taking of the scholastic census, or the apportionment of State and County school funds among the several Counties and districts in this State. Provided, further, that the cost of establishing and maintaining such kindergartens shall be paid from the special school tax of said districts. Said kindergartens shall be a part of the public school system and shall be governed, as far as practicable in the same manner and by the same officers as is now, or may hereafter be, provided by law for the government of the other public schools of the State. (Acts 1917, ch. 122, sec. 1.)

The title of this act purports to amend art. 2811, ante, which see.

Art. 2909½a. Employment of teachers.—The trustees shall be empowered to employ to teach such kindergartens only those who hold State Kindergarten Certificates, provided for in Section No. 121, of Chapter 96, of the Acts of the Thirty-second Legislature of the State of Texas [Art. 2811]. (Id. sec. 2.)

Art. 2909½b. Repeal; partial invalidity.—All laws and parts of laws in conflict with this Act are hereby repealed, and in case it is held by the courts that any part of this Act is unconstitutional, such decision shall not impair the other parts and provisions of this Act. (Id. sec. 3.)

CHAPTER TWENTY-THREE

VOCATIONAL EDUCATION

Art. 2909¾. Acceptance of Act of Congress; good faith of State pledged.—The State of Texas, hereby accepts the provisions of the Act of Congress, approved February 23, 1917, entitled; "An Act to provide for the promotion of vocational education; to provide for co-operation with the States in the promotion of such education in agriculture, trades and industries, and home economics; to provide for co-operation with the States in the preparation of teachers of vocational subjects; and to appropriate money and regulate its expenditure." The good faith of the State is hereby pledged to make available thorough appropriations for the several purposes of said Act funds sufficient at least to equal the sums alloted, from time to time, to this State for the appropriations made by said Act and to meet all conditions necessary to entitle the State to the

benefits of said Act. (Acts 1919, ch. 114, sec. 1.)

This Act supersedes act June 5, 1917, 1st C. S. ch. 45, to the same effect.

Art. 2909¾a. State Treasurer to be custodian of funds.—The State Treasurer is hereby designated custodian of all funds allotted to this State from the appropriations made by said Act, and he shall receive and provide for the proper custody and disbursements of the same in accordance with this Act. (Id. sec. 2.)

Art. 2909¾b. State Board of Education designated State Board for Vocational Education.—The State Board of Education is hereby designated as the State Board for Vocational Education, authorized, and is hereby given all necessary power, to co-operate, as provided in and required by the aforesaid Act of Congress with the Federal Board of Vocational Education in the Administration of the provisions of said Act; and to do all things necessary to entitle the State to receive the full benefits thereof. (Id. sec. 3.)

Art. 2909¾c. Appropriations.—There is hereby appropriated out of the money in the State Treasury not otherwise appropriated, for the scholastic year 1919–20, $57,591.26, or so much thereof as may be necessary, to be used for salaries of teachers, supervisors, or directors of agricultural subjects in the public schools; $21,671.72, or so much thereof as may be necessary, for salaries of teachers of trade and industrial and home economics subjects in the public schools; and $40,935.47, or so much thereof as may be necessary for training of teachers of vocational subjects in the colleges of the State, to be conditioned upon receiving a like sum from the Federal Board for Vocational Education to be used for similar purposes, and for the scholastic year 1920–21, $69,687.89, or so much thereof as may be necessary for salaries of teachers, supervisors, or directors of agricultural subjects in the public schools; $26,133.06, or so much thereof as may be necessary for paying salaries of teachers of trade and industrial and home economics subjects in the public schools; $49,362.16, or so much thereof as may be necessary, for training of teachers of vocational subjects in the colleges of the State, to be conditioned upon receiving a like sum from the Federal Board of Vocational Education to be used for similar purposes; provided, that such amounts may be expended from each of these funds as, in the judgment of the State Board of Vocational Education, may be necessary for such expenses of direction and supervision of the work as will enable the State to secure the full benefit of the appropriation of the Federal government under the Smith-Hughes Act. (Id. sec. 4.)

Art. 2909¾d. Purpose of appropriation.—It is hereby expressly provided that all appropriations by local school boards for the purposes of this Act, and all appropriations by the State in its educational budgets that come within the provisions of this Act shall be allowed to compensate for the appropriations herein provided; and that the appropriations of this Act are simply a guarantee of good faith on the part of the State in the administration of the Federal Vocational Education Act; and are to be actually distributed only in order to secure to the State the full benefits of the Federal appropriation or, in case of necessity, to preserve the good name of the State; provided, that the State Board for Vocational Education is hereby authorized to permit the expenditure by the State of amounts not exceeding more than $25,000.00 for 1919–20 and $25,000.00 for 1920–21, for aid in securing the benefits of the Federal appropriation to the rural schools and schools of small towns, the remainder of the funds required to duplicate Federal funds being required of school Boards accepting Federal funds under the provisions of this Act. (Id. sec. 5.)

Art. 2909¾e. Schools entitled to benefits of appropriation.—In order for any school to secure the benefits of the appropriation for the purposes specified in this Act, plans shall be submitted to the State Board of Vocational Education showing the kinds of vocation for which it is proposed that the appropriation shall be used; the kind of school & equipment; courses of study; methods of instruction; qualifications of teachers and plans for the supervision and in the case of teacher-training institutions, plans for the training of teachers, as provided in the Federal Act. Such plans shall be submitted to the State Superintendent of Public Instruction upon the form prescribed by the State Board for Vocational Education, and approved by the Federal Board for Vocational Education. It shall be the duty of the State Superintendent as secretary of the State Board for Vocational Education, to make a thorough investigation of such application submitted for aid under this Act, and the State Board for Vocational Education shall require a certificate that each school applying for aid under this Act meets substantially the requirements of the law before aid in any amount is granted. (Id. sec. 6.)

Art. 2909¾f. Studies, etc., as vocational education.—The State Board for Vocational Education shall have authority to make studies and investigations relating to Vocational Education, to advise with the Federal Board having in charge the direction of this work, to prescribe qualifications for the teachers, directors, & supervisors of the subjects for which provision is made in this Act, provided that they do not conflict with regulations of the said Federal Board, and to provide for the certification of such teachers, directors, and supervisors. (Id. sec. 7.)

TITLE 49

ELECTIONS

CHAPTER ONE

TIME AND PLACE OF HOLDING ELECTIONS

Art. 2910. Elections, general, time for holding.—A general election shall be held on the first Tuesday after the first Monday in November, A. D. 1912, and every two years thereafter, at such places as may be prescribed by law, after notice given as prescribed by law. (Acts 1905, 1st S. S. p. 535.)

Art. 2911. Elections, special, time for holding.—Special elections shall be held at such times and places as may be fixed by law providing therefor. (Id. sec. 62.)

Art. 2912. Polls, hours of opening and closing.—In all elections, general, special or primary, the polls shall be open from eight o'clock in the morning until seven o'clock in the evening; and the election shall be held for one day only. (Id. sec. 64.)

Art. 2913. Precincts, election, formed how and when, publication.—The county commissioners' court of each county may, if they deem it proper, at each August term of the court, divide their respective counties, and counties attached thereto for judicial purposes, into convenient election precincts, each of which shall be differently numbered and described by natural or artificial boundaries or survey lines by an order to be entered upon the minutes of the court. They shall immediately thereafter publish such order in some newspaper in the county for three consecutive weeks. If there be no newspaper in the county, then such copy of such order shall be posted in some public place in each precinct in the county. No election precinct shall be formed out of two or more justice precincts, nor out of the parts of two or more justice precincts. (Id. sec. 7.)

Art. 2914. Precincts in cities and towns, how formed.—The county commissioners' court, in establishing new election precincts, shall divide any city or town into as many election precincts as they see proper, none of which shall have resident therein more than three hundred and fifty voters, as ascertained by the vote of the last preceding general city or town election. Every ward in every incorporated city, town or village shall constitute an election precinct, unless there shall have been cast in the said ward, at the last general city or town election held therein, more than three hundred and fifty votes. Cities and towns, and towns and villages incorporated under the general laws shall not necessarily constitute election precincts; and no precinct shall be made out of parts of two wards. Provided, that this section [article] shall not apply to cities, towns and villages of less than ten thousand inhabitants; and, in such cities, towns and villages, the justice precincts in which said cities, town and villages are situated may be divided into election precincts without regard to the wards of such cities, towns and villages, and without reference to the number of votes to be cast. (Id. sec. 8.)

Art. 2915. (1709) Unorganized counties, precincts and voting in.—Each unorganized county of the state of Texas which is attached, for judicial purposes, to an organized county shall be attached, for election purposes, to some one of the commissioners' precincts of such organized county, and voters in such unorganized county shall be authorized to vote in any election for commissioner of such commissioners' precinct; provided, when more than one election precinct has been established by law in such unorganized county of the state, each election precinct therein shall be attached, for election purposes, severally to one of the commissioners' precincts of such organized county; and voters in such election precincts shall be authorized to vote in any election for commissioner of the commissioners' precinct to which such election precinct has been attached. (Acts 1885, p. 89.)

Art. 2916. (1732) (1689) Voters shall vote in precinct where they reside.—All voters in any county shall vote in the election precinct in which they reside. (Act Aug. 23, 1876, p. 308, sec. 14. Acts 1881, p. 97.)

Art. 2917. Collector, order fixing precincts to be served on.—The county commissioners' court shall cause to be made out and delivered to the county collector of taxes, before the first day of September, annually, a certified copy of the last order fixing the limits and designating the number or name of each precinct for the year following. (Acts 1905, 1 S. S., p. 535.)

Art. 2918. Polling places and poll tax lists in towns, etc., under general law.—In towns or cities incorporated under the general laws, the city council may provide for city or town elections that there shall be one or more polling places; and, in such case, the certified list of poll taxpaying voters for all election precincts in which voters reside who are to vote at any such polling place shall be used therefor. (Id. sec. 9.)

Art. 2919. But one election poll in certain cities and towns.—In all cities and towns in this state in which the number of electors at the last municipal election does not exceed four hundred in number, but one election poll shall be opened at any municipal election; and all officers of such towns and cities to be elected shall be voted for at such poll. (Acts 1897, p. 10.)

Art. 2919a. Use of public buildings for holding elections.—In all cases where it is practicable so to do, all elections shall be held in some school house, fire station or other public building within the limits of the election precinct in which such election is being held, and no charge shall be made for the use of such building, except that any additional expense actually incurred by the authorities in charge of such building on account of the holding of the election therein shall be repaid to them by the party who would be liable for the expenses of holding the election under the existing law, and provided that if there be no building available for the purpose of holding such election in the election precinct in which the election is being held, then such election may be held in some other building. (Acts 1917, ch. 149, sec. 2.)

CHAPTER TWO

OFFICERS OF ELECTION

Art. 2920. Judges and clerks of election; presiding judges; appointment, qualification and duties.—The county commissioners' court shall, at the February term, appoint from among the citizens of each voting precinct in which there are less than one hundred voters who have paid their poll tax and received their certificates of exemption two reputable men who are qualified voters as judges of the election. They shall be selected from different political parties, if practicable, and shall continue to act until their successors are appointed. When the bounds of the precinct are changed so that one or more judges reside outside of the precinct for which they were appointed, the court shall appoint others to fill such vacancy or vacancies. One of the judges, who shall, in all cases, belong to the party that, at the last general election, cast the largest vote for

governor throughout the state shall be designated as the presiding judge at elections; he shall appoint two competent and reputable clerks of different political parties, if practicable, who are qualified voters, to act as clerks of the election. The order appointing all judges shall be entered of record. The presiding judge shall act in receiving and depositing the votes in the ballot boxes, and the other judge shall act in counting the votes cast; one of the clerks shall keep the poll list and list of qualified voters, and, upon the poll list he shall write at the time of voting the name and number of each voter; the other clerk shall act as canvassing clerk, and shall keep the tally list of votes counted; said officers shall perform such other duties as the presiding judge may direct. (Acts 1905, S. S., p. 533, sec. 57.)

Art. 2921. Judges and clerks of election in precincts of over 100 poll tax receipts, appointment and duties.—For every precinct in which there are one hundred male citizens or more who have paid their poll tax or received their certificates of exemption, the commissioners' court shall appoint four judges of election, who shall be chosen when practicable from opposing political parties, one of whom shall be designated as presiding judge. The presiding and one associate judge shall act in receiving and depositing the votes in the ballot box, and the other two judges shall act in counting the vote cast. The presiding judge shall appoint four competent and reputable clerks who have paid their poll tax, and of different political parties, when practicable; two of said clerks shall assist in keeping poll lists and the list of qualified voters; upon the poll lists they shall write the name and number of each voter, and at the time voted. Two clerks shall be canvassing clerks, who shall keep tally lists of votes counted and perform such other duties as the presiding judge may direct. At the close of the canvassing, and during its progress, the tally clerks shall compare their tally lists and certify officially to their correctness. Provided, that in all elections held under the provisions of this title, other than general elections, local option elections and primary elections, the officers to be appointed by the commissioners' court to hold said elections shall be a presiding judge, and assistant judge and two clerks, whose compensation shall be two dollars per day, and two dollars to the presiding judge extra for making return of the election. (Id. sec. 58.)

Art. 2922. Disqualifications for being judges, etc., or members of executive committees of parties.—No one who holds an office of profit or trust under the United States or this state, or in any city or town in this state or within thirty days after resigning or being dismissed from any such office, except a notary public, or who is a candidate for office, or who has not paid his poll tax, shall act as judge, clerk or supervisor of any election, nor shall any one act as chairman or as member of any executive committee of a political party, either for the state or any district, county or city, who has not paid his poll tax, or who is a candidate for office, or who holds any office of profit or trust under either the United States or this state, or in any city or town in this state; or any one who may be enjoying gratituitous passage on street cars or on other public service corporations, by reason of his appointment as a special policeman, or any one who has any connection, whatever, with the city, whereby the city is justified in issuing to any such person free transportation on the street cars, or franks entitling him to the free use of public service corporations, or any person who is regularly employed in any capacity by the city, for whose services a salary or wages is paid, except a notary public. (Acts 1905, S. S. p. 533, sec. 60; Acts 1911, p. 18, sec. 1.)

Art. 2923. Supervisors of elections, appointment, etc., powers and duties.—The chairman of the county executive committee, for each political party that has candidates on the official ballot, or if he fails to act, any three members of such committee, may, not less than five days before the general election, nominate one supervisor of election for each voting precinct, who has paid his poll tax, by presenting his name to the county judge, who shall indorse his approval on the certificate of his nomination if he is a reputable citizen, but not otherwise. And thereupon, on his presenting such nomination and its approval to the presiding judge of the precinct, he shall be permitted to sit conveniently near the judges, so that he can observe the conduct of the election, including the counting of the votes, the locking and sealing of the ballot boxes, their custody and safe return. He shall not be permitted to enter into any conversation with the judges or clerks regarding the election while it is progressing, except to call the attention of the judges or clerks to any irregularity or violation of the law that he may observe. Before he shall be permitted to act as supervisor, he shall take an oath, to be administered by the presiding judge, that he will mention and note any errors he may see in testing or counting the votes, and that he will well and truly discharge his duties as supervisor impartially, and will report in writing all violations of the law and irregularities that he may observe to the next grand jury. (Acts 1905, S. S., p. 533, sec. 59.)

Art. 2924. Supervisors, appointed, how, etc.; duties.—Any one-fifth of the candidates whose names appear on the official ballot may, on the day preceding the election or prior thereto, agree in writing signed by them upon two supervisors who, when selected, shall be sworn as election officers. Said supervisors shall be qualified voters of the county in which they may serve as such supervisors. Said supervisors, while the election is being held, shall remain in view of the ballot boxes until the count is concluded. It shall be their duty to be present at the marking of the ballot of any voter, by the judge of said election, not able to make his own ballot, to see that said ballot is marked in accordance with the wishes of the voter; and it shall further be their duty to see that each and every ballot is correctly called. The said supervisors shall note any and all fraud or irregularity occurring, and report same to the next grand jury. (Acts 1905, 1 S. S., p. 552. Acts 1909, 2 S. S., p. 451, sec. 12.)

Art. 2925. Compensation of judges and clerks.—Judges and clerks of general and special elections shall be paid two dollars a day each; and the judge who delivers

the returns of election immediately after the votes have been counted, shall be paid two dollars for that service; provided, the polling place of his precinct is at least two miles from the court house, and provided, also, he shall make returns of all election supplies not used when he makes return of the election. (Acts 1905, 1 S. S., p. 557, sec. 146.)

Art. 2926. (1752) Payment of compensation; working day.—The compensation of judges and clerks of general and special elections shall be paid by the county treasurer of the county where such services are rendered, upon the order of the commissioners' court of such county; provided, twelve working hours shall be considered a day within the meaning of this article.

Art. 2927. Precincts, order defining to be served on precinct judges.—Precinct judges for all general elections shall be served with copies of the order of the county commissioners' court, properly certified to by the clerk of the said court, designating the number, name and bounds of the election precinct and of their appointment as judges. Such service shall be made by the sheriff or a constable within ten days after the entry of such order, and return shall be made thereof on a copy showing when, where and how he executed the same. (Id. sec. 11.)

Art. 2928. (1708) (1665b) Presiding officers in unorganized counties.—It shall be the duty of the commissioners' court to which any unorganized county is attached for judicial purposes to appoint some suitable person in each of such unorganized counties to serve as a presiding officer of elections in said unorganized county; which appointment shall be made in the same manner as in the appointment of presiding officers in election precincts in organized counties. (Acts 1881, p. 97.)

Art. 2928a. Submission of proposed constitutional amendment; judges, clerks and supervisors, how selected, etc.—Whenever any proposed amendment to the constitution of this state is to be voted upon by the qualified voters of this state, either at an election held for that purpose or at any election for the state officers, the county chairman of any organization advocating, and the county chairman of any organization opposing the adoption of such amendment, or if such county chairman fails to act, then three members of the county executive committee of any organization advocating, or three members of the county executive committee opposing the adoption of such constitutional amendment may at any time not less than five days before the election at which such proposed amendment is to be voted upon, nominate one judge, one clerk and one supervisor to serve as judge, clerk and supervisor, respectively, for the voting box for which they are so selected, who shall be qualified voters of the voting precinct or box for which they are chosen, by presenting in writing to the county judge of the county the names of such judges, clerks and supervisors so selected, and such county judge shall appoint the parties nominated to act in such capacities at the respective voting precincts and boxes for which they are respectively selected. Should the county judge fail or refuse to appoint such officers, they shall apply to the officers and judges of the voting precinct or box for which they were respectively nominated, and the manager and judges of such precinct or box shall permit such persons so selected to act in the capacities named. (Acts 1911, p. 144, sec. 1.)

Art. 2928b. Judges, clerks and supervisors additional; compensation; duties and powers.—Such judges, clerks and supervisors shall serve in addition to the election officers provided for by the general election laws, and they shall receive the same compensation. Said judges and clerks shall assist in holding and conducting said election, and in receiving and counting the votes cast. Said supervisor shall have the right to watch the conduct of the election, including the counting of the votes, locking and sealing the ballot boxes, their custody and safe return. (Id. sec. 3.)

Art. 2928c. Supervisor to report fraud, etc.; duty of clerk of county court.—Any supervisor who shall discover any fraud or irregularity in the conduct of an election or in counting the votes or in making returns thereof, within five days after said election, shall file a written report under oath with the county clerk of the county in which he resides, setting out fully any irregularity or fraud or semblance thereof occurring in said voting precinct or box that would in any manner affect the true result of said election in said voting precinct. The clerk of the county court of said county shall keep said report on file in his office and shall permit the same to be inspected upon application by any citizen of this state. It shall be the duty of such supervisor to call the attention of the officers holding such election to any fraud, irregularity or mistake, illegal voting attempted, or legal voting prevented, or other failure to comply with the law governing such election at the time it occurs, if practicable, and if he has knowledge thereof at the time; and he shall not report any matter to which he should have called attention at the time, to which he did not call attention at the time, unless he shows some good and sufficient reason why the same was not called to the attention of such election officers. (Id. sec. 4.)

Art. 2928d. Certain offenses of officers and supervisors.—Any election officer or supervisor who shall intimidate or attempt to intimidate any voter, or knowingly refuse to allow any qualified voter to vote, or any person who, within one hundred feet of the voting box on election day, shall intimidate or attempt to intimidate any qualified voter from voting, or in any manner by word or act attempt to influence any voter to cast his vote for or against any question provided under this Act to be voted upon, shall be deemed guilty of a misdemeanor and upon conviction, shall be fined in any sum not less than $50.00 nor more than $500.00. Provided, further, that the provisions of this section shall not be construed to prevent the officers of the election from assisting any qualified voter in making out his ticket as is provided for under the general election laws. (Id. sec. 5a.)

Art. 2928e. Existing statutes not repealed.—This law shall not repeal any existing statute with reference to the conduct

ing of elections, but shall be cumulative thereof. (Id. sec. 16.)

CHAPTER THREE

ORDERING ELECTIONS, ETC.

Art. 2929. Proclamation of election by governor.—Notice shall be given to the people of all elections for state and district officers, electors for president and vice president of the United States, members of congress, members of the legislature and all officers who are elective every two years. Such notices shall be by proclamation by the governor ordering the election, not less than thirty days before the election, issued and mailed to the several county judges. (Acts 1905, 1 S. S., p. 528, sec. 30.)

Art. 2930. Order for election by county judge, etc.; writs of election, etc.—The county judge, or if his office is vacant, or if he fails to act, then two of the county commissioners shall order an election for county and precinct officers, and all other elections which under the law the county judge may be authorized to order. The county judge, or county commissioners, as the case may be, shall issue writs of election ordered by him or them, in which shall be stated the office or offices to be filled by the election or the question to be voted on, or both, as the case may be, and the day of election. (Id. sec. 31.)

Art. 2931. (1725) (1682) Writs of election, how served, etc.—The writs of election and copies of the form of returns shall be delivered to the sheriff of the county, who shall, previous to the day of election, deliver the same to the presiding officer of each election precinct in which the election is ordered to be held, and in case there be no presiding officer in any such election precinct, the writ and form shall be delivered to the qualified voter of such election precinct who resides at or nearest to the voting place in such precinct.

Art. 2932. Invalidated—election not; how.—A failure, from any cause, on the part of the governor or the county judge or commissioners' court, or of both to order or give notice of any general election shall not invalidate the same if otherwise legal and regular. (Id.)

Art. 2933. Notice of election; by whom given; requirements as to.—The county judge, or if he fails to act, then two county commissioners, shall cause notice of a general election or any special election to be published by posting notice of election at each precinct thirty days before the election; which notice shall state the time of holding the election, the office to be filled, or the question to be voted on, as the case may be; provided, that in local option, stock law, and road tax elections, the notices of elections, or any other special election specially provided for by the laws of this state, shall be given in compliance with the requirements of laws heretofore or hereafter enacted governing said elections respectively; and provided, also, that if a vacancy occurs in the state senate or house of representatives during the session of the legislature, or within ten days before it convenes, then twenty days notice of a special election to fill such vacancy shall be sufficient. Posting of notice of an election shall be made by the sheriff or a constable, who shall make return on a copy of the writ, how and when he executed the same. (Id. sec. 33.)

Art. 2934. In cities, towns, etc., ordering elections, notice, officers, supervisors.—In all city, town and village elections, the mayor, or if he fails to, then the board of aldermen or the officials in whom authority is vested by law, shall order elections pertaining alone to municipal affairs, give notice and appoint election officers to hold the election, unless a different method be prescribed by the charter of such city, town or village; but, in all cases, supervisors may be selected as in general elections, and the judges and clerks shall each be selected from different political parties when practicable. (Id. sec. 34.)

Art. 2935. Vacancy, order for election to fill, etc.—In all cases of vacancy in a civil office in the state, caused by death or resignation or otherwise, the vacancy of which is to be filled by election, the officer or officers authorized by this title to order elections shall immediately make such order, fixing the day, not exceeding thirty days after the first public notice of such order to fill the unexpired term, and cause like notice to be given and issue writs as provided for in general elections. (Id. sec. 35.)

Art. 2936. (1805) (1754) In case of a tie another election shall be held.—Whenever, at any election, there shall be an equal number of votes given to two or more persons for the same office, except executive offices as provided in the constitution, and no one elected thereto, the officer to whom the returns are made shall declare such election void as to such office only, and shall immediately order another election to fill such office; and notice shall be given, and such other election shall be held in the same manner as is provided in other elections. (Act Aug. 23, 1876, p. 310, sec. 24. P. D. 3606.)

Art. 2937. Forms of blanks furnished by secretary of state.—The secretary of state shall, at least thirty days before the general election, prescribe to the county judge of each county forms of all blanks necessary under this title. (Acts 1905, S. S., p. 528, sec. 32.)

CHAPTER FOUR

SUFFRAGE

Art. 2938. Qualifications for voting; who not qualified.—The following classes of persons shall not be allowed to vote in this state:

1. Persons under twenty-one years of age.
2. Idiots and lunatics.
3. All paupers supported by the county.
4. All persons convicted of any felony, except those restored to full citizenship and right of suffrage, or pardoned.
5. All soldiers, marines and seamen employed in the service of the army or navy of the United States. (Acts 1905, 1 S. S., p. 520, sec. 1.)

Art. 2939. (1731) Qualifications for voting; voting by absentees.—Every male person subject to none of the foregoing disqualifications who shall have attained the age of twenty one years, and who shall be a citizen of the United States, and who shall have

resided in this state one year next preceding an election, and the last six months within the district or county in which he offers to vote, shall be deemed a qualified elector; and every male person of foreign birth, subject to none of the foregoing disqualifications, who has, not less than six months before an election in which he offers to vote, declared his intention to become a citizen of the United States, in accordance with the Federal Naturalization laws, and shall have resided in the state one year next preceding such election and the last six months in the county in which he offers to vote, shall also be deemed a qualified voter; and all electors shall vote in the voting precinct of their residence; provided that the electors living in an unorganized county may vote at an election precinct in the county to which such county is attached for judicial purposes; and provided further, that any voter who is subject to pay his poll tax under the laws of the state of Texas or ordinances of any city or town in this state, shall have paid said tax before he offers to vote at any election in this state, and holds a receipt showing the payment of his poll tax before the first day of February next preceding such election; and, if he is exempt from paying a poll tax and resides in a city of ten thousand inhabitants or more, he must procure a certificate showing his exemption, as required by this or, if such voter shall have lost or misplaced his tax receipt, he shall be entitled to vote, upon making affidavit before any officer authorized to administer oaths that such tax was actually paid by him before said first day of February next preceding such election at which he offers to vote, and that said receipt had been lost. Such affidavit shall be made in writing and left with the judge of the election. Provided, that in any election held only in a subdivision of a county for the purpose of determining any local question or proposition affecting only such subdivision of the county, then, in addition to the foregoing qualifications, the voter must have resided in such subdivision of the county for six months next preceding such election.

Any qualified elector as defined by the statutes of this state, who expects to be absent from the county of his residence, and at any other place in this State, on the day of his election may vote subject to the following conditions, to-wit:

At some time not more than ten days nor less than three days prior to the date of such election such elector shall make his personal appearance before the county clerk of the county of his residence, and if personally unknown to such clerk, shall be identified by at least two reputable citizens of such county, and shall deliver to such clerk his poll tax receipt or exemption certificate, entitling him to vote at such election, and said clerk shall deliver to such elector one ballot which has been prepared in accordance with the law for use in such election, which shall then and there be marked by said elector apart and without the assistance or suggestions of any other person, in such manner as said elector shall desire, same to be voted, which ballot shall be folded and placed in a sealed envelope and delivered to said clerk who shall keep same so sealed, and who shall also keep said poll tax receipt or certificate open to the inspection of any person who may wish to examine or see same until the second day prior to said election, and said clerk shall on said second day place the said poll tax receipt or certificate together with the said sealed envelope containing said marked ballot in another envelope which shall be by said clerk then mailed to the presiding judge of the voting precinct in which said elector lives. The postage for the entire correspondence herein made necessary to be provided by said elector. In the presence of the election officers provided by law, and on the day of such election and between the hours of two and three o'clock the said presiding judge of same in the precinct of the residence of said elector shall open the envelope containing said poll tax receipts and marked ballots and publicly announce that the ballot of such named elector is proposed to be cast, at which time any person who desired to challenge said vote and the right of same to be cast, shall be heard to present such challenge, and if there be no challenge of same, said vote shall be cast and counted according to the law; but if there by any challenge of such vote legal cause same shall be heard and decided according to the law provided in the case of challenge; and in case no challenge is made, such poll tax receipt, after same is marked, "Voted" as provided by law, shall be mailed back to the said county clerk. But in case of challenge, if challenged, such poll tax receipt together with affidavits relating thereto shall be mailed by said judge of election to the county clerk of such county who shall keep same for thirty days and if no demand be made for the production of same before any body or person in authority within said time, said county clerk shall deliver such receipt to the owners thereof. When voted the judge of election shall mark opposite the name of such absentee voter the word "Absentee" * * * ; provided this Act shall apply to any and all primary elections only. (Acts 1905, 1 S. S., p. 520, sec. 2; Acts 1917, 1st C. S., ch. 40, sec. 1.)

For the omitted portion (shown by asterisks) see the Penal Code, art. 221a.

Art. 2940. Qualifications for voting in city elections.—All qualified electors of this state, as described in articles 2938 and 2939, who shall have resided for six months immediately preceding an election within the limits of any city or incorporated town shall have a right to vote for mayor and all other elective officers; but, in all elections to determine the expenditure of money or assumption of debt, or issuance of bonds, only those shall be qualified to vote who pay taxes on property in such city or incorporated town; provided, that no poll tax for the payment of debts thus incurred shall be levied upon the person debarred from voting in relation thereto. (Acts 1905, 1 S. S., p. 520, sec. 3.)

Art. 2941. "Residence" defined.—The "residence" of a single man is where he usually sleeps at night; that of a married man is where his wife resides, or if he be permanently separated from his wife, his residence is where he sleeps at night; provided, that the residence of one who is an inmate or officer of a public asylum or eleemosynary institute, or who is employed as a clerk in one

of the departments of government at the capital of this state, or who is a student of a college or university, unless such officer, clerk, inmate or student has become a bona fide resident citizen in the county where he is employed, or is such student, shall be construed to be where his home was before he became such inmate or officer in such eleemosynary institution or asylum or was employed as such clerk or became such student; and, if on payment of his poll tax he would be a qualified voter, he shall be permitted to return during the month of January in each year to his home to pay his poll tax or obtain his certificate of exemption, and shall be permitted to return again to his home to vote at any general or primary election. The inmates of the Confederate home situate within the limits of the city of Austin shall, after obtaining their certificates of exemption, be entitled to vote for state, district, municipal and county officers. (Id. sec. 4.)

Art. 2942. Poll tax collected from whom; when paid; receipt.—The poll tax required by the constitution and laws in force shall be collected from every male person between the ages of twenty-one and sixty who resided in this state on the first day of January preceding its levy, Indians not taxed, persons insane, blind, deaf or dumb and those who have lost a hand or foot, or permanently disabled, excepted; which tax shall be collected and accounted for by the tax collector each year and appropriated as required by law. It shall be paid at any time between the first day of October and the first day of February following; and the person, when he pays it, shall be entitled to his poll tax receipt, even if his other taxes are unpaid. (Id. sec. 12.)

Art. 2943. Poll tax, who not required to pay.—Every male person who is more than sixty years old or who is blind or deaf and dumb, or is permanently disabled, or has lost one hand or foot, shall be entitled to vote without being required to pay a poll tax, if he has obtained his certificate of exemption from the county collector when the same is required by the provisions of this title. (Id. sec. 6.)

Art. 2944. Mode of paying poll tax.—If the taxpayer does not reside in a city of ten thousand inhabitants or more, his poll tax must either be paid by him in person or by some one duly authorized by him in writing to pay the same, and to furnish the collector the information necessary to fill out the blanks in the poll tax receipt. Such authority and information must be signed by the party who owes the poll tax, and must be deposited with the tax collector and filed and preserved by him. (Id. sec. 16.)

Art. 2945. Same subject.—In all cases where the taxpayer resides in a city of ten thousand inhabitants or more, the tax must be paid in person by the taxpayer entitled to the receipt, except as provided by this article. If a person residing in a city of ten thousand inhabitants who is subject to pay a poll tax, intends to leave the precinct of his residence before the first day of October, with the intention not to return until after the first day of the following February, and does not return before that time, he shall be entitled to vote, if possessing all other legal qualifications, by paying his poll tax or obtaining his certificate of exemption through an agent authorized by him in writing, which shall state truly his intention to depart from the precinct, the expected period of his absence, and every fact necessary to enable the tax collector to fill the blanks in his receipt. Such authority, in fact, must be sworn to by the citizen and certified to by some officer authorized to administer oaths. It shall be deposited with the tax collector and kept in his office. (Id. secs. 16 and 25.)

Art. 2945a. Tax receipt not to be delivered to agent, etc.—When, in cases permitted by this title, the tax is paid by an agent, the tax receipt shall not be delivered to such agent, but shall be sent by mail to the taxpayer or kept and delivered to him in person by the tax collector. (Id. sec. 16.)

Art. 2946. Candidate, etc., not to pay poll tax of another; provided, etc.—In no event shall any candidate for office pay the poll tax for another. And no person shall for, or on behalf of, any candidate for office or person interested in any question to be voted on, pay the poll tax for another; provided, that any person who has bought the property of another, which property is legally bound for the payment of any poll tax, may pay the poll tax of such former owner; but the collector in such case shall not issue a poll tax receipt authorizing any person to vote, but shall give the party paying the same an ordinary memorandum receipt therefor; but such memorandum receipts shall not state either the race, occupation or residence of the taxpayer. (Id. sec. 16.)

Art. 2947. No one to give money to another to pay poll tax.—No one shall knowingly give money to a citizen to pay his poll tax. (Id. sec. 27.)

Art. 2948. No one to keep poll tax of another, except.—No one shall keep the poll tax receipt of another person in his possession or under his control, except in cases specially authorized by law. (Id. sec. 27.)

Art. 2949. Poll tax receipt shall show what.—Each poll tax receipt and its duplicate shall show the name of the party for whom it was issued, the payment of the tax, age, his race, the length of time he has resided in the state, the length of time he has resided in the county, the voting precinct in which he lives, except when he lives in an unorganized county, his occupation, his post-office address, or, if he lives in an incorporated city, ward, street and number of his residence, if numbered, and the length of time he has resided in such city or town. (Id. sec. 16.)

Art. 2950. Poll tax receipt, form of.—The poll tax receipt shall be in the following form, and numbered consecutively in each book provided for in this title:

Poll Tax Receipt

No. ....

State of Texas, county of .....

Received of ..... on the ..... day of ..... A. D. 19...., the sum of ..... dollars, in payment of poll tax for the year A. D. 19....

The said taxpayer being duly sworn by me, says that he is .... years old, that he re-

sides in voting precinct No. .... in ..... county, that his race is ....., that he has resided in Texas .... years, and in ..... county .... years, that he is by occupation ....., that his postoffice address is .....

(If in an incorporated city or town, a blank must be provided for the ward, street and number of residence in lieu of his postoffice address, and length of time he has resided in such city or town.)

All of which I certify.

(Seal) (Signed) .....

Tax Collector ..... County, Texas.

(Id. sec. 18.)

Art. 2951. Poll tax receipt, etc., in case of removal to another ward of city over 10,000.—If a citizen in a city of ten thousand inhabitants, after receiving his poll tax receipt or certificate of exemption, removes to another ward in the same city before the next election, he may vote at any general election in the ward of his new residence by presenting his poll tax receipt or certificate of exemption to the precinct election judges, or by making affidavit that it has been lost or misplaced; which affidavit shall be left with the judges and be forwarded with the election returns. But, in all such cases, if the removal was to the ward of his new residence in the same city before the certified list of voters was delivered to the precinct judges, he shall appear before the collector of taxes not less than five days before such election or primary election, and obtain a corrected receipt or certificate; and his name shall be added to the list of voters for the precinct of his new residence; and he shall not vote in that event, unless his name appears on the certified list of voters. (Id. sec. 21.)

Art. 2952. Poll tax receipt in case of removal to another county or precinct; proviso.—If a citizen, after receiving his poll tax receipt or certificate of exemption, removes to another county or to another precinct in the same county, he may vote at an election in the precinct of his new residence in such other county or precinct by presenting his poll tax receipt or his certificate of exemption or his written affidavit of its loss to the precinct judges of election, and stating in such affidavit where he paid such poll tax or received such certificate of exemption, and by making oath that he is the identical person described in such poll tax receipt or certificate of exemption, and that he then resides in the precinct where he offers to vote and has resided for the last six months in the district or county in which he offers to vote and twelve months in the state. But no such person shall be permitted to vote in a city of ten thousand inhabitants or more, unless he has first presented to the tax collector of his residence a tax receipt or certificate, not less than four days prior to such election or primary election or made affidavit of its loss and stating in such affidavit where he paid such poll tax or received such certificate of exemption; and the collector shall thereupon add his name to the list of qualified voters of the precinct of his new residence; and, unless such voter has done this and his name appears in the certified list of voters of the precinct of his new residence, he shall not vote. (Id. sec. 22.)

Art. 2953. Exemption certificate in cities over 10,000; requisites, etc.; form.—Every person who is exempted by law from the payment of a poll tax and who is in other respects a qualified voter, who resides in a city of ten thousand inhabitants or more, shall, after the first day of October and before the first day of February following, before he offers to vote, obtain from the tax collector of the county of his residence a certificate showing his exemption from the payment of a poll tax. Such exempt person shall, on oath, state his name, county of his residence, occupation, race, age, the length of time he has resided in Texas, the length of time he has resided in the county and the length of time he has resided in the city, and the ward and voting precinct in which his residence is located, the street and number of his residence, if numbered. He shall also state the grounds on which he claims exemption from the payment of a poll tax. Such certificate shall be detached from said book, leaving thereunder a duplicate carbon or other copy thereof which shall contain the same description; and the original shall be delivered, bearing its proper number, to the citizen in person to identify him in voting. Certificates of exemption for each precinct shall be numbered consecutively, beginning at one. They shall be in the following form:

Certificate of Exemption from Poll Tax

No. ....

State of Texas, county of .....

I ....., tax collector for said county, Texas, do hereby certify that ..... personally appeared before me on the ..... day of ..... A. D. ....., and being sworn, said his name is ....., that his race is ....., that he is .... years old, that his occupation is ....., that he has resided in Texas for ..... years, in the county of ..... for ..... years, and in the city of ..... for ..... years, that he now resides in precinct No. ...., in ward No. ....; and on ..... street, and in house No. ..... (if numbered); that he is exempt from the payment of the poll tax by reason of ..... and that he is a qualified voter under the constitution and laws of Texas.

(Seal) (Signed) .....

Tax Collector, ... County, Texas.

(Id. sec. 19.)

Art. 2954. Minor reaching majority between Feb. 1, and election day, certificate.—Every male person who will reach the age of twenty-one years after the first day of February and before the day of a following election at which he wishes to vote, and who possesses all the other qualifications of a voter shall be entitled to vote at such election, if he has obtained a certificate of exemption from the county collector before the first day of February, which shall specify the day when he will be twenty-one years old, and contain all the other requisites of a certificate of exemption. Before the certificate of exemption shall issue, the applicant therefor shall make written affidavit of his age, to be

administered and certified to by the county collector, who shall file and preserve the same. (Id. sec. 23.)

Art. 2955. Poll tax in unorganized counties.—The poll tax due from citizens of unorganized counties shall be paid in the county to which the unorganized county is attached for judicial purposes. (Id. sec. 13.)

Art. 2956. Poll tax receipt, etc., books, furnished by commissioners to collector; requisites.—The commissioners' court of each county shall, before the first day of October every year, furnish to the county tax collector a blank book for each voting precinct, which shall be marked with the name and number of the precinct for which it is intended. Each book shall contain a sufficient number of blank poll tax receipts for each voting precinct not in a city of ten thousand inhabitants or more, and not exceeding three hundred and fifty blank poll tax receipts and certificates of exemptions for each precinct in a city of ten thousand inhabitants or more, of which not more than sixty shall be certificates of exemptions, and a greater or less number of each in the same proportion when sufficient for the voters of the precinct. Each receipt and certificate shall, in each such book, be bound immediately over a duplicate copy thereof; which duplicate copy, when filled out, shall correspond with the receipt or certificate in its number, the name, length of residence in the state or county, the voting precinct, race, occupation and postoffice address of the citizen to whom the tax receipt or certificate of exemption is given. If the voting is in a city, the receipt or certificate and duplicate must show the ward, street and number, if numbered, of the citizen's residence (in lieu of postoffice address); and the length of time he has resided in such city. The receipts and certificates shall be numbered in consecutive order. Similar blank books of poll tax receipts shall be furnished to each unorganized county attached to such county for judicial purposes, except that the voting precinct need not appear therein. When the tax receipt or certificate is delivered to the citizen, it shall be detached from the book and retained by him for his future use and identification in voting. (Id. sec. 14.)

Art. 2957. Poll tax deputy to be appointed, etc., in certain counties.—In all counties containing a city of ten thousand inhabitants or more, other than the county seat of such county, it shall be the duty of such collector to have a duly authorized and sworn deputy to represent him for the purpose of accepting poll taxes and giving receipts therefor, who shall keep his office for such purpose at some convenient place in such city during the entire month of January of each year, and he shall publish four weeks notice of the authority of such deputy and the location of the office. (Id. sec. 17.)

Art. 2958. Collector may administer oaths, etc.—The county collector is authorized to administer oaths and certify thereto under the seal of his office in every case where an oath is required in complying with any portion of this title connected with his official duties. (Id. sec. 24.)

Art. 2959. Residence, proof of, when; false statement reported to grand jury.—If the county collector does not personally know one who applies to pay his poll tax or secure his certificate of exemption from its payment, as being a resident in the precinct which such person claims as that of his residence, it shall be the duty of such collector to require proof of such residence; and, if he has reason to believe such person has falsely stated his age, occupation, precinct of his residence, or the length of his residence in the state, county and city, he shall require proof of such statement; and, if on inquiry, he is satisfied that said person has sworn falsely, he shall make a memorandum of the words used in such statement, and present the same to the foreman of the next grand jury. (Id. sec. 26.)

Art. 2960. False swearing to be reported to grand jury.—Whenever the county collector shall have reason to believe that a citizen who has paid his poll tax or received a certificate of exemption has sworn falsely to obtain the same, he shall report the facts upon which such belief is founded to the next grand jury organized in the county. (Id. sec. 20.)

Art. 2961. Lists of poll taxpayers, etc., furnished by collector to board, and by board to judges; requisites.—Before the first day of April every year, the county collector of taxes shall deliver to the board that is charged with the duty of furnishing election supplies separate certified lists of the citizens in each precinct who have paid their poll tax or received their certificates of exemption, the names being arranged in alphabetical order, and to each name its appropriate number, as shown by the duplicates retained in his office, with a description of the voter as to his residence, his voting precinct, length of his residence in the state and county, his race, occupation and postoffice address if not in a city of more than ten thousand inhabitants. If the county has any unorganized county or counties attached to it for judicial purposes, the collector of taxes shall also deliver to said board, before the first day of April of each year, as many certified lists of the electors resident in such unorganized county or counties who have paid their poll tax or received the certificate of exemption as there are election precincts in his county; which lists shall be identical with those of poll taxpayers in his own county, except that the voting precinct shall not be stated. The tax collector of any county containing a town or city of more than ten thousand inhabitants shall also furnish to said board, not less than four days prior to any primary or general election, supplemental lists in the form herein prescribed, of all poll taxpaying voters who have, since paying their poll tax, removed to each voting precinct in each such city or town in the county from another county or in another precinct in the same county. Said board shall furnish each presiding judge of a precinct the certified list and supplemental list of the voters of his precinct at the time when he furnishes other election supplies. Such certified lists of qualified voters shall be in the following form:

Voters in Election Precinct

No. .....
Name .....
Precinct .....
Age .....
Length of residence in state .....
Length of residence in county .....
Occupation .....
Race .....
Length of residence in city and ward .....
Street and No. of residence .....
Postoffice address .....
(Id. sec. 15.)

Art. 2962. Poll tax receipts, duplicates to be securely kept, etc.—The county collector shall keep securely in a safe place the duplicates for each precinct from which such poll tax receipts and certificates of exemption have been detached; and they must remain there except when taken out for examination, which must always be done in his presence, but they shall be burned by the county judge at the expiration of three years. (Id. sec. 29.)

Art. 2963. Poll tax receipts, statement of, by collector.—On or before the tenth day of March of each year, the collector of taxes shall make statement to the county clerk showing how many poll tax receipts he has issued; said statement shall show how many poll tax receipts have been issued and to whom issued in each voting precinct in the county; and such statement shall become a record of the county commissioners' court. (Id. sec. 28.)

Art. 2963a. Service in army, navy, etc., during war with Germany declared public service entitling to exclusive separate public emoluments and privileges.—Whereas the United States has been at war with the Imperial German Government since the 7th day of April, A. D., 1917; and whereas said war has called from peaceful pursuits and ordinary avocations more than 174,000 citizens of Texas and taken said citizens from their homes and usual places of abode into military cantonments and foreign countries as soldiers, sailors and marines and prevented them from exercising the ordinary privileges of citizens of the State; therefore, it is declared that said war is, within the terms and provisions of Section 10, Article 8 of the Constitution of this State, a great public calamity in all the counties, cities and towns of this State; and, whereas, the said citizens of this State in the service of the Government of the United States as soldiers, sailors and marines, in the various departments and divisions of the military service embraced within these terms, have been prevented, by reason of their service and obedience to the laws, rules and regulations of the military service, and by reason of the inadequate provisions of the laws of this State, from paying their poll taxes under the provisions of Section 2, Article 6 of the Constitution of this State, and, by reason of the great calamity of war as aforesaid, have been so prevented; and, whereas, it is declared in Section 9, Article 16 of the Constitution of Texas that absence on business of the United States shall not forfeit a residence once obtained so as to deprive anyone of the right of suffrage; therefore, it is declared, that said sailors, soldiers and marines should not, and ought not, to be compelled to pay their poll taxes, due or assessed against them for the years A. D. 1918, and A. D. 1919; and, whereas, it is declared in Section 3, Article 1 of the Constitution of Texas, that "All free men, when they form a social compact, have equal rights and no man or set of men is entitled to exclusive separate public emoluments or privileges, but in consideration of public services"; it is hereby declared by the Legislature of Texas that the services in said war of said soldiers, sailors and marines were and are "public services" within the meaning of said provision of the Constitution of Texas. And it is here declared that such sailors, soldiers and marines in consideration of public services are entitled to exclusive separate public emoluments and privileges. (Acts 1919, 1st C. S., ch. 3, sec. 1.)

Art. 2963b. Release of soldiers, etc., from payment of poll taxes for 1918 and 1919.—Therefore, by authority of Section 10, Art. 8, and section 3, Article 1, of the Constitution of this State the Legislature of this State, by vote of two-thirds of each House, duly entered and recorded thereon, does hereby release to the said soldiers, sailors and marines the payment of all poll taxes which may have been or may be levied against them for the years A. D. 1918, and A. D. 1919. (Id. sec. 2.)

Art. 2963c. Soldiers, etc., may vote at elections during 1919 and 1920 without poll tax receipts.—It is further declared that it shall not be necessary for said discharged sailors, soldiers and marines, in order to exercise the privilege of suffrage and vote at all elections held within the State of Texas during the years 1919 and 1920, to hold a poll tax receipt showing any poll tax paid before the 1st day of February next preceding such election or paid at any time theretofore or thereafter, as provided in Article 2942, Chapter 4, Title 49 of the Revised Civil Statutes of the State of Texas of 1911. (Id. sec. 3.)

Art. 2963d. Exhibition to election officers of discharge papers; affidavit; duties of election officers.—All such discharged sailors, soldiers and marines coming within the terms and provisions of this Act, when they present themselves at the proper place, which proper place shall be the place of residence of such person at the time of enlistment, or the place of residence acquired since his discharge, and who is otherwise a qualified voter at such place for voting; that is, at the place of their residence at the time of joining the Army, Navy or Marines of the United States, shall exhibit to the election officers their discharge from the military or naval service of the United States, showing their service in the present war, or if such discharge is lost, misplaced or in the hands of the Federal Government, then they shall make a written affidavit to such fact, stating, in the face of the affidavit, the unit in which they were serving at the time of their discharge, and, as near as may be, the date and place of their discharge and present place of residence. Said affidavit may be made before any officer authorized to administer oaths or by the officers of the election authorized to administer oaths. Upon presentation of such discharge or the making of such affidavit, if the voter is otherwise qualified, except having paid his poll tax, then he shall

be qualified to vote and shall be permitted to vote at any election held within the State of Texas. If an affidavit is made, then the affidavit shall be filed with the election officers and shall be preserved in a box or receptacle in the same manner that ballots are preserved. If a voter presents his discharge, then a memorandum of the contents of the discharge shall be made by one of the election officers, and shall be filed by him and preserved in the same manner that affidavits are required to be preserved under this Act; provided, that the terms and provisions of this Act shall apply only to such discharged sailors, soldiers and marines as may have received honorable discharges from their respective branches of the military service. (Id. sec. 4.)

Art. 2963e. Stamping ballots used by soldiers, etc.—All ballots voted under this Act shall be written or stamped on the back thereof by the election officers, or under their direction, and contain the words "discharged soldiers' ballot," before said ballot may be voted or may be counted. It shall be filed and be counted as shall be the ballots of other voters. (Id. sec. 5.)

Art. 2963f. Act cumulative of other election laws.—This law shall be cumulative of all other election laws of this State, except wherein conflict therewith and where in conflict, this Act shall prevail; provided further that the invalidity of any section of this Act shall not affect the constitutionality of any other section. (Id. sec. 6.)

Art. 2963g. Act to apply to all elections.—This Act shall apply to all elections in this State—general, special and primary. (Id. sec. 7.)

Art. 2963h. Soldier, sailor, and marine defined.—It is declared that where the word "soldier" or the word "sailor," or the words "marines" is used in this Act, it shall include all enlisted men and officers in the military and naval service of the United States in the present war. (Id. sec. 8.)

Art. 2963i. Person not discharged soldier, etc., representing himself to be such; punishment; printing act.—Anyone who is not in fact a discharged soldier, sailor or marine as these terms have been defined in this Act who presents himself at any voting place to vote in this State and represents to the election officers that he is a discharged soldier, sailor or marine, or makes the affidavit herein provided for discharged soldiers, sailors or marines, shall be guilty of a felony, and upon conviction shall be punished by confinement in the State penitentiary for any period of time not less than two years nor more than five years. Ten thousand copies of this Act shall be printed in bill form, under the supervision of the Secretary of State, and a sufficient number of copies of this Act shall be, by the Secretary of State, delivered to each and every County Judge within the State on or before May 16, 1919, and three copies of said Act shall be, by the County Judge of each County in this State, delivered to the presiding officer of each election precinct within his county, together with all other election supplies to be used at the election to be held on the 24th. day of May, 1919. And one thousand dollars or so much thereof as may be necessary is hereby appropriated out of any funds not otherwise appropriated to defray the expenses of printing and distributing said Acts as herein provided. (Id. sec. 9.)

Art. 2963j. Mandamus against election officers to compel compliance with act.—Should any election officer or election officers, declare that they will on any election day, refuse to let any discharged soldier, sailor, or marine, or to let discharged soldiers, sailors or marines, vote in accordance with the terms and provisions of this Act, then, any such discharged soldier, sailor or marine shall have authority to bring an original mandamus suit in the District Court of the County of his residence, or any court of Civil Appeals or the Supreme Court, against any such officer or officers, for the purpose of compelling them to permit him to vote, in accordance with the provisions of this Act; and no appeal shall lie from the decision or judgment of such District Judge, or Appellate Court, trying such case, and no Court having jurisdiction to issue the writ of mandamus provided for herein shall upon proper application refuse to issue such writ and hear said cause solely upon the ground that the jurisdiction herein conferred is concurrent in other courts. (Id. sec. 10.)

Art. 2963k. Offenses by election officers; punishment.—Refusal on the part of any election officer engaged in the conducting of any election in this State to receive, or properly count the vote of any discharged soldier, sailor or marine, entitled to vote at any election under the provisions of this Act, shall constitute a misdemeanor, punishable by imprisonment in the county jail not to exceed twelve months, or by fine not to exceed One Thousand Dollars, or by both such imprisonment and fine, at the discretion of the jury. (Id. sec. 11.)

CHAPTER FOUR A

SUFFRAGE—WOMEN

Art. 2963¼. Women entitled to vote; poll tax.—From and after the passage of this Act any woman, who possesses the other qualifications of an elector under the Constitution and laws of this State, shall have the right to vote at any and all primary elections or nominating conventions held under the laws of this State, and the fact of her sex shall in no wise disqualify such person, provided the payment of a poll tax shall in no case be required of such person as a qualification to vote in such primary elections or to participate in such nominating conventions during the year 1918. (Acts 1918, 4th C. S., ch. 34, sec. 1.)

Art. 2963¼a. Registration of women voters in cities; form of receipts.—In all cities of ten thousand inhabitants and over, the County Tax Collector shall provide a record for the registration of women voters, setting forth the name, age, race, and present residence, giving the street number; and each woman who expects to vote in the primary election shall each year personally appear and personally fill out the blank form of registration receipts hereinafter set out said registration receipt on oath not less than fifteen (15) days before the date of the primary election at which she expects to vote. Such registration receipt shall be detached from said book, leaving thereunder a duplicate, carbon, or other copy thereof, which shall contain the same information; and the origi-

nal shall be delivered, bearing its proper number, to the woman registrant, in person, to identify her in voting. Registration receipts for each precinct shall be numbered consecutively, beginning at one. They shall be in the following form:

Registration Receipt.

State of Texas, County of ..... No....., I ..... of ..... County, Texas, am ..... years of age, color ....., race ....., occupation ....., residence No. ...., ... City, Voting Precinct ....., Post Office Address ....., have lived at said place ..... years.

(Signed) .....

Sworn to and subscribed before me, this ..... day of ....., 19.....

.....

Tax Collector ..... County.

I, ..., Tax Collector aforesaid, hereby certify that the foregoing registrant personally signed and swore to the facts set out in the above receipt before me, showing her to be a qualified voter in primary elections in said county, State and precinct for the year .....

(Seal.)

.....

Tax Collector ..... County.

(Id. sec. 2.)

Art. 2963¼b. Women entitled to vote at primary elections outside cities during 1918.—Every woman who possesses the other qualifications of an elector under the Constitution and laws of this State, and who lives in a voting precinct outside of a city of ten thousand inhabitants, shall have the right to vote in all primary elections held in the year 1918, who shall present herself, personally, at the office of the tax collector of the county in which she lives at any time not less than fifteen days prior to the holding of such primary election, and shall personally fill out, with her own hand, in duplicate, or upon a form and stub, the form of registration receipt prescribed in Section 2 of this bill [Art. 2963¼a], and shall sign and swear to same before said tax collector, who shall certify one copy of such receipt in form as prescribed in Section 2 of this Act and deliver same to such registrant, who shall present same, or an affidavit as to its loss or destruction, when she offers to vote at such primary election. (Id. sec. 2a.)

Art. 2963¼c. Lists of registered women voters for election judges.—The Tax Collector shall furnish to the Board charged with the duty of furnishing election supplies, separate certified lists of the women registered in each precinct, in cities of ten thousand and over, the names to be arranged in alphabetical order, and to each name its appropriate number as shown by the duplicate retained in his office. Said Board shall furnish each presiding judge of each precinct, in cities of ten thousand and over, the certified lists of said women voters in his precinct at the time when he furnishes other election supplies. Such certified lists of qualified women voters shall be in the same form as that required by law for the certified lists of qualified male voters furnished by said Board to said judge of the election of said precinct; provided that before the name of each woman voting in such primary election, the judges or clerks shall write on the poll lists the word "woman"; provided, further, that such word may be so placed either with a rubber stamp, or pen and ink, or pencil. (Id. sec. 3.)

Art. 2963¼d. Where lists need not be furnished.—It shall not be necessary for the County Tax Collector to furnish the Chairman of the county executive committee of political parties, judges of election, or any other person, for use in primary elections, a certified list of women voters, except in cities of ten thousand inhabitants and over. (Id. sec. 3a.)

Art. 2963¼e. When registration of women necessary.—Where registration, as above provided in cities of ten thousand or over, is required, said registration shall be a necessary qualification for women voting in primary elections. And the provisions in the laws of the State of Texas governing and pertaining to elections and production of poll tax certificates and certificates of exemption required of men, the affidavits in case of loss of said certificates and the penalties for fraudulently or falsely obtaining the same, and all other laws for the purity and protection of the electorate, when not in conflict with the provisions of this Act, shall apply to and govern the duties, responsibilities and privileges of the women voters of this State, but where in conflict shall, as to female voting, be governed by the provisions of this Act. (Id. sec. 4.)

Art. 2963¼f. Act to govern elections during 1918; requirements thereafter.—The provisions of this Act shall apply to and govern the voting of women in the primary elections held during the year 1918, and from and after the first of January, 1919, each woman voter in this State, voting and offering to vote in any primary election or convention shall be required to pay the poll tax now required by law of each male person who desires to vote and shall be governed and controlled by all of the laws of the State of Texas, requiring and permitting the voting upon the payment of poll taxes in this State. (Id. sec. 5.)

Section 6 of this Act repeals all conflicting laws.

CHAPTER FIVE

OFFICIAL BALLOT

Art. 2964. Ballot, vote shall be by; numbering; safeguards, etc.; no registration; cities included.—In all elections by the people, the vote shall be by official ballot, which shall be numbered, and elections so guarded and conducted as to detect fraud and preserve the purity of the ballot. No registration in cities with a population of ten thousand or more shall be hereafter required as a qualification to vote, but all the provisions of this title which prescribe qualifications for voting and which regulate the holding of elections, shall apply to elections in cities. (Acts 1905, 1 S. S., p. 521, sec. 5.)

Art. 2965. Ballot, official, required; to contain what.—No ballot shall be used in voting at any general, primary or special election held to elect public officers, select candidates for office or determine questions submitted to a vote of the people, except the official ballot, unless otherwise authorized by law. At the top of the official ballot shall be printed in large letters the words "Official Ballot." It shall contain the printed names

of all candidates whose nominations for an elective office have been duly made and properly certified. The names shall appear on the ballot under the title of the party that nominates them, except as otherwise provided by this title. (Id. sec. 46.)

Art. 2966. No candidate on ballot, except, etc.—No name shall appear on the official ballot except that of a candidate who was actually nominated (either as a party nominee or as a non-partisan or independent candidate) in accordance with the provisions of this title. (Id. sec. 118.)

Art. 2967. Candidates of certain parties not on ballot unless, etc.—The name of no candidate of any political party that cast one hundred thousand votes or more at the last preceding general election shall be printed on any official ballot for a general election, unless nominated by primary election, on primary election day, except as herein otherwise provided. (Id. sec. 52.)

Art. 2968. Vacancy, where nominee declines or dies, etc., substitution on ballot, etc.—Where a nominee shall have declined his nomination, or shall have died, and the vacancy so created shall have been filled, and such facts shall have been certified in accordance with the provisions of article 3172, thereupon the secretary of state or county judge, as the case may be, shall promptly notify the official board created by this act to furnish election supplies that such vacancy has occurred, and the name of the new nominee shall then be printed upon the official ballot, if the ballots are not already printed. If such declination or death of the nominee occurs after the ballots are printed, or due notice of the name of the new nominee is received after such printing, the official board charged with the duty of furnishing election supplies shall prepare as many pasters bearing the name of the new nominee as there are official ballots, which shall be pasted over the name of the former nominee on the official ballot before the presiding judge of the precinct indorses his name on the ballot for identification.

No paster shall be used except as herein authorized, and if otherwise used the names pasted shall not be counted. (Id. sec. 50.)

Art. 2969. Ballots, how printed; form, etc.; manner of voting.—All ballots shall be printed with black ink on clear white paper of sufficient thickness to prevent the marks thereon to be seen through the paper, and of uniform style. The tickets of each political party shall be placed or printed on one ballot, arranged side by side in columns separated by parallel rule. The space which shall contain the title of the office and the name of the candidate (or candidates, if more than one is to be voted for for the same office) shall be of uniform style and type on said tickets. At the head of each ticket shall be printed the name of the party. When a party has not nominated a full ticket, the titles of those nominated shall be in position opposite to the same office in a full ticket, and the titles of the offices shall be printed in the corresponding positions in spaces where no nominations have been made. In the blank columns and independent columns, the titles of the offices shall be printed in all blank spaces to correspond with a full ticket. When presidential electors are to be voted on, their names shall appear at the heads of their respective tickets. When constitutional amendments or other propositions are to be voted on, the same shall appear once on each ballot in uniform style and type. When a voter desires to vote a ticket straight, he shall run a pencil or pen through all other tickets on the official ballot, making a distinct marked line through such ticket not intended to be voted; and when he shall desire to vote a mixed ticket he shall do so by running a line through the names of such candidates as he shall desire to vote against in the ticket he is voting, and by writing the name of the candidate for whom he desires to vote in the blank column and in the space provided for such office; same to be written with black ink or pencil, unless the names of the candidates for which he desires to vote appear on the ballot, in which event he shall leave the same not scratched. (Id. sec. 53.)

Art. 2970. Ballot, further regulations as to.—The name of no candidate shall appear more than once upon the official ballot, except as a candidate for two or more offices permitted by the constitution to be held by the same person. The name of the candidate nominated by any political party shall appear on the ballot, and under the head of the party making such nomination. (Id. sec. 49.)

Art. 2971. Constitutional amendment and other questions, how submitted.—When a constitutional amendment or other question submitted by the legislature is to be voted on, the form in which it is submitted shall be described by the governor in his proclamation in such terms as to give the voter a clear idea of the scope and character of the amendment, and printed once at the bottom of each ballot as described by this title, the words "for" and "against" under it; provided, the legislature has failed to prescribe a form. If a proposition or question is to be voted on by the people of any city, county or other subdivision of the state, the form in which such proposition shall be voted on shall be prescribed by the local or municipal authority submitting it. (Id. sec. 4.)

Art. 2972. Ballot, any, at school election, city, etc.—At the election of school district officers or school officers for a city, town or village, at which no officer is to be elected, or election of officers of fire departments, any ballot may be used prescribed by local authorities. (Id. sec. 51.)

Art. 2973. Ballots, how many furnished.—For each voting precinct, there shall be furnished one and a half times as many official ballots as there are qualified voters in the precinct, as shown by the list required to be furnished by the tax collector to precinct judges. (Id. sec. 48.)

Art. 2974. Ballots (counted) etc., delivered to judges.—The official ballots to be counted before delivery and sealed up and together with the instruction cards, with poll lists, tally sheets, distance markers, returning blanks and stationery, shall be delivered to the precinct judges, and the number of each indorsed on the package, and entered of record by the county clerk in the minutes of the commissioners' court. In like manner, shall be sent the list of qualified voters for the precinct, certified to by the col-

lector, if the presiding judge has not already received it. (Id. sec. 44.)

Art. 2975. Ballots, voters may provide when.—If, from any cause, the official ballots furnished for an election precinct have been exhausted or not delivered to the precinct judges, the voters may provide their own ballot after the style of the official ballot described in this title. (Id. sec. 47.)

CHAPTER SIX

SUPPLIES, ARRANGEMENTS, AND EXPENSES OF ELECTION

Art. 2976. Booths, voting, required in cities of 10,000 and over.—Voting booths shall be furnished and used at elections at each voting precinct in towns or cities of ten thousand inhabitants or more. (Acts 1905, 1 S. S., p. 529, sec. 37.)

Art. 2977. Booths, voting, and guard rails.—There shall be one voting booth or place for every seventy citizens who, at the last general election paid their poll tax or obtained certificates of exemption from its payment, and who reside in the voting precinct; provided, the judges of the election may provide as many more booths and places as they shall deem necessary. Each polling place, whether provided with voting booths or not, shall be provided with a guard rail, so constructed and placed that only such persons as are inside of such guard rail can approach the ballot boxes or compartments, places or booths at which the voters are to prepare their votes, and that no person outside of the guard rail can approach nearer than six feet of the place where the voter prepares his ballot. The arrangement shall be such that neither the ballot boxes nor the voting booths nor the voters while preparing their ballots shall be hidden from view of those outside the guard rail, or from the judges, and yet the same shall be far enough removed and so arranged that the voter may conveniently prepare his ballot for voting in secrecy. There shall be provided in each voting place voting booths where voting booths are required, with three sides closed and the front side open. Each booth shall be twenty-two inches wide on the inside, thirty-two inches deep and six feet four inches high, and shall contain a shelf for convenience of the voter in preparing his ballot; and the booths shall be so constructed with hinges that they can be folded up for storage when not in use. (Id. sec. 38.)

Art. 2978. Same subject.—Every guard rail shall be provided with a place for entrance and exit. The arrangement of the polling place shall be such that the booths or places prepared for voting can only be reached by passing within the guard rail; and the booths, ballot boxes, election officers and every part of the polling place, except the inside of the booths, shall be in plain view of the election officers and persons outside the guard rail, among whom may be one challenger for each political party and no more. (Id. sec. 40.)

Art. 2979. Booths, voting.—The voting booths shall be so arranged that there shall be no access to them through any doors, window or opening except through the front of the booth; and the same care shall be observed in precincts where there are no booths in protecting the voter from intrusion while he is preparing his ballot. (Id. sec. 41.)

Art. 2980. Guard rails, and screened shelf, etc., when booth not required.—When voting booths are not required, a guard rail shall be so placed that no one not authorized can approach nearer than six feet of the voter while he is preparing his ballot; and a shelf for writing shall be prepared for him, with black lead pencil, and so screened that no other person can see how he prepares his ballot. All booths and voting places shall be properly lighted. (Id. sec. 42.)

Art. 2981. Ballot boxes.—For each election precinct, there shall be provided four ballot boxes to be marked as follows: "Ballot box No. 1 for election precinct No. ....." (giving name and number of precinct); "Ballot box No. 2 for election precinct No. .....;" "Ballot box No. 3 for election precinct No. .....;" "Ballot box No. 4 for election precinct No. ....." (Id. sec. 43.)

Art. 2982. Ballot boxes, how made.—All ballot boxes shall be securely made of metal or wood, provided with a top, hinges, lock and key, and an opening shall be made at the top of each just large enough to receive a ballot when polled. (Id. sec. 62.)

Art. 2983. Board to provide election supplies.—The county judge, county clerk and sheriff shall constitute a board, a majority of whom may act, to provide the supplies necessary to hold and conduct the election, all of which shall be delivered to the presiding judges of the election by the sheriff or any constable of the county, when not called for and obtained in person by the precinct judges. (Id. sec. 38.)

Art. 2984. Ballot boxes, etc., presiding judge to procure, when.—If, from any cause, ballot boxes, voting booths, guard rails or other election supplies have not been received by the presiding judge, he shall procure them, and they shall be paid for as other election supplies; and, if the certified list of qualified voters is not in his possession at least three days before the election, he shall send for and procure them. (Id. sec. 45.)

Art. 2985. Supplies, report of to county commissioners.—For all supplies furnished by the county, the board to provide election supplies shall file with the county commissioners' court a written report of their action, giving detailed statement of the expenses incurred in procuring such supplies. (Id. sec. 39.)

Art. 2986. Collector's fees and how paid.—The collector of taxes shall be paid fifteen cents for each poll tax receipt and certificate of exemption issued by him, to be paid pro rata by the state and county in proportion to the amount of poll tax received by each; and this shall include his compensation for administering oaths, furnishing certified lists of qualified voters in election precincts for use in all general elections and primary conventions, when desired, and for all duties required of him under this title; provided, that collectors, whose salaries are fixed by what is known as the fee bill, shall receive ten cents for each poll tax receipt and certificate of exemption issued by him; and such fees shall be ex officio and not accountable under said fee bill. (Id. sec. 144.)

Art. 2987. Sheriff's and constable's fees.—The sheriff or any constable, for serving copies of the order designating the bounds of election precincts, or the election judges, posting notices, and for serving all other writs or notices prescribed by this title, shall be paid the amounts allowed by statutes for serving civil process. For delivering election supplies to precinct judges, when they are not obtained by such judges in person, the sheriff or constable shall be paid such amount as may be allowed by the commissioners' court, not to exceed two dollars for each election precinct. (Id. sec. 145.)

Art. 2988. Expenses for election supplies, how paid.—All expenses incurred in providing voting booths, stationery, official ballots, wooden or rubber stamps, tally sheets, polling lists, instruction cards, ballot boxes, envelopes, sealing wax and all other supplies required for conducting a general or special election shall be paid for by the county, except the cost of supplying booths for cities, which shall be provided for as required by former laws; provided, that all accounts for supplies furnished or services rendered shall first be approved by the county commissioner's court, except the accounts for voting booths for cities. (Id. sec. 147.)

Art. 2989. Expense of city election paid by city.—The expenses of all city elections shall be paid by the city in which same are held. (Id. sec. 45.)

Art. 2990. Mayor, etc., to perform duties required of county judge, etc.—In all elections in incorporated cities, towns and villages, the mayor, the city clerk, the board of commissioners or aldermen, shall do and perform each and every act in other elections required to be done and performed respectively by the county judge, the county clerk or the county commissioners' court. (Id. sec. 45.)

CHAPTER SEVEN

MANNER OF CONDUCTING ELECTIONS AND MAKING RETURNS THEREOF

Art. 2991. Oaths of officers of election; instruction cards.—Before opening the polls, the presiding judge of election shall, in an audible voice, take the following oath or affirmation, which shall be uttered slowly and distinctly, and each of the other judges and clerks shall repeat the same after him: "I solemnly swear (or affirm) that I will not in any manner request or seek to persuade or induce any voter to vote for or against any particular candidate or candidates, or for or against any proposition to be voted on; that I will not keep or make any memoranda or entry of anything occurring within the booths or polling places, as the case may be, nor disclose how any one whom I am permitted to assist in voting has voted, except I be called on to testify in a judicial proceeding; and that I will faithfully perform this day my duty as officer of the election, and guard, as far as I am able, the purity of the ballot box. So help me, God." (Acts 1905, 1 S. S., p. 533, sec. 56.)

Art. 2992. Polls, preliminary arrangement of and examination; regulations as to ballots, instruction cards, distance markers; notices as to electioneering, loitering, etc.—The judges and clerks of election for each precinct (and supervisors, if any have been selected) shall meet at the polling place at least half an hour before the time for opening the polls, and shall proceed to arrange the guard rail, the space within the guard rail, the voting booths, (if any), and the furniture for the orderly and legal conduct of the election. The judges of election shall then examine the ballot boxes required for the reception of the ballots and the blank official ballots, and shall deposit such ballots as are found to be defective in printing in ballot box No. 4 for mutilated or returned ballots. They shall also examine the sample ballots, instruction cards, distance markers, tally sheets, return sheets, certified list of voters, rubber or wooden stamps, and all things required for the election; but the package containing the official ballots shall not be opened until the morning of the election and at the polling place. One instruction card shall be posted near each distance marker where it can be read by citizens before voting. The package of official ballots shall remain in the custody of the judges and the polling clerks. The judges shall cause to be placed at the distance of one hundred feet from the entrance of the room at which the election is held visible distance markers in each direction of approaches to the polls, on each of which shall be printed in large letters the words: "Distance markers. No electioneering or loitering between this point and the entrance to the polls." The judges shall examine the ballot boxes and then relock them, after all present can see they are empty. The instruction cards and distance markers shall be posted up and shall not be defaced or removed during the progress of the election. The ballot clerks with official ballots, the presiding officer of the election, the poll clerk, the election supplies and the certified lists of qualified voters for the precinct, and the supervisors, if there are any, shall be as conveniently near each other as practicable within the polling place. (Id. sec. 55.)

Art. 2993. Instruction card posted in booth.—Before the election begins, one instruction card shall be posted up in each voting booth where it can be read; and, when there are no voting booths, one shall be posted up in plain view at the place prepared for the voter to make out his ballot. (Id. sec. 56.)

Art. 2994. Judges, appointment by voters, when; certificate; presiding judge to appoint assistant, when.—If a presiding judge fails to attend on election day, or fails to act, or none shall have been appointed, the voters present may appoint their own presiding officer, who has paid his poll tax, and such voters may also appoint the necessary assistant judges of election. When a presiding officer, who has been appointed by a commissioners' court, fails to act in conducting an election, and one is selected by the voters present, the judges and clerks at such election shall, in making their returns of election, certify to that fact, and state that the acting judges were appointed by the voters present. When an assistant judge or clerk has not been appointed, or, having been theretofore appointed, fails to act at the opening of the polls or during the election, the presiding judge shall appoint in his place another with the same qualifica-

tions, and return a certificate of such appointment with each election return. (Id. sec. 83.)

Art. 2995. Judges may administer oaths; powers of presiding judge.—Judges of elections are authorized to administer oaths to ascertain all facts necessary to a fair and impartial election. The presiding judge of election, while in the discharge of his duties as such, shall have the power of the district judge to enforce order and keep the peace. He may appoint special peace officers to act as such during the election, and may issue warrants of arrest for felony, misdemeanor or breach of peace committed at such election, directed to the sheriff or any constable of the county, or such special peace officer, who shall forthwith execute any such warrants, and, if so ordered by the presiding judge, confine the party arrested in jail during the election or until the day after the election, when his case may be examined into before some magistrate, to whom the presiding judge shall report it; but the party arrested shall first be permitted to vote, if entitled to do so; provided, that, if said party is drunk from the use of intoxicating liquor, he shall not be permitted to vote until he is sober. (Id. sec. 67.)

Art. 2996. Ballot boxes, preliminary inspection.—Before the balloting begins, the presiding judge shall unlock ballot box No. 1, and after all the officers of the election and supervisors have inspected the same to see that it is empty relock it and place it within view, where it shall remain until removed to make room for ballot box No. 2. A like examination shall be made of ballot box No. 2. (Id. sec. 68.)

Art. 2997. Poll tax receipt, etc.—No citizen shall be permitted to vote, unless he first presents to the judge of election his poll tax receipt or certificate of exemption issued to him before the first day of February of the year in which he offers to vote, except as otherwise permitted in this title, unless the same has been lost or mislaid, or left at home, in which event he shall make an affidavit of that fact, which shall be left with the judges and sent by them with the returns of the election; provided, that, if since he obtained his receipt or certificate he removes from the precinct or county of his residence, he may vote on complying with other provisions of this title. (Id. sec. 66.)

Art. 2998. Poll tax receipt, etc., receiving; testing voter, etc.—One of the election judges shall receive from the voter his poll tax receipt or certificate of exemption, when he presents himself to vote; the voter shall announce his name, and the judge, after comparing the appearance of the party with the description given in the certified list of qualified voters of the precinct made out by the county collector, and being satisfied that it accords therewith, shall pronounce in an audible voice the name of the voter and his number, as given in the list of qualified voters. If the voter has lost, mislaid or left at home his receipt or certificate, and shall present his written affidavit of that fact, and if his appearance tallies with that given for the same number and name on the list of qualified voters, or if the voter presents his written affidavit of removal from some other precinct or county, in cases where the same is permitted by this title, together with his receipt or certificate or affidavit of the loss thereof, and the judges of election shall be satisfied that he paid his poll tax or received his certificate of exemption before the first day of the preceding February, the judge shall in like manner pronounce in an audible voice the name and number of the elector on the certified list of qualified voters with the word, "correct." (Id. sec. 71.)

Art. 2999. Examination of challenged voter on oath; noted on poll list.—When a person offering to vote shall be objected to by an election judge or a supervisor or challenger, the presiding judge shall examine him upon an oath touching the points of such objection, and, if such person fails to establish his right to vote to the satisfaction of the majority of the judges, he shall not vote. If his vote be received, the word, "sworn," shall be written upon the poll list opposite the name of the voter. (Id. sec. 73.)

Art. 3000. (1736) Challenged vote in certain cities, proceedings on.—In any election, state, county or municipal, being held in any city or town of ten thousand inhabitants or more, according to the last preceding United States census, when the right to vote of any elector offering to vote is challenged, proceedings shall be had as prescribed in article 790. (Acts 1891, p. 47.)

Art. 3001. Poll tax receipt stamping; delivery of ballot with signature of presiding judge; preparing ballot.—When the judges are satisfied as to the right of the citizen to vote, and one has pronounced in an audible voice his name and number as shown on the list of qualified voters of the precinct, and the word, "correct," the judge shall stamp in legible characters with a stamp of wood or rubber the poll tax receipt or certificate of exemption with the words: "Voted ——— day of ———, A. D. 19—," or write the same words in ink and then return said receipt or certificate to the voter, and shall at the same time deliver to him one official ballot on the blank side of which the presiding judge shall have previously written his signature. The voter shall then immediately repair to one of the voting booths, or places prepared for voting by the election officers, and there prepare his ballot, in the manner provided by article 2969. (Id. sec. 72.)

Art. 3002. Marked ballot or memorandum; powers and duties of judge.—Any judge may require a citizen to answer under oath before he secures an official ballot whether he has been furnished with any paper or ballot on which is marked the names of any one for whom he has agreed or promised to vote or for whom he has been requested to vote, or has such paper or marked ballot in his possession, and he shall not be furnished with an official ballot until he has delivered to the judge such marked ballot or paper, if he has one. (Id. sec. 70.)

Art. 3003. One voter at a time in booth; assistance to illiterates; interpreter; supervisor may be present, etc.—Not more than one person at the same time shall be permitted to occupy any one compartment, voting booth or place prepared for a voter, nor shall any assistance be given a voter in preparing his ballot, except when a voter is unable to prepare the same himself because of some bodily infirmity, such

as renders him physically unable to write, or is over sixty years of age and is unable to read and write, in which case two judges of such election shall assist him, they having been first sworn that they will not suggest, by word or sign or gesture, how such voter shall vote; and they will confine their assistance to answering his questions, to naming candidates, and the political parties to which they belong, and that they will prepare his ballot as such voter himself shall direct; provided that the voter must in every case explain in the English language how he wishes to vote, and no judge of the election shall use any other than the English language in aiding the voter, or in performing any of his duties as such judge of the election, and in all cases where assistance is given hereunder, two judges of the election shall assist such voter, they having been first sworn that they will not suggest by word, sign, or gesture, how such voter shall vote; that they will confine their assistance to answering his questions in the English language, to naming candidates, and, if the voting be at a general election, to naming the parties to which such candidates belong, and that they will prepare the ballot as such voter directs, in the English language; and where any assistance is rendered in preparing a ballot other than as herein allowed, the ballot shall not be counted, but shall be void for all purposes. If the election be a general election, the judges who assist such voters shall be different political parties, if there be such judges present, and if the election be a primary election, a supervisor, or supervisors, may be present, when the assistance herein permitted is being given, but such supervisor or supervisors must remain silent except in cases of irregularity or violation of the law. (Id. sec. 82: Acts 1918, 4th C. S., ch. 30, sec. 1; Acts 1919, ch. 55, sec. 1.)

Art. 3004. Judge, etc., shall not electioneer, etc.—No election judge, clerk or other person connected with the holding of an election shall, on election day, indicate by words, sign, symbol or writing to any citizen, how he shall or should not vote; provided, nothing herein shall interfere with the operation of article 3003. (Acts 1905, 1 S. S., p. 533, sec. 65.)

Art. 3005. Ballot delivery by voter, deposit, and requirements connected therewith.—When a citizen shall have prepared his ballot, he shall fold the same so as to conceal the printing thereon, and so as to expose the signature of the presiding judge on the blank side, which shall always be indorsed by the judge before the ballot is delivered, and shall, after leaving the booth, hand to the numbering judge his ballot, who shall number the same. If the judges are satisfied that the ballot returned is the one delivered to the voter, the numbering judge shall number the ballot, writing on the blank side the number opposite the voter's name on the voting list, and shall stamp or write the same with the word, "voted," and deposit the ballot in the ballot box. The letter, "v," shall, at the same time, be marked by one of the clerks on the certified list or supplemental list of qualified voters opposite the voter's name thereon, and the voter shall thereupon immediately leave the polling place. (Id. sec. 74.)

Art. 3006. Mutilated, etc., ballots, rule as to.—No voter shall be entitled to receive a new ballot in lieu of one mutilated and defaced, until he first returns such ballot and it is deposited in box No. 4; nor shall any one be supplied with more than three ballots in succession, when they are mutilated or defaced. A register shall be kept by the clerks as the voting progresses of the mutilated or defaced ballots, which shall be deposited in box No. 4, in which shall also be deposited and returned all official ballots not used. (Id. sec. 75.)

Art. 3007. Ballot boxes and ballots, custody; admission to polls.—From the time of opening the polls until the announcement of the results of the canvass of votes cast and the signing of the official returns the boxes and official ballots shall be kept at the polling place in the presence of one or more of the judges and supervisors, if there are any. No person shall be admitted within the room where the election is being held, except the judges, clerks, persons admitted by the presiding judge to preserve order, supervisors of election, and persons admitted for the purpose of voting. (Id. sec. 76; Acts 1918, 4th C. S., ch. 30, sec. 1.)

Art. 3008. Defective, etc., ballots in box 4; return, statement, opening, etc.—In ballot box No. 4 shall be deposited, in addition to ballots defectively printed, all defaced and mutilated ballots, and, when the polls are closed, all the ballots that have not been voted. The box shall be locked and so returned sealed to the county clerk, with a statement which shall be placed therein signed by the presiding judge of the number of ballots received by him, the number of mutilated or defaced ballots that the box contained, and also the number of ballots not given to voters, as well as those defectively printed, so that, after adding such numbers, all ballots delivered to the election officers may be accounted for. Such ballot box shall, when the returns of votes cast are canvassed by the commissioners' court, be opened, the ballots counted and a record made of what they have found to be its contents. (Acts 1905, 1 S. S., p. 533, sec. 69.)

Art. 3009. Deposit and count, using Boxes 1 and 2 alternately; voted ballots put in box 3; return, etc.—At the expiration of one hour after voting has begun, the receiving judges shall deliver ballot box No. 1 to the counting judges, who shall at once deliver in its place ballot box No. 2, which shall again be opened and examined in the presence of all the judges and securely closed and locked; and, until the ballots in ballot box No. 1 have been counted, the receiving judge shall receive and deposit ballots in ballot box No. 2. Ballot box No. 1 shall, on its receipt by the counting judges, be immediately opened and the tickets taken out by one of them, one by one, when he shall read and distinctly announce, while the ticket remains in his hand, the name of each candidate voted for thereon, which shall be noted on the tally sheets, and shall then deliver the ballot to the other counting judge, who shall place the same in box No. 3, which shall remain locked and in view until the counting is finished, when said box shall be

returned with the other boxes, locked and sealed, to the county clerk. Ballot boxes Nos. 1 and 2 shall be used by the receiving judge and the counting judge alternately, as above provided, as often as the counting judge has counted and exhausted the ballots in either box. (Id. sec. 80.)

Art. 3010. Unfolding ballots, etc., forbidden.—No officer of election shall unfold or examine the face of a ballot when received from an elector, nor the indorsement on the ballot, except the signature of the judge, or the words stamped thereon, nor compare it with the clerk's list of voters, when the ballots are counted, nor shall he permit the same to be done, nor shall he examine, nor permit to be examined, the ballots after they are deposited in a ballot box, except as herein provided for in canvassing the votes, or in cases specially provided by law. (Id. sec. 77.)

Art. 3011. Signature of judge on ballots, no ballot without, counted.—The counting judges and clerks shall familiarize themselves with the signature of the judge who writes his name on each ballot that is voted, and shall count no ballots that do not bear his signature or are unnumbered, or if, on examination by the judges, such signature is found to be a forgery. (Id. sec. 78.)

Art. 3012. (1741) (1697) Ballots which shall not be counted.—No ballot which is not numbered as provided in article 3005 shall be counted, nor shall either of two or more ballots folded together be counted, and where the names of two or more persons are upon a ballot for the same office, when but one person is to be elected to that office, such ballot shall not be counted for either of such persons. (Acts 1876, p. 308, sec. 16. R. S. 1879, 1697.)

Art. 3013. Nominee dying before election, etc., vote counted, etc.—If a nominee dies or declines the nomination before the election, and no one is nominated to take his place, the votes cast for him shall be counted and return made thereof; and, if he shall have received a plurality of the votes cast for the office, the vacancy shall be filled as in case of a vacancy occurring after the election. (Id. sec. 50.)

Art. 3014. Supervisors may be present.—The election supervisors may be present when the ballots are being examined and the votes called off and noted on the tally sheets. (Acts 1905, S. S. p. 538, sec. 80.)

Art. 3015. Announcement of vote at each exchange of boxes.—At each change of the boxes, one of the judges shall announce at the outer door of the voting place the number of votes already cast. (Id. sec. 81.)

Art. 3016. Status of count announced, when, etc; memorandum public.—Immediately upon the closing of the polls, and at intervals of two hours thereafter, the presiding judge or an associate judge shall make a correct but unofficial memorandum of the total number of votes counted for each candidate at that time, such memorandum being in the order in which the names of the candidates appear upon the ballot; and thereupon he shall publicly announce from such memorandum the status of the count at the door of the building where the counting is in progress. This memorandum shall thereafter be accessible to the public, and especially newspaper reporters, who may call for information; and the presiding judge or an associate judge may furnish reporters information concerning the status of the count at other times after the polls have closed. The announcement of the status of the count shall continue as aforesaid until the count has been completed, when a correct but unofficial announcement of the total number of votes received by each candidate shall be announced in the manner above provided. This section [article] shall also apply so as to require the same reports from judges of primary elections. (Id. sec. 88.)

Art. 3017. No information except as herein permitted.—No judge or clerk shall make any statement, nor give information in any manner, of the number of votes nor any other fact regarding their opinion of the state of the polls, after the closing thereof, except as herein permitted. (Id. sec. 76.)

Art. 3018. (1807) Arrest, privilege from.—In all cases, except treason, felony or breach of peace, voters shall be privileged from arrest during their attendance at elections, and in going to and returning therefrom. (Id. sec. 63. R. S. 1879, art. 1755. P. D. 3625.)

Art. 3019. Loitering and electioneering within 100 feet of booths; special constable.—The election judges shall prevent loitering and electioneering while the polls are open, within one hundred feet of the door through which voters enter to vote, and within one hundred feet of the place where the voter is required to prepare his ballot; and, for this purpose, they shall appoint a special constable to enforce this authority. (Id. sec. 84.)

Art. 3020. Carriages, etc., forbidden, unless, etc.—No carriage or other vehicle shall be used by any person to convey voters to the voting places, unless the voter is physically unable to go to or to enter the polling place without assistance, in which event two of the judges of different political parties, if there are such, may deliver an official ballot to him at the entrance to the polling place and permit him to make out his ballot and deliver it there. (Id. sec. 85.)

Art. 3021. Barroom, etc., not to be opened on election day, nor intoxicating liquor sold, etc.—No person shall open or keep open any barroom, drinking saloon or wholesale beer or liquor house, where vinous, malt, spirituous and intoxicating liquors are sold during any portion of the day on which an election, either general, special or primary, is held for any purpose, in the voting precinct where such an election is held; nor shall any one, in such voting precinct, sell, barter or give away any vinous, spirituous or intoxicating liquor during the day of such election, nor shall any one carry, or cause to be carried, to the polling place on the day of election, any intoxicating liquor for the purpose of sale, gift or to be drunk; and if any one shall find any intoxicating liquor on election day he shall refrain from taking possession of it and shall not inform another of its whereabouts. (Id. sec. 86.)

Art. 3022. Intoxicating liquor sold on election day, how.—Intoxicating liquor may be sold on election day by a druggist only to fill prescriptions by a physician, but who at the time must certify in writing, on his

honor, that it is needed by his sick patient. (Id. sec. 87.)

Art. 3023. Refreshments.—If the officers of election need refreshments during the voting and before the canvass of votes, they shall be taken at the polling places, and in view of the ballot boxes; provided, that the refreshments shall contain no alcoholic, vinous, malt or intoxicating liquors. (Id. sec. 79.)

Art. 3024. (1743) (1698) Return of elections, how and to whom made.—When the ballots have all been counted, the managers of the election in person shall make out triplicate returns of the same, certified to be correct, and signed by them officially, showing: First, the total number of votes polled at such box; second, the number polled for each candidate; one of which returns, together with poll lists and tally lists, shall be sealed up in an envelope and delivered by one of the precinct judges to the county judge of the county; another of said returns, together with poll lists and tally lists, shall be delivered by one of the managers of election to the clerk of the county court of the county, to be kept by him in his office open to inspection by the public for twelve months from the day of the election; and the other of said returns, poll and tally lists shall be kept by the presiding officer of the election for twelve months from the day of election. (Acts 1883, p. 50, as modified by Acts 1905, S. S., p. 541, sec. 91.)

Art. 3025. (1744) (1699) Same subject.—In case of vacancy in the office of county judge, or the absence, failure or inability of that officer to act, the election returns shall be delivered to the clerk of the county court of the county, who shall safely keep the same in his office, and he, or the county judge, as the case may be, shall deliver the same to the county commissioners' court on the day appointed by law to open and compare the polls. (R. S. 1879, 1699.)

Art. 3026. Returns, with election supplies; voting booths stored, etc.—One of the precinct judges shall deliver the returns of election, with certified lists of qualified voters, with all stationery, rubber stamps and blank forms and other election supplies not used, to the county judge, immediately after the votes have been counted. He shall provide for the safe storage of the voting booths in some place in the precinct, and notify the county judge. (Acts 1905, S. S., p. 541, sec. 91.)

Art. 3027. (1747) (1702) Ballots, etc., to be placed in a box and delivered to county clerk.—Immediately after counting the votes by the managers of election, the presiding officer shall place all the ballots voted, together with one poll list and one tally list, into a wooden or metallic box, and shall securely fasten the box with nails, screws or locks, and he shall, within ten days after the election, Sundays and the days of election excluded, deliver said box to the clerk of the county court of his county, or to the county to which the unorganized county is attached for judicial purposes, whose duty it shall be to keep the same securely; and, in the event of any contest growing out of elections within one year thereafter, he shall deliver said ballot box to any competent officer having a process therefor, from any tribunal or authority authorized by law to demand such ballot box; provided, that all questions arising at any election board shall be settled and determined by the presiding officer and the judges, anything in any law to the contrary notwithstanding. (Acts 1881, p. 97. R. S. 1879, 1702.)

Art. 3028. (1748) (1703) Ballots, etc., shall be burned, when.—In the event that no contest grows out of the election within one year after the day of such election, the said clerk shall destroy the contents of said ballot box by burning the same. (Id. R. S. 1879, 1703.)

Art. 3029. (1749) (1704) Presiding officer shall retain one poll and tally list.—The presiding officer of election shall retain in his custody one of the poll lists and one of the tally lists of the election, and shall keep the same for one year after election, subject to the inspection of any one interested in such election. (R. S. 1879, 1704.)

Art. 3030. (1753) (1705) County commissioners shall open returns, when.—On the Monday next following the day of election, and not before, the county commissioners' court shall open the election returns and estimate the result, recording the state of the polls in each precinct in a book to be kept for that purpose; provided, that, in the event of a failure from any cause of the commissioners' court to convene on the Monday following the election to compute the votes, then said court shall be convened for that purpose upon the earliest day practicable thereafter. (Acts 1883. p. 50.)

Art. 3031. (1754) (1706) Returns shall not be estimated, unless, etc.—No election returns shall be opened or estimated, unless the same have been returned in accordance with the provisions of this title.

Art. 3032. (1755) (1707) Certificates of election to county and precinct officers.—After an estimate of the result of an election has been made, as provided for in this title, the county judge shall deliver to the candidate or candidates for whom the greatest number of votes have been polled for county and precinct officers a certificate of election, naming therein the office to which such candidate has been elected, the number of votes polled for him and the day on which such election was held and shall sign the same and cause the seal of the county court to be thereon impressed.

Art. 3033. (1792) Additional regulations by certain cities.—Cities containing a population of ten thousand inhabitants or more may, through their city council, adopt such methods to protect the purity of the ballot in elections held at their municipal elections, not inconsistent with the provisions of this chapter, as may be deemed advisable. (Acts 1892, S. S., p. 18, sec. 30.)

Art. 3034. (1756) (1708) When a county is a representative or senatorial district.—If the county constitutes a senatorial or representative district of itself, the county commissioners' court shall at the same time make an estimate of the votes polled for members of the legislature; and the county judge shall give a like certificate of election, as provided in the preceding article, to the person receiving the highest number of votes for senator or representative, and shall also transmit a duplicate of such

certificate to the secretary of state. (Acts 1883, p. 50.)

Art. 3035. (1757) Returns of election for certain state and district officers.—In all elections for comptroller of public accounts, treasurer of the state, commissioner of the general land office, attorney general, state superintendent of public instruction, commissioner of agriculture, railroad commissioners, judges of the supreme court, court of criminal appeals, courts of civil appeals, and district courts, district attorneys, representatives in the congress of the United States, and for the adoption or rejection of proposed constitutional amendments, the county judge shall, on the Monday next following the day of election, or as soon thereafter as the commissioners' court shall have opened the returns and estimated the result, as provided in article 3030, make out duplicate returns of the election; one of which he shall immediately transmit to the seat of government of the state, sealed in an envelope, directed to the secretary of state, and endorsed, "Election Returns for ..... county, for ....." [filling the first blank with the name of the county and the other blank with the name of the office for which the election was held, or a designation of the proposed amendments to the constitution voted upon, as the case may be]; and the other of such returns shall be deposited in the office of the clerk of the county court of the county where such election was held. (Acts 1897, p. 31.)

Art. 3036. (1758) (1710) Such returns shall be counted, when and by whom.—On the fortieth day after the election, the day of election excluded, and not before, the secretary of state, in the presence of the governor and attorney general, or in case of vacancy in either of said offices, or of inability or failure of either of said officers to act, then in the presence of either one of them, shall open and count the returns of the election. (Acts 1883, p. 50.)

Art. 3037. (1759) (1711) Governor shall give certificate of election, when.—When the returns have been counted, the governor shall immediately make out, sign and deliver a certificate of election, with the seal of the state thereto affixed, to the person or persons who shall have received the highest number of votes for each or any of said offices. (Id.)

Art. 3038. (1760) (1712) Returns for governor and lieutenant-governor.—The county judges of the several counties shall promptly make duplicate returns of the election for governor and lieutenant-governor, carefully sealed in an envelope, one of which shall be transmitted to the seat of government in this state, directed to the speaker of the house of representatives, and indorsed as provided in article 3035, and the other of said returns shall be deposited in the office of the clerk of the county court of said county. (Id.)

Art. 3039. (1761) (1713) Secretary of state shall keep returns, etc.—The transmitted returns provided for in the preceding article, directed to the secretary of state, shall be taken charge of by him, and preserved in his office, the package and seal thereon to remain unbroken until the organization of the next legislature, when he shall, on the first day thereof, deliver the said return to the speaker of the house of representatives. (Id.)

Art. 3040. (1762) (1714) Returns for members of the legislature.—When an election shall have been held for members of the legislature in a district composed of more counties than one, the county judge to whom the returns in each county are made, and who is not authorized to give certificates of election to such members of the legislature, shall make out and send complete returns of such election for members of the legislature in his county immediately after examining and recording the same, to the county judge of the county, who may by law be authorized to give certificates of election to members of the legislature for such district. (Id. sec. 26.)

Art. 3041. (1763) (1715) Returns shall be transmitted how, and to whom.—The returns provided for in the preceding article shall be sealed in an envelope, and the name of the officer forwarding them shall be written across the seal, and the envelope shall be indorsed, "Election returns," and directed to the county judge of the proper county and transmitted by mail or other safe and expeditious conveyance. (Id.)

Art. 3042. (1764) (1716) Duty of county judge.—The county judge to whom the returns named in the two preceding articles are forwarded, or in case of a vacancy in that office, or of inability or failure to act on the part of such officer, then the clerk of the county court of such county, or his deputy, shall, upon the thirtieth day after the election, Sunday excluded if Sunday be the thirtieth day, open and count said returns in the presence of at least two qualified voters of said district, and, after recording the same, shall give a certificate or certificates of election to the person or persons receiving the highest number of votes for senator or representative in that district; which certificate shall be under the seal of the county court of the county from whence it issues, and shall state the number of votes received by the person to whom the same is given; and the officer giving such certificate shall immediately forward a duplicate of the same to the secretary of state. (Id.)

Art. 3043. (1765) (1717) Count may be made before 30th day, when.—If all the election returns of the district shall have been received by the returning officer of the district before the said thirtieth day, then he may count said returns and issue the certificate of election as provided for in the preceding article at any time before said thirtieth day. (Id.)

Art. 3044. (1766) (1718) County judge shall certify to secretary of state the officers elected and qualified.—At the expiration of thirty days from an election, and from time to time thereafter as the officers may qualify, the county judge of each county shall make out and certify to the secretary of state a tabular statement showing who were elected, and to what office, and the date of qualification, giving the number of the precinct, (if precinct officers), and he shall also certify the result of the vote for members of the legislature; and he shall in like manner report to the secretary of state all special elections to fill a vacancy in any county [or] precinct office, certifying

when and how the vacancy occurred. (Act March 6, 1863. P. D. 3604.)

Art. 3044a. Uniform date for qualification of all county and precinct officers.—That after each general election in this State, those who are elected to the various county and precinct offices in the State shall qualify, by taking the oath of office and giving bond and assuming the duties of their respective offices, as prescribed by law, on the first day of December following such general election, or as soon thereafter as possible. And all those officers holding office at the time of such general election, shall surrender their offices to their successors accordingly on such date, or as soon after said date as their said successors shall have qualified and be ready to assume the duties thereof. All laws and parts of laws that may be in conflict herewith are hereby repealed. (Acts 1917, ch. 143, sec. 1.)

Art. 3045. (1809) (1758) Governor shall commission officers, except, etc.—The governor shall commission all officers, except governor, members of congress, electors for president and vice-president of the United States, members of the legislature and municipal officers. (Act Aug. 23, 1876, p. 310, sec. 22.)

CHAPTER EIGHT

CONTESTING ELECTIONS

Art. 3046. (1793) Contest of election for district attorney.—Contested elections for the office of district attorney shall be tried by the district judge of the district in the county where the candidate who shall have received the certificate of election shall reside and, if there are two district judges in said county, then to be tried before either of said judges. (Acts 1895, p. 58.)

Art. 3047. (1794) Contest of election for district judge.—Contested elections for the office of district judge shall be tried in the county of the adjoining district, the county seat of which is nearest to the residence of the candidate who shall have received the certificate of election, and by the district court of such adjoining district, and in counties having two or more district courts, then to be tried by the district court of the adjoining district in said county. (Id.)

Art. 3048. (1795) Contest of election for appellate judges.—Contested elections for the office of chief justice or associate justice of the supreme court and judges of the court of criminal appeals shall be tried in the county and by the district court of the district, or one of them, in which the seat of government is located. And contested elections for the office of chief justice of the court of civil appeals, or associate justice of any supreme judicial district in the state, shall be tried by the district court, or either of them if there are more than one, in the county where said court of civil appeals has its sittings. (Id.)

Art. 3049. (1795) Contest of election for any county office.—Contested elections for any county office shall be tried by the district court in the county where the election was held. If there are two such courts, then to be tried by either of them. (Id.)

Art. 3050. (1797) Other contested elections than for officers.—Contested elections for other purposes than the election of officers shall be tried by the district court in the county where the election was held, or either of them, if there is more than one such court. (Id.)

Art. 3051. (1798) Notice of contest.—Any person intending to contest the election of any one holding a certificate of election as a member of the legislature, or for any office mentioned in this law shall, within thirty days after the return day of election, give him a notice thereof in writing and deliver to him, his agent or attorney, a written statement of the ground on which such contestant relies to sustain such contest. By the "return day" is meant the day on which the votes cast in said election are counted and the official result thereof declared. (Id.)

Art. 3052. (1799) Reply to notice of contest.—The person holding such certificate shall, within ten days after receiving such notice and statement, deliver, or cause to be delivered, to said contestant, his agent or attorney, a reply thereto in writing. (Id.)

Art. 3053. (1800) Service of notice, etc.—The notice, statement and reply required by the two preceding articles may be served by any person competent to testify, and shall be served by delivering the same to the party for whom they are intended in person, if he can be found in the county. If not found, then upon the agent or attorney of such person, or by leaving the same with some person over the age of sixteen years at the usual place of abode or business of such person. (Id.)

Art. 3054. (1801) Copy of notice and reply to be filed, etc.—If the contest be for the validity of an election for any state office, except the office of governor and lieutenant-governor, or for any district office, except members of the legislature, or for any county office, a copy of the notice and statement of the contestant and of the reply thereto of the contestee served on the parties shall be filed with the clerk of the court having jurisdiction of the case. (Id.)

Art. 3055. (1802) Cause to have precedence; procedure if contest be for district clerk.—When the notice, statement and reply have been filed with the clerk of the court, he shall docket the same as in other causes, and the said contest shall have precedence over all other causes. Should the office contested for be that of clerk of the district court, then a clerk pro tem. shall be appointed as is provided now by law in suits where the clerk is a party to the suit. (Id.)

Art. 3056. (1803) Rules of evidence and procedure on trial.—In trials of all contests of election, the evidence shall be confined to the issues made by the statement and reply thereto, which statement and reply may be amended as in civil cases; and, as to the admission and exclusion of evidence, the trial shall be conducted under the rules governing proceedings in civil causes. (Id.)

Art. 3057. (1804) Contestee in certain cases to execute bond.—Whenever the validity of an election for an officer other than for members of the legislature is contested, the contestee shall, within twenty days after the service of the notice and statement of such contest upon him, as provided in this law, file with the clerk of the court in which such contest is pending a bond with two

or more good and sufficient sureties, payable to the contestant, to be approved by said clerk, in an amount to be fixed by said clerk, and not less than double the probable amount of salary or fees or both, as the case may be, to be realized from the office being contested for a period of two years. Said bond to be conditioned that, in the event the decision of the contest shall be against such contestee and in favor of the contestant, such contestee will pay over to such contestant whatever sum may be adjudged against him by a court having jurisdiction of the subject matter of such bond. (Id.)

Art. 3058. (1804a) On failure of contestee in such cases, contestant to execute bond.—Should the contestee fail to file the bond as required in the preceding article, and within the time therein prescribed, it shall be the duty of said clerk to notify the contestant immediately of such failure; and such contestant shall have the right, within ten days after such notice, to file a like bond payable to the contestee, conditioned that, in the event the decision of the contest is against him and in favor of the contestee, he will pay over to such contestee whatever sum may be adjudged against him, the said contestant, by a court having jurisdiction of the subject matter of such bond. (Id.)

Art. 3059. (1804b) Execution of bond by contestant to be certified to governor.—Immediately upon the filing of said bond by the contestant, the clerk shall certify in writing, and under his official seal, to the governor that the contestee failed to give the required bond, and that the contestant has given such bond in accordance with law. (Id.)

Art. 3060. (1804c) Governor to commission contestant to perform duties of office pending determination of contest.—Upon receiving such certificate from the clerk, it shall be the duty of the governor to issue a commission to the said contestant for the office in controversy pending such contest; and thereupon the contestant, upon qualifying in said office as required by law, shall exercise all the rights and powers and perform all the duties of said office for the full term thereof, unless it shall be otherwise determined and ordered by the court upon the trial of such contest. (Id.)

Art. 3061. (1804d) On failure of contestant to execute bond governor to commission contestee.—It shall be the duty of the governor to issue the commission to the contestee at the time provided by law as in other cases, unless he has been notified of the failure of such contestee to file the bond required by article 3057, in which event the governor shall withhold the issuance of such commission until after the time allowed the contestant to file such bond has elapsed; but, if the said contestant shall also fail to file bond as provided in article 3058, and within the time therein required, it shall be the duty of the clerk to certify all the facts in the case under his official seal to the governor, who shall thereupon issue the commission to the contestee. (Id.)

Art. 3062. (1804e) Fraudulent votes not to be counted.—If, upon the trial of any contested election case, any vote or votes be found to be illegal or fraudulent, the court trying the same shall subtract such vote or votes from the poll of the candidate who received the same, and after a full and fair investigation of the evidence shall decide to which of the contesting parties the office belongs. (Id.)

Art. 3063. (1804f) Election to be declared void, when.—Should it appear on the trial of any contest provided for in article 3054 that it is impossible to ascertain the true result of the election as to the office about which the contest is made, either from the returns of the election or from any evidence within reach, or from the returns considered in connection with other evidence, or should it appear from the evidence that such a number of legal voters were, by the officers or managers of the election, denied the privilege of voting as, had they been allowed to vote, would have materially changed the result, the court shall adjudge such election void, and direct the proper officers to order another election to fill said office; which election shall be ordered and held and returns thereof made in all respects as required by the general election laws of the state. (Id.)

Art. 3064. (1804g) Bonds subject to suit.—The bonds required to be filed by the contestant and contestee under the provisions of this chapter shall remain on file in the office of the clerk where filed, and may be sued upon as other bonds. (Id.)

Art. 3065. (1804h) Appeal available, and to have precedence of hearing.—Either the contestant or contestee may appeal from the judgment of the district court to the court of civil appeals, under the same rules and regulations as are provided for appeals in civil cases; and such cases shall have precedence in the court of civil appeals over all other cases. (Id.)

Art. 3066. (1804i) Transcript on appeal.—In case of appeal as provided for in the preceding article, the clerk shall, without delay, make up the transcript and forward the same to the clerk of the court of civil appeals for that district. (Id.)

Art. 3067. (1804j) Costs, how taxed.—The costs in all contested election cases shall be taxed according to the laws governing costs in civil cases, except when otherwise specially provided, and bond for costs may be required as in civil suits. (Id.)

Art. 3068. (1804k) Measure of damages.—Where the contest shall have been decided against one of the parties and the other party shall have filed a bond and performed the duties of the office under the provisions of this chapter, the bond so filed shall inure to the benefit of the successful party in any suit thereon in a court having jurisdiction of the amount in controversy; and the measure of damages recoverable, besides cost of suit, shall be the salary, fees, and emoluments of office of which he has been deprived, less such reasonable expenses as the party holding the office shall have incurred in executing the duties of the office; provided, that he shall have acted in good faith in receiving the certificate of election or commission for the office.

Art. 3069. (1804*l*) Record, copies of, how sent up.—If the contest be for the validity of an election for members of the legislature, a copy of the notice, the statement, and the reply served upon the parties as re-

quired by this chapter, shall, within twenty days after the service thereof, be filed with the district returning officer to whom the returns of such election were made, who shall envelop the same, together with a certified copy of the poll book or register of the votes of each precinct and county returned to him in said election, and shall seal the said envelope and write his name across the seals, and address the package to the president of the senate or speaker of the house of representatives, as the case may be, to the care of the secretary of state, and shall forward the same by mail or other safe conveyance to the seat of government, so as to reach there if possible before the convening of the legislature. (Id.)

Art. 3070. (1804m) Depositions may be taken in such case.—At any time after filing said papers with said returning officer, either party to said contest may proceed, at his own expense, to take such written testimony as he may deem proper, having first served the opposite party, his agent or attorney, with a copy of the interrogatories he intends to propound to each witness, and the name of the officer before whom such interrogatories will be answered, as well as the time and place of taking such testimony. (Id.)

Art. 3071. (1804n) Who may take such depositions.—Any officer authorized by the law of this state to administer oaths, upon being satisfied as to any costs, including his own fees, that may accrue in the taking of such testimony, shall proceed, upon the application of the party desiring it, to summon the witness or witnesses named in the interrogatories and take his or their answers in writing and under oath to such interrogatories and cross-interrogatories as may be propounded in writing.

Art. 3072. (1804o) How depositions may be returned.—The answers of each witness shall be reduced to writing and signed by such witness, and sworn to by such witness before the officer taking the same, and shall be certified to by such officer and sealed in an envelope; and the name of the said officer shall be written by him across the seals; and he shall forward the same without delay by mail or other safe conveyance to the president of the senate or the speaker of the house of representatives, as the case may be, to the care of the secretary of state, at the seat of government.

Art. 3073. (1804p) Procedure in the house in which the contest is pending.—The notice and statement of contest and the other papers pertaining thereto shall immediately after the organization of the legislature be opened by the president of the senate or the speaker of the house of representatives, as the case may be; and the same shall be referred to the committee on privileges and elections of the house in which the contest is pending, which committee shall proceed without delay to fix a time for the hearing of said case, and, after due notice to the parties thereto shall investigate the issues between said parties, hearing all the legal evidence that may be presented to said committee, and shall as soon thereafter as practicable report their conclusions of law and fact in respect to said case to the house by which said committee was appointed, accompanied by all the papers in the cause, and the evidence taken therein, with such recommendations as may to them seem proper. Any one or more of the committee dissenting from the views of the majority may present a minority report. (Id.)

Art. 3074. (1804q) Hearing of evidence by committee on privileges and election; powers and duties of committee.—The rules of evidence and the laws in force respecting the admissibility of evidence, the taking of depositions and the issuance and service of process in the district courts of this state shall be observed by said committee, so far as the same may be applicable. Said committee shall have the power to send for persons and papers, and the chairmen of said committees shall have the power to issue all process necessary to secure the attendance of witnesses and the production of papers, ballot boxes and other documents before said committee, and such process shall be executed by the sergeant-at-arms of the house in which the contest is pending, or by such other person as may be designated by the presiding officer of said house. (Id.)

Art. 3075. (1804r) Procedure on final trial by the body; fees, etc.—The house in which the contest is pending shall, as soon as practicable after the report of the committee has been received, fix a day for the trial of the contest, and shall proceed to determine whether the contestant or contestee, or either of them, is entitled to the contestant's seat; provided, the said house may hold the election void after full consideration of all the evidence and for the reasons prescribed in article 3063, and in such case the governor shall be at once notified of the vacancy. Such fees shall be paid to the witnesses and the officers serving the process as shall be prescribed by the rules of the house in which said contest is pending, and no mileage or per diem shall be paid to either of the parties to said contest until said case is determined, and in no case shall any mileage or per diem be paid to any party against whom any contest is decided. (Id.)

Art. 3076. (1804s) Contest for governor; lieutenant-governor, etc.—If the contest be for the validity of an election for governor, lieutenant-governor, comptroller of public accounts, treasurer, commissioner of the general land office or attorney general, the same shall be tried and determined by both houses of the legislature in joint session and the provisions of this chapter governing in the case of a contest for the validity of an election for members of the legislature shall apply to and govern in a contest for the offices above named, as far as the same may be applicable. (Id. Const., art. 4, sec. 3.)

Art. 3077. (1804t) Other contested elections.—If the contest be for the validity of an election held for any other purpose than the election of an officer or officers in any county or part of a county or precinct of a county, or in any incorporated city, town or village, any resident of such county, precinct, city, town or village, or any number of such residents, may contest such election in the district court of such county in the same manner and under the same rules as far as applicable, as are prescribed in this chapter for contesting the validity of an election for a county office.

Art. 3078. (1804u) Parties defendant under preceding article.—In any case provided for in the preceding article, the county attorney of the county, or where there is no county attorney the district attorney of the district, or the mayor of the city, town or village, or the officer who declared the official result of said election, or one of them, as the case may be, shall be made the contestee and shall be served with notice and statement, and shall file his reply thereto as in the case of a contest for office; but in no case shall the costs of such contest be adjudged against such contestee, or against the county, city, town or village which they may represent, nor shall such contestee be required to give any bond upon an appeal. (Id.)

Art. 3078a. Contesting elections on proposed amendments to constitution; petition; injunction; citation; pleadings; bond.—Within sixty days from the date of any such election upon any proposed amendment to the constitution, and not thereafter, any citizen of this state who is a qualified voter shall have the right to contest said election by filing his petition in one of the district courts of Travis county, Texas, setting forth fully his grounds for contest, naming the secretary of state as contestee; and thereupon the district judge, in whose court the contest is filed, shall make an order for the issuance, and the clerk of said court or the judge thereof, shall issue a writ of injunction enjoining the secretary of state from tabulating, estimating or canvassing the returns of said election and from ascertaining or declaring the result of said election until said contest is finally determined. Citation shall be issued and served upon the secretary of state as in other civil cases. At the time of filing such petition, contestant shall cause to be published in some daily newspaper published in the state, for not less than ten days before appearance day, a brief notice to all parties interested that such suit has been filed. The secretary of state shall within twenty days from service of citation file a formal answer, but shall not be liable for any costs. Any qualified citizen or citizens adversely interested in such contest may appear by counsel of their own choosing upon either side of the contest, but opponents of the contest shall have the right to direct and control the pleadings of the secretary of state and the conduct of the contest upon the part of the contestees; and contestants shall jointly and not severally plead in the cause. The said court shall cause the party contesting the result of said election and the parties adversely interested to form issues and shall as near as may be conform the hearing and determination of such contest to the proceedings usual in courts in contested election cases. The court shall permit contestants to amend their petition, include therein allegations charging fraud, irregularity or mistakes, upon such terms as to the court may seem just, and likewise the contestees shall have the right both to contest the charges made by the contestant and to make counter charges, but the court shall bring the parties to issue with all possible dispatch. Provided, however, that should any contest be filed as herein provided for, that the contestant shall be required to give a good and sufficient bond to be approved by the clerk of the court wherein said contest is filed conditioned that the said contestant will pay, in the event he is defeated in said contest, all the costs that may be incurred in the trial of said contest, and that he shall not be permitted to file any such contest and give in lieu of the bond herein provided for any affidavit of inability to pay the costs as provided for under the general statutes. (Acts 1911, p. 144, sec. 8.)

Art. 3078b. Same subject; powers of court.—The said court shall have the power to appoint commissioners to sit at such places as the court may designate for the purpose of hearing testimony, reducing same to writing and reporting same to said court. said court shall also have the power to issue all orders that may be necessary or proper to compel the production before said court or any commissioner appointed by said court, of all ballot boxes and instrumentalities used in connection with said election that may be necessary or proper to the determination of the issue raised by such contest, and to send by proper process to any county in the state, for the officers of the election or the custodians of ballot boxes for the purpose of aiding in, ascertaining and determining any matter or thing necessary or proper in connection with the trial of said contest. (Id. sec. 9.)

Art. 3078c. Same subject; trial; court may adjourn, make orders, etc.—The said court may proceed to the trial of said issue raised by said contest after having given the contestants and the contestees full and fair opportunity to produce before said court the evidence pro and con upon such issues. The court may adjourn said hearing from time to time and may, before the final determination of said cause, make such orders and decrees as to the court may seem just and proper, requiring any election officers to make such certificates of the result of such election as in the judgment of the court such officers should have been made in making the returns of such election. (Id. sec. 10.)

Art. 3078d. Same subject; may hear and determine, etc.—Upon the trial of said cause, the court shall have full power and authority to hear and determine all matters and things necessary or proper to the determination of the question whether a majority of the legal votes cast in said election, either in favor or against said proposed amendment, including the manner of holding the election, any frauds or irregularities in the conduct thereof, or in the making of the returns thereof illegal votes cast at said election or legal votes prevented from being cast, false calculations, certificates or returns, and to exercise all powers of the court, both in law or in equity, in order to fully inquire into and ascertain the true and correct result of such election free from any fraud, irregularity or mistake. (Id. sec. 11.)

Art. 3078e. Same subject; may compel correct returns.—The said court shall have full power and authority when the result of such election in any voting precinct box shall have been ascertained and determined, to order and compel the proper officers thereof to make true and correct returns of such election in such voting box as finally determined by said court, to the proper officers of such county; and when the result in any county shall have been ascertained and determined by said court, to order and compel the proper returning officers of such county to make true and correct returns of the result of said

election in said county as to said amendment as ascertained by said court to the secretary of state, and to order the secretary of state to make his returns, tabulations, canvassings, countings and certificates in accordance with the result of such election as finally ascertained and determined by the court. (Id. sec. 12.)

Art. 3078f. Same subject; provisions cumulative.—The provisions of this Act are cumulative and not exclusive of the powers, rights and authority vested in the district courts of Texas. (Id. sec. 13.)

Art. 3078g. Same subject; contest to have precedence; appeals, etc.—The said contest shall have precedence in said court over all causes pending therein, and upon final disposition thereof an appeal may be taken by either party as in other civil cases; and such appeal or writ of error or motion for rehearing shall have precedence over all other causes pending in the appellate courts to which the appeal or writ of error is taken, except such cases as may be entitled to precedence over said cause by virtue of some provision of the constitution of this state. Upon final judgement [judgment] in said appellate court, it shall be the duty of said appellate court to enter a decree ordering and directing the secretary of state to declare the true result of said election as judicially determined and ascertained by said court, and the secretary of state shall make his tabulations, canvassings and certificates of the results of such election in accordance with the final judgement [judgment] of said court, and said amendment shall be adopted or rejected in accordance with the final result of said election as finally determined by the judgement [judgment] of said court. (Id. sec. 14.)

Art. 3078h. Same subject; result final, etc.—The result of said contest shall finally settle all questions relating to the validity of said election, and it shall not be permissible to again call the legality of said election in question in any other suit or proceeding, and if no contest of said election is filed and prosecuted in the manner and within the time herein provided for, it shall be conclusively presumed that said election as held and the result thereof as declared are in all respects valid and binding upon all courts, provided, that pending such contest the enforcement of all laws in relation to the subject matter of such contest shall not be suspended, but shall remain in full force and effect, and all laws and parts of laws in conflict herewith are hereby repealed. (Id. sec. 15.)

CHAPTER NINE

MISCELLANEOUS PROVISIONS

Art. 3079. (1806) (1755) County commissioners shall act, when.—Whenever, by this title, any duty is devolved upon a county judge, and that office is vacant, or such officer from any cause fails to perform such duty, any two or more of the county commissioners of the county may perform such duty; and it shall be the duty of said commissioners to perform such duty in such case. (Act Feb. 11, 1850. P. D. 3625.)

Art. 3080. (1808) (1757) County judge shall certify death of certain officers to secretary of state.—When any state or district officer, member of congress, member of the legislature or notary public, shall depart this life, the county judge of the county where such death occurs or of the county where such officer resided, shall immediately certify the fact of the death of such officer to the secretary of state. (Act March 6, 1863. P. D. 3604.)

Art. 3081. (1810) (1759) Provisions of title apply to all elections, except, etc.—The provisions of this title shall apply to all elections held in this state, except as otherwise herein provided. (Acts 1905, S. S., p. 520, sec. 93.)

Art. 3082. (1810a) Persons not eligible to hold office.—No person shall be eligible to any State, County, precinct or municipal office in the State of Texas unless he shall be eligible to hold office under the Constitution of this State, and unless he shall have resided in this State for the period of twelve months and six months in the county, precinct, or municipality, in which he offers himself as a candidate, next preceding any general or special election and shall have been an actual bona fide citizen of said county, precinct, or municipality for more than six months. Providing further, that no person ineligible to hold office shall ever have his name placed upon the ballot or ticket at any general or special election, or at any primary election where candidates are selected under primary election laws of this State; and no such ineligible candidate shall ever be voted upon, nor have votes counted for him, at any such general, special, or primary election. (Acts 1895, p. 81; Acts 1919, ch. 13, sec. 1.)

Art. 3083. (1810b) Certificate of election shall not issue unless.—There shall not be issued by the Secretary of State, or by any county judge of the State, or any other authority authorized to issue such certificates, any certificates of election or appointment to any person elected or appointed to any office in this State, who is not eligible to hold such office under the Constitution of this State and under the above Article of the Statutes of this State; and the name of an ineligible person, under the Constitution and laws of this State, shall not be certified by any party, committee or any authority authorized to have the names of candidates placed upon the primary ballots at any primary election in this State; and the name of any ineligible candidate under the Constitution and laws of this State shall not be placed upon the ballot of any general or special election by any authority whose duty it is to place names of candidates upon official ballots. (Id. Acts 1919, ch. 13, sec. 1; Acts 1919, 2d C. S., ch. 40, sec. 1.)

Art. 3083a. Writs of injunction, etc., to enforce preceding articles, etc.—The district court shall have authority to issue writs of injunction and all other necessary process at the suit of any interested party, or of any voter, to enforce the provisions of the above two articles and to protect thereunder the rights of all parties and the public; for such purpose, jurisdiction and authority is conferred upon all district courts of this State and all cases filed hereunder shall have first right of precedence upon trial and appeal. (Acts 1919, ch. 13, sec. 1.)

CHAPTER TEN

NOMINATIONS—BY PRIMARY ELECTIONS AND OTHERWISE

1. NOMINATIONS BY PARTIES OF ONE HUNDRED THOUSAND VOTES AND OVER

Art. 3084. Candidates of parties of 100,000 votes and over to be nominated by primary election.—On primary election day in 1912, and every two years thereafter, candidates for governor and for all other state offices to be chosen by a vote of the entire state, and candidates for congress and all district offices to be chosen by the vote of any district comprising more than one county, to be nominated by each organized political party that cast one hundred thousand votes or more at the last general election, shall, together with all candidates for offices to be filled by the voters of a county, or of a portion of a county, be nominated in primary elections by the qualified voters of such party. (Acts 1905, S. S., p. 549, sec. 117.)

Art. 3085. Primary election defined.—The term, "primary election," as used in this chapter, means an election held by the members of an organized political party for the purpose of nominating the candidates of such party to be voted for at a general or special election, or to nominate the county executive officers of a party. (Id. sec. 102.)

Art. 3086. General primary election day; second primary; special primaries; city, etc., primaries.—The fourth Saturday in July, 1918, and every two years thereafter shall be general primary election day, and primary elections to nominate candidates for a general election shall be held on no other day, except when specially authorized. No person shall be declared the nominee of any political party, at any primary election for any State or District office unless he has complied with every requirement of this Chapter and all other laws applicable to primary and other elections, and has received a majority of all the votes cast at such primary elections, for all candidates for such office. If at the general primary election for any political party, no candidate becomes the nominee for any State or District office under this Article, a second primary election shall be held by such political party, in the State or such District, or Districts, as the case may be, on the Fourth Saturday in August succeeding such general primary election, and only the name of the two candidates who received the highest number of votes for any office for which nomination was made at the general election shall be placed on the official ballot, as candidates for such office at such second primary. The second primary election shall be conducted according to the law prescribed for conducting the general primary election, and the candidates receiving a majority of all votes cast for the office to which they aspire shall be declared the nominee for their respective offices. Any political party may hold a second primary election on the fourth Saturday in August to nominate candidates for any county or precinct office, where a majority vote is required to make nomination; but at such second primary, only the two candidates who received the highest number of votes at the general primary for the same office shall have their names placed upon the official ballot. Nominations of candidates to be voted for at any special election shall be made at a primary election at such time as the party executive committee shall determine, but no such committee shall ever have the power to make such nominations; provided that all precincts in the same county and all counties in the same district shall vote on the same day. Nominations of party candidates for offices to be filled in a city or town shall be made not less than ten days prior to the city or town election at which they are to be chosen, in such manner as the party executive committee for such city or town shall direct, and all laws prescribing the method for conducting county primary elections shall apply to them. (Id., sec. 105; Acts 1918, 4th C. S., ch. 90, sec. 1.)

Art. 3087. Places of holding primaries.—The places of holding primary elections of political parties in the various precincts of the state shall not be within one hundred yards of the place at which such elections or conventions are held by a different political party. When the chairman of the executive committees of the different parties can not agree on the places where precinct primary elections to be held on the same day shall be held, such places in each precinct shall be designated by the county judge, who shall cause public notice thereof to be given at once in some newspaper in the county, or if there be none, by posting notices in some public place in the precinct. (Acts 1905, S. S., p. 549, sec. 122.)

Art. 3088. Polls, primary, hours for opening and closing, etc.—The polls at primary elections shall be open at eight o'clock in the morning and closed at seven o'clock in the evening of the same day, and the election shall be held for one day only. (Id. sec. 125.)

Art. 3089. Officers, etc., of primary election; appointment and qualifications.—All the precinct primary elections of a party shall be conducted by a presiding judge, to be appointed by a chairman of the county executive committee of the party, with the assistance and approval of at least a majority of the members of the county executive committee. Such presiding judge shall select an associate judge and two clerks to assist in conducting the election; two supervisors may be chosen by any one-fourth of the party candidates, who, with the judges and clerks, shall take the oath required of such officers in general elections. Two additional clerks may be appointed, but only when, in the opinion of the presiding judge, there will be more than one hundred votes polled at the primary election in the precinct. No one shall serve as judge, clerk or supervisor at a primary election, unless he has paid his poll tax. (Id. sec. 123.)

Art. 3090. Judges of primary election, powers and duties.—Judges of primary elections have the authority, and it shall be their duty, to administer oaths, to preserve order at the election, to appoint special officers to enforce the observance of order and to make arrests, as judges of general elections are authorized and required to do. Such judges and officers shall compel the observance of the law that prohibits loitering or electioneering within one hundred feet of the entrance of the polling place, and shall arrest, or cause to be arrested, anyone en-

gaged in the work of conveying voters to the polls in carriages or other mode of conveyance, except as permitted by this title. (Id. secs. 134 and 104.)

Art. 3091. Majority or plurality vote, question of determined how; second election.—The county executive committee shall decide whether the nomination of county officers shall be by majority or plurality vote, and, if by majority vote, the committee shall call as many such elections as may be necessary to make such nomination, and, in case the committee fails to so decide, then the nomination of all such officers shall be by a plurality of the votes cast at such election. (Acts 1905, S. S., p. 546, sec. 111.)

Art. 3092. Majority or plurality vote, question of determined how.—The county executive committee may determine whether the nomination of county officers shall be by a majority or plurality vote in such county, and, if by a majority vote, then the committee may call as many such elections as may be necessary to make such nomination. (Id. sec. 117.)

Art. 3093. Qualifications for voting; poll tax.—No one shall vote in any primary election or convention, unless he is a citizen of the United States and has paid his poll tax or obtained his certificate of exemption from its payment, in cases where such certificate is required, before the first of February next preceding, which fact must be ascertained by the officers conducting the primary election by an inspection of the certified lists of qualified voters of the precinct, and of the poll tax receipts or certificates of exemption; nor shall he vote in any primary election except in the voting precinct of his residence; provided, that if this receipt or certificate be lost or misplaced, or inadvertently left at home, that fact must be sworn to by the party offering to vote; and provided, further, that the requirements as to presentation of the poll tax receipt, certificate of exemption or affidavit shall apply only to cities of ten thousand population or over as shown by the last United States census; provided, that the executive committee of any party for any county may prescribe additional qualifications for voters in such primaries, not inconsistent with this title.

This Act shall not be held or construed to repeal or in any way limit or restrict the right of women to vote in primary elections or conventions given them by any law enacted at the 4th Called Session of the 35th Legislature.

All laws or parts of laws in conflict herewith are repealed. (Id. sec. 103; Acts 1918, 4th C. S., ch. 60, sec. 1.)

Art. 3094. Expenses of primary election how met.—At the meeting of the county executive committee provided for in article 3106, the county committee shall also carefully estimate the cost of printing the official ballots, renting polling places where same may be found necessary, providing and distributing all necessary poll books, blank stationery and voting booths required, compensation of election officers and clerks and messengers, to report the result in each precinct to the county chairman, as provided for herein, and all other necessary expenses of holding such primaries in such counties, and shall apportion such cost among the various candidates for nomination for county and precinct offices only as herein defined, and offices to be filled by the voters of such county, or precinct only, (candidates for state offices excepted), in such manner as in their judgment is just and equitable, giving due consideration to the importance and emoluments of each such office for which a nomination is to be made, and shall, by resolution, direct the chairman to immediately mail to each person whose name has been requested to be placed on the official ballot a statement of the amount of such expenses so apportioned to him, with the request that he pay the same to the county chairman on or before the fourth Monday in June thereafter. (Acts 1905, S. S. p. 546, sec. 111.)

Art. 3095. Ballot, official, at primaries, form, etc., of, and manner of voting.—The vote at all general primaries shall be by official ballot, which shall have printed at the head the name of the party, and under such head the names of all candidates, those for each nomination being arranged in the order determined by the various committees as herein provided for, beneath the title of the office for which the nomination is sought. The voter shall erase or mark out all the names he does not wish to vote for. The official ballot shall be printed in black ink upon white paper, and beneath the name of each candidate thereof for state and district offices, there shall be printed the county of his residence. The official ballot shall be printed by the county committee in each county, which shall furnish to the presiding officer of the general primary for each voting precinct at least one and one-half times as many of such official ballots as there are poll taxes paid for such precinct, as shown by the tax collector's list. Where two or more candidates are to be nominated for the same office, to be voted for by the qualified voters of the same district, county or justice precinct, such candidates shall be voted for and nominations made separately, and all nominations shall be separately designated on the official ballots by numbering the same, "1," "2," "3," etc., printing the abbreviation "No.," and the designating number after the title of the office for which such nominations are to be made. Each candidate for such nominations shall designate in the announcement of his candidacy and in his request to have his name placed on the official ballot, the number of the nomination for which he desires to become a candidate, and the names of all candidates so requesting shall have their names printed beneath title of the office and the number so designated. Each voter shall vote for only one candidate for each such nomination. (Id. sec. 107.)

Art. 3096. Ballot, primary, no symbol, etc., on, except, etc., ballot without test not counted, etc.—No official ballot for primary election shall have on it any symbol or device or any printed matter, except a primary test, to be uniform throughout the state, which shall read as follows: "I am a ——— (inserting the name of the political party or organization of which the voter is a member) and pledge myself to support the nominees of this primary;" and any ballot which shall not contain such test printed above the names of the candidates thereon, shall be void and shall not be counted. Such ballot shall also

contain the names and residences of the candidates.

Art. 3097. Ballot, primary or general, no symbol, etc., on, etc.; referendum on U. S. senator.—No official ballot, either for a primary or general election, shall have on it any symbol or device or any printed matter, except that which is authorized by law; and no ballot cast in violation of this article shall be counted for any candidate. Provided, that the executive committee of the party for any county shall print on the primary ticket the names of all persons whose names, not less than thirty days prior to the day of the primary, shall be requested to be printed thereon as candidates for United States senator; and the executive committee shall forward to each nominee of the party for state senator and representative voted for by the voters of such county, a certified statement of the vote cast in the county for each such candidate. (Id. sec. 124.)

Art. 3098. Ballot, primary, candidate for state office, placed on, how.—Any person affiliating with any party who desires his name to appear on the official ballot for a general primary, as a candidate for the nomination of such party for any state office, shall file with the state chairman not later than the first Monday in June preceding such primary, his written request that his name be placed upon such official ballot as a candidate for the nomination named therein, giving his age and occupation, the county of his residence and his postoffice address, which shall be signed by him and acknowledged by him before some officer. Any twenty-five qualified voters may likewise join in the request that the name of any person affiliating with such party be placed upon the official ballot as a candidate for any state nomination, giving the occupation, county of residence and postoffice address of such person signing and acknowledging the same as above provided, and may file the same with the state chairman on, or prior to, the date above mentioned, with the same effect as if such request had been filed by the party named therein as a candidate for such nomination. All such requests shall be considered filed with the state chairman when they are sent from any point in this state by registered mail, addressed to the state chairman at his postoffice address. (Id. sec. 108.)

Art. 3099. State executive committee to meet when and certify names of candidates in primary to county chairman.—On the second Monday in June preceding each general primary, the state committee shall meet at some place to be designated by its chairman, of which designation it shall be the duty of such chairman to notify by mail all members of said committee, and all persons whose names have been requested to be placed upon the official ballot, not less than three days prior to such meeting. Such committee at this meeting shall, by resolution, direct their chairman to certify to each county chairman in the state the names of such candidates and county of residence of each as shown by the requests filed with the state chairman. Copies of such certificates shall be immediately furnished to each newspaper in the state desiring to publish the same, and one copy shall be immediately mailed to the chairman of the executive committee of each county. (Id. sec. 109.)

Art. 3100. Ballot, primary, candidate for district office placed on how; certification.—Any person desiring his name to appear on the official ballot as a candidate for the nomination for chief justice or associate justice of the court of civil appeals, or for representative in congress, or for state senator, or for representative, or district judge, or district attorney, in representative or judicial districts composed of more than one county, shall file with the chairman of the executive committee of the party for the district, the request prescribed in this chapter, with reference to the candidate for state nominations, or, if there be no chairman of such district executive committee, then with the chairman of each county composing such district, not later than the first Monday in June preceding the general primary. Such requests may likewise be filed not later than said date by any twenty-five qualified voters resident within such district, signed and acknowledged by such voters in the manner prescribed respecting such request signed by a candidate named therein. Immediately after said date it shall be the duty of each such district chairman to certify the names of all persons for whom such requests have been filed to the county chairman of each county composing such district; and each county committee shall determine by lot the order in which the names of all candidates for each such district office shall be printed upon the official ballot. (Id. sec. 110.)

Art. 3101. Ballot, primary, candidate for county, etc., office placed on, how.—Any person desiring his name to appear on the official ballot for the general primary, as a candidate for the nomination for any office to be filled by the qualified voters of a county, or a portion thereof, or for county chairman, shall file with the county chairman of the county of his residence, not later than the Saturday before the third Monday in June preceding such primary, a written request for his name to be printed on such official ballot as a candidate for the nomination or position named therein, giving his occupation and postoffice address, giving the street and number of his residence, if within a city or town, such request to be signed and acknowledged by him before some officer authorized to take acknowledgment to deeds. Such request similarly signed and acknowledged by any twenty-five qualified voters resident in the county may be filed on or before said date, requesting that the name of any person named therein may be placed on the official ballot as a candidate for any county or precinct office or chairmanship, with like effect as if such request was filed by the person named as a candidate therein; which request shall be endorsed by the candidate named therein, showing his consent to such candidacy, if nominated. (Id. sec. 111.)

Art. 3102. Candidates before primary, certificates of presented to county committee by chairman.—At the meeting of the county executive committee provided for in article 3106, the county chairman shall present to the committee the certificates of the chairman of the state and the various district executive committees, showing the names

of all persons whose names are to appear on the official ballot as candidates for state and district offices. (Id. sec. 111.)

Art. 3103. Primary committee; appointment; to make up official ballot.—The county chairman shall appoint, subject to the approval of the committee, a subcommittee of five members to be known as the primary committee, of which he shall be ex officio chairman, which subcommittee shall meet on the second Monday in July and make up the official ballot for such general primary in such county, in accordance with the certificates of the state and district chairman, and the requests filed with the county chairman and placing [place] the name of candidates for nomination for state, district, county and precinct officers thereon in the order determined by the county executive committee as herein provided. (Id. sec. 111.)

Art. 3104. No candidate placed on ballot who has not paid pro rata expenses.—The name of no person shall be placed on the ballot for a county or precinct office who has not paid to the county executive committee the amount of the estimated expenses of holding such primary, apportioned to him by the county executive committee, as hereinbefore provided. No candidate for a state or district office, unless such district is composed of one county only, shall be required to pay any portion of such cost, unless the executive committee of the county shall so direct; but in no event shall more than one dollar apiece be assessed against any such candidate for a state or district office, unless such district is composed of one county only. (Id. sec. 111.)

Art. 3105. Order of names on ballot, determined how, and when.—It shall be the duty of the various county committees of any political party, on the day and date set apart by this chapter for arranging for primary elections, to determine the order in which the names of the various candidates for state or district or county and precinct offices shall appear on the ticket, and said order shall be determined by lot, so no preference shall be given to any candidate. (Id. sec. 113.)

Art. 3106. Order of names on ballot determined how, and when.—On the third Monday in June preceding such general primary, the county executive committee of each county shall meet at the county seat and determine by lot the order in which the names of all candidates for each nomination or position requested to be printed on the official ballot shall be printed thereon. (Id. sec. 111.)

Art. 3107. County executive committees, county, and precinct chairmen, elected at primary, etc.—There shall be, for each political party required by this law to hold primary elections for nomination of its candidates, a county executive committee, to be composed of one member from each voting or justice precinct in such county, as the party executive committee may direct, the members of which county executive committee as well as the county chairman and a precinct chairman for each voting or justice precinct, as the case may be, shall be elected by the qualified voters of the county on primary election day; provided, that, in case of a vacancy occurring in the office of chairman, county or precinct, or any member of such committee, such vacancy shall be filled by a majority vote of said executive committee. (Acts 1905, S. S., p. 544. Acts 1907, p. 331, sec. 106.)

Art. 3108. County chairman, voted for; member of district committee, etc., term.—On primary election day, when candidates for state, district, county and precinct offices are nominated, the voters of each organized political party shall vote for a chairman of the county executive committee, and the result shall be reported to the county clerk, and the county chairman thus elected shall at once enter upon the discharge of the duties of such position; the said county chairman shall be ex officio a member of the executive committee of all districts of which his county is a part; and the district committee thus formed shall elect its own chairman. (Acts 1905, S. S., p. 551, sec. 121.)

Art. 3109. Chairman, county or precinct, where no candidates for, blanks.—If there are no requests filed for candidates for county or precinct chairman, a blank space shall be left on the ticket beneath the designation of such position. (Id. sec. 111.)

Art. 3110. Referendum on platform demands, and submission of same, upon.—Any political party in this state, in convention assembled, shall never place in the platform or resolutions of the party they represent any demand for specific legislation on any subject, unless the demand for such specific legislation shall have been submitted to a direct vote of the people, and shall have been endorsed by a majority vote of all the votes cast in the primary election of such party; provided, that the state executive committee shall, on petition of ten per cent of the voters of any party, as shown by the last primary election vote, submit any such question or questions to the voters at the general primary next preceding the state convention. (Acts 1907, p. 328, sec. 120.)

Art. 3111. Referendum instruction of delegates by, method, etc.—Whenever delegates are to be selected by any political party to any state or county convention, by primary election or primary convention, or candidates are instructed or nominated, it shall be the duty of the chairman of the county or precinct executive committee of said political party, upon the application of ten per cent of the members of said party, who are legally qualified voters in said county or precinct, to submit, at the time and place of selecting said delegates, any proposition desired to be voted upon by said voters; and the delegates selected at that time shall be considered instructed for whichever proposition for which a majority of the votes are cast; provided, that the number of voters belonging to said political party shall be determined by the votes cast for the party nominee for governor at the preceding election; and provided, further, that said application is filed with the county or precinct chairman at least five days before the tickets are to be printed, and the chairman may require a sworn statement that the names of said applicants are genuine. (Acts 1905, S. S., p. 556, sec. 140.)

Art. 3112. Supplies, executive committee to supervise and distribute.—The executive committee shall have general supervision of the primary in such county, and

shall be charged with the full responsibility for the distribution of all supplies necessary for holding same in each precinct, to the presiding judge thereof. (Id. sec. 123.)

Art. 3113. If presiding officer fail to obtain supplies, to whom delivered.—If the duly appointed presiding officer shall fail to obtain from the executive committee the supplies for holding such election, such committee shall deliver the same to the precinct chairman for such precinct, and, if unable to deliver the same to such presiding officer or precinct chairman not less than twenty-four hours prior to the time of opening the polls for such primary, such committee shall deliver the same to any qualified voter of the party residing in such precinct, taking his receipt therefor and appointing him to hold such election in case such presiding officer or precinct chairman shall fail to appear at the time prescribed for opening the polls. (Id. sec. 123.)

Art. 3114. Booths, etc., for general election, used for primary.—The voting booths, ballot boxes and guard rails, prepared for a general election, may be used by the organized political party nominating by primary election that cast over one hundred thousand votes at the last preceding general election. (Id. sec. 128.)

Art. 3115. Safeguards against fraud; list of voters; stamping, etc.—To guard against fraud, a certified list and supplemental list of the qualified voters of the voting precinct, furnished by the collector of taxes, shall be in the possession of the officers conducting the primary election for reference and comparison, and opposite the name of every voter on said list shall be stamped, when his vote is cast, with a rubber or wooden stamp, or written with pen and ink the words, "primary—voted," with the date of such primary under the same. (Id. sec. 104.)

Art. 3116. List of voters furnished, to be used in primary, etc.—The county tax collector shall deliver to the chairman of the county executive committee of each political party, for its use in primary elections, at least five days before election day, certified lists of the qualified voters of each precinct in the county, arranged alphabetically and by precincts, who have paid their poll tax or received certificates of exemption; and it shall be the duty of such chairman to place the same in the hands of the election officers of each election precinct before the polls are open; and no primary election shall be legal, unless such list is obtained and used for reference during the election. For each list of all the qualified voters of the county who have paid their poll taxes and received their certificates of exemption, the collector shall be permitted to charge not more than five dollars, the same to be paid by the party or its chairman so ordering said lists; provided, that the charge of five dollars shall be in full for the certified lists of all the voters of the county arranged by precincts, as above provided. (Id. sec. 129.)

Art. 3117. Same subject.—It shall be the duty of the tax collector of each county, upon application by the county chairman of the various political parties, to furnish to the presiding judges of the election in the several precincts certified copies of the list of qualified voters of the several precincts, which said copies shall be furnished at least four days prior to said primary election. (Id. sec. 104.)

Art. 3118. Precaution to secure purity of ballot.—The same precautions required by law to secure the purity of the ballot box in general elections, in regard to the ballot boxes, locking the ballot boxes, sealing the same, watchful care of them, the secrecy in preparing the ballot in the booth or places prepared for voting shall be observed in all primary elections. (Id. sec. 135.)

Art. 3119. Ballots, others, furnished where mutilated, etc.—No more than three ballots in succession shall be furnished a voter who mutilates or otherwise spoils his ballot; and the judges may, as in general election, require a voter, before he receives an official ballot, to surrender to them any ballot or paper on which is written or printed any names for which the voter has agreed to vote or been requested to vote. (Id. sec. 138.)

Art. 3120. Intoxicating liquors, sale of prohibited; officers not to partake.—The law prohibiting the sale of intoxicating liquor on election day applies to primary elections with all its prohibitions; and the officers of primary elections shall not, on primary election day, partake of spirituous, vinous, malt or intoxicating liquors after the polls are open. (Id. sec. 127.)

Art. 3121. Returns of primary elections, ballot boxes, etc.—Returns shall be made within four days to the chairman of the executive committee by the precinct judges, of the ballot boxes containing the ballots voted, locked and sealed, tally sheets, return sheets, ballots mutilated and defaced, and ballots not voted, for which he shall account to the executive committee of the county. (Id. sec. 136.)

Art. 3122. Returns to county chairman; canvass by executive committee, when.—All returns of precinct primary elections, properly signed and certified as correct by the judges and clerks thereof, showing the vote cast for each candidate, shall be sealed and immediately delivered, after such primary election, to the chairman of the county executive committee of the party. Such party chairman shall give notice to the members of the county executive committee to assemble at the county seat of the county on the first Saturday after the first primary election; and said returns shall then be opened under the direction of such executive committee and canvassed by them. (Id. sec. 131.)

Art. 3123. Canvass of result of primary election by county executive committee, when.—All county executive committees of organized political parties shall meet the first Saturday after each primary election to canvass the result of such election (Id. sec. 112.)

Art. 3124. Tie in primary election, as to county or precinct office, determined by lot, etc.—If, on counting the vote in a primary election, it shall appear that, for a county or precinct office, the largest vote has been cast for two candidates for the same office, and that they have each received the same number of votes, the chairman of the executive committee shall, in the presence of the executive committee or the county con-

vention, as the case may be, cast lots for the nomination in such manner as they may direct and in the presence of rival candidates, if they desire to be present, and declare and certify the result of that candidate who is successful by lot. (Id. sec. 133.)

Art. 3125. List of nominees made by committee, and certified by chairman to county clerk.—The county executive committee shall make a list of the candidates who have received the highest vote for office, and the chairman of the executive committee shall certify to the same and deliver it to the county clerk of the county. (Id. sec. 131.)

Art. 3126. County chairman to prepare statement of vote, etc., mail to state and district chairman, presented to committees.—The chairman of the executive committee in each county shall, as soon as the vote cast in the primary election has been counted and canvassed as herein provided for, prepare a tabulated statement of the votes cast in his county for each candidate for each nomination for a state, district, county or precinct office, and of that cast for county chairman, as shown by the canvass made by the county executive committee, and shall immediately mail such statement as to a state or district office, in a sealed envelope by registered letter, to the chairman of the state executive committee, and district executive committee, respectively, who shall present the same to the state and district committee at its meeting to be held as herein provided. (Id. sec. 117.)

Art. 3127. Nominees for state, etc., offices, published and certified, to whom.—As to candidates for governor, or for an office to be filled by all the voters of the state, or of any district composed of more than one county, the chairman of the county executive committee and its secretary shall certify the number of votes cast for each of such candidates, and cause the same to be published in some newspaper of the county, if there be one, and deliver his certificate of the vote cast for each candidate for such office to the president of the next state convention of the party in the manner required in this title, and certify the vote cast for each district office to the chairman of the district committee. (Id. sec. 131.)

Art. 3128. Ballots accounted for.—All ballots given to the election judges of the precinct by the executive chairman, or some member of the executive committee, shall be used and accounted for as in general elections. (Id. sec. 130.)

Art. 3129. Boxes, and ballots, disposition of.—Ballot boxes after being used in primary elections shall be returned with the ballots cast, or contained in each box as they were deposited by the election judges, locked and sealed, to the county clerk, and, unless there be a contest for a nomination in which fraud or illegality is charged, they shall be unlocked and unsealed by the county clerk and their contents destroyed by the county clerk and the county judge without examination of any ballot, at the expiration of sixty days after such primary election. (Id. sec. 143.)

Art. 3130. County clerk to publish, etc., nominees.—The county clerk shall cause the names of the candidates who have received the necessary vote to nominate, as directed by the county executive committee, for each office, to be printed in some newspaper published in the county, and, if no newspaper be published in a county, then he shall post a list of such names in at least five public places in the county, one of which shall be upon the door of the court house in said county. (Id. sec. 131.)

Art. 3131. Objections to nomination to be made within five days.—All objections to the regularity or validity of the nomination of any person, whose name appears in said list, shall be made within five days after such printing or posting, by a notice in writing filed with the county clerk, setting forth the grounds of objections. In case no such objection is filed within the time prescribed, the regularity or validity of the nomination of no person whose name is so printed or posted, shall be thereafter contested. (Id. sec. 131.)

Art. 3132. Names printed on ballot, when and how.—After said names have been so printed or posted for the period above required, the said clerk shall cause said names to be printed on the official ballot in the column for the ticket of that party. (Id. sec. 131.)

Art. 3133. County clerk to post names of candidates ten days before printing on ballot, etc.—It shall be the duty of the county clerk of each county to post in a conspicuous place in his office, for the inspection and information of the public, the names of all candidates that have been lawfully certified to him to be printed on the official ballot, for at least ten days before he orders the same to be printed on said ballot; and he shall order all the names of the candidates so certified printed on the official ballot as otherwise provided in this title. (Id. sec. 132.)

Art. 3134. County conventions; and precinct conventions.—On the first Saturday after primary election day for 1912, and each two years thereafter, there shall be held in each county a county convention of each party, to be composed of one delegate from each precinct in such county for each twenty-five votes, or a major fraction thereof, cast for the party's candidate for governor at the last preceding election, which delegates shall be elected by the voters of each precinct on primary election day, in such manner as may be prescribed by the county executive committee at their meeting on the second Monday in June, which convention shall elect one delegate to the state and several district conventions for each three hundred votes, or a major fraction thereof, cast for the party's candidate for governor in such county at the last preceding general election; and the delegates to the said conventions so elected, or such of them as may attend the said conventions, shall cast the vote of the county in such conventions. Immediately upon the adjournment of each such county convention, the president thereof shall make out a certified list of the delegates to each of said conventions chosen by such county convention and shall sign the same, the secretary of such convention attesting his signature, and shall forward such certified list by sealed registered letter to the chairman of the state and district executive committees, who shall present the same to the respective committees at its meeting prior

to the convention; and, from such certified list, the respective committees shall prepare a temporary roll of those selected as delegates to such convention; provided, that no proxies shall be allowed to, or recognized in, any convention held by authority of this title, where a delegate from the county is present in the convention. (Id. sec. 115.)

Art. 3135. County convention may be held at time for meeting of executive committee.—Nothing in this chapter shall prevent the holding of the county convention at the time named in article 3122, for the meeting of the executive committee for the purpose of counting and declaring the result; but the chairman of the executive committee shall certify the result as required by this chapter. (Id. sec. 131.)

Art. 3136. District conventions; notice; report by executive committee; canvass of votes at primary; certification; single candidate; duty of county clerk.—On the fourth Saturday in August succeeding each general primary, there shall be held in each district within the State in which any candidate or candidates for any district office are to be elected at the succeeding general election, a district convention, which shall be composed of delegates from the county or counties composing such district, selected in the manner herein provided; notice of the time and place of holding such convention shall be given by the executive committee of such district at least ten days prior to such meeting. Before such convention assembles, the executive committee of such district shall meet and elect a chairman of such committee, shall prepare a list of the delegates from the various counties composing such district which have been certified to the district committee by the chairman of the various county committees, shall tabulate the vote cast in the various counties for each candidate for district office, which has been certified to such committee as provided in this chapter and shall also prepare a statement, showing the number of convention votes which each county in such district is entitled to cast in said convention upon the basis set forth in Article 3142, and shall present such list of delegates, tabulated vote and convention vote to the convention when it assembles. The district convention shall then canvass the returns of the votes cast in all of the counties of the district for each candidate as presented to them by the district committee, and shall declare the person found to have received the largest number of votes at the primary in the district for such office the nominee of the party for such office; and the chairman and the secretary of the convention shall forthwith certify such nomination to the Secretary of State, who shall certify all district nominations to the various county clerks. But, in the event there is only one name on the ballot for a district office without an opponent, the district chairman shall, as soon as practicable after the primary election, certify that the person on the ballot is the nominee of the party and that there shall be no convention held for the purpose of declaring the result; provided further that it shall be the duty of the county clerk of each county of this state to certify to the Secretary of State on or before the fourth Saturday in August succeeding any general primary the total vote cast in his county for each and every district officer, and in the event no district convention be held as herein provided for, the Secretary of State shall ascertain from the returns so certified who has received the largest vote for such office, and shall certify such fact to each county clerk in such district not later than October 1st of such year. (Acts 1905, S. S., p. 547; Acts 1907, p. 329; Acts 1915, ch. 16, sec. 1.)

Art. 3137. Place for state convention, fixed how.—At the meeting of the state executive committee held on the second Monday in June preceding each general primary election, the said committee shall decide upon and publish the place where the state convention of the party shall be held on the second Tuesday in August thereafter. (Acts 1905, S. S., p. 545, sec. 109.)

Art. 3138. State executive committee to canvass returns as to nominations for state offices; statement of vote; list of delegates elected to state conventions.—On the third Monday after the fourth Saturday in July, 1918, and every two years thereafter the State Executive Committee shall meet at a place selected at the meeting held on the second Monday in June preceding, and shall open and canvass the returns of the primary elections held on the fourth Saturday in July as to candidates for State offices, as certified by various county chairmen and shall prepare a tabulated statement showing the number of votes received by each such candidate in each county, which statement shall be approved by the State committee and certified by its chairman. If such returns show that for any State office no candidate received a majority of all the votes cast for all candidates for such office, such committee shall prepare a list of the two candidates receiving the highest vote for each office for which no candidate received a majority of votes cast at such primary for such office and shall certify same to the county chairman of the several counties to be placed upon the official ballot as candidates for office at the second primary election to be held on the fourth Saturday in August thereafter. On the second Monday after the fourth Saturday in August, 1918, and every two years thereafter, the State Executive Committee shall meet at the place selected for the meeting of the State convention and shall open and canvass the returns of the second primary election held to nominate candidates for State offices as certified by the various county chairmen to the State Chairman, and shall prepare a tabulated statement showing the number of votes received by each such candidate in each county, which statement shall be approved by the State Committee and certified by its chairman. At this meeting the State Committee shall also prepare a complete list of the delegates elected to the State conventions from each county, as certified to the State Chairman by each County Chairman. The State Chairman shall present said tabulated statement and said list of delegates to the chairman of the State Convention immediately after its temporary organization on the following day, for its approval or disapproval. (Id. sec. 119; Acts 1918, 4th C. S., ch. 90, sec. 2.)

Art. 3139. State convention to canvass vote for candidates for state offices; declaration of result; certificate to Secretary of State.—The State Convention shall canvass the vote cast in the entire State for each candidate for each State office as shown by the statement thereof presented to it by the State Committee, and shall declare the candidates for each State office who has received a majority of votes cast for all candidates for such office in the first primary election, if any candidate receives a majority of all the votes cast for all the candidates for such office at said primary election, and if no candidate received such majority, then it shall declare the candidate who received a majority of all votes cast for such office at the second primary election, the nominee of the party for such office; and the chairman and the secretary of the State Convention shall forthwith certify all such nominations to the Secretary of State. (Acts 1905, 2 S. S., p. 4. Acts 1905, S. S., p. 550. Acts 1907, p. 329, sec. 120; Acts 1918, 4th C. S., ch. 90, sec. 2.)

Art. 3140. Party state conventions; time of meeting; further duties.—All party State Conventions to announce a platform of principles and announce nominations for Governor and State offices shall, except as otherwise provided, meet at such places as may be determined by the parties respectively on the Tuesday after the second Monday after the fourth Saturday in August, 1918, and every two years thereafter and they shall remain in session from day to day until all nominations are announced and the work of the convention is finished. Provided, that said convention shall, among other things, elect a chairman of the Executive Committee and thirty-one members thereof, one from each senatorial district of the State, the members of said committee to be those persons who shall be recommended by the delegates representing the counties composing the senatorial districts respectively, each county voting its convention strength, each of whom shall hold said office until his successor is elected; and, in case of a vacancy, a majority of the members of said committee shall fill the same by electing some eligible person thereto. (Acts 1905, S. S., p. 549, sec. 116; Acts 1918, 4th C. S., ch. 90, sec. 2.)

Art. 3141. Every certificate of nomination to state what.—Every certificate of nomination made by the president of the state convention, or by the chairman of any executive committee, must state when, where, by whom, and how the nomination was made. (Acts 1905, S. S., p. 549, sec. 118.)

Art. 3142. Convention vote of each county, in state or district convention.—Each county in the state or district convention shall be entitled to one vote for each five hundred votes, or major fraction thereof, cast for the candidate for governor of the political party holding the convention at the last preceding primary election. In case, at such primary election, there were cast for such candidate for governor less than five hundred votes in any county, then all such counties shall have one vote. (Acts 1907, p. 329, sec. 120.)

Art. 3143. Mandamus to compel performance of duties.—Any executive committee or committeeman or primary election officer, or other person herein charged with any duty relative to the holding of the primary election, or the canvassing, determination or declaration of the result thereof, may be compelled by mandamus to perform the same in accordance with the provisions of this title. (Acts 1905, S. S., p. 557, sec. 142.)

Art. 3144. Errors and violations of law, immaterial, not to vitiate election, etc.—No immaterial error made by any officer of a primary election, or any immaterial violation of the primary election laws by an elector shall vitiate any election held under this title, nor be the cause of throwing out the vote of any election precinct. (Id. sec. 137.)

Art. 3145. Expenses of candidates, statement of.—Within ten days after a primary and also after a final election, all candidates for office at such election shall file a written itemized statement, under oath, with the county judge of the county of their residence, of all the expenses incurred during the canvass for the office, and for the nomination, including amounts paid to newspapers, hotel and traveling expenses, and such statement shall be sworn to and filed, whether the candidate was elected or defeated, which shall at all times be subject to inspection of the public. (Id. sec. 90.)

Art. 3146. Expenses of manager of political headquarters, etc., statement of required, etc.—Every person who manages any political headquarters for any political party, or for any candidate before any election, and every clerk or agent of such manager for such headquarters or candidate, and every other person whomsoever who expends money, gives any property or thing of value, or promises to use influence, or give a future reward to promote or defeat the election of any candidate, or to promote or defeat the success of any political party at any election, shall, within ten days after such election, file with the county judge of the county in which the political headquarters was located, and with the county judge of the county where such manager, clerk, or other person, as the case may be, reside, an itemized statement of all moneys or things of value thus given or promised, for what purpose, by whom supplied, in what amount and how expended, and what reward was given or promised, by whom and to whom, and what influence was promised, by whom promised and to whom said promise was given. He shall also state whether he had been informed, or has reason to believe, that the person thus aiding or attempting to defeat a party or candidate was an officer, stockholder, agent or employé of, or was acting for or in the interest of, any corporation, giving his name, and, if so, of what corporation; and he shall if he has no positive knowledge, state the source of his information or the reasons for his belief, as the case may be; all of which shall be sworn to and subscribed before the county judge, who shall file and preserve the same, which shall at all times be subject to inspection of the public. (Id. sec. 89.)

Art. 3147. Contests of primary elections, decided by executive committees or district court.—In all contests for a primary election or nomination of a convention, based on charges of fraud or illegality in the method of conducting the elections, or fraud or illegality in selecting the delegates to the

convention, or in certifying to the convention, or in nominating candidates in state, district, county, precinct or municipal conventions, or in issuing certificates of nomination from such conventions, the same shall be decided by the executive committee of the state, district, or county, as the nature of the office may require, each executive committee having control, in its own jurisdiction, or by the district court, or judge of said court in vacation, of the district where the contestee resides, said executive committee and the district courts having concurrent jurisdiction. (Acts 1909, 2 S. S., p. 452, sec. 141.)

Art. 3148. Place for hearing contests of primary elections by committee.—In all contests between candidates for state office, the committee shall hold its hearing in the city of Austin, Travis county, unless some other place is agreed upon by the parties; and in all contests between candidates for any district, county, municipal or precinct office, the committee may hold its hearing, at its election, either in the county of the residence of the contestee or in any county where the fraud or illegality complained of is alleged to have occurred, or at such other place as the parties may agree upon. (Id. sec. 141.)

Art. 3149. Contest before executive committee; procedure, etc.—The complaining candidate, if he desires to file a contest with the executive committee, shall, within five days after the result has been declared by the committee or convention, cause a notice to be served on the chairman or some member of the executive committee, in which he shall state specifically the ground of his contest; also shall serve, or cause to be served, on the opposing candidate a copy of such notice, at least five days prior to the date set for hearing by the committee. If special charges of fraud or illegality in the conduct of the election, or in the manner of holding the convention, or in the manner of making nominations, are made, and not otherwise, the chairman, or, in case he fails or refuses, any member of the committee, shall within twenty days after the primary election, or the convention, convene the executive committee, who shall then examine the charges, hear evidence and decide in favor of the party who in their opinion was nominated in the primary election, or in the convention; provided, that, before any advantage can be taken of the disregard or violation of any directory provision of the law, it must appear that, but for such disregard or violation, the result would have been different. (Id. sec. 141.)

Art. 3150. Ballot boxes may be opened by committee, when.—The executive committee may, if in its opinion the ends of justice require it, unlock and unseal the ballot boxes used in the precinct where fraud or illegality is charged to have been used, and examine their contents, after which they shall be sealed and delivered to the county clerk. (Id. sec. 141.)

Art. 3151. Certificate and printing name on ballot, on decision by committee, unless appeal.—When the committee has decided the contest, unless notice of appeal to the district court is given, the executive chairman shall certify its findings to the officers charged with the duty of providing the official ballot; and the name of the candidate in whose favor the executive committee shall find shall be printed on the official ballot for the general election. (Id. sec. 141.)

Art. 3152. Same, where such appeal not perfected.—In case such appeal is not perfected in the manner and time as herein provided, the chairman of the executive committee trying such contest shall certify the name of the party held by the executive committee to have been nominated to the proper office, to be placed on the official ballot. (Id. sec. 141.)

Art. 3153. Appeal from executive committee to district court; procedure.—Where contests are originally filed with the executive committee, either party shall have the right to appeal from the final decision of the executive committee to the district court having jurisdiction; and said contest shall there be tried de novo by said court. The party taking such appeal shall, within three days from final decision of the executive committee, file written notice of such appeal with the chairman or secretary of such executive committee. Upon the filing of such notice of appeal, the secretary of said executive committee shall prepare a certificate showing that such contest had been tried and determined by such executive committee, the decision of such committee, and that notice of appeal had been given, and shall file same, together with all papers filed in such contest, in the district court, or with the district judge, in vacation, of the district having jurisdiction of such appeal, within ten days after the decision of the executive committee is rendered; and the filing of such certificate and papers in said court, or with said judge in vacation, shall be held to perfect such appeal. And if for any cause the secretary of said executive committee shall fail or refuse to file said certificate and other papers pertaining to such appeal, in the district court of such district, or with the judge of said district, within ten days after such decision has been rendered by said committee, then in such event the contestant may prepare a brief statement of the action of said committee in such contest, and perfect his appeal by filing same with said district court, or with the judge of said district, within fifteen days after such decision by the executive committee. (Id. sec. 141.)

Art. 3154. Review of certificates of nomination by district court; procedure.—In state, district, county, precinct or municipal offices, the certificate of nomination issued by the president or chairman of the nominating convention, or chairman of the county executive committee, shall be subject to review, upon allegations of fraud or illegality, by the district court of the county in which the contestee resides, or the judge of said court in vacation; provided, that such allegations are filed in said court within ten days after the issuance of said certificate; and when said allegations are so filed, or the appeal from the decision of the executive committee is perfected, the judge of the district court shall set same down for hearing, either in term time or vacation, at the earliest practical time; and a copy of said grounds of contest, together with the notice of the date set for said hearing, shall be prepared and issued by the clerk of the district

court and be served upon the contestee five days before the hearing before said court or judge, and the parties to said contest shall have the right to summon witnesses. (Id. sec. 141.)

Art. 3155. Ballot boxes may be opened by court, when; disposition of.—The court or judge may, if in his opinion the ends of justice require it, unlock and unseal the ballot boxes used in the precinct where fraud or illegality is charged to have been used, and examine their contents, after which they shall be sealed and delivered to the county clerk. (Id. sec. 141.)

Art. 3156. Judgment of court final in what cases.—The said court or judge shall determine said contest; and the decision of said court or judge shall be final as to all district, county, precinct, or municipal offices. (Id. sec. 141.)

Art. 3157. Certifying judgment, and printing names on ballot.—A certified copy of the judgment of said court or judge shall be transmitted by the clerk thereof to the officers charged with the duty of providing the official ballot, and the name of the candidate in whose favor said judgment shall be rendered shall be printed in the official ballot for the general election. (Id. sec. 141.)

Art. 3158. Appeal to court of civil appeals in what cases; advanced.—In all contests for state offices before the district court, exercising either its original or appellate jurisdiction, either party may appeal to the court of civil appeals, and such appeal shall be advanced on the docket of said appellate court and have precedence of all other cases. (Id. sec. 141.)

2. NOMINATIONS BY PARTIES OF TEN THOUSAND AND LESS THAN ONE HUNDRED THOUSAND VOTES

Art. 3159. May nominate, how.—Each political party, whose nominee for governor in the last preceding general election received as many as ten thousand and less than one hundred thousand votes, may nominate candidates for state, district and county offices under the provisions of this law by primary election, and they may nominate candidates for state offices at a state convention, which shall be held the second Tuesday in August, and which shall be composed of delegates elected in the various counties and county conventions held on the first Saturday after primary election day, which shall be composed of delegates from the general election precinct in such counties elected therein at primary conventions, held in such precincts on the fourth Saturday in July. (Acts 1905, S. S., p. 542, sec. 99.)

Art. 3160. Nominations of such parties, state committee to determine mode.—The state committee of all such parties shall meet at some place in the state to be designated by the chairman thereof on the second Tuesday in May, and shall decide, and by resolution declare, whether they will nominate state, district and county officers by convention or by primary elections, and shall certify their decision to the secretary of state. (Id. sec. 99.)

Arts. 3161. Nominations of such parties for district offices.—Nominations for district offices made by such parties shall be made by conventions held on the same days as herein prescribed for district conventions of other parties, composed of delegates elected thereto at county conventions held on the same day herein prescribed for such county conventions of other parties, all of which county conventions shall nominate candidates for county offices of such party of such county. (Id. sec. 99.)

Art. 3162. Nominations of such parties to be certified by whom.—All nominations so made by a state or district convention shall be certified by the chairman of the state or district committee of such party to the secretary of state, and a nomination made by a county convention, by the chairman of the county committee. (Id. sec. 99.)

Art. 3163. Poll tax requirement in such primary convention.—No person shall be allowed to vote or participate in any such primary convention, unless he shall have first produced evidence that he has paid his poll tax or is exempt; and no person shall be allowed to participate in any such convention who has participated in the convention or primary of any other party held on the same day. (Id. sec. 99.)

3. NON-PARTISAN AND INDEPENDENT CANDIDATES

Art. 3164. Non-partisan and independent candidates' names placed on ballot, how.—The name of a non-partisan or independent candidate may be printed on the official ballot in the column for independent candidates, after a written application signed by qualified voters addressed to the secretary of state and delivered to him within thirty days after primary election day as follows: If for a state office to be voted for throughout the state, one per cent of the entire vote of the state cast at the last preceding general election; if for a congressional, supreme judicial, senatorial, representative, flotorial or judicial district office, three per cent of the entire vote cast in any such district at the last preceding general election; provided, that the number of signatures need not exceed five hundred for any congressional, senatorial or judicial office, nor for any other office that is not filled by all the voters of the state. (Id. sec. 94.)

Art. 3165. Same subject.—No application to the secretary of state shall contain the name of more than one candidate, and no citizen shall sign such application, unless he has paid his poll tax or received his certificate of exemption; provided, that, if the office is one to which two or more persons are to be elected, his application may be for as many candidates as there are persons to be elected to that office; and provided, also, that no person who has voted at a primary election shall sign an application in favor of any one for an office for which a nomination was made at such primary election. (Id. sec. 95.)

Art. 3166. Same subject.—To every citizen who signs such application, shall be administered the following oath, which shall be reduced to writing and attached to such application, viz.: "I know the contents of the foregoing application; I have participated in no primary election which has nominated a candidate for the office for which I desire (here insert the name) to be a candidate; I am a qualified voter at the next general elec-

tion under the constitution and laws in force, and have signed the above application of my own free will." One certificate of the officer before whom the oath is taken may be so made as to apply to all to whom it was administered. (Id. sec. 96.)

Art. 3167. Same subject.—The secretary of state shall, on the receipt of the application which conforms to the above requirements, issue his instruction to the county clerks of this state, or of the district, as the case may require, directing that the name of the citizen, in whose favor the application is made, shall be printed on the official ballot in the independent column under the title of the office for which he is a candidate; provided, that the citizen, in whose favor the application is made, shall first file his written consent with the secretary of state to become a candidate, within thirty days after primary election day. (Id. sec. 97.)

Art. 3168. Same subject, in county, city or town elections.—Independent candidates for office at a county, city or town election may have their names printed upon the official ballot on application to the county judge, if for a county office, or to the mayor, if for a city or town office, such application being in the same form and subject to the same requirements herein prescribed for applications to be made to the secretary of state in case of state or district independent nomination; provided, that a petition of five per cent of the entire vote cast in such county, city or town at the last general election shall be required for such nomination. (Id. sec. 98.)

4. LOCAL NOMINATIONS OF PARTIES HAVING NO STATE ORGANIZATION

Art. 3169. Nominations, local, of parties having no state organization.—Any political party, not having a state organization, but desiring to nominate candidates for county and precinct offices only, may nominate such candidates therefor under the provisions of this title, by primary elections or by a county convention held on the legal primary election day, as herein defined, which county convention shall be composed of delegates from various election precincts in said county, elected therein at primary conventions held in such precincts between the hours of eight a. m. and ten p. m. of the preceding Saturday. All nominations made by any such parties shall be certified to the county clerk by the chairman of the county committee of such party, and, after taking the same course as nominations of other parties certified to the clerk, shall be printed on the official ballot in a separate column, headed by the name of the party; provided, a written application for such printing shall have been made to the county judge, signed and sworn to by three per cent of the entire vote cast in such county at the last general election. (Id. sec. 100.)

5. PARTY NOMINATIONS FOR CITY AND TOWN ELECTIONS

Art. 3170. Cities and towns; elections; nominations for, how made; executive committee; powers and duties of committee, etc.—Each and every incorporated city or town in the state of Texas, whether incorporated under the general or special laws, may make nominations for office in the following manner: In each of said cities and towns there shall be an executive committee for each political party, consisting of a city chairman and one member for each ward in such city or town, and in case such city or town is not divided into wards, for either political or election purposes, then there shall be selected four members of said committee, in addition to the city chairman. If any city or town shall be divided into wards, for either political or election purposes, or both, then such party executive committee shall consist of one member from each ward and a city chairman of such executive committee. Provided, however, that no city or town in this state shall have a smaller number than four executive committeemen and a chairman of such executive committee. In all cities and towns which now have no executive committee, the county chairman of the party desiring to make nominations in such cities and towns shall appoint an executive committee to serve until the next city election shall be held, and in each city and town in this state in which a political party may desire to make nominations, there shall be held, at least thirty days prior to the regular city election, an election at which there may be nominated by such political party, officers to be elected at the next city election, and at which election there shall be selected the executive committee for such party in said city and town herein provided for, and in all such city primary elections, the provisions of the law relating to primary elections and general elections shall be observed. The executive committee herein provided for may decide whether or not nominations shall be made by such political party in such city or town; provided, that upon petition being made to said city or county chairman, signed by twenty-five per cent of the voters of the party in such city, as shown by the last general state election, requesting that party nominations be made for city officers, then said city executive committee, through an order of its chairman, shall order a primary election or mass convention of the qualified voters of the party, as may be petitioned for by the voters presenting said petition, and it shall thereupon be the duty of said city executive committee to grant such request as shall be contained in such petition, and such primary election or mass convention shall be ordered, and it shall be mandatory upon such city or county chairman to order such election or mass convention to be held within ten days from the time such petition is presented. At such primary election or mass convention a new executive committee shall be selected to serve during the ensuing term; provided that this Act shall not be construed so as to prevent independent candidates for city offices from having their names upon the official ballot, as provided for in section 99 of this Act [Arts. 3159–3163]. Provided, further, that this Act shall not repeal the provisions of any charter heretofore or hereafter specially granted to any city in this state. (Acts 1911, p. 18, sec. 2, amending Acts 1905, p. 552, sec. 128a and superseding Arts. 3170, 3171, Rev. St. 1911.)

Art. 3171. [Superseded. See Art. 3170.]

6. MISCELLANEOUS PROVISIONS

Art. 3172. Nomination declined, how; vacancy how filled, etc.; posters used when, etc.—A nominee may decline and annul his nomination by delivering to the officer with whom the certificate of his nomination is filed, ten days before the election, if it be for a city office, and twenty days in other cases, a declaration in writing, signed by him before some officer authorized to take acknowledgments. Upon such declination (or in case of death of a nominee), the executive committee of a party, or a majority of them for the state, district or county, as the office to be nominated may require, may nominate a candidate to supply the vacancy by filing with the secretary of state in the case of state or district officers, or with the county judge in the case of county or precinct officers, a certificate duly signed and acknowledged by them, setting forth the cause of the vacancy, the name of the new nominee, the office for which he was nominated, and when and how he was nominated. (Acts 1905, S. S., p. 542, sec. 50.)

Art. 3173. No executive committee to nominate, except.—No executive committee shall ever have any power of nomination, except where a nominee has died or declined the nomination as provided in article 3172. (Id. sec. 118.)

Art. 3174. Parties, new, etc., name of, regulated.—No new political party shall assume the name of any pre-existing party; and the party name printed on the official ballot shall not consist of more than three words. (Id. sec. 101.)

CHAPTER TEN A

ELECTION OF UNITED STATES SENATORS BY DIRECT VOTE

Art. 3174a. Election of United States senators; time of holding; qualification of voters.—An election for the election of a senator from Texas to the congress of the United States shall be held on the first Tuesday after the first Monday in November of each and every year immediately preceding the 4th day of March when the term of any United States senator from the state of Texas to the congress of the United States is to expire. That at such election no person shall be qualified to vote for any candidate for United States senator unless he is a qualified elector in any election held to elect members of the most numerous branch of the legislature of this state. (Acts 1913, S. S., p. 101, sec. 1.)

Art. 3174b. Filling vacancy; calling election; temporary appointment by governor.—When any vacancy happens or occurs in the representation of this state in the United States senate, the governor of this state shall within ten days issue writs of election to fill such vacancy, which election shall be held not less than sixty days nor more than ninety days after such vacancy occurs.

Provided if the congress or senate is in session at the time of such vacancy or should convene before such election or before the result of the same can be officially ascertained under the law, the governor shall make temporary appointment of a suitable and qualified person to represent the state in the United States senate, until the election and qualification of a senator can be made. (Id. sec. 2.)

Art. 3174c. Application of primary laws; returns.—Every law regulating or in any manner governing elections or the holding of primaries in this state shall be held to apply to each and every election or nomination of a candidate for a United States senator so long as they are not in conflict with the constitution of the United States or of any law or statute enacted by the congress of the United States regulating the election of United States senators or the provisions of this Act.

The returns from any election held for United States senator shall be made, the result ascertained and declared, a certificate of election issued, as is provided for the election of representatives in congress, by chapter 7, title 49, Revised Civil Statutes of 1911. (Id. sec. 3.)

Art. 3174d. Candidates must be nominated how.—The name of no candidate for United States senator shall be placed upon the official ballot of any party or of any organization as the nominee of said party or organization for said office unless said candidate has been duly nominated and selected as herein provided. (Id. sec. 4.)

Art. 3174e. Nominations by parties at primary election.—Each and every party desiring to nominate a candidate for United States senator shall, if such election is to be held on the first Tuesday after the first Monday in November of any year, nominate or select such candidate or candidates for United States senator at a general primary election to be held throughout the state on the 4th Saturday in July next preceding such election for United States senator. (Id. sec. 5.)

Art. 3174f. Application of general election laws; violations of election laws.—At each and every primary election held in this state for the nomination of a candidate for United States senator, each and every provision of the laws of this state which has for its object the protection of the ballot and the safe guarding of the public against fraudulent voting, illegal methods, undue influence, corrupt practices, and in fact each and every restriction of whatever kind or character or nature as applied to any election held in this state whether general, special or primary shall be held to apply to a primary election held for or when a candidate for United States senator is to be nominated when not in conflict with the provisions of this Act. And the violation of any such provisions or restrictions at any such primary election shall be punished in the same manner as prescribed by law for the violation of any election law whether general, special or primary. (Id. sec. 6.)

Art. 3174g. Application of general election laws as to matters not embraced in this Act.—When the law with reference to holding senatorial primaries is silent the election officers in securing supplies, in conducting the election and in making returns and in canvassing the votes shall in every particular follow the methods provided by law covering primary elections or general elections held for the purpose of electing or

nominating state, district, county, and precinct offices. (Id. sec. 7.)

Art. 3174h. Written request for insertion of names of candidates on primary ballot.—Any person affiliating with any political party who desires his name to appear on the general official primary ballot of said party as a candidate for the nomination of such party for United States senator shall file with the state chairman of said party not later than the first Monday in June preceding such general primary his written request that his name shall be placed on the official ballot of said party as a candidate at the aforesaid general primary for the nomination as a candidate for United States senator before the party with which he affiliates. (Id. sec. 8.)

Art. 3174i. Application of candidate to state chairman of party; contents; requisites of application; request by voters; acceptance by nominee; filing.—Any person who is thirty years of age or over, and who has been for nine years a citizen of the United States and is a bona fide inhabitant of the state who desires his name to appear on the official ballot at any primary election as a candidate for the nomination of said party as a candidate for United States senator shall address his application to the state chairman of the party with which he affiliates and shall set forth in said application: (1) That he is a candidate for the nomination of his party as a candidate for United States senator. (2) His age. (3) His occupation. (4) The county of his residence. (5) His post office address. (6) That he is a member in good faith of the political party upon whose ballot he wishes his name to appear and that if he voted at the preceding election he voted for the nominees of said party. (7) That he will, during his term of office, if elected, endeavor to truly respect the wishes of his constituency and to abide by and support such measures as may be endorsed by the primary voters of his party in this state as declared by their vote at a primary election.

Said application to be signed by the candidate and properly acknowledged before some person authorized to take acknowledgments. And also twenty-five (25) qualified voters may likewise join in a request that the name of any person affiliating with such party be placed upon the official ballot as a candidate for United States Senator, giving the occupation, county of residence and post office address of such person, signing and acknowledging same as above provided, and may file the same with the state chairman on or prior to the date above mentioned with the same effect as if such request had been filed by the party named therein as a candidate for such nomination. All petitions or requests filed by twenty-five voters, as provided herein, shall be endorsed by the person, in whose favor the request is made, showing his willingness to qualify for the position, if elected. All requests, whether made by the candidate or by petition, shall be considered filed with the state chairman when they are sent from any point within the United States by registered mail, on or before the date mentioned, addressed to the state chairman at his post office address. (Id. sec. 9.)

Art. 3174j. Compliance with requirements; majority vote; second primary election; time of holding.—No person shall be declared the nominee of any political party for United States senator unless he has complied with every requirement of this Act and all other laws applicable hereto and has received a majority of all the votes cast at said primary election for all the candidates of that party for United States senator. If at the first primary election no candidate receives a majority of the vote polled by his party for all the candidates for United States senator before said party, the state executive committee or state chairman thereof shall call a second primary election for the purpose of determining the choice of the party as between the two candidates receiving the largest number of votes at the first primary election. Said second primary shall be held on the 4th Saturday in August, immediately after the first primary is held. At such second primary, only the two candidates in each party receiving the highest votes shall be voted upon. (Id. sec. 10.)

Art. 3174k. Election expenses; limitation of amount; contest; second primary.—No person shall be entitled to a position on the official ballot at any general or special election held to select a United States senator, who shall have spent in the campaign preceding the nomination, more than $5000. or who shall have failed or refused to comply with any provision of the law regulating the collection and disbursement of funds preceding election. Should the nomination of any candidate for United States senator be contested, the same shall be conducted under the provision of the law regulating contests before party election committees or the courts for state offices.

Provided that where there is a second primary, each candidate for United States senator may expend in his own behalf, under the regulations prescribed by this Act, an additional $1000.00. (Id. sec. 11.)

Art. 3174*l*. Provisions applicable to both special and general elections.—The following provisions shall be held to apply to all primaries and elections for United States senator whether special or general. (Id. sec. 12.)

Art. 3174m. Disbursements contrary to law.—No person shall receive or accept any money, property or other thing of value, or any promise or pledge thereof, constituting a disbursement made for political purposes contrary to law. (Id. sec. 13.)

Art. 3174n. Want of knowledge of character of disbursements no defense.—In any prosecution for the violation of this provision it shall be a defense if the accused person shall prove that he had neither knowledge that such disbursements constituted a disbursement made for political purposes contrary to law nor any reasonable cause to believe that it constituted such disbursement. (Id. sec. 14.)

Art. 3174nn. Disbursements through agents or others prohibited; filing authorization.—No candidate for United States senator shall make any disbursement for political purposes except under his personal direction, which for every purpose shall be considered his act, through a party committee, or through a personal committee, whose authority to act shall be filed, as provided by this Act. (Id. sec. 15.)

Art. 3174o. Personal campaign committee; filing written authorization to make disbursements; secretary of committee; revocation of authority; filling vacancy; presumptions.—Any candidate for United States senator may select a personal campaign committee to consist of one or more persons, but before any personal campaign committee shall make any disbursement in behalf of any candidate, or shall incur any obligation, express or implied, to make any disbursement in his behalf, it shall file with the secretary of state a written statement, signed by such candidate for United States senator setting forth that such personal campaign committee has been appointed and giving the name and address of each member thereof, and the name and address of the secretary thereof. If such campaign committee consists of only one person, such person shall be deemed the secretary thereof. Any candidate for United States senator may revoke the selection of any member of such personal campaign committee by a revocation in writing which, with proof of personal service on the member whose selection is so revoked, shall be filed with the officer with whom the appointment was filed. Such candidate may fill the vacancy thus created in the manner in which an original appointment is made. The acts of every member of such personal campaign committee will be presumed to be with the knowledge and approval of the candidate until it has been clearly proved that the candidate did not have knowledge of and approved the same, and that in the exercise of reasonable care and diligence, he could not have had knowledge of or any opportunity to disapprove the same. (Id. sec. 16.)

Art. 3174oo. Disbursements by persons other than candidates and their authorized committees prohibited; exceptions.—No person or group of persons, other than a candidate or his personal campaign committee or a party committee, shall in an election for a United States senator or nomination of a candidate for United States senator make any disbursement for political purposes otherwise than through a personal campaign committee or a party committee, except that expenses incurred for rent of hall or other room for public speaking, for printing, for postage, for advertising, for distributing printed matter, for clerical assistance and for hotel and traveling expenses solely in connection with a public speaking engagement, may be contributed and paid by a person or group of persons residing within the county where such expenses are incurred, but not otherwise. (Id. sec. 17.)

Art. 3174p. Disbursements by candidates; what authorized and what prohibited.—No candidate for the nomination or election for United States senator shall make any disbursements for political purposes except:

(1) For his personal hotel and traveling expenses and for postage, telegraph and telephone expenses.

(2) For payments which he may make to the state pursuant to law.

(3) For contributions to his duly registered campaign committee.

(4) For contribution to his party committee.

(5) For other purposes enumerated by law when such candidate has no personal campaign committee, but not otherwise.

(6) After the primary, no candidate for United States senator for election shall make any disbursement in behalf of his candidacy, except contributions to his party committee, for his own actual necessary personal traveling expenses, and for postage, telegraph and telephone expenses. (Id. sec. 18.)

Art. 3174pp. Disbursements by party or personal committee; what authorized and what prohibited.—No party committee nor personal campaign committee shall make any disbursements except:

(1) For maintenance of headquarters and for hall rentals, incident to the holding of public meetings.

(2) For necessary stationery, postage and clerical assistance to be employed for the candidate at his headquarters or at the headquarters of the personal campaign committee, or party committee incident to the writing, addressing and mailing of letters and campaign literature.

(3) For necessary expenses incident to the furnishing and printing of badges, banners and other insignia, to the printing and posting of hand bills, posters, lithographs and other campaign literature and the distribution thereof through the mails or otherwise.

(4) For campaign advertising in newspapers, periodicals or magazines, as provided by law.

(5) For actual and necessary personal expenses of public speaking.

(6) For traveling expenses of members of party committees or personal campaign committees. Nothing herein shall be construed as authorizing the employment on a salary or any other reward, any campaign manager, booster or political organizer. (Id. sec. 19.)

Art. 3174q. Rendition of bills for disbursements; time for; payment of bills not presented within time prohibited.—Every person who shall have any bill, charge or claim upon or against any personal campaign committee, any party committee or any candidate for United States senator for any disbursement made, services rendered, or thing of value furnished, for political purposes or incurred in any manner in relation to any primary or election for United States senator, shall render in writing to such committee or candidate, such bill, charge or claim within ten days after the day of election or primary in connection with which such bill, charge or claim was incurred. No candidate for United States senator and no personal campaign or party committee shall pay any bill, charge or claim so incurred prior to any primary or election which is not so presented within ten days after such primary or election. (Id. sec. 20.)

Art. 3174qq. Filing statement of disbursements; contents of statement; final statement.—Every candidate for United States senator and the secretary of every party committee shall on the second Saturday occurring after such candidate for United States senator or committee has first made a disbursement or first incurred any obligation, express or implied, to make a disbursement for political purposes, and thereafter, on the second Saturday of each calendar month, until all disbursements shall have

been accounted for, and also on the Saturday preceding any election or primary, file a financial statement verified upon the oath of such candidate for United States senator or upon the oath of the secretary of such committee, as the case may be, which statement shall cover all transactions not accounted for and reported upon in statements theretofore filed. Each statement after the first shall contain a summary of all preceding statements, and summarize all items theretofore reported under the provisions of each subdivision of this Act in a separate total, and shall state the sum and total of all disbursements up to date of the report. On or before the second Saturday after the election, a final statement shall be filed by said candidate for United States senator and the secretary of every personal campaign committee, and the secretary of every party committee, which said statement shall include all former statements and be as full and complete as that required for the statements required to be made on the last Saturday before the election and required by this Act. (Id. sec. 21.)

Art. 3174r. Statements filed with county clerk and secretary of state.—The statement of every candidate for United States senator and the statement of his personal campaign committee shall be filed with the county clerk of the county where such candidate resides and with the secretary of state. (Id. sec. 22.)

Art. 3174rr. Contents of statements.—Each statement shall give in full detail:

(1) Every sum of money and all property, and every other thing of value received by such candidate or committee during such period from any source whatsoever which he uses or has used, or is at liberty to use for political purposes, together with the name of every person from which same was received, the specific purposes for which it was received, and the date when each was received, together with the total amount received from all sources in any amounts or manner whatsoever.

(2) Every promise or pledge of money, property or other thing of value received by such candidate or committee during such period, the proceeds of which he uses or has used or is at liberty to use for political purposes, together with the names of the person by whom each was promised or pledged, and the date when each was so promised or pledged together with the total amounts promised or pledged from all sources in any amount or manner whatsoever.

(3) Every disbursement made by such candidate or committee for political purposes during such period, together with the name of every person to whom the disbursement is made, the specific purpose for which each was made, and the date when each was made, together with the total amount of disbursements made in any amounts or manner whatsoever.

(4) Every obligation, express or implied, to make any disbursement incurred by such candidate or committee for political purposes during such period, together with the names of the person or persons to or with whom each such obligation has been incurred, the specific purpose for which each was made, and the date when each was incurred, together with the total amount of such obligations made in any amounts or manner whatsoever. (Id. sec. 23.)

Art. 3174s. Persons receiving payments to file statements with secretary of state; penalty for violation.—Each and every person who shall receive any payment directly or indirectly, for political purposes in a campaign before a primary or a general election for United States senator whether as salary or as expenses, shall within thirty days after such payment has been made, or such payment has been promised, make a sworn statement showing in detail said payment or promised payments, by who made, what services were rendered for same. This statement shall be filed with the secretary of state. Any person who comes within the provisions of this section and fails to make the statements herein, shall upon conviction be confined in the county jail for not less than ten nor more than thirty days. (Id. sec. 24.)

Art. 3174ss. Blanks for statements; distribution.—Blanks for all statements required by law shall be prepared by the secretary of state and copies thereof, together with a copy of this Act, shall be furnished by the secretary of state to the secretary of every personal campaign committee and to the secretary of every party committee, and to every candidate for United States senator upon the filing of nomination papers, and all other persons required by law to file such statements who may apply therefor. (Id. sec. 25.)

Art. 3174t. Name of candidate not to be printed on ballot if statements not filed.—The name of no candidate for United States senator chosen at a primary election or otherwise, shall be printed on the official ballot for the ensuing election, unless there has been filed by or on behalf of said candidate and by his personal campaign committee, if any, the statements of accounts and expenses relating to the nominations of candidates for United States senator required by this Act. (Id. sec. 26.)

Art. 3174tt. Persons other than candidates or committees to file statements of disbursements; contents of statement.—Every person other than a candidate or a personal campaign committee or party committee, who shall within any twelve months before or after any election for United States senator make any disbursements for any political purposes relating to the election or nomination of a candidate for United States senator exceeding in the aggregate, twenty-five ($25) dollars in amount and value, shall file within forty-eight hours after making any disbursements, causing the aggregate of such disbursements to reach such amount, a sworn statement thereof with the clerk of the county wherein he resides. (2) Such statements shall give in full detail, with date, every item of money, property, or other thing of value constituting any part of such disbursement, the exact means by which and the manner in which each such disbursement is made, and the name and address of every person to whom each was made, and the specific purpose for which each was made. (Id. sec. 27.)

Art. 3174u. Limitation of amount of disbursements; proviso.—No disbursement shall be made and no obligation, express or implied, to make such disbursement or pay-

ment, shall be incurred by or on behalf of any candidate for the nomination for United States senator which shall be in the aggregate in excess of $5,000.00, and $1,000.00 additional when a second primary is necessary. Provided that the expenditures allowed in section 17 [Art. 3174oo] shall not be included in estimating the $5,000.00, or the additional $1,000.00 for the second primary. (Id. sec. 28).

Art. 3174uu. Delegation of authority to make disbursements; limitation on amount.—Any candidate for United States senator may delegate to his personal campaign committee, or to any party committee or his party, in writing duly subscribed by him, the expenditure of any portion of the total disbursements which are authorized to be incurred by him or on his behalf, by the provisions of this Act, but the total of all disbursements, by himself, by his personal campaign committee in his behalf, by all party committees in his behalf, or otherwise made in his behalf, shall not exceed in the aggregate the amounts in this section, except as provided by law. Provided that the expenditures allowed in section 17 [Art. 3174oo] hereof shall not be included in estimating the total amount. (Id. sec. 29.)

For sections 30 and 31 of this act see post, Penal Code, arts. 295v, 295w.

Art. 3174v. Violation of act; penalty; disqualification to hold office; name not to be placed on official ballot.—Any candidate for United States senators who shall fail to do and perform any of the things or acts required of him under the provision of this Act relating to the disbursement or collection of money or anything of value for political purposes shall upon conviction be confined in the county jail for not less than thirty nor more than one hundred days, and in addition thereto, may be fined not less than two hundred, nor more than five hundred dollars, nor shall he be entitled to hold the office for which he may be elected, or if nominated, his name shall not be placed upon the official ballot for the ensuing election. (Id. sec. 32.)

Art. 3174vv. Same subject.—If any candidate for United States senator shall do any of the things or acts forbidden by the provisions of this Act with reference to the disbursement or collection of money, or anything or things of value, for political purposes as defined by this Act, he shall upon conviction, be confined in the county jail not less than thirty nor more than one hundred days, and in addition thereto may be fined in any sum not less than two hundred, nor more than five hundred dollars, nor shall he be entitled to hold the office for which he may be elected, or if nominated, his name shall not be placed upon the official ballot for the ensuing election. (Id. sec. 33.)

Art. 3174w. Officers at primary elections; compensation.—At each and every primary held for the nomination of a candidate for United States senator, the election shall be conducted by the duly appointed and constituted election officers of the several polling places and voting precincts throughout the state who shall be paid as provided by law for holding elections in other cases. (Id. sec. 34.)

Art. 3174ww. Qualifications of voters at primary; challenge; affidavit as to affiliation.—At each and every primary held for the purpose of nominating a candidate for United States senator no person not a qualified elector to vote for United States senator under the constitution of the United States shall be permitted to vote and no person shall vote for any candidate for the nomination for United States senator who does not belong to the same political party with which the voter affiliates and when any voter attempts to vote for any person as a candidate for the nomination for United States senator, and is challenged, he shall, before being permitted to vote, make an affidavit that he is a bona fide member of said party and if he voted in the preceding general election held for the election of state officials, he voted for the nominees of the party whose ticket he desires to vote. Upon making such an affidavit he shall be permitted to vote. (Id. sec. 35.)

Art. 3174x. Any other candidate may have his name placed on ballot by petition; application of general laws.—Any person who has not been defeated at the primary election preceding the general or special election for United States senators, desiring to have his name appear upon the official ballot at any general election as a candidate for United States senator who is not the nominee of any political party or political organization may do so only upon presenting a petition to the secretary of state signed by at least ten per cent of the qualified voters in the state of Texas as measured by the total vote for governor at the preceding general election. Said petitioner shall conform in every particular to the requirements of the laws of this state with reference to placing the name of any candidate, other than the nominee of any party upon the official ballot, provided, further, that in no case shall the name of any person be placed upon the official ballot at any general election as a candidate for United States senator as the nominee of any party unless he has been nominated under the provisions of this Act and has complied with every provision of the laws of this state with reference to the nomination of candidates for United States senators. (Id. sec. 36.)

Art. 3174xx. Placing names on ballot when primary not held; application; contents; requisites; instructions to county clerks.—Any person desiring to have his name appear upon the official ballot as a candidate for United States senator at any special election held for the purpose of filling a vacancy in the United States senate, when no party primary is held, may do so by presenting his application to the secretary of state which shall set forth (1) that he is a candidate for United States senator. (2) His age. (3) His occupation. (4) The county of his residence. (5) His post office address, (6) that he is a member in good faith of the political party upon whose ballot he wishes his name to appear that if a voter at the preceding election he voted for the nominees of said party, (7) that he will during the term of his office, if elected, endeavor to truly respect the wishes of his constituency and to abide by and support such measures

as may be endorsed by the primary voters of his party in this state, and that he will use all honorable means at his command to secure the appointment for such applicants for positions in the federal service as receive a majority of the votes at any primary held by the members of his party to determine their wishes with reference thereto. Said application to be signed by the candidate and properly acknowledged before some person authorized to take acknowledgments. The secretary of state shall upon receipt of the application which conforms to the above requirements, issue his instruction to the county clerks of this state directing that the name of the applicant shall be printed on the official ballot in the column under the title of the office for which he is a candidate. (Id. sec. 37.)

Art. 3174y. Placing names on ballot for special primary; written request; requisites; filing with state chairman of party; instructions to county committees; canvass of returns; second primary.—Any candidate who desires his name to appear on the official ballot for a special primary as a candidate for the nomination of such party for the office of United States senator shall file with the state chairman of his party, not later than fifteen (15) days prior to the date of such primary, his written request that his name be placed upon such official ballot as a candidate for the nomination of United States senator, giving his age and occupation, the county of his residence and post office address, which shall be signed by him and acknowledged by him before some officer, and also twenty-five (25) qualified voters may likewise join in a request that the name of any person affiliating with such party be placed upon the official ballot as a candidate for United States senator, giving the occupation, county of residence and post office address of such person, signing and acknowledging same as above provided, and may file the same with the state chairman within the time above mentioned with the same effect as if such request had been filed by the party named therein as a candidate for such nomination. And the chairman and secretary of the state committee shall forthwith cause to be mailed to the chairman and secretary of every county committee of the party in the state the name of such candidate for United States senator, with instructions that it be placed on the official ballot of such county. All requests shall be considered filed with the state chairman when they are sent from any point within the United States by registered mail, or by telegraph, addressed to the state chairman at his post office address. On the first Saturday following such special primary election, the county executive committee of each county in the state, shall meet and canvass the returns of such election, and shall immediately thereafter certify by its chairman and secretary the result of said election and forward same to the state chairman. The state executive committee shall meet at a time not later than fifteen (15) days after the date of said special primary and canvass and tabulate the returns of said election as certified by the county chairman, and the candidate receiving the majority of the number of votes cast at such primary shall be the nominee of the party for such office; and the state chairman shall order the name of such candidate placed upon the official ballot of said party. Provided, however, if at the first primary election no candidate receives a majority of the votes polled by his party for all the candidates for United States senator before said party, the state executive committee or state chairman thereof shall call a second primary election for the purpose of determining the choice of the party as between the two candidates receiving the largest number of votes at the first primary election. Said second primary shall be held on the third Saturday following the first primary, and at such second primary, only the two candidates in each party receiving the two highest votes shall be voted upon. (Id. sec. 38.)

Art. 3174z. Two senators to be elected; designation of term desired.—When there are two senators to be elected from Texas to the congress of the United States, each candidate offering his name for election shall designate in his application for a position on the ticket whether in a general or special election or primary, whether he is a candidate for the short term or long term. (Id. sec. 39.)

CHAPTER TEN B

REGULATING AND LIMITING EXPENDITURES AT PRIMARY ELECTIONS

Art. 3174¼. Definitions.—For the purpose of this Act the word "Candidate" shall be taken as referring to any person who has announced to any other person or to the public that he is a candidate for the nomination for any office which the laws of this State require shall be determined by a primary election. The words "County nomination" shall be taken as referring to the nomination for any office to be filled by the choice of the voters residing in only one county or less than one county, and the words "District Nomination" shall be taken as referring to the nomination for any office to be filled by the choice of the voters residing in more than one county, and the words "State nomination" shall be taken as referring to the nomination for any office to be filled by the choice of the voters of the entire State.

In all cases where second primary elections may be held in compliance with any law of this State, the first and second primary elections shall for the purposes of this Act be considered together as one primary election. (Acts 1919, ch. 88, sec. 1.)

Art. 3174¼a. Campaign and assistant campaign managers; designation; removal.—Every candidate for a state or District nomination may designate a campaign manager by written appointment filed with the Secretary of State, and every candidate for a County nomination may designate a campaign manager by written appointment to be filed with the County Clerk of his County, and each candidate for State or District nomination, or the lawfully designated campaign manager of such candidate, may also designate an assistant campaign manager for each county affected by such candidacy by written appointment to be filed with the County Clerk of the County. Any campaign manager or assistant campaign manager designated as provided in this section may be removed by the designation of a successor, and all vacancies occurring by such removal

or by death, resignation or otherwise, may be filled in the manner provided for original designations. (Id. sec. 2.)

Art. 3174½b. Purposes for which expenditures may be made; persons authorized to make expenditures; amounts of expenditures; punishment for violations of article.—No candidate for any nomination to be determined by primary election and no campaign manager for such candidate shall himself or by or through any other person or persons, or on behalf of any other person or persons, directly or indirectly, give, pay or expend any money or pay or give anything of value or promise to give, pay or expend any money or to pay or to give anything of value, or authorize any expenditure or assume any pecuniary liability in furthering or opposing the candidacy of any persons for any nomination to be determined by a primary election in this State, except for the following purposes only, to-wit:

1. For the traveling expenses of the candidate, or of his campaign manager or assistant campaign manager as defined by this Act or of a secretary for such candidate.

2. The payment of fees or charges for placing the name of the candidate upon the primary ballot, and for holding and making returns of the election.

3. The hire of clerks and stenographers and the cost of clerical and stenographic work and of addressing, preparing and mailing campaign literature.

4. Telegraph and telephone tolls, postage, freight and express charges.

5. Printing and stationery.

6. Procuring and formulating lists of voters.

7. Headquarters of office rent.

8. Newspaper and other advertising and publicity.

9. Renting of halls or providing places for public meetings and all expenses of advertising and other expenses usually incident to holding such meetings.

No expenditure authorized by this Section may lawfully be made or authorized or liability therefor incurred by any person other than a candidate himself, or his lawfully designated campaign manager or assistant campaign manager, or by some clerk or other agent lawfully authorized, in writing, by a campaign manager or assistant campaign manager, provided that no campaign manager or assistant campaign manager shall have more than one person so authorized to act for him at the same time.

The expenditure of any money or the giving, paying or promising to give or pay any money or anything of value, directly or indirectly by any candidate for nomination or by any campaign manager or assistant campaign manager or any authorized clerk or other employé of such campaign manager or assistant campaign manager, in furthering or opposing the candidacy of any person for nomination in a primary election, except in the manner and for the purposes authorized by the provisions of this section is expressly prohibited, and the total amount expended and authorized for these purposes and for any and all purposes connected with furthering or opposing the candidacy of any person for a nomination to be determined by a primary election by any candidate or campaign manager, shall not exceed the following amounts for each candidate for each of the following offices to-wit:

For United States Senator	$10,000.00
For Governor	10,000.00
For all other officers to be chosen by voters of the entire State, including Judges of Courts of Last Resort and Members of Congress at large	2,500.00
For District Members of Congress	2,500.00
For member of the Court of Civil Appeals	1,500.00
For District Attorney or District Judge	600.00
For member of the State Senate	1,000.00
For member of the House of Representatives	300.00
For County officers in counties having a population of 50,000 or more	750.00
For County Officers in Counties having a population of 30,000 and more, and less than 50,000	500.00
For County Officers in Counties having a population of less than 30,000	300.00
(The last Federal census to determine the population of a County.)	
For any other position which the law may provide shall be chosen in primary election	100.00

Four-fifths of the sums stipulated in this Section as the limits of expenses to be incurred by candidates and their campaign managers may be expended in the campaign preceding the first primary, and the remaining one-fifth in the campaign preceding the second primary.

The limits fixed by this section for all State and district nominations shall include and cover all amounts, expended, or authorized to be expended by such candidate or his campaign manager and also all amounts paid or distributed to assistant campaign managers for use of expenditure in their respective Counties. Any such assistant campaign manager may himself and through his lawfully authorized agent, expend in his county out of contributions made to the campaign fund by citizens of his County and collected by him or out of monies furnished him by the candidate or his campaign manager or from all such sources together, for lawful purposes permitted by this Act, a sum which shall not exceed ten ($10.00) dollars for each One hundred qualified voters on the current poll tax list of such county provided that such sum shall in no event exceed in the aggregate the sum of Five hundred ($500.00) dollars for any County; and provided further, that the aggregate sums stipulated in this section as the maximum amounts that may be expended by candidates and their campaign managers shall be construed to embrace all expenditures herein authorized to be made in counties by assistant campaign managers. The expenditure of any money or the giving or promising to give or pay any money or anything of value by any candidate or by any campaign manager or his clerk or agent, or assistant campaign manager, or his clerk or agent in furthering of or opposition to the candidacy of any person for any nomination in a primary election in excess of the amount fixed and

prescribed by this Section, is hereby prohibited and declared to be unlawful. Any person who shall violate any of the provisions of this section shall be deemed guilty of an offense, and upon conviction thereof, should be punished by a fine not to exceed $1000.00, or by confinement in the County jail for not more than one year, or by both such fine and imprisonment, or by confinement in the penitentiary for not less than one year, nor more than five years. (Id. sec. 3.)

Art. 3174¼c. Campaign contributions; persons who may make; limitation on amounts; personal expenditures; violations of article; punishment.—It shall be lawful for any person other than a corporation to make campaign contributions to be paid directly to the candidate or his lawfully designated and appointed campaign manager or by citizens of any County to the lawfully designated and appointed assistant campaign manager for such County, such contributions to be used for lawful purposes. It shall be lawful for any one or more citizens residing in any locality to raise by voluntary contributions a fund not exceeding fifty ($50.00) dollars in amount for the purpose of defraying the expenses of any political meeting to be held in such locality, such expense to include the cost of advertising such meeting, or hiring halls or providing other places for holding the same, or providing music therefor, or the bona fide traveling expenses and hotel bills of speakers, provided that a statement of all receipts and disbursements for such purposes signed and sworn to by the person or persons receiving and disbursing the same shall be filed with the County Clerk of the County in which such meeting is held, within twenty-four hours after it is held.

It shall be lawful for any person to expend for postage, or telegraph or telephone tolls, or for cost of any correspondence or any other lawful purpose out of his own funds where the sum is not to be repaid to him in behalf of any one candidate a sum which shall exceed in the aggregate Ten ($100.00) Dollars, and it shall also be lawful for any person to contribute bone fide his own personal services and personal traveling expenses, including hotel bills while traveling to the support of any candidacy. Except as expressly permitted by the foregoing provisions of this Section, it shall be unlawful for any person other than candidates for nomination to be determined by primary elections or the campaign managers or assistant campaign managers of such candidates lawfully designated as provided in this Act, or the agents or such campaign managers or assistant campaign managers lawfully authorized as provided in this Act, either himself or by or through any other person or persons or on behalf of any other person or persons directly or indirectly to give pay or expend any money or give or pay anything of value or promise to give, pay or expend any money or to pay or to give anything of value or authorize any expenditure or assume any pecuniary liability for the purpose of aiding, assisting or promoting or defeating or helping to defeat the nomination at any such primary election of any candidate for any nomination to be determined thereby and any person who shall violate the provisions of this Section shall be deemed guilty of an offense, and upon conviction thereof, should be punished by a fine not to exceed $1000.00 or by confinement in the county jail for not more than one year, or by both such fine and imprisonment, or by confinement in the penitentiary for not less than one year, nor more than five years. (Id. sec. 4.)

Art. 3174¼d. Hiring, etc., persons to aid in campaigns unlawfully; punishment.—And [any] candidate or other person who otherwise than in compliance with the provisions of this Act, shall hire or employ or offer to hire or employ or shall reward or give to any person anything of value for his services or for loss of time or for reimbursement for his expenses in consideration of such person directly or indirectly working, electioneering or making public addresses for or against any candidate for a nomination in a primary election who rewards or offers to reward any person for his vote or influence or the promise of his vote or influence for or against any candidate for nomination in a primary election, shall be deemed guilty of an offense, and upon conviction thereof, should be punished by a fine not to exceed $1,000.00, or by confinement in the county jail for not more than one year, or by both such fine and imprisonment, or by confinement in the penitentiary not less than one year, nor more than five years. (Id. sec. 5.)

Art. 3174¼e. Expenditures by candidate, campaign manager, etc., on behalf of another candidate; punishment.—No candidate for a nomination in a primary election or his campaign manager or his assistant campaign manager, shall directly or indirectly himself or by or through another person, give, pay, expend or contribute any money or thing of value for the furtherance of the candidacy of any other candidate. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and punished by a fine not to exceed $1000.00, or by confinement in the county jail not to exceed one year, or by both such fine and imprisonment. (Id. sec. 6.)

Art. 3174¼f. Violations of act; punishment.—Any candidate or other person who furnishes, gives, or delivers to another person any money or other thing of value to be used in violation of or for any purpose prohibited by the provisions of this Act, and any person who receives or accepts any money or thing of value to be used in violation of or for any purpose prohibited by the provisions of this Act, shall be deemed guilty of an offense, and upon conviction thereof, should be punished by a fine not to exceed $1000.00, or by confinement in the County jail for not more than one year, or by both such fine and imprisonment, or by confinement in the penitentiary for not less than one year, nor more than five years. (Id. sec. 7.)

Art. 3174¼g. Records of receipts and expenditures; contents; affidavits to; false oaths, etc., punishment.—Each and every candidate for nomination in a primary election and every campaign manager or assistant campaign manager for any such candidate, is hereby required to keep an accurate record of all funds received and disbursed for campaign purposes, which record shall be preserved for a period of twelve months, and shall be open to inspection of all opposing candidates and qualified voters, and

every candidate and campaign manager is hereby required to file a sworn statement of all monies previously received or disbursed by him, including money borrowed and liabilities incurred but not paid, not more than thirty nor less than twenty-five days prior to the date of the primary election, and not more than twelve nor less than eight days prior to the date of the primary election, and not more than ten days after the date of the primary election. Each such statement shall include all items contained in all statements previously made in accordance with the requirements of this Section, if any, and shall include the names of all contributors to any campaign fund handled by the party making the same, and the names of all persons from whom any money has been received or from whom any money has been borrowed for such fund, and the names of all persons to whom disbursements exceeding ten ($10.00) dollars in amount have been made and the purpose of such disbursements. Such statement shall also set forth that it is as full and explicit as the party making it is able to make, and the party making it shall before some officer qualified to administer oaths, take and subscribe the following oath, which shall be filed with said statement:

"I do solemnly swear that the foregoing statement, filed herewith correctly shows all moneys received by me and disbursed by me or in my behalf or with my knowledge or consent through or by any other person in connection with the candidacy of ———— for the nomination for ———— before the ———— primary election, and that I have neither directly nor indirectly arranged or assented to, encouraged or connived at the spending of any money other than as shown in said statement, and that I have not violated any of the provisions of the laws of Texas governing primary elections of the expenditure of funds in connection with a candidacy for a nomination in such primary election in letter or in spirit."

Such statements and oaths shall be filed within the times required by this section by candidates for State and District nominations and their campaign managers with the Secretary of State, and by candidates for County nominations and their campaign managers and by the assistant campaign managers of candidates for State and District nominations with the County Clerk of the County in which they reside.

Whoever shall willfully and corruptly make any false oath, affidavit or sworn statements in complying with the requirements of this Section shall be deemed guilty of an offense, and upon conviction thereof should be punished by a fine not to exceed $1000.00, or by confinement in the County jail for not more than one year, or by both such fine and imprisonment, or by confinement in the penitentiary for not less than one year, nor more than five years. (Id. sec. 8.)

Art. 3174½h. Forfeiture of rights for violations of act by candidate.—If any candidate shall knowingly violate any of the provisions of this Act or shall knowingly permit or assent to the violation of any provision of this Act by any campaign manager or assistant campaign manager or other person, he shall thereby forfeit his right to have his name placed upon the primary ballot or if nominated in the primary election, to have his name placed on the official ballot at the general election, and proceedings by quo warranto to enforce the provisions of this section or to determine the right of any candidates alleged to have violated any of the provisions of this Act to have his name placed on the primary ballot or the right of any nominee alleged to have violated any of the provisions of this Act to have his name placed upon the official ballot, for the general election may be instituted at the suit of any citizen in the District Court of any County, the citizens of which are entitled to vote for or against any candidate who may be charged in such proceedings with having violated the provisions of this Act. All such proceedings so instituted shall be advanced and summarily heard and disposed of by both the Trial and Appellate Courts. (Id. sec. 9.)

CHAPTER ELEVEN

NATIONAL CONVENTION, STATE CONVENTION TO SELECT DELEGATES TO

Art. 3175. National convention, state convention to select delegates to.—Any political party, desiring to elect delegates to a national convention, shall hold a state convention at such place as may be designated by the state executive committee of said party, on the fourth Tuesday of May, 1912, and every four years thereafter. Said convention shall be composed of delegates duly elected by the voters of said political party in the several counties of the state at primary conventions to be held on the first Saturday in May, 1912, and every four years thereafter. Said primary conventions shall be held between the hours of ten o'clock a. m. and eight o'clock p. m. These primary conventions shall elect delegates to the county convention of the several counties, which shall be held on the first Tuesday after the first Saturday in May, 1912, and every four years thereafter. The qualified voters of each voting precinct of the county shall assemble on the date named, and shall be presided over by a chairman who shall have been previously appointed by the county executive committee of the party, and shall be a qualified voter in said election precinct; and said convention may elect from among their number a secretary and such other officers as may be necessary to conduct the business of the convention. The chairman of said convention shall possess all the power and authority that is given to election judges under the provisions of this title. Before transacting any business, the chairman shall make, or cause to be made, a list of all qualified voters present; and the name of no person shall be entered upon said list, nor shall he be permitted to vote or to participate in the business of such convention, until it is made to appear that he is a qualified voter in said precinct, from a certified list of qualified voters, the same as is required in conducting a general election. After the convention is organized as above provided, it shall elect its delegates to the county convention and transact such other business as may properly come before it. The officers of said convention shall keep a written record of its proceedings, including a list of the delegates elected to the county con-

vention, which record shall constitute the returns from said convention. The same shall be signed officially, sealed up and safely transmitted by the officers thereof to the chairman of the county executive committee of the party, and to be used by the executive committee in making up a roll of the delegates to the county convention. (Acts 1905, S. S., p. 555, sec. 139.)

Art. 3175a. Nomination of candidates for president and vice-president and party presidential electors, and election of party delegates to national conventions. —Provided, that on the fourth Tuesday in May, A. D. 1916, and every four years thereafter, in addition to the candidates heretofore required to be nominated at the regular nominating election, the qualified electors of the political parties of this state shall have the opportunity to vote their first and second preference on their party nominating ballots for their choice of those aspiring to be the candidates of their respective parties for president and vice-president of the United States, and for the nomination of their party presidential electors and the election of their party delegates to the national convention of the respective political parties of this state. The names of the aspirants in each such party for its nomination to be its nominees for president and vice-president of the United States; and for presidential electors and the election of said delegates to said national conventions shall be printed on the party nominating ballot and the ballots shall be marked and the votes shall be counted, canvassed and returned under the same regulation of law as the names of the party aspirants for the party nominations for the offices of governor and lieutenant governor of this state. That said candidates for the nomination of president and vice-president of the United States shall have their names placed upon said primary ballot at two separate places under the headlines "First Choice" and "Second Choice" to enable the electors participating in said election to vote for their first and second choice for said officers; provided, that aspirants for such presidential nominations need not file any personal petition for placing their names on said political ballot, but that the state chairman of the respective political parties of this state shall certify to each county chairman of the respective political parties of said state, the names and addresses of all candidates of said respective political parties for said offices of president and vice-president of the United States, such names to be placed upon said official ballot as candidates for said offices.

Every qualified voter participating in said primary shall have the right at such nominating election to vote for two candidates from his respective congressional district for delegates to said national convention and for as many delegates at large to said national convention as may be directed by the state executive committee of said political party, and for the nomination of one presidential elector from his respective congressional district. The candidates for president and vice-president of the United States receiving the highest number of votes cast in said primary election shall be considered the first choice of the adherents of said political party in this state for said office, and the candidates for president and vice-president of the United States securing the second highest number of votes cast in said primary election shall be considered the second choice of the adherents of such party for said offices. The number of said candidates for delegate equal to the number of said delegates to be elected, and the number of presidential electors to be nominated, receiving respectively each for himself the highest number of votes for such office or nomination, shall be elected or nominated as the case may be.

Provided the provisions of this Act shall be optional with the political parties polling less than 50,000 votes for their candidate for governor at the last preceding general election. Provided that the expense incurred in holding said precinct primaries shall be paid out of the county treasury of each county in which said primaries are held upon a warrant drawn upon the county treasury by the commissioners court of said county, or said court shall authorize the county clerk of said county to draw said warrant, and said fees shall correspond to the amount now paid election officers for holding general elections in this state, and this shall only apply to primaries for political parties when the candidate for governor at the last preceding general election polled 50,000 or more votes. (Acts 1913, p. 88, sec. 1.)

TITLE 50

ELECTORS OF PRESIDENT AND VICE-PRESIDENT

Art. 3176. (1811) (1760) Time of election of electors and who are qualified to be electors and to vote for electors.— On the Tuesday next after the first Monday in November, A. D. 1912, and on the first Tuesday next after the first Monday in November every four years thereafter, the qualified voters for members of the house of representatives of the state legislature shall elect from among the resident citizens, over twenty-one years of age, and not members of either house of congress of the United States, as many electors of president and vice-president of the United States as the state of Texas may at the time be entitled to elect. (Act March 15, 1848. P. D. 3644.)

Art. 3177. (1812) (1761) Mode, places, etc., of election for electors.— Such election shall be held in the same manner, at the same places, under the same regulations, and by officers and managers appointed in the same way as elections for members of the house of representatives of this state may be; except that such qualified voter shall be authorized to vote for the whole number of electors that the state will then be empowered to elect. (Id. P. D. 3645.)

Art. 3178. (1813) (1762) Returns of election by precinct officers.—The officers conducting said elections, or the managers thereof at each precinct, shall, within three days after holding said election, add up and compare the number of votes given for each person there voted for as an elector, and shall make out in writing, seal up, certify and transmit the result of said election to the county judge or other proper officer of their county, in the same manner prescribed by the laws regulating elections for members of the state legislature. (Id. P. D. 3646.)

Art. 3179. Returns of elections by counties.—On the Monday next following the day of election, or as soon thereafter as the commissioners' court shall have opened the election returns, and estimated the result, in accordance with article 3030, the county judge shall make duplicate returns of the election, one of which he shall immediately transmit to the seat of government in this state, sealed in an envelope, directed to the secretary of state, and endorsed "Election Returns for ..... County for Presidential Electors," [filling the blank with the name of the county] and the other of such returns shall be deposited in the office of the clerk of the county court of the county where such election was held. (Id. P. D. 3647.)

Art. 3180. (1815) Secretary of state shall count returns, when, etc.—It shall be the duty of the secretary of state, in the presence of the governor and attorney general, or either of them on the fourth Monday in November next after said election, to open all the election returns received by him, and correctly add up all the votes cast in the several counties for each of the said electors, and cause the result thereof, with the names of the persons elected, to be forthwith published in some newspaper printed at the seat of government, and shall issue certificates of election to the persons so elected. (Id. P. D. 3648.)

Art. 3181. (1851a) Contest; filed when; how tried.—Any person or persons intending to contest the election of any or all of the persons declared elected, as provided in article 3180, as electors of president and vice-president, shall, within fifteen days from the said fourth Monday in November, file with the secretary of state a written statement of the ground on which such contestant relies to sustain such contest, and shall, within such time, notify the contestee thereof in writing, and deliver to him, his agent or attorney, a copy of said statement. The contestee shall, within ten days after receiving such notice, file with the secretary of state his reply thereto in writing. The contest shall, as soon thereafter as possible, be tried and determined by the state board of canvassers, consisting of the governor, attorney general and secretary of state, or any two of them; and their decision shall be rendered at least six days before the time fixed by law for the meeting of the electors. Such decision, in which two at least of such board shall join, shall be final, and certificates of election, in accordance therewith, shall at once be issued by the secretary of state to the proper parties. Where not otherwise herein provided, the provisions of chapter 8 of title 49, relating to contests for the validity of an election for members of the legislature, shall apply to such contests for presidential electors. (Id.)

Art. 3182. (1816-1817) (1765-1766) Electors shall convene, when and where.—The electors so chosen shall convene in the capitol at the seat of government of the state, on the second Monday in January next after their election, and vote for president and vice-president of the United States, and make returns thereof as is, or hereafter may be, required by the laws of the United States. (Acts 1897, p. 25. P. D. 3649. U. S. Rev. Stat., p. 21.)

Art. 3182a. Place of absent or disqualified electors, how supplied.—If any person so chosen elector shall, by death or other disabling cause, fail to attend by the hour of two o'clock in the afternoon of the day fixed by law, and vote as required by law, or if any such person shall be legally disqualified to serve as elector, a majority of the qualified electors present, after having convened, may appoint some other person to act as elector in the place of any such absent or disqualified person, and shall immediately report their action to the secretary of state aforesaid. (Id. P. D. 3650. Acts 1848, p. 104.)

Art. 3183. (1818) (1767) Governor shall cause list of electors to be made, etc.—The governor shall, on or before the meeting of the electors, cause three lists of the names of such electors to be made out and delivered to them, as required by act of congress. (Id. P. D. 3651.)

Art. 3184. (1819) (1768) Governor shall issue proclamation, etc.—It shall be the duty of the governor, or in case of his inability, then of the lieutenant-governor, to issue a proclamation under the seal of the state, and have the same published for at least forty days before an election for electors, in some newspaper printed at the seat of government, requiring the county judge, or other proper officer or officers, of each county in the state to cause an election to be held at each precinct in the county at the time and for the purpose prescribed in this title. (Id. P. D. 3652.)

Art. 3185. (1820) (1769) Compensation of electors.—Electors for president and vice-president of the United States shall receive the same pay for mileage in traveling to and from the seat of government of the state, and the same pay daily while engaged there in the duties required of them by law, as that allowed by law to the members of the legislature of this state. (Act Dec. 1, 1849. P. D. 3653.)

See Trust on Real Property Vol. II pp. 10 et.

TITLE 51

ESCHEAT

Art. 3186. (1821) (1770) When estates shall escheat; evidence; service of process.—If any person die seized of any real or possessed of any personal estate, without any devise thereof, and having no heirs, or where the owner of any real or personal estate shall be absent for the term of seven years, and is not known to exist, leaving no heirs, or devise of his estate, such estate shall escheat to and vest in the state; provided, that, where no will is recorded or probated in the county where such property is situated, within seven years after the death of the owner, it shall be prima facie evidence that there was no will, and where no lawful claim is asserted to, or lawful acts of ownership exercised in, such property for the period of seven years, and this has been proved to the satisfaction of the court, it shall be deemed prima facie evidence of the death of the owner, and of the failure of heirs; and the court trying the cause may, if such evidence is not rebutted, find therefrom in favor of the state; provided, further, that any one paying taxes to the state on such property, either personally or through an agent, shall be held to be exercising law-

ful acts of ownership in such property within the meaning of this title, and shall not be concluded by any judgment, unless he be made a party to such escheat proceedings, and a personal service of citation be had upon him, if a resident of this state, and his address can be secured by reasonable diligence, but, if he be a non-resident of the state and can not be found, the personal service of citation shall be made upon any agent of such claimant, if such agent, by the use of reasonable diligence, can be found; such reasonable diligence to include an investigation of the records of the office and inquiry of the state and county tax collector and the state and county tax assessor of the county in which the property sought to be escheated is situated. (Acts 1885, p. 35. Acts 1907, p. 111.)

Art. 3187. (1822) (1771) District attorney to file petition for escheat, when; venue; requisites of petition.—When the district or county attorney shall be informed or have reason to believe, that an executor or executors, if more than one, has been named under the will of any person who has died without heirs and without having devised his estate, has not accepted the trust, that no administrator with the will annexed, has been appointed, or where such attorney shall discover that no letters of administration on the estate of an intestate who has died without heirs have been granted, or where such attorney finds any estate, real or personal, in the condition specified in the next preceding article, he shall file a petition in behalf of the state in the district or the county where such property, or any part thereof, lies; which petition shall set forth a description of the estate, the name of the person last lawfully seized or possessed of same, the name of the tenants or persons in actual possession, if any, and the names of the persons claiming the estate, if any such are known to claim or whose claim may be discovered by the exercise of reasonable diligence, and the facts or circumstances in consequence of which such estate is claimed to have escheated, and the diligence exercised to discover the claimants of same, praying that such property be escheated and for a writ of possession for the same in behalf of the state. Such petition shall be sworn to by such attorney. (Id.)

Art. 3188. (1823) (1772) Clerk to issue citation to those alleged to be in possession, etc.—The clerk of the court shall issue citation, as in other civil causes, for such of the defendants as shall be alleged in the petition to hold possession of or claim such estate and for such other persons as this title provides shall be cited, requiring them to appear and answer at the next term of court. (Id.)

Art. 3189. (1824) (1773) Citation published and its requisites.—The clerk shall also issue a citation, setting forth briefly the contents of the petition, for all persons interested in the estate to appear and answer at the next term of court, which citation shall be published as required in other civil suits. (Acts 1885, p. 35.)

Art. 3190. (1825) (1774) Claimants may appear and plead.—All persons named in such petition as tenants or persons in actual possession or claimants of the estate may appear and plead to such proceedings, and may traverse the facts stated in the petition, or the title of the state to the lands and tenements therein mentioned, as in civil cases, and any other person claiming an interest in such estate may appear and be made a defendant and plead as in other cases. (P. D. 3661.)

Art. 3191. (1826) (1775) If no person appears.—If no person, after notice as aforesaid, shall appear and plead within the time prescribed by law then judgment shall be rendered by default in behalf of the state. (P. D. 3662.)

Art. 3192. (1827) (1776) If any person appears, issue and trial.—If any person appear and deny the title set up by the state, or traverse any material fact in the petition, issue shall be made up and tried as other issues of fact; and a survey may be ordered, as in other cases where the titles or boundaries of land are drawn in question. (P. D. 3663.)

Art. 3193. (1828) (1777) Judgment for the state, when.—If, after the issue and trial, it appears from the facts found or admitted that the state has good title to the estate, real or personal, in the petition mentioned, or any part thereof, judgment shall be rendered that the state shall be seized or possessed thereof, and at the discretion of the court recover costs against the defendants; provided, that whenever judgment is rendered in favor of the state, whether by default or after trial upon the merits, a writ of possession shall be awarded as in other civil suits. (Acts 1885, p. 35.)

Art. 3194. (1829) (1778) Costs against the state, how paid.—If it appears that the state has no title in such estate, the defendant shall recover his costs, to be taxed and certified by the clerk; and the comptroller of public accounts shall, on such certificate being filed in his office, issue a warrant therefor on the treasury, which shall be paid as other demands on the treasury. (P. D. 3665.)

Art. 3195. (1830) (1779) Judgment to contain description, vest title in state and stay writ of possession.—When any judgment shall be rendered that the state be seized or possessed of any estate, such judgment shall contain a description thereof, and shall vest title in the state; such judgment, when rendered for real estate, shall further provide that no writ of possession for such property shall issue within two years from the date when such judgment becomes final, and no sale thereof be made within such time. (Acts 1907, p. 112.)

Art. 3196. (1830) (1779) Claimant not personally served may sue to divest title, etc.—Such title to such real property, or any part thereof, so adjudged to the state, shall be subject to divestiture at the suit of any claimant not personally served with citation in such escheat proceedings, who shall institute suit therefor against the state in any court having jurisdiction, within two years after the date when such judgment in the escheat proceedings has become final, and who shall finally be adjudged owner of the property, for the recovery of which the suit is brought, or any part thereof. (Id.)

Art. 3197. (1831) (1780) Writ of seizure and proceedings thereunder.—A writ shall be issued to the sheriff or any constable of the proper county commanding him to seize such estate vested in the state; and,

if the same be personal property or real estate, he shall dispose of the same at public auction in the manner provided by law for the sale of property under execution; and the proceeds, less the costs of court and attorneys' commissions, shall be paid into the treasury of the state; provided, that no real estate shall be sold by the sheriff or constable at less than the minimum price to be fixed by the judge before whom the cause was tried, said minimum valuation to be distinctly stated in the advertisement, and, should there be on the day of sale no bona fide bid for as high an amount as the valuation fixed by the judge before whom the cause was tried, there shall be no sale, and the writ shall be immediately returned to the court issuing the same; and thereafter said real estate may be sold by the attorney general in the same manner as lands bid in by the state under authority of article 358 are now sold by that officer. (Acts 1885, p. 35.)

Art. 3198. (1832) (1781) Appeal or writ of error.—Any party who shall have appeared to any such proceedings, and the district or county attorney, on behalf of the state, shall have the right to prosecute an appeal or writ of error upon such judgment. (P. D. 3669.)

Art. 3199. (1833) (1782) Comptroller to keep accounts.—The comptroller shall keep just accounts of all moneys paid into the treasury, and of all lands vested in the state under the provisions of this chapter. (P. D. 3670.)

Art. 3200. (1834) (1783) Heir, etc., afterward appearing, may bring suit.—If any person appear after the death of the testator or intestate and claim any money paid into the treasury under this chapter, as heir, or devisee, or legatee thereof, he may file a petition in the district court for the county where the estate was sold, stating the nature of his claim and praying that such money be paid to him; a copy of which petition shall be served on the district or county attorney at least twenty days previous to the return day of the process, who shall put in an answer to the same. (P. D. 3671.)

Art. 3201. (1835) (1784) Order of court in favor of claimant.—The court shall examine the claim and the allegations and proofs; and, if it shall find that such person is an heir, devisee, legatee or legal representative, whether citizen or foreigner, such court shall make an order directing the comptroller to issue his warrant on the treasury for the payment of the same, but without interests or costs; a copy of which order under the seal of the court shall be a sufficient voucher for issuing such warrant; and the same proceedings shall be instituted for the recovery of any money or property heretofore deposited with the treasurer or comptroller in accordance with the laws heretofore existing; provided, that, if such heir, devisee, legatee or legal representative or their assigns shall sue for and recover such estate, real or personal, in any court of competent jurisdiction in this state from any purchaser at sheriff's sale, as hereinbefore provided, or from his heirs, devisees, legatees, legal representatives or assigns, then, and in any such event, a certified copy of such judgment of recovery, together with the affidavit of the party cast in the suit that he is the owner of, and entitled to, the money theretofore paid into the state treasury as the proceeds of such escheated estate, shall be sufficient authority for the issuance by the comptroller of a warrant on the state treasury for the payment to such purchaser, his heirs, legal representatives or assigns, such net amount of money as was paid into the state treasury by reason of said sheriff's sale of such estate. (P. D. 3672. Amend. 1895, p. 189.)

Art. 3202. (1836) (1785) Proceeds of escheated property subject to disposition by the state.—The proceeds of all property escheated in accordance with the provisions of this chapter shall remain subject to the disposition of the state, as may hereafter be prescribed by law. (P. D. 3674.)

Art. 3203. (1837) (1786) Final decree of probate court may be revised, when.—Any decree of the probate court finally closing any estate may be revised and corrected in the district court of the county in which the letters were granted to such executor or administrator, upon the ground that there was error, fraud or mistake of law or fact, in such final account, and settlement, upon the application of the state, by bill of review, in the same manner as is now provided by law for the revision and correction of any such account and settlement by any individual interested in an estate. (Act Nov. 13, 1866, p. 236, sec. 1.)

Art. 3204. (1838) (1787) Governor may cause proceedings to be instituted, when.—In any case in which the governor has reason to believe that there has been fraud, error or mistake of law or fact, in any such final account and settlement, he is authorized to retain counsel and have proceedings instituted, in accordance with the provisions of this chapter and the laws, to have such final account and settlement revised and corrected for the protection of the rights of the state; and for such services the counsel so retained shall be allowed a reasonable compensation. (Act Nov. 13, 1866, p. 236, sec. 2.)

Art. 3205. (1839) (1788) Suit must be in name of state.—All suits brought for the collection of the assets turned over to the treasurer, under this chapter, shall be brought in the name of "The State of Texas." (Id. sec. 3.)

TITLE 52

ESTATES OF DECEDENTS

CHAPTER ONE

JURISDICTION

Art. 3206. (1840) (1789) Probate jurisdiction of the county court.—The county court shall have the general jurisdiction of a probate court. It shall probate wills, grant letters testamentary or of administration, settle the accounts of executors and administrators, and transact all business appertaining to the estates of deceased persons, including the settlement, partition and distribution of such estates. (Const., art. 5, sec. 16.)

See Herron's Probate Guide, pp. 45-49, 56-57, 216-217; Moore v. Mertz, 85 S. W. 312; Nelson v. Bridge, 86 S. W. 7; De Rivera v. Atchison, T. & S. F. Ry. Co., 149 S. W. 223; Putney v. Livingston, 192 S. W. 259; Daniel v. Finley, 194 S. W. 955.

Art. 3207. (1841) (1790) Probate jurisdiction of district court.—The district court shall have appellate jurisdiction and general control in probate matters over the county court established in each county for the probating of wills, granting letters testamentary or of administration, settling the accounts of executors and administrators, and for the transaction of business appertaining to estates, and original jurisdiction and general control over executors and administrators under such regulations as may be prescribed by law. (Id. sec. 8.)

See ante art. 1706; see Herron's Probate Guide, pp. 54-6; Japhet v. Pullen, 133 S. W. 441; Shook v. Journeay, 149 S. W. 406; Daniel v. Finley, 194 S. W. 955.

Art. 3208. (1842) (1791) Proceedings of probate of will, etc., void, when, etc.—If a will be probated before the death of the testator, or if administration be granted upon the estate of a living person, the proceedings shall be void; but the bond or bonds of the executor or administrator shall not be void, but may be recovered upon as other bonds.

Alexander v. Maverick, 18 Tex. 195; Burdett v. Silsbee, 15 Tex. 617.

Art. 3209. (1843) (1792) In what counties will shall be probated and letters granted.—Wills shall be admitted to probate, and letters testamentary or of administration shall be granted:

1. In the county where the deceased resided, if he had a domicile or fixed place of residence in the state.

2. If the deceased had no domicile or fixed place of residence in the state, but died in the state, then either in the county where his principal property was at the time of his death, or in the county where he died.

3. If he had no domicile or fixed place of residence in the state, and died without the limits of the state, then in any county in this state where his nearest kin may reside.

4. But if he has no kindred in this state, then in the county where his principal estate was situated at the time of his death. (Acts 1876, p. 93, sec. 1.)

See Herron's Probate Guide, pp. 49-51; West v. Keeton, 42 S. W. 1034; Augier v. Jones, 67 S. W. 449; Nelson v. Bridge, 86 S. W. 7; Pecos & N. T. Ry. Co. v. Porter, 183 S. W. 98.

Art. 3210. (1844) (1793) In case of concurrent jurisdiction of several courts.—When two or more courts have concurrent jurisdiction of an estate, the court in which application for letters testamentary or of administration thereon is first filed shall have and retain jurisdiction of such estate, to the exclusion of such other court or courts.

CHAPTER TWO

RECORD BOOKS

Art. 3211. (1845) (1794) Judges probate docket.—There shall be kept by the clerk of the county court a record book to be styled, "Judge's probate docket," in which shall be entered:

1. The name of each deceased person upon whose estate proceedings are had or sought to be had.

2. The name of the executor or administrator of such estate, or of the applicant for letters, as the case may be.

3. The date of the filing of the original application for the probate of a will, or for letters testamentary or of administration.

4. A minute of all orders, judgments, decrees and proceedings had in the estate, with the date thereof.

5. Each estate shall be numbered upon such docket in the order in which the proceedings therein have been commenced, and each paper filed in an estate shall be numbered with the docket number of such estate.

See Herron's Probate Guide, pp. 59-62.

Art. 3212. (1846) (1795) Probate minutes.—Said clerk shall also keep a record book to be styled, "Probate minutes," in which he shall enter in full all the orders, judgments, decrees and proceedings of the court, and in which shall be recorded all papers of estates required by law to be recorded.

Teague v. Swasey, 102 S. W. 458.

Art. 3213. (1847) (1796) Claim docket.—Said clerk shall also keep a record book to be styled, "Claim docket," in which shall be entered all claims presented against an estate for approval by the court. This docket shall be ruled at proper intervals from top to bottom, with a short note of the contents at the top of each column. One or more pages shall be assigned to each estate. In the first or marginal column shall be entered the names of the claimants in the order in which their claims are filed; in the second, the amount of the claim; in the third, its date; in the fourth, when due; in the fifth, the date from which it bears interest; in the sixth, the rate of interest; in the seventh, when allowed in whole or in part by the executor or administrator; in the eighth, the amount allowed; in the ninth, the date of rejection; in the tenth, the date of filing; in the eleventh, when approved; in the twelfth, the amount approved; in the thirteenth, when disapproved; in the fourteenth, the class to which the claim belongs; in the fifteenth, when established by judgment of a court; in the sixteenth, the amount of such judgment. (Acts 1870, p. 169; P. D. 5673.)

De Cordova v. Rogers, 75 S. W. 16.

Art. 3214. (1848) (1797) Probate fee book.—Said clerk shall also keep a record book, to be styled, "Probate fee book," in which shall be entered each item of costs which accrue to the officers of the court, together with witness fees, if any, showing the party to whom such costs or fees are due, the date of the accrual of the same and the estate or party liable therefor.

Art. 3215. (1849) (1798) Record books shall be indexed, etc.—Each record book shall be provided by the clerk with a convenient index, and shall be open to the inspection of any person desiring to examine the same. but shall not be taken from the office of the clerk.

Art. 3216. (1850) (1799) Shall be evidence.—Said record books, or certified copies therefrom, shall be evidence in any of the courts of this state.

See Sayles' Practice, p. 465.

Art. 3217. (1851) (1800) What paper shall be recorded in probate minutes.—The following papers of an estate shall be recorded in the probate minutes:

1. All applications for the probate of wills when the probate has been granted.

2. The citation and return thereon in such cases.

3. The will and the testimony upon which the same was admitted to probate.

4. All bonds and the oaths of executors and administrators.
5. The notice to persons holding claims against an estate.
6. All inventories and appraisements and lists of claims.
7. All exhibits and accounts.
8. All reports of hiring, renting or sale.
9. All applications for the sale of real estate.
10. All reports of commissioners of partition.

Papers which have been disapproved by the court, and vouchers and all other papers not above enumerated, shall not be recorded. (P. D. 5772.)

CHAPTER THREE
GENERAL PROVISIONS

Art. 3218. (1852) (1801) Decisions, etc., of court shall be rendered in open court, etc.—All decisions, orders, decrees and judgments of the county court in probate matters shall be rendered in open court, and at a regular term of such court for civil and probate business, unless in cases where it is otherwise specially provided.

See Const., art. 5, sec. 17; Herron's Probate Guide, p. 64; Teague v. Swasey, 102 S. W. 458; Reeves v. Fuqua, 184 S. W. 682.

Art. 3219. (1853) (1802) And shall be entered of record.—All such decisions, orders, decrees and judgments shall be entered on the records of the court, during the term at which the same are rendered; and any such decision, order, decree or judgment shall be a nullity unless entered of record.

See Herron's Probate Guide, p. 64; West v. Keeton, 42 S. W. 1034; Blackwood v. Blackwood's Est., 47 S. W. 483; Wheeler v. Duke, 67 S. W. 909; Kelsey v. Trisler, 74 S. W. 64; De Cordova v. Rogers, 75 S. W. 17; Teague v. Swasey, 102 S. W. 458; Threatt v. Johnson, 156 S. W. 1137.

Art. 3220. (1854) (1802a) Probate docket disposed of promptly.—When the probate docket is taken up, it shall be disposed of with dispatch, without an adjournment of the court for more than three days at any time; and, in case of such adjournment, the reason therefor must appear upon the minutes. (Acts 1881, p. 31.)

Art. 3221. (1855) (1803) No trial by jury in probate matters.—There shall be no trial by jury in probate matters, except when expressly provided by law. (P. D. 5481.)

See Sayles' Practice, p. 430; Herron's Probate Guide, pp. 65-66; Stone v. Byars, 73 S. W. 1086.

Art. 3222. (1856) (1804) Duty of clerk to file papers, etc.—The clerk of the county court shall receive and file all applications, complaints, petitions and all other papers permitted or required by law to be filed in said court in estates of decedents, and shall indorse on each paper the date when it was filed, and sign his name officially to such indorsement, and shall also place thereon the docket number of the estate to which it belongs.

Art. 3223. (1857) (1805) Clerk shall issue all notices, etc.—Said clerk shall issue all necessary notices, citations, writs and process from said court in probate matters without any order from the county judge, unless such order is required by some provision of this title. (Acts 1876, p. 129, sec. 138.)

Art. 3224. (1858) (1806) Power of court to attach and imprison executor, etc.—The county judge shall have power to enforce obedience to all his lawful orders against executors and administrators, by attachment and imprisonment, but no such imprisonment shall exceed three days for any one offense, except in the case provided for in the succeeding article. (Id. p. 129, sec. 135.)

Art. 3225. (1859) (1807) Person having will, etc., may be attached, etc.—When complaint shall be made in writing to any county judge that any person has the last will of any testator or testatrix, or any papers belonging to the estate of a testator or intestate, said county judge shall cause said person to be cited to appear before him, either in term time or vacation, and show cause why he should not deliver such will to the court for probate, or why he should not deliver such papers to the executor or administrator; and upon the return of such citation served, unless such will or papers are so delivered or good cause be shown to the court for not delivering the same, the county judge, if satisfied that such person had such will or papers at the time of the complaint being filed, may cause him to be arrested and imprisoned until he shall so deliver them. (Id. p. 128, sec. 126.)

See Herron's Probate Guide, pp. 123-4.

Art. 3226. (1860) (1808) Executions in probate matters.—Executions issued from the county court in probate matters shall be directed to the sheriff or any constable of a county, shall be made returnable in sixty days, and shall be tested and signed by the clerk officially and sealed with the seal of the court; and all proceedings under such executions shall be governed by the laws regulating proceedings under executions issued from the district court in so far as the same may be applicable. (Id. p. 129, sec. 135.)

Art. 3227. (1861) (1809) County judge may enforce orders, etc., of previous court.—The county judge shall have the same power to enforce all orders, decrees and judgments heretofore made and rendered in the probate court of his county, as if such orders, decrees or judgments had been made and rendered under the provisions of this title. (Id. p. 130, sec. 140.)

Art. 3228. (1862) (1810) Requisites of citation in probate matters.—All citations in probate matters shall be in writing, dated and signed by the clerk officially, and sealed with the seal of the court, and shall state substantially the nature of the proceeding which the party to be cited is called upon to answer, and the time when, and place where, such party is required to appear.

Art. 3229. (1863) (1811) Service of citation.—A citation is served either by posting, by delivery in person, or by publication, and, when the mode of service is not expressly provided by law, it must be served upon the party to be cited in person, by delivering to him a true copy of such citation at least ten days, exclusive of the day of service, before the day upon which he is required to appear and answer.

See Herron's Probate Guide, p. 122.

Art. 3230. (1864) (1812) Service by posting.—When citation is required to be posted, it means for ten days, exclusive of the day of posting, before the day upon which the party is required to appear and answer, at

three of the most public places in the county, one of which shall be at the court house door, and no two of which shall be in the same city or town, unless the contrary be expressed by the law which provides for such citation. (P. D. 5475.)

Art. 3231. (1865) (1813) Mode of posting citation and return of same.—When a citation is required to be posted, the clerk shall place the original citation, together with three copies thereof, in the hands of the sheriff or any constable of the proper county, who shall post such copies as required by the preceding article, and shall return the original to the clerk, stating in a written return thereon the time when, and the place where, he posted such copies. (Id.)

Art. 3232. (1866) (1814) Citation by publication.—In all cases where it is necessary to cite any person by publication, and the manner of citing such person is not otherwise provided for, the citation by publication shall be made in like manner as in suits in the district court. (Acts 1876, p. 129, sec. 137.)

Art. 3233. (1867) (1815) Rights, etc., of executors, etc., regulated by common law.—The rights, powers and duties of executors and administrators shall be governed by the principles of the common law, when the same do not conflict with any of the provisions of the statutes of this state. (Id. p. 130, sec. 141.)

See post, art. 5493; Herron's Probate Guide, pp. 151-2; Stevenson v. Roberts, 64 S. W. 230; McLavy v. Jones, 72 S. W. 407; Brown v. Fid. & Dep. Co., 80 S. W. 593; Altgelt v. Alamo Nat. Bk., 83 S. W. 6.

Art. 3234. (1868) (1816) Depositions and rules of evidence.—In all proceedings in the county court arising under the provisions of this title, the depositions of witnesses may be taken and read in evidence under the same rules and regulations as in the District Court, and all laws in relation to witnesses and evidence that govern in the District Court shall apply to proceedings in the county court, so far as may be applicable. Except that in the case of the probate of a will and in all other proceedings in estates where there is no opposing party or his attorney of record, upon whom service of notice and copies of interrogatories may be had, notice of the intention to take such depositions of a witness may be served by posting such notice for a period of twenty days as is provided in the statutes governing the posting of notices. At the time such notice is filed with the clerk of the court, copy of the interrogatories propounded shall also be filed, and at the expiration of such twenty days commission may issue for the taking of such depositions. If no one appears to file cross interrogatories, the county judge may file such cross interrogatories. (Id. p. 129, sec. 136; Acts 1919, ch. 108.)

See post, art. 3244; Herron's Probate Guide, pp. 67-68; Fulton v. Nat. Bk. of Denison, 62 S. W. 85.

Art. 3235. (1869) (1817) In whom property vests upon death of testator or intestate.—When a person dies, leaving a lawful will, all of his estate devised or bequeathed by such will shall vest immediately in the devisees or legatees; and all the estate of such person, not devised or bequeathed, shall vest immediately in his heirs at law; but all of such estate, whether devised or bequeathed or not, except such as may be exempted by law from the payment of debts, shall still be liable and subject in their hands to the payment of the debts of such testator or intestate; and, whenever a person dies intestate, all of his estate shall vest immediately in his heirs at law, but with the exceptions aforesaid shall still be liable and subject in their hands to the payment of the debts of the intestate; but, upon the issuance of letters testamentary or of administration upon any such estate, the executor or administrator shall have the right to the possession of the estate as it existed at the death of the testator or intestate, with the exception aforesaid; and it shall be the duty of such executor or administrator to recover possession of and hold such estate in trust to be disposed of in accordance with law. (Acts 1876, p. 127, sec. 125.)

See Herron's Probate Guide, pp. 69-71, 151-152; Speer's Marital Rights, p. 758; Blinn v. McDonald, 46 S. W. 787; Stevenson v. Roberts, 64 S. W. 230; F. & M. Nat. Bk. of Waco v. Bell, 71 S. W. 571; Laas v. Seidel, 66 S. W. 871; McLavy v. Jones, 72 S. W. 407; Wilkins v. Briggs, 107 S. W. 135; American Nat. Bank of Paris v. First Nat. Bank of Clarksville, 114 S. W. 176; Melton v. Beasley, 121 S. W. 574; Anderson v. McGee, 130 S. W. 1040; American Bonding Co. of Baltimore v. Logan. Arts. 3235, 166 S. W. 1132; Hoefling v. Hoefling, 167 S. W. 210; American Bonding Co. of Baltimore v. Logan, 167 S. W. 771; Rotan Grocery Co. v. Pate, 169 S. W. 378; Lauraine v. Ashe, 191 S. W. 563; Lauraine v. Dickson Car Wheel Co., 198 S. W. 1103.

Art. 3236. (1870) (1818) Any person interested in an estate may file opposition, etc.—Any person interested in an estate may, at any time before any application, petition, exhibit, account, claim or other proceeding is decided upon by the court, file opposition thereto in writing, and shall be entitled to process for witnesses and evidence, and to be heard upon such opposition as in other suits.

See post, art. 3386; Herron's Probate Guide, pp. 118-119, 194.

Art. 3237. (1871) (1819) Duty of county judge to call dockets, etc.—It shall be the duty of the county judge, at each regular term of his court for probate business, to call the estates in their regular order upon his docket, and also to call the claim docket, and to make such orders as may be necessary. It shall also be his duty to see that executors, administrators and officers perform the duties enjoined upon them by law in all matters pertaining to such estates.

Art. 3238. (1872) (1820) Meaning of "term of court," "docket," and "minutes."—When a term of the county court is mentioned in this title, a regular term of said court for probate business is meant, and when the word, "docket," is used, the probate docket is meant, and when the word, "minutes," is used, the probate minutes are meant.

Art. 3239. (1873) (1821) Duty of the judge to sign the minutes, etc.—It shall be the duty of the county judge, whenever he enters an order upon the minutes in vacation, to date and sign the same officially; and, at the close of each term of his court, he shall in open court sign the minutes of such term officially, after ascertaining that all orders, judgments, decrees and proceedings of the term have been properly entered, and that all papers required to be recorded therein have been so recorded.

See Herron's Probate Guide, p. 64; Green v. White, 45 S. W. 389.

Art. 3240. (1874) (1822) Attachment for property of estate may be issued, when.—Whenever complaint in writing, under oath, shall be made to the county judge, by any person interested in the estate of a decedent, that the executor or administrator of such estate is about to remove said estate, or any part thereof, beyond the limits of this state, such judge shall have power to order a writ to issue, directed to the sheriff or any constable of any county in the state, commanding him to seize such estate, or any part thereof, and hold the same subject to such further orders as such judge may make on such complaint; provided, that no such writ shall issue, unless the complainant shall give bond with two or more good and sufficient sureties, in such sum as the said judge may require, payable to the executor or administrator of such estate, conditioned for the payment of all damages and costs that may be recovered for the wrongful suing out of such writ. (Acts 1876, p. 129, sec. 139.)

Art. 3241. (1875) (1822a) Annual exhibits required; final settlement, when.—Executors and administrators shall be required to make annual exhibits under oath, fully showing the condition of the estate; they shall be required to make final settlement of the estates they represent within three years from the grant of letters, unless the time be extended by the court after satisfactory showing being made under oath; and, upon failure in either case, shall be removed as provided in article 3394. (Acts 1881, p. 31.)

See post, art. 3563 et seq.; Herron's Probate Guide, pp. 331-332.

Art. 3242. (1876) (1823) Twenty days notice of filing exhibit shall be given, etc.—All exhibits made by executors or administrators, showing a list of claims allowed and approved, or established against the estate they represent, or showing the condition of said estate, and an account of the moneys received and of the moneys paid out on account of said estate, returned to the court before the filing of the account for final settlement of said estate, shall be filed with the clerk, unless otherwise specially provided in this title. Notice of such filing shall be posted on the court house door of the county for which such court is held; and no other action shall be had thereon until the expiration of at least twenty days from the posting of said notice, after which time the county judge shall, in term time, examine said exhibit, and, if the same be found to be correct, render judgment of approval thereon and order said exhibit to be recorded. (Acts 1876, p. 109, sec. 68.)

Thomas v. Hawpe, 80 S. W. 129.

Art. 3243. (1877) (1824) When an executor or administrator shall be deemed to have qualified.—An executor or administrator shall be deemed to have duly qualified when he shall have taken the oath required by law, and when he shall have given the bond required by law, and when said bond has been approved and filed. In case of an executor where no bond is required, he shall be deemed to have been duly qualified when he shall have taken the oath required by law.

Art. 3244. (1878) (1825) Depositions and rules of evidence.—In all proceedings in the county court arising under the provisions of this title, the depositions of witnesses may be taken and read in evidence, under the same rules and regulations as in the district court, and all laws in relation to witnesses and evidence which govern the district court shall apply to all proceedings in the county court, under the provisions of this title so far as they are applicable.

See ante, art. 3234; Herron's Probate Guide, pp. 67-68.

Art. 3245. (1879) (1826) Titles made by executor, etc., valid although, etc.—When an executor or administrator, legally qualified as such, has performed any acts as such executor or administrator in conformity with his authority and with law, such acts shall continue to be valid to all intents and purposes, so far as regards the rights of innocent purchasers of any of the property of the estate from such executor or administrator, for a valuable consideration, in good faith, and without notice of any illegality in the title to the same, notwithstanding such acts or the authority under which they were performed may afterward be set aside, annulled and declared invalid.

See Herron's Probate Guide, p. 305; Masterson's heirs v. Stevens, 37 S. W. 364; Green v. White, 45 S. W. 389.

Art. 3246. (1879a) Sales by foreign executors validated.—All sales of real estate within this state, which have been heretofore made by executors of wills, which, prior to such sales, had been probated according to the laws of another state of the United States, having jurisdiction, and which wills possessed the requisites to pass title to real estate required by the statutes of this state, where such wills conferred upon the executors the power to sell the real estate so sold, independent of the probate court, and where such sales would have been valid and effectual to pass the title to such real estate had the wills been probated in this state, be and the same are hereby validated; provided, however, that the validation of such sales shall not defeat the rights of creditors of the testators of such wills, nor affect the title of purchasers for value from the heirs or devisees of the testators of such wills, where such purchases were made prior to the enactment hereof. (Acts 1893, p. 102.)

See Herron's Probate Guide, pp. 79-80; League v. Williamson, 77 S. W. 435.

CHAPTER FOUR

APPLICATIONS FOR THE PROBATE OF WILLS AND FOR LETTERS

Art. 3247. (1880) (1827) Application for letters must be filed within four years after death of testator, or intestate, exception.—All applications for the grant of letters testamentary or of administration upon an estate must be filed within four years after the death of the testator or intestate; and, if four years have elapsed between the death of such testator or intestate and the filing of such application, such application shall be refused and dismissed; provided, that this article shall not apply to citizens of this state who have suffered losses by Indian depredations, or by the occupation or taking of their property by troops enlisted in, or belonging to, the United States army, and have died since such loss, and make the application for the

purpose of recovering compensation for such loss. In all such cases, the proper courts of this state are authorized to grant letters of administration upon the estate of any citizen, without regard to the date of his death, when the applicant for letters alleges in his application that the testator or intestate suffered losses by Indian depredations or by the occupation or taking of their property by troops enlisted in, or belonging to, the United States army, and that letters are sought for the purpose of enabling him or her to bring suit in the United States court of claims to recover compensation for such loss. (Acts 1899, p. 244; Acts 1876, p. 94, sec. 2; Acts 1893, p. 6; P. D. 5505.)

See Herron's Probate Guide, pp. 81-82; Nelson v. Bridge, 86 S. W. 7.

Art. 3248. (1881) (1828) Will shall not be probated after a lapse of four years, unless, etc.—No will shall be admitted to probate after the lapse of four years from the death of the testator, unless it be shown by proof that the party applying for such probate was not in default in failing to present the same for probate within the four years aforesaid; and in no case shall letters testamentary be issued where a will is admitted to probate after the lapse of four years from the death of the testator.

See Herron's Probate Guide, pp. 81-83, 100-101; Shook v. Journeay, 149 S. W. 406; Armendariz de Acosta v. Cadena, 165 S. W. 555; Masterson v. Harris, 174 S. W. 570; Michaelis v. Nance, 184 S. W. 785.

Art. 3249. (1882) (1829) Administration not barred, when.—Where letters testamentary or of administration shall have once been granted, any person interested in the administration may proceed, after any lapse of time, to compel a settlement of the estate when it does not appear from the record that the administration thereof has been closed. (P. D. 5507.)

See Herron's Probate Guide, pp. 83-85; Thomas v. Hawpe, 80 S. W. 129; McLain v. Pate, 124 S. W. 718.

Art. 3250. (1883) (1830) Applications shall be in writing and filed.—All applications for probate of wills, or for letters testamentary or of administration, shall be in writing and filed with the clerk of the county court of the proper county. (Acts 1876, p. 94, sec. 2.)

Art. 3251. (1884) (1831) Application for probate of written will produced in court shall state what.—An application for the probate of a written will produced in court shall state:

1. The name of the testator and that he is dead, and the time and place of his death.

2. The facts necessary to show that the court has jurisdiction of the estate.

3. The nature and probable value of the estate.

4. The name and residence of the executor named in the will, if any, and if none be named in the will, then the name and residence of the applicant.

5. That such executor or applicant, as the case may be, is not disqualified by law from accepting letters, if letters be desired.

Nelson v. Bridge, 86 S. W. 7.

Art. 3252. (1885) (1832) Will shall be filed with the application, etc.—The written will shall be filed with the application for the probate thereof, and shall thereafter remain in the office of the clerk with whom it is filed, unless removed therefrom by order of the county or district court.

Art. 3253. (1886) (1833) What the application shall state where the will can not be produced in court.—An application for the probate of a written will which cannot be produced in court, in addition to the requirements of article 3197, shall state:

1. The reason why such will can not be produced.

2. The contents of such will as far as known.

3. The date of such will, and the executor appointed therein, if any, and the names of the subscribing witnesses thereto, if any.

4. The names and residences, if known, of all the heirs at law of the testator, and if not known, that fact shall be stated.

Such application shall be sworn to by the applicant or some credible person.

See Herron's Probate Guide, pp. 103-104.

Art. 3254. (1887) (1834) Application for nuncupative will shall state, what.—An application for the probate of a nuncupative will, in addition to the requirements of article 3251, shall state:

1. The substance of the testamentary words spoken.

2. The names and residence of the witnesses thereto.

3. The names and residence, if known, of the heirs at law of the testator, and, if not known, that fact shall be stated.

Such application shall be sworn to by the applicant or some credible person.

See post arts. 3261, 7862; Herron's Probate Guide, pp. 104-5.

Art. 3255. (1888) (1835) Application for letters of administration shall state, what.—An application for letters of administration shall state:

1. The name of the deceased; that he is dead, and the time and place of his death, and that he died intestate.

2. The facts necessary to show that the court has jurisdiction of the estate.

3. The nature and probable value of the estate.

4. That a necessity exists for an administration upon such estate, setting forth the facts which show such necessity.

5. That the applicant is not disqualified by law to act as administrator.

See Herron's Probate Guide, pp. 85-6; Nelson v. Bridge, 86 S. W. 7.

Art. 3256. (1889) (1836) Citation to issue, and shall state, what.—When an application for the probate of a written will, together with such will, is filed with the clerk, or when an application for letters of administration is filed, the clerk shall issue a citation to all parties interested in such estate, which citation shall state:

1. That such application has been filed, and the nature of it.

2. The name of the deceased and of the applicant.

3. The time when, and the court by which, the application will be acted upon.

4. It shall cite all persons interested in the estate to appear at the time therein named and contest said application, should they desire to do so.

See Martin v. Smith, 57 S. W. 299; Pierce v. Farrar, 126 S. W. 932.

Art. 3257. (1890) (1837) Service of such citation, how made.—The citation provided for in the preceding article shall be served by posting for at least ten days, exclusive of the day of posting, before the first day of the term of the court to which such citation is returnable.

Art. 3258. (1891) (1838) Citation when will can not be produced, or where it is nuncupative.—When the application is for the probate of a written will which can not be produced in court, or for the probate of a nuncupative will, the citation shall contain substantially the statements made in the application, and the time when, place where, and the court before which such application will be acted upon.

Art. 3259. (1892) (1839) Service of such citation, how made.—If the heirs of the testator be residents of this state and their residence be known, the citation provided for in the preceding article shall be served upon them by delivering to each of them in person a true copy of such citation, at least ten days, exclusive of the day of service, before the first day of the term of the court to which such citation is returnable.

Art. 3260. (1893) (1840) Service of such citation by publication.—Service of such citation may be made by publication thereof in a newspaper published in the county in which such citation is issued, if there be one, and, if there be none, then in the newspaper which is published nearest to the court house of such county, for four successive weeks previous to the first day of the term of the court to which such citation is returnable, in the following cases:

1. When the heirs are non-residents of this state.
2. When their names or their residences are unknown.
3. When they are transient persons.

Art. 3261. (1894) (1841) No action shall be had until service of citation.—No application shall be acted upon until the service of citation has been made in the manner and for the length of time in such case required by the preceding articles of this chapter.

See Herron's Probate Guide, p. 102.

Art. 3262. (1895) (1842) Application may be made to whom.—Applications for the probate of a will may be made by the testamentary executor, or by any person interested in the estate of the testator, and application for letters of administration upon an estate may be made by any person. (Acts 1876, p. 95, sec. 6.)

See Herron's Probate Guide, p. 106.

Art. 3263. (1896) (1843) Administration may be prevented, how.—When application is made for letters of administration upon an estate by a creditor, and those interested in the estate do not desire an administration thereupon, they can defeat such application:

1. By the payment of the claim of such creditor.
2. By proof to the satisfaction of the court that such claim is fictitious, fraudulent, illegal or barred by limitation.
3. By executing a bond with two or more good and sufficient sureties, payable to, and to be approved by, the county judge, in double the amount of such creditor's debt, conditioned that the obligors will pay the debt of such applicant upon the establishment thereof by suit in any court having jurisdiction of the amount in the county having jurisdiction of such estate. (P. D. 5558.)

See Truesdale v. Putegnat, 59 S. W. 307; Wood v. Priddy, 164 S. W. 1099.

Art. 3264. (1897) (1844) One creditor may apply in behalf of several, etc.—Several creditors may authorize one of their number to apply for letters in behalf of them all; and, in such case, the grant of letters can not be defeated without complying with the requirements of the preceding article as to all the claims so represented. (P. D. 5559.)

Art. 3265. (1898) (1845) Bond shall be filed, etc.—The bond provided for in article 3263, when given and approved, shall be filed with the clerk of the county court and recorded in the minutes, and any creditor, to secure the payment of whose debt the same was executed, may sue thereon in his own name for the recovery of his debt.

Art. 3266. (1899) (1846) Lien upon estate to secure bond.—A lien shall exist on all of the estate in the hands of the distributees of such estate, and those claiming under them with notice of such lien, to secure the ultimate payment of the bond provided for in article 3263.

CHAPTER FIVE

PROBATE OF WILLS

Art. 3267. (1900) (1847) How a written will which is produced in court may be proved.—A written will produced in court may be proved:

1. By the written affidavit of one of the subscribing witnesses thereto, taken in open court and subscribed by such witness.
2. If all the witnesses are non-residents of the county, or those resident of the county are unable to attend court, it may be proved by the testimony of any one or more of them taken by deposition.
3. If none of the witnesses are living, it may be probated on proof by two witnesses of the handwriting of the subscribing witnesses thereto, and also of the testator, if he was able to write, which proof may be either by affidavit taken in open court and subscribed by the witnesses, or by deposition.
4. If the will was wholly written by the testator it may be probated on proof by two witnesses of his handwriting, which proof may also be made by affidavit taken in open court and subscribed to by the witnesses, or by deposition. (Acts 1876, p. 94, sec. 3.)

See Herron's Probate Guide, p. 115.

Art. 3268. (1901) (1848) How written will not produced may be proved.—A written will which can not be produced in court, upon proof of that fact, may be proved in the same manner as provided in the preceding article, and the same amount and character of testimony shall be required to prove such will as is required to prove a written will produced in court.

Tyner v. Paschal, 27 Tex. 286.

Art. 3269. (1902) (1849) Nuncupative will shall not be proved, when, etc.—No nuncupative will shall be proved within fourteen days after the death of the testator; nor shall any such will be probated after six months have elapsed from the time of

speaking the pretended testamentary words, unless the same, or the substance thereof, shall have been committed to writing within six days after making such will; nor shall any such will be probated, unless it be made in the time of the last sickness of the deceased, at his habitation, or where he has resided for ten days next preceding, except when the deceased is taken sick away from home and dies before he returns to such habitation. (Id. p. 95, sec. 4; P. D. 1264.)

See post art. 7862; Herron's Probate Guide, p. 109; Martinez v. De Martinez, 48 S. W. 532.

Art. 3270. (1903) (1850) Nuncupative will must be proved, how.—No nuncupative will shall be probated, unless it be proved by three credible witnesses that the testator called on some person to take notice or bear testimony that such is his will, or words of like import, and if the testimony of such witnesses differs materially as to the testamentary words spoken, or as to the testator's calling upon some one to witness the same, the will shall not be admitted to probate. (Id; P. D. 1264.)

See post art. 7861; Jones v. Norton, 10 Tex. 121; Mitchell v. Vickers, 20 Tex. 384.

Art. 3271. (1904) (1851) Facts which must be proved.—Before admitting a will to probate, it must be proved to the satisfaction of the court:

1. That the testator, at the time of executing the will, was at least twenty-one years of age, or was married, that he was of sound mind, and that he is dead.

2. That the court has jurisdiction of his estate.

3. That citation has been served and returned in the manner and for the length of time required by law.

4. That the testator executed the will with the formalities and solemnities and under the circumstances required by law to make it a valid will.

5. That such will has not been revoked by the testator. (Revision, 1879.)

See Herron's Probate Guide, pp. 118-9; Martin v. Smith, 57 S. W. 299; McElroy v. Phink, 76 S. W. 753; Moore v. Boothe, 87 S. W. 882; Green v. Hewett, 118 S. W. 170; Warren v. Ellis, 137 S. W. 1182; Golden v. Walker, 153 S. W. 683; Baker v. McDonald, 159 S. W. 450; Navarro v. Garcia, 172 S. W. 723; Rounds v. Coleman, 189 S. W. 1086; Perdue v. Perdue, 208 S. W. 353.

Art. 3272. (1905) (1852) Further proof in case of will which can not be produced in court.—If the will be a written will which can not be produced in court, the cause of its non-production must be proved; and such cause must be sufficient to satisfy the court that it can not by any reasonable diligence be produced, and the contents of such will must be substantially proved by the testimony of a credible witness who has read the same, or who has heard it read.

See Herron's Probate Guide, p. 108.

Art. 3273. (1906) (1853) All testimony shall be committed to writing, etc.—All testimony taken in open court upon the hearing of an application to probate a will shall be committed to writing at the time it is taken, and subscribed in open court by the witness or witnesses, and filed by the clerk. (Acts 1876, p. 95, sec. 7.)

See Walker v. Boyd, 48 S. W. 602; Golden v. Walker, 153 S. W. 683.

Art. 3274. (1907) (1854) Order shall be entered, will, etc., shall be recorded, when.—Upon the hearing of an application for the probate of a will, if the court be satisfied from the evidence that such will should be admitted to probate, an order to that effect shall be entered upon the minutes; and such will, together with the application for the probate thereof, and all the testimony in the case, shall be recorded in the minutes; provided, that the substance only of depositions shall be so recorded.

See Sayles' Practice, p. 472.

Art. 3275. (1908) (1855) Certified copy of record may be read in evidence.—A certified copy of such record of testimony may be read in evidence on the trial of the same matter in any other court when taken there by appeal or otherwise. (Id. p. 95, sec. 7.)

See Herron's Probate Guide, pp. 110-111.

Art. 3276. (1909) (1856) Will probated in another state or country may be filed and recorded in this state.—When application is made for the probate of a will which has been probated according to the laws of any of the United States or territories, or of any country out of the limits of the United States, a copy of such will and the probate thereof attested by the clerk of the court in which such will was admitted to probate, and the seal of the court annexed, if there be a seal, together with a certificate from the judge or presiding magistrate of such court, that the said attestation is in due form, may be filed and recorded in the court, and shall have the same force and effect as the original will, if probated in said court; provided, that the validity of such will may be contested in the same manner as the original might have been. (Id. sec. 5.)

See post arts. 3289, 7875-7878; Herron's Probate Guide, pp. 76-7; Dew v. Dew, 57 S. W. 926; Mason v. Rodriguez, 115 S. W. 868; Pena Y Vidaurri's Estate v. Bruni, 156 S. W. 315; Lane v. Miller & Vidor Lumber Co., 176 S. W. 100.

CHAPTER SIX

GRANTING LETTERS

Art. 3277. (1910) (1857) Who are disqualified from being executors or administrators.—Letters testamentary or of administration shall not be granted to any person who is under twenty-one years of age, or of unsound mind; provided, however, that such letters may be granted to a surviving husband or wife who may be under twenty-one years of age. (Acts 1876, p. 96, sec. 10.)

See Speer's Marital Rights, p. 776; Shook v. Journeay, 149 S. W. 406.

Art. 3278. (1911) (1858) When a will has been probated letters testamentary shall be granted.—When a will shall have been probated, it shall be the duty of the court to grant letters testamentary to the executor or executors appointed by such will, if any there be, or to such of them as are not disqualified, and are willing to accept the trust and qualify according to law within twenty days after such probate, except in the case provided for in article 3248. (Id. p. 95, sec. 8.)

Shook v. Journeay, 149 S. W. 406; Journeay v. Shook, 152 S. W. 809.

Art. 3279. (1912) (1859) When administration shall be granted.—When any person shall die intestate, or where no executor is named in a will, or where the executor renounces, dies, becomes of unsound mind, or is removed, or is disqualified, or shall neglect to accept and qualify within

twenty days after the probate of the will, or shall neglect for a period of thirty days after the death of the testator to present the will for probate, then administration of the estate of such intestate, or administration with the will annexed of the estate of such testator shall be granted, should administration appear to be necessary. (Id. sec. 9.)

See Herron's Probate Guide, p. 92.

Art. 3280. (1913) (1860) Administration shall not be granted unless, etc.—No administration upon any estate shall be granted, unless it be made to appear to the satisfaction of the court that there exists a necessity therefor, such necessity to be determined by the court hearing the application.

See Herron's Probate Guide, p. 86; Speer's Marital Rights, p. 776.

Art. 3281. (1914) (1861) Order in which letters shall be granted.—Letters testamentary or of administration shall be granted to persons who are qualified to act, in the following order:

1. To the person named as executor in the will of the deceased.
2. To the surviving husband or wife.
3. To the principal devisee or legatee of the testator.
4. To any devisee or legatee of the testator.
5. To the next of kin of the deceased, the nearest in the order of descent first, and so on.
6. To a creditor of the deceased.
7. To any person of good character residing in the county. (Id.; P. D. 5508.)

See Speer's Marital Rights, p. 776; Herron's Probate Guide, pp. 93-4; Truesdale v. Putegnat, 59 S. W. 307; Stevens v. Cameron, 96 S. W. 1086; Journeay v. Shook, 152 S. W. 809; Pepper v. Walling, 195 S. W. 892.

Art. 3282. (1915) (1862) Where applicants are equally entitled.—When applicants are equally entitled, the letters shall be granted to the applicant who, in the judgment of the court, is most likely to administer the estate advantageously, or they may be granted to any two or three of such applicants. (P. D. 5512.)

Art. 3283. (1916) (1863) Certain persons entitled to letters may waive right in favor of another, how.—The surviving husband or wife, or, if there be no such survivor, the heirs, or any one of the heirs of the deceased, to the exclusion of any person not equally entitled, may, in open court, or by power of attorney, duly authenticated and filed with the clerk of the county court of the county having jurisdiction of the estate, renounce his right to the administration in favor of some other qualified person, and thereupon the court may grant letters to such other person.

See Speer's Marital Rights, p. 776; Stevens v. Cameron, 96 S. W. 1086; Id. 101 S. W. 791; Kimmons v. Abraham, 158 S. W. 256.

Art. 3284. (1917) (1864) Letters revoked and granted to persons having prior right.—Where letters have been granted to one, and another whose right thereto is prior and who has not waived such right and who is not disqualified, makes application for letters, the letters previously granted shall be revoked and other letters shall be granted to the person thus entitled. (Id. p. 96, secs. 13-14; P. D. 5518.)

See Speer's Marital Rights, p. 777; Polasek v. Janecek, 55 S. W. 522; Heinemeier v. Arlitt, 67 S. W. 1038.

Art. 3285. (1918) (1865) Letters revoked and granted to executor upon attaining lawful age.—Whenever any person named as executor in a will is under age, and letters of administration with the will annexed have been granted to any other person, such executor shall, upon proof that he has attained the age of twenty-one years and is not disqualified otherwise, be entitled to have such letters of administration revoked and letters testamentary granted to himself. And when two or more persons are named executors in a will, any one or more of whom are minors when such will is admitted to probate, the letters testamentary have been issued to such only as are of full age, such minor or minors, upon attaining the age of twenty-one years, if not disqualified, shall be permitted to qualify and receive letters. (Id. p. 96, sec. 11.)

Art. 3286. (1919) (1866) Executor absent from the state, etc., may qualify within what time, etc.—Whenever any person named as executor in a will shall have been absent from the state when the testator died or when the will was proved, whereby he was prevented from presenting the will for probate within thirty days after the death of the testator, or from accepting and qualifying as executor within twenty days after the probate of the will, or whenever he shall have been prevented by sickness from so presenting the will or from so accepting and qualifying, he shall be allowed to accept and qualify as executor at any time within sixty days after his return to the state or his recovery from sickness, upon making proof to the court that he was so absent or prevented by sickness; and, if in the meantime letters of administration have been granted, such letters shall be revoked. (Id. p. 96, sec. 12.)

Art. 3287. (1920) (1867) Letters shall not be revoked except upon application and citation.—Letters shall not be revoked and other letters granted under the provisions of either of the four preceding articles, unless application therefor has been filed and the executor or administrator has been cited to appear at a regular term of the court and show cause why such application should not be granted; but in such cases, when the letters are revoked, other letters may be granted without the posting of citation as in other cases.

Ballard v. Wheeler, 56 S. W. 946.

Art. 3288. (1921) (1868) When will is discovered after grant of administration.—Whenever letters of administration shall have been granted upon an estate, and it shall afterward be discovered that the deceased left a lawful will, such will may be proved in the manner provided for the proof of wills; and, if an executor is named in such will, and he is not disqualified, he shall be allowed to qualify and accept as such executor, and the letters previously granted shall be revoked; but if no such executor be named in the will, or if the executor named be disqualified, or shall renounce the executorship,

or shall neglect to accept and qualify within twenty days after the date of the probate of the will, or shall neglect for a period of thirty days after the discovery of such will to present it for probate, then administration with the will annexed of the estate of such testator shall be granted as in other cases. All acts done by the first administrator, previous to the qualification of the executor or administrator with the will annexed, shall be as valid as if no such will had been discovered. (Id. p. 97, sec. 15.)

See Herron's Probate Guide, p. 101.

Art. 3289. (1922) (1869) Executor of will proved in another state entitled to letters within this state, when.—When a will has been admitted to probate in any of the United States or territories thereof, or in the District of Columbia, or in any country out of the limits of the United States, and the executor named in such will has qualified, and a copy of such will and the probate thereof has been filed and recorded in any county court of this state having jurisdiction of the estate, and letters of administration have been granted by such court to any person other than such executor, upon the application of such executor, and after citation served upon the person to whom such letters have been granted, such letters shall be revoked, and letters testamentary shall be granted to such applicant. (Id. p. 97, sec. 16; P. D. 5517.)

See Herron's Probate Guide, p. 80; Stevens v. Cameron, 101 S. W. 791; Dodge v. Youngblood, 202 S. W. 116.

Art. 3290. (1923) (1870) Bond shall be required as in other cases.—In the case provided for in the preceding article, the executor shall be required to give bond as in other cases, notwithstanding any provision to the contrary in the will, and the order revoking the former letters shall not take effect until such executor has qualified in accordance with law. (P. D. 5517.)

Art. 3291. (1924) (1871) Further administration shall be granted, when.—Whenever an estate is unrepresented by reason of the death, removal or resignation of the executor or administrator, the court shall grant further administration upon such estate when necessary, and with the will annexed, where there is a will, in the same manner and under the same regulations provided for the appointment of original executors or administrators. (Id. p. 97, sec. 18.)

See Herron's Probate Guide, pp. 185-7.

Art. 3292. (1925) (1872) Executor, etc., who has been removed, shall not afterward be appointed, etc.—Whenever any person has been removed from the executorship or administration of an estate, he shall not afterward be appointed administrator thereof. (Id. p. 100, sec. 28.)

Art. 3293. (1926) (1873) What facts must appear before granting letters testamentary.—Before granting letters testamentary, it must appear to the court:

1. That the person is dead.
2. That four years have not elapsed since his decease prior to the application.
3. That the court has jurisdiction of the estate.
4. That the will has been proved as prescribed by law.
5. That the person to whom the letters are to be granted is named as executor in the will.
6. That the person named as executor is not disqualified by law.

The first three subdivisions of this article have no application where letters of administration upon such estate have been previously granted in said court. (Id. p. 24, sec. 2.)

Nelson v. Bridge, 86 S. W. 7; Journeay v. Shook, 152 S. W. 809; Pepper v. Walling, 195 S. W. 892.

Art. 3294. (1927) (1874) What facts must appear before granting letters of administration.—Before granting letters of administration, it must appear to the court:

1. That the person is dead.
2. That four years have not elapsed since his decease prior to the application.
3. That the court has jurisdiction of the estate.
4. That there is a necessity for an administration upon such estate.
5. That the person to whom the letters are about to be granted is entitled thereto by law and is not disqualified.

The first three subdivisions of this article have no application when letters testamentary or of administration have been previously granted upon such estate by said court. (Id.)

See post, arts. 3593, 3594, 3609; Herron's Probate Guide, pp. 87-9; Nelson v. Bridge, 86 S. W. 7.

Art. 3295. (1928) (1875) Order of court granting letters.—When letters testamentary or of administration are granted by the court, an order to that effect shall be entered upon the minutes, which order shall state:

1. The name of the testator or intestate.
2. The name of the person to whom the grant of letters is made.
3. If bond is required, the amount thereof.
4. The order shall require the clerk of the court to issue letters in accordance with such order, when the person to whom such letters are granted shall have qualified according to law.

See Herron's Probate Guide, p. 94.

Art. 3296. (1929) (1876) Grant of letters may be opposed, etc.—When application is made for letters of administration, any person may at any time before the said application is granted, file his opposition thereto in writing, and may apply for the grant of letters to himself or to any other person; and, upon the trial, the court shall grant letters to the person that may seem best entitled to them, having regard to the provisions of this title, without further notice than that of the original application.

See Herron's Probate Guide, pp. 95-6.

CHAPTER SEVEN

TEMPORARY ADMINISTRATION

Art. 3297. (1930) (1877) County judge may appoint temporary administrator, when.—Whenever it may appear to the county judge that the interest of an estate requires the immediate appointment of an administrator, he shall, either in open court or in vacation, by writing under his hand and the seal of the court, attested by the clerk, appoint some suitable person temporary administrator with such limited powers as the circumstances of the case may require. (Acts 1876, p. 98, sec. 20.)

Art. 3298. (1931) (1878) Appointment may be made without application, etc.—Such appointment may be made either upon written application or without such application, and without citation. It shall define the powers conferred, and before being delivered to the person appointed shall be recorded in the minutes of the court, and the clerk shall indorse thereon a certificate that it has been so recorded, and until such record and certificate are made such appointment shall not take effect. (Id. p. 98, sec. 20.)

See Life Ins. Co. v. Gibbs, 78 S. W. 398; Gulf, C. & S. F. Ry. Co. v. Cooper, 191 S. W. 579.

Art. 3299. (1932) (1879) Oath and bond required.—Such appointment shall not be delivered or take effect until the person appointed has taken the oath and has given bond as required by law. (Id. p. 98, sec. 22.)

See Herron's Probate Guide, p. 73.

Art. 3300. (1933) (1880) Appointment shall cease to be of force, when.—Such appointment shall cease to be of force on the day designated for taking up probate business at the first term of the court held next after the date thereof, unless at such term it be continued in force by an order entered upon the minutes in open court; and in no case shall such appointment continue in force beyond the day designated. (Id. p. 98, sec. 20.)

See Life Ins. Co. v. Gibbs, 78 S. W. 398.

Art. 3301. (1934) (1881) Pending contest the county judge may appoint temporary administrator.—Pending any contest relative to the probate of a will, or the granting of letters of administration, whether such contest be in the county court or in the district court, it shall be the duty of the county judge, should he deem it necessary, to appoint a temporary administrator in the manner prescribed in the preceding articles in this chapter, with such limited powers as the circumstances of the case may require; and such appointment may continue in force until the termination of the contest and the appointment of an executor or administrator with full powers. (Id. p. 98, sec. 21.)

See Herron's Probate Guide, p. 74.

Art. 3302. (1935) (1882) Rights and powers of temporary administrator.—Temporary administrators shall have and exercise only such rights and powers with regard to the estate, or such portions thereof as may be committed to their charge, as are specifically and clearly expressed in the order of the court appointing them, and any acts performed by them as such administrators that are not so expressly authorized shall be void.

See post, art. 4700; Herron's Probate Guide, pp. 74-5; Anglin v. Barlow, 45 S. W. 827; Lemp Brewing Co. v. La Rose, 50 S. W. 460; P. J. Willis & Bro. v. Pinkard, 52 S. W. 626.

Art. 3303. (1936) (1883) List, return of sales, exhibit and account shall be made.—At the expiration of the time for which a temporary administrator has been appointed, he shall file with the clerk of the court a list of all the property of the estate which has come to his hands, a return of all sales made by him, and a full exhibit and account of all his acts as such administrator, all of which shall be verified by his affidavit. (P. D. 5531.)

Art. 3304. (1937) (1884) List, etc., shall be acted upon by the court.—The list, return, exhibit and account required to be made by the temporary administrator under the preceding article shall be acted upon by the court at the same or a subsequent term, and whenever temporary letters shall expire, or cease to be of effect from any cause, the court shall immediately, either in term time or in vacation, enter an order upon the probate minutes requiring such temporary administrator to forthwith deliver the estate remaining in his possession to the person legally entitled to the possession of the same.

CHAPTER EIGHT

OATH AND BOND OF EXECUTORS AND ADMINISTRATORS

Art. 3305. (1938) (1885) Oath of executor or administrator with will annexed.—Before the issuance of letters testamentary or of administration with the will annexed, the person named executor or appointed administrator with the will annexed shall take and subscribe on oath in form as follows: "I do solemnly swear that the writing which has been offered for probate is the last will of ———, so far as I know or believe, and that I will well and truly perform all the duties of executor of said will (or of administrator with the will annexed, as the case may be) of the estate of said ———." (Acts 1876, p. 100, sec. 30.)

Art. 3306. (1939) (1886) Oath of administrator.—Before the issuance of letters of administration, the person appointed administrator shall take and subscribe an oath in form as follows: "I do solemnly swear that ———, deceased, died without leaving any lawful will, so far as I know or believe, and that I will well and truly perform all the duties of administrator of the estate of said deceased." (Id. p. 100, sec. 31.)

Art. 3307. (1940) (1887) Oath of temporary administrator.—Before the issuance of temporary letters of administration, the person appointed temporary administrator shall take and subscribe an oath in form as follows: "I do solemnly swear that I will well and truly perform the duties of temporary administrator of the estate of ———, deceased, in accordance with law, and with the order of the court appointing me such administrator." (Id. p. 98, sec. 22.)

Art. 3308. (1941) (1888) Oath may be taken before any officer authorized to administer oaths, etc.—The oaths prescribed by the three preceding articles may be taken before any officer authorized to administer oaths, and shall be filed with the clerk of the court granting the letters, and shall be recorded in the minutes of such court.

Art. 3309. (1942) (1889) Bond of executors and administrators.—Before the issuance of letters testamentary or of administration, the person to whom letters are granted shall enter into bond, with at least two good and sufficient sureties, who shall be bona fide residents of this state, to be approved by, and payable to, the county judge of the county, in such penalty as he may direct, not less than double the estimated value of the estate of the testator or intestate, except in the case of temporary administrator, when the bond shall be in such sum as the county judge may direct; provided, that such

bond may be made by any corporation or corporations organized or created under the laws of this state, or foreign corporations permitted to do business in this state, for the purpose of issuing surety, guaranty or indemnity bonds, guaranteeing the fidelity of executors, administrators and guardians, and may be accepted by the county judge. (Acts 1897, p. 58; Acts 1876, p. 100, sec. 32.)

See ante, art. 1121, sec. 37; Herron's Probate Guide, pp. 128-9; Isham v. S., 49 S. W. 594; Sparks v. S., 60 S. W. 246.

Art. 3310. (1943) (1890) Form of bond.—The following form, or the same in substance, may be used for the bonds of executors and administrators:

"The State of Texas,

"County of ———.

"Know all men by these presents, that we, A B as principal, and C D and E F as sureties, are held and firmly bound unto the county judge of the county of ———, and his successors in office, in the sum of ——— dollars; conditioned that the above bound A B, who has been appointed executor of the last will and testament of J C, deceased, (or has been appointed by the county judge of ——— county, administrator with the will annexed of the estate of J C, deceased, or, has been appointed by the county judge of ——— county, administrator of the estate of J C, deceased, or has been appointed by the county judge of ——— county, temporary administrator of the estate of J C, deceased, as the case may be), shall well and truly perform all the duties required of him under said appointment.

"A B,
"C D,
"E F."

(Acts 1876, p. 101, sec. 34.)

Art. 3311. (1944) (1891) Oath and bond within what time.—The oath of an executor or administrator may be taken and subscribed, or his bond may be given and approved, either in term time or vacation, at any time before the expiration of twenty days from the probate of the will or the order granting the letters, or before his letters shall have been revoked for a failure to qualify within the time allowed. (Id. p. 101, sec. 33.)

See Herron's Probate Guide, p. 130.

Art. 3312. (1945) (1892) Bond shall be filed and recorded.—All bonds of executors and administrators when approved shall be filed with the clerk of the court and shall be recorded in the minutes of the court. (Id. p. 101, sec. 33.)

Art. 3313. (1946) (1893) When will provides that no bond shall be required.—When any testator shall direct in his will that no security shall be required of the person named therein as the executor, letters testamentary shall be issued to such person without any bond being required, except in the case provided for in article 3290 in which case bond is required, notwithstanding the will may provide to the contrary. (Id. p. 101, sec. 32.)

Art. 3314. (1947) (1894) Bond of married woman.—When a married woman may be appointed executrix or administratrix, she may, jointly with her husband, or without her husband, if he be absent from the state, or insane, or refuses to join with her, execute such bond as the law requires and acknowledge the same before the county judge, county clerk, or any notary public of the county where the will was proved or letters were granted; and such bond shall bind her separate estate in the same manner as if she were unmarried but shall not bind her husband as surety unless he sign and be approved as such. (Id. p. 101, sec. 35; P. D. 5571.)

See Speer's Marital Rights, p. 233.

Art. 3315. (1948) (1895) Bond of a husband or wife who is a minor.—When a surviving husband or wife under twenty-one years of age shall wish to accept and qualify as executor or executrix, or administrator or administratrix, he or she may execute such bonds as the law requires and acknowledge the same before the county judge, county clerk or any notary public of the county in which the will was proved or letters of administration were granted, and such bonds shall be as valid as if he or she were of lawful age. (Id. p. 101, sec. 36.)

See Speer's Marital Rights, p. 233.

Art. 3316. (1949) (1896) When new bond may be required.—An executor or administrator may be required to give a new bond in the following cases:

1. When the sureties upon the bond or any one of them shall die, remove beyond the limits of the state, or become insolvent.

2. When, in the opinion of the county judge, the sureties upon any such bond are insufficient.

3. When, in the opinion of the county judge, any such bond is defective.

4. When the amount of any such bond is insufficient.

5. When the sureties or any one of them petition the court to be discharged from future liability upon such bond.

6. When the bond and the record thereof have been lost or destroyed. (Id. pp. 101, 102, secs. 37, 39.)

See Herron's Probate Guide, p. 133; Hines v. Givens, 68 S. W. 295; Moore v. Hanscom, 103 S. W. 665; Moore v. Hanscom, 106 S. W. 876.

Art. 3317. (1950) (1897) Duty of county judge to require new bond, when.—When it shall come to the knowledge of the county judge that any such bond is in any respect insufficient or that it has, together with the record thereof, been lost or destroyed, it shall be his duty without delay to cause the executor or administrator to be cited to show cause why he should not give a new bond.

Moore v. Hanscom, 103 S. W. 665.

Art. 3318. (1951) (1898) Any person interested in estate may demand new bond.—Any person interested in an estate may, upon application in writing filed with the county clerk of the county where the administration is pending, alleging that the bond of the executor or administrator is insufficient or defective, or has been, together with the record thereof, lost or destroyed, cause such executor or administrator to be cited to appear and show cause why he should not give a new bond. (Id. p. 102, sec. 38.)

Moore v. Hanscom, 103 S. W. 665.

Art. 3319. (1952) (1899) Sureties may ask to be discharged, and for new bond.—The sureties upon the bond of an executor or administrator, or any one of these, may, at any time, present a petition to the county judge praying that such execu-

tor or administrator may be required to give a new bond, and that he or they may be discharged from all liability for the future acts of such executor or administrator, whereupon such executor or administrator shall be cited to appear and give a new bond. (Id. sec. 39.)

Moore v. Hanscom, 103 S. W. 665.

Art. 3320. (1953) (1900) Citation to executor or administrator.—The citations required in the three preceding articles may be issued either in term time or in vacation, and shall require the party cited to appear before the county judge on some day named therein, not later than ten days from the date of such citation, either in term time or in vacation, and five days service thereof, exclusive of the day of service, shall be sufficient.

Art. 3321. (1954) (1901) Order requiring new bond.—Upon the return of any such citation served, the county judge shall, on the day named in such citation for the hearing of the matter, whether it be in term time or in vacation, proceed to inquire into the sufficiency of the reasons for requiring a new bond, and if satisfied that a new bond should be required he shall enter an order to that effect upon the minutes, stating in such order the amount of such new bond, and the time within which it shall be given, which shall not be later than twenty days from the date of such order. (Id. p. 102.)

Art. 3322. (1955) (1902) After order requiring new bond, functions of executor, etc., suspended.—Whenever an executor or administrator has been required to give a new bond, the order requiring such bond shall have the effect to suspend the powers of such executor or administrator, and he shall not thereafter pay out any money of said estate or do any other official act except to preserve the property of the estate until such new bond has been given and approved. (Id. p. 102, sec. 40.)

Art. 3323. (1956) (1903) Sureties discharged when new bond is approved.—When a new bond has been given and approved, the sureties upon the former bond of such executor or administrator are thereby discharged from all liability for the future acts of such executor or administrator, and an order to that effect shall be entered upon the minutes of the court. (Id. sec. 39.)

See Richardson v. Overleese, 44 S. W. 308; Miller v. Miller, 53 S. W. 363.

Art. 3324. (1957) (1904) Bond shall not be void on first recovery, etc.—The bonds of executors and administrators shall not become void upon the first recovery, but may be put in suit and prosecuted from time to time until the whole amount thereof shall have been recovered.

See Herron's Probate Guide, pp. 135-7.

CHAPTER NINE

ISSUANCE OF LETTERS

Art. 3325. (1958) (1905) Clerk shall issue letters, when.—Whenever an executor or administrator has been qualified in the manner required by law, it shall be the duty of the clerk of the court granting the letters testamentary or of administration to forthwith issue and deliver the letters to such executor or administrator. (Acts 1876, p. 97, sec. 19.)

Art. 3326. (1959) (1906) What constitutes letters.—Letters testamentary or of administration shall be a certificate of the clerk of the court granting the same, attested by the seal of such court, and stating that such executor or administrator, as the case may be, has duly qualified as such as the law requires, the date of such qualification and the name of the deceased. (Id.)

Art. 3327. (1960) (1907) Letters and certificate of letters made evidence.—Such letters, or a certificate of the clerk of the court which granted the same, under the seal of such court, that such letters have been issued, shall be sufficient evidence of the appointment and qualification of an executor or administrator and of the date of such qualification. (Id.; P. D. 1286.)

See post, art. 3711.

Art. 3328. (1961) (1908) Letters shall issue to each one qualifying.—When two or more persons qualify as executors or administrators, letters shall be issued to each one of them so qualifying.

Art. 3329. (1962) (1909) Other letters may be issued, when.—When letters have been lost or destroyed, the clerk may issue other letters in their stead, which shall have the same force and effect as the original letters.

CHAPTER TEN

INVENTORY, APPRAISEMENT AND LIST OF CLAIMS

Art. 3330. (1963) (1910) Appointment of appraisers.—Whenever letters testamentary or of administration shall be granted, the county judge shall, by an order entered on the minutes of the court, appoint three or more disinterested persons, citizens of the county, any two of whom may act, to appraise the estate of the deceased. (Acts 1876, p. 103, sec. 43.)

See post, art. 3596.

Art. 3331. (1964) (1911) Same subject.—If from any cause such appointment be not made, or if the appraisers, or any of them so appointed, fail to act, or if from any other cause a new appointment is required, the county judge shall by a like order, either in term time or vacation, appoint another appraiser or appraisers, as the case may require.

Art. 3332. (1965) (1912) Inventory and appraisement.—Every executor or administrator shall, immediately after he has qualified as such, with the assistance of any two or more of the appraisers appointed by the county judge, make, or cause to be made, a full inventory and appraisement of all the estate of the testator or intestate, both real and personal, specifying in such inventory what portion of said estate is the separate property of the deceased, and what portion, if any, is represented as common property. (Id. p. 103, sec. 44.)

See Griffin v. Harris, 88 S. W. 493.

Art. 3333. (1966) (1913) Appraisement shall be sworn to.—The appraised value of each article of property shall be stated opposite such article in the inventory; and such appraisement shall be sworn to and subscribed by the appraisers making the same before some officer of the county where the same is made authorized by law to administer oaths. (Id. p. 103, sec. 44.)

Art. 3334. (1967) (1914) List of claims.—Such executor or administrator shall also make and attach to said inventory a full and complete list of all claims due or owing to the testator or intestate, stating the nature of such claims, the names of the parties owing the same, the date thereof and the date when due, and the rate of interest each one bears, and shall also specify what portion of such claims is the separate property of the deceased, and what portion, if any, is represented as common property. (Id. p. 103, sec. 44.)

Art. 3335. (1968) (1915) Inventory and list shall be sworn to.—Such executor or administrator shall also attach to such inventory and list his affidavit in writing, subscribed and sworn to by him, before some officer of the county authorized by law to administer oaths, that the said inventory and list is a full and complete inventory and list of the property and claims of his testator or intestate that have come to his knowledge. (Id. p. 103, sec. 44.)

Art. 3336. (1969) (1916) Shall be returned within sixty days.—The inventory, appraisement and list required to be made by the preceding articles of this chapter shall be returned to the court granting the letters, either in term time or in vacation, within sixty days from the date of granting such letters. (Id. p. 103, sec. 45.)

Art. 3337. (1970) (1917) Court shall approve or disapprove same.—Upon the return of any such inventory, appraisement and list, it shall be the duty of the judge, either in term time or in vacation, to examine the same, and to either approve or disapprove the same. (Id.)

Art. 3338. (1971) (1918) Order of approval.—Should the inventory, appraisement and list be approved by the judge, he shall cause an order to that effect to be entered upon the minutes, either in term time or in vacation, and shall cause such inventory and list to be recorded upon said minutes.

Art. 3339. (1972) (1919) Order of disapproval.—Should the inventory, appraisement and list, or either of them, be disapproved, an order to that effect shall be entered upon the minutes, either in term time or in vacation, and such order shall further require the executor or administrator to return another inventory, appraisement and list, or either of them, within a time which shall be specified in such order, not to exceed ten days from the date of such order; and the judge may also, if he deems it necessary, appoint new appraisers.

Art. 3340. (1973) (1920) Duty of executor, etc., to make additional inventory.—Whenever property or claims of the testator or intestate other than such as may be included in the inventory and list, which have been returned, shall come to the knowledge of the executor or administrator, he shall make and return an additional inventory or list, or both, of such newly discovered property or claims, or both, without delay; and, upon the return of any such additional inventory, the county judge shall, either in term time or in vacation, appoint appraisers and cause the property named in such additional inventory to be appraised as in the case of original appraisements. (Id. p. 103, sec. 46.)

Texas Loan Agency v. Dingee, 75 S. W. 866; Moore v. Mertz, 85 S. W. 312; Cavitt v. Beall Hardware & Implement Co., 204 S. W. 798.

Art. 3341. (1974) (1921) May be cited to make, etc.—Any executor or administrator, on the complaint in writing of any person interested in the estate, shall be cited to appear before the court in which the administration was granted, at a regular term thereof, and show cause why he should not be required to make and return an additional inventory or list of claims, or both. (Id. p. 103, sec. 46.)

Art. 3342. (1975) (1922) Order requiring additional inventory.—Upon the hearing of such complaint, the court shall, on sufficient proof being made that any property or claims of the estate have not been included in the inventory and list returned, require an additional inventory or list, or both, as the case may be, to be made and returned, including such property or claims, in like manner as original inventories and lists, and within such time as may be fixed by the court by an order to that effect entered upon the minutes. (Id. p. 103, sec. 46.)

Art. 3343. (1976) (1923) Erroneous inventory or list may be corrected.—Any executor or administrator, on complaint in writing of any person interested in the estate, setting forth that an error has been made in the inventory or list of claims returned, and pointing out such error, shall be cited to appear at a regular term of the court and show cause why such alleged error should not be corrected; and, if upon the hearing of such complaint it appear to the satisfaction of the court that such inventory or list is in any particular erroneous, such error shall be corrected and an order to that effect shall be entered upon the minutes, specifying such error and the correction thereof.

See Herron's Probate Guide, pp. 148-9.

Art. 3344. (1977) (1924) New appraisement may be required.—Any person interested in the estate who may deem any appraisement returned therein unjust or erroneous, may, upon complaint in writing, cause the executor or administrator to appear at a regular term of the court and show cause why a new appraisement should not be made. (Id. p. 104, sec. 48.)

Art. 3345. (1978) (1925) Order for same.—Upon the hearing of such complaint, if the court be satisfied that such appraisement was manifestly unjust or erroneous, an order shall be entered upon the minutes appointing appraisers and requiring a new appraisement to be made and returned in like manner as original appraisements. (Id.)

Art. 3346. (1979) (1926) New appraisement stands in place of original.—When any such new appraisement is made, returned and approved by the court, it shall stand in the place of the original appraisement of the same property. (Id. p. 104, sec. 48.)

Art. 3347. (1980) (1927) Not more than one reappraisement.—Not more than one reappraisement shall be made, but any person interested in the estate may contest the approval of any appraisement by filing his objections thereto in writing at any time

before such appraisement has been approved by the court. (Id.)

Moore v. Hanscom, 103 S. W. 665; Cavitt v. Beall Hardware & Implement Co., 204 S. W. 798.

Art. 3348. (1981) (1928) Shall be evidence to what extent.—All inventories and appraisements and lists of claims which have been taken, returned and approved in accordance with the provisions of this chapter, or the record thereof, or certified copies of either the originals or the record thereof, may be given in evidence in any of the courts of this state in any suit, by or against the executor or administrator, but shall not be conclusive for or against him, if it be shown—

1. That there is other property belonging to the estate not inventoried; or,

2. That there are other claims belonging to the estate other than those named in the list; or,

3. That certain property or claims named in the list did not belong to the estate; or,

4. That the property was not separate or common property as specified in such inventory or list; or,

5. That the property or any part thereof was sold legally and in good faith for less than the appraised value thereof. (Id. p. 104, sec. 47.)

See Sayles' Practice, p. 465; Herron's Probate Guide, pp. 149-150; Speer's Marital Rights, p. 628.

Art. 3349. (1982) (1929) Where more than one executor or administrator qualifies and some neglect to return inventory, etc.—If there be more than one executor or administrator qualified as such, any one or more of them, on the neglect of the others, may return an inventory and appraisement and list of claims as required by the provisions of this chapter; and the executor or administrator so neglecting shall not thereafter interfere with the estate or have any power over the same; but the executor or administrator so returning shall have thereafter the whole administration, unless within sixty days after the return the delinquent or delinquents shall assign to the court in writing and under oath some reasonable excuse which the court may deem satisfactory; and, if no such sufficient excuse shall be assigned within said time, an order shall be entered upon the minutes removing such delinquent or delinquents and revoking his or their letters. (Id. p. 98, sec. 23.)

See Herron's Probate Guide, pp. 162-3.

CHAPTER ELEVEN

CERTAIN RIGHTS, DUTIES AND POWERS OF EXECUTORS AND ADMINISTRATORS

Art. 3350. (1983) (1930) What care to take of property of estate.—It shall be the duty of the executor or administrator to take such care of the property of the estate of his testator or intestate as a prudent man would take of his own property, and if there be any buildings belonging to the estate it shall be his duty to keep the same in tenable repair, extraordinary casualties excepted, unless directed not to do so by an order of the court. (Acts 1876, p. 104, sec. 49.)

See Herron's Probate Guide, p. 155; Rice v. Conwill, 80 S. W. 393.

Art. 3351. (1984) (1931) Duty in regard to plantation, manufactory or business.—If there be a plantation, manufactory or business belonging to the estate, and the disposition thereof is not specially directed by will, and, if the same be not required to be at once sold for the payment of debts, it shall be the duty of the executor or administrator to carry on the plantation, manufactory or business, or cause the same to be done, or to rent the same, as shall appear to him to be most for the interest of the estate. In coming to a determination, he shall take into consideration the condition of the estate and the necessity that may exist for future sale of such property for the payment of claims or legacies, and shall not extend the time of renting any of the property beyond what may consist with the speedy settlement of the estate. (Id. p. 104, sec. 50.)

See Herron's Probate Guide, pp. 155-6; McMillan v. Hendrick's Estate, 46 S. W. 860; Altgelt v. Sullivan & Co., 79 S. W. 334; Altgelt v. Alamo Nat. Bk., 79 S. W. 582; Id., 83 S. W. 6; Stafford & Co. v. Dunovant's Est., 81 S. W. 65; Altgelt v. Oliver Bros., 86 S. W. 28; Stoughton Wagon Co. v. S. G. Dreyfus Co., 181 S. W. 703.

Art. 3352. (1985) (1932) Action of executor, etc., in regard to plantation, etc., may be controlled by court.—Any person interested in the estate may, upon complaint in writing, after citation of the executor or administrator, at a regular term of the court upon good cause shown, obtain an order of the court, which shall be entered upon the minutes, controlling the action of such executor or administrator in regard to such plantation, manufactory or business. (Id. p. 104, sec. 50.)

Art. 3353. (1986) (1933) Ordinary diligence shall be used to collect claims and recover property of estate.—Every executor or administrator shall use ordinary diligence to collect every claim due to the estate he represents, and to recover possession of all property to which the estate has a right; provided, there is a reasonable prospect that such claim can be collected or such property recovered; and, if any executor or administrator shall neglect to use such diligence, he and the sureties on his bond shall be liable, at the suit of any person interested in the estate, for the use of the estate, for the amount of such claims or the value of such property as may have been lost by his neglect to use such diligence. (Id. p. 104, sec. 52.)

See Herron's Probate Guide, pp. 156-7.

Art. 3354. (1987) (1934) Property may be purchased, compromises made, etc., under order of the court.—Whenever an executor or administrator may deem it for the interest of the estate he represents to purchase any property, or to exchange any property, or take any claims or property for the use and benefit of the estate in payment of any debt due the estate, or to compound bad or doubtful debts due the estate, or to make compromises or settlements in relation to property or claims in dispute or litigation, it shall be his duty to present an application in writing to the county court, at a regular term thereof, representing the facts; and, if the court upon the hearing of such application shall be satisfied that it will be for the interest of the estate to grant the same, an order to that effect shall be entered upon the minutes, setting forth fully the authority granted. (Id. p. 105, sec. 54; P. D. 5622.)

See Herron's Probate Guide, p. 157; Smith v. Pate, 43 S. W. 312; Brown v. Fid. & Dep. Co., 80 S. W. 593.

Art. 3355. (1988) (1935) Power to release mortgage.—When a mortgagee dies, his executor or administrator, on receipt of the amount due on the mortgage, is authorized to release such mortgage. (Id. p. 105, sec. 55, P. D. 5638.)

Art. 3356. (1989) (1936) Acts of one co-executor or co-administrator valid.—Should there be more than one executor or administrator of the same estate at the same time, the acts of one of them as such executor or administrator shall be as valid as if all had acted jointly; and, in case of the death, resignation or removal of an executor or administrator, if there be a co-executor or co-administrator of such estate, he shall proceed with the administration as if no such death, resignation or removal had occurred.

See Simkins' Equity (2d Ed.) p. 227; Herron's Probate Guide, pp. 158-162.

Art. 3357. (1990) (1937) Preceding article does not apply, when.—The preceding article shall not be construed to authorize one of several executors to convey real estate, but in such case all the executors who have qualified as such and who are acting as such shall join in such conveyance.

CHAPTER TWELVE

ADMINISTRATION UNDER A WILL

Art. 3358. (1991) (1938) Directions in will to be executed, unless, etc.—When a will has been probated, its provisions and directions shall be executed, unless the same are annulled or suspended by order of the court probating the same in a proceeding instituted for that purpose by some person interested in the estate. (P. D. 5623.)

See Allardyce v. Hamilton, 68 S. W. 834; Id. 70 S. W. 76; Shook v. Journeay, 149 S. W. 406; Thornton v. McReynolds, 156 S. W. 1144; Hughes v. Mulanax, 157 S. W. 217; Hilgers v. Hilgers, 159 S. W. 851; Nunn v. Titchie-Goettinger Co., 196 S. W. 890; Hutchens v. Dresser, 196 S. W. 969.

Art. 3359. (1992) (1939) Proceedings to annul directions in will.—Such proceeding shall be by application in writing, filed with the clerk of the court, setting forth the provisions and directions in the will that are objected to, and the grounds of objection.

Shook v. Journeay, 149 S. W. 406.

Art. 3360. (1993) (1940) Citation to executor, etc., in such case.—Upon the filing of such application, the clerk shall issue a citation for the executor or administrator with the will annexed to appear at a regular term of such court and answer such application, the substance of which application shall be set forth in the citation; and such citation shall further direct such executor or administrator to refrain from executing the provisions and directions in the will that are objected to, until such application has been heard and decided by the court.

Shook v. Journeay, 149 S. W. 406.

Art. 3361. (1994) (1941) Order of the court in such case.—If it appear upon the hearing of such application that no material injury to the interests of the applicant will be occasioned by executing the provisions and directions of the will, and that such provisions and directions are legal, the objections shall be overruled, and the provisions and directions objected to shall be confirmed and executed, and an order to that effect shall be entered upon the minutes; otherwise an order shall be entered upon the minutes of the court annulling the provisions and directions in the will to which objections are sustained, or suspending the execution of the same until the further order of the court.

See Allardyce v. Hambleton, 70 S. W. 76.

Art. 3362. (1995) (1942) Testator may provide that no action be had in the court, except probate of will, etc.—Any person capable of making a will may so provide in his will that no other action shall be had in the county court in relation to the settlement of his estate than the probating and recording of his will, and the return of an inventory, appraisement and lists of claims of his estate. (Acts 1876, p. 124, sec. 117.)

See Herron's Probate Guide, pp. 167-170; Roy v. Whitaker, 48 S. W. 892; In re Grant's Estate, 53 S. W. 372; Ellis v. Mabry, 60 S. W. 571; Stevenson v. Roberts, 64 S. W. 230; Bank v. Bell, 71 S. W. 571; Epperson v. Reeves, 79 S. W. 845; Hughes v. Mulanax, 153 S. W. 299; McMahan v. McMahan, 175 S. W. 157; Dunn v. Epperson, 175 S. W. 837; Huth v. Huth, 187 S. W. 523.

Art. 3363. (1996) (1943) Creditor may sue executor in such case.—In the cases mentioned in the preceding article, any person having a debt or claim against said estate may enforce the payment of the same by suit against the executor of such will; and, when judgment is recovered against the executor, the execution shall run against the estate of the testator in the hands of the executor that may be subject to such debt; but no such executor shall be required to plead to any suit brought against him for money until the expiration of twelve months from the date of the probate of such will. (Id. p. 124, sec. 117.)

See ante, arts. 2004, 2005; Herron's Probate Guide, pp. 172-3; Woolley v. Sullivan, 46 S. W. 629; Burns v. Falls, 56 S. W. 576; F. & M. Nat. Bk. v. Bell, 71 S. W. 571; Altgelt v. Sullivan & Co., 79 S. W. 334; Hartz v. Hausser, 90 S. W. 63; Dunn v. Epperson, 175 S. W. 837.

Art. 3364. (1997) (1944) Executor without bond may be required to give bond, when.—In cases where no bond has been required of an executor, any person having a debt, claim or demand against the estate, to the justice of which oath has been made by himself, his agent or attorney, or any person interested in such estate, whether in person or as the representative of another, may, by complaint in writing filed in the court where such will was probated, cause such executor to appear before such court at some regular term and show cause why he should not be required to give bond as such executor. (Id.)

See Herron's Probate Guide, pp. 131-2; Morton v. Morris, 56 S. W. 559.

Art. 3365. (1998) (1945) Order requiring bond.—Upon the hearing of such complaint, if it be made to appear by proof to the satisfaction of the court that such executor is wasting, mismanaging or misapplying such estate, and that thereby said creditor may probably lose his debt, or such person his interest in the estate, it shall be the duty of the court to enter an order upon the minutes requiring such executor to give bond within ten days from the date of such order. (Id. p. 124, sec. 117.)

Art. 3366. (1999) (1946) Bond in such case.—Such bond shall be signed by the executor with two or more good and sufficient sureties for an amount equal to double the full value of the estate, to be approved by, and payable to, the county judge of the county, conditioned that said executor will well

and truly administer such estate, and that he will not waste, mismanage or misapply the same; which bond shall be filed, and, when approved by the county judge, shall be recorded in the minutes, and may be recovered upon as other bonds given by executors and administrators. (Id. p. 125, sec. 117.)

Art. 3367. (2000) (1947) Should executor fail to give required bond.—Should such executor fail to give such bond within ten days after the order requiring him to do so, then it shall be the duty of the county judge, without citation, and either in term time or in vacation, to remove such executor and appoint some competent person in his stead, whose duty it shall be to administer said estate according to the provisions of such will, and who, before he enters upon the administration of said estate, shall take the oath required of executors and shall give the bond required in the preceding article. (Id. p. 125, sec. 117.)

Art. 3368. (2001) (1948) Estate may be partitioned and divided by court, when.—If such will does not distribute the entire estate of the testator, or provide a means for partition of said estate, the executor shall have the right to file his final account in the court in which the will was probated, and ask partition and distribution of the estate: and the same shall be partitioned and distributed in the manner provided for the partition and distribution of estates administered under the direction of the court. (Id.)

See Herron's Probate Guide, p. 175.

Art. 3369. (2002) (1949) Heirs, etc., may be required to give bond. when.—When it is provided in a will that no action shall be had in the county court, except to probate and record the will and return an inventory of the estate, any person having a debt against such estate may, by complaint in writing filed in the court where such will was probated, cause all the persons entitled to any portion of such estate under the will or as heirs at law to be cited to appear before such court at some regular term and execute an obligation, with two or more good and sufficient sureties, for an amount equal to the full value of such estate as shown by the inventory and list of claims, such obligation to be payable to the county judge, and to be approved by him, and conditioned that the obligors shall pay all debts that may be established against such estate in the manner provided by law. (Id. p. 126, sec. 123.)

Art. 3370. (2003) (1950) Upon failure to give bond estate shall be administered under direction of the court.—Upon the return of the citation served unless such persons so entitled to any portion of the estate, or some of them, or some other person for them, shall execute such obligation to the satisfaction of the county judge, such estate shall thereafter be administered and settled under the direction of the court as other estates are required to be settled. (Id. p. 126, sec. 123.)

Art. 3371. (2004) (1951) Bond shall be filed and recorded.—If the obligation provided for in article 3369 is executed and approved, it shall be filed and recorded in the minutes of the court, and no further action shall be had in said court in relation to said estate, except in the case mentioned in article 3368, in which case the action therein provided for may be had. (Id.)

Art. 3372. (2005) (1952) Creditor may sue on bond, etc.—Every creditor of such estate shall have the right to sue on such obligation in any court having jurisdiction of the debt, and shall be entitled to judgment thereon for such debt as he may establish against the estate, or such creditors may have their action against those in possession of the estate. (Id.)

Art. 3373. (2006) (1953) Costs of such proceeding to be paid by whom.—All costs of the proceedings, provided for in the four last preceding articles, shall be paid by the persons entitled to such estate, according to their respective interests in such estate. (Id.)

Art. 3374. (2007) (1954) Executor may sell property without order of court, when, etc.—Whenever in a will power is given to an executor to sell any property of the testator, no order of the county judge shall be necessary to authorize the executor to make such sale, and, when any particular directions are given by a testator in his will respecting the sale of any property belonging to his estate, the same shall be followed, unless such directions have been annulled or suspended by order of the court as hereinafter provided. (Id. p. 113, sec. 82.)

See Stevenson v. Roberts, 64 S. W. 230; Hughes v. Mulanax, 157 S. W. 217.

Art. 3375. (2008) (1955) Personal property reserved from sale by will.—If a testator in his will directs his personal estate, or any part thereof, not to be sold, the same shall be reserved from sale, unless such sale be necessary for the payment of debts. (Id. p. 130, sec. 146.)

Art. 3376. (2009) (1956) Administration under will same as intestates' estates, except, etc.—The administration of an estate under a will shall in all respects be governed by the provisions of the law respecting the administration of intestates' estates, except where it is otherwise provided by law or by the provisions and directions of the will.

See McMillan v. Hendricks' Estate, 46 S. W. 860; Stevenson v. Roberts, 64 S. W. 230.

Art. 3377. (2010) (1957) Legatee or devisee may obtain order for delivery of legacy or bequest, when and how.—Any devisee or legatee may obtain from the county judge of the county where the will was proved an order for the executor or administrator, with the will annexed, to deliver to him the property devised or bequeathed, whenever it shall appear to such county judge that there will remain in the hands of such executor or administrator, with the will annexed, after such delivery, a sufficient amount of the estate for the payment of all debts against said estate; provided, such devisee shall have first caused the executor or administrator, and the other devisees or legatees, if any, and the heirs, if any, of the estate is coming to them, to be cited to appear and show cause why such order should not be made. (Id. p. 110, sec. 70.)

See Herron's Probate Guide, pp. 183-4; Morton v. Morris, 56 S. W. 559.

Art. 3378. (2011) (1958) Naming an executor in a will does not release him from a debt, etc.—The naming an executor

in a will shall not operate to extinguish any just claim which the deceased had against him; and, in all cases where an executor or administrator may be indebted to his testator or intestate, he shall account for the debt in the same manner as if it were so much money in his hands; provided, however, that if said debt was not due at the time of receiving letters, he shall only be required to account for it from the date when it shall become due. (Id. p. 105, sec. 53.)

Berry v. Hindman, 129 S. W. 1181.

CHAPTER THIRTEEN

SUBSEQUENT EXECUTORS AND ADMINISTRATORS

Art. 3379. (2012) (1959) Subsequent administrator under a will shall succeed to rights of executor, etc.—When an administrator of the estate not administered has been, or shall be hereafter, appointed, he shall succeed to all the rights, powers and duties of the former executor or administrator, except such rights and powers conferred on the former executor by the will of the testator as are different from those conferred by this title on executors generally. (Acts 1876, p. 98, sec. 24.)

See ante, art. 3291.

Art. 3380. (2013) (1960) Powers of subsequent administrator.—Such administrator shall have power to make himself party to all suits prosecuted by the former executor or administrator of the estate, and may be made a party to all suits prosecuted against the former executor or administrator of the estate. He shall have power to settle with the former executor or administrator of the estate, and to receive and receipt for all such portion of the estate as remains in his hands. He shall have power to bring suit on the bond or bonds of the former executor or administrator, in his own name as administrator, for all the estate that has not been accounted for by such former executor or administrator. (Id.)

See Herron's Probate Guide, pp. 57, 136-9, 188-191.

Art. 3381. (2014) (1961) How subsequent administration shall proceed.—Such administrator shall proceed to administer such estate in like manner as if his administration was a continuation of the administration of the former executor or administrator, with the exceptions hereinbefore named. (Id.)

Herron's Probate Guide, pp. 187-8.

Art. 3382. (2015) (1962) Same as to executor after administration.—Whenever an executor shall accept and qualify as such after letters of administration shall have been granted upon the estate, such executor shall, in like manner, succeed to the previous administrator, and he shall proceed to administer the estate in like manner as if his administration was a continuation of the former one, subject, however, to any legal directions of the testator contained in his will, in relation to the estate. (Id.)

Whitmire v. Powell, 117 S. W. 433.

Art. 3383. (2016) (1963) Inventories, etc., to be returned in one month.—An executor or administrator who has been qualified as such to succeed a prior administrator or executor shall make and return to the court an inventory and appraisement and list of claims of the estate within one month after being qualified, in like manner as is required of original executors and administrators; and they shall also in like manner return additional inventories and lists of claims. (Id. p. 98, sec. 24.)

Whitmire v. Powell, 117 S. W. 433.

CHAPTER FOURTEEN

WITHDRAWING ESTATES FROM ADMINISTRATION

Art. 3384. (2017) (1964) Persons entitled to estate may cause executor or administrator to be cited, etc.—At any time after the return of inventory, appraisement and list of claims of a deceased person, any one entitled to a portion of said estate, as heir, devisee or legatee, or his guardian, if he be a minor, may, by a complaint in writing, filed in the court where such inventory, appraisement and list of claims have been returned, cause the executor or administrator of the estate to be cited to appear at some regular term of the court and render an exhibit under oath of the condition of such estate. (Acts 1876, p. 126, sec. 124.)

See Herron's Probate Guide, pp. 192-3; Whitmire v. Powell, 117 S. W. 433; Rowe v. Dyess, 177 S. W. 521; Dyess v. Rowe, 177 S. W. 523.

Art. 3385. (2018) (1965) May give bond to pay debts of estate, etc.—Upon the return of such citation served, the persons so entitled to such estate, or any of them, or any persons for them, may execute and deliver to the county judge an obligation payable to him, with two or more good and sufficient sureties, to be approved by such county judge, for an amount equal to at least double the appraised value of the estate as ascertained by the appraisement and list of claims returned, conditioned that the persons who execute such obligation shall pay all the debts against the estate not paid that have been allowed by the executor or administrator and approved by the county judge, or that have been established by suit, or that may be established by suit against said estate, and will pay to the executor or administrator any balance that may be found to be due him by the judgment of the court on his exhibit. (Id.)

Whitmire v. Powell, 117 S. W. 433; Rowe v. Dyess, 177 S. W. 521; Dyess v. Rowe, 177 S. W. 523.

Art. 3386. (2019) (1966) Bond shall be filed and recorded and order of court thereon.—When the bond provided for in the preceding article has been given and approved, it shall be filed and recorded in the minutes of the court; and the court shall thereupon enter an order upon the minutes directing and requiring the executor or administrator to deliver forthwith to such person or persons the portion or portions of such estate to which he or they are entitled. (Id.)

See ante, art. 3236; Herron's Probate Guide, pp. 193-4.

Art. 3387. (2020) (1967) Partition may be had of estate.—Any of the persons so entitled to any portion of the estate may, on application in writing to the court, cause a partition and distribution of such estate to be made among the persons entitled thereto, in accordance with the provisions of this title respecting the partition and distribution of estates. (Id.)

Art. 3388. (2021) (1968) Lien on property in hands of distributees.—A lien shall exist on all of said estate in the hands of the distributees, and those claiming under them, with notice of such lien, to secure the ultimate payment of the aforesaid obligation. (Id.)

See Herron's Probate Guide, pp. 195-6.

Art. 3389. (2022) (1969) Creditor whose claim has been allowed, etc., may sue on bond.—Any creditor of such estate whose claim is yet unpaid, and which claim has been allowed by the executor or administrator previous to the filing of such obligation, and approved by the county judge or established by suit against the executor or administrator previous to the filing of such obligation, shall have the right to sue on such obligation in his own name, and shall be entitled to judgment thereon for the amount of his claim. (Id.)

Art. 3390. (2023) (1970) Other creditor may sue and recover, to what extent.—Any other creditor of such estate whose claim is not barred by the laws of limitation shall have the right to sue on such obligation, and shall be entitled to judgment thereon for such debt as he may establish against the estate. (Id.)

Art. 3391. (2024) (1971) Creditor may also sue distributee.—Any creditor may sue any distributee, or he may sue all the distributees together, who have received any of the estate; but no one of such distributees shall be liable beyond his just proportion according to the estate he may have received in the distribution. (Id.)

Art. 3392. (2025) (1972) Order discharging executor or administrator and closing estate.—When an estate has been withdrawn from further administration under the provisions of this chapter, an order shall be entered upon the minutes discharging the executors or administrator and declaring the administration closed.

See Herron's Probate Guide, p. 196.

CHAPTER FIFTEEN

REMOVAL OF EXECUTORS AND ADMINISTRATORS

Art. 3393. (2026) (1973) In what cases may be removed without notice.—Executors and administrators may be removed by the county judge without notice, at a regular term of the court, by an order entered on the minutes of the court, in the following cases:

1. When they neglect to qualify in the manner and within the time required in this title.

2. When they neglect to return to the court an inventory and appraisement and list of claims of the estate, in the manner and within the time required in this title.

3. When they have been required to give a new bond and neglect to do so within the time prescribed by the court.

4. When they absent themselves from the state for a period of three months at one time, without permission of the court.

5. In such other cases as are specially provided for in this title. (Acts 1876, p. 99, sec. 26.)

See Herron's Probate Guide, pp. 144, 197-200; Stevens v. Cameron, 96 S. W. 1086; Shook v. Journeay, 149 S. W. 406.

Art. 3394. (2027) (1974) In what cases may be removed with notice.—Executors and administrators may be removed by the county judge on his own motion, or on the complaint of any person interested in the estate, after being cited to answer such motion or complaint at a regular term of the court, in the following cases:

1. When there shall appear sufficient grounds to believe that they have misapplied, embezzled or removed from the state the property, or any part thereof, committed to their charge, or that they are about to misapply, embezzle or remove from the state any of such property.

2. When it is proved that they have been guilty of gross neglect, or mismanagement in the performance of their duties as such executors or administrators.

3. When they fail to obey any order of the court consistent with this title, made in relation to the estate committed to their charge.

4. When an executor or administrator becomes of unsound mind, or from any other cause is incapable of performing the duties of his trust.

5. When they fail to make an annual exhibit fully showing the condition of the estate they represent, or fail to make to the court any exhibit they are required to make by law.

6. When they fail to make a final settlement for three years after the grant of letters, unless the time be extended by the court, after satisfactory showing being made under oath. (Acts 1881, p. 31.)

See Stevens v. Cameron, 101 S. W. 791.

Art. 3395. (2028) (1975) Citation need not be served, when.—In the cases enumerated in the preceding article, when proof is made that the executor or administrator has removed from the state, or is eluding the process of the court, the motion or complaint may be heard, though the citation be not served. (Acts 1876, p. 99, sec. 27.)

Art. 3396. (2029) (1976) Order of removal shall set forth cause.—In all cases when an executor or administrator is removed, an order to that effect shall be entered upon the minutes of the court, which order shall set forth the cause of such removal. (Id.; P. D. 5734.)

CHAPTER SIXTEEN

RESIGNATION OF EXECUTORS AND ADMINISTRATORS

Art. 3397. (2030) (1977) Application to resign must be accompanied by exhibit and account.—If at any time an executor or administrator shall wish to resign the administration of the estate that has been committed to his charge, he shall present to the court in which the administration is pending an application in writing, stating such wish, and shall accompany said application with a full and complete exhibit of the condition of the estate, together with his administration account; which exhibit and account shall both be verified by affidavit. (Acts 1876, p. 100, sec. 29.)

See Herron's Probate Guide, pp. 201-3; Roy v. Whitaker, 48 S. W. 892; Wells v. Houston, 56 S. W. 233.

Art. 3398. (2031) (1978) Citation in such cases.—Upon the filing of such applica-

tion, exhibit and account, it shall be the duty of the clerk to make out a citation returnable to some regular term of the court; which citation shall state the presentation of such application, exhibit and account, the term of the court at which the same will be acted upon, and shall require all those interested in the estate to appear and contest the said exhibit and account if they see proper. (Id.)

Art. 3399. (2032) (1979) How served.—Such citation shall be published for at least twenty days in some newspaper printed in the county, if there be one; if not, then by posting copies thereof for a like period in the manner required for posting other citations. (Id.)

Art. 3400. (2033) (1980) Exhibit and account shall be examined, etc., by the court.—At the return term of such citation, or at some other term to which it may have been continued, upon the county judge being satisfied that such citation has been published or posted, as the case may be, he shall proceed to examine such exhibit and account, and to hear all proof that may be offered in support of the same, and all objections, exceptions and proof offered against the same, and shall, if necessary, restate such exhibit and account, and shall audit and settle the same. (Id.)

Art. 3401. (2034) (1981) Order approving exhibit and account.—If, upon such examination and settlement, it shall appear that such executor or administrator has accounted for all said estate according to law, the county judge shall enter an order upon the minutes, approving such exhibit and account, and requiring such executor or administrator to deliver the estate, if there be any remaining in his possession, to some person qualified by law to receive it. (Id.)

Art. 3402. (2035) (1982) Order of discharge.—When such executor or administrator has delivered the estate in accordance with the order of the court to some person qualified to receive it, and has produced to the court satisfactory evidence of that fact, the court shall enter an order upon the minutes, either in term time or in vacation, accepting the resignation of such executor or administrator and discharging him from such trust. (Id.)

Art. 3403. (2036) (1983) Shall not be discharged until, etc.—No executor or administrator shall be discharged until the exhibit and account required have been made, returned, settled and approved as provided in this chapter, nor until he has delivered the estate, if there be any remaining in his possession, as hereinbefore required.

CHAPTER SEVENTEEN

ALLOWANCE TO WIDOW AND MINOR CHILDREN

Art. 3404. (2037) (1984) Allowance to widow and minor children to be made, when.—At the first regular term of the court after the original grant of letters testamentary or of administration, or at any subsequent term thereafter, within twelve months after the grant of such original letters, it shall be the duty of the court to fix the amount of an allowance for the support of the widow and minor children of the deceased. (Acts 1876, p. 105, sec. 56.)

See Herron's Probate Guide, pp. 205-208; Speer's Marital Rights, p. 779; Johnson v. Weatherford, 71 S. W. 789; Wilson v. Brinker, 76 S. W. 213; Zieschang v. Helmke, 84 S. W. 436; Wilkins v. Briggs, 107 S. W. 135.

Art. 3405. (2038) (1985) Amount of allowance, and with reference to what time.—Such allowance shall be of an amount sufficient for the maintenance of such widow and minor children for the term of one year from the time of the death of the testator or intestate, and such allowance to be fixed with regard to the facts existing during the first year after the death of such testator or intestate; provided, that in no case shall such allowance exceed one thousand dollars. (Acts 1887, p. 73.)

Art. 3406. (2039) (1986) Allowance shall not be made, when.—No such allowance shall be made for the widow when she has separate property adequate to her maintenance; nor shall such allowance be made for the minor children when they have property in their own right adequate to their maintenance. (Acts 1876, p. 105, sec. 56.)

See Speer's Marital Rights, p. 779.

Art. 3407. (2040) (1987) Order fixing allowance.—When an allowance has been fixed, an order shall be entered upon the minutes stating the amount thereof, and directing the executor or administrator to pay the same in accordance with law.

Art. 3408. (2041) (1988) To whom allowance shall be paid.—The executor or administrator shall pay such allowance—

1. To the widow, if there be one, for the use of herself and the minor children, if such children be hers.

2. If the widow is not the mother of such minor children, or of some of them, the portion of such allowance necessary for the support of such minor child or children of which she is not the mother, shall be paid to the guardian or guardians of such minor child or children.

3. If there be no widow, the allowance to the minor child or children shall be paid to the guardian or guardians of such minor child or children.

See Speer's Marital Rights, p. 780; Wilson v. Brinker, 76 S. W. 213.

Art. 3409. (2042) (1989) Widow or guardian may take property for allowance.—The widow, or the guardian of the minor children, as the case may be, shall have the right to take in payment of such allowance, or any part thereof, any of the personal property of the estate at its appraised value as shown by the appraisement returns. (Id.)

Art. 3410. (2043) (1990) Sale shall be ordered to raise allowance, when.—If there be no personal effects of the deceased that the widow or guardian is willing to take for such allowance, or not a sufficiency of them, and if there be no funds or not sufficient funds in the hands of such executor or administrator to pay such allowance, or any part thereof, then it shall be the duty of the county judge, so soon as the inventory and appraisement and list of claims are returned and approved, to order a sale of so much of the estate for cash as will be sufficient to

raise the amount of such allowance, or a part thereof, as the case may require. (Id.)

See Speer's Law of Married Women, p. 780; Johnson v. Weatherford, 71 S. W. 789.

Art. 3411. (2044) (1991) Allowance to be paid in preference to other debts or charges, except, etc.—The allowance made for the support of the widow and minor children of deceased shall be paid in preference to all other debts or charges against the estate, except the funeral expenses and expenses of last sickness of deceased, which claims shall be first paid, if presented within the time prescribed by law entitling them to such preference.

See post, arts. 3422, 3427, 3428, 3436; Speer's Marital Rights, p. 780; In re Laurence's Estate, 74 S. W. 779; Wilkins v. Briggs, 107 S. W. 135; Kimmons v. Abraham, 176 S. W. 671.

Art. 3412. (2045) (1992) Allowance apportioned, how.—The allowance provided for in this chapter shall be paid as follows:

1. If there be both widow and minor child or children, the widow shall be entitled to one-half and the minor child or children to the other half.

2. If there be a widow and no minor child or children, the widow shall receive the whole.

3. If there be a minor child or children and no widow, such minor child or children shall receive the whole.

See Woolley v. Sullivan, 45 S. W. 377.

CHAPTER EIGHTEEN

SETTING APART THE HOMESTEAD AND OTHER EXEMPT PROPERTY TO WIDOW AND CHILDREN

Art. 3413. (2046) (1993) Court shall set apart exempt property, etc.—At the first term of the court after an inventory, appraisement and list of claims have been returned, it shall be the duty of the court, by an order entered upon the minutes, to set apart for the use and benefit of the widow and minor children and unmarried daughters remaining with the family of the deceased all such property of the estate as may be exempt from execution or forced sale by the constitution and laws of the state, with the exception of any exemption of one year's supply of provisions. (Acts 1876, p. 106, sec. 57.)

See Herron's Probate Guide, pp. 212-3; Speer's Marital Rights, p. 784; Shumate v. Champion, 39 S. W. 128; Champion v. Shumate, 40 S. W. 394; Linares v. Linares, 51 S. W. 510; Linares v. De Linares, 53 S. W. 579; White v. Small, 54 S. W. 915; Roots v. Robertson, 55 S. W. 308; Simms v. Hixon, 65 S. W. 36; Wilson v. Brinker, 76 S. W. 213; Griffin v. Harris, 88 S. W. 493; Wilkins v. Briggs, 107 S. W. 135; Anderson v. McGee, 130 S. W. 1040; Ross v. Martin, 140 S. W. 432; Hoefling v. Thulemeyer, 142 S. W. 102; American Bonding Co. of Baltimore v. Logan, 166 S. W. 1132; Hoefling v. Hoefling, 167 S. W. 210; American Bonding Co. of Baltimore v. Logan, 167 S. W. 771; Kimmons v. Abraham, 176 S. W. 671; Newnom v. Hedeman, 184 S. W. 298.

Art. 3414. (2047) (1994) Allowance in lieu of exempt articles.—In case there should not be among the effects of the deceased all or any of the specific articles so exempted, it shall be the duty of the court to make a reasonable allowance in lieu thereof, to be paid to such widow and children, or such of them as there may be, as hereinafter directed. (Id.)

See Herron's Probate Guide, pp. 213-5; Speer's Marital Rights, p. 784; Hoefling v. Hoefling, 167 S. W. 210; Newnom v. Hedeman, 184 S. W. 298.

Art. 3415. (2048) (1995) Such allowance shall not exceed, what.—The allowance in lieu of a homestead shall in no case exceed five thousand dollars, and the allowance for other exempted property shall in no case exceed five hundred dollars, exclusive of the allowance provided in the preceding chapter. (Id.)

Art. 3416. (2049) (1996) To whom the exempt property shall be delivered.—The exempted property set apart to the widow and children shall be delivered by the executor or administrator without delay as follows:

1. If there be a widow and no children, or if the children be the children of the widow, the whole of such property shall be delivered to the widow.

2. If there be children and no widow, such property shall be delivered to such children if they be of lawful age, or to their guardian if they be minors, or the same may be equally divided among them, except the homestead.

3. If there be children of the deceased of whom the widow is not the mother, the share of such children in such exempted property, except the homestead, shall be delivered to such children if they be of lawful age, or to their guardian if they be minors, or may be equally divided between them.

4. In all cases, the homestead shall be delivered to the widow, if there be one, and if there be no widow, to the guardian of the minor children and unmarried daughters, if any, living with the family.

See Herron's Probate Guide, p. 220; Speer's Marital Rights, p. 785; Burns v. Falls, 56 S. W. 576; White v. Small, 54 S. W. 915; Simms v. Hixon, 65 S. W. 36; Cox v. Oliver, 95 S. W. 596; Wilkins v. Briggs, 107 S. W. 135.

Art. 3417. (2050) (1997) Allowance shall be paid, how.—The allowances made in lieu of any of the exempted property shall be paid either in money out of the funds of the estate that may come to the hands of the executor or administrator, or in any property of the deceased that such widow or children if they be of lawful age, or their guardian if they be minors, may choose to take at the appraisement, or a part thereof, or both, as they may select. (Id.)

See Herron's Probate Guide, pp. 218-9.

Art. 3418. (2051) (1998) To whom allowance shall be paid.—Such allowance shall be paid by the executor or administrator in the following manner:

1. If there be a widow and no children, the whole to be paid to such widow.

2. If there be children and no widow, the whole to be paid to such children if they be of lawful age, or to their guardian if they be minors, or to be equally divided among them.

3. If there be both widow and children, the whole to be paid to such widow if she be the mother of such children, but, if she be not the mother of such children, one-half to be paid to such widow and the other half to such children if they be of lawful age, or to their guardian if they be minors, or to be equally divided among them. (Id.)

See Speer's Marital Rights, p. 786, et seq.

Art. 3419. (2052) (1999) Sale to raise allowance, when.—If there be no property of the deceased that such widow or children are willing to take for such allowance, or not a sufficiency, and there be no funds, or not sufficient funds of the estate in the hands of such executor or administrator to pay such allowance, or any part thereof, it shall be the

duty of the county judge, on the application in writing of such widow and children, to order a sale of so much of the estate for cash as will be sufficient to raise the amount of such allowance, or a part thereof, as the case may require. (Id.)

See Speer's Marital Rights, p. 786.

Art. 3420. (2053) (2000) Property on which liens exist shall not be set aside. —No property upon which a lien or liens have been given by an unmarried person, or by the husband and wife acknowledged in a manner legally binding upon the wife, or upon which a vendors lien or other lien or liens existing at the date of acquisition of property exists, shall be set aside to the widow or children as exempted property or appropriated to make up allowances made in lieu of exempted property, or for the support of the widow or children, until the debts secured by such liens are first discharged, and provided that this article shall apply to all estates regardless of whether solvent or insolvent. (Id.; Acts 1917, ch. 34, sec. 1.)

See Herron's Probate Guide, pp. 221-4; Speer's Marital Rights, p. 786; Ford v. Sims, 57 S. W. 20; Newnom v. Hedeman, 184 S. W. 298.

Art. 3421. (2054) (2001) When estate proves to be solvent.—If, upon a final settlement of such estate, it shall appear that the same is solvent, the exempted property, except the homestead, which has been set apart to the widow or children, or both, together with any allowance that has been received by them in lieu thereof, shall be subject to partition and distribution among the heirs and distributees of such estate in like manner as the other property of the estate. (Acts 1876, p. 106, sec. 57.)

See Speer's Marital Rights, p. 786; White v. Small, 54 S. W. 915; Hoefling v. Thulemeyer, 142 S. W. 102; Hoefling v. Hoefling, 167 S. W. 210.

Art. 3422. (2055) (2002) When estate proves to be insolvent.—Should the estate, upon final settlement, prove to be insolvent, the title of the widow and children to all the property and allowances set apart or paid to them, under the provisions of this and of the preceding chapter, shall be absolute, and shall not be taken for any of the debts of the estate, except as hereinafter provided. (Id.)

See ante, art. 3411; post arts. 3427, 3428, 3436; Herron's Probate Guide, pp. 236, 225-6; Speer's Marital Rights, p. 786; Woolley v. Sullivan, 45 S. W. 377; Roots v. Robertson, 55 S. W. 308; State v. Jordan, 60 S. W. 1009; Anderson v. McGee, 130 S. W. 1040; Hoefling v. Thulemeyer, 142 S. W. 102; Hays v. Moore, 144 S. W. 1054; American Bonding Co. of Baltimore v. Logan, 166 S. W. 1132; Hoefling v. Hoefling, 167 S. W. 210; American Bonding Co. of Baltimore v. Logan, 167 S. W. 771; Kimmons v. Abraham, 176 S. W. 671; Investors' Mortgage Security Co., Limited v. Newton, 184 S. W. 291; Newnom v. Hedeman, 184 S. W. 298.

Art. 3423. (2056) (2003) Exempt property, etc., not to be considered in ascertaining solvency, etc.—In ascertaining whether an estate is solvent or insolvent, the exempt property set apart to the widow or children, or the allowance in lieu thereof, and the allowance provided for in the preceding chapter, shall not be estimated or considered as assets of the estate.

See ante arts. 3404-3412; Herron's Probate Guide, p. 204; Speer's Marital Rights, p. 786; Hoefling v. Hoefling, 167 S. W. 210.

Art. 3424. (2057) (2004) When homestead shall not be partitioned.—The homestead shall not be partitioned among the heirs of the deceased during the lifetime of the widow, or so long as she may elect to use or occupy the same as a homestead, or so long as the guardian of the minor children of the deceased may be permitted, under the order of the proper court having the jurisdiction, to use and occupy the same. (Const., art. 16, sec. 52.)

See Herron's Probate Guide, pp. 218, 226-230; Speer's Law of Married Women, p. 787; Garrison v. Ferguson's Est., 54 S W. 247; White v. Small, 54 S. W. 915; Flynn v. Hancock, 80 S. W. 245; White v. Yates, 85 S. W. 46; Savings & Loan Co. v. Bristoll, 131 S. W. 641; Hoefling v. Thulemeyer, 142 S. W. 102; Lucas v. Lucas, 143 S. W. 1153; Hoefling v. Hoefling, 167 S. W. 210.

Art. 3425. (2058) (2005) When homestead may be partitioned.—When the widow dies or sells her interest in the homestead, or elects to no longer use or occupy the same as a homestead, and when the proper court no longer permits the guardian of the minor children to use and occupy the same as a homestead, it may be partitioned among the respective owners thereof in like manner as other property held in common.

See Herron's Probate Guide, pp. 226-230; Speer's Marital Rights, p. 787; Garrison v. Ferguson's Est., 54 S. W. 247; Lucas v. Lucas, 143 S. W. 1153; Hoefling v. Hoefling, 167 S. W. 210.

Art. 3426. (2059) (2006) No distinction between separate and community homestead.—The homestead rights of the widow and children of deceased are the same whether the homestead be the separate property of the deceased or community property between the widow and the deceased, and the respective interests of such widow and children shall be the same in one case as in the other.

See Herron's Probate Guide, pp. 231-2; Speer's Marital Rights, p. 787.

Art. 3427. (2060) (2007) Homestead not liable for debts, except, etc.—The homestead shall not be liable for the payment of any of the debts of the estate, except for the purchase money thereof, the taxes due thereon or for work and material used in constructing improvements thereon; and in this last case only when the work and material are contracted for in writing, with the consent of the wife, given in the same manner as required in making a sale and conveyance of the homestead. (Const., art. 16, sec. 50.)

See post arts. 3792, 5631; Herron's Probate Guide, pp. 232-4; Speer's Marital Rights, p. 787; State v. Jordan, 60 S. W. 1009; Anderson v. McGee, 130 S. W. 1040; American Bonding Co. of Baltimore v. Logan, 166 S. W. 1132; Hoefling v. Hoefling, 167 S. W. 210; American Bonding Co. of Baltimore v. Logan, 167 S. W. 771; Kimmons v. Abraham, 176 S. W. 671.

Art. 3428. (2061) (2008) Other exempt property, liable for what debts.—The exempted property, other than the homestead, or any allowance made in lieu thereof, shall be liable for the payment of the funeral expenses and the expenses of last sickness of deceased, when presented within the time prescribed therefor; but such property shall not be liable for any other debts of the estate.

See ante arts. 3411, 3422; post 3436; Speer's Marital Rights, p. 787.

Art. 3429. (2062) (2009) Homestead rights of surviving husband.—On the death of the wife, leaving a husband surviving, the homestead shall descend and vest in like manner as other real property of the deceased, and shall be governed by the same laws of descent and distribution, but it shall not be partitioned among the heirs of the

deceased during the lifetime of such surviving husband, or so long as he may elect to use or occupy the same as a homestead. (Const., art. 16, sec. 52.)

See Herron's Probate Guide, pp. 235-6; Speer's Marital Rights, p. 788; Savings & Loan Co. v. Bristoll, 131 S. W. 641.

CHAPTER NINETEEN

PRESENTMENT, ETC., OF CLAIMS AGAINST AN ESTATE

Art. 3430. (2063) (2010) Notice of issuance of letters shall be given.—It shall be the duty of an executor or administrator, within one month after receiving letters, to publish in some newspaper printed in the county where the letters were issued, if there be one, a notice requiring all persons having claims against the estate of the testator or intestate to present the same within the time prescribed by law; which notice shall state the time of the original grant of letters testamentary or of administration, and the residence and postoffice address of such executor or administrator, and shall be published once a week for four successive weeks. (Acts 1876, p. 106, sec. 58.)

Art. 3431. (2064) (2011) Copy of notice, etc., to be filed and recorded.—A copy of such printed notice, together with the affidavit of the publisher, sworn to and subscribed before some officer authorized to administer oaths, that it was published once a week for four successive weeks, shall be filed and recorded in the court from which the letters were issued, and a certified copy thereof, or of such record, may be given in evidence in any court in any action by or against the executor or administrator. (Id.)

Art. 3432. (2065) (2012) Same subject.—When no newspaper is printed in the county, the notice required shall be posted at the court house door of the county where the letters were issued, for four successive weeks, and a copy of such notice, with the return that such notice has been posted according to law, shall be filed and recorded, and shall be evidence as provided in the preceding article in the case of a printed notice. (Id.)

Art. 3432a. Notice to holders of recorded claims; contents of notice; mode of giving.—It shall be the duty of an executor or administrator within four months after receiving letters to give notice of the issuance of such letters, to each and all persons having a claim for money against the testator or intestate at the time of death, provided:

1. That such claim is secured by a deed of trust, mortgage, or vendors, mechanics or other contracts lien upon real estate belonging to such testator or intestate.

2. That the instrument creating extending or transferring such lien is duly recorded prior to the death of such testator or intestate in the county in which the real estate covered by such lien is situated, and,

3. That the instrument creating extending or transferring such lien shall contain a statement of the residence and post office address of the holder of such claim (whether original payee or transferee). Said notice stating the original grant of letters testamentary or of administration shall be given by mailing same as a registered letter addressed to the record holder of such indebtedness or claim at the post office address given in the said instrument creating such lien, or in the last recorded extension or transfer of said lien in case same has been transferred of record. (Acts 1913, p. 253, sec. 1.)

Art. 3432b. Copy of notice, etc., to be filed and recorded.—A copy of such notice together with return receipt and accompanied by the affidavit of the executor or administrator, sworn to and subscribed before some officer authorized to administer oaths, stating that said notice had been mailed as required by law, and giving the name of the person to whom sent, shall be filed and recorded in the court from which the letters issued, and a certified copy thereof, of such record, may be given in evidence in any court in any action by or against the executor or administrator. (Id.)

Art. 3433. (2066) (2013) One notice sufficient.—If such notices have been given by a former executor or administrator, a subsequent executor or administrator need not give it; and such notices given by one executor or administrator where several are acting as such shall be sufficient for all. (Id.)

See Herron's Probate Guide, p. 242.

Art. 3434. (2067) (2014) Penalty for neglect to give notice.—If the executor or administrator fails to give such notices or causes the same to be given, he and his sureties upon his bond shall be liable for any damage which any person may sustain by reason of such neglect unless it appears that such person had such notice otherwise; and such executor or administrator shall be removed by the county judge at any regular term of the court on the complaint of any person interested in the estate after being cited to answer such complaint. (Acts 1876, p. 107, sec. 60; Acts 1913, p. 253, sec. 1.)

See Tiboldi v. Palms, 78 S. W. 726.

Art. 3435. (2068) (2015) Claims shall be postponed, if not presented within twelve months; proviso.—Every claim for money against a testator or intestate shall be presented to the executor or administrator within twelve months after the original grant of letters testamentary or of administration of the claimant thereof shall be postponed until the claims which have been presented within said twelve months by the executor or administrator and approved by the county judge have been first entirely paid; providing, however, that if the notice required in article 3432a be not given by the executor or administrator to the holder of any recorded claim and therein specified, then the failure upon the part of such holder to present such claim within twelve months shall not postpone the claimant thereof until the claims which have been presented within twelve months and allowed by the executors or administrators and approved by the county judge shall have been first entirely paid, nor shall any of the provisions of this article apply to such claim in any manner whatever. (Id.)

See Herron's Probate Guide, pp. 243-4, 253-4; Barlow v. Anglin, 45 S. W. 857; Adue v. Gonzales, 54 S. W. 367; Nat. Guar. L. & T. Co. v. Fly, 69 S. W. 231; Bell's Est. v. Bk., 76 S. W. 798.

Art. 3436. (2069) (2016) Claims for funeral expenses and of last sickness to be presented in sixty days, or, etc.—Claims for funeral expenses and expenses of last

sickness of the deceased shall be presented within sixty days after the original grant of letters testamentary or of administration, or the exempted property set apart to the widow and children, or allowances made them under the provisions of chapters seventeen and eighteen of this title, shall no longer be liable to the payment of such claims, or any part thereof.

See ante arts. 3404-3412; Herron's Probate Guide, p. 208; In re Laurence's Est., 74 S. W. 779.

Art. 3437. (2070) (2017) Time of absence of executor, etc., not to be computed.—If the executor or administrator absent himself from the state, the time of such absence shall not be computed in estimating the twelve months or sixty days' time mentioned in the two preceding articles. (Acts 1876, p. 107, sec. 59.)

See Adue v. Gonzales, 54 S. W. 367; Whitmire v. Powell, 117 S. W. 433.

Art. 3438. (2071) Estate charged with joint obligation.—When two or more persons are jointly bound for the payment of a debt or for any other purpose, upon the death of either of said persons so bound, his estate may be charged by virtue of such obligation in the same manner as if the obligors had been bound severally as well as jointly. (Acts 1887, p. 17.)

See Simkins' Contracts and Sales (3d Ed.) p. 489.

Art. 3439. (2072) (2018) Affidavit to claim.—No executor or administrator shall allow any claim for money against his testator or intestate, nor shall any county judge approve the same, unless such claim is accompanied by an affidavit in writing that the claim is just and that all legal offsets, payments and credits known to affiant have been allowed. Such affidavit, if made by any other person than the owner of the claim, shall state further that the affiant is cognizant of the facts contained in his affidavit. (Acts 1876, p. 106, sec. 61.)

See Herron's Probate Guide, pp. 245-6; Lanier v. Taylor, 41 S. W. 516; Strickland v. Sandmeyer, 52 S. W. 87; Anderson v. Cochran, 57 S. W. 29; Granberry v. Granberry, 90 S. W. 711.

Art. 3440. (2073) (2019) Claim lost or destroyed may be presented, how.—If the claim has been lost or destroyed, the claimant, or some one for him, may make an affidavit to the fact of such loss or destruction, stating the amount, date and nature of such claim and when due, and that the same is just, and that all legal offsets, payments and credits known to affiant have been allowed, and that the claimant is still the owner of the same; but, in such case, before such claim shall be approved, it must be proved by disinterested testimony taken in open court, or by deposition.

Art. 3441. (2074) (2020) Affidavit made before whom.—The affidavit may be made before any officer authorized to administer oaths and give certificates thereof. (Revision, 1879.)

See Anderson v. Cochran, 57 S. W. 29.

Art. 3442. (2075) (2021) Allowance or approval without affidavit, void.—If any such claim is allowed or approved without such affidavit as is required by the preceding articles of this chapter, such allowance or approval shall be of no force or effect. (Acts 1876, p. 106, sec. 61.)

See Anderson v. Cochran, 57 S. W. 29.

Art. 3443. (2076) (2022) Memorandum of allowance or rejection.—When any claim for money against an estate shall be presented to the executor or administrator, if the same be properly authenticated in the manner required by this chapter, he shall indorse thereon or annex thereto a memorandum in writing signed by him, stating the time of its presentation, and that he allows or rejects the claim, or what portion thereof he allows or rejects, as the case may be. (Id. sec. 63.)

See Herron's Probate Guide, pp. 247-8.

Art. 3444. (2077) (2023) Failure to indorse or annex memorandum.—When a claim for money against the estate of a deceased person shall be presented to the executor or administrator for his action, and he shall fail to indorse thereon, or annex thereto, a memorandum in writing as required by the last preceding article, such failure shall be deemed equivalent to a rejection of the claim, and shall authorize the claimant to bring a suit for the establishment thereof in like manner as if such claim had been so rejected; and such executor or administrator shall be removed on the complaint of any person interested in such claim, after being cited to appear and answer such complaint, and upon proof being made of such failure. (Id. p. 108, sec. 64.)

Art. 3445. (2078) (2024) When claim is allowed, shall be presented for approval.—If a claim, or a part thereof, be allowed by an executor or administrator, it shall be presented within twelve months after the issuance of original letters testamentary or of administration to the clerk of the county court of the proper county, who shall enter the same in its proper place upon the claim docket, and unless such claim is so presented within said time, the payment thereof, should it be approved either in whole or in part, shall be postponed until all other claims which have been allowed and approved within the time prescribed have been first entirely paid.

Bell's Est. v. Bk., 76 S. W. 798.

Art. 3446. (2079) (2025) Claim shall be acted upon by the court.—All claims that have been allowed by the executor or administrator and entered upon the claim docket for the period of ten days shall be acted upon by the court at a regular term, and either approved in whole or in part or rejected, as to the court may seem right, and they shall also at the same time be classified by the court.

Art. 3447. (2080) (2026) Action of the court upon claims.—When the court has acted upon a claim its action shall be entered upon the claim docket and the date thereof, and the county judge shall also indorse upon such claim or annex thereto a memorandum in writing, signed by him officially and dated, stating the action of the court upon such claim, whether approved or disapproved, or if approved in part and rejected in part, stating the amount approved, and also stating the classification of such claim.

See Herron's Probate Guide, p. 249; De Cordova v. Rogers, 75 S. W. 16; Gulf Nat. Bank v. Shelton, 182 S. W. 337.

Art. 3448. (2081) (2027) Any person interested in estate may oppose the approval of a claim.—Any person interested

in an estate may, at any time before the court has acted upon a claim, appear and object to the approval of the same, or any part thereof, in writing, and in such case the court shall hear proof and render such judgment as the facts and the law may require.

See Herron's Probate Guide, pp. 249-252.

Art. 3449. (2082) (2028) When claim has been rejected the owner may bring suit.—When a claim for money against an estate has been rejected by the executor or administrator, either in whole or in part, the owner of such claim may, within ninety days after such rejection, and not thereafter, bring a suit against the executor or administrator for the establishment thereof in any court having jurisdiction of the same; and, on the trial of such suit, the memorandum in writing of the executor or administrator indorsed on, or annexed to, such claim may be given in evidence to prove the facts therein stated, without proof of the handwriting of such executor or administrator, unless the same be denied under oath. (Acts 1876, p. 106, sec. 63.)

See Herron's Probate Guide, pp. 276, 278; Barlow v. Anglin, 45 S. W. 857; Marx v. Freeman, 52 S. W. 647; Whitmire v. Powell, 117 S. W. 433; Butler v. Fechner, 200 S. W. 1126; Farmers' Nat. Bank v. Crumley, 204 S. W. 358.

Art. 3450. (2083) (2029) Judgment establishing claim shall be filed, etc.—No execution shall be issued on a judgment obtained in any such suit, but a certified copy of such judgment shall be filed with the clerk of the county court where the estate is pending within thirty days after the rendition of such judgment, and entered upon the claim docket, and shall be classified by the county judge, and have the same force and effect as if the amount thereof had been allowed by the executor or administrator, and approved by the county judge. (Id.)

See post art. 3723; ante art. 2005; Sayles' Practice, p. 1191; Herron's Probate Guide, pp. 254-5.

Art. 3451. (2084) (2030) Cost of suit to be adjudged against claimant, when.—In any suit that may be brought by the holder of a claim to establish the same after rejection, if he fails to recover judgment thereon for a greater amount than was allowed by the executor or administrator, he shall be adjudged to pay all costs of such suit. (Id. p. 107, sec. 62.)

Art. 3452. (2085) (2031) Action of court on claim a judgment, etc.—The action of the court in approving or disapproving a claim shall have the force and effect of a final judgment, and when the claimant, or any person interested in the estate, shall be dissatisfied with such action, he may appeal therefrom to the district court, as from other judgments of the county court rendered in probate matters.

See post arts. 3631, 4220; Herron's Probate Guide, pp. 256-9; Eastland v. Williams, 46 S. W. 32; Hardcastle v. Archer, 81 S. W. 368; Gulf Nat. Bank v. Shelton, 182 S. W. 337; Ralston v. Stainbrook, 187 S. W. 413.

Art. 3453. (2086) (2032) Claim of executor or administrator.—The provisions of this chapter respecting the presentation of claims against an estate shall not be construed to apply to any claim of the executor or administrator against his testator or intestate; but any such executor or administrator holding any such claim shall file the same in the court granting his letters, verified by affidavit as required in other cases, within six months after he has qualified as such executor or administrator, or such claim shall be barred. (Id. p. 110, sec. 71.)

See Herron's Probate Guide, pp. 259-260.

Art. 3454. (2087) (2033) Action of the court thereon, etc.—When such claim has been entered upon the claim docket, and acted upon by the court as in other cases of claims, an appeal from the judgment of the court may be taken as in other cases.

Art. 3455. (2088) (2034) Provisions of this chapter do not apply to certain claims.—The provisions of this chapter respecting the presentation of claims shall not be so construed as to apply to the claim of any heir, devisee or legatee when claiming as such, nor to any claim that accrues against the estate after the granting of letters testamentary or of administration for which the executor or administrator has contracted. (Id. sec. 70.)

Art. 3456. (2089) (2035) Claim shall not be allowed after order for partition.—No claim for money against his testator or intestate shall be allowed by an executor or administrator, nor shall any suit be instituted against him on any such claim after an order for partition and distribution has been made; but the owner of any such claim not barred by the laws of limitation shall have his action thereon against the heirs, devisees or legatees of the estate, but they shall not be bound beyond the value of the property they may receive in such partition and distribution. (Id. sec. 69.)

See Herron's Probate Guide, pp. 260-2.

Art. 3457. (2090) (2036) Judgment shall not be rendered in favor of claim which has not been presented and rejected.—No judgment shall be rendered in favor of a claimant upon any claim for money which has not been legally presented to the executor or administrator, and rejected by such executor or administrator, either in whole or in part. (P. D. 5683.)

See Whitmire v. Powell, 117 S. W. 433; Ralston v. Stainbrook, 187 S. W. 413; Putney v. Livingston, 192 S. W. 259.

CHAPTER TWENTY

CLASSIFICATION AND PAYMENT OF CLAIMS

Art. 3458. (2091) (2037) Classification of claims.—The claims against an estate shall be classed and have priority of payment as follows:

1. Funeral expenses and expenses of last sickness.

2. Expenses of administration and the expenses incurred in the preservation, safekeeping and management of the estate.

3. Claims secured by mortgage or other liens so far as the same can be paid out of the proceeds of the property subject to such mortgage or other lien, and, when more than one mortgage or lien shall exist upon the same property, the oldest shall be first paid; but no preference shall be given to such claims secured by mortgage or lien further than regards the property subject to such mortgage or other lien.

4. All claims legally exhibited within one year after the original grant of letters testamentary or of administration.

5. All claims legally exhibited after the lapse of one year from the original grant of letters testamentary or of administration. (Acts 1876, p. 115, sec. 88; P. D. 5674.)

See ante art. 3446; post art. 3460; Herron's Probate Guide, pp. 261, 263-7; Barnes v. Sc. Am. Mortg. Co., 68 S. W. 529; Hardcastle v. Archer, 81 S. W. 368; Rodgers v. Sturgis Nat. Bank, 152 S. W. 1176; Stoughton Wagon Co. v. S. G. Dreyfus Co., 181 S. W. 703; Gulf Nat. Bank v. Shelton, 182 S. W. 337.

Art. 3459. (2092) (2038) Claims to be paid pro rata, when.—Where there is a deficiency of assets to pay all claims of the same class, they shall be paid pro rata; and no executor or administrator shall be allowed to pay any claims, whether the estate is solvent or insolvent, except with their pro rata amount of the funds of the estate that have come to hand. (Id.; P. D. 5674.)

See Herron's Probate Guide, pp. 268-9.

Art. 3460. (2093) (2039) Order of payment of claims.—Executors and administrators, whenever they have funds in their hands belonging to the estate they represent, shall pay—

1. Funeral expenses and expenses of last sickness, if the claims therefor have been presented within sixty days from the original grant of letters testamentary or of administration, but if not presented within such time their payment shall be postponed until the allowances made to the widow and children, or either, are paid.

2. Allowances made to the widow and children, or either.

3. Expenses of administration and the expenses incurred in the preservation, safekeeping and management of the estate.

4. Other claims against the estate in the order of their classification. (Id. sec. 89.)

See Zieschang v. Helmke, 84 S. W. 436; Rodgers v. Sturgis Nat. Bank, 152 S. W. 1176; Stoughton Wagon Co. v. S. G. Dreyfus Co., 181 S. W. 703.

Art. 3461. (2094) (2040) Claim shall not be paid, unless, etc.—No claim for money, or any part thereof, shall be paid until it has been approved by the county judge or established by the judgment of a court of competent jurisdiction.

Art. 3462. (2095) (2041) Owner of claim may obtain order for payment, when.—Whenever an executor or administrator has funds of the estate in his hands sufficient to pay a claim, or any part thereof, against the estate, and fails to make such payment when required to do so by the owner of such claim, such owner may obtain an order of the county court, at a regular term thereof, directing such payment to be made, upon making proof that such executor or administrator has funds of the estate in his hands which should be paid upon such claim, and that he fails to make such payment; provided, such executor or administrator shall have first been cited on the complaint in writing of such claimant, filed with the clerk, to appear and show cause why such order should not be made. (Id.)

See Herron's Probate Guide, p. 270.

Art. 3463. (2096) (2042) Proceeds of sale of property on which there is a mortgage or other lien.—Whenever any executor or administrator shall have in his hands the proceeds of a sale that has been made for the satisfaction of a mortgage or other lien, and such proceeds, or any part thereof, are not required for the payment of any debts against the estate that have a preference over such mortgage or other lien, it shall be the duty of such executor or administrator, within twelve months after the grant of letters testamentary or of administration, to pay over such proceeds, or so much thereof as may not be required for the payment of any debts against the estate that have a preference over such mortgage or other lien, to the creditor or creditors having a right thereto; and, if any executor or administrator shall fail so to do, such creditor or creditors, upon proof thereof, may obtain an order from the county court, in like manner as is provided in the preceding article, directing such payment to be made. (Id. p. 116, sec. 90.)

Art. 3464. (2097) (2043) Exhibit of condition of estate after twelve months.—At the first term of the court after the expiration of twelve months from the original grant of letters testamentary or of administration, it shall be the duty of the executor or administrator to return to the court an exhibit in writing, sworn to and subscribed by him, setting forth a list of all claims against the estate that were presented to him within twelve months after the said original grant of letters testamentary or of administration, specifying which have been allowed by him, which have been rejected and the date when rejected, which have been sued upon and the condition of the suit, also setting forth fully the condition of the estate. (Id. p. 109, sec. 66.)

Art. 3465. (2098) (2044) Penalty for failure to return exhibit.—Should such executor or administrator fail to return the exhibit as required by the preceding article, any person interested in the estate may, upon complaint in writing, filed with the clerk, cause such executor or administrator to be cited to appear at a regular term of the court and show cause why his letters should not be revoked and why he should not be fined for such failure; and, upon the hearing of such complaint, unless good cause be shown for such failure, the court shall revoke the letters of such executor or administrator and shall fine him in a sum not to exceed one hundred dollars. (Id.)

Art. 3466. (2099) (2045) Order for the payment of claims in full.—Upon the return of such exhibit, if it shall appear therefrom, or from any other evidence, that the estate is solvent, taking into consideration as well the claims presented before the expiration of twelve months from said granting of letters testamentary or of administration on which suit has been, or can yet be, instituted, as those so presented, allowed and approved, or established by judgment, and that the executor or administrator has in his hands sufficient funds for the payment of all the aforesaid claims, it shall be the duty of the county judge to order immediate payment to be made of all claims allowed and approved or established by judgment. (Id. p. 116, sec. 91.)

Art. 3467. (2100) (2046) Order for payment of claims pro rata.—If it appear that the funds on hand are not sufficient for the payment of all the said claims, or if the estate be insolvent and the executor or ad-

ministrator has any funds in his hands, it shall be the duty of the county judge to order such funds to be applied to the payment of all claims having a preference in the order of their priority, if they, or any of them, be still unpaid, and then to the payment pro rata of the other claims allowed and approved or established, taking into consideration also the claims that were presented within the twelve months, and in suit or on which suit may yet be instituted. (Id.)

Art. 3468. (2101) (2047) Claims presented after twelve months, paid when.—Claims for money against the estate of a deceased person, which may be presented to the executor or administrator after the expiration of twelve months from the original grant of letters testamentary or of administration, and allowed and approved or established by judgment, shall be paid by the executor or administrator at any time before the estate is finally closed, when he has funds of the estate in his hands over and above what may be sufficient to pay all debts of every kind against the estate that were presented within the twelve months and allowed and approved or established by judgment, or that may be so established; and an order for the payment of any such claim, upon proof that the executor or administrator has such funds, may be obtained from the county judge in like manner as is provided in this chapter for creditors to obtain payment. (Id. p. 116, sec. 92.)

See Herron's Probate Guide, pp. 272-3.

Art. 3469. (2102) (2048) Exhibit may be required, when, etc.—At the third regular term after the expiration of twelve months from the original grant of letters testamentary or of administration, or at any term of the court thereafter, any person interested in the estate may, by a complaint in writing filed in the county court, cause the executor or administrator to be cited to appear at a regular term of the court and make an exhibit in writing, under oath, to the court, setting forth fully, in connection with the previous exhibits, the condition of the estate he represents; and, if it shall appear to the court by said exhibit, or by other evidence, that said executor or administrator has any funds of the estate in his hands subject to distribution among the creditors of the estate, it shall be the duty of the county judge to order the same to be paid out to them according to the provisions of this chapter; or any executor or administrator may voluntarily present such exhibit to the court, and, if he has any of the funds of the estate in his hands subject to distribution among the creditors of the estate, a like order shall be made. (Id. sec. 93.)

See Herron's Probate Guide, pp. 273-4; Dulaney v. Walsh, 37 S. W. 615.

Art. 3470. (2103) (2049) Liability of executor, etc., for failure to pay money, etc.—In all cases where an order shall be made by any county judge, under the provisions of this title, for an executor or administrator to pay over money to any person other than the treasurer of the state, and such executor or administrator shall neglect to make such payment when it is demanded by the person entitled thereto, his agent or attorney, such executor or administrator shall be liable on his official bond to the person in whose favor such order of payment was made, for damages upon the amount he shall so neglect to pay at the rate of five per cent per month for each and every month he shall so neglect to make such payment after the same was so demanded, such damages to be recovered by suit against such executor or administrator and the sureties upon his bond before any court having jurisdiction of the amount claimed, exclusive of interest and such damages. (Id. p. 119, sec. 101.)

See Herron's Probate Guide, p. 274.

Art. 3471. (2104) (2050) Executor or administrator shall not purchase claim against estate.—It shall not be lawful for any executor or administrator to purchase for his own use, either directly or indirectly, any claim against the estate he represents; and, should he do so, any person interested in the estate may, upon complaint in writing, cause him to be cited to appear before the court; and, upon proof of such complaint, the court shall enter an order upon the minutes cancelling the claim so purchased; and such executor or administrator shall not be allowed to receive from the estate any portion of such claim. (Id. p. 114, sec. 86.)

See Herron's Probate Guide, p. 275.

CHAPTER TWENTY-ONE
HIRING AND RENTING

Art. 3472. (2105) (2051) Executor, etc., may hire out or rent property of estate.—When an executor or administrator thinks it would be to the interest of the estate to hire out any of the personal property of the estate, or to rent any of the real estate, he shall do so either at public auction or privately, for cash or on credit, as he may deem most advantageous to the estate. (Acts 1876, p. 104, sec. 51.)

See Herron's Probate Guide, pp. 282-4.

Art. 3473. (2106) (2052) May obtain order of the court to hire out or rent same.—Should such executor or administrator prefer not to act without an order of the court, he may file an application in writing with the clerk of the county court, setting forth the property which he thinks should be hired or rented; and, should the county judge be of the opinion that it would be to the interest of the estate to grant the application, he shall do so by an order entered upon the minutes, either in term time or in vacation, which order shall name the property to be hired or rented, and state whether such hiring or renting shall be at public auction or privately, and whether for cash or on credit, and, if on credit, the length of such credit, and shall also state the period of time for which such property shall be hired or rented.

Art. 3474. (2107) (2053) When, without order of court, responsible, etc.—When an executor or administrator hires or rents property belonging to an estate without an order of the court authorizing him to do so, he shall be held responsible to the estate for the reasonable value of the hire or rent of such property, to be ascertained by the court by satisfactory evidence.

Art. 3475. (2108) (2054) Note with security for hire or rent shall be taken.—When property is hired or rented on a credit, possession thereof shall not be delivered to the person hiring or renting the same until such person has executed and delivered to

the executor or administrator a note with good personal security for the amount of such hire or rent; and any executor or administrator, who shall deliver possession of any property so hired or rented on a credit without first receiving such note with good personal security, shall be responsible upon his bond as such executor or administrator for the full amount of such hire or rent.

Art. 3476. (2109) (2055) Report of hiring or renting.—When any property of the estate has been hired or rented, the executor or administrator shall, within thirty days after such hiring or renting, return to the court a report in writing, signed by him and sworn to before some officer authorized to administer oaths, stating—

1. The property hired or rented.
2. When the same was so hired or rented, and whether at public auction or privately.
3. Whether for cash or on a credit, and, if on a credit, the length of such credit.
4. The name of the person hiring or renting the same.
5. The amount for which the same was hired or rented.

Art. 3477. (2110) (2056) Action of court on report.—When any such report of hiring or renting is returned to the court, it shall be filed, and, at a regular term of the court thereafter, it shall be examined, and, if found to be just and reasonable, it shall be approved and confirmed by order of the court entered upon the minutes, and shall be recorded in the minutes; but, if disapproved by the court, an order to that effect shall be entered, and also adjudging against such executor or administrator the reasonable value of the hire or rent of such property, where it appears that, by reason of any fault of such executor or administrator, such property has not been hired or rented for its reasonable value.

Art. 3478. (2111) (2057) Person interested in estate may file complaint to have property hired or rented.—Any person interested in an estate may, upon complaint in writing filed in the county court, cause an executor to be cited to appear at a regular term of such court and show cause why he should not hire or rent any of the property belonging to the estate, and upon the hearing of such complaint the court shall make such order as may seem most for the interest of the estate.

CHAPTER TWENTY-TWO

SALES AND LEASES

Art. 3479. (2112) (2058) Advantage of estate to be considered in ordering sale.—All sales for the payment of the debts owing by the estate shall be ordered to be made of such property as may be deemed most advantageous to such estate to be sold. (Acts 1876, p. 112, sec. 76.)

See Herron's Probate Guide, pp. 285-6; Minter v. Burnett, 38 S. W. 350.

Generally, see Jones v. Gilliam, 199 S. W. 694; Dodge v. Youngblood, 202 S. W. 116.

Art. 3480. (2113) (2059) No sale without order of court.—No sale of any property belonging to an estate shall be made by an executor or administrator without an order of the court authorizing the same.

See Herron's Probate Guide, pp. 286-7; Browne v. Fid. & Dep. Co., 80 S. W. 593; Matula v. Freytag, 107 S. W. 536; Berry v. Hindman, 129 S. W. 1181; Webb v. Reynolds, 160 S. W. 152; Id., 207 S. W. 914; Schaeffer v. Williams, 208 S. W. 220.

Art. 3480a. Lease of gas, oil, or mineral lands of estate.—Whenever there is real property belonging to the estate of a deceased person that is believed to contain gas, oil, other minerals, or metals, upon application in writing by the executor or administrator, or any heir, devisee or legatee of the deceased interested in such gas, oil, other minerals or metals, or any creditor of the estate whose claim had been allowed and approved or established by suit, the County Court, by an order entered on the Minutes of the Court either in term time or in vacation may direct the lease of such property for the purpose of drilling, mining, and operating for such gas, oil, other minerals or metals; or any part thereof. Such order shall state the minimum bonus, if any, to be received by the executor or administrator under such lease or sale, the minimum royalty to be reserved to the estate under such lease or sale in no event less than 1/8 royalty on oil and such other terms of such lease or sale as the court may desire to embody in such order.

Before such application shall be heard by the County Court notice of such application shall, however, be given by the executor or administrator by publication of such notice in one issue of any newspaper published in the county where such real property is situated, which notice shall appear subsequent to filing of such application and not less than ten days prior to hearing thereon, and which notice shall describe such real property with sufficient accuracy to identify same and shall state the time and place of hearing on such application. (Acts 1919, ch. 137.)

Art. 3480b. Same subject.—The executor or administrator shall in term time or vacation report to the County Court any lease or sale made by him in accordance with the immediately foregoing article within ten days of entry of order authorizing such lease or sale and shall embody in such report, or attach thereto, a full copy of the proposed contract of lease or deed of conveyance evidencing such sale, and such lease or sale shall be approved by the court, with such amendments, if any, as the court may direct, or shall be disapproved by the court at any time within ten days after the filing of such report either in term time or vacation by an order of approval or disapproval entered on the Minutes of said Court. If said lease is approved, the order of approval shall direct the executor or administrator to execute and deliver the lease, contract or deed of conveyance approved on compliance by the other party or parties thereto with the terms thereof; provided that no lease executed under the provisions of this Chapter shall be binding upon heirs, legatees, or distributees of any estate, or on purchasers from said estate unless actual development has been commenced by the time said estate is partitioned and distributed and is being and continues to be prosecuted with reasonable diligence thereafter. (Id.)

Art. 3481. (2114) (2060) Sale may be on what terms.—The court may order a sale of property, to be made for cash or on a credit, at public auction or privately, as it may consider most to the advantage of the

estate, except when herein otherwise specially provided.

Art. 3482. (2115) (2061) Sales at public auction same as under execution.—All sales of personal property at public auction shall be governed by the rules governing sales of personal property under execution, unless herein otherwise provided. (Acts 1876, p. 130, sec. 148.)

Art. 3483. (2116) (2062) Purchasers shall give note and security, when.—When personal property is sold on a credit, it shall not be for a longer time than six months from the date of such sale, and the purchaser shall be required to give his note for the amount of such purchase, with good and solvent personal security, before such property shall be delivered to him.

Art. 3484. (2117) (2063) Property liable to perish or be wasted shall be sold.—Whenever there is property belonging to the estate of a deceased person that is perishable or liable to waste, upon the application in writing of the executor or administrator, or any heir, devisee or legatee of the deceased, or any creditor of the estate whose claim has been allowed and approved or established by suit, the county judge, by an order entered on the minutes of the court, either in term time or in vacation, may direct the sale of such property, or any part thereof. (Id. p. 111, sec. 74.)

Art. 3485. (2118) (2064) Sale of crops.—The county judge may, either in term time or in vacation, by an order entered on the minutes of the court, direct the crops belonging to the estate of a deceased person, or any part thereof, to be sold at private sale, upon the application in writing of the executor or administrator, or any heir, devisee or legatee of the deceased, or any creditor of the estate whose claim has been allowed and approved or established by suit; provided, that no crops shall be sold under any such order at a less price than their fair market value. (Id. p. 112, sec. 75.)

Art. 3486. (2119) (2065) Duty of executor, etc., to sell personal property.—The executor or administrator, as soon as practicable after his qualification as such, shall sell, at public or private sale, as the court may order, all personal property belonging to the estate, except such bonds, securities or other personal property as may, in the opinion of the county judge, be of a character not liable to waste or loss, and except property exempt from forced sale, specific legacies and personal property necessary to carry on a plantation, manufactory or business, which it may be thought best to carry on, giving such credit as such executor or administrator or county judge may deem most advantageous to the estate, not exceeding six months, and taking notes with one or more sufficient sureties for the purchase money. (Id. p. 130, sec. 145.)

Art. 3487. (2120) (2066) Sale of stock.—If the executor or administrator shall represent to the court on oath in writing that there is stock belonging to the estate which he is unable to collect or command, the court may order that the same be sold at public auction, on such credit as the court may deem reasonable, not exceeding twelve months, taking notes with good and sufficient sureties for the purchase money; and such sale shall be advertised, made, returned and confirmed in the same manner as the sale of real property. (Id. p. 131, sec. 150.)

Art. 3488. (2121) (2067) Order for sale of property mortgaged, etc.—Any creditor of a deceased person holding a claim secured by mortgage or other lien, which claim has been allowed and approved or established by suit, may obtain at a regular term of the court, from the county court of the county where the letters testamentary or of administration were granted, an order for the sale of the property upon which he has such mortgage or other lien, or so much of said property as may be required to satisfy such claim, by making his application in writing and having such executor or administrator cited to appear and answer the same. And, in case the mortgage or other lien shall be upon real property, the same notice shall be given of said application as is required to obtain an order for the sale of such property. (Id. p. 112, sec. 77.)

See Herron's Probate Guide, pp. 290-1; Wall v. Club L. & Co., 88 S. W. 534; Cole v. Lewis, 159 S. W. 180; Ralston v. Stainbrook, 187 S. W. 413.

Art. 3489. (2122) (2068) Duty of executor, etc., to apply for sale of real estate, when.—It shall be the duty of the executor or administrator, so soon as he shall ascertain that it is necessary, to apply to the county judge, at some regular term of the court, for an order to sell so much of the real estate belonging to the estate he represents as he shall think to be sufficient to pay the local charges and claims against the estate. (Id. p. 111, sec. 72.)

See Herron's Probate Guide, pp. 291-4.

Art. 3490. (2123) (2069) Requisites of such application.—Such application shall be in writing and shall describe the real estate sought to be sold, and shall be accompanied by an exhibit in writing, verified by the affidavit of such executor or administrator, showing fully and particularly the charges and claims against said estate that have been approved or established by suit, or that have been rejected and may yet be established, and the amount due, or claimed to be due, on each, and the estimated expenses of administration, and the property of said estate remaining on hand liable for the payment of such charges and claims. (Id.)

See Texas L. & L. Co. v. Dunovant's Est., 87 S. W. 208; Daimwood v. Driscoll, 151 S. W. 621.

Art. 3491. (2124) (2070) Citation in such case.—Upon the filing of such application and exhibit it shall be the duty of the clerk to issue a general citation to all persons interested in the estate, describing the land sought to be sold, and requiring such persons to appear at the term named in such citation, and show cause why such sale should not be made should they choose to do so. (Id.)

Art. 3492. (2125) (2071) Posting and return of citation.—Such citation shall be posted in the manner required for other citations for at least twenty days before the first day of the term of the court at which such application is to be heard, and shall be returned, and the citation and return recorded, in like manner as other citations and returns thereon. (Acts 1876, p. 112; Acts 1909, S. S. p. 336.)

Art. 3493. (2126) (2072) Action of the court on application.—Upon the return of such citation served, it shall be the duty

of the court at a regular term thereof to hear such application and to hear evidence in favor of or against the same, and, if satisfied that a necessity exists for such sale, to order the same to be made; but if not satisfied that a necessity exists for such sale, or if satisfied that there is other property of the estate that it would be more to the interest of the estate to have sold than the property sought to be sold, the application shall be refused by an order to that effect entered upon the minutes. (Id. p. 112, sec. 76.)

See Herron's Probate Guide, pp. 296-7.

Art. 3494. (2127) (2073) Real estate shall be sold on twelve months' credit, except, etc.—All sales of real estate for the payment of debts shall be made at public auction to the highest bidder on a credit of twelve months, except when otherwise specially provided by law. (Id. p. 112, sec. 80.)

See Richardson v. Overleese, 44 S. W. 308.

Art. 3495. (2128) (2074) May be sold for cash, etc., when.—Sales of real estate may be made at public auction for cash or on such credit as the county judge may direct not exceeding twelve months, in the following cases:

1. When the sale is made for the purpose of raising the amount, or any part of the amount, of any allowance made to the widow and children, or either, under the provisions of this title.

2. When the sale is made for the satisfaction of a mortgage or other lien upon such real estate.

3. When such sale is made in accordance with directions contained in a will. (Id.)

Art. 3496. (2129) (2075) Sale may be public or private for cash or part credit; minimum cash payment; lien; adequacy of price; security.—When it shall appear to be to the interest of the estate, the county judge may order a sale of real estate to be made at public or private sale for cash, or for part cash and part credit, and if so for part cash and part credit, then upon terms to be determined by the judge of said court; provided, that one-fifth of the purchase price must be paid in cash, and the executor or administrator shall retain a lien upon said premises to secure the payment of the deferred payment. It must be shown, in addition to the other requirements of the statutes of the State of Texas, that said sale was made for a fair price, and no personal security shall be required of the purchaser of said property, unless the county judge shall deem it necessary. (Id. p. 112, sec. 81; Acts 1915, ch. 46, sec. 1.)

Art. 3497. (2130) (2076) Twenty days' notice of sale to be given.—All public sales of real estate shall be advertised at least twenty days before the day of sale. The manner of advertising shall be by posting a notice of such sale at the court house of the county where the land is to be sold, and at two other public places in the county where the sale is to be made, but not in the same city or town. (Acts 1876, p. 113, sec. 83.)

Art. 3498. (2131) (2077) What notice of sale shall state.—Such notice shall state the time and place of sale, the terms of sale, shall describe the property to be sold, and shall be signed by the executor or administrator.

Art. 3499. (2132) (2078) Time and place of sale.—All public sales of real estate should be made in the county where the letters testamentary or of administration were granted, at the court house door of such county, or at the place in such county where sales of real estate are specially authorized by law to be made; and all such sales shall be made on the first Tuesday of the month, between the hours of ten a. m. and four p. m.

See Herron's Probate Guide, p. 300.

Art. 3500. (2133) (2079) Sale may be ordered to be made in county where land is situated.—When the county judge shall deem it for the advantage of the estate, he may order the sale of real estate to be made in the county where it is situated; and, in all cases where such public sale is ordered to be made in any other county than that in which the letters testamentary or of administration were granted, such sale shall be advertised in both counties. (Id. p. 113, sec. 83.)

Art. 3501. (2134) (2080) Order of court for sale of property.—Whenever any property of an estate is ordered to be sold by the county judge, such order shall be entered on the minutes of the court, shall describe the property to be sold, the time and place of sale, and the terms of such sale. (Id. p. 112, sec. 79.)

Art. 3502. (2135) (2081) Any person interested in estate may apply for an order of sale.—When any executor or administrator shall neglect to apply for an order to sell sufficient property of the estate he represents to pay the charges and claims against the estate that have been allowed and approved or established by suit, any person interested in the estate may, upon application in writing, cause such executor or administrator to be cited to appear at a regular term of the court and make a full exhibit of the condition of such estate as required in article 3464, and show cause why a sale of the property of the estate should not be ordered; and, upon the hearing of such application, if the court is satisfied from the proof that a necessity exists for the sale, the same shall be ordered as in other cases. (Id. p. 111, sec. 73.)

Art. 3503. (2136) (2082) Any person interested in estate may oppose the application for sale.—When an application is made to the county judge for an order to sell any property belonging to the estate of a deceased person, any person interested in such estate may, at any time before an order is made thereon, file his opposition in writing to such sale, or may make application in writing for sale of other property of the estate; and, upon hearing of the matter in controversy, the county judge shall make such order thereon as the circumstances of the case may require, having due regard to the provisions of this title. (Id. p. 112, sec. 78.)

Art. 3504. (2137) (2083) Executor or administrator shall not purchase property of the estate.—It shall not be lawful for any executor or administrator to take the estate of his testator or intestate, or any part thereof, at its appraised value, or to become the purchaser, either directly or indirectly, of any property of the estate sold by him; and, if any executor or administrator should either, directly or indirectly, become the pur-

chaser of any of the property of his testator or intestate, at a sale made by him or his co-executor or co-administrator, upon the complaint in writing of any person interested in such estate, and service of citation upon such executor or administrator, and, upon proof of such complaint, such sale shall be declared void by the county judge, and such executor or administrator decreed to hold the property so purchased in trust as assets of the estate, and an order to that effect shall be entered upon the minutes of the court. (Id. p. 114, sec. 86.)

See Herron's Probate Guide, pp. 301-2.

Art. 3505. (2138) (2084) Bidder failing to comply with his bid shall be liable, etc.—When any person shall bid off property offered for sale, rent or hire, at public auction, by an executor or administrator, and shall fail to comply with the terms of sale, renting or hiring, such property shall be readvertised and sold, rented or hired without any further order of the court for that purpose; and the person so failing to comply shall be liable to pay such executor or administrator for the use of the estate ten per cent on the amount of his bid, and also the deficiency in price on the second sale, renting or hiring, if any such deficiency there be; to be recovered by such executor or administrator by suit in any court of the county where such sale, hiring or renting was made, having jurisdiction of the amount claimed. (Id. p. 113, sec. 84.)

See Herron's Probate Guide, pp. 303-4.

Art. 3506. (2139) (2085) Public sale may be continued from day to day.—Public sales may be continued from day to day, in case the day set apart for such sale shall be insufficient to complete the same, by giving public notice of such continuance at the conclusion of the sale of each day, and the continued sale shall commence and close within the same hours. (Id. sec. 83.)

Art. 3507. (2140) (2086) Notice of private sale need not be given, unless, etc.—When property is ordered by the court to be sold at private sale, no notice of such sale shall be required, unless the court ordering such sale shall direct otherwise.

CHAPTER TWENTY-THREE

REPORT OF SALES, ETC.

Art. 3508. (2141) (2087) Sales shall be reported in thirty days.—All sales of property of an estate shall be reported to the court ordering the same within thirty days after the same are made. (Acts 1876, p. 113, sec. 85.)

Goldstein v. Susholtz, 105 S. W. 219.

Art. 3509. (2142) (2088) Requisites of report of sale.—The report of sale shall be in writing, and shall be subscribed and sworn to by the executor or administrator before some officer authorized to administer oaths, and shall show—

1. The time and place of the sale.
2. The property sold, describing the same.
3. The name of the purchaser of such property.
4. The amount for which each article of property sold.
5. The date of the order of the court authorizing the sale.
6. The terms of the sale, and whether at public auction or made privately.

See Herron's Probate Guide, pp. 306-7.

Art. 3510. (2143) (2089) Report may be made, when, etc.—The report of sale may be made in term time or in vacation, and, when returned, shall be filed by the clerk, and the filing thereof noted upon the judge's docket.

Art. 3511. (2144) (2090) Action of court on report of sale.—At any time after the expiration of five days from the filing of a report of sale, it shall be the duty of the county judge, at a regular term of his court, to inquire into the manner in which the sale was made, and to hear evidence in support of or against such report; and, if satisfied that such sale was fairly made, and in conformity with law, he shall enter upon the minutes of the court a decree confirming such sale, and order the report of sale to be recorded by the clerk, and the proper conveyance of the property to be made by the executor or administrator to the purchaser upon compliance by such purchaser with the terms of sale. (Acts 1876, p. 113, sec. 85.)

See Herron's Probate Guide, pp. 308-310; Club L. & C. Co. v. Dallas Co., 64 S. W. 872; James v. Nease, 69 S. W. 110; Goldstein v. Susholtz, 105 S. W. 219.

Art. 3512. (2145) (2091) Sale shall be set aside, when.—If the court is not satisfied that the sale was fairly made and in conformity with law, an order shall be entered upon the minutes setting the same aside and ordering a new sale to be made if necessary. (Id.)

See Herron's Probate Guide, p. 309.

Art. 3513. (2146) (2091a) Conveyance of property sold.—After a sale has been confirmed by a decree of the court, upon the purchaser complying with the terms of the sale, the executor or administrator shall execute and deliver to the purchaser a proper conveyance of the property purchased by him. In the case of personal property, no conveyance shall be necessary, but the decree of the court confirming the sale shall vest the right and title of the testator or intestate to the property sold in the purchaser, and shall be prima facie evidence that all the requirements of the law have been complied with in making the sale. (Id. p. 113, sec. 85.)

Goldstein v. Susholtz, 105 S. W. 219.

Art. 3514. (2147) (2092) Conveyance of real estate.—If the property sold be real estate, the conveyance shall be by deed, and shall recite the decree of the court confirming the sale and ordering the conveyance to be made; and such conveyance shall vest the right and title that the testator or intestate had in such real estate in the purchaser, and shall be prima facie evidence that all the requirements of the law have been complied with in making such sale. (Id.)

See Club L. & C. Co. v. Dallas Co., 64 S. W. 872.

Art. 3515. (2148) (2093) Conveyance of real estate shall not be delivered until, etc.—No conveyance of real estate sold shall be executed and delivered by the executor or administrator to the purchaser until the terms of sale have been complied with by such purchaser; and, when such sale has been made on a credit, it shall be the duty of the executor or administrator before delivering a conveyance of the property to the pur-

chaser, to take from such purchaser a note with good personal security, together with a mortgage containing a power of sale upon the property sold to secure the payment of the purchase money, and to file such mortgage for record in the county where such real estate is situated. (Id. p. 114, sec. 87.)

See Herron's Probate Guide, pp. 311-312.

Art. 3516. (2149) (2094) Penalty for neglect to take note and mortgage.—Should the executor or administrator neglect to take such note, security and mortgage, and file such mortgage for record in the proper county before delivery of such deed, he and the sureties on his bond shall be liable at the suit of any person interested in the estate, for the use of the estate, for the full amount of such sale. (Id.)

Art. 3517. (2150) (2095) Note holds vendor's lien.—All notes executed for the purchase money of real estate purchased under the provisions of this chapter shall hold the vendor's lien on the real estate for which they were given against all persons having notice, express or implied, in favor of the estate, whether the mortgage be recorded or not, and such lien shall in no case be waived. (Id.)

CHAPTER TWENTY-FOUR

ENFORCING SPECIFIC PERFORMANCE OF CONTRACTS

Art. 3518. (2151) (2096) Proceeding to enforce specific performance of bond, etc.—When any person shall sell property and enter into bond or other written agreement to make title thereto, and shall depart this life without having made such title, the owner of such bond or written agreement, or his legal representatives, may file a complaint in writing in the county court of the county where the letters testamentary or of administration were granted, and cause the executor or administrator to be cited to appear at a regular term of the court, and show cause why a specific performance of such bond or other written agreement should not be decreed; and such bond or other written agreement shall be filed with such complaint, or good cause shown under oath why the same can not be so filed; and, in case it can not be so filed, the same or the substance thereof shall be set forth in the complaint. (Acts 1876, p. 108, sec. 65.)

See Herron's Probate Guide, pp. 314-6; Simkins' Equity (2d Ed.) p. 703.

Art. 3519. (2152) (2097) Action of the court on complaint.—When the citation has been returned served, the court shall hear such complaint and the evidence in support thereof, or against the same, and, if satisfied from the proof that such bond or written agreement was legally executed by the testator or intestate, and that the complainant has a right to demand a specific performance thereof, a decree shall be entered upon the minutes ordering the executor or administrator to make title to the property so sold by his testator or intestate according to the tenor of the bond or other written agreement; and such property shall be fully described in such decree. (Id.)

See Simkins' Equity (2d Ed.) p. 703; Dutton & Rutherford v. Wright & Vaughn, 85 S. W. 1025.

Art. 3520. (2153) (2098) Conveyance under provisions of this chapter.—When a conveyance is made under the provisions of this chapter, it shall recite the decree of the court authorizing it, and, when delivered, shall have the effect to vest in the person to whom made all the right and title which the testator or intestate had to the property conveyed; and such conveyance shall be prima facie evidence that all the requirements of the law have been complied with in obtaining the same.

See Herron's Probate Guide, p. 316; Simkins' Equity (2d Ed.) p. 703; Hughes v. Wright & Vaughan, 97 S. W. 525.

CHAPTER TWENTY-FIVE

HEIRSHIP, ETC.—ADJUDICATION OF

Art. 3521. County court may determine and declare heirship, etc., when; venue.—Whenever any person has died, or shall hereafter die, intestate, owning or being entitled to any real or personal property in this state, or any share or interest therein, and there shall have been no administration in this state upon the estate of such decedent, and whenever there has been a will probated in this state or elsewhere, or an administration in this state upon the estate of such decedent, and any real or personal property in this state has been omitted from such will or from such administration, or no final disposition thereof has been made in such administration, the county court of the county of this state in which such proceedings were last pending, or, in the event no will of such decedent has been admitted to probate in this state, and no administration has been granted in this state upon the estate of such decedent, then the county court of the county in which any of the real property belonging to such estate is situated, or, if there be no such real property, then of the county in which any personal property belonging to such estate may be found, may determine and declare in the manner hereinafter provided in this chapter, who are the heirs and only heirs of such decedent, and their respective shares and interests, under the laws of this state, in the estate of such decedent, and actions therefor shall be known as actions to declare heirship. (Acts 1907, p. 230, sec. 1.)

Art. 3522. Who may maintain action, and how; requisites of petitions; parties.—Such action may be instituted and maintained in any of the instances enumerated in article 3521 by any person or persons claiming to be the owner or owners of the estates of such decedent, or of any share or interest therein. Such action shall be instituted by the filing in the proper court of a petition which shall give the name and also the time and place of the death and the names and places of residence of the heirs of such decedent, if known to the petitioners or any of them, and, if the time and place of the death or the names and places of residence of all the heirs of such decedent be not definitely known to such petitioners or any of them, then such petition shall set forth, in at least general terms, any and all of such material facts and circumstances within the knowledge or information of such petitioners, or any of them, as may reasonably tend to show the time and place of the death and the names and places of residence of the heirs of such decedent, and the true

share and interest of each such petitioner, and of each such heir, in the estate of such decedent. Such petition shall, so far as is known to any of the petitioners, also contain such a description of all the real property of such decedent as would be sufficient in a conveyance thereof, and also a description, in at least general terms of all the personal property belonging to the estate of such decedent. Such petition shall be supported by the written personal affidavit of each such petitioners to the effect that, in so far as is known to such petitioner, all the allegations of such petition are true in substance and in fact and that no such material fact or circumstance has, within such affiant's knowledge, been omitted from such petition. The unknown heirs of such decedent, and, excepting only the plaintiffs, all persons who may be named in such petition as heirs of such decedent, and all persons who may, at the date of the filing of such petition, be shown by the deed records of the county in which any of the real property described in such petition may be situated, to own any share or interest in any such real property, shall be made parties defendant in such action. (Id. sec. 2.)

Art. 3523. Notice, citation, etc., cause to be transferred when, and to what court.—Due notice of the filing of such petition shall be given in the manner and for the length of time and in accordance with the provisions of law now in force in this state concerning the issuance and service of citations upon resident defendants, and notice to non-resident defendants, and citation by publication for unknown heirs, respectively; and, in so far as they are applicable thereto, all provisions of laws now in force in this state, relative to or concerning suits wherein citation by publication is provided for by law, shall apply to and govern in all suits provided for in this chapter. In the event an administration upon the estate of any such decedent shall be granted in any county in this state, after the institution of any such action, and in the event the will of such decedent shall be admitted to probate in any county in this state after the institution of such action, then, and in either such event, the court in which such action may then be pending, shall, by an order to be entered of record therein, transfer such cause to the county court of the county in which such administration shall have been granted or such will shall have been probated, and, thereupon, the clerk of the court in which such action was originally filed shall transmit to the clerk of the court named in such order, a certified transcript of all docket entries and orders of the court in such cause. The clerk of the court to which such cause shall be so transferred shall file such transcript, and record the same in the minutes of the court, and shall duly docket such cause, and same shall thereafter proceed as though originally filed in that court. (Id. sec. 3.)

Art. 3524. Hearing and procedure on; judgment to declare and contain what; effect of.—Upon the hearing of such cause, the trial court may require the issues involved to be duly framed and submitted, and shall confine the proof to such issues; and all the evidence shall be reduced to writing, and shall be subscribed and sworn to by the witnesses, respectively, and filed in the cause, and recorded in the minutes of the court. The judgment of the court in such cause shall declare the names and places of residence of the heirs of such decedent, and their respective shares and interests in the real and personal property of such decedent, in so far as such facts shall be ascertainable from the evidence under the laws of this state and the rules of evidence, and shall state in what respects, if any, the evidence presented upon such hearing fails to develop such issues, or any of them; and all issues in the cause which may be framed by the court, or under its direction, shall be embodied in the judgment of the court. As between and as among all parties to such cause who may have been personally so duly served with citation or notice, as to a non-resident in such cause, and as between any and all of them, and any and all bona fide purchasers for value from them, or any of them, of any of the real or personal property of such decedent, which is described in such judgment, or any interest therein, such judgment shall be conclusive, and as to any and all other persons such judgment shall be prima facie evidence that the heirs of such decedent and that their respective interests in the real and personal property described in such judgment are as therein stated; but such judgment shall not preclude any suit or suits against the persons therein named as heirs of such decedent, or any one or more of them, based upon the allegation that such heir or heirs have received more than his or their proper and just share of the property of such decedent. Such judgment shall have the force and effect of a final judgment of such court; and any party or parties to such cause may appeal from such judgment in like manner and under the same conditions as is now, or may hereafter be, provided by law in other cases arising under the probate laws of this state. (Id. sec. 4.)

Art. 3525. Certified copy of judgment to be filed for record, etc., where, etc., constructive notice.—A certified copy of such judgment may be filed for record in the office of the county clerk of the county in which any of the real property described in such judgment may be situated, and recorded in the deed records of such county, and indexed in the name of such decedent as grantor and of the heirs named in such judgment as grantees; and, from and after such filing, such judgment shall constitute constructive notice of the facts set forth in such judgment. (Id. sec. 5.)

Art. 3526. Provisions of chapter cumulative.—The provisions of this chapter shall be deemed and held to be cumulative of all existing laws, and shall not be held to repeal any existing law. (Id. sec. 6.)

CHAPTER TWENTY-SIX

PARTITION AND DISTRIBUTION

Art. 3527. (2154) (2099) Application for partition and distribution.—All applications for the partition and distribution of an estate shall be in writing, and shall be filed with the clerk of the court in which the administration of the estate is pending. Such application shall state:

1. The name of the person whose estate is sought to be partitioned and distributed.
2. The names and residences of all persons

entitled to a share of such estate, and whether such persons are adults or minors, and if these facts be unknown to the applicant, it shall be so stated in the application, such application may be filed by any person interested in the estate. (Acts 1876, p. 120, sec. 102.)

See Herron's Probate Guide, pp. 317-8.

Art. 3528. (2155) (2100) Citation in such cases.—Upon the filing of any such application, it shall be the duty of the clerk to issue a citation returnable to some regular term of the court; which citation shall state the name of the person whose estate is sought to be partitioned and distributed, the term of the court to which such citation is returnable, and shall require all persons interested in the estate to appear and show cause why such partition and distribution should not be made. (Id.)

See Pye v. Guffey, etc., Co., 95 S. W. 622.

Art. 3529. (2156) (2101) Service of citation.—Such citation shall be personally served by leaving a copy thereof with each person entitled to a share of the estate, who is known and is a resident of this state; and, if there be any persons so entitled who are not known, or who are not residents of this state, such citation shall be published for at least four successive weeks in some newspaper printed in the county, if there be one, if not, then it shall be published in like manner in one of the nearest newspapers published in the state. A copy of such publication, and the affidavit of the publisher or printer attached thereto, shall accompany the report of the officer serving such citation. (Id.)

See Herron's Probate Guide, p. 319.

Art. 3530. (2157) (2102) Executor, etc., shall also be cited, etc.—When the application is made by any other person than the executor or administrator of the estate, such executor or administrator shall be cited to appear and answer such application, and to file in court a full and complete exhibit and account of the condition of the estate, verified by affidavit, as in case of final settlement of such estate.

Art. 3531. (2158) (2103) Application may be made, when.—At any time after the first term of the court after the expiration of twelve months from the original grant of letters testamentary or of administration, the heirs, devisees or legatees of the estate, or any of them, may, by their application in writing, filed in the county court, cause the executor or administrator, and the heirs, devisees and legatees of the estate, to be cited to appear at a regular term of the court and show cause why a partition and distribution of the residue of such estate should not be made. (Id. p. 117, sec. 94.)

Routledge v. Elmendorf, 116 S. W. 156.

Art. 3532. (2159) (2104) Upon return of citation served, court shall proceed, etc.—Upon the return of any such citation, served at the return term thereof, or at some succeeding term, to which the application may be continued, if it shall appear that such citation has been served or published as required by law, the court shall ascertain whether the whole, or any part, of such property is susceptible of partition, also the value of the property and that there is a residue of the estate on hand subject to partition and distribution, the court shall proceed to have such residue partitioned and distributed among the persons entitled thereto in the manner hereinafter provided. (Acts 1876, p. 120; Acts 1905, p. 108.)

Art. 3533. (2160) (2105) Court shall ascertain what facts.—In the proceeding to partition an estate, the court shall ascertain:

1. The residue of the estate subject to partition and distribution, which shall be ascertained by deducting from the entire assets of such estate remaining on hand the amount of all debts and expenses of every kind which have been approved or established by judgment, or which may yet be established by judgment, and also the probable future expenses of administration.

2. The persons who are by law entitled to partition and distribution, and their respective shares.

3. Whether advancements have been made to any of the persons so entitled, their nature and value, and shall require the same to be placed in hotchpotch as required by the law governing descents and distributions. (Id. p. 120, sec. 103.)

See ante art. 2467; Herron's Probate Guide, pp. 56-7, 320-1.

Art. 3534. (2161) (2106) Shall appoint guardians for minors, etc.—If there are any persons entitled to any portion of the estate who are known, and are minors, and have no guardian in this state, or whose guardians are also entitled to a portion of such estate, the court shall appoint a guardian ad litem to represent such minors in the partition of the estate; and, if there be any persons so entitled who are not known or are not residents of the state, and no person appears who is authorized to represent them, the court shall appoint an attorney to represent such persons in the partition. (Id.)

See post art. 3562; Herron's Probate Guide, pp. 321-2.

Art. 3535. (2162) (2107) Decree of partition.—The court shall then proceed to enter a decree, which shall state:

1. The name and residence, if known, of each person entitled to a share of the estate, specifying those who are known to be minors and the name of their guardian, or guardian ad litem, and the name of the attorney appointed to represent those who are unknown or are not residents of the state.

2. The proportional part of the estate to which each is entitled.

3. It shall contain a full description of all the estate to be distributed.

4. It shall direct the executor or administrator to retain in his hands for the payment of debts and expenses of administration a sufficient amount of money or property for that purpose, specifying the amount of money or the property to be so retained. (Id.)

See Herron's Probate Guide, p. 329.

Art. 3536. (2163) (2108) Where estate consists of money or debts only.—If the estate to be distributed shall consist only of money or debts due the estate, or both, the court shall fix the amount to which each distributee is entitled, and order the payment and delivery thereof by the executor or administrator. (Id.)

Art. 3537. (2164) (2109) Court shall appoint commissioners, when.—If the estate does not consist entirely of money or

debts due the estate, or both, the court shall appoint three or more discreet and disinterested persons as commissioners, to make a partition and distribution of the estate, unless the court has already determined that the estate is incapable of partition. (Acts 1876, p. 120; Acts 1905, p. 108.)

Art. 3538. (2165) (2110) Writ of partition shall issue.—When commissioners are appointed, the clerk shall issue a writ of partition directed to the commissioners appointed, commanding them to proceed forthwith to make such partition and distribution in accordance with the decree of the court, a copy of which decree shall accompany the writ, and also commanding them to make due return of said writ, with their proceedings under it, at some term of the court to be named in the writ. (Id. sec. 102.)

Art. 3539. (2166) (2111) Service of writ.—Such writ shall be served by delivering the same and the accompanying copy of the decree of partition to any one of the commissioners appointed, and by notifying the other commissioners, verbally or otherwise, of their appointment, and such service may be made by any person.

Art. 3540. (2167) (2112) Manner of making partition by commissioners.—It shall be the duty of the commissioners of partition under this chapter to make a fair, just and impartial partition and distribution of the estate in the following order:

1. Of the land or other property by allotment to each distributee of a part in each parcel or of parts in one or more parcels, or of one or more parcels, either with or without the addition of a part or parts of other parcels, as shall be most for the interest of the distributees; provided, the said real estate is capable of being so divided without manifest injury to all or any of the distributees.

2. If the real estate is not capable of a fair, just and equal division in kind, but may be made so by allotting to one or more of the distributees a proportion of money or other personal property to supply the deficiency or deficiencies, the commissioners shall have power to make, as near as may be, an equal division of the real estate and supply the deficiency of any share or shares from the money or other property.

3. The commissioners shall proceed to make a like division in kind, as near as may be, of the money and other personal property, and shall determine by lot among equal shares to whom each particular share shall belong. (Id. p. 121, sec. 104.)

Art. 3541. (2168) (2113) Report of commissioners when division is made.—Said commissioners having divided the whole, or any part of the estate, shall make to the court a report in writing, subscribed and sworn to by them, containing a statement of the property divided by them, and also a particular description of the property allotted to each distributee and its value. And, if it be real estate that has been divided, said report shall contain a general plat of said land with the division lines plainly set down and the number of acres in each share. (Id. p. 122, sec. 106.)

Art. 3542. (2169) (2114) Action of court upon report of commissioners.—Upon the return of such report, it shall be the duty of the court, at some regular term, to examine the same carefully and to hear all exceptions and objections made thereto, and to hear evidence in favor of or against the same, and, if it be merely informal, to cause said informality to be corrected; and, if such division shall appear to have been fairly made according to law, and no valid exceptions are taken to it, the court shall approve it and order it to be recorded, and shall enter a decree vesting title in the distributees of their respective shares or portions of the property as set apart to them by the commissioners; but, if said division shall not appear to have been fairly made according to law, or any valid exceptions are taken to it, the court shall set aside said report and division and order a new partition to be made. (Id.)

Art. 3543. (2170) (2115) Court to make special finding as to property incapable of division, and value of same.—When, in the opinion of the court, the whole or any portion of the estate is not capable of fair and equal division among the distributees, the court shall make a special finding in writing, specifying therein the property that is so incapable of division and the value of the same as found by it. (Acts 1876, p. 120, sec. 105; Acts 1905, p. 109.)

Art. 3544. (2171) (2116) Distributees may pay appraised value and take property incapable of division, when.—Upon such special finding of the court, and not less than twenty days after such finding, and before any exception thereto is filed, or after such exception is acted upon by the court, any one or more of the distributees, at a regular term of the court, by the payment to the executor or the administrator of the value of the property found by the court, that is incapable of division, shall have the right to take such property. (Id.)

Art. 3545. (2172) (2117) May take it on credit, when.—Should the court think it for the interest of the distributees to allow a credit, any one or more of such distributees shall have the right to take said property by executing his or their obligations with two or more good and sufficient sureties in favor of each of the other distributees for their share of the appraised value of such property, payable at such time, not exceeding twelve months from the date thereof, as the court may designate; and, when such obligations are executed, a lien shall exist upon such property by operation of law to secure the payment of the same. (Acts 1876, p. 120, sec. 102.)

Art. 3546. (2173) (2118) Decree of court in such cases vesting title.—Should any one or more of the distributees take the said property as aforesaid, it shall be the duty of the court to enter upon the minutes a decree stating the facts; and, on the entry of such decree, the property shall vest as fully and absolutely in the person or persons taking the same as the deceased was vested therewith, subject to the lien for the purchase money thereof, as provided in the preceding article. (Id.)

Art. 3547. (2174) (2119) New appraisement of property, when.—Any distributee shall have the right to file his exception to said finding within twenty days after the finding of the court. The court

shall hear proof of same; and, if satisfied that its finding is erroneous, it may make such additional or amendatory finding so as to conform to the proof. (Acts 1876, p. 120; Acts 1905, p. 109.)

Art. 3548. (2175) (2120) If no distributee take property, it shall be sold, etc.—If no distributee take the said property as aforesaid, the court shall order the sale of the same, either for cash or on a credit, as may be most for the interest of the distributees, and the proceeds of sale when collected shall be distributed by the court among those entitled thereto. (Acts 1876, p. 120, sec. 102.)

Art. 3549. (2176) (2121) Distributee purchasing at sale shall pay only the excess of his share.—At any such sale, if any distributee shall bid off any of the said property, he shall be required to pay, or secure, as the case may be, only such amount of his bid as may exceed the amount of his share of such property. (Id.)

Art. 3550. (2177) (2122) Court may order sale, when.—When any portion of the estate to be partitioned lies in another county and can not be fairly partitioned without prejudice to the interests of the distributees, the commissioners may report such facts to the county judge in writing; whereupon he may, at some regular term of the court, if satisfied that the said property can not be fairly and advantageously divided, or that its sale would be more advantageous to the distributees, order a sale thereof for cash, or on a credit of not more than twelve months, at his discretion; and, when the proceeds of such sale have been collected, they shall be distributed by him among those entitled thereto. (Id. p. 122, sec. 107.)

Art. 3551. (2178) (2123) If property is not sold, commissioners in county where it is situated shall be appointed, etc.—If the court is not satisfied that such property can not be fairly and advantageously divided, or that its sale would be more advantageous to the distributees, three or more commissioners may be appointed in each county where any portion of the estate so reported is situated, and the same proceedings shall be had thereon as is provided in this chapter for commissioners to make partition. (Id.)

Art. 3552. (2179) (2124) Majority of commissioners may act.—In all cases where commissioners to make partition are appointed under this chapter, the report of a majority of them shall be sufficient. (Id. p. 123, sec. 109.)

Art. 3553. (2180) (2125) Court shall order executor or administrator to deliver property, when.—When the report of any commissioners to make partition shall have been approved and ordered to be recorded, the court shall order the executor or administrator to deliver to the distributees their respective shares of the estate on demand, including all the title deeds and papers belonging to the same. (Id. sec. 113.)

Art. 3554. (2181) (2126) To whom property shall be delivered.—If any distributee be a minor, his share shall be delivered to his guardian, and, if such minor has no guardian, and is a resident of this state, the executor or administrator shall retain his share until a guardian of such minor shall be appointed and qualified; and, if any distributee be a minor and reside in any other than this state, and the guardianship of such minor or minors may be, or has been, granted in the state where such minor or minors reside, it shall be lawful for the executor or administrator in this state to settle with, and pay or deliver over to, such guardian any and all estate in his hands, which shall be as good and valid as if the guardianship had been granted in this state; provided, said guardian, before he receives such estate, shall make and enter into a bond as guardian in the matter of the guardianship so pending, conditioned and for the amount prescribed by the court having jurisdiction of such guardianship; and provided, further, that he shall produce to the court of the county wherein administration has been, or may be, granted in this state a certified copy of the bond so given and of the record of his appointment as guardian, with certificates from the clerk and judge of the court in which said guardianship is pending that said appointment and bond are in due and legal form under the laws of the said state; also a copy of his bond as guardian; and, if the court shall be satisfied that said guardian has been legally appointed and otherwise complied with the requirements herein, such court shall order to be recorded in the clerk's office of the county court, which, when recorded, shall entitle the guardian to settle for the amount due his ward. (Id.; Acts 1895, p. 150.)

See post art. 4256; Hoffman v. Watkins, 130 S. W. 625.

Art. 3555. (2182) (2127) Damages for neglect to deliver property, etc.—If any executor or administrator shall neglect to deliver to the person entitled thereto, his agent or attorney, when demanded, any portion of an estate so ordered to be delivered, such executor or administrator shall be liable to pay out of his own estate to the person so entitled damages on the amount or value of the share so withheld, at the rate of ten per cent per month for each and every month he shall so neglect to deliver such share after such demand, which damages may be recovered by suit before any court having competent jurisdiction. (Id.)

Art. 3556. (2183) (2128) Surviving husband or wife may have partition of common property.—When any husband or wife shall die leaving any common property, the survivor may, at any time after letters testamentary or of administration have been granted, and an inventory, appraisement and list of the claims of the estate have been returned, make application in writing to the court which granted such letters for a partition of such common property, which application shall be acted upon at some regular term of the court. (Id. p. 122, sec. 108.)

See Speer's Marital Rights, p. 750; Yates v. Yates, 68 S. W. 708; Huth v. Huth, 187 S. W. 523.

Art. 3557. (2184) (2129) Action of court and bond in such case.—If, upon the hearing of such application, there appear to be any such common property, and such surviving husband or wife shall execute and deliver to the county judge an obligation with two or more good and sufficient sureties, payable to and approved by the said county judge, for an amount equal to the value of his or her interest in such common property, conditioned for the payment of one-half of

all debts existing against such common property, then the county judge shall proceed to make a partition of said common property into two equal moieties, one to be delivered to the survivor and the other to the executor or administrator of the deceased; and all the provisions of this chapter respecting the partition and distribution of estates shall apply to any partition made under the provisions of this article, so far as the same may be applicable. (Id.)

See Speer's Marital Rights, p. 750.

Art. 3558. (2185) (2130) Lien upon property delivered, etc.—Whenever any such partition shall be made, a lien shall exist upon the property delivered to such survivor to secure the payment of the aforesaid obligation; and such obligation shall be filed with the clerk and recorded in the minutes of the court; and any creditor of said common property may sue in his own name on such obligation, and shall have judgment thereon for one-half of such debt as he may establish, and for the other half he shall be entitled to be paid by the executor or administrator of the deceased. (Id.)

See Speer's Marital Rights, p. 751; Yates v. Yates, 68 S. W. 708.

Art. 3559. (2186) (2131) Common property shall be held by executor, etc., until, etc.—Until any such partition of common property is applied for and made as herein provided, the executor or administrator of the deceased shall have the right, and it shall be his duty, to recover possession of all such common property and hold the same in trust for the benefit of the creditors and others entitled thereto under the provisions of this title. (Id.)

See Speer's Marital Rights, p. 751 et seq.

Art. 3560. (2187) (2132) Joint owners with estate may have partition.—Any person having a joint interest with the estate of a decedent in any property, real or personal, may make application to the county court from which letters testamentary or of administration have been granted on said estate, to have a partition thereof; whereupon the court shall proceed to make a partition of said property between the applicant and the estate of the deceased; and all the rules and regulations contained herein in relation to the partition and distribution of estates shall govern partitions under this article so far as the same are applicable. (Id. p. 123, sec. 112.)

Art. 3561. (2188) (2133) Expenses of partition to be paid by whom.—All expenses incurred in the partition of estates shall be paid by the parties interested in the partition, each party paying in proportion to the share he may receive. The portion of the estate allotted to each distributee shall be liable for his portion of such expenses, and if not paid the court may order execution therefor in the names of the persons entitled thereto. (Id. sec. 111.)

Art. 3562. (2189) (2134) Court may appoint another guardian, etc., when.—In any case where the county judge shall appoint a guardian ad litem for minors, or an attorney to represent a distributee who is absent from the state or unknown, under the provisions of this title, if such guardian ad litem, or attorney, shall neglect to attend to the duties of such appointment, the county judge shall appoint others in their places by an order entered on the minutes of the court; and such guardian ad litem and attorney shall be allowed by the county judge a reasonable compensation for their services, to be paid out of the estate of the person they represent, and an order to that effect shall be entered upon the minutes, and if such allowance is not paid an execution may issue therefor in the name of the person entitled thereto. (Id. sec. 110.)

See ante art. 3534.

CHAPTER TWENTY-SEVEN

FINAL SETTLEMENT, ETC.

Art. 3563. (2190) (2135) Duty of executor, etc., to present account for final settlement, when.—When all the debts known to exist of every kind against the estate of a deceased person have been paid, or when they have been paid so far as the assets of the estate in the hands of the executor or administrator will permit, it shall be the duty of the executor or administrator of such estate to present to the court his account for final settlement of such estate verified by affidavit. (Acts 1876, p. 117, sec. 95.)

See ante, art. 3241; Herron's Probate Guide, pp. 331-2; Cobb v. Speers, 49 S. W. 666.

Art. 3564. (2191) (2136) What the account shall show.—Such accounts shall show:

1. The property that has come into the hands of such executor or administrator belonging to the estate.
2. The disposition that has been made of any such property.
3. The debts that have been paid.
4. The debts and expenses, if any, still owing by the estate.
5. The property of the estate, if any, still remaining on hand.
6. The persons entitled to receive any portion of such estate, and their residence, if known, and whether adults or minors, and if minors, the names of their guardians.
7. Any advancements or payments that may have been made by the executor or administrator from such estate to any such person.
8. Said account shall be accompanied by proper vouchers in support of each item thereof, and such account and vouchers shall be filed with the clerk, either in term time or in vacation.

See Herron's Probate Guide, pp. 332-3.

Art. 3565. (2192) (2137) What shall be sufficient under the preceding article.—It shall be sufficient, under the preceding article, to refer to the inventory without giving each item in detail; also to refer to and adopt report of sales, exhibits and accounts of the executor or administrator, including vouchers which had previously been approved and filed according to law, without re-stating the items thereof.

Art. 3566. (2193) (2138) Executor, etc., may be cited to present such account.—Should the executor or administrator neglect to present such account, it shall be the duty of the county judge, either of his own motion or upon the complaint of any person interested in the estate, to cause such executor or administrator to be cited to present such account within a time specified in such citation. (Id.)

See Herron's Probate Guide, p. 335.

Art. 3567. (2194) (2139) Citation shall issue.—Upon the presentation of an

account for final settlement, it shall be the duty of the clerk to issue a citation, which shall state the presentation of said account, the term of the court when it will be acted on, and shall require all persons interested to appear and contest the same if they see proper. (Id.)

Art. 3568. (2195) (2140) Service on return of such citation.—Such citation shall be published for at least twenty days in a newspaper printed in the county, if there be one, if not then by posting such notice at the court house and at two other public places in the county, not in the same town or city, for at least twenty days. When the citation has been published, the affidavit of the publisher or printer attached to a copy thereof, that the same has been published for at least twenty days, shall accompany the return of the officer who executes such citation. When the citation has been posted, the original citation, with the return of the officer posting the same indorsed thereon or attached thereto, shall be filed.

See Herron's Probate Guide, pp. 335-6.

Art. 3569. (2196) (2141) County judge may order other notice to be given.—In addition to the citation required in the two preceding articles, the county judge may order such other notice to be given as he shall deem expedient, by an order entered upon the minutes of the court. (Id.)

Art. 3570. (2197) (2142) Action of court upon account.—At the term of court named in such citation, or at some subsequent term to which the same has been continued, upon return being made that citation has been served in the manner required, it shall be the duty of the court to examine said account and the vouchers accompanying the same, and after hearing all exceptions and objections thereto, and the evidence that may be offered in support of or against such account, to re-state said account, if necessary, and audit and settle the same. (Id.)

See Herron's Probate Guide, pp. 336-7; Cobb v. Speers, 49 S. W. 666; Thomas v. Hawpe, 80 S. W. 129; Gallaspie v. Hardy, 196 S. W. 592.

Art. 3571. (2198) (2143) Partition of estate on hand shall be made.—Upon a settlement of an estate, if there is any of the estate remaining in the hands of the executor and administrator, and the heirs, devisees or legatees of the estate, or their assignee, or either of them, are present or represented in court, it shall be the duty of the county judge to order a partition and distribution of the estate to be made among them, upon satisfactory proof being made that they are entitled to receive it. (Id.)

See Herron's Probate Guide, pp. 337-8; Cobb v. Speers, 49 S. W. 666; Friend v. Boren, 95 S. W. 711; Gallaspie v. Hardy, 196 S. W. 592.

Art. 3572. (2199) (2144) Executor, etc., shall be discharged, when.—If, upon such settlement, there be none of the estate remaining in the hands of the executor or administrator, he shall be discharged from his trust by an order of the court entered upon the minutes, and such order shall declare said estate closed. (Id.)

Art. 3573. (2200) (2145) Order for discharge of executor, etc., when, etc.—Whenever in any case the executor or administrator has fully administered the estate in accordance with the provisions of this title and in accordance with the order of court, and has filed proper vouchers, it shall be the duty of the court to enter upon the minutes an order discharging said executor or administrator from his trust and declaring said estate to be closed.

See Herron's Probate Guide, p. 338.

CHAPTER TWENTY-EIGHT
PAYMENT OF ESTATES INTO THE TREASURY

Art. 3574. (2201) (2146) If distributee does not demand his portion in six months after partition, same shall be paid to state treasurer.—If any person entitled to a portion of an estate, except a minor who resides in this state and has no guardian, shall not demand the portion to which he is entitled from the executor or administrator within six months after an order approving the report of commissioners of partition, the county judge, by an order entered upon the minutes, shall require the executor or administrator to pay so much of said portion as may be in money to the state treasurer; and such portion as may be in other property he shall order the executor or administrator to sell on such terms as the court may think best, and, when the proceeds of such sale are collected, he shall order the same to be paid to the treasurer of the state, in all such cases allowing to the executor or administrator reasonable compensation for his services. (Acts 1876, p. 124, sec. 114.)

Art. 3575. (2202) (2147) When those entitled to estate do not appear and claim, shall be paid to state treasurer.—Upon the settlement of the final account of any executor or administrator, if the heirs, devisees or legatees of the estate, or assignees, or any of them, do not appear or are not represented in the court, and there are any funds of such estate remaining in the hands of the executor or administrator, it shall be the duty of the county judge to enter an order upon the minutes requiring such executor or administrator to pay such funds to the treasurer of the state. (Id. sec. 96.)

See Friend v. Boren, 95 S. W. 711.

Art. 3576. (2203) (2148) Property uncalled for shall be sold, etc.—If in such case there shall be any property of the estate that has not been sold, or any debts due the estate that may be collected, it shall be the duty of the county judge, by an order entered upon the minutes, to require the executor or administrator to sell such property on such terms as the county judge may think best, and to collect such debts and to pay the proceeds of such sale and amount collected of such debts to the state treasurer as soon as received, in all such cases allowing to the executor or administrator reasonable compensation for his services. (Id. p. 118, sec. 96.)

Art. 3577. (2204) (2149) Executor, etc., shall make report, etc.—The executor or administrator, while he has any of such estate under his control, shall from time to time, as he receives money, report the same to the court in writing under oath, and, should he neglect to report to the court the condition of the estate at reasonable periods of time, it shall be the duty of the court to cause him to be cited to appear and make such report either in term time or in vacation, and the court shall thereupon make such

order as the circumstances of the case may require.

Art. 3578. (2205) (2150) While the property remains under control of executor, etc., distributees may have partition.—While such estate, or any portion thereof, remains under the control of the executor or administrator, the heirs, devisees, legatees or their assignees, or any of them, may obtain from the county judge, at a regular term of the court, an order to have the same partitioned and distributed among them, according to their respective interests in the same, upon causing the executor or administrator to be cited, and upon making satisfactory proof of their right to the same. (Id.)

Art. 3579. (2206) (2151) Certified copy of order for payment to treasurer shall be sent by the clerk to treasurer.—Whenever an order shall be made by the county judge for an executor or administrator to pay over any funds to the treasurer of the state, under the provisions of this chapter, it shall be the duty of the clerk of the court, in which such order may be made, to transmit to said treasurer, by mail, a certified copy of such order within thirty days after said order shall have been made. (Id. sec. 97.)

Art. 3580. (2207) (2152) Clerk shall take certificate of postmaster, etc.—Whenever the clerk mails such copy, he shall take from the postmaster with whom it is mailed a certificate stating that such certified copy was mailed in his office, directed to the treasurer of the state, at the seat of government, and the date when it was mailed, which certificate shall be recorded in the minutes of the court. (Id.)

Art. 3581. (2208) (2153) Penalty for neglect of such duty.—Any clerk who shall neglect to transmit a certified copy of such order within the time prescribed, and to take such certificate and have it so recorded, as required in the preceding article, shall be liable in a penalty of one hundred dollars, to be recovered by an action in the name of the state, before any court of the county having jurisdiction of the amount, on the information of any citizen of the county, one-half of which penalty shall be paid to the informer and the other half to the state. (Id.)

Art. 3582. (2209) (2154) Executor, etc., shall take receipt of treasurer, etc.—Whenever an executor or administrator shall pay over to the treasurer of the state any funds of the estate he represents, under the provisions of this chapter, he shall take from such treasurer a receipt for such payment, with his official seal attached, and file the same with the clerk of the court ordering such payment; and such receipt shall be recorded on the minutes of such court, and a certified copy of the same, or of such record, shall be evidence of such payment. (Id. p. 119, sec. 98.)

Art. 3583. (2210) (2155) Distributees may recover funds paid into the treasury.—Whenever any funds of an estate shall have been paid to the treasurer of the state, under the provisions of this chapter, any heir, devisee or legatee of such estate, or their assignees, or any of them, may recover the portion of such funds to which he or they would have been entitled, as if the same had not been so paid to the treasurer. (Id. sec. 99.)

Art. 3584. (2211) (2156) Mode of recovery.—In such case, the person claiming such funds, or any portion thereof, shall institute his suit therefor, by petition filed in the county court of the county in which the estate was administered, against the treasurer of the state, setting forth the petitioner's right to such funds, and the amount claimed by him. (Id.)

See Dodson v. Wortham, 45 S. W. 858.

Art. 3585. (2212) (2157) Citation to county or district attorney.—Upon the filing of such petition, the clerk shall issue a citation for the county attorney of the county, or the district attorney of the district, to appear and represent the interest of the state in such suit, and it shall be the duty of such county or district attorney to do so.

Art. 3586. (2213) (2158) Proceedings in suit to recover funds.—The proceedings in such suit shall be governed by the same rules as are provided for civil suits in the county court; and, should the plaintiff establish his right to the funds claimed, he shall have a judgment therefor, which shall specify the amount to which he is entitled; and a certified copy of such judgment shall be sufficient authority for the treasurer to pay the same.

Art. 3587. (2214) (2159) Costs shall be paid by plaintiff.—The costs of any such suit shall in all cases be adjudged against the plaintiff, and he may be required, as in other cases, to secure the costs. (Id.)

Art. 3588. (2215) (2160) Penalty when executor, etc., fails to pay funds to treasurer.—Whenever any executor or administrator shall fail to pay to the treasurer of the state any funds of the estate that he represents which he has been ordered by the county judge so to pay, within three months after such order has been made, such executor or administrator shall be liable to pay out of his own estate to the state treasurer damages thereon at the rate of five per cent per month for each month he may neglect to make such payment after the three months from such order. (Id. sec. 100.)

Art. 3589. (2216) (2161) Treasurer may apply to county court to enforce payment, and duty of court in such case.—The treasurer of the state shall have the right in the name of the state to apply to the court in which the order for payment was made, by application in writing, to enforce the payment of such funds, together with the payment of any damages that may have accrued under the provisions of the preceding article; and it shall be the duty of the court to enforce such payment in like manner as other orders of payment are required to be enforced. (Id.)

Art. 3590. (2217) (2162) Treasurer may also sue upon bond.—The treasurer shall also have the right to institute suit in the name of the state against such executor or administrator and the sureties on his bond for the recovery of the funds so ordered to be paid and damages, if any have accrued, which suit may be instituted in any court of competent jurisdiction in the county where the order of payment was made. (Id.)

Art. 3591. (2218) (2163) Duty of county or district attorney to represent state.—It shall be the duty of the county or

district attorney, as the case may be, to attend to and represent the interests of the state in all matters arising under any of the provisions of this chapter, and for which services he shall receive such compensation as may be provided by law.

CHAPTER TWENTY-NINE

ADMINISTRATION OF COMMUNITY PROPERTY

Art. 3592. (2219) (2164) Community property liable for community debts, etc.—The community property of the husband and wife, except such as is exempt from forced sale, shall be liable for all the debts contracted during marriage. And, in the settlement of such community estates, it shall be the duty of the survivor, executor or administrator to keep a separate and distinct account of all the community debts allowed or paid in the settlement of such estates. (Acts 1876, p. 124, sec. 115; Const. art. 16, sec. 15.)

See ante art. 2470; post art. 4622; Herron's Probate Guide, pp. 345-6; Speer's Marital Rights, p. 414.

Generally, see First Nat. Bank of New Boston v. Daniel, 172 S. W. 747.

Art. 3593. (2220) (2165) When there is no child, administration not required.—Where the husband or wife dies intestate, or becomes insane, having no child or children, and no separate property, the common property passes to the survivor, charged with the debts of the community; and no administration thereon or guardianship of the estate of the insane wife or husband shall be necessary. (Acts 1893, p. 88; P. D. 5498.)

See Speer's Marital Rights, p. 744; Herron's Probate Guide, p. 347; Schwartz v. West, 84 S. W. 282; Whitmire v. Bank, 97 S. W. 512; Fidelity Lumber Co. v. Howell, 206 S. W. 947.

Art. 3594. (2221) (2166) Where there is child, survivor holds subject, etc.—Where the wife dies or becomes insane, leaving a surviving husband and child, or children, the husband shall have the exclusive management, control and disposition of the community property in the same manner as during her lifetime, or sanity; and it shall not be necessary that the insane wife shall join in conveyances of such property, or her privy examination and acknowledgment be taken to such conveyances, subject, however, to the provisions of this chapter. (Acts 1893, p. 88; 1876, p. 127, sec. 116; P. D. 4647.)

See Herron's Probate Guide, p. 347; Speer's Marital Rights, p. 745; Melde v. Melde, 132 S. W. 980; Pierce v. Gibson, 184 S. W. 502; Priddy v. Tabor, 189 S. W. 111.

Art. 3595. (2222) (2167) Application for community administration.—The husband shall, within four years after the death of the wife, or her being declared insane, as provided by law, when there is a child, or children, file a written application in the county court of the proper county, stating:

1. The death of his wife, or that she has been declared insane by a court of competent jurisdiction, and the time and place of her death or of such declaration.

2. That she left a child or children, giving the names, sex, residence, and age of each child.

3. That there is a community estate between the deceased or insane wife and himself.

4. Such facts as show the jurisdiction of the court over the estate.

5. Asking for the appointment of appraisers, to appraise such estate. (Acts 1893, p. 88.)

See Speer's Marital Rights, p. 810; Williams v. Steele, 108 S. W. 155.

Art. 3596. (2223) (2168) Court shall appoint appraisers.—Upon the filing of such application, the county judge shall, without citation, and either in term time or in vacation, by an order entered upon the minutes of the court, appoint appraisers to appraise such estate as in other administrations. (Acts 1876, p. 124.)

See ante art. 3330; Speer's Marital Rights, p. 810; Williams v. Steele, 108 S. W. 155.

Art. 3597. (2224) (2169) Inventory, appraisement, and list of indebtedness, sworn to and returned, etc.—It shall be the duty of the surviving husband or wife (of community estates) with the assistance of any two of the appraisers, to make out a full, fair and complete inventory and appraisement of such community estate; and the survivor shall attach thereto a list of all community debts due the estate, and shall also attach thereto a list of all indebtedness due by said community estate to other parties, giving the amount of each debt and the name of the party or parties to whom it is due, and his or their postoffice address; and such inventory, list of claims, and list of indebtedness, of said community estate, shall be sworn to by said survivor; and the inventory, appraisement and list of claims due said community estate shall be sworn to by said appraisers; and said inventory, appraisement, list of claims due said estate, and list of indebtedness due by said estate, shall be returned to the court within twenty days from the date of the order appointing appraisers in like manner as other administrations. (Acts 1905, p. 336; Acts 1876, p. 124.)

See post art. 3602; Herron's Probate Guide, pp. 348-9; Speer's Marital Rights, p. 810; Thomas v. First Nat. Bank of Hico, 127 S. W. 844.

Art. 3598. (2225) (2170) Bond of survivor.—The surviving husband shall, at the same time he returns the inventory, appraisement and list of claims, present to the court his bond with two or more good and sufficient sureties, payable to and to be approved by the county judge, in a sum equal to the whole of the value of such community estate as shown by the appraisement, conditioned that he will faithfully administer such community estate, and pay over one-half the surplus thereof after the payment of the debts with which the whole of such property is properly chargeable, to such person or persons as shall be entitled to receive the same. (Id. p. 124, sec. 116.)

See Herron's Probate Guide, pp. 349-350; Speer's Marital Rights, p. 811; Belt v. Celti, 93 S. W. 1001.

Art. 3599. (2226) (2171) Action of court upon inventory, etc.—When any such inventory, appraisement, list of claims and bond are returned to the county judge, he shall, either in term time or in vacation, examine the same and approve or disapprove them by an order to that effect entered upon the minutes of the court, and, when approved, the same shall be recorded upon the minutes of the court, and the order approving the same shall also authorize such sur-

vivor to control, manage and dispose of such community property in accordance with the provisions of this chapter.

See Herron's Probate Guide, p. 351; Speer's Marital Rights, p. 811; Green v. White, 45 S. W. 389; Thomas v. First Nat. Bank of Hico, 127 S. W. 844; Morse v. Nibbs, 150 S. W. 766.

Art. 3600. (2227) (2172) After order of court, survivor has control, etc.—When the order mentioned in the preceding article has been entered, such survivor, without any further action in the county court, shall have the right to control, manage and dispose of such community property, real or personal, in such manner as may seem best for the interest of the estate and of suing and being sued with regard to the same, in the same manner as during the lifetime of the deceased; and a certified copy of the order of the court mentioned in the preceding article shall be evidence of the qualification and right of such survivor. (P. D. 4648.)

See Speer's Marital Rights, p. 811; Herron's Probate Guide, pp. 351-3; Jones v. McRae, 41 S. W. 403; Wingfield v. Hackney, 68 S. W. 262; Thomas v. First Nat. Bank of Hico, 127 S. W. 844; Morse v. Nibbs, 150 S. W. 766.

Art. 3601. (2228) (2173) Survivor shall keep an account, etc.—The survivor shall keep a fair and full account and statement of all community debts and expenses paid by him, and of the disposition made of such community property; and, upon final partition of said estate, shall account to the legal heirs of the deceased for their interest in such estate, and the increase and profits of the same, after deducting therefrom all community debts, unavoidable losses, necessary and reasonable expenses, and a reasonable commission for the management of the same. (P. D. 4648.)

See Herron's Probate Guide, p. 353; Speer's Marital Rights, p. 811.

Art. 3602. (2229) (2174) New appraisement and bond may be required.—Any person interested in such community estate may cause a new appraisement to be made of the same, or a new bond may be required of the survivor for the same causes and in like manner as provided in other administrations.

See ante art. 3597; Speer's Marital Rights, p. 811; Hines v. Givens, 68 S. W. 295.

Art. 3603. (2230) (2175) Duty of survivor to pay debts.—It shall be the duty of the survivor to pay all just and legal community debts as soon as practicable, and according to the classification and in the order prescribed for the payment of debts in other administrations.

See Herron's Probate Guide, pp. 353-4; Speer's Marital Rights, p. 812.

Art. 3604. (2231) (2176) Creditor may have survivor to make exhibit, when.—Any creditor of the estate whose claim has not been paid in full may, after the lapse of one year from the filing of the inventory, appraisement, list of claims and bond by the survivor, cause such survivor to be cited to appear at a regular term of the court in which such bond has been filed, and make an exhibit to the court in writing and under oath, showing fully and specifically—

1. The debts that have been presented to him against such community estate and their class.

2. The debts that have been paid by him and those that remain unpaid, and the class of each.

3. The property that has been disposed of by him and the amount received therefor.

4. The property remaining on hand.

5. An account of losses, expenses and commissions.

See Speer's Marital Rights, p. 812.

Art. 3605. (2232) (2177) Action of court upon exhibit.—When such exhibit has been returned to the court and filed, the court shall, at a regular term, examine the same and hear exceptions and objections thereto, and evidence in support of or against the same; and, if satisfied that the estate has been fairly administered and in conformity to law, and that there remains no further property of such estate for the payment of debts, the court shall enter an order upon the minutes approving such exhibit and directing the same to be recorded in the minutes, and shall also in such order declare such administration closed.

See Speer's Marital Rights, p. 812.

Art. 3606. (2233) (2178) Sureties on survivor's bond shall be cited, when.—But should it appear to the court from such exhibit or from other evidence that such estate has been improperly administered, or that there are still assets of said estate that are liable for the payment of the applicant's debt, or any part thereof, and if said debt be for the amount of one thousand dollars or less, exclusive of interest, the court shall order citation to issue for the sureties upon the bond of such survivor, citing them to appear before such court at a regular term thereof, and show cause why judgment should not be rendered against them for such debt and costs, which citation shall be returnable as in other civil suits; and the proceedings in such case shall be the same as in other civil suits in said court.

See Speer's Marital Rights, p. 813.

Art. 3607. (2234) (2179) Creditor may sue upon bond, when.—Should the amount due and payable to such creditor exceed one thousand dollars, exclusive of interest, the court shall enter an order upon the minutes requiring the survivor to pay such debt, or a part thereof, as the evidence may show to be proper; and, should he neglect to pay the same for thirty days after the date of such order, the creditor may have his action in the district court of the county where the survivor's bond is filed, against such survivor and the sureties upon his bond; and, in such case, a certified copy of such bond or the record thereof, and of the proceedings and orders of the county court in the estate, shall be evidence in any other court.

See Herron's Probate Guide, p. 356; Speer's Marital Rights, p. 813.

Art. 3608. (2235) (2180) Action of court when survivor fails to make exhibit.—Should the survivor, after being duly cited, fail to file an exhibit as required, the court shall proceed, in accordance with the provisions of the two preceding articles, as if the creditor's right to the payment of his claim had been fully established.

Art. 3609. (2236) (2181) Surviving wife shall have same rights, etc.—The wife may retain the exclusive management, control and disposition of the community property of herself and deceased or insane husband in the same manner, and subject to

the same rights, rules and regulations as provided in the case of the husband, and until she shall, in the event of the death of the husband, marry again. (Id.; amend. 1893, p. 88; P. D. 4652.)

See post arts. 4076, 4247; Herron's Probate Guide, p. 357; Speer's Marital Rights, p. 813; Townes' Texas Pleadings (2d Ed.) p. 248; Wingfield v. Hackney, 68 S. W. 262.

Art. 3610. (2236a) "Survivor," etc., applies alike to sane and insane persons.—The use of the words, "survivor," or, "surviving," in the above and foregoing articles of this chapter, where no other designation is given, shall be held to apply as well to a sane person representing an insane person. (Acts 1893, p. 88.)

See Speer's Marital Rights, p. 813.

Art. 3611. (2237) (2182) Rights of wife cease when she marries again.—Upon the marriage of the surviving wife, she shall cease to have such control and management of said estate or the right to dispose of the same; and said estate shall be subject to administration as in other cases of deceased persons' estates.

See Speer's Marital Rights, p. 813; Faris v. Simpson, 69 S. W. 1029; King v. Summerville, 80 S. W. 1050; Moore v. Belt, 206 S. W. 225.

Art. 3612. (2238) (2183) Persons entitled to estate may have partition, when.—After the lapse of twelve months from the filing of the bond by the survivor, the persons entitled to the deceased's share of such community estate, or any portion thereof, shall be entitled to demand and have a partition and distribution thereof in the same manner as in other administrations.

See Speer's Marital Rights, p. 814; Herron's Probate Guide, pp. 357-8; Faris v. Simpson, 69 S. W. 1029; Cheek v. Hart, 111 S. W. 775.

Art. 3613. (2238a) Recovery of insane spouse stops action hereunder.—Whenever such insane husband or wife shall have recovered sanity, then all action hereunder shall cease, and a report shall be made under oath of all transactions had and done under said proceedings; and said report shall be filed and recorded in the court where such proceedings were had, and with the other papers of the case. (Acts 1893, p. 88.)

See post arts. 4253-4255; Speer's Marital Rights, p. 814.

Art. 3614. (2238b) Duty of guardians in such cases.—Persons now acting as guardians of the estate of persons of unsound mind shall turn over the estates of their wards, where the wards shall be married persons, upon the qualification of the sane spouse, as provided in this chapter. (Id.)

See Speer's Marital Rights, p. 814.

CHAPTER THIRTY

TRANSFER OF ADMINISTRATION

Art. 3615. (2239) (2184) Court shall transfer administration on application, when.—It shall be the duty of the county judge of any county from which any county, or part thereof, has been taken, upon the written application of the executor, administrator, or the majority of the heirs of an estate, to transmit all original papers relating to the settlement of a deceased person's estate who was at the time of his decease a resident of that part of the territory of the county which has been, or may hereafter be, taken to form any new county, or that may be added to any other county, to the county court of such new county, or county to which such territory has been added; and he shall also transmit with such original papers a transcript, certified by the clerk under the seal of the court, of the records of all orders, judgments and decrees of the court had in relation to such estate. (Acts 1876, p. 125, sec. 118.)

Art. 3616. (2240) (2185) Applicant shall pay fees due.—At the time of filing such application, the applicant shall pay all fees due on account of such estate; and the order for the transfer of such estate shall not be made until such fees have been paid. (Id.)

Art. 3617. (2241) (2186) Order of court for transfer.—When the fees due have been paid, the county judge shall, either in term time or in vacation, hear such application; and, if satisfied that the facts exist which authorize the transfer of such estate, he shall enter an order upon the minutes directing such transfer, and ordering all original papers of the estate that have not been recorded to be recorded previous to such transfer.

Art. 3618. (2242) (2187) Duty of clerk to record all papers not recorded.—Upon the entry of such order, it shall be the duty of the clerk to record all original papers belonging to the estate that have not been previously recorded, for which the same fee shall be allowed him as is allowed for other recording; which fees shall be paid by the applicant before any such transfer shall be made. (Id. p. 125, sec. 119.)

Art. 3619. (2243) (2188) Administration of estate shall be proceeded with as if commenced originally in the county to which transfer is made.—In all cases where papers and proceedings relating to the settlement of an estate shall be transmitted to any court in the manner provided for in this chapter, such papers and proceedings shall be filed in such court; and such estate shall be proceeded with and settled in such court in like manner as if the settlement of such estate had been originally commenced in such county; and the transcript of the record transmitted in the manner provided herein shall have the same force and effect in evidence as the record itself might or could have. (Id. sec. 120.)

Art. 3620. (2244) (2189) Administration in district court shall be transferred to county court.—All proceedings in relation to the settlement, partition and distribution of estates of deceased persons, remaining unsettled in the district courts of this state, shall be transferred to the county court of the county having jurisdiction thereof, and shall be conducted and concluded in such county court under the provisions of this title. (Id. p. 130, sec. 144.)

CHAPTER THIRTY-ONE

COSTS

Art. 3621. (2245) (2190) Commission allowed executors and administrators.—Executors and administrators shall be entitled to receive and may retain in their hands five per cent on all sums they may actually receive in cash, and the same per cent on all sums they may pay away in cash in the course of their administration. (Acts 1876, p. 126, sec. 121.)

See Herron's Probate Guide, pp. 362-3.

Art. 3622. (2246) (2191) Commissions not allowed on certain moneys.—The commission allowed by the preceding article shall not be allowed or received for receiving any cash which was on hand at the time of the death of the testator or intestate, nor for paying out money to the heirs or legatees as such. (Id.)

See Herron's Probate Guide, pp. 361-2.

Art. 3623. (2247) (2192) Shall be allowed expenses, etc.—Executors and administrators shall also be allowed all reasonable expenses necessarily incurred by them in the preservation, safe keeping and management of the estate, and all reasonable attorney's fees that may be necessarily incurred by them in the course of the administration. (Id.)

Art. 3624. (2248) (2193) Account for expenses shall be filed and acted upon by the court.—All such charges as are provided for in the preceding article shall be made in writing, showing specifically each item of expense and the date thereof, and shall be verified by the affidavit of the executor or administrator, and filed with the clerk and entered upon the claim docket, and shall be acted upon by the court in like manner as other claims against the estate.

See Harris v. Warlick, 42 S. W. 356; Staley v. Hankla, 43 S. W. 20; Barnett v. Houston, 44 S. W. 690; McShan v. Lewis, 76 S. W. 616.

Art. 3625. (2249) (2194) Costs of appraisers.—Appraisers appointed under the provisions of this title shall be entitled to receive two dollars per day each for every day that they may be necessarily engaged in the performance of their duties as such appraisers.

Art. 3626. (2250) (2195) Costs of commissioners.—Commissioners appointed under the provisions of this title to partition and distribute an estate, or any part thereof, shall be entitled to receive two dollars each for every day that they may be necessarily engaged in the performance of their duties as such commissioners, to be taxed and paid as other costs in cases of partition.

Art. 3627. (2251) (2196) When costs shall be adjudged against executor, etc.—In all cases where an executor or administrator shall neglect the performance of any duty required by this title, and any costs are incurred on account thereof, he and his sureties on his bond shall be liable for all such costs, and the same shall be adjudged against him and his sureties, and execution issue therefor as in other cases. (Id. p. 129, sec. 133.)

See Thomas v. Hawpe, 80 S. W. 129.

Art. 3628. (2252) (2197) Same subject.—Whenever an executor or administrator shall be removed for any of the causes set forth in this title, the costs of such proceeding shall likewise be adjudged against him and the sureties upon his bond. (Id.)

See Manning v. S., 81 S. W. 957.

Art. 3629. (2253) (2198) When application, etc., is defeated costs shall be adjudged against applicant, etc.—In all cases where a party shall file any application, complaint or opposition in the court, under the provisions of this title, and on the trial thereof he shall be defeated, or fail in the object for which his application, complaint or opposition was filed, all costs occasioned by the filing of the same shall be adjudged against him. (Id. p. 129, sec. 134.)

See Lanius v. Fletcher, 99 S. W. 169.

Art. 3630. (2254) (2199) Security for costs may be required, when.—When any person, except the executor or administrator of an estate, files any application, complaint or opposition in relation to the estate, the clerk may require him to give security for the probable costs of such proceeding before filing the same; or any one interested in the estate, or any officer of the court may, at any time before the trial of such application, complaint or opposition, obtain from the court, upon written motion, an order requiring such party to give security for the costs of such proceedings, and the rules governing the proceedings in civil suits in the county court respecting this subject shall govern in such case.

CHAPTER THIRTY-TWO

APPEALS TO THE DISTRICT COURT

Art. 3631. (2255) (2200) Right of appeal.—Any person who may consider himself aggrieved by any decision, order, decree or judgment, of the county court shall have the right to appeal therefrom to the district court of the county, upon complying with the provisions of this chapter. (Acts 1876, p. 128, sec. 130.)

See ante art. 3452; Herron's Probate Guide, pp. 257, 366-9; Harbison v. Harbison, 56 S. W. 1006; Thomas v. Hawpe, 62 S. W. 785; Milo v. Nuske, 66 S. W. 544; Magness v. Berry, 69 S. W. 987; In re Pearce, 96 S. W. 1094; Beversdorff v. Dienger, 141 S. W. 533; Shook v. Journeay, 149 S. W. 406; Wolnitzek v. Lewis, 162 S. W. 963; Beversdorff v. Dienger, 174 S. W. 576; Huth v. Huth, 187 S. W. 523.

Art. 3632. (2256) (2201) Appeal bond; requisites of.—He shall, within fifteen days after such decision, order, judgment or decree shall have been rendered, file with the county clerk a bond with two or more good and sufficient sureties, payable to the county judge, in any amount to be fixed by the county judge, and to be approved by the clerk, conditioned that the appellant shall prosecute said appeal to effect and perform the decision, order, decree or judgment which the district court shall make thereon, in case the cause shall be decided against him. (Acts 1909, S. S. p. 282; Acts 1876, p. 128, sec. 130.)

See Herron's Probate Guide, pp. 369-370; Beversdorff v. Dienger, 141 S. W. 533; Beversdorff v. Dienger, 174 S. W. 576.

Art. 3633. (2257) (2202) Bond not required of executor, etc., unless, etc.—When an appeal is taken by an executor or administrator, no bond shall be required, unless such appeal personally concern him, in which case he must give the bond.

See ante art. 2106; Herron's Probate Guide, pp. 164, 369; Adue v. Gonzales, 54 S. W. 367; Cox v. Paschal, 54 S. W. 774; Arthur v. Reed, 64 S. W. 831; Holman v. Klatt, 78 S. W. 1088; Reeves v. Fuqua, 183 S. W. 34.

Art. 3634. (2258) (2203) Affidavit that party is too poor to give bond.—Where the party who desires to appeal is unable to give the appeal bond, it shall be sufficient if he file with the county clerk, within the time prescribed for giving such bond, an affidavit in writing that he has made diligent efforts to give such bond and is unable to do so by reason of his poverty, and such affidavit shall operate a perfection of

the appeal in respect to the matter of costs. (P. D. 6180.)

See Milo v. Nuske, 66 S. W. 544; Clark v. Briley, 193 S. W. 419.

Art. 3635. (2259) (2204) Duty of county clerk to make and transmit transcript, etc.—Upon such appeal bond or affidavit being filed in the county clerk's office, it shall be his duty immediately to make out a certified transcript of the papers and proceedings relating to the decision, order, judgment or decree appealed from, together with such decision, order, judgment or decree, and transmit the same to the clerk of the district court, together with the appeal bond or affidavit that has been made in lieu of such bond, on or before the first day of the next term of such court. (Id. sec. 131.)

See Herron's Probate Guide, p. 372; Newton v. Leal, 56 S. W. 209; Beadle v. McCrabb, 199 S. W. 355.

Art. 3636. (2260) (2205) Transcript to be transmitted, when, etc.—In case the county clerk shall be unable for want of time to make out such transcript before the first day of the next term of the district court of the county, after such appeal is taken, then such transcript shall be transmitted to the next succeeding term of such district court. (Id. sec. 132.)

See Hoefling v. Esser's Estate, 46 S. W. 294; Beadle v. McCrabb, 199 S. W. 355.

Art. 3637. (2261) (2206) Duty of district clerk who receives transcript, etc.—When the transcript and appeal bond or affidavit have been received by the clerk of the district court, he shall file and number the same, and enter the case upon the civil docket of such court, to be called and disposed of in its regular order.

Art. 3638. (2262) (2207) Appeals shall be tried de novo in regular order upon the docket.—All causes removed by appeal to the district court shall be tried anew, as if originally brought in such court; and, if no appearance is entered upon the docket for the appellee, the cause shall proceed to trial in its regular order upon the docket as if both parties were present. (P. D. 480.)

See Herron's Probate Guide, p. 373; Moore v. Hardison, 10 Tex. 471; Garrett v. Garrett, 47 S. W. 76; Goldstein v. Susholtz, 105 S. W. 219; Harrell v. Traweek, 108 S. W. 1021.

Art. 3639. (2263) (2208) Certified copy of judgment of district court to be transmitted to county court.—When the judgment of the district court has been rendered, a certified copy thereof shall forthwith be transmitted by the clerk of the district court to the clerk of the county court from which the case was appealed for the observance of such court; and the clerk of the county court, upon receiving such certified copy of judgment, shall file the same and record it upon the minutes of the court and note it upon the docket; and the county judge shall make such order as may be necessary to the enforcement of such judgment.

See ante art. 2002.

TITLE 53

EVIDENCE

CHAPTER ONE

PERSONAL ATTENDANCE OF WITNESSES

Art. 3640. (2264) (2209) Witnesses subpœnaed.—The clerk of the district or county court, or justice of the peace, as the case may be, shall, at the request of any party to a suit pending in his court, or of his agent or attorney, issue a subpœna for any witness or witnesses who may be represented to reside within the county or be found therein at the time of the trial. (Acts 1846, p. 363, sec. 1; P. D. 3719.)

See Sayles' Practice, p. 364.

Art. 3641. (2265) (2210) Form of subpœna.—The style of the subpœna shall be "The State of Texas." It shall state the names of the parties to the suit, the court in which the same is pending, the time and place at which the witness is required to appear, and the party at whose instance he is summoned. It shall be dated and tested by the clerk or justice, but need not be under the seal of the court, and the date of its issuance shall be noted thereon. It may be made returnable forthwith, or on any day for which the trial of the cause may be set. (Id.)

See Const., art. 5, sec. 2; ante art. 2180; Sayles' Practice, p. 364.

Art. 3642. (2266) (2211) Service of.—Subpœnas may be executed and returned at any time before the trial of the cause, and shall be served by being read to the witness; and service thereof may be accepted by any witness by a written memorandum, signed by him, attached to the subpœna. (Id. sec. 16; P. D. 1434.)

See King Co. v. Mitchell, 71 S. W. 610.

Art. 3643. (2267) (2212) Witness shall attend, etc.—Every witness summoned in any suit shall attend the court from day to day, and from term to term, until discharged by the court or party summoning him; and, if any witness, after being duly summoned, shall fail to attend, he may be fined by the court as for a contempt of court, and an attachment may issue against the body of such witness to compel his attendance; but no such fine shall be imposed, nor shall such attachment issue in a civil suit until it shall be shown to the court, by affidavit of the party, his agent or attorney, that his lawful fees have been paid or tendered to such witness. (Id.; P. D. 3720.)

See Sayles' Practice, pp. 72, 365-6, 404, 690.

Art. 3644. (2268) (2213) Fees of witnesses.—Witnesses shall be allowed a fee of one dollar for each and every day they may be in attendance on the court, and six cents for every mile they may have to travel in going to and returning therefrom, which shall be paid on the certificate of the clerk, by the party summoning them; which certificate shall be given on the affidavit of the witness before the clerk; and such compensation and mileage of witnesses shall be taxed in the bill of costs as other costs. (Id.; P. D. 3724.)

See Sayles' Practice, pp. 365-6, 689; Cabell v. Orient Ins. Co., 55 S. W. 610; Tex. M. Ry. v. Parker, 66 S. W. 583; Gulf, C. & S. F. Ry. Co. v. Adams, 121 S. W. 876.

Art. 3645. (2269) (2214) Witness refusing to testify.—Any witness refusing to give evidence may be committed to the county jail, there to remain without bail until he shall consent to give evidence. (Id.; P. D. 3725.)

See Sayles' Practice, p. 366.

Art. 3646. (2270) (2215) Privileged from arrest.—Witnesses shall be privileged from arrest, except in cases of treason, felony

and breach of the peace, during their attendance at court, and in going to and returning therefrom, allowing one day for each twenty-five miles from their place of abode. (Id.; P. D. 3723.)

See Sayles' Practice, p. 367.

Art. 3647. (2271) (2216) Party may be examined as a witness.—Either party to a suit may examine the opposing party as a witness, and shall have the same process to compel his attendance as in the case of any other witness. His examination shall be conducted and his testimony shall be received under the same rules applicable to other witnesses. (Acts 1858, p. 110, sec. 3; P. D. 3754.)

See Sayles' Practice, pp. 367, 489; Tillman v. Peoples, 67 S. W. 201; Abilene & S. Ry. Co. v. Burleson, 157 S. W. 1177; Campbell v. Peacock, 176 S. W. 774.

Art. 3648. (2272) (2217) Interpreters may be summoned and appointed.—The court may, when necessary, appoint interpreters, who may be summoned in the same manner as witnesses, and shall be subject to the same penalties for disobedience, and shall be entitled to the same fees. (Acts 1846, p. 363, sec. 98; P. D. 3761.)

See Sayles' Practice, p. 367.

Art. 3648a. Same subject; compensation.—The commissioners' courts of the various counties of this state are hereby authorized to pay for the services of interpreters employed by the various courts within their respective counties not to exceed the sum of Three and fifty-Hundredths Dollars ($3.50) a day, which sum is to be paid out of the general funds of the county upon warrants issued by the respective courts or clerks thereof in favor of the persons rendering such services; provided, however, that such interpreter shall be paid only for the time he is actually employed. (Acts 1918, 4th C. S., ch. 15, sec. 1.)

Art. 3648b. Same subject; services chargeable as costs.—In all civil suits wherein the services of an interpreter is used there shall be charged and collected as part of the costs of the case as interpreter's fees the sum of Three Dollars ($3.00), which amount when collected shall be paid into the general funds of the county. (Id. sec. 2.)

CHAPTER TWO

DEPOSITIONS OF WITNESSES

Art. 3649. (2273) (2218) Depositions of witnesses may be taken, when.—Depositions of witnesses may be taken when the party desires to perpetuate the testimony of a witness, and, in all civil suits heretofore or hereafter brought in this state, whether the witness resides in the county where the suit is brought or out of it; provided, the failure to secure the deposition of a male witness residing in the county in which the suit is pending shall not be regarded as want of diligence where diligence has been used to secure his personal attendance by the service of subpœna or attachment, under the rules of law, unless by reason of age, infirmity or sickness, or official duty, the witness will be unable to attend the court, or unless he is about to leave, or has left, the state or county in which the suit is pending and will not probably be present at the trial. (Acts 1846, p. 363, sec. 67; P. D. 3726; Acts 1879, p. 126.)

See Sayles' Practice, pp. 369, 690; People's Nat. Bk. v. Mulkey, 60 S. W. 753; Rucker v. Carr, 163 S. W. 632; Kansas City Southern Ry. Co. v. Carter, 166 S. W. 115; Rhea v. Cook, 174 S. W. 892.

Art. 3650. (2274) (2219) Same subject; notice and service thereof.—The party wishing to take the deposition of a witness in a suit pending in court shall file with the clerk or justice of the peace, as the case may be, a notice of his intention to apply for a commission to take the answers of the witness to interrogatories attached to such notice. The notice shall state the name and residence of the witness, or the place where he is to be found, and the suit in which the deposition is to be used; and a copy thereof, and of the attached interrogatories, shall be served upon the adverse party, or his attorney of record, five days before the issuance of a commission; and, whenever the adverse party is a corporation or a joint stock association, service may be made upon the president, secretary or treasurer of such corporation or association, or upon the local agent representing such corporation or association in the county in which the suit is pending, or by leaving a copy of the notice and attached interrogatories at the principal office of such corporation or association during office hours. (Acts 1879, p. 126; 1887, p. 27.)

See ante art. 1861; post arts. 3654, 3675, 3681; Sayles' Practice, pp. 370, 372; G., H. & S. A. Ry. v. Morris, 61 S. W. 709; El Paso, etc., Ry. v. Vizard, 88 S. W. 457.

Art. 3651. (2275) (2220) When notice may be given by publication.—In all civil suits where it shall be shown to the court, by affidavit filed therein, that either party is beyond the jurisdiction of the court, or that he can not be found, or has deceased since the commencement of the suit, and such death has been suggested at a prior term of the court, so that the notice and copy of interrogatories can not be served upon him for the purpose of taking depositions, and such party has no attorney of record upon whom they can be served, or if he be deceased and all the persons entitled to claim by or through such deceased defendant have not made themselves parties to the suit, and are unknown, the party wishing to take depositions may file his interrogatories in the court where said suit is pending, and the clerk of such court or justice of the peace shall thereupon cause a notice to be published in some newspaper for thirty days, stating the number of the suit, the names of the original parties, in what court the suit is pending, the name and residence of the witness to whom interrogatories are propounded, and that a commission will issue on or after the thirtieth day after such publication to take the deposition of such witness; at the expiration of which time such clerk or justice shall, on the application of the party filing such interrogatories, his agent or attorney, issue a commission as in other cases. (Id. sec. 79; P. D. 3737.)

See Sayles' Practice, pp. 320, 370-2.

Art. 3652. (2276) (2221) When process was served by publication.—In suits where service of process has been made by publication, and the defendant has not answered within the time prescribed by law, service of notice of filing interrogatories may be made at any time after the day when the

defendant is required to answer, by filing such notice among the papers of the suit at least twenty days before the issuance of a commission; service of notice may also be made in the manner prescribed in the preceding article. (Acts 1861, p. 26, sec. 1; P. D. 3738.)

Art. 3653. (2277) (2222) When suit has not been commenced.—When any person may anticipate the institution of a suit in which he may be interested, and may desire to perpetuate the testimony of a witness to be used in such suit, he, his agent or attorney, may file a written statement in the proper court of the county where such suit could be instituted, representing the facts and the names and residences, if known, of the persons supposed to be interested adversely to said person; a copy of which statement and writ shall be served on the persons interested adversely; or, where such person, his agent or attorney, shall at the time of filing such statement, make affidavit that the names and residences of the heirs, successors or legal representative of any deceased person are unknown to the affiant, or reside beyond the jurisdiction of the state, the clerk of the court or justice shall issue a like writ, which shall be served on such unknown or non-resident persons by publication in some newspaper, in the mode and manner designated by law for the service of original process upon non-residents or unknown parties; after which the depositions of such witnesses may be taken and returned by the parties making the said statement in the form and under the rules prescribed for taking testimony by deposition; and such testimony may be used in any suit which may be thereafter instituted by or between any of the parties to the statement, or those claiming under them, in like manner as if such depositions had been taken after the institution of such suit or suits; and, when such suits have been instituted, all such depositions so taken and returned shall be subject to the like exceptions as other depositions. (Acts 1874, p. 103, sec. 1; P. D. 6829b.)

See Sayles' Practice, pp. 320, 371.

Art. 3654. (2278) (2223) Cross-interrogatories.—Whenever one party may file interrogatories for the purpose of taking the deposition of a witness, the opposite party may file cross-interrogatories at any time before the commission issues, and a copy of the same shall accompany the direct interrogatories, and shall be answered and returned therewith. (Id. sec. 72; P. D. 3731.)

See Sayles' Practice, p. 372.

Art. 3655. (2279) (2224) Commission to take deposition.—After the service of the notice of filing the interrogatories has been completed, the clerk or justice shall issue a commission to take the deposition of the witness named in the notice. (Id. sec. 67; P. D. 3736.)

Art. 3656. (2280) (2225) Requisites of.—The style of the commission shall be, "The State of Texas," and it shall be dated and tested as other process; it shall be addressed to the several officers named in the succeeding article, and shall authorize and require them, or either of them, to summon the witness before him forthwith, and to take his answers under oath to the direct and cross-interrogatories, if any, a copy of which shall be attached to such commission, and to return without delay the commission and interrogatories, and the answers of the witness thereto, to the clerk or justice of the proper court, giving his official and postoffice address. (Id.)

See Kane v. Sholars, 90 S. W. 937; Sayles' Practice, 373.

Art. 3657. (2281) (2226) Officers authorized to execute.—The commission shall be addressed to the following officers, either of whom may execute and return the same:

1. If the witness be alleged to reside or be within the state, to any clerk of the district court, any judge or clerk of the county court, or any notary public of the proper county.

2. If the witness be alleged to reside or be without the state, and within the United States, to any clerk of a court of record having a seal, any notary public, or any commissioner of deeds duly appointed under the laws of this state within some other state or territory.

3. If the witness is alleged to reside or be without the United States, to any notary public or any minister, commissioner or charge d'affaires of the United States resident in, and accredited to, the country where the deposition may be taken, or any consul-general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul or consular agent of the United States resident in such country. (P. D. 3726, 3736.)

Art. 3658. (2282) (2227) Witness to be summoned.—Upon the receipt of such commission by any officer to whom it is addressed, residing in this state, if the witness does not voluntarily appear, he shall issue a subpœna, directed to the sheriff or any constable of the county, requiring him to summon the witness to appear and answer interrogatories at a time and place named in the subpœna. (Acts 1905, p. 107; Acts 1874, p. 103, sec. 68; Acts 1907, p. 186; P. D. 3727.)

See Sayles' Practice, p. 669.

Art. 3659. (2283) (2228) Refusing to answer, may be attached.—If the witness, after being duly summoned, shall fail to appear, or, having appeared shall refuse to answer the interrogatories, such officer shall have power to issue an attachment against such witness and to fine and imprison him in like manner as the district and county courts are empowered to do in like cases. (Acts 1874, p. 103, sec. 68.)

See Sayles' Practice, pp. 374, 669.

Art. 3660. (2284) (2229) Execution of the commission.—Upon the appearance of the witness, the officer to whom the commission is directed shall proceed to take his answers to the interrogatories. The answers shall be reduced to writing, and shall be signed and sworn to by the witness. The officer shall certify that the answers of the witness were signed and sworn to by the witness before him, and shall seal them up in an envelope, together with the commission and interrogatories and cross-interrogatories, if any, and shall write his name across the seal, and indorse on the envelope the names of the parties to the suit and of the witnesses, and shall direct the package to the clerk of the court from which the commission issued; and, if the depositions be sent by mail, the officer taking the same shall certify on the envelope enclosing the depositions that he in person deposits the same in the mail for transmission, stating the date when and

the postoffice in which the same are deposited for transmission. (Acts 1905, p. 107; Acts 1874, p. 103, sec. 69; Acts 1907, p. 187.)

See Sayles' Practice, p. 375-6; P. D. 3728; Wisegarver v. Yinger, 122 S. W. 925; Texas & P. Ry. Co. v. Mosley, 124 S. W. 90; Hartford Fire Ins. Co. v. Becton, 125 S. W. 883.

Art. 3661. (2285) (2230) Interpreter.—The officer executing such commission shall have authority, when he shall deem it expedient, to summon and swear an interpreter to facilitate the taking of the deposition.

Art. 3662. (2286) (2231) Return of depositions.—Depositions may be returned to the court either by mail, by a party interested in taking the same, or by any other person; and the clerk or justice taking them from the postoffice shall indorse on them that he received them from the postoffice, and sign his name thereto. If sent otherwise than by mail, the person delivering them into court shall make affidavit before the clerk or justice that he received them from the hands of the officer before whom they were taken; that they have not been out of his possession since, and that they have undergone no alteration. (Acts 1848, p. 106, sec. 16; P. D. 3729.)

See Sayles' Practice, p. 378; Wisegarver v. Yinger, 122 S. W. 925.

Art. 3663. Depositions by oral examination and answer.—The testimony of any witness, and of any party to a suit, by oral deposition and answer may be taken in any civil case in any of the District and County Courts of this State, in any instance where depositions are now authorized by law to be taken. (Acts 1907, p. 187; Acts 1919, ch. 5, sec. 1.)

Art. 3664. Notice of taking depositions, requisites of.—Ten days' notice must be first given in writing by the party, or his attorney, proposing to take such deposition, to the opposite party, or his attorney of record, which notice shall state the name of the witness and the time and place of the taking of his deposition; and, in all cases in rem, the person having the agency or possession of the property at the time of the seizure shall be deemed the adverse party until a claim shall have been put in. (Acts 1907, p. 187.)

Art. 3665. Any person may be compelled to appear and answer; proviso where deposition taken at distance over 100 miles.—Any person may be compelled to appear and depose, as provided by this chapter, in the same manner as witnesses may be compelled to appear and testify in court; provided, that, when such depositions are to be taken at a point more than one hundred miles distant from the court where the suit is pending, the party to whom such notice is given may, by notice to the adverse party or his attorney, require the deposition to be taken upon commission and written interrogatories, unless the judge or court before whom said suit is pending shall, upon proper application, after notice, made either in term time or vacation, otherwise direct. (Id.)

Art. 3666. Service of notice, etc., noted on copy filed, etc.; commission to issue after ten days.—After the notice of taking depositions by oral examination and answer, provided for in the last preceding article, shall have been served, the party serving the same shall note on a true copy thereof the date and hour of such service, and upon whom served, the manner of service, and sign the same; and the party desiring such deposition shall file such true copy with the clerk of the court in which such cause is pending, with request for the issuance of a commission to take such deposition, whereupon said clerk shall, after the expiration of ten days from the date of the service of such notice, as noted on said true copy, issue a commission to take such deposition. (Id.)

Art. 3667. Commission, how styled, etc.; requisites of.—Such commission shall be styled, addressed, dated and tested as provided by articles 3656 and 3657 of this chapter, and shall authorize and require the officer or officers to whom the same is addressed, or either of them, to examine said witness before him on the date named in the notice and commission and to take his answers under oath to such questions as may be propounded to him by the respective parties, or their attorneys, to the suit or proceeding; and such commission shall require such witness to remain in attendance from day to day until such deposition is begun and completed. (Id.)

Art. 3668. Powers of officer taking depositions.—Said officer shall have the power and authority conferred by article 3658 as amended by this act, and article 3659, to enforce the attendance of the witness, and to compel him to testify. (Id.)

Art. 3669. Written cross-interrogatories may be filed.—If the party upon whom the notice is served shall desire to do so, he may file with the clerk of the court written interrogatories to the witness, a certified copy of which interrogatories shall be attached to the commission and answers thereto taken at the time of taking the oral testimony. (Id.)

Art. 3670. Witness to be cautioned and sworn, etc.—Every person deposing, as provided in this act, shall be first cautioned and sworn to testify the truth, the whole truth and nothing but the truth. (Id.)

Art. 3671. Examination, how conducted, reduced to writing, etc., and subscribed.—The witness shall be carefully examined, his testimony shall be reduced to writing or typewriting by the officer taking the deposition, or by some person under his personal supervision, or by the deponent himself in the officer's presence, and by no other person, and shall, after it has been reduced to writing or typewriting, be subscribed by the deponent. (Id.)

Art. 3672. Objections to testimony not to be sustained, etc., but recorded and reserved for court, etc.—The officer taking such deposition shall not sustain objections or exceptions to any of the testimony taken, nor exclude same; but any of the parties or attorneys engaged in taking the testimony may have such objections as they may make recorded with the testimony and reserved for the action of the court in which the cause is pending, and any such court shall not be confined to the objections made at the taking of the testimony. (Id.)

Texas & P. Ry. Co. v. Mosley, 124 S. W. 90.

Art. 3673. Depositions certified and returned how; rules as to use, etc.—Such depositions shall be certified and returned by the officer taking the same, and opened as is provided in articles 3660, 3662 and 3674; and

the same rules shall apply to the use of such deposition as are provided by articles 3675 to 3678, inclusive. (Acts 1907, p. 188.)

Art. 3674. (2287) (2232) Depositions opened.—Depositions, after being filed, may be opened by the clerk or justice at the request of either party or his counsel; and the clerk or justice shall indorse on such depositions upon what day and at whose request they were opened, signing his name thereto, and they shall remain on file for the inspection of either party. (Acts 1846, p. 363, sec. 77; P. D. 3741.)

See Sayles' Practice, p. 378.

Art. 3675. (2288) (2233) Either party may use depositions, when.—When cross-interrogatories have been filed and answered, either party has the right to use the depositions on the trial. (Id. sec. 76; P. D. 3740.)

See Sayles' Practice, p. 372; Galveston, H. & S. A. Ry. Co. v. Young & Webb, 148 S. W. 1113.

Art. 3676. (2289) (2235) Objections to depositions.—When a deposition shall have been filed in the court at least one entire day before the day on which the case is called for trial, no objection to the form thereof, or to the manner of taking the same, shall be heard, unless such objections are in writing and notice thereof is given to the opposite counsel before the trial commences; provided, however, that such objection shall be made and determined at the first term of the court after the deposition has been filed, and not thereafter. (Id. sec. 78; Acts 1893, p. 5; P. D. 3742.)

See Sayles' Practice, pp. 379, 675; McCown v. Terrell, 40 S. W. 54; Blake v. S., 43 S. W. 107; Lumpkin v. Minor, 46 S. W. 66; Mayton v. Sonnefield, 48 S. W. 608; McMahan v. Veasey, 60 S. W. 333; Taylor B. & H. R. Co. v. Warner, 60 S. W. 442; Waters-Pierce Oil Co. v. Davis, 60 S. W. 454; St. Louis, etc., R'y v. Harkey, 88 S. W. 506; Borden v. Le Tulle Mer. Co., 99 S. W. 128; Ellis v. Lewis, 100 S. W. 189; R'y v. Barrett, 101 S. W. 1025; St. Louis, S. F. & T. Ry. Co. v. Adams, 118 S. W. 1155; Henderson v. Louisiana & Texas Lumber Co., 128 S. W. 671; Texas & P. Ry. Co. v. Sandy, 140 S. W. 498; Houston, E. & W. T. Ry. Co. v. Lacy, 153 S. W. 414; Missouri, O. & G. Ry. Co. of Texas v. Browning, 166 S. W. 34; Rotge v. Simmler, 176 S. W. 614; Padgitt Bros. Co. v. Dorsey, 206 S. W. 851.

Art. 3677. (2290) (2236) Depositions to be read in evidence, subject, etc.—Depositions may be read in evidence upon the trial of any suit in which they are taken, subject to all legal exceptions which might be made to the interrogatories and answers, were the witness personally present before the court giving evidence. (Acts 1848, p. 106, sec. 17; P. D. 3733.)

See Sayles' Practice, p. 380; People's Nat. Bk. v. Mulkey, 60 S. W. 753; Rucker v. Carr, 163 S. W. 632; Rhea v. Cock, 174 S. W. 892; Dawedoff v. Hooper, 190 S. W. 522.

Art. 3678. (2291) (2237) Matter not responsive stricken out.—If any deposition shall contain any testimony not pertinent to the direct and cross-interrogatories propounded, such matter shall be deemed surplusage, and may be stricken out by the court upon objection thereto. (Acts 1846, p. 363, sec. 73; P. D. 3732.)

See Sayles' Practice, p. 380.

CHAPTER THREE
DEPOSITIONS OF PARTIES

Art. 3679. (2292) (2238) Party may take his own deposition.—The deposition of either party to a suit, who is a competent witness therein, may be taken in his own behalf in the same manner and with like effect with the depositions of other witnesses.

See Sayles' Practice, p. 381; Lumpkin v. Minor, 46 S. W. 66; Ex parte Johnson, 111 S. W. 743; Farmers' & Merchants' Nat. Bank of Abilene v. Ivey, 182 S. W. 706.

Art. 3680. (2293) (2239) May take deposition of adverse party.—Either party to a suit may examine the opposing party as a witness, upon interrogatories filed in the cause, and shall have the same process to obtain his testimony as in the case of any other witness; and his examination shall be conducted and his testimony received in the same manner and according to the same rules which apply in the case of any other witness, subject to the provisions of the succeeding articles of this chapter. (Acts 1858, p. 110, sec. 3; P. D. 3754.)

See post art. 3681; Sayles' Practice, p. 381; Smith v. Olsen, 46 S. W. 631; Tillman v. Peoples, 67 S. W. 201; Sparks v. Taylor, 87 S. W. 740; Id. 90 S. W. 485; Ex parte Johnson, 111 S. W. 743; Hamner v. Garrett, 133 S. W. 1058; Farmers' & Merchants' Nat. Bank of Abilene v. Ivey, 182 S. W. 706; El Paso Electric Ry. Co. v. Sauerenmann, 208 S. W. 237.

Art. 3681. Where either party is a corporation, no ex parte depositions.—Where either party to any suit is a corporation, neither party thereto shall be permitted to take ex parte depositions. (Acts 1897, p. 117.)

See G., H. & S. A. R'y v. Thompson, 44 S. W. 8; H. & T. C. R'y v. Stuart, 48 S. W. 800; H. & T. C. R'y v. Stewart, 50 S. W. 333; Lion Ins. Co. of London v. Wicker, 54 S. W. 294; St. Louis, etc., R'y v. Terry, 54 S. W. 431; Farmers' & Merchants' Nat. Bank of Abilene v. Ivey, 182 S. W. 706; El Paso Electric Ry. Co. v. Sauerenmann, 208 S. W. 237.

Art. 3682. (2294) (2240) Not necessary to give notice.—It shall not be necessary to give notice of the filing of the interrogatories or to serve a copy thereof on the adverse party before a commission shall issue to take the answer thereto, nor shall it be any objection to the interrogatories that they are leading in their character. (Acts 1858, p. 110, sec. 3.)

See Sayles' Practice, pp. 382, 384; Ex parte Johnson, 111 S. W. 743; Farmers' & Merchants' Nat. Bank of Abilene v. Ivey, 182 S. W. 706; El Paso Electric Ry. Co. v. Sauerenmann, 208 S. W. 237.

Art. 3683. (2295) (2241) Taken and returned as other depositions.—A commission to take the answers of the party to the interrogatories filed shall be issued by the clerk or justice, and be executed and returned by any authorized officer as in other cases. (Id.)

See Sayles' Practice, p. 382.

Art. 3684. (2296) (2242) Answer may embrace, what; contradiction of.—The party interrogated may, in answer to questions propounded, state any matter connected with the cause and pertinent to the issue to be tried; and the adverse party may contradict the answers by any other competent testimony in the same manner as he might contradict the testimony of any other witness. (Id. sec. 4; P. D. 3755.)

See Sayles' Practice, p. 383; Wofford v. Farmer, 40 S. W. 788; Heintz v. O'Donnell, 42 S. W. 797; Sparks v. Taylor, 90 S. W. 485; Farmers' & Merchants' Nat. Bank of Abilene v. Ivey, 182 S. W. 706.

Art. 3685. (2297) (2243) Refusal to answer, etc.—If the party interrogated refuses to answer, the officer executing the com-

mission shall certify such refusal; and any interrogatory which the party refuses to answer, or which he answers evasively, shall be taken as confessed. (Id. sec. 5; P. D. 3756.)

See Sayles' Practice, p. 383; Tillman v. Peoples, 67 S. W. 201; Weinert v. Simmang, 68 S. W. 1011; Ex parte Johnson, 111 S. W. 743; Farmers' & Merchants' Nat. Bank of Abilene v. Ivey, 182 S. W. 706.

Art. 3686. (2298) (2244) Objections to interrogatories, etc.—The party interrogated may, upon the trial of the case, take exception to the interrogatories on the ground that they are not pertinent, and to the answers that they are not competent evidence.

See Sayles' Practice, p. 384.

CHAPTER FOUR
GENERAL PROVISIONS

Art. 3687. (2299) (2245) Common law rules of evidence.—The common law of England as now practiced and understood shall, in its application to evidence, be followed and practiced by the courts of this state, so far as the same may not be inconsistent with this title or any other law. (Acts Dec. 20, 1836; P. D. 3706.)

See post, art. 5492; Sayles' Practice, pp. 23, 34, 330, 452; Anderson v. Ashe, 130 S. W. 1044.

Art. 3688. (2300) (2246) Color or interest does not disqualify.—No person shall be incompetent to testify on account of color, nor because he is a party to a suit or proceeding or interested in the issue tried. (Acts 1871, p. 108; P. D. 6826.)

See Sayles' Practice, p. 447.

Art. 3689. (2301) (2247) Husband or wife not disqualified, except, etc.—The husband or wife of a party to a suit or proceeding, or who is interested in the issue to be tried, shall not be incompetent to testify therein, except as to confidential communications between such husband and wife.

See Speer's Marital Rights, p. 593; Sayles' Practice, p. 447; Steves v. Smith, 107 S. W. 141; First Bank of Springtown v. Hill, 151 S. W. 652.

Art. 3690. (2302) (2248) In actions by or against executors, etc., certain testimony not allowed.—In actions by or against executors, administrators or guardians, in which judgment may be rendered for or against them as such, neither party shall be allowed to testify against the others as to any transaction with, or statement by, the testator, intestate or ward, unless called to testify thereto by the opposite party; and the provisions of this article shall extend to and include all actions by or against the heirs or legal representatives of a decedent arising out of any transaction with such decedent. (Id.; P. D. 6827.)

See Herron's Probate Guide, pp. 68-9, 117, 121; Sayles' Practice, p. 488; Speer's Marital Rights, p. 594; Shilling v. Shilling, 35 S. W. 420; Lomax v. Marlow, 38 S. W. 228; Lumpkins v. Coates, 42 S. W. 580; Ivey v. Bondies, 44 S. W. 916; Anglin v. Barlow, 45 S. W. 827; Killfoil v. Moore, 45 S. W. 1024; Walker v. Pittman, 46 S. W. 117; Caffey's Ex'rs v. Cooksey, 47 S. W. 66; Garrett v. Garrett, 47 S. W. 76; Gibony v. Hutcheson, 50 S. W. 648; Davis v. Beall, 50 S. W. 1086; Colonial & U. S. Mortg. Co. v. Thedford, 51 S. W. 263; Clark v. Clark, 51 S. W. 337; Bradshaw v. Roberts, 52 S. W. 574; Wilmurth v. Tompkins, 53 S. W. 833; Lewis v. Whitworth, 54 S. W. 1077; Saunders Ex'rs v. Weekes, 55 S. W. 33; Mayfield v. Robinson, 55 S. W. 399; Williams v. Emberson, 55 S. W. 596; Baugh v. Geiselman, 55 S. W. 615; Gonzales v. Adue, 56 S. W. 544; Garwood v. Schlichenmaier, 60 S. W. 573; Gilroy v. Richards, 63 S. W. 664; Contlett v. U. S. Mortg. Co. of Scotland, 60 S. W. 817; Pennybacker v. Hazlewood, 61 S. W. 153; Sanders v. Kirbie, 63 S. W. 626; Hedges v. Williams, 64 S. W. 76; Gillaspie v. Murray, 66 S. W. 252; Barrett v. Eastham, 67 S. W. 198; Boston v. McMenamy, 68 S. W. 201; McKnight v. Reed, 71 S. W. 318; Tenzler v. Tyrrell, 75 S. W. 57; Haberzettle v. Dearing, 80 S. W. 539; Abbott v. Stiff, 81 S. W. 562; Tompkins v. McGinn, 85 S. W. 452; Rascoe v. Walkersmith Co., 86 S. W. 728; Barrett v. Eastham Bros., 86 S. W. 1057; Rogers v. Tompkins, 87 S. W. 379; Field v. Field, 87 S. W. 726; Jones v. Day, 88 S. W. 424; Manchester v. Bursey, 91 S. W. 817; Edelstein v. Brown, 95 S. W. 1126; Evans v. Scott, 97 S. W. 116; Davis v. Davis, 98 S. W. 198; Jennings v. Borton, 98 S. W. 445; Edelstein v. Brown, 100 S. W. 129; Sachse v. Loeb, 101 S. W. 450; Tison v. Gass, 102 S. W. 751; McKeon v. Roan, 106 S. W. 404; Grieb v. Stahl, 107 S. W. 41; Duncan v. Jouett, 111 S. W. 981; Simon v. Middleton, 112 S. W. 441; Keck v. Woodward, 116 S. W. 75; Wooden v. Wooden, 116 S. W. 627; Royal Fraternal Union v. Stahl, 126 S. W. 920; Smith v. Olivarri, 127 S. W. 235; Smalley v. Paine, 130 S. W. 739; Lengelet v. Piper, 133 S. W. 480; Eatman v. Eatman, 135 S. W. 165; Berger v. Kirby, 135 S. W. 1122; Buckley v. Runge, 136 S. W. 533; Gurley v. Hanrick's Heirs, 139 S. W. 721; Yealock v. Yealock, 141 S. W. 842; Spencer v. Schell, 142 S. W. 111; Wolf v. Wilhelm, 146 S. W. 216; Heath v. Moore, 146 S. W. 709; Dickey v. Forrester, 148 S. W. 1181; McDonald's Estate v. McDonald, 150 S. W. 593; Schnable v. Henderson, 152 S. W. 231; Berger v. Kirby, 153 S. W. 1130, 51 L. R. A. (N. S.) 182; Barker v. Johnson, 154 S. W. 609; Boiders v. Dooley, 154 S. W. 614; Harry v. Hamilton, 154 S. W. 637; Straight v. Goodwin, 157 S. W. 425; Ross v. Kell, 159 S. W. 119; Swan v. Price, 162 S. W. 994; Smith v. Huff, 164 S. W. 429; Lester v. Hutson, 167 S. W. 321; Kohlberg v. Awbrey & Semple, 167 S. W. 828; Spencer v. Schell, 173 S. W. 867; Dicken v. Cruse, 176 S. W. 655; Pipkin v. Tuer, 177 S. W. 983; Neblett v. Cooper Grocery Co., 180 S. W. 1162; Cosgrove v. Smith, 183 S. W. 109; General Bonding & Casualty Ins. Co. v. McCurdy, 183 S. W. 796; Lester v. Hutson, 184 S. W. 268; Yates v. Craddock, 184 S. W. 276; Miles v. Bodenheim, 184 S. W. 633; Peil v. Warren, Jr., 187 S. W. 1052; Briggs v. McBride, 190 S. W. 1123; Walton v. Walton, 191 S. W. 188; Bright v. Briscoe, 193 S. W. 156; Clark v. Briley, 193 S. W. 419; Miles v. Bodenheim, 193 S. W. 693; Richards v. Hartley, 194 S. W. 478; Tharp v. Striker, 194 S. W. 1014; Russell v. Beckert, 195 S. W. 607; Lovenskoild v. Casas, 196 S. W. 629; Smith's Heirs v. Hirsch, 197 S. W. 754; Houston Transfer & Carriage Co. v. Williams, 201 S. W. 712; Williams v. Farmers' Nat. Bank of Stephenville, 201 S. W. 1083; Perez v. Maverick, 202 S. W. 199; Cooper Grocery Co. v. Neblett, 203 S. W. 365; Leahy v. Timon, 204 S. W. 1029; St. Louis Union Trust Co. v. Harbaugh, 205 S. W. 496; Grelle v. Grelle, 206 S. W. 114; Moore v. Belt, 206 S. W. 225; Stiles v. Hawkins, 207 S. W. 89; Perdue v. Perdue, 208 S. W. 353; Byrnes v. Curtin, 208 S. W. 405; Ferguson v. Coleman, 208 S. W. 571; McKelvy v. Gugenheim, 208 S. W. 757.

Art. 3691. (2303) (2249) Religious opinions, etc., do not disqualify.—No person shall be incompetent to testify on account of his religious opinions, or for want of any religious belief. (Const., art. 1, sec. 5.)

See Sayles' Practice, pp. 34, 451.

Art. 3692. (2304) (2250) Printed statutes evidence, when.—The printed statute books of this state, of the United States, of the District of Columbia, or of any state or territory of the United States, or of any foreign government purporting to have been printed under the authority thereof, shall be received as evidence of the acts and resolutions therein contained. (Acts May 13, 1846; P. D. 3712.)

See Sayles' Practice, p. 457; Blethen v. Bonner, 52 S. W. 571; Mex. Nat. Ry. v. Ware, 60 S. W. 343; Atchison, T. & S. F. Ry. Co. v. Smythe, 119 S. W. 892.

Art. 3693. (2305) (2251) Certified copies of acts, etc., evidence.—A certified copy under the hand and seal of the secretary of state of this state, of any act or resolution contained in any of such printed statute books deposited in his office, or of any law or bill, public or private, deposited in his of-

fice in accordance with law, shall be received as evidence thereof. (Id.)

See Sayles' Practice, p. 457; Brummer v. Galveston, 77 S. W. 239.

Art. 3694. (2306) (2252) Copies of records of public officers and courts to be prima facie evidence.—Copies of the records of all public officers and courts of this state, certified to under the hand, and seal [,] of [if] there be one, of the lawful possessor ot such records, shall be admitted as evidence in all cases where the records themselves would be admissible; translated copies of all records in the land office, certified to under the hand of the translator, and the commissioner of the general land office, attested with the seal of said office, shall be prima facie evidence in all cases where the original records would be evidence. (Id.; P. D. 3715.)

See post, art. 6795; Sayles' Practice, pp. 461, 463, 465, 479; Heintz v. Thayer, 50 S. W. 929; Frickie v. S., 51 S. W. 394; Johnson v. S., 55 S. W. 968; Hopkins v. S., 64 S. W. 933; Wren v. Howland, 75 S. W. 895; Smithers v. Lowrance, 79 S. W. 1088; Trimble v. Burroughs, 95 S. W. 614; Slaughter v. Cooper, 107 S. W. 897; Myers v. Moody, 122 S. W. 920; Allen v. Clearman, 128 S. W. 1140; Gould v. S., 134 S. W. 695; Clayton v. S., 149 S. W. 119; Garrett v. Grisham, 156 S. W. 505; Smith v. S., 156 S. W. 645; Magee v. Paul, 159 S. W. 325; Randolph v. Lewis, 163 S. W. 647; Denton v. English, 171 S. W. 248; Missouri, K. & T. Ry. Co. of Texas v. Empire Express Co., 173 S. W. 222; Woods v. Moore, 185 S. W. 623; Kenedy Pasture Co. v. S., 196 S. W. 287.

Art. 3695. (2307) (2252a) Record of surveys, evidence.—The county surveyor of the several counties of this state shall record in a well-bound book all the surveys in the county or district for which he was elected, with plats thereof that he may make, whether private or official; and certified copies of such record, under the official signature of the surveyor, may be used in evidence in any of the courts of this state. (Acts 1881, p. 71.)

See Sayles' Practice, p. 482; Sullivan v. Solis, 114 S. W. 456.

Art. 3696. (2308) (2253) Copies and certificates from certain officers are evidence.—It shall be the duty of the secretary of state, attorney general, commissioner of the general land office, comptroller, treasurer, adjutant general, commissioner of agriculture, commissioner of insurance and banking, and state librarian, to furnish any person who may apply for the same with a copy of any paper, document or record in their respective offices, and also to give certificates, attested by the seal of their respective offices, certifying to any fact or facts contained in the papers, documents or records of their offices, to any person applying for the same; and the same shall be received in evidence in all cases in which the originals would be evidence. (Act March 20, 1848; P. D. 3806.)

See Sayles' Practice, p. 466; Brewster Co. v. Presidio County, 48 S. W. 213; Stokes v. Riley, 68 S. W. 703; Trevey v. Lowrie, 78 S. W. 18; Bradford v. Brown, 84 S. W. 392; Allen v. Halstead, 87 S. W. 754; Flint v. Taylor, 91 S. W. 864; Trimble v. Burroughs, 95 S. W. 614; Lewright v. Walls, 119 S. W. 721; Myers v. Moody, 122 S. W. 920; Allen v. Clearman, 128 S. W. 1140; Gould v. S., 134 S. W. 695; Magee v. Paul, 159 S. W. 325; Thatcher v. Matthews, 183 S. W. 810.

Art. 3697. (2309) (2254) Notarial acts and copies thereof are evidence.—All declarations and protests made, and acknowledgments taken, by notaries public, and certified copies of their records and official papers, shall be received as evidence of the facts therein stated in all the courts of this state. (Acts 1876, p. 30, sec. 9; P. D. 4697.)

See post, art. 6013; Sayles' Practice, p. 469.

Art. 3698. (2310) (2255) In suits against delinquent officers, transcript from comptroller's office is evidence.—In suits by the state against any officer or agent thereof, on account of any delinquency or failure to pay to the state any money, a transcript from the papers, books, records and proceedings of the office of comptroller of public accounts, purporting to contain a true statement of accounts between the state and such party, authenticated under the seal of said office, shall be admitted as prima facie evidence; and the court trying the cause may thereupon render judgment accordingly; and all copies of bonds, contracts or other papers relating to, or connected with, any account between the state and an individual, sued as aforesaid, when certified by the comptroller of public accounts to be true copies of the originals on file in said office, and authenticated under the seal of said office, may be annexed to such transcript and shall be entitled to the same degree of credit that would be due to the original papers if produced and proved in court; but, when such suit is brought upon a bond or other written instrument, and the defendant shall by plea under oath deny the execution of such instrument, the court shall require the production and proof thereof. (Acts 1861, p. 14; P. D. 3704.)

See Sayles' Practice, p. 471; U. S. Fid. & Guar. Co. v. Fossati, 80 S. W. 74.

Art. 3699. (2311) (2256) Copies of certain instruments prior to 1837 are evidence.—Copies of all conveyances and other instruments of writing between private individuals, which were filed in the office of any alcalde or judge in Texas previous to the first Monday in February, 1837, shall be admissible in evidence, and shall have the same force and effect as the originals thereof; provided, such copies are certified under the hand and official seal of the officer with whom the originals are now deposited. (Act May 13, 1846, p. 363; P. D. 3717.)

See Sayles' Practice, p. 480.

Art. 3700. (2312) (2257) Recorded instruments admitted in evidence without proof, when.—Every instrument of writing which is permitted or required by law to be recorded in the office of the clerk of the county court, and which has been, or hereafter may be, so recorded, after being proved or acknowledged in the manner provided by the laws of this state in force at the time of its registration, or at the time it was proved or acknowledged, or every instrument which has been, or hereafter may be, actually recorded for a period of ten years in the book used by said clerk for the recording of such instruments, whether proved or acknowledged in such manner or not, shall be admitted as evidence in any suit in this state without the necessity of proving its execution, provided, no claim adverse or inconsistent to the one evidenced by such instrument shall have been asserted during that ten years; provided, that the party to give such instrument in evidence shall file the same among the papers of the suit in which he proposes to use it at least three days before the commencement of the trial of such suit, and give notice of such filing to the opposite party or his

attorney of record; and unless such opposite party, or some other person for him, shall, within three days before the trial of the cause, file an affidavit stating that he believes such instrument of writing to be forged. And, whenever any party to a suit shall file among the papers of the cause an affidavit stating that any instrument of writing, recorded as aforesaid, has been lost, or that he can not procure the original, a certified copy of the record of any such instrument shall be admitted in evidence in like manner as the original could be. And after such instrument shall have been actually recorded as herein provided for a period of ten years, it shall be no objection to the admission of same, or a certified copy thereof, as evidence, that the certificate of the officer, who took such proof or acknowledgment, is not in form or substance such as required by the laws of this state; and said instrument shall be given the same effect as if it were not so defective. (Acts 1846, p. 387; Acts 1907, p. 308; P. D. 3716.)

See arts. 6821 et seq.; W. U. Tel. Co. v. Hearne, 40 S. W. 50; Boyd v. Leith, 50 S. W. 619; Corder v. Steiner, 54 S. W. 277; Batts v. Moore, 54 S. W. 1036; Thompson v. Johnson, 58 S. W. 1030; Villareal v. McLaughlin, 62 S. W. 98; Logan's heirs v. Logan, 72 S. W. 416; Gann v. Roberts, 74 S. W. 950; Williamson v. Work, 77 S. W. 266; Valentine v. Sweatt, 78 S. W. 385; Lamar v. S., 95 S. W. 509; Burton v. S., 101 S. W. 226; Stark v. Harris, 106 S. W. 887; Clayton v. Ingram, 107 S. W. 880; Ariola v. Newman, 113 S. W. 157; Haney v. Gartin, 113 S. W. 166; Klumpp v. Stanley, 113 S. W. 602; Sims v. Sealy, 116 S. W. 630; Houston Oil Co. of Texas v. Kimball, 122 S. W. 533; Holland v. Votaw, 130 S. W. 882; Holland v. Votaw, 131 S. W. 406; March v. Spivy, 133 S. W. 529; Gould v. S., 134 S. W. 695; Smith v. Burgher, 136 S. W. 75; McElroy v. Sparkman, 139 S. W. 529; Green v. Gregory, 142 S. W. 999; Clayton v. S., 149 S. W. 119; American Rio Grande Land & Irrigation Co. v. Mercedes Plantation Co., 155 S. W. 286; Whitaker v. Browning, 155 S. W. 1197; Rule v. Richards, 159 S. W. 386; Sullivan v. Fant, 160 S. W. 612; Hill & Jahns v. Lofton, 165 S. W. 67; McKenzie v. Imperial Irr. Co., 166 S. W. 495; Wacaser v. Rockland Savings Bank, 172 S. W. 737; Denman v. James, 180 S. W. 1157; Emory v. Bailey, 181 S. W. 831; Speers v. S., 190 S. W. 164; Alling v. Vander Stucken, 194 S. W. 443; Moser v. Tucker, 195 S. W. 259; Conrad v. Hughes, 195 S. W. 1181; Kenedy Pasture Co. v. S., 196 S. W. 287; Ludtke v. Murray, 199 S. W. 321; Boedefeld v. Johnson, 201 S. W. 1027.

Art. 3701. Record books, certain declared valid records, etc.; certified copies, effect of.—All volumes constituting a portion of the records of any county organized prior to January 1, 1882, wherein are recorded deeds, mortgages or trust deeds, or other muniments of title to real estate situated in such county, which volumes and records are now and have been constantly among the archives of such county, as records thereof, shall be, and the same are hereby declared to be, in all respects lawful and valid records of such counties respectively, for all purposes whatsoever relating to titles to real estate, as effectively as if such books and records were originally records of such counties, respectively, and as fully and completely as if such counties had been duly organized at the dates of the filing for record of the instruments recorded therein, as shown therein. Certified copies of the instruments recorded in said volumes, made in accordance with law, shall have the force and effect that certified copies of original records have in organized counties, and same may be used for all purposes lawful for certified copies of original records in ordinary cases in organized counties. (Acts 1905, p. 36, secs. 1, 2.)

Art. 3702. Certified copies of deeds, etc., to land in Archer county recorded in Jack county, when, etc.; evidence, when.—Certified copies of deeds, mortgages, trust deeds and all other instruments in any manner affecting titles to lands in Archer county, which were recorded in Jack county from the tenth day of August, 1866, to the tenth day of August, 1870, said certified copies being made under the hand and seal of the clerk of the county court of Shackelford county, shall be admitted in evidence in all suits where secondary evidence is admissible. (Acts 1897, p. 143.)

Art. 3703. (2319) (2263) Transcribed records, certified copies of, evidence, etc.—Where a county has been heretofore, or may hereafter be, created out of the territory of any organized county, and the records of deeds and other instruments required or permitted by law to be recorded, relating to lands or other property in such new county, have been transcribed and placed on record in such new county, in accordance with law, certified copies of such transcribed records in the new county may be admitted in evidence with like effect as certified copies of the original records. (Acts 1879, ch. 99, p. 106, sec. 3.)

See post art. 6772; Sayles' Practice, p. 478.

Art. 3704. (2320) Transcribed records, effect of.—Transcribed records for new counties or for newly attached territory, as provided for by law, when properly verified and certified, shall have all the force and effect in judicial proceedings in courts of this state as the original records. (Acts 1879, p. 105.)

See Sayles' Practice, p. 479.

Art. 3705. (2313) (2257a) Certain abstracts of title evidence, when.—All abstracts of land titles, or land abstract books to lands in this state, compiled from the records of any county in this state, prior to the year 1890, which said records were partially or wholly destroyed or lost from any cause during the month of May, 1874, March, 1876, and January, 1889, shall hereafter be competent prima facie evidence of the truth of the data or memoranda therein contained and compiled prior to the year 1890, and shall be admissible in evidence in the courts of this state; provided, that the compiler or compilers of such abstracts of land titles or land title abstract books, shall have made heretofore, or before offered in evidence, affidavit before some officer authorized, at the time of making such affidavit, to take acknowledgments to deeds in this state, and to the effect that said abstracts of land titles, or land title abstract books, were compiled by him from the records of the county prior to their destruction or loss, and that they contain a true and correct statement of the matters and things to which they relate; and provided, also, that it shall be admissible to offer in evidence any testimony tending to discredit or substantiate the reliability of such abstract of land titles or land title abstract books, or tending to show the compiler thereof to have been incompetent or unreliable, or competent and reliable; and provided, further, that a copy of such abstract shall be filed in the papers of the cause in which it is sought to be used, and notice given to the opposite party at least five days before

the trial, and the same defense may be made as if copies of the original record had been filed; provided, further, that the party offering such abstracts of land titles, or land title abstract books, in evidence shall himself, or by his agent or attorney, have made affidavit that the original instrument to which the said data or memorandum relates is not then on record; and that he has made diligent search and inquiry for the same in places and from persons where and in whose possession it would most probably be found, and has been unable to find the same; that, to his best knowledge and belief, the same is lost or destroyed; and provided, further, that the owner of said abstracts of land titles, or of land title abstract books, shall have filed with the county commissioners' court his application in writing (which may be granted or refused, in the discretion of said court, and if refused, this article shall not become of force as to said application so refused) for an order of said court admitting to record in said court the contract of the said owner in writing, wherein the said owner shall bind himself, his heirs and assigns, as follows: That said owner, his heirs or assigns, will, whenever requested in writing, setting forth the data required by any party to any suit interested in introducing said abstracts of land titles, or land title abstract books, produce the same without charge on the day demanded for introducing in evidence, and upon the trial of any cause in this state; provided, that if said owner, his heirs or assigns, are required to produce said abstracts of land titles, or land title abstract books, in courts of any other county than that to the lands of which said abstract of land titles or land title abstract books pertain, they shall be, by the party at whose instance such production is required, reasonably compensated in advance for the time and expense of the said owner, his heirs or assigns. And the said owner in said contract shall bind himself, his heirs and assigns, to answer in full damages to any party damaged by the failure or default of the said owner, his heirs or assigns, without good cause, to produce said abstracts of land titles, or land title abstract books, data or memoranda, when demanded, as herein provided. And said contract shall further stipulate that no charge shall ever be made by said owner, his heirs or assigns, in excess of one dollar for each instrument or remove in any title, in the compilation of a complete abstract or title to the lands in the county to which said abstracts of land titles, or land title abstract books, pertain, and that said owner, his heirs and assigns, will, upon request and payment of the fees therefor by any person, either make, compile and certify, or cause to be made, compiled or certified, within a reasonable time, a complete abstract of title to any land to which said abstracts of land titles, or land title abstract books, pertain; provided, that nothing herein contained shall ever be construed to in any way affect or apply to any suit or suits pending in any of the courts in this state on the twelfth day of July, 1891; provided, further, that the provisions of this article shall not apply if it can be shown by competent evidence that any such deeds were improperly recorded; provided, that, whenever any person, company or corporation has heretofore complied with the law which is amended hereby, in order to make an abstract evidence, the said person, company or corporation shall not be required to do anything more or further under this article in order to have the benefits thereof. (Acts 1897, p. 146; Acts 1891, p. 136; Acts 1901, p. 44.)

See Sayles' Practice, p. 475.

Art. 3706. (2314) (2258) Certified copy of instrument sued on is evidence, when.—If suit be brought on any instrument or note in writing filed in any suit brought thereupon in any other court of this state, a certified copy of such instrument or note in writing, under the hand and seal of the clerk of the court in which the original may be filed, shall be admitted as evidence in like manner as such original might be; but, if the defendant shall plead and file an affidavit under oath that such original instrument or note in writing has not been executed by him, or by his authority, the clerk of the court having the custody of such original shall, on being subpœnaed as a witness, attend with the same on trial of the cause. (Acts 1891, p. 136; Acts 1846, p. 363; P. D. 3718.)

See Sayles' Practice, p. 457; Golin v. S., 38 S. W. 794.

Art. 3707. (2315) (2259) Certified copies from heads of departments evidence.—Certified copies, under the hands and official seals of the heads of departments, of all notes, bonds, mortgages, bills, accounts, or other documents, properly on file in any of the departments of this state, shall be received in evidence on an equal footing with the originals, in all suits now pending, or which may be hereafter instituted, in this state, where the originals of such notes, bonds, mortgages, bills, accounts or other documents would be evidence. (Acts 1870, p. 62; P. D. 6825.)

See Sayles' Practice, p. 471.

Art. 3708. (2316) (2260) Assessment or payment of taxes may be proven, how.—Whenever in any cause it may be material to prove the assessment of any property for taxes, or the payment of any taxes, the certificate of the comptroller of such assessment from the rolls deposited in his office, or that the payment of such taxes is shown by the records of his office, shall be admissible in evidence to prove the same. (Act Feb. 15, 1858; P. D. 3708.)

See Sayles' Practice, p. 472.

Art. 3709. (2317) (2261) Rate of interest in this state presumed, unless, etc.—The rate of interest in any other state, territory or country is presumed to be the same as that established by law in this state, and may be recovered accordingly without allegation or proof of the rate of interest in such other state, territory or country, unless the rate of interest in such other country be alleged and proved. (Id.)

See Sayles' Practice, p. 458.

Art. 3710. (2318) (2262) Execution of notes and other instruments presumed, unless, etc.—When any petition, answer, or other pleading shall be founded, in whole or in part, on any instrument or note in writing, charged to have been executed by the other party or by his authority, and not alleged therein to be lost or destroyed, such instrument or note in writing shall be received as

evidence without the necessity of proving its execution, unless the party by whom or by whose authority such instrument or note in writing is charged to have been executed, shall file his affidavit in writing denying the execution thereof; and the like rule shall prevail in all suits against indorsers and sureties upon any note or instrument in writing. When any such instrument or note in writing is charged to have been executed by any testator or intestate, it shall be received in evidence in like manner, unless some suspicion is cast upon it by the affidavit of the executor or administrator of such testator or intestate. (Act May 13, 1846; P. D. 1443.)

See ante, art. 1906, sec. 8; Sayles' Practice, p. 454; Hoxie v. Farmers & Mechanics Nat. Bk. of Ft. Worth, 49 S. W. 637; State Nat. Bk. v. Stewart, 88 S. W. 295; Bolden v. Hughes, 107 S. W. 91; Clymer v. Terry, 109 S. W. 1129; Dalton v. Dalton, 143 S. W. 241; Garrett v. Grisham, 156 S. W. 505; Quanah, A. & P. Ry. Co. v. R. D. Jones Lumber Co., 178 S. W. 858; North American Dredging Co. of Nevada v. S., 201 S. W. 1065; Kansas City Life Ins. Co. v. Jinkens, 202 S. W. 772.

Art. 3711. (2321) (2264) Evidence of appointment and qualification of executor, etc.—Whenever it may be necessary to make proof of the appointment and qualification of an executor, administrator or guardian, the letters issued to them in the manner provided by law, or a certificate of the proper clerk under his official seal that such letters have been issued, shall be sufficient evidence of the appointment and qualification of such executor, administrator or guardian. (Acts 1863, p. 5.)

See ante, art. 3327; see Sayles' Practice, p. 472.

Art. 3712. (2323) (2266) Suit on sworn account.—When any action or defense is founded upon an open account, supported by the affidavit of the party, his agent or attorney, taken before some officer authorized to administer oaths, to the effect that such account is, within the knowledge of affiant, just and true, that it is due, and that all just and lawful offsets, payments and credits have been allowed, the same shall be taken as prima facie evidence thereof, unless the party resisting such claim shall, before an announcement of ready for trial in said cause, file a written denial, under oath, stating that such account is not just or true, in whole or in part, and if in part only, stating the items and particulars which are unjust; provided, that, when such counter affidavit shall be filed on the day of the trial, the party claiming under such verified account shall have the right to continue such cause until the next term of court; when he fails to file such affidavit, he shall not be permitted to deny the account, or any item therein as the case may be. (Acts 1883, p. 110.)

See ante, art. 1906, sec. 11; Herron's Probate Guide, p. 246; Sayles' Practice, pp. 392, 417, 458; Moore v. Powers, 41 S. W. 707; Brin v. Wachusetts Shirt Co., 43 S. W. 295; Garwood v. Schleichenmaier, 60 S. W. 574; Craig v. Pruitt, 60 S. W. 586; Shaw v. Gilmer, 66 S. W. 679; Standifer v. Bond Hdw. Co., 94 S. W. 144; Davidson v. McCall Co., 95 S. W. 32; Wroten, etc., v. Mineola, etc., 95 S. W. 744; Milam v. Lbr. Co., 97 S. W. 825; Bergman Produce Co. v. Browne, 141 S. W. 153; Bishop v. Mount, 152 S. W. 442; Rodgers-Wade Furniture Co. v. Wynn, 156 S. W. 340; Continental Lumber & Tie Co. v. Miller, 161 S. W. 927; Alexander Bros. v. Wroe & Geppert, 164 S. W. 1055; Green v. Hoppe, 175 S. W. 1117; Wall & Carr v. J. M. Radford Grocery Co., 176 S. W. 785; Rockdale Mercantile Co. v. Brown Shoe Co., 184 S. W. 281; Bay Lumber Co. v. Artman & Duettmer, 188 S. W. 279; Wilson v. J. W. Crowdus Drug Co., 190 S. W. 194; Peterson v. Graham-Brown Shoe Co., 200 S. W. 899.

Art. 3713. (677) (601) Records of corporation are evidence.—The records of any company incorporated under the provisions of any statute of this state, or copies thereof duly authenticated by the signature of the president and secretary of such company, under the corporate seal thereof, shall be competent evidence in any action or proceeding to which such corporation may be a party. (Id.; P. D. 5967.)

TITLE 54

EXECUTION

Art. 3714. (2324) (2267) Execution on judgment of district and county court, issued when.—From and after the adjournment of every district or county court, it shall be the duty of the clerk thereof to tax the costs in every case in which a final judgment has been rendered against the party liable therefor under such judgment, and which have not been paid by him, and to issue execution for the enforcement of such judgment and the collection of such costs. (Acts 1873, p. 209, sec. 1; P. D. 3772.)

See ante, art. 1711; Sayles' Practice, pp. 679, 1183; Patton v. Cox, 77 S. W. 1025; Ryan v. Raley, 106 S. W. 750; Texas Co. v. Beddingfield, 114 S. W. 894; Beaumont Irrigating Co. v. De Laune, 173 S. W. 514.

Art. 3715. (2325) (2268) Execution before adjournment, when.—After the expiration of twenty days from and after the rendition of a final judgment in the district or county court, and after the overruling of any motion therein for a new trial or in arrest of judgment, if no supersedeas bond on appeal or writ of error has been filed and approved, the clerk shall issue execution upon such judgment upon the application of the successful party. (Id.)

See Sayles' Practice, p. 1183; Texas Co. v. Beddingfield, 114 S. W. 894.

Art. 3716. (2326) (2269) Execution issued before adjournment, superseded, when.—When an execution has been issued under the preceding article, and a supersedeas bond is afterward filed and approved within the time prescribed by law, the clerk shall immediately issue a writ of supersedeas suspending all further proceedings under such execution.

See Sayles' Practice, p. 1099.

Art. 3717. (2326a) When judgment shall become dormant.—If no execution is issued within twelve months after the rendition of a judgment in any court of record, the judgment shall become dormant and no execution shall issue thereon, unless such judgment be revived; but, where the first execution has issued within the twelve months, the judgment shall not become dormant, unless ten years shall have elapsed between the issuance of executions thereon, and execution may issue at any time within ten years after the issuance of the preceding execution. (Acts 1895, p. 2.)

See post, arts. 5617, 5696; Sayles' Practice, p. 1211; Maddox v. Summerlin, 49 S. W. 1033; Cabell v. Orient Ins. Co., 55 S. W. 610; Gale Mfg. Co. v. Dupree, 146 S. W. 1048; Spiller v. Hollinger, 148 S. W. 338; Farmers' Nat. Bank v. Crumley, 204 S. W. 358.

Art. 3718. (2327) (2270) Execution from justice's court.—Executions from the justices' courts shall issue as provided in the title relating to said courts.

Art. 3719. (2328) (2271) Execution issued on removal of property, etc.—Upon the filing of an affidavit that the party against whom a judgment for money, other than a judgment for costs only, has been rendered, is about to remove his property out of the county, or is about to transfer or secrete his property for the purpose of defrauding his creditors, the clerk may issue execution immediately. (Acts 1842, p. 66, sec. 3; P. D. 3774.)

See Sayles' Practice, p. 1184.

Art. 3720. (2329) (2272) On death of plaintiff, execution issued how.—Where a sole plaintiff, or one of the several plaintiffs, shall die after judgment, execution shall issue on such judgment in the name of the legal representative of such deceased sole plaintiff, or in the name of the surviving plaintiffs, and the legal representative of the deceased plaintiff, as the case may require, upon an affidavit of such death being filed with the clerk, together with a certificate of the appointment of such representative under the hand and seal of the clerk of the court wherein such appointment was made. (Act Feb. 5, 1853; P. D. 13.)

See Sayles' Practice, p. 1189.

Art. 3721. (2330) (2273) On death of executor, etc.—When an executor, administrator, guardian or trustee of an express trust dies or ceases to be such executor, administrator, guardian or trustee after judgment, execution shall issue on such judgment in the name of his successor, upon an affidavit of such death being filed with the clerk, together with the certificate of the appointment of such successor, under the hand and seal of the clerk of the court wherein such appointment was made. (Id.)

See ante, art. 1889.

Art. 3722. (2331) (2274) On death of nominal plaintiff.—When a person in whose favor a judgment is rendered for the use of another dies after judgment, execution shall issue in the name of the party for whose use the suit was brought, upon an affidavit of such death being filed with the clerk.

Art. 3723. (2332) (2275) On death of defendant, no execution for money.—Where a sole defendant dies after judgment for money against him, execution shall not issue thereon, but the judgment may be proved up and paid in due course of administration. (Act Feb. 5, 1853; P. D. 14.)

See ante, arts. 3363, 3450; Towne's Texas Pleading (2d Ed.) p. 655; Fleming v. Ball, 60 S. W. 985; Lippincott v. Taylor, 135 S. W. 1070; Cole v. Lewis, 159 S. W. 180; Allison v. Richardson, 171 S. W. 1021.

Art. 3724. (2333) (2276) On death of defendant, execution for property.—In all cases of judgments other than money judgments, where the sole defendant, or one or more of several joint defendants shall die after judgment, upon an affidavit of such death being filed with the clerk, together with the certificate of the appointment of a representative of such decedent, under the hand and seal of the clerk of the court wherein such appointment was made, the proper process on such judgment shall issue against such representative. (Id.)

Art. 3725. (2334) (2277) Terms "plaintiff" and "defendant" defined.—By the term, "plaintiff," as used in this title, is meant the party in whose favor judgment is rendered, and by the term, "defendant," is meant the party against whom judgment was rendered.

Art. 3726. (2335) (2278) County to which execution for money shall issue.—Where the execution requires that the judgment shall be made out of the property of the debtor, it shall be issued in the first instance to the county in which the judgment is rendered, and upon the return thereof that no property can be found, or not sufficient to satisfy the same, execution may be issued to any other county in the state. (Act Jan. 27, 1842; P. D. 3784.)

See Sayles' Practice, p. 1188; Norwood v. Orient Ins. Co., 44 S. W. 188; Cabell v. Orient Ins. Co., 55 S. W. 610; Kingman Texas Implement Co. v. Borders, 156 S. W. 614.

Art. 3727. (2336) (2279) Execution for property shall issue.—Where the execution, or any writ in the nature thereof, requires the sale or delivery of specific real or personal property, it may be issued to the county where the property, or some part thereof, is situated.

See Sayles' Practice, p. 1188.

Art. 3728. (2337) (2280) To different counties.—Process in the nature of an execution which requires only the delivery of real or personal property may be issued at the same time to different counties.

Art. 3729. (2338) (2281) Requisites of an execution.—The style of the execution shall be, "The State of Texas." It shall be directed to the sheriff or any constable of the proper county, and shall be signed by the clerk or justice officially, and sealed with the seal of the court, if issued out of the district or county court. It shall correctly describe the judgment, stating the court wherein and the time when rendered, the names of the parties, the amount, if it be for money, and the amount actually due thereon, if less than the original amount, the rate of interest, if other than six per cent, and shall have the following requisites:

1. The several items of the bill of costs to be collected under the execution shall be indorsed thereon in intelligible words and figures.

2. If the judgment be for money simply, it shall require the officer to satisfy the judgment out of the property of the debtor, subject to execution.

3. If the judgment commands the sale of particular property for the satisfaction thereof, the writ shall be framed accordingly.

4. If the judgment be for the delivery of the possession of real or personal property, the writ shall require the officer to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may, at the same time, require the officer to satisfy any costs, damages or rents and profits recovered by the same judgment, out of any property subject to execution of the party against whom it is rendered.

5. If the judgment be for the recovery of personal property or its value, the writ shall command the officer, in case a delivery thereof can not be had, to levy and collect the value thereof for which the judgment was recovered, to be specified therein out of any

property of the party against whom the judgment was rendered, liable to execution.

6. It shall require the officer to satisfy the costs adjudged against the party, and the further costs of executing the writ, out of any property liable to execution of the party against whom the judgment was rendered.

7. When an alias or pluries execution is issued, it shall show upon its face the number of previous executions which have been issued on the judgment. (Const. art. 5, sec. 12; Acts 1873, p. 209, secs. 1, 2; P. D. 3772.)

See Sayles' Practice, pp. 679, 1185, 1186; Capps v. Leachman, 39 S. W. 917; Medlin v. Seideman, 88 S. W. 250.

Art. 3730. (2339) (2282) Returnable, when.—The execution shall be returnable to the first day of the next term of the court, or in thirty, sixty or ninety days, if so directed by the plaintiff, his agent or attorney. (Act June 4, 1873; P. D. 3775.)

See Sayles' Practice, p. 1218.

Art. 3731. (2340) (2283) Indorsements by officer.—The officer receiving an execution shall indorse thereon the exact hour and day when he received it, and, if he receives more than one on the same day against the same person, he shall number them as received; and, on failure to do, or in case of false indorsement, he and his sureties shall be liable, on motion in the court from whence the execution is issued, three days' notice being given, to a judgment in favor of the plaintiff in execution for twenty per cent on the amount of the execution, together with such damages as the plaintiff in execution may have sustained by such failure or such false indorsement. (Act Jan. 25, 1842; P. D. 3780.)

See Sayles' Practice, pp. 131, 1191.

Art. 3732. (2341) (2284) Execution levied on property of surety, when.—If it appear upon the face of an execution, or by the indorsement of the clerk, that of those against whom it is issued any one is surety for another, the levy of the execution shall first be made upon the property of the principal subject to execution and situate in the county in which the judgment is rendered. But, if property of the principal can not be found which will, in the opinion of the officer, be sufficient to make the amount of the execution, the levy shall be made on so much property of the principal as may be found, if any, and upon so much of the property of the surety as may be necessary to make the amount of the execution. (Act Feb. 5, 1858; P. D. 4786.)

See post, arts. 6331-6334; Sayles' Practice, p. 990; Denson v. Taylor, 132 S. W. 811.

Art. 3733. (2342) (2285) On death, etc., of officers, enforced by successor.—If the officer receiving an execution die or go out of office before the return of any execution, his successor or other officer authorized to discharge the duties of the office in such case shall proceed therein in the same manner that such officer should have done.

See Sayles' Practice, p. 1221.

Art. 3734. (2343) (2286) Enforced without delay.—When an execution against the property of any person is issued to an officer, he shall proceed without delay to levy the same upon the property of the defendant not exempt from execution, unless otherwise directed by the plaintiff, his agent or attorney.

Bailey v. Block, 134 S. W. 323.

Art. 3735. (2344) (2287) Levy of execution.—The officer shall first call upon the defendant, if he can be found, or, if absent, upon his agent within the county, if known, to point out property to be levied upon; and a levy shall first be made upon the property designated by the defendant or his agent; provided, that if it be personal property, the defendant or his agent deliver the same into the officer's possession; or, if it be real estate, that he deliver to the officer a description thereof by metes and bounds, and that it be situated in whole or in part within the county. If, in the opinion of the officer, the property so designated will not sell for enough to satisfy the execution and costs of sale, he shall notify the defendant or his agent thereof; whereupon the latter may make an additional designation. (Acts 1873, p. 209, sec. 2; P. D. 3775.)

See Sayles' Practice, pp. 796, 1200; Beck v. Avindino, 68 S. W. 827; Rosenthal & Desberger v. Mounts, 130 S. W. 192.

Art. 3736. (2345) (2288) Failure of defendant to designate property.—If no property be thus designated, or if an insufficient amount of property be designated, it shall be the duty of the officer to levy the execution upon the property of the debtor, subject to execution in the following order:

1. On personal or movable property.
2. On uncultivated lands; and,
3. Upon cultivated lands. (Id. sec. 3.)

See Sayles' Practice, p. 1200; Rosenthal & Desberger v. Mounts, 130 S. W. 192.

Art. 3737. (2346) (2289) Property not to be designated.—A defendant in execution can not point out property which he has sold, mortgaged or conveyed in trust, or property exempt from forced sale.

See Sayles' Practice, pp. 1195, 1200.

Art. 3738. (2347) (2290) Property sold, etc., can not be levied on, when.—Property which the judgment debtor has sold, mortgaged or conveyed in trust shall not be seized in execution, if the purchaser, mortgagee or trustee shall point out other property of the debtor in the county sufficient to satisfy the execution.

See Sayles' Practice, pp. 797, 1201.

Art. 3739. (2348) (2291) Levy on real estate.—In order to make a levy on real estate, it shall not be necessary for the officer to go upon the ground, but it shall be sufficient for him to indorse such levy on the writ.

See Sayles' Practice, pp. 796, 801, 1203.

Art. 3740. (2349) (2292) On personal property.—A levy upon personal property is made by taking possession thereof, when the defendant in execution is entitled to the possession; where the defendant in execution has an interest in personal property, but is not entitled to the possession thereof, a levy is made thereon by giving notice thereof to the person who is entitled to the possession, or one of them when there are several.

See Sayles' Practice, pp. 795-7, 1204; Sumner v. Crawford, 41 S. W. 994; Sutton v. Gregory, 45 S. W. 932; Kessler v. Halff, 51 S. W. 48; Davis v. Jones, 75 S. W. 63; Hubert v. Hubert, 102 S. W. 948; Jones & Nixon v. First State Bank of Hamlin, 140 S. W. 116; Needham v. Cooney, 173 S. W. 979; Kimbrough v. Bevering, 182 S. W. 403; Burch v. Mounts, 185 S. W. 889.

Art. 3741. (2350) (2293) On stock running at large.—A levy upon horses, mules, jacks, jennets, horned cattle or hogs running at large in a range, and which can

not be herded and penned without great inconvenience and expense, may be made by designating by reasonable estimate the number of animals and describing them by their marks and brands, or either; such levy shall be made in the presence of two or more credible persons, and notice thereof shall be given in writing to the owner or his herder or agent, if residing within the county and known to the officer.

See Sayles' Practice, pp. 802, 877, 1204; Cope v. Lindsey, 43 S. W. 29; Lindsey v. Cope, 44 S. W. 276.

Art. 3742. (2351) (2294) Levy on shares of stock, etc.—A levy on the stock of any corporation or joint stock company is made by leaving a notice thereof with any officer of such company. (Acts 1875, p. 102.)

See Sayles' Practice, pp. 796, 1206.

Art. 3743. (2352) (2295) Interest of partner.—A levy upon the interest of a partner in partnership property is made by leaving a notice with one or more of the partners, or with a clerk of the partnership.

See Sayles' Practice, pp. 796, 877, 1202; Sumner v. Crawford, 41 S. W. 994; Jones v. Meyer Bros. Drug Co., 61 S. W. 553; Davis v. Jones, 75 S. W. 63; Adue v. Wettermark, 82 S. W. 797; Hubert v. Hubert, 102 S. W. 948; Seal v. Holcomb, 107 S. W. 916; First State Bank of Hamlin v. Jones & Nixon, 139 S. W. 671; J. M. Radford Grocery Co. v. Owens 161 S. W. 911; Jones & Nixon v. First State Bank of Hamlin, 173 S. W. 202; Wells v. Cloud, 202 S. W. 331.

Art. 3744. (2353) (2296) Goods pledged or mortgaged.—Goods and chattels pledged, assigned or mortgaged as security for any debt or contract, may be levied upon and sold on execution against the person making the pledge, assignment or mortgage subject thereto; and the purchaser shall be entitled to the possession when it is held by the pledgee, assignee or mortgagee, on complying with the conditions of the pledge, assignment or mortgage.

See Sayles' Practice, pp. 797, 1201.

Art. 3745. (2354) (2297) Shares of stock may be sold.—Shares of stock in any joint stock or incorporated company may be sold on execution against the person owning such stock. (Acts 1875, p. 102.)

See Sayles' Practice, pp. 796, 1206.

Art. 3746. (2355) (2298) Duty of officer as to property in his hands.—The officer shall keep securely all personal property levied on by him for which no delivery bond has been given; and, if any injury or loss should result to any party interested by his negligence, he and his sureties shall be liable to pay the value of the property so lost or the amount of injury sustained, and ten per cent thereon, to be recovered by the party injured on motion, three days' notice being given in the court from which the execution issued. (Act Jan. 27, 1842; P. D. 3782.)

See Sayles' Practice, p. 1208.

Art. 3747. (2356) (2299) Expenses for keeping property.—The officer shall be authorized to retain out of the proceeds of personal property sold upon execution all reasonable expenses incurred by him in making the levy and keeping the property. (Id.)

See Sayles' Practice, p. 1208; Coleman Nat. Bank v. Futch, 146 S. W. 957.

Art. 3748. (2357) (2300) Defendant may give delivery bond and keep property.—Any personal property taken in execution may be returned to the defendant by the officer upon the delivery by the defendant to him of a bond, payable to the plaintiff, with two or more good and sufficient sureties, to be approved by the officer, to the effect that the property shall be delivered to the officer at the time and place named in the bond, to be sold according to law, or for the payment to the officer of a fair value thereof, which shall be stated in the bond. (Id.; P. D. 3778.)

See Sayles' Practice, p. 1209.

Art. 3749. (2358) (2301) Property may be sold by defendant.—Where property has been replevied, as provided in the preceding article, the defendant may sell or dispose of the same, paying the officer the stipulated value thereof.

Art. 3750. (2359) (2302) Forfeited delivery bond.—In case of the non-delivery of the property according to the terms of the bond, and non-payment of the value thereof, the officer shall forthwith return the bond, indorsed, "forfeited," to the clerk of the court from which execution issued; whereupon, if the judgment remain unsatisfied in whole or in part, the clerk shall issue execution against the principal debtor and the sureties on the bond for the amount due, not exceeding the stipulated value of the property, upon which execution no delivery bond shall be taken, which fact shall be indorsed by the clerk on the execution. (Id.; P. D. 3779.)

See Sayles' Practice, p. 1209.

Art. 3751. (2360) (2303) Real property sold, how.—Real property taken by virtue of any execution shall be sold at public auction, at the court house door of the county, on the first Tuesday of the month, between the hours of ten o'clock a. m. and four o'clock p. m. (Id.; P. D. 3776.)

See Sayles' Practice, p. 1223; Menard v. MacDonald, 115 S. W. 63; Adams v. Zellner, 174 S. W. 933.

Art. 3752. (2361) (2304) Sale of lands, etc., elsewhere than at court house door.—Where by law the public sales of lands in any county are directed to be made at any other place than the court house door, the sales herein provided to be made at the court house door shall be made at the place designated by such law.

See Sayles' Practice, p. 1223.

Art. 3753. (2362) (2305) Lots in a city or town, how sold.—If real property situated in any town or city, taken in execution, consist of several lots, tracts or parcels, each shall be offered separately, unless the same be not susceptible of a separate sale by reason of the character of the improvements thereon.

See Sayles' Practice, p. 1228; Glasscock v. Price, 45 S. W. 416; Moore v. Miller, 155 S. W. 573; Peters v. Rice, 157 S. W. 1181.

Art. 3754. (2363) (2306) Lands not in a city, etc., sold in lots, when.—When lands not situated in any town or city are taken in execution, the defendant in such writ in whom the legal or equitable title to such land may be vested, shall have the right to present to the officer holding such execution, at any time before the sale so as not to delay the same being made as advertised, a plat of said land as actually surveyed, in lots of not less than fifty acres, by the county surveyor of the county wherein said premises are situated. The plat shall be accompanied by the field-notes of each lot as numbered, with the certificate of the county

surveyor, that the same are correct, and the defendant shall have the right to designate the order in which the lots shall be sold. (Acts 1875, p. 50.)

See Sayles' Practice, p. 1228; Ellis v. Harrison, 57 S. W. 984; Galvin v. McConnell, 117 S. W. 211; Dickinson v. Comstock, 199 S. W. 863.

Art. 3755. (2364) (2307) Sale of lots shall cease, when.—When a sufficient number of such lots are sold to satisfy the amount due on the execution, the sale shall cease at the request of the defendant. (Id.)

See Sayles' Practice, p. 1268.

Art. 3756. (2365) (2308) Expenses of selling lots, how paid.—The expenses of the survey and all other expenses attending the sale of said land in lots, as hereinbefore provided, shall be paid by the defendant, and shall in no case constitute any additional cost in said case. (Id.)

Art. 3757. (2366) (2309) Notice of sale of real estate.—The time and place of making sale of real estate under execution, order of sale, or venditioni exponas, shall be advertised by the officer by having the notice thereof published in the English language once a week for three consecutive weeks preceding such sale, in some newspaper published in said county. The first of said publications shall appear not less than twenty days immediately preceding the day of sale. Said notice shall contain a statement of the authority by virtue of which the sale is to be made, the time of levy, and the time and place of sale; it shall also contain a brief description of the property to be sold, and shall give the number of acres, original survey, locality in the county, and the name by which the land is most generally known, but it shall not be necessary for it to contain field notes. Publishers of newspapers shall receive for publishing said sales fifty cents per square for the first insertion and thirty cents per square for subsequent insertions, to be taxed and paid as other costs; for such publication, ten lines shall constitute a square, and the body of no such advertisements shall be printed in larger type than brevier; provided, that no fee for advertising any property in a newspaper under the provisions of this article shall exceed the sum of five dollars. If there be no newspapers published in the county, or none the publisher of which will publish the notice of sale for the compensation herein fixed, the officer shall then post such notice in writing in three public places in the county, one of which shall be at the court house door of such county, for at least twenty days successively next before the day of sale. The officer making the levy shall give the defendant or his attorney written notice of such sale, either in person or by mail, which notice shall substantially conform to the foregoing requirements. But nothing herein shall affect the method of advertising land under the powers conferred by any deed of trust or other contract lien. (Act Jan. 27, 1842, p. 66; 1893, p. 11; 1895, p. 168; Acts 1903, p. 104.)

See Simkins' Equity (2d Ed.) p. 194; Luper v. O'Donohue, 45 S. W. 327; Bean v. City of Brownwood, 45 S. W. 897; Bell v. Williams, 56 S. W. 774; Marston v. Yaites, 66 S. W. 867; Rogers v. Moore, 94 S. W. 113; Id. 97 S. W. 685; Corbett v. Sweeney, 151 S. W. 858; Moore v. Miller, 155 S. W. 573; Adams v. Zellner, 174 S. W. 933; South Texas Lumber Co. v. Burleson, 178 S. W. 961; Adams v. Kelly, 196 S. W. 576.

Article 2367, R. S. 1895, from Acts 1879, p. 152, repealed by Act 1903, p. 105.

Art. 3758. (2368) (2310) "Court house door" defined.—By the "court house door" of a county is meant either of the principal entrances to the house provided by the proper authority for the holding of the district court; and where, from any cause, there is no such house, the door of the house where the district court was last held in that county shall be deemed to be the court house door. Where the court house, or house used by the court, has been destroyed by fire or other cause, and another has not been designated by the proper authority, the place where such house stood shall be deemed to be the court house door.

See Simkins' Equity (2d Ed.) p. 194; Sayles' Practice, p. 1223.

Art. 3759. (2369) (2310a) Sales of real estate under powers conferred by deed of trust or other contract lien; land situated in more than one county; notice; sales how made; land in unorganized county.—All sales of real estate made in this State under powers conferred by any deed of trust or other contract lien shall be made in the county in which such real estate is situated, unless such real estate be situated in more than one county, in which event, notices as herein provided shall be given in both or all of such counties, providing and giving notice that such sale will be made of such real estate in that one of said counties in which the greater portion of the real estate may be situated; if equal quantities of said land to be sold lie in different counties, said notice shall designate in which of said counties the sale is to be made. Notice of such proposed sale shall be given by posting written notice thereof for three consecutive weeks prior to the day of sale in three public places in said county or counties, one of which shall be at the court house door of the county in which such sale is to be made, and if such real estate be in more than one county, one at the court house door of each county in which said real estate is situated, or such notice may be given as required by statute in case of judicial sale, or such notice may be given in either of said methods, or as may be provided for in said deed of trust or contract lien; and such sales shall be made at public vendue, between the hours of 10 o'clock a. m., and 4 o'clock p. m., of the first Tuesday in any month provided; that when such real estate is situated in an unorganized county, such sale shall be made in the county to which such an unorganized county is attached for judicial purposes. (Acts 1889, p. 143; Acts 1915, ch. 43, sec. 1; Acts 1915, 1st C. S., ch. 15, sec. 2.)

See Simkins' Equity (2d Ed.) p. 195; Sayles' Practice, p. 1224; Bell v. Williams, 56 S. W. 774; Galloway v. Kerr, 63 S. W. 180; Kerr v. Galloway, 64 S. W. 858; Swain v. Mitchell, 66 S. W. 61; Fischer v. Simon, 66 S. W. 447; Fischer v. Simon, 66 S. W. 882; Marston v. Yaites, 66 S. W. 867; Corbett v. Sweeney, 151 S. W. 858; Roe v. Davis, 172 S. W. 708; Adams v. Zellner, 174 S. W. 933; Adams v. Kelly, 196 S. W. 576.

Art. 3759a. Judicial confirmation of foreclosure sales of property owned by soldier or sailor.—In all cases of sales of real property of soldiers or sailors serving

in the armies or navies of the United States during the continuance of the war with Germany, under and by virtue of deeds of trust or of mortgages where such sales are made without foreclosure suits, before the execution of any conveyance by reason thereof or the delivery of the property, or before such property is taken possession of, there shall first be filed in a court of competent jurisdiction a suit for the confirmation of such sale and for the authority to make conveyance of and delivery of the property; in such suits service shall be had on any soldier or sailor as is provided by law in such cases, and such suit shall be subject to all laws of this State applicable; on the final trial of the case if the court finds that it is proper and lawful to confirm such sale he shall do so and order a conveyance and delivery of the property, and all sales, not made in compliance with this Act and other Acts on the subject shall be null and void. Provided that on the final trial and before judgment of confirmation is entered by the court, the defendant may file an answer setting up any defense he may have to the merits of the case. (Acts 1917, 3d C. S., ch. 4, sec. 1.)

See ante, art. 1868a.

Art. 3759b. Same; not applicable when.—Nothing contained in this Act shall in anywise affect or apply to existing laws governing the foreclosure of any deed of trust, mortgage or other lien upon any real property, not owned by such soldier or sailor at the time of his enlistment and subsequently conveyed to him encumbered by such deed of trust, mortgage or other lien. (Id. sec. 2.)

Art. 3759c. Judicial sales of property of soldier or sailor prohibited for one year.—All sales under execution, Deed of Trust, Mortgage or lien of property belonging to soldiers or sailors now in the service of the United States during the present war or who have been in such service and honorably discharged is hereby prohibited for twelve months after the discharge of any such soldier or sailor, and any sale made in violation of this law shall convey to the purchaser no right or title. Provided, however, such soldier or sailor may waive the benefits of this Act by doing so in writing duly acknowledged before some person authorized by law to take acknowledgments. Provided further that all statutes of limitation shall be suspended during the twelve months after such discharge as to any debt, right, or cause of action against such soldier or sailor. And provided further that the provisions of this Act shall apply only to such soldier and sailor defendants as are, in the discretion of the trial court, necessary parties defendant to the pending litigation, and then only to such debts as were contracted by such soldier or sailor prior to his enlistment or draft into the army or navy of the United States. (Acts 1919, ch. 63, sec. 1.)

Art. 3760. (2370) (2311) Sale of personal property.—Personal property taken in execution shall be sold on the premises where it is taken in execution, or at the court house door of the county, or at some other place if, owing to the nature of the property, it is more convenient to exhibit it to purchasers at such place. (Act Jan. 27, 1842; P. D. 3776.)

See Sayles' Practice, p. 1225.

Art. 3761. (2371) (2312) Notice of sale of personal property.—Previous notice of the time and place of the sale of any personal property on execution shall be given for ten days successively, by posting up written or printed notices thereof in at least three public places in the county, one of which shall be at the court house door of the county and one at the place where the sale is to be made. (Id.)

See Sayles' Practice, p. 1227.

Art. 3762. (2372) (2313) Personal property present at sale, except.—Personal property shall not be sold, unless the same be present and subject to the view of those attending the sale, when it is susceptible of being thus exhibited, except shares of stock in joint stock or incorporated companies, and in cases where the defendant in execution has merely an interest without right to the exclusive possession, in which case the interest of the defendant may be sold and conveyed without the presence or delivery of the property.

See Sayles' Practice, p. 1225.

Art. 3763. (2373) (2314) Sale of stock running in range.—When a levy is made upon horses, mules, jacks, jennets, horned cattle or hogs running at large in the range, under article 3741 of this title, it is not necessary that such stock, or any part thereof, should be present at the place of sale, and the purchaser at such sale is authorized to gather and pen such stock and select therefrom the number purchased by him.

See Sayles' Practice, pp. 802, 1225; Floyd v. S., 68 S. W. 690.

Art. 3764. (2374) (2315) When execution not satisfied.—When the property levied upon does not sell for enough to satisfy the execution, the officer shall proceed anew, as in the first instance, to make the residue.

See Sayles' Practice, p. 1243.

Art. 3765. (2375) (2316) Conveyance to purchaser.—When a sale has been made and the terms thereof complied with, the officer shall execute and deliver to the purchaser a conveyance of all the right, title, interest and claim which the defendant in execution had in and to the property sold. (Id.; P. D. 3795.)

See Sayles' Practice, p. 1240; Chase v. York Co. Sav. Bk., 36 S. W. 406; Ostrom v. Arnold, 58 S. W. 631; Lippincott v. Taylor, 135 S. W. 1070.

Art. 3766. (2376) (2316a) Deeds to the state in usual form.—In all cases where property is purchased by the state, under article 357, the officer selling the same shall execute and deliver to the state a deed of conveyance to the same, such as is prescribed for individuals in similar cases. (Acts 1879, p. 9.)

Art. 3767. (2377) (2317) Conveyance made after death of purchaser.—In case the purchaser, having complied with the terms of the sale, shall die before a conveyance shall have been executed to him, the officer shall convey the property sold to the purchaser, nevertheless, and the conveyance shall have the same effect as if it had been executed in the lifetime of the purchaser.

See Sayles' Practice, p. 1240.

Art. 3768. (2378) (2318) Purchaser deemed innocent.—A purchaser at sale under execution shall be deemed to be an innocent purchaser without notice in all cases

where he would be deemed to be such had the sale been made voluntarily by the defendant in person.

See Simkins' Equity (2d Ed.) p. 657; Sayles' Practice, p. 1235; Rogers v. Houston, 60 S. W. 445.

Art. 3769. (2379) (2319) Penalty for making sale otherwise than as authorized by law.—Any officer who shall sell any property without giving the previous notice herein directed or who shall sell the same otherwise than in the manner herein prescribed, shall forfeit and pay to the party injured not less than ten nor more than two hundred dollars in addition to such other damages as the party may have sustained, to be recovered, on motion, five days' notice thereof being given, from such officer and his sureties.

See Sayles' Practice, pp. 674, 1227, 1228; Mara v. Branch, 135 S. W. 661.

Art. 3770. (2380) (2320) Officer or deputy shall not purchase.—If any officer making sale of property on execution, or his deputy, shall, directly or indirectly, purchase the same, the sale shall be void.

Art. 3771. (2381) (2321) Purchaser failing to comply.—If any person shall bid off property at any sale made by virtue of an execution, and shall fail to comply with the terms of the sale, he shall be liable to pay the plaintiff in execution twenty per cent. on the value of the property thus bid off, besides costs, to be recovered on motion, five days' previous notice of such motion being given to the defendant; and, should the property on a second sale bring less than on the former, he shall be liable to pay to the defendant in execution all loss which he sustains thereby, to be recovered on motion as above provided. (Acts 1842, p. 66; P. D. 3786.)

See Sayles' Practice, pp. 670, 1229; Towell v. Smith, 55 S. W. 186; Shanley v. York, 118 S. W. 146; Borden v. Fahey, 120 S. W. 564; Archenhold Co. v. Schaefer, 205 S. W. 139.

Art. 3772. (2382) (2322) Re-sale of property.—When the terms of the sale shall not be complied with by the bidder, the sheriff shall proceed to sell the property again on the same day, if there be sufficient time; but, if not, he shall readvertise and sell the same as in the first instance. (Id.; P. D. 3787.)

See Sayles' Practice, p. 1229.

Art. 3773. (2383) (2323) Return of execution by mail.—When an execution is issued to any county other than the one in which the judgment is rendered, return may be made by mail; but money can not be thus sent except by direction of the party entitled to receive the same or his attorney of record.

See Sayles' Practice, pp. 1228-9.

Art. 3774. (2384) (2324) Money to be paid over.—When an officer has collected money on execution, he shall pay over the same to the party entitled thereto at the earliest opportunity.

See Polk v. Peterson, 93 S. W. 504.

Art. 3775. (2385) (2325) Failure to pay over money.—Should an officer fail or refuse to pay over money collected under an execution when demanded by the person entitled to receive the same, he shall be liable to pay to such person the amount so collected, with damages at the rate of five per cent per month thereon, besides interests and costs, which may be recovered of him and his sureties by the party entitled to receive the same on motion before the court from which said execution issued, five days' previous notice thereof being given to said officer and his sureties. (Id.; P. D. 3781.)

See Sayles' Practice, pp. 131, 249, 674, 1229; Russell v. S., 40 S. W. 69; Polk v. Peterson, 93 S. W. 504; Matthews v. Perminter, 162 S. W. 1180.

Art. 3776. (2386) (2326) Failure to levy or sell, penalty for.—Should an officer fail or refuse to levy upon or sell any property justly liable to execution, when the same might have been done, he and his sureties shall be liable to the party entitled to receive the money collected on such execution for the full amount of the debt, interest and costs, to be recovered on motion before the court from which said execution issued, five days' previous notice thereof being given to said officer and his sureties. (Id.; P. D. 3796.)

See Sayles' Practice, pp. 131, 249, 674, 1230; Murray v. Evans, 60 S. W. 786; Nowotny v. Grona, 98 S. W. 416; Peck v. Murphy & Bolanz, 184 S. W. 542; Seagraves v. Scarborough, 190 S. W. 1154; Buckholts State Bank v. Thallman, 196 S. W. 687.

Art. 3777. (2387) (2327) Failure to return execution.—Should an officer neglect or refuse to return any execution as required by law, or should he make a false return thereon, he and his sureties shall be liable to the party entitled to receive the money collected on such execution for the full amount of the debt, interests and costs, to be recovered as provided in the preceding article. (Id.; P. D. 3796.)

See Ranken v. Jones, 53 S. W. 583; Hale v. Bickett, 78 S. W. 531; Matthews v. Perminter, 162 S. W. 1180; Peck v. Murphy & Bolanz, 184 S. W. 542; Buckholts State Bank v. Thallman, 196 S. W. 687.

Art. 3778. (2388) (2328) Surplus to be paid to defendant.—If, on the sale of property, more money is received than is sufficient to pay the amount of the execution or executions in the hands of the officer, the surplus shall be immediately paid over to the defendant, his agent or attorney. (Id.; P. D. 3777.)

See Sayles' Practice, p. 1230.

Art. 3779. (2389) (2329) Return of execution.—Every execution shall be returned forthwith, upon being satisfied by the collection of the money, or upon order of the plaintiff or his attorney indorsed thereon.

See Sayles' Practice, p. 1228.

Art. 3780. (2390) (2330) Death of defendant operates as supersedeas, when.—The death of the defendant after the execution is issued shall operate as a supersedeas thereof; but the lien of the execution, when one has been acquired by a levy, shall be recognized and enforced by the county court in the payment of the debts of the deceased.

See Sayles' Practice, p. 1190; Lippincott v. Taylor, 135 S. W. 1070.

Art. 3781. (2391) (2331) Death of plaintiff does not abate writ.—An execution shall not be abated by the death of the plaintiff therein after the execution has been issued, but the same shall be executed and returned in the same manner as if the plaintiff was still living.

See Sayles' Practice, p. 1190.

Art. 3782. (2392) (2332) Execution docket.—The clerk of each of the several courts shall keep an execution docket in which he shall enter a statement of all executions as they are issued by him, specifying the names of the parties, the amount of the judgment, the amount due thereon, the rate of interest when it exceeds eight per cent,

the costs, the date of issuing the execution, to whom delivered, and the return of the officer thereon, with the date of such return; and such docket entries shall be taken and deemed to be a record. (Id.; P. D. 3773; Revision, 1879.)

See Sayles' Practice, pp. 464, 1219.

Art. 3783. (2393) (2333) Index to execution docket.—The clerk shall keep an index and cross-index to the execution docket; and, when execution is in favor of or against several persons, it shall be indexed in the name of each person.

See Sayles' Practice, p. 1185.

Art. 3784. (2394) (2334) Penalty for failing to keep docket and index.—Any clerk who shall fail to keep an execution docket and index thereto, as hereinbefore directed, or shall neglect to make the entries therein, shall, besides being punished as provided in the penal law, be liable to any person injured for the amount of damages sustained by such neglect, to be recovered in a suit against him and his sureties on his official bond.

TITLE 55

EXEMPTIONS

CHAPTER ONE

PROPERTY EXEMPT FROM FORCED SALE

Art. 3785. (2395) (2335) Property exempt from, to every family.—The following property shall be reserved to every family, exempt from attachment or execution and every other species of forced sale for the payment of debts, except as hereinafter provided:

1. The homestead of the family.
2. All household and kitchen furniture.
3. Any lot or lots in a cemetery held for the purpose of sepulture.
4. All implements of husbandry.
5. All tools, apparatus and books belonging to any trade or profession.
6. The family library, and all family portraits and pictures.
7. Five milch cows and their calves.
8. Two yoke of work oxen, with necessary yokes and chains.
9. Two horses and one wagon.
10. One carriage or buggy.
11. One gun.
12. Twenty hogs.
13. Twenty head of sheep.
14. All saddles, bridles, and harness necessary for the use of the family.
15. All provisions and forage on hand for home consumption; and,
16. All current wages for personal services. (Const., art. 16, secs. 28, 50; Acts 1870, p. 127, sec. 2; Acts 1874, p. 137, sec. 70; P. D. 6834, 6003.)

Sayles' Practice, pp. 799, 839; Speer's Marital Rights, p. 547; Stephens v. Hobbs, 36 S. W. 287; McCord-Collins Co. v. Lazarus, 50 S. W. 1048; Hall v. Miller, 51 S. W. 36; McClelland v. Barnard, 81 S. W. 591; Simmang v. Pennsylvania Fire Ins. Co., 112 S. W. 1044, 132 Am. St. Rep. 846; Hammond v. Pickett, 158 S. W. 174; Harris v. Todd, 158 S. W. 1189; Harris v. Townley, 161 S. W. 5; Hammond v. McFarland, 161 S. W. 47; Mitchell v. Western Casualty & Guaranty Ins. Co., 163 S. W. 630; Campbell v. Honaker's Heirs, 166 S. W. 74; American Bonding Co. of Baltimore v. Logan, 166 S. W. 1132; Smith v. McBryde, 173 S. W. 234.

Art. 3786. (2396) (2336) "Homestead" defined.—The homestead of a family, not in a town or city, shall consist of not more than two hundred acres of land, which may be in one or more parcels, with the improvements thereon; the homestead in a city, town or village, consisting of a lot or lots, not to exceed in value five thousand dollars at the time of their designation as a homestead, without reference to the value of any improvements thereon; provided, that the same shall be used for the purposes of a home, or as a place to exercise the calling or business of the head of a family; provided, also, that any temporary renting of the homestead shall not change the character of the same when no other homestead has been acquired. (Acts 1897, p. 131; Const., art. 16, sec. 51.)

See Sayles' Practice, pp. 799, 1196; Speer's Marital Rights, p. 499; Herron's Probate Guide, pp. 209 et seq.; Wallis v. Wendler, 65 S. W. 44; Lewis v. Goldthwaite Nat. Bk., 81 S. W. 797; Haile v. Haile, 93 S. W. 435; McCracken v. Taylor, 146 S. W. 693; American Bonding Co. of Baltimore v. Logan, 166 S. W. 1132; Witt v. Teat, 167 S. W. 302; General Bonding & Casualty Ins. Co. v. Trabue, 174 S. W. 689; Ridling v. Murphy, 191 S. W. 206.

Art. 3787. (2396) (2336) Proceeds of sale of homestead exempt for six months.—The proceeds of the voluntary sale of the homestead shall not be subject to garnishment or forced sale within six months after such sale. (Id.)

See citations under art. 3786.

Art. 3788. (2397) (2337) Property exempt to others than families.—The following property shall be reserved to persons who are not constituents of a family, exempt from attachment, execution and every other species of forced sale:

1. A lot or lots in a cemetery, held for the purpose of sepulture.
2. All wearing apparel.
3. All tools, apparatus and books belonging to any trade or profession.
4. One horse, saddle and bridle.
5. Current wages for personal services. (Acts 1870, p. 127, sec. 2; P. D. 6834; Const., art. 16, sec. 28.)

See Sayles' Practice, p. 799; Smith v. Horton, 46 S. W. 401; McCord-Collins Co. v. Lazarus, 50 S. W. 1048; Stone v. Schneider-Davis Co., 112 S. W. 133; Mitchell v. Western Casualty & Guaranty Ins. Co., 163 S. W. 630.

Art. 3789. (2398) (2338) Ferryboat, etc.—There shall be reserved to every ferryman exempt from attachment, execution and every other species of forced sale, except as hereinafter provided, one ferryboat, keel or flatboat, used as a ferryboat, with the necessary tackle for operating the same, not exceeding in value five hundred dollars; but such exemption shall not apply to any recovery for damages sustained by the negligence or other improper conduct on the part of such ferryman. (Act 1858, p. 21, sec. 1; P. D. 3802.)

Art. 3790. (2399) (2339) Public property of counties, cities and towns exempt.—The property of counties, cities and towns, owned and held only for public purposes, such as public buildings and the sites therefor, fire engines and the furniture thereof, and all property used and intended for extinguishing fires, public grounds and other property devoted exclusively to the use and benefit of the public, shall also be exempt from forced sale; provided, that nothing herein shall prevent the enforcement of the vendor's lien, the mechanic's or builder's lien, or other liens existing on the eighteenth day of April, 1876,

when the existing constitution went into effect. (Const., art. 9, sec. 9.)

Art. 3791. (2400) (2340) Public libraries.—All public libraries shall be exempt from attachment, execution and every other species of forced sale. (Acts 1870, p. 127, sec. 2; P. D. 6834.)

Art. 3792. (2401) (2341) Homestead exemption does not apply, when.—The exemption of the homestead provided for in this chapter shall not apply where the debt is due:

1. For the purchase money of such homestead or a part of such purchase money.
2. For taxes due thereon.
3. For work and material used in constructing improvements thereon; but in this last case such work and material must have been contracted for in writing, and the consent of the wife, if there be one, must have been given in the same manner as is by law required in making a sale and conveyance of the homestead. (Const., art. 16, sec. 50.)

See post, art. 5631; ante, art. 3427; Sayles' Practice, p. 799; Speer's Marital Rights, p. 828.

Art. 3793. (2402) (2342) Exemptions not to override claims for rent, etc.—The exemption of personal property provided for in this chapter shall not apply when the debt is due for rents and advances made by a landlord to his tenant, under the provisions of title eighty, or to other debts which are secured by a lien on such property. (Acts 1874, p. 56, sec. 1.)

See Sayles' Practice, pp. 799, 1195.

CHAPTER TWO

EXCESS OVER HOMESTEAD, ETC., HOW SET APART AND SUBJECTED TO EXECUTION

Art. 3794. (2403) (2343) Voluntary designation of, and who may set aside, homestead in the country.—When the homestead of a family, not being in a town or city, is a part of a larger tract or tracts of land than is exempt from forced sale as such homestead, it shall be lawful for the head of the family to designate and set apart the homestead, not exceeding two hundred acres, to which the family is entitled under the constitution and laws of this state. (Acts 1873, p. 64, sec. 1 et seq.; P. D. 6994a et seq.)

See Sayles' Practice, p. 1196; Speer's Marital Rights, p. 505; Wilder v. McConnell, 43 S. W. 807; Affleck v. Wangemann, 55 S. W. 312; Brin v. Anderson, 60 S. W. 778; McGaughey v. American Nat. Bk., 92 S. W. 1004; Morris v. Pratt, 116 S. W. 646; Hughes v. Hughes, 170 S. W. 847.

Art. 3795. (2404) (2344) Mode of setting it apart.—The party desiring so to designate and set apart the homestead shall file for record with the clerk of the county court of the county in which the land, or a part thereof, may be, an instrument of writing containing a description by metes or bounds, or other sufficient description to identify it, of the homestead so claimed by him, stating the name of the original grantee and the number of acres, and, if more than one survey, the number of acres in each.

Morris v. Pratt, 116 S. W. 646; Hughes v. Hughes, 170 S. W. 847.

Art. 3796. (2405) (2345) Instrument to be recorded, etc.—Such instrument shall be signed by the party and acknowledged or proved as other instruments for record, and shall state that the party has designated and set apart as his homestead the tract or tracts of land so claimed by him; and such instrument shall be recorded by the clerk in the record of deeds of said county.

See McGaughey v. American Nat. Bank, 92 S. W. 1004; Morris v. Pratt, 116 S. W. 646.

Art. 3797. (2406) (2346) Excess over homestead subject to execution.—Where the owner of such a homestead, part of a larger tract, as is described in article 3794, has failed to designate and set apart his homestead as provided in the three preceding articles, the excess of such tract or tracts of land over and above the homestead exemption may be partitioned and separated from such homestead and subjected to levy and sale under execution, if otherwise subject, as hereinafter directed. (Id.)

See Beall v. Hollingsworth, 46 S. W. 881.

Art. 3798. (2407) (2347) Owner to be notified to set apart, etc.—The sheriff or constable holding an execution against the owner of such excess of land, over and above his exempted homestead, and not separated and partitioned therefrom, may, on his own motion, and shall, if required by the plaintiff in execution, his agent or attorney, notify the defendant in execution to designate and set apart his homestead from the remainder of the land so owned and occupied by him, and that on his failure to do so within ten days the sheriff or constable will proceed to have such partition made as provided by law. (Id.)

Art. 3799. (2408) (2348) Notice, what.—The notice mentioned in the preceding article shall be written or printed, and shall be signed by the sheriff or constable. (Id.)

Art. 3800. (2409) (2349) Service of notice.—Such notice may be served on the defendant by the sheriff or constable by reading the same to him, or by leaving a copy of the same at his place of residence, with some person over fourteen years of age. (Id.)

Art. 3801. (2410) (2350) Return of service.—The sheriff or constable shall return said notice to the court from which the execution issued, with his return indorsed thereon, showing how he executed the same. (Id.)

Art. 3802. (2411) (2351) Return prima facie evidence.—The notice and return indorsed thereon shall be filed by the proper officer of the court, and shall be prima facie evidence of the facts stated. (Id.)

Art. 3803. (2412) (2352) Defendant may designate his homestead.—On the service of such notice, the defendant in execution shall have the right, within ten days thereafter, to designate and set apart his homestead from any excess of land owned by him, and deliver the same to the sheriff or constable. (Id.)

Art. 3804. (2413) (2353) Mode of making designation by defendant.—The designation and setting apart so made by the defendant shall be such as is required by articles 3795 and 3796. (Id.)

Art. 3805. (2414) (2354) Designation to be recorded.—The sheriff or constable shall deliver the designation or setting apart of the homestead so made to the clerk of the county court of the county in which such homestead, or a part thereof, is, and such clerk shall forthwith record the same in the record of deeds of his said county. (Id.)

Art. 3806. (2415) (2355) Effect of, when made by defendant.—Such designation and setting apart of the homestead made by the defendant under any of the preceding articles shall operate as a relinquishment of all right of homestead in the excess of land so partitioned from the homestead, and shall be binding on the defendant, and all others in privity with him, and the same, or a certified copy of the record thereof, shall be admitted in evidence of the facts stated therein. (Id.)

See Speer's Marital Rights, p. 505.

Art. 3807. (2416) (2356) Defendant failing, officer to appoint commissioners.—If the defendant in execution shall fail or refuse, within ten days after such notice, to so designate and set apart his homestead, the sheriff or constable holding such execution shall, at the earliest practicable time, summon either verbally or in writing three disinterested freeholders of the county, neighbors of the defendant in execution, as commissioners to designate for the defendant his homestead. (Id.)

Art. 3808. (2417) (2357) Commissioners to designate homestead.—The commissioners shall, as soon as practicable, proceed to partition the homestead of the defendant from the remainder of the tract or tracts, and may, if they deem it necessary, call in a surveyor to assist them. The action of such commissioners shall be reduced to writing and signed by them, or a majority of them, and shall be sworn to before some officer authorized to administer oaths, which shall be sufficient to admit the same to record. (Id.)

Art. 3809. (2418) (2358) Requisites of designation by commissioners.—The designation of the homestead by such commissioners shall contain all the requisites prescribed for a designation and setting apart by the defendant, and, in addition thereto, shall state that the commissioners making the same were summoned by the sheriff or constable holding said execution to perform such duty and that the designation of the homestead made by them is fair and just to the best of their judgment and belief. (Id.)

Art. 3810. (2419) (2359) To be returned and recorded; effect of.—The commissioners shall return their said designation to the sheriff or constable, who shall deliver the same to the clerk of the county court to be recorded; and such designation, or a certified copy thereof, shall have the same effect as if the defendant had made the same under the provisions of this chapter. (Id.)

Art. 3811. (2420) (2360) Sheriff's return.—Whenever a homestead is designated under the provisions of this chapter, the sheriff or constable holding said execution shall make due return thereon, showing:

1. That notice to designate his homestead was given to the defendant in execution, referring to said notice and return thereon, which shall be returned with said execution.

2. That the designation of his homestead was delivered to him by the defendant, and has been filed by him with the county clerk, stating the dates of such delivery and filing.

3. If the defendant has failed or refused to deliver to him the designation of his homestead within the time prescribed by law, the return shall show that fact, and also that commissioners were duly appointed by him, and that the designation made by such commissioners was filed by him with the clerk of the county court, stating the times when said acts were done; and such return shall be prima facie evidence of the facts therein stated. (Id.)

See Sayles' Practice, p. 1195.

Art. 3812. (2421) (2361) Compensation of commissioners and surveyor.—The commissioners shall be entitled to receive for their services the sum of two dollars per day, and the surveyor the sum of five dollars per day, to include pay for chain carriers. (Id.)

Art. 3813. (2422) (2362) Fees of clerk, etc.—The sheriff or constable and clerk shall, for their services, be entitled to such fees as are, or may be, allowed by law. (Id.)

Art. 3814. (2423) (2363) Fees, etc., taxed as costs.—Such fees and expenses shall be taxed as part of the costs of the execution against the defendant and collected as other costs. (Id.)

See Sayles' Practice, p. 1196; State v. Hart, 70 S. W. 947.

Art. 3815. (2424) (2364) Excess to be sold.—Whenever the homestead of the defendant in execution has been designated in either of the modes prescribed in this chapter, the officer holding said execution may proceed to sell the excess over and above the homestead, in accordance with the law governing sales under execution. (Id.)

Art. 3816. (2425) (2365) Defendant may change, etc., but, etc.—The defendant may, at any time after his homestead has been designated and set apart in either of the modes pointed out in this chapter, change the boundaries of his said homestead by an instrument executed and recorded in the manner provided for in articles 3795 and 3796, but such change shall not impair the rights of parties acquired prior to such change.

See Speer's Marital Rights, p. 506; Smith v. Van Slyke, 139 S. W. 619.

Art. 3817. (2426) (2366) Provisions of this chapter cumulative.—The provisions of this chapter in regard to the designation of the homestead are cumulative, and shall not be construed so as to interfere with, or abrogate, any other mode or remedy now known to the law for subjecting the excess of the homestead tract of land over and above the exemption to forced sale, or any mode known to the law for producing partition by the purchaser at such execution sale, between himself and the owner of the homestead. (Id.)

See Beall v. Hollingsworth, 46 S. W. 881.

Art. 3818. (2427) (2367) Personal property may be designated, etc.—Where there is more personal property of the same kind than is exempt from execution, the head of the family, or other person entitled to such exemption, may point out the portions to be levied on; but, if he fails to do so within a reasonable time after being requested by the officer holding the execution, such officer may make the selection for himself; but such notice shall only be necessary when the defendant is at the time to be found within the county.

See Sayles' Practice, p. 1196; Hall v. Miller, 51 S. W. 36.

TITLE 56

EXPRESS COMPANIES

For duties of railroads to and remedies for failure to perform, see "Railroads."

Art. 3819. (2428) Express companies declared common carriers and duties defined.—Every person, firm or corporation which shall do the business of an express company, upon railroads or otherwise, in this state, by the carrying of any kind of property, money, papers, packages or other things, are hereby declared to be common carriers, and shall receive, safely carry and promptly deliver at the express office nearest destination every such article as may be tendered to them, and in the carriage of which they are engaged; provided, that no such company shall be compelled to carry any gunpowder, dynamite, kerosene, naphtha, gasoline, matches or other dangerous or inflammable oils, acids or materials, except under such regulations as may be prescribed by the railroad commission. It shall be unlawful for any person firm or corporation so engaged to demand or receive for such services other than reasonable compensation. (Acts 1891, p. 48, sec. 1.)

Art. 3820. (2429) Railroad commission to regulate rates, etc.—The railroad commission of the state of Texas shall have power, and it shall be its duty, to fix and establish reasonable and just rates of charges for each class or kind of property, money, papers, packages and other things to be charged for and received by each express company on all such property, money, papers, packages and things which, by the contract of carriage, are to be transported by such express company between points wholly within this state, which rates or charges may be made to apply to all such companies, and may be changed or modified by said commission from time to time in such manner as may become necessary. Said commission shall have the same power to make and prescribe such rules and regulations for the government and control of such express companies as is, or may be, conferred upon said commission for the regulation of railroads. (Id. sec. 2.)

Art. 3821. (2430) Penalties against, and railroad commission to enforce.—Every express company doing business in this state which shall demand or receive a greater compensation than that which may be prescribed and fixed by the said railroad commission for the transportation of any class or kind of property, money, papers, packages or things, shall be deemed guilty of extortion, and shall forfeit and pay to the state of Texas a sum not to exceed five hundred dollars for each offense; provided, that, if it shall appear that such violation was not willful, said company shall have ten days to refund such overcharges or damages, in which case the penalty shall not be incurred. And the said commission shall have authority and it shall be its duty to sue for and recover the same in the same manner as may be prescribed by law for like suits against railroad companies. (Id. sec. 3.)

Art. 3822. (2431) Powers of commission over, same as over railroads.—The said commission shall have authority, and it shall be its duty to call upon such express companies for reports, and investigate their books in the same manner as may be prescribed by law for the regulation of railroad companies, and the said commission shall have power and authority to institute suits, sue out such writs and process as may be applicible and authorized for the regulation of railroad companies. All laws, rules and regulations made and prescribed for the government and control of railroads, in so far as they are applicable, shall be of equal force and effect against all express companies. (Id. sec. 4.)

Art. 3823. To keep general office in this state, etc.—Every incorporated express company shall keep a general office in this state, at some place on the line of its transportation, in which it shall keep its books, accounts and contracts, relating to express business, or copies thereof, embracing all books, papers and contracts, or copies thereof, showing the value of its property of all kinds, and the amount of all its receipts and disbursements on account of the express business done in this state. The books, papers and contracts required to be kept in said general office shall at all times be subject to inspection and examination by the officers of the state of Texas, and by any member or members of the railroad commission of Texas, or by its authorized agent, officer or employé. A failure to comply with any of the foregoing provisions of this article shall subject the offending company, and any officer, agent or employé of such company so offending, to a penalty of not less than one hundred nor more than five hundred dollars. And a failure to comply with the foregoing provision shall subject the company so offending to forfeit its charter and privileges of doing business as an express company in this state. The railroad commission of Texas shall report to the attorney general of the state the name of any company, and the officers, agents or employés thereof, violating any of the provisions of this and of articles 3824 and 3825, and any suits to recover the penalties herein prescribed, or to forfeit the charter of such express company doing business in this state, shall be instituted and prosecuted in a court having jurisdiction, in the county of Travis, in the state of Texas, by the attorney general of the state. (Acts 1897, p. 14, sec. 1.)

Art. 3824. To furnish information to railroad commission.—Any incorporated express company with its principal office in another state, and doing business as such express company in this state, is hereby required to provide and keep, in its general office in this state, a copy of its charter, and to make full annual statements of the value of all its property, including a like statement of all its indebtedness, and of all its annual receipts and expenditures as such express company, to the railroad commission of Texas, at such time or times as may be prescribed by it; which statement shall be certified to be correct, and shall be sworn to by the president and secretary, or general manager in Texas, of such company; and such company shall permit any member or members of the railroad commission of Texas, or its authorized agent, to freely examine any and all books, papers and contracts, in said office; and, should any such company, or any person in charge of said office refuse to permit such examination, this shall be sufficient

ground for the withdrawal, by this state, of its privilege of doing business as such express company in this state; and it shall be the duty of the attorney general of the state to institute and conduct suits for that purpose in a court having jurisdiction in Travis county, in the state of Texas. (Id. sec. 2.)

Art. 3825. To give notice of place of general office.—Every express company doing business as such in this state shall, within ninety days after the passage of this act, establish the general office provided for in this act, at some point on their line of transportation in this state, and shall immediately give notice in writing to the railroad commission of Texas of the place at which such general office is located, and shall, at the same time, give notice in writing to the said commission of the name and official designation of the person or persons, officer or officers, charged with the management of such general office, and shall, from time to time, give like notices in writing of any change of location of such general office, or of the person or persons, officer or officers, charged with the management. A failure to comply with any of the provisions of this article shall be sufficient cause for withdrawing from such express company the privilege of doing business as such in this state. (Id. sec. 3.)

TITLE 57

FACTORS AND COMMISSION MERCHANTS

Art. 3826. Commission merchant defined.—Any person, firm or corporation pursuing, or who shall pursue, the business of selling produce, or goods, wares or merchandise of any kind upon consignment for a commission, shall be deemed to be a commission merchant. (Acts 1907, p. 61, sec. 1.)

Art. 3827. Bond of.—Every commission merchant is hereby required to make bond in the sum of three thousand dollars, entered into with two or more good and sufficient sureties, who are residents of this state, and who shall make affidavit before some officer authorized to administer oaths, that they in their own right, over and above all exemptions, are worth the full amount of the bond they sign as sureties, payable to the county judge of each county in which such commission merchant maintains an office, and to the successors in office of such county judge as trustees for all persons who may become entitled to the benefits of this Act; conditioned that such commission merchant will faithfully and truly perform all agreements and contracts entered into with consignors for said produce, goods, wares or merchandise, that said commission merchant will promptly receive and sell such produce, goods, wares or merchandise, and will on receipt of such produce, goods, wares or merchandise class the same, and if such class as made by such commission merchant is not as high as that made and sent to him by the consignor, he (the commission merchant), will immediately notify the consignor of such fact and of the class made by him; and, as soon as sold will send to the consignor a full and complete account of sales of same, giving an itemized account thereof, and the price received, the dates of sales, and shall, within five days after said produce, goods, wares or merchandise are sold, send to the consignor the full amount received for the same, less the commission due said commission merchant under the contract of consignment, which bond shall be approved by the county judge of the county in which said commission merchant maintains an office, and by said county judge filed for record in the county clerk's office as chattel mortgages are now authorized to be filed by law; provided, that any commission merchant may be bonded under the provisions of this Act by a solvent surety company, doing business in this state, to be approved by the county judge under the provisions of this article. (Acts 1907, p. 61, sec. 2. Acts 1913, p. 178, sec. 1, amending Art. 3827, Rev. St. 1911.)

Art. 3828. Bond made where; suit in same county.—Such bond shall be made and filed for record in each county in which such commission merchant maintains an office, and in which county suits may be maintained upon such bond by any person claiming to have been damaged by a breach of its condition; provided, that said bond shall not become void upon the first recovery thereon, but may be sued upon until the amount thereof is exhausted; provided, however, that when said bond by suits of recovery has been reduced to the sum of fifteen hundred dollars, that said commission merchant shall be required to enter into a new bond in the sum of three thousand dollars as required in the first instance under the provisions of this chapter; which said new bond shall be liable for all future contracts, agreements or consignments thereafter entered into by said commission merchant and consignor of such produce, cotton, sugar, goods, wares or merchandise, and upon failure of said commission merchant to give said new bond, as above required, he shall cease doing business in this state; provided any commission merchant, as herein defined, who shall engage in business as such commission merchant, without first making and filing the bond provided for in articles 3827 and 3828, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars. (Acts 1913, p. 178, sec. 1, amending Art. 3828, Rev. St. 1911.)

Art. 3829. (2432) Factors, etc., prohibited from being interested in their own sales.—No factor or commission merchant, to whom any cotton, sugar, produce or merchandise of any kind is consigned, for sale on commission or otherwise, shall purchase the same or reserve any interest whatever therein upon the sale of the same, either directly or indirectly, in his own name or in the name or through the instrumentality of another, for his own benefit or for the benefit of another, or as factor or agent of any other person, without express license from the owner or consignor of such cotton, sugar, produce or other merchandise, or some person authorized by him, given in writing so to do, under a penalty of forfeiture of one-half the value of cotton, sugar, produce or other merchandise so purchased or sold, to be recovered by the owner of the same by suit before any court of competent jurisdiction in the county where the sale took place,

or wherein the offending party resides. (Act Feb. 11, 1860. P. D. 3803.)

Art. 3830. Factor to render account of sales and give particulars under penalty. —Upon the shipment of any produce, cotton, sugar, goods, wares or merchandise, consigned for sale to any factor or commission merchant, it is hereby made his duty that such commission merchant will faithfully and truly perform all agreements and contracts entered into with consignors for said produce, cotton, sugar, goods, wares an [and] merchandise; that said commission merchant will promptly receive and sell such produce, cotton, sugar, goods, wares or merchandise, in accord with the contract of consignment and will on receipt of such produce, cotton, sugar, goods, wares or merchandise class the same, and if such class as made by such commission merchant is not as high as that made and sent to him by the consignor, he, (the commission merchant), will immediately notify the consignor of such fact and of the class made by him and as soon as sold will send to the consignor a full and complete account of sales of same, giving an itemized account thereof, and the price received, the dates of sales, and shall, within five days after said produce, cotton, sugar, goods, wares or merchandise are sold, send to the consignor the full amount received for the same, less the commission due said commission merchant under the contract of consignment; ,and if cotton, sugar, or other produce sold by weight, the weight of the same in gross, and the tare allowed, and be accompanied by the certificate or memorandum, signed by the weigher who weighed the same, of the weight and condition as required by law, and upon failure of the said commission merchant to comply with any one of the provisions of this article, he and the bondsmen required by this chapter shall be liable for all actual damages incurred by the consignor by reason thereof, and in addition thereto a penalty of not less than one hundred dollars nor more than five hundred dollars, to be recovered by the consignor in a suit filed for said actual damages and for said penalty. (Act Feb. 11, 1860. P. D. 3804. Acts 1913, p. 178, sec. 1, amending Art. 3830, Rev. St. 1911.)

Art. 3831. (2434) No charge allowed for mending, etc., unless same has been actually done.—No commission merchant or factor shall be permitted to make any charge for mending, or patching, or roping bales, or for cooperage or repairing bales, or for labor, or hauling, or cartage, or for storage, marking or weighing, unless the same has been actually done; and, in case of any such charge, a bill of particulars shall be rendered notwithstanding any usage or custom to the contrary to make such charge, by rate or average; and the person offending against the provisions of this chapter shall be liable to a penalty of not more than five hundred nor less than one hundred dollars, to be recovered by the owner or consignor, as in the two preceding articles. (Id. P. D. 3805.)

Art. 3832. (2435) Drawbacks, rebates, etc., prohibited.—All drawbacks and rebatement of insurance, freight, transportation, carriage, wharfage, storage, compressing, baling, repairing, or for any other kind of labor or service, of or to any cotton, grain or any other produce or article of commerce, paid or allowed, or contracted for, to any common carrier, shipper, merchant, commission merchant, factor, agent or middleman of any kind, not the true and absolute owner thereof, are forever prohibited. (Const., art. 16, sec. 25.)

Art. 3832a. Prescribing the duties of a shipper.—Every consignor of produce, goods, wares or merchandise in this state consigning produce, goods, wares, merchandise to commission merchants to be sold on commission shall, when he consigns such produce, goods, wares or merchandise, send to such commission merchant a written statement in which such consignor shall state the amount, the quality or class, the condition of such produce, goods, wares or merchandise so consigned, and if said commission merchant, on receipt of same, fails to promptly notify said consignor of any objection he may have to the class, quality or quantity so consigned, then such statement shall be prima facie evidence of the fact that said consignment of such produce, goods, wares or merchandise is truly stated in said statement by the consignor to said commission merchant, provided further, that when such produce, goods, wares or merchandise is received by said commission merchant, such commission merchant shall give to the agent of the railroad or other carrier so delivering such produce, goods, wares or merchandise, a receipt for same which receipt shall state the quality, quantity, grade and condition of such produce, goods, wares or merchandise, and said agent of the railroad or other carrier shall keep such receipt on file in his office subject to the inspection of any one interested in such shipment, for six months from the date of such receipt. (Acts 1913, p. 178, sec. 1, amending Title 57, Rev. St. 1911.)

This article was added as art. 3833. It is designated here as art. 3832a to avoid confusion with art. 3733, post.

Art. 3832b. Not to apply to cotton, etc. —None of the provisions of this bill shall apply to cotton, and nothing herein shall be construed as repealing or affecting any existing laws touching the subject of commission merchants or brokers as the same relates to the handling of cotton. (Id. sec. 1a.)

Art. 3832c. Livestock commission merchants defined.—That any person, firm or corporation pursuing or who shall pursue the business of selling livestock, cattle, cows, calves, bulls, steers, hogs, sheep, mules, horses, jacks and jennets, or any of them upon consignment for a commission or other charges, or who shall solicit consignments of live stock as a commission merchant or who shall advertise or hold himself out to be such, shall be deemed and held to be a livestock commission merchant within the meaning of this Act. (Acts 1913, p. 93, sec. 1.)

Art. 3832d. Bond of.—That all livestock commission merchants be and they are hereby required to make bond each in the sum of $10,000.00 entered into with two or more good and sufficient sureties, who are residents of this state, or some surety company duly and legally authorized to do business in this state, payable to the county judge of the county in which such livestock commission merchant resides or has his principal office, and to his successors in office, as trustees for all persons who may become entitled to the benefits of

this Act, such bond to be filed in the county where such commission merchant has his principal office or place of business, in which county suits may be maintained on such bond and such bond shall be conditioned that such livestock commission merchant will faithfully and truly perform all agreements entered into with consignors with respects to receiving, handling, selling and making remittances and payments made to him, which bond shall be approved by the county clerk of the county in which such livestock commission merchant resides, or has principal office and by him, be filed and recorded. (Id. sec. 2.)

Art. 3832e. Suits on bond.—That the bond provided for by the preceding section may be sued upon and recovery had thereon by any person claiming to have been damaged by a breach of its conditions; provided, that said bond shall not become void upon the first recovery thereon, but may be sued upon until the amount thereof is exhausted. That upon the exhaustion of said bond by recoveries thereon, said livestock commission merchant shall be required to make and file a new bond conditioned as provided in section 2 [Art. 3832d] hereof. (Id. sec. 3.)

Art. 3832f. New bond required, when.—That if it shall come to the knowledge of the said county judge or the county clerk that either or all of the sureties on said bond are, or may become insolvent, then it shall be the duty of said county judge or said county clerk to require said live stock commission merchant to enter into, execute and deliver a new bond, as herein provided for. (Id. sec. 3a.)

Art. 3832g. Bond filed, where; fees.—The bond herein mentioned shall be filed and kept by the county clerk of the county where filed, who shall receive the sum of fifty cents for each such bond, same to be paid by such commission merchant. (Id. sec. 5.)

Art. 3832h. Laws not repealed.—It is expressly declared that none of the provisions of title 57 of the Revised Civil Statutes of 1911 [Arts. 3826–3832], are affected or in anywise modified or repealed by the provisions of this Act. (Id. sec. 6.)

Art. 3832i. Laws repealed.—That all laws and parts of laws in conflict herewith be, and the same are hereby repealed. (Id. sec. 7.)

TITLE 57½

FEDERAL FARM LOAN BONDS

Art. 3832½. Investments and public deposits.—That hereafter all bonds issued under and by virtue of the Federal Farm Loan Act, approved by the President of the United States July 17, 1916, which is "An Act to provide capital for agricultural development, to create standard forms of investments based upon farm mortgages; to equalize rates of interest upon farm leans [loans], to furnish a market for United States bonds, to create Government depositaries and financial agents for the United States, and for other purposes," shall hereafter be lawful investment for all fiduciary and trust funds in this State and may be accepted as security for all public deposits where deposits of bonds or mortgages are authorized by law to be accepted; such bonds shall be lawful investment for all funds which may be lawfully invested by guardians, administrators, trustees and receivers, for savings departments of banks incorporated under the laws of Texas, for banks, savings banks and trust companies chartered under the laws of Texas, and for all insurance companies of every kind and character chartered or transacting business under the laws of Texas, where investments are required or permitted by the laws of this State; provided, further, that where such bonds are issued against and secured by promissory notes or other obligations, the payment of which is secured by mortgage, deed of trust or other valid lien upon unencumbered real estate situated in this State, then such bond or bonds so issued and so secured shall be regarded for investment purposes by insurance companies as "Texas securities," within the meaning of the laws of this State governing such investments. (Acts 1917, ch. 63, sec. 1.)

TITLE 58

FEES OF OFFICE

CHAPTER ONE

CERTAIN STATE OFFICERS

1. GENERAL PROVISIONS

Art. 3833. (2436) (2372) Secretary of state, commissioner general land office, and other officers to furnish copies and certificates.—It shall be the duty of the secretary of state, commissioner of the general land office, comptroller, treasurer, commissioner of agriculture, commissioner of insurance and banking, state librarian, adjutant general, and attorney general to furnish any person who may apply for the same with a copy of any paper, document or record in their respective offices, and also to give certificates, attested by the seals of their respective offices, certifying to any fact or facts contained in the papers, documents or records of their offices, to any person applying for the same. (Acts March 20, 1848; P. D. 3806.)

Art. 3834. (2437) (2373) Fees of such officers for copies and certificates.—It shall be lawful for the officers named in the preceding article to demand and receive the following fees for the services mentioned therein, except as otherwise specially provided in this chapter: (Acts 1907, p. 283, P. D. 3807.)

For copies of any paper, document, or record in their offices, in the English language, including certificate and seal, for each hundred words	$ 15
For copies of any paper, document or record in their offices, in any other language than the English, including certificate and seal, for each hundred words	25
For each translated copy of any paper, document, or record in their offices, including certificate and seal, for each hundred words	30
For the copy of any plat or map in their offices, such fee as may be established by the officer in whose office the same is made, to be determined with reference to the amount of labor required	
For each certificate not otherwise provided for	50

See post art. 3842.

Art. 3835. (2438) (2374) Shall not charge officers of state for copies.—Nothing contained in the two preceding articles shall authorize either of the officers therein named to demand or receive fees from any officer of the state for copies of any papers, documents, or records in their offices, or for any certificate in relation to any matter in their offices when such copies or certificates are required in the performance of any of the official duties of such officer. (Id; P. D. 3810.)

Art. 3836. (2444) (2379) Shall keep fee book and render account of fees quarterly.—It shall be the duty of the secretary of state, commissioner of the general land office, comptroller, treasurer, commissioner of agriculture, commissioner of insurance and banking, state librarian, adjutant general and attorney general, respectively, to keep fee books in their several offices in which they shall enter all the fees received for any of the services named in this chapter; and they shall quarterly file with the comptroller an account of all fees so received by them respectively; which account shall be verified by the affidavit of the officer rendering the same; and such officers shall also, at the end of each quarter, pay over to the treasurer of the state all money received by them respectively under the provisions of this chapter. (Acts March 20, 1848; P. D. 3808.)

2. SECRETARY OF STATE

Art. 3837. (2439) Fees of state department.—The Secretary of State, besides other fees that may be prescribed by law, is authorized and required to charge for the use of the State the following fees:

For each and every charter, amendment or supplement thereto of a private corporation created for the purpose of operating or constructing a railroad, magnetic telegraph line or street railway or express company, authorized or required by law to be recorded in said department, a fee of two hundred dollars to be paid when said charter is filed; provided, that if the authorized capital stock of said corporation shall exceed one hundred thousand dollars, it shall be required to pay an additional fee of fifty cents for each one thousand dollars authorized capital stock, or fractional part thereof, after the first one hundred thousand; and provided further that such fee shall not exceed the sum of twenty-five hundred dollars.

For each and every charter, amendment or supplement thereto, of a private corporation intended for the support of public worship, any benevolent, charitable, educational, missionary, literary or scientific undertaking, the maintenance of a library, the promotion of painting, music or other fine arts, the encouragements of agriculture or horticulture, the maintenance of public parks, the maintenance of a public cemetery not for profit, a fee of ten dollars to be paid when the charter is filed.

For each and every charter, amendment or supplement thereto, of a private corporation created for any other purposes intended for mutual profit or benefit, a fee of fifty dollars shall be paid when said charter is filed, provided that if the authorized capital stock of said corporation shall exceed ten thousand dollars, it shall be required to pay an additional fee of ten dollars for each additional ten thousand dollars of its authorized capital stock, or fractional part thereof, after the first, and provided further that such fee shall not exceed the sum of twenty-five hundred dollars.

For each commission to every officer elected or appointed in this State, a fee of one dollar; and each and every State, district county and precinct officer elected or appointed in this State is required to apply for and receive his commission; provided, that the Secretary of State shall not be required to forward copies of laws to nor attest the authority of any officer in this State who fails or refuses to take out his commission as required herein.

For each official certificate, a fee of one dollar.

For each warrant of requisition, a fee of two dollars.

For every remission of fine or forfeiture, one dollar.

For copies of any paper, document or record in his office, for each one hundred words, fifteen cents.

For each and every charter, amendment or supplement thereto taken out under Chapter 16, Title 25, Revised Statutes (channel and dock corporations), a fee of two hundred dollars shall be paid to the Secretary of State for the use and benefit of the State, which shall be paid when the charter, amendment or supplement thereto is filed for record; provided, that if the authorized capital stock of said corporation shall exceed one hundred thousand dollars, it shall be required to pay an additional fee of fifty cents for each one thousand dollars of its authorized capital stock, or fractional part thereof, in excess of one hundred thousand dollars; and provided further that such fee shall not exceed the sum of twenty-five hundred dollars.

Each and every foreign corporation that files with the Secretary of State a certified copy of its articles of incorporation and any amendments thereto and obtains a permit to do business in this State, and each and every foreign corporation now holding a permit to do business in this State, or shall hereafter obtain a permit to do business in this State, that shall subsequently file with the Secretary of State, a certified copy of any amendment or supplement to its articles of incorporation, such corporation shall pay to the Secretary of State as filing fees the following: fifty dollars for the first ten thousand dollars of its capital stock actually subscribed, and ten dollars for each additional ten thousand dollars or fractional part thereof; provided that in no event shall such fee exceed the sum of twenty five hundred dollars; provided that each and every foreign corporation having a permit to do business in this State, shall be required to immediately file with the Secretary of State, of Texas, a certified copy of any amendment or supplement to its original Articles of incorporation, when any such amendment or supplement to its original Articles of incorporation is filed in the State, Territory or Foreign Country, under whose laws such corporation is incorporated, after such permit is granted; provided, that the fee required to be paid by any foreign corporation for a permit to engage in the manufacture, sale, rental, lease or operation of all kinds of cars, or to en-

gage in conducting, operating or managing any telegraph line in this State, shall in no event exceed the sum of twenty-five hundred dollars. (Acts 1907, S. S. p. 500; Acts 1905, p. 135; Acts 1887, p. 93; Acts 1889, p. 93; Acts 1889, p. 87; Acts 1883, p. 72; Acts 1909, S. S. p. 267; Acts 1917, ch. 85, sec. 1; Acts 1919, ch. 45, sec. 1.)

Prior act held unconstitutional. See Crane Co. v. Looney, 218 Fed. 260.

Art. 3838. Minimum fees in certain cases.—The minimum fee for any foreign building and loan company shall be two hundred and fifty dollars; provided, further, that the fee required to be paid by any foreign corporation for a permit to do the business of loaning money in this state shall in no event exceed one thousand dollars. (Acts 1909, S. S., p. 267.)

Art. 3839. Pending suit not affected.—Nothing in this chapter, nor in articles 1315 and 1316, shall in anywise affect any suit now pending in the name, or in behalf of, the state of Texas, as against any foreign corporation. (Id.)

Art. 3840. Fees paid in advance to secretary and by him to treasury monthly.—All fees mentioned in articles 3837 and 3838 shall be paid in advance into the office of the secretary of state, and shall be by him paid into the state treasury monthly. (Id.)

3. ATTORNEY GENERAL

Art. 3841. (2440) (2375) Fees of attorney general.—The attorney general shall be entitled to the following fees:

For each affirmance of judgment in cases to which the state may be a party involving pecuniary liabilities to the state, ten per cent on the amount collected if under one thousand dollars, and five per cent for all above that sum, to be paid out of the money when collected.

For all cases involving the forfeiture of charters, heard on appeal before the supreme court or court of appeals, twenty-five dollars.

But the whole amount of fees allowed the attorney general shall not exceed the sum of two thousand dollars per annum, and the excess of such fees over two thousand dollars per annum shall be paid into the state treasury. (Acts 1876, p. 284, sec. 2.)

4. COMMISSIONER OF GENERAL LAND OFFICE

Art. 3842. (2441) (2376) Fees of commissioner of general land office.—The Commissioner of the General Land Office is authorized and required to charge for the use of the State the following fees, to wit:

Filing Fees.

Deed transferring one tract of land or a decree of Court relating to one tract of land	$ .50
Each additional tract in a deed or decree	.25
Affidavit of ownership	.50
Original field notes	1.00
Transfer of mineral claims, permits, relinquishments, leases [,] contracts, etc	1.00
Certificates of facts covering one tract of land	1.00
Each additional tract	.50
Certificate of occupancy on the home section	1.00
Each additional tract shown in a certificate on the home tract	$ .50
Each other certificate not otherwise provided for	.50

Certified Copies.

Certificate of the class of Toby Scrip	2.50
All other land certificates	1.00
Application for survey	1.00
Field notes	1.00
Mineral application	1.00
Mineral permit or mineral lease	2.00
Purchase application and obligation	1.25
Purchase application	1.00
Obligation for deferred payment on land	.50
File wrapper	1.00
Proof of occupancy	1.50
Deed, Bond for title, power of attorney, decree of court or other similar instrument	1.50
Patent	1.25
Affidavit of settlement, non-settlement and rebuttal affidavits, each	1.00
Other affidavits	1.00
Lease application or contract not exceeding five tracts	.75
Each additional tract add	.25
Letters and impressions of letters, one page	.50
Letters and impressions of letters more than one page	1.00
Extract of muster roll, traveling land board reports, clerks' returns relating to land certificates, patent delivery books, school land sales, records and books and other similar records, each	2.00
For copy of any record, document or papers in the English language not otherwise provided for herein 20 cents for each 100 words; provided that no charge shall be less than	1.00
Plain or certified copy of any other paper, document or record in any other language than the English, 40 cents for each 100 words; provided no charge shall be less than	1.00
Blue print, white print, or other cloth map of any county except lithograph	3.00
Lithograph map	.50
Plain or certified copy of a portion of a map or sketch or plat made by print or hand, and for a working sketch the charge shall be determined by the amount of material used and time consumed at the rate of, per hour	1.00
For examination of any filed papers, for each survey	.50
When an examination of the records of the General Land Office, other than maps or filed papers, is desired by one person or where search is necessary to compile information minimum fee to be charged of 50 cents, and if the examination is extended beyond thirty minutes an additional sum shall be charged at the rate of, per hour	1.00

Patent Fees.

Eighty acres or less	3.00
Each additional 80 acres or fractional part thereof contained in a patent	1.00

(Acts 1873, p. 176, P. D. 6844a; Acts 1907, p. 283; Acts 1919, ch. 48, sec. 1.)

See Acts 1879, ch. 55, for penalty for not paying fees and taking out patents.

5. COMPTROLLER

Art. 3843. (2442) (2377) Fees of comptroller.—The comptroller of public accounts shall charge the following fees:

For examinations in which the state, or any county, has no interest, for each hour or fraction of an hour spent in such examination	$ 50
For each sealed certificate issued	50

(Acts 1875, p. 182, sec. 2.)

6. COMMISSIONER OF INSURANCE AND BANKING

Art. 3844. (2443) (2378) Fees of commissioner of insurance and banking.—The commissioner of insurance and banking shall charge and receive for the use of the state the following fees, to-wit:

For filing each declaration or certified copy of charter of insurance company	$ 25 00
For filing the annual statement of an insurance company, or certificate in lieu thereof	20 00
For certificate of authority and certified copy thereof	1 00
For every copy of any paper filed in his department, for each folio	20
For affixing his official seal and certifying to the same	1 00
For valuing policies of life insurance companies, for each one million of insurance or fraction thereof	10 00
For official examination of companies under the law, the actual expenses incurred, and ten dollars a day, not to exceed	250 00

(Acts 1876, p. 223, sec. 12; Acts 1907, p. 127, sec. 16.)

7. RAILROAD COMMISSION

Art. 3845. Fees of railroad commission.—The railroad commission of Texas shall be, and it is hereby, authorized to charge fees for copies of all papers furnished by it, except such as may be furnished to some department of the state government, as follows:

For copies of any paper, document or record in its office, including certificate and seal, to be applied by the secretary, for each one hundred words, fifteen cents; provided, that this article shall not be so construed as to authorize the charging of such fees for railroad companies or other persons for tariff sheets for their own use, which such tariff sheets are in force.

The fees so charged and collected shall be accounted for by the secretary of the railroad commission and paid into the treasury as provided for in article 3836. (Acts 1899, p. 297.)

CHAPTER TWO

CLERKS OF THE SUPREME COURT AND COURTS OF CIVIL APPEALS

Art. 3846. (2445) (2380) Fees of clerk of supreme court.—The clerk of the supreme court shall receive the following fees:

Entering appearance of either party, in person or by attorney, to be charged but once	$ 50
Docketing each cause, to be charged but once	50
Filing the record in each cause	50
Entering each rule or motion	25
Entering the order of the court upon any rule or motion, or entering any interlocutory judgment	$ 50
Administering an oath or affirmation without a certificate	15
Administering an oath or affirmation and giving certificate thereof, with seal	25
Entering each continuance	20
Entering each final judgment or decree	1 00
Each writ issued	1 00
Making out and transmitting the mandate and judgment of the supreme court to any inferior court	1 50
Making copies of any papers or records in their offices, including certificate and seal, for each one hundred words	15
Recording the opinions of the judges, for each one hundred words	20
Taxing the bill of costs in each case with copy thereof	50
Issuing attorney's license	5 00

(Acts 1876, p. 285, sec. 4, modified by Acts 1893, p. 165.)

For fees of deputy clerks, see article 1536.

Art. 3847. (1011) Fees of clerks of courts of civil appeals.—The clerks of the courts of civil appeals shall receive as compensation for their services the following fees:

Entering appearances of either party, in person or by attorney, to be charged but once	$ 50
Docketing each cause, to be charged but once	50
Filing the record in each cause	50
Entering each rule or motion	25
Entering the order of court upon any rule or motion, or entering any interlocutory judgment	50
Administering an oath or affirmation, without a certificate	15
Administering an oath or affirmation and giving a certificate thereof with seal	25
Entering each continuance	20
Entering each final judgment or decree	1 00
Each writ issued	1 00
Making out and transmitting the mandate and judgment of the court to any inferior court	1 50
Making copies of any papers or records in their offices, including certificate and seal, for each 100 words	10
Recording the opinions of the judges, for each 100 words	15
Taxing the bill of costs in each case	50
Filing each brief, or other paper necessary to be filed	10
For certificate and seal, where same is necessary	50
Recording sheriff's return on execution	50
For issuing copies of each notice ordered by court	50

(Acts 1893, p. 8; Acts 1892, p. 33; Acts 1893, p. 165)

Art. 3847a. Salary of clerks of courts of civil appeals.—The Clerks of the Courts of Civil Appeals of Texas shall hereafter receive an annual salary of Three Thousand ($3,000.00) Dollars, payable in equal monthly installments and the same shall be paid out

of the general revenues of this State. (Acts 1919, ch. 78, sec. 1.)

Art. 3847b. Payment of costs collected into treasury.—Said Clerks of said Courts of Civil Appeals shall collect and pay into the Treasury of the State of Texas all costs to be, and that are, collected by him, under such laws as now exist or may hereafter be enacted, under such further rules and regulations as may be prescribed by the Comptroller, subject to the approval of the Judges of said Courts. (Id. sec. 3.)

Art. 3848. (2446) (2382) Compensation for services not provided for.—The clerks of the supreme court and courts of civil appeals for every service not herein provided for shall receive such fees as may be allowed by the court, not to exceed the fees herein allowed for services requiring a like amount of labor. (Act Aug. 23, 1876, p. 285, sec. 4.)

For provisions as to office rent, stationery, etc., of the clerks of the supreme court, courts of civil appeals and court of criminal appeals, see art. 3904.

CHAPTER THREE
COUNTY OFFICERS

1. COUNTY JUDGE

Art. 3849. (2447) (2383) Fees of county judge in probate matters.—The county judge shall receive the following fees in probate matters:

Probating a will	$2 00
Granting letters testamentary, of administration or of guardianship	50
Each order of sale	50
Each approval and confirmation of sale	50
Each decree refusing order of sale, or refusing confirmation of sale	50
Each decree of partition and distribution	2 00
Each decree approving or setting aside the report of commissioner of partition and distribution	2 00
Each decree removing an executor, administrator or guardian to be paid by such executor, administrator or guardian	1 00
Each fiat or certificate	50
Each continuance	10
Each order, not otherwise provided for	50
Administering oath or affirmation with certificate and seal	50
Administering oath or affirmation without certificate and seal	25

(Acts 1876, p. 284, sec. 6.)

Art. 3850. (2448) (2384) Commission allowed county judge.—There shall also be allowed the county judge a commission of one-half of one per cent upon the actual cash receipts of each executor, administrator or guardian, upon the approval of the exhibits and the final settlement of the account of such executor, administrator or guardian, but no more than one such commission shall be charged on any amount received by any such executor, administrator or guardian. (Id.)

Art. 3851. (2449) (2385) Fees in lunacy cases, etc.—For every case of lunacy disposed of by the county judge, he shall receive three dollars, to be paid out of the county treasury. For each civil cause finally disposed of by the county judge, by trial or otherwise, he shall receive a fee of three dollars, to be taxed against the party cast in the suit; provided, that, if the party cast in the suit has filed his oath of inability to pay costs during the progress of the cause, or be unable to pay costs, then the county judge shall be allowed by the county commissioners' court such compensation as they may deem proper, not to exceed three dollars for each state case. (Id.; Acts of 1879, ch. 81, p. 91.)

Art. 3852. (2450) (2386) Compensation for ex officio services.—For presiding over the commissioners' court, ordering elections and making returns thereof, hearing and determining civil causes, and transacting all other official business not otherwise provided for, the county judge shall receive such salary from the county treasury as may be allowed him by order of the commissioners' court. (Id.)

Art. 3853. (2451) (2387) Fees for testing weights and measures, etc.—For testing any steelyard, balance or beam, the county judge shall receive from the applicant a fee of fifty cents, and, for every weight or measure, ten cents. (P. D. 5358.)

Art. 3854. (2452) (2388) Fees for hiring out county convicts.—The county judge shall receive the following fees for hiring out county convicts, in all cases to be paid in advance by the party hiring a convict, the same to be repaid to the contractor or employer when demanded, out of the wages of such convict, viz.:

For every bond required to be taken	$1 00
For the examination and approval of each bond	50

(Acts 1876, p. 230, sec. 14.)

2. CLERKS OF THE DISTRICT COURT

Art. 3855. (2453) (2389) Fees of clerks of the district courts.—The clerks of the district courts shall receive for the following services in civil cases the following fees, to-wit:

For copy of petition including certificate and seal, each one hundred words	$ 20
Each writ of citation	75
Each copy of citation	50
Docketing each cause, to be charged but once	20
Every other order, judgment or decree, not otherwise provided for	75
Docketing each rule or motion, including rule for cost	15
Filing each paper	15
Entering appearance of each party to a suit, to be charged but once	15
Each continuance	20
Swearing each witness	10
Administering an oath, affirmation, or taking affidavit, certificate and seal; provided, that he shall only be allowed pay for one certificate to each witness claim for attendance in behalf of plaintiff, and one each in behalf of defendant, at any one term of the court	50
Each subpœna issued	25
Each additional name inserted in subpœna	15
Approving bond (except for cost)	1 50
Swearing and impaneling a jury	35
Receiving and recording a verdict of a jury	35

Assessing damages in each case not tried by a jury	$ 50
Each commission to take depositions	75
Taking depositions, each one hundred words	15
Issuing copies of interrogatories with certificate and seal, per one hundred words	15
Each final judgment	1 00
Where judgment exceeds three hundred words, the additional fee for each one hundred words in excess of three hundred words shall be	15
For each order of sale	1 00
For each execution	75
For each writ of possession or restitution	75
For each injunction writ	75
Each copy of injunction writ	75
For every other writ not otherwise provided for	75
For each copy of writ not otherwise provided for	50
Recording returns of any writ, where such return is required by law to be recorded, including the return on all writs, except subpœnas	50
Each certificate to any facts contained in his office	75
Making out and transmitting the records and proceedings in a cause to any inferior court, for each one hundred words	10
Making out and transmitting mandate or judgment of the district court upon appeal from the county court	1 00
Filing a record in a cause appealed to the district court	50
Transcribing, comparing and verifying record books of his office, payable out of the county treasury, upon warrants issued upon the order of commissioners' court, each one hundred words	15
Making transcript of records and papers in any cause upon appeal, or writ of error, with certificate and seal, each one hundred words	15
Making copy of all records of judgments or papers on file in his office, for any party applying for same, with certificate and seal, each one hundred words	15
Taxing the bill of costs in any case with copy of same	25
Filing and recording the declaration of intention to be a citizen of the United States	2 00
Issuing certificate of naturalization	2 50

(Acts 1901, p. 24; Acts 1893, p. 170.)

Art. 3856. Clerk shall compare and certify copies, etc.; fees.—Whenever, in any suit, a certified copy of any petition or any other instrument is necessary in the district court, it shall be lawful for the plaintiff or defendant to prepare such true and correct copy thereof, and submit the same to the clerk of the district court, whose duty it shall be to compare the same with the original instrument, and, if found to be correct, he shall attach his certificate of true copy. For such services he shall receive fifty cents for each certificate and seal, and, in addition thereto, the sum of ten cents per page, three hundred words to the page, for each page of each copy. But nothing in this or the preceding article shall be construed as repealing the maximum fixed by existing law upon the total compensation allowed to district clerks. (Acts 1901, p. 24; Acts 1897, S. S. p. 44; Acts 1897, S. S. p. 12; Acts 1895, p. 170.)

Art. 3857. (2454) (2390) Fees in probate matters.—In matters relating to estates of deceased persons and minors, when the same are transacted in the district court, the clerk of such court shall receive the same fees that are allowed therefor to clerks of the county court.

Art. 3858. (2456) (2392) Compensation for ex officio services.—The clerk of the district court shall receive, in addition to the fees herein allowed, for the care and preservation of the records of his office, keeping the necessary indexes, and other labor of the like class, to be paid out of the county treasury on the order of the commissioners' court, such sum as said commissioners' court shall determine. (Acts 1876, p. 287, sec. 8; 1879, p. 92.)

Art. 3859. No compensation for assessing damages.—No district clerk shall receive any compensation for assessing damages in any case. (Acts 1897, S. S. p. 13, sec. 23.)

3. CLERKS OF THE COUNTY COURT

Art. 3860. (2457) (2393) Fees of clerks of county court.—Clerks of the county court shall receive the following fees:

Filing each paper	$ 05
Issuing notices, including copies for posting or publication	75
Docketing each application, complaint, petition or proceeding, to be charged but once	10
Each writ or citation, including copy thereof	50
Each copy of any paper that is required to accompany any writ or citation, with certificate and seal, for each one hundred words	10
Issuing letters testamentary, of administration or guardianship	50
Each final judgment or decree	50
Every other order or decree, not exceeding 100 words	15
Where such other order or decree contains 100 words and not more than 200 words	25
When any final judgment or decree, or any other order or decree, exceeds 200 words, an additional fee for each 100 words in excess of 200 words	10
Recording all papers required to be recorded by them in relation to estates of decedents or wards, for each one hundred words	10
Administering oath to executor, administrator or guardian	10
Administering oath or affirmation in other cases, without certificate and seal	15
Administering oath or affirmation with a certificate and seal	25
Entering each order of the court approving or disapproving a claim against an estate	25
Filing each paper, except subpœnas	05
Each appearance, to be charged but once	05
Entering each continuance, except in estates	10
Each subpœna	25

Each additional name inserted in a subpœna	$ 05
Approving bond, except bond for costs and notarial bond	1 00
Approving notarial bond	50
Swearing each witness	10
Swearing and impaneling a jury	25
Receiving and recording a verdict	25
Assessing damages in each case not tried by a jury	50
Each commission to take depositions	50
Taking depositions, each 100 words	15
Each execution, order of sale, writ of possession, restitution or other writ not otherwise provided for	50
For recording return of any writ, when any such return is required by law to be recorded	50
Where the return exceeds 300 words, for each one hundred words in excess of three hundred words	10
Copies of interrogatories, cross-interrogatories and all other papers or records required to be copied by him, including certificate and seal, where the copy does not exceed 200 words, for each 100 words	15
Where the copy exceeds 200 words, for each additional 100 words in excess of 200 words	10
Transcript in any case where appeal or writ of error is taken, with certificate and seal, each 100 words	10
Each certificate to any fact or facts contained in the records of his office, with certificate and seal, when not otherwise provided for	50
Taxing the bill of costs in each cause, with a copy thereof	25
For recording attachments and returns, the same fees allowed for recording deeds.	
For filing and recording chattel mortgage deposited	25
For entering satisfaction of chattel mortgages	25
Recording all papers required or permitted by law to be recorded, not otherwise provided for, including certificate and seal, for each 100 words	10
Transcribing records for new counties and added territory, for each one hundred words	15
Transcribing, comparing and verifying record books of his office, payable out of the county treasury upon warrant issued under the order of the commissioners' court, for each one hundred words	10
Issuing and recording marriage license	1 00
Recording each mark and brand, or either	25
Issuing each license, other than a marriage license, where the law provides for him to issue such license	1 00
Recording and certifying bills of sale under the stock laws, for each one hundred words	15
Recording each mark and brand and giving certificate thereof	75
Revising the list of marks and brands, such compensation as the county commissioners' court may allow.	
Qualifying a notary public	50

(Id. sec. 9; Act Aug. 23, 1876, p. 301, sec. 26; Acts 1897, S. S. p. 13; Acts 1897, p. 44, sec. 3; Acts 1897, S. S. p. 13; Acts 1899, p. 81; Acts 1879, p. 134; Acts 1897, S. S. p. 13; Acts 1879, p. 105; Acts 1897, S. S. p. 13; Acts 1889, p. 80.)

Art. 3861. (2458) (2394) Compensation for preserving the records, etc.—It shall be the duty of the county judge at each term of his court to inquire into and examine the amount of labor actually and necessarily performed by the clerk of his court, in the care and preservation of the records of his office, in the making and keeping of the necessary indexes thereto, and other labor of a like class, and to allow said clerk a reasonable compensation therefor, not to exceed the fees allowed him by law for like services, and not to exceed one hundred dollars annually, to be paid out of the county treasury upon the sworn account of such clerk, approved in writing thereon by the county judge. (Acts 1876, p. 287, sec. 9.)

Art. 3862. (2459) (2395) Compensation for ex officio services.—For all ex officio services in relation to roads, bridges and ferries, issuing jury scrip, county warrants, and taking receipts therefor, services in habeas corpus cases, making out bar dockets, keeping county convict book, keeping record of trust funds, filing and docketing all papers for commissioners' court, keeping road overseer's book and list of hands, recording all collection returns of delinquent insolvents, and list of lands sold to individuals for taxes, recording county treasurers' reports, recording reports of justices of the peace, recording reports of animals slaughtered, and services in connection with all elections, and all other public services not otherwise provided for, to be paid upon the order of the commissioners' court out of the treasury, the clerk shall receive the sum of not less than ten dollars nor more than twenty-five dollars per annum for each one thousand inhabitants of his county; provided, that the total amount paid the clerk in any one year shall not be less than fifty nor more than five hundred dollars, said amount to be paid quarterly. No county clerk shall be compelled to file or record any instrument of writing permitted or required by law to be recorded until after payment or tender of payment of all legal fees for such filing or recording has been made: provided, that nothing herein shall be construed to include papers or instruments filed or recorded in suits pending in the county court. (Acts 1881, p. 99.)

Art. 3863. No compensation for assessing damages.—No county clerk shall receive any compensation for assessing damages in any case. (Acts 1897, S. S. p. 13.)

For fees of county clerk in lunacy cases, see Article 165.

4. SHERIFFS

Art. 3864. (2460) (2396) Sheriff's fees.—Sheriffs shall receive the following fees:

Serving each original citation in a civil suit	$ 75
Summoning each witness	50
Levying and returning each writ of attachment or sequestration	2 00
Copy of attachment writ and return for recording	1 00
Levying each execution	1 00
Return of execution	50

Serving each writ of garnishment or other process not otherwise provided for	$ 75
Serving each writ of injunction	1 00
Collecting money on execution or order of a sale, when the same is made by a sale, for the first $100 or less, 4 per cent.; for the second $100, 3 per cent.; for all sums over $200 and not exceeding $1000, two per cent.; for all sums over $1000 and not exceeding $5000, one per cent.; for all sums over $5000, one-half of one per cent.	
Taking and approving each bond, and returning the same to the proper court when necessary	1 00
Endorsing the forfeitures of any bond required to be endorsed by him	50
Executing and returning each writ of possession or restitution	3 00
Posting the advertisements for sale under execution, or any order of sale	1 00
Posting any other notices required by law not otherwise provided for	1 00
Executing a deed to each purchaser of real estate under execution or order of sale	2 00
Executing a bill of sale to each purchaser of personal property under an execution or order of sale, when demanded by the purchaser	1 00
For each case tried in the district or county court, a jury fee shall be taxed for the sheriff of	50
For services in designating a homestead	2 00

For traveling in the service of any civil process, sheriffs and constables shall receive five cents for each mile going and coming; if two or more persons are mentioned in the writ, he shall charge for the distance actually and necessarily traveled in the service of the same.

Collecting money on an execution or an order of sale, when the same is made by a sale, for the first one hundred dollars or less, four per cent.; for the second one hundred dollars, three per cent.; for all sums over two hundred dollars, two per cent. When the money is collected by the sheriff without a sale, one-half of the above rates shall be allowed him.

For every day the sheriff or his deputy shall attend the district or county court, he shall receive two dollars a day, to be paid by the county, for each day that the sheriff by himself or a deputy shall attend said court. (Acts 1876, p. 289; Acts 1897, S. S. p. 13, sec. 24; Acts 1879, p. 92; Acts 1889, p. 80.)

Ledbetter v. Dallas County, 111 S. W. 193; Lee v. Brooks, 131 S. W. 1195.

Art. 3865. (2461) (2397) Sheriffs' fees for serving process from supreme court, etc.—Sheriffs shall be allowed for all process issued from the supreme court or courts of civil appeals, and served by them, the same fees as are allowed them for similar service upon process issued from the district court. (Acts 1875, p. 70, sec. 3.)

Art. 3866. (2462) (2398) Compensation for ex officio services.—For summoning jurors in district and county courts, serving all election notices, notices to overseers of roads and doing all other public business not otherwise provided for, the sheriff may receive annually not exceeding five hundred dollars, to be fixed by the commissioners' court at the same time other ex officio salaries are fixed; provided, that, in counties exceeding twenty-five thousand population at last decennial census, sheriffs may receive an additional amount not exceeding fifty dollars for each five thousand population in excess of twenty-five thousand up to fifty thousand population, to be paid out of the general funds of the county on the order of the commissioners' court. Provided, that the total amount of compensation which may be paid annually under the provisions of this act shall not exceed the sum of eight hundred dollars. (Acts 1905, p. 91.)

For fees of sheriff in lunacy cases, see art. 165.

5. JUSTICES OF THE PEACE

Art. 3867. (2463) (2399) Justices' fees.—Justices of the peace shall receive the following fees: (Acts 1875, p. 291, sec. 12; Acts 1897, S. S. p. 13.)

Each citation	$ 50
Each subpœna for one witness	25
Each additional name inserted in a subpœna	05
Docketing each cause	10
Filing each paper	05
Each continuance	10
Each bond not otherwise provided for	50
Swearing each witness in court	10
Administering an oath or affirmation without a certificate	10
Administering an oath or affirmation with a certificate	25
Administering the oath, approving bond and issuing a writ of attachment or sequestration	1 50
Issuing any other writ or process not otherwise provided for	50
Causing a jury to be summoned and swearing them	25
Receiving and recording verdict of jury	25
Each order in a cause not otherwise provided for	25
Each final judgment	50
Each application to set aside a judgment or for a new trial, with the final judgment thereon	50
Each appeal bond	25
Each commission to take depositions	50
Copy of interrogatories or cross-interrogatories, for each one hundred words, including certificate	10
Making and certifying a transcript of the entries on his docket, and filing the same, together with the original papers in the case, in the proper court, in each case of appeal or certiorari	1 50
Each execution or order of sale	60
Each writ of possession or restitution	75
Receiving and recording the return on each execution, order of sale, writ of possession or restitution, if a levy is returned or the writ executed	30
If no levy is returned or the writ not executed	10

Making copies of any papers or records in his office for any person applying for the same, for each one hundred words including certificate	$ 10
Taxing costs, including copy thereof, in each case	10
Each certificate not otherwise provided for	25
Taking acknowledgment for stay of judgment	50

For fees of justice of the peace in lunacy cases, see art. 165.

6. CONSTABLES

Art. 3868. (2464) (2400) Constables' fees.—Constables shall receive the following fees for services rendered in business connected with courts of justices of the peace: (Acts 1875, p. 291, sec. 13.)

Serving each citation in civil suit	$ 70
Serving each garnishment	70
Serving each notice for the taking of depositions and copy of interrogatories	70
Serving each subpœna	50
Levying and returning each writ of attachment or sequestration	1 50
Copy of attachment writ and return for recording	1 00
Levying each execution	70
Executing order of sale, writ of possession or restitution	1 00
Returning each execution, order of sale, writ of possession or restitution	40
Taking and approving each bond	1 00
Summoning a jury in justice's court	1 00
Advertising sale under execution or order of sale	70
Making title to purchaser of real estate under execution or order of sale	2 00
Making title to purchaser of personal property under execution or order of sale, when demanded by purchaser	50

Taking care of property levied upon by virtue of any legal process, all reasonable and necessary expenses, to be taxed and allowed by the court to which such process is returnable. Collecting money under an execution or order of sale, when a sale is made, four per cent. on the amount actually collected by him. When the money is collected by him without a sale, two per cent. on the amount actually collected by him. (Id. p. 291, sec. 13; Acts of 1889, p. 80.)

Art. 3869. (2465) (2401) Fees for services in district or county courts.—For all services performed by constables in business connected with the district and county courts, they shall receive the same fees allowed sheriffs for the same services. (Id.)

7. COUNTY COMMISSIONERS

Art. 3870. (2466) (2402) Per diem pay of county commissioners.—Each county commissioner, and the county judge when acting as such, shall receive from the county treasury, to be paid on the order of the commissioners' court, the sum of three dollars for each day he is engaged in holding a term of the commissioners' court, but such commissioners shall receive no pay for holding more than one special term of their court per month. (Acts 1876, p. 292, sec. 14.)

8. ASSESSOR OF TAXES

Art. 3871. Assessors' compensation.—Each assessor of taxes shall receive the following compensation for his services, which shall be estimated upon the total value of the property assessed as follows: For assessing the State and County taxes: on all sums for the first Two Million Dollars ($2,000,000.00), or less, Five Cents (5c) for each One Hundred Dollars ($100.00) of property assessed; and on all sums in excess of Two Million Dollars ($2,000,000.00), and less than Five Million Dollars ($5,000,000.00) Two and one-fourth cents (2¼c) on each One Hundred Dollars ($100.00) and on all sums in excess of Five Million Dollars ($5,000,000.00), one and seven-tenths cents (1.7) on each One Hundred Dollars ($100.00); one-half of the above fee shall be paid by the State, and one-half by the County; for assessing the taxes in all drainage districts, road districts, or other political subdivisions of the county, the assessor shall be paid one-half of one cent for each One Hundred Dollars of the assessed values of such districts or subdivisions; provided such compensation as is paid to the assessor to be prorated among the various drainage districts, road districts and other political subdivisions of the county according to the value of the property assessed in each district, or other political subdivision; and for assessing the poll tax, Five Cents (5c) for each poll which shall be paid by the State. The Commissioners' Court shall allow the assessor of taxes such sums of money to be paid monthly from the county treasury, as may be necessary to pay for clerical work, taking assessments and making out the tax rolls of the county, such sums so allowed to be deducted from the amount allowed to the assessor as compensation upon the completion of said tax rolls; provided, the amount allowed the assessor by the Commissioners' Court shall not exceed the compensation that may be due by county to him for assessing. (Acts 1897, S. S. p. 8, sec. 8; Acts 1919, ch. 158, sec. 1; Acts 1919, 2d C. S., ch. 57, sec. 1.)

9. COLLECTOR OF TAXES

Art. 3872. Collectors' compensation.—There shall be paid for the collection of taxes as compensation for the services of the collector, beginning with the first day of September of each year, five per cent (5%) on the first Ten Thousand Dollars ($10,000.00) collected for the State, and four per cent (4%) on the next Ten Thousand Dollars ($10,000.00) so collected for the State, and one (1%) per cent on all collected over that sum; for collecting the county taxes, five per cent (5%) on the first Five Thousand Dollars ($5,000.00) of such taxes collected and four per cent (4%) on the next Five Thousand Dollars ($5,000.00) collected, and one and one-fourth per cent (1¼%) on all such taxes collected over that sum. For collecting the taxes in all drainage districts, road districts, or other political subdivisions of the county, the tax collector shall be paid one half of one per cent (1%) on all such tax collected; provided that the amount to be paid the tax collector shall be paid by the various drainage districts, road districts, or other political subdivisions of the county on a pro rata basis in accordance with the amount collected for

such districts; and in counties owing subsidies to railroads, the collector shall receive only one per cent (1%) for collecting such railroad taxes, and in cases where property is levied upon and sold for taxes, he shall receive the same compensation as allowed by law to sheriffs or constables on making the levy and sale, in similar cases, but in no case to include commission on such sales; and on all occupation and license taxes collected five per cent (5%). (Acts 1897, S. S., p. 8, sec. 9; Acts 1919, ch. 158, sec. 2.)

10. COUNTY TREASURER

Art. 3873. (2467) (2403) County treasurers' commissions.—The county treasurer shall receive commissions on the moneys received and paid out by him, said commissions to be fixed by order of the commissioners' court as follows: For receiving all moneys, other than school funds, for the county, not exceeding two and one-half per cent, and not exceeding two and one-half per cent for paying out the same; provided, however, he shall receive no commissions for receiving money from his predecessor nor for paying over money to his successor in office. (Acts 1897, S. S., p. 8, sec. 15.)

Hill County v. Sauls, 134 S. W. 267; Montgomery County v. Talley, 169 S. W. 1141; Smith v. Wise County, 187 S. W. 705; Wood County v. Leath, 204 S. W. 454.

Art. 3874. (2468) Commissions on school fund.—The treasurers of the several counties shall be treasurers of the available public free school fund and also of the permanent county school fund for their respective counties. The treasurers of the several counties shall be allowed for receiving and disbursing the school funds one-half of one per cent for receiving, and one-half of one per cent for disbursing, said commissions to be paid out of the available school fund of the county; provided, no commissions shall be paid for receiving the balance transmitted to him by his predecessor, or for turning over the balance in his hands to his successor; and provided, further, that he shall receive no commissions on money transferred. (Acts of 1891, p. 147.)

Art. 3875. (2469) (2405) Commissions shall not exceed $2,000 annually.—The commissions allowed to any county treasurer shall not exceed two thousand dollars annually. (Id.; Acts of 1879, ch. 69, p. 79.)

11. DISTRICT AND COUNTY SURVEYORS

Art. 3876. (2470) (2406) District and county surveyors' fees.—District and county surveyors shall receive the following fees: (Id. sec. 16.)

Inspecting and recording the field-notes and plat of a survey for any tract of land over one-third of a league	$ 3 00
One-third of a league	2 00
Less than one-third of a league	1 00
For recording surveys and plats required in article 5319, for each one hundred words	20
Examination of papers and records in his office at the request of any person	25
Copies of all field-notes and plats, or any other papers or records in his office, for each one hundred words, including certificate	20
Surveying any tract of land, including all expenses in making the survey, and returning the plat and field-notes of the survey, for each English lineal mile actually run	$ 3 00
Surveying any tract of land, including all expenses of making the survey, and returning the plat and field-notes, when the distance actually run is less than one English lineal mile	2 50
For services in designating a homestead, to include pay for chain carriers, for each day's service	5 00

(Act 1881, p. 71.)

12. INSPECTOR OF HIDES AND ANIMALS

Art. 3877. (2471) (2407) Fees of inspector of hides and animals.—Inspectors of hides and animals for each county or district shall receive the following fees:

For each hide or animal inspected	$ 10
If more than fifty hides or animals are inspected in the same lot at the same time for the same person, for each hide or animal in excess of fifty	03
For each certificate of acknowledgment	50

(Acts 1876, p. 301, sec. 25; Id. sec. 17, p. 302, sec. 30.)

13. NOTARIES PUBLIC

Art. 3878. (2472) (2408) Fees of notaries public.—Notaries public shall receive the following fees:

Protesting a bill or note for non-acceptance or non-payment, register and seal	$1.00
Each notice of protest	.25
Protest in all other cases, for each 100 words	.25
Certificate and seal to such protest	.50
Taking the acknowledgment or proof of any deed or other instrument in writing, for registration, including certificate and seal	.50
Taking an acknowledgment of a married woman to any deed or other instrument of writing authorized to be executed by her, including certificate and seal	.50
Administering an oath or affirmation with certificate and seal	.50
All certificates under seal not otherwise provided for	.50
Copies of all records and papers in their office, including certificate and seal, if less than 200 words	.50
If more than 200 words, for each 100 words in excess of 200, in addition to the fee of fifty cents	.25
All notarial acts not provided for	.50
Taking the depositions of witnesses, for each 100 words	.15
Swearing a witness to depositions, making certificate therefor with seal, and all other business connected with taking such deposition	.50

(Acts 1876, p. 293, sec. 18; Acts 1915, ch. 21, sec. 1.)

14. PUBLIC WEIGHERS

Art. 3879. (2473) (2409) Fees of public weighers.—Public weighers shall receive the following fees:

For each bale of cotton weighed, not exceeding	$ 10

When he shall run a cotton yard in connection with his weighing, his compensation shall not exceed, as yardage for the first month after same is received for storage, per bale ..... $ 15
Thereafter per bale per month, not exceeding 10
For each bale or sack of wool, or hogshead of sugar or wagon load of hay, pecans or grain..... 10
For each part of a wagon load of hay, grain or pecans, not exceeding..... 05
For each barrel weighed..... 10
For each bale of hides weighed..... 10
For each loose hide weighed..... 02

And he shall not be obliged to deliver any such articles so weighed until his fee therefor shall have been paid. (Acts 1875, p. 162, sec. 7; Acts 1879, p. 117, sec. 6; Acts 1903, p. 217.)

CHAPTER FOUR
GENERAL PROVISIONS

Art. 3880. Official failing to take out commission shall not receive fees or compensation, etc.—Any official who refuses or fails to take out a commission shall not be entitled to receive or collect, either from the state or from individuals, any fee or fees, or any sum or sums of money, as fees of office, or compensation for official services; and it shall be unlawful for the comptroller of public accounts, any county commissioners' court, any county auditor or any other person whose duty it is to approve claims or accounts of public officials, to approve or to pay any claim or account in favor of any and all such officers who have failed or refused to take out and pay for their commission as officials as required by this article; and the secretary of state shall, from time to time, as such commissions are issued by him, furnish a list thereof the comptroller of public accounts and the county commissioners' court and the county auditor, with the name of the county in which such officers reside, and of the district judge. (Acts 1907, p. 501.)

Art. 3881. Maximum amount of fees allowed.—Hereafter the maximum amount of fees of all kinds that may be retained by any officer mentioned in this section (article) as compensation for services shall be as follows: County judge, an amount not exceeding two thousand two hundred and fifty dollars per annum; sheriff, an amount not exceeding two thousand seven hundred and fifty dollars per annum; clerk of the county court, an amount not exceeding two thousand two hundred and fifty dollars per annum; county attorney, an amount not exceeding two thousand two hundred and fifty dollars per annum; clerk of the district court, an amount not exceeding two thousand two hundred and fifty dollars per annum; collector of taxes, an amount not exceeding two thousand two hundred and fifty dollars per annum; assessor of taxes, an amount not exceeding two thousand two hundred and fifty dollars per annum; justices of the peace, an amount not exceeding two thousand dollars per annum; constables, an amount not exceeding two thousand dollars per annum; provided, that this Act shall not apply to justices of the peace or constables except those holding offices in cities of more than twenty thousand inhabitants, to be determined by the last United States census. (Acts 1897, S. S. pp. 9, 43, sec. 10; Acts 1913, p. 246, sec. 1.)

Art. 3882. Maximum fees in certain counties.—In any county shown by the last United States census to contain as many as twenty-five thousand inhabitants the following amounts shall be allowed, viz.: county judge, an amount not exceeding twenty-five hundred dollars per annum; sheriff, an amount not exceeding three thousand dollars per annum; clerk of the county court, an amount not exceeding twenty-four hundred dollars per annum; county attorney, an amount not exceeding twenty-four hundred dollars per annum; district attorney, an amount not exceeding twenty-five hundred dollars per annum, inclusive of the five hundred dollars allowed by the constitution and paid by the state; clerk of the district court, an amount not exceeding twenty-four hundred dollars per annum; collector of taxes, an amount not exceeding twenty-four hundred dollars per annum; assessor of taxes, an amount not exceeding twenty-four hundred dollars per annum. (Id.)

Art. 3883. Maximum fees in counties of 37,000 inhabitants or containing cities of 25,000.—In counties containing a city of over twenty-five thousand inhabitants, or in such counties as shown by the United States Census of 1910, shall contain as many as thirty-seven thousand inhabitants, the following amount of fees shall be allowed, viz: county judge, an amount not exceeding thirty-five hundred dollars per annum; sheriff, an amount not exceeding thirty-five hundred dollars per annum; clerk of the county court, an amount not exceeding twenty-seven hundred and fifty dollars per annum; county attorney, an amount not exceeding thirty-five hundred dollars per annum; district attorney, an amount not exceeding twenty-five hundred dollars, inclusive of the five hundred dollars allowed by the Constitution and paid by the State; clerk of the district court, an amount not exceeding twenty-seven hundred and fifty dollars per annum; collector of taxes, an amount not exceeding twenty-seven hundred and fifty dollars per annum; assessor of taxes, an amount not exceeding twenty-seven hundred and fifty dollars per annum; provided, the compensation fixed herein for sheriffs and their deputies shall be exclusive of any rewards received for the apprehension of criminals or fugitives from justice. (Acts 1913, p. 246, sec. 1; Acts 1917, ch. 130, sec. 1.)

Art. 3883a. Maximum fees of county attorney in counties having more than 100,000 population; accounts; proviso.—That in any county having a population in excess of one hundred thousand inhabitants according to the census of the United States of 1910, where there is no district attorney, the county attorney of such county shall be allowed to retain out of the fees earned and collected by him the sum of $4,000.00 per annum, and in addition thereto one-fourth of the excess of such fees collected by him, provided, however, that such additional amount retained by him out of the excess fees shall not exceed the sum of $2,000 per year, the remainder to be paid into the treasury of the county; provided that in arriving at the amount collected by him he shall include the

fees arising from all classes of criminal cases whether felony or misdemeanor arising in any of the courts in such county now existing, or which may hereafter be created including habeas corpus hearing and fines and forfeitures; provided that after the 30th day of November and before the first day of January following each year, he shall make a full and complete report and accounting to the county judge of the county of all of such fees so collected by him; provided the said county attorney shall not receive any moneys from any source whatsoever in excess of the six thousand dollars above provided for. Such fees, however, to be included in the reports herein provided for and to be taken into consideration in arriving at the total maximum compensation provided in this Act. And further provided, that except as herein specifically provided otherwise, all provisions of Chapter 4, Title 58 of the Revised Civil Statutes of Texas of 1911, as amended by Chapter 121 of the Acts of the Regular Session of the Thirty-Third Legislature, shall apply and remain in full force and effect. (Acts 1917, 1st C. S., ch. 34, sec. 1.)

Art. 3884. County attorney, compensation in certain counties.—The county attorney in those counties having no district attorney, where he performs the duties of district attorney, may receive the same compensation as provided for the district attorney. (Acts 1897, S. S. pp. 9, 43, sec. 10.)

For fees of county attorney in lunacy cases, see art. 165.

Art. 3885. District attorney, compensation of.—The maximum fixed for the compensation of the district attorney shall be construed to be the amount which that officer is authorized to retain of fees allowed such officer in his district, whether composed of one or more counties. (Id.)

Art. 3886. County judge, compensation as superintendent of public instruction.—In counties where a county judge acts as superintendent of public instruction, he shall receive such other salary as may be provided by the commissioners' court, not to exceed the sum of six hundred dollars per annum. (Id.)

Art. 3887. Last United States census to govern in all cases.—The last United States census shall govern as to population in all cases. (Acts 1897, S. S. p. 43, sec. 10. Acts 1913, p. 246, sec. 1.)

Art. 3888. Amounts allowed to be retained out of fees collected; state not responsible.—The amounts allowed to each officer mentioned in articles 3881 to 3886, inclusive, may be retained out of the fees collected by him under existing laws; but in no case shall the state or the county be responsible for the payment of any sum when the fees collected by any officer are less than the maximum compensation allowed by this chapter, or be responsible for the pay of any deputy or assistant. (Acts 1897, S. S. p. 9, sec. 11; Acts 1907, p. 50.)

Art. 3889. Fees, how disposed of; excess fees.—Each officer named in this Chapter shall first, out of the fees of his office, pay or be paid the amount allowed him under [the] this provisions of this Chapter, together with the salaries of his assistants or deputies. If the fees of such office collected in any one year be more than the amount needed to pay the amount allowed such officer and his assistants and deputies, same shall be deemed excess fees and such excess fees such officer in counties having less than twenty-five thousand inhabitants shall retain one-fourth until such one-fourth amounts to the sum of Twelve Hundred Dollars; and in counties having between twenty-five and thirty-eight thousand inhabitants such officer shall retain one-fourth of the excess fees until such one-fourth amounts to the sum of Twelve Hundred and Fifty Dollars; and in Counties having more than thirty-eight thousand inhabitants such officer shall retain one-fourth of the excess fees until such one-fourth amounts to the sum of Fifteen Hundred ($1500.00) Dollars. Such population to be based on the United Census next preceding any given year. All fees collected by officers named in Article 3881 to 3886 of the Revised Statutes of 1911 during any fiscal year in excess of the maximum amount allowed by law, and of the one-fourth of the excess of the maximum amount allowed for their services, and for the services of their deputies or assistants as herein provided for shall be paid into the county treasury of the county where the excess accrued; provided that in counties of less than twenty-five thousand inhabitants by such last preceding United States census, and which counties constitute a separate judicial district. "The chief deputy or first assistant of the officers named in this Chapter shall receive a sum not to exceed a rate of eighteen hundred dollars per annum, and the other deputies or assistants a sum not to exceed a rate of fifteen hundred dollars per annum, and the limitations as to the pay of deputies and assistants elsewhere, provided, in this Chapter shall not apply in such Counties." (Acts 1897, S. S. p. 9, sec. 11; Acts 1907, p. 50; Acts 1913, p. 246, sec. 1; Acts 1919, ch. 158, sec. 3; Acts 1919, 2d C. S., ch. 20, sec. 1.)

This act, in so far as it provides for payment to the county of surplus fees received by district attorneys from the state treasury, makes a grant of public money to a municipal corporation, in violation of Const. art. 3, sec. 51. Bexar County v. Linden, 205 S. W. 478.

Art. 3890. Officer not collecting maximum fees, etc., may retain out of delinquent fees collected, remainder paid to treasurer.—Any officer mentioned in articles 3881 to 3886, who does not collect the maximum amount of his fees for any fiscal year and who reports delinquent fees for that year, shall be entitled to retain, when collected, such part of such delinquent fees as is sufficient to complete the maximum compensation for the year in which delinquent fees were charged, and also to retain the one-fourth of the excess belonging to him, and the remainder of the delinquent fees for that fiscal year shall be paid as herein provided for when collected. (Acts 1897, S. S. p. 9, sec. 11; Acts 1907, p. 50.)

Art. 3891. Fees of district clerks in counties having more than one district.—In all counties in this state having more than one judicial district, the district clerks thereof shall in no case be allowed fees in excess of the maximum fees allowed clerks in counties having only one district court. (Id.)

Art. 3892. Delinquent fees, collection of, commissions on, remainder paid to treasurer.—All fees due and not collected

as shown in the report required by article 3895 shall be collected by the officer to whose office the fees accrued; and, out of such part of delinquent fees as may be due the county, the officer making such collection shall be entitled to ten per cent of the amount collected by him, and the remainder shall be paid into the county treasury, as provided in article 3889 of this act. It shall not be legal for any officer to remit any fee that may be due under the law fixing fees. (Acts 1897, S. S. p. 10, sec. 13.)

Art. 3893. Compensation for ex-officio services, when may be allowed by commissioners' court; proviso.—The commissioners' court is hereby debarred from allowing compensation for ex-officio services to county officials when the compensation and excess fees which they are allowed to retain shall reach the maximum provided for in this chapter. In cases where the compensation and excess fees which the officers are allowed to retain shall not reach the maximum provided for in this chapter, the commissioners' court shall allow compensation for ex-officio services when, in their judgment, such compensation is necessary; provided, such compensation for ex-officio services allowed shall not increase the compensation of the official beyond the maximum amount of compensation and excess fees allowed to be retained by him under this chapter. (Acts 1897, S. S. p. 10, sec. 15. Acts 1913, p. 246, sec. 1.)

Art. 3894. Officials named in articles 3881 to 3886 to keep accounts; duty of grand jury and district judge as to.—It shall be the duty of those officials named in articles 3881 to 3886, and also the sheriffs, to keep a correct statement of the sums coming into their hands as fees and commissions, in a book to be provided by them for that purpose, in which the officer at the time when any fees or moneys shall come into his hands shall enter the same; and it shall be the duty of the grand jury (and the district judge shall so charge the grand jury) to examine these accounts at the session of the district court next succeeding the first day of December of each year, and make a report on same to the district court at the conclusion of the session of the grand jury. (Acts 1897, S. S. p. 10, sec. 16.)

Art. 3895. Officers to make sworn statement, etc., to show what.—Each officer mentioned in articles 3881 to 3886, and also the sheriff, shall, at the close of each fiscal year, make to the district court of the county in which he resides a sworn statement showing the amount of fees collected by him during the fiscal year, and the amount of fees charged and not collected, and by whom due, and the number of deputies and assistants employed by him during the year, and the amount paid, or to be paid each. (Acts 1897, S. S. p. 11; Acts 1907, p. 50.)

Art. 3896. Fiscal year defined, and regulation of reports.—A fiscal year, within the meaning of this chapter, shall begin on December 1 of each year; and each officer named in articles 3881 to 3886, and also the sheriff, shall file the reports and make the settlement required in this chapter on December 1 of each year. Whenever such officer serves for a fractional part of a fiscal year, he shall nevertheless file his report and make a settlement for such part of a year as he serves, and shall be entitled to such proportional part of the maximum allowed as the time of his services bears to the entire year. However, an incoming officer elected at the general election, who qualifies prior to December 1 next following, shall not be required to file any report or make any settlement before December 1 of the following year; but his report and settlement shall embrace the entire period dated from his qualification. (Acts 1897, S. S. p. 11, sec. 19.)

Art. 3897. Monthly report; statement of expenses; audit, etc.—At the close of each month of his tenure of such office each officer whose fees are affected by the provisions of this Act shall make as a part of the report now required by law, an itemized and sworn statement of all the actual and necessary expenses incurred by him in the conduct of his said office, such as stationery, stamps, telephone, traveling expenses and other necessary expense. If such expense be incurred in connection with any particular case, such statement shall name such case. Such expense account shall be subject to the audit of the county auditor, and if it appear that any item of such expense was not incurred by such officer, or that such item was not necessary thereto, such item may be by such auditor or court rejected. In which case the correctness of such item may be adjudicated in any court of competent jurisdiction. The amount of such expense, referred to in this paragraph, shall not be taken to include the salaries of assistants or deputies which are elsewhere herein provided for. The amount of such expense shall be deducted by the officer in making each such report, from the amount, if any, due by him to the county under the provisions of this Act. (Acts 1897, S. S. p. 11, sec. 19. Acts 1913, p. 246, sec. 1.)

Art. 3898. [Amended by Acts 1913, p. 246. Repealed by Acts 1919, ch. 158, sec. 4.]

Art. 3899. Collector and assessor to file with comptroller copies of sworn statements.—The tax collector and tax assessor, at the time of their settlement of accounts with the comptroller, shall file with him a copy of the sworn statement required under article 3895. (Acts 1897, S. S. p. 11, sec. 18.)

Art. 3900. Officer recovering money or fees belonging to another shall inform him and pay over on demand, etc.—It shall be the duty of every county and precinct officer in the state of Texas who shall, in his official capacity, collect or receive any money or fees belonging to any witness, officer or other person, to inform such person of the collection of such money or fees, and to promptly pay the same over on demand to the person entitled thereto, taking receipt therefor, which shall be entered or noted in the fee book of such officer. (Acts 1907, p. 120, sec. 1.)

Art. 3901. Officers to report fees collected, etc., requisites of report.—On or before the second Mondays in February, May, August and November of each year, said officers shall make report in writing and under oath to the commissioners' court of their respective counties of all such moneys and fees so collected by them during the quarter last preceding, and remaining in their hands uncalled for, giving the number and the style of each cause in which said moneys or fees accrued, and the name of the person entitled thereto; which report shall be filed with the

county clerk of said county, and the same shall be by him kept and preserved for future reference and examination. (Id. sec. 2.)

Art. 3902. Officers to pay over fees, etc., to treasurer after four years, etc.; statements; disposition.—Every officer collecting or having the custody of any money or fees embraced within the provisions of this and the two preceding articles, at the expiration of four years from the time of collecting or receiving such money or fees, in all cases where the same have not been paid over to the person or persons entitled thereto, shall pay the same to the county treasurer of his respective county, accompanying the same by an itemized statement, as provided in article 3901, which statement shall be filed and kept by said treasurer; and said money or fees shall be by him placed to the credit of the road and bridge fund of the county; and the treasurer shall issue to the said officer his receipt for said money or fees, itemizing the same as above provided, which receipt shall be filed by said officer with the county clerk of his respective county; provided, that any officer, upon retiring from office, having any money or fees in his hands embraced within the provisions of this and the two preceding articles, and which are not due to be turned over to the county treasurer as herein provided, shall turn the same over to his successor in office, together with an itemized list of the same as hereinbefore provided, taking proper receipt therefor; and his successor shall report and pay over the same to the county treasurer in accordance with the provisions of this article. (Id. sec. 3.)

Art. 3903. County judge may authorize appointment of deputies and assistants; assistants for district and county attorneys in certain counties; compensation; additional allowance; salaries; order of county judge; compensation, how fixed; payment.—Whenever any officer named in Article[s] 3881 to 3886 shall require the services of deputies or assistants in the performance of his duties, he shall apply to the county judge of his county for authority to appoint same; and the county judge shall issue an order authorizing the appointment of such a number of deputies or assistants as in his opinion may be necessary for the efficient performance of the duties of said office. The officer applying for appointment of a deputy or assistant, or deputies or assistants, shall make affidavit that they are necessary for the efficiency of the public service, and the county judge may require, in addition, a statement showing the need of such deputies or assistants; and in no case shall the county judge attempt to influence the appointment of any person as deputy or assistant in any office. Provided, that in all counties having a population in excess of 100,000 inhabitants, the district attorney of any district, or the county attorney of any county where there is no district attorney, is authorized, with the consent of the county judge of the country for which such appointment is intended to appoint not to exceed two (2) assistants, in addition to his regular deputies or assistants, the number of deputies or assistants not to exceed two for the entire district, regardless of the number of counties it may contain, which two assistants shall not be required to possess the qualifications prescribed by law for district and county attorneys, and who shall perform such duties as may be assigned to them by the county attorney of such county, or the district attorney of such district, and who shall receive as their compensation one hundred twenty-five ($125) dollars per month, to be paid in monthly installments out of the funds of the county for which such appointment is made, by warrants drawn on such county funds; and provided, further, that in counties having a population in excess of 100,000, the district attorney in the county of his residence or the county attorney where there is not a district attorney, shall be allowed by order of the commissioners' court of the county where such official resides, as in the judgment of the commissioners' court may be necessary to the proper administration of the duties of such office, not to exceed, however, the sum of fifty ($50) dollars per month. Such amount as may be thus necessarily incurred shall be paid by the commissioners' court upon the affidavit made by the district attorney or the county attorney, showing the necessity of such expense and for what same was incurred. The commissioners' court may also require any other evidence as in their opinion may be necessary to show the necessity of such expenditure, but they shall be the sole judge as to the necessity of such expenditure and their judgment allowing same shall be final. The maximum amount allowed for deputies or assistants for their services shall be as follows, to-wit:

First assistant or chief deputy, a sum not to exceed a rate of twelve hundred ($1200.00) dollars per annum; others not to exceed a rate of nine hundred ($900.00) dollars per annum.

Provided, however, that in counties having a population of 37,500 to 100,000 inhabitants, the maximum salaries allowed for deputies or assistants for their services shall be as follows:

First assistant or chief deputy, a sum not to exceed a rate of eighteen hundred ($1800.00) dollars per annum; heads of each department not to exceed the sum of fifteen hundred ($1500.00) dollars per annum; others not to exceed a rate of twelve hundred ($1200.00) dollars per annum.

Provided, however, that in counties having a population in excess of 100,000 inhabitants, as shown by the last scholastic census, the maximum salaries allowed for deputies or assistants for their services shall be as follows:

First assistant or chief deputy, a sum not to exceed a rate of twenty-one hundred ($2100.00) dollars per annum; heads of each department not to exceed the sum of eighteen hundred ($1800.00) dollars per annum; others not to exceed a rate of fifteen hundred ($1500.00) dollars per annum.

The county judge in issuing his order granting authority to appoint deputies or assistants shall state in such order the number of deputies or assistants authorized, but the amount of compensation to be allowed each deputy or assistant shall be fixed by the officer requesting same and shall be paid out of the fees of office to which said deputies or assistants may be appointed and shall not be included in estimating the maximum salaries of the officers named in Articles 3881 to 3886,

such salaries to be paid out of the fees of the office in the following manner: First, out of any current fees collected, and if such fees are not sufficient, then out of any delinquent fees collected and which are due the county after all legal deductions are made and lastly, if there be any balance remaining after the payment of the maximum salary due the officer and the salaries due the deputies, then such balance to be paid to the county treasury. (Acts 1897, S. S., p. 10, sec. 12; Acts 1913, p. 286, sec. 1; Acts 1917, ch. 55, sec. 1.)

See ante, arts. 340a-340g, 342-344.

Art. 3903a. Applicability to counties having both district and county attorney.—The provisions of this Act relating to the appointment and payment of deputies or assistants by County Attorneys in counties having a population in excess of 100,000 inhabitants, shall also apply to counties having both a district attorney and county attorney. (Acts 1917, 1st C. S., ch. 26, sec. 1.)

See ante, art. 3903.

Art. 3904. (2474) (2410) Office rent, stationery, etc., to clerks of supreme court and courts of appeals.—There shall be allowed to the clerks of the supreme court and courts of civil and criminal appeals, reasonable office rent, stationery and furniture for their offices, to be paid on the order and approval of their respective courts out of the appropriation for the contingent expenses of said courts. (Acts 1876, p. 285, sec. 4.)

Art. 3905. (2475) (2411) Stationery, etc., allowed certain county officers.—There shall be allowed to county judges, clerks of the district and county courts, sheriffs and county treasurers, such books, stationery, including blank bail bonds and blank complaints, and office furniture as may be necessary for their offices, to be paid for on the order of the commissioners' court out of the county treasury; and suitable offices shall also be provided by the commissioners' court for said officers at the expense of the county. And such books and stationery as are necessary in their performance of their duties shall also be furnished justices of the peace by said commissioners' court. (Acts of 1885, p. 112.)

Art. 3906. (2476) (2412) No fees allowed on motions for security for costs, etc.—Clerks of the district and county courts and justices of the peace shall receive no fees for motions or judgments upon motions for security for costs, nor for taking and approving a bond for costs. (Id. sec. 9; Acts 1876, p. 285, sec. 9.)

Art. 3907. (2477) (2413) Judgment containing several orders, one fee only shall be charged.—A judgment containing several orders shall be considered as one judgment, and only one fee shall be charged by the court, clerk or justice of the peace for rendering or entering the same. (Id.)

Art. 3908. (2478) (2414) Fees of officers for taking acknowledgments, etc.—Clerks of the district and county courts and other officers authorized by law to take acknowledgment or proof of deeds or other instruments of writing shall receive the same fees for taking such acknowledgment or proof as are allowed notaries public for the same services.

Art. 3909. (2479) (2415) Clerks are prohibited from acting as conveyancers, etc.—All clerks and their deputies are prohibited from charging any fees or commissions for writing deeds, mortgages, bills of sale, or any other conveyance for any person, unless they pay the same tax, if any, which may be required by law to be paid by conveyancers or attorneys at law. (Id. sec. 9.)

Art. 3910. (2480) (2416) Fees in suits to be taxed against party cast, etc.—The fees allowed in this title pertaining to suits or actions in courts shall be allowed and taxed in the bill of costs against the party cast in the suit or action wherein any such service shall be rendered, except where it is otherwise provided by law or adjudged by the court. (Id. sec. 20.)

See ante, art. 2035.

Art. 3911. (2481) (2417) No charge for copies of papers, when.—No copy of a paper not required by law to be copied shall be allowed and taxed in the bill of costs; and, if any party or attorney shall take out copies of his own pleadings, or of papers filed by him in any cause, it shall be at his own expense, and no charge for such copies shall be allowed in the bill of costs. (Id.)

Art. 3912. (2482) (2418) No fee for examinations.—No clerk of a court, justice of the peace or other officer shall be allowed to charge any fee for the examination of any paper or record in his office. (Id. sec. 21.)

Art. 3913. (2483) (2419) Officers shall keep fee books.—Every officer entitled by law to charge fees for services shall keep a fee book, and shall enter therein all fees charged for services rendered; which fee book shall, at all times, be subject to the inspection of any person wishing to see the amount of fees therein charged. (Id. sec. 22.)

Art. 3914. (2484) (2420) Fee bill shall be produced, etc., before fees are collectible.—None of the fees mentioned in this title shall be payable to any person whomsoever until there be produced, or ready to be produced, unto the person owing or chargeable with the same, a bill or account in writing containing the particulars of such fees, signed by the clerk or officer to whom such fees are due, or by whom the same are charged, or by the successor in office or legal representative of such clerk or officer. (Id. sec. 23.)

Art. 3915. (2485) (2421) Penalty for demanding, etc., fees unlawfully.—If any of the officers named in this title shall demand and receive any higher fees than are prescribed to them in this title, or any fees that are not allowed by this title, such officer shall be liable to the party aggrieved for fourfold the fees so unlawfully demanded and received by him, to be recovered in any court of competent jurisdiction, and may also be punished criminally for extortion, as prescribed in the Penal Code. (Id. sec. 24.)

See Acts 1879, ch. 108, sec. 9; Tarrant County v. Rogers, 125 S. W. 592; Redus v. Blucher, 207 S. W. 613.

Art. 3916. (2486) (2422) Certain officers shall keep list of fees posted, etc.—It shall be the duty of county judges, clerks of the district and county courts, sheriffs, justices of the peace, constables and notaries public of the several counties, to keep posted up, at all times, in a conspicuous place in their respective offices a complete list of fees

allowed by law to be charged by them respectively. (Id. sec. 25.)

Art. 3917. (2487) (2423) Fees shall not be demanded in advance, etc.—Officers receiving any process to be executed shall not be entitled in any case to demand their fees for executing the same in advance of such execution, but their fees shall be taxed and collected as other costs in the case.

Art. 3918. (2488) (2424) Execution for costs.—It shall be lawful for any clerk of a court or justice of the peace, when any suit is determined in their respective courts and the costs are not paid by the party against whom the same have been adjudged, to issue execution therefor against such party, under the same rules governing executions in other cases, to be levied and collected as in other cases. (Id. sec. 26.)

Art. 3919. (2489) (2425) Bill of costs shall accompany execution.—A bill of costs, showing each item thereof, for which the party against whom the execution issues is liable, shall accompany each execution or order of sale. (Id.)

See ante, art. 3729, sec. 1.

Art. 3920. (2490) (2426) Execution shall issue on demand of person entitled to costs.—Any person to whom any costs are due in a suit or action, which has been determined, may demand that execution issue therefor; and, thereupon it shall be the duty of the clerk or justice of the peace to issue execution for all costs due by such party at once.

See ante, art. 3714.

Art. 3921. (2492) (2428) Preceding articles, etc., do not apply to executors, etc.—The preceding articles in relation to executions and payment of costs do not apply to executors, administrators or guardians, but in cases where costs are adjudged against an estate of a deceased person, or of a ward, the same shall be collected as provided in the titles, "Estates of Decedents," and, "Guardian and Ward." (Id. sec. 26; Acts of 1879, ch. 81, p. 93.)

Art. 3922. (2493) (2429) Execution for costs shall not issue, until, etc.—No execution for costs shall issue in any case until after judgment rendered therefor by the court.

See arts. 2030 et seq.

Art. 3923. (2494) (2430) No fee allowed for filing certain papers.—No clerk or justice of the peace shall be entitled to any fee for filing any process or paper issued by him and returned into his court.

Art. 3924. (2495) Any other fees of office.—Any other fees of office not embraced within this title, but otherwise provided for, shall not be affected by the provisions hereof.

Art. 3925. (2495a) State's attorney fees in school land litigation.—District and county attorneys who have represented, or may hereafter represent, the state in suits for the recovery of interest and purchase money due the state on account of sales of school lands, made under the laws of 1879 and 1881, or for the forfeiture of said lands on account of non-payment of said interest and purchase money, shall be allowed a fee of ten dollars for each of such cases in which the state recovers judgment; said fees to be approved by the judge who tried the case, or his successors in office, and certified by the clerk of the trial court, and when so approved and certified shall be paid out of any moneys in the treasury not otherwise appropriated; provided, that, in cases where suits are filed by one district or county attorney and judgment obtained by his successor in office, the fee shall be equally divided between them. (Act 1893, p. 29.)

Art. 3926. (2495b) Defense attorney fees in such cases.—A fee of five dollars for every suit heretofore or hereafter brought (shall) be allowed attorneys appointed by the court to represent the defendant in all cases where the state recovered judgment and where the costs can not be made out of the defendant; said fee to be paid by the state upon the presentation of an account allowed by the district court trying said case, stating the number and style of the suit and that the state recovered therein, that the attorney was appointed and represented the defendant therein, and that the costs can not be recovered out of said defendant. (Id.)

TITLE 59

FENCES

Art. 3927. (2496) (2431) "Sufficient fence" defined.—Every gardener, farmer or planter shall make a sufficient fence about his cleared land in cultivation, at least five feet high, and make such fence sufficiently close to prevent hogs from passing through the same; but it shall be unlawful for any persons whomsoever, by joining fences or otherwise, to build or maintain more than three miles lineal measure of fence running in the same general direction without a gateway in the same, which gateway must be at least eight feet wide, and shall not be locked. (Acts 1840, p. 179; P. D. 3838; P. C. arts. 685–86; Acts 1884, p. 37.)

Gest v. Dube, 142 S. W. 965.

Art. 3928. (2497) (2432) Complaint before justice of the peace, when made.—When any trespass shall have been done by any cattle, horses, hogs or other stock, on the cleared and cultivated ground of any person, it shall be lawful for such person to complain thereof to any justice of the peace for the county where such trespass shall have been done, and such justice is hereby authorized and required to cause two disinterested and impartial freeholders to be summoned, who, with such justice, shall view and examine on oath whether complainant's fence be sufficient or not; and what damages he has sustained by such trespass, and certify the same in writing; and, if it shall so appear that said fence be sufficient, then the owner of such cattle, horses, hogs or other stock, shall make full satisfaction for the trespass to the party injured, to be recovered before any tribunal having cognizance thereof.

Gest v. Dube, 142 S. W. 965.

Art. 3929. (2498) (2433) Stock may be impounded, when.—In case of a second trespass by the same cattle, horses, hogs or other stock, the owner, lessee or proprietor of the premises upon which the trespass is committed may, if he deem it necessary for the protection and preservation of his premises, or the crops growing thereon, cause such stock to be penned and turned over to the sheriff or constable and held responsible to the person damaged for all damages caused

by said stock and all costs thereon. (P. D. 6845.)

Gest v. Dube, 142 S. W. 965.

Art. 3930. (2499) (2434) Owner of cattle, etc., not liable, when.—If it shall appear that the said fence is insufficient, then the owner of such cattle, horses, hogs or other stock, shall not be liable to make satisfaction for such damages. (Id.; P. D. 6845.)

Gest v. Dube, 142 S. W. 965.

Art. 3931. (2500) (2435) Persons injuring stock, liable, when.—If any person whose fence shall be adjudged insufficient shall, with guns, dogs or otherwise maim, wound or kill any horses, cattle, hogs or other stock, or cause or procure the same to be done, such person so offending shall make full satisfaction to the person injured for all damages by such person sustained, to be recovered before any tribunal having cognizance thereof. (P. D. 3840.)

Art. 3932. (2501) Unlawful to remove adjoining fence except, when.—Hereafter, it shall be unlawful for any person who is a joint owner of any separating or dividing fence, or who is in any manner interested in any fence attached to, or connected with, any fence owned or controlled by any other person, to remove the same, except by mutual consent or as hereinafter provided. (Act March 17, 1887; 1889, p. 45.)

See McNeely v. S., 96 S. W. 1083.

Art. 3933. (2502) Can not separate fence, except, how.—Any person who is the owner or part owner of any fences connected with or adjoined to any fences owned in part or in whole by any other person shall have the right to withdraw or separate his fence or part of fence from the fence of any other person or persons in this state; but such person who desires to withdraw or separate such fence from the fence of any other person shall give notice in writing to such person, his agent, attorney, or lessee, of his intention to separate or withdraw his fence, or part thereof, for at least six months prior to the time of such intended withdrawal or separation. (Id.)

Brown v. Johnson, 73 S. W. 49.

Art. 3934. (2503) Adjacent owners required to remove fence, how.—Any person who is the owner of any fence wholly upon his own land to which the fence of another is adjoined or connected in any manner, may require the owner of any such fence to disconnect and withdraw the same back on his own land by first giving notice in writing, for at least six months, to such person, his agent, attorney, or lessee, to disconnect and withdraw his fence back on his own land. (Id.)

See Pen. C., arts. 1244, 1245.

TITLE 59 A

FIRE ESCAPES

Art. 3934½. Owners and lessees of certain buildings shall construct fire escapes.—That it shall be the duty of the owner entitled to the beneficial use, rental or control, or, if such owner be a non-resident, the occupant or lessee, of any building three or more stories in height, constructed or used, or intended to be used, in whole or in part, as a hospital, seminary, college, academy, school house, dormitory, hotel, lodging house, apartment house, rooming house, boarding house, theater, or any place of public amusement, lodge hall or any hall used for public gatherings, or any manufacturing establishment or industrial plant, wholesale or retail mercantile store, workshop, warehouse, office building, and any building erected by municipal, county or State authority, wherein public assemblies are permitted or sleeping apartments are provided on any floor above the second, to cause to be erected and fixed to every such building one or more adequate fire escapes, which, in no case, shall be less than one such escape to each five thousand square feet of lot area covered by such building. Provided that any building six or more stories in height shall have at least two such fire escapes to each five thousand square feet of lot area covered by such building; provided, that, where the area and height of any building is such that the construction of one fire escape will meet the requirements of this Act and it is elected to construct an interior stairway type escape, then, in such case, there shall be provided at least one other exit from each floor of said building which exit shall be placed as remote from the entrance to the fire escape as is consistent with the construction of the building, and provided. further, that all fire escapes shall be located as far as possible, consistent with accessibility, from stairways, elevator hatchways and other openings in the floors, and as far apart as is consistent with the construction and location of the building. Provided that it shall be the duty of the owner entitled to the beneficial use, rental or control, or, if such owner be a non-resident, the occupant or lessee, of any building two stories in height, already erected or which may hereafter be erected and used in whole or in part as a hotel, school dormitory, theatre or hospital, to cause to be erected an adequate number of stairways, which, in no case, shall be less than two, and one additional stairway for each five thousand square feet of lot area covered by such building in excess of ten thousand square feet, which stairways shall be located as remote from each other as is possible, and be easy of access from all parts of the building. A basement of any building that extends five feet or more above grade line shall be considered a story within the meaning of this Act. (Acts 1917, ch. 140, sec. 1.)

Section 8 repeals articles 861 to 867, inclusive, Revised Criminal Statutes of 1911, and chapter 12, general laws of the regular session of the 34th Legislature, and all laws in conflict.

Art. 3934½a. What constitutes adequate fire escape.—An adequate fire escape, provided for in Section One (1) of this Act [Art. 3934½] is defined to be a concrete stairway, an iron or steel stairway, an iron or steel straight chute, or an iron or steel spiral chute, each type of which may be constructed of other fireproof material of equal strength, and may be erected on the exterior or interior of any building requiring fire escapes. It is hereby made the duty of the fire marshal of the State Fire Insurance Commission, who for convenience will be referred to herein as the State Fire Marshal, to prepare and promulgate minimum specifications for the construction and erection of each type of fire escape authorized by this Act, which specifications shall be based upon a working stress of not less than sixteen thousand

pounds to the square inch for steel, twelve thousand pounds to the square inch for wrought iron, and seven hundred pounds to the square inch for concrete; provided, that specifications for interior fire escapes shall require that they be enclosed with noncombustible material, and that all door and window openings be properly protected with self-closing, fire-proof shutters, and that all stairway escapes, interior and exterior, be continuous and suitably connected with the roof of the building. No fire escapes shall be approved as complying with the provisions of this Act the material and erection of which are not at least the equivalent of the minimum specifications promulgated by the State Fire Marshal as herein provided. It shall also be the duty of the State Fire Marshal to prepare and promulgate minimum specifications for the construction of stairways required for buildings two stories in height, as set forth in Section one (1) of this Act, which stairways may be constructed of wood or other material, and located on the interior or exterior of the building, but shall not be required to be enclosed. (Id. sec. 2.)

Art. 3934½b. Guide signs and exit lights; obstructions.—That it shall be the duty of the owner entitled to the beneficial use, rental or control; or if the owner be a non-resident the occupant or lessee, of any building used or intended to be used as described in Section one (1) of this Act [Art. 3934½] where fire escapes are required, also to provide and maintain, in good condition at all times, therein proper guide signs and exit lights, which signs and lights shall be of a sufficient number on each floor to indicate the location of fire escapes and all entrances thereto. And it shall be unlawful to obstruct, in any manner whatsoever, any fire escape required by the provisions of this Act, or any hallway, corridor, or entrance way leading thereto. (Id. sec. 3.)

Art. 3934½c. Duties of State Fire Marshal and other officers.—The State Fire Marshal shall have general charge and supervision of the enforcement of the provisions of this Act, and, for this purpose, it is hereby made the duty of any inspector of the State Fire Insurance Commission, the chief of any fire department, or the fire marshal of any city or town to assist the State Fire Marshal in giving effect to the terms and provisions hereof, and shall be subject to his direction, and to the rules and regulations adopted for its enforcement. (Id. sec. 4.)

Art. 3934½d. Notice to owner or lessee; lessee entitled to reimbursement.—It shall be the duty of the State Fire Marshal or anyone authorized to act in his stead, when any building shall be found which required the erection of fire escapes, and upon which fire escapes have not been erected according to the provisions of this Act, to serve a written notice upon the party or parties whose duty it is to erect such fire escapes, which notice shall specify the time within which said fire escapes shall be erected, and which in no case, shall be more than ninety days, and said notice shall be deemed to have been served if delivered to the person to be notified, or if left with any adult person at the usual residence or place of business of the person to be notified, or if deposited in the postoffice, directed to the last known address of the person to be notified. In case of buildings within the terms of this Act, that are managed and controlled by a Board of trustees, Board of Commissioners or other governing body, notice may be served on the president, secretary, or treasurer of such Board of trustees, Board of Commissioners, or other governing body, to cause the erection of fire escapes on said buildings as may be required. Provided that the occupant or lessee of any building who is required to erect fire escapes under the provisions of this Act shall be entitled to reimburse himself for the cost and expense of erecting said fire escapes out of the rent or lease money of said premises, and such reimbursement shall not be construed to be a breach of any existing lease contract or any covenant thereof, nor grounds for any action of damages or ouster. (Id. sec. 5.)

Art. 3934½e. Injunction to restrain occupancy of building not equipped as required by act; sequestration; bond.—In addition to the other remedies and penalties herein provided, upon the failure of any of the parties charged with the duty so to do to erect fire escapes in accordance with this law, the Attorney General of the State, or any county or District Attorney of the county where any such building is located, upon direction of the Attorney General, shall bring an action against the owner, lessee and occupants of any such building for an injunction enjoining the further occupancy of such building until compliance with this Act. Such action may be brought in the county where such building is located. In case the owner of the building is a non-resident, then, in addition to an injunction against the actual occupants, the same shall be taken in possession by the court under a writ of sequestration issued at the instance of the State without bond which possession shall be retained until the owner thereof files in the court a bond in such amount as the court may direct conditioned for the immediate installation of proper fire escapes in accordance with this law. (Id. sec. 7.)

TITLE 60

FISCAL YEAR

Art. 3935. (2504) (2436) Termination of fiscal year.—The fiscal year of the state shall terminate on the thirty-first day of August of each year, and appropriations made for the support of the state government shall conform thereto. (Acts 1901, p. 9; Acts 1857, p. 17, sec. 1.)

Art. 3936. (2505) (2437) Accounts to be closed and reports compiled.—All officers who are required by law to report annually or biennially to the legislature or governor shall close their accounts on said date, and as soon thereafter as practicable shall prepare and compile their respective reports. (Id. sec. 1; P. D. 3864.)

Art. 3937. (2506) (2438) Secretary of state to have reports printed.—All annual or biennial reports intended for the use of the legislature or governor shall be transmitted by the respective officers to the secretary of state on or before the first day of November; and the secretary of state shall cause the same to be printed in accordance with the laws regulating public printing, as soon as

practicable; all biennial reports to be printed before the assembling of the legislature. (Id. sec. 2; P. D. 3865.)

Art. 3938. (2507) (2439) Legislators to be furnished with copies of reports.—Upon the organization of the legislature, the secretary of state shall transmit to the presiding officers of both houses ten copies of each printed report for the use of the members of the legislature. (Id. sec. 3; P. D. 3866.)

Art. 3939. Purpose of title.—The purpose of this chapter is to require all appropriations for the support of the state government to conform to the fiscal year as provided in article 3935; and all officers that are required by law to report annually or biennially to either the legislature or governor to close their accounts, transmit their reports at a uniform date; and all laws or parts of laws in conflict with this act are hereby repealed. (Id.)

TITLE 61

FORCIBLE ENTRY AND DETAINER

Art. 3940. (2519) (2440) In what cases the action will lie.—If any person (1) shall make an entry into any lands, tenements or other real property, except in cases where entry is given by law, or (2) shall make any such entry by force or (3) if any person shall wilfully and without force hold over any lands, tenements or other real property after the termination of the time for which such lands, tenements or other real property were let to him, or to the person under whom he claims, after demand made in writing for the possession thereof by the person or persons entitled to such possession, such person shall be adjudged guilty of forcible entry and detainer, or of forcible detainer, as the case may be. (Acts 1876, p. 155, sec. 1.)

Walther v. Anderson, 114 S. W. 414.

Art. 3941. (2520) (2441) "Forcible entry" defined.—A "forcible entry" or an entry where entry is not given by law within the meaning of this chapter is:

1. An entry without the consent of the person having the actual possession.

2. As to a landlord an entry upon the possession of his tenant at will or by sufferance, whether with or without the tenant's consent.

Art. 3942. (2521) (2442) Other cases of forcible detainer.—A person shall be adjudged guilty of forcible detainer also in the following cases:

1. Where a tenant at will or by sufferance refuses, after demand made in writing as aforesaid, to give possession to the landlord after the determination of his will.

2. Where the tenant of a person who has made a forcible entry refuses to give possession, after demand as aforesaid, to the person upon whose possession the forcible entry was made.

3. Where a person who has made a forcible entry upon the possession of one who acquired it by forcible entry refuses to give possession on demand, as aforesaid, to him upon whose possession the first forcible entry was made.

4. Where a person who has made a forcible entry upon the possession of a tenant for a term refuses to deliver possession to the landlord, upon demand as aforesaid, after the term expires; and, if the term expire whilst a writ of forcible entry sued out by the tenant is pending, the landlord may, at his own cost and for his own benefit, prosecute it in the name of the tenant. It is not material whether the tenant shall have received possession from his landlord or have become his tenant after obtaining possession.

Art. 3943. (2522) (2443) Venue.—Any justice of the peace of the precinct where the property is situated shall have jurisdiction to hear and determine any case arising under this title. (Acts 1876, p. 155, sec. 4.)

Art. 3944. (2523) (2444) Citation.—When the party aggrieved, or his authorized agent, shall file his complaint in writing and under oath with such justice of the peace, it shall be his duty immediately to issue his citation to the sheriff or any constable of the county, commanding him to summon the person against whom complaint is made to appear before such justice of the peace at a time and place named in such citation, such time being not more than ten days nor less than six days from the date of service of such citation; provided, that if the party aggrieved shall, at the time of filing his complaint under oath, execute a bond with two or more good and sufficient sureties, to be approved by the justice of the peace, in such an amount as may be fixed by the justice of the peace as the probable amount of the costs of suit and of the damages which may result to defendant in the event the suit has been improperly instituted, and conditioned that the plaintiff will pay defendant all such costs and damages as shall be adjudged against him,—it shall be the duty of the officer serving such citation to place the aggrieved person in possession of the property sued for, unless the defendant shall, within six days from the service of the citation, execute and deliver to such officer a bond with two or more good and sufficient sureties in an amount double the amount of the bond given by the plaintiff, to be approved by the officer serving such citation and conditioned that the defendant, in case judgment is rendered against him, will pay all the costs of suit and the reasonable rental or value of the use of the property during the time he has withheld possession of the same from plaintiff to the time of making such bond and, in addition, will also pay the reasonable value or rental of such property while such suit is pending and until it is finally disposed of. (Acts 1876, p. 155, sec. 4; Acts 1917, ch. 154, sec. 1; Acts 1918, 4th C. S., ch. 83, sec. 1.)

Art. 3944a. (2523a) Joinder of suit for rent; judgment.—A suit for rent may be joined with an action of forcible entry and detainer, wherever the suit for rent is within the jurisdiction of the justice court. In such case the court, in rendering judgment in the action of forcible entry and detainer, may at the same time render judgment for any rent due the landlord by the renter; provided the amount thereof is within the jurisdiction of the justice court. (Acts 1911, p. 28.)

Art. 3945. (2524) (2445) Requisites of the complaint.—The complaint named in the preceding article shall describe the lands,

tenements or premises, the possession of which is claimed, with certainty sufficient to identify the same; and it shall also state the facts which entitle the complainant to the possession and authorize the action under the first three articles of this title. (Acts 1876, p. 155, sec. 4.)

Art. 3946. (2525) (2446) Service and return of citation.—The sheriff or constable receiving such citation shall execute the same by reading it to the defendant, or by leaving a copy thereof with some person over the age of sixteen years, at his usual place of abode, at least five days before the return day thereof; and he shall return such citation, with his action written thereon, to the justice of the peace who issued the same, on the day assigned for trial. (Id.)

Art. 3947. (2526) (2447) Either party may demand a jury; precept for and service.—Either party to the suit shall have the right of trial by jury, by making demand for a jury to the justice of the peace on or before the day for which the case is set for trial, and paying the jury fee of three dollars; and, when a jury is demanded, the justice of the peace shall issue a precept to the sheriff or any constable of the county, commanding him to summon a jury of six men, qualified jurors of the county, to appear before him on the day set for trying the complaint, to serve as jurors, and shall be returned with the name of the jurors thereon to the said justice of the peace on the day assigned for trial. If no jury be demanded, the case shall be tried by the justice of the peace without a jury. (Acts 1876, p. 155; Acts 1897, p. 16.)

Art. 3948. (2527) (2448) Other jurors may be summoned, when.—If any of the jurors summoned as aforesaid shall fail or refuse to attend, or shall be excused after being challenged, a jury shall be completed by causing other qualified jurors to be summoned immediately. (Id.)

Art. 3949. (2528) (2449) Shall be docketed and tried as other cases, etc.—The cause shall be docketed and tried as other cases; and the justice of the peace shall have authority to issue subpœnas for witnesses, to enforce their attendance, and to punish for contempts. (Id.)

Stacks v. Simmons, 58 S. W. 959.

Art. 3950. (2529) (2450) Right of possession the only issue.—On the trial of any case of forcible entry, or of forcible detainer, under the provisions of this title, the only issue shall be as to the right to actual possession; and the merits of the title shall not be inquired into.

Hous v. Reavis, 35 S. W. 1063; Zuercher v. Startz, 115 S. W. 1175; Hengy v. Hengy, 151 S. W. 1127.

Art. 3951. (2530) (2451) Trial may be postponed for cause.—For good cause shown, supported by affidavit by either party, the trial may be postponed for a time not exceeding six days. (Acts 1876, p. 155.)

Art. 3952. (2531) (2452) Hearing and judgment without jury.—On the day named in the citation for trial, or on the day to which the case may be postponed according to the provisions of the preceding article, if no jury is demanded, the justice of the peace shall hear the evidence and render his judgment of guilty or not guilty of the charge as stated in the complaint. (Id.; Acts 1897, p. 16.)

Art. 3953. (2531) (2452) Jury case, impaneling; hearing; verdict.—If a jury is demanded by either party, the jury shall be impaneled and sworn as in other cases; and, after hearing the evidence, they shall return their verdict of guilty or not guilty of the charge as stated in the complaint. (Id.; Acts 1897, p. 16.)

See Stacks v. Simmons, 58 S. W. 959.

Art. 3954. (2532) (2453) Judgment of the court, and writ, etc.—If the justice of the peace, if no jury is demanded, or the jury, in case one is demanded, find the defendant guilty, the said justice of the peace shall give judgment thereon for the plaintiff to have restitution of the premises and for costs; and he shall award his writ of restitution and may issue execution for the costs, but, should the defendant be found not guilty, judgment shall be given in favor of the defendant and against the plaintiff for all costs, and execution may issue therefor. (Id.; Acts 1897, p. 16.)

Art. 3955. (2533) (2454) Writ of restitution not to issue for two days.—No writ of restitution shall issue until the expiration of two days from the rendition of the judgment. (Id.)

Art. 3956. (2534) (2455) May appeal, when and how.—Either party, his agent or attorney, may appeal from any final judgment rendered by the justice of the peace in such case, to the county court of the county in which the judgment is rendered, by giving notice thereof in open court and by filing with such justice of the peace, within five days after the rendition of said judgment, a bond with two or more good and sufficient sureties, to be approved by said justice of the peace, and payable to the adverse party, conditioned that he will prosecute his appeal with effect, or pay all costs and damages which may be adjudged against him; and no motion for a new trial shall be necessary to authorize such appeal. (Id. p. 163, sec. 21.)

See ante, arts. 742, 2392; Sayles' Practice, pp. 1052, 1058.

Art. 3957. (2535) (2456) Form of appeal bond.—The appeal bond made in the preceding article may be substantially as follows:

"The State of Texas,

"County of ———.

"Whereas, upon a writ of forcible entry (or forcible detainer) in favor of A B, and against C D, tried before ———, a justice of the peace of ——— county, a judgment was rendered in favor of the said A B on the —— day of ———, A. D. ———, and against the said C D, from which the said C D has appealed to the county court; now, therefore, the said C D and ———, his sureties, covenant that he will prosecute his said appeal with effect and pay all costs and damages which may be adjudged against him.

"Given under our hands this —— day of ———, A. D. ——."

See Sayles' Practice, p. 1053.

Art. 3958. (2536) (2457) Duty of justice in case of appeal.—Whenever such appeal bond shall be executed and filed, the justice of the peace shall stay all further proceedings on the judgment, and he shall

immediately make out a transcript of all the entries made on his docket of the proceedings had in the case before him; and he shall file the same, together with all the original papers, with the clerk of the county court of the county in which the trial was had, on or before the first day of the first term of said court, or, if there be insufficient time, on or before the first day of the next succeeding term thereof.

See Sayles' Practice, p. 1060.

Art. 3959. (2537) (2458) Trial de novo.—The clerk of the county court shall docket the cause, and the same shall be tried de novo, with or without a jury, as in other cases.

See Sayles' Practice, p. 1066.

Art. 3960. (2538) (2459) Damages may be proved, when.—On the trial of said cause in the county court the appellee shall be permitted to prove the damages for withholding the possession of the premises from the appellee during the pendency of the appeal, and for the reasonable expenses of the appellee in prosecuting or defending the cause in the county court; and, if the possession of the premises be not adjudged to the appellant, the said court shall render judgment also in favor of the appellee and against said appellant and the sureties on his bond for the damages proven and all costs.

See Sayles' Practice, p. 1069; McRae v. White, 42 S. W. 793.

Art. 3961. (2539) (2460) Judgment by default, when.—Should the defendant, by himself or his attorney, fail to enter an appearance upon the docket of the county court on appearance day, and before the case is called regularly for trial, the facts alleged in the complaint may be taken as admitted, and judgment by default may be entered accordingly. (Acts 1876, p. 163, sec. 21.)

See Sayles' Practice, p. 1058; Stacks v. Simmons, 58 S. W. 959.

Art. 3962. (2540) (2461) Judgment of county court, final, etc., except, etc.—After a trial upon the merits, the proper judgment shall be rendered upon the law and the facts, or upon the verdict of the jury, as the case may be; and the judgment of the county court finally disposing of the cause shall be conclusive of the litigation, and no further appeal shall be allowed, except where the judgment shall be for damages in an amount exceeding one hundred dollars.

See Sayles' Practice, p. 1069; Lane v. Jack, 61 S. W. 422; Kerlin v. Bassett, 152 S. W. 526; Delgado v. Chapa, 173 S. W. 1169.

Held unconstitutional in Supreme Lodge United Benevolent Ass'n v. Johnson, 77 S. W. 661.

Art. 3963. (2541) (2462) Writ of restitution, etc., by whom issued and served.—The writ of restitution, or execution, or both, shall be issued by the clerk of the county court according to the judgment rendered, and the same shall be executed by the sheriff or constable, as in other cases; and such writ of restitution shall not be suspended or superseded in any case by any appeal taken from such final judgment in the county court.

See Sayles' Practice, p. 1069.

Art. 3964. (2542) (2463) Shall not bar action for trespass, etc.—The proceedings under a forcible entry, or forcible detainer, shall not bar an action for trespass, damages, waste, rent or mesne profits.

See House v. Reavis, 35 S. W. 1063.

TITLE 62

FRAUDS AND FRAUDULENT CONVEYANCES

Art. 3965. (2543) (2464) Written memorandum required to maintain certain actions.—No action shall be brought in any of the courts in any of the following cases, unless the promise or agreement upon which such action shall be brought, or some memorandum thereof, shall be in writing and signed by the party to be charged therewith, or by some person by him thereunto lawfully authorized:

1. To charge any executor or administrator upon any promise to answer any debt or damages due from his testator or intestate, out of his own estate; or,

2. To charge any person upon a promise to answer for the debt, default or miscarriage of another; or,

3. To charge any person upon any agreement made upon consideration of marriage; or,

4. Upon any contract for the sale of real estate or the lease thereof for a longer term than one year; or,

5. Upon any agreement which is not to be performed within the space of one year from the making thereof. (Acts Jan. 18, 1840; P. D. 3875.)

See ante, art. 1103; Simkins' Contracts and Sales (3d Ed.) p. 132; Flannery v. Chidgey, 77 S. W. 1034; Sorrells v. Goldberg, 78 S. W. 711; Wattenbarger v. Hodges, 85 S. W. 1013; Wiley v. Whaley, 85 S. W. 1165; Morrison v. Hazzard, 88 S. W. 385; City of Tyler v. St. L. S. W. Ry., 91 S. W. 1; Allen v. Allen, 107 S. W. 528; Altgelt v. Escalero, 110 S. W. 989; Hazzard v. Morrison, 130 S. W. 244; Porter v. Norman, 136 S. W. 1173; Adams v. Hughes, 140 S. W. 1163; Granger Real Estate Exch. v. Anderson, 145 S. W. 262; Black v. Hanz, 146 S. W. 309; Rosen v. Phelps, 160 S. W. 104; Johnson v. Tindall, 161 S. W. 401; Hein v. John Finnigan Co., 163 S. W. 124; Daugherty v. Leewright, 174 S. W. 841; Lindley v. Lindley, 178 S. W. 782; Bank of Garvin v. Freeman, 181 S. W. 187; Longinotti v. McShane, 184 S. W. 598; Ryan v. Lofton, 190 S. W. 752; Clegg v. Brannan, 190 S. W. 812; Burgher & Co. v. Canter, 190 S. W. 1147; Howell v. Duncanson, 195 S. W. 349; Neely v. Dublin Fruit Co., 199 S. W. 827; Robbins v. Winters, 203 S. W. 149; Lott Town & Improvement Co. v. Harper, 204 S. W. 452; Ætna Ins. Co. v. Richey, 206 S. W. 383.

Art. 3966. (2544) (2465) Conveyance to defraud creditors, etc., void.—Every gift, conveyance, assignment, or transfer of, or charge upon, any estate real or personal, every suit commenced, or decree, judgment or execution suffered or obtained and every bond or other writing given with intent to delay, hinder or defraud creditors, purchasers, or other persons of or from what they are, or may be, lawfully entitled to, shall, as to such creditors, purchasers or other persons, their representatives or assigns, be void. This article shall not affect the title of a purchaser, for valuable consideration, unless it appear that he had notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor. (P. D. 3876.)

See ante, art. 3768; Simkins' Equity (2d Ed.) p. 576; Cook v. Greenberg, 34 S. W. 687; McGregor v. White, 39 S. W. 1024; Koch v. Bruce, 49 S. W. 1101; Felsher v. Halenza, 68 S. W. 838; Rutherford v. Carr, 84 S. W. 659; Id., 87 S. W. 815; Jolly v. Diehl, 86 S. W. 965; May v. Merchants' & Planters' Nat. Bank of Mt. Vernon, 152 S. W. 1194; Clarke v. A. B. Frank Co., 168 S. W. 492; Stolte v. Karren, 191 S. W. 600; Messimer v. Echols, 194 S. W. 1171; Spadra-Clarksville Coal Co. v. Security Nat. Bank of Dallas, 206 S. W. 200.

Art. 3967. (2545) (2466) Voluntary conveyances.—Every gift, conveyance, assignment, transfer or charge made by a debtor, which is not upon consideration deemed valuable in law, shall be void as to prior creditors, unless it appears that such debtor was then possessed of property within this state subject to execution sufficient to pay his existing debts; but such gift, conveyance, assignment, transfer or charge shall not on that account merely be void as to subsequent creditors, and though it be decreed to be void as to a prior creditor, because voluntary, it shall not for that cause be decreed to be void as to subsequent creditors or purchasers. (P. D. 3876–77.)

See Simkins' Equity (2d Ed.) p. 567; Walker v. Loring, 36 S. W. 246; Shannon v. Buttery, 140 S. W. 858; Rector v. Continental Bank & Trust Co., 180 S. W. 309; Collett v. Houston & T. C. R. Co., 186 S. W. 232; First State Bank & Trust Co. of Abilene v. Walker, 187 S. W. 724; Ochoa v. Edwards, 189 S. W. 1022; City National Bank of Eastland v. Kinnebrew, 190 S. W. 536; Stolte v. Karren, 191 S. W. 600; Moore v. Belt, 206 S. W. 225.

Art. 3968. (2546) (2467) Gift of goods, etc.—No gift of any goods or chattels shall be valid unless by deed or will, duly acknowledged or proven up and recorded, or unless actual possession shall have come to, and remained with, the donee or some one claiming under him. (P. D. 3876.)

See Simkins' Equity (2d Ed.) p. 576; Bruce v. Koch, 40 S. W. 626; Love v. Hudson, 59 S. W. 1128; Cowen v. First Nat. Bank of Brownsville, 63 S. W. 532; Coke & Reardon v. Ikard, 87 S. W. 869; Eldridge v. McDow, 102 S. W. 435; Eldridge v. McDow, 132 S. W. 516; Schauer v. Von Schauer, 138 S. W. 145; First Nat. Bank of Plainview v. McWhorter, 179 S. W. 1147; Rector v. Continental Bank & Trust Co., 180 S. W. 309; Earhart v. Agnew, 190 S. W. 1140; Spaulding Mfg. Co. v. Allen, 193 S. W. 715.

Art. 3969. (2547) (2468) Loan of chattels.—Where any loan of goods or chattels shall be pretended to have been made to any person with whom, or those claiming under him, possession shall have remained for the space of two years without demand made and pursued by due process of law on the part of the pretended lender; or when any reservation or limitation shall be pretended to have been made of a use of property, by way of condition, reversion, remainder or otherwise in goods and chattels, the possession whereof shall have remained in another as aforesaid, the same shall be taken as to the creditors and purchasers, of the persons aforesaid so remaining in possession, to be fraudulent within this chapter, and that the absolute property is with the possession, unless such loan, reservation or limitation of use of property were declared by will, or by deed or other instrument in writing, duly acknowledged or proved and recorded. (P. D. 3876.)

See Simkins' Equity (2d Ed.) p. 576; Hastings v. Kellogg, 36 S. W. 821; Hunstock v. Roberts, 65 S. W. 675; Cox v. Patten, 66 S. W. 64; Eason v. Garrison & Kelly, 82 S. W. 800; Woodward v. Traction Co., 95 S. W. 76; Hudgins v. Hammers, 178 S. W. 986; Spadra-Clarksville Coal Co. v. Security Nat. Bank of Dallas, 206 S. W. 200.

Art. 3970. (2548) Chattel mortgage void, when.—Every mortgage, deed of trust or other form of lien attempted to be given by the owner of any stock of goods, wares or merchandise daily exposed to sale, in parcels, in the regular course of the business of such merchandise, and contemplating a continuance of the possession of said goods and control of said business, by sale of said goods by said owner, shall be deemed fraudulent and void. (Acts 1879, p. 60.)

See post art. 5655; see Simkins' Equity (2d Ed.) p. 576; Bowen v. Lansing Wagon Wks., 43 S. W. 872; Mansur & Tilbetts Imp. Co. v. Beeman-St. Clair Co., 45 S. W. 729; Avery & Sons v. Waples, 49 S. W. 151; Wright v. Tex. Moline Plow Co., 90 S. W. 905; Continental State Bank of Beckville v. Trabue, 150 S. W. 209; Denman v. James, 180 S. W. 1157; J. I. Case Threshing Mach. Co. v. Lipper, 181 S. W. 236; Mayfield Co. v. Harlan & Harlan, 184 S. W. 313; Krower v. Martin, 184 S. W. 511; Park v. South Bend Chilled Plow Co., 199 S. W. 843; Clark & Boice Lumber Co. v. Commercial Nat. Bank of Jefferson, 200 S. W. 197; John Church Co. v. Martinez, 204 S. W. 486; Spadra-Clarksville Coal Co. v. Security Nat. Bank of Dallas, 206 S. W. 200.

Old art. 2549 was same as old art. 3327, and will be found as art. 5654.

Art. 3971. Sales of merchandise and fixtures in bulk; notice to creditors; liability as receiver.—The sale or transfer in bulk of any part or the whole of a stock of merchandise, or merchandise and the fixtures pertaining to the conducting of said business otherwise than in the ordinary course of trade, and in the regular prosecution of the business of the seller or transferor, shall be void as against the creditors of the seller or transferor unless the purchaser or transferee demand and receive from the seller or transferor a written list of names and addresses of the creditors of the seller or transferor, with the amount of the indebtedness due or owing to each and certified by the seller or transferor under oath to be a full, accurate and complete list of his creditors, and of his indebtedness; and unless the purchaser or transferee shall at least ten days before taking possession of such merchandise or merchandise and fixtures, or paying therefor, notify personally or by registered mail every creditor whose name and address are stated in said list, or of which he has knowledge, of the proposed sale and of the price, terms and conditions thereof. Any purchaser or transferee who shall not conform to the provisions of this Act shall, upon application of any of the creditors of the seller or transferor, become a receiver and be held accountable to such creditors for all goods, wares, merchandise and fixtures that have come into his possession by virtue of such sale or transfer. (Acts 1909, p. 66; Acts 1915, ch. 114, sec. 1.)

Art. 3972. Purchaser conforming to provisions, not accountable.—Any purchaser or transferee who shall conform to the provisions of Article 3971 shall not in any way be held accountable to any creditor of the seller or transferor for any of the goods, wares, merchandise or fixtures that have come into the possession of said purchaser or transferee by virtue of such sale or transfer. (Acts 1909, p. 66, sec. 2; Acts 1915, ch. 114, sec. 1.)

Art. 3973. Not applicable in what cases.—Nothing in Articles 3971 and 3972 shall apply to sales by executors, administrators, receivers or any public officer conducting a sale in his official capacity, nor to a sale or transfer of stocks of merchandise and fixtures for the payment of bona fide debts, where all creditors share in proportion to their respective claims, and without preference in the sale or transfer or the proceeds thereof. (Acts 1909, p. 66, sec. 3; Acts 1915, ch. 114, sec. 1.)

Art. 3973a. Actionable fraud.—Actionable fraud in this State with regard to transactions in real estate or in stock in corpora-

tions or joint stock companies shall consist of either a false representation of a past or existing material fact, or false promise to do some act in the future which is made as a material inducement to another party to enter into a contract and but for which promise said party would not have entered into said contract, provided however that whenever a promise thus made has not been complied with by the party making it within reasonable time, it shall be presumed that it was falsely and fraudulently made, and the burden shall be on the party making it to show that it was made in good faith but was prevented from complying therewith by the act of God, the public enemy or by some equitable reason. (Acts 1919, ch. 43, sec. 1.)

Art. 3973b. Same subject; actual damages.—All persons guilty of fraud, as defined in this Act, shall be liable to the person defrauded for all actual damages suffered the rule of damages being the difference between the value of the property as represented or as would have been worth, had the promise been fulfilled, and the actual value of the property in the condition it is delivered at the time of the contract. (Id. sec. 2.)

Art. 3973c. Same subject; exemplary damages.—All persons making the false representations or promises and all persons deriving the benefit of said fraud, shall be jointly and severally liable in actual damages, and in addition thereto, all persons knowingly and willfully making such false representations or promises or knowingly taking the advantage of said fraud shall be liable in exemplary damages to the person defrauded in such amount as shall be assessed by the Jury, not to exceed double the amount of the actual damages suffered. (Id. sec. 3.)

TITLE 63

GAME, FISH, OYSTERS, ETC.

See post, Penal Code, arts. 868-923u.

CHAPTER ONE

GAME, FISH AND OYSTER COMMISSIONER

Art. 3974. (2508) Office created.—The Office of the Game, Fish and Oyster Commissioner is hereby created and the Governor of the State is authorized to appoint a competent person as Game, Fish and Oyster Commissioner of the State of Texas. (Acts 1895, p. 70; Acts 1919, 2d C. S., ch. 73, art. [sec.] 1.)

Acts 1919, ch. 157, relating to game, and Acts 1919, 2d C. S., ch. 73, relating to fish, supersede and supply many of the provisions of this Title of the Revised Statutes and of Chapter 6 of Title 13 of the Penal Code. Of Acts 1919, ch. 157, section 1 is set forth post, this title, art. 4022, and post, Penal Code, art. 900½; section 2 is set forth post, this title, art. 4022a, and post, Penal Code, art. 900½a; sections 3-33 are set forth post, Penal Code, arts. 900½aa-900½qq; sections 34 and 35 are set forth post, this title, arts. 4039a, 4039b; sections 36-39 are set forth post, Penal Code, arts. 900½r-900½ss; sections 40 and 41 are set forth post, this title, arts. 4035a, 4035; and sections 42-47 are set forth post, Penal Code, arts. 900½t-900½vv. Of Acts 1919, 2d C. S., ch. 73, article 1 is this article; articles 2-11 are set forth post, this title, arts. 3975-3983, 4018a; articles 12, 13 are set forth post, Penal Code, arts. 923j, 923jj; articles 14, 15 are set forth post, this title, arts. 3984, 3986; art. 16 is set forth post, this title, art. 3986, and post, Penal Code, art. 917; articles 17-25 are set forth post, this title, arts. 3990-3993, 3995-3999; article 26 is set forth post, Penal Code, art. 920; article 27 is set forth post, this title, art. 3999a, and post, Penal Code, art. 908; articles 28-49 are set forth post, Penal Code, arts. 908a, 905, 906, 923o, 923oo, 923m, 870, 907, 903, 872, 901, 911, 923gg, 923ggg, 923gggg, 923nn, 918, 914, 921, 922, 923jj, 923b; article 50 is set forth post this title, 4019c; articles 51-66 are set forth post, Penal Code, arts. 923e, 871, 909a, 913, 914a, 914b, 923qq, 923r, 923rr, 923s, 923ss, 923t, 923ff, 923fff, 923ffff, 923p, 912a, 923pp, 923q, 872cc, 923tt; articles 67 and 74 are set forth post, this title, arts. 4016, 4018b, 4002, 4003, 4010, 4001, 4004, 4005, 4006, 4007, 4008, 4009; article 75 is set forth post, Penal Code, art. 923u; and articles 76, 76a and 77 are set forth post, this title 4018c, 4018d, 4018e.

Art. 3975. (2509) Qualifications.—The person appointed to the office of Game, Fish and Oyster Commissioner shall be a citizen of the United States and of the State of Texas. (Acts 1895, p. 70; Acts 1899, p. 312; Acts 1919, 2d C. S., ch. 73, art. [sec.] 2.)

Art. 3976. (2510) Office, where kept.—The Game, Fish and Oyster Commissioner shall have his office in the State Capitol in the City of Austin, Texas, during his term of office which shall be two years. (Acts 1911, p. 62, sec. 1; Acts 1919, 2d C. S., ch. 73, art. [sec.] 3.)

Art. 3977. (2511) Bond and oath.—The Game, Fish and Oyster Commissioner shall file with the Secretary of State, a good and sufficient bond, to be approved by that official in the sum of ten thousand dollars with two or more good and sufficient securities conditioned that he will faithfully perform the duties to this office. He shall take the oath prescribed for sheriffs and when he shall have filed said bond and taken said oath, he shall enter on the duties of his office. Said bond shall not be void on the first recovery but may be sued on from time to time in the name of the State or any persons injured until the whole amount has been recovered. (Acts 1895, p. 70; Acts 1919, 2d C. S., ch. 73, art. [sec.] 4.)

Art. 3978. (2512) Seal.—The Game, Fish and Oyster Commissioner shall have a seal on which shall be a five pointed star and the words "Game, Fish and Oyster Commissioner of Texas," and which seal he shall use in issuing commissions to deputies in his department and in other official acts. (Acts 1895, p. 70; Acts 1919, 2d C. S., ch. 73, art. [sec.] 5.)

Art. 3979. (2513) General duties and powers.—The duties of the Game, Fish and Oyster Commissioner shall be in the execution of the Game, Fish and Oyster Laws of the State and such further duties as may be imposed upon him by legislation. In the execution of these laws he shall exercise the power and authority given to the sheriffs of the State. (Acts 1895, p. 70; Acts 1905, pp. 128-129; Acts 1919, 2d C. S., ch. 73, art. [sec.] 6.)

CHAPTER TWO

FISH, OYSTERS, ETC.

Art. 3980. Public rivers, etc., property of state, etc.; jurisdiction of Game, Fish and Oyster Commissioner over.—All of the public rivers, bayous, lagoons, creeks, lakes, bays and inlets in this State, and all that part of the Gulf of Mexico within the jurisdiction of this State, together with their beds and bottoms, and all of the products thereof, shall continue and remain the property of the State of Texas, except in so far as the State shall permit the use of said water and bottoms, or permit the taking of the products of such bottoms and waters, and in so far as this use shall relate to or affect

the taking and conservation of fish, oyster, shrimp, crabs, clams, turtle, terrapin, mussels, lobsters and all other kinds and forms of marine life, or relate to sand, gravel, marl, mudshell and all other kinds of shell, the Game, Fish and Oyster Commissioner shall have jurisdiction over and control of, in accordance with, and by the authority vested in him by the laws of this State. (Acts 1905, p. 129; Acts 1919, 2d C. S., ch. 73, art. [sec.] 7.)

See ante, note to art. 3974.

Art. 3981. (2158*l*) Private and public oyster beds defined; beds subject to location.—All oyster beds shall be public or private; all not designated private shall be public. All natural oyster beds and oyster reefs of this State shall be deemed public, and a natural oyster bed shall be declared to exist when as many as five barrels of oysters may be found therein within twenty-five hundred square feet of any position of said reef or bed; and any lands covered by water containing less oysters than the above amount shall be subject to location at the discretion of the Game, Fish and Oyster Commissioner, but this shall not apply to a reef or bed that has been exhausted within a period of eight years. (Acts 1895, p. 70; Acts 1899, p. 314; Acts 1907, p. 236; Acts 1919, 2d C. S., ch. 73, art. [sec.] 8.)

Art. 3982. (2158*o*) Riparian rights as to gathering, etc., oysters; affidavit that oysters offered for sale were taken from private bed; limitation on locations.—Whenever any creek, bayou, lake or cove shall be included within the metes and bounds of any original grant or location of land in this State, the lawful occupant of such grant or location shall have the exclusive right to use said creek, lake, bayou or cove for gathering, planting, or sowing oysters within the metes and bounds of the official grant or patent of said land. Provided, that the Game, Fish and Oyster Commissioner may require the owner of oysters produced on such lands, when such oysters offered for sale to make an affidavit that such oysters were produced on this land. And the failure of the person claiming that such oysters were produced on his private oyster bed or bottoms, to have and to show such affidavit to the Game, Fish and Oyster Commissioner or one of his deputies, or to the person to whom he offers such oysters for sale, shall be presumptive that such oysters were taken from a public bed, and on prosecution for the same, it shall devolve on the defendant to show that such oysters were taken from his private bed, or bottom of oysters. No person shall locate water or ground covered with water for planting oysters along any bay shore in this State, nearer than 100 yards from the shore. (Acts 1913, p. 297, sec. 1; Acts 1919, 2d C. S., ch. 73, art. [sec.] 9.)

The title, enacting clause, and section 1 of Acts 1913, p. 297, read as follows:

"An Act to amend articles 3982, 3983, 3984, 3986, 3987, 3988, 3990, 3992, 3995, 3998, 3999, 4004, 4005, 4006, 4008, 4009, 4013, 4014, 4016, 4019, and to repeal articles 4020 and 4021, of chapter 2, title 63, Revised Civil Statutes of Texas, so as to provide better protection of the fish and oyster industries of this state, prescribing riparian rights, the prerequisites to the issuance of license to catch fish, oysters, etc.; providing for examination of location, surveys, etc., permit to gather seed oysters and to whom and by whom granted, the distribution of fines collected and the disposition of funds, the size of the meshes of seines, nets, etc., and providing the prerequisites for permission to seine and conditions upon which permission may be granted to use dredges on reefs, providing for deputy fish and oyster commissioners and defining and describing certain duties of the game, fish and oyster commissioner and his deputies, and declaring an emergency.

"Be it enacted by the legislature of the state of Texas:

"Section 1. That articles 3982, 3983, 3984, 3986, 3987, 3988, 3990, 3992, 3995, 3998, 3999, 4004, 4005, 4006, 4008, 4009, 4013, 4014, 4016, 4019, of chapter 2, title 63 of the Revised Civil Statutes of Texas, 1911, be and the same are hereby amended so as to hereafter read as follows:"

Following section 1 appeared 38 articles, numbered consecutively 3982 to 4019, both inclusive. Of the articles of the new act 3982 to 4011 both inclusive, corresponded in subject-matter to the corresponding articles of the Revised Statutes; 4012 embraced the subject-matter of Arts. 4012 and 4013 of the Revised Statutes; 4013 embraced the subject-matter of Art. 4014 of the Revised Statutes; 4014 embraced the subject-matter of Art. 4015 of the Revised Statutes; 4015 embraced the subject-matter of Art. 4016 of the Revised Statutes; 4016 embraced the subject-matter of Art. 4018 of the Revised Statutes; and 4017, 4018, and 4019 introduced new matters.

If the title and the enacting clause was sufficient to supersede those articles of the Revised Statutes not specifically enumerated, all those articles were dispensed with, except 4017 and 4019 as to which there was no corresponding subject-matter in the new act. Acts 1919, 2d C. S., ch. 73, supersedes nearly all of the provisions of said Acts 1913, p. 297. The various sections of said acts 1919. 2d C. S., ch. 73, have been given the article numbers which the corresponding sections of the old act bore in the Revised Statutes, and subsequent compilations.

Art. 3983. (2514) Special tax on fish, shrimp, oysters, turtles and terrapin taken and sold or offered for sale; amount; payment; what constitutes a barrel of oysters; title to shells.—There shall be and is hereby levied a tax of not less than one-fifth of one per cent per pound on all fish, and shrimp, taken and sold or offered for sale in this State, and not less than two cents a barrel on all oysters, sold or offered for sale in this State, whether from private or public beds, and offered for sale or shipment, and not less than one-half a cent per pound on all turtles, and not less than twenty-five cents on each terrapin offered for sale and shipment. Such tax shall be paid under such rules and regulations as the Game, Fish and Oyster Commissioner shall prescribe. For all purposes mentioned in this Title or Section, a barrel of oysters shall be deemed and taken to consist of three boxes of oysters in the shell, said boxes to be of the following dimensions; ten inches wide by twenty inches long and thirteen and one-half inches in depth. In filling such boxes for measurement, such oysters shall not be placed or deposited in such box in a way that will make them fill the box more than two and one-half inches in the center above the height of the box. Provided that two gallons of shucked oysters without their shells shall be considered and deemed by this Act as equal to one barrel of oysters in the shell. It is hereby specially provided that the title to the shells, from which oysters are taken, shall remain in the State and the Game, Fish and Oyster Commissioner is directed to handle, control or sell same under the same rules and regulations as fixed by law, or may hereafter be fixed by law, for the handling, control or sale of other shells or mudshell taken from the tidal waters of

the State. (Acts 1913, p. 297, sec. 1; Acts 1919, 2d C. S., ch. 73, art. [sec.] 10.)

For article 12 of Acts 1919, 2d C. S., ch. 73, prescribing a penalty for using a measurement other than as provided for in this article, see post, Penal Code, art. 923j.

For article 13 of Acts 1919, 2d C. S., ch. 73, prescribing a penalty for non-payment of the taxes imposed by this article see post, Penal Code, art. 923jj.

Art. 3984. Registration of fishing boats in public waters; application; certificate; fee; marking boats.—Any person who is a citizen of the United States wishing to use a boat in catching or taking fish, green turtle, terrapin or shrimp or gathering oysters or other marine life for market in public waters of this State, in accordance with the provisions of the fish and oyster laws of this State, shall apply to the Game, and Oyster Commissioner or his deputies for permission to do so. Such applicant shall furnish said officer under oath his name, place or residence, the name and kind of boat to be used by him, together with the number of men to be employed by him. Thereupon the officer shall register such boat which register number shall be distinctly painted, as the Game, Fish and Oyster Commissioner may designate, on such boat, for which registration he shall pay the said officer one dollar and fifty cents and the said officer shall furnish the applicant with a certificate of such registration, such certificate shall be for twelve months from date of issuance. (Acts 1913, p. 297, sec. 1; Acts 1919, 2d C. S., ch. 73, art. [sec.] 14.)

Art. 3985. (2514) Permit to sell, with receipts of seizure and sale; proceeds, how disposed of.—When the special tax provided for in article 3983 of this chapter has been paid, it shall be the duty of the game, fish and oyster commissioner, or his deputy, receiving the tax, to give a receipt for same, together with a permit authorizing the holder thereof to dispose of the products on which the special tax has been paid. A duplicate of which receipt and permit shall be retained in the office of said commissioner issuing same. This permit shall be given by the person delivering said products to the person, firm or corporation to whom the products mentioned therein shall be sold or delivered for sale, shipment or storage. Any fish, turtle, terrapin, shrimp or oysters found in the possession of any packer, buyer or commission man, for the disposition of which he can not show the state's permit, shall continue the property of the state, and may be seized by the game, fish and oyster commissioner, or any of his deputies, and sold, the proceeds thereof to go to the fish and oyster fund of the state. (Acts 1913, p. 297, sec. 1.)

Art. 3986. (2518k) License to catch or take fish, oysters, etc.; issue; term of; fee for; cancellation.—Any captain or master of any boat wishing to engage in the business of catching or taking any fish, turtle, terrapin, shrimp, or oysters or other marine life from the waters of the State for market shall, before engaging in such business, secure from the Game, Fish and Oyster Commissioner, or one of his deputies, a license granting him permission to take from the waters of the State, fish, turtle, terrapin, shrimp, or oysters; provided, that the license in exercising the privilege named in this license, shall at all times be governed by the fish and oyster laws of this State. For the purpose of obtaining this license the person desiring same must make written application to the Game, Fish and Oyster Commissioner, or one of his deputies, in which he, the applicant shall set forth under oath that he is a citizen of the United States and the name, class and register number of his boat. If the application be for a license to use seines and nets, the applicant shall state the number, class and length of the seines and nets to be used by him, and if the application be for a license to gather oysters he must state the number of tongs to be used by him, and the applicant shall also agree that because of the privilege he shall receive from the State of Texas, of taking fish, turtle, terrapin, shrimp or oysters from her waters, or the marine life, all such products at all times, shall be subject to inspection by the Game, Fish and Oyster Commissioner, or any of his deputies, and that said application shall authorize said Commissioner, or any of his deputies, to enter at any time the boat or any house or place, where he, the applicant, may have such from her waters, or the marine life, all such products at all times, shall further agree to pay to the State of Texas a special tax provided for in Article 10 of this Act [art. 3983]. This application having been duly executed and handed to the Game, Fish and Oyster Commissioner, or any of his deputies, accompanied by the applicant's registration certificate and the fee for the license applied for, it shall thereupon be the duty of the Game, Fish and Oyster Commissioner, or the deputy receiving same, to issue to the applicant a license to engage in the business set forth in his application, and the license shall be subject to such limitations and control as herein prescribed and as is or may be prescribed by the laws of this State. Said license must be signed by the Game, Fish and Oyster Commissioner, or his deputy, stamped with the seal of office and state the name of the licensee, name and class of his boat and the date of issuance. Such license shall be for twelve months, if for fishing, for fish, turtle, or shrimp, and from September the first to April the first, following the date of license, if for gathering oysters; and from November the first to February the first inclusive, if granted for the purpose of catching terrapin, and for said license the applicant shall pay the sum of one dollar. The license so issued shall be kept on the boat subject to the inspection of the Game, Fish and Oyster Commissioner or any of his deputies, and it shall not be good for any other person nor on any other boat than the original named therein without the consent of the Game, Fish and Oyster Commissioner, or one of his deputies, having first been had, which consent or assignment shall be written across the face of said license; provided, that if at any time such licensed captain or master of a boat shall violate any of the fish and oyster laws of this State, or shall at any time refuse to comply with any provision made in his application for license, the Game, Fish and Oyster Commissioner is authorized to cancel said license and the boat registration certificate, notice of which shall be given by the Fish and Oyster Commissioner in writing and delivered to the licensee, and such license to such captain and the registration of such boat shall not be renewed for three

years. Any person wishing to engage in the taking or catching of any fish, turtle, terrapin, shrimp, or opsters for market as the employee of the owner or as a part of a crew of any registered boat, shall procure a license in the same manner and character as the captain or master of any registered boat engaged in taking or catching fish, turtle, terrapin, shrimp, or oysters or other marine life, for market; provided, that one license so issued under this Article shall authorize the licensee to engage in taking or catching any of the products named herein. (Acts 1913, p. 297, sec. 1; Acts 1919, 2d C. S., ch. 73, art. [sec.] 15.)

Art. 3987. License to wholesale dealers in fish and oysters; application; requisites; agreement for inspection, records, etc.; forfeiture of license; tax; cancellation.—For the protection of the fish and oyster industry, any individual, firm or corporation, engaged in, or who may engage in, the business of a wholesale dealer or dealers in fish and oysters, shall secure from the Game, Fish and Oyster Commissioner, or one of his deputies, a license granting such individual, firm or corporation permission to engage in said occupation for one year. For the purpose of obtaining this license the applicant desiring same must make written application to the Game, Fish and Oyster Commissioner, or one of his deputies, in which he (the applicant) shall set forth under oath, if required, that he is a citizen of the United States by birth or not being so shall state that he has been granted full naturalization papers and by what court and at what time they were granted. Where a corporation applying for permit to conduct a wholesale business in fish, oysters and other marine products as mentioned, contains foreigners, it shall conform to the foregoing provision as applied to individual applicants. He shall also agree that, because of the privilege which he applies for from the State of Texas, that all products handled by him shall, at all times be subject to the inspection of the Game, Fish and Oyster Commissioner, or any of his deputies; and in said application he shall authorize said Commissioner or any of his deputies to enter his place of business, or any place where he may have such products stored, and inspect same. He shall also agree to keep a correct record of all fish, oysters, shrimp and other taxed marine life handled by him under this law in a book to be furnished by the Game, Fish and Oyster Commissioner; and, further, that failure on his part to keep a correct record shall be grounds for the forfeiture of his license granted him under the application aforesaid. This application, having been duly executed and delivered to the Game, Fish and Oyster Commissioner, or any of his deputies, together with a fee of ten dollars for same, it shall be the duty of the Game, Fish and Oyster Commissioner, or his deputy, to issue to the applicant a license to engage in the business set forth in the application. Said license must be signed by the Game, Fish and Oyster Commissioner, or one of his deputies stamped with the seal of his office, and state the name of the licensee, place of business and the kind of license applied for, and shall be good for twelve months following the date of issuance. For such license the applicant shall pay one dollar for each one thousand pounds of fish handled by him, and a tax of one cent per barrel on oysters handled by him, which tax, shall be paid monthly, the tax to be paid on the first of each month, which may be due upon the said product handled during the preceding month as shown by the record books hereinbefore mentioned. * * A wholesale dealer in the meaning and definition of this Act is any person, corporation or firm or partnership engaged in the business of buying and selling fish, oysters, shrimp, turtle, terrapin, crabs, clams, lobsters or other commercial marine life. (Acts 1913, p. 297, sec. 1; Acts 1919, 2d C. S., ch. 73, art. [sec.] 16.)

This article is a part of article 16 of Acts 1919, 2d C. S., ch. 73. For the penal provision of said article 16, see post, Penal Code, art. 917.

Arts. 3988, 3989. [Superseded by Acts 1919, 2d C. S., ch. 73, art. [sec.] 16, ante, art. 3987.]

Art. 3990. Deposit of estimated amount of tax, etc.—The applicant for any license under this act, based upon fish and oysters handled, shall upon the issuance of such license, deposit with the Game, Fish and Oyster Commissioner, if required to do so by such officer, an amount of money, to be fixed by the said commissioner, in addition to the ten dollars required of him as a wholesale dealer as defined in Article 16 [Art. 3987], sufficient to cover the estimated amount of tax that would be due by applicant upon monthly business of applicant, and against which deposit the tax due may be charged by the commissioner, and said applicant shall make additional deposits in sufficient amounts to at all times maintain a deposit sufficient to cover the estimated tax that may be due by applicant, which additional deposit shall be made upon request of the Game, Fish and Oyster Commissioner. (Acts 1913, p. 297, sec. 1; Acts 1919, 2d C. S., ch. 73, art. [sec.] 17.)

Art. 3991. (2518m) Location for planting oysters; who may obtain; application; fee for.—Any person who is a citizen of the United States, or any corporation having been chartered in this State shall have the right of obtaining a location for planting oysters and making private oyster beds within the public waters of this State, by making written application to the Game, Fish and Oyster Commissioner, or his deputy, describing the location desired. A fee of twenty dollars cash must accompany such application. (Acts 1913, p. 297, sec. 1; Acts 1919, 2d C. S., ch. 73, art. [sec.] 18.)

Art. 3992. (2518m) Examination of location; survey.—When the application and fee provided for in Article 18 [Art. 3991] has been placed in the hands of the Game, Fish and Oyster Commissioner, it shall then be the duty of the Game, Fish and Oyster Commissioner, or his deputy, to examine thoroughly the location desired, as soon as practicable, with tongs, dredge, or any other efficient manner; and, if the same be not a natural oyster bed or reef, and exempt from location by any section or article of this chapter, he shall have the location surveyed by a competent surveyor. In making said location, said surveyor shall plant two iron stakes or pipes on the shore line nearest to the proposed location, one at each end of the proposed location, which said takes or pipes

shall be not less than two inches in diameter and be set at least three feet in the ground. Said stakes or pipes shall be placed with reference to bearings of not less than three natural or permanent objects or land marks. And the locator shall place and maintain under the direction of the Game, Fish and Oyster Commissioner, or his deputy, a bouy at each corner of his oyster claim farthest from the land. All locations for private oyster beds shall be made outside of the riparian limits as defined in the laws relating thereto. (Acts 1913, p. 297, sec. 1; Acts 1919, 2d C. S., ch. 73, art. [sec.] 19.)

Art. 3993. (2518m) Location certificate; fee for; filing and recording; fee for; evidence.—The Game, Fish and Oyster Commissioner, or his deputy, shall give the locator a certificate signed by the Game, Fish and Oyster Commissioner and stamped with the seal of his office; such certificate shall show the date of application, date of survey, number, description of metes and bounds with reference to the points of the compass and natural and artificial objects by which said location can be found and verified. And the locator shall before such certificate is delivered to him, pay the Game, Fish and Oyster Commissioner, or his deputy, surveyor's fees, and all other expenses connected with establishing such location. If such sums, as costs of the location and establishment of the claim, are less than twenty dollars paid to such commissioner, or deputy, the difference in amount shall be returned to such locator by the Commissioner or deputy. If such expenses amount to more than twenty dollars the deficit shall be paid to the Game, Fish and Oyster Commissioner by the locator.

At any time not exceeding sixty days after the date of such certificate of location, the locator must file the same with the county clerk of the county in which the location is situated, who shall record the same in a well bound book kept for that purpose, and the original with a certificate of registration shall be returned to the owner or locator; the clerk shall receive for the recording of such certificate the same fee as for recording deeds: the original or certified copies of such certificates shall be admissible in evidence under the same rule governing the admission of deeds or certified copies thereof. (Acts 1913, p. 297, sec. 1; Acts 1919, 2d C. S., ch. 73, art. [sec.] 20.)

Art. 3994. [Superseded by Acts 1919, 2d C. S., ch. 73, art. (sec.) 20, ante, art. 3993.]

Art. 3995. (2518m) Possession of locator protected.—Any person so locating, shall be protected in his possession thereof against trespass thereon in like manner as free-holders are protected in their possessions, as long as he maintains all stakes and buoys, in their original and correct position, and complies with all laws, rules and regulations governing the fish and oyster industries. (Acts 1913, p. 297, sec. 1; Acts 1919, 2d C. S., ch. 73, art. [sec.] 21.)

Art. 3996. (2518p) Location limited; foreign corporations excluded.—No person, firm or corporation, shall ever own, lease or otherwise control more than one hundred acres of land covered by water, the same being oyster locations under this chapter, and within the public waters of this State; and any person, firm or corporation that now holds more than one hundred acres of oyster locations, shall not be permitted hereafter to acquire, lease or otherwise control more; provided that no corporation shall lease or control any such lands covered by water unless such corporation shall be duly incorporated under the laws of this State. (Acts 1913, p. 297, sec. 1; Acts 1919, 2d C. S., ch. 73, art. [sec.] 22.)

Art. 3997. (2518n) Staking, marking or fencing private locations.—Any person, firm, or corporation who has secured, or may hereafter secure a location for a private oyster bed in this State, shall keep the two iron stakes or pipes and buoys as provided for in Article 19 [Art. 3992], in place, and shall preserve the marks so long as he is the lessee of said location, and this shall apply also to any person, firm or corporation acquiring any location by purchase or transfer of any nature, and said locator or the assignee of any locator shall have the right to fence said location or any part thereof; provided, that said fence does not obstruct navigation through or into a regular channel or cut leading to other public waters. (Acts 1913, p. 297, sec. 1; Acts 1919, 2d C. S., ch. 73, art. [sec.] 23.)

Art. 3998. (2518n) Rentals for locations; forfeiture of location.—The owner or locator of private oyster beds, under provisions of the foregoing articles shall not be required to pay any rentals on such locations for a period of five years, or till such time as he shall begin to market or sell oysters from such location or bed. When such locator shall begin to sell or market oysters from such location he shall pay the State one dollar and fifty cents per acre per annum and two cents a barrel or such tax as may be imposed under section ten of this Act [Art. 3983] on oyster sales, and failure to pay such rental by the 1st day of March each year shall annul and be a forfeiture of his lease. And if oysters are not marketed or sold from such location within five years from the date of location, such location shall become void. (Acts 1913, p. 297, sec. 1; Acts 1919, 2d C. S., ch. 73, art. [sec.] 24.)

Art. 3999. Permit to gather oysters for planting or for preparation for market; persons entitled to; application; restrictions; culls; marking beds planted with oysters so taken.—Any person who is a citizen of the State of Texas, or any corporation chartered by the said State of Texas, to engage in the culture of oysters or transact business in the purchase and sale of oysters and fish and composed of American citizens, wishing to plant oysters on their own oyster locations or to take oysters from oyster reefs and public waters of the State of Texas for the purpose of preparing them for market, shall make application to the Game, Fish and Oyster Commissioner for permission to do the same. In such application the applicant shall set out distinctly the purpose for which he desires such oysters, and also the amount or number that he desires to take from the beds and waters mentioned. The Game, Fish and Oyster Commissioner may grant such permit or he may refuse to do so. But if he should grant such permit he shall require the applicant to take the oysters he is authorized to take from

beds or reefs designated by such commissioner and name them in the permit; he shall mark off the exact area of such beds or reefs from which such oysters shall be taken; he shall designate the bottoms on which such oysters shall be deposited, if they are taken to be prepared for market; he shall require the applicant to cull the oysters taken on the grounds where they are to be located; he shall state what implements, such as tongs and dredges shall be used in taking such oysters and he shall make and enforce all the other regulations he may think necessary to protect and conserve the oysters on the reefs and beds from which the applicant hereinbefore mentioned is permitted to take oysters. When any person or corporation takes oysters, under the provisions of this act from the public reefs for planting purposes and places them on his or its own private bed or reef, or takes oysters from such public reefs or beds for the purpose of preparing them for market, and places them on such beds or bottoms designated by the Game, Fish and Oyster Commissioner, where they may be prepared for market, such oysters shall become the personal property of the person or corporation planting them, in the first instance, or depositing them in the second instance. Provided, that the person or corporation planting the oysters or depositing them for preparation for market shall, by buoys or stakes or by fencing, clearly and distinctly mark the boundaries of the bed planted or the boundaries of the deposit of oysters made for preparation for market; and no prosecution of any one shall be permitted for taking such oysters unless the boundaries of the private beds and the boundaries of the deposit for the market preparation are established and maintained. (Acts 1913, p. 297, sec. 1; Acts 1919, 2d C. S., ch. 73, art. [sec.] 25.)

Art. 3999a. Individual license to take fish, etc., for sale; fee for.—Any person who is an American citizen desiring to fish in the public waters of this State, or fish for oysters, fish, shrimp, turtle, terrapin, clams, crabs or other marine animal life, for the purpose of selling them, shall procure from the Game, Fish and Oyster Commissioner or his deputy, a license to do so, and such person shall pay the fee of one dollar for such license, which shall be for one year from the date thereof and obligate the holder to observe all the laws of the State enacted to conserve the marine life of such public waters. (Id. art. [sec.] 27.)

This is a part of Acts 1919, 2d C. S., ch. 73, art. 27. For the penal provision of said art. 27 see post, Penal Code, art. 908. See, also, post, Penal Code, art. 908a.

Art. 4000. Duties of commissioner.—It shall be the duty of the Game, Fish and Oyster Commissioner to collect the special tax imposed by this chapter and enforce its payment, to inspect all products so taxed and verify the weights and measures thereof, to collect all license fees, to collect all rents on locations for planting oysters, to examine or have examined all streams, lakes or ponds when requested to do so for the purpose of stocking such waters with fish best suited to such location and he shall procure and furnish such stock fish from the nearest fishery and fish hatchery, free of charge to any party or parties applying therefor. It shall be the duty of the Game, Fish and Oyster Commissioner to supply from the fish hatcheries and fisheries of this State free of charge to all parties applying therefor such number of fish for the purpose of stocking private lakes and ponds, or public waters, as may be available for distribution; provided, however, that the parties applying therefor shall pay all transportation charges on such fish and shall return to the hatchery or fishery all containers, free of cost.

It shall be lawful for the Game, Fish and Oyster Commissioner of this State and his deputies to take at any time from the public fresh waters of this State all brood fish required by him in operation of such hatcheries for the purpose of propagation and culture. It shall also be lawful for the United States Commissioner of Fisheries and his duly authorized agents to take from public fresh waters of this State all brood fish necessary in the operation of Federal Fish Hatcheries. (Acts 1913, p. 297, sec. 1; Acts 1917, 3d C. S., ch. 12, sec. 1; Acts 1918, 4th C. S., ch. 87, sec. 1.)

Art. 4000a. United States Commissioner of Fisheries may conduct fish hatching and culture.—There is hereby accorded to the United States Commissioner of Fisheries and his duly authorized agents the right to conduct fish hatching and fish culture and all operations connected therewith at any time, in any manner, and at any place, that may be by them considered necessary and proper. (Acts 1917, 3d C. S., ch. 12, sec. 2; Acts 1918, 4th C. S., ch. 87, sec. 2.)

Art. 4001. (2515) Commissioner to keep record of special taxes collected, licenses issued, etc.—The Game, Fish and Oyster Commissioner shall keep a record book, which shall be well bound, and in which shall be recorded all special taxes collected, all licenses issued and license fees collected all certificates issued for locations of private oyster beds, showing the date of certificate and application, when and how the applications were executed and the manner in which the bottoms were examined and rents collected for such locations, showing also all stock fish furnished, to whom furnished, and the cost of same, the streams, lakes or ponds stocked number and kinds of fish used in each and showing all collections, and disbursements in and from his office. (Acts 1913, p. 297, sec. 1; Acts 1919, 2d C. S., ch. 73, art. [sec.] 71.)

Art. 4002. Commissioner to keep accounts with locators.—The Game, Fish and Oyster Commissioner shall keep an account with each and every person, firm or corporation holding certificates for the location of private oyster beds in this State, showing the amounts received as rents, etc. (Acts 1913, p. 297, sec. 1; Acts 1919, 2d C. S., ch. 73, art. [sec.] 68.)

Art. 4003. (2516) Annual report of Commissioner; contents; printing and distribution; dismissal from office for failure to make.—The Game, Fish and Oyster Commissioner shall make on the thirty-first day of August of each year, or as soon thereafter as practicable, not later than October 1st, of each year, a report to the Governor, showing the conditions of the fish and oyster industry. The report shall show the special taxes collected, the number and class

of all boats engaged in the fish and oyster trade, the number of licenses issued and license fees collected, the number, place and acreage of private oyster beds and rents received therefor, and all other amounts collected from whatever source, and the disbursements therefor, as provided for in this chapter with such observations and remarks as pertain to the industry. The report shall also contain a statement of all stock furnished, to whom furnished, the cost of same, the streams, lakes or ponds stocked, the number and kind of fish used in each, and the condition of such plants, with any other data he may obtain on the subjects. The Governor shall order a sufficient number of copies of such report to be printed and filed in the Secretary of State's Office for the purpose of free distribution to parties interested therein. Failure to make such report within the time specified, the said Commissioner may, in the discretion of the Governor, be dismissed from his office. (Acts 1913, p. 297, sec. 1; Acts 1919, 2d C. S., ch. 73, art. [sec.] 69.)

Art. 4004. (2518d) Boat deputies; appointment; powers.—The Game, Fish and Oyster Commissioner is authorized to appoint deputies for each of the vessels owned by the State and employed in the Fish and Oyster Department. Such boat deputies shall have and exercise the same powers and duties as the Game, Fish and Oyster Commissioner and execute a good and sufficient bond, with two or more sureties, that such deputies shall at all time be subject to the orders of the Game, Fish and Oyster Commissioner. (Acts 1913, p. 297, sec. 1; Acts 1919, 2d C. S., ch. 73, art. [sec.] 71.)

Art. 4005. (2517) Shore and interior deputies; appointment; powers and duties.—The Game, Fish and Oyster Commissioner is authorized to appoint such other shore and interior deputies as he may deem necessary for the enforcement of the law. And such shore deputies and interior deputies shall have and exercise the same powers and duties as the Game, Fish and Oyster Commissioner in the enforcement of the Game, Fish and Oyster Laws, and be at all times subject to his order. (Acts 1913, p. 297, sec. 1; Acts 1919, 2d C. S., ch. 73, art. [sec.] 71.)

Art. 4006. (2518k) Qualifications of deputy fish and oyster commissioners; terms of office.—No person shall hold the office of deputy fish and oyster commissioner who is not a citizen of the United States and of the State of Texas. All deputies shall hold their office at the pleasure of the Game, Fish and Oyster Commissioner. (Acts 1913, p. 297, sec. 1; Acts 1919, 2d C. S., ch. 73, art. [sec.] 71.)

Art. 4007. (2518g) Oath and bond of deputy fish and oyster commissioner.—Before entering upon the duties of his office each deputy fish and oyster commissioner shall file with the Fish and Oyster Commissioner a good and sufficient bond, with two or more sureties, in the sum of one thousand dollars, and take the same oath of office as the Game, Fish and Oyster Commissioner, and said bond and oath shall be governed by the provisions of Article 4 [art. 3977]. (Acts 1913, p. 297, sec. 1; Acts 1919, 2d C. S., ch. 73, art. [sec.] 72.)

Art. 4008. (2518f) Deputy fish and oyster commissioners ex officio game commissioners.—Each Deputy fish and oyster commissioner shall be ex officio game commissioner, and shall exercise the duties and powers of Game Commissioner under the direction of the Game, Fish and Oyster Commissioner. (Acts 1913, p. 297, sec. 1; Acts 1919, 2d C. S., ch. 73, art. [sec.] 73.)

Art. 4009. (2518e) Monthly reports by deputies; remittances.—All deputy fish, and oyster commissioners shall make a monthly report to the Game, Fish and Oyster Commissioner of all funds collected by them, remitting along with said report all sums of money collected by them during the said month. (Acts 1913, p. 297, sec. 1; Acts 1919, 2d C. S., ch. 73, art. [sec.] 74.)

Art. 4010. (2518j) Commissioner responsible for deputies.—The Commissioner shall be responsible, on his bond, for the official acts of his deputies. (Acts 1913, p. 297, sec. 1; Acts 1919, 2d C. S., ch. 73, art. [sec.] 70.)

Art. 4011. (2518) Fish and oyster fund.—All the money derived by the state from fines for infraction of the fish and oyster laws, fees for licenses, and taxes on private oyster beds, and taxes on fish and oysters, shall be kept by the comptroller separate under the head of, "Fish and Oyster Fund." (Acts 1913, p. 297, sec. 1.)

Art. 4012. [Superseded.]

See Art. 4013.

Art. 4013. Fines distributed, how.—Of all fines collected for infraction of the fish and oyster laws, ten per cent. shall go to the prosecuting attorney and the residue shall go to the fish and oyster fund of the state. (Id.)

Art. 4014. (2518c) Disposition of funds collected by deputies.—All funds collected by deputy fish and oyster commissioners along the coast for register certificates, licenses, fees and rents for locating private oyster beds and any other fees that may be prescribed, shall be, by said deputies and each of them, paid over weekly to the game, fish and oyster commissioner. Such funds so collected by the game, fish and oyster commissioner weekly from the deputy game, fish and oyster commissioners, shall be by the game, fish and oyster commissioner deposited monthly in the state treasury, to the credit of the fish and oyster fund. (Id.)

Art. 4015. (2517) Compensation of commissioner.—The game, fish and oyster commissioner shall for his services in the fish and oyster department, be allowed the sum of eighteen hundred dollars per annum, to be paid out of any funds in the state treasury not otherwise appropriated, to be paid in the same manner as other officers of the state. He shall also be allowed a sum not to exceed six hundred dollars per annum for office rent, traveling and other expenses, to be paid on vouchers approved by the governor, showing that such amounts have actually been expended in the performance of his duties of said office and he shall be allowed all stationery, books, blanks, tags, state laws and charts necessary to the execution of the duties of his office. (Id. Acts 1895, p. 70. Acts 1899, p. 313.)

Art. 4016. (2518c) Compensation of deputy commissioners, etc.—Out of the Fish and Oyster Fund all deputy fish and oyster commissioners shall be paid their sala-

ries and expenses monthly on the approval of the Game, Fish and Oyster Commissioner; the Comptroller drawing his warrant in favor of each of said persons on said special fish and oyster fund as follows: Chief Deputy fifth[y] dollars per month; deputies on boats one hundred dollars per month; mates on boats seventy-five dollars per month; shore or interior deputies sixty dollars per month; First Deputy at Caddo Lake one hundred dollars per month; Assistant Deputy at Caddo Lake seventy-five dollars per month; Deputy at Medina Lake one hundred dollars per month; Deputy at Galveston, one hundred dollars per month; shore Deputy at Houston, one hundred and thirty-five dollars a month; Deputy at Fish Hatchery one hundred and twenty-five dollars per month. Three workmen at the hatchery at sixty dollars each, per month. (Acts 1895, p. 70; Acts 1899, p. 313; Acts 1903, p. 190; Acts 1905, p. 130; Acts 1907, p. 234; Acts 1909, S. S. p. 325; Acts 1913, p. 297, sec. 1; Acts 1919, 2d C. S. ch. 73, art. [sec.] 67.)

Art. 4017. (2518i) Fees for making arrests, etc.—In making arrests, summoning witnesses and serving processes, the commissioner, or his deputy, shall be allowed the same fees and mileage as sheriffs, the same being charged as costs and collected the same as are sheriff's costs and fees. (Acts 1895, p. 70.)

Art. 4018. Commissioners' court may appropriate money for stocking waters with fish; deputy for, etc.—The commissioners' court of any county bordering on any stream or having within its borders any public stream, lake or pond, shall have the right to appropriate a sum not to exceed two hundred dollars per annum, out of the general fund of the county or so much thereof as said court may deem necessary for the purpose of stocking said waters with fish, and at the request and recommendation of said commissioners' court, the state game, fish and oyster commissioner shall appoint a deputy fish commissioner for said county, who shall have charge of all public waters in said county for the purpose of stocking and protecting same, and the commissioners' court shall pay the said deputy for his services such amount as may be agreed upon, not to exceed two dollars and fifty cents per day. (Acts 1913, p. 297, sec. 1.)

Art. 4018a. Commissioner to collect taxes, licenses, etc.—The Game, Fish and Oyster Commissioner is hereby authorized and empowered to collect all taxes and licenses, fines and forfeiture and all money due said department, by deputies or persons specially employed for that purpose. (Acts 1919, 2d C. S., ch. 73, art. [sec.] 11.)

Art. 4018b. Same subject; other duties.—It shall be the duty of the Game, Fish and Oyster Commissioner to collect all taxes, licenses and fines as imposed by law, and to enforce their payment, to inspect all products so taxed, and to verify the weights and measures thereof, to collect all license fees, to collect all rents on locations for planting oysters, to examine, or have examined, all streams, lakes, or ponds, when requested so to do, for the purpose of stocking such waters with fish, best suited to such locations and he shall superintend and have control in the propagation of fish in the State Fish Hatchery and the distribution of such fish, and he shall have superintendence and control of the propagation and distribution of birds and game in the State reservations over which he may have control, or which may be established for such propagation. He shall also be allowed, a sum not to exceed fifteen hundred dollars per annum for office rent, traveling and other expenses, to be paid on vouchers approved by the Governor, showing that such amounts have actually been expended in the performance of his duties of said office, and he shall be allowed all stationery, books, blanks, tags, State laws and charts necessary to the execution of the duties of his office. (Id. art. [sec.] 67.)

Art. 4018c. Taking of brood fish by commissioner.—It shall be lawful for the Game, Fish and Oyster Commissioner of this State and his deputies or the United States Commissioner of Fisheries and his duly authorized Agents, to take at any time and in any manner from the public fresh waters of this State all brood fish required by them in operation of the State and Federal Hatcheries. (Id. art. [sec.] 76.)

Art. 4018d. Partial invalidity of act.—If any section of this bill shall be held unconstitutional it shall not affect any other section of this bill, and all sections save the one that may be declared unconstitutional shall continue to be in full force and effect. (Id. art. [sec.] 76a.)

Art. 4018e. Effect of act on other acts.—This Act shall be construed to be a continuation of all former Acts upon the subject, and any and all suits instituted under any former Act shall not abate, but prosecutions thereof shall continue under the provisions of such former Acts or under this Act. (Id. art. [sec.] 77.)

Art. 4019. Improving, etc., the natural oyster beds of Matagorda Bay; expenditure authorized, provided, etc.—The game, fish and oyster commissioner is hereby authorized to use and expend the sum of three thousand dollars, or as much thereof as may be necessary, out of the fish and oyster fund, for the purpose of improving and reviving the natural oyster beds in Matagorda bay, in the state of Texas, by constructing a canal from the northeast end of said bay, connecting same with the lakes and bayous leading into the San Bernard river, for the purpose of conducting salt water into said bay; and said amount of three thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of said fish and oyster fund for such purpose, said money to be paid out upon the approval of the game, fish and oyster commissioner, and by warrant drawn by the state comptroller on the state treasurer; provided, that in no event shall the state be liable for the payment of any indebtedness created by virtue of this article, and the said game, fish and oyster commissioner shall only create such indebtedness when there are sufficient funds in said fish and oyster fund, not otherwise appropriated, to meet such indebtedness. (Acts 1909, S. S., p. 328.)

Art. 4019a.

For this article, which contains a penal provision, see post, Penal Code, arts. 923*o*, 923*oo*.

Art. 4019b.
For this article, which contains a penal provision, see post, Penal Code, art. 923m.

Art. 4019c. Dredging reefs for improvement thereof.—Whenever the Game, Fish and Oyster Commissioner believes that an oyster bed can be improved by the use of dredges he may grant the use of such dredges on such reefs, but only under the superintendence, supervision and in the presence of a deputy fish and oyster commissioner. And the Game, Fish and Oyster Commissioner is authorized to purchase boats and implements and employ labor to work such public oyster reefs and beds as he thinks can be improved thereby, the expense of which shall be paid from the Fish and Oyster Fund of the State on warrants issued by the Comptroller or the sworn statement as to the correctness of such expense by the Game, Fish and Oyster Commissioner. (Acts 1913, p. 297, sec. 1; Acts 1919, 2d C. S., ch. 73, art. [sec.] 50.)

Arts. 4020, 4021. [Repealed.]
See Art. 4021a.

Art. 4021a. Laws repealed.—That articles 4020 and 4021, said title, and all other laws and parts of laws in conflict herewith, be and the same are hereby repealed. (Acts 1913, p. 297, sec. 2.)

Art. 4021b. What included within act, and under management, etc., of game, fish and oyster commissioner.—All the islands, reefs, bars, lakes, and bays within tidewater limits from the most interior point seaward co-extensive with the jurisdiction of this State and such of the fresh water islands, lakes, rivers, creeks and bayous within the interior of this State as may not be embraced in any survey of private land, together with all the marl and sand of commercial value, and all the shells, mudshell or gravel, or whatsoever kind that may be in or upon any island, reef or bar, and in or upon the bottoms of any lake, bay, shallow water, rivers, creeks and bayous and fish hatcheries and oyster beds, within the jurisdiction and territory herein defined, are included within the provisions of this Act, and all such islands, reefs, bars, lakes, bays, shallow waters, rivers, creeks and bayous, and the marl, sand, shells, mudshells, gravel and oyster beds and fish hatcheries, located as herein defined, are, for the purpose of this Act, hereby placed under the management, control and protection of the Game, Fish and Oyster Commissioner. (Acts 1911, p. 118, sec. 1; Acts 1919, 2d C. S., ch. 74, sec. 1.)

Art. 4021c. Certain fresh water lakes shall not be sold; open to public; protection of fish in.—Such of the fresh water lakes, rivers, creeks and bayous within this State as may be embraced in any survey of private land shall not be sold, but shall remain open to the public; provided should the Game, Fish and Oyster Commissioner stock them with fish, he is authorized to protect same for such time and under such rules as may be prescribed by him. (Acts 1911, p. 118, sec. 2; Acts 1919, 2d C. S., ch. 74, sec. 1.)

Art. 4021d. Powers of commissioner; marl, sand, shells, mudshell and oyster beds.—The Game, Fish and Oyster Commissioner is hereby invested by all the power and authority necessary to carry into effect the provisions of this Act, and shall have full charge and discretion over all matters pertaining to the sale, the taking, carrying away or disturbing of all marl, sand or gravel of commercial value, and all gravel and shells or mudshell and oyster beds and their protection from free use and unlawful disturbing or appropriation of same, with such exceptions, and under such restrictions and limitations as may be provided herein. (Acts 1911, p. 118, sec. 3; Acts 1919, 2d C. S., ch. 74, sec. 1.)

Art. 4021e. Marl; purchase, etc.—None of the marl, gravel, shells, mudshell or sand included in the preseding Sections of this Act shall be purchased, taken away or disturbed except as provided in this Act nor shall any oyster beds, or fish hatcheries, within the territory included in this Act be disturbed except as herein provided. (Acts 1911, p. 118, sec. 4; Acts 1919, 2d C. S., ch. 74, sec. 1.)

Art. 4021f. Same subject; application; permit; limitations on; revocation; no special privilege or exclusive right.—Anyone desiring to purchase any of the marl and sand of commercial value and any of the gravel, shells or mudshell included within the provision of this Act, or otherwise operate in any of the waters or upon any island, reef, bar, lake, bay, river, creek or bayou, included in this Act, shall first make written application therefor to the Game, Fish and Oyster Commissioner designating the limits of the territory in which such person desires to operate. If the Game, Fish and Oyster Commissioner is satisfied the taking, carrying away or disturbing of the marl, gravel, sand, shells or mudshell, in the designated territory would not damage or injuriously affect any oysters, oyster beds, fish inhabiting waters thereof or adjacent thereto and that such operation would not damage or injuriously affect any island, reef, bar, channel, river, creek or bayou used for frequent or occasional navigation nor change or otherwise injuriously affect any current that would affect navigation, he may issue a permit to such person after such applicant shall have complied with all regulations and requirements prescribed by said Commissioner. The permit shall authorize the applicant to take, carry away, or otherwise operate within the limits of such territory as may be designated therein, and for such substance or purpose only as may be named in the permit and upon the terms and conditions therein. No permit shall be assignable, and a failure to, or refusal of the holder to comply with the terms and conditions of the permit shall operate as an immediate termination and revocation of all rights conferred therein or claimed thereunder. No special privilege or exclusive right shall be granted to any person, association of persons, corporate or otherwise, to take or carry away any marl, gravel, sand, shell or mudshell from any territory or to otherwise operate in or upon any island, reef, bay, lake, river, creek, bayou, or bay included in this Act. (Acts 1911, p. 118, sec. 5; Acts 1919, 2d C. S., ch. 74, sec. 1.)

Art. 4021g. Sale of marl, gravel, sand, shells or mudshell; proceeds.—The Game, Fish and Oyster Commissioner, by and with the approval of the Governor, may sell the marl, gravel, sand, shells, or mudshell, in-

cluded within this Act, upon such terms and conditions as he may deem proper, but for not less than four cents per ton, and payment thereof shall be made to said Commissioner. The proceeds arising from such sale shall be transmitted to the State Treasurer and be credited to the general fund of the State and may be expended by the said Commissioner upon itemized accounts sworn to by those performing the service or furnishing the material, and approved by said commissioner. The said account shall be filed with the Comptroller of Public Accounts, and he shall draw a warrant therefor upon the State Treasurer. (Acts 1911, p. 118, sec. 6; Acts 1911, S. S., p. 78, sec. 1; Acts 1919, 2d C. S., ch. 74, sec. 1.)

Art. 4021h. [Superseded by the omission thereof from the amendatory act. Acts 1919, 2d C. S., ch. 74, sec. 1.]

Art. 4021i. Permits to counties, cities, towns, etc.—If any county, or sub-division of a County, City or town should desire any marl, gravel, sand, shell, or mudshell included in this Act for use in the building of any road or street, which work is done by said county, or any subdivision of a county, City or Town, such county or subdivision of a County, City or Town may be granted a permit without charge and shall have the right to take carry away or operate in any waters or upon any islands, reefs or bars included in this Act; such county, subdivision of a county, City or Town to do the work under its own supervision, but such County, or any sub-division of a County, City or Town shall first obtain from the said Commissioner a permit to do so, and the granting of same for the operation in the territory designated by such County, or any sub-division of a County, City or Town, shall be subject to the same rules, regulations and limitations and discretion of the said Commissioner as are other applicants and permits. If any County, or any sub-division of a County, City or Town should desire any gravel, marl, sand, or shell or mudshell included in this Act for use in the building of any road or street, and the building of any road or street is to be done by contract, or the dredging or taking of gravel, marl, sand or shell, or mudshell for use on said road or street, is to be done by contract, then the said County or any sub-division of a county, City or Town may obtain a refund from the Game, Fish and Oyster Commissioner, of the tax levied and collected on said gravel, marl, sand or shell or mudshell as fixed by the Game, Fish and Oyster Commissioner at the time of the taking thereof by warrant drawn by the Comptroller upon the fish and oyster fund upon itemized account sworn to by the proper officer representing said County or any sub-division of a County, City or Town and approved by the Game, Fish and Oyster Commissioner and under such other rules and regulations as may be prescribed by the Game, Fish and Oyster Commissioner. (Acts 1911, p. 118, sec. 8; Acts 1919, 2d C. S., ch. 74, sec. 1.)

Art. 4021j.

For this article, which is penal, see post, Penal Code, art. 923n.

Art. 4021k. Sand may be taken from Galveston bay without payment, etc.—Provided, however, that there may be taken and appropriated from beneath the waters of Galveston bay, sand for filling and raising the grade of Galveston island, without making payment therefor to the game, fish and oyster commission or to the state of Texas. (Acts 1911, p. 118. Amended, Acts 1913, p. 329, sec. 1.)

Art. 4021l. Sand and other deposits may be taken from Corpus Christi Bay and Nueces Bay.—And provided further however, that there may be taken and appropriated from beneath the waters of Corpus Christi Bay and Nueces Bay, sand and other deposits for filling and raising the grade of the salt flats in the northern portion of the City of Corpus Christi and the lowlands lying north of the north boundary line of the City of Corpus Christi, in Nueces county, Texas, without making payment therefor to the Game, Fish and Oyster Commissioner or to the State of Texas. (Acts 1917, ch. 86, sec. 1.)

CHAPTER THREE

GAME

Art. 4022. Wild animals, birds, and fowl property of people.—All the wild animals, wild birds, wild fowl within the borders of this State are hereby declared to be the property of the people of the State. (Acts 1907, p. 278; Acts 1919, ch. 157, sec. 1.)

See ante, note to art. 3974.

Art. 4022a. Game birds defined.—Wild turkeys, wild ducks, wild geese, wild grouse, wild brant, sand hill cranes, wild prairie chickens or pinnated grouse, wild pheasants, wild partridges, and wild quail of all varieties, wild doves of all varieties, wild pigeons of all varieties, wild snipe of all varieties, wild shore birds, wild robins and wild Mexican pheasants, known as "chacalaca," and wild plover are hereby declared to be the game birds, within the meaning of this Act. (Acts 1903, ch. 137; Acts 1907, p. 278; Acts 1919, ch. 157, sec. 2.)

Arts. 4023-4025. [Omitted.]

These articles, relating to hunting licenses, are superseded by Acts 1919, ch. 157, secs. 42-44, post, Penal Code, arts. 900½t-900½u.

Art. 4026. County clerk to issue local hunting licenses, etc., keep stubs of, etc.—The county clerk of each county in this state is hereby authorized to issue local hunting licenses, under his official seal, to all persons complying with the provisions of this chapter, and shall fill out correctly and preserve the stubs attached thereto. (Acts 1907, p. 256. Acts 1909, 2 S. S., p. 456.)

Art. 4027. County clerk to keep record.—The county clerk shall keep a complete and correct record of hunting licenses issued, showing the name and place of residence of each licensee, and the serial number and date of the license so issued, in a book to be furnished by the game, fish and oyster commissioner; which record shall be kept in his office and be open to the inspection of the public at all times during office hours. Said books and license stubs and unused licenses shall always be open to inspection of the game, fish and oyster commissioner or his deputies. (Acts 1907, p. 256. Acts 1909, 2 S. S., p. 456.)

Art. 4028. Monthly report of licenses by county clerk, in duplicate, to commissioner and comptroller.—The county clerk shall, within ten days of the close of each

calendar month, make out a detailed report in duplicate under the seal of his office, showing the serial number and date of each license issued, and the name and residence of the person to whom issued; he shall forward one copy to the game, fish and oyster commissioner at Austin, and one copy to the comptroller, who shall charge the game, fish and oyster commissioner with the amount so shown to be remitted. (Acts 1907, p. 256. Acts 1909, 2 S. S., p. 457.)

Art. 4029. Commissioner to enforce laws for protection, etc., of wild game, etc., bring actions, etc., for fines, etc.; powers.—It is hereby made a special duty of the game, fish and oyster commissioner to enforce the statutes of this state for the protection and preservation of wild game and wild birds, and to bring, or cause to be brought, actions and proceedings in the name of the state of Texas to recover any and all fines and penalties provided for in the laws now in force, or that may hereafter be enacted, relating to wild game and wild birds. Said game, fish and oyster commissioner may make complaint and cause proceedings to be commenced against any person for violation of any of the laws for the protection and propagation of game or birds, without the sanction of the county attorney of the county in which such proceedings are commenced; and in such case he shall not be required to furnish security for costs. (Acts 1907, p. 254.)

See post, Penal Code, arts. 896, 897, 900½m.

Art. 4030. Power to seize birds and animals, when; disposition of.—The game, fish and oyster commissioner shall, at any and all times, seize and take possession of all birds and animals that have been caught, taken or killed, or had in possession or under control, or have been shipped contrary to any of the laws of this state, and such seizure may be made without a warrant. All birds or animals seized by the commissioner shall be disposed of in such manner as may be directed by any court having competent jurisdiction to hear and determine cases for violation of the game and bird laws of this state. (Id.)

See post, Penal Code, arts. 896, 897, 900½m.

Art. 4031. Commissioner to keep record; to contain what.—It shall be the duty of the game, fish and oyster commissioner to keep in his office, in the capitol of this state, a well bound book in which he shall keep a complete list of the licenses issued, fines collected and a statement of all prosecutions instituted for violation of the game, fish and oyster laws, and the result of same. Said records shall be kept open for the inspection of the comptroller and the public. (Acts 1907, p. 256. Acts 1909, 2 S. S., p. 457.)

Art. 4032. Monthly report by commissioner.—The game, fish and oyster commissioner, at the close of each calendar month, shall file with the comptroller a report in writing and detail, stating the service performed by him during the last preceding month, including a detailed statement of the suits commenced at his instance and the disposition made of same, all fines, licenses and other fees collected, their disposition, and any other particulars he may deem proper. (Acts 1907, p. 255. Acts 1909, 2 S. S., p. 455.)

Art. 4033. Commissioner may appoint chief deputy; office in capitol; oath; duties.—The game, fish and oyster commissioner shall have power to appoint a chief deputy, who shall maintain an office in the capitol of the state; said chief deputy shall take the constitutional oath of office and shall act as general assistant to said game, fish and oyster commissioner, and, during the absence, sickness or disability of the commissioner, he shall exercise the duties of said commissioner. Said chief deputy shall devote his entire time to the work of his office. (Acts 1907, p. 255.)

Art. 4034. Bond of chief deputy.—The chief deputy game, fish and oyster commissioner shall, before assuming the duties of his office, file with the secretary of state a good and sufficient bond in the sum of five thousand dollars for the faithful performance of the duties of his office. (Id. p. 256.)

Art. 4035. Deputy game commissioners; appointment; powers; compensation.—The Game, Fish and Oyster Commissioner shall also have power to appoint Deputy Game Commissioners in the several Counties of the State, who shall have the same power and authority as herein provided for the Game, Fish and Oyster Commissioner and shall be subject to the supervision and control of and removal by the said Game, Fish and Oyster Commissioner. Such Deputy Game Commissioners shall receive three ($3.00) dollars per day for each day's service performed and all necessary expenses incurred, on sworn account when ordered to perform said services by the Game, Fish and Oyster Commissioner or his Chief Deputy, which account shall be approved by the Game, Fish and Oyster Commissioner and paid out of the Game fund in the State Treasury on warrant drawn by the State Comptroller. Such Deputy Game Commissioner may be ex-officio Fish and Oyster Commissioner whenever the Game, Fish and Oyster Commissioner shall so designate them. (Acts 1907, p. 255; Acts 1919, ch. 157, sec. 41.)

Art. 4035a. Special game commissioners; appointment; powers; compensation.—It shall be the duty of the Game, Fish and Oyster Commissioner to appoint Special Game Commissioners who shall be ex-officio Deputy Game, Fish and Oyster Commissioners with all the powers of the latter to enforce the Game, Fish and Oyster Laws of this State. Such special game commissioners shall receive not more than one hundred twenty-five ($125.00) dollars per month, and expenses, each to be paid out of the Special Game Funds on approval of the Game, Fish and Oyster Commissioner. Each deputy commissioner shall take the oath of office and shall give a good and sufficient bond in the sum of one thousand ($1,000.00) dollars, for the faithful performance of his duties. Such Special Deputy Game Commissioner shall hold their office at the discretion of the Game, Fish and Oyster Commissioner and have all the power in the discharge of their duty as are conferred on the Game, Fish and Oyster Commissioner. (Acts 1919, ch. 157, sec. 40; Acts 1919, 2d C. S., ch. 72, sec. 1.)

Art. 4036. [Superseded.]

This article is superseded by Acts 1919, ch. 157, sec. 34, post, art. 4039a.

Art. 4037. Disposition of fines by court or deputy commissioner.—All fines collected in the county or district courts of this state for violation of the game and bird laws of this state, shall, within thirty days from date of the collection, be forwarded by the court, or the deputy game commissioner, to the game, fish and oyster commissioner, who shall deposit same in the state treasury, and same shall be credited to the special fund provided for the payment of salaries and expenses of deputies appointed under the provisions of this chapter. (Acts 1909, 2 S. S., p. 455.)

This article is superseded in part by Acts 1919, ch. 157, sec. 34, post, art. 4039a.

Art. 4038. Disposition of license fees received by county clerk.—The county clerk shall, with each monthly report required of him by this chapter, remit to the game, fish and oyster commissioner at Austin, all license fees collected by him, less twenty-five cents for each license issued, which he may retain as his fee. Upon the receipt of such report and remittance, the game, fish and oyster commissioner shall deposit same in the state treasury to the credit of the special fund provided for in this chapter; and the comptroller shall credit said commissioner with the amount of the deposit so made. (Id. p. 457.)

This article is superseded in part by Acts 1919, ch. 157, sec. 34, post, art. 4039a.

Art. 4039. [Superseded.]

This article is superseded by Acts 1916, ch. 157, sec. 34, post, art. 4039a.

Art. 4039a. Fines, penalties, forfeitures, etc., to be expended in enforcement of game laws; payments from fund.—All money collected from fines, penalties, forfeitures of bonds for violating the Game Laws of this State, and all moneys collected for hunting licenses and hunting boat licenses, shall belong to the special game fund of this State and shall be paid over by the Game, Fish and Oyster Commissioner to the Treasurer of the State, during the first week of each month and shall be credited to such Special Game fund, and such fund shall be expended in the enforcement of the Game Laws by the Game, Fish and Oyster Commissioner their necessary expenses, and the purchase and supply of means to enable such Commissioner and Deputies to enforce such laws, and all such expenditures shall be verified by the affidavit of the Deputy Game Commissioner to the Game, Fish and Oyster Commissioner and on the approval of such expenditures by the Game, Fish and Oyster Commissioner it shall be the duty of the Comptroller of the State to draw his warrant on the Treasurer of the State for the amount of such expenditures in favor of the person claiming the same, to be paid out of the special game fund. (Acts 1919, ch. 157, sec. 34.)

Art. 4039b. Warrants and payments for enforcement of game laws drawn on and made from fund herein provided only.—At no time shall any warrant be issued or payment made for the enforcement of the Game Laws, employment of Deputy Game Commissioner or the furnishing of means to enforce such laws, or for the conservation or propagation of game of any kind, except on and from the special game fund herein provided for, and if at the end of each year there remains an unexpended balance in such fund the Game, Fish and Oyster Commissioner is required to expend such sums of such balance in the introduction, propagation and distribution in the State of wild game birds and wild game animals and quadrupeds, and in the collection of dressed and mounted specimen of the wild birds and wild animals of Texas. (Acts 1919, ch. 157, sec. 35; Acts 1919, 2d C. S., ch. 72, sec. 1.)

Art. 4040. Compensation of commissioner and deputies.—The game, fish and oyster commissioner shall receive, in addition to the salary now paid him for his services in the fish and oyster department, the sum of seven hundred dollars per annum, and his actual and necessary expenses incurred in the discharge of his said duties, to be paid monthly on the warrant of the comptroller, on the approval of his vouchers therefor. The chief deputy shall receive an annual salary of eighteen hundred dollars and his actual and necessary expenses incurred by him in the discharge of the duties of his office, to be paid monthly on the warrant of the comptroller, and on the approval of his accounts and vouchers therefor. Each deputy commissioner shall receive three dollars per day for each day actually spent in the discharge of his duties under the direction of the commissioner, and their actual expenses necessarily incurred when so employed, to be paid monthly on the warrant of the comptroller, on the approval of itemized vouchers verified under oath and certified and approved by the game, fish and oyster commissioner; provided, that the total amount paid out by the warrant of the comptroller for the salaries and expenses of the game, fish and oyster commissioner, his chief deputy and the other deputies provided for in this chapter, shall not exceed the amount received by the state treasurer from the sale of hunting licenses and the collection of fines and penalties in cases for the violation of the game and bird laws of this state. And in no event shall the state ever be liable for the pay of any of the deputy commissioners provided for in this chapter. (Acts 1907 pp. 255–256, secs. 5–6.)

Superseded in part by art. 4035, ante.

Art. 4041. Chief deputy to furnish blank hunting licenses to county clerk; accounts.—It shall be the duty of the chief deputy game, fish and oyster commissioner to prepare and furnish to each county clerk blank hunting licenses with stubs attached, numbered serially. Said chief deputy shall open an account with each county clerk and charge him with the number of licenses furnished said clerk. Said account shall show the serial number of such licenses. (Acts 1909, 2 S. S., p. 456, sec. 10.)

Art. 4042. Commissioner and deputies made fire commissioners; deputies.—The game, fish and oyster commissioner and his deputies appointed under the provisions of this chapter are hereby made fire commissioners, and it shall be their duty, in addition to their duties provided for in this chapter, to caution sportsmen or other persons, while in the woods or marshes or prairies, of the danger from fire, and to extinguish all fires left burning by any one, to the extent of their power, and to give notice to any and

all parties interested, when possible, of fires raging and beyond their control, to the end that same may be controlled and extinguished. (Acts 1907, p. 257, sec. 12.)

TITLE 63 A

GOVERNING BOARDS OF STATE INSTITUTIONS

Art. 4042a. How composed; qualifications.—The board of regents of the university of Texas shall be composed of nine persons, who shall be qualified voters; the board of directors of the agricultural and mechanical college of Texas shall be composed of nine persons, who shall be qualified voters; the state board of regents of the normal colleges shall be composed of six persons, who shall be qualified voters; the board of regents of the college of industrial arts for women shall be composed of six persons, three of whom may be women; the board of managers of the blind institute, the deaf and dumb institute, the deaf, dumb and blind institute for colored youths, the Confederate home, the Confederate woman's home, of each of the insane asylums, the epileptic colony and the orphans home, shall each be composed of six members, who shall be qualified voters. (Acts 1913, p. 191, sec. 1.)

Art. 4042b. Members of boards of institutions of higher education, how selected, nominated and appointed; vacancies; members of existing boards.—The members of the governing board of each of the state institutions of higher education mentioned in section 1 [Art. 4042a] shall be selected from different portions of the state, and shall be nominated by the governor and appointed by and with the advice and consent of the senate. In event of a vacancy on said board, the governor shall fill said vacancy until the convening of the legislature and the ratification by the senate. The members of each of said boards who shall be in office at the time this Act takes effect shall continue to exercise their duties until the expiration of their respective terms, as shall be determined according to requirements of section 3 of this Act [Art. 4042c], and additional members shall be appointed in the manner prescribed herein to fill out the membership herein provided for. (Id. sec. 2.)

Art. 4042c. Members divided into classes; terms, etc.; duties of boards.—The following members of the several governing boards shall be divided into equal classes, numbered one, two and three, as determined by each board at its first meeting after this Act shall become a law, these classes shall hold their offices two, four and six years respectively, from the time of their appointment. And one-third of the membership of each board shall hereafter be appointed at each regular session of the legislature to supply the vacancies made by the provisions of this Act and in the manner provided for in section 2 [Art. 4042b], who shall hold their offices for six years, respectively. The duties of the several governing boards shall be determined by law heretofore enacted or that may hereafter be enacted, no changes in the said duties being made by this act. (Id. sec. 3.)

TITLE 64

GUARDIAN AND WARD

CHAPTER ONE

GENERAL PROVISIONS

Art. 4043. (2550) (2469) Jurisdiction of county court over.—The county court shall appoint guardians of minors, persons of unsound mind and habitual drunkards, settle accounts of guardians, and transact all business appertaining to the estates of minors, persons of unsound mind and habitual drunkards. (Const. art. 5, sec. 16; Acts 1876, p. 19, sec. 4.)

See Speer's Marital Rights, p. 251; Gill v. Everman, 59 S. W. 531.

Art. 4044. (2551) (2470) Jurisdiction of district court over.—The district court shall have appellate jurisdiction over the county court in all matters of guardianship, and original control and jurisdiction over guardians and wards, under such regulations as may be prescribed by law. (Const. art. 5, sec. 8.)

See ante art. 1706; Rice v. Rice, 59 S. W. 941.

Art. 4045. (2552) (2471) Who are minors.—Male persons under twenty-one years of age, and females under twenty-one years of age who have never been married, are minors. (Acts 1876, p. 175, sec. 2.)

See post art. 4628; Sayles' Practice, p. 219; Speer's Marital Rights, p. 26.

Art. 4046. (2553) (2472) Who are persons of unsound mind.—Persons of unsound mind are idiots, lunatics or insane persons. (Id. sec. 3.)

Art. 4047. (2554) (2473) Who is an habitual drunkard.—An habitual drunkard is one whose mind has become so impaired by the use of intoxicating liquors or drugs that he is incapable of taking care of himself or property. (Id.)

See Simkins' Contracts and Sales (3d Ed.) p. 175.

Art. 4048. (2555) (2474) Record books of estates shall be used, etc.—The record books used for the business of estates of decedents shall also be used for the business of guardianships.

See Blackwood v. Blackwood's Est., 49 S. W. 1045.

Art. 4049. (2556) (2475) What papers shall be recorded.—The following papers shall be copied at length into the minutes of the court:

1. All applications, citations and returns upon citations.
2. All notices, whether published or posted, with the returns thereon.
3. All bonds and official oaths.
4. All inventories, appraisements and lists of claims, after the same have been approved by the court.
5. All reports of sales, renting or leasing of property, and of loaning or investing money, after such reports have been approved by the court.
6. All accounts and exhibits of the guardian, after the same have been approved by the court. (Id. p. 191, sec. 186.)

Art. 4050. (2557) (2476) Orders, etc., of court shall be at regular terms unless, etc.—All decisions, orders and judgments of the court in matters of guardianship shall be rendered and entered on the minutes of the court at a regular term thereof, and in open

court, except in cases where it is otherwise specially provided.

See Blackwood v. Blackwood's Est., 47 S. W. 483; Id. 49 S. W. 1045; Teague v. Swasey, 101 S. W. 458; Threatt v. Johnson, 156 S. W. 1137.

Art. 4051. (2558) (2477) Provisions, etc., governing estates of decedents govern guardianships, etc.—The provisions, rules and regulations which govern estates of decedents shall apply to and govern such guardianships, whenever the same are applicable and not inconsistent with any of the provisions of this title.

See Blackwood v. Blackwood's Est., 49 S. W. 1045; Heinemeier v. Arlitt, 67 S. W. 1038; Magness v. Berry, 69 S. W. 987; Kelsey v. Trisler, 74 S. W. 64; Brown v. Fidelity & Dep. Co., 80 S. W. 593; Hoffman v. Watkins, 130 S. W. 625.

Art. 4052. (2559) (2478) Any person may contest proceedings.—Any person has the right to appear and contest the appointment of a particular person as guardian, or to contest any proceeding which he deems to be injurious to the ward, or to commence any proceeding which he considers beneficial to the ward, such person being liable for the costs occasioned by him in the case of his failure. (Id. p. 170, sec. 18.)

See Hagan v. Snider, 98 S. W. 213.

Art. 4053. (2560) (2479) Case of guardianship shall be called at each term.—It shall be the duty of the county judge, at each regular term of his court, to call each case of guardianship upon his docket, and to make such orders therein as may be necessary, and to see that such orders, together with all papers required to be recorded, are entered upon the minutes, and to hold guardians and the officers of his court to a strict accountability for the performance of their duties with reference to guardianships.

Art. 4054. (2561) (2480) Meaning of "term of court."—Whenever a term of the county court is mentioned in this title, it is meant a term of such court held for the transaction of probate business.

Art. 4055. (2562) (2481) Appeals, etc., may be taken under the rules provided by law.—The judgments, orders, decrees and proceedings of the court in relation to guardianships may be appealed from to the district court by any person who may consider himself aggrieved thereby; or the same may be revised and corrected by certiorari, or bill of review, in the manner and under the rules and regulations provided by law.

See post, art. 4290; Magness v. Berry, 69 S. W. 987.

CHAPTER TWO

IN WHAT COUNTY PROCEEDINGS SHALL BE COMMENCED

Art. 4056. (2563) (2482) Guardianship of estate of minor shall be commenced where parents reside.—A proceeding for the appointment of a guardian for the estate of a minor shall be commenced in the county where the parents of such minor reside. (Acts 1876, p. 176, sec. 19.)

Art. 4057. (2564) (2483) Where parents reside in different counties.—If the parents of the minor do not reside in the same county, the proceedings for such guardianship shall be commenced in the county where the parent who has the custody of the minor resides. (Id. sec. 20.)

Art. 4058. (2565) (2484) Proceedings for guardianship of an orphan shall be commenced, where.—A proceeding for the appointment of a guardian of the person and estate of an orphan, or of either, shall be commenced in the county where the last surviving parent of such orphan resided at the time of the death of such parent, or where such orphan is found, or where the principal estate of such orphan may be. (Id. sec. 21.)

See Hagan v. Snider, 98 S. W. 213.

Art. 4059. (2566) (2485) Persons of unsound mind and drunkards.—A proceeding for the appointment of a guardian of the person or estate, or of either, of a person of unsound mind, or an habitual drunkard, shall be commenced in the county where such person of unsound mind or habitual drunkard resides.

See Flynn v. Hancock, 80 S. W. 245.

Art. 4060. (2567) (2486) Where a guardian has been appointed by will.—Where a guardian has been appointed by will, proceedings for letters of guardianship shall be commenced in the county where the will has been admitted to probate.

Munson v. Newson, 9 Tex. 109.

CHAPTER THREE

COMMENCEMENT OF PROCEEDINGS

Art. 4061. (2568) (2487) Commenced by written application.—A proceeding for the appointment of a guardian is commenced by written application, filed in the county court of the county having jurisdiction of the case. (Acts 1876, p. 177, sec. 23.)

Art. 4062. (2569) (2488) Who may make application, and what the same shall contain.—The application may be made by any person, and it shall state:

1. The name, sex, age and residence of the minor.

2. The estate of such minor, if any, and the probable value thereof.

3. Such facts as show the jurisdiction of the court over the case. (Id. sec. 24.)

See Herron's Probate Guide, p. 379.

Art. 4063. (2570) (2489) Clerk shall issue citation, which shall state, what.—Upon the filing of such application, the clerk shall immediately issue citation, which shall state that an application has been filed, and by whom, for the guardianship of the person, or estate, or both, as the case may be, of the minor, naming such minor, and shall cite all persons interested in the welfare of such minor to appear at a term of the court named in such citation, and contest such application if they see proper to do so.

Art. 4064. (2571) (2490) Citation shall be served, how.—Such citation shall be served by posting copies thereof for not less than ten days before the first day of the term of the court at which the application is to be acted upon, one of which copies shall be posted at the court house, and two other copies at two other public places in the county, not in the same city or town.

Art. 4065. (2572) (2491) Return of citation.—The sheriff or other officer serving such citation shall return the same, stating thereon, in writing, the time and places. when and where, he posted such copies and shall sign such return officially.

Art. 4066. (2573) (2492) Minor fourteen years old or over shall be personally cited.—If the minor be fourteen years of

age or over, such minor shall be personally served with citation to appear and answer such application; or such minor may, by writing filed with the clerk, waive the issuance of such citation, and make choice of a guardian. (Id. sec. 27.)

Art. 4067. (2574) (2493) County judge shall commence proceedings, when.—Whenever it shall come to the knowledge of the county judge that there is within his county any minor without a guardian of his person or estate, he shall cause a citation to be posted to all persons interested in the welfare of such minor to show cause at a regular term of his court why a guardian of such minor should not be appointed; and, if such minor be fourteen years of age or over, he shall be personally cited. (Id. sec. 28.)

See Flynn v. Hancock, 80 S. W. 245.

CHAPTER FOUR

PERSONS ENTITLED TO BE APPOINTED GUARDIANS, AND PERSONS WHO ARE DISQUALIFIED

Art. 4068. (2575) (2494) Father entitled where parents live together.—Where the parents of the minor live together, the father is the natural guardian of the person of the minor children by the marriage, and is entitled to be appointed guardian of their estates. (Acts 1876, p. 175, sec. 8.)

See Speer's Marital Rights, p. 102; Heinemeier v. Arlitt, 67 S. W. 1038; Gully v. Gully, 184 S. W. 555.

Art. 4069. (2576) (2495) Parents equally entitled, when.—Where the parents do not live together, their rights are equal; and the guardianship of their minor children shall be assigned to one or the other, according to the circumstances of each case, taking into consideration the interest of the child alone. (Id. sec. 9.)

Art. 4070. (2577) (2496) Surviving parent entitled.—Where one of the parents is dead, the survivor is the natural guardian of the persons of the minor children, and entitled to be appointed guardian of their estates. (Id. sec. 10.)

See Herron's Probate Guide, pp. 381-2; Sancho v. Martin, 64 S. W. 1015; Gallamore v. Glazier, 200 S. W. 854.

Art. 4071. (2578) (2497) Surviving parent may appoint guardian by will, etc.—The surviving parent of a minor may, by will or written declaration, appoint any person not disqualified to be guardian of the persons of his or her children after the death of such parent; and such person shall be entitled to be appointed guardian of their estates also after the death of such parent. (Id. sec. 11.)

Art. 4072. (2579) (2498) Who entitled to guardianship of orphans.—Where the minor is an orphan, and no one has been appointed by the parent to be the guardian of such minor, as provided in the preceding article, the nearest ascendant in the direct line of such minor, if not disqualified, is entitled to the guardianship of both the person and the estate of such minor. (Id. sec. 12.)

See Heinemeier v. Arlitt, 67 S. W. 1038.

Art. 4073. (2580) (2499) Where ascendants are equally entitled.—If there be more than one ascendant in the same degree in the direct line, they are equally entitled; and the guardianship shall be given to one or the other, according to circumstances, taking into consideration the interest of the orphan alone. (Id. sec. 13.)

Art. 4074. (2581) (2500) Collateral kin entitled, when.—In case the orphan has no ascendant in the direct line, the guardianship shall be given to the nearest of kin in the collateral line, who comes immediately after the presumptive heir or heirs of the orphan; and if there be two or more in the same degree, the guardianship shall be given to the one or the other, according to circumstances, taking into consideration the interest of the orphan alone. (Id. sec. 14.)

See Heinemeier v. Arlitt, 67 S. W. 1038.

Art. 4075. (2582) (2501) Where no one who is entitled applies, court shall appoint, etc.—If there be no relative of the minor qualified to take the guardianship, or if no person entitled to such guardianship applies therefor, the court shall appoint some proper person to be such guardian.

Art. 4076. (2583) (2502) Who entitled in case of person of unsound mind, etc.—In the case of a person of unsound mind, or an habitual drunkard, the nearest of kin to such person, who is not disqualified, shall be entitled to the guardianship; and, where two or more are equally entitled the guardianship shall be given to one or the other, according to circumstances, taking into consideration the interest of the ward alone. If such ward have a husband or wife who is not disqualified, such husband or wife shall be entitled to the guardianship in preference to any other person.

See post, art. 4247; Herron's Probate Guide, p. 383.

Art. 4077. (2584) (2503) Court shall appoint proper person, when.—If no person who is entitled to such guardianship and who is qualified shall apply therefor, the court shall appoint some proper person to be such guardian.

Art. 4078. (2585) (2504) Who are not qualified to be guardians.—The following persons shall not be appointed guardians:

1. Minors, except the father or mother.
2. Persons whose conduct is notoriously bad.
3. Persons of unsound mind.
4. Habitual drunkards.
5. Those who are themselves or whose father or mother are parties to a lawsuit, on the result of which the condition of the minor or part of his fortune may depend.
6. Those who are debtors to the minor, unless they discharge the debt prior to such appointment; but this subdivision does not apply to the father or mother of such minor. (Id. sec. 16.)

See Speer's Marital Rights, p. 364; Heinemeier v. Arlitt, 67 S. W. 1038; Davis v. Hammack, 107 S. W. 112; Burns v. Parker, 155 S. W. 673.

Art. 4079. (2586) (2505) Minor fourteen years of age may select his own guardian.—A minor who is fourteen years of age or over has the right to select a guardian, either of his person or estate, or both; which selection may be made in open court, in person or by attorney; and the person selected, if qualified, shall be entitled to be appointed guardian, except in the case where the surviving parent of such minor has appointed a guardian by will or written dec-

laration; in which case, the person so appointed shall be entitled to the guardianship.

See ante, art. 4066; Herron's Probate Guide, pp. 334-5.

CHAPTER FIVE

APPOINTMENT OF GUARDIANS

Art. 4080. (2587) (2506) Court may proceed to appoint, when.—At a regular term of the court, after notice shall have been given by citation duly served as required by law, the court may proceed to the appointment of a guardian.

Art. 4081. (2588) (2507) What facts must appear before appointment is made.—Before appointing a guardian, the court must be satisfied:

1. That the person for whom a guardian is sought to be appointed is a minor, a person of unsound mind or an habitual drunkard.

2. That the court has jurisdiction of the case.

3. That the person to be appointed guardian is not disqualified to act as such and is entitled thereto; or, in case no person who is entitled thereto applies therefor, that the person appointed is a proper person to act as such guardian.

Art. 4082. (2589) (2508) Only one guardian of the person or estate shall be appointed, except, etc.—Only one guardian can be appointed of the person or estate; but one person may be appointed guardian of the person, and another of the estate, whenever the court shall be satisfied that it will be for the advantage of the ward to do so. Nothing in this article shall be held to prohibit the joint appointment of husband and wife. (Act Aug. 15, 1870; P. D. 6926.)

See St. Paul Sanitarium v. Crim, 84 S. W. 1114; McAdams v. Wilson, 164 S. W. 59.

Art. 4083. (2590) (2509) Order of appointment shall contain what.—The order of the court appointing a guardian shall be entered upon the minutes of the court, and shall specify:

1. The name of the person appointed.

2. The name of the ward.

3. Whether the guardian is of the person, of the estate, or of both the person and estate of such ward.

4. The amount of the bond required of such guardian.

5. If it be the guardianship of the estate, the order shall also appoint three or more discreet and disinterested persons to appraise such estate, and return such appraisement to the court.

6. It shall direct the clerk to issue letters of guardianship to the person appointed when such person has qualified according to law.

See Herron's Probate Guide, p. 387; Gill v. Everman, 60 S. W. 913; Threatt v. Johnson, 156 S. W. 1137; McAdams v. Wilson, 164 S. W. 59.

Art. 4084. (2591) (2510) Minor having guardian may select another, when.—A minor having a guardian of his person or estate, appointed by the court, may, upon attaining the age of fourteen years, by application in writing filed in the court in which such guardianship is pending, select another guardian of his person or of his estate; and, if the court is satisfied that the person selected is suitable and competent, the appointment of such person as guardian shall be made, and the letters of guardianship to the former guardian shall be revoked; except, in the case where such former guardian has been appointed by the will or written declaration of the parent of such minor, in which case the minor shall not be permitted to select another guardian, unless such appointed guardian die, resign or is removed from such guardianship.

Art. 4085. (2592) (2511) Another guardian shall be appointed, when.—Whenever a person appointed guardian fails to qualify as such, according to law, or dies, resigns, or is removed, the court shall appoint another guardian in his stead.

Art. 4086. (2593) (2512) Guardian of minor continues in office, until, etc.—The guardian of a minor continues in office, unless sooner discharged according to law, until the minor arrives at the age of twenty-one years, or, being a female, marries, or until such minor shall die. (Acts 1876, p. 178, sec. 38.)

See post art. 4267; Hix v. Duncan, 99 S. W. 422.

Art. 4087. (2594) Guardian of person of unsound mind, etc., continues in office until, etc.—The guardian of a person of unsound mind or an habitual drunkard shall continue in office, unless sooner discharged according to law, until the ward shall be restored to sound mind or to correct, sober habits, as the case may be, or shall die. (Acts 1876, p. 175.)

Art. 4088. (2595) Court may appoint a receiver, when.—When, from any cause, the estate of a minor, person of unsound mind or of an habitual drunkard is without a guardian, and such estate is likely to injure or waste, the county judge shall, upon application or without application, either in term time or in vacation, appoint some suitable person to take charge of such estate, as receiver, until a guardian can be regularly appointed, and shall make such other orders as may be necessary for the preservation of such estate. Such appointment and orders shall be recorded in the minutes of the court, and shall specify the duties and powers of such receiver; and the provisions of the law governing in the case of a temporary administration upon the estate of a decedent shall govern in the case of a receiver appointed under this article, so far as the same are applicable. If, during the pendency of such receivership, the wants of such minor, person of unsound mind or habitual drunkard should require the use of the means of such estate for their subsistence, clothing or education, the county judge is hereby authorized, and it shall be his duty, upon application or without application, either in term time or in vacation, to appropriate by an order entered upon the minutes of his court, out of the effects of such estate, an amount sufficient for such purpose; said amount to be paid by such receiver upon such claims for the subsistence, clothing or education as may have been presented to such county judge and approved, and by him ordered to be paid. If, at any time, the receiver shall have on hand any money belonging to such estate beyond what may be necessary for the present necessities of the beneficiary of said estate and the current expenses thereof, he may, under the direction of the county judge, loan said money for such length of time as

said county judge may direct, for the highest legal rate of interest that can be obtained therefor, in the manner and upon the security and terms provided in article 4141. (Acts 1885, p. 81.)

See Sayles' Practice, p. 960; Speer's Marital Rights, p. 364.

Art. 4089. (2596) (2515) Guardianship of estate of non-resident minor.—When a minor or person of unsound mind resides out of the state and owns property in this state, guardianship of the estate of such minor or person of unsound mind may be granted when it is made to appear that a necessity exists for such guardianship, in like manner as if such minor or person of unsound mind resided in this state; and the court making such grant of guardianship shall take all such action and make all such orders in reference to the estate of the ward, for the maintenance and support or education and care of such ward, out of the proceeds of such ward's estate, in like manner as if the ward had resided in this state and guardianship of the person of said ward had been granted by said court, and the ward had been sent abroad by the order of the court for education or treatment. (Acts 1876, p. 176, sec. 22.)

Art. 4090. (2597) (2516) Letters shall issue, when, and shall state, what.—When a person appointed guardian has qualified as such, by taking the oath and giving the bond required by law, the clerk shall issue to him a certificate, attested by the seal of the court, stating the fact of such appointment and qualification and date thereof; which certificate shall constitute letters of guardianship, and be evidence of the authority of the person to whom issued to act as guardian. (Revision, 1879.)

CHAPTER SIX

TEMPORARY GUARDIAN

Art. 4091. County judge may appoint temporary guardian of person and estate of minor, when, etc.—Whenever it may appear to the county judge that the interests of any minor and his or her estate, or either, require immediate appointment of a guardian, he shall, either in open court or in vacation, without citation and with or without written application therefor, appoint some suitable person temporary guardian of the person of such minor and his or her estate, or either, as the case may be; and the appointment so made may be made permanent, as hereinafter provided for. (Acts 1905, p. 18, sec. 1.)

Art. 4092. Order shall state what.—The order of the court in making such appointment shall state that unless the same is contested at the next regular term of the court, after service of citation, the same shall be made permanent. (Id. sec. 2.)

Art. 4093. Court to determine contest; pending what, temporary guardian to act; exhibit where appointment set aside.—In case such appointment is contested, the court shall hear and determine the same as the law and the facts require; and, during the pendency of such contest, the person so appointed as temporary guardian shall continue to act as such; and, in case such appointment is set aside, the court shall require the person so appointed to make out, and file in court, under oath, a complete exhibit of the condition of such minor's estate, and what disposition, if any, he has made of the same, or any portion thereof. (Id. sec. 3.)

Art. 4094. Appointment not effective till oath and bond.—Such appointments shall not take effect, until the person so appointed has taken the oath and given bond as required by law. (Id. sec. 4.)

Art. 4095. Upon appointment, citation to issue; requisites.—Immediately after such appointment so made, it shall be the duty of the clerk of the court to issue citation; which shall state the name of the person appointed, and when so appointed, and the name of the minor, or minor's estate, or both, as the case may be, and shall cite all persons interested in the welfare of such minor to appear at the term of court named in such citation, and contest such appointment if they so desire; and, that, if such appointment is not contested at the term of court so named in the citation, then the same shall become permanent. (Id. sec. 5.)

Art. 4096. Provisions of title 51 apply.—That all the provisions of this title, relating to the guardianship of the persons and estates of minors shall apply to temporary guardianship of the persons and estates of minors, in so far as the same are applicable and not inconsistent with any of the provisions of this chapter. (Id. sec. 6.)

CHAPTER SEVEN

OATH AND BOND OF GUARDIANS

Art. 4097. (2598) (2517) Oath of guardian.—The guardian shall take an oath faithfully to discharge the duties of guardian of the person (or of the estate, or of the person and estate, as the case may be) of the ward, according to law; which oath shall be indorsed on the bond of such guardian, and may be taken before any officer of the county in which the proceedings for such guardianship are pending, authorized to administer oaths generally. (Acts 1876, p. 177, sec. 35.)

Art. 4098. (2599) (2518) Bond of guardian of the person.—The bond of a guardian of the person of a ward shall be in an amount to be fixed by the court granting such guardianship, not to exceed one thousand dollars, and shall be made payable to the county judge of the county where such guardianship is pending, and to be approved by such county judge, conditioned that such guardian will faithfully discharge the duties of guardian of the person of such ward. (Id. sec. 31.)

See post art. 5689; Hornung v. Schramm, 54 S. W. 616.

Art. 4099. (2600) (2519) Bond of guardian of the estate.—The bond of the guardian of the estate of a ward shall be in an amount equal to double the estimated value of the personal property belonging to such estate, plus a reasonable amount, to be fixed at the discretion of the county judge, to cover rents, revenues and income derived from the renting or use of real estate belonging to such estate, payable to the county judge of the county where such guardianship is pending and to be approved by such county judge, conditioned that such guardian will faithfully discharge the duties of guardian of the estate of such ward according to

law; and it shall be the duty of such county judge to annually examine into the condition of the estate of the ward, and the solvency of such guardian's bond, and to require such guardian at any time it may appear that such bond is not ample security to protect such estate and the interest of his ward; to execute another bond in accordance with law. And, in such case, he shall notify the guardian as in other cases; and should damage or loss result to the estate of any ward through the negligence of such county judge, to perform the duties herein prescribed, such county judge shall be liable on his official bond, payable to such ward, in an amount equal to the loss due to such negligence. (Acts 1895, p. 231. Acts 1913, p. 321, sec. 1.)

See post, art. 5689; Herron's Probate Guide, pp. 391-3; Hornung v. Schramm, 54 S. W. 616; Greer v. Ford, 72 S. W. 73; McAdams v. Wilson, 164 S. W. 59; United States Fidelity & Guaranty Co. v. Taggart, 194 S. W. 482.

Art. 4100. (2601) (2520) What sureties required.—Any bond required by the provisions of this chapter to be given by a guardian shall be subscribed by such guardian, and by at least two good and sufficient sureties, to be approved by the county judge of the county in which the guardianship is pending; or such bond shall be subscribed by such guardian and by one or more corporations authorized and empowered to issue and execute guaranty or indemnity bonds, guaranteeing the fidelity of executors, administrators and guardians, and authorized to carry on such business in this state by the laws thereof; and where a guardian's bond is made with a corporation or corporations as surety or sureties thereon, the provisions requiring two sureties shall not apply, but the same may be made with one corporation as surety, if the judge of the court shall deem such surety sufficient. (Acts 1897, p. 52; Acts 1876, p. 177; sec. 32; Acts 1899, p. 229.)

See Herron's Probate Guide, pp. 391-2; Less v. Ghio, 49 S. W. 635; Id. 51 S. W. 502.

Art. 4101. (2601) (2520) Premium on surety company bond to be paid by guardian.—In all cases where such bond is made by any corporation authorized to issue and execute guaranty or indemnity bonds, the premium on such bond shall be paid by the guardian, and shall not be paid out of the estate of his ward. (Acts 1897, p. 52; Acts 1876, p. 177, sec. 32; Acts 1899, p. 229.)

See citations under art. 4100.

Art. 4102. (2601) (2520) Surety company bond validated.—All bonds of guardians heretofore made in this state with a corporation or corporations as surety or sureties thereon are hereby validated and made effectual in like manner to the same extent as if made under the provisions of the two preceding articles. (Acts 1897, p. 52; Acts 1876, p. 177, sec. 32; Acts 1899, p. 229, sec. 2.)

See citations under art. 4100.

Art. 4103. (2602) (2521) Bond where same person is guardian of both person and estate.—Where the same person is appointed guardian of both the person and estate of a ward only one bond shall be given by such guardian, varying the form thereof to suit the case. (Act 1876, p. 177, sec. 34.)

Hornung v. Schramm, 54 S. W. 615.

Art. 4104. (2603) (2522) No bond required when will, etc., has dispensed with it.—When the surviving parent of a minor has provided by will, regularly probated, that a guardian appointed by such will shall not be required to give bond for the management of the estate devised by such will, the direction shall be observed, unless it be made to appear at any time that such guardian is mismanaging the property, or is about to betray his trust; in which case, upon proper proceedings had for that purpose, such guardian may be required by the court to give bond as in other cases. (Id. sec. 33.)

See Herron's Probate Guide, p. 394.

Art. 4105. (2604) (2523) Bond of married woman as guardian.—Where a married woman may be appointed guardian, she may, jointly with her husband, or without her husband, if he be absent from the state or refuse to join in the bond with her, execute such bond as guardian as the law requires, and acknowledge the same before any officer authorized by law to take acknowledgments of married women to written instruments; and such bond shall bind her estate in the same manner as if she were unmarried, but shall not bind her husband as surety unless he sign and be approved as such. (Id. sec. 39.)

See Speer's Marital Rights, p. 365.

Art. 4106. (2605) (2524) Bond of father or mother under twenty-one years of age valid.—A bond executed by the father or mother of a minor, as guardian of such minor, when such father or mother is under twenty-one years of age, shall be as valid as if he or she were of full age. (Id. sec. 40.)

Art. 4107. (2606) (2525) New bond may be required, etc.—The county judge shall have power to require new bonds of guardians in all cases where he has power to require new bonds of executors or administrators, and under the same rules and regulations, and with like effect.

See ante, art. 3316; Miller v. Miller, 53 S. W. 363; Moore v. Hanscom, 103 S. W. 665.

Art. 4108. (2607) (2526) Guardian shall cease to act as such, when.—When a guardian has been required to give a new bond, he shall thereafter refrain from acting as such guardian, except to preserve the property committed to his charge, until he has given such new bond and the same has been approved. (Id. sec. 43.)

Art. 4109. (2608) (2527) Surety may be relieved in same manner, etc.—A surety upon the bond of a guardian may be relieved from his bond, in the same manner and with like effect, as is provided in the case of a surety upon the bond of an executor or administrator. (Id.)

See ante, arts. 3319-3323.

Art. 4110. (2609) (2528) Oath and bond to be presented within twenty days.—The oath and bond of a guardian shall be presented to the county judge within twenty days after the order appointing such guardian, either in term time or in vacation, for the action of such judge.

Art. 4111. (2610) (2529) Oaths and bonds shall be recorded.—The oaths of guardians and their bonds, when approved, shall be immediately filed with the clerk of

the county court and recorded in the minutes of said court and safely preserved.

Art. 4112. (2611) (2530) Sureties relieved, when, etc.—When a new bond has been given and approved, the sureties upon the former bond of such guardian shall not be liable for any misconduct of such guardian occurring after the approval of such new bond, and shall be released from all liability for the acts of such guardian occurring after the approval of such new bond. (Id. sec. 44.)

CHAPTER EIGHT

INVENTORY, APPRAISEMENT AND LIST OF CLAIMS

Art. 4113. (2612) (2531) Inventory shall be returned in thirty days, etc.—It shall be the duty of every guardian of an estate, as soon as he shall have collected the estate, and within thirty days after he has taken the oath and given bond, with the assistance of any two of the appraisers appointed by the court, to make and return to the court a true and perfect inventory of all the property, real and personal, belonging to said estate, which has come to the knowledge of such guardian; and each article of such property shall be appraised by such appraisers, and the appraised value thereof stated opposite the same in the inventory; and the same shall be subscribed and sworn to by such appraisers before any officer of the county in which the inventory is made, authorized by law to administer oaths generally. (Acts 1876, p. 179, sec. 50.)

Art. 4114. (2613) (2532) List of claims.—The guardian shall also make out and attach to such inventory and appraisement a list of all claims due or to become due belonging to the estate. Such list shall state:

1. The name of each person indebted to the estate.

2. The nature of such indebtedness, whether by note, bill, bond or other written obligation, or by account or verbal contract.

3. The date of such indebtedness, and the date when the same was due or will be due.

4. The amount of each claim, and the rate of interest thereon, and the time for which the same bears interest. (Id. sec. 50.)

Art. 4115. (2614) (2533) Affidavit of guardian to inventory, etc.—The guardian shall annex to the inventory, appraisement, and list of claims, an affidavit in substance as follows: "I, A B, guardian of the estate of C D, do solemnly swear that the inventory and list of claims annexed hereto are a true and perfect inventory and list of all the property, real and personal, belonging to said estate that has come to my knowledge;" which affidavit shall be subscribed and sworn to by such guardian before some officer of the county in which the same is made who is authorized to administer oaths generally.

Art. 4116. (2615) (2534) Property held in common shall be specified.—If any property be held or owned by the ward in common with another or others, it shall be distinctly stated in the inventory or list of claims, as the case may be, the items thereof that are so held or owned, the names and the relationship, if any, of the other part owner or owners, and the interest or share of such ward in such property. (Id. sec. 52.)

Art. 4117. (2616) (2535) Additional inventory, when.—Whenever any guardian of an estate shall discover any property belonging to such estate which has not been inventoried and appraised, or any claim that has not been embraced in the list of claims, he shall forthwith make out and return to the court an additional inventory or list of claims, embracing such property or claims, as the case may be. (Act March 20, 1848; P. P. 3899.)

See Moore v. Hanscom, 103 S. W. 665.

Art. 4118. (2617) (2536) Appraisers to be appointed in such case, when, etc.—Where an additional inventory of property has been returned by the guardian, the court shall appoint appraisers to appraise such property, as in the case of original inventories, or such appraisers may be appointed before the return of such additional inventory, either in term time or in vacation, by an order of the court entered upon the minutes.

See Moore v. Hanscom, 103 S. W. 665.

Art. 4119. (2618) (2537) Additional inventory, etc., may be required, when.—Whenever it shall be shown to the county judge that any guardian has not returned to the court an inventory and appraisement and list of claims of all the property belonging to his ward, such judge shall cause such guardian to be cited, either in term time or in vacation, and require him to return to the court an additional inventory and appraisement, or an additional list of claims, as the case may be, in the same manner as in the case of original inventories and appraisements and lists of claims are required to be returned, and within the same time; but such inventory and appraisement and list of claims shall only embrace such property as has been omitted in previous inventories and appraisements and lists of claims. (Id.)

See Moore v. Hanscom, 103 S. W. 665.

Art. 4120. (2619) (2538) Inventories, etc., may be corrected, etc.—Erroneous inventories, appraisements and lists of claims may be corrected, and new appraisements may be ordered, under the same rules and regulations as are provided in the case of estates of decedents.

See ante, art. 3343.

Art. 4121. (2620) (2539) Inventories, etc., evidence.—All inventories, appraisements or lists of claims, when approved by the court, or the record thereof, or copies of the same or of the record thereof, duly certified under the seal of the clerk of the county court having charge thereof, may be given in evidence in any suit by or against such guardian, but shall not be conclusive against the ward, if it be shown that there is other property or claims of such ward not included therein, or that the estate or claims were actually worth more than the value at which they are set down in such inventories, appraisements or lists. (Id.; P. D. 3900.)

CHAPTER NINE

POWERS AND DUTIES OF GUARDIANS

Art. 4122. (2621) (2540) Of the person.—The guardian of the person is entitled to the charge and control of the person of the ward, and the care of his support and education, and his duties shall correspond with his rights. (Acts 1876, p. 181, sec. 75.)

Art. 4123. (2622) (2541) Same subject.—It is the duty of the guardian of the

person of a minor to take care of the person of such minor, to treat him humanely, and to see that he is educated in a manner suitable to his condition, and, if necessary for his support, that he learn a trade or adopt some useful profession. (Id. sec. 7.)

Art. 4124. (2623) (2542) Guardian of the estate.—The guardian of the estate is entitled to the possession and management of all property belonging to the ward, to collect all debts, rents, or claims due such ward, to enforce all obligations in his favor, to bring and defend suits by or against him; but, in the management of the estate, the guardian shall be governed by the provisions of this title. (Id. sec. 76.)

Art. 4125. (2624) (2543) Of both person and estate.—The guardian of both person and estate has all the rights and powers, and shall perform all the duties of the guardian of the person, and of the guardian of the estate. (Id. sec. 79.)

See Herron's Probate Guide, p. 403.

Art. 4126. (2625) (2544) Guardian of the estate shall manage same prudently.—It is the duty of the guardian of the estate to take care of and manage such estate as a prudent man would manage his own property; and he shall account for all such rents, profits and revenues as the estate would have produced by such prudent management. (Id. sec. 77.)

See Simkins' Equity (2d Ed.) p. 574.

Art. 4127. (2626) (2545) Duty to collect estate.—It is the duty of the guardian of the estate, immediately after receiving letters, to collect, and take into possession, the personal property, books, title papers, and other papers belonging to the estate. (Id. sec. 48.)

See Shippers' Compress & Warehouse Co. v. Davidson, 80 S. W. 1032.

Art. 4128. (2627) (2546) Shall use diligence to collect claims, etc.—The guardian of the estate shall use due diligence to collect all claims or debts owing to the ward, and to recover possession of all property to which the ward has a title or claim; provided, there is a reasonable prospect of collecting such claims or debts, or of recovering such property; and, if he neglects to use such diligence, he and his sureties shall be liable for all damages occasioned by such neglect. (Id. sec. 78.)

See authority cited, preceding article.

Art. 4129. (2628) (2547) May take property for debt due ward, when.—The guardian of the estate may receive property in payment of any debt due to the ward, in all cases where he shall be of the opinion that the interest of his ward will be advanced thereby, being responsible for a prudent exercise of the discretion hereby conferred. (Id. sec. 92.)

Art. 4130. (2629) (2548) Guardian of estate shall pay to guardian of person, etc.—When different persons have the guardianship of the person and estate of a ward, the guardian of the estate must pay over to the guardian of the person, semiannually, a sufficient amount of money, to be fixed by the court, for the education and maintenance of the ward, and, on failure, shall be compelled to do so by order of the court, after being duly cited. (Id. sec. 93.)

Art. 4131. (2630) (2549) Education and maintenance of ward.—The court may direct the guardian of the person to expend, for the education and maintenance of his ward, a specific sum, although such sum may exceed the income of the ward's estate; but, without such direction of the court, the guardian shall not be allowed, in any case, for the education and maintenance of the ward, more than the clear income of the estate. (Id. sec. 94.)

See Herron's Probate Guide, p. 400; Blackwood v. Blackwood's Est., 47 S. W. 483; De Cordova v. Rogers, 75 S. W. 17; Logan v. Gay, 87 S. W. 852; Id., 90 S. W. 861; Whitfield v. Burrell, 118 S. W. 153; Yates v. Watson, 187 S. W. 548; Anderson v. Steddum, 194 S. W. 1132; Dallas Trust & Savings Bank v. Pitchford, 208 S. W. 724.

Art. 4132. (2631) (2550) Property held in common with others.—If the ward holds or owns any property in common, or as part owner with another person, the guardian shall be entitled to possession thereof in common with the other part owner or owners in the same manner as other owners in common, or joint owners, would be entitled. (Id. sec. 49.)

Art. 4133. (2632) (2551) Guardian shall not dispute ward's title, except, etc.—The guardian, or his heirs, executors, administrators or assigns shall not dispute the right of the ward to any property that shall have come into the possession of such guardian, as guardian, except such property as shall have been recovered from the guardian, or there be a personal action pending on account of it. (Id. sec. 69.)

CHAPTER TEN

RENTING AND LEASING PROPERTY, AND INVESTING AND LOANING MONEY, OF WARD

Art. 4134. (2633) (2552) Guardian may carry on or rent farm, etc., under order of the court.—If there be a farm, plantation, manufactory or business belonging to the estate, and if the same be not required to be at once sold for the payment of debts, it shall be the duty of the guardian of such estate, upon an order of the court, to carry on such farm, plantation, manufactory or business or rent the same, as shall appear for the best interest of the estate. In coming to a determination, the court shall take into consideration the condition of the estate, and the necessity that may exist for the future sale of such property for the payment of debts or the education and maintenance of the ward, and shall not extend the time of renting any such property beyond what may consist with the interests of the estate and of the ward. (Acts 1876, p. 182, sec. 86.)

Art. 4135. (2634) (2553) Duty of guardian to rent out property, when, etc.—When an order of the court is made directing property to be rented, it shall be the duty of the guardian to obey such order and rent the property for the best price that can be obtained therefor, taking good security for the payment of the rent, and that the tenant will not commit, nor permit any other person to commit, waste on the rented premises. (Id. sec. 87.)

Art. 4136. (2635) (2554) May rent improved property other than, etc., without order.—The guardian may rent the improved property of the ward, other than such property as is named in article 4134

without an order of the court authorizing him to do so, and either at public or private renting; but, when he rents without an order of court, he shall be required to account to the estate of the ward for the reasonable value of the rent of such property for the time the same was so rented.

Art. 4137. (2636) (2555) Court may order improved property rented, etc.—The court may order the farm, plantation, manufactory, business, or any improved property of the estate to be rented, either at public or private renting, for any length of time, not exceeding one year, and upon such terms and conditions as the court may deem for the best interests of the ward.

Art. 4138. (2637) (2556) Unimproved land may be leased.—If the ward own wild or unimproved real property, the guardian may let out the same on improvement leases, under order of the court, for such length of time, and upon such terms and conditions as the court may direct in its order. (Id. sec. 88.)

Art. 4139. (2638) (2557) Guardian may be cited to show cause why he should not rent land out, etc.—Any person, upon complaint in writing filed with the clerk of the county court, may cause the guardian of the estate of a ward to be cited to appear at a regular term of the court and show cause why he should not be required to rent out the farm, plantation or other improved property of the ward, or why he should not be required to lease for improvement the wild or unimproved lands of the ward; and, upon the hearing of such complaint, the court shall make such order as may, in his judgment, be for the best interest of the estate.

Art. 4140. (2639) (2558) Money may be invested, how.—If, at any time, the guardian of the estate shall have on hand any money belonging to the ward beyond what may be necessary for the education and maintenance of such ward, such guardian shall invest such money in bonds of the United States, of the State of Texas, of any county of the State of Texas, of any district or subdivision of any county of the State of Texas, of any incorporated city or town in the State of Texas or loan the same for the highest rate of interest that can be obtained therefor. (Id. sec. 89; Acts 1913, p. 321, sec. 1.)

See Whitfield v. Burrell, 118 S. W. 153; United States Fidelity & Guaranty Co. v. Taggart, 194 S. W. 482.

Art. 4141. (2640) (2559) Security for money loaned; examination by attorney.—When the guardian loans the money he shall take the note of the borrower, the same to be secured by mortgage with power of sale on unincumbered real estate situated in this state, worth at least twice the amount of such note, or on collateral notes secured by vendor's lien notes, as collateral, or may purchase vendor's lien notes; provided, that at least one-half has been paid, in cash or its equivalent, on the land for which said notes were given.

When the guardian loans the money of the ward as provided in this article, or invests the money of the ward as provided in this article or invests the money of the ward as provided in article 4140 of this chapter, as amended, he shall not pay over or transfer any money in consummation of such investment, loan or purchase until he shall have submitted, or caused to have been submitted, all bonds, notes, mortgages, documents, abstracts and other papers pertaining to such investment, loan or purchase to some reputable attorney for examination, and shall have received an opinion in writing from such attorney to the effect that all papers pertaining to such investment, loan or purchase are regular and that the title to such bonds, notes or real estate is good. That the attorney making such examination shall be paid a reasonable fee, not to exceed one per cent of the amount so invested or loaned, which shall be paid by the guardian out of the funds of the ward. (Acts 1876, p. 182; Acts 1897, p. 196; Acts 1913, p. 321, sec. 1.)

See Moore v. Hanscom, 106 S. W. 876; U. S. Fidelity & Guaranty Co. v. Taggart, 194 S. W. 482.

Art. 4142. County judge not relieved from responsibility on bond.—Nothing contained in the last preceding article shall relieve the county judge from responsibility on his bond as now provided by law. (Acts 1876, p. 182.)

See Moore v. Hanscom, 106 S. W. 876.

Art. 4143. (2641) (2560) Investing money in real estate.—When the guardian may think it best for his ward to have any surplus money on hand invested in real estate, he shall file an application in writing in the court where the guardianship is pending, asking for an order of such court authorizing him to make such investment Such application shall state the nature of the investment sought to be made, and the reasons why the guardian is of the opinion that it would be for the benefit of the ward to have the same made. (Acts 1876, p. 182.)

See post, art. 4158; Herron's Probate Guide, p. 408; Moore v. Hanscom, 106 S. W. 876.

Art. 4144. (2642) (2561) Judge to investigate investment, etc.—When any such application is filed, the attention of the judge of the court shall be called thereto and he shall take the matter under consideration and proceed to make such investigation as may be necessary to obtain all the facts concerning the investment; but shall not render an opinion or make any order on the application until after the expiration of five days from date of filing. (Acts 1876, p. 182; Acts 1913, p. 321, sec. 1.)

See Moore v. Hanscom, 106 S. W. 876.

Art. 4145. (2643) (2562) Order of the court on such application.—Upon the hearing of any such application, either at a regular term of the court or in vacation, if the court be satisfied that such investment will be beneficial to the ward, an order authorizing the same to be made, shall be entered upon the minutes, which order shall specify the investment to be made, and shall contain such other directions as the court may think it advisable to make. (Acts 1876, p. 182; Acts 1913, p. 321, sec. 1.)

See Moore v. Hanscom, 106 S. W. 876.

Art. 4146. (2644) (2563) Contract of investment must be approved by the court.—When any contract has been made for the investment of money in real estate, under order of the court such contract shall be reported in writing to the court by the guardian, and it shall be the duty of the court to inquire fully into the same, and if satisfied that such investment will benefit

the estate of the ward, and that the title to such real estate is valid and unincumbered, the court may approve the contract and authorize the guardian to pay over the money in performance of the same; but no money shall be paid out by the guardian on any such contract until such contract has been approved by the court by an order to that effect upon the minutes of the court; and this order may be made at a regular term or in vacation. (Acts 1876, p. 182; Acts 1913, p. 321, sec. 1.)

See Herron's Probate Guide, p. 411; Moore v. Hanscom, 106 S. W. 876.

Art. 4147. (2645) (2564) Title to be made to ward and property to be inventoried, etc.—When the money of the ward has been invested in real estate, the title to such real estate shall be made to such ward; and such real estate shall be inventoried, appraised, managed and accounted for by the guardian as other real estate of the ward.

Art. 4148. (2646) (2565) Guardian may be cited to show cause why he should not invest or loan money.—When there is any surplus money of the estate in the hands of the guardian, any person may, by complaint in writing filed in the court in which such guardianship is pending, cause such guardian to be cited to appear at a regular term of such court, to show cause why such surplus money should not be invested or loaned at interest, in accordance with the provisions of this chapter; and, upon the hearing of such complaint, the court shall enter upon the minutes such order as the law and the facts may require.

Art. 4149. (2647) (2566) County judge shall see that money is invested, etc.—It shall be the duty of the county judge, whenever it is made known to him in any manner that there is surplus money belonging to the ward in the hands of the guardian, to cause such guardian to be cited to appear at a regular term of the court and show cause why said money should not be invested, or why it should not be loaned at interest under the provisions of this chapter.

Art. 4150. (2648) (2567) When guardian is liable for interest.—If the surplus money in the hands of the guardian belonging to the ward can not be invested or loaned at interest as directed in this chapter, after due diligence to do so by the guardian, he shall be liable for the principal only of such money. But, if the guardian neglects to invest such money or loan the same at interest when he could do so by the use of reasonable diligence, he shall be liable for the principal and also for the highest legal rate of interest upon such principal for the time he so neglects to invest or loan the same. (Acts 1876, p. 182, sec. 90.)

See Herron's Probate Guide, p. 412; Logan v. Gay, 87 S. W. 852; Whitfield v. Burrell, 118 S. W. 153; American Surety Co. of New York v. Hardwick, 186 S. W. 804; U. S. Fidelity & Guaranty Co. v. Taggart, 194 S. W. 482.

Art. 4151. (2649) (2568) Shall not be personally responsible for money loaned, when.—The guardian shall not be personally responsible for money loaned under the direction of the court, on security approved by the court, in case of the inability of the borrower to pay the same, and the failure of the security, unless such guardian has been guilty of fraud or negligence in respect to such loan or the collection of the same; in which case, he and the sureties upon his bond shall be liable for whatever loss his ward may have sustained by reason of such fraud or negligence. (Id. sec. 91.)

Art. 4152. (2650) (2569) Shall report renting, etc., to court.—The guardian shall report to the court in writing, and verified by his affidavit, the renting or leasing of property belonging to the estate, or the investment or loaning of money belonging to the estate, within thirty days after any such transaction, stating fully the facts of such transaction.

Art. 4152a. Guardian may make mineral lease.—The guardians of the estates of minors or any other persons, appointed under the laws of the State of Texas, which have heretofore been appointed or which may hereafter be appointed, shall have the authority to make mineral leases upon the real estate belonging to the estates of their wards. (Acts 1913, p. 261, sec. 1; Acts 1915, ch. 44, sec. 1; Acts 1919, ch. 119, sec. 1.)

Section 3 of Acts 1919, ch. 119, repeals Acts 1915, ch. 44, which in turn repealed Acts 1913, p. 261.

Art. 4152b. Same subject; application, hearing, approval, and order.—Whenever a guardian of the estate of any persons shall desire to make a mineral lease upon the real estate of his ward, he shall apply to the county judge of the county where such guardianship is pending for authority to make and execute such mineral lease, and such application shall be in writing and sworn to by such guardian, and the county judge, either in term time or vacation, shall hear such application, and shall require such proof as to the necessity or advisability of such lease, and if he shall approve the same, he shall enter an order on the minutes of the probate court, either in term time or vacation, authorizing the guardian to make such mineral lease, which order shall set out the terms upon which it shall be made; provided, that in the case of such leases executed by guardians of minors, no lease shall extend beyond the time that the ward shall become twenty-one years of age, unless at that time the lessee shall have discovered such minerals as are specified in the lease, or any of such minerals, upon the premises described in such lease, in which event the same shall remain in full force so long as such minerals or any or either of them shall be produced in paying quantities, provided that the marriage of a female ward shall not terminate any lease made hereunder until such ward actually reaches the age of twenty-one years.

Before such application shall be heard by the county judge, notice of such application shall be given by the guardian for one week prior to the time such application shall be heard by publishing same in some newspaper of the county where said guardianship is pending, for one issue of said paper, and such notice shall state when and where such application shall be heard.

It is further provided that after notice and hearing of said application and the granting of the same by the probate court, that said guardian shall be fully authorized to make the mineral lease upon the real estate of the ward, in accordance with the judgment of the county court acting upon the

same. (Acts 1913, p. 261, sec. 2; Acts 1915, ch. 44, sec. 2; Acts 1919, ch. 119, sec. 2.)

CHAPTER ELEVEN

SALES

Art. 4153. (2651) (2570) Perishable property shall be sold.—The guardian of the estate, as soon as practicable after appraisement, shall apply for an order of the court to sell at public or private sale, for cash or on credit not exceeding six months, all the personal property belonging to the ward that is liable to perish, waste or deteriorate in value, or that will be an expense or disadvantage to the estate to keep on hand. (Acts 1876, p. 181, sec. 80.)

Art. 4154. (2652) (2571) Sales of wild stock.—If the guardian shall represent to the court on oath that there is stock belonging to the estate which he is unable to collect or command, the court may order that the same be sold at public auction, on such credit as the court may deem reasonable, not exceeding twelve months, taking notes bearing interest at the rate of ten per cent per annum from the day of sale, with good and sufficient security for the purchase money. Such sale shall be advertised, made, returned and acted upon by the court the same as sales of real estate. (Id. secs. 84, 85.)

Art. 4155. (2653) (2572) When real estate may be sold.—When the income of the ward's estate, and the personal property thereof, and the proceeds of previous sales, are insufficient for the education and maintenance of the ward or to pay the debts against the estate, the guardian of the person, or of the estate, or any person holding a valid claim against the estate, may, by application in writing to the court in which such guardianship is pending, ask for an order for a sufficient amount of real estate to be sold to make up the deficiency, or when the property of the ward consists in whole or in part of real estate that is non-revenue bearing property and is not calculated to have any reasonable increase in value or when property of the ward consists in whole or in part of an undivided interest in real estate and the guardian believes it to be to the best interest of the estate of the ward to sell such real estate he may, by application in writing to the court in which such guardianship is pending ask for an order for such real estate to be sold. (Acts 1876, p. 181, secs. 101, 102; Acts 1913, p. 321, sec. 1.)

See Fidelity & Deposit Co. v. Schelper, 83 S. W. 871; Ridling v. Murphy, 191 S. W. 206; Schaeffer v. Williams, 208 S. W. 220.

Art. 4156. (2654) (2573) Guardian shall apply for order to sell real estate, when.—It is the duty of the guardian to apply for such order whenever it appears that a necessity exists therefor, and to set forth fully in his application such necessity, and accompanying the application with an exhibit, under oath, showing fully the condition of the estate. (Acts 1876, p. 181, sec. 105.)

See Herron's Probate Guide, pp. 415-7; Mullinax v. Barrett, 173 S. W. 1181.

Art. 4157. (2655) (2574) Guardian shall be cited, when.—When the application for the sale of real estate is made by any other person than the guardian of the estate, the guardian of the estate shall be cited to appear at a regular term of the court and show cause why the order should not be made, and also to present to the court an exhibit, under oath, showing fully the condition of the estate.

Art. 4158. (2656) (2575) Hearing on application for sale of real estate.—Whenever an application for the sale of real estate is filed, it shall be the duty of the clerk to immediately call the attention of the judge of the court in which such guardianship is pending to the filing of the application, and the judge shall designate a day to hear such application, which may be heard in term time or vacation, provided, such application shall remain on file at least five days before any orders are made and the judge may continue such hearing from time to time until he shall have been satisfied as to the facts concerning the application. (Acts 1876, p. 181, sec. 104; Acts 1913, p. 321, sec. 1.)

See ante, art. 4143; Herron's Probate Guide, p. 408.

Art. 4159. (2657) (2576) [Repealed by Acts 1913, p. 321, sec. 2.]

Art. 4160. (2658) (2577) Advantage of estate to be considered in ordering sale.—When a sale of real estate is ordered, it shall be of the property which the court may deem most advantageous to the estate to be sold. (Acts 1876, p. 181, sec. 103.)

Art. 4161. (2659) (2578) May be sold on what terms.—A sale of real estate may be ordered to be made for cash or for part cash and part credit, at public auction or private sale, as may appear to the court to be to the best interest of the estate. (Acts 1892, S. S., p. 9; Acts 1913, p. 321, sec. 1.)

Art. 4162. (2660) (2579) Order of sale shall state what.—An order for the sale of real estate shall state:

1st. The property to be sold, giving such description of it as will identify it.

2nd. Whether it is to be sold at public auction or at private sale, and, if at public auction, the time and place of such sale.

3rd. The necessity and purpose of such sale.

4th. It shall require the guardian to file a good and sufficient bond, subject to the approval of the court, in an amount equal to twice the amount for which such real estate is sold.

5th. It shall require the sale to be made and the report thereof returned to the court in accordance with law. (Acts 1876, p. 180, sec. 100; Acts 1913, p. 321, sec. 1.)

See Herron's Probate Guide, pp. 419-20.

Art. 4163. (2661) (2580) In what county real estate shall be sold.—All private sales of real estate shall be made in the county where the guardianship is pending; all public sales of real estate shall be made in the county where the real estate is situated and such public sales shall be advertised and the sale made as is provided in section 4168 of chapter 11, title 64, Revised Civil Statutes of Texas, 1911. (Acts 1876, p. 180, sec. 108; Acts 1913, p. 321, sec. 1.)

See post, arts. 4181-4183; Herron's Probate Guide, p. 420.

Art. 4164. (2662) (2581) Terms of sale.—The terms of sale of real estate when made partly on credit shall be that the cash payment be not less than one-third of the purchase price, and that the purchaser give his note or notes for the deferred payments maturing in equal annual amounts, the last note to mature not later than five years from

date of deed, said note to bear interest from date at a rate of interest not less than six per cent, payable annually, and in default of the payment of principal or interest or any part thereof when due shall mature the whole debt; all notes for the deferred payments to be secured by vendor's lien, retained in deed and notes upon the property sold and further secured by deed of trust, upon the property sold, with usual provisions for foreclosure and sale upon failure to make payments provided in deed and notes. (Acts 1892, S. S. p. 9; Acts 1913, p. 321, sec. 1.)

See post, arts. 4181, 4183.

Art. 4165. (2663) (2582) Guardian shall not purchase property belonging to ward.—It shall not be lawful for the guardian to take the estate of his ward or any part thereof, at its appraised value, or to become the purchaser, either directly or indirectly, of any property of the estate sold by him; and, if any guardian shall, either directly or indirectly, become the purchaser of any property of his ward, at a sale made by such guardian, upon the complaint in writing of any person, and, after service of citation upon such guardian, and upon proof of such complaint, such sale shall be declared void by the court, and shall be set aside, and an order to that effect entered upon the minutes; and the costs of such sale, and of the proceedings to set the same aside, shall be adjudged against such guardian individually.

Art. 4166. (2664) (2583) Bidder failing to comply with bid shall be liable, etc.—When any person shall bid off property offered for sale by a guardian, and shall fail to comply with the terms of the sale, the facts shall be reported to the court by the guardian; and such person so failing to comply shall be liable to pay such guardian, for the use of the estate, ten per cent on the amount of his bid; and, also, the deficiency in price on the second sale of such property, if any such deficiency there be, to be recovered by suit in any court of the county where such sale was made having jurisdiction of the amount claimed.

Art. 4167. (2665) (2584) Sale may be continued from day to day.—Public sales may be continued from day to day in case the day set apart for any such sale shall be insufficient to complete the same, by giving public notice verbally of such continuance at the conclusion of the sale each day; and the continued sale shall commence and conclude within the hours prescribed for public sales under execution.

Art. 4168. (2666) (2585) Guardians' sales governed by same rules as execution sales.—The laws regulating sales under execution, so far as the same relate to the advertisement and sale of property and the proceedings incidental thereto, and are not inconsistent with the provisions of this title, shall apply to and govern public sales by a guardian of the property of the ward. (Acts 1876, p. 181, secs. 82–111.)

Art. 4169. (2667) (2586) Notice of private sale not required.—When a private sale of the property of the ward is made by a guardian, notice of such sale is not required to be given.

Art. 4170. (2668) (2587-2588) Sale of mortgaged property to be made on such terms as court may direct.—Any person holding a claim against the estate of a ward, secured by mortgage or other lien, may obtain an order for the sale of the property upon which he has such mortgage or other lien, or so much thereof as may be required to satisfy the claim, by causing citation to be posted and the guardian to be cited to appear at a regular term of the court and show cause why such order should not be made; and such sale shall be made upon such terms as the court may direct; which terms shall be stated in the order of sale; and the notice and other proceedings shall be the same as in other sales by guardians. (Acts 1876, p. 181, secs. 100, 107.)

Art. 4171. (2669) (2589) Mortgage or lien may be discharged without sale.—Should it appear to the court that the discharge of such mortgage or other lien, out of the general assets, would be beneficial to the estate, the payment may be ordered to be so made, instead of ordering a sale of the property. (Id. sec. 106.)

Art. 4172. (2670) Guardian may reduce rate of interest on ward's debts, how.—Should an estate in the hands of a guardian be involved in debt, and, upon proper showing made to the court, it shall appear that the guardian can pay off and discharge existing debts to the advantage of the estate by the hypothecation or mortgage of real estate at a lower rate of interest, or upon more advantageous terms than the old indebtedness, the court may, in its discretion, by order made for that purpose, allow the guardian to pay off and discharge existing debts by the execution of a good and sufficient mortgage or deed of trust upon real estate to secure the person furnishing the money with which to discharge said indebtedness; acts of guardians under this article to be reported to the court and approved as in case of sales; nor shall any guardian renew any indebtedness or evidence thereof except by order of the court, made upon application and notice as in case of sales of land. (Acts 1892, S. S. p. 10.)

Art. 4173. (2671) May renew debt, when.—Should a guardian not have sufficient funds in hand belonging to the estate of his ward to pay and discharge any existing debt, he may renew the evidence of the same in like manner as his ward could, were he able to act; and such act of the guardian shall have the same force and effect with reference to such novated paper as if done by the ward; provided that no such guardian shall renew the evidences of any debt against the estate of his ward which shall have become barred by the statutes of limitations; nor shall such guardian renew the evidences of any debt that may have been made or contracted by his ward during his minority or other disabilities. (Acts of 1892, S. S., p. 10. Acts 1913, p. 321, sec. 1.)

CHAPTER TWELVE

REPORTS OF SALES AND ACTION OF THE COURT THEREON

Art. 4174. (2672) (2590) Sales shall be reported in thirty days.—All sales of the property of the ward shall be reported to the court in which the guardianship is pending,

by the guardian, within thirty days after the sale is made.

McMinn v. Cope, 112 S. W. 809; Brown v. Brown, 142 S. W. 23.

Art. 4175. (2673) (2591) Report of sale and its requisites.—The report of any sale shall be in writing, and shall be subscribed and sworn to by the guardian before some officer authorized to administer oaths. It shall show:

1. The time and place of the sale.
2. The property sold, giving a description of the same.
3. The name of the purchaser of the property.
4. The amount for which each article of property was sold.
5. The date of the order of sale.
6. Whether such sale was at public auction or was a private sale.
7. The terms of the sale.
8. Whether or not the purchaser has complied with the terms of the sale.

See Herron's Probate Guide, pp. 426-7; McMinn v. Cope, 112 S. W. 809; Brown v. Brown, 142 S. W. 23.

Art. 4176. (2674) (2592) Report may be in term time or vacation.—A report of sale may be made in term time or in vacation, and, when returned, shall be filed by the clerk and the filing thereof noted in the case upon the judge's docket.

Art. 4177. (2675) (2593) Action of the court on the report; proviso.—At any time after the expiration of five days from the filing of a report of sale, it shall be the duty of the court in which the same has been filed to inquire into the manner in which such sale was made, and hear evidence in support of or against such report and, if satisfied that such sale was fairly made and in conformity with law, and that the guardian has filed his bond as required herein, which has been duly approved by the court, the court shall cause to be entered upon the minutes a decree confirming such sale, and order the report of sale to be recorded by the clerk, and the proper conveyance of the property sold be made by the guardian to the purchaser, upon compliance by such purchaser with the terms of sale; provided that in cases pending at the time this law becomes effective and in which the guardian has a satisfactory bond filed, equal to twice the amount of all personal property of the ward and twice the amount of the real estate sold, he shall not be required to file a new bond. (Act Aug. 18, 1876, p. 185, sec. 113. Acts 1913, p. 321, sec. 1.)

Art. 4178. (2676) (2594) Sale shall be set aside, when.—If the court is not satisfied that the sale was fairly made, and in conformity with law, an order shall be entered upon the minutes, setting the same aside, and ordering the property to be again sold, if necessary.

Art. 4179. (2677) (2595) Conveyance of property sold.—After a sale has been confirmed by a decree of the court, and after the purchaser has complied with the terms of the sale, the guardian shall execute and deliver to the purchaser a proper conveyance of the property purchased by him. In the case of a sale of personal property, no conveyance shall be necessary; but the decree of the court confirming the sale shall vest the right and title of the ward to the property sold in the purchaser, and shall be prima facie evidence that all the requirements of the law have been complied with in making such sale.

Art. 4180. (2678) (2596) Conveyance of real estate.—If the property sold be real estate, the conveyance shall be by deed, and shall refer to the decree of the court confirming the sale and ordering the conveyance to be made, by giving the date and term of the court of such order; and such conveyance shall vest the right and title of the ward to such real estate in the purchaser, and shall be prima facie evidence that all the requirements of the law have been complied with in making such sale. (Acts 1876, p. 185, sec. 115.)

Art. 4181. (2679) (2597) No conveyance until terms of sale have been complied with.—No conveyance of real estate sold shall be executed and delivered by the guardian to the purchaser until the terms of sale have been complied with by such purchaser; and when such sale has been made for part cash and part credit, it shall be the duty of the guardian, before delivering a conveyance of the property sold to the purchaser, to take from such purchaser a note or notes for the deferred payment, bearing interest at a rate not less than six per cent per annum, payable annually, secured by the vendor's lien and a deed of trust, with usual provisions for foreclosure and sale. as additional security, and to file such deed of trust for record in the county where such real estate is situated. (Acts 1913, p. 321, sec. 1.)

See ante, art. 4164; Herron's Probate Guide, p. 420; McMinn v. Cope, 112 S. W. 809; Mullinax v. Barrett, 173 S. W. 1181.

Art. 4182. (2680) (2598) Penalty for neglect to take note and mortgage, etc.—Should the guardian neglect to take the note, security and mortgage, and file such mortgage for record in the proper county before delivering to the purchaser a deed, as required by the preceding article, such guardian and the sureties upon his bond shall be liable for whatever loss may accrue to the estate of the ward by reason for such neglect.

Art. 4183. (2681) (2599) Vendor's lien to be retained, when.—All notes executed for the purchase money of real estate, under the provisions of this chapter, shall hold the vendor's lien on the real estate for which such notes were given against all persons having notice, express or implied, in favor of the estate, whether the mortgage be recorded or not; and such lien shall, in no case, be waived.

Art. 4184. (2682) (2600) When property is not sold at the time ordered, etc.—If, from any cause, the guardian shall fail to sell any real estate ordered to be sold, at the time specified in the order, he shall report the facts to the court or judge, accompanied by his affidavit of the truth thereof, and the court or judge, either in term time or vacation, may, by an order entered upon the minutes, appoint another day for such sale, and so on, from time to time, until the sale is completed. (Acts 1876, p. 185, sec. 116.)

CHAPTER THIRTEEN

ANNUAL ACCOUNTS

Art. 4185. (2683) (2601) Annual account of guardian of person.—The guardian of the person, where there is a separate guardian of the estate, shall annually return to the court an account, supported by his affidavit, showing the items of expenditure since the last account for the education and maintenance of the ward. (Acts 1876, p. 186, sec. 120.)

Brown v. Brown, 142 S. W. 23.

Art. 4186. (2684) (2602) Annual account of guardian of estate.—The guardian of an estate shall annually return to the court an account showing:

1. Any property that may have come to his knowledge belonging to his ward which has not been previously inventoried or listed.

2. Any changes in the property of the ward which have not been previously reported.

3. A complete account of receipts and disbursements since the last annual account.

4. All claims that have been allowed by him against the estate since the last annual account that are still unpaid.

5. All claims that have been rejected by him since the last annual account, and whether the same have been sued upon or not.

6. The money and property still on hand, and the condition of such property, and the use that is being made of the same.

7. Such other facts as may be necessary to show the true and exact condition of the estate.

Annexed to such account, shall be the affidavit of the guardian that it contains a correct and complete statement of the matters to which it relates. (Id. sec. 119.)

Art. 4187. (2685) (2603) Annual account shall remain on file five days, etc.—When an annual account is presented, it shall be filed; and the filing thereof noted upon the judge's docket, and, without being acted on, shall remain on file five days. (Acts 1876, p. 186, sec. 121. Acts 1913, p. 321, sec. 1.)

Art. 4188. (2686) (2604) Hearing on annual account.—At any time after the expiration of five days from the date of the filing of an annual account, the judge may act on such account and may continue the hearing thereon from time to time until fully advised as to all items of such account. (Acts 1876, p. 186, sec. 122. Acts 1913, p. 321, sec. 1.)

Art. 4189. (2687) (2605) Accounts must be proved by vouchers or other evidence.—The guardian must produce and file proper vouchers for every item of credit claimed by him in his account, or support the same by other satisfactory evidence. (Acts 1876, p. 186, sec. 124.)

Art. 4190. (2688) (2606) Action of the court on the account.—If the account be found incorrect, it shall be correctly stated; and, when so corrected, or if found correct, it shall be approved by an order of the court entered upon the minutes. (Id. sec. 125.)

Art. 4191. (2689) (2607) Guardian shall be cited to return account, when.—If the guardian fail to return an annual account, as required by the provisions of this chapter, he shall be cited to return the same at the next term of the court, and show cause for failing to return such account at the proper time. (Id. sec. 128.)

Brown v. Brown, 142 S. W. 23.

Art. 4192. (2690) (2608) Penalty for failing to return account.—If the guardian fail to return such account, after being cited to do so, or fail to show good cause for failing to return such account at the proper time, he may be fined by the court not exceeding five hundred dollars, for the use of the county; and he and his sureties shall be liable for all fines imposed and damages sustained by reason of such failure. (Id. sec. 129.)

Art. 4193. [Repealed by Acts 1913, p. 321, sec. 2.]

CHAPTER FOURTEEN

DEATH, RESIGNATION AND REMOVAL OF GUARDIANS

Art. 4194. (2691) (2609) When guardian dies.—When a guardian dies the court, on application, shall appoint another. (Acts 1876, p. 179, sec. 54.)

Art. 4195. (2692) (2610) Resignation of guardian.—When a guardian wishes to resign, he shall present his application in writing to that effect to the court, and accompany such application with a full and complete account of the condition of the estate and of his guardianship verified by his affidavit. (Id. sec. 55.)

Stewart v. Robbins, 65 S. W. 899.

Art. 4196. (2693) (2611) Citation in such case.—Upon the filing of such application and account, the clerk shall issue a citation to all persons interested in such guardianship, which citation shall state:

1. That such guardian has filed his application for leave to resign the guardianship, and has accompanied the same by an account for final settlement thereof.

2. It shall notify all persons interested in the guardianship to appear at a certain term of the court, commencing on such a day and month, and contest the account of the guardian, if they see proper to do so. (Id. sec. 56.)

Art. 4197. (2694) (2612) Service of such citation.—Such citation shall be published once a week for three successive weeks in some newspaper in the county, if there be one regularly printed therein; if not, then such citation shall be duly posted for at least twenty days before the return term thereof; and such citation shall be duly returned by the officer executing the same. (Id. sec. 57.)

Art. 4198. (2695) (2613) Action of court upon application and account.—Upon the hearing of such application and account, if it appear that such guardian has accounted for all the estate according to law, the court shall enter an order upon the minutes that he delivered the estate remaining in his possession, if any there be, or the person of his ward, or both, as the case may be, to some person who shall have been or may be appointed and qualified as guardian in his place; upon compliance with such order and surrender of his letters of guardianship, such guardian shall be permitted to resign his trust and be discharged; and an order to that effect shall be made by the court and entered upon the minutes of the court. (Id. sec. 58.)

See Stewart v. Robbins, 65 S. W. 899.

Art. 4199. (2696) (2614) Removal of guardian without notice, when.—Guardians shall be removed in the following cases, without notice, at the regular term of the court:

1. When they neglect to return, within thirty days after qualification, an inventory and list of claims of the property of the estate, as far as such property has come to their knowledge.

2. When they have been required to give a new bond, and neglect to do so within the time prescribed.

3. When they have removed from the state. (Id. sec. 59.)

See Herron's Probate Guide, p. 435; Brown v. Brown, 142 S. W. 23.

Art. 4200. (2697) (2615) Removal after citation.—A guardian may be removed by the court of its own motion, or on the motion of any person interested in the ward, or his estate, after being cited to answer:

1. When he fails to return any account which he is required to return by any of the provisions of this title.

2. When he fails to obey any order of the court or judge, consistent with this title.

3. When there is good cause to believe that he has misapplied, embezzled or removed, or is about to misapply, embezzle or remove from the state, the property committed to his charge, or any part thereof.

4. When he is proved to have been guilty of gross neglect or mismanagement in the performance of any of his duties as guardian.

5. When he becomes of unsound mind, or becomes an habitual drunkard, or is sentenced to imprisonment for a term of years.

6. When, if he be the guardian of the person, he cruelly treats the ward, or neglects to educate and maintain the ward as liberally as the means of such ward and the circumstances of the case demand. (Id. sec. 60.)

See Herron's Probate Guide, p. 436.

Art. 4201. (2698) (2616) Order removing guardian shall state what, etc.—The order of the court removing a guardian shall state the cause of such removal, and shall require such guardian to surrender his letters of guardianship, and shall also further require such guardian to deliver the person of the ward, or his estate, or both, as the case may be, to some person who has been appointed guardian and has qualified as such in his place. (Id. secs. 61–2.)

Art. 4202. (2699) (2617) Person removed shall not be reappointed.—When any person shall have been removed from the guardianship of the person or estate of a ward, he shall not afterward be reappointed to such guardianship. (Id. sec. 63.)

Art. 4203. (2700) (2618) When guardian dies, etc., estate shall be accounted for and delivered, etc.—If a guardian die, resign, or be removed, he or his legal representatives shall account for, pay and deliver to the person legally entitled to receive the same, all the property of every kind belonging to the estate of the ward at such time and in such manner as the court shall order; and, in case of a refusal to comply with an order of the court to that effect, the same may be enforced by attachment and punishment as for contempt. (Id. sec. 64.)

See Bopp v. Hansford, 45 S. W. 744.

Art. 4204. (2701) (2619) Subsequent guardian shall account for what.—When a guardian succeeds a former guardian, he shall be required to account for all the estate which came into the hands of his predecessor, and shall be entitled to any order or remedy which the court has power to give, in order to enforce the delivery of the estate, and the liability of the sureties of his predecessor for so much as is not delivered. But such subsequent guardian shall be excused from accounting for such of the estate as he has failed to recover after the use of due diligence. (Id. sec. 65.)

See Fid. & Dep. Co. v. Schelper, 83 S. W. 872; Kunz v. Ragsdale, 200 S. W. 269.

Art. 4205. (2702) (2620) Subsequent guardian succeeds to what.—A subsequent guardian shall succeed to all the rights, powers and duties of his predecessor, and shall proceed with the guardianship in all respects as if it were a continuation of the same by the same guardian.

See Herron's Probate Guide, pp. 437-8.

CHAPTER FIFTEEN

CLAIMS AGAINST THE ESTATE

Art. 4206. (2703) (2621) Guardian may pay claim without authentication, when.—A guardian may pay any claim against the estate of his ward which he knows to be just, without the authentication thereof. (Acts 1876, Aug. 18, sec. 95.)

Art. 4207. (2704) (2622) Claim shall not be allowed unless supported by affidavit, etc.—The guardian shall not allow, and the court shall not approve, any claim, except as provided for in the preceding article, unless it be accompanied by an affidavit of the claimant, that the claim is just, that nothing has been paid or delivered toward the satisfaction of such claim, except what is mentioned or credited (if any), that there are no counter claims known to the affiant which have not been allowed, and that the sum claimed is justly due. (Id. sec. 154.)

Bradshaw v. Lyles, 119 S. W. 918.

Art. 4208. (2705) (2623) Where claim is not founded on written instrument, affidavit shall state facts.—Where the claim is not founded on an instrument in writing or an account, in addition to the statement required by the preceding article, the affidavit must state the facts upon which the claim is founded. (Id. sec. 155.)

Art. 4209. (2706) (2624) When a claim belongs to a corporation, who shall make affidavit.—When a claim belongs to a corporation, the cashier, treasurer or managing agent of such corporation shall make the affidavit required to authenticate it. (Id. sec. 156.)

Art. 4210. (2707) (2625) Affidavit by officer of corporation, executor, etc., shall state what, etc.—When an affidavit authenticating a claim is made by an officer of a corporation, an executor, administrator, trustee, assignee, agent or attorney, it shall be sufficient to state in such affidavit that he has made diligent inquiry and examination and that he does verily believe that nothing has been paid and delivered toward the satisfaction of such claim, except the amount credited (if any), that there are no counter

claims which have not been allowed, and that the sum claimed is justly due. (Id. sec. 157.)

Art. 4211. (2708) (2626) Affidavit may be made before what officers.—The affidavit authenticating a claim may be made before any officer authorized to administer oaths. (Revision, 1879.)

Art. 4212. (2709) (2627) Memorandum of allowance or rejection on claim.—When a claim is presented to the guardian, properly authenticated, he shall indorse thereon or annex thereto a memorandum in writing signed by him, stating the time of its presentment, and that he allows or rejects it, or what portion thereof he allows, if any. (Acts 1876, Aug. 18, sec. 159.)

Art. 4213. (2710) (2628) Effect of failure to make memorandum.—The failure of a guardian to indorse on, or annex to, any claim presented to him, his allowance or rejection thereof, shall be deemed a rejection of such claim; and, in such case, the costs, if the claim be established, shall be adjudged against the guardian to be paid out of his own estate. (Id. sec. 160.)

Art. 4214. (2711) (2629) Rejected claim, if not sued on in ninety days, barred.—When a claim, or part thereof, has been rejected by the guardian, the claimant, if he does not submit thereto, shall institute suit thereon within ninety days after such rejection, or the same shall be barred. (Id. sec. 162.)

See ante, art. 3449.

Art. 4215. (2712) (2630) Memorandum evidence.—When a rejected claim is sued upon, the indorsement thereon or annexed thereto of its rejection shall be taken to be true without proof, unless it be denied under oath. (Id. sec. 165.)

Art. 4216. (2713) (2631) When claim is allowed, shall be presented, etc.—After a claim has been presented to the guardian and allowed, the claimant shall present it to the clerk of the court in which the guardianship is pending, who shall enter it upon the claim docket. (Id. sec. 161.)

Art. 4217. (2714) (2632) Claims shall be examined, etc., by the court.—At each regular term of the court, all claims which have been allowed and entered on the claim docket shall be examined by the court and approved or disapproved, in the same manner as is provided for claims against the estates of decedents. (Id. sec. 164.)

See ante, arts. 3446-3447; Logan v. Gay, 90 S. W. 861.

Art. 4218. (2715) (2633) Any person may contest claim.—Any person may appear and contest the approval of any claim, or any part thereof, and shall be entitled to process to compel the attendance of witnesses and the production of testimony as in ordinary suits. (Id. sec. 166.)

Art. 4219. (2716) (2634) Court shall hear evidence on claim.—Although a claim be properly authenticated and allowed, if the court be not well satisfied it is just, it shall send for persons and papers, and may examine the claimant and the guardian under oath and hear other evidence. If the court be not entirely convinced in such case by evidence other than the testimony of the claimant that the claim is just, it shall be disapproved. (Id. sec. 167.)

Art. 4220. (2717) (2635) Order of approval or disapproval is a judgment.—The order of approval or disapproval of a claim has the force and effect of a judgment. (Id. sec. 168.)

See Herron's Probate Guide, p. 442; Logan v. Gay, 90 S. W. 861.

Art. 4221. (2718) (2636) Appeal may be taken from action of court on claim.—When a claimant or any person interested in a ward shall be dissatisfied with the action of the court in approving or disapproving a claim in whole or in part, he may appeal therefrom to the district court, as in the case of any other judgment rendered by said court.

See De Cordova v. Rogers, 75 S. W. 17.

Art. 4222. (2719) (2637) Action of court shall be indorsed on claim, etc.—When a claim is acted on by the court, the court shall indorse thereon, or annex thereto, a memorandum in writing, signed officially, stating the action of the court upon such claim, and shall also enter such action upon the claim docket.

See Logan v. Gay, 90 S. W. 861.

Art. 4223. (2720) (2638) Lost claim may be proved, how.—When a claim has been lost and cannot be produced, the claimant may make an affidavit of the facts and present it to the guardian, with the same effect as the claim itself; but, in such case, the claim must be proved by competent testimony, other than such claimant's affidavit or oath, produced in court or taken by deposition, before it shall be approved by the court. (Acts 1876, Aug. 18, sec. 174.)

Art. 4224. (2721) (2639) Claim held by guardian, established, how.—A claim which the guardian held against the ward at the time of his appointment, or which has since accrued, is exhibited by being filed, verified by the affidavit of the guardian; after which it takes the same course as other claims. (Id. sec. 158.)

Art. 4225. (2722) (2640) When claim is said to be exhibited.—A claim is said to be legally exhibited:

1. When it is properly presented to the guardian, and after being allowed by him is filed.

2. When, after being rejected, suit is commenced thereon. (Id. sec. 169.)

Art. 4226. (2723) (2641) When a claim is said to be established.—A claim is said to be established:

1. When it has been allowed by the guardian and approved by the court.

2. When, in a suit thereon, it has been sustained by the judgment of the proper court. (Id. sec. 170.)

See Logan v. Gay, 90 S. W. 861.

Art. 4227. (2724) (2642) When a claim may be exhibited.—Claims which have not been legally exhibited within the year may be exhibited at any time afterward, before the estate is closed, or suit on such claims would be barred by the general law of limitation. (Id. sec. 172.)

Art. 4228. (2725) (2643) Limitation is interrupted, how.—The general law of limitations is interrupted:

1. By filing a claim which has been allowed.

2. By commencing a suit upon a rejected or disapproved claim within ninety days after such rejection or disapproval. (Id. sec. 173.)

Art. 4229. (2726) (2644) Guardian shall not purchase claim.—It shall not be

lawful for a guardian, either directly or indirectly, to purchase for his own use any claim against the estate of his ward; and, upon proof to the satisfaction of the court of the violation of this provision, the court shall disapprove the claim.

Art. 4230. (2727) (2645) Claim established by judgment shall be filed, etc.—When a claim has been established by judgment, a certified copy of such judgment shall be filed with the clerk of the court in which the guardianship is pending, and entered upon the claim docket as other claims are entered. (Acts 1876, Aug. 18. sec. 164.)

Art. 4231. (2728) (2646) Cost incurred in exhibiting, etc., a claim; taxed, how.—The costs incurred in the exhibition and establishment of claims shall be taxed as follows:

1. If a claim be allowed and approved, the estate shall pay the costs.

2. If a claim be allowed, but disapproved, the claimant shall pay the costs.

3. If a claim which has been rejected be established, the estate shall pay the costs. (Id. sec. 190.)

Art. 4232. (2729) (2647) Claim docket.—The claim docket required to be kept in estates of decedents shall be used also for the estates of wards, and under the same rules as far as applicable. (Acts 1876, Aug. 18, sec. 190.)

See ante, art. 3213.

Art. 4233. (2730) (2648) Payment of claims.—It shall be the duty of the guardian to pay all claims against the estate of his ward that have been allowed and approved, or established by suit, as soon as practicable; and the court may, at any time, either in term time or in vacation, by an order entered upon the minutes, direct the order in which the claims against the estate shall be paid, and the amount to be paid on each claim, when the funds are not sufficient to pay them all in full.

See Logan v. Gay, 90 S. W. 861.

Art. 4234. (2731) (2649) Creditor may obtain order for payment of claim.—Any creditor of the estate of the ward whose claim has been approved by the court, or established by judgment, may, upon application in writing to the court in which such guardianship is pending, at a regular term thereof, obtain an order for the payment of such claim, upon proof being made that there are funds in the hands of the guardian subject thereto, or, if there be no funds, or not sufficient for the payment of such claim, and if to await the receipt of funds from other sources would involve an unreasonable delay, an order shall be made for the sale of property of the estate sufficient to pay the debt. (Acts 1876, Aug. 18, sec. 96.)

Thompson v. Gooldsby, 106 S. W. 936.

Art. 4235. (2732) (2650) Execution shall issue against guardian, when.—If any guardian shall fail to pay any claim ordered by the court to be paid when demanded, upon affidavit of the demand and failure to pay being filed with the clerk of the court making such order, an execution shall be issued for the amount ordered to be paid such claimant, and for the costs of such proceeding against the property of such guardian. (Id. sec. 97.)

Thompson v. Gooldsby, 106 S. W. 936.

Art. 4236. (2733) (2651) Sureties on guardian's bond shall be cited, when, etc.—If the execution provided for in the preceding article be returned not satisfied, the sureties upon such guardian's bond may be cited to appear at a regular term of the court from which such execution issued, and show cause why judgment should not be rendered against them for such debt, interest and costs. (Id. sec. 98.)

Art. 4237. (2734) (2652) Citation and judgment in such case.—Citation in such case may be issued to any county in the state; and, upon the return thereof duly served, if good cause to the contrary be not shown, the court shall render judgment against the sureties so served in favor of the claimant for the amount of the claim ordered to be paid as aforesaid, and remaining unpaid, and ten per cent. damages thereon, together with interest and costs; and execution may issue thereon accordingly. (Id. sec. 99.)

CHAPTER SIXTEEN

GUARDIANSHIP OF PERSONS OF UNSOUND MIND AND HABITUAL DRUNKARDS

Art. 4238. (2735) (2653) County judge shall issue warrant on information.—If information be given to the judge of the county court that any person of the county is of unsound mind, or is an habitual drunkard, and is without a guardian, such judge, if satisfied that there is good cause for the exercise of his jurisdiction, shall, either in term time or in vacation, issue a warrant to the proper officer commanding that such person be brought before him at a time and place to be named in such warrant. (Acts 1876, p. 187, sec. 141.)

See Shields v. Aultman, Miller & Co., 50 S. W. 219; Glenn v. S., 107 S. W. 621; Ward v. Compton, 203 S. W. 129.

Art. 4239. (2736) (2654) Duty of county officer to file information, when.—It shall be the duty of any county officer who may discover any person who resides in the county to be of unsound mind, and without a guardian, to file information thereof with the county judge of such county, who shall issue his warrant as provided in the preceding article.

Art. 4240. (2737) (2655) Requisites of information.—The information provided for in the two preceding articles shall be in writing, and shall state the name of the person charged with being of unsound mind or an habitual drunkard, if his name be known, and, if unknown, such person shall be described, and that such person is of unsound mind, or is an habitual drunkard, as the case may be, to the best of the knowledge and belief of the informant; and such information shall be subscribed and sworn to by the informant before some officer of the county authorized to administer oaths.

Art. 4241. (2738) (2656) Jury shall be impaneled.—When the person charged is brought before the judge he shall, either in term time or in vacation, cause to be impaneled a qualified jury to try the case and decide whether such person is of unsound mind, or is an habitual drunkard, as charged in the information.

Art. 4242. (2739) (2657) Proceedings at trial.—The case shall be docketed in the name of the county as plaintiff, and the person against whom the information is filed as defendant; and the proceedings and trial therein shall be governed by the same rules and regulations that govern in ordinary suits in the county court, unless otherwise provided.

Art. 4243. (2740) (2658) If verdict is against defendant, guardian shall be appointed.—If it be found by the jury that the defendant is of unsound mind, or is an habitual drunkard, as charged, the court shall proceed, immediately and without further notice, to appoint a guardian of the person and estate of such defendant in the same manner as in the case of a minor. (Acts 1876, p. 187, sec. 143.)

See Speer's Marital Rights, p. 366.

Art. 4244. (2741) (2659) New trial may be granted, when.—The court may, for good cause shown, at any time within ten days after the verdict has been returned, set aside such verdict and grant a new trial to either party; but, when two juries have concurred in a case, the second verdict shall not be set aside. (Id. sec. 144.)

Art. 4245. (2742) (2660) Provisions as to minors apply to persons of unsound mind, etc.—All the provisions of this title relating to the guardianship of the persons and estates of minors shall apply to the guardianship of the persons and estates of persons of unsound mind and habitual drunkards, in so far as the same are applicable and not inconsistent with any provision of this chapter.

See Sayles' Practice, p. 219; Flynn v. Hancock, 80 S. W. 245; Ward v. Compton, 203 S. W. 129.

Art. 4246. (2743) (2661) Order for support of ward's family.—The court by which any person of unsound mind or habitual drunkard is committed to guardianship may make orders for the support of his family and the education of his children when necessary. (Acts 1876, p. 187, sec. 177.)

See Speer's Marital Rights, p. 366.

Art. 4247. (2744) (2662) Husband or wife first entitled to guardianship.—If the person committed to guardianship is married, the husband or the wife of such person, as the case may be, shall be entitled first in order to the guardianship.

See ante, arts. 3593, 3594, 4076; Speer's Marital Rights, p. 365.

Art. 4248. (2745) (2663) When ward is furiously mad.—If any person shall be furiously mad, or so far disordered in his mind as to endanger his own person or the person or property of others, it shall be the duty of the guardian or other person under whose care he may be, and who is bound to provide for his support, to confine him in some suitable place until the first regular term of the county court of his county, when the court shall make such order for the restraint, support and safe-keeping of such ward as the circumstances may require. (Acts 1876, p. 187, sec. 178.)

Art. 4249. (2746) (2664) When insane person is not confined or in charge of any one.—If any such person of unsound mind as is specified in the preceding article shall not be confined by those having charge of him, or if there be no person having such charge, any magistrate may cause such insane person to be apprehended and may employ any person to confine him in some suitable place until the county court shall make further order thereon, as provided in the preceding article. (Id. sec. 179.)

Art. 4250. (2747) (2665) Who are liable to maintain persons of unsound mind, etc.—Where the person of unsound mind or habitual drunkard has no estate of his own, they shall be maintained:

1. By the husband or wife of such person, if any, if able to do so.
2. By the father or mother of such person, if able to do so.
3. By the children and grandchildren of such person, if able to do so.
4. By the county in which said person has his residence. (Id. sec. 180.)

Art. 4251. (2748) (2666) Expenses of confinement to be paid, how.—The expenses attending the confinement of an insane person shall be paid by the guardian out of the estate of the ward, if he has any estate; and, if he has no estate, such expense shall be paid by the person bound to provide for and support such insane person; and, if not so paid, the county shall pay the same. (Id. sec. 181.)

Art. 4252. (2749) (2667) County may recover back expenses paid.—In all cases of appropriations out of the county treasury for the support and confinement of any person of unsound mind or habitual drunkard, the amount thereof may be recovered by the county from the estate of such person, or from any person who, by law, is bound to provide for the support of such person, if there be any such person able to pay the same. (Id. sec. 182.)

Art. 4253. (2750) (2668) Proceedings to discharge ward from guardianship.—If any person shall allege in writing and under oath that a person who has been adjudged to be of unsound mind, or an habitual drunkard, has been restored to his right mind, or to correct, sober habits, as the case may be, the guardian of the person and of the estate of such ward shall be cited to appear before the county judge on a day and at a place named in such citation, either in term time or in vacation, and show cause why such ward should not be discharged from further guardianship, or the guardian may appear without such citation. (Id. sec. 183.)

See ante, art. 4087; post, art. 4267.

Art. 4254. (2751) (2669) Same subject.—If the fact of such alleged restoration be doubtful, the court shall, either in term time or in vacation, cause a qualified jury to be impaneled to try the issue as in the first instance, and if it be found by such jury that the ward has been restored to his right mind, or has reformed, he shall be discharged from guardianship by an order to that effect entered upon the minutes; and the guardian shall immediately settle his accounts and deliver up all the property remaining in his hands to such ward. (Id.)

Art. 4255. (2752) (2670) Court may discharge from guardianship without jury, when.—If the fact of such alleged restoration be not doubtful, the court may, without the intervention of a jury, make the

order discharging the ward from guardianship, as provided in the preceding article. (Id.)

CHAPTER SEVENTEEN
NON-RESIDENT GUARDIANS AND WARDS

Art. 4256. (2753) (2671) Non-resident guardian may obtain letters in this state, how.—Where a guardian and his ward are non-residents, such guardian may file in the county court of any county a full and complete transcript from the records of a court of competent jurisdiction where he and his ward reside, showing that he has been appointed and has qualified as guardian of the estate of such ward; which said transcript shall be certified by the clerk of the court in which the proceedings were had, under the seal of such court, if there be one, together with a certificate from the judge, chief justice or presiding magistrate of such court, as the case may be, that the attestation to such transcript is in due form; and upon the filing of such transcript the same may be recorded, and the guardian shall be entitled to receive letters of guardianship of the estate of such minor situated in this state, upon filing a bond with sureties, as in other cases, in double the amount of the estimated value of such estate. (Acts 1876, p. 180, sec. 70.)

See ante, art. 3554; Herron's Probate Guide, pp. 452-3; Orr v. Wright, 45 S. W. 629; Gill v. Everman, 60 S. W. 913; Hoffman v. Watkins, 130 S. W. 625.

Art. 4257. (2754) (2672) Such guardian may remove property out of state, etc.—Upon the recovery of the property of the ward, if it be personal property, such guardian may remove the same out of the state, unless such removal would conflict with the tenure of such property, or the terms and limitations under which it is held; and, if it be real property, he may obtain an order for the sale of it and remove the proceeds; such sale shall be made, returned and acted upon by the court as other sales of real estate by a guardian. (Id. sec. 71.)

Hoffman v. Watkins, 130 S. W. 625.

Art. 4258. (2755) (2673) Resident executor, etc., may be ordered to deliver property.—Any resident executor, administrator or guardian having any of the estate of such ward may be ordered by the court to deliver the same to such non-resident guardian. (Id. sec. 72.)

See ante, art. 3554; Hoffman v. Watkins, 130 S. W. 625.

Art. 4259. (2756) (2674) Property shall not be removed until debts are paid, etc.—There shall be no removal from the state of any such property, until all the debts known to exist against the estate have been paid, or the payment thereof secured by bond payable to the judge of the county court and approved by the clerk. (Id. sec. 73.)

Hoffman v. Watkins, 130 S. W. 625.

Art. 4260. (2757) (2675) Benefits of this chapter shall not extend, etc.—The benefit of the provisions of this chapter shall not extend to the residents of any state, territory, district or country in which a similar law does not exist in favor of the residents of this state. (Id. sec. 74.)

Hoffman v. Watkins, 130 S. W. 625.

CHAPTER EIGHTEEN
REMOVAL OF GUARDIANSHIP

Art. 4261. (2758) (2676) Application to remove guardianship to another county.—When a guardian desires to remove the transaction of the business of the guardianship from one county to another, he shall file in the court where such guardianship is pending a written application asking for authority to do so, and state in such application his reasons for desiring such removal. (Acts 1876, p. 185, secs. 117-18.)

Art. 4262. (2759) (2677) Citation to sureties in such case.—Upon the filing of such application, the clerk shall issue citation to the sureties upon the bond of such guardian, citing them to appear at a regular term of the court, to be named in such citation, and show cause why such application should not be granted. (Id. sec. 118.)

Art. 4263. (2760) (2678) Action of the court on application.—Upon the hearing of the application, if no good cause be shown to the contrary, and if it appear that the removal of the guardianship would be to the interest of the ward, the court shall enter an order upon the minutes authorizing such removal upon the payment of all costs that have accrued.

Art. 4264. (2761) (2679) Transcript to be made and transmitted by clerk, etc.—When such order of removal has been made the clerk shall record all papers of the guardianship required to be recorded, and that have not already been recorded, and shall make out a full and complete certified transcript of all the orders, decrees, judgments and proceedings in such guardianship, and, upon the payment of his fees therefor, shall transmit such transcript, together with all the original papers in the case, to the clerk of the county court of the county to which such guardianship has been removed.

Art. 4265. (2762) (2680) When order of removal shall take effect.—The order removing a guardianship shall not take effect until the transcript provided for in the preceding article has been filed in the office of the clerk of the county court of the county to which such guardianship has been ordered removed, and until a certificate of that fact from the clerk filing the same, under his official seal, has been filed in the court making such order of removal.

Art. 4266. (2763) (2681) Guardianship when removed shall be proceeded with, how, etc.—When a guardianship has been removed from one county to another, in accordance with the provisions of this chapter, it shall be proceeded with in the court to which it has been removed as if it had been originally commenced in said court; but it shall not be necessary to record any of the papers in the case that have already been recorded in the court from which the same has been removed.

CHAPTER NINETEEN
FINAL SETTLEMENT

Art. 4267. (2764) (2682) When guardianship shall be settled.—When the ward dies, or, if a minor, arrives at the age of twenty one years, or, if a female, marries, or, if a person of unsound mind or habitual drunkard, is restored and discharged from

guardianship, the guardianship shall be immediately settled and closed and the guardian discharged, as provided in the following articles of this chapter.

See ante, arts. 4086-7, 4253; Herron's Probate, Guide, pp. 457 et seq.; Read v. Henderson, 57 S. W. 78; Allen v. Stovall, 63 S. W. 863; Logan v. Gay, 90 S. W. 861; Hix v. Duncan, 99 S. W. 422; Kretzschmar v. Peschel, 144 S. W. 1021.

Art. 4268. (2765) (2683) Guardian shall file account for final settlement, which shall show, what.—The guardian shall file with the clerk of the court in which the guardianship is pending his account for final settlement of such guardianship; which account shall show fully and completely:

1. The property, rents, revenues and profits received by the guardian and belonging to his ward during his guardianship.

2. The disposition made of such property, rents, revenues and profits.

3. The expenses and debts, if any, against the estate remaining unpaid.

4. The property of the estate remaining in the hands of such guardian, if any.

5. Such other facts as may be necessary to a full and definite understanding of the exact condition of the guardianship.

6. Such account shall be subscribed and sworn to by the guardian before some officer authorized to administer oaths.

See Hix v. Duncan, 99 S. W. 422.

Art. 4269. (2766) (2684) Guardian may be cited to make final settlement, etc.—Should the guardian fail to file his account for final settlement at the proper time, the court shall, upon its own motion, or upon the complaint in writing of any one interested in the estate, cause such guardian to be cited to appear at a regular term of the court and file such account.

See ante arts. 4253-4255; Whitfield v. Burrell, 118 S. W. 153.

Art. 4270. (2767) (2685) Citation when account is filed.—Upon the filing of an account for final settlement, the clerk shall, if the ward be living and resident in the state, and his residence be known, issue a citation notifying such ward of the filing of such account, and of the term of court at which the same will be acted upon, and that he may appear and contest such account, if he see proper to do so.

See Herron's Probate Guide, p. 459.

Art. 4271. (2768) (2686) Same subject.—If the ward be not living but there is an executor or administrator of his estate legally qualified, such executor or administrator shall be cited, as provided in the preceding article.

Art. 4272. (2769) (2687) Same subject.—If the ward be not living, and there be no executor or administrator of his estate, or if the ward be a nonresident of the state, or if his residence be unknown, citation shall be published once a week for three successive weeks, in some newspaper published in the county, if there be one regularly published therein; if not, then such citation shall be duly posted for at least twenty days before the return term thereof.

Art. 4273. (2770) (2688) Action of the court upon account.—After citation has been duly served, the court shall proceed to examine the account for final settlement, and to hear all exceptions and objections thereto (if any), and the evidence in support of or against such account, and if the same is found to be fair, just and correct, an order shall be entered upon the minutes approving it, and directing the guardian to deliver the estate remaining in his hands to the ward or other person legally authorized to receive the same; and, upon compliance with such order, the guardian shall be discharged, and such guardianship closed by an order to that effect entered upon the minutes.

Whitfield v. Burrell, 118 S. W. 153.

Art. 4274. (2771) (2689) Account shall be re-stated, when.—Should the account be found to be incorrect in any particular, the court shall cause the same to be corrected and re-stated, and make such order in relation thereto as may be necessary to a full and fair settlement of the guardianship.

Whitfield v. Burrell, 118 S. W. 153.

Art. 4275. (2772) (2690) Guardian must produce vouchers, etc.—The guardian must produce and file proper vouchers for every item of credit claimed by him in his account, or support the same by other satisfactory evidence.

Art. 4276. (2773) (2691) Court shall appoint attorney to represent ward, when.—When the ward is dead and there is no executor or administrator of his estate, or when the ward is a nonresident, or his residence is unknown, the court shall appoint an attorney to represent the interest of such ward in the final settlement with the guardian, and shall allow such attorney reasonable compensation for his services out of the ward's estate.

Art. 4277. (2774) (2692) Debts that could not be collected to be excluded.—In the settlement of the account of the guardian, all debts due the estate which the court is satisfied could not have been collected by due diligence, and which have not been collected, shall be excluded from the computation. (Acts 1876, p. 185, sec. 130.)

Art. 4278. (2775) (2693) Labor or services of ward to be accounted for, etc.—In the settlement of any of the accounts of the guardian, he shall account for the reasonable value of the labor or services of his ward, or the proceeds thereof, if any such labor or services have been rendered by such ward; and the guardian shall be entitled to reasonable credits for the board, clothing and maintenance of his ward.

Art. 4279. (2776) (2694) Guardian may be attached, etc., when.—When a guardian who has been ordered by the court, upon final settlement, to deliver the estate to the ward, or other person legally authorized to receive the same, fails to obey such order, he may be attached and punished as for a contempt of court.

CHAPTER TWENTY

COMPENSATION OF GUARDIANS, EXPENSES AND COSTS OF GUARDIANSHIP

Art. 4280. (2779) (2697) Guardian of person receives no pay.—The guardian of the person alone is entitled to no compensation. (Acts 1876, p. 187, sec. 189.)

Art. 4281. (2780) (2698) Commissions of guardians.—The guardian of the estate shall not be entitled to or receive any fee or commission on the estate of the ward when first delivered to him; but shall be

entitled to a fee of five per cent on the gross income of the ward's estate and five per cent on all money paid out; provided, the term "money paid out" shall not be construed to include money loaned or invested or paid over on the settlement of the guardianship. (Acts 1876, p. 187, sec. 40; Acts 1913, p. 321, sec. 1.)

See Herron's Probate Guide, p. 464.

Art. 4282. (2781) (2699) Extra compensation, when allowed.—If the guardian manages a farm, plantation, manufactory or other business of his ward, the court may allow him a reasonable compensation for such services. (Acts 1876, p. 187, sec. 40.)

Art. 4283. (2782) (2700) Expenses incurred to be allowed.—All necessary and reasonable expenses incurred by the guardian in the preservation and management of the ward's estate, and in the collecting or attempting to collect claims or debts due the ward, and in recovering, or attempting to recover, property to which the ward has a title or claim, and all reasonable attorneys' fees necessarily incurred in the management of such guardianship, shall be allowed the guardian, to be paid out of the estate on satisfactory proof thereof being made to the court. (Id. sec. 131.)

See Herron's Probate Guide, p. 464.

Art. 4284. (2783) (2701) Pay of appraisers.—Appraisers appointed by the court to appraise the property of the ward shall be allowed two dollars each for every day that they are necessarily engaged in the performance of such duty, to be paid out of the estate.

Art. 4285. (2784) (2702) Costs shall be adjudged against the guardian, when.—In all cases where the guardian shall neglect the performance of any duty required of him, and shall be cited to appear before the court on account thereof, he shall pay all costs of such proceeding out of his own estate; and the court shall adjudge the same against him. (Acts 1876, p. 187, sec. 191.)

See ante arts. 4213, 4231, 4235-7.

Art. 4286. (2785) (2703) Costs shall be adjudged against applicant, when.—In all cases where a party shall make any application or opposition, and on the trial thereof he shall be defeated, all costs occasioned by such application or opposition shall be adjudged against such party by the court. (Id. sec. 192.)

Whitfield v. Burrell, 118 S. W. 153; Hefley v. Hugen, 120 S. W. 956.

Art. 4287. (2786) (2704) In proceedings against persons of unsound mind, etc.—When any person is found to be of unsound mind or to be an habitual drunkard, the cost of the proceeding shall be paid out of his estate; or, if his estate be insufficient to pay the same, such costs shall be paid out of the county treasury, and the judgment of the court shall be accordingly. (Id. sec. 195.)

See Peterson v. Seagraves, 60 S. W. 751.

Art. 4288. (2787) (2705) Same subject.—If the defendant, in the case mentioned in the preceding article, be discharged, the person at whose instance the proceeding was had shall pay the costs of such proceeding; unless the informant be an officer acting in his official capacity in filing the information, in which case the costs shall be paid out of the county treasury. (Id.)

Art. 4289. (2788) (2706) Cost laws apply to guardianships.—The provisions of law regulating costs and security therefor shall apply to matters of guardianship, where the same are not expressly provided for in this title. (Id. sec. 189.)

See Sayles' Practice, p. 684.

CHAPTER TWENTY-ONE

APPEAL, BILL OF REVIEW AND CERTIORARI

Art. 4290. (2789) (2707) Right of appeal.—Any person who may consider himself aggrieved by any decision, order or judgment of the court, or by any order of the judge thereof, may appeal to the district court as a matter of right, without bond. (Acts 1876, p. 192, sec. 197.)

See ante art. 4221; Orr v. Wright, 45 S. W. 629; Kleinsmith v. Northcut, 56 S. W. 557; Arthur v. Reed, 64 S. W. 831; De Cordova v. Rogers, 75 S. W. 17; Bradshaw v. Lyles, 119 S. W. 918.

Art. 4291. (2790) (2708) Notice of appeal.—An appeal is taken by causing an entry of notice thereof to be made on the record during the term at which such decision, order or judgment is entered; or, if such decision, order or judgment be made in vacation, by causing the entry of such notice to be made before the close of the next regular term of the court thereafter. (Id. sec. 198.)

Bradshaw v. Lyles, 119 S. W. 918.

Art. 4292. (2791) (2709) Transcript on appeal.—When notice of appeal has been given, a certified transcript of the proceedings shall be made out by the clerk and transmitted to the district court of the county; such transcript shall not contain anything that does not relate to the decision, order or judgment appealed from. (Id. sec. 199.)

Bradshaw v. Lyles, 119 S. W. 918.

Art. 4293. (2792) (2710) Several appeals may be embraced in same transcript, when.—When notice of appeal has been given by the same person from more than one decision, order or judgment of the court in the same guardianship, at the same term, all of the appeals may be embraced in the same transcript. (Id.)

Art. 4294. (2793) (2711) Transcript shall be made out, etc., within what time.—If there be not time to make out such transcript before the first day of the next term of the district court after such appeal is taken, it shall be transmitted to such court within sixty days after such appeal is taken. (Id. sec. 200.)

Art. 4295. (2794) (2712) Appeal shall not suspend decisions, etc., unless, etc.—The appeal shall not suspend the decision, order or judgment, except in the cases mentioned in the succeeding article, unless the appellant, within twenty days after the entry of notice of appeal, shall file a bond in an amount fixed by the court at the time of entry of appeal, signed by two or more good and sufficient sureties, payable to, and approved by, the clerk, conditioned that the appellant shall perform the orders and judgment which the district court may make therein, in case the decision be against him. (Id. sec. 201.)

See ante, art. 2106.

Art. 4296. (2795) (2713) Appeal suspends decision, etc., without bond, when.—An appeal suspends the decision, order or judgment, without bond:

1. When taken by a claimant from the disapproval of his claim.

2. When taken by the guardian or trustee, except where the controversy is respecting the rights of guardianship or the settlement of an account. (Id. sec. 202.)

See Kleinsmith v. Northcut, 56 S. W. 557.

Art. 4297. (2796) (2714) Judgment of district court shall be entered of record, etc.—When a certified copy of the judgment of the district court in the case is received, it shall be entered of record upon the minutes of the county court as the judgment of such county court. (Id. sec. 203.)

See ante, art. 2002.

Art. 4298. (2797) (2715) Judgment dismissing appeal, etc.—Where a certified copy of the judgment of the district court dismissing an appeal or quashing a supersedeas is received, it shall be entered of record on the minutes of the county court, and the decision, order or judgment of the county court which was appealed from shall stand as if no appeal or supersedeas had been taken or obtained. (Id. sec. 204.)

Art. 4299. (2798) (2716) Appeal shall be tried de novo.—Appeals from the decision, order or judgment of the county court or county judge to the district court in cases of guardianship shall be tried in the district court de novo; and the judgment of the district court therein shall be certified to the county court to be carried into effect. (Acts 1846; P. D. 1460.)

Bradshaw v. Lyles, 119 S. W. 918.

Art. 4300. (2799) (2717) Bill of review may be brought.—Any person interested may, by a bill of review, filed in the court in which the proceedings were had, have any decision, order or judgment rendered by such court, or by the judge thereof, revised and corrected on showing error therein. But no process or action under such decision, order or judgment shall be stayed except by writ of injunction. (Id. sec. 205.)

See Herron's Probate Guide, pp. 55, 469-70; Miller v. Miller, 53 S. W. 363; De Cordova v. Rogers, 67 S. W. 1042; Id. 75 S. W. 17; Kelsey v. Trisler, 74 S. W. 64; Nicholson v. Nicholson, 125 S. W. 965; United States Fidelity & Guaranty Co. v. Buhrer, 131 S. W. 808; United States Fidelity & Guaranty Co. v. Buhrer, 132 S. W. 505; Jirou v. Jirou, 135 S. W. 114; Yates v. Watson, 187 S. W. 548.

Art. 4301. (2800) (2718) Certiorari.—Any person interested may also have any decision, order or judgment of the county court or county judge revised and corrected by writ of certiorari from the district court under the same rules and regulations as are provided in estates of decedents.

See ante, art. 733; Gill v. Evermann, 59 S. W. 531; Jirou v. Jirou, 135 S. W. 114; McAllen v. Wood, 201 S. W. 433.

TITLE 65

HEADS OF DEPARTMENTS

CHAPTER ONE

SECRETARY OF STATE

Art. 4302. (2801) His appointment and term.—A secretary of state shall be appointed by the governor, by and with the advice and consent of the senate, and shall be continued in office during the term of service of the governor by whom he was appointed, and until his successor is appointed and qualified. (Const., art. 4, sec. 21. Act May 9, 1846. Amended Acts 1899, p. 3. O. & W. 1818.)

Art. 4303. Oath and bond.—He shall, within twenty days after he has received notice of his appointment, and before he enters upon the duties of his office, give a bond, payable to the governor and his successors in office, for the use of the state, in the sum of twenty-five thousand dollars, with not less than six good sureties, to be approved by the governor, conditioned that he will faithfully execute the duties of his office; and shall take and subscribe to the oath prescribed by the constitution, which, together with the bond, shall be deposited in the office of the comptroller of public accounts. (Acts 1899, p. 3.)

Art. 4304. (2802) Shall register governor's acts.—He shall keep a fair register of all the official acts of the governor, and, when required, shall lay the same, and all minutes and other papers in relation thereto, before the legislature, or either branch thereof. (Id. sec. 2. O. & W. 1819.)

Art. 4305. (2803) His general duties.—He shall keep his office at the seat of government or other place where the sessions of the legislature may be held; he shall, in a separate book suitable for the purpose, keep a complete register of all the officers appointed and elected in the state, and commission the same when not otherwise provided for by law; he shall arrange and preserve all the books, maps, parchments, records, documents, deeds, conveyances and other papers belonging to the state that have been, or may be properly deposited there, and sealed with the seal of the state, and also similar copies of any act, law or resolution of the United States, or either of them, from the originals in his office; which copies shall be as legal and conclusive in evidence and to all intents and purposes in the courts of this state as the originals would have been; and he shall, when required, furnish the governor, the legislature or either branch thereof, with such copies, and shall affix the seal of the state to all certificates of official character that may emanate from his office. (Id. sec. 13. O. & W. 1820.)

Art. 4306. (2804) Shall receive and bind enrolled bills, etc.—He shall attend at every session of the legislature for the purpose of receiving bills which have become laws, and immediately after the close thereof shall cause all such bills and all the enrolled joint resolutions of the legislature to be bound together in a volume to be kept in his office, and the date of the session to be written or stamped thereon, a certified copy of which he shall deliver to the public printer, together with an index of the same, and he shall carefully examine and compare the printed copy with the certified copy and correct all the errors contained in the former. (Id. sec. 4. O. & W. 1821.)

Art. 4306a. Carbon copies of enrolled bills.—Whereas, it is necessary that copy of all engrossed bills in both the House and Senate be furnished to the State Printer by the Secretary of State, and by such copy being made by the enrolling clerks of both the

House and Senate an expense of $200.00 will be saved the state; therefore, be it

Resolved, by the House of Representatives, the Senate concurring, that the Enrolling Clerk of the House and the Enrolling Clerk of the Senate be directed to make carbon copies of all enrolled bills that are sent to the Governor for his approval and furnish the same to the Secretary of State to be certified to and furnished to the State Printer. (H. C. R. No. 5, Feb. 16, 1915, p. 275.)

Art. 4307. (2805) Shall forward laws, etc., to certain foreign officials.—The secretary of state shall forward to the librarian of congress and the secretary of state of the United States, the secretary of the treasury of the United States, and the executive departments of all of the states of the union, to each foreign librarian or government with whom a system of library exchange may be established, as he may deem advisable, copies of all laws and judicial reports printed and published by order of the legislature, and at the expense of the state. (Act March 20, 1848. Amended Acts 1909, p. 124. O. & W. 1825.)

Art. 4308. (2806) Disposition of books received.—The secretary of state shall turn over to the person in charge of the state library, immediately upon their receipt, all books, maps, charts or other publications of a political or miscellaneous character received at his office; and he shall, in like manner, turn over to the librarian of the supreme court at the capitol all volumes of reports of the courts of any other state or territory received by him; and he shall, in like manner, turn over to the state library, all printed volumes of the statutes or laws of any nation, state or territory, to be deposited in said state library for the same use and purpose as the other books kept there. (Amended Acts 1909, p. 124, sec. 8.)

Art. 4309. (2807) Copies of reports to be sent to whom.—The secretary of state shall deliver, by mail or otherwise, to each justice of the supreme court, each judge of the courts of appeals, the attorney general, the assistant attorney general, the governor, each district judge of the state, each professor of law of the university of Texas, the librarian of said university, and to the county judge of each county for the use of the counties, one copy of the reports of the supreme court and court of appeals, hereafter issued; also shall furnish to each district judge of the United States for Texas one copy of each of said reports for each branch of his courts; and, when it appears that any of the reports of either of said courts have been heretofore furnished and not returned to the department of state, or when they are hereafter delivered by the state to either of the said officers or authorities, the secretary shall have no authority to send another copy, except on proof that the same have been destroyed by fire, or have been rendered valueless by long use, to be evidenced by the certificate of the officer demanding to be resupplied with such report. (Acts 1887, p. 114.)

Art. 4310. (2808) What officers entitled to receive copies of laws.—The following officers shall be entitled to receive one copy of each of all general and special laws hereafter passed by the legislature, to-wit: The governor and heads of departments, each member of the legislature, the judges of the several courts throughout the state, and the clerks of said courts, and each county attorney. The following officers shall be entitled to receive one copy each of all general laws hereafter passed by the legislature, to-wit: County treasurer, county surveyor, sheriff, assessor of taxes, collector of taxes, inspector of hides and animals, justice of the peace, constable and county commissioner. (Acts 1885, p. 68.)

Art. 4311. (2809) How distributed.—The secretary of state shall distribute the printed laws of each session of the legislature to the officers named in the preceding article, as follows: He shall mail or deliver in person to the governor and heads of departments, and to all state or district officers, a copy each, as therein provided; and he shall forward to the county judge of each county a sufficient number of said laws to supply each county officer named in the preceding article with a copy. (Act Feb. 2, 1850, p. 99, sec. 3. P. D. 4585.)

Art. 4312. (2810) May sell copies of laws.—The secretary of state is authorized to sell copies of the general and special laws of the state of Texas that have been or may hereafter be published, at a price not to exceed twenty-five per cent above cost of publishing; provided, that a sufficient number of all laws published be reserved from sale for the use of the state; and provided, further, that any money realized in excess of the costs attending such sale shall be placed to the account of the general revenue in the state treasury. (Acts 1883, p. 33.)

Art. 4313. (2811) Legislative journals, how distributed.—He shall distribute to the governor and heads of departments, and to each member of the legislature, a copy of the printed journals of both houses; and he shall also forward to the county judge of each county two copies of said journals, one to be deposited in the office of the clerk of the district court and the other in the office of the clerk of the county court, for the use of said courts respectively. (Id. sec. 4. P. D. 4586.)

Art. 4314. (2812) Digest of laws, how distributed.—Whenever a digest or revision of the laws of the state has been or shall be subscribed for, or published by the state, a sufficient number of copies of each volume thereof shall be forwarded to the county judge of each county to furnish one of said copies to each judge of the supreme and district courts and courts of appeals, to each clerk of the supreme, district and county courts, and courts of appeals, and to each justice of the peace that may be a resident in said county; and it shall be the duty of said county judge to deliver one copy of each of said volumes to each of said officers that may reside in said county. (Id. sec. 5. P. D. 4587.)

Art. 4315. (2813) Executive officers entitled to copies.—The secretary of state shall also deliver to each of the executive officers at the seat of government one copy of each volume of any edition of a digest or revision of the laws of the state, whether such books shall be subscribed for or published by the state, which shall belong to said office; and the officer receiving any such volume

shall be bound to deliver it to his successor, and shall be liable to pay his successor the costs and charges that may be necessary to supply the office with any book he may neglect so to deliver. (Id. sec. 7. P. D. 4589.)

Art. 4316. (2814) Officers shall receipt for books.—Whenever any officer shall receive a copy of any report, statute, digest or journal, he shall receipt for the same to the officer distributing it, who shall file such receipt in his office; and said books shall be deemed to belong to the office of said officer to whom they are delivered, and shall, at all reasonable hours, be subject to the inspection and examination of any citizen of this state; and, should any of said officers fail or refuse to deliver any of said books to his successor in office when demanded by him, the officer so failing or refusing shall be liable to pay such successor the costs and charges that may be necessary to supply the office of such successor with any of said books that he shall so fail or refuse to deliver. (Id. sec. 6. P. D. 4588.)

Art. 4317. (2815) Shall distribute United States laws.—The secretary of state shall forward to the clerk of the county court of each county, for the use of the county, one copy of all the acts of the congress of the United States which may be received in his office. (Act May 9, 1846, p. 189, sec. 6. P. D. 4582.)

Art. 4318. (2816) May appoint chief and other clerks.—The secretary of state shall appoint a chief clerk and such number of assistant clerks as may be authorized by law, each of whom shall receive such compensation as may from time to time be fixed by appropriation.

Art. 4319. (2817) Chief clerk may act, when.—In the absence of the secretary of state, or his inability to act from any cause, the chief clerk may perform all the duties required by law of that officer. (Id. sec. 7. P. D. 5094.)

Art. 4319a. Exchange of reports of appellate courts, Supreme Court, and Court of Criminal Appeals, Session Acts, revised statutes, etc.—The Secretary of State is hereby authorized and directed in addition to the exchanges he is now authorized to make under existing law, to make exchanges of the reports of the several appellate courts of this State, of the Supreme Court and the Court of Criminal Appeals, of the Session Acts of the Legislature, of the existing and future revised Civil and Criminal Statutes of this State, and of other State publications and department reports of this State for the court reports, session acts, revised statutes, Civil and Criminal, and other State publications and department reports of the United States Government, of the other States of the Union, and of foreign countries, for the benefit of the Law Library of the University of Texas, provided that the Secretary of State shall always keep on hand a sufficient number of copies of all State publications to meet the reasonable current demands of the State. (Acts 1919, 2d C. S., ch. 32, sec. 1.)

CHAPTER TWO

COMPTROLLER OF PUBLIC ACCOUNTS

Art. 4320. Election and term of office.—That there shall be elected by the qualified voters of this state, at the time and places of election for members of the legislature, a comptroller of public accounts, who shall hold his office for the term of two years, and until the election and qualification of his successor. (Acts 1910, 4 S. S., p. 37, sec. 1.)

Art. 4321. Vacancy, how filled.—In case of a vacancy in the office of comptroller of public accounts, the governor shall fill the same by appointment for the unexpired term; which appointment shall be submitted to the senate for confirmation in accordance with law. (Id. sec. 2.)

Art. 4322. Bond.—The comptroller shall, within twenty days after he shall have received notice of his election or appointment and before he enters upon the duties of his office, give a bond, payable to the governor and his successors in office, for the use of the state, in the sum of seventy-five thousand dollars, with not less than six good sureties, to be approved by the governor, conditioned that he will faithfully execute the duties of his office, and shall take and subscribe to the oath prescribed by the constitution, which, together with the bond, shall be deposited in the office of the secretary of state; which said bond shall not be void on the first recovery of part or of the whole of the penalty, and shall thereafter continue in force for the whole amount of the penalty thereof, and may be sued on from time to time, and shall be deemed to extend to the faithful performance of the duties of his trust until his successor shall be duly qualified, and shall have entered upon the duties of his office. (Id. sec. 3.)

Art. 4323. Seal.—He shall procure at the expense of the state, a seal with the words, "Comptroller's Office, State of Texas," engraved around the margin, and a star with five points in the center thereof, which shall be used as the seal of the comptroller's office in the authentication of all his official acts, except warrants drawn on the treasury of the state. (Id. sec. 4.)

Art. 4324. Accounting officer.—It shall be the duty of the comptroller of public accounts to superintend the fiscal concerns of the state, as the sole accounting officer thereof, and manage the same in the manner required by law; he shall also perform such official acts as were required of the secretary of the treasury of the republic of Texas, when not otherwise provided by law. (Id. sec. 5.)

Art. 4325. Shall keep accounts between state and United States.—He shall keep and state all accounts between this state and the United States, and all other accounts in which the state is interested, including all moneys received by the state as interest and other payments on land and office fees of his and other departments of the state government, and all other moneys received by the state from whatever source and for whatever purpose, and suggest plans for the improvement and management of the public revenue. (Id. sec. 6.)

Art. 4326. Examine accounts of persons indebted to state.—He shall examine and settle the accounts of all persons indebted to the state, and certify the amount or balance to the treasurer, and direct and superintend the collection of all moneys due the state. (Id. sec. 7.)

Art. 4327. Accounts to be verified by affidavit.—He shall require all accounts presented to him for settlement, not otherwise provided for by law, to be made on forms prescribed by him, and all such accounts shall be verified by affidavit taken before some officer authorized to administer oaths, touching the correctness of the same, or by oath or affirmation, which may be administered by himself in any case in which he may deem it necessary; and all such accounts of the same class and kind shall be uniform in size, arrangement, matter and form. (Id. sec. 8.)

Art. 4328. Shall require statements.—He shall require all persons who shall have received any moneys belonging to the state, and shall not have accounted therefor, to settle their accounts; and shall, from time to time, require all persons receiving moneys or having the disposition or management of any property of the state, of which an account is kept in his office, to render statements thereof to him. (Id. sec. 9.)

Art. 4329. Audit claims against state.—He shall audit the claims of all persons against the state in cases where provisions for the payment thereof have been made by law, unless the auditing of any such claim shall be otherwise specially provided for. (Id. sec. 10.)

Art. 4330. Certain claims to be presented before legislature convenes.—All sheriffs, attorneys and all other parties holding claims against the state of Texas, for which no warrants have been issued, and the appropriation for which has been exhausted, shall present the same to the comptroller of the state for his consideration at least thirty days before the meeting of each regular session of the legislature of the state of Texas. (Id. sec. 11.)

Art. 4331. Claims to have priority.—The comptroller of the state of Texas is authorized and directed to audit no claims against the state not presented within the time prescribed in the preceding article of this chapter, until all claims presented prior to that time have been considered and passed upon by him. (Id. sec. 12.)

Art. 4332. Warrants on treasurer.—He shall draw warrants on the treasurer for the payment of all moneys directed by law to be paid out of the treasury; and no warrant shall be drawn unless authorized by law; and every warrant shall refer to the law under which it is drawn; and no warrant shall be issued in favor of any person, or the agent or assignee of any person indebted to the state, until such debt be paid. (Id. sec. 13.)

Art. 4333. No warrants to be drawn, unless.—No warrant shall be drawn on the treasury of this state by the comptroller based alone on the requisition of any individual or board, except as otherwise provided by law; but, in all cases, an account must first be made in pursuance of some specific appropriation, and filed with the comptroller by some one duly authorized and verified by affidavit. (Id. sec. 14.)

Art. 4334. Shall prescribe forms.—He shall prescribe and furnish the forms to be used by all persons in the collection of the public revenue and the mode and manner of keeping and stating their accounts, and shall adopt such regulations, not inconsistent with the constitution and laws, as he may deem essential to the speedy and proper assessment and collection of the revenues of the state; and all such forms of the same class, kind and purpose shall be uniform in size, arrangement, matter and form. (Id. sec. 15.)

Art. 4335. Allowance to tax collector.—He shall remit, or make an allowance, to every tax collector in the auditing of his accounts, for all sums of money which, in his judgment, have been illegally assessed. (Id. sec. 15a.)

Art. 4336. Comptroller's account to be approved by secretary of state.—The account of the comptroller against the state shall not be passed to the treasurer until approved by the secretary of state. (Id. sec. 16.)

Art. 4337. Bonds to be deposited in office.—All liens, mortgages, bonds and other securities for money given to this state or any officer, and being for the use of the state, unless otherwise specially directed, shall be deposited in the office of the comptroller. (Id. sec. 17.)

Art. 4338. (2830) Audited claims to be reported to legislature.—The comptroller of the state of Texas shall keep a book for the purpose of registering and indexing all audited claims against the state, and, on the meeting of the regular session of the legislature, shall make a minute report of the same to the two houses thereof, giving the names and amounts of all audited claims. (Acts 1876, p. 281.)

Art. 4339. Accounts to be closed, when.—The accounts of the comptroller shall be annually closed on the last day of August; and he shall exhibit all books, papers, vouchers and all other matters pertaining to his office, for the examination of either branch of the legislature, or any committee which may be by them appointed, whenever required by them to do so. (Acts 1910, 4 S. S., sec. 18.)

Art. 4340. Shall render account to governor, when.—In addition to the reports required by the constitution, the comptroller shall exhibit to the governor, on the first Monday of November of each year, and at such other times as he shall require, an exact and complete statement of the funds of the state, of its revenues, and of the public expenditures during the preceding year (or for such other times as may be required), with a detailed estimate of the expenditures to be defrayed from the treasury for the ensuing year, specifying therein each object of expenditures and distinguishing between such as are provided for by general or special appropriation, and such as are required to be provided for by law, and showing the means from which such expenditures are to be defrayed. (Id. sec. 19.)

Art. 4341. Shall preserve books, records, etc.—The comptroller of public accounts shall preserve the books, records, papers and other things belonging to his office, and deliver the same, without injury or damage, to his successor. (Id. sec. 20.)

Art. 4342. To be notified of deficiencies, when.—All heads of departments, managers of state institutions or other persons intrusted with the power or duty of contracting for supplies, or in any manner pledging the credit of the state for any deficiency

that may arise under their management or control, shall, at least thirty days before such deficiency shall occur, make out a sworn estimate of the amount necessary to cover such deficiency until the meeting of the next legislature; and such estimate shall be immediately filed with the governor of the state, who shall thereupon carefully examine the same and approve or disapprove the same in whole or in part. When such deficiency claim, or any part thereof, has been so approved by the governor he shall indorse his approval thereon, designating the amount and items thereof approved and the items disapproved, and file the same with the comptroller; and the same shall be authority for the comptroller to draw his deficiency warrant for so much thereof as may be approved; but no claim, or any part thereof, shall be allowed or warrants drawn therefor by the comptroller, or paid by the treasurer, unless such estimate has been so approved and filed. If there is a deficiency appropriation sufficient to meet such claim, then a warrant shall be drawn therefor and the same shall be paid; but, if there is no such appropriation, or if such appropriation be so exhausted that it is not sufficient to pay such deficiency claim, then a deficiency warrant shall issue therefor; and such claim shall remain unpaid until provision be made therefor at some session of the legislature thereafter; provided, that the provisions of this section [article] shall not apply to fees and dues for which the state may be liable under the general laws; provided, further, when any injury or damage shall occur to any public property from flood, storm or any unavoidable cause, the estimate may be filed at once, but must be approved by the governor as provided in this section [article].

Art. 4343. Chief clerk.—The comptroller shall appoint a chief clerk, who, before entering upon the duties of his office, shall be required to take the oath prescribed by the constitution, and give bond in the sum of ten thousand dollars, payable in like manner as the bond of the comptroller, conditioned for the faithful performance of his duties, whose duty it shall be to discharge the duties of the comptroller when the comptroller may be unavoidably absent or incapable, from sickness or other cause, to discharge said duties, and, under the direction of the comptroller, to supervise the keeping of the books, records and accounts of the department, and to perform such other duties as may be required of him by law and by the comptroller: and, in the event the office of the comptroller should become vacant by death, resignation or otherwise, said chief clerk shall act as comptroller until a comptroller is appointed and qualified.

Art. 4344. Deposit warrants.—The comptroller shall have printed uniform deposit warrants, which shall be of four classes: "State revenue," "available school," "permanent school," and "miscellaneous;" and which shall be prepared in triplicate and marked "original," "duplicate," and "triplicate," respectively. Each class shall be separately serially numbered, and shall be on paper of a different color from the other classes. He shall provide for the use of his department a warrant register for each class of deposit warrants, each volume of which shall be appropriately designated by number or otherwise, and the pages of which shall be ruled and the lines numbered consecutively. When a deposit warrant is prepared, it shall be registered in the deposit warrant register for the class to which it belongs and on the line in such register corresponding in number with the number of the deposit warrant registered. A distribution of the amount stated in each deposit warrant shall be posted in detail to the ledger containing accounts for each source of revenue. The triplicate deposit warrant shall be, on receipt by the treasurer of the amount stated therein, receipted by the treasurer and delivered to the person making the deposit, the original to the state treasurer, who shall file the same numerically; and the duplicate shall be, on receipt of the amount stated therein, receipted by the treasurer, and by him returned to the comptroller, who shall file same numerically. The printed forms for these warrants shall be so prepared and arranged that the original, duplicate and triplicate may, by use of carbon sheets, all be prepared at one and the same writing; and no deposit shall be received into the state treasury on any account, except upon a deposit warrant issued as herein provided.

Art. 4345. Deposit receipts.—The comptroller shall have printed uniform deposit receipts, to be issued by the comptroller to cover moneys and other securities received and held by the state treasurer for which no deposit warrant is issued, or the issuance of a deposit warrant for which, if deferred, except office fees of the state treasurer. Such receipts shall be prepared in duplicate and marked "original" and "duplicate," respectively, and shall be serially numbered; and the printed form for these receipts shall be so prepared and arranged that the original and the duplicate may, by the use of carbon sheets, both be prepared at one and the same writing. The duplicate shall be receipted by the treasurer, and by him returned to the comptroller, and the original delivered to, and retained by, the state treasurer. He shall provide his office with separate registers, prepared in like manner and form, as the register provided for in article 4344 of this chapter, in which he shall register the deposit receipts, issued in like manner as is provided for the registration of deposit warrants, and shall provide a separate ledger in which shall be kept appropriate accounts for all matters for which such deposit receipts are issued.

Art. 4346. Claims and accounts.—All claims and accounts against the state shall be submitted on forms prescribed by the comptroller, and in duplicate, when required by him, and, except claims for pensions, shall be so prepared as to provide for the entering thereon, for the use of the comptroller's department, as well as other appropriate matters, the following:

(a) Signature of the head of the department or other person responsible for incurring the expenditure, or of the person on whose account the expenditure was incurred.

(b) Appropriation number.

(c) Initials of the person ascertaining if there are funds available.

(d) Initials of the person auditing the claim.

(e) Number and date of warrant issued with the initials of the person preparing the warrant.

(f) Initials of the person posting to ledger.

(g) Initials of the person comparing the claim and warrant.

Art. 4347. Claims to be classified.—There shall be three classes of claim forms, as follows:

1. "General," which shall consist of: (a) payrolls, covering departmental and institutional services; (b) traveling expense vouchers; (c) purchases and services other than personal; and (d) sheriff and court claims; and under the head of sheriff and court claims the comptroller may provide for different forms, such as those for sheriffs, county attorneys, district attorneys, district clerks, district judges, witnesses and all other like claims relating to the judiciary; but those of the same kind, use and purpose shall be uniform in size, arrangement, matter and form.

2. "Special," covering all claims for which special warrants are issued and all claims and accounts under this head of the same kind, use and purpose shall be uniform in size, arrangement, matter and form.

3. "Pensions." The forms for pensions shall be prescribed by the comptroller, and shall be uniform in size, arrangement, matter and form.

Art. 4348. List of claims to be kept.—When claims and accounts are received, it shall be ascertained if there are funds available therefor; and the persons making the examination shall indicate such fact by marking his initials upon such claim; and, if there are no funds available, that fact shall be written or stamped upon such claim; and the same shall be held to await the authority to issue a proper warrant therefor. When a claim has been audited and warrant drawn therefor, the claim shall be numbered with the same number as the warrant; and such claim shall be filed numerically according to class, "general," "special," and "pension," respectively. There shall be kept, either in book form or in the form of a card index, an alphabetical index of claimants; but, as to pay rolls, the department or institution shall be the claimant. The index shall show only the name of the claimant and the number of the claim. After the expiration of two years, such claims shall be removed from the files and otherwise securely stored and preserved as records.

Art. 4349. Pay warrants.—The comptroller shall have printed uniform pay warrants, which shall be of three classes, "general," "special," and "pension." Such warrants shall be prepared in duplicate, and shall be marked "original," and "duplicate," respectively; and each class shall be serially numbered and shall be of a color of paper different from the other class. Such warrants shall be prepared so as to provide for entering thereon, in addition to other appropriate matter, the following:

(a) Initials of the person in the comptroller's department comparing the warrant with the claim.

(b) Initials of the person in the comptroller's department registering the warrant.

(c) Designation of the fund against which the warrant is drawn.

Art. 4350. Pay warrants registered.—The comptroller shall provide a pay warrant register for each class of pay warrants, each volume of which shall be appropriately designated by number or otherwise, and the pages of which shall be ruled, and the lines numbered consecutively. When a pay warrant is prepared, it shall be registered in the pay warrant register for the class to which it belongs; and such entries in those registers shall be on the line corresponding in number with the number on the pay warrant register; and such registry shall consist only of an entry of the amount and name of the payee of such warrant; and, if a warrant is erroneously prepared and not issued, or is canceled, or is properly shown to be lost or destroyed, such fact shall be noted in the register opposite the number of such warrant in the register. One person shall be designated by the comptroller as warrant clerk and such person shall prepare or be responsible for the preparation of all pay warrants, and shall be accountable to the comptroller for warrants coming into his possession. No warrant shall be prepared except on presentation to the warrant clerk of a properly verified and audited claim, the proper auditing of which claims shall be evidenced by the initials written thereon by the person auditing the same; and such claim so verified and audited shall be sufficient and the only authority for the preparation of a warrant or warrants. When a warrant has been properly prepared, the claim upon which it was prepared shall be initialed with the initials of the warrant clerk, and such warrant shall be registered as herein provided; and the fact of the registration thereof shall be shown by writing thereon the initials of the person registering the same. When a warrant is properly prepared, it shall be, with the claim upon which it is based, passed to the comptroller for his signature or the signature of such person as may be authorized by law to sign the same in his stead. Such warrant shall then be passed to, and registered in, the treasurer's department and signed by the state treasurer, or some person authorized by law to sign for him, and returned to the comptroller's department. Such warrant shall then be delivered by the comptroller to the person entitled to receive it; and he shall, at his option, take a receipt from such person therefor; which receipt shall be filed in his office. The printed forms for these warrants shall be so prepared and arranged that the original and duplicate may, and the same shall, by the use of carbon sheets, be prepared at one and the same writing.

Art. 4351. Law not to apply to pension warrants.—Applications for pensions and the issuance of pension warrants shall not be subject to the provisions of this chapter. Such warrants shall be separately serially numbered.

Art. 4352. Registration of bonds.—The comptroller shall procure for the use of his department suitable books appropriately ruled and printed, to be known as "bond registers," the volumes of which shall be separately designated by number or otherwise, in which he shall register alphabetically all state, county, school, municipal, and drainage or other such bonds required by law to be registered by him. Neither the bonds nor

opinion of the attorney general, nor the record or other papers or documents relative thereto, shall be recorded in full; but only the name of the authority issuing and the names and official capacities of the officers signing such bonds, the date of issue, date of registration, amount of principal, date of maturity, number, time of option of redemption, rate of interest and day of the month of each year when the interest shall fall due, of each bond so registered, shall be entered upon such register; and, on the same line where such entry is made, shall be provided blank spaces in which shall be entered the date of payment or redemption of each bond when the same is paid or redeemed; and, when any bond is paid or redeemed, it shall be the duty of the proper officer of the authority paying such bond to notify the comptroller of the fact and date of such payment or redemption, and for entering the file number of all documents and other papers filed in connection with such bond; and all papers and documents pertaining to such bonds shall be filed and appropriately numbered.

Art. 4353. Account of bonds belonging to each fund to be kept separate.—The comptroller shall keep appropriate accounts by funds, showing a short description of the essential features of each, of each bond or of each purchase of similar or like bonds, or other securities purchased by and belonging to the permanent school and other funds of the state; each of which accounts shall be charged with the principal of such bond or purchase; and, with each separate item of interest payments to accrue thereon, and shall be credited with payments as made. He shall also keep controlling or total accounts of such bonds or other securities; which accounts shall be kept with respect to the total amount of bonds or other securities belonging to each separate fund; each of which controlling accounts shall be balanced quarterly at the same time as and the balance of which shall correspond with like accounts kept by the state treasurer.

Art. 4354. State general ledger.—The comptroller shall establish and maintain a double entry system of bookkeeping to be in charge of the chief bookkeeper. The accounts of each of the funds shall be opened in a "state general ledger;" and, at the start, credited with a balance of the funds on hand. An account shall also be opened with the state treasurer and charged with the cash on hand and the balance in depositories. Each charge shall represent the aggregate amount of cash held by him for the various funds. Thereafter, no entry shall be made in the ledger except by means of the double entry system. Warrants issued shall be charged in monthly totals to the fund accounts. Accounts shall be opened for the purpose of showing the amount of outstanding pay warrants from time to time; which accounts shall be credited with the warrants issued and charged with the warrants paid. All outstanding pay warrants, at the time this act shall go into effect, shall be definitely ascertained, and the account started with a credit for the aggregate amount, and the several fund accounts charged with the outstanding pay warrants against said accounts respectively. The comptroller shall charge the state treasurer in totals with all deposit warrants as issued and credit him with warrants paid so that the balance in the treasurer's hands, together with the balance in the state depositories, shall agree with the balance shown by this account.

Art. 4355. Revenue ledger.—The comptroller shall keep a ledger, to be known as "revenue ledger," in which a distribution shall be made of the revenues derived by the state from all sources, and the amount derived from each source, as stated. The sources of revenue printed on the back of the duplicate in each deposit warrant issued therefor by the comptroller shall be posted to the revenue ledger, and its balances periodically agreed with the deposit warrants issued.

Art. 4356. Ledger for accounting of tax collectors.—The comptroller shall keep the accounts of tax collectors in a separate ledger, one for current taxes and the other for delinquent and insolvent taxes, and these ledgers shall be made self-balancing by means of controlling accounts.

Art. 4357. Ledger for account of state treasurer.—The comptroller shall keep a suspense ledger in which the accounts of the state treasurer shall be stated in respect to moneys held by him, pending the issuance of deposit warrants and moneys and securities held, other than those for state purposes, for all of which the comptroller shall issue deposit receipts, posting the same in total to this ledger. It shall also include the accounts of heads of departments for all moneys received by them, and not deposited with the state treasurer; which accounts shall be kept in monthly totals based upon monthly reports furnished to the comptroller by each of the heads of departments.

Art. 4358. Shall keep journals.—The comptroller shall keep journals through which all entries are made in the ledgers.

Art. 4359. Issue duplicate warrants, when.—The comptroller of public accounts, when satisfied that any original warrant drawn upon the state treasurer has been lost, or destroyed, or when any certificate or other evidence of indebtedness approved by the auditing board of the state has been lost, is authorized to issue a duplicate warrant in lieu of the original warrant or a duplicate or a copy of such certificate, or other evidence of indebtedness in lieu of such original; but no such duplicate warrant, or other evidence of indebtedness, shall issue until the applicant has filed with the comptroller his affidavit, stating that he is the true owner of such instrument, and that the same is in fact lost or destroyed, and shall also file with the comptroller his bond in double the amount of the claim, with two or more good and sufficient sureties, payable to the governor, to be approved by the comptroller, and conditioned that the applicant will hold the state harmless and return to the comptroller, upon demand being made therefor, such duplicates or copies, or the amount of money named therein, together with all costs that may accrue against the state on collecting the same.

Art. 4360. Duty when duplicates are improperly issued.—If, after the issuance of said duplicate or copy, the comptroller should ascertain that the same was improperly issued, or that the applicant or party to whom the same was issued was not the owner

thereof, he shall at once demand the return of said duplicate or copy if unpaid, or the amount paid out by the state, if so paid; and, upon failure of the party to return same or the amount of money called for, suit shall be instituted upon said bond in the court having jurisdiction of the amount in controversy, in the city of Austin, Travis county, Texas.

Art. 4361. Comptroller and treasurer to examine and cancel warrants.—The comptroller shall examine the disbursements of the treasurer at the end of each quarter, and shall, together with the treasurer, cancel the warrants which have been paid in such manner as to prevent their future circulation, and shall examine if the receipts acknowledged by the treasurer during the quarter correspond with the deposits, and if the balance of money reported to be in his possession is actually in his hands.

CHAPTER THREE

STATE TREASURER

See "Education—Public"; "Depositions," and other specific titles.

Art. 4362. (2849) His election and term of office.—There shall be elected by the qualified voters of the state, at the time and places of election for members of the legislature, a state treasurer, who shall hold his office for the term of two years, and until the election and qualification of his successor. (Re-enacted Acts 1909, 2 S. S., p. 438, sec. 1. Const., art. 4, sec. 2.)

Art. 4363. (2850) Vacancies, how filled.—Should a vacancy occur in the office of the state treasurer, the governor shall fill the same by appointment for the unexpired term; which appointment shall be submitted to the senate, if in session, for confirmation. (Re-enacted Acts 1909, 2 S. S., p. 438, sec. 2.)

Art. 4364. (2851) His oath and bond.—The state treasurer shall, within twenty days after he shall have received notice of his election, and before he enters upon the duties of his office, give a bond payable to the governor and his successors in office, for the use of the state, in the sum of seventy-five thousand dollars, with no less than six good sureties, to be approved by the governor, conditioned that he will faithfully execute the duties of his office, and shall take and subscribe the oath prescribed by the constitution, which, together with the bond, shall be deposited in the office of the secretary of state; which said bond shall not be void on the first recovery of part, or of the whole of the penalty, but shall thereafter continue in force for the whole amount of the penalty thereof, and may be sued on from time to time, and shall be deemed to extend to the faithful performance of the duties of his trust, and until his successor shall be duly qualified and shall have entered upon the duties of his office. (Act March 19, 1846, p. 10, sec. 1. Re-enacted Acts 1909, 2 S. S., p. 438, sec. 3. P. D. 5282.)

Art. 4365. (2852) New bond may be required.—It shall be the duty of the attorney general, with the comptroller, on the first days of June and December of every year, to examine the bond of the treasurer and make diligent inquiry into the condition of the sureties on said bond; and, if, in the opinion of the attorney general, said bond is not sufficient, from death, removal, insolvency of said sureties, or from any cause, to secure the state in her rights, then, it shall be the duty of the attorney general to notify said treasurer in writing of the insufficiency of said bond; and, should said treasurer fail, for the space of twenty days from the date of such notice, to furnish a sufficient new bond, it shall be the duty of the governor forthwith to suspend said treasurer from office. (Act May 3, 1873, p. 62, sec. 3. Re-enacted Acts 1909, 2 S. S., p. 438, sec. 4.)

Art. 4366. (2853) Failing to give new bond.—Should the treasurer be suspended from office under the provisions of the preceding article, it shall be the duty of the governor to appoint some suitable person as treasurer, who shall give bond as in other cases, said bond to be approved by the governor; and the appointee shall perform the duties of treasurer until the suspended officer shall give a new bond to be approved by the governor, as in other cases. (Id. sec. 4. Re-enacted Acts 1909, 2 S. S., p. 438, sec. 5.)

Art. 4367. (2854) Shall receive moneys on warrant of comptroller.—The treasurer shall receive, on the warrants of the comptroller of public accounts, all moneys which shall, from time to time, be paid into the treasury of the state, receipting for the same upon duplicate and triplicate warrants; which duplicate shall be deposited with the comptroller, and the triplicate given to the person depositing such moneys. (Act March 19, 1846, sec. 2. P. D. 5283. Re-enacted Acts 1909, 2 S. S., p. 438, sec. 6.)

Art. 4368. (2855) How money to be paid out.—The treasurer shall countersign and pay all warrants drawn by the comptroller of public accounts on the treasury, which are authorized by law; and no money shall be paid out of the treasury except on the warrants of the comptroller. (Id. sec. 3. P. D. 5284. Re-enacted Acts 1909, 2 S. S., p. 438, sec. 7.)

Art. 4369. (2856) Shall keep strict accounts.—He shall keep true, regular and methodical accounts of the receipts and expenditures of the public moneys of the treasury, and close his accounts annually on the thirty-first day of August, with the proper and legal vouchers for the same, distinguishing between the receipts and disbursements of each fiscal year. (Id. sec. 4. P. D. 5285. Re-enacted Acts 1909, 2 S. S., p. 438, sec. 8.)

Art. 4370. (2858) An account for each appropriation.—He shall also open an account in the treasury for all appropriations of money made by law, so that the appropriations and the application in pursuance thereof may clearly and distinctly appear. (Id. sec. 6. P. D. 5287. Re-enacted Acts 1909, 2 S. S., p. 438, sec. 9.)

Art. 4371. (2859) Shall make an annual exhibit to the governor.—In addition to the reports required by the constitution, the treasurer shall submit to the governor on the first Monday of November of each year, and at such other times as he shall require, an exact statement of the condition and situation of the treasury, and of the balance of money remaining therein to the credit of the state, with a summary of the receipts and payments of the treasury during the preced-

ing year, or for such other period of time as may be specially required, and shall exhibit all books, papers, vouchers and other matters pertaining to his office, for the examination of the legislature, or either branch thereof, or any committee which may be by them appointed, whenever required by them to do so. (Id. sec. 7. P. D. 5288. Re-enacted Acts 1909, 2 S. S., p. 438, sec. 10.)

Art. 4372. (2860) Public moneys and that only to be kept in the treasury.—All moneys received by the treasurer shall be kept in the safes and vaults of the treasury; and it shall not be lawful for the treasurer to keep or receive into the building, safes or vaults of the treasury any money, or the representative of money, belonging to any individual, except in cases expressly provided for by law; nor shall it be lawful for said treasurer to appropriate to his own use, or loan, sell or exchange any money, or the representative of money, in his custody or control as such treasurer. (Act May 3, 1873, p. 62, sec. 1. P. D. 5290. Re-enacted Acts 1909, 2 S. S., sec. 11.)

Art. 4373. (2861) May appoint chief clerk, etc.—The treasurer shall appoint a chief clerk, who shall be required to give bond in the sum of twenty thousand dollars, payable to the governor of the state, and conditioned as is the bond of the state treasurer, and shall appoint such other employés as may be authorized by law; each and all of whom shall receive such compensation as may from time to time be appropriated by law for that purpose. (Amended Acts 1909, 2 S. S., sec. 12.)

Art. 4374. (2862) Chief clerk may act, when and how.—The chief clerk of the treasurer's office shall, whenever by reason of sickness, unavoidable absence or other cause, the treasurer is not able to act, sign his own name as acting treasurer, and do such other acts and things as the treasurer himself might legally do; and the legal acts and signatures of such chief clerk as acting treasurer shall be as valid as the acts and signatures of the state treasurer himself. (Amended Acts 1909, 2 S. S., sec. 13.)

Art. 4375. (2863) Shall turn over to his successor.—The treasurer shall, at the close of his term of office, deliver into the possession of his successor the moneys, securities and all other property of the state, together with books, vouchers, papers and evidences of property in his possession, and all other matters and things which pertain to the office of state treasurer. (Act March 19, 1846, p. 10, sec. 8. P. D. 5289. Re-enacted Acts 1909, 2 S. S., p. 438, sec. 14.)

Art. 4376. (2863a) Custodian of school fund bonds.—The treasurer of the state of Texas is hereby made the custodian of all bonds in which the school funds of the state of Texas have been, or may hereafter be, invested; and it is hereby made his duty to keep said bonds in his custody until the same shall be paid off, discharged, or otherwise disposed of by the proper authorities of said state. (Acts 1895, p. 9. Re-enacted Acts 1909, 2 S. S., p. 438, sec. 15.)

Art. 4377. (2863b) Duty with respect thereto.—Said treasurer shall, upon the payment of any installment of interest, see that the proper credit is given, and that the coupons on said bonds, when paid, shall be properly separated therefrom and canceled by said treasurer. (Id. Re-enacted Acts 1909, 2 S. S., p. 438, sec. 16.)

Art. 4378. Certain money returned to counties.—Whenever there is money in the state treasury placed there to pay off any of the obligations due by any county, city or town, and it is made to appear to the comptroller, by certified copy of the records of county commissioners' court, or by other satisfactory evidence, that said obligations are no longer outstanding against such county, city or town, then it shall be the duty of the comptroller to draw a warrant on the state treasury in favor of such county, city or town for the amount of money so remaining in the treasury; and the state treasurer shall pay such money on said warrant of the comptroller to the treasurer of such county, city or town, for the benefit of the general fund of such county, city or town. (Acts 1901, p. 19.)

Art. 4379. Deposit warrant register.—The state treasurer shall cause to be prepared a deposit warrant register designed with columns for state revenue, available school fund, and miscellaneous; all warrants to be entered consecutively and distributed to the proper columns. (Acts 1909, 2 S. S., p. 438, sec. 17.)

Art. 4380. Shall post daily totals.—The state treasurer shall cause the daily totals of state revenue and all available school deposit warrants to be posted to the fund accounts in the ledger, and the items in the miscellaneous column to be posted in detail, except that deposit warrants for bonds sold or redeemed shall be posted in a bond book. (Id. sec. 18.)

Art. 4381. Register of warrants issued.—The state treasurer shall keep registers of warrants issued, one for general warrants, and one for special warrants. In the case of pensions, the comptroller shall furnish a list of those issued; which list shall be compared with the warrants and shall constitute the treasurer's register of pension warrants issued. The date of payment of all warrants shall be stamped on the above registers. The state treasurer shall keep a "warrants paid register" with columns headed "general," "special," and "pensions." In this register, the general and special warrants shall be entered when paid in detail and the pension warrants in one daily total. (Id. sec. 19.)

Art. 4382. Certain other accounts.—The state treasurer shall keep accounts called "warrants payable, general," "warrants payable, special," and "warrants payable, pensions," to which, when opened, shall be credited the daily totals of the several registers of warrants issued and charged with the daily total of warrants paid of each class, so that the balance of these accounts shall represent the aggregate amount of outstanding warrants. (Id. sec. 20.)

Art. 4383. Outstanding warrants.—Outstanding warrants shall be listed each month from the registers of warrants issued, and a list thereof sent to the comptroller for his record. With this list, the state treasurer shall furnish a statement showing the aggregate amount of general, special and pension warrants paid during the month. (Id. sec. 21.)

Art. 4384. General revenue account.—The state treasurer shall charge the daily totals of the general warrants issued from the register to "general revenue" account in the ledger. The daily total of pension warrants issued shall be similarly treated; while the special warrants issued shall be charged to the fund account to which they apply, except that those issued for bonds purchased shall be posted to the bond book. (Id. sec. 22.)

Art. 4385. Appropriation ledger.—The state treasurer shall charge all pay warrants issued under the authority of appropriations in detail to the "appropriation ledger," an account being kept for each appropriation, which shall be credited with the amount of the appropriation. The total of the appropriation so credited shall be charged to an account called "appropriation voted." The daily totals of the general warrants issued shall be credited to this account, so that the balance shall represent the aggregate amount of unused appropriation. (Id. sec. 23.)

Art. 4386. Daily statement from land office.—The state treasurer shall receive daily from the general land office a detailed list of remitters of money for interest, principal and leases of school, university and asylum lands, together with the actual remittances, which he shall cash and deposit in his vault, if the necessity arises. A deposit receipt shall be issued by the comptroller for the daily total of such remittances; and the cashier of the treasurer's department shall keep a cash book, to be called "suspense cash book," in which to enter these deposit receipts, and any others issued for cash received for which no deposit warrants can be issued, or when their issuance is delayed. When deposit warrants are issued, they shall be credited in this cash book, as well as any refunds; and the balance shall represent the aggregate of items still in suspense. Refunds shall be made in a manner similar to that in present use, except that they shall all be made on the comptroller's authority. (Id. sec. 24.)

Art. 4387. Office fee book.—The state treasurer shall keep an office fee book in which shall be entered in detail all fees earned by the treasury department; which fees shall be deposited into the treasury to the credit of the general revenue at the end of each month on a deposit warrant issued by the comptroller. (Id. sec. 25.)

Art. 4388. Cash balancing book.—The treasurer shall keep a book, to be called "cash balancing book," for the purpose of arriving at the daily cash balance, in which shall be entered the daily totals of all receipts and disbursements. (Id. sec. 26.)

Art. 4389. Ledger to contain what.—The ledger kept by the state treasurer shall contain accounts for each fund, which shall be credited with the existing balances and with the daily totals of deposit warrants except those issued for bonds. The pay warrants issued, except those for bonds, shall be charged to the several fund accounts from the warrant register in daily totals. (Id. sec. 27.)

Art. 4390. Bond book.—The state treasurer shall keep a bond book, with columns for each fund, which shall start with the aggregate amount of bonds now held and be charged with all subsequent additions and credited with all bonds sold or redeemed. The entries in the bond book shall be posted from the deposit warrant and special warrant registers, being the deposit warrants issued for bonds sold or redeemed and special warrants for bonds purchased. The treasurer shall also keep a bond register, in which shall be entered the essential details of all bonds held by him and belonging to any state fund. (Id. sec. 28.)

Art. 4391. Bond, etc., register.—The state treasurer shall keep a suitable register in which to enter all bonds, cash and other securities lodged with him by bond investment, surety and insurance companies, and state depository banks, and all other bonds lodged with him under the provisions of the statutes, the registration of which is not otherwise provided for by law. The relinquishment of these securities shall be on the authority of the comptroller. The state treasurer shall keep a separate bond book in which to enter all these transactions consecutively, posting each item to the register; which book shall be opened with the aggregate of securities now held. (Id. sec. 29.)

CHAPTER FOUR

COMMISSIONER OF THE GENERAL LAND OFFICE

Art. 4392. (2864) His election and term.—There shall be elected by the qualified voters at the time and places of election for members of the legislature, a commissioner of the general land office, who shall hold his office for the term of two years, and until the election and qualification of his successor in office, and shall reside at the capital during his continuance in office. (Const., art. 4, secs. 2, 23.)

Art. 4393. (2865) Vacancies, how filled.—In case of a vacancy in the office of commissioner of the general land office, the governor shall fill the same by appointment, which shall be submitted to the senate, if in session, for confirmation; and the person so appointed shall hold said office for the unexpired term.

Art. 4394. (2866) His bond and oath.—The commissioner of the general land office shall, before he enters upon the discharge of the duties of his office, enter into a bond with three or more sureties, in the sum of fifty thousand dollars, payable to the governor and his successors in office, for the use of the state, conditioned for the faithful discharge of his official duties, and take and subscribe the oath prescribed by the constitution; which bond, after being approved by the governor, shall, together with the oath, be filed in the office of the secretary of state. (Act May 12, 1846, p. 232, sec. 5. P. D. 4096.)

Art. 4395. (2867) Seal of office.—The commissioner of the general land office shall procure a seal of office with the words, "General Land Office, the State of Texas," engraved around the margin, and such other device as the governor shall approve; which approval shall be certified and recorded in the office of the secretary of state. (Id. sec. 6. P. D. 4089.)

Art. 4396. (2868) His general duties.—It shall be the duty of the commissioner to superintend, control and direct the official conduct of all subordinate officers of the

general land office, and to execute and perform all acts and things touching or respecting the public land of the state of Texas, or rights of individuals in relation thereto, as may be required of him by law. (Id. sec. 1. P. D. 4091.)

Art. 4397. (2869) Give information to the governor, etc.—The commissioner of the general land office shall give information to the governor, or either branch of the legislature, concerning the public lands, or the general land office, from time to time, as may be required. (Id. sec. 12. O. & W. 1155.)

Art. 4398. (2871) Chief clerk.—The commissioner of the general land office shall appoint a chief clerk who shall hold his office at the pleasure of the commissioner, and shall enter into bond, with three or more sureties, in the penal sum of twenty thousand dollars, payable to the governor and his successors in office, for the use of the state, and conditioned for the faithful discharge of the duties of his office; which bond shall be approved by the governor and filed in the office of the secretary of state. (Acts 1846, p. 232, sec. 4. P. D. 4094.)

Art. 4399. (2872) May act as commissioner, when.—In case of sickness, absence, death or resignation of the commissioner of the general land office, it shall be lawful for the chief clerk to perform all the duties required of the commissioner. (Id. sec. 4. P. D. 4095.)

Art. 4400. (2873) Spanish translator.—The commissioner of the general land office shall appoint a translator who shall thoroughly understand the Spanish and English languages, and who shall, before he enters upon the duties of his office, take and subscribe the oath of office prescribed by the constitution, and give bond, with three or more good sureties, in the penal sum of twenty thousand dollars, payable to, and to be approved by, the governor, and conditioned for the faithful discharge of the duties of his office. (Id. sec. 3. Act Dec. 14, 1837, p. 62, sec. 33. P. D. 4094, 4097.)

Art. 4401. (2874) His duties.—It shall be the duty of said translator to translate into the English language, and record in a book to be kept by him for that purpose, all the laws and public contracts relating to titles of lands which are written in the Spanish or Castilian language, and also to translate and record in like manner all original titles or papers relating thereto which are written in said language, and which may be on file in the general land office. (Id. sec. 34. P. D. 4098.)

Art. 4402. (2875) Receiving clerk.—The commissioner of the general land office shall, with the consent and approval of the governor, appoint a suitable person to act as receiving clerk for the land office; and the person thus appointed shall, before entering upon the duties of his office, qualify and execute a bond in the sum of twenty-five thousand dollars, payable to the governor and approved by him, conditioned as other official bonds for a faithful discharge of the duties of his office; which bond shall be filed in the office of the secretary of state. (Act Nov. 10, 1866, p. 161, sec. 1.)

Art. 4403. (2876) Shall receive and receipt for money.—It shall be the duty of the receiving clerk to receive all funds that are required to be paid to the commissioner by existing laws, and to give to the person depositing money a certificate of deposit stating the amount, name of party, and character of claim upon which deposited; and, if any funds are received of a general character in advance of fees and dues, it shall be so stated; and the receiving clerk shall be responsible therefor to the state or individual. (Id. p. 162, sec. 2.)

Art. 4404. (2877) Shall register receipts and payments.—The receiving clerk shall keep a book or books, in which he shall enter each deposit separately, giving name of party, number of claim and situation of land sought to be perfected, and shall keep all letters and other vouchers filed in neat and regular order and number corresponding with his books, and shall make a report to the treasurer on the last day of each month of all funds in his hands due the state, paying the same in and taking the receipt in his own name in the same manner as heretofore required by law of the commissioner. (Id.)

Art. 4405. (2878) Shall report to the governor, etc.—It shall be the duty of the receiving clerk to furnish the governor, through the commissioner of the general land office, on or before the meeting of the legislature, a correct report of the condition of his office, the money received, giving character of claim, the money paid out and character of payment; and it shall be his duty to keep separate columns in his books, showing the amount of specie or the amount of currency or other funds paid in; and, in his reports to the treasury he shall pay in kind all funds in his hands that belong to the state of Texas, and, upon his removal or resignation, shall turn over his books, accounts and money in hand to his successor, when properly qualified, or to the commissioner, taking a receipt for the same. (Id. sec. 3.)

Art. 4406. (2879) If defaulter, to be removed.—The commissioner shall from time to time examine the books and accounts of the receiving clerk and note that they are properly kept, and, if any defalcation is found, shall report the same to the governor at once, who shall suspend him from office until an examination is made, and, if found guilty, he shall be removed and proceedings instituted upon his bond to recover whatever deficit may occur. (Id.)

Art. 4407. (2880) Chief and other draftsmen.—The commissioner of the general land office shall appoint one chief draftsman, and such number of compiling or assistant draftsmen as may from time to time be authorized by law, whose duty it shall be to make out and complete maps of all surveys made in the several counties and districts from the maps furnished by county and district surveyors; and they shall from time to time, as surveys are made in the several counties and land districts and forwarded to the general land office, as required by law, plat such surveys upon the proper county or district maps. Such chief draftsman and other draftsmen shall also perform all drafting and other duties as may be required of them by the commissioner of the general land office, for the benefit of the state or individuals. (Act Feb. 5, 1841, p. 150. P. D. 4100.)

Art. 4408. (2881) Appointment of clerks.—The commissioner of the general land office shall appoint such number of clerks as may from time to time be authorized by legislative appropriation or other law of the state; and such clerks and the compiling and assistant draftsmen provided for in the preceding article, shall receive such compensation for their services as may be appropriated for that purpose.

Art. 4409. (2882) Salary of chief clerk, etc.—The chief clerk, translator, receiving clerk and chief draftsman shall receive such compensation for their services as may from time to time be appropriated by law for that purpose.

Art. 4410. (2883) All employés may be removed by the commissioner.—All clerks, draftsmen or other employés of the general land office, including the chief clerk, translator, receiving clerk and chief draftsman, shall hold their offices and positions, at the pleasure of the commissioner, and may be removed by him at any time for satisfactory cause.

CHAPTER FIVE

ATTORNEY GENERAL

See "Lands-Public," ch. 10.

Art. 4411. (2884) His election, term.—There shall be elected by the qualified voters, at the time and places of election for members of the legislature, an attorney general, who shall hold his office for the term of two years, and until the election and qualification of his successor in office. (Const., art. 4, secs. 1, 2, 22.)

Art. 4412. (2885) Vacancies, how filled.—In case of a vacancy in the office of attorney general, the governor shall fill such vacancy by appointment, which shall be submitted to the senate, if in session, and the person so appointed shall hold his office until the next succeeding general election for members of the legislature and the qualification of his successor.

Art. 4413. (2886) Shall represent state in higher courts.—It shall be the duty of the attorney general to prosecute and defend all actions in the supreme court or courts of appeals in which the state may be interested, and also to perform such other duties as may be prescribed by the constitution and laws. (Act May 11, 1846, p. 206, sec. 1. P. D. 198.)

Art. 4414. [Superseded.]

See Art. 4418a.

Art. 4415. (2888) Shall transmit state demands for suit.—He shall transmit to the proper district or county attorneys, with such instructions as he may deem necessary, all certified accounts, bonds or other demands which may have been delivered to him by the comptroller of public accounts for prosecution and suit. (Id. sec. 6. P. D. 203.)

Art. 4416. (2889) Shall require and make reports of suits.—He shall require the several district and county attorneys to report to him semi-annually, at the close of the courts of their respective districts or counties, in such form as he may prescribe, precise information of the situation of all suits instituted by them for the collection of public money; and he shall report to the comptroller of public accounts annually, on the last day of October and at such other times as the comptroller may request, a full and correct statement of the situation of all suits instituted for the collection of public money. (Id. secs. 7, 8. P. D. 204, 205.)

Art. 4417. (2890) Prepare forms for contracts, etc.—He shall, whenever requested by the comptroller of public accounts, prepare proper forms for contracts, obligations and other instruments which may be wanted for the use of the state. (Id. sec. 10. P. D. 207.)

Art. 4418. (2891) Shall advise the governor, etc.—At the request of the governor or the heads of departments at the capitol, he shall give them legal advice in writing upon any question touching the public interest or concerning their official duties. (Id. sec. 9. P. D. 206. Acts 1879, ch. 117, p. 127.)

Art. 4418a. Shall advise heads of departments, state boards, legislative committees, county auditors, district and county attorneys, etc.; advice as to issuance of bonds; escheat proceedings.—In addition to the duties now or that may hereafter be imposed upon the Attorney General by law, he shall, at the request of the Governor or the heads of the departments of the State Government, including the heads and boards of penal and eleemosynary institutions, and all other State Boards, regents, trustees of the State educational institutions, and committees of either branch of the Legislature, and County Auditors now authorized by statute and to be authorized, give them advice in writing upon any question touching the public interest, or concerning their official duties. He shall counsel and advise the several district and county attorneys of the State, in the prosecution and defense of all actions in the district or inferior courts, wherein the State is interested, whenever requested by them, after said attorney shall have investigated the question, and shall with the question presented to the Attorney General, submit his brief also. He shall counsel and advise the proper legal authorities in regard to the issuance of all bonds that the law requires shall be approved by him, and it shall also be his duty to institute and prosecute or cause to be instituted and prosecuted all suits and proceedings necessary to recover for and on behalf of the State all properties, real, personal or mixed, that have heretofore escheated or that may escheat to this State under the provisions of Title 51, of the Acts of 1911, or under any other law now in existence, or that may hereafter be enacted, and the Attorney General is hereby prohibited from giving legal advice or written opinions to any other than the public officials named above. (Acts 1913, p. 48, sec. 1; Acts 1917, ch. 165, sec. 1.)

Art. 4419. (2892) Shall inspect accounts in offices of treasurer and comptroller.—He shall at least once a month inspect the accounts in the offices of the state treasurer and the comptroller of public accounts, of all officers, and of individuals charged with the collection or custody of funds belonging to the state, and shall proceed immediately to institute, or cause to be instituted, against any such officer or individual, who is in default or arrears, suit for the recovery of funds in his hands; and he

shall also institute immediately criminal proceedings against all officers or persons who have violated the laws by misapplying, or retaining in their hands, funds belonging to the state.

Art. 4420. (2893) Required to attend sales and bid in land.—In any case wherein any property shall be sold by virtue of any execution or order of sale issued upon any judgment in favor of the state, except executions issued upon judgments in cases of scire facias, the agent or attorney representing the state, by and with the advice and consent of the attorney general of the state, is hereby authorized and required to attend such sales, and bid on, and buy in, for the state said property, when it shall be deemed proper to protect the interest of the state in the collection of such judgment; provided, that in no case shall the amount bid by him exceed the amount necessary to satisfy said judgment and all costs due thereon. (Acts 1879, S. S. pp. 9–10.)

Art. 4421. (2894) To execute deeds.—In all cases where property is so purchased by the state, the officer selling the same shall execute and deliver to the state a deed of conveyance to the same, such as is prescribed for individuals in similar cases. (Id. sec. 2.)

Art. 4422. (2895) May sell such property, how.—The agent or attorney of the state buying for the state any such property at such sale shall be authorized, by and with the advice and consent of the attorney general, at any time to sell or otherwise dispose of said property so purchased in the manner and upon such terms and conditions as he may deem most advantageous to the state; and, if sold or disposed of for a greater amount than is necessary to pay off the amount due upon the judgment and all costs, the remainder shall be paid into the state treasury and placed to the credit of the general revenue; and when such sale is made the attorney general shall, in the name of the state, execute and deliver to the purchaser a deed of conveyance to said property, which deed, when so signed by him, shall vest all the right and title to the same in the purchaser thereof. (Id. sec. 3.)

Art. 4423. (2896) Agent of county authorized to bid in for county and to sell same.—When any such property is sold under execution or order of sale issued upon any judgment in favor of the county, including executions issued upon judgments in cases of scire facias in the name of the state, the attorney or agent so representing the county, by and with the advice and consent of the commissioners' court, shall have the same authority to buy and dispose of such property for the county as the agent or attorney for the state is given in this chapter in similar cases; and, when any property is so purchased by the agent or attorney of the county, the officer so selling the same shall execute and deliver to the county a deed of conveyance to the same; and, whenever the property so bought in for the county is sold, the county commissioners' court shall execute and deliver to the purchaser thereof a deed of conveyance in the name of the county to such property. (Id. sec. 4.)

Art. 4424. (2897) Sale of judgments against insolvents.—Whenever the principal and sureties upon any judgment held by the state are insolvent, so that under any existing process of law said judgment or any part thereof can not be collected, there shall be, and is hereby constituted, a board consisting of the attorney general, comptroller and treasurer of the state, who are hereby empowered and authorized by such advertising as they may deem necessary to offer for sale at public outcry, or by private sale, as they may deem to the best interest of the state, all the right of the state to such judgment; and, if by public sale, if the amount bid on the same should not be deemed sufficient, they shall refuse to accept the same, and dispose of the same in any manner deemed by them most advantageous to the interest of the state, and upon sale shall make a proper assignment of said judgment to the purchaser. (Id. sec. 5.)

Art. 4425. (2898) Register of official acts.—The attorney general shall keep in proper books, to be provided for that purpose at the expense of the state, a register of all his official acts and opinions, of all actions and demands prosecuted or defended by him or any district or county attorney, in which any portion of the revenue of the state is involved, and of all proceedings had in relation thereto, and shall deliver the same to his successor in office. (Acts 1846, p. 204. Id. sec. 12. P. D. 209.)

Art. 4426. (2899) Shall pay over collections immediately.—All money received by the attorney general for debts due or penalties forfeited to the state, shall be paid by him into the treasury immediately after the receipt thereof. (Id. sec. 11. P. D. 208.)

Art. 4427. (2900) Enforce forfeiture of charters, etc.—It shall be the duty of the attorney general, unless otherwise expressly directed by law, whenever sufficient cause exists therefor, to seek a judicial forfeiture of the charters of private corporations; and he shall at once take steps to seek such forfeiture in all cases where satisfactory evidence is laid before him that any corporation receiving state aid has, by the non-performance of its charter conditions or the violations of its charter, or by any act or omission, misuser or non-user, forfeited its charter or any rights thereunder. (Act Aug. 21, 1876, p. 312, sec. 1.)

Art. 4428. (2901) And inquire into all charter rights.—He shall also especially inquire into the charter rights of all private corporations and, from time to time, in the name of the state, take such legal action as may be proper and necessary to prevent any private corporation from exercising any power or demanding or collecting any species of taxes, tolls, freight or wharfage not authorized by law. (Const., art. 4, sec. 22.)

Art. 4429. (2902) No admission to prejudice.—No admission, agreement or waiver, made by the attorney general, in any action or suit in which the state is a party, shall prejudice the rights of the state. (Act May 11, 1846, p. 206, sec. 14. P. D. 211.)

Art. 4430. (2903) Office, where kept.—The attorney general shall reside and keep his office at the seat of government. (Id. sec. 15. P. D. 212.)

Art. 4431. First office assistant to act, when.—In case of the absence or inability to act of the attorney general, the first office

assistant of the attorney general shall discharge the duties which devolve by law upon the attorney general. (Act 1903, p. 117, sec. 1.)

Art. 4432. (2904) Assistant attorney general.—The governor shall appoint, by and with the advice and consent of the senate, if in session, an officer to be styled the assistant attorney general, who shall hold his office for the term of two years, and until the election and qualification of his successor. The assistant attorney general shall assist the attorney general in representing the interests of the state in all suits, pleas and prosecutions in the supreme court and courts of appeal. (Acts March 15, 1875, p. 179. Acts 1903, p. 117.)

Art. 4433. (2906) Further duties.—The assistant attorney general shall represent the state in all cases in the district or inferior courts of any county when required so to do by the governor or attorney general; and he shall, in addition thereto, perform such other duties as may be required of him by law or by the governor or attorney general. (Id.)

Art. 4434. (2907) Governor authorized to order civil suits, when.—The governor is authorized to order through the proper officials the institution, prosecution or defense of any civil action or suit whenever he deems such course proper for the assertion or defense of any right of the state, and to render to said officials such assistance as to him may seem necessary or expedient. (Acts 1887, p. 138.)

CHAPTER SIX

COMMISSIONER OF AGRICULTURE

Art. 4435. Election and qualification.—A commissioner of agriculture shall be elected by the people at the same time and in the same manner, who shall qualify and assume office, as all other state officers. He shall be an experienced and practical farmer, and shall have knowledge of agriculture, manufacture and general industry. (Acts 1907, p. 127, sec. 1.)

Art. 4436. Term of office.—The term of office of said commissioner shall be two years, and until his successor shall have been elected and qualified. Any vacancy occurring in said office shall be filled for the unexpired term by appointment of the governor. (Id. sec. 2.)

Art. 4437. Oath and bond.—Before entering upon the duties of his office, he shall take the oath of office prescribed by the constitution, and shall execute a bond in the sum of five thousand dollars, with two or more good and sufficient sureties, payable to the state of Texas, to be approved by the governor, and conditioned for the faithful discharge of the duties of his office, which oath and bond shall be filed in the office of the secretary of state. (Id. sec. 4.)

Art. 4438. Location of office.—The office of the commissioner shall be located in the city of Austin. (Id. sec. 6.)

Art. 4439. Chief clerk.—Said commissioner shall appoint one chief clerk, who shall possess a practical knowledge of agriculture, horticulture, manufacturing and kindred industries, and the proper methods of marketing the products of said industries. He may appoint such other clerks as the labors of his office may require, and all clerks shall be removable at the pleasure of the commissioner. (Id. sec. 7.)

Art. 4440. Chief clerk shall act, when.—The chief clerk shall possess all the powers and perform all the duties attached by law to the office of commissioner during the necessary or unavoidable absence of the commissioner, or his inability to act for any cause. The commissioner shall be responsible for the acts of his chief clerk, who shall, before entering upon the duties of his position, take the oath required of the commissioner, and shall enter into bond in the sum of three thousand dollars with two or more sureties to be approved by the governor, and payable to the state of Texas, conditioned for the faithful performance of his duties. (Id. sec. 8.)

Art. 4441. Same.—The chief clerk shall discharge such duties as may be prescribed by the commissioner; his annual salary shall not exceed fifteen hundred dollars per annum, payable monthly on certificate of the commissioner, and his expenses while traveling on the business of the office, under the direction of the commissioner, shall be paid by the state. (Id. sec. 9.)

Art. 4442. Seal.—The commissioner shall have and may use a seal of office, the design of which shall consist of a star with five points, surrounded by a wreath of olive and live oak; said seal shall not be less than one and a half and not more than two inches in diameter, and on the margin thereof around the wreath shall be inserted the words, "Commissioner of Agriculture, State of Texas," or some intelligible abbreviation thereof. (Id. sec. 10.)

Art. 4443. Duties.—The duties of the commissioner shall be as follows:

1. He shall cause to be executed all laws in relation to agriculture.

2. He shall encourage the proper development of agriculture, horticulture and kindred industries.

3. He shall encourage the organization of agricultural societies; and, for the benefit of the agricultural communities, he shall cause to be held farmers' institutes at such times and at such places throughout the state as will best promote the advancement of agricultural knowledge and the improvement of agricultural methods and practices. He shall publish and distribute such papers and addresses read or delivered at these institutes as he shall deem to be of value to the farming interest.

4. He shall investigate the subject of subsoiling, the problems of drainage and of irrigation, their relation to agriculture, with a view to extending the area of the same, and the best modes of effecting each in the different portions of the state.

5. He shall investigate and report upon the question of broadening the market and of increasing the demand for cotton goods and all other agricultural and horticultural products, both in the United States and in foreign countries. Further, it shall be his duty to compile the statistics showing from abroad the number of bales of cotton consumed by the spinners, and demands for our cotton, the methods and course that sales to foreign countries now take, showing the purchasers, brokers, etc., through whose hands the cotton

largely passes after leaving the producers, likewise showing in what countries an increased trade could be worked up, and thereby giving a better outlet for the trade and the best method to bring consumer and purchaser together, and all other information beneficial to farmers.

6. He shall cause to be investigated the diseases of grain, cotton, fruit, and other crops grown in this state, with a view to discovering remedies for such diseases. He shall also investigate the habits and propagation of the various insects that are injurious to the crops of this state, and the best methods for their destruction. The protection of fruit trees, shrubs and plants shall be under his direct supervision and control, and he shall have and exercise all the powers and perform all the duties in relation thereto, conferred or imposed by law.

7. He shall investigate the subject of grasses and report upon their value and the cultivation of the varieties best adapted to the different sections of the state. He shall also collect and publish information relating to forestry, tree planting, the best means of preserving and replenishing forests, and shall encourage the planting and culture of nut trees and recommend such legislation as may be necessary for the protection, restoration and preservation of the forests of this state.

8. He shall inquire into the subjects connected with stockraising, dairying and poultry; the obtaining and rearing of such domestic animals and fowls as are of most value, and the breeding and improvement of the same. He shall encourage the raising of fish and the culture of bees.

9. He shall investigate and report upon the growing of wool, and the utility and profit of sheep raising; he shall also inquire into the culture of silk, its preparation for market and its manufacture.

10. He shall correspond with the department of agriculture at Washington, and with the departments of agriculture of the several states and territories of the United States, and, at his option, with those of foreign countries, and with the representatives of the United States in foreign countries, with the view of gathering facts and information that will aid and advance the interests of agriculture in Texas. He may also, for the same purpose, correspond with such organizations, societies, associations and individuals in the state as he may choose, having for their object the promotion of agriculture in any of its branches.

11. He shall collect and publish statistics and such other information regarding such industries of this state and of other states as may be considered of benefit in developing the agricultural resources of this state. He shall cause a proper collection of agricultural statistics to be made annually; and, to this end, he shall furnish blank forms to the tax assessors of each county before the first of January of each year, including forms as to the acreage in cotton, grain and other leading products of the state, to be filled out by persons assessed for taxes, together with such instructions as will properly direct said assessor in filling them out. It is hereby made the duty of said tax assessor to return said blanks, with accurate answers, to the commissioner of agriculture on or before the first day of June following. It is further made the special duty of the said tax assessor to forward by registered mail to the commissioner of agriculture lists of the names and addresses of all ginners within their counties when asked to do so by the commissioner. It shall be the duty of the commissioner to furnish to every ginner blank forms for reports, which forms shall be filled out by said ginners as the commissioner may direct, and returned by them to the commissioner. In order to facilitate the collection and collation of accurate information concerning the various subjects treated of in this chapter, the heads of the several state departments, and of the state institutions, are hereby required to furnish accurately such information as may be at their command whenever called upon for same by said commissioner. In the prosecution of his work, the commissioner is hereby empowered to enter manufacturing establishments chartered or authorized to do business in this state, and said corporations shall furnish such information as said commissioner may request of them.

12. He shall make and publish such rules and regulations as he may deem necessary to carry into effect the provisions of this chapter. (Id. sec. 11.)

Art. 4444. Shall be member of board of directors of A. & M. college.—The commissioner of agriculture shall be ex officio a member of the board of directors of the agricultural and mechanical college of the state, and shall be allowed all necessary expense in attending the meetings of said board. (Id. sec. 12.)

Art. 4445. Shall make report.—The commissioner shall make and submit to the governor, on or before the first day of November of each year, a full and comprehensive report showing the work and expenditures of his office during the fiscal year preceding, which report shall be transmitted by the governor to the legislature. (Id. sec. 13.)

Art. 4446. Report printed and distributed.—Under the direction of the commissioner, the public printer shall print annually not to exceed ten thousand copies of the annual report of said commissioner, said report to be distributed to the farmers through the farmers' institutes and other agricultural organizations or otherwise, at the discretion of the commissioner. (Id. sec. 14.)

Art. 4447. Commissioner shall co-operate with A. & M. college.—No provision of this chapter shall be construed as to in any way conflict with the scope and character of the work of the agricultural and mechanical college or of the agricultural experiment stations, but the said commissioner shall co-operate with the said agricultural and mechanical college and said agricultural experiment stations in all lines looking toward the agricultural and horticultural interest of the state. (Id. sec. 15.)

Art. 4448. Duties as to irrigation.—It shall be the duty of the commissioner of agriculture to prepare and make public reports on the present system of irrigation now in operation in this state, the cost of maintenance and operation of same, the character and kind of irrigation plants which result in

the greater saving to the users of water, the class and character of water contracts entered into by the various canal companies; he shall also inquire into the reasonableness and fairness of rates being charged for water by the various canal companies in this state, and, from time to time, shall make public the result of his inquiries; he shall collect and publish statistics and other information regarding the irrigation of rice and other crops as may be of benefit in developing and collaborating a more efficient system of laws safeguarding and defining the rights of users and sellers of water for irrigating purposes; and he shall make up and file an annual report on same with such recommendations as he may deem beneficial to the industry, which report shall be filed with the governor and transmitted to the legislature. (Act 1909, p. 353, sec. 1.)

Art. 4449. To employ engineers.—The commissioner of agriculture is hereby empowered and authorized to employ a competent engineer and expert, possessing a practical knowledge of the application of irrigation to the raising of rice and other crops, for the purpose of assisting him in performing the duties required of him in the preceding article. (Id. sec. 2.)

BUREAU OF COTTON STATISTICS

Art. 4450. Shall maintain bureau of cotton statistics.—The commissioner shall maintain in the department of agriculture a bureau of cotton statistics, as hereinafter provided. (Acts 1907, p. 313.)

Art. 4451. Public ginners, who are; to obtain certificate.—All custom ginners of seed cotton in this state are declared to be public ginners. Any person or persons, firm or corporation in this state, before engaging in the business of public ginners, shall obtain from the county clerk of the county in which gin is located a certificate after the following form:

Number .....

This is to certify that ..... of ..... county, Texas, has this day filed affidavit required by law of all public ginners in this state.

(Seal.) .....,

County clerk of ..... county, Texas.

(Id. sec. 1.)

Art. 4452. Affidavit.—The form of affidavit to be made to, and filed with, the county clerk shall be as follows:

I, ... of ..... county, Texas, do solemnly swear that I will, so long as I may operate a public gin, make and forward a true and correct report of the number of bales of cotton ginned by me to the commissioner of agriculture at Austin, as required by law. (Id. sec. 2.)

Art. 4453. Certificate furnished commissioner.—The county clerk shall number each certificate issued by him consecutively, beginning at number one, and shall immediately forward to the commissioner of agriculture the name and postoffice address to whom certificate was issued. The clerk shall issue certificates to all ginners and shall take the affidavits as herein required without cost to ginners. (Id. sec. 3.)

Art. 4454. Commissioner to furnish blanks.—The commissioner of agriculture, upon receipt of information of the issuance of a ginner's certificate from any county clerk in this state, shall immediately forward all necessary blanks to the public ginner for making official cotton report, which shall consist of the following:

Envelopes addressed to the commissioner of agriculture, Austin, Texas; and there shall be printed upon the upper left hand corner the words, "Official Cotton Report of ..... County," also blanks, to-wit:

Official Cotton Report.

Certificate No. .....

..... 19....

Commissioner of Agriculture,

Austin, Texas.

Sir: This is to certify that I have ginned ..... bales of cotton from the ..... day of ..... 19...., to the ..... day of .... 19....

(Signed) .....

(Id. sec. 4.)

Art. 4455. Ginners to report to commissioner.—All public ginners shall make and forward reports to the commissioner of agriculture on the blanks furnished them, by the third of each month, stating the exact number of bales ginned by them the preceding calendar month. This report must be made by all ginners, unless they have ceased to operate, the notice of which must be forwarded to the commissioner of agriculture. These reports must be securely sealed by ginners. (Id. sec. 5.)

Art. 4456. Reports opened and made public, when.—The commissioner of agriculture shall open, on the eighth of each month, and tabulate the official cotton reports of the various counties in the presence of three credible witnesses, who shall be appointed by the governor. The complete report, showing total number of bales of cotton ginned, shall be given out to the public, including the press, at eleven o'clock a. m., on the ninth of each month. (Id. sec. 6.)

Art. 4457. Revealing contents of reports punishable.—If the commissioner of agriculture, his assistants, or any one else connected with the opening and tabulating of these official cotton reports, or any other person, shall give out any information as to the number of bales of cotton ginned before the time specified by this act, shall, upon conviction, be punished as provided by the Criminal Code. (Id. sec. 7.)

PROTECTION OF FRUIT TREES, SHRUBS AND PLANTS

Art. 4458. Shall supervise protection of trees, etc.—The protection of fruit trees, shrubs and plants shall be under the supervision and control of the commissioner of agriculture, and the same shall be regulated as provided in the ensuing articles. (Acts 1909, p. 316.)

Art. 4459. Proceedings where diseased trees, etc., are found.—No person in this state shall knowingly or willfully keep any peach, almond, apricot, nectarine or other trees affected with the contagious disease known as yellows. Nor shall any person keep for sale any apple, peach, plum or other tree affected with nematode galls, crown galls, or root rot. Nor shall any person knowing-

ly or willfully keep any plum, cherry or other trees affected with the contagious disease or fungus known as black knot; nor any tree, shrubs or plant infested with or by the San Jose scale or other insect pest dangerously injurious to, or destructive of, trees, shrubs or other plants; nor any orange or lemon trees, citrus stocks, cape jasmines or other trees, plants or shrubs infested with "white fly," or other injurious insect pests or contagious diseases of citrus fruits; nor subtropical plants, shrubs, evergreens or ornamentals; nor any china, forest or other trees, shrubs or plants, infested with injurious insect pests or contagious diseases. Every such tree, shrub or plant shall be a public nuisance, and as such it shall be the duty of the commissioner of agriculture, or his representatives, to abate it; and no damage shall be awarded for entering upon the premises upon which there are trees, shrubs or plants infected with yellows, black knot, crown gall or other infectious or dangerous disease, or infested with San Jose scale or other dangerous insect pest, for the purpose of legally inspecting the same; nor shall any damages be awarded for the treatment by the commissioner of agriculture, or his duly authorized agents or representatives, of such trees, shrubs or plants, or for altogether destroying such trees if necessary to suppress such insect, pest or disease, if done in accordance with the provisions of this article. But the owner of the trees, shrubs or plants shall be notified immediately upon its being determined that such trees, shrubs or plants should be destroyed, by a notice in writing signed by the commissioner, or the person or persons representing him; which said notice in writing shall be delivered in person to the owner of such trees, shrubs or plants, or left at the usual place of residence of such owner, or, if such owner be not a resident of the locality, to notify by leaving such notice with the person in charge of the premises, trees, shrubs or plants, or in whose possession they may be. Such notice shall contain a brief statement of the facts found to exist, whereby it is necessary to destroy such trees, shrubs or plants, and shall call attention to the law under which it is proposed to destroy them, and the owner shall, within ten days from the date upon which such notice shall have been received, remove and burn all such diseased or infected trees, shrubs or plants. If, however, in the judgment of said commissioner, or person representing him, any tree, shrub or plant infected with any disease, or infested with dangerously injurious insects, can be treated with sufficient remedies, he may direct such treatment to be carried out by the owner under the direction of the commissioner, agent, employé or representatives. In case of objections to the findings of the chief inspector, employés or representatives of the commissioner, an appeal may be made to the commissioner, whose decision shall be final. An appeal must be taken within five days from service of said notice, and shall act as a stay of proceedings until it is heard and decided. When the commissioner, or chief inspector, or employer or representative appointed by him, shall determine that any tree or trees, shrub or other plants must be treated or destroyed forthwith, he may employ all necessary assistance for that purpose; and such representative or representatives, agent or agents, employé or employés, may enter upon any or all premises necessary for the purpose of such treatment, removal or destruction. But such commissioner, or the person representing him, shall, before such treatment or destruction, first require the owner or person in charge of the trees, shrubs or plants, to treat or destroy same, as the case may be; and, upon the refusal or neglect upon the part of said owner or person in charge to so treat or destroy such trees, plants or shrubs, then such commissioner, chief inspector, or person or persons representing him, shall treat or destroy such trees, shrubs or plants; and all charges and expenses thereof shall be paid by such owner or person in charge of said trees, shrubs or plants, and shall constitute a legal claim against such owner or person in charge, which may be recovered in any court having jurisdiction, upon the suit of such commissioner, or chief inspector, or the county attorney of the county where the premises are situated, together with all costs, including an attorney fee of ten dollars, to be taxed as other costs. (Id. sec. 1.)

Art. 4460. Nurseries to be examined and certificates issued.—The commissioner of agriculture shall cause an examination to be made at least once each year of each and every nursery or other place where trees, shrubs or plants, commonly known as nursery stock, are grown or exposed for sale, for the purpose of ascertaining whether the trees, shrubs or plants therein kept or propagated for sale are infected with contagious disease or diseases, or infested with insect pests. If, after such examination, it is found that the said trees, shrubs or other plants so examined are apparently free in all respects from any contagious or infectious disease or diseases, dangerously injurious insect pest or pests, the said commissioner shall issue to the owner or proprietor of the stock so examined a certificate setting forth the fact that the stock so examined was at the time of such examination apparently free from any and all such disease or diseases, insect pest or pests. No such certificate shall be negotiable or transferable, and shall be void if sold or transferred. Any such act or sale or transference shall be punishable as provided by this law. (Id. sec. 2.)

Art. 4461. Shipments of nursery stock to be accompanied by certificate.—All nursery stock consigned for shipment, or shipped by freight, express or other means of transportation, shall be accompanied by a copy of said certificate attached to each car, box, bale, bundle or package. When such box, bale, bundle or package, contains nursery stock to be delivered to more than one individual, partnership, or corporation, each portion of such nursery stock to be delivered to such individual, partnership or corporation, shall also bear a copy of the certificate of inspection issued as provided in the preceding article. (Id. sec. 2.)

Art. 4462. Nursery stock shipped into state; certificate of inspection.—No individual, partnership or corporation outside the

state shall be permitted to ship nursery stock into this state without first filing with the commissioner of agriculture a certified copy of his or their certificate of inspection issued by the proper authorities in the state in which the proposed shipment originates. This certificate must show that the stock to be shipped has been examined by the proper officer of inspection in that state or province, and that the stock is apparently free from all dangerous insect pests or contagious diseases; and, when fumigation is required by the commissioner of agriculture, that the stock has been properly fumigated. Immediately upon receipt of the filing with the commissioner of agriculture of this certificate, he shall, in addition, make further investigation as to the moral standing and integrity of the applicant as will satisfy him that the applicant is entitled to receive a certificate. A fee of five dollars shall be required from the applicant, upon receipt of which the commissioner of agriculture may issue a certificate permitting the applicant to ship into the state. Each box, bale or package of nursery stock from outside the state shall bear a tag on which is printed a copy of the certificate of this state, and also a copy of the certificate of the state in which it originates. (Id. sec. 3.)

Art. 4463. Transportation companies not liable, when.—No transportation company or common carrier shall be liable for damages to the consignee or consignor for refusing to receive for transportation or deliver such trees, packages, bales, bundles or boxes when not accompanied by copies of the certificates provided for in the preceding article. The agent of such companies or common carriers shall report any such shipment to the commissioner of agriculture immediately. Shipments of nursery stock into this state, or originating within the state, without tags or proper certificates as provided for in article 4462 shall be dealt with as in article 4459. (Id. sec. 3.)

Art. 4464. Commissioner to revoke certificate, when.—The commissioner shall have power to revoke any certificate which has been issued when he shall find that false representations have been made by the party or parties to whom certificates have been issued, or who have refused to comply with the law, instructions, rules and regulations given by the commissioner of agriculture as required by the provisions of this chapter and its enforcement. (Id. sec. 4.)

Art. 4465. Provisions, how enforced.—The commissioner of agriculture shall enforce the provisions of the foregoing articles, and make and enforce such rules and regulations, not inconsistent with such articles, as may be deemed necessary for carrying the same into effect, including the provisions relating to the inspection of nurseries, orchards, forest trees, greenhouses, and all other products originating from the same, within the meaning of these articles. He shall also appoint one person who shall be designated as chief inspector, whose duty it shall be to inspect, or cause to be inspected, under the directions of the commissioner of agriculture all trees, plants and shrubs of every kind whatsoever, grown, produced or offered for sale by any nursery, dealer, individual or corporation in this state, and also to inspect, or cause to be inspected, all orchards provided for above, and may employ such other person or persons, expert or experts, as may be necessary from time to time for administering and carrying into operation and enforcing these provisions; provided, the chief inspector shall not, during the time of such service, be interested in or connected with any nursery business whatsoever. The said commissioner shall fix and collect reasonable fees for the inspection provided for, and not less than two dollars and fifty cents nor more than fifteen dollars shall be charged for each inspection. All fees collected shall be paid to the department of agriculture and credited to the fund provided for administering this law. Any persons or experts employed by the commissioner of agriculture for the purpose of administering the provisions, rules and regulations hereof shall be paid a salary. Such salary shall not exceed the sum of five dollars per diem and traveling expenses while actually engaged in performing their duties, the same to be paid out of any fund made available to the department of agriculture for the enforcement of this law. (Id. sec. 5.)

Art. 4466. Provisions, how enforced by prosecution.—To enforce the provisions hereof, and the rules and regulations of the commissioner of agriculture in reference thereto, suit shall be entered by the county attorney in any court having jurisdiction, and the sheriff or peace office of any such court shall perform his usual duties in enforcing the provisions hereof. Any moneys appropriated for the department of agriculture for the administration of these provisions shall be available for use to the amount necessary for the enforcement hereof, as indicated herein; provided, that all fines collected from proceedings hereunder shall revert to the available school fund of the county in which the prosecution originates and is tried. (Id. sec. 7.)

Art. 4467. Terms defined.—The term "nursery stock," within the meaning of these articles, shall include all fruit trees and vines, shade trees and forest trees, whether such shade or forest trees be especially grown for sale in a nursery or taken from the forests and offered for sale; all scions, seedlings, roses, evergreens, shrubbery or ornamentals, also such greenhouse plants, or propagation stock, all classes of berry plants, cut flowers taken from plants, bushes, shrubs or other trees growing in this state, which may be a medium for disseminating injurious insect pests and contagious diseases. The term "nursery" shall be construed to mean any grounds or premises on which nursery stock is grown, or exposed for sale. "Being in the nursery business" applies to any individual, partnership or corporation which may either sell or grow, or both grow and sell, nursery stock regardless of the variety or quantity of nursery stock sold or grown. The term "dealer" shall be construed to apply to any individual, partnership or corporation not growers of nursery stock, but who buy and sell nursery stock for the purpose of reselling and reshipping under their own name or title, independently of any control of those from whom they purchase. An "agent of a nursery or dealer" shall be construed to apply to any individual, partnership or corpo-

ration selling nursery stock, either as being entirely under the control of the nursery or dealer with whom the nursery stock offered for barter and traffic originates, or some co-operative basis for handling nursery stock with the grower or dealer, as specified in this article. Any such agent shall have proper credentials from the dealer he represents or co-operates with, and, failing in that, any such agent shall be classed as a dealer, and subject to such rules and regulations as may be adopted relative to them, and shall be amenable to the same penalties for violations of any provisions of these articles, or the rules and regulations of the commissioner. (Id. sec. 8.)

Art. 4468. Rules and regulations by commissioner.—The commissioner of agriculture shall prepare suitable rules and regulations for the traffic of cape jasmine cut flower shipments, also for the shipment of such greenhouse and floral plants as may require control, in order that the purposes for which this law is established may be accomplished. He shall also provide such rules and regulations concerning city, private or public parks, avenues of shade trees, shrubbery and ornamentals along the streets of cities, for city residences, and city property generally, as will secure a protection and immunity from insect pests and contagious diseases intended to be provided for by this law. It shall be the duty of city administrations through their proper officers, the duty of owners of parks, of city residence or other city property, to obey these rules and regulations, and co-operate with the commissioner of agriculture, or his representatives, in enforcing such rules and regulations, or any provisions of this law. (Id. sec. 9.)

BOLL WEEVIL—REWARD FOR EXTERMINATION

Art. 4469. Reward.—The sum of fifty thousand dollars is appropriated out of any money in the treasury not otherwise appropriated for the purpose of discovering a practical remedy for the destruction of the boll weevil, said money to be used as hereinafter set forth, to-wit: That said money be held in the state treasury subject to a warrant drawn thereon signed by the governor, president of agricultural and mechanical college and the commissioner of agriculture of Texas. That said persons shall constitute a board whose duty it shall be to offer, in the name of the state of Texas, the said named fifty thousand dollars to any person or persons who shall discover and furnish a practical remedy for the destruction of the cotton boll weevil in Texas. That said money shall not be drawn from the treasury until it has been thoroughly proven as hereinafter provided that the person or persons in whose favor the warrant is drawn have produced a practical remedy that will destroy the cotton boll weevil. Said board of three as aforesaid shall act jointly with a committee of five practical farmers to be appointed by the governor from five representative districts of the cotton producing belt of the state where the cotton boll weevil is prominent. (Acts 1903, p. 72, sec. 1.)

Art. 4470. Expenses and claim for reward.—The sum of two thousand five hundred dollars, or so much thereof as is necessary, be and the same is hereby appropriated to pay the expenses and per diem of the board appointed to pass on the remedy produced, said money to be used out of any money not otherwise appropriated and paid out under direction of the governor; provided, that each member shall be allowed five dollars per day for his services. The persons presenting their claims for said reward must subscribe to the following oath, to wit: "I, ..., have discovered a practical method by which the cotton boll weevil can be destroyed at a cost of not more than one dollar per acre per annum, and cause no bad effect to the cotton. My method is so economical that it can be used by all cotton planters." (Id. sec. 2.)

Art. 4471. Farmers to make affidavit.—Said five practical farmers, reputable citizens, shall subscribe to the following oath: "I, ..., swear (or affirm) that I have witnessed experiments and applications of Mr. ..... in the destruction of the cotton boll weevil at ..... I further swear (or affirm) that this method of destroying the weevil is so economical and practical that, if followed as directed by ....., will effectually destroy the weevil affecting cotton. That I have witnessed the test made for the destruction of the cotton boll weevil ....., that I have not received anything, or been offered anything, of value to secure my vote or influence in securing the reward for the party or parties claiming the same, and I do further swear (or affirm) that, to the best of my judgment, that the method offered by ....., which I have seen tested, is economical, practical and will destroy the cotton boll weevil, if followed as directed." (Id. sec. 3.)

Art. 4472. Discoverer to report to governor.—After the person or persons claiming said reward have complied with the above demands, he or they shall report to the governor that he or they have discovered a practical remedy for the destruction of the cotton boll weevil. (Id. sec. 4.)

Art. 4473. Farmers appointed to experiment.—It shall then be the duty of the governor to appoint five practical farmers, of good character and reputation, as aforesaid, selecting one from each of five representative districts of the cotton producing belt of Texas, who shall assemble at a place designated by the governor, where experiments will be carried on by the party or parties claiming said reward, and, in case of refusal, resignation or disqualification of any member of the committee, the governor shall appoint another from the representative district so vacated to fill his place. (Id. sec. 5.)

Art. 4474. Oath; preliminaries before payment of reward.—Those who have been selected by the governor to pass upon the practicability and expediency of the method by which he or they propose to kill or destroy the cotton boll weevil shall subscribe to the following oath: "I, ..., do solemnly swear that I am not related to the party or parties who are now claiming said reward, neither am I in any way interested in his patent or proposed means of destroying the cotton boll weevil." After a fair test or tests covering all points claimed by the inventor or discoverer of a practical remedy

for the destruction of the cotton boll weevil have been made, or may be made from time to time covering two consecutive years, to satisfy fully all members of the committee appointed by the governor, commissioner of agriculture, and the president of the agricultural, and mechanical college, that the remedy proposed by the party or parties having been given a fair test for two consecutive years under every requirement of the committee appointed by the governor, and having been by them declared to be so economical, practical and effective and that the cost of same does not exceed one dollar per acre per annum, will so report to the governor, in writing, giving in full the details of the experiment witnessed, and recommending that the governor, commissioner of agriculture and the president of the agricultural and mechanical college pay to the party or parties who have made the test the reward offered by the state of Texas. (Id. secs. 6, 7.)

Art. 4475. Same.—After the aforesaid board of practical farmers, acting jointly with the governor, commissioner of agriculture and president of the agricultural and mechanical college of Texas, have passed on the claims of all who make application for the aforesaid reward, and have decided upon the most meritorious claim presented as hereinbefore required, then shall a period of two successive years elapse in which the people may put into practical application the remedy recommended. And, if at the expiration of the two years it has, in the judgment of the aforesaid board, proven a success, the fifty thousand dollars shall be awarded to the person or persons discovering or inventing said remedy. Provided, that the insecticide, device or machine, if patented, or, if any insecticide, the formulæ of same shall be conveyed to the state of Texas before said party competing for the prize shall have the right to have same tested by the board free of charge; provided, further, this remedy shall not interfere with the discovery of any remedy by the state of Texas in the experimental station or by the agricultural and mechanical college; and provided, also, no man shall receive any benefit until he first proves that he was the first discoverer of such remedy; and the governor shall have the right at any time to suspend this appropriation provided a satisfactory remedy has in his judgment been discovered by the state experimental board. (Id. sec. 8.)

PINK BOLLWORM QUARANTINE

Art. 4475a. Quarantine zone created.—There is hereby created a zone along the boundary between the State of Texas and the Republic of Mexico, comprising the counties of El Paso, Hudspeth, Culberson, Jeff Davis, Presidio, Brewster, Terrell, Val Verde, Kinney, Maverick, Webb, Zapata, Starr, Hidalgo and Cameron, and that part of Dimmitt County south of a line drawn diagonally across the county from the northwest corner of the County where it joins Zavalla and Maverick counties to the southeast corner of the said Dimmitt County on the line of La-Salle County, for the purpose of aiding in the prevention of the introduction into this State of the Cotton pest, Pectinophera Gosypiella Saund, hereinafter referred to as the pink bollworm. (Acts 1919, ch. 41, sec. 1.)

This act supersedes Acts 1917, 3d C. S., ch. 11.

Art. 4475b. Proclamation by governor; duties of Commissioner of Agriculture; inspection and report.—Whenever the Secretary of Agriculture of the United States shall certify to the Governor of this State that the pink bollworm in any of its stages of development, including the egg, larval, pupal and adult stages, has been discovered in Mexico within fifty miles of the Texas border, it shall be the duty of the Governor to proclaim that part of the zone established by Section 1 [Art. 4475a] adjacent to the location of the pest and for a distance of not less than fifty miles in such zone along the border of the State a closed zone from which it shall be unlawful to transport any cotton or cotton products to any part of the State from such closed zone embraced in the proclamation of the Governor; provided, however, that it shall be the duty of the Commissioner of Agriculture of Texas to make a thorough inspection of the cotton fields and cotton and cotton products in such closed zone, and if such investigation determines the fact that there is no pink bollworm in such closed zone, and no pink bollworm in any of its stages of development in any territory within the State of Texas or without the United States, and adjacent to said zone and not less than fifty miles from such closed zone, then in such event after such finding of fact by him he shall certify such finding to the Governor, who may by Proclamation declare it lawful for cotton growers in such closed zone and its products to be transported from such closed zone under such conditions as may be deemed essential to the protection of the cotton industry of the state. (Id. sec. 2.)

Art. 4475c. Prohibiting growing of cotton within quarantine zone.—At any time the Secretary of Agriculture of the United States shall report the presence of pink bollworm within twenty-five miles of the Texas border, the Governor shall cause a special examination to be made by the Commissioner of Agriculture of this State of the danger of infestation of Texas fields by the pest, and if such report, in the judgment of the Governor, shall justify such action, he shall declare the growing of cotton in the said zone for such distance adjacent to the known location of the pink bollworm as may be deemed necessary to assure the prevention of the introduction of the pest, a public menace, and thereafter it shall be unlawful for any person or persons to grow cotton in such territory so set apart, or to transport any cotton, or its products from such zone to any other point in Texas, so long as such condition of menace to the cotton industry shall be deemed to exist. (Id. sec. 3.)

Art. 4475d. Inspection of cotton fields; proclamation of quarantine; fumigation or disinfection.—It shall be the duty of the Commissioner of Agriculture of this State to maintain a rigid inspection of the cotton fields, and of the cotton and cotton products in the zone provided for in Section 1 of this Act, in such manner as to determine the presence of pink bollworm in all stages of development, and whenever the pest is discovered in such zone the Commissioner shall certify

that fact to the Governor of the State, who shall immediately proclaim a quarantine of such territory in the zone, and such territory adjacent thereto, as may be deemed necessary to prevent further advance of the pest into Texas; and thereafter it shall be unlawful for any person or persons to transport cotton, or cotton products of any kind from any territory within the counties in such zone, or the territory adjacent thereto embraced in such quarantine proclamation, through or to any other part of the State of Texas, or transport any car or vehicle or freight or other article contaminated with cotton seed, or other products of cotton capable of carrying the pink bollworm in any of its stages from the counties embraced in such zone through or to any other point in Texas, unless and until it shall have been freed from cotton seed or other cotton products and shall have been properly fumigated or disinfected in such manner as the Commissioner of Agriculture of this State shall direct. Any and all such fumigation or disinfection and the cost of such protective measures against the spread of the pink bollworm shall be paid by the owners of the cotton or cotton products or of the car, vehicle, freight, or other article used for such transportation of cotton or its products. (Id. sec. 4.)

Art. 4475e. Special quarantine zones. —If the cotton pest known as the pink bollworm, in any of its different stages, shall be found in the State, and outside the zone provided for in Section 1 [Art. 4475a] of this Act, the Commissioner of Agriculture of this State shall immediately certify that fact to the Governor, who shall proclaim a special zone or quarantine district surrounding the known location of the pest to such extent as may be determined sufficient to prevent the spread of the pink bollworm and it shall be unlawful for any person or persons to ship any cotton products of any kind from such quarantined district or transport any car or vehicle, or freight or any other article contaminated with cotton seed, or other cotton product capable of carrying the pink bollworm in any of its stages from the quarantined area through or to any other point in this State unless and until it shall have been freed from cotton seed or other cotton product, and shall have been fumigated or disinfected in such manner as the Commissioner of Agriculture shall direct. Any and all such fumigation or disinfection and cost of such protective measures against the spread of the pink boll worm shall be paid by the owners of the cotton or its products, qr by the owners of the car, vehicle or freight or other article employed in its transportation. (Id. sec. 5.)

Art. 4475f. Destruction of infected cotton; valuation and payment to owners.—If it shall become necessary in the judgment of the Commissioner of Agriculture of this State to the protection of the cotton industry of Texas, that the Commissioner shall destroy cotton and cotton plants being lawfully grown in any field or fields in which the pink bollworm may have been discovered, or in any fields in the vicinity of such infested fields, he shall report such condition and certify a recommendation to that effect to the Governor, who shall thereupon declare such cotton or fields of cotton a public menace, and upon the promulgation of such proclamation the Commissioner of Agriculture shall be empowered to exercise all authority requisite to the complete destruction of such cotton or cotton plants in such field or fields, and it shall be his duty to effect such destruction in such manner as may be deemed essential to the eradication of the pest and to the adequate protection of the cotton industry of Texas. In the event it shall be found necessary in the accomplishment of the purposes of this Act to destroy any field or fields of cotton, the County Judge of the County in which such field or fields may be located shall immediately appoint three disinterested citizens whose duty it shall be to carefully examine such field or fields of cotton, and report to the County Judge their conclusions of the value of the cotton in such field or fields to be destroyed. Before entering upon the duties required of them, such citizens shall take an oath before some officer legally qualified herein provided for. When the report of the said three citizens shall be filed with the County Judge it shall be his duty to transmit the same with his endorsement to the Commissioner of Agriculture of the State, who shall certify to the fact of such field or fields of cotton having been destroyed, in pursuance of the provisions of this Act, and he shall then file such report and certificate with the State Comptroller, who shall issue his warrant upon the State Treasurer for such sum as may be declared just and due in such report, which sum shall be paid from any funds in the State Treasury not otherwise appropriated. Provided, if any person whose cotton or field of cotton has been destroyed according to the provisions of this Act is dissatisfied with the estimate of damage assessed by the said three citizens, he shall have the right of appeal to any court of competent jurisdiction. (Id. sec. 6.)

Art. 4475ff. Special quarantine zones. —In the event of the discovery of infestation of cotton fields in the State, which infestation, in the judgment of the Commissioner of Agriculture of the State, does not require the destruction of the cotton and cotton plants in the field or fields infested, for the protection of the cotton industry of Texas, he shall report such condition to the Governor and certify a recommendation that such field or fields of cotton, shall be condemned and placed in a special zone or quarantine district determined sufficient in area to prevent the spread of the pink boll worm, and thereafter it shall be unlawful for any person or persons to remove any part of such cotton or cotton plants being grown in such field or fields except under such rules and regulations as the Commissioner of Agriculture shall promulgate as requisite to the prevention of the spread of the pink boll worm; and the loss, if any, to the owner or owners of such cotton or fields of cotton sustained by reason of the condemnation herein authorized by the Commissioner of Agriculture, shall be ascertainable in the same manner as is herein provided for the destruction of cotton or fields of cotton, and the owners of such cotton or fields of cotton so condemned shall be entitled to recover compensation for the loss sustained by reason of such act of condemnation as may be awarded, and such person or persons shall have the right of appeal from such award as provided in this Act. All ex-

traordinary work and attendant expenses necessary to the eradication of the pink boll worm in such special zones, except such expenses for fumigation as may be required shall be borne by the State, and evidenced by statement of the Commissioner of Agriculture as herein provided for such expenses. And in the event it becomes necessary in the judgment of the Commissioner of Agriculture to prescribe rules for the cleaning of the fields condemned under the provisions of this Section to destroy the pink boll worm in its various stages of development, such cleaning of fields and destruction of plants shall be conducted under the direct supervision of the Commissioner who shall certify the expense therefor, by a sworn statement, to the State Comptroller who shall issue his warrant upon the State Treasurer, who shall pay the same from any moneys in the Treasury not otherwise appropriated. (Id. sec. 7.)

Art. 4475fff. Destruction of plants and cleaning of ground.—Whenever fields of cotton shall have been quarantined and ordered destroyed to prevent the spread of the pink boll worm as provided in Sections 5 and 6 of this Act [arts. 4475e, 4475f], it shall become the duty of the Commissioner of Agriculture to promulgate rules and regulations for the thorough destruction of all plants and for the cleaning of the ground in such manner as may be deemed essential to the eradication of the worm in any of its stages. The work of destroying the cotton plants and of thoroughly cleaning the fields to assure destruction of the pink boll worm in any of its stages of development, shall be conducted under the direct supervision of the Commissioner of Agriculture, and the actual expense of such destruction of plants and cleaning of fields, shall be certified by sworn statement of the Commissioner to the State Comptroller, who shall issue his warrant upon the State Treasurer for the amount, which sum shall be paid from any funds in the State Treasury not otherwise appropriated. It shall be the duty of the owner of such field or fields of cotton, or the tenant in possession of such premises and growing such cotton, to render all assistance practicable to the Commissioner of Agriculture. (Id. sec. 8.)

Art. 4475g. Proclamation against growing of cotton in infested districts.—If, upon careful investigation, the Commissioner of Agriculture shall deem it necessary to the protection of the cotton industry of Texas that the growing of cotton in any quarantined district, or in any part of such quarantined district, known to be infested with pink boll worm, be prohibited, he shall certify such conclusion to the Governor, who shall thereupon issue his proclamation designating a non-cotton zone or district in which the growing of cotton shall be declared a public menace, and thereafter it shall be unlawful to plant, cultivate or grow cotton in such district for such terms of years as the proclamation may designate, or so long as such condition of menace to the cotton industry shall be deemed to exist. Provided, that at the end of the crop season next following the creation of any non-cotton zone under the provisions of this Act, the Commissioner of Agriculture shall cause to be made a thorough investigation, as provided in Section 15 [Art. 4475j], of the field or fields of cotton and territory embraced within the non-cotton zone, and after such investigation shall file a report and recommendation with the Governor indicating whether or not the result of such investigation requires the continued maintenance of the non-cotton zone, or justifies the modification of such quarantine restrictions as provided for a regulated zone, under which, the growing of cotton shall be permissible as authorized in Section 10 of this Act [Art. 4475gg], and in the event the recommendation of the Commissioner of Agriculture shall be for a regulated zone, the Governor shall be authorized to proclaim such territory a regulated zone. (Id. sec. 9.)

Art. 4475gg. Regulated zones or districts.—If, upon thorough investigation of all cotton fields and adjacent lands in any territory known to have been infested with the pink boll worm and embraced in a quarantine district, as herein provided for, the Commissioner of Agriculture shall conclude that the work of eradication of the pest has removed the condition of public menace to the cotton industry of the State from such district or any part thereof, and that it will not constitute a certain and known danger to permit the growing of cotton under restrictions believed adequate to prevent any spread of the pink boll worm, in the event there should be a reappearance of the pest in such district or any part thereof, he shall certify such conclusions to the Governor who shall thereupon issue his proclamation designating a regulated zone or district, in which the growing of cotton shall be declared permissible, if and when, carried on in conformity to the regulations prescribed therefor by the Commissioner of Agriculture, which regulations shall embrace the planting of seed from non-infested territory, ginning within the zone, marketing and such other rules as may be deemed essential. It shall be the duty of the Commissioner to promulgate such regulations as soon as practicable after the designation of any regulated zone. Such proclamation of the Governor establishing a regulated zone shall remain in effect until continued thorough investigations shall indicate the complete eradication of the pest. Such regulations may include the destruction of cotton fields which qualified entomologists shall certify, in the manner herein provided, to be infested with the pink boll worm, and thereafter it shall be unlawful to grow cotton in any such regulated district or part thereof, except under such further regulations as the Commissioner of Agriculture may prescribe. If it should become necessary for the Commissioner of Agriculture to condemn or destroy any cotton or fields of cotton in any regulated zone, as authorized to be established by this section of this Act, and the Commissioner shall certify that fact to the County Judge of the County in which such cotton, field or fields of cotton are situated, the County Judge of such county in which such cotton, or field or fields of such cotton may be situated shall proceed to determine the loss sustained by such person or persons, in the same manner as is herein provided in Section 6, and compensation for such losses, when determined, shall be made as therein directed. Provided, that no owner of any cotton, or field or fields of cotton, who has refused to conform to the proclama-

tions, rules, regulations and restrictions, or of any of them, authorized by this Act, to prevent the spread of the pink boll worm, or who has wilfully refused or neglected to co-operate with the Commissioner of Agriculture in the efforts undertaken for the protection of the cotton industry, shall be entitled to compensation for losses sustained by or through the acts of destruction or condemnation as directed by this Act. (Id. sec. 10.)

Art. 4475h. Commissioner may enter fields.—For the purpose of complying with the requirements of this Act in preventing the introduction of the pink boll worm into Texas, or to eradicate the pest if its presence shall be discovered in the State, the Commissioner of Agriculture and his authorized agents shall have power to enter into any field or fields of cotton or upon any premises in which cotton or its products may be stored or held, and may examine any products or container of cotton or its products, or thing or substance liable to be infested with the pink boll worm in any of the stages of its development. (Id. sec. 11.)

Art. 4475i. Co-operation with federal officers.—It shall be the duty of the Commissioner of Agriculture of this State to co-operate with the Secretary of Agriculture of the United States in any measures authorized and to be undertaken by authority of the Federal Government in preventing the introduction of the pink boll worm into the United States through the State of Texas. (Id. sec. 12.)

For sections 13 and 14 of this act see post, Penal Code, arts. 729½, 729½a.

Art. 4475j. Investigation of infested areas; entomologist; duties.—Before any quarantine shall be declared or established embracing any section or territory within this State pursuant to any of the provisions of this Act, the Commissioner of Agriculture of this State shall cause to be made a thorough examination of the territory and premises believed to be infested by a competent and experienced entomologist, who shall, after going upon the premises, and after making the examination in person, accompanied by two or more responsible persons, report the result thereof to the Commissioner of Agriculture; should such report express the conclusion that the pink boll worm in any of its stages of development exists within the territory under investigation before the Commissioner of Agriculture shall file the report with the Governor herein provided for, or certify a recommendation for the establishment of a quarantine, there shall be an investigation of the area believed to be infested by a Commission composed of an entomologist designated by the Commissioner of Agriculture of the State, an entomologist appointed by the Governor of the State, an entomologist designated by the United States Department of Agriculture, an entomologist designated by the Agricultural and Mechanical College of Texas, and an entomologist to be appointed by the County Judge of the county in which the fields believed to be infested are located, which commission shall determine the fact and extent of infestation. Should the infestation in the judgment of the said Commission be of such nature as to require quarantine restriction, they shall report a recommendation to the Commissioner of Agriculture, stating whether the infestation is of such a character as to require the issuance of a proclamation by the Governor declaring and establishing a non-cotton zone, or for the establishment of a regulated zone, and in the manner such zones are, respectively, authorized to be created in this Act. Before submitting the report herein provided for with the Commissioner of Agriculture, the said Commission shall conduct a public hearing on or near the territory under investigation, due notice of the time and place of which hearing shall be given, and at which they shall hear all such statements as may be relevant to the duty devolving upon them in the investigation of the nature and extent of infestation and the area that should be embraced within the limits of any zone to be proclaimed. The Commission shall, after such investigation and such hearing, report a recommendation of the area to be embraced within the zone, which area shall not exceed a distance of five miles from the outermost known place of infestation, and the area set out in the report of such Commission shall constitute the zone to be embraced within any proclamation of the Governor as authorized by this Act.

The person who made the examination disclosing the presence of the pink boll worm shall also make a statement in writing setting forth among other essential information, the following facts:

1. The date when such examination was made.
2. The names of two or more responsible persons who were present when such examination was made.
3. The locality where the pink boll worm was found.
4. The name or names of the owner or owners of the premises.
5. The extent of the infestation and the number and description of the localities infested.
6. The necessary steps to be taken in dealing with the infestation and the proper safe-guards to be employed.
7. Any other information deemed necessary to be given preparatory to dealing, in the manner prescribed by this Act, with the infested area.

Such statement shall be duly verified by the oath of the person making the examination, shall be filed and preserved in the office of the Commissioner of Agriculture, and be open to the inspection of the public. (Id. sec. 15.)

Art. 4475jj. Investigations by Commissioner; inspectors.—The Commissioner of Agriculture shall make adequate investigation to determine the presence of the pink boll worm in the State, and shall take prompt action to secure the establishment and maintenance of an effective quarantine of all infested areas that may be discovered within the State. For the purpose of effecting the provisions of this Act, the Commissioner of Agriculture may employ and prescribe the duties of such inspectors as may be necessary and fix their compensation. All expenses incurred under this Act in the enforcement of its provisions shall be paid as are other expenses of a similar character incurred by the Department of Agriculture of the State. (Id. sec. 16.)

Art. 4475k. Cumulative construction; partial invalidity.—The provisions of the several sections of this Act shall be construed as cumulative in effect, and shall not be held to modify the provisions, restrictions or requirements of other sections; and if any provisions of this Act shall be declared by proper judicial action to be unconstitutional that fact shall not operate to invalidate other provisions. (Id. sec. 17.)

AGRICULTURAL AND EXPERIMENTAL STATIONS

Arts. 4476-4483. [Superseded.]

See Acts S. S. 1913, p. 98 [Arts. 14*o*-14vv], amending Acts 1913, p. 339. The last-named act amended Acts 1909, p. 332, which was incorporated into Rev. Civ. St. 1911, as Arts. 4476-4483.

Art. 4484. Board of directors of A. & M. college to assist U. S. government in maintaining stations.—The board of directors of the agricultural and mechanical college of Texas are authorized and directed to assist the national government in maintaining an experiment station for the purpose of conducting experimental culture of tobacco and carrying on researches and experiments in tobacco growing under the direction of the national government's expert in the seventeenth representative district. (Acts 1909, p. 278, sec. 1.)

CHAPTER SEVEN

COMMISSIONER OF INSURANCE AND BANKING

Art. 4485. (2908) Appointment by the governor.—The governor shall appoint, by and with the advice and consent of the senate, a commissioner of insurance and banking, who shall be a citizen of the state and experienced in matters of insurance. (Act Aug. 21, 1876, p. 219, sec. 2; Acts 1887, p. 99; Acts 1889, pp. 53-54; Const., art. 16, sec. 38.)

Art. 4486. (2909) His term of office.—The commissioner of insurance and banking shall hold his office for the term of two years, and until the appointment and qualification of his successor. (Id. secs. 2, 5.)

Art. 4487. (2910) Vacancies in office, how filled.—The governor may fill any vacancy occurring in the office of commissioner of insurance and banking, and report the name of the person so appointed to the senate, if in session, or at the next succeeding session of the legislature. Should the senate fail to confirm the appointment made by the governor within ten days after being advised thereof, then the said office shall be deemed vacant and a new appointment shall be made until the office is filled. (Id. sec. 27.)

Art. 4488. (2911) Oath and bond.—Within fifteen days after notice of his appointment, and before entering upon the duties of his office, he shall take the oath of office prescribed by the constitution, and shall give a bond to the state of Texas in the sum of five thousand dollars, with two or more good and sufficient sureties, to be approved by the governor, and conditioned for the faithful discharge of the duties of his office, which oath and bond shall be filed in the office of the secretary of state. (Id. p. 219, sec. 3.)

Art. 4489. (2912) May appoint clerks.—Said commissioner may appoint a competent chief clerk and such other clerks as the labors of his office may require; and all clerks shall be removable at the pleasure of the commissioner. (Sen. Jour., 1895, p. 478.)

Art. 4490. (2913) Chief clerk, duties of.—The chief clerk shall possess all the power and perform all the duties attached by law to the office of commissioner during the necessary or unavoidable absence of the commissioner, or his inability to act from any cause. The commissioner shall be responsible for the acts of his chief clerk, who shall, before entering upon the duties of his position, take the oath required of the commissioner; he may also be required by the commissioner to enter into bond with security, payable to said commissioner, for the faithful performance of the duties of his position. (Id.)

Art. 4491. Title and seal of office.—The said commissioner shall be styled, the commissioner of insurance and banking, and shall have a seal of office, the design of which shall consist of a star with five points, with letters composing the word "Texas," arranged between the respective points thereof; said seal to be not less than one and a half and not more than two inches in diameter, and on the margin, "Department of Insurance and Banking," or an intelligible abbreviation thereof. Such seal thus formed and impressed shall be the seal of office of the department of insurance and banking. (Acts of 1889, p. 53. Acts 1907, p. 127, sec. 16.)

Art. 4492. (2915) Ineligibility of certain persons.—No person who is a director, officer or agent of, or directly or indirectly interested in, any insurance company, except as insured, shall be a commissioner or clerk; and it shall be unlawful for such commissioner, or any person employed by him or in any way connected with his office, to purchase all or any part of any mine or mineral land, to be in any manner interested in such purchase, during the term of his office or employment. (Acts of 1887, p. 99. Acts 1888, p. 10.)

Art. 4493. (3050) Duties of commissioner.—In addition to the duties required of the commissioner of insurance and banking, he shall perform other duties as follows:

1. Shall execute the laws.—To see that all laws respecting insurance and insurance companies are faithfully executed.

2. File articles of incorporation and other papers.—To file and preserve in his office all acts or articles of incorporation of insurance companies and all other papers required by law to be deposited with him, and, upon application of any party interested therein, to furnish certified copies thereof upon payment of the fees prescribed by law. (Acts 1909, p. 192, sec. 59, par. 2.)

3. Calculate net value of policies.—He shall, as soon as practicable in each year, calculate or cause to be calculated in his office, by an officer or employé of his department, the net value on the thirty-first day of December of the previous year of all the policies in force on that day in each life or health insurance company doing business in the state, upon the basis and in the manner prescribed by law. (Id. par. 3.)

4. Shall see that the company has net value of policies on hand.—Having deter-

mined the net value of all the policies in force, it shall be his duty to see that the company has in safe securities of the class and character required by the laws of this state the amount of said net value of all its policies, after all its debts and claims against it and at least one hundred thousand dollars of surplus to policy holders have been provided for. (Id. par. 4.)

5. May accept the valuation of commissioners of other states.—He may accept the valuation made by the insurance commissioner of the state under whose authority a life insurance company was organized, when such valuation has been properly made on sound and recognized principles, as a legal basis as above; provided, the company shall furnish to him a certificate of the insurance commissioner of such states, setting forth the value calculated on the data designated above of all the policies in force in the company on the previous thirty-first day of December, and stating that, after all other debts of the company and claims against it at that time, and one hundred thousand dollars surplus to policy holders, were provided for, the company had, in safe securities of the character required by the laws of this state, an amount equal to the net value of all its policies in force, and that said company is entitled to do business in its own state. (Id. par. 5.)

6. Shall see that company furnishes certificate.—Every life insurance company doing business in this state during the year for which the statement is made that fails promptly to furnish the certificate aforesaid shall be required to make full detailed lists of policies and securities to the insurance commissioner, and shall be liable for all charges and expenses consequent upon not having furnished said certificates. (Id. par. 6.)

7. Shall calculate the reserve on fire insurance.—For every company doing fire insurance business in this state, he shall calculate the reinsurance reserve for unexpired fire risks by taking fifty per cent of the premiums received on all unexpired risks that have less than one year to run, and a pro rata of all premiums received on risks that have more than one year to run; provided, that, when the reinsurance reserve, calculated as above, is less than forty per cent of all the premiums received during the year, the reinsurance reserve in this case shall be the whole of the premiums received on all of its unexpired risks. For every company transacting any kind of insurance business in this state, for which no basis is prescribed by law, he shall calculate the reinsurance reserve upon the same basis prescribed in this section [article] as to companies transacting fire insurance business. (Id. par. 7.)

8. Shall charge premiums.—In marine and inland insurance, he shall charge all the premiums received on unexpired risks as a reinsurance reserve. (Id. par. 8.)

9. Duties when company's capital is impaired.—Having charged against a company other than life, the reinsurance reserve, as prescribed by the laws of this state, and adding thereto all other debts and claims against the company, he shall, in case he find the capital stock of the company impaired to the extent of twenty per cent, give notice to the company to make good its whole capital stock within sixty days, and, if this is not done, he shall require the company to cease to do business within this state, and shall thereupon, in case the company is organized under authority of the state, immediately institute legal proceedings to determine what further shall be done in the case. (Id. par. 9.)

10. Shall publish results of investigation.—The commissioner shall publish the result of his examination of the affairs of any company whenever he deems it for the interest of the public. (Id. par. 10.)

11. Shall suspend or revoke certificate.—He shall suspend the entire business of any company of this state, and the business within this state of any other company, during its non-compliance with any provision of the laws relative to insurance, or when its business is being fraudulently conducted, by suspending or revoking the certificate granted by him; and he shall give notice thereof to the insurance commissioner or other similar officer of every state, and shall publish notice thereof; provided, that he shall give such company at least ten days notice in writing of his intention to suspend its right to do business or revoke the certificate of authority granted by him, stating specifically the reason why he intends to so suspend or revoke such certificate of authority. (Id. par. 11.)

12. Shall report to attorney general.—He shall report promptly and in detail to the attorney general any violation of law relative to insurance companies or the business of insurance. (Id. par. 12.)

13. Shall furnish blanks.—He shall furnish to the companies required to report to him the necessary blank forms for the statements required. (Id. par. 13.)

14. Shall keep records.—He shall preserve in a permanent form a full record of his proceedings and a concise statement of the condition of each company or agency visited or examined. (Id. par. 14.)

15. Give certified copies.—At the request of any person, and on the payment of the legal fee, he shall give certified copies of any record or papers in his office, when he deems it not prejudicial to public interest, and shall give such other certificates as are provided for by law. (Id. par. 15.)

16. Report annually to governor.—He shall report annually to the governor the names and compensations of his clerks, the receipts and expenses of his department for the year, his official acts, the condition of companies doing business in this state, and such other information as will exhibit the affairs of said department. (Id. par. 16.)

17. Send copies of reports to.—He shall send a copy of such annual report to the insurance commissioner or other similar officer of every state and to each company doing business in the state. (Id. par. 17.)

18. Report laws to commissioners of other states.—On request, he shall communicate to the insurance commissioner or other similar officer of any other state, in which the substantial provisions of the law of this state relative to insurance have been, or shall be, enacted, any facts which by law it is his duty to ascertain respecting the companies of this state doing business within such other state. (Id. par. 18.)

19. See that no company does business, when.—He shall see that no company is permitted to transact the business of life insurance in this state whose charter authorizes it to do a fire, marine, lightning, tornado or inland insurance business, and that no company authorized to do a life or health insurance business in this state be permitted to take fire, marine or inland risks. (Id. par. 19.)

20. Admit mutual companies, when.—The commissioner of insurance and banking shall admit into this state mutual insurance companies organized under the laws of other states and who have two hundred thousand dollars assets in excess of liabilities engaged in cyclone, tornado, hail and storm insurance. (Id. par. 20.)

Metropolitan Life Ins. Co. v. Love, 108 S. W. 821.

Art. 4494. May change form of annual statement.—The commissioner of insurance and banking may, from time to time, make such changes in the forms of the annual statements required of insurance companies of any kind, as shall seem to him best adapted to elicit a true exhibit of their condition and methods of transacting business; provided, that such terms and requirements shall elicit only such information as shall pertain to the business of the company. (Id. sec. 60.)

Art. 4495. Duty when parties refuse to appear and testify.—Whenever any person shall refuse to appear and testify or to give information authorized by this chapter to be demanded by the commissioner of insurance, such commissioner may file his application under oath with any district judge or district court within this state, where said witness is summoned to appear; and it shall be the duty of said judge to summon said witness, administer oaths as required by law and require answers to such questions; and such judge or court shall have power to punish for contempt as now provided by law. (Acts 1909, p. 192, sec. 63.)

Art. 4496. Sheriffs, etc., shall execute service.—Sheriffs and other peace officers of this state shall execute process directed to them by the commissioner of insurance and make return thereof to him, as in the case of process issued from any of the courts. (Id. sec. 64.)

Art. 4497. Shall issue certificate of authority, when; revoke certificate, when.—Should the commissioner of insurance and banking be satisfied that any company applying for a certificate of authority has in all respects fully complied with the law, and that, if a stock company, its capital stock has been fully paid up, that it has the required amount of capital or surplus to policy holders, it shall be his duty to issue to such company a certificate of authority under the seal of his office, authorizing such company to transact insurance business, naming therein the particular kind of insurance, for the period of not less than three months nor extending beyond the last day of February next following the date of such certificate. And, if any such insurance company organized under the laws of any state or country, after having obtained a certificate of authority from the commissioner of insurance and banking, or other officer authorized to issue such permit to do business in this state, shall bring in any federal court any suit or action against any citizen of this state, or shall remove any suit or action heretofore or hereafter commenced in any court of this state, to which it is a party, to any federal court, the commissioner of insurance and banking shall forthwith revoke and recall the certificate of authority of such insurance company to do and transact business in this state; and no renewal of authority shall be granted to such insurance company to do business in this state for a period of three years after such revocation; and such insurance company shall thereafter be prohibited from transacting any business in this state until again duly authorized by law. (Id. sec. 40.)

Art. 4498. Shall compute reserve liability of companies.—It shall be the duty of the commissioner of insurance and banking, as soon as practicable in each year, to compute the reserve liability on the thirty-first day of December of the preceding year of every company organized under the laws of this state, or authorized to transact business in this state, which has outstanding policies of insurance on the lives of citizens of this state, in accordance with the following rules:

1. The net value on the first day of December of the preceding year of all outstanding policies of life insurance in the company issued prior to the first day of January, 1910, shall be computed according to the terms of said policies on the basis of the American Experience Table of Mortality, and four and one-half per cent interest per annum.

2. The net value on the last day of December, of the preceding year, of all policies of life insurance issued after the thirty-first day of December, 1909, upon the basis of the Actuary's or Combined Experience Table of Mortality, with four per cent interest per annum; provided, that the policies of any such life insurance company thereafter issued upon the reserve basis of an interest rate lower than four per cent shall be computed upon the basis of the American Experience Table of Mortality with interest at such lower rate per annum; provided, that any company which, on January 1, 1909, was writing policies on the basis of four and a half per cent, may continue on that basis until January 1, 1912, and its policies shall be so valued.

3. In every case in which the actual premium charged for an insurance is less than the net premium for such insurance computed according to its respective tables of mortality and rate of interest aforesaid, the company shall also be charged with the value of annuity, the amount of which shall equal the difference between the premium charged and that required by the rules above stated, and the term of which in years shall equal the number of future annual payments due on the insurance at the date of the valuation. (Id. sec. 15.)

Art. 4499. Shall calculate reinsurance reserve.—On the thirty-first day of December of each and every year, or as soon thereafter as may be practicable, the commissioner of insurance and banking shall have calculated in his office the reinsurance reserve for all unexpired risks of all insurance companies organized under the laws of this state, or transacting business in this state, transacting any kind of insurance other than life,

fire, marine, inland, lightning or tornado insurance, by taking fifty per cent of the gross premiums on all unexpired risks that have less than one year to run and a pro rata of all premiums received on risks that have more than one year to run. (Id. sec. 53.)

Art. 4500. Shall examine companies, have free access to books, etc.—The commissioner of insurance and banking shall, at the end of each two years, or oftener if he deems necessary, in person or by one or more examiners, commissioned in writing, visit each company organized under the laws of this state, and examine its financial condition and its ability to meet its liabilities. He shall have free access to all the books and papers of the company or agents thereof relating to the business and affairs of such company, and shall have power to summon and examine under oath the officers, agents and employés of such company and any other person within the state relative to the affairs of such insurance company. He may revoke or modify any certificate of authority issued by him when any conditions or requirements prescribed by law for granting it no longer exist; provided, that he shall give such company at least ten days notice in writing of his intention to revoke or modify such certificate of authority issued by him, stating specifically the reasons why he intends to revoke or modify such certificate. The expense of every such examination shall be paid by the company so examined, but the commissioner shall not make any charge for services except for traveling or other actual expenses and shall furnish the company with an itemized statement of such expenses. (Id. sec. 41.)

Art. 4501. Powers and duties of commissioner in case of examination.—The commissioner of insurance and banking, for the purpose of examination authorized by law, has power either in person or by one or more examiners by him commissioned in writing:

1. To require free access to all books and papers within this state of any insurance companies, or the agents thereof, doing business within this state.

2. To summon and examine any person within this state, under oath, which he or any examiner may administer, relative to the affairs and conditions of any insurance company.

3. To visit at its principal office, wherever situated, any insurance company doing business in this state, for the purpose of investigating its affairs and conditions, and shall revoke the certificate of authority of any such company in this state refusing to permit such examination. The reasonable expenses of all such examinations shall be paid by the company examined.

4. He may revoke or modify any certificate of authority issued by him when any conditions prescribed by law for granting it no longer exist.

5. He shall also have power to institute suits and prosecutions, either by the attorney general or such other attorney as the attorney general may designate, for any violations of the law of this state relating to insurance; and no action shall be brought or maintained by any person other than the commissioner of insurance and banking for closing up the affairs or to enjoin, restrain or interfere with the prosecution of the business of any such insurance company organized under the laws of this state. (Id. sec. 66.)

Art. 4502. (3054) Transfer of securities by commissioner not valid unless countersigned by treasurer.—No transfer by the commissioner of securities of any kind, in any way held by him in his official capacity, shall be valid unless countersigned by the treasurer of the state. (Acts of 1879, p. 224, sec. 13.)

Art. 4503. (3055) Duty of treasurer in regard to such transfers.—It is the duty of the state treasurer:

1. To countersign any such transfer presented to him by the commissioner.

2. To keep a record of all transfers, stating the name of the transferee, unless transferred in blank, and a description of the security.

3. Upon countersigning, to advise by mail the company concerned, the particulars of the transaction.

4. In his annual report to the legislature, to state the transfers and the amount thereof, countersigned by him. (Id.)

Art. 4504. (3056) Free access to records, books, etc., given to commissioner and treasurer.—For the purpose of verifying the correctness of records, the commissioner of insurance shall be entitled to free access to the treasurer's records, required by the preceding article, and the treasurer shall be entitled to free access to the books and other documents of the insurance department relating to securities held by the commissioner. (Id. sec. 14.)

Art. 4505. (3057) Instruments executed by commissioner, and copies of papers in his office made evidence.—Every instrument executed by the commissioner of insurance of this state, or of any other state, in which the substantial provisions of the laws of this state relating to insurance have been, or shall be, enacted, pursuant to authority conferred by law, and authenticated by his seal of office shall be received as evidence; and copies of papers and records in his office certified by him, and so authenticated, shall be received as evidence with the same effect as the originals. (Id. p. 223, sec. 11.)

Art. 4506. (3058) Commissioner authorized to make inquiries of company, etc.—The commissioner of insurance is authorized to address any inquiries to any insurance company in relation to its business and condition, or any matter connected with its transactions which he may deem necessary for the public good or for a proper discharge of his duties; and it shall be the duty of the company so addressed to promptly answer such inquiries in writing. (Act Feb. 17, 1875, p. 39, sec. 18.)

Art. 4507. (3059) Annual statement to be tabulated and submitted to legislature by commissioner.—It shall be the duty of the commissioner to cause the information contained in the annual statements of companies to be arranged in tabular form and prepare the same in a single document for printing, and submit the same to the legislature as a portion of his regular report to that body. (Id. p. 43, sec. 28.)

Art. 4508. (3060) Insurance company's certificate of authority to transact business to be revoked, when.—Should any insurance company fail or neglect to pay off and discharge any execution, issued upon a valid final judgment against said company, within thirty days after the notice of the issuance thereof, then in that event the certificate of authority of said company to transact business of insurance shall be revoked, canceled and annulled, and said company shall be prohibited from transacting business of insurance in this state until said execution be satisfied. (Acts of 1879, ch. 144, p. 159.)

CHAPTER EIGHT

STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

Art. 4509. Election of.—There shall be elected, at each general election for state and county officers, a state superintendent of public instruction, who shall hold his office for a term of two years, and until his successor is elected and qualified, and shall receive an annual salary of twenty-five hundred dollars, and may employ as many clerks as may be necessary to perform the duties of his office; provided, that no greater number shall be employed than the legislature has appropriated salaries for. The superintendent shall take the oath of office prescribed by the constitution, and shall perform such duties as may be prescribed by law. Appeal shall always lie from the rulings of the state superintendent to the state board of education. (Acts 1905, p. 263, sec. 24.)

Art. 4510. General duties.—The superintendent of public instruction shall be charged with the administration of the school laws and a general superintendency of the business relating to the public schools of the state. He shall hear and determine all appeals from the rulings of the decisions of subordinate school officers, and all such officers and teachers shall conform to his decisions, unless they are reversed by the state board of education. He shall prescribe suitable forms for reports required of subordinate school officers and teachers, and blanks for their guidance in transacting their official business and conducting public schools, and shall, from time to time, prepare and transmit to them such instructions as he may deem necessary for the faithful and efficient execution of the school laws, and by whatsoever is so communicated to them, shall they be bound to govern themselves in the discharge of their official duties. He shall examine and approve all accounts of whatsoever kind against the school fund that are to be paid by the state treasurer, and, upon such approval, the comptroller shall be authorized to draw his warrant. (Id. sec. 25.)

Art. 4511. Instructions binding.—The state superintendent shall advise and counsel with the school officers of the counties, cities and towns and school districts as to the best methods of conducting the public schools, and shall be empowered to issue instructions and regulations, binding for observance on all officers and teachers in all cases wherein the provisions of the school law may require interpretation in order to carry out the designs expressed therein, also in cases that may arise in which the law has made no provision, and where necessity requires some rule in order that there may be no hardships to individuals, and no delays or inconvenience in the management of school affairs. (Id. sec. 27.)

Art. 4512. Shall note educational progress.—It shall be the duty of the state superintendent of public instruction to inform himself concerning the educational progress of the different parts of this state and of other states. In so far as he may be able, he shall visit different sections of this state and address teachers' institutes, associations, summer normals and other educational gatherings, to instruct teachers and arouse educational sentiment; and the legislature shall make adequate appropriation for necessary traveling expenses, or those of his representative, when in the service of the state. (Id. sec. 29.)

Art. 4513. Shall have school laws printed.—He shall cause to be printed for general distribution such number of copies of school laws as may at any time be necessary, to be determined by the state board of education. (Id. sec. 28.)

Art. 4514. Shall furnish plans for school buildings.—It shall be the duty of the state superintendent of public instruction to prepare as many as three sets of plans for public school buildings, the said plans being designed to meet the needs of rural schools of various sizes, and, upon request of the trustees of any school district, shall furnish copies of such plans and specifications. (Id. sec. 81. Amended Act 1909, p. 21.)

Art. 4515. Shall make report.—The state superintendent shall, one month before the meeting of each regular session of the legislature and ten days prior to any special session thereof, at which, under the governor's proclamation convening the same, any legislation may be had respecting the public schools, make a full report to the board of education of the condition of the public schools throughout the state. Such report shall give all the information called for by the board of education, and contain such other matters as the state superintendent shall deem important. (Id. sec. 46. Acts 1905, p. 263.)

Art. 4516. Governor shall lay report before legislature.—The governor shall lay such report before the legislature, and two thousand copies of said report shall be printed in pamphet form for the use of the legislature and for distribution among the various school officers and libraries within the state, and the superintendents of public schools of other states and territories of the United States and Canada, and the bureau of education at Washington city. (Id. sec. 47.)

Art. 4517. School officers to make reports to state superintendent.—The state superintendent shall require of county judges, county, city and town superintendents, county and city treasurers and treasurers of school boards, and other school officers and teachers, such school reports relating to the school fund and other school affairs as he may deem proper for collecting information and advancing the interests of the public schools, and shall furnish the county, city and town superintendents, and other school

officers and teachers, for the use of such officers and teachers, the necessary blanks and forms for making such reports and carrying out such instructions as may be required of them; and any county judge, or county, city or town superintendent, assessor, treasurer or teacher, who shall wilfully fail to make such report within twenty days after the same shall have been required by the state superintendent to be filed, shall be deemed guilty of a misdemeanor, and shall on conviction be fined as provided in the Penal Code; and said fine shall be paid, when collected, to the available school fund. (Id. sec. 48.)

Art. 4518. Reports to be filed.—The state superintendent shall file all reports, documents and papers transmitted to him and the state board of education by county or city school officers, and from all other sources, pertaining to public schools, and keep a complete index of the same. (Id. sec. 26.)

Art. 4519. Shall pro rate available funds monthly.—On the first day of each month, the state superintendent of public instruction shall pro rate to the several counties, cities and towns and school districts constituting separate school organizations, according to the scholastic population of each, the available school money collected during the preceding month and then on hand as shown by the certificate issued that day to him by the comptroller, and shall thereupon certify to the comptroller the total sum pro rated to each; and such certificate shall be authority for the comptroller to draw his warrant in favor of the treasurer of each such county, city or town or school district for the amount stated in such certificate. (Acts 1909, 2 S. S., p. 432, sec. 5.)

Art. 4520. Shall disburse warrants drawn by comptroller.—He shall receive from the state treasurer all warrants drawn by the comptroller in favor of the treasurer of the available school fund of each county, city or town, and each school district having control of its public school, and shall transmit such warrants to the respective treasurers in favor of whom they are drawn. (Id. sec. 5.)

CHAPTER NINE

GENERAL PROVISIONS

Art. 4520¼. Inventories of public property filed with Superintendent of Public Buildings and Grounds.—Within sixty days after this Act becomes effective and on or before the 31st day of January each year thereafter, it shall be the duty of the head of each department of the State government, with his office located in the capitol or in the State land office building in the City of Austin, to make up and file with the Superintendent of Public Buildings and Grounds a complete inventory of all furniture, fixtures, machinery, machines, typewriters and other office utilities belonging to the State, except books and stationery. If the head of any such department, in making up his inventory, finds that he has not on hand any such property of the State which has been received by him, then he shall at the same time file with the Superintendent of Public Buildings and Grounds a statement showing the disposition of such property, and if the same be lost or disposed of without authority, or by reason of the carelessness or negligence of such officer, then such officer shall be responsible to the State therefor and shall replace the same in his Department or pay the reasonable value thereof, to be ascertained by the Superintendent of Public Buildings and Grounds, to the State. It shall be the duty of the Superintendent of Public Buildings and Grounds to check up such inventories from time to time and make demand on the heads of the various departments of the State government, subject hereto, for the restoration or payment for all property not lawfully accounted for by such departmental head. (Acts 1918, 4th C. S., ch. 42, sec. 1.)

Art. 4520¼a. Disposition of public property.—The departmental heads subject to this Act shall neither purchase nor sell any of the personal property enumerated in Section 1 hereof, but when they have any such property which may no longer be used by them they shall deliver the same to the Superintendent of Public Buildings and Grounds, taking his receipt therefor, who in turn may deliver the same to some other department in need of such property or utility. It shall be the duty of the Superintendent of Public Buildings and Grounds to furnish the various departments referred to in this Act with all furniture, fixtures, office necessities and utilities named in Section 1 of this Act [Art. 4520¼], except stationery and books, and where he does not have the same on hand, he shall purchase the same. Where a system of purchasing these articles is provided by law through the State Purchasing Agent, then the Superintendent of Public Buildings and Grounds shall obtain the same through the State Purchasing Agent's contract; otherwise he shall purchase the same on his own record in the open market and supply the departmental heads therewith; provided, however, that all purchases made prior to the 31st day of August, A. D., 1918, shall be made as now provided in the appropriation bills. (Id. sec. 2.)

Art. 4520¼b. Requisitions for furniture, etc., by department heads.—When the head of any department of the State Government mentioned in this Act is in need of any furniture, fixtures, machinery, machine, typewriter or other utilities, except books and stationery, he shall make a written requisition addressed to the Superintendent of Public Buildings and Grounds stating his particular needs; which requisition shall be kept on file by the Superintendent of Public Buildings and Grounds in his office as a permanent record. It shall be the duty of the Superintendent of Public Buildings and Grounds to furnish suitable requisition blanks to the heads of all departments covered by this Act. The Superintendent of Public Buildings and Grounds, shall keep on file in his office a permanent record showing the requisitions received by him from the various departmental heads and showing what dispositions were made of same. (Id. sec. 2a.)

Art. 4520¼c. Payment for purchases for departments.—Provided that until funds are appropriated for the purpose of this Act to be expended hereunder, the purchase made for any particular department shall be paid for out of the existing appropriation made

for such department available for such purpose, and the account for same shall be approved by the head of the department for which said purchases were made, and the Superintendent of Public Buildings and Grounds. (Id. sec. 2b.)

TITLE 66

HEALTH—PUBLIC

CHAPTER ONE

TEXAS STATE BOARD OF HEALTH

Art. 4521. Texas state board of health; how constituted.—The Texas state board of health shall consist of seven members, who shall be legally qualified practicing physicians, who shall have had at least ten years experience in actual practice of medicine within the state of Texas, of good professional standing, who shall be graduates of reputable medical colleges, to be appointed biennially by the governor on or before the tenth day of March following his inauguration. One member of said board, who shall be appointed by the governor and confirmed by the senate, shall be designated by the governor as state health officer, and who shall be president and executive officer of the board. The members of said board shall hold their office for a term of two years, and until their successors shall be appointed and qualified, unless sooner removed for cause. (Acts 1909, p. 340, sec. 1.)

Art. 4522. Salaries and expenses of president and members.—The president of said board shall receive annually a salary of two thousand five hundred dollars. The other six members of said board shall receive no salary, but each of said members shall be allowed for each and every day he shall be in attendance upon the meetings of the board the sum of ten dollars, including the time spent in travel, and three cents per mile going and coming for actual expenses, to be paid on their vouchers when approved by the president of the board and the governor, by warrant drawn by the comptroller against the general appropriation provided by law for that purpose; provided, no member shall receive more than five hundred dollars annually. (Id. sec. 2.)

See post, art. 7085b, for salary of president.

Art. 4523. Time and place of meeting of board.—A majority of the members of the board shall constitute a quorum for the transaction of business. The board shall meet at Austin quarterly on a day to be fixed by the board, or hear and determine all appeals from the rulings and decisions of subordinate as often and at such time and places as such meetings shall be deemed necessary for the board. Timely notice of such meetings shall be given to each member of the board by the president thereof. The board shall be convened on call of the president, or on demand of three members of said board made in writing to the president. The office of said board shall be in the capitol, at Austin; and the said board shall be furnished with all necessary equipment and supplies, including laboratory supplies, books, stationery, blanks, furniture, etc., as other offices of the state are furnished, including suitable rooms for its offices and laboratories, necessary for carrying on the work of the board, and to be provided in the capitol building, or other suitable buildings, to be designated by the governor. (Id. sec. 3.)

Art. 4524. Officers and assistants appointed; salaries and duties.—The president of the board shall appoint, with the approval of the governor, the following officers and assistants:

1. An assistant state health officer, who shall be a legally qualified practitioner of medicine under the laws of the state of Texas, and who shall have had five years experience in the practice of medicine in this state, whose duty it shall be to assist the president of the board in a general supervision of the affairs of his office and in the enforcement of quarantine and sanitation throughout the state. Said assistant state health officer shall receive an annual salary of two thousand and four hundred dollars.

2. A registrar of vital statistics, whose duty it shall be to correct, record, compile and tabulate the vital and mortuary statistics of the state as provided by law, and shall also be secretary of the board, and perform such other duties as may be directed by the president of the board, and he shall receive an annual salary of one thousand and eight hundred dollars.

3. A chemist and bacteriologist, who shall be learned in chemistry, pathology, and bacteriology and he shall receive a salary of one thousand and eight hundred dollars per annum. He shall make examinations and analyses of such things and matters as may be submitted to him by the board, or the state health officer, and shall report results of such examinations in such manner and form as may be directed by the board.

4. One stenographer and bookkeeper combined, at a salary of one thousand and two hundred dollars per annum.

5. One inspector, at a salary of one thousand and eight hundred dollars per annum. It shall be the duty of such inspector to conduct such inspection as required by the board and the president of the board, and to assist in the enforcement of all sanitary and quarantine laws of the state, and to perform such other necessary services as may be prescribed by the president of the board. (Id. sec. 4.)

Art. 4524a. Bureau of Vital Statistics.—That for the purpose of the efficient enforcement of the Sanitary Code of Texas, and the State Board of Health, shall establish a Bureau of Vital Statistics, and shall provide therefor suitable apartments, fire-proof vaults and filing cases necessary for the permanent preservation of all official records relating to births and deaths in the State of Texas, including those of the years prior to 1910 now in the basement of the State Capitol. (Acts 1917, ch. 129, sec. 1.)

Sections 2-15 of this act are arts. 4524b-4524g, 4553a (rules 36a, 36b, 36c, 37a, 38a, 38b, 50a) of the civil statutes, post, and arts. 801a, 801b of the Penal Code, post.

Art. 4524b. Qualifications of State Registrar; duties.—In addition to the qualification now required of the State Registrar of Vital Statistics, he shall be a licensed physician under the laws of this State, and shall have had not less than five years' experience as a general practitioner and two years' experience as a Vital Statistician; and

it shall be his duty to superintend the collection, filing and compilation of all birth and death certificates. (Id. sec. 2.)

Art. 4524c. Salary of State Registrar.—The State Registrar of Vital Statistics shall receive an annual salary of ($2,400.00), and shall not engage in private practice during the time he serves as such registrar. (Id. sec. 3.)

See post, art. 7085b for salary of registrar.

Art. 4524d. Deputy State Registrar.—The State Health Officer is hereby authorized and it shall be his duty, immediately after this Act takes effect, to appoint a Deputy State Registrar of Vital Statistics, who shall act as assistant to the State Registrar and shall perform such duties as may be assigned him by the State Registrar. (Id. sec. 4.)

Art. 4524e. Salary of Deputy State Registrar.—The Deputy State Registrar shall receive an annual salary of ($1,500.00); provided, that said Deputy State Registrar shall have had at least two years' practical experience as a Vital Statistician. (Id. sec. 5.)

Art. 4524f. Salaries and expenses of bureau to be paid by state; appropriation.—The salaries and contingent expenses of the Bureau of Vital Statistics shall be paid by the State, and for the purpose of putting this Act into immediate effect, and for the purpose of the efficient enforcement of the same, there is hereby appropriated out of any money in the State Treasury, not otherwise appropriated, the sum of eight thousand ($8.000.00) dollars for the purpose of paying the salaries of the State Registrar, Deputy State Registrar, all necessary clerical services, and other necessary expenses, for the remainder of the fiscal year ending August 31, 1917. (Id. sec. 14.)

Art. 4524g. Local systems of registration of births and deaths.—No system for the registration of births and deaths shall be continued or maintained in any of the several cities or counties of this State other than the system provided for and prescribed by the provisions of this Act.

Provided, this Act shall not be construed to repeal any of the laws of this State now in force effecting public health and the registration of birth and death certificates, which are not clearly in conflict herewith, but shall be construed to be cumulative to said laws. (Id. sec. 15.)

Art. 4525. Members of board to qualify; commissions to issue.—Members of the board shall qualify by taking the constitutional oath of office before an officer authorized to administer oaths within this state. Upon presentation of oaths and their certificates of appointment signed by the governor, the secretary of state shall issue commissions to them under the seal of the state, which shall be evidence and be authority to act as such members of the board. (Acts 1909, p. 340, sec. 5.)

Art. 4526. Bond of the president.—The president of the board shall execute bond in the sum of ten thousand dollars, with two or more good and sufficient sureties, payable to the governor and his successors in office, conditioned for faithful performance of his official duties, to be approved by the governor, and filed in the office of the secretary of state. (Id. sec. 6.)

Art. 4527. President shall have charge of state quarantine.—The president of the board shall, besides his other duties, have charge of and superintend the administration of all matters pertaining to state quarantine. (Id. sec. 7.)

Art. 4528. General powers and duties of the state board of health.—The state board of health shall have general supervision and control of all matters pertaining to the health of citizens of this state, as provided herein. It shall make a study of the causes and prevention of infection of contagious diseases affecting the lives of citizens within this state and except as otherwise provided in this Act shall have direction and control of all matters of quarantine regulations and enforcement and shall have full power and authority to prevent the entrance of such diseases from points without the state and shall have direction and control over all sanitary and quarantine measures for dealing with all diseases within the state and to suppress same and prevent their spread. (Acts 1913, p. 147, sec. 1, amending Acts 1909, p. 340, sec. 9, thus superseding Art. 4528, Rev. St. 1911.)

Art. 4528a. Dissemination of information for prevention of communicable disease; bulletins; free lectures and exhibits; employment of assistants; expenses; encouragement of local societies.—The state health department shall disseminate information concerning the cause, nature, extent and prevention of communicable disease and shall arrange for free lectures and health exhibits, and shall cause to be printed and distributed free of cost to the people, bulletins, pamphlets, circulars, leaflets, cards, and other printed matter, printed in English, Spanish and German, containing useful information for the protection of the individual and the public health. The state health department shall send a public health exhibit in a railway car or cars over the lines of railroads in the state of Texas and shall cause the exhibit to be displayed in the cities and towns on railway lines. With the display of the exhibit there shall be given free lectures and talks to the people, illustrated, where possible, with stereopticon and moving pictures, and printed matter containing useful information pertaining to the protection of health and prevention of disease shall be distributed. The details of the work shall be planned by the state health department and the state health officer may employ assistants to carry on the work, for such periods of time as may be necessary and shall fix their salaries, provided that the salary of the director of the work shall not exceed $200.00 a month and the salaries of traveling representatives shall not exceed $125.00 a month and the salaries of other employees shall not exceed $100.00 a month. Necessary expenses of such employees shall be paid in the same manner that expenses of other employees of the state are paid. The state health officer may designate any employee as a health officer, and during their term of service, employees so designated shall have the power and authority of a health officer.

The state health department shall encourage the organization of county and city societies and committees for the prevention of disease and protection of the public health

and may co-operate with any corporation organized under the laws of Texas for benevolent and charitable purposes, in the movement to disseminate information concerning the cause, nature, extent and prevention of communicable disease. (Acts 1913, S. S., p. 191, sec. 1.)

Art. 4528b. Free transportation on railroads.—It shall be lawful for any railroad company to furnish free of charge a car or cars for the display of the public health exhibit and to furnish free transportation to the persons actually engaged in the work in connection with the display of the public health exhibit. (Id. sec. 2.)

Art. 4528c. Expenditures by counties and cities.—It shall be lawful for the commissioners' court of any county or of the city council of any city or the city commissioners of any city or other governing body of any city or town to contribute to the local expense of the display of the public health exhibit. (Id. sec. 3.)

Art. 4528d. State health officer may accept donations.—It shall be lawful for the state health officer to accept donations and contributions to the expense of the display of the public health exhibit. (Id. sec. 4.)

Art. 4528e. Appropriation; expenditures subject to approval of governor.—There is hereby appropriated, to be disbursed at the discretion of the state health officer, for the purposes mentioned in section 1 of this Act, in the same manner as other expenses of his office, the sum of $2000.00 for the cost of preparation of the exhibit, $3000.00 for the expenses of the work until September 1st, 1913, and $10,000 for the expenses of the work from September 1st, 1913, to September 1st, 1914, and $10,000 for the expenses of the work from September 1st, 1914 to September 1st, 1915. Provided no obligation shall be incurred nor money expended under the provisions of this Act unless first approved by the governor. (Id. sec. 5.)

Arts. 4529-4533. [Superseded.]

Acts 1911, p. 173, amends section 10 of chapter 30 of the Acts of the 31st Legislature. Section 10 is embraced in Arts. 4529-4533, Rev. St. 1911. The Revised Statutes mistakenly ascribes Articles 4530, 4531, and 4532 to section 7 of the act referred to. The result is that Articles 4529-4533 are superseded. See Art. 4553a.

Art. 4534. [Repealed.]

See Acts 1911, p. 173 [Art. 4553a.]

Art. 4535. Perform duties of state health officer.—It shall be the duty of said Texas state board of health to perform all functions and duties now imposed by existing laws upon the state health officer; and whenever state health officer is mentioned in the present laws, the Texas state board of health shall be deemed to succeed in purpose and effect, whenever such statutes are not in conflict with this chapter. (Acts 1909, p. 340, sec. 12.)

Art. 4536. Members of board may enter, examine and inspect, etc.—The members of the board of health and every person duly authorized by them, upon presentation of proper authority in writing, are hereby empowered, whenever they may deem it necessary in pursuance of their duties, to enter into, examine, investigate, inspect and view all ground, public buildings, factories, slaughter houses, packing houses, abattoirs, dairies, bakeries, manufactories, hotels, restaurants and all other public places and public buildings where they may deem it proper to enter for the discovery and suppression of disease and for the enforcement of the rules, regulations and ordinances of the sanitary code for Texas after it has been adopted, promulgated and published by the board for the enforcement of any and all health laws, sanitary laws or quarantine regulations of this state. (Id. sec. 14.)

Art. 4537. Investigations by board; powers and duties of court.—The members of said board of health and its officers are severally authorized and empowered to administer oaths and to summon witnesses and compel their attendance in all matters proper for the said board to investigate, such as the determination of nuisances, investigation of public water supplies, investigation of any sanitary conditions within the state, investigation of the existence of infection, or the investigation of any and all matters requiring the exercise of the discretionary powers invested in said board and its officers and members, and in the general scope of its authority invested by this chapter. The several district judges and courts are hereby charged with the duty of aiding said board in its investigations and in compelling due observance of the provisions of this chapter; and, in the event any witness summoned by said board or any of the officers or members of the same shall prove disobedient or disrespectful to the lawful authority of such board, officer or member, such person shall be punished by the district court of the county in which such witness is summoned to appear as for contempt of said district court. (Id. sec. 15.)

Art. 4538. Office of county physician abolished; office of county health officer substituted.—The office of county physician is abolished within the several organized counties of this state, and instead the office of county health officer is created; and such office of county health officer shall be filled by a competent physician legally qualified to practice under the laws of the state of Texas and of reputable professional standing. (Id. secs. 17–18.)

Art. 4539. Qualification, appointment and compensation of county health officer.—It is hereby made the duty of the commissioners' court by a majority vote in each organized county to appoint a proper person for the office of county health officer for his county, who shall hold office for two years and until his successor shall be appointed and qualify, unless sooner removed for cause. Said county health officer shall take and subscribe to the constitutional oath of office, and shall file a copy of such oath of office and a copy of his appointment with the Texas state board of health; and, until such copies are so filed, said officer shall not be deemed legally qualified. Compensation of said county health officer shall be fixed by the commissioners' court; provided, that no compensation or salary shall be allowed, except for services actually rendered. (Id. sec. 19.)

Art. 4540. Office of city health officer substituted for city physician.—The office of city physician for the several incorporated cities and towns within this state is abolished, and instead created the office of city health officer; and such office of city health officer shall be filled by a competent physi-

cian, legally qualified to practice medicine within this state, of reputable professional standing. (Id. secs. 20, 21.)

Art. 4541. City health officer.—The city council or the city commissioners, as the case may be, of each incorporated city and town within this state shall elect a qualified person for the office of city health officer by a majority of the votes of the city council or city commission, as the case may be, except in cities which may be operated under a charter providing for a different method of selecting city physicians, in which event the office of city health officer shall be filled as is now filled by the city physician, but in no instance shall the office of city health officer be abolished. The city health officer, after appointment, shall take and subscribe to the constitutional oath of office, and shall file a copy of such oath and a copy of his appointment with the Texas state board of health, and shall not be deemed to be legally qualified until said copies shall have been so filed. (Id. sec. 22.)

Art. 4542. City health officers to be appointed by board, when.—In case the authorities hereinbefore mentioned shall fail, neglect or refuse to fill the office of county or city health officer as in this chapter provided, then the Texas state board of health shall have the power to appoint such county or city health officer to hold office until the local authorities shall fill such office, first having given ten days notice in writing to such authority of the desire for such appointment. (Id. sec. 23.)

Art. 4543. Duties of county health officer.—Each county health officer shall perform such duties as have heretofore been required of county physicians, with relation to caring for the prisoners in county jails and in caring for the inmates of county poor farms, hospitals, discharging duties of county quarantine and other such duties as may be lawfully required of the county physician by the commissioners' court and other officers of the county, and shall discharge any additional duties which it may be proper for county authorities under the present laws to require of county physicians; and, in addition thereto, he shall discharge such duties as shall be prescribed for him under the rules, regulations and requirements of the Texas state board of health, or the president thereof, and is empowered and authorized to establish, maintain and enforce quarantine within his county. He shall also be required to aid and assist the state board of health in all matters of local quarantine, inspection, disease prevention and suppression, vital and mortuary statistics and general sanitation within his county; and he shall at all times report to the state board of health, in such manner and form as it shall prescribe, the presence of all contagious, infectious and dangerous epidemic diseases within his jurisdiction; and he shall make such other and further reports in such manner and form and at such times as said Texas state board of health shall direct, touching such matters as may be proper for said state board of health to direct; and he shall aid said state board of health at all times in the enforcement of its proper rules, regulations, requirements and ordinances, and in the enforcement of all sanitary laws and quarantine regulations within his jurisdiction. (Id. sec. 24.)

Art. 4544. County health officer under direction of board; proceedings against for failure in duty.—In all matters with which the state board of health may be clothed with authority, said county health officer shall at all times be under its direction; and any failure or refusal on the part of said county health officer to obey the authority and reasonable commands of said state board of health shall constitute malfeasance in office, and shall subject said county health officer to removal from office at the relation of the state board of health; and pending charges for removal said county health officer shall not receive any salary or compensation; which cause shall be tried in the district court of the county in which such county health officer resides. (Id. sec. 25.)

Art. 4545. Duty of health officers as to indigent consumptives.—Hereafter, when any indigent person suffering from tuberculosis is sojourning in any other county than his residence makes application for financial relief to any county health officer or commissioners' court of any county in this state, or the mayor or health officer of any city in this state, before any relief is granted, he shall make an affidavit that he is indigent and unable to provide for himself. When such affidavit is made, it shall be the duty of the county health officer, mayor, city health officer or county judge to forthwith notify the state health officer of the case, giving the name of the patient and the place of his residence. If such patient is a bona fide citizen of any county within the state of Texas, it shall be the duty of the state health officer, and he shall have the power, to purchase a ticket for said patient and furnish him with sufficient additional means to purchase food en route to his former home, and return such patient thereto. (Id. sec. 1.)

Art. 4546. County health officers under direction of board; proceedings against for failure of duty.—In the event any county health officer shall fail or refuse to properly discharge the duties of his office, as prescribed by this chapter, the state board of health shall file charges with the commissioners' court for the proper county, specifying wherein such officer has failed in the discharge of his duties; and at the same time the state board of health shall file a protest with the county clerk and the county treasurer against the payment of further fees, salary or allowance to said county health officer; and, pending such protest and charges, it shall not be lawful for such county health officer to be paid or to receive any subsequently earned salary, fees or allowances on account of his office, unless such charges are shown to be untrue and are not sustained. After five days notice in writing to said county health officer, the commissioners' court shall hear the charges, at which hearing the county judge shall preside, and the state board of health may be represented. Either party, the state board or the county health officer, may appeal from the decision of said court to the district court of the county; and, pending such appeal, no salary, fees or allowance shall be paid to said county health officer for any subsequent earned salary; and,

in the event the charges shall be sustained, the county health officer shall be charged to pay all costs of court, and shall forfeit all salary, fees and allowances earned subsequent to the date of filing the charges and protests. (Id. sec. 26.)

Art. 4547. No cost or appeal bond required of board.—No bond for costs, or bond on appeal, or writ of error shall be required of the state board of health or state officials in any actions brought or maintained under this chapter. (Id. sec. 27.)

Art. 4548. Duties of city health officer enumerated.—Each city health officer shall perform such duties as may now or hereafter be required by the city councils and ordinances of city physicians, and such duties as may be required of him by general law and city ordinances with regard to the general health and sanitation of towns and cities, and perform such other duties as shall be legally required of him by the mayor, councils, commissioners or the ordinances of his city or town. He shall, in addition thereto, discharge and perform such duties as may be prescribed for him under the directions, rules, regulations and requirements of the state board of health and the president thereof. He shall be required to aid and assist the state board of health in all matters of quarantine, vital and mortuary statistics, inspection, disease prevention and suppression and sanitation within his jurisdiction. He shall at all times report to the state board of health, in such manner and form as shall be prescribed by said board of health, the presence of all contagious, infectious and dangerous epidemic diseases within his jurisdiction, and shall make such other and further reports in such manner and form and at such times as said state board of health shall direct, touching all such matters as may be proper for the state board of health to direct, and he shall aid said state board of health at all times in the enforcement of proper rules, regulations and requirements in the enforcement of all sanitary laws, quarantine regulations and vital statistics collection, and perform such other duties as said state board of health shall direct. (Id. sec. 28.)

Art. 4549. City health officer may be removed, when and how.—In all matters in which the state board of health may be clothed with authority, said city health officer shall at all times be governed by the authority of said board of health, and failure or refusal on the part of said city health officer to properly perform the duties of his office as prescribed by this chapter shall constitute malfeasance in office, and shall subject said city health officer to removal from office at the relation of the state board of health, which cause shall be tried in the district court of the county in which such city health officer resides. (Id. sec. 28.)

Art. 4550. Board to file charges against city health officer.—In the event of a failure or refusal of said city health officer to properly discharge his duties of his office, the state board of health shall file charges against said city health officer with the council or city commission of the proper town or city, which shall specify in what particulars said city health officer has failed in respect to the discharge of his duties, and shall at the same time file a protest with the city secretary and city treasurer against the payment to said city health officer of further fees, salary or allowance; and, pending such charges and protest, no further salary, fees or allowance shall be paid to said city health officer, unless such charges are shown to be untrue and not sustained. After five days notice in writing to said city health officer, the charges shall be heard before the mayor and council, or the mayor and commission, of the town or city in which said city health officer shall reside, at which hearing the state board of health may be represented, and either the city health officer or the state board of health shall have the right of appeal to the county court of the county in which the city or town is situated; and, if said charges be sustained, said city health officer shall be adjudged to pay all costs of court, and shall forfeit all salary, fees and allowances accrued subsequent to the date of filing of the charges and protest originally and which may be due him on account of his office. (Id. sec. 28.)

Art. 4551. Compensation of city health officer.—The compensation of city health officer shall be fixed by the mayor and council, or the mayor and commissioners, of the respective towns and cities within this state. (Id. sec. 29.)

Art. 4552. Annual conference of county and city health officers.—There shall be an annual conference of county health officers and city health officers of this state at such time and place as the state board of health shall designate, at which conference the president or some member of the state board of health shall preside. The several counties, towns and cities may provide for and pay the necessary expense of its county health officer or city health officer for attendance upon said conference. (Id. sec. 30.)

Art. 4553. Legal proceedings in name of board; duty of attorney general in regard to.—In all matters wherein the board of health shall invoke the assistance of the courts, the action shall run in the name of the state of Texas; and the attorney general shall assign a special assistant to attend to all legal matters of the board; and, upon demand of the board, it shall be the duty of the attorney general to promptly furnish the necessary assistance to the board to attend to all its legal requirements. (Id. sec. 31.)

CHAPTER TWO

SANITARY CODE

Art. 4553a. Sanitary code.—The following rules are hereby enacted as the "Sanitary Code for Texas," adopted for the promotion and protection of the public health and for the general amelioration of the sanitary and hygienic condition within this state, for the suppression and prevention of infectious and contagious diseases, and for the proper enforcement of quarantine, isolation and control of such diseases, to wit: (Acts 1911, p. 173, sec. 1, amending Acts 1909, p. 340, sec. 10, and superseding Arts. 4529–4533, Rev. St. 1911.)

QUARANTINE AND DISINFECTION

Rule 1. **Physicians shall report contagious and pestilential diseases and deaths from same.**—Every physician in the

state of Texas shall report in writing or by an acknowledged telephone communication to the local health authority, immediately after his or her first professional visit, each patient he or she shall have or suspect of suffering with any contagious disease, and if such disease is of a pestilential nature, he shall notify the president of the state board of health at Austin by telegraph, or telephone at state expense, and he or she shall report to the said health authority every death from such disease immediately after it shall have occurred. The attending physician is authorized and it is made his duty to place the patient under restrictions of character described hereinbelow in the case of each and every respective disease. (Acts 1911, p. 173, sec. 1.)

Rule 2. **Local health authority means city or county health officer or local board of health.**—For the purpose of these regulations, the phrase "local health authority" shall be held to designate the city or county health officer, or local board of health, within their respective jurisdictions. (Id.)

Rule 3. **"Contagious diseases" shall include Asiatic cholera, etc., and be reported to the president of the state board of health.**—The phrase "contagious disease" as used in these regulations shall be held to include the following diseases, whether contagious or infectious; and as such shall be reported to all local health authorities and by said authorities reported in turn to the president of the state board of health: Asiatic cholera, bubonic plague, typhus fever, yellow fever, leprosy, smallpox, scarlet fever (scarlatina), diphtheria (membranous croup), epidemic cerebro-spinal meningitis, dengue, typhoid fever, epidemic dysentery, trachoma, tuberculosis and anthrax. (Id.)

Rule 4. **City and county health officers to keep record of contagious diseases.**—City and county health authorities shall keep a careful and accurate record of all cases of contagious diseases as reported to them, with the date, name, age, sex, race, location and such other necessary data as may be prescribed by the state board of health. And they shall also make a monthly report of all contagious diseases, of which they may be cognizant, to the president of the state board of health, before the fifth of the following month, upon blank forms provided by the state board of health. The reports on tuberculosis are to be privately kept and are to be considered in the light of a confidential communication, not for the purpose of isolation, but with the object of education in sanitary precautions, and to supply literature of the state board of health. (Id.)

Rule 5. **Rules and regulations as to quarantine and disinfection to be observed by health authorities, etc.**—The following rules of instruction for the regulation of quarantine, isolation and disinfection in the several contagious diseases, hereinbefore mentioned, are to be observed by all boards of health, health officers, physicians, school superintendents and trustees, and others. All health authorities of counties, cities, and towns in this state are hereby directed and authorized to establish local quarantine, hold in detention, maintain isolation and practice disinfection as hereinafter provided for, of all (such infected) persons, vehicles or premises which are infected or are suspected of being infected with any of the above named diseases whenever found.

(a) Absolute quarantine includes, first, absolute prohibition of entrance to or exit from the building or conveyance except by officers or attendants authorized by the health authorities, and the placing of guards if necessary to enforce this prohibition; second, the posting of a warning placard stating "contagious disease," in a conspicuous place or places on the outside of the building or conveyance; third, the prohibition of the passing out of any object or material from the quarantined house or conveyance; fourth, provision for conveying the necessaries of life under careful restrictions to those in quarantine.

(b) Modified quarantine includes, first, prohibition of entrance and exit, and in absolute quarantine except against certain members of the family authorized by the health authorities to pass in and out under certain definite restrictions; second, the placing of a placard as before; third, isolation of patient and attendant; forth, prohibition of the carrying out of any object or material unless the same shall have been thoroughly disinfected.

(c) Absolute isolation includes, first, the confinement of the patient and attendants to one apartment or suite of apartments, to which none but authorized officers or attendants shall have admission; second, screening of room and entire house if necessary with not less than 16-mesh wire gauze; third, the prohibition of passing out of the sick room of any object or material until the same has been thoroughly disinfected; fourth, protection of the air of the house by hanging a sheet, kept constantly moist with a disinfectant solution, over the doorway of the patient's room or rooms and reaching from the top of the floor; fifth, if in the opinion of the local health authority the patient can not be treated, with reasonable safety to the public, at home, the removal of the patient and exposures to a contagious disease hospital or pest house.

(d) Modified isolation includes the confinement of the patient and attendants to one room or suite of rooms, to which none but authorized officers or attendants shall have admission, but allowing the attendants to pass out of the room after disinfection of person and complete change of clothing; second, screening as above mentioned; third, the prohibition of passing any object or material out of the sick room until it has been disinfected; fourth, protection of the doorway as before.

(e) Special isolation includes, first, prohibition of patient from attending any place of public assemblage; second, the providing of separate eating utensils for the patient; third, prohibition of sleeping with others or using the same towels or napkins.

(f) By complete disinfection is meant disinfection during illness, under direction of attending physician, of patient's body, of all excretions or discharges of patient and of all articles of clothing and utensils used by patient, and after recovery, death or removal, the disinfection of walls, woodwork, furniture, bedding, etc.

(g) By partial disinfection is meant disin-

fection of discharges or excretions of patients and their clothing and the room or rooms occupied by the patient during illness. (Id.)

Rule 6. **Disinfection shall be done according to direction of state board of health.**—All disinfection prescribed in these regulations shall be a part of the control of the disease, and shall be done according to the direction of the Texas state board of health in its circular on disinfection. (Id.)

Rule 7. **Health authority shall placard all houses where contagious diseases exist.**—Upon notice that smallpox, diphtheria, scarlet fever, or other quarantinable disease exists within his jurisdiction, it shall be the duty of the local health authority to have the house in which such disease prevails placarded by placing a yellow flag or card not less than eight inches wide and twelve inches long with the words "contagious disease" and the quarantine regulations printed thereon in a conspicuous place on said house. (Id.)

Rule 8. **Persons forbidden going to or leaving quarantined premises.**—After the house is flagged, or placarded, all persons, except the attending physician or health officer, are forbidden from going in or leaving such premises, without the permission of the local health authority, and the carrying off, or causing to be carried off, of any material whereby such disease may be conveyed, is prohibited until after the disease has abated and the premises, dwelling and clothing have been disinfected and cleaned as the local health authority may direct. (Id.)

Rule 9. **Person affected or exposed to contagious diseases shall obey health authority.**—It shall be the duty of all persons infected with any contagious disease, or who, from exposure to contagion from such disease, may be liable to endanger others who may come in contact with them to strictly observe such instructions as may be given them by any health authority of the state, in order to prevent the spread of such contagious disease, and it shall be lawful for such health authorities to command any person thus infected or exposed to infection to remain within designated premises for such length of time as such authority may deem necessary. (Id.)

Rule 10. **Persons having certain diseases shall not be allowed on thoroughfares.**—All persons having any quarantinable disease are prohibited from riding on any public vehicle or conveyance, and form being upon public thoroughfares or in public assemblages. (Id.)

Rule 11. **Placard shall not be destroyed or removed.**—No person, or persons, shall alter, deface, remove, destroy or tear down any card posted by a local health authority. The occupant or person having possession or control of a building upon which a quarantine notice has been placed shall within twenty-four (24) hours after the destruction or removal of such notice by other than the proper health authority, notify the local health authority of such destruction or removal. (Id.)

Rule 12. **Quarantinable pestilential diseases; absolutely quarantined.**—In the management and control of the following pestilential diseases: cholera, plague, typhus fever and yellow fever, the house must be placarded, premises placed in absolute quarantine, patient in absolute isolation and a complete disinfection done upon death or recovery taking place. (Id.)

Rule 13. **Quarantinable dangerous contagious diseases; modified quarantine.**—In the management and control of leprosy, smallpox, scarlet fever (scarlatina), diphtheria (membranous croup), and dengue, it is required that the house be placarded, premises placed in modified quarantine, patient in modified isolation, and complete disinfection done upon death or recovery. (Id.)

Rule 14. **Non-quarantinable contagious diseases.**—The management and control of typhoid fever, cebor-spinal meningitis (epidemic), epidemic dysentery, trachoma (acute catarrhal conjunctivitis), tuberculosis and anthrax require special isolation and partial disinfection. (Id.)

Rule 15. **Quarantinable for school purposes; barred from school twenty-one days.**—Persons suffering from measles, whooping cough, mumps, German measles (rotheln) and chickenpox, shall be required to be barred from school for twenty-one days (at the discretion of the local health officer) from date of onset of the disease, with such additional time as may be deemed necessary, and may be readmitted on a certificated [certificate] by him attesting to their recovery and non-infectiousness. (Id.)

Rule 16. **Minor diseases to be excluded during illness.**—Those actually suffering from tonsilitis, scabies (itch), impetigo contagiosa, favus, shall be excluded from school during such illness and be readmitted on the certificate of the attending physician attesting to their recovery and non-infectiousness. (Id.)

Rule 17. **Above rules not to abrogate other measures.**—Provided, that the above requirements shall in no sense be construed as abrogating any additional precautionary measures enforced by local health authorities, but it is expected that additional restrictive measures will be taken, at the discretion of the local health authorities when the necessity arises, more especially in the more densely populated cities and towns, or when violations of quarantine occur. (Id.)

Rule 18. **Health authorities to investigate reported cases.**—Whenever a local health authority is informed or has reason to suspect that there is a case of smallpox, scarlet fever, or other reportable disease within the territory over which he has jurisdiction, he shall immediately examine into the facts of the case and shall adopt the quarantine or employ the sanitary measures as herein provided. (Id.)

Rule 19. **Health authority shall see that quarantine and disinfection is carried out.**—Within his jurisdiction, each and every local health authority shall see that the quarantining or disinfection of any house, building, car, vessel, or vehicle, or any part thereof and of any articles therein likely to retain infection, is carried out, and that all persons who have been in quarantine, are required to take a disinfecting bath before the same are released. And in the event of the disease having been smallpox, all persons exposed shall be isolated for eighteen days

from the time of last exposure unless successfully vaccinated. (Id.)

Rule 20. **Premises occupied by persons with contagious diseases to be disinfected before reoccupied.**—No person shall offer for hire or cause or permit any one to occupy apartments previously occupied by a person ill with smallpox, scarlet fever, diphtheria, or tuberculosis, or any quarantinable disease, until such apartments shall have been disinfected under the supervision of the local health authority. (Id.)

Rule 21. **On failure to disinfect premises they shall be placarded.**—Whenever these rules and regulations, or whenever the order or direction of the local health authority requiring the disinfection of articles, premises or apartments, shall not be complied with, or in case of any delay, said authority shall forthwith cause to be placed upon the door of the apartment or premises a placard as follows: "These apartments have been occupied by a patient suffering with a contagious disease and they may have become infected. They must not be again occupied until my orders directing the renovation and disinfection of same have been complied with. This notice must not be removed, under penalty of the law, except by an authorized health official." (Id.)

Rule 22. **Nurses and midwives shall report redness of eyelids or inflammation to health authority.**—Whenever any nurse, midwife or other person not a legally qualified practitioner of medicine shall notice inflammation of the eyes or redness of the lids in a new-born child under his or her care, it shall be the duty of such person to report the same to the local health authority, or in his absence, any reputable physician, within twelve hours of the time the disease is first noticed. (Id.)

Rule 23. **Householders or heads of families to report contagious diseases.**—Every hotel proprietor, keeper of a boarding house or inn, and householder or head of a family in a house wherein any case of reportable contagious disease (including tuberculosis) may occur, shall report the same to the local health authority within twelve hours of the time of his or her first knowledge of the nature of such disease, unless previous notice has been given by the physician in attendance; and in cases of quarantinable diseases until instructions are received from the said local health authority shall not permit any clothing or other article which may have been exposed to infection to be removed from the house; nor shall any occupant of said house change his residence elsewhere without the consent of the said local health authority. (Id.)

Rule 24. **Persons suffering from reportable diseases shall not work where food products are produced.**—No person suffering with any reportable disease, or who resides in a house in which there exists a case of smallpox, scarlet fever, diphtheria, or typhoid fever, shall work or be permitted in or about any dairy, or any establishment for the manufacture of food products, until the local health authority has given such a person a written certificate to the effect that no danger to the public will result from his or her employment or presence in such establishment. (Id.)

Rule 25. **Health authority shall send attending physician printed matter.**—Immediately after being notified of any case of smallpox, scarlet fever, ditheria [diphtheria], typhoid fever, or tuberculosis, the local health authority shall send to the attending physician, or with his approval directly to the patient the printed matter published by the state board of health relative to the prevention and control of such diseases. (Id.)

Rule 26. **Persons with trachoma or contagious catarrhal conjunctivitis to be excluded from schools.**—Persons afflicted with trachoma, granulated lids, or contagious catarrhal conjunctivitis must be excluded from schools, public assemblages, and from close association with other individuals, unless they are under the constant care and strict supervision of a competent physician, and hold a certificate from said physician stating that active inflammation has subsided, said certificate to be countersigned by a local health authority. (Id.)

Rule 27. **Schools temporarily closed and disinfected.**—A school house wherein a child suffering from smallpox, scarlet fever or diphtheria has been present, shall be deemed infected and must be temporarily closed and thoroughly disinfected and cleaned under the supervision of the local health authority before the reopening of the school. (Id.)

Rule 28. **School may be reopened after disinfection and vaccination.**—In the event of the aforementioned disease being smallpox and in case the board of trustees having passed a regulation requiring a successful vaccination of all teachers and pupils, the school may be reopened immediately after the disinfection and cleaning, and all teachers and pupils who have been successfully vaccinated may return; otherwise the school shall be kept closed eighteen days or until the local health authority directs otherwise. (Id.)

Rule 29. **Health authority to notify superintendents of pupils from infected houses.**—The local health authority shall notify the superintendent or principal of any school of the locations of quarantinable diseases, and if the superintendent or principal finds any attendants in such school who live in said houses, he shall deny them admission to the said schools, only admitting them again upon presenting a certificate from the attending physician, countersigned by the local health authority, that there is no longer danger from contagion. (Id.)

Rule 30. **Children with contagious diseases shall not attend school.**—No superintendent, principal or teacher of any school, and no parent, master or guardian of any child or minor, having the power and authority to prevent, shall permit any child or minor, having any quarantinable disease, or any child residing in any house in which any such disease exists or has recently existed, to attend any public, private, parochial, church or Sunday school until the requirements of these rules shall have been complied with. (Id.)

Rule 31. **Health authorities to assume control of quarantine in their jurisdiction.**—In all incorporated cities and towns the city health authorities shall assume control and management of contagious diseases and exposures and practice quarantine, iso-

lation and disinfection as herein provided. In those portions of all counties in this state, outside of incorporated cities and towns, the county health officer shall assume management and control of contagious diseases and exposures and practice quarantine, isolation and disinfection as herein provided. (Id.)

Rule 32. **These rules not to prevent local rules of quarantine if no conflict.**—Nothing contained in these regulations shall be construed to prevent any city, county or town from establishing any quarantine which they may think necessary for the preservation of the health of the same; provided, that the rules and regulations of such quarantine be not inconsistent with the provisions of these regulations and be consistent with and subordinate to said provisions, and the rules and regulations prescribed by the governor and state board of health. It shall be the duty of the local health authority to at once furnish the president of the state board of health with a true copy of any quarantine orders and regulations adopted by said local authorities. (Id.)

Rule 33. **Health authorities may pass through quarantine lines.**—All health authorities shall have the privilege and shall be allowed to pass through all quarantine lines, whether instituted at the instance of state or local authorities, they first requesting permission and acquainting the officers or guards in charge with the fact of their being properly authorized health officers, and with the additional statement that they are fully acquainted with the nature of the disease that they are visiting, and further that they will take proper precautions to prevent carrying the infection themselves. (Id.)

VITAL STATISTICS

Rule 34. **Physicians, surgeons, midwives and parents shall report births.**—All physicians, surgeons or accoucheurs (midwives) who may attend at the birth of a child, or, in the absence of such attendance, either parent of the child, shall report the fact, together with all statistical data relating thereto, within five days from time of the birth to the city or county registrar as hereinafter provided for. (Acts 1911, p. 173, sec. 1.)

Rule 35. **Undertakers shall report deaths.**—Every person acting as undertaker shall file with the proper registrar a certificate of death and all persons furnishing a coffin or box in which to bury the dead shall be deemed undertakers. (Id.)

Rule 36. **City and county "registrar."**—For the purposes of these rules and regulations the phrase "county registrar" shall be held to designate the clerk of the county court, when a birth or death is returnable from a county, outside of incorporated cities or towns; and in all such incorporated cities and towns the term city registrar shall be held to designate the city health officer or other city official, acting as registrar for said city, and all returns of births and deaths accruing [occurring] outside of incorporated cities and towns shall be made to the county registrar of the county in which said births and deaths occur; all returns of births and deaths occurring within any incorporated city or town shall be made to the city registrar of the city or town in which said births and deaths occur, and all returns of deaths where the bodies are buried within any incorporated city or town shall be made to the city registrar. (Id.)

Rule 36a. **Fees of local registrars; accounts; audit and approval.**—The city or county registrar shall receive a fee of twenty-five cents for each birth and for each death certificate completely filled in and properly registered and filed by him with the State Registrar as required by the rules and regulations of the Sanitary Code for Texas and the provisions of this Act, and, all accounts payable to a county registrar shall be paid by the county treasurer out of the general fund of the county; provided, however, that each account shall in addition to the approval of the commissioners' court of the county, or the county auditor, as the case might be, bear approval of the State Registrar; and provided, further, that the State Registrar shall, not later than December 1, 1917, and each year thereafter, certify to the commissioners' court of the several counties the number of births and death certificates properly returned to the Bureau of Vital Statistics during the preceding year, together with the name and the amount due each county registrar at the rate fixed herein; provided, further, that all accounts payable to a city registrar shall be approved by the city council, or city commission, as the case might be, and also bear the approval of the State Registrar, and the same shall be paid out of the general fund of the city; provided, however, that in all incorporated cities or towns where the official who performs the duties of city registrar receives any salary, compensation or reward for his services that the 25 cents provided for each certificate herein shall not be allowed. (Acts 1917, ch. 129, sec. 6.)

Rule 36b. **Appointment of precinct registrars on failure of city and county registrars to perform their duties; fees.**—That for the purpose of the efficient enforcement of this Act, when any county registrar shall fail or refuse to secure and return to the Bureau of Vital Statistics the birth and death certificates required to be secured and returned by him as such county registrar, then the State Health Officer, upon the written recommendation of the State Registrar, shall petition the commissioners' court of such county to appoint some qualified person to perform the duties of local or precinct registrar for each commissioners' precinct within such county, provided that such person so appointed shall be a bona fide resident of the county and of such commissioners' precinct, and shall receive the 25 cents provided herein for each birth or death certificate; provided, further, that such local or precinct registrar shall forward the original birth or death certificate to the Bureau of Vital Statistics in the same manner as provided by law for city and county registrars, and shall also send on same date a copy or duplicate of such birth or death certificate to the county clerk to be recorded by him in the record kept by him in his office for that purpose; provided, further, that when any city registrar shall fail or refuse to secure and return to the Bureau of Vital Statistics the birth and death certificates required to be secured and returned by him as such city registrar, then the State Health Officer, upon the written recommendation of the State

Registrar, shall petition the city council, or commission, of such city or town to appoint some qualified person to perform the duties of city registrar, provided that such person so appointed shall be a bona fide resident of such city or town, and shall receive 25 cents provided herein for each birth or death certificate. (Id. sec. 7.)

Rule 36c. **Appointment of registrars for inaccessible precincts; fees.**—Whenever a commissioners' precinct of a county is located so as not to be conveniently accessible to the county registrar, and that fact is brought to the knowledge of the State Registrar, or the County Health Officer shall recommend in writing that the State Health Officer petition the commissioners' court of such county to appoint some qualified person to perform the duties of precinct registrar for such precinct, and it shall be the duty of the commissioners' court, upon receipt of such petition from the State Health Officer, to appoint such precinct registrar; provided, that such registrar shall possess the qualifications, perform the duties, and receive the rate of compensation prescribed for precinct registrars by the provisions of Section 7 [Rule 36b] of this Act. (Id., sec. 7a.)

Rule 37. **In incorporated cities and towns, city health officer to act as city registrar, etc.**—Each and every incorporated city or town in the state of Texas shall constitute a primary registration district. In such incorporated city or town, the city health officer shall be and shall be known as the city registrar. Each city registrar shall appoint a deputy whose duty it shall be to act in his stead in case of absence, illness or disability, and both city registrar and his deputy shall be subject to all rules and regulations herein mentioned. Provided, that in cities or towns where the city secretary or other city officials are, at the date of promulgation of the sanitary code for Texas, officiating as registrars of births and deaths under local ordinances which require a burial permit, based upon a duly accredited death certificate, before allowing the dead to be buried, such officers shall be continued as city registrars in and for such cities and towns, but shall be subject to the rules and regulations herein contained. That the body of any person whose death occurs in any said registration district shall not be interred, deposited in a vault or tomb, cremated or otherwise disposed of, or removed or transported from said registration district until a permit for burial, removal or other disposition shall have been properly issued by the city registrar of the registration district in which the death or interment occurs. And no such burial or removal permit shall be issued by any registrar until a complete and satisfactory certificate and return of the death has been filed with him as hereinafter provided. Provided, that a transit permit issued in accordance with the law and health regulations of the place where death occurred, whether in Texas or outside of the state, may be accepted by the city registrar of the district where the body is to be interred or otherwise finally disposed of, as a basis upon which he shall issue a local burial permit, in the same way as if the death occurred in his city, but shall plainly enter on the face of the copy of the record which he shall make for return to the state registrar the fact that it was a body shipped in for interment, and give the actual place of death. But when a body is removed from a district in Texas to an adjacent or nearby district for interment, not requiring the use of a common carrier or the issue of a transit permit, then the city registrar's burial permit from the district where death occurred may be accepted as authority for burial. It shall be the duty of the aforementioned city registrar to record in a permanently bound book, which shall be secured from the city for that purpose, all births and deaths which shall occur within their respective cities and towns, together with such statistics and data as shall be furnished him by the birth certificates and death certificates herein elsewhere provided for, and it shall be the duty of said city registrar to transmit all such original birth and death certificates received during the preceding month to the state registrar of vital statistics at Austin on or before the tenth day of the following month. (Acts 1911, p. 173, sec. 1.)

Rule 37a. **Burial or removal permit; certificate of death.**—The body of any person whose death occurs within the State of Texas, or which may be found dead within the State of Texas, shall not be interred or deposited in a vault, or tomb, or cremated, or otherwise disposed of, or removed from or into any registration district, or be held temporarily pending further disposition, for a period of more than seventy-two (72) hours after death, unless a permit for burial, removal or other disposition thereof shall have been properly issued by the registrar of the city, county or precinct in which the death occurred or the body was found; provided, however, that this section shall not apply to counties of less than two thousand (2,000) inhabitants; provided, further, that no such burial or removal permit shall be issued by any registrar until a complete certificate of death has been filed with him as herein provided; and provided, further, that when a body is transported from one registration district to another district, or from another State into another registration district within this State, for burial or other disposition, the transmit or removal permit issued in accordance with the law shall be accepted by the registrar of the district into which the body is transported for burial or other disposition as a basis upon which he may issue a local burial permit; and provided, further, that the registrar shall note upon the face of such permit the fact that the body was shipped in for burial or other disposition, and shall state thereon the actual place of death; and provided, further that no registrar shall receive any fee or pay for the issuance of such permits. (Acts 1917, ch. 129, sec. 11.)

Rule 38. **Form of certificate.**—All certificates of births and deaths shall be made in the manner prescribed by the state board of health and in the form of certificate prescribed by the state registrar to the aforementioned registrars. (Acts 1911, p. 173, sec. 1.)

Rule 38a. **Data to be shown by death certificate.**—Each death certificate shall contain the following items, and which are hereby declared to be personal and statistical particulars and medical particulars necessary to complete such certificate:

(1) Place of death, including city or village;
(2) Full name of decedent;
(3) Sex;
(4) Color and race;
(5) Conjugal relations (single, married, widowed, or divorced);
(6) Date of birth (year, month and day);
(7) Age (years, month and days);
(8) Occupation described in full;
(9) Place of birth;
(10) Name of father;
(11) Birthplace of father;
(12) Maiden name of mother;
(13) Birthplace of mother;
(14) Signature and address of informant;
(15) Date of death (give year, month and day);
(16) Certification as to the medical attendance on the decedent, fact and time of death, time last seen alive and cause of death, with contributory cause, if any, and duration of each, and whether due to dangerous or unsanitary conditions of employment, together with signature and address of physician or official making the medical certificate and date of certification.
(17) Length of residence at place of death.
(18) Place of burial or removal and date of same.
(19) Signature of undertaker or person acting as such, and all death certificates shall be made on a form and of a size prescribed by the State Registrar of Vital Statistics, and provided subdivision five (5) to thirteen (13), inclusive, may be omitted, if such information is not obtainable, and the death certificate shall be so endorsed. (Acts 1917, ch. 129, sec. 8.)

Rule 38b. **Data to be shown by birth certificate.**—Each birth certificate shall contain the following items, and which are declared to be necessary statistical data to complete such certificate:
(1) Place of birth, county, city or village;
(2) Full name of child.
(3) Sex of child.
(4) Whether twin, tripplet, or plural birth.
(5) Whether legitimate or illegitimate.
(6) Date of birth, year, month and day.
(7) Full name of father.
(8) Residence of father.
(9) Color or race of father.
(10) Age of father at last birthday.
(11) Occupation of father.
(12) Birthplace of father.
(13) Maiden name of mother.
(14) Residence of mother.
(15) Color or race of mother.
(16) Age of mother at last birthday.
(17) Birthplace of mother.
(18) Occupation of mother.
(19) Number of children born to this mother prior to this birth.
(20) Number of children of this mother living.
(21) The certification of attending physician, surgeon or midwife, as to attendance at birth, including the statement of the year, month, day and hour of birth, and whether the child was born alive or was still-born; provided that such certificate shall be signed by the physician or surgeon, or mid-wife, with the date of signature and address of such physician, or surgeon, or mid-wife; provided, further, that if there was no physician, surgeon, or mid-wife in attendance, then the father or mother of the child, or the owner of the premises, shall notify the local registrar within five days following the birth, and such registrar shall fill in this item and the party so notifying the registrar shall sign such certificate, and such certificate shall fully and completely contain all the facts in connection with such birth; and provided, further, that all birth certificates shall be upon a form and of a size prescribed by the State Registrar of Vital Statistics. (Id. sec. 9.)

Rule 39. **Undertaker shall fill out certificate and obtain particulars.**—In case of death (including stillbirths) in which any undertaker buries the dead or assists at such burial, it shall be the duty of such undertaker to accurately and properly fill out the death certificate as provided by the state registrar, in so far as regards the "personal and statistical particulars," and further, he shall obtain from the physician or coroner the answers to questions under the heading of "medical particulars" of the death certificate; said death certificate to be mailed or handed in by the undertaker to the county registrar within five days after said death occurs; provided, that in case the undertaker cannot communicate with the physician or coroner within the five days specified, he shall mail the death certificate to such physician or coroner, as accurately and properly filled out as possible, for such physician or coroner to complete the "medical particulars" of the death certificate, in which event the aforesaid physician or coroner shall make report to the proper registrar. (Acts 1911, p. 173, sec. 1.)

Rule 40. **Physicians shall promptly give medical particulars to undertaker.**—It shall be the duty of every physician in the event of a death (including stillbirths) occurring in any case at which said physician is the last in attendance, to promptly and accurately fill out the questions in the "medical particulars" of the death certificate when the death certificate is presented by the undertaker. (Id.)

Rule 41. **Physician last in attendance shall report rural deaths.**—In the event of a death occurring in the rural districts of the state and no undertaker being in attendance or responsible for the report of the death, the physician last in attendance or the coroner, in the event of his being called in, shall accurately and completely fill out the certificate of death and transmit it to the county registrar. (Id.)

Rule 42. **Coroner shall give information, also head of house.**—In case of death (including stillbirths) where a coroner shall hold an inquest to ascertain the cause of death, the said coroner shall answer the questions (medical particulars) as in rule 39 to be answered by the attending physician, and answer them in as full and complete manner as the information from such coroner's inquest will permit; and when a person dies without medical attendance and does not require the attendance of a coroner, the head of the household where such death occurs, or the next of kin, shall immediately notify the local health authority who shall, after proper investigation, and, if deemed necessary by him, after an autopsy to determine the cause of death, issue a certificate of death. (Id.)

Rule 43. **Superintendents of hospitals to give information.**—If the deceased died in a hospital or other institution, the person acting as undertaker shall present the certificate to the superintendent or head of such institution for the special information indicated on the blank for such cases. The undertaker shall then fill in the other information above required and transmit the complete certificate to the proper registrar. (Id.)

Rule 44. **Undertakers shall report physicians for neglect of giving information.**—In the event of the neglect or refusal of the physician, coroner, superintendent or person in charge of any hospital or other institution to promptly and accurately fill out the death certificate as above required, and sign it, when so requested by an undertaker, the same shall be immediately reported by the undertaker to the state registrar for the purpose of prosecution. (Id.)

Rule 45. **Stillborn or those dead births of seven months gestation to be reported.**—All stillborn children (those dead at birth after seven months gestation) shall be registered as births and also as deaths, and a certificate of both the birth and the death shall be filed with the proper registrar, in the usual form and manner, the certificate of birth to contain in place of the name of the child, the word "stillborn." The "medical particulars" of the death certificate shall be signed by the attending physician, if any, or midwife, and shall state the cause of death as "stillborn," with the cause of the stillbirth, if known, whether a premature birth, and, if born prematurely, the period of uterine gestation, in months, if known. (Id.)

Rule 46. **Clerks shall record all statistical data.**—The clerk of the county court in every county in the state of Texas shall record all statistical data relating to such births and deaths as are reported to him from his county outside incorporated cities and towns in a permanently bound book which he shall secure and keep for that purpose, in form as supplied by the state registrar, and shall transmit the original certificates to the state registrar by the tenth of each month following the month in which they are received. (Id.)

Rule 47. **Sextons shall keep record.**—All sextons or superintendents of cemeteries are required to file all burial permits received and to record in a permanently bound book, the names of all persons interred, date of interment, place of burial, number of the grave or section of cemetery where buried and name of undertaker; and shall before the tenth of the following month make a report to the state Registrar of all deceased persons deposited in their respective cemeteries during the preceding month. (Id.)

Rule 48. **State registrar shall supply blanks, etc.**—The state registrar shall prepare, print and supply to all city and county registrars all blanks and forms used in reporting births and deaths or in otherwise carrying out the purposes of this regulation, and each county shall print and supply their county registrar and each city council supply their city registrar with a permanently bound book, in form prepared by the state registrar for recording all statistical data relating to births and deaths in their respective jurisdictions; and the state registrar shall prepare and issue such detailed instructions as may be required to secure the uniform observance of its provisions and the maintenance of a perfect system of registration. He shall carefully examine all certificates received and if any such are incomplete or unsatisfactory he shall require such further information to be furnished as may be necessary to make the record complete and satisfactory. And all physicians, midwives, informants or undertakers connected with any case, and all other persons having knowledge of the facts, are hereby required to furnish such information as they may possess regarding any birth or death upon demand of the state registrar, in person, by mail, or through the county or city registrar. He shall further arrange, bind and permanently preserve the certificates in a systematic manner. (Id.)

Rule 49. **City and county registrars shall furnish blanks to those required to report.**—It shall be the duty of the city and county registrars to supply blank forms of certificate and such instructions as are applied to them by the state registrar to all in their respective jurisdictions who are required to make reports under these regulations. (Id.)

Rule 50. **City and county registrars examine all certificates of birth and death.**—Each city and county registrar shall carefully examine each certificate of birth or death when received, and if any such are incomplete or unsatisfactory, he shall require such further information to be furnished as may be necessary to make the record complete and satisfactory. He shall number consecutively the certificates of birth and death, in two separate series, beginning with the "number one" for the first birth and first death in each calendar year. (Id.)

Rule 50a. **Certified copies of birth and death certificates furnished by State Registrar; fee; fund, how used.**—The State Registrar of Vital Statistics shall, upon the request of any applicant, furnish a certified copy of any birth or death record registered under the provisions of this Act, and for such certified copy he shall be entitled to a fee of 50 cents to be paid by the applicant; and provided, further, that such copy of the record of birth or death, when properly certified by the State Registrar of Vital Statistics as a true copy of the original, shall be prima facie evidence in all courts and places of such facts therein stated; and provided, further, that it shall be the duty of the State Registrar, at the end of each month, to make an itemized account of all fees collected by him during that month and pay the same over to the State Treasurer to be kept by such treasurer in a special and separate fund to be known as the "Vital Statistics fund," and the amounts so deposited in such fund may be used for the expenses incurred in the enforcement of the law relating to the registration of births and deaths within this State, and any unexpended balance remaining in such fund at the end of each fiscal year shall be transferred to the public school fund of the State. (Acts 1917, ch. 129, sec. 10.)

DEPOTS, RAILWAY COACHES AND SLEEPING CARS

Rule 51. **Contagious diseases barred from public vehicles.**—No person known to be suffering from any contagious disease such as smallpox, scarlet fever, diphtheria, measles or whooping cough shall be allowed to enter or ride in any day coach, sleeping car, interurban car or street car, and when any such person is discovered to be in any car as mentioned above, it shall be the duty of the conductor or other individual in charge of said car to notify the nearest or most accessible county or city health officer and the latter shall remove and isolate said patient as is proper in such case or circumstance. (Acts 1911, p. 173, sec. 1.)

Rule 52. **Depots, etc., to be ventilated and heated.**—Each depot, railway coach, sleeping car, interurban car and street car while in use for the accommodation of the public shall be properly ventilated, and, if necessary, heated, and a sufficient amount of heat shall be furnished in time of need so that fresh air can be supplied without causing it to become unduly or uncomfortably cold; and the janitor, conductor, caretaker or other person in charge shall see to it that the air is replenished with fresh air from time to time as needed to prevent the same from becoming foul, unsanitary or oppressive. (Id.)

Rule 53. **Cuspidors to be provided, disinfected, etc.**—Cuspidors must be provided in adequate numbers in all waiting rooms of depots and railway stations; each day coach shall be provided with one cuspidor for each seat or every two chairs, and two in each smoking apartment; except that in each parlor car there may be as few as one cuspidor to every three seats and two cuspidors used in the smoking apartment; in each sleeping car shall be placed one cuspidor to each section and three cuspidors in the smoking apartment, one of which cuspidors, in the absence of a dental lavatory, shall be of an unusually large size and placed near the wash basin for use in washing the teeth; each aforementioned cuspidor shall contain not less than one-third of a pint of an approved disinfectant solution, and the cuspidor shall be emptied, washed in a similar solution and replenished each trip or every twenty-four hours. (Id.)

Rule 54. **Dry cleaning prohibited.**—Dry dusting and dry sweeping is prohibited at all times in waiting rooms of depots and railway stations, or in railway coaches, sleeping cars, interurban cars and street cars. (Id.)

Rule 55. **Coaches to be cleaned after each trip; how cleaned.**—Railway day coaches shall be thoroughly cleaned at the end of each trip, and in no instance shall the day coach go uncleaned longer than two days when such coach is in use; the thorough cleaning of day coaches shall consist as follows:

(a) Windows and doors shall be first opened and the aisle-strip, if there be any, removed, and, when possible, thoroughly sunned.

(b) All upholstery shall be dusted and brushed, using the vacuum process cleaning apparatus whenever possible.

(c) Floor mopped or swept, after it has been sprinkled with an approved disinfectant solution, or preferably cleaned by sprinkling with sawdust moistened with said approved disinfectant and sweeping. After cleaning, as described, the floor must be scrubbed with soap and water to which may be added the same disinfectant solution.

(d) Closet floors, urinals, toilet bowls, and walls must be cleaned by washing, scouring and wiping with an approved disinfectant solution, to which soda ash or other cleansing agent may be added.

(e) All arms of seats and window ledges must be wiped free of dust with a damp cloth (preferably one wet with disinfectant solution).

(f) Provided, that where the vacuum cleaning apparatus is installed and coaches are thoroughly cleaned with this method daily, the aforementioned method of brushing, cleaning and scrubbing may be used as seldom as once in each period of seven days. (Id.)

Rule 56. **Railway stations to be cleaned.**—The sanitary method of cleaning as prescribed in the foregoing rule must be followed in the sanitation of waiting rooms of depots and railway stations once in every twenty-four hours. (Id.)

Rule 57. **Dining cars, etc., to be thoroughly cleaned.**—Parlor, buffet and dining cars must be cleaned at cleaning terminals, as set forth in rule 55 of this chapter. Carpets and draperies to be removed, dusted, sunned and aired. Food boxes, refrigerators, closets, drawers, and cupboards to be cleaned, scalded and treated with a solution containing 2 per cent formaldehyde, or other approved disinfectant. (Id.)

Rule 58. **Interurban and street cars to be washed, disinfected, etc.**—Interurban cars and street cars must be washed with a hose and scrubbed thoroughly once every twenty-four hours, and must be disinfected with formaldehyde gas under the supervision of the local health authority immediately after any case of contagious disease has been discovered therein. (Id.)

Rule 59. **Sleeping cars to be cleaned; disinfected.**—All sleeping cars shall be cleaned at cleaning terminals according to the methods set forth in rule 55 above, at least twice during a period of every seven days; shall be disinfected with formaldehyde gas at least twice during a period of seven days; upon routes designated by the president of the state board of health, all sleeping cars shall be disinfected as seldom as once during a period of seven days. In addition to the foregoing, all sleeping cars shall be disinfected immediately after any case of contagious or infectious disease is discovered therein. All blankets used in sleeping cars must be thoroughly sterilized and washed at intervals of not more than ninety days. (Id.)

Rule 60. **Record of disinfection to be kept and signed.**—On each passenger car operated in the state of Texas a disinfection record must be kept and preserved, and on same the following records are to be entered and kept, viz:

1. Place and date of each disinfection.
2. Length of time devoted to each such thorough disinfection.
3. Each item in said record shall be inserted immediately after each act recorded, and the signature of the person or persons doing

said cleaning or disinfection must appear beneath the said records. (Id.)

Rule 61. **Water coolers to be provided; manner of cleaning.**—All depots, railway coaches, sleeping cars, or interurban cars must be provided with a water cooler for the use of patrons and the traveling public; such water cooler must be so constructed as to be easily removed for the purpose of cleaning; must be emptied, rinsed and cleaned, and must be scalded and sunned when possible once in each period of twenty-four hours, and must be filled with good and wholesome drinking water when in service. Ice for use in water coolers must not be dumped on floors, sidewalks or car platforms. It must be washed and must be handled with ice-tongs. (Id.)

Rule 62. **Expectorating on floors prohibited.**—Expectorating on the floor or walls or furniture of any waiting room in any depot, on any depot platform, in any railway coach, sleeping car, interurban car, or street car in this state, is prohibited. Placards calling attention of passengers and employés shall be hung in a conspicuous place in each of the aforementioned rooms and cars. (Id.)

Rule 63. **Expectorating in basins prohibited.**—Brushing of teeth or expectorating in basins used for lavatory purposes is prohibited, and placards calling attention of passengers and employés shall be hung in a conspicuous place in the dressing room of passenger coaches. (Id.)

Rule 64. **Separate compartments for negro porters.**—Sleeping car companies shall provide compartments and bedding for their negro porters separate from those provided for their white passengers. (Id.)

Rule 65. **Negro porters prohibited from sleeping in.**—Negro porters shall not sleep in sleeping car berths nor use bedding intended for white passengers. (Id.)

Rule 66. **Certain floor covering prohibited.**—No waiting room in any depot or railway station shall be floored in part or entirely with burlap, cocoa matting, or sacking cloth. (Id.)

Rule 67. **Water closets to be provided.**—All depots and railway station shall provide adequate urinals and water closets for patrons and the traveling public; must keep them in proper sanitary condition, and if within five hundred feet of any public sewer, must make permanent sanitary connection with same. Any privy or box closet furnished by any such railway company shall be protected from flies by screening or other effective method, including hinged lids or other device for covering the opening in the seats of said closets. Such privies and closets as are not in connection with a sanitary sewer shall be provided with a water-tight box, or other receptacle underneath, and when full or at any time when its condition shall create a nuisance or become unsanitary, and in no instance shall such box-closet go longer than one month before it must be emptied and disinfected with 5 per cent carbolic acid solution or other approved disinfectant solution. (Id.)

Rule 68. **Railway premises shall be drained.**—The premises of all depots and railway stations shall be thoroughly drained, so that no stagnant water will collect on said premises. (Id.)

Rule 69. **All cisterns, etc., shall be screened.**—All cisterns, fire water barrels, or other water containers upon the premises of any depot or railway station shall be screened with not less than 16-mesh wire gauze. (Id.)

GOVERNING THE PREPARATION FOR TRANSPORTATION OF DEAD BODIES

Rule 70. **Bodies dead of pestilential diseases.**—No body of any person dead of Asiatic cholera, bubonic plague, typhus fever or small pox shall be transported except in a hearse or undertaker's wagon unless said body shall have been cremated. (Acts 1911, p. 173, sec. 1.)

Rule 71. **Bodies dead of dangerous contagious diseases.**—The bodies of those who have died of diphtheria (membranous croup), scarlet fever (scarlatina, scarlet rash), glanders, anthrax or leprosy, shall not be accepted for transportation unless prepared for shipment by being thoroughly disinfected by (a) arterial and cavity injection with an approved disinfectant fluid, (b) disinfecting and stopping all orifices with absorbent cotton, and (c) washing the body with the disinfectant, all of which must be done by a licensed embalmer, holding a certificate as such. After being disinfected as above, such body shall be encased in an air-tight zinc, tin, copper or lead-lined coffin, or iron casket, all joints and seams hermetically soldered, and all enclosed in a strong, tight wooden box. Or, the body being prepared for shipment by disinfecting as above, may be placed in a strong coffin or casket, and said coffin or casket enclosed in an air-tight copper or tin case, all joints and seams hermetically soldered and all enclosed in a strong outside wooden box. (Id.)

Rule 72. **Bodies dead of non-quarantinable contagious diseases.**—The bodies of those dead of typhoid fever, puerperal fever, erysipelas, tuberculosis and measles, or other dangerous communicable disease, other than those specified in rules 70 and 71, may be received for transportation when prepared for shipment by filling cavities with an approved disinfectant, washing the exterior of the body with the same, and stopping all orifices with absorbent cotton and encased in an air-tight coffin or casket; provided, that this shall apply only to bodies which can reach their destination within forty-eight hours from time of death. In all other cases such bodies shall be prepared for transportation in conformity with rule 71. But when the body has been prepared for shipment by being thoroughly disinfected by an embalmer holding a certificate, as in rule 71, the air-tight sealing may be dispensed with. (Id.)

Rule 73. **Bodies dead of other diseases.**—The bodies of those dead of diseases that are not contagious, infectious or communicable may be received for transportation when encased in a sound coffin or casket and enclosed in a strong outside box; provided, they reach their destination within thirty hours from time of death. If the body can not reach its destination within thirty hours from time of death, it must be prepared for shipment by filling cavities with an approved disinfectant, washing the exterior of the body with the same, and stopping all orifices with absorbent cotton, and encased in an air-

tight coffin or casket. But when the body has been prepared for shipment by being thoroughly disinfected by a licensed embalmer as in rule 71, the air-tight sealing may be dispensed with. (Id.)

Rule 74. **Persons accompanying bodies dead of contagious diseases.**—In cases of contagious or infectious diseases, the body must not be accompanied by persons or articles which have been exposed to the infection of the disease, unless certified by the health officer as having been properly disinfected; and before selling passage tickets, agents shall carefully examine the transit permit and note the name of the passenger in charge, and of any other proposing to accompany the body, and see that all necessary precautions have been taken to prevent the spread of disease. The transit permit in such cases shall specifically state who is authorized by the health authorities to accompany the remains. In all cases where bodies are forwarded under rule 71, notice must be sent by telegraph to health officer at destination, advising the date and train on which the body may be expected. This notice must be sent by or in the name of the health officer at the initial point, and is to enable the health officer at destination to take all necessary precautions at that point. (Id.)

Rule 75. **Bodies not shipped by express.**—Every dead body not shipped by express must be accompanied by a person in charge, who must be provided with a passage ticket and also present a full first-class ticket marked "corpse" for the transportation of the body, and a transit permit showing physician's or coroner's certificate, name of deceased, date and hour of death, age, place of death, cause of death, and if of a contagious or infectious disease, the point to which the body is to be shipped, and when death is caused by any of the diseases specified in rule 71, the names of those authorized by the health authorities to accompany the body. The transit permit must be made in duplicate, and the signatures of the physician or coroner, health officer and undertaker must be on both the original and duplicate copies. The undertaker's certificate and paster of the original shall be detached from the transit permit and pasted on the end of the coffin box. The physician's certificate and transit permit shall be handed to the passenger in charge of the corpse. The whole duplicate copy shall be sent to the official in charge of the baggage department of the initial line and by him to the secretary of the state board of health at Austin. (Id.)

Rule 76. **Bodies shipped by express.**—When dead bodies are shipped by express, the whole original transit permit shall be pasted upon the outside box, and the duplicate forwarded by the express agent to the secretary of the state board of health at Austin. (Id.)

Rule 77. **Disinterred bodies treated as contagious.**—Every disinterred body, dead from any disease or cause, shall be treated as contagious or dangerous to the public health and shall not be accepted for transportation unless said removal has been approved by the state or local health authorities having jurisdiction where such body is disinterred, and the consent of the health authorities of the locality to which the corpse is consigned has first been obtained; and all such disinterred remains shall be enclosed in a hermetically sealed (soldered) zinc, tin or copper-lined coffin or box. Bodies deposited in receiving vaults shall be treated and considered the same as buried bodies. (Id.)

Rule 78. **Transfer of dead bodies in transit.**—When it may become necessary to transfer dead bodies in transit from one railway train to another, or from one station to another, or from a station to a ferry, the affidavit of the undertaker and permit of the local health officer accompanying the remains shall be in all cases sufficient authority for such transfer. (Id.)

Rule 79. **Certificate furnished by undertaker.**—No common carrier shall accept for transportation any body unless a certificate is furnished by the undertaker preparing such body for shipment to the effect that the foregoing rules have been complied with in the preparation for transportation of said body.

Any person who shall violate any of the rules, regulations or provisions of the sanitary code of Texas, as herein set forth, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than ten dollars and not more than one thousand dollars.

Provided, this Act shall not be construed to repeal any of the laws of this state now in force affecting the public health, which are not clearly in conflict herewith, but shall be construed to be cumulative to said laws. (Id.)

CHAPTER THREE

POLLUTION OF WATERS

Art. 4553b. Polluting certain waters unlawful; penalty for violation, etc.—It shall be unlawful for any person, firm or corporation, private or municipal, to pollute any water course, or other public body of water, from which water is taken for the uses of farm, live stock, drinking and domestic purposes, in the State of Texas, by the discharge, directly or indirectly, of any sewage or unclean water or unclean or polluting matter or thing therein or in such proximity thereto as that it will probably reach and pollute the waters of such water course or other public body of water from which water is taken, for the uses of farm live stock, drinking and domestic purposes; provided, however, that the provisions of this bill shall not affect any municipal corporation situated on tide water; that is to say, where the tide ebbs and flows in such water course. A violation of this provision shall be punished by a fine of not less than one hundred dollars and not more than one thousand dollars. When the offense shall have been committed by a firm, partnership or association, each member thereof who has knowledge of the commission of such offense, shall be held guilty. When committed by a private corporation, the officers and members of the board of directors, having knowledge of the commission of such offense, shall each be deemed guilty; and when by a municipal corporation, the mayor and each member of the board of aldermen or commission, having knowledge of the commission of such offense, as the case may be, shall be held guilty as representatives of the municipality; and each person so indicated as above shall be subject to the

punishment provided hereinbefore; provided, however, that the payment of the fine by one of the persons so named shall be a satisfaction of the penalty as against his associates for the offenses for which he may have been convicted; provided, the provisions of this Act shall not apply to any place or premises located without the limits of an incorporated town or city, nor to manufacturing plants whose affluents contain no organic matter that will putrify, or any poisonous compounds, or any bacteria dangerous to public health or destructive of the fishlife of streams or other public bodies of water. (Acts 1913, p. 90, sec. 1; Acts 1915, ch. 23, sec. 1.)

Art. 4553c. Enjoining pollution; penalty for violation of injunction, etc.—Upon the conviction of any person under Section 1 of this Act [Art. 4553b], it shall be the duty of the court, or judge of the court, in which such conviction is had, to issue a writ of injunction, enjoining and restraining the person or persons or corporation responsible for such pollution, from a further continuance of such pollution; and for a violation of such injunction, the said court and the judge thereof shall have the power of fine and imprisonment, as for contempt of court, within the limits prescribed by law in other cases; provided, that this remedy by injunction and punishment for violation thereof shall be cumulative of the penalty fixed by Section 1 of this Act; and the assessment of a fine for contempt shall be no bar to a prosecution under Section 1; neither shall a conviction and payment of fine under Section 1 be a bar to contempt proceedings under this section. (Acts 1913, p. 90, sec. 2; Acts 1915, ch. 23, sec. 2.)

Art. 4553d. Cities and persons affected to have specified time to make arrangements for compliance with act.—Any city or town of this State, with a population of more than fifty thousand inhabitants, which has already an established sewerage system dependent upon any water course or other public body of water, from which water is taken for the uses of farm, live stock, drinking and domestic purposes, or which discharges into any water course or public body of water, from which water is taken for the uses of farm, live stock, drinking and domestic purposes, shall have until January 1, 1917, within which to make other provisions for such sewage. Cities and towns of less population than fifty thousand inhabitants shall have until January 1, 1917, within which to make other arrangements for the disposal of such sewage. Any person, firm or corporation, private or municipal, coming under or affected by the terms of this bill, or any independent contractor having the disposal of the sewage of any city or town, shall have until January 1, 1917, within which to make other arrangements for the disposal of such sewage, or other matter which may pollute the water, as defined in this bill. (Acts 1913, p. 90, sec. 3; Acts 1915, ch. 23, sec. 3.)

Art. 4553e. State board of health to enforce; inspector, how appointed; duties.—The Texas State Board of Health is authorized, and it is hereby made its duty, to enforce the provisions of this Act; and to this end the Governor shall appoint, by and with the consent of the Senate, an inspector to act under the direction of the said Board of Health and the State Health Officer making such investigations, inspections and reports, and performing such other duties in respect to the enforcement of this Act as the said Board of Health officer may require. (Acts 1913, p. 90, sec. 4; Acts 1915, ch. 23, sec. 4.)

CHAPTER FOUR
CHARBON DISTRICTS

Art. 4553f. Charbon districts.—That all of that portion of the state of Texas in which charbon or anthrax has heretofore been prevalent or any district of the state of Texas in which charbon or anthrax may become prevalent, shall be known as charbon districts and shall be subject to the provisions hereof. (Acts 1913, p. 147, sec. 2 [10a].)

Art. 4553g. Cases of animals suffering from charbon or anthrax to be reported; failure to report misdemeanor.—That each person residing in a district where charbon or anthrax is prevalent or where the same is supposed to be prevalent shall report in writing to the county health officer, who in turn shall report in writing to the president of the state board of health at Austin, all cases where an animal or animals are suffering with charbon or anthrax or supposed to have such disease, and each physician practicing in the state of Texas shall report in writing to the president of the state board of health all persons suffering from charbon or anthrax or supposed to be suffering from same and in case of failure to do so any person so failing shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than $10.00 nor more than $25.00 and each case of which no report is made shall constitute a separate offense. (Id. [10b].)

Art. 4553h. State board of health to employ bacteriologist; duties; salary; appropriation.—That the state board of health shall employ a bacteriologist at a salary of not more than $300.00 per month and during the time that charbon or anthrax is prevalent he shall make an examination and analysis and a scientific research for the purpose of combating with said disease and said bacteriologist may be kept in the district affected by charbon as many months each as the state board of health deems necessary and for the purpose of carrying out the provisions of this Act the sum of four thousand ($4000.00) dollars or so much thereof as may be necessary is hereby appropriated out of the general revenue not otherwise appropriated which shall be paid out on warrant drawn by the president of the state board of health and attested by the secretary of said board. (Id. [10c].)

Art. 4553i. Duties of board; isolation of stock.—That the state board of health acting through one of the members or through the local health office in the county where charbon is reported to be prevalent shall in person or through some one employed by them, visit all stock reported to have charbon or anthrax and see that proper steps be taken for the isolation of same from other stock and also isolate other stock which have been exposed to said disease and so keep same isolated for such a period as it may deem necessary. (Id. [10d].)

Art. 4553j. Carcasses to be destroyed; failure misdemeanor.—That carcasses of stock which have died from charbon or anthrax shall be destroyed by burning by the owner or person in charge within 24 hours after death and any owner or person having charge of said animals who should fail to destroy said carcasses as herein provided shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than $25.00 nor more than $100.00 and each 24 hours after the first 24 hours that said carcass is permitted to remain undestroyed shall be considered a separate offense. (Id. [10e].)

Art. 4553k. Powers and duties of county health officer; isolation or quarantine proclamation; penalty for failure to obey.—The county health officer shall be the exclusive judge of the necessity of isolation or quarantine of all animals infected therewith and when in the judgment of said county health officer there exists a necessity thereof [therefor] said county health officer shall issue a proclamation directing that all animals of certain classes which he may specify in the infected district, in either the entire county or any political subdivision thereof, shall be placed and kept in an enclosure by the owners or keeper thereof, and any owner, or keeper of such animals for the owners, who shall fail or refuse to obey the requirement of such proclamation shall be fined in any sum not less than $10.00 nor more than $50.00 and where any owner or keeper for the owner shall have more than ten animals subject to the quarantine regulations herein provided the fine shall be doubled and each day that any owner or keeper for such owner shall fail to comply with the proclamation of said county health officer, shall constitute a separate offense and such quarantine shall continue and be in effect as long as in the judgment of such county health officer it may be necessary to prevent the spread of charbon or anthrax. (Id. [10f].)

Art. 4553*l*. Proclamation, when sufficient.—The proclamation of the county health officer provided for in section 10f of this Act [Art. 4553k] shall be sufficient, if it name the kinds or classes of stock to which it shall apply and it shall be published in some newspaper published in the county if there be one; and if there be no newspaper it shall be posted in three public places in said county one of which shall be at the court house door of such county if the proclamation pertains to the whole county, but if only to a subdivision of the county, then in any three public places in such subdivision, and one insertion in a newspaper shall be sufficient, and such proclamation shall be effective three days after such notice is given. (Id. [10g].)

Art. 4553m. May prohibit running at large of animals; submission to voters; ballots, etc.; commissioners' court to issue proclamation when vote in favor of prohibiting.—In all counties now affected with charbon or anthrax, or which may hereafter become affected, the qualified voters of such county or any political subdivision thereof may, in the manner hereinafter provided, prohibit the running at large of cattle, horses, sheep, goats and hogs or any of such animals within such county or subdivision thereof; provided that, upon the petition of ten per cent of the qualified voters of such county or subdivision, thereof presented to the commissioners' court of such county in open session, requesting such court to order an election to be held in such county or political subdivision thereof said petition to state the territory within which an election is requested and the kinds of animals to be effected and also for what portions of the year it is desired to prohibit such stock from running at large, or whether the entire year, it shall be the duty of said commissioners' court to order such election to be held within such territory as may be petitioned for, naming the kinds of animals to be affected thereby and as designated in the order for such election; and such commissioners' court shall also designate in said order of election the time within which such stock is to be prohibited from running at large, whether for the entire year or for portions thereof; which the said court is hereby authorized to do in accordance with the petition therefor. Such commissioners' court is hereby authorized and it is made its duty to provide for the holding of such elections and compensation of officers thereof, provided that the expense of such election shall be borne by the county wherein such election is ordered and held; and provided further that in any such election so to be held the ballots shall read as follows:

"For the Running at Large of Domestic Animals," and

"Against the Running at Large of Domestic Animals."

Returns of such election shall be made by the presiding officers of the precinct or precincts of the county where such election is held, to the county judge of such county, whose duty it shall be to forthwith call the commissioners' court together for the purpose of canvassing the returns; and if it shall be found by the commissioners' court, upon a canvass of such returns, that a majority of the qualified voters of the county or subdivision thereof wherein such election was held, is in favor of prohibiting the running at large of such domestic animals as hereinbefore named, then it shall be the duty of the commissioners' court of such county to forthwith declare the result of said election and give public notice thereof by proclamation of such court to be issued and posted within three public places of the county or subdivision thereof in which such election has been held. (Id. [10h].)

Art. 4553n. Permitting animals to run at large after proclamation unlawful; penalty, etc.—From and after the issuance and posting of the proclamation hereinabove provided for, it shall be unlawful for any owner or keeper of such animals hereinabove designated or any of them to permit such animals as have been voted upon to run at large within such county or subdivision thereof at any time within which the same has been prohibited; and in case of failure or refusal of any owner or keeper of such stock or any of them to comply with such proclamation he shall be deemed guilty of a misdemeanor and shall be fined in any sum not less than five dollars ($5.00) nor more than fifty dollars ($50.00) and each day that any owner or keeper for such owner shall fail to comply with the law as herein provided for, shall constitute a separate offense.

The venue of such prosecution shall lie in the counties where the offense is committed. [Id. (10i).]

Art. 4553o. Laws repealed and unrepealed.—This Act shall not be construed to repeal the laws of this state now in force affecting the public health, which is not clearly in conflict herewith but shall be construed to be cumulative to the said law but all laws in conflict herewith are hereby repealed. (Id. [10j].)

CHAPTER FIVE

SPECIAL QUARANTINE REGULATIONS

Art. 4554. (4321) Governor empowered to issue proclamation, when.—The governor is empowered to issue his proclamation declaring quarantine on the coast, or elsewhere within this state, whenever in his judgment quarantine may become necessary; and such quarantine may continue for any length of time as in the judgment of the governor the safety and security of the people may require. (Acts 1891, p. 188.)

Art. 4555. (4324) May issue proclamation, when.—Whenever the governor has reason to believe that the state of Texas is threatened at any point or place on the coast, border or elsewhere within the state with the introduction or dissemination of yellow fever contagion, or any other infectious and contagious disease that can and should, in the opinion of the Texas state board of health, be guarded against by state quarantine, he shall, by proclamation, immediately declare said quarantine against any and all such places, and direct the Texas state board of health to promptly establish and enforce the restrictions and conditions imposed and indicated by said quarantine proclamation; and when from any cause the governor can not act, and the exigencies of the threatened danger require immediate action, the Texas state board of health is empowered to declare quarantine as prescribed in this article, and maintain the same until the governor shall officially take such action as he may see proper. (Acts 1891, p. 188, sec. 4.)

Art. 4556. (4326) Local quarantine.—The law in regard to local quarantine by the inhabitants of any point or points on the coast or elsewhere in the state shall remain in full force when in conformity with this title: provided, that in all differences and disputes between any such points, contiguous or remote, within this state, such differences and disputes shall be immediately by the local health authorities, if any, and if none, by the inhabitants themselves, reported and submitted to the governor; and, on the receipt of such report, he shall forthwith order the state health officer to such points with instructions to investigate the same and report the exact condition of things, and upon investigation of such report shall issue his proclamation declaring the determination of the issue, and by said proclamation the aforesaid differences shall be governed and determined. (Id. sec. 6.)

Art. 4557. (4328) Local to be subordinated to state authorities.—Whenever quarantine is declared by the governor or by any county or corporate authorities in the state, it shall be the duty of such authorities to establish a quarantine station or stations where any person may be detained for such length of time as, in the discretion of the quarantine officers, the public safety may demand; provided, that all county and municipal quarantine shall be subordinate, subject to and regulated by such rules and regulations as may be prescribed by the governor or Texas state board of health. (Id. sec. 8.)

Art. 4558. (4329) Shelter, etc., to be furnished by health officer to persons detained.—It shall be the duty of the Texas state board of health to furnish persons detained by them with necessary shelter and subsistence (not including crews of vessels, except such as are removed by the quarantine officers from infected vessels), and to provide all other things essential for the protection and comfort of those held in quarantine, and all such expenses authorized by the Texas state board of health and approved by the governor shall be paid by the state. (Id. sec. 9.)

Art. 4559. (4330) Expenses, etc.—All the costs and expenses of enforcing and maintaining the general quarantine, or such as are ordered by the governor or Texas state board of health shall be paid out of the fund appropriated for quarantine purposes. All quarantine officers appointed by the governor shall be selected and commissioned by the governor of the state, and shall be paid by the state, and all health authorities of the state, or of any county or city thereof, shall obey the rules and regulations prescribed by the governor or Texas state board of health. The regular officers in charge of regular established quarantine stations on the coast shall be allowed one hundred and fifty dollars per month while on duty at their respective stations; provided, that the provisions of this chapter shall not apply to the port of Galveston; and provided, that the officer in charge of said station shall receive two hundred dollars per month. Temporary officers, or those commissioned by the governor to guard against threatened epidemics, and those stationed at railway crossings on the Rio Grande shall receive one hundred and fifty dollars per month while on duty, and such other pay for extra expenses actually incurred as may be deemed just by the governor and Texas state board of health. All quarantine officers, whether of towns, cities, counties or state, shall be authorized to administer oaths to any person or persons suspected of violating any quarantine regulations; and any person or persons swearing falsely shall be punished according to the provisions of the Penal Code. (Acts 1895, p. 142.)

Art. 4560. (4331) Stations to be provided.—It is hereby made the duty of any county, town or city authority upon the coast or elsewhere in Texas, at as early a day as practicable after the promulgation of the governor's proclamation declaring quarantine, to provide suitable stations where they are not now provided, at sufficient distance from the usual places of landing of vessels, or the depots of railroads coming into their respective counties, towns or cities, and to select, appoint and employ a competent physician as health officer, subject to the approval of the governor, at such stations, and to furnish said officer with such guards, employés and other things as may be necessary to render such quarantine effective; and said county,

town or city authorities may provide for the establishment and maintenance of quarantine, subordinate, subjected to, and regulated by, such rules and regulations as the governor and Texas state board of health may prescribe. (Acts 1883, p. 17.)

Art. 4561. (4332) Governor may appoint local health officer, when.—Whenever, on the coast of Texas or elsewhere in this state, the authorities of any county, town or city fail, refuse or neglect to establish quarantine as provided in the preceding article, then and in that event the governor shall have the power, and it shall be his duty, to appoint a health officer and to prescribe such regulations for the government of the same as he may deem necessary. (Acts 1891, p. 186.)

Art. 4562. (4333) Incoming vessels to be stopped.—It shall be the duty of all health officers and all quarantine authorities to stop each and every vessel from any infected port or district, notwithstanding the said vessel may have a clean bill of health, if deemed necessary, (and such health officers or quarantine authorities shall have power so to do) to take the affidavit of the master of said vessel as to the health of himself and crew from the time of sailing from said infected port or district; and such officers and authorities shall detain said vessel at quarantine for such length of time as may be prescribed by the governor and Texas state board of health in their rules and regulations governing quarantine; and all such officers and authorities may use force if necessary in order to discharge the duties imposed upon them by the provisions of this title and the rules and regulations of the governor and Texas state board of health. (Acts 1883, p. 17.)

Art. 4563. (4334) Vessels from infected ports.—Any vessel arriving at any of the quarantine stations of this state, designated by the proper authorities, from any infected port or district, without a clean bill of health from the proper officers from said port or district, shall be taken possession of by the health officer or other quarantine authority at the station at which said vessel arrives, and be held by the same until all fines that may have been assessed against the master of said vessel for a violation of the quarantine laws, rules and regulations have been paid, or until said vessel shall have been replevied in accordance with law. (Acts 1891, p. 188, sec. 12.)

Art. 4564. (4335) Payment of fine, etc.—The payment of the fine which may be assessed against the master of such vessel shall not operate as a release or discharge of the vessel from quarantine, but the same rules shall apply as in case of other vessels placed in quarantine. (Id. sec. 13.)

Art. 4565. (4336) Expenses to be itemized.—It shall be the duty of the county, town or city authorities aforesaid, as soon as quarantine ceases to exist, to forward to the comptroller of the state an itemized account of all receipts and expenditures made by them, and when approved by the governor and Texas state board of health, said comptroller shall draw his warrant upon the treasurer for the payment of any balance that may be due said authorities, or either of them, and pay into the treasury any excess of receipts over expenditures as a credit to the quarantine fund. (Acts 1883, p. 18.)

Art. 4566. (4337) Corporate authorities may establish quarantine, when.—Nothing contained in this title shall be construed to prevent any town, city or county from establishing any quarantine which they may think necessary for the preservation of the health of the same; provided, that the rules and regulations of such quarantine be not inconsistent with the provisions of this title, and be consistent with, and subordinate to, said provisions and the rules and regulations prescribed by the governor and Texas state board of health. (Id.)

Art. 4567. (4338) Municipal authorities may co-operate, how.—The municipal authorities of towns and cities, and commissioners' courts of the counties wherein such towns and cities are situated, may co-operate with each other in making such improvements connected with said towns, cities and counties as may be deemed by said authorities and courts necessary to improve the public health and to promote efficient sanitary regulations; and, by mutual agreement, they may provide for the construction of said improvements and the payment therefor. (Acts 1879, S. S. p. 9.)

Art. 4568. (4340) Commissioners' court may direct county physician to declare quarantine, when.—Whenever the commissioners' court of any county has reason to believe that they are threatened at any point or place within or without the county limits with the introduction or dissemination of a dangerous, contagious or infectious disease that can and shall be guarded against by quarantine, they may direct their county health officer to declare and maintain said quarantine against any and all such dangerous diseases; to establish, maintain and supply stations or camps for those held in quarantine; to provide hospitals, tents or pest houses for those sick of contagious and infectious disease; to furnish provisions, medicine and all other things absolutely essential for the comfort of the well and the convalescence of the sick. The county physician shall keep an itemized account of all lawful expenses incurred by local quarantine, and his county shall assume and pay them as other claims against the county are paid. Chartered cities and towns are embraced within the purview of this article, and the mere fact of incorporation does not exclude them from the protection against epidemic diseases given by the commissioners' court to other parts of their respective counties. The medical officers of chartered cities and towns can perform the duties granted or commanded in their several charters, but must be amenable and obedient to rules prescribed by the Texas state board of health. This article, however, must not be construed as prohibiting any incorporated town or city from declaring, maintaining and paying for local quarantine. (Id. sec. 15.)

Art. 4569. (4341) Bond of health officer at Galveston.—The quarantine or health officer at Galveston, Texas, shall give bond, with two or more good and sufficient sureties, payable to the governor, in the sum of ten thousand dollars, conditioned for the care and preservation of any steam vessel or vessels belonging to the state at his station,

and for the faithful performance of his duty. (Id. sec. 16.)

Art. 4570. (4342) To prescribe rules, etc.—It is hereby made the duty of the governor and Texas state board of health, upon completion of the disinfecting warehouse at Galveston or any port on the coast of Texas, to prescribe such rules and regulations as may be necessary for the disinfection of all vessels and their cargoes and passengers arriving at said ports from any infected port or district, the object of such rules and regulations being to provide safety for the public health of the state without unnecessary restrictions upon commerce and travel. (Id. sec. 17.)

Art. 4571. (4342a) Sale of condemned property.—The state health officer be and is hereby authorized, with the advice and consent of the governor, to sell to the best advantage of the state, for cash, any property in the quarantine service that is useless, and to apply the proceeds thereof to the general revenue of the state of Texas, and make due report of said sale or sales to the governor. (Acts 1895, p. 2.)

Art. 4572. Vessels to be disinfected; fees of quarantine officer, etc.—Any vessel arriving at a port of this state, and required to be disinfected by the terms of the governor's quarantine proclamation, shall be disinfected by the quarantine officer of such port and shall pay to such quarantine officer such fees as may be prescribed by the governor, before being released from quarantine. All vessels boarded by the quarantine officer of any port shall pay to such officer such fees as are prescribed by the governor. The quarantine officer receiving such fees shall give bond in such sum as may be prescribed by the governor for the safe keeping of such collection, and shall report and remit them to the Texas state board of health at least once every month. (Acts 1901, p. 266.)

Art. 4573. Persons to disinfect at their own expense.—Every person having control of any public building, railway company, sleeping car company, or other corporation, company or individual, or the receiver thereof, engaged in the carrying of passengers in this state, shall, at their own expense, within a prescribed time after receiving notice of the promulgation of the rules and regulations of the state board of health in relation thereto, carry the same into effect, or be punished as prescribed in the Penal Code. (Acts 1903, p. 180.)

Art. 4574. In case of irreconcilable conflict.—Any provisions of this chapter which may irreconcilably conflict with the provisions of the foregoing chapter, shall yield to such provisions.

CHAPTER SIX

PURE FOOD REGULATIONS

Art. 4575. Dairy and food commissioner; appointment, salary and bond.—Immediately after the taking effect of this Act, or as soon thereafter as practicable, the governor shall appoint a suitable person to be dairy and food commissioner, who shall be a practical analytical chemist and bacteriologist, which office is hereby created, and which commissioner so appointed shall hold office for a term of two years or until his successor is appointed and qualified. Said commissioner shall receive an annual salary of $2000.00. Before entering upon the duties of his office he shall subscribe and file in the office of the secretary of state an oath of office in the form prescribed by law, and shall enter into bond with the state of Texas, in the sum of $10,000.00, with sureties to be approved by the governor, conditioned upon the faithful performance of his duties. (Acts 1911, p. 76, sec. 9.)

Art. 4576. May be removed; vacancy, how filled.—The governor shall have the power to remove such commissioner at any time in his discretion and in case of a vacancy in the office of commissioner from any cause, the governor may appoint another person to fill the same. (Id. sec. 10.)

Art. 4577. Assistant chemists; appointment; salary; bond.—The said commissioner is hereby authorized and empowered, with the advice and consent of the governor, to appoint two assistant chemists. The salary of the assistant chemists shall be $1500.00 per annum each. The assistant chemists shall each enter into bond with the state of Texas for the sum of $5000.00, with sureties to be approved by the governor, conditioned for the faithful performance of their duties. (Id. sec. 11.)

Art. 4578. Stenographer; appointment and salary.—The commissioner shall appoint one stenographer for the transaction of the business of his office. Said stenographer shall receive an annual salary of $900.00. (Id. sec. 12.)

Art. 4579. Inspectors; appointment; duties; salary.—The commissioner shall have power to appoint two inspectors at a salary of not to exceed $1200.00 per annum each, whose duties it shall be to collect samples of foods and drugs, and places where foods and drugs are manufactured, or kept for sale, and to perform such other duties as may be prescribed and directed by the commissioner, according to his rules and regulations. (Id. sec. 13.)

Art. 4580. Expenses of department provided for.—The actual and necessary expenses of the dairy and food commissioner and his assistants and deputies in the performance of their official duties shall be paid by the state. The amounts for the same shall be audited by the comptroller and upon his warrant drawn upon the state treasury. (Id. sec. 14.)

Art. 4581. Office and laboratory.—The office and laboratory of the dairy and food commissioner shall be at the state capitol, and office and laboratory room shall be furnished in the capitol building. (Id. sec. 15.)

Art. 4582. Duties and powers of commissioner.—It shall be the duty of the dairy and food commissioner, or any inspector or deputy appointed by him, to carefully inquire into the quality of the foods and drug products manufactured or sold or exposed for sale, or offered for sale in this state, and they may in a lawful manner procure samples of the same and make due and careful examination and analysis of all or of any such food and drug products, to discover if the same are adulterated, or misbranded, impure, or unwholesome, in contravention of

this Act, and it shall be the duty of the commissioner to make complaint against the manufacturer or vender thereof, in the proper county, and furnish the evidence thereon and thereof to obtain a conviction for the offence charged. The dairy and food commissioner, or his inspectors, or any person by him duly appointed for that purpose, shall make complaint and cause proceedings to be commenced against any person for the violation of any of the laws relative to adulterated, misbranded, impure or unwholesome food, and in such case he shall not be obliged to furnish security for costs; and he shall have power in the performance of his duties to enter into any creamery, factory, store, salesroom, drug store or laboratory, or place where he has reason to believe foods or drugs are made, prepared, sold or offered for sale or exchange, and to open any cask, tub, jar, bottle or package containing or supposed to contain any article of food or drug and examine or cause to be examined the contents thereof, and take therefrom samples for analysis. The persons making such inspection shall take such sample of such article or product and he shall mark or seal such sample and shall tender at the time of taking it to the manufacturer or vender of such product or to the person having the custody of the same the value thereof, and a statement in writing of the reason for taking such sample. It shall also be the duty of the dairy and food commissioner to formulate, publish and enforce such rules and regulations as may be necessary to enforce this Act, and he shall adopt the standards for foods, food products, beverages, drugs, etc., and the methods of analysis authorized as official by the United States department of agriculture in so far as they are applicable in the light of modern discovery and scientific research. (Id. sec. 16.)

Art. 4583. Unlawful for officers to issue certificates in what cases.—It shall be unlawful for the dairy and food commissioner or his deputy or assistants while they hold office to furnish to any individual, firm or corporation any certificate as to the purity or excellence of any article manufactured or sold to or by them to be used as food or drug or in the preparation of foods or drugs. (Id. sec. 17.)

Art. 4584. Annual report of commissioner; contents.—The commissioner shall make an annual report to the governor on or before the 31st day of August in each year which shall be printed and published at the expense of the state, which report shall cover the entire work of his office for the preceding year, and shall show, among other things, the number of manufactories and other places inspected and by whom, the number of specimens of food and drug articles analyzed, and the number of complaints entered against any person or persons for the violation of the laws relative to the adulteration of foods and drugs, the number of convictions had and the amount of fines imposed therefor, together with such recommendations relative to the statutes in force as his experience may justify. (Id. sec. 18.)

Art. 4585. Bulletins; notices of judgments.—The commissioner is hereby empowered with authority to issue bulletins quarterly, or as often as in his judgment he may deem advisable, showing the work of the commissioner. And he shall give notices of the judgments of the courts, by publication, in such manner as he may prescribe by the rules and regulations, and the expenses of such publications shall be paid by the state. (Id. sec. 20.)

Art. 4585a. Condemnation, confiscation and forfeiture of articles adulterated or misbranded; suit, how brought; judgment; duties and fees of district and county attorneys; bond for delivery to owner.—That any article of food or drug that is adulterated or misbranded within the meaning of this Act shall be liable to be condemned, confiscated and forfeited by a suit to be brought in the district court of the county where said article of food or drug is located, by a suit to be filed in said court in the name of the state of Texas as plaintiff, and in the name of the owner thereof as defendant, if said owner be known; if he be unknown, then in the name of said article of food or drug, and service shall be obtained in said cases in the same manner that the law provides that service shall be obtained in civil cases. That upon a trial of said case, if it be determined by the court or jury trying said case that said article of food or drug is misbranded or adulterated, or of a poisonous or deleterious character within the meaning of this Act, the same shall be disposed of by destruction or sale in accordance with the judgment of the court, and the proceeds thereof, if sold, less the legal cost and charges, shall be paid into the treasury of this state. And it is hereby made the duty of the different district and county attorneys in this state to file forfeiture and condemnation suits under this Act at the request of the dairy and food commissioner, and said district or county attorneys, as the case may be, shall be entitled to a fee of $15.00, to be paid out of the proceeds arising from the sale of the property condemned, said fee to be in addition to all other fees allowed by law, and shall be over and above the fees allowed under the general fee act of this state. It is further provided, that upon payment of the costs of such forfeiture or condemnation proceeding by the owner of the property proceeded against and by his executing and delivering a good and sufficient bond in double the value of the goods proceeded against, payable to the state of Texas, conditioned that said articles shall not be sold or otherwise disposed of contrary to the provisions of this Act, the court may by order direct that said goods be delivered to the owner thereof. In all proceedings begun under this section, either party may demand trial by jury, of any issue of fact joined in any such case, and all such proceedings shall be at the suit of and in the name of the state of Texas. (Id. sec. 21.)

Art. 4585b. Names and addresses of manufacturers and vendors to be registered with commissioner; fees; pure food fund.—All manufacturers of foods and drugs doing business in the state of Texas, or all such persons as shall bring into and offer for sale within the state any article of food or drug, shall annually register their firm names and addresses with the dairy and food commissioner and shall pay to said commissioner a fee of $1.00 for such registration on or before the first day of September of each year. Such fees shall be turned

over by the commissioner to the state treasurer and set apart as a fund to be known as "The Pure Food Fund," which fund, or as much thereof as may be necessary, may, with the advice and consent of the governor, be used by the commissioner for paying the expenses of the dairy and food department. The amounts for such expenses shall be audited by the comptroller upon his warrant drawn upon the state treasury. (Id. sec. 23.)

Art. 4585c. Additional assistants; compensation.—The said dairy and food commissioner shall be authorized to appoint, such additional inspectors, chemists, clerks and other additional assistants as in his judgment may be necessary, whose compensation shall be paid out of the registration fees and penalties collected by the commissioner. (Id. sec. 24.)

Art. 4585d. Dairy and food department to assist.—The dairy and food department shall assist the state board of health in such manner and at such times as may be necessary for protecting the public health of the state. (Id. sec. 25.)

Art. 4586. Manufacture and sale of adulterated and misbranded foods prohibited.—That no person, firm or corporation, shall within this state manufacture for sale, have in his possession with the intent to sell, offer or expose for sale, or sell or exchange any article of food, or drug which is adulterated or misbranded within the meaning of this Act. The term "food" as used herein shall include all articles used for food, drink, flavoring, confectionery or condiment, by man, whether simple, mixed or compounded. That the term "drug" as used in this Act shall include all medicines and preparations for internal or external use recognized in the United States Pharmacopœia or National Formulary, and any substance or mixture of substances intended to be used for the cure, mitigation or prevention of disease of either man or animal. (Id. sec. 1.)

Art. 4587. Drugs, confectionery and foods, when deemed adulterated.—That for the purposes of this Act an article shall be deemed to be adulterated: (a) In the case of drugs; (1) if, when sold under or by a name, recognized in the eighth decennial revision of the United States Pharmacopœia or in such United States Pharmacopœia as was official at the time of labeling it, or in the National Formulary, it differs from the standard strength, quality or purity laid down therein; (2) if, when sold under or by a name not recognized in the eighth decennial revision of the United States Pharmacopœia, but which is found in some other Pharmacopœia or other standard work on materia medica, it differs materially from the standard of strength, quality or purity laid down in such work; (3) if its strength, quality or purity falls below the professed standard under which it is sold. (b) In the case of confectionery: If it contain terra alba, barytes, talc, chrome yellow, or other mineral substance or poisonous color or flavor, or other ingredients deleterous or detrimental to health or any vinous, malt or spirituous liquor or compound, or narcotic drug. (c) In the case of food; (1) if any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength; (2) if any substance has been substituted wholly or in part for the article; (3) if any valuable constituent of the article has been wholly or in part abstracted, or if the product be below that standard of quality, quantity, strength or purity represented to the purchaser or consumer; (4) if it be mixed, colored or powdered, coated or stained in a manner whereby damage or inferiority is concealed; (5) if it contain any added poisonous or other added deleterious ingredient which may render such article injurious to health, provided, that when in the preparation of food products for shipment they are preserved by any external application applied in such manner that the preservative is necessarily removed mechanically, or by maceration in water or otherwise, and directions for the removal of said preservative shall be printed on the covering of the package, the provisions of this Act shall be construed as applying only when said products are ready for consumption; (6) if it consists in whole or in part of a filthy, decomposed or putrid animal or vegetable substance, or any portion of an animal or vegetable unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter. For the purpose of this Act, the term "filthy" shall be deemed to apply to food not securely protected from flies, dust, dirt, and as far as may be necessary by all reasonable means from all foreign or injurious contaminations. (Id. sec. 2.)

Art. 4588. Term "misbranded" defined.—That the term "misbranded," as used herein, shall apply to all drugs or articles of food or articles which enter into the composition of food, the package or label of which shall bear any statement, design or device regarding such article or the ingredients or substances contained therein which shall be false or misleading in any particular. That for the purposes of this Act an article shall also be deemed to be misbranded: (a) In the case of drugs; (1) if it be an imitation of or offered for sale under the name of another article; (2) if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package, or if the package fail to bear a statement on the label of the quantity or proportion of any morphine, phenocetice, opium, cocaine, heroin alpha, or beta eucaine, chloroform, cannabis indica, chloral hydrate, or acetanelid or any derivative or preparation of any such substances contained therein. (b) In the case of food: (1) if it be an imitation of or offered for sale under the distinctive name of another article; (2) if it be labeled or branded so as to deceive or mislead the purchaser or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package, or if it fail to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin alpha, or beta eucaine, phenacetin chloroform, cannabis indica, chloral hydrate or acetanelid, or any derivative or preparation of any of such substances contained therein; (3) if in package form and the contents are stated in terms of weight or measure, they are not plainly and correctly stated on the outside of

the package; (4) if the package containing it or its labels bear any statement, design or device regarding the ingredients or the substances contained therein, which statement, design or device shall be false or misleading in any particular, provided [than] that an article of food which does not contain any added poisonous or deleterious ingredient shall not be deemed to be adulterated or misbranded in the following cases: First in case of mixtures or compounds which may be now or from time to time hereafter known as articles of food, under their own distinctive names, and not an imitation of or offered for sale under the distinctive name of another article, if the name be accompanied on the same label or brand with a statement of the place where said article has been manufactured or produced; second, in the case of articles labeled, branded or tagged so as to plainly indicate that they are compounds, imitations or blends; that the term "blend," as used herein, shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose or coloring and flavoring only; and provided, further, that nothing in this Act shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredients to disclose their trade formulas except in so far as the provisions of this Act may require to secure freedom from adulteration or misbranding. (Id. sec. 3.)

Arts. 4589, 4590. [Repealed by Acts 1911, p. 76, sec. 26.]

The provision of Art. 4589 has been carried into section 2 of the new act (Art. 4587).

Art. 4591. Manufacture and sale of certain foods, discolored and adulterated, prohibited.—It shall be unlawful for any person to manufacture, sell, offer or expose for sale or exchange any article of food to which has been added formahaldehyde, boric acid or borates, benzoic acid or benzoate sulphurous acids or sulphites, salacyclic acid or salacylates, abrastal, beta naphthal, fluorine compounds, dulcin, glucin cocaine, sulphuric acid or other mineral acid except phosphoric acid, any preparation of lead or copper or other ingredient injurious to health; provided, that nothing in this Act shall be construed as prohibiting the sale of catsups, sauces, concentrated fruits, fruit juices, and like substances preserved with one-tenth of one per cent of benzoate of soda, or the equivalent benzoic acid, when a statement of such fact is plainly indicated upon the label; provided, further, that the oxides of sulphur may be used for bleaching, clarifying and refining food products. (Id. sec. 4.)

Art. 4592. Baking powder to be labeled, how.—Whoever manufactures for sale within this state, or offers or exposes for sale or exchange or sells any baking powder or compound intended for use as a baking powder under any name or title whatsoever shall securely affix or cause to be securely affixed to the outside of every box, can or package containing such baking powder or like mixture or compound a label distinctly printed in plain capital letters in the English language, containing the name and residence of the manufacturer or dealer, and the ingredients of the baking powder. Baking powder containing less than 10 per cent of available carbon dioxide shall be deemed to be adulterated. (Id. sec. 5.)

Art. 4593. Sale of impure milk prohibited.—That it shall be unlawful for any person either by himself or agent to sell or expose for sale or exchange any unwholesome, watered, adulterated or impure milk or swill milk or colestrum, or milk from cows kept upon garbage, swill or any other substance in a state of putrefaction or other deleterious substances, or from cows kept in connection with any family in which there are infectious diseases, or from sick or diseased cows; provided, "skim milk" may be sold if on the can, or package from which such milk is [s]old, the words "skim milk" are distinctly painted in letters not less than one inch in length. (Id. sec. 6.)

Art. 4594. [Repealed by Acts 1911, p. 76, sec. 26.]

Art. 4595. Exemptions from prosecutions.—That no dealer shall be prosecuted under the provisions of this Act, when he can establish a guaranty signed by the wholesaler, jobber, manufacturer, or other party residing within this state or in the United States from whom he purchases such article, to the effect that the same is not adulterated or misbranded within the meaning of this Act, designating it. Said guaranty, to afford protection, shall contain the name and address of the party making the sale of such articles to such dealer, and in such case said party or parties shall be amenable to the prosecutions, fines and other penalties, which would attach, in due course to the dealer under the provisions of this act. (Id. sec. 7.)

CHAPTER SEVEN

EMBALMING BOARD

Art. 4596. Embalming board; how constituted; terms of office; qualifications, how removed.—The state board of embalming shall consist of five members to be appointed by the state board of health, and all vacancies occurring in the board shall be filled by the said board for the unexpired term. The term of each member of said board shall be for two years. The members of said board shall be practical embalmers, having experience in said business, and the care of, and the disposition of, dead human bodies. The members of said boards shall be citizens of this state. The appointing board shall remove any member of said board for neglect of duty, incompetency or improper conduct. (Acts 1903, p. 123, sec. 1.)

Art. 4597. Board, when appointed; vacancies, when filled.—The board shall be appointed on or before the first day of June, and all vacancies occurring by the expiration of their respective terms of office shall be filled annually on the aforesaid date. (Id. sec. 2.)

Art. 4598. Certificates of appointment; members qualify.—The state board of health shall furnish each person appointed to serve on the state board of embalming a certificate of appointment, and such appointee shall qualify by taking the usual oath of office before any officer authorized by law to administer oaths in this state, within ten days after said appointment has been made, and this fact shall be noted on the certificate of appointment, and shall be filed with the board of embalmers. (Id. sec. 3.)

Art. 4599. Duties and powers of board.—The Board of Embalming shall have the power and it shall be its duty:

1. To prescribe and maintain a standard of proficiency as to the qualifications of those engaged, and who may engage in the practice of embalming in connection with the care and disposition of dead bodies in the State of Texas, and, in this connection, the said board shall have the right and the power, to be exercised at its discretion, to employ capable and efficient lecturers and demonstrators in the science of embalming for the benefit of all licensed embalmers in this State. The said lecturers and demonstrators shall meet not more than once in each year with annual session of the Texas Funeral Directors' and Embalmers' Association.

2. To meet at least once in each year, and oftener, as the proper and efficient discharge of its duties may require. At least sixty days' notice of the time and place of the meeting of said board shall be given by publication in at least three daily newspapers published in different towns and cities of the State. Three members of the board shall constitute a quorum for the transaction of all its business and the performance of all its duties; the board shall make an annual report to the State Health Officer, a copy of which shall be furnished to each and every licensed embalmer in the State of Texas, upon the condition of embalming in Texas, which report shall embrace all the proceedings of the board, and give an itemized account of money received and paid out by said board, shall show to whom paid and specifically for what purpose it was paid, and also the names of all embalmers duly licensed under this chapter. And it shall be the further duty of said board to deliver all money on hand at the end of the term of each board, after all the outstanding debts have been paid, to their successors in office. (Acts 1903, p. 123, sec. 4; Acts 1915, ch. 137, sec. 1.)

Art. 4600. Application to engage in business; fee; skill required.—Every person engaged or desiring to engage in the practice of embalming in connection with the care and disposition of dead human bodies within the State of Texas shall make a written application to the state board of embalming for a license, accompanying the same with a license fee of five dollars, whereupon the applicant as aforesaid shall present himself or herself before said board at a time and place to be fixed by said board; and, if the board shall find upon examination that the applicant is of good moral character, possessed of the knowledge of the venous arterial system, the location of the heart, lungs, bladder, womb and other organs of the human body, and the location of abdominal, pleural and thoracic cavities, location of the carotid, bracharal, radial, ulnar, femoral and tibinal arteries, a knowledge of the science of embalming and the care and disposition of the dead, and has a reasonable knowledge of sanitation and the disinfection of bodies of diseased persons, and the apartment, clothing and bedding in case of death by infectious or contagious diseases, the board shall issue to said applicant a license as a duly licensed embalmer, authorizing him to practice the science of embalming. Such license shall be signed by a majority of the board and attested by its seal. All persons receiving license under the provisions of this chapter shall have said license registered in the county clerk's office in the county in the jurisdiction of which it is proposed to carry on said practice, and shall display said license in a conspicuous place of business of said person so licensed. (Acts 1903, p. 123, sec. 5.)

Art. 4601. Renewal of license; fee for.—Every registered embalmer, who desires to continue the practice of his profession, shall annually thereafter, during the time he shall continue in such practice, on such date as said board may determine, pay to the secretary of said board a fee of two dollars for the renewal of said license. (Id. sec. 6.)

Art. 4602. License to be revoked, when, how.—The state board of embalming shall be and is hereby authorized to revoke any license issued by them for good and sufficient cause, subject to the right of appeal to the state board of health, whose decision shall be final. (Id. sec. 7.)

Art. 4603. Department to be self-sustaining; moneys received, how appropriated.—All expense, salaries, and per diem to members of this board shall be paid from fees received under the provisions of this chapter, and shall in no manner be an expense to the state. All moneys received in excess of per diem allowance, and other expenses provided for, shall be held by the secretary of said board as a special fund for meeting the expenses of the board. (Id. sec. 8.)

Art. 4604. Unlawful to practice without license.—It shall be unlawful for any person not a registered embalmer to embalm or pretend to practice the science of embalming in connection with the care and disposition of the dead, unless said person is a registered embalmer, within the meaning of this chapter. (Id. sec. 9.)

Art. 4605. Provisions do not apply to what.—Nothing in this chapter shall apply to, or in any manner interfere with, the duties of any municipal, county and state officer, or state institution, nor apply to any person simply engaged in the furnishing of burial receptacles for the dead, but only to such person or persons engaged in the business of embalming in connection with the care and disposition of the dead. (Id. sec. 10.)

CHAPTER EIGHT

VENEREAL DISEASES

Art. 4605¼. Diseases declared contagious, etc.—Syphilis, gonorrhea and chancroid, hereinafter designated venereal diseases, are hereby declared to be contagious, infectio[n]us, communicable, and dangerous to the public health. (Acts 1918, 4th C. S., ch. 85, sec. 1.)

Art. 4605¼a. Physicians to report venereal diseases.—Any physician or other person who makes a diagnosis in, or treats a case of syphilis, gonorrhea or chancroid, and every superintendent or manager of a hospital, dispensary, or charitable or penal institution, in which there is a case of venereal disease, shall report such case immediately, in writing to the local health officer, stating the name and address or the office

number, age, sex, color, and occupation of the diseased person, and the date of the onset of the disease, and the probable source of infection, provided that the name and address of the diseased person need not be stated, except as hereinafter specifically required in Section 6 [Art. 4605¼e], and provided, further, that all information and reports concerning persons having venereal disease shall be held secret in accordance with provisions in Section 11 [Art. 4605¼j]. The report shall be enclosed in a sealed envelope and sent to the local health officer, who shall report weekly on the prescribed form to the State Board of Health, all cases reported to him. The physicians and others residing in cities having no city health officer, shall make reports required in this section of this Act direct to the county health officer, where there is a county health officer in the county in which they reside, and where there is no county health officer, all such report shall be made direct to the State Board of Health. (Id. sec. 2.)

Art. 4605¼b. Instructions to patients with venereal disease.—It shall be the duty of every physician and of every other person who examines or treats a person having syphilis, gonorrhea or chancroid, to instruct him in measures for preventing the spread of such disease, and of the necessity for treatment until cured, and to hand him a copy of the circular of information obtainable for this purpose for the State Board of Health. (Id. sec. 3.)

Art. 4605¼c. Investigations as to existence of such diseases; examination of suspects.—All City, county, or other health officers shall use every available means to ascertain the existence of, and to investigate all cases of syphilis, gonorrhea, and chancroid within their several territorial jurisdictions, and to ascertain the sources of such infections. Local health officers are hereby empowered and directed to make such examinations of persons reasonably suspected of having syphilis, gonorrhea or chancroid as may be necessary for carrying out the provisions of this Act. Owing to the prevalence of such diseases among prostitutes and persons associated with them, all such persons are to be considered within the above class. (Id. sec. 4.)

Art. 4605¼d. Quarantine of persons afflicted with such diseases.—Upon receipt of a report of a case of veneral disease it shall be the duty of the local health officer to institute measures for protection of other persons from infection by such venereally diseased person.

(a) Local health officers are authorized and directed to quarantine persons who have, or are reasonably suspected of having syphilis, gonorrhea, or chancroid, whenever, in the opinion of said local officer, or the State Board of Health, or its executive officer, quarantine is necessary for the protection of the public health. In establishing quarantine the local Health Officer shall designate and define the limits of the area in which the person known to have, or reasonably suspected of having syphilis, gonorrhea, or chancroid and his immediate attendant, are to be quarantined and no person, other than the attending physician, shall enter or leave the area of quarantine without the permission of the local health officer.

No one but the local health officer shall terminate said quarantine, and this shall not be done until the quarantined person has become non-infectious, as determined by the local health officer or his authorized deputy through clinical examination and all necessary laboratory tests, or until permission has been given him to do so by the State Board of Health or its executive officer.

(b) The local health officer shall inform all persons who are about to be released from quarantine for venereal disease, in case they are not cured, what further treatment should be taken to complete their cure. Any person not cured, before released from quarantine, shall be required to sign the following statement after the blank spaces have been filled to the satisfaction of the health officer. I ..... residing at ..... hereby acknowledge the fact that I am at this time infected with .....; and agree to place myself under the medical care of .....,

Name of Physician or clinic

..... within ..... hours.

Address

and that I will remain under treatment of said physician or clinic until released by the health officer of ..... or until my case is transferred, with the approval of said health officer, to another regularly licensed physician or an approved clinic.

I hereby agree to report to the health officer within four days after beginning treatment as above agreed, and will bring with me a statement from the above physician or clinic of the medical treatment applied in my case, and thereafter will report as often as may be demanded of me by the health officer.

I agree further, that I will take all precautions recommended by the health officer to prevent the spread of the above disease to other persons and that I will not perform any act which will expose other persons to the above disease.

I agree, until finally released by the health officer to notify him of any change of address and to obtain his consent before moving my abode outside of his jurisdiction.

.....

Signature.

.....

Date.

All persons signing the above agreement shall observe its provisions, and any failure to do so shall be a violation of this Act. All such agreements shall be filed with the health officer, and kept inaccessible to the public as provided in Section 11 [Art. 4605¼j].

The Commissioners' Courts of the various counties in this State, and the city councils, or other boards of the incorporated towns and cities of the State, are hereby empowered and directed to provide suitable places for the detention of persons who may be subject to quarantine and who should be segregated for the execution of the provisions of this Act; and such Commissioners' Court, city councils and other governing boards of incorporated cities and towns are hereby au-

thorized to incur, on behalf of their said counties, cities or towns, the expenses necessary to the enforcement of this Act. (Id. sec. 5.)

Art. 4605¼e. Patients applying for treatment to give name and address of prior physician; report of name and address of patient.—(a) When a person applies to a physician or other person for the diagnosis or treatment of syphilis, gonorrhea or chancroid, it shall be the duty of the physician or person so consulted to inquire of, and ascertain from, the person seeking such diagnosis or treatment, whether such person has heretofore consulted with, or has been treated by, any other physician or person, and if so, to ascertain the name and address of the physician or person last consulted. It shall be the duty of the applicant for diagnosis or treatment to furnish this information, and a refusal to do so, or a classification of the same and address of such physician or person consulted by such applicant shall be deemed a violation of this Act. It shall be the duty of the physician or other person whom the applicant consults to notify the physician or other person last consulted of the change of advisers. Should the physician or person previously consulted fail to receive such notice within ten days after the last date upon which the patient was instructed by him to appear, it shall be the duty of such physician or person to report to the local health officer the name and address of such venereally diseased person.

(b) If an attending physician or other person knows or has good reasons to suspect that a person having syphilis, gonorrhea, or chancroid is so conducting himself or herself as to expose other persons to infection, or is about so to conduct himself or herself, he shall notify the local health officer of the name and address of the diseased person and the essential facts in the case. (Id. sec. 6.)

Art. 4605¼f. Druggists to keep record of sales of treatments for such diseases.—Any druggist or other persons who sells any drug, compound, specific or preparation of any kind used for or believed by the druggist or person to be intended to be used for the treatment of any of said venereal diseases, shall keep a record of the name and address of the person making such purchase. A copy of said record shall be mailed each week to the local health officer and by him to the State Board of Health. (Id. sec. 7.)

Art. 4605¼g. Infected person exposing another to infection.—It shall be a violation of this statute for any infected person knowingly to expose another person to infection with any of the said venereal diseases, or for any person to perform an act which exposes another person to infection with venereal disease. (Id. sec. 8.)

Art. 4605¼h. Prostitution declared a source of infection; suppression.—Prostitution is hereby declared to be a prolific source of syphilis, gonorrhea, and chancroid, and the repression of prostitution is declared to be a public health measure. All local and state health officers are therefore directed to co-operate, with proper officials whose duty it is to enforce laws directed against prostitution, and otherwise to use every proper means for the repression of prostitution. (Id. sec. 9.)

Art. 4605¼i. Certificates of freedom from such diseases.—Physicians, health officers, and all other persons are prohibited from issuing certificates of freedom from venereal disease, provided this Section shall not prevent the issuance of statements of freedom from infectious diseases written in such form, or given under such safe guards, that their use for solicitation for sexual intercourse would be impossible. (Id. sec. 10.)

Art. 4605¼j. Information and reports confidential.—All information and reports concerning persons infected with venereal diseases shall be inaccessible to the public except in so far as publicity may attend the performance of the duties imposed by this statute and by the laws of the State. (Id. sec. 11.)

For section 12 of this act see Penal Code, art. 420j.

Art. 4605¼k. Remedies for enforcement of act.—In addition to the remedies provided herein for the enforcement of the provisions of this Act, the State Health Department and all county and local health departments are hereby authorized and empowered to employ all measures provided by existing laws for ascertaining, handling, segregating and controlling contagious or infectious diseases. (Id. sec. 13.)

TITLE 67

HOLIDAYS—LEGAL

Art. 4606. (2939) What days are legal holidays.—The first day of January, the twenty-second day of February, the second day of March, the twenty-first day of April, the third day of June, the fourth day of July, the first Monday in September, the twelfth day of October, and the twenty-fifth day of December, of each year, and all days appointed by the President of the United States, or by the Governor, as days of fasting or thanksgiving, and every day on which an election is held throughout the State, are declared holidays, on which all the public offices of the State may be closed, and shall be considered and treated as Sunday or the Christian Sabbath for all purposes regarding the presenting for payment or acceptance and of protesting for and giving notice of the dishonor of bills of exchange, bank checks and promissory notes placed by the law upon the footing of bills of exchange. (Acts 1893, p. 4; Acts 1911, p. 52.)

See Webb v. S., 40 S. W. 989; Michael v. Michael, 100 S. W. 1018; Consumers' Lignite Co. v. Houston & T. C. R. Co., 179 S. W. 306.

Art. 4607. (2940) Arbor day.—The twenty-second day of February of each year, the same being a legal holiday, is further set apart and designated as "Arbor Day," to be devoted to the planting and cultivation of forest, shade and ornamental trees throughout the state, and to be observed for that purpose in such manner as may seem best to the people of each community. (Acts 1889, p. 78.)

Art. 4607a. Texas Flag Day.—March 2d shall hereafter be designated as "Texas Flag Day," and that the Governor of Texas be requested to issue his proclamation each year before March 2d, so declaring, and that he urge the people of Texas to observe it by displaying on all public buildings, including the school houses, of the State, the Texas flag;

and that the Superintendent of Public Buildings and Grounds be instructed hereafter on all days of the year, except upon National occasions, to have the Texas flag unfurled upon the flagstaff of the Capitol at Austin. (H. C. R. No. 6, Feb. 18, 1915, p. 276.)

Art. 4607b. Sam Houston Memorial Day.—That Friday, March 2, 1917, and March 2nd of each year thereafter, be and the same is hereby designated as "Sam Houston Memorial Day," and that the Governor of Texas be and he is hereby requested to issue his official proclamation under the great seal of the State, calling upon the people to celebrate the anniversary with fitting ceremonies, and to contribute to a fund to be known as the Sam Houston Memorial Fund for the purpose of erecting said Memorial, to the end that all the people of Texas may have part in doing a too long delayed honor to the memory of a patriot who has rendered Texas invaluable service in her struggle for liberty, and in after years as President of the Republic of Texas, and still later as one of her representatives for twelve years in that august parliament the Senate of the United States, and as Governor of this imperial commonwealth which eventuated out of the Republic which had its birth on the battlefield of San Jacinto. (H. C. R. No. 2, Jan. 30, 1917, p. 489.)

TITLE 67A

HOME GUARD

Art. 4607½. Home guard in counties may be organized.—That whenever a state of war exists between the United States and another nation there may be created and organized with the consent and under the direction of the County Court of any county, a Home Guard composed of citizens of such county and of the United States of America over the age of 21 years. (Acts 1917, 3d C. S., ch. 20, sec. 1.)

Art. 4607½a. Guard subject to call of sheriff; right to carry arms.—Such Home Guard shall at all times be subject to the orders of the sheriff of such county, and the members thereof as a whole and individually shall at all times be subject to the call to duty by the sheriff to preserve order in any section of the county; provided, such Home Guard as a whole or as individuals shall be authorized to carry on and about their person pistols and such other weapons as may be necessary when called to actual duty by the sheriff. (Id. sec. 2.)

Art. 4607½b. Organization.—Such Home Guard shall be organized to conform as nearly as practicable to the organization of military units. (Id. sec. 3.)

Art. 4607½c. Drills and uniform.—Such Home Guard may engage in such drills at such times and places as the commanding officer may prescribe, and may be uniformed in manner not to conflict with Section 125, Act of the Congress of the United States, Approved June 3, 1916. (Id. sec. 4.)

Art. 4607½d. Expense, how paid; return of arms, etc.—The organization and maintenance of such Home Guard shall be without expense to the State of Texas, or any county, city or town; provided, however, that counties, cities and towns may through their lawfully constituted governing bodies appropriate from their public treasuries moneys wherewith to provide arms and ammunition for such Home Guard under such rules and regulations as they may prescribe; provided that all persons who receive arms from the county shall return all guns and ammunitions to the County Judge when they are not on duty. (Id. sec. 5.)

TITLE 68

HUSBAND AND WIFE

CHAPTER ONE

CELEBRATION OF MARRIAGE

Art. 4608. (2954) (2838) Who authorized to celebrate rites.—All regular licensed or ordained ministers of the gospel, Jewish rabbis, judges of the district and county courts, and all justices of the peace of the several counties are authorized to celebrate the rites of matrimony between all persons legally authorized to marry. (Acts 1866, p. 72; 1891, p. 96; P. D. 7119.)

See Speer's Marital Rights, p. 13.

Art. 4609. (2955) (2839) Who not permitted to marry.—Males under sixteen and females under fourteen years of age shall not marry. (Id.)

See Speer's Marital Rights, p. 6; Murphy v. S., 143 S. W. 616.

Art. 4610. (2956) (2840) License.—Any person desirous of marrying shall apply to the clerk of the county court, and shall receive from him a license directed to all persons authorized by law to celebrate the rites of matrimony, which shall be sufficient authority for any one of such persons to celebrate such marriage. (Act June 5, 1837; P. D. 4666.)

See Speer's Marital Rights, p. 11.

Art. 4611. (2957) (2841) Consent of parent or guardian.—No clerk shall issue a license without the consent of the parent or guardian of the parties applying, if there be a legally appointed guardian of either party to such license, said consent to be given in person or in writing, signed and acknowledged by said parent or guardian before an officer authorized to take acknowledgments, unless the parties so applying shall be, in case of the male twenty-one years of age, and in case of the female eighteen years of age and if there be any doubt in the mind of the clerk of the county court issuing such license, he shall not issue said license unless there shall be presented to him a certificate under oath from their parent or guardian or some person other than the contracting parties that the contracting parties have attained the ages aforesaid; provided, further, that nothing in this Act shall be construed to affect the issuance of marriage license in seduction prosecution. Provided, that in cases where any minor has neither parent nor guardian, then the clerk shall not issue a license without the consent of the county judge of the county of the residence of such minor, such consent to be in writing and signed and acknowledged by such county judge. (P. D. 4667; Acts 1911, p. 63.)

See Speer's Marital Rights, p. 10; Wells v. Hardy, 51 S. W. 503; Evans v. Johnson, 61 S. W. 143.

Art. 4612. (2958) (2842) Record and return of licenses.—The said clerk shall record all licenses so issued by him in a well-

bound book kept for that purpose; and it shall also be the duty of the persons solemnizing the rites of matrimony to indorse the same on the license and make return of the same to the office of the clerk of the county court within sixty days after the celebration aforesaid; which return shall also be recorded as aforesaid. (P. D. 4668.)

See Burton v. S., 101 S. W. 226.

Art. 4613. (2959) (2843) Certain intermarriages prohibited.—It shall not be lawful for any person of Caucasian blood or their descendants to intermarry with Africans or the descendants of Africans; and, should any person as aforesaid violate the provisions of this article, such marriage shall be null and void. (P. D. 4670; P. C. 346.)

See Speer's Marital Rights, p. 6; Sayles' Practice, p. 947.

Art. 4614. (2960) (2844) Marriages by bond, etc., validated.—Whereas, many persons heretofore, previous to the passage of an act approved June 5, 1837, regulating marriages, and for other purposes, had, for the want of some person legally qualified to celebrate the rites of matrimony, resorted to the practice of marrying by bond, and others have been married by various officers of justice not authorized to celebrate such marriages, and whereas, public policy and the interest of families require a further legislative action on the subject, therefore, all such marriages are declared legal and valid to all intents and purposes, and the issue of such persons are declared legitimate children and capable of inheritance. (Act Feb. 5, 1840; P. D. 4671.)

Art. 4615. (2961) (2845) Issue legitimated.—In cases where persons have so intermarried agreeably to the custom of the times, and where husband or wife has since died, then and in that case the issue of such marriages are hereby legitimated. (Act Jan. 20, 1840; P. D. 4672.)

Art. 4616. (2962) (2846) Cohabitation of certain persons considered as marriage.—All persons who at any time heretofore have lived together as man and wife, and both of whom, by the laws of bondage, were precluded from the rites of matrimony, and continued to live together until the death of one of the parties, shall be considered as having been legally married, and the issue of such cohabitation is declared legitimate; and all such persons as were so living together in such relation on the fifteenth day of August, 1870, shall be considered as having been legally married, and the children heretofore or hereafter born of such cohabitations are declared legitimate. (Acts 1870, p. 127; P. D. 7120.)

See Speer's Marital Rights, p. 32.

CHAPTER TWO

MARRIAGE CONTRACTS

Art. 4617. (2963) (2847) What stipulations may be made.—Parties intending to enter into the marriage state may enter into what stipulations they please, provided they be not contrary to good morals or to some rule of law; and in no case shall they enter into any agreement, or make any renunciation, the object of which would be to alter the legal orders of descent, either with respect to themselves, in what concerns the inheritance of their children or posterity, which either may have by any other person, or in respect to their common children; nor shall they make any valid agreement to impair the legal rights of the husband over the person of the wife, or the persons of their common children. (Acts Jan. 20, 1840; P. D. 4632.)

See Speer's Marital Rights, p. 56; Simkins' Equity (2d Ed.) p. 306; Simkins' Contracts and Sales (3d Ed.) p. 441; Herron's Probate Guide, p. 36.

Art. 4618. (2964) (2848) How authenticated.—Every matrimonial agreement must be acknowledged before some officer authorized by law to take acknowledgment to deeds, and attested by at least two witnesses; the minor capable of contracting matrimony may give his consent to any agreement which this contract is susceptible of, but such agreement must be made by the written consent of both parents, if both be living; if not, by that of the survivor; if both be dead, then by the written consent of the guardian of such minor. (P. D. 4633.)

See post, art. 6824; Speer's Marital Rights, p. 57; Simkins' Equity (2d Ed.) p. 306.

Art. 4619. (2965) (2849) Can not be altered after marriage.—No matrimonial agreement shall be altered after the celebration of the marriage. (P. D. 2749.)

See Simkins' Equity (2d Ed.) p. 307; Speer's Marital Rights, p. 57.

Art. 4620. (2966) (2850) Reservation by wife must be recorded.—When the wife, by a marriage contract, may reserve to herself any property, or rights to property, whether such rights be in esse or expectancy, such reservation, to be valid as to the subsequent purchasers or creditors of her husband, must be acknowledged and recorded as provided by law. (P. D. 4635.)

See post, arts. 6824, 6843; Speer's Marital Rights, p. 57; Simkins' Equity (2d Ed.) p. 307.

CHAPTER THREE

RIGHTS OF MARRIED WOMEN

Art. 4621. (2967) (2851) Separate property; management; joinder of husband in conveyance, etc.; permission to convey where husband abandons wife, is insane, or refuses to join; husband's debts; conveyance of homestead.—All property, both real and personal, of the husband owned or claimed by him before marriage, and that acquired afterwards by gift, devise or descent, as also the increase of all lands thus acquired, and the rents and revenues derived therefrom, shall be his separate property. The separate property of the husband shall not be subject to the debts contracted by the wife, either before or after marriage, except for necessaries furnished herself and children after her marriage with him. All property of the wife, both real and personal, owned or claimed by her before marriage, and that acquired afterwards by gift, devise or descent, as also the increase of all lands thus acquired, and the rents and revenues derived therefrom, shall be the separate property of the wife. During marriage the husband shall have the sole management, control and disposition of his separate property, both real and personal, and the wife shall have the sole management, control and disposition of her separate property, both real and personal; provided however, the joinder of the husband in the manner now provided by law for conveyance of the separate real estate of the wife shall be necessary to an encumbrance or conveyance by the wife of her lands, and the joint signa-

ture of the husband and wife shall be necessary to a transfer of stocks and bonds belonging to her, or of which she may be given control by this Act; provided, also, that if the husband shall have permanently abandoned his wife, be insane, or shall refuse to join in such encumbrance, conveyance or transfer of such property, the wife may apply to the district court of the county of her residence, and it shall be the duty of the court, in term time or vacation, upon satisfactory proof that such encumbrance, conveyance or transfer would be advantageous to the interest of the wife, to make an order granting her permission to make such encumbrance, conveyance or transfer without the joinder of her husband, in which event she may encumber, convey or transfer said property without such joinder. Neither the separate property of the wife, nor the rents from the wife's separate real estate, nor the interest on bonds and notes belonging to her, nor dividends on stocks owned by her, nor her personal earnings, shall be subject to the payment of debts contracted by the husband. The homestead, whether the separate property of the husband or wife, or the community property of both, shall not be disposed of except by the joint conveyance of both the husband and the wife, except where the husband has permanently abandoned the wife, or is insane, in which instances the wife may sell and make title to any such homestead, if her separate property, in the manner herein provided for conveying or making title to her other separate estate.

The community property of the husband and wife shall not be liable for debts or damages resulting from contracts of the wife, except for necessaries furnished herself and children, unless the husband joins in the execution of the contract. Provided that her rights with reference to the community property on permanent abandonment by the husband shall not be affected by the preceding sentence. (Act March 13, 1848; P. D. 4641; Const., art. 16, sec. 15; Acts 1913, p. 61, sec. 1; Acts 1917, ch. 194, sec. 1.)

See ante, art. 1839; post, art. 6844; Speer's Marital Rights, pp. 235, 249, 292, 294, 466; Simkins' Equity (2d Ed.) p. 253, et seq.; Herron's Probate Guide, pp. 471-486; Coleman v. Bank, 43 S. W. 938; Id. 63 S. W. 868; Nat. Fire Ins. Co. v. Wagley, 68 S. W. 819; Dority v. Dority, 71 S. W. 950; St. L. S. W. Ry. v. Wright, 75 S. W. 565; Bledsoe v. Fitts, 105 S. W. 1142; Kauffman v. S., 109 S. W. 172; Heintz v. Heintz, 120 S. W. 941; Broussard v. Lawson, 124 S. W. 712; Sauvage v. Wauhop, 143 S. W. 259; Walker v. Farmers' & Merchants' State Bank of Winters, 146 S. W. 312; Waggoner Bank & Trust Co. v. Warren, 152 S. W. 691; Gameson v. Gameson, 162 S. W. 1169; Connell v. Nickey, 167 S. W. 313; Winkie v. Conatser, 171 S. W. 1017; Tannehill v. Tannehill, 171 S. W. 1050; First Nat. Bank of Plainview v. McWhorter, 179 S. W. 1147; Scruggs v. Gage, 182 S. W. 696; Red River Nat. Bank v. Ferguson, 192 S. W. 1088; St. Paul Fire & Marine Ins. Co. v. McQuary, 194 S. W. 491; Emerson-Brantingham Implement Co. v. Brothers, 194 S. W. 608; Akin v. First Nat. Bank of Bridgeport, 194 S. W. 610; Akin v. Thompson, 196 S. W. 625; Aiken v. First Nat. Bank of Bridgeport, 198 S. W. 1017; Clark v. Tulley, 200 S. W. 605; Markley v. Martin, 204 S. W. 123; Barber v. Keeling, 204 S. W. 139; Sewell v. Walton, 204 S. W. 371; Red River Nat. Bank v. Ferguson, 206 S. W. 923; Miller v. Fenton, 207 S. W. 631; Ayo v. Robertson, 207 S. W. 979; Johnson v. Scott, 208 S. W. 671.

Art. 4621a. Money or property received as compensation for personal injuries to wife.—All property or moneys received as compensation for personal injuries sustained by the wife shall be her separate property, except such actually and necessary expenses as may have accumulated against the husband for hospital fees, medical bills and all other expenses incident to the collection of said compensation. (Acts 1915, ch. 54, sec. 1.)

Art. 4622. (2968) (2852) Community property; what property shall be under control, etc., of wife; bank deposits.—All property acquired by either the husband or wife during marriage, except that which is the separate property of either one or the other, shall be deemed the common property of the husband and wife, and during coverture may be disposed of by the husband only, provided, however, the personal earnings of the wife, the rents from the wife's real estate, the interest on bonds and notes belonging to her and dividends on stocks owned by her shall be under the control, management and disposition of the wife alone, subject to the provisions of article 4621, as hereinabove written; and further provided, that any funds on deposit in any bank or banking institution, whether in the name of the husband or the wife, shall be presumed to be the separate property of the party in whose name they stand, regardless of who made the deposit, and unless said bank or banking institution is notified to the contrary, it shall be governed accordingly in honoring checks and orders against such account. (P. D. 4642; Acts 1913, p. 61, sec. 1.)

See ante arts. 2470, 3592; Speer's Marital Rights, pp. 235, 249, 292, 294, 371, 392, 394; Simkins' Equity (2d Ed.) p. 315 et seq.; Shields v. Aultman-Miller & Co., 50 S. W. 219; Martin v. McAllister, 63 S. W. 624; Cervantes v. Cervantes, 76 S. W. 790; Creamer v. Briscoe, 107 S. W. 635; Kauffman v. State, 109 S. W. 172; Frey v. Myers, 113 S. W. 592; Sauvage v. Wauhop, 143 S. W. 259; Ragley-McWilliams Lumber Co. v. Davidson, 152 S. W. 856; Wood v. Dean, 155 S. W. 363; Hanks v. Leslie, 159 S. W. 1056; Gameson v. Gameson, 162 S. W. 1169; Connell v. Nickey, 167 S. W. 313; Scott v. Scott, 170 S. W. 273; Winkie v. Conatser, 171 S. W. 1017; Tannehill v. Tannehill, 171 S. W. 1050; First Nat. Bank of Plainview v. McWhorter, 179 S. W. 1147; Scruggs v. Gage, 182 S. W. 696; Emery v. Barfield, 183 S. W. 386; Red River Nat. Bank v. Ferguson, 192 S. W. 1088; Emerson-Brantingham Implement Co. v. Brothers, 194 S. W. 608; Akin v. First Nat. Bank of Bridgeport, 194 S. W. 610; Messimer v. Echols, 194 S. W. 1171; Akin v. Thompson, 196 S. W. 625; Aiken v. First Nat. Bank of Bridgeport, 198 S. W. 1017; Sewell v. Walton, 204 S. W. 371; Red River Nat. Bank v. Ferguson, 206 S. W. 923; Miller v. Fenton, 207 S. W. 631; Johnson v. Scott, 208 S. W. 671.

Art. 4623. (2969) (2853) Presumption as to community property.—All the effects which the husband and wife possess at the time the marriage may be dissolved shall be regarded as common effects or gains, unless the contrary be satisfactorily proved. (Act Jan. 20, 1840; P. D. 4638.)

See post, arts. 4634, 4638, 4639; Speer's Marital Rights, p. 657; Smith v. Smith, 91 S. W. 815; Stein v. Mentz, 94 S. W. 447; Frey v. Myers, 113 S. W. 592; Phillips v. Palmer, 120 S. W. 911; Wood v. Dean, 155 S. W. 363; Key v. S., 160 S. W. 354; Swilley v. Phillips, 169 S. W. 1117.

Art. 4624. (2970) (2854) What property subject to debts of wife; husband must join in certain contracts.—Neither the separate property of the husband nor the community property other than the personal earnings of the wife, and the income, rents and revenues from her separate property shall be subject to the payments of debts contracted by the wife, except those contracted for necessaries furnished her or her children; provided, the wife shall never be the joint maker of a note or a surety on any bond or obligation of another without the joinder of her husband with her in making such con-

tract. (Act March 13, 1848. P. D. 4643. Acts 1913, p. 61, sec. 1.)

Simkins' Equity (2d Ed.) pp. 286, 289; Speer's Marital Rights, pp. 105, 196, 197, 203, 207, 213, 230, 372, 637, 650; Simkins' Contracts and Sales (3d Ed.) p. 176 et seq.; Menard v. Schneider, 48 S. W. 761; Beattie v. Keller, 49 S. W. 408; Bexar B. & L. Ass. v. Heady, 50 S. W. 1079; Proetzel v. Rabel, 54 S. W. 374; Bord v. Stubbs, 54 S. W. 633; Parker v. Wood, 61 S. W. 940; Emerson v. Kneezell, 62 S. W. 551; Flannery v. Chidgey, 77 S. W. 1034; Evans v. Gray, 86 S. W. 375; Haas v. American Nat. Bk., 94 S. W. 439; Desmond v. Dockery, 116 S. W. 114; Stroter v. Brackenridge, 118 S. W. 632; Stroter v. Brackenridge, 118 S. W. 634; Billingsly v. Swenson Land Co., 123 S. W. 194; Teel v. Blair, 128 S. W. 478; Howell v. McMurry Lumber Co., 132 S. W. 848; Bott v. Wright, 132 S. W. 960; Taylor v. Thomas, 145 S. W. 1061; Lilly v. Yeary, 152 S. W. 823; Fisher v. Scherer, 169 S. W. 1133; Winkie v. Conatser, 171 S. W. 1017; Tannehill v. Tannehill, 171 S. W. 1050; Eubank v. City of Ft. Worth, 173 S. W. 1003; Red River Nat. Bank v. Ferguson, 192 S. W. 1088; Shaw v. Proctor, 193 S. W. 1104; Akin v. First Nat. Bank of Bridgeport, 194 S. W. 610; First State Bank of Tomball v. Tinkham, 195 S. W. 880; Akin v. Thompson, 196 S. W. 625; Aiken v. First Nat. Bank of Bridgeport, 198 S. W. 1017; Sewell v. Walton, 204 S. W. 371; Red River Nat. Bank v. Ferguson, 206 S. W. 923; Johnson v. Scott, 208 S. W. 671; Mills v. Frost Nat. Bank, 208 S. W. 698.

Art. 4625. (2971) (2855) Judgment and execution in such cases.—Upon the trial of any suit as provided for in the preceding article, if it shall appear to the satisfaction of the court and jury that the debts so contracted or expenses so incurred were for the purposes enumerated in said article, and also that the debts so contracted or expenses so incurred were reasonable and proper, the court shall decree that execution may be levied upon either the common property or the separate property of the wife, at the discretion of the plaintiff. (P. D. 4644.)

See ante, arts. 1840, 1841; Speer's Marital Rights, pp. 197, 204, 632, 637; Sayles' Practice, p. 173; Carson v. Taylor, 47 S. W. 395; Haas v. American Nat. Bk., 94 S. W. 439; Desmond v. Dockery, 116 S. W. 114; White v. Cowles, 155 S. W. 982.

Art. 4626. (2972) (2856) Husband failing to support wife, etc.—Should the husband fail or refuse to support his wife from the proceeds of the lands she may have, or fail to educate her children as the fortune of the wife would justify, she may, in either case, complain to the county court, which, upon satisfactory proof, shall decree that so much of such proceeds shall be paid to the wife for the support of herself and for the nurture and education of her children, as the court may deem necessary. (Act Jan. 20, 1840; P. D. 4637.)

See Speer's Marital Rights, pp. 92, 454, 557; Simkins' Contracts and Sales (3d Ed.) p. 184; Dority v. Dority, 70 S. W. 338; Burns v. Burns, 126 S. W. 333.

Art. 4627. (2973) (2857) Community property liable for debts.—The community property of the husband and wife shall be liable for their debts contracted during marriage, except in such cases as are specially excepted by law. (Acts Aug. 26, 1856; P. D. 4646.)

See ante, arts. 2470, 3592; Speer's Marital Rights, p. 650.

Art. 4628. (2974) (2858) Female under 21 emancipated by marriage.—Every female under the age of twenty-one years, who shall marry in accordance with the laws of this state, shall, from and after the time of such marriage, be deemed to be of full age, and shall have all the rights and privileges to which she would have been entitled had she been at the time of her marriage of full age. (Act March 13, 1848; P. D. 4642.)

See ante, art. 4045; Speer's Marital Rights, p. 27.

Art. 4629. (2975) (2859) Rights of persons married elsewhere.—The marital rights of persons married in other countries, who may remove to this state, shall, in regard to property acquired in this state during the marriage, be regulated by the laws of this state. (P. D. 4639.)

See Speer's Marital Rights, p. 99.
For Change of Name, see art. 5954.

Art. 4629a. May apply to district court to be feme sole for mercantile and trading purposes, how.—Any married woman within this state may, with the consent of and joined by her husband, apply to the district court of the county in which she may be a bona fide resident for judgment or order of the said court removing her disabilities of coverture and declaring her feme sole for mercantile and trading purposes. (Acts 1911, p. 92, sec. 1.)

Art. 4629b. Petition; contents.—Said application shall be in the form of a petition in writing, addressed to said court, setting out the cause or causes which make it desirable or advantageous to said married woman to be so declared feme sole. (Id. sec. 2.)

Art. 4629c. Hearing on petition.—Upon the filing of said petition same shall be docketed as in other cases, and at any time thereafter the district court may, in term time, take up and hear said petition and evidence in regard thereto. (Id. sec. 3.)

Art. 4629d. Decree declaring married woman feme sole for mercantile and trading purposes; effect of decree.—If upon a hearing of said petition, and evidence relating thereto, it should appear to the court that it would be to the interest and advantage of the said married woman so applying, then said court shall enter its order or decree declaring said married woman feme sole for mercantile or trading purposes, and thereafter the said married woman may, in her own name, contract and be contracted with, sue and be sued, and all of her separate property not exempt from execution under the exemption laws of Texas, shall thereafter be subject to her debts and liable under execution therefor, and her contracts and obligations shall be as binding on her as if she were a feme sole. Provided, however, that no married woman shall convey or encumber her separate real property except as now provided by law. (Id. sec. 4.)

CHAPTER FOUR

DIVORCE

Art. 4630. (2976) (2860) Marriage may be annulled, when.—The district court shall have power to hear and determine suit for the dissolution of marriage, where the causes alleged therefor shall be natural or incurable impotency of body at the time of entering into the marriage contract, or any other impediment that renders such contract void, and shall have power and authority to decree the marriage to be null and void. (Act Jan. 6, 1841; P. D. 3449.)

See Sayles' Practice, pp. 177, 946; Speer's Marital Rights, pp. 22, 52, 661.

Art. 4631. (2977) (2861) Divorce may be granted in what cases.—A divorce by

separation from the bonds of matrimony may be decreed in the following cases:

1. Where either the husband or wife is guilty of excesses, cruel treatment or outrages toward the other, if such ill treatment is of such a nature as to render their living together insupportable.

2. In favor of the husband, where his wife shall have been taken in adultery, or where she shall have voluntarily left his bed and board for the space of three years with the intention of abandonment.

3. In favor of the wife, where the husband shall have left her for three years with intention of abandonment, or where he shall have abandoned her and lived in adultery with another woman.

4. In favor of either the husband or wife, when the other shall have been convicted, after marriage, of a felony and imprisoned in the state prison; provided, that no suit for divorce shall be sustained because of the conviction of either party for felony until twelve months after final judgment of conviction, nor then if the governor shall have pardoned the convict; provided, that the husband has not been convicted on the testimony of the wife, nor the wife on the testimony of the husband. (Acts 1876, p. 16; P. D. 3451.)

See ante, arts. 1705, 1766; Speer's Marital Rights, pp. 662, 670, 675, 677, 678; Sayles' Practice, p. 948; O'Farrell v. O'Farrell, 119 S. W. 899; McConkey v. McConkey, 187 S. W. 1100; Bolt v. Bolt, 199 S. W. 309; Claunch v. Claunch, 203 S. W. 930.

Art. 4632. (2978) (2862) Plaintiff must be resident; suit not to be heard within 30 days; remarriage; divorce where marriage was to escape penalties for seduction; additional ground for divorce.—No suit for divorce from the bonds of matrimony shall be maintained in the courts of this state unless the petitioner for such divorce shall at the time of exhibiting his or her petition, be an actual bona fide inhabitant of the state for a period of twelve months, and shall have resided in the county where the suit is filed six months next preceding the filing of the suit; provided, that such suit shall not be heard or divorce granted before the expiration of thirty days after the same is filed; and provided, further, that neither party to a divorce suit, wherein a divorce is granted upon the ground of cruel treatment, shall marry any other person for a period of twelve months next after such divorce is granted, but the parties so divorced may marry each other at any time upon obtaining a license as provided in article 4610; provided that where a man marries the woman whom he seduces to escape penalties of the law punishing for seduction, the man shall not be entitled to a divorce for any cause within three years after such marriage, provided that this Act shall not apply to any case where either the husband or wife is insane.

Provided further that in addition to the grounds for divorce now provided by statute, that where any husband and wife have lived apart without co-habitation for as long as ten years, the same shall be sufficient grounds for divorce. (Acts 1873, p. 117. P. D. 3459. Acts 1913, p. 183, sec. 1.)

See ante, art. 1830, sec. 16; Speer's Marital Rights, pp. 688, 703, 709; Sayles' Practice, p. 945; Michael v. Michael, 79 S. W. 74; Owens v. Owens, 90 S. W. 664; Gamblin v. Gamblin, 114 S. W. 408; McLean v. Randell, 135 S. W. 1116; Dickinson v. Dickinson, 138 S. W. 205; Charlton v. Charlton, 141 S. W. 290; Forsythe v. Forsythe, 149 S. W. 198; Fox v. Fox, 179 S. W. 883; Coward v. Sutfin, 185 S. W. 378; Skeen v. Skeen, 190 S. W. 1118; Hunt v. Hunt, 196 S. W. 967; Daugherty v. Daugherty, 198 S. W. 985.

Art. 4633. (2979) (2863) Husband and wife competent witnesses.—In all suits and proceedings for divorce from the bonds of matrimony, the defendant shall not be compelled to answer upon oath, nor shall the petition be taken as confessed for want of answer, but the decree of the court shall be rendered upon full and satisfactory evidence, upon the verdict of a jury, if a jury shall have been demanded by either party, and if not, upon the judgment of the court affirming the material facts alleged in the petition. In all such suits and proceedings the husband and wife shall be competent witnesses for and against each other, but neither party shall be compelled to testify as to any matter that will criminate himself or herself; and where the husband or wife testifies, the court or jury trying the case shall determine the credibility of such witness and the weight to be given such testimony; but no divorce shall be granted upon the evidence of either husband or wife, if there be any collusion between them. (Acts 1897, p. 49; P. D. 3452.)

See Speer's Marital Rights, pp. 691, 696, 699, 709; Sayles' Practice, pp. 954-5; Seago v. Seago, 64 S. W. 941; Wright v. Wright, 110 S. W. 158; Ingle v. Ingle, 131 S. W. 241; Duffer v. Duffer, 144 S. W. 354; Fitzgerald v. Fitzgerald, 168 S. W. 452; Grisham v. Grisham, 185 S. W. 959.

Art. 4634. (2980) (2864) Division of property.—The court pronouncing a decree of divorce from the bonds of matrimony shall also decree and order a division of the estate of the parties in such a way as to the court shall seem just and right, having due regard to the rights of each party and their children, if any; provided, however, that nothing herein contained shall be construed to compel either party to divest himself or herself of the title to real estate. (P. D. 3452.)

See ante, art. 4623; Speer's Marital Rights, pp. 710, 717, 720; Sayles' Practice, p. 956; Bahn v. Starcke, 34 S. W. 103; Moor v. Moor, 57 S. W. 992; Long v. Long, 69 S. W. 428; Ligon v. Ligon, 87 S. W. 838; Bond v. Bond, 90 S. W. 1128; Smith v. Smith, 91 S. W. 815; Gully v. Gully, 173 S. W. 1178; Wade v. Wade, 180 S. W. 643; Gully v. Gully, 184 S. W. 555; Smith v. Smith, 200 S. W. 1129; Phillips v. Phillips, 203 S. W. 77; Celli v. Sanderson, 207 S. W. 179.

Art. 4635. (2981) (2865) Condonation, connivance and collusion.—In any suit for divorce for the cause of adultery, if it shall be proved that the complainant has been guilty of the like crime, or has admitted the defendant into conjugal society or embraces after he or she knew the criminal fact, or that the complainant, if the husband, connived at his wife's prostitution, or exposed her to lewd company, whereby she became ensnared to the crime aforesaid, it shall be a good defense and a perpetual bar against said suit; or if it appears that the adultery complained of is occasioned by collusion of the parties, and done with intention to procure a divorce, or where both parties shall be guilty of adultery, then no divorce shall be decreed. (P. D. 3460.)

See ante, art. 4631, sec. 3; Speer's Marital Rights, p. 678; Sayles' Practice, p. 951.

Art. 4636. (2982) (2866) Legitimacy of children; parties may marry again.—

A divorce from the bonds of matrimony shall not in any wise affect the legitimacy of the children thereof; and either party may, after the dissolution of the marriage, marry again. (P. D. 3453.)

See Speer's Marital Rights, p. 709; Sayles' Practice, p. 958.

Art. 4637. (2983) (2867) Debts and alienations after suit filed.—On and after the day on which the action for divorce shall be brought, it shall not be lawful for the husband to contract any debts on account of the community, nor to dispose of the lands belonging to the same; and any alienation made by him after that time shall be null and void, if it be proved to the satisfaction of the court that such alienation was made with a fraudulent view of injuring the rights of the wife. (P. D. 3457.)

See Speer's Marital Rights, p. 685; Sayles' Practice, p. 956; Sparks v. Taylor, 90 S. W. 485; Hines v. Sparks, 146 S. W. 289; Gabb v. Boston, 149 S. W. 569.

Art. 4638. (2984) (2868) Inventory and appraisement; injunction.—At any time during a suit for divorce the wife may, for the preservation of her rights, require an inventory and an appraisement to be made of both real and personal estate which are in the possession of the husband, and an injunction restraining him from disposing of any part thereof in any manner. (P. D. 3458.)

See Sayles' Practice, pp. 888, 956; Speer's Marital Rights, p. 686; Turner v. Turner, 105 S. W. 237; Swearingen v. Swearingen, 165 S. W. 16; Turner v. Turner, 204 S. W. 133.

Art. 4639. (2985) (2869) Temporary orders.—Pending any suit for a divorce the court, or the judge thereof, may make such temporary orders respecting the property and parties as shall be deemed necessary and equitable. (P. D. 3454.)

See Speer's Marital Rights, pp. 681, 686; Sayles' Practice, p. 956; Bond v. Bond, 90 S. W. 1128; Ex parte Davis, 111 S. W. 394, 17 L. R. A. (N. S.) 1140; Shaw v. Shaw, 112 S. W. 124; Turner v. Turner, 204 S. W. 133; Lingwiler v. Lingwiler, 204 S. W. 785.

Art. 4640. (2986) (2870) Alimony.—If the wife, whether complainant or defendant, has not a sufficient income for her maintenance during the pendency of the suit for a divorce, the judge may, either in term time or in vacation, after due notice, allow her a sum for her support in proportion to the means of the husband, until a final decree shall be made in the case. (P. D. 3456.)

See Speer's Marital Rights, pp. 455, 682; Sayles' Practice, p. 957; Bond v. Bond, 90 S. W. 1128; Ex parte Davis, 111 S. W. 394, 17 L. R. A. (N. S.) 1140; Ex parte Lohmuller, 129 S. W. 834, 29 L. R. A. (N. S.) 303.

Art. 4641. (2987) (2871) Custody of children.—The courts aforesaid shall have power, in all cases of separation between man and wife, to give the custody and education of the children to either father or mother, as to the said court shall seem right and proper, having regard to the prudence and ability of the parents, and the age and sex of the child or children, to be determined and decided on the petition of either party; and in the meantime to issue any injunction or make any order that the safety and well being of any such children may require. (P. D. 3461.)

See Speer's Marital Rights, p. 719; Sayles' Practice, p. 958; Ligon v. Ligon, 87 S. W. 838; Bond v. Bond, 90 S. W. 1128; Wright v. Wright, 110 S. W. 158; Ex parte Ellerd, 158 S. W. 1145, Ann. Cas. 1916D, 361; Gully v. Gully, 173 S. W. 1178; Noble v. Noble, 185 S. W. 318.

Art. 4642. (2988) (2872) Costs.—The court may award costs to the party in whose behalf the sentence or decree shall pass, or that each party shall pay his or her own costs, as to the court shall appear reasonable.

Speer's Marital Rights, p. 724; Sayles' Practice, p. 681.

TITLE 69

INJUNCTIONS

Art. 4643. (2989) Writs of injunction granted, when.—Judges of the district and county courts shall, either in term time or vacation, hear and determine all applications and may grant writs of injunctions returnable to said courts in the following cases:

1. Where it shall appear that the party applying for such writ is entitled to the relief demanded, and such relief or any part thereof requires the restraint of some act prejudicial to the applicant.

2. Where, pending litigation, it shall be made to appear that a party doing some act respecting the subject of litigation, or threatens or is about to do some act or is procuring or suffering the same to be done in violation of the rights of the applicant, which act would tend to render judgment ineffectual.

3. In all cases where the applicant for such writ may show himself entitled thereto under the principles of equity, and as provided by statutes in all other acts of this state, providing for the granting of injunctions, or where a cloud would be put on the title of real estate being sold under an execution against a person, partnership or corporation, having no interest in such real estate subject to the execution at the time of the sale, or irreparable injury to real estate or personal property is threatened, irrespective of any legal remedy at law. Provided, that no district judge shall have the power to grant any writ of injunction returnable to any other court than his own, unless the application or petition therefor shall state that the resident judge, that is, the judge in whose district the suit is, or is to be brought is absent from his district, or is sick and unable to hear or act upon the application or is inaccessible, or unless such resident judge shall have refused to hear or act upon such application for the writ of injunction, or unless such judge is disqualified to hear or act upon the application; and the facts of, and relating to, such judge's absence, or sickness and inability, or disqualification, or inaccessibility, or refusal to act, must be fully set out in the application for the writ, or in an affidavit accompanying said application; and, in case of such absence or sickness and inability or inaccessibility or disqualification of the resident judge, or in case of his refusal to hear or act upon such application, no district judge shall have the power to grant the writ when the application therefor shall have once been acted upon by a district judge of the state; provided, that when the judge applied to shall have refused to hear or act upon such application he shall indorse thereon, or annex thereto, his refusal to hear or act upon such application, together with his reason therefor; provided, that nothing herein shall apply to the granting of writs

of injunction by non-resident judges to stay execution or to restrain foreclosures, or to restrain sales under deeds of trust, or to restrain trespasses, or to restrain the removal of property, or to restrain acts injurious to or impairing riparian or easement rights where proof is made to the satisfaction of such non-resident judge that it is impracticable for the applicant to reach the resident judge and procure his action in time to effectuate the purpose of the application. A resident judge shall be deemed inaccessible, within the meaning of this act, when, by the ordinary and available means and modes of travel and communication, he can not be reached in sufficient time to effectuate the purpose of the writ of injunction sought. Whenever an application or petition for the writ of injunction shall be made to a non-resident judge upon the ground that the resident judge is inaccessible as hereinbefore defined, the party making such application, or his attorney, shall make and file with the application, as a part thereof or annexed thereto, an affidavit setting out fully the facts showing that the resident judge is inaccessible, and the efforts made by the applicant to reach and communicate with said resident judge, and the result of said efforts in that behalf; and, unless it appears from said affidavit that the applicant has made a fair and reasonable effort to procure the action of the resident judge upon said application, no non-resident judge shall have the power to hear said application upon the ground of inaccessibility of the resident judge; and should any non-resident judge hear said application upon said ground of inaccessibility of the resident judge, and should grant the writ of injunction prayed for, said injunction so granted shall be dissolved upon it being shown that the petitioner has not first made reasonable effort to procure a hearing upon said application before the resident judge. (Acts 1907, p. 206; Const., art. 5, secs. 8, 16; Acts 1909, p. 354.)

See ante, arts. 102, 4638; Simkins' Equity (2d Ed.) p. 744; Ex parte Warfield, 50 S. W. 933; Green v. Gresham, 53 S. W. 382; Sayles' Practice, pp. 888, 956; Sullivan v. Dooley, 73 S. W. 82; Walstein v. Nicholson, 105 S. W. 207; Thompson v. Gooldsby, 106 S. W. 936; Woods v. Lowrance, 109 S. W. 418; Steger & Sons Piano Mfg. Co. v. MacMaster, 113 S. W. 337; Mitchell v. Burnett, 122 S. W. 937; Latham Co. Bankers v. Shelton, 122 S. W. 941; Ex parte Morgan, 124 S. W. 99, 136 Am. St. Rep. 996; Holbein v. De La Garza, 126 S. W. 42; Biggs v. Leffingwell, 132 S. W. 902; Southwestern Telegraph & Telephone Co. v. Smithdeal, 136 S. W. 1049; Dawson v. Dawson, 136 S. W. 1149; McLaughlin v. Smith, 140 S. W. 248; Le Baume v. Northern Texas Traction Co., 143 S. W. 301; Spence v. Fenchler, 151 S. W. 1094; City of Brownwood v. Brown Telegraph & Telephone Co., 152 S. W. 709; Houston Oil Co. of Texas v. Davis, 154 S. W. 337; S. K. McCall Co. v. Page, 155 S. W. 655; Bull v. Bearden, 159 S. W. 1177; Acme Cement Plaster Co. v. American Cement Plaster Co., 167 S. W. 183; Poe v. Ferguson, 168 S. W. 459; Barcus v. O'Brien, 171 S. W. 492; Tullos v. Church, 171 S. W. 803; Winkle v. Conatser, 171 S. W. 1017; Dibrell v. City of Coleman, 172 S. W. 550; Brown v. Fleming, 178 S. W. 964; Coman v. Baker, 179 S. W. 937; Cattlemen's Trust Co. of Ft. Worth v. Willis, 179 S. W. 1115; Allen v. Carpenter, 182 S. W. 430; Lane v. Kempner, 184 S. W. 1090; Birchfield v. Bourland, 187 S. W. 422; City Nat. Bank of Eastland v. Kinnebrew, 190 S. W. 536; Stolte v. Karren, 191 S. W. 600; Wooten v. Odell, 191 S. W. 721; City Com'rs of Port Arthur v. Fant, 193 S. W. 334; Simpson v. McGuirk, 194 S. W. 979; Guaranty State Bank & Trust Co. v. Thompson, 195 S. W. 960; Allen v. Knox, 195 S. W. 1169; Sweeney v. Alderete, 196 S. W. 367; Needham v. Arno Co-Op. Irr. Co., 196 S. W. 887; Houston Oil Co. of Texas v. Village Mills Co., 202 S. W. 725; Kleschnick v. Martin, 208 S. W. 948.

Generally, under this chapter, see State v. Clark, 187 S. W. 760.

Art. 4643a. Same subject; mining operations.—No injunction or temporary restraining order, shall be issued by any judge of this State prohibiting any sub-surface drilling or mining operations on the application of any adjacent land owner, claiming injury to his surface or improvements, or loss of, or injury to the minerals thereunder, unless the person, corporation or partnership against whom drilling or mining operations is alleged as a wrongful act is shown to be unable to respond in damages for any injury that may result from drilling or mining operations; provided, however, that the person, corporation or partnership against whom such injunction is sought shall enter into a bond with one or more sufficient sureties, in such sum as the judge hearing the said application and having jurisdiction thereof shall fix, securing the complainant in the payment of any injuries that may be sustained by such complainant as the result of such drilling or mining operations; provided, that the court may, when he deems it necessary to protect any or all interest involved in such litigation, in lieu of such bond, appoint a trustee with such powers as the court may prescribe or appoint a receiver under the provisions of the statute, to take charge of and hold the minerals produced from the lands of the complainant or the proceeds thereof subject to the final disposition of such litigation. (Acts 1919, ch. 162, sec. 1.)

Art. 4644. Appeals allowed to courts of civil appeals.—Any party or parties to any civil suit wherein a temporary injunction may be granted or refused or having been granted shall on motion be dissolved, or when motion to dissolve has been overruled, under any of the provisions of this title, in term time or in vacation, may appeal from the order or judgment granting or refusing, or dissolving or refusing to dissolve such injunction, to the court of Civil Appeals having jurisdiction of such appeal; but such appeal shall not have the effect to suspend the order appealed from, unless it shall be so ordered by the court or judge who enters the order; provided, the transcript in such case shall be filed with the clerk of the Court of Civil Appeals not later than twenty days after the entry of record of such order or judgment granting, refusing dissolving or refusing to dissolve such injunction. (Acts 1909, p. 354, sec. 2; Acts 1907, p. 206, sec. 2; Acts 1919, ch. 17, sec. 1.)

Art. 4645. Proceedings on appeal.—It shall not be necessary to brief such case in the Court of Civil Appeals or Supreme Court, and the case may be heard in the said courts on the bill and answer, and such affidavits and evidence as may have been admitted by the judge granting, refusing, dissolving or refusing to dissolve such injunction; provided the appellant may file a brief in the court of Civil Appeals or Supreme Court; but such appellant shall furnish the appellee with a copy thereof not later than two days before the case is called for submission in such court, and the appellee shall have until the day the case is called for submission to answer such brief. (Acts 1909, p. 354, sec. 3;

Acts 1907, p. 206, sec. 3; Acts 1919, ch. 17, sec. 2.)

Art. 4646. Case to have precedence on appeal.—Such case shall be advanced in the court of civil appeals or supreme court on motion of either party, and shall have priority over other cases pending in such courts. (Acts 1909, p. 354, sec. 4; Acts 1907, p. 206, sec. 4.)

Art. 4647. (2990) No injunction against a judgment, except, etc.—No injunction shall be granted to stay any judgment or proceedings at law, except so much of the recovery or cause of action as the complainant shall in his petition show himself equitably entitled to be relieved against, and so much as will cover the costs. (Acts 1846, p. 363; P. D. 3930.)

See Sayles' Practice, p. 892; Simkins' Equity (2d Ed.) p. 776.

Art. 4648. (2991) Injunction to stay execution within twelve months, unless, etc.—No injunction to stay an execution upon any valid and subsisting judgment shall be granted after the expiration of one year from the rendition of such judgment, unless it be made to appear that an application for such injunction has been delayed in consequence of the fraud or false promises of the plaintiff in the judgment, practiced or made at the time of, or after rendition of, such judgment, or unless for some equitable matter or defense arising after the rendition of such judgment. If it be made to appear that the applicant was absent from the state at the time such judgment was rendered, and was unable to apply for such writ within the time aforesaid, such injunction may be granted at any time within two years from the date of the rendition of the judgment. (Id.; P. D. 3931.)

See Sayles' Practice, p. 893; Simkins' Equity (2d Ed.) p. 776; Lane v. Moon, 103 S. W. 211; Griffith v. Missouri, K. & T. Ry. Co. of Texas, 108 S. W. 756; Kruegel v. Rawlins, 121 S. W. 216; Trammell v. Chamberlain, 128 S. W. 429; Axtell v. Lopp, 152 S. W. 192; Bullitt v. Jesse French Piano & Organ Co., 158 S. W. 782; Texas & P. Ry. Co. v. Miller, 171 S. W. 1069; Kimmell v. Edwards, 194 S. W. 168.

Art. 4649. (2992) Injunctions granted on sworn petition.—No writ of injunction shall be granted, unless the applicant therefor shall present his petition to the judge, verified by his affidavit taken before some officer authorized to administer oaths, and containing a plain and intelligible statement of the grounds for such relief. (P. D. 3929.)

See Sayles' Practice, p. 898; Simkins' Equity (2d Ed.) p. 752; Johnson v. Daniel, 63 S. W. 1032; Lee v. Broocks, 118 S. W. 164; Clarey v. Hurst, 136 S. W. 840; Smith v. Banks, 152 S. W. 449; Collier v. Smith, 169 S. W. 1108; McAmis v. Gulf, C. & S. F. Ry. Co., 184 S. W. 331; White v. Ferris, 186 S. W. 367; Southern Oil & Gas Co. v. Mexia Oil & Gas Co., 186 S. W. 446; Graves v. M. Griffin O'Neil & Sons, 189 S. W. 778; Collin County School Trustees v. Stiff, 190 S. W. 216; Leach v. Thompson, 192 S. W. 602; Gray v. S. T. Woodring Lumber Co., 197 S. W. 231; Lingwiler v. Lingwiler, 204 S. W. 785; Wilkinson v. Lyon, 207 S. W. 638.

Art. 4650. (2993) Judge's fiat to be indorsed on petition.—If, upon the inspection of such petition, it shall appear to the judge from the facts stated therein that the applicant is entitled to the writ, he shall indorse on such petition or annex thereto his written order directing the clerk of the proper court to issue the writ of injunction prayed for, upon such terms and under such modifications, limitations and restrictions as may be specified in said order; and the judge shall also specify in such order the amount of the bond to be given by the applicant as a prerequisite to the issuance of the writ. If the injunction be applied for to restrain the execution of a money judgment or the collection of a debt, the bond shall be fixed in double the amount of such judgment or debt. (P. D. 3933.)

See Sayles' Practice, pp. 900-1; Simkins' Equity (2d Ed.) p. 752; Riggins v. Thompson, 71 S. W. 14; Cole v. Forto, 155 S. W. 350; Sanders v. Bledsoe, 173 S. W. 539.

Art. 4651. (2994) Notice to opposite party, when.—Upon application for any writ of injunction, if it appear to the judge that delay will not prove injurious to either party, and that justice may be subserved thereby, he may cause notice of such application to be served upon the opposite party, his agent or attorney, in such manner as he may direct, and fix a time and place for the hearing of such application.

See Sayles' Practice, p. 900; Simkins' Equity (2d Ed.) p. 753; Riggins v. Thompson, 71 S. W. 14; Holbein v. De La Garza, 126 S. W. 42; Houk v. Robinson, 160 S. W. 120; Cartwright v. Warren, 177 S. W. 197; Hailey v. Brooks, 191 S. W. 781; American Nat. Ins. Co. v. Hicks, 198 S. W. 616.

Art. 4652. (2995) Petition to be filed and cause docketed.—Upon the grant of any writ of injunction, the party to whom the same is granted shall file his petition therefor, together with the order of the judge granting the same, with the clerk of the proper court; and, if such writ of injunction does not pertain to a pending suit in said court, the cause shall be entered on the civil docket of the court in its regular order in the name of the party to whom the writ is granted as plaintiff and of the opposite party as defendant.

See Simkins' Equity (2d Ed.) p. 753; Sayles' Practice, p. 900.

Art. 4653. (2996) Writs, where returnable.—Writs of injunction granted to stay proceedings in a suit, or execution on a judgment, shall be returnable to and tried in the court where such suit is pending, or such judgment was rendered; writs of injunction for other causes, if the party against whom it is granted be an inhabitant of the state, shall be returnable to, and tried in, the district or county court of the county in which such party has his domicile, according as the amount or matter in controversy comes within the jurisdiction of either of said courts. If there be more than one party against whom any writ is granted, it may be returned and tried in the proper court of the county where either may have his domicile. (Acts 1846, p. 363; P. D. 3932.)

See ante, art. 1830, sec. 17; Simkins' Equity (2d Ed.) p. 753; Bell v. York, 43 S. W. 68; Adoue v. Wettermark, 55 S. W. 512; Smith v. Morgan, 67 S. W. 919; Foust v. Warren, 72 S. W. 404; Osborne & Co. v. Gatewood, 74 S. W. 72; Little v. Griffin, 77 S. W. 635; Cooper Grocery Co. v. Peter, 80 S. W. 108; Ex parte Breeding, 90 S. W. 634; Ketelsen & Degetan v. Pratt Bros. & Seay, 100 S. W. 1172; Broocks v. Lee, 110 S. W. 756; Texas & P. Ry. Co. v. Butler, 114 S. W. 671; Wheeler v. Powell, 114 S. W. 689; Kruegel v. Rawlins, 121 S. W. 216; Smith Drug Co. v. Rochelle, 135 S. W. 258; Ward v. Powell, 140 S. W. 1188; Hillsman v. Cline, 145 S. W. 726; International & G. N. Ry. Co. v. Anderson County, 150 S. W. 239; Bullitt v. Jesse French Piano & Organ Co., 158 S. W. 782; Cotton v. Rea, 163 S. W. 2; Lester v. Gatewood, 166 S. W. 389; Meyers v. Hambrick, 167 S. W. 34; Royal Amusement Co. v. Columbia Piano Co., 170 S. W. 278; McDade v. Vogel, 173 S. W. 506; Brown v. Fleming, 178 S. W. 964; Cattlemen's Trust Co. of Ft. Worth v. Willis, 179 S. W. 1115; Palmer v. Jaggaers, 180 S. W. 907; Thallman v. Buckholts

State Bank, 181 S. W. 791; Baker v. Crosbyton Southplains R. Co., 182 S. W. 287; Marshall v. Spiller, 184 S. W. 285; Hammack v. Schley, 186 S. W. 872; Wardlaw v. Savage, 191 S. W. 1176; Klaras v. North British & Mercantile Ins. Co. of London & Edinburgh, 200 S. W. 584; Houston & T. C. R. Co. v. City of Ennis, 201 S. W. 256; Long v. Knott, 203 S. W. 1127; Matthews v. Eyres, 206 S. W. 963; Kieschnick v. Martin, 208 S. W. 948.

Art. 4654. (2997) The bond for injunction.—Upon the filing of the petition and order of the judge hereinbefore provided for, in the proper court, and before the issuance of the writ of injunction, the complainant shall execute and file with the clerk a bond to the adverse party, with two or more good and sufficient sureties, to be approved by such clerk, in such sum as may be affixed in the order of the judge granting the writ, conditioned that the complainant will abide the decision which may be made therein, and that he will pay all sums of money and costs that may be adjudged against him, if the injunction be dissolved in whole or in part. If the state be complainant in any petition for injunction, no bond shall be required. (P. D. 3933.)

See Sayles' Practice, p. 901; Simkins' Equity (2d Ed.) p. 753; Parker v. Boyd, 42 S. W. 1031; Paine v. Carpenter, 111 S. W. 430; El Campo Light, Ice & Water Co. v. Water & Light Co. of El Campo, 132 S. W. 868; Houston Ice & Brewing Co. v. Clint, 159 S. W. 409; Athens Telephone Co. v. City of Athens, 163 S. W. 371.

Art. 4655. (2998) Clerk to issue the writ.—When the petition, order of the judge and bond aforesaid are filed, it shall be the duty of the clerk to issue the writ of injunction directed in such order, in conformity with the terms thereof, and to deliver the same to the sheriff or any constable of the proper county for service and return.

Art. 4656. (2999) The writ and its requisites.—The writ of injunction shall be sufficient if it contains substantially the following requisites:

1. Its style shall be, "The State of Texas."
2. It shall be directed to the person or persons enjoined.
3. It must state the names of the parties to the proceeding, plaintiff and defendant, and the nature of the plaintiff's application, with the action of the judge thereon.
4. It must command the person or persons to whom it is directed to desist and refrain from the commission or continuance of the act enjoined, or to obey and execute such order as the judge has seen proper to make.
5. It shall state the term of the court to which such writ is returnable.
6. It shall be dated and signed by the clerk officially, and attested with the seal of his office; and the date of its issuance must be indorsed thereon.

See Sayles' Practice, p. 902.

Art. 4657. (3000) Writs may issue in different counties.—If there be several persons enjoined, residing in different counties, a writ shall issue to each of such counties.

See Sayles' Practice, p. 902.

Art. 4658. (3001) To whom delivered.—The clerk issuing any such writ of injunction shall deliver the same to the sheriff or any constable of his county, if the person enjoined be a resident of such county; if the person enjoined be a resident of some other county, the clerk shall forward such writ by mail to the sheriff or any constable of such county.

Art. 4659. (3002) Service and return of the writ.—The officer receiving any writ of injunction shall indorse thereon the date of its receipt by him, and shall forthwith execute the same by delivering to the party enjoined a true copy of such writ; and the original shall be returned to the court from which it issued, on or before the return day named therein, with the action of the officer indorsed thereon or annexed thereto, showing how and when he executed the same.

Art. 4660. (3003) Duty of defendant upon service of writ.—The party upon whom any writ of injunction is served shall obey the command thereof and refrain from the commission of the act enjoined so long as such injunction continues in force; or, if the continuance of an act or acts be enjoined, the person enjoined shall immediately cease such act or acts and thereafter refrain from their continuance so long as such injunction remains in force. Any person violating the provisions of this article shall be dealt with as hereinafter directed.

Art. 4661. (3004) Injunctions restrain attorneys, etc., as well as the party.—Any injunction restrains the counselors, solicitors, attorneys, agents, servants and employés of the party, as well as the party himself.

See Sayles' Practice, p. 903.

Art. 4662. (3005) Citation to issue to defendants.—When any writ of injunction is issued, and such writ does not pertain to a suit pending in the court, the clerk of such court shall issue a citation to the defendant as in other civil cases, which shall be served and returned in like manner as ordinary citations issued from said court. But if any injunction is issued after notice to the defendant, as hereinbefore provided, no citation to such defendant shall be necessary.

See Sayles' Practice, p. 900.

Art. 4663. (3006) The answer.—The defendant to an injunction proceeding may answer as in other civil actions; but no injunction shall be dissolved before final hearing because of a denial of the material allegations of the plaintiff's petition, unless the answer denying the same is verified by the oath or affirmation of the defendant. (P. D. 3929.)

See Sayles' Practice, p. 904; Simkins' Equity (2d Ed.) p. 754; Murphy v. Smith-Walker & Co., 84 S. W. 678; Smith v. Palo Pinto County, 123 S. W. 1193; Southern Oil & Gas Co. v. Mexia Oil & Gas Co., 186 S. W. 446; Leach v. Thompson, 192 S. W. 602; Trimble v. Hawkins, 197 S. W. 224; San Antonio Water Supply Co. v. Green, 198 S. W. 631; Staffel v. San Antonio School Board of Education, 201 S. W. 413; Manton v. City of San Antonio, 207 S. W. 951.

Art. 4664. (3007) Dissolution in term time or vacation.—In all cases of injunction, motions to dissolve the same without determining the merits may be heard after answer filed, in vacation as well as in term time, at least ten days' notice of such motion being first given to the opposite party or his attorney. In such cases, the proceedings upon such hearing, including the action of the judge upon the motion, shall be entered upon the minutes of the proper court by the clerk thereof, on or before the first day of the succeeding term of such court, and thereafter shall constitute a part of the record of the same. (P. D. 3934.)

See Sayles' Practice, pp. 674, 904; Simkins' Equity (2d Ed.) p. 754.

Art. 4665. (3008) Refunding bond on dissolution.—Upon the dissolution of any injunction restraining the collection of money, by an interlocutory order of the court or judge, made in term time or vacation, if the petition be continued over for trial, it shall be the duty of the court or judge to require of the defendant in such injunction proceedings a bond, with two or more good and sufficient sureties, to be approved by the clerk of the court; which bond shall be payable to the complainant in double the amount of the sum enjoined, and conditioned to refund to the complainant the amount of money, interest and costs, which may be collected of him in the suit or proceeding enjoined, in the event such injunction is made perpetual on final hearing. (P. D. 3937.)

See Sayles' Practice, p. 905; Simkins' Equity (2d Ed.) p. 755.

Art. 4666. (3009) Judgment on such bond.—In the event such injunction is perpetuated on final hearing, the court may, on motion of the complainant, enter judgment against the principal and sureties in any bond taken in accordance with the provisions of the preceding article for such amount as may be shown to have been collected from such complainant. (P. D. 3938.)

See Sayles' Practice, p. 905.

Art. 4667. (3010) Damages for delay.—Upon the dissolution of an injunction, either in whole or in part, on final hearing, where the collection of money has been enjoined, if the court be satisfied that the injunction was obtained only for delay, damages thereon may be assessed by the court, at ten per cent on the amount released by the dissolution of the injunction, exclusive of costs. (P. D. 3935.)

See Sayles' Practice, p. 907; Simkins' Equity (2d Ed.) p. 757; Carpenter v. First Nat. Bank of Sour Lake, 114 S. W. 904; Hicks v. Murphy, 162 S. W. 925; Ables v. Waggoner, 208 S. W. 693.

Art. 4668. (3011) Disobedience a contempt.—Disobedience of an injunction may be punished by the court or judge, in term time or in vacation, as a contempt. (P. D. 3934.)

See Simkins' Equity (2d Ed.) p. 804; Sayles' Practice, p. 903; Ex parte Breeding, 90 S. W. 634; Ex parte Testard, 115 S. W. 1155, 20 Ann. Cas. 117; Ex parte Looper, 134 S. W. 345.

Art. 4669. (3012) Procedure in case of disobedience.—In case of such disobedience, the complainant, his agent or attorney, may file in the court in which such injunction is pending, or with the district or county judge, as the case may be, in vacation, his affidavit, stating the person guilty of such disobedience and describing the act or acts constituting the same; and thereupon the court or judge shall issue, or cause to be issued, an attachment for such person, directed to the sheriff or any constable of the proper county, and requiring such officer to arrest the person therein named and have him before the court or judge at a time and place to be named in such writ.

See Sayles' Practice, p. 903; Ex parte Testard, 115 S. W. 1155, 20 Ann. Cas. 117; Ex parte Morgan, 124 S. W. 99, 136 Am. St. Rep. 996.

Art. 4670. (3013) Persons guilty to be imprisoned.—On return of such attachment, the court or judge shall proceed to hear proof; and, if satisfied that such person has disobeyed the injunction either directly or indirectly, he shall be committed to jail without bail until he purges himself of such contempt, in such manner and form as may be directed by the court or judge.

See Ex parte Morgan, 86 S. W. 755; Ex parte Testard, 115 S. W. 1155, 20 Ann. Cas. 117; Ex parte Young, 129 S. W. 599.

Art. 4671. (3014) General principles of equity applicable, when.—The principles, practice and procedure governing courts of equity shall govern proceedings in injunctions when the same are not in conflict with the provisions of this title or other law.

See Sayles' Practice, p. 890; Simkins' Equity (2d Ed.) p. 745.

Art. 4672. (3015) Injunction by the state.—The full right, power and remedy of injunction may be resorted to and invoked by the state at the instance of the county or district attorney or attorney general, to prevent, prohibit or restrain the violation of any revenue law of the state. (Acts 1888, p. 8, sec. 1.)

See Simkins' Equity (2d Ed.) p. 749; Sayles' Practice, p. 898.

Art. 4673. (3016) Shall be cumulative.—The right and remedy provided by the preceding article shall be cumulative of other laws in force in this state. (Id. sec. 2.)

INJUNCTIONS IN PARTICULAR CASES

Art. 4674. Unlawful sale, etc., of liquors may be enjoined.—Any person, firm or corporation in this state who may engage in, pursue, carry on, or maintain, any of the following described occupations or callings under the circumstances and conditions herein described, are hereby declared to be the creators and promoters of a public nuisance, and may be enjoined at the suit either of the county or district attorney in behalf of the state, or of any private citizen thereof.

1. Any person, firm or corporation who may engage in or pursue the business of selling intoxicating liquor without having first procured the necessary license and paid the taxes required by law.

2. Any person, firm or corporation who may, as owner, proprietor or agent, establish, manage or conduct any public place or business where intoxicating liquors are stored, kept, drunk, sold or dispensed within any county or precinct within this state, wherein the sale of intoxicating liquor has been prohibited by law.

3. Any person, firm or corporation who may, under the pretense of selling or dispensing intoxicating liquor on prescription, in any county or precinct in this state wherein the sale of intoxicating liquor has been prohibited by law, and who in thus selling or dispensing such intoxicating liquor violates the law; provided, if, on final hearing, such injunction is sustained, the license of such person shall be revoked, and he shall not thereafter be permitted to again pursue such business for a period of one year.

4. Any person who, as a physician, follows the business of writing and issuing prescriptions to persons contrary to law, prescribing the use of intoxicating liquors to such persons, in any county or precinct in this state wherein the sale of intoxicating liquor has been prohibited by law.

5. Any person who shall engage in the business of peddling or "bootlegging" intoxi-

cating liquor in any county or precinct in this state wherein the sale of intoxicating liquor has been prohibited by law.

6. Any person who canvasses or solicits orders for the sale of intoxicating liquor from persons other than those engaged in the lawful sale of the same in any county or precinct in this state wherein the sale of intoxicating liquor has been prohibited by law. (Acts 1907, p. 166, sec. 1.)

Art. 4675. Procedure as in other cases.—The procedure in all cases brought under the preceding article shall be the same as in other suits for injunction, as nearly as may be; provided, that, when the suit is brought in the name of the state by any of the officers aforesaid, the petition for injunction need not be verified. (Id. sec. 2.)

Alamo Club v. S., 147 S. W. 639.

Art. 4676. Persons compelled to testify.—Any person may be compelled to testify and give evidence in any proceeding under the two preceding articles, but such evidence shall not be used against such person in any criminal prosecution in this state. (Id. sec. 4.)

Art. 4677. Cumulative remedy.—The foregoing remedy by injunction shall not be held to supersede or repeal any law now in force correcting the evils defined, but shall be cumulative of all such laws. (Id. sec. 3.)

Art. 4678. Sale of intoxicating liquors in local option territory enjoined.—The actual, threatened or contemplated use of any place, room, premises, building or part thereof, in any county, justice precinct, town, city or subdivision of a county, as may be designated by the commissioners' court of said county, in which the sale of intoxicating liquors has been prohibited under the laws of this state, for the purpose of selling intoxicating liquor in violation of law, or in which to keep, store or deposit any intoxicating liquor for the purpose of being sold in violation of law, or the possession of, or having under control or management at any such place, or any intoxicating liquor for the purpose and with the intent to sell the same in violation of law, shall be enjoined at the suit of the state, or of any citizen thereof. (Acts 1910, 3 S. S. p. 35, sec. 11.)

Art. 4679. Who made party defendant.—Any person, company, corporation or association of persons who may so use, or be about to use, or who may aid or assist in any such actual or threatened use, of such place, room, premises, building or part thereof, or any person who may have, possess or manage for any such purpose any intoxicating liquor, or who may aid or assist another in thus possessing, having or maintaining or managing intoxicating liquor for such purpose, may be made a party defendant to such suit. (Id. sec. 12.)

Art. 4680. By whom prosecuted.—The attorney general and the several district and county attorneys shall institute and prosecute all such injunction suits that the said attorney general or district or county attorney may deem necessary; provided, that such suit may be brought and prosecuted by any one of said officers; and provided, further, that nothing contained herein shall prevent said injunction from issuing at the suit of any citizen of this state who may sue in his own name, and any such citizen shall not be required to show that he is personally injured by reason of the matters and things of which he complains. (Id. sec. 13.)

Art. 4681. Same proceedings as in other cases, except.—The procedure in all cases brought hereunder shall be the same as in other suits for injunction, or where injunction is sought, as near as may be; provided, that where the suit is brought in the name of the state by any of the officers aforesaid, the petition therefor need not be verified, nor shall the state be required to pay or give security for costs or on appeal; and appeal by the state shall be perfected by giving notice thereof in open court, and all such cases shall have precedence on the docket of all courts where pending. (Id. sec. 14.)

Art. 4682. General reputation evidence.—In any proceeding under the provisions of the three preceding articles evidence of the general reputation of the house, place, building, premises or part thereof, or of the business, occupation or pursuit of the defendant involved, may be admitted in evidence as tending to prove the allegations of the complaint; provided, that in any investigation no person shall be exempt from giving testimony therein, but the testimony given by a witness shall not be used against him in any criminal action or proceeding, nor shall any criminal action or proceeding be brought against such witness on account of any testimony so given by him. (Id. sec. 15.)

Art. 4683. Injunction against soliciting orders in local option districts.—The actual, threatened or contemplated pursuit of any such business mentioned in articles 7479 and 7480 of the title, "Taxation," in any local option territory, by any person or firm or association of persons or corporations, without there having first been procured a license therefor as provided in said articles, shall be enjoined at the suit of the state at the instigation of either the county or district attorney, or at the suit of any individual citizen of the county where the business is, or is about to be, pursued; and it shall not be necessary for any citizen to show that he has any pecuniary interest involved; and the state shall not be required to give security for cost, and all the rules of evidence, practice and procedure that pertain to courts of equity generally, or that exist by virtue of any law of this state, may be invoked and applied in any injunction proceeding instituted hereunder. (Acts 1909, p. 53, sec. 6.)

Art. 4684. Injunction against sale of non-intoxicating liquors without license.—The actual, threatened or contemplated pursuit of any such business mentioned in article 7476 of the title, "Taxation," by any such person or firm or association of persons or corporations, without there having first been procured a license therefor as provided in said article, shall be enjoined at the suit of the state at the instigation of either the county or district attorney, or at the suit of any individual citizen of the county where the business is, or is about to be, pursued; and it shall not be necessary for any citizen to show that he has any pecuniary interest involved, and the state shall not be required to give security for cost, and all the rules of evidence, practice and procedure that pertain to courts of equity generally, or that exist by virtue of any law of this state, may

be invoked and applied in any injunction proceeding instituted hereunder. (Acts 1909, p. 51. Amended by Act 1909, 2 S. S. p. 397.)

Art. 4685. Use of premises for gaming enjoined.—The habitual use, actual, threatened or contemplated, use of any premises, place, building or part thereof, for the purpose of gaming or of keeping or exhibiting games prohibited by the laws of this state, shall be enjoined at the suit either of the state or of any citizen thereof. (Acts 1905, p. 372.)

Alamo Club v. S., 147 S. W. 639.

Art. 4686. Parties and proceedings.—Any person who may so use, or who may be about to use, or who may aid or abet any other person in the use of any premises, place or building or part thereof, may be made a party defendant in such suit. (Id. sec. 1.)

See Ex parte Allison, 90 S. W. 492; Id. 870; Ex parte Garza, 95 S. W. 1059.

Art. 4687. Suits, by whom instituted.—The attorney general and the several district and county attorneys shall institute and prosecute all suits under the two preceding articles that said attorney general or such district or county attorney may deem necessary to enjoin such use; provided, that such suit may be brought and prosecuted by any one of said officers; and provided, further, that nothing in the above proviso contained shall prevent such injunction from issuing at the suit of any citizen of this state who may sue in his own name, and such citizen shall not be required to show that he is personally injured by the acts complained of. (Id. sec. 2.)

Art. 4688. Procedure in other injunction cases.—The procedure in all cases brought hereunder shall be the same as in other suits for injunction, as near as may be; provided, that when the suit is brought in the name of the state by any of the officers aforesaid, the petition for injunction need not be verified. (Id. sec. 3.)

Art. 4688a. Maintaining or operating pool hall enjoined.—The habitual, actual, threatened or contemplated use of any premises, place, room, building, or part thereof, or tent, or any kind or character of enclosure, similar or dissimilar to those named, or any unenclosed open space for the purpose of exhibiting any tables, stands, or structures, of the kind or character referred to and described in this Act shall be enjoined at the suit of either the State or any citizen thereof. The Attorney General of the State, or any District or County Attorney, or any citizen, of any county in which any pool hall is maintained, operated, or the use threatened or contemplated may either in term time or vacation apply to the district judge, in which district is located the place where such pool hall is maintained, or operated or the use threatened or contemplated (or to any district judge in Travis County) for injunction to prohibit the maintenance and operation of any such pool hall. Should the Court determine that a pool hall is being maintained or operated in violation of this act, he shall issue a temporary injunction or restraining order as may be necessary and shall issue an injunction permanently prohibiting the running thereof upon final hearing. For this purpose, jurisdiction and venue are conferred upon the several district judges and courts within the State, according to the purpose and intent of this provision. This remedy by injunction shall be considered in addition to the remedy by prosecution and may be exercised independently of and without reference to whether or not any prosecution has been instituted or may, or may not, be instituted. Any person who may use or who may be about to use or who may aid or abet any other person in the use of any such premises or places named in this act in violation of this act may be made a party defendant in such suit. (Acts 1919, ch. 14, sec. 3.)

For secs. 1 and 2 of Acts 1919, ch. 14, see Penal Code, arts. 582a, 582b.

Art. 4688b. Sale of liquors within certain prescribed zones.—The Attorney General is hereby authorized to enjoin the sale of spirituous, vinous or malt liquors capable of producing intoxication, in violation of this Act, or any conduct in violation of this Act, and suit therefor may be maintained in the name of the State of Texas in Travis County, Texas, and the District or County Attorney of any county wherein any sale of such liquors are made in violation of any term of this Act, or any conduct in violation of this Act, is hereby authorized to maintain, in the proper court of said county, or in Travis County, Texas, suit in the name of the State to enjoin and prevent such sale or other violation of this Act. (Acts 1918, 4th C. S., ch. 12, sec. 6.)

For the remainder of Acts 1918, 4th C. S. ch. 12, see Penal Code, arts. 610d-610l.

For similar provision in Acts 1919, 2d C. S., ch. 78, sec. 38, see Penal Code, art. 588¼rr.

Art. 4689. Use of premises for bawdy houses enjoined.—The habitual, actual, threatened or contemplated use of any premises, place, building or part thereof, for the purpose of keeping, being interested in, aiding or abetting the keeping of a bawdy or disorderly house, shall be enjoined at the suit of either the state or any citizen thereof. Any person who may use, or who may be about to use, or who may aid or abet any other person in the use of any premises, place or building or part thereof, may be made a party defendant in such suit; provided, that the provisions of this and the succeeding article shall not apply to nor be so construed as to interfere with the control and regulation of bawds and bawdy houses by ordinances of incorporated towns and cities acting under special charters and where the same are actually confined by ordinance of such city within a designated district of such city. (Acts 1907, p. 246.)

Lane v. Bell, 115 S. W. 918; Hatcher v. Dallas, 133 S. W. 914; Spence v. Fenchler, 151 S. W. 1094; Campbell v. Peacock, 176 S. W. 774; Coman v. Baker, 179 S. W. 937; Spence v. Fenchler, 180 S. W. 597; Moore v. S., 181 S. W. 438; Baker v. Coman, 198 S. W. 141.

Art. 4690. By whom brought; proceedings as in other injunction cases.—The attorney general and the several district and county attorneys shall institute and prosecute all suits that said attorney general or such district or county attorney may deem necessary to enjoin such use; provided, that such suit may be brought and prosecuted by any one of such officers; and provided, further, that nothing in the above proviso contained shall prevent such injunction from issuing at the suit of any citizen of this state who may sue in his own name; and such

citizen shall not be required to show that he is personally injured by the acts complained of; and the procedure in all cases brought hereunder shall be the same as in other suits for injunction, as near as may be; provided, that, when the suit is brought in the name of the state by any of the officers aforesaid, the petition for injunction need not be verified. (Id.)

Lane v. Bell, 115 S. W. 918; Ex parte Morgan, 124 S. W. 99, 136 Am. St. Rep. 996; Hatcher v. Dallas, 133 S. W. 914; Spence v. Fenchler, 180 S. W. 597; Baker v. Coman, 198 S. W. 141.

Art. 4691. Bucket shops may be enjoined.—The habitual use, actual, threatened or contemplated, of any premises, place or building, for carrying on bucket shops, as defined in the penal laws of this state, or the habitual use by or permitting to remain in any bucket shop as defined, any telegraph or telephone wires or instruments, actual or threatened, under circumstances prohibited by the penal laws of this state, shall be enjoined at the suit of either the state or any citizen thereof. (Acts 1907, p. 172, sec. 11.)

Art. 4692. Who may enjoin.—The attorney general or the several district and county attorneys shall prosecute all suits deemed by them necessary to enjoin such use; provided, that nothing herein shall prevent such injunction from issuing at the suit of any citizen of this state who may sue in his own name, and such citizen shall not be required to show that he is personally injured by the acts complained of. (Id. sec. 12.)

Art. 4693. Procedure as in other cases.—The procedure in all cases brought under the two preceding articles of this chapter shall be the same as in other suits for injunction, as near as may be; provided, that when such suit is brought by any district or county attorney or by the attorney general, the petition for injunction need not be verified. (Id. sec. 13.)

TITLE 70

INJURIES RESULTING IN DEATH—ACTIONS FOR

Art. 4694. (3017) (2899) Actions for injuries resulting in death, brought when.—An action for actual damages on account of injuries, causing the death of any person may be brought in the following cases:

1st. When the death of any person is caused by the neglect or carelessness of the proprietor, owner, charterer or hirer of any railroad, steamboat, stage coach or other vehicle for the conveyance of goods, passengers or by the unfitness, neglect or carelessness of their servants or agents; when the death of any person is caused by the neglect or carelessness of the receiver or receivers, or other person or persons in charge or control of any railroad, or their servants or agents; the liability of receivers shall extend to cases in which the death may be caused by reason of the bad or unsafe condition of the railroad or machinery or other reason or cause by which an action may be brought for damages on account of injuries, the same as if said railroad was being operated by the railroad company.

2nd. When the death of any person is caused by the wrongful act, neglect, unskillfulness or default of another person or corporation, their agents or servants. (Acts 1860, p. 32. Acts 1887, p. 44. Acts 1892, S. S., p. 5. Acts 1913, p. 288, sec. 1.)

See Townes' Texas Pleading (2d Ed.) p. 286; Sayles' Practice, pp. 969, 981; Bammel v. Kirby, 47 S. W. 392; H. & T. C. Ry. v. Lipscomb, 62 S. W. 954; Burns v. Merchants' & Planters' Oil Co., 63 S. W. 1061; Lipscomb v. H. & T. C. Ry., 64 S. W. 923; Cole v. Parker, 66 S. W. 135; Parker v. Dupree, 67 S. W. 185; Ry. v. Freeman, 73 S. W. 542; Id., 79 S. W. 9; Thompson v. Ry., 80 S. W. 990; Ship. Comp. & W. H. Co. v. Davidson, 80 S. W. 1032; Ry. v. McVey, 83 S. W. 34; Lodowick Lbr. Co. v. Taylor, 87 S. W. 358; Ry. v. Currie, 91 S. W. 1100; Kirby Lbr. Co. v. Chambers, 95 S. W. 607; Citizens' Telephone Co. v. Thomas, 99 S. W. 879; Ott v. Johnson, 101 S. W. 534; San Antonio Gas & Electric Co. v. Badders, 103 S. W. 229; Williams v. Northern Texas Traction Co., 107 S. W. 125; Houston & T. C. R. Co. v. Davenport, 110 S. W. 150; Galveston, H. & S. A. Ry. Co. v. Pigott, 116 S. W. 841; Kirby Lumber Co.'s Receivers v. Owens, 120 S. W. 936; Rice & Lyon v. Lewis, 125 S. W. 961; Farmers' & Mechanics' Nat. Bank v. Hanks, 128 S. W. 147; Jacksonville Ice & Electric Co. v. Moses, 134 S. W. 379; Wm. Cameron & Co. v. McSween, 137 S. W. 139; Farmers' & Mechanics' Nat. Bank v. Hanks, 137 S. W. 1120; Hugo, Schmeltzer & Co. v. Paiz, 141 S. W. 518; Levinski v. Cooper, 142 S. W. 959; Deweese v. Southwestern Telegraph & Telephone Co., 144 S. W. 732; Commerce Cotton Oil Co. v. Camp, 145 S. W. 902; Williams v. Coca-Cola Co., 150 S. W. 759; Bledsoe v. Thompson Bros. Lumber Co., 151 S. W. 910; Wilson v. Brown, 154 S. W. 322; Sullivan-Sanford Lumber Co. v. Watson, 155 S. W. 179; William Miller & Sons Co. v. Wayman, 157 S. W. 197; Stephenville, N. & S. T. Ry. Co. v. Voss, 159 S. W. 64; Black v. Texas & P. Ry. Co., 161 S. W. 1077; Modern Order of Praetorians v. Nelson, 162 S. W. 17; American Exp. Co. v. Parcarello, 162 S. W. 926; Elliott v. City of Brownswood, 166 S. W. 1129; Horton & Horton v. Hartley, 170 S. W. 1046; Canode v. Sewell, 172 S. W. 142; Ft. Worth Belt Ry. Co. v. Jones, 182 S. W. 1184; Corsicana Transit Co. v. Walton, 189 S. W. 307; Hovey v. See, 191 S. W. 606; Slate v. City of Ft. Worth, 193 S. W. 1143; Ft. Worth & R. G. Ry. Co. v. Bird, 196 S. W. 597; San Antonio & A. P. Ry. Co. v. Behne, 198 S. W. 680.

Art. 4695. (3018) (2900) Character of wrongful act.—The wrongful act, negligence, carelessness, unskillfulness, or default, mentioned in the preceding article must be of such a character as would, if death had not ensued, have entitled the party injured to maintain an action for such injury. (Acts 1860, p. 32. Acts 1887, p. 44. Acts 1892, S. S. p. 5.)

See Thompson v. Ry., 80 S. W. 990; Wilson v. Brown, 154 S. W. 322; Sullivan-Sanford Lumber Co. v. Watson, 155 S. W. 179; Stephenville, N. & S. T. Ry. Co. v. Voss, 159 S. W. 64; Canode v. Sewell, 172 S. W. 142; Ft. Worth Belt Ry. Co. v. Jones, 182 S. W. 1184; Hovey v. See, 191 S. W. 606; Rishworth v. Moss, 191 S. W. 843.

Art. 4696. (3019) (2901) Exemplary damages.—When the death is caused by the wilful act or omission, or gross negligence of the defendant, exemplary as well as actual damages may be recovered. (Const., art. 16, sec. 26.)

See Sayles' Practice, p. 984.

Art. 4697. (3020) (2902) Action commenced without regard to criminal proceedings.—The action may be commenced and prosecuted, although the death shall have been caused under such circumstances as amounts in law to a felony, and without regard to any criminal proceedings that may, or may not, be had in relation to the homicide. (Id.)

See Const., art. 16, sec. 26; Sayles' Practice, pp. 336, 981, 983; A. T. & S. F. Ry. v. Van Belle, 64 S. W. 397.

Art. 4698. (3021) (2903) For whose benefit action to be brought.—The action shall be for the sole and exclusive benefit of the surviving husband, wife, children and

parents of the person whose death shall have been caused, and the amount recovered therein shall not be liable for the debts of the deceased. (Id. sec. 2; P. D. 16.)

See Sayles' Practice, p. 986; Speer's Marital Rights, pp. 50, 564, 844, 862; Johnson v. Farmer, 35 S. W. 1062; G. B. & K. C. Ry. v. Hernandez, 45 S. W. 197; Texas Loan Agency v. Fleming, 46 S. W. 64; T. & P. Ry. v. Martin, 60 S. W. 803; H. & T. C. Ry. v. Harris, 64 S. W. 227; Merch. & Plant. Oil Co. v. Burns, 72 S. W. 626; Thompson v. Ry., 80 S. W. 990; Paris & G. N. Ry. Co. v. Robinson, 127 S. W. 294; San Antonio & A. P. Ry. Co. v. Williams, 158 S. W. 1171; St. Louis, B. & M. Ry. Co. v. Jenkins, 163 S. W. 621; San Antonio Portland Cement Co. v. Gschwender, 191 S. W. 599; Vaughan v. Southwestern Surety Ins. Co., 195 S. W. 261; Schaff v. Shepherd, 196 S. W. 232; Cole v. Mallory S. S. Co., 197 S. W. 326; Vaughan v. Southwestern Surety Ins. Co., 206 S. W. 920.

Art. 4699. (3022) (2904) Who may bring the action.—The action may be brought by all of the parties entitled thereto, or by any one or more of them for the benefit of all. (Id.)

See ante art. 1838; Speer's Marital Rights, p. 564; S. An. St. Ry. v. Renken, 38 S. W. 829; Lumsden v. Ch. R. I. & T. Ry., 56 S. W. 605; Merch. & Plant. Oil Co. v. Burns, 72 S. W. 626; De Garcia v. Ry., 77 S. W. 275; Taylor v. San Antonio Gas, etc., Co., 93 S. W. 674; San Antonio & A. P. Ry. Co. v. Williams, 158 S. W. 1171; Chicago, R. I. & G. Ry. Co. v. Oliver, 159 S. W. 853; Galveston, H. & S. A. Ry. Co. v. Pennington, 166 S. W. 464; San Antonio Portland Cement Co. v. Gschwender, 191 S. W. 599; Schaff v. Shepherd, 196 S. W. 232.

Art. 4700. (3023) (2905) Executors etc., may bring the action, when.—If the parties entitled to the benefit of the action shall fail to commence the same within three calendar months after the death of the deceased, it shall be the duty of the executor or administrator of the deceased to commence and prosecute the action, unless requested by all of the parties entitled thereto not to prosecute the same. (Id.)

See ante, art. 3302; Herron's Probate Guide, p. 75; Sayles' Practice, pp. 217, 986; El Paso & N. E. Ry. Co. v. Gutierrez, 111 S. W. 159.

Art. 4701. (3024) (2906) Suit does not abate by death of either party.—The action shall not abate by the death of either party to the record if any person entitled to the benefit of the action survives. If the plaintiff die pending the suit, when there is only one plaintiff, some one or more of the parties entitled to the money recovered may, by order of the court, be made plaintiff, and the suit be prosecuted to judgment in the name of such plaintiff for the benefit of the persons entitled. (Id. sec. 4; P. D. 18.)

See ante art. 1895; Sayles' Practice, p. 335; Texas Loan Agency v. Fleming, 46 S. W. 64.

Art. 4702. (3025) (2907) Abates, when.—If the sole plaintiff die pending the suit, and he is the only party entitled to the money recovered, the suit shall abate.

See Sayles' Practice, pp. 335-6; Townes' Texas Pleading (2d Ed.) p. 650; Texas Loan Agency v. Fleming, 46 S. W. 64; So. Pac. Co. v. Winton, 66 S. W. 477.

Art. 4703. (3026) (2908) Executor, etc., of defendant made party, when.—If the defendant die pending the suit, his executor or administrator may be made a party, and the suit be prosecuted to judgment as though such defendant had continued alive. The judgment in such case, if rendered in favor of the plaintiff, shall be, to be paid in due course of administration. (Id.)

See Sayles' Practice, p. 335; Johnson v. Farmer, 35 S. W. 1062.

Art. 4704. (3027) (2909) Damages to be apportioned by the jury.—The jury may give such damages as they may think proportioned to the injury resulting from such death; and the amount so recovered shall be divided among the persons entitled to the benefit of the action, or such of them as shall then be alive, in such shares as the jury shall find by their verdict. (Id. sec. 2; P. D. 16.)

See Sayles' Practice, p. 985; Speer's Marital Rights, pp. 565, 861; T. & P. Ry. v. Martin, 60 S. W. 803; Tex. Mid. Ry. v. Crowder, 64 S. W. 90; Merch. & Planters' Oil Co. v. Burns, 72 S. W. 626; Ry. v. McVey, 83 S. W. 34; Id., 87 S. W. 328; Houston & T. C. R. Co. v. Davenport, 110 S. W. 150; Gulf, C. & S. F. R. Co. v. Farmer, 115 S. W. 260; International & G. N. R. Co. v. White, 131 S. W. 811; Gulf, C. & S. F. Ry. Co. v. Hicks, 166 S. W. 1190; Panhandle & S. F. Ry. Co. v. Huckabee, 207 S. W. 329.

Art. 4704a. Actions for death caused in foreign state or country.—That whenever the death or personal injury of a citizen of this state or of a country having equal treaty rights with the United States on behalf of its citizens, has been or may be caused by a wrongful act, neglect or default in any state, for which a right to maintain an action and recover damages in respect thereof is given by a statute or by law of such state, territory or foreign country, such right of action may be enforced in the courts of the United States, or in the courts of this state, within the time prescribed for the commencement of such action by the statute of this state, and the law of the former shall control in the maintenance of such action in all matters pertaining [pertaining] to procedure. (Acts 1913, p. 338, sec. 1.)

TITLE 71

INSURANCE

CHAPTER ONE

INCORPORATION OF INSURANCE COMPANIES

Art. 4705. (3028) (2910) Formation of company.—Any number of persons desiring to form a company for the purpose of transacting insurance business shall adopt and sign articles of incorporation, and submit the same to the attorney general; and, if said articles shall be found by him to be in accordance with the law of this state, and of the United States, he shall attach thereto his certificate to that effect whereupon such articles shall be deposited with the commissioner of insurance and banking.

State v. Burgess, 109 S. W. 922.

Generally under this chapter, see International Travelers' Ass'n v. Branum, 169 S. W. 389.

Art. 4706. (3029) What the articles of incorporation shall contain.—Such articles shall contain:

1. The name of the company; and the name selected shall not be so similar to that of any other insurance company as to be likely to mislead the public.

2. The locality of the principal business office of such company.

3. The kind of insurance business which the company proposes to engage in.

4. The amount of its capital stock, which shall in no case be less than one hundred thousand dollars.

State v. Burgess, 109 S. W. 922.

Art. 4707. (3030) (2912) Duty of commissioner of insurance when articles are deposited with him.—When the said articles of incorporation have been deposited with the commissioner of insurance and banking, and the law in all other respects has been complied with by the company, the commissioner shall make an examination, or cause one to be made by some competent and disinterested person appointed by him for that purpose; and if it shall be found that the capital stock of the company, to the amount required by law, has been paid in, and is possessed by it, in money, or in such stocks, notes, bonds or mortgages, as are required by law, and that the same is the bona fide property of such company, and that such company has in all respects complied with the law relating to insurance, then the commissioner of insurance and banking shall issue to such company a certificate of authority to commence business as proposed in their articles of incorporation. (Acts 1875, p. 33, sec. 7.)

Art. 4708. (3031) (2913) Company shall certify, under oath, that the capital is bona fide its property.—The corporators or officers of any such company shall be required to certify under oath to the commissioner of insurance and banking that the capital exhibited to the person making the examination is the bona fide property of the company so examined, which certificate shall be filed and recorded in the office of the commissioner of insurance and banking. (Id.)

Art. 4709. (3032) (2914) Where examination is made by other than commissioner.—If the examination be made by any other person than the commissioner of insurance and banking, the finding shall be certified under the oath of the person making such examination, and such finding and certificate shall be filed and recorded in the office of the commissioner of insurance and banking. (Id.)

Art. 4710. (3033) (2915) Stock shall be divided into shares.—The stock of any company organized under the laws of this state shall be divided into shares of one hundred dollars each. (Id. sec. 3.)

Art. 4711. (3034) (2916) Capital stock shall consist of what.—The capital stock of a company shall consist—

1. In lawful money of the United States; or

2. In the bonds of this state or any county or incorporated town or city thereof, or the stock of any national bank; or

3. In first mortgages upon unincumbered real estate in this state, the title to which is valid, and the market value of which is double the amount loaned thereon, exclusive of buildings, unless such buildings are insured in some responsible company and the policy or policies transferred to the company taking such mortgage. (Acts 1889, p. 11.)

Art. 4712. (3035) (2917) Surplus money may be invested, how.—The surplus money of a company over and above its paid up capital stock may be invested in, or loaned upon the pledge of, public stocks or bonds of the United States, or any of the states, or stocks, bonds, or other evidence of indebtedness of any solvent dividend paying corporations, or in bills of exchange or other commercial notes or bills, except its own stock; provided, always, that the current market value of such stocks, bonds, notes, bills, or other evidences of indebtedness, shall be at all times during the continuance of such loans at least twenty per cent. more than the sum loaned thereon. (Acts 1875, p. 33.)

Art. 4713. (3036) (2918) Company may change and reinvest its stock.—A company may change and re-invest its capital stock in like securities, as occasion may, from time to time, require. (Id.)

Art. 4714. (3037) (2919) Number and qualification of directors.—The affairs of any company organized under the laws of this state shall be managed by not more than thirteen nor fewer than seven directors, all of whom shall be stockholders in the company. (Id. sec. 5.)

Art. 4715. (3038) (2920) Election of directors.—Within thirty days after the subscription books of the company have been filed, a majority of the stockholders shall hold a meeting for the election of directors, each share entitling the holder thereof to one vote; and the directors then in office shall continue in office until their successors have been duly chosen and have accepted the trust. (Id.)

Art. 4716. (3039) (2921) Annual meetings for election of directors.—The annual meeting for the election of directors of a company shall be held during the month of January, as the by-laws of the company may direct. (Id. sec. 9.)

Art. 4717. (3040) (2922) Special meetings for election of directors.—If from any cause the stockholders should fail to elect directors at an annual meeting, they may hold a special meeting for that purpose, by giving thirty days' notice thereof in some newspaper in general circulation in the county in which the principal office of the company is located, and the directors chosen at such special meeting shall continue in office until their successors are duly elected and have accepted. (Id.)

Art. 4718. (3041) (2923) Quorum of stockholders.—No meeting of stockholders shall elect directors or transact such other business of the company, unless there shall be present at such meeting, in person or by proxy, a majority in value of the stockholders equal to two-thirds of the stock of such company.

Art. 4719. (3042) (2924) Directors shall choose president and other officers.—The directors shall choose by ballot from their own number a president and such other officers as the by-laws of the company may designate, who shall perform such duties, receive such compensation and give such security as the by-laws of such company may require. (Id. sec. 10.)

Art. 4720. (3043) (2925) Directors may ordain by-laws, etc.—The directors may ordain and establish such by-laws and regulations, not inconsistent with law, as shall appear to them necessary for regulating and conducting the business of the company. (Id. sec. 11.)

Art. 4721. (3044) (2926) Shall keep a record of their transactions.—It shall be the duty of the directors to keep a full and correct record of their transactions, which shall, at all times during business hours, be open to the inspection of the stockholders and

other persons interested therein. (Id. sec. 11.)

Art. 4722. (3045) (2927) Shall fill vacancies, and what shall constitute a quorum.—The directors shall fill all vacancies which shall occur in the board or in any of the offices of the company, and a majority of the board shall constitute a quorum for the transaction of business.

Art. 4723. (3046) (2928) General incorporation law shall apply to insurance companies.—The laws relating to and governing corporations in general shall apply to and govern insurance companies incorporated in this state in so far as the same may not be inconsistent with the provisions of this title.

CHAPTER TWO

LIFE, HEALTH AND ACCIDENT INSURANCE COMPANIES

Art. 4724. Terms defined.—A life insurance company shall be deemed to be a corporation doing business under any charter involving the payment of money or other thing of value, conditioned on the continuance or cessation of human life, or involving an insurance, guaranty, contract or pledge for the payment of endowments or annuities. An accident insurance company shall be deemed to be a corporation doing business under any charter involving the payment of money or other thing of value, conditioned upon the injury, disablement or death of persons resulting from traveling or general accidents by land or water. A health insurance company shall be deemed to be a corporation doing business under any charter involving the payment of any amount of money, or other thing of value, conditioned upon loss by reason of disability due to sickness or ill health. When consistent with the context and not obviously used in a different sense, the term, "company," or, "insurance company," as used herein, includes all corporations engaged as principals in the business of life, accident or health insurance. The term, "home," or domestic company, as used herein, designates those life, accident, or life and accident, health and accident or life, health and accident insurance companies incorporated and formed in this state. The term, "foreign company," means any life, accident or health insurance company organized under the laws of any other state or territory of the United States or foreign country. The term, "home office," of a company means its principal office within the state or country in which it is incorporated and formed. The "insured" or "policy-holder" is the person on whose life a policy of insurance is effected. The "beneficiary" is the person to whom a policy of insurance effected is payable. By the term, "net assets," is meant the funds of the company available for the payment of its obligations in this state, including uncollected premiums not more than three months past due and deferred premiums on policies actually in force, after deducting from such funds all unpaid losses and claims, and claims for losses, and all other debts, exclusive of capital stock. The "profits" of a company are that portion of its funds not required for the payment of losses and expenses, nor set apart for any other purpose required by law. (Acts 1909, p. 192, sec. 1.)

Indiana & Ohio Live Stock Ins. Co. v. Krenek, 144 S. W. 1181.

Art. 4725. Who may incorporate.—Any three or more citizens of this state, who shall be known as corporators, may associate themselves for the purpose of forming a life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company; provided that no such company shall transact more than one of the foregoing classes of business, except in separate and distinct departments. In order to form such a company, the corporators shall sign and acknowledge its articles of incorporation before any officer authorized to take acknowledgments to deeds and file the same in the office of the commissioner of insurance and banking. Such articles of incorporation shall specify:

(a) The name and place of residence of each of the incorporators.

(b) The name of the proposed company, which shall contain the words, "Insurance Company," as a part thereof, and which must not so closely resemble the name of any existing company transacting insurance business in this state as to mislead the public.

(c) The location of its home office.

(d) The kind or kinds of insurance business it purposes to transact.

(e) The amount of its capital stock, not less than $100,000, all of which capital stock must be subscribed and fully paid up and in the hands of the corporators before said articles of incorporation are filed, such capital stock to be divided into shares of one hundred dollars each.

(f) The period of time it is to exist, which shall not exceed five hundred years.

(g) The number of shares of such capital stock.

(h) Such other provisions not inconsistent with the law as the corporators may deem proper to insert therein. (Id. sec. 2.)

State v. Burgess, 109 S. W. 922; Scottish Union & Nat. Ins. Co. v. Wade, 127 S. W. 1186; Mecca Fire Ins. Co. of Waco v. Stricker, 136 S. W. 599; Cope v. Pitzer, 166 S. W. 447; Prudential Life Ins. Co. of Texas v. Smyer, 183 S. W. 825; Zapp v. Spreckels, 204 S. W. 786.

Art. 4726. Charter to be approved by attorney general, etc.—When such articles of incorporation are filed with the commissioner of insurance and banking, together with an affidavit made by two or more of its incorporators that all the stock has been subscribed in good faith and fully paid for, together with a charter fee of twenty dollars, it shall be the duty of the commissioner to submit such articles of incorporation to the attorney general for examination; and, if he approves the same as conforming with the law, he shall so certify and deliver such articles of incorporation, together with his certificate of approval attached thereto, to the commissioner of insurance and banking, who shall, upon receipt thereof, record the same in a book kept for that purpose; and upon receipt of a fee of one dollar, he shall furnish a certified copy of the same to the corporators, upon which, they shall be a body politic and corporate, and may proceed to complete the organization of the company, for which purpose they shall forthwith call a meeting of the stockholders, who shall adopt

by-laws for the government of the company, and elect a board of directors not less than five, composed of stockholders; which board shall have full control and management of the affairs of the corporation, subject to the by-laws thereof as adopted or amended from time to time by the stockholders or directors, and to the laws of this state. The board of directors so elected shall serve until the second Tuesday in March thereafter, on which date annually thereafter there shall be held an annual meeting of the stockholders at the home office, and a board of directors elected for the ensuing year. At all meetings of the stockholders, each stockholder shall be entitled to one vote for each share of stock fully paid up appearing in his name on the books of the company, which vote may be given in person or by written proxy. The majority of the paid up capital stock at any meeting of the stockholders shall constitute a quorum. (Id. sec. 3.)

Art. 4727. Amendment of charter.—At any regular meeting or called meeting of the stockholders, they may, by resolution, provide for any lawful amendment to the charter or articles of incorporation; and such amendment, accompanied by a copy of such resolution duly certified by the president and secretary of the company, shall be filed and recorded in the same manner as the original charter, and shall thereupon become effective. Stockholders representing a majority of the capital stock of any such company may in such manner also increase or reduce the amount of its capital stock; provided, that the capital stock shall in no case be reduced to less than one hundred thousand dollars fully paid up. A statement of any such increase or reduction shall be signed and acknowledged by two officers of the company and filed and recorded along with the certified copy of the resolution of the stockholders provided therefor in the same manner as the charter or amendment thereto. For any such increase or reduction, the company may require the return of the original certificates as other evidences of stock in exchange for new certificates issued in lieu thereof. The shares of stock of such company shall be transferable on its books, in accordance with law and the by-laws of the company, by the owner in person or his authorized agent; and every person becoming a stockholder by such transfer shall succeed to all rights of the former holder of the stock transferred, by reason of such ownership. (Id. sec. 3.)

Art. 4728. Examination by commissioner before commencing business.—When the first meeting of the stockholders shall be held and the officers of the company elected, it shall be the duty of the president or secretary to notify the commissioner of insurance and banking; and he shall thereupon immediately make, or cause to be made, at the expense of the company, a full and thorough examination thereof; and, if he shall find that all of the capital stock of the company, amounting to not less than one hundred thousand dollars, has been fully paid up and is in the custody of the officers, either in cash or securities of the class in which such companies are authorized by this chapter to invest or loan their funds, he shall issue to such company a certificate of authority to transact such kind or kinds of insurance business within this state as such officers may apply for and as may be authorized by its charter; which certificate shall expire on the last day of February next after the date of its issuance. Before such certificate is issued, not less than two officers of such company shall execute and file with the commissioner of insurance and banking a sworn schedule of all the assets of the company exhibited to him upon such examination, showing the value thereof, together with a sworn statement that the same are bona fide, the unconditional and unencumbered property of the company and are worth the amounts stated in such schedule. No original or first certificate of authority shall be granted, except in conformity herewith, regardless of the date of filing of the articles of incorporation with the commissioner of insurance and banking. (Id. sec. 4.)

Art. 4729. Shall file annual statement.—Each life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company, organized under the laws of this state, shall, after the first day of January of each year and before the first day of March following, and before the renewal of its certificate of authority to transact business, prepare, under oath of two of its officers, and deposit in the office of the commissioner of insurance and banking, a statement, accompanied with the fee for filing annual statements of ten dollars, showing the condition of the company on the thirty-first day of December the next preceding, which shall include a statement in detail showing the character of its assets and liabilities on that date, the amount and character of business transacted, moneys received and how expended during the year, and the number and amount of its policies in force on that date in Texas, and the total amount of all policies in force; and the commissioner of insurance and banking may, from time to time, make such changes in the forms and requirements of the annual statements of companies as shall seem to him best adapted to elicit from the companies a true exhibit of their condition and method of conducting business; and such statement shall also contain and set forth an exhibit of the investments of such company; provided, that such terms and requirements shall elicit only such information as shall pertain to the business of the company. (Id. sec. 5.)

Art. 4730. Renewal certificates.—Whenever any life insurance company, or accident insurance company, or life and accident, or health and accident, or life, health and accident insurance company, transacting insurance business in this state, shall have filed its annual statement in accordance with the preceding article, showing a condition which entitles it to transact business in this state in accordance with the provisions of this chapter, the commissioner of insurance and banking shall, upon receipt of a fee of one dollar, issue a renewal certificate of authority to such company, which shall expire on the last day of February of the subsequent year. (Id. sec. 6.)

Art. 4731. Copy of certificate for agents.—Any such company organized under the laws of this state, having received authority from the commissioner of insurance

and banking to transact business in this state, shall receive from such commissioner, upon written request therefor, a certified copy of its certificate of authority for each of its agents in this state. (Id. sec. 7.)

Art. 4732. To sue and be sued; commissioner only can enjoin.—Actions may be maintained by a company organized under the laws of this state against any of its policy holders, stock holders, or other person, for any cause relating to the business of such company; and actions may also be prosecuted and maintained by any policy holder, or the heirs or legal representatives of any such policy holder, against the company for losses which accrue on any policy; but no action shall be brought or maintained by any person other than the commissioner of insurance and banking of this state for the enjoining, restraining or interfering with the prosecution of the business of the company. (Id. sec. 8.)

Art. 4733. Laws relating to corporations shall govern.—The laws relating to and governing corporations in general shall apply to and govern companies organized under this chapter, in so far as the same are pertinent and not in conflict with the provisions of this chapter. (Id. sec. 9.)

Art. 4734. May invest in what securities.—A life insurance company organized under the laws of this state may invest in or loan upon the following securities, viz.:

(a) It may invest any of its funds or accumulations in the bonds of the United States or of any state, county, or city of the United States, or the bonds of any independent or common school district, or first mortgage bonds of any dividend paying railroad or electric railway company duly incorporated under the laws of the United States, or any state thereof.

(b) It may loan any of its funds and accumulations, taking as security therefor such collateral as under the previous subdivision it may invest in, and upon first liens upon real estate, the title to which is valid, and the value of which is double the amount loaned thereon; provided, that, if any part of such value is in buildings, such buildings shall be insured against loss by fire for at least fifty per cent of the value thereof, with loss clause payable to such company. It may also make loans upon the security of or purchase its own policies, but no loan on any policy shall exceed the reserve value thereof. No investment or loan, except policy loans, shall be made by any such insurance company, unless the same shall first have been authorized by the board of directors, or by a committee charged with the duty of supervising such investments or loans. No such company shall subscribe to, or participate in, any underwriting of the purchase or sale of securities or property, or enter into any such transaction for such purpose, or sell on account of such company jointly with any other person, firm or corporation; nor shall any such company enter into any agreement to withhold from sale any of its property; but the disposition of its property shall be at all times within the control of its board of directors. Every such company possessed of assets not authorized by this chapter shall dispose of the same within five years after July 10, 1909, unless such time is extended for good cause by the commissioner of insurance and banking. (Id. sec. 10.)

Art. 4735. May hold real estate for what purposes and for how long.—Every such insurance company may secure, hold and convey real property only for the following purposes and in the following manner:

1. One building site and office building for its accommodation in the transaction of its business and for lease and rental.

2. Such as shall have been acquired in good faith by way of security for loans previously contracted or for moneys due.

3. Such as shall have been conveyed to it in the satisfaction of debts previously contracted in the course of its dealings.

4. Such as shall have been purchased at sales under judgment or decrees of court, or mortgage or other liens held by such companies.

All such real property specified in subdivisions 2, 3 and 4 of this article, which shall not be necessary for its accommodation in the convenient transaction of its business, shall be sold and disposed of within five years after the company shall have acquired title to the same, or within five years after the same shall have ceased to be necessary for the accommodation of its business; and it shall not hold such property for a longer period, unless it shall procure a certificate from the commissioner of insurance that its interests will suffer materially by the forced sale thereof; in which event, the time for the sale may be extended to such time as the commissioner shall direct in such certificate. (Id. sec. 11.)

Art. 4736. Director not to do certain things.—No director or officer of any insurance company transacting business in this state, or organized under the laws of this state, shall receive any money or valuable thing for negotiating, procuring, recommending or aiding in any purchase or sale by such company of any property, or any loan from such company, nor be pecuniarily interested, either as principal, co-principal, agent or beneficiary, in any such purchase, sale or loan; provided, that nothing contained in this article shall prevent a life insurance corporation from making a loan upon a policy held therein, by the borrower, not in excess of the reserve value thereof. (Id. sec. 12.)

Art. 4737. May reinsure.—Any life insurance company, organized under the laws of this state, may reinsure in any insurance company authorized to transact business in this state, any risk or part of a risk which it may assume; provided, that no such company shall have the power to so reinsure its entire outstanding business until the contract therefor shall be submitted to the commissioner of insurance and banking, and be by him approved, as protecting fully the interests of all the policy holders. (Id. sec. 13.)

Art. 4738. Dividends to be paid only from profits.—No life insurance company, organized under the laws of this state, shall declare or pay any dividends to its policy holders, except from the profits made by such company; provided, that this shall not prohibit the issuance of policies guaranteeing a definite payment or reduction in premiums, not exceeding the expense loading on said premiums; but, where said reduction exceeds

said expense loading, the proper reserve therefor must be held by the company to provide for the deficiency so arising in the net premium; and provided, further, that this shall not apply to payments to holders of special or board contracts heretofore issued. No such life insurance company shall declare or pay any dividends to its stockholders, except from the profits made by said company, not including surplus arising from the sale of stock. (Id. sec. 14.)

Art. 4739. Salaries.—No domestic life insurance company shall pay any salary, compensation or emolument to any officer, trustee or director thereof, nor any salary, compensation or emolument amounting in any year to more than five thousand dollars to any person, firm or corporation, unless such payment be first authorized by a vote of the board of directors of such life insurance company; provided, that the limitation as to time contained herein shall not be construed as preventing a life insurance company from entering into contracts with its agents for the payment of renewal commissions. No such company shall grant any pension to any officer, director or trustee thereof, or to any member of his family after his death. (Id. sec. 20.)

Art. 4740. Disbursements to be made by vouchers only.—No domestic life insurance company shall make any disbursement of one hundred dollars or more, unless the same be evidenced by a voucher signed by, or on behalf of, the person, firm or corporation receiving the money and correctly describing the consideration for the payment. If the expenditure be for both services and disbursements, the voucher shall set forth the service rendered and statement of the disbursement made. If the expenditure be in connection with any matter pending before any legislature or public body, or before any department or officer of any state or government, the voucher shall correctly describe, in addition, the nature of the matter and of the interest of such company therein. When such voucher can not be obtained, the expenditure shall be evidenced by a paid check or an affidavit describing the character and object of the expenditure and stating the reason for not obtaining such voucher. (Id. sec. 21.)

Art. 4741. Policies shall contain what.—No policy of life insurance shall be issued or delivered in this state, or be issued by a life insurance company organized under the laws of this state, unless the same shall contain provisions substantially as follows:

1. A provision that all premiums shall be payable in advance either at the home office of the company or to an agent of the company upon delivery of a receipt signed by one or more of the officers who are designated in the policy.

2. A provision for a grace of at least one month for the payment of every premium after the first, which may be subject to an interest charge, during which month the insurance shall continue in force, which provision may contain a stipulation that, if the insured shall die during the period of grace, the overdue premium will be deducted in any settlement under the policy.

3. A provision that the policy, or policy and application, shall constitute the entire contract between the parties and shall be incontestable not later than two years from its date, except for nonpayment of premiums; and which provision may or may not, at the option of the company, contain an exception for violations of the conditions of the policy relating to naval and military services in time of war.

4. A provision that all statements made by the insured shall, in the absence of fraud, be deemed representations and not warranties.

5. A provision that, if the age of the insured has been understated, the amount payable under the policy shall be such as the premium paid would have purchased at the correct age.

6. A provision that, after three full years premiums have been paid, the company, at any time while the policy is in force, will advance upon proper assignment of the policy and upon the sole security thereof at a specified rate of interest a sum equal to, or at the option of the owner of the policy less than, the legal reserve at the end of the current policy year on the policy and on any dividend addition thereto, less than a sum not more than two and one-half per centum of the amount insured by the policy, and of any dividend additions thereto; and that the company may deduct from such loan value any existing indebtedness on the policy and any unpaid balance of the premium for the current policy year, and may collect interest in advance on the loan to the end of the current policy year, which provision may further provide that such loans may be deferred for not exceeding six months after application therefor is made. It shall further be stipulated in the policy that failure to repay any such advance, or to pay interest, shall not void the policy until the total indebtedness thereon to the company shall equal or exceed the loan value. No condition other than as herein provided shall be exacted as a prerequisite to any such advance. This provision shall not be required in term insurances, nor in pure endowments issued or granted as original policies, or in exchange for lapsed or surrendered policies; and no provision herein required shall compel any company to loan on any policy an amount greater than ninety-seven and one-half per centum of the face value thereof, including net dividend additions thereto.

7. A provision which, in event of default in premium payments, after premiums shall have been paid for three full years, shall secure to the owner of the policy a stipulated form of insurance, the net value of which shall be at least equal to the reserve at the date of default on the policy, and on any dividend additions thereto, specifying the mortality table and rate of interest adopted for computing such reserves, less a sum not more than two and one-half per cent of the amount insured by the policy and of any existing dividend additions thereto, and less any existing indebtedness to the company on the policy. Such provision shall stipulate that the policy may be surrendered to the company at its home office within one month from date of default for a specified cash value at least equal to the sum which would otherwise be available for the purchase of insurance, as aforesaid, and may stipulate

that the company may defer payment for not more than six months after the application therefor is made. This provision shall not be required in term insurances.

8. A table showing in figures the loan values, and the options available under the policies each year, upon default in premium payments during the first twenty years of the policy or the period during which premiums are payable, beginning with the year in which such values and options become available.

9. A provision that if, in event of default in premium payments, the value of the policy shall be applied to the purchase of other insurances; and if such insurance shall be in force and the original policy shall not have been surrendered to the company and canceled, the policy may be reinstated within three years from such default, upon evidence of insurability satisfactory to the company and payments of arrears of premiums with interest.

10. A provision that, when a policy shall become a claim by the death of the insured, settlement shall be made upon receipt of due proof of death and the right of the claimant to the proceeds, or not later than two months after the receipt of such proof.

11. A table showing the amounts of installments in which the policy may provide its proceeds may be payable.

Any of the foregoing provisions, or portions thereof, not applicable to single premium policies shall, to that extent, not be incorporated therein. (Id. sec. 22.)

Art. 4742. Policies shall not contain what.—No policy of life insurance shall be issued or delivered in this state, or be issued by a life insurance company incorporated under the laws of this state, if it contains any of the following provisions:

1. A provision limiting the time within which any action at law or in equity may be commenced to less than two years after the cause of action shall accrue.

2. A provision by which the policy shall purport to be issued or to take effect more than six months before the original application for the insurance was made, if thereby the insured would rate at any age younger than his age at date when the application was made, according to his age at nearest birthday.

3. A provision for any mode of settlement at maturity of less value than the amounts insured on the face of the policy, plus dividend additions, if any, less any indebtedness to the company on the policy, and less any premium that may, by the terms of the policy, be deducted; provided, that any company may issue a policy promising a benefit less than the full benefit in case of the death of the insured by his own hand while sane or insane, or by following stated hazardous occupations. This provision shall not apply to purely accident and health policies. None of the foregoing provisions relating to policy forms shall apply to policies issued in lieu of, or in exchange for, any other policy issued before July 10, 1909. (Id. sec. 23.)

Art. 4743. Policies of foreign companies may contain.—The policies of a life insurance company not organized under the laws of this state may contain any provision which the law of the state, territory, district or country, under which the company is organized, prescribes shall be in such policies when issued in this state; and the policies of a life insurance company organized under the laws of this state may, when issued or delivered in any other state, territory, district or country, contain any provision required by the laws of the state, territory, district or country in which the same are issued, anything in this chapter to the contrary notwithstanding. (Id. sec. 24.)

Art. 4744. Venue of suits on policies.—Suits on policies may be instituted and prosecuted against any life insurance company, or accident insurance company, or life and accident, or health and accident, or life, health and accident insurance company, in the county where the home office of such company is located, or in the county where loss has occurred or where the policy holder or beneficiary instituting such suit resides. (Id. sec. 33; P. D. 7116g.)

See Sayles' Practice, pp. 278, 304, 318; Indiana & Ohio Live Stock Ins. Co. v. Krenek, 144 S. W. 1181; International Travelers' Ass'n v. Powell, 196 S. W. 957; International Travelers' Ass'n v. Votaw, 197 S. W. 237; Reliance Life Ins. Co. v. Robinson, 202 S. W. 354.

Art. 4745. Service of process.—Process in any civil suit against any domestic life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company, may be served only on the president, or any active vice president, or secretary, or general counsel residing at the city of the home office of the company, or by leaving a copy of same at the home office of such company during business hours. (Id. sec. 34.)

Art. 4746. Losses shall be paid promptly.—In all cases where a loss occurs and the life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company liable therefor shall fail to pay the same within thirty days after demand therefor, such company shall be liable to pay the holder of such policy, in addition to the amount of the loss, twelve per cent damages on the amount of such loss together with reasonable attorney fees for the prosecution and collection of such loss. (Id. sec. 35; P. D. 7116o.)

See Sayles' Practice, p. 677; N. Y. Life Ins. Co. v. Smith, 41 S. W. 680; Washington Life Ins. Co. v. Gooding, 49 S. W. 123; N. W. Life Ins. Co. v. Sturdevant, 59 S. W. 61; N. Y. Life Ins. Co. v. Orlopp, 61 S. W. 337; N. Y. Life Ins. Co. v. English, 70 S. W. 441; Sun Life Ins. Co. v. Phillips, 70 S. W. 603; Ætna Life Ins. Co. v. Parker & Co., 72 S. W. 168, 621; Sup. Council A. L. H. v. Story, 73 S. W. 1; Woodmen, etc., v. Carrington, 90 S. W. 921; Continental Casualty Co. v. Wade, 99 S. W. 877; Southwestern Ins. Co. v. Woods Nat. Bank, 107 S. W. 114; Penn Mutual Life Ins. Co. v. Maner, 109 S. W. 1084; Mutual Reserve Life Ins. Co. v. Jay, 109 S. W. 1116; Mutual Life Ins. Co. v. Ford, 130 S. W. 769; Mutual Life Ins. Co. v. Ford, 131 S. W. 406; Manhattan Life Ins. Co. v. Cohen, 139 S. W. 51; American Nat. Ins. Co. v. Collins, 149 S. W. 554; New York Life Ins. Co. v. Hagler, 169 S. W. 1064; National Life Ass'n v. Parsons, 170 S. W. 1038; Commonwealth Bonding & Casualty Ins. Co. v. Wright, 171 S. W. 1043; Ætna Accident & Liability Co. v. White, 177 S. W. 162; American Nat. Ins. Co. v. Fulghum, 177 S. W. 1008; National Live Stock Ins. Co. v. Gomillion, 178 S. W. 1050; American Nat. Ins. Co. v. Hawkins, 189 S. W. 330; American Nat. Ins. Co. v. Hollingsworth, 189 S. W. 792; New York Life Ins. Co. v. Veith, 192 S. W. 605; International Travelers' Ass'n v. Votaw, 197 S. W. 237; Western Indemnity Co. v. Free and Accepted Masons of Texas, 198 S. W. 1092.

Art. 4747. Certificate null and void, when.—Should any life insurance company,

accident insurance company, life and accident, health and accident, or life, health and accident insurance company fail to pay off and satisfy any execution that may lawfully issue on any final judgment against said company within thirty days after the officer holding such execution has demanded payment thereof from any officer or attorney of record of such company, in this state, or out of it, such officer shall immediately certify such demand and failure to the commissioner of insurance and banking; and thereupon the commissioner shall forthwith declare null and void the certificate of authority of such company; and such company shall be prohibited from transacting any business in this state until such execution shall be fully satisfied and discharged, and until such commissioner shall renew his certificate of authority to such company. (Id. sec. 36.)

Art. 4748. Business of life insurance companies limited to certain kinds of business.—It shall be unlawful for any life insurance company, accident insurance company, life and accident, health and accident, and life, health and accident insurance company to take any kind of risks or issue any policies of insurance, except those of life, accident or health; nor shall the business of life, accident or health insurance in this state be in any wise conducted or transacted by any company which, in this or any other state or country, is engaged or concerned in the business of marine, fire or inland insurance. (Id. sec. 37.)

Art. 4749. Deposit of securities.—Any life insurance company, accident insurance company, life and accident, health and accident, or life, health and accident insurance company, organized under the laws of this state, may, at its option deposit with the treasurer of this state securities equal to amount of its capital stock, and may, at its option, withdraw the same, or any part thereof, first having deposited in the treasury in lieu thereof other securities equal in value to those withdrawn. Any such securities, before being so originally deposited or substituted, shall be approved by the commissioner of insurance and banking; and, when any such deposit is made, the treasurer shall execute to the company making the deposit a receipt therefor, giving such description to such securities as will identify the same; and such company shall have the right to advertise such fact, or print a copy of the treasurer's receipt on the policies it may issue; and the proper officers or agents of each insurance company making such deposit shall be permitted, at all reasonable times, to examine such securities and to detach coupons therefrom and to collect interest thereon, under such reasonable rules and regulations as may be prescribed by the treasurer, and the commissioner of insurance and banking, of this state. The deposit herein provided for, when made by any company, shall thereafter be maintained as long as said company shall have outstanding any liability to its policy holders. For the purpose of state, county and municipal taxation, the situs of all personal property belonging to such companies shall be at the home office of such company. (Id. sec. 38.)

Art. 4750. Same.—Any life insurance company now incorporated, or which may hereafter be incorporated, under the laws of this state, may deposit with the commissioner of insurance and banking of the state of Texas, for the common benefit of all the holders of its policies and annuity bonds, securities of the kinds in which, by the laws of this state, it is permitted to invest or loan its funds, equal to the legal reserve on all its outstanding policies in force, which securities shall be held by said commissioner in trust for the purpose and objects herein specified. Any such company may deposit lawful money of the United States in lieu of the securities above referred to, or any portion thereof, and may also, for the purposes of such deposit, convey to said commissioner in trust the real estate in which any portion of its said reserve may be lawfully invested; and, in such case, said commissioner shall hold the title thereto in trust until other securities in lieu thereof shall be deposited with him, whereupon he shall reconvey the same to such company. Said commissioner may cause any such securities or real estate to be appraised and valued prior to their being deposited with, or conveyed to, him in trust as aforesaid, the reasonable expense of such appraisement or valuation to be paid by the company. (Act 1909, p. 448, 2 S. S. sec. 1.)

Art. 4751. Policies shall have indorsed on face, etc.—After making the deposit mentioned above, no company shall thereafter issue a policy of insurance or endowment or annuity bond, except policies of industrial insurance, unless it shall have upon its face a certificate substantially in the following words: "This policy is registered, and approved securities equal in value to the legal reserve hereon are held in trust by the commissioner of insurance and banking of the state of Texas," which certificate shall be signed by such commissioner and sealed with the seal of his office. All policies and bonds of each kind and class issued and the forms thereof filed in the office of said commissioner shall have printed thereon some appropriate designating letter or figure, combination of letters or figures or terms identifying the particular form of contract, together with the year of adoption of such form; and, whenever any change or modification is made in the form of contracts, policy or bond, the designating letters, figures or terms and year of adoption thereon shall be correspondingly changed. The commissioner of insurance and banking shall prepare and keep such registers thereof as will enable him to compute their value at any time. Upon written proof attested by the president or vice president and secretary of the company which shall have issued such policies or annuity bonds that any of them have been commuted or terminated, the commissioner shall commute or cancel them upon his register; and, until such proof is furnished all registered, contracts shall be considered in force for the purposes of this chapter. The net value of every policy or annuity bond, according to the standard prescribed by the laws of this state for the valuation of policies of life insurance companies, when the first premium shall have been paid thereon, less the amount of such

liens as the company may have against it (not exceeding such value), shall be entered opposite the record of said policy or annuity bond in the register aforesaid at the time such record is made. On the first day of January of each year, or within sixty days thereafter, the commission shall cause the policies and annuity bonds of each company accepting the terms of this chapter to be carefully valued; and the actual value thereof at the time fixed for such valuation, less such liens as the company may have against it, not exceeding such value, shall be entered upon the register opposite the record of such policy or bond, and the commissioner shall furnish a certificate of the aggregate of such value to the company. It shall be the duty of the commissioner to cancel mutilated or surrendered policies and annuity bonds issued by any such company, and register other like policies or bonds issued in lieu thereof. Each company, which shall have made the deposit herein provided for, shall make additional deposits from time to time, in amounts not less than five thousand dollars, and of such securities as are permitted by this chapter to be deposited, so that the market value of the securities deposited shall always be equal to the net value of the policies and annuity bonds issued by said company, less such liens as the company may have against them, not exceeding such net value. So long as any company shall maintain its deposits as herein prescribed at an amount equal to, or in excess of, the net value of its policies and annuity bonds as aforesaid, it shall be the duty of said commissioner to sign and affix his seal to the certificates before mentioned on every policy and annuity bond presented to him for that purpose by any company so depositing. The commissioner shall keep a careful record of the securities deposited by each company, showing by item the amount and market value thereof. If at any time it shall appear therefrom that the value of the securities held on deposit is less than the actual value of the policies and annuity bonds issued by such company and then in force, it shall be unlawful for the commissioner to execute the certificate on any additional policies or annuity bonds of such company until it shall have made good the deficit. Any company depositing under the provisions of this chapter may increase its deposits at any time by making additional deposits of not less than five thousand dollars of such securities as are authorized by this chapter. Any such company whose deposits exceed the net value of all policies and annuity bonds it has in force, less such liens (not exceeding such net value) as the company may hold against them, may withdraw such excess; and it may withdraw any of such securities at any time by depositing others of equal value and of the character authorized by this chapter in their stead; and it may collect the interest coupons, rents and other income on the securities deposited as the same accrue.

The securities deposited under this chapter by each company shall be placed and kept by the commissioner of insurance and banking of the state in some secure safe-deposit, fire-proof box or vault in the city or town in or near which the home office of the company is located; and the officers of the company shall have access to such securities for the purpose of detaching interest coupons and crediting payment and exchanging securities as above provided, under such reasonable rules and regulations as the commissioner may establish. (Id. sec. 2.)

Art. 4752. Fees for making deposits.—Every company making deposit under the provisions of this chapter shall pay to the commissioner of insurance and banking for each certificate placed on registered policies or annuity bonds issued by the company, after the original or first deposit is made hereunder, a fee of twenty-five cents; and the fee so received shall be disposed of by said commissioner as follows:

1. The payment of the annual rent or hire of the safety deposit fire-proof box above provided.

2. Payment for the services of a competent and reliable representative of said commissioner, to be appointed by him, who shall have direct charge of the securities and safety box containing the same, and through whom, and under whose supervision, the insurance company may have access to its securities for the purposes above provided. The sum paid such representative shall not exceed sixty dollars per annum for each company.

3. The balance of such fees shall be paid to, or deposited with, the state treasurer to the credit of the general fund. (Id. sec. 3.)

Art. 4753. Securities may include capital stock; securities to be increased.—Any life insurance company organized under the laws of this state and making the deposit provided for by this chapter, may include, as a part thereof, securities representing its capital stock, and any deposits of its securities heretofore or hereafter made in compliance with the laws of this state representing its capital stock, and shall only be required to deposit in addition thereto the remainder of its total reserve on outstanding policies and annuity bonds after deducting therefrom the amount of its capital stock securities so deposited. Deposits of securities made hereunder to the value of the reserve on all outstanding policies and annuity bonds shall be added to, and maintained from time to time as the reserve values increase, by the company issuing such contracts, or by any company which may reinsure or assume them; and such securities shall be held by the commissioner of insurance and banking and his successors in office in trust for the benefit of such policies and annuity bonds so long as the same shall remain in force. No company, making the deposit provided for herein, shall reinsure its outstanding business, or the whole of any one or more of its risks, except in or with a company or companies incorporated and organized under the laws of this state, or a company having permission to do business in this state. (Id. secs. 4, 5.)

Art. 4754. Sub-standard or extra hazardous policies.—If any life insurance company doing business under the laws of this state has written or assumed risks that are sub-standard or extra hazardous and has charged therefor more than its published rates of premium, the commissioner of insurance and banking shall in valuing such poli-

cies compute and charge such extra reserves thereon as is warranted by reason of the extra hazard assumed and the extra premium charged. (Id. sec. 6.)

Art. 4755. No commissions to be paid officers.—No life insurance company transacting business in this state shall pay, or contract to pay, directly or indirectly, to its president, vice president, secretary, treasurer, actuary, medical director or other physician charged with the duty of examining risks or applications for insurance or to any officer of the company other than an agent or solicitor, any commission or other compensation contingent upon the writing or procuring of any policy of insurance in such company, or procuring an application therefor by any person whomsoever, or contingent upon the payment of any renewal premium, or upon the assumption of any life insurance risk by such company; and, should any company violate the provisions of this article, it shall be the duty of the commissioner of insurance and banking to revoke its certificate of authority to transact business in this state. (Id. sec. 7.)

Art. 4756. Co-operative companies.—The provisions of articles 4750 to article 4755, inclusive, shall likewise apply to and govern co-operative life insurance companies organized under the laws of this state. (Id. sec. 8.)

Art. 4757. Funds to be deposited in name of company.—Any director, member of a committee, or officer, or any clerk of a home company, who is charged with the duty of handling or investing its funds, shall not deposit or invest such funds, except in the corporate name of such company; shall not borrow the funds of such company; shall not be interested in any way in any loan, pledge, security, or property of such company, except as stockholder; shall not take or receive to his own use any fee, brokerage, commission, gift or other consideration for, or on account of, a loan made by or on behalf of such company. (Act 1909, p. 192, sec. 39.)

Art. 4758. Impairment of capital stock.—Any such insurance company transacting business within this state, whose capital stock shall become impaired to the extent of thirty-three and one-third per cent thereof, computing its liabilities according to the terms of this chapter, shall make good such impairment within sixty days, by reduction of its capital stock (provided such capital stock shall in no case be less than one hundred thousand dollars), or otherwise; and failure to make good such impairment within said time shall forfeit its right to write new business in this state until said impairment shall have been made good. And provided, that the commissioner of insurance and banking may apply to any court of competent jurisdiction for the appointment of a receiver to wind up the affairs of such company when its capital stock shall become impaired to the extent of fifty per cent thereof, computing its policy liabilities according to the American experience table of mortality and four and one-half per cent interest. And provided, further, that no company shall write new business in Texas when its net surplus to policy holders is less than one hundred thousand dollars. (Id. sec. 43.)

Art. 4759. Form of policies to be filed.—Life insurance companies shall, within five days after the issuance of, and the placing upon the market, any form of policies of life insurance, file a copy of such form of policy with the department of insurance and banking. (Id. sec. 44.)

Art. 4760. Policy to be approved by commissioner.—No insurance company transacting business in this state shall hereafter be permitted to issue or sell any policy of industrial life insurance, or any policy of accident or health insurance, until the form thereof has been submitted to the commissioner of insurance and banking. If the commissioner of insurance and banking shall approve the form of such policy as complying with the requirements of the laws of this state, the same may thereafter be issued and sold. If he shall disapprove the same, any such company may institute a proceeding in any court of competent jurisdiction to review his action thereon. (Id. sec. 45.)

Art. 4761. Must have certificate of authority.—No foreign or domestic insurance company shall transact any insurance business in this state, other than the lending of money, unless it shall first procure from the commissioner of insurance and banking a certificate of authority, stating that the requirements of the laws of this state have been fully complied with by it, and authorizing it to do business in this state. Such certificate of authority shall expire on the last day of February in each year, and shall be renewed annually so long as the company shall continue to comply with the laws of the state, such renewals to be granted upon the same terms and considerations as the original certificate. (Id. sec. 46.)

Art. 4762. Companies with $25,000 capital stock.—Companies may be incorporated in the manner prescribed by this chapter for the incorporation of life, accident and health insurance companies generally, which shall have power only to transact business within the state of Texas, and to write insurance only on the weekly or monthly premiums plan, and to issue no policy promising to pay more than one thousand dollars in the event of the death of the insured from natural causes, nor more than two thousand dollars in the event of death of any person from accidental causes, which may issue, combined or separately, life, accident or health insurance policies with not less than an actual paid up capital of twenty-five thousand dollars; provided, that all such companies shall be subject to all the laws regulating life insurance companies in this state not inconsistent with the provisions of this article; and provided, further, that such companies shall not be permitted to invest their assets in other than Texas securities as defined by the laws of this state regulating the investments of life insurance companies. (Id. sec. 56.)

Art. 4763. Unlawful dividends.—It shall not be lawful for any insurance company organized under the laws of this state to make any dividend, except from surplus profits arising from its business; and, in estimating such profits, there shall be reserved therefrom the lawful reserve on all unexpired risks and also the amount of all unpaid losses, whether adjusted or unadjusted, and

all other debts due and payable, or to become due and payable, by the company. Any dividends made contrary to the provisions of this article shall subject the company making them to a forfeiture of its charter; and the commissioner of insurance shall forthwith revoke its certificate of authority; provided, that he shall give such company at least ten days notice in writing of his intention to revoke such certificate, stating specifically the reasons why he intends to revoke same. (Id. sec. 61.)

Art. 4764. Taxation of domestic insurance companies.—Insurance companies incorporated under the laws of this state shall hereafter be required to render for state, county and municipal taxation all of their real estate as other real estate is rendered; and all of the personal property of such insurance companies shall be valued as other property is valued for assessment in this state in the following manner: From the total valuation of its assets shall be deducted the reserve, being the amount of the debts of insurance companies by reason of their outstanding policies in gross, and from the remainder shall be deducted the assessed value of all real estate owned by the company and the remainder shall be the assessed taxable value of its personal property. Home insurance companies shall not be required to pay any occupation or gross receipt tax. (Id. sec. 25.)

Art. 4765. Foreign companies, statement.—Any life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company, incorporated under the laws of any other state, territory or country, desiring to transact the business of such insurance in this state, shall furnish said commissioner of insurance and banking with a written or printed statement under oath of the president or vice president, or treasurer and secretary of such company, which statement shall show:

(a) The name and locality of the company.

(b) The amount of its capital stock.

(c) The amount of its capital stock paid up.

(d) The assets of the company, including: first, the amount of cash on hand and in the hands of other persons, naming such persons and their residence; second, real estate unincumbered, where situated and its value; third, the bonds owned by the company and how they are secured, with the rate of interest thereon; fourth, debts due the company secured by mortgage, describing the property mortgaged and its market value; fifth, debts otherwise secured, stating how secured; sixth, debts for premiums; seventh, all other moneys and securities.

(e) Amount of liabilities to the company, stating the name of the person or corporation to whom liable.

(f) Losses adjusted and due.

(g) Losses adjusted and not due.

(h) Losses adjusted.

(i) Losses in suspense and for what cause.

(j) All other claims against the company, describing the same.

Provided that the commissioner of insurance and banking may require any additional fact to be shown by such annual statement. Each such company shall be required to file a similar statement not later than March 1 of each year. (Id. sec. 26.)

Metropolitan Life Ins. Co. v. Love, 108 S. W. 321.

Art. 4766. To file articles of incorporation.—Such foreign life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company shall accompany such statement with a certified copy of its acts or articles of incorporation, and all amendments thereto, and a copy of its by-laws, together with the name and residence of each of its officers and directors, and all of which shall be certified under the hand of the president or secretary of such company. (Id. sec. 27.)

Art. 4767. Paid up capital stock.—No such foreign life insurance company, accident insurance company, or life and accident, health and accident, or life, health and accident insurance company, shall transact any business of insurance in this state, unless such company is possessed of at least one hundred thousand dollars of actual paid up in cash money capital invested in such securities as provided under the laws of the state, territory or country of its creation; and no mutual life insurance company or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company operating on the old line or legal reserve basis, shall transact any business of insurance in this state, unless such company is possessed of at least one hundred thousand dollars of net surplus assets invested in securities provided for under the law of the state, territory or country of its creation. (Id. sec. 28.)

Art. 4768. Deposits required.—Whenever the existing or future laws of any other state or territory of the United States, or of any other country, shall require of life insurance companies, accident insurance companies, or life and accident, health and accident, or life, health and accident insurance companies, incorporated by this state, any deposit of securities in such other state, territory or country before transacting insurance business therein, then, and in every such case, all insurance companies of such state shall, before doing any insurance business in this state, be required to make the same deposit of securities with the treasurer of this state. (Id. sec. 29; P. D. 7116m.)

See Seiders v. Merchants' Life Ass'n, 54 S. W. 753.

Art. 4769. Alien companies to deposit.—No foreign life insurance company or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company, incorporated by or organized under the laws of any foreign government, shall transact business in this state, unless it shall first deposit and keep deposited with the treasurer of this state, for the benefit of the policy holders of such company, citizens or residents of the United States, bonds or securities of the United States or the state of Texas to the amount of one hundred thousand dollars. (Id. sec. 30.)

Art. 4770. Deposit liable for judgment.—The deposit required by the preceding article shall be held liable to pay the judgments of policy holders in such company, and may be so decreed by the court adjudicating the same. (Id. sec. 31.)

Art. 4771. When alien companies need not deposit.—If the deposit required by article 4769 has been made in any state of the United States, under the laws of such state, in such manner as to secure equally all the policy holders of such company who are citizens and residents of the United States, then no deposits shall be required in this state; but a certificate of such deposit under the hand and seal of the officer of such other state with whom the same has been made shall be filed with the commissioner of insurance and banking. (Id. sec. 32.)

Art. 4772. Assets, how invested.—The assets of any company not organized under the laws of this state shall be invested in securities or property of the same classes permitted by the laws of this state as to home companies or by other laws of this state in other securities approved by the commissioner of insurance and banking as being of substantially the same grade. (Id. sec. 57.)

Art. 4773. Shall file power of attorney.—Each life insurance company engaged in doing or desiring to do business in this state shall file with the commissioner of insurance and banking of this state an irrevocable power of attorney, duly executed, constituting and appointing the commissioner of insurance and banking of this state and his successors in office, or any officer or board which may hereafter be clothed with the powers and duties now devolving upon said commissioner, its duly authorized agent and attorney in fact for the purpose of accepting service for it or being served with citation in any suit brought against it in any court of this state, by any person, or by or to or for the use of the state of Texas, and consenting that the service of any civil process upon him as its attorney for such purpose in any such suit or proceeding shall be taken and held to be valid, waiving all claim and right to object to such service or to any error by reason of such service; and such appointment, agency and power of attorney shall, by its terms and recitals, provide that it shall continue and remain in force and effect so long as such company continues to do business in this state or to collect premiums of insurance from citizens of this state, and so long as it shall have outstanding policies in this state, and until all claims of every character held by the citizens of this state, or by the state of Texas, against such company, shall have been settled. And said power of attorney shall be signed by the president or a vice president and the secretary of such company, whose signature shall be attested by the seal of the company; and said officer signing the same shall acknowledge its execution before an officer authorized by the laws of this state to take acknowledgments; and the said power of attorney shall be embodied in, and approved by, a resolution of the board of directors of such company; and a copy of such resolution, duly certified to by the proper officers of said company, shall be filed with the said power of attorney in the office of the commissioner of insurance and banking of this state, and shall be recorded by him in a book kept for that purpose, there to remain a permanent record of said department. (Acts 1909, p. 240, sec. 12.)

Art. 4774. Duty of commissioner in accepting service.—Whenever the commissioner of insurance and banking of this state shall accept service or be served with citation in any suit pending against any life insurance company in this state, as provided by the preceding article, he shall immediately enclose the copy of the citation served upon him, or a substantial copy thereof, in a letter properly addressed to the general manager or general agent of the company against whom such service is had, if it shall have a general manager or general agent within this state, and if not, then to the home office of the company, and shall forward the same by registered mail, postage prepaid; and no judgment by default shall be taken in any such cause until after the expiration of at least ten days after the general agent or general manager of such company, or the company at its home office, as the case may be, shall have received such copy of such citation; and the presumption shall obtain, until rebutted, that such notice was received by such agent or company in due course of mail after being deposited in the mail at Austin. (Id. sec. 13.)

CHAPTER THREE

INVESTMENT IN TEXAS SECURITIES AND TAXATION OF GROSS RECEIPTS

Art. 4775. Investment in Texas securities.—Each and every life insurance company now engaged, or that may hereafter engage, in transacting the business of life insurance in this state, shall, as a condition of its right to transact such business in this state, invest and keep invested in Texas securities, as hereinafter defined, and in Texas real estate as hereinafter provided, a sum of money equal to at least seventy-five per cent of the aggregate amount of the legal reserve required by the laws of the state of its domicile, to be maintained on account of its policies of insurance in force written upon the lives of citizens of this state, which reserve is hereinafter denominated as its "Texas Reserves." And each such company, securing a certificate of authority to do business in this state, shall be deemed to have accepted such certificate subject to all of the conditions and requirements of this chapter. (Acts 1909, p. 240, sec. 1; Acts 1907, p. 316, sec. 1.)

Art. 4776. Definition of "Texas securities."—The phrase, "Texas Securities," as used in this chapter, shall be held to include bonds of the state of Texas, or of any county, city, town, school district or other municipality or subdivision, which is now or may hereafter be constituted or organized and authorized to issue bonds under the constitution and laws of this state, promissory notes and other obligations, the payment of which is secured by a mortgage, deed of trust or other valid lien upon unincumbered real estate situated in this state, the title to which real estate is valid and the market value of which is double the amount loaned thereon, exclusive of buildings, unless such buildings are insured and kept insured in some company authorized to transact business in this state, and the policy or policies transferred to the company taking such mortgage or lien; the first mortgage bonds of any solvent corporation, incorporated under the laws of this state and doing business in this state, which has not in five years next preceding the date of the investment by such

company in such mortgage bonds, defaulted for more than three months in the payment of interest upon its bonds or indebtedness, the market value of which bonds is equal to the amount invested therein; and loans made to policy holders on the sole security of the reserve values of their policies. And the investments required by this chapter, or any part thereof, may be made by the purchase of not more than one building site, and in the erection thereon of not more than one office building, or in the purchase at its reasonable market value of such office building already constructed and the ground upon which the same is located, in any city of the state having a population of more than four thousand inhabitants. And all real estate owned by life insurance companies in this state, on December 31, 1909, and all thereafter acquired under the provisions of this chapter, or by foreclosure of a lien thereon, shall be treated, to the extent of its reasonable market value, as a part of the investments required by this chapter. And "Texas Securities" as used in the following articles of this chapter shall be held to include every character of investment authorized by the terms of this article. (Id. sec. 2.)

Art. 4777. Investments, how made.—The investments required by this chapter shall be made as follows:

(a) Each life insurance company which had a certificate of authority to transact business in this state April 2, 1909, the total amount of whose investments in Texas securities as of December 31, 1908, was equal to or exceeded seventy-five per cent of the amount of its Texas reserves as of that date, shall have so invested not later than January 31, in each year, a sum of money equal to seventy-five per cent of the amount of its Texas reserves as of the preceding December 31.

(b) Each life insurance company which had a certificate of authority to transact business in this state on April 2, 1909, the amount of whose investments in Texas securities as of December 31, 1908, was less than seventy-five per cent of the amount of its Texas reserves as of said date, shall have so invested, not later than January 31 in each year, a sum at least equal to seventy-five per cent of the amount by which its Texas reserves as of December 31 preceding exceeded the amount of its Texas reserves as of December 31, 1908, added to the amount of its total investments in Texas securities as of said date; and each such company shall, in addition, have so invested not later than January 31, 1910, a sum at least equal to ten per cent of the amount by which seventy-five per cent of its Texas reserves as of December 31, 1908, exceeded the amount of its investments in Texas securities as of said date, and annually thereafter it shall have invested, not later than January 31, an additional ten per cent of the amount of such excess, until the total amount of its investments in Texas securities shall at least equal seventy-five per cent of its Texas reserves.

(c) Each life insurance company not having a certificate of authority to transact business in this state on April 2, 1909, or that may thereafter discontinue writing new business under such certificate, shall, if it again obtain a certificate of authority to transact business in this state, be required to have invested in Texas securities annually as above provided, a sum equal to seventy-five per cent of its Texas reserves; provided, that if on December 31 preceding the issuance of such certificate of authority, the amount of its investments in Texas securities was less than seventy-five per cent of the amount of its Texas reserves it shall be required to have so invested annually as above provided, a sum equal to seventy-five per cent of the increase in its Texas reserves since December 31 last preceding the issuance of its certificate of authority, added to the amount of its total investment in Texas securities as of said date; and, in addition, it shall, not later than January 31 in each year after the issuance of its certificate of authority, have so invested ten per cent of the amount by which seventy-five per cent of its Texas reserves as of December 31 preceding the date of said certificate exceeded the amount of its total investments in Texas securities as of that date, and shall have invested annually thereafter, not later than January 31, an additional ten per cent of such excess, until the total amount of its investments in Texas securities shall at least equal seventy-five per cent. of the amount of its Texas reserves. The proportionate amount of the Texas reserves required by this section to be invested in Texas securities as of any date shall thereafter be maintained; provided, that such investment shall not be required to be made by any life insurance company after it has ceased to do the business of life insurance or to write policies of life insurance in this state. (Acts 1909, p. 241, sec. 3; Acts 1907, p. 318, sec. 5.)

Art. 4778. Report showing amount of reserve.—That each life insurance company doing business in this state shall, not later than ten days after January 31 of each year, file with the commissioner of insurance and banking of this state, on a blank prepared and furnished by him for that purpose, a report showing the entire amount of the reserve on its entire business in force in this state on December 31, preceding, and an itemized schedule of its investments in Texas securities, which report shall be sworn to by either the president or a vice president and the secretary of such company. Such report shall contain such other information as may be required by the commissioner to determine whether or not such company has continuously and in good faith complied with this law; and for that purpose the commissioner may, whenever he shall deem it proper, require such special or supplemental reports as he may deem necessary. (Acts 1909, p. 242, sec. 4; Acts 1907, p. 318, sec. 7.)

Art. 4779. Report showing gross amount of receipts.—Each life insurance company not organized under the laws of this state, transacting business in this state, shall annually, on or before the first day of March, make a report to the commissioner of insurance and banking of this state, which report shall be sworn to by either the president or vice president and secretary or treasurer of such company, and which shall show the gross amount of premiums collect-

ed during the year ending on December 31, preceding, from citizens of this state, upon policies of insurance; and each such company shall pay annually an occupation tax equal to three per cent of such gross premium receipts; provided, that when the report of the investment in Texas securities, as defined by law, of any such companies as of December 31, of any year, shall show that it has invested on said date as much as thirty per cent of its total Texas reserves, as defined by law, in promissory notes or other obligations secured by mortgage, deed of trust, or other lien on Texas real estate, the rate of occupation tax shall be reduced to two and six-tenths per cent; and, when such report shall show that such company has so invested on said date as much as sixty per cent of its total Texas reserve, the rate of such occupation tax shall be reduced to two and three-tenths per cent; and when such a report shall show that such company has so invested, on said date, as much as seventy-five per cent of its total Texas reserve, the rate of such occupation tax shall be reduced to two per cent; provided, that all such companies shall in any event make the investments in Texas securities in proportion to the amount of Texas reserves as required by law. Such occupation taxes shall be for and on account of the business transacted within this state during the calendar year in which such premiums were collected, or for that portion thereof during which the company shall have transacted business in this state. (Acts 1909, 1 S. S. p. 264, sec. 1.)

Art. 4780. Taxes to be paid before certificate is issued.—Upon the receipt of sworn statements showing the gross premium receipts of such company, the commissioner of insurance and banking of this state shall certify to the treasurer of this state the amount of taxes due by such company for the preceding year; which taxes shall be paid to the state treasurer for the use of the state, by such company. Upon his receipt of such certificate, and the payment of such tax, the treasurer shall execute a receipt therefor, which receipt shall be evidence of the payment of such taxes; and no such life insurance company shall receive a certificate of authority to do business in this state until such taxes are paid. If, upon the examination of any company, or in any other manner, the commissioner of insurance and banking shall be informed that the gross premium receipts of any year exceed in amount those shown by the report thereof, theretofore made as above provided, it shall be the duty of such commissioner to file with the state treasurer a supplemental certificate showing the additional amount of taxes due by such company, which shall be paid by such company upon notice thereof. It shall be the duty of the state treasurer of this state if, within fifteen days after the receipt by him of any certificate or supplemental certificate provided for by this article, the taxes due as shown thereby have not been paid, to report the facts to the attorney general, who shall immediately institute suit in the proper court in Travis county to recover such taxes. (Id. sec. 1.)

Art. 4781. Taxes imposed in this chapter to be sole taxes imposed.—No occupation tax other than herein imposed shall be levied by the state or any county, city or town, upon any life insurance company herein subject to the occupation tax in proportion to its gross premium receipts, or its agents. The occupation tax imposed by this act upon life insurance companies shall be the sole occupation tax which any company doing business in this state under the provisions of this chapter shall be required to pay. (Acts 1909, p. 240, sec. 6.)

Art. 4782. Companies deemed to have accepted provisions of this chapter, when.—Each life insurance company not organized under the laws of this state, hereafter granted a certificate of authority to transact business in this state, shall be deemed to have accepted such certificate and to transact such business hereunder subject to the conditions and requirements that, after it shall cease to transact new business in this state under a certificate of authority, and so long as it shall continue to collect renewal premiums from citizens of this state, it shall be subject to the payment of the same occupation tax in proportion to its gross premiums during any year, from citizens of this state, as is or may be imposed by law on such companies transacting new business within this state, under certificates of authority during such year; provided, that the rate of such tax to be so paid by any such company shall never exceed the rate imposed by this chapter upon insurance companies transacting business in this state; and each such company shall make the same reports of its gross premium receipts for each such year and within the same period as is or may be required of such companies holding certificates of authority; and shall at all times be subject to examination by the commissioner of insurance and banking, or some one selected by him for that purpose, in the same way and to the same extent as is or may be required of companies transacting new business under certificates of authority in this state, the expenses of such examination to be paid by the company examined; and the respective duties of the commissioner of insurance and banking in certifying the amount of such taxes, and of the state treasurer and attorney general in their collection, shall be the same as are or may be prescribed respecting taxes due from companies authorized to transact new business within this state. (Id. sec. 7.)

Art. 4783. Companies desiring to do business after having ceased to do so.—Any life insurance company which has heretofore been, may now be, or may hereafter be, engaged in writing policies of insurance upon the lives of citizens of this state, which has heretofore ceased, or may hereafter cease, writing such policies, and which does not now or may not hereafter have a certificate of authority to transact the business of life insurance in this state, but which has continued or may continue to collect renewal or other premiums upon such policies, shall, before it may again obtain a certificate of authority to transact the business of life insurance in this state, report under oath to the commissioner of insurance and banking of this state the gross amount of premiums so collected from citizens of this state upon policies of insurance during each calendar year since the end of the period covered by

the last preceding report by such company of gross premium receipts upon which it paid an occupation tax, and shall pay to the state a sum equal to the percentage of its gross premium receipts for each such year that was required by law to be paid as occupation taxes by companies doing business in this state, during such year or years; and, upon the payment of such sum and securing a certificate of authority to do business in this state, the penalties provided for the failure to pay such taxes and make such reports in the past shall be remitted. (Id. sec. 8.)

Art. 4784. Failure to renew certificate, may do what.—Any company which shall fail to renew its certificate of authority or continue to write new business in this state shall, nevertheless, have the right to maintain an agent or agents in Texas for the purpose of collecting renewal premiums on outstanding business written by it under certificate of authority, and also for the purpose of making investments as provided by this chapter. (Id. sec. 9.)

Art. 4785. Commissioner may revoke certificate, when and how.—If any life insurance company, while holding a certificate of authority to transact business in this state, shall fail or refuse to comply with any of the provisions or requirements of this chapter, it shall be the duty of the commissioner of insurance and banking, upon ascertaining such fact, to notify such company by registered letter, properly addressed and mailed, or by any other form of actual notice in writing delivered to an executive officer of such company, of his intention to revoke its certificate of authority to transact business in this state at the expiration of thirty days after the mailing of such registered letter, or the date upon which such actual notice is served; and, if such provisions or requirements are not fully complied with upon the expiration of said thirty days, it shall be the duty of the commissioner of insurance and banking to revoke the certificate of authority of such company; and, in case of such revocation, such company shall not be entitled to receive another certificate of authority for a period of one year, and until it shall have fully and in good faith complied with all such provisions and requirements of this chapter. Any company feeling itself aggrieved by the action of the commissioner in revoking its certificate of authority to do business in this state may bring suit against him in the court of Travis county having jurisdiction thereof, to annul and vacate the order revoking such certificate. (Id. sec. 10.)

Art. 4786. Penalty for failure to report or investment.—If any company shall intentionally fail or refuse to make the investments required by this chapter, or make any report required by this chapter, or to make any special report requested by the commissioner of insurance and banking under the authority of this chapter, or generally to comply with any provision or requirements of this chapter, while holding a certificate of authority to transact business in this state, or after it shall cease to writ new business or cease to hold such certificate, such failure or refusal shall subject such company, in addition to the penalty provided in the preceding article, in cases to which said article may be applicable, to the payment of a penalty of twenty-five dollars per day for each day that such company shall remain in default after the commissioner of insurance and banking shall notify such company of such default, in the manner provided in the preceding article, to be recovered in a suit to be brought by the attorney general in behalf of the state in the district court of Travis county. And in any suit that may be brought to recover such penalty or penalties, there shall be a prima facie presumption, subject to rebuttal, that any default that may have occurred was intentional, and that the notice required by this chapter was given, and the burden of proof shall be on the defendant company to prove that the investments required by this chapter were made as herein required whenever the question of whether or not such investments were thus made is in issue. (Id. sec. 11.)

Art. 4787. Deposit by domestic company.—Any life insurance company, organized under the laws of this state, may, at its option, deposit with the treasurer of this state, securities in which its capital stock is invested, or securities equal in amount to its capital stock, of the class in which the law of this state permits insurance companies to invest their capital stock, and may, at its option, withdraw the same or any part thereof, first having deposited with the treasurer, in lieu thereof, other securities of like class and equal amount and value to those withdrawn. Any such securities, before being so originally deposited or substituted, shall be approved by the commissioner of insurance and banking; and, when any such deposit is made, the treasurer shall execute to the company making such deposit a receipt therefor, giving such description of said stock or securities as will identify the same, and stating that the same are held on deposit as the capital stock investments of such company; and such company shall have the right to advertise such fact or print a copy of the treasurer's receipt on the policies it may issue; and the proper officers or agent of each insurance company making such deposit shall be permitted at all reasonable times to examine such securities and to detach coupons therefrom and to collect interest thereon, under such reasonable rules and regulations as may be prescribed by the treasurer and the commissioner of insurance and banking of this state. The deposit herein provided for, when made by any company, shall thereafter be maintained so long as said company shall have outstanding any liability to its policy holders in this state. (Id. sec. 14.)

Art. 4788. Not to apply to certain companies.—The provisions of this chapter requiring investments in Texas securities shall not apply to any life insurance company, the total amount of whose Texas reserves does not exceed five thousand dollars, or to any such company doing only a reinsurance business in this state, but all of the other provisions of this chapter shall apply to such companies. (Id. sec. 16.)

Art. 4789. Not to apply to fraternal beneficiary associations.—The provisions of this chapter shall not be held to apply to fraternal beneficiary associations as defined by the laws of this state. (Acts 1909, p. 247, sec. 17; Acts 1907, p. 319, sec. 12.)

Art. 4790. Companies desiring to loan money only.—Any life insurance company

not desiring to engage in the business of writing life insurance in this state, but desiring to loan its funds in this state, may obtain a permit to do so by complying with the laws of this state relating to foreign corporations engaged in loaning money in this state, without being required to secure a certificate of authority to write life insurance in this state. (Acts 1909, p. 247, sec. 18.)

CHAPTER FOUR

ASSESSMENT OR NATURAL PREMIUM COMPANIES

Art. 4791. Foreign assessment companies.—Companies or associations organized under the laws of any other state of the United States, carrying on the business of life or casualty insurance on the assessment or natural premium plan, having cash assets of a sum not less than one hundred thousand dollars, invested as required by the laws of this state regulating other insurance companies, shall be licensed by the commissioner of insurance and banking to do business in this state, and be subject only to the provisions of this chapter; provided, however, that such company or association shall first file with the commissioner of insurance and banking a certified copy of its charter, a written agreement, appointing the commissioner of insurance and banking, and his successor in office, to be its true and lawful attorney, upon whom all lawful process in any action or proceeding against it may be served; a certificate under oath of its president and secretary that it is paying, and for the twelve months next preceding has paid, the maximum amount named in its policies or certificates in full; a statement under oath of its president and secretary of its business for the year ending on the thirty-first day of December preceding; a certified copy of its constitution and by-laws, and a copy of its policy and application; a certificate from the proper authority in its home state that said company or association is legally entitled to do business in such home state, and has at least one hundred thousand dollars surplus assets subject to its indebtedness. It shall be the duty of the commissioner of insurance and banking to issue a license to any company or association complying with the provisions of this chapter; and every such company or association shall annually thereafter, before such license is renewed, file with the commissioner of insurance and banking on or before the first day of March, a statement under oath of its president and secretary, or like officers, of its business for the year ending December 31 preceding. (Acts 1889, p. 98, sec. 1.)

Art. 4792. Fees.—Every such company or association shall pay to the commissioner of insurance and banking, for the use of the state, the following fees: For filing copy of its charter, twenty-five dollars; for filing statement preliminary to admission, twenty dollars; for filing each annual statement after admission, twenty dollars; for license to company or association, one dollar. (Id. sec. 2.)

Art. 4793. Shall not apply to mutual benefit associations.—The provisions of this chapter shall in no wise apply to mutual benefit organizations doing business in this state through lodges or councils, such as the Order of Chosen Friends, Knights of Honor, or kindred organizations. (Id. sec. 3.)

See Washington Life Ins. Co. v. Gooding, 49 S. W. 123; Woodmen, etc., v. Carrington, 90 S. W. 921.

CHAPTER FIVE

MUTUAL ASSESSMENT ACCIDENT INSURANCE HOME COMPANIES

Art. 4794. Incorporation of.—Any number of persons, not less than five, may organize a corporation for the purpose of transacting the business of accident insurance, upon the co-operate or mutual assessment plan, without capital stock, by complying with the provisions of this chapter; provided, that all such persons shall be bona fide citizens and residents of the state of Texas. (Acts 1903, p. 174, sec. 1.)

Art. 4795. Charter, requirements of.—Such persons must sign and acknowledge, before an officer duly authorized to take acknowledgments of deeds, a written charter setting forth:

First. The name of such corporation, which name must not so resemble the name of any other company engaged in the insurance business in this state as to cause a probability of confusion.

Second. The number of its directors, and the names and residences of those who are to act as such for the first year.

Third. The location of its principal office, which must be within the state of Texas.

Fourth. It shall state that said corporation shall have no capital stock, and shall give the purpose for which same is organized, and the plan upon which it proposes to do business, by stating that its said business shall be conducted upon the assessment plan, without lodges.

Fifth. The term for which it is to exist, which shall not be for more than fifty years. (Id. sec. 2.)

Art. 4796. Application to accompany charter, what it shall show.—Said charter shall be presented to the attorney general of this state, accompanied by affidavits of all said incorporators, showing that they are bona fide citizens of this state, by bona applications for insurance in said company, from not less than two hundred applicants, for not less than one hundred thousand dollars insurance, by an affidavit by one of its incorporators, showing that each of said applicants has deposited with applicant at least eighty cents on each one thousand dollars insurance so applied for by him, and by a certificate of some solvent bank, showing that all such advance funds are deposited therein to be turned over to the treasurer of such corporation when organized. Said attorney general shall carefully examine all said instruments; and, if he finds the same are in conformity with the requirements of this chapter, he shall give his approval, and file the same with the commissioner of insurance and banking. (Id. sec. 3.)

Art. 4797. Complete and ready for business, when.—When said charter has been filed with the commissioner, with the approval of the attorney general, accompanied by a filing fee of twenty dollars, the commissioner shall record the said charter and certificate of the attorney general in a book kept for that purpose, and shall, upon

the receipt of fee for certified copy of charter of one dollar, furnish a certified copy of such charter and certificate of the attorney general to the corporators, and shall return to said corporators all such applications for membership, also a certificate that such charter has been filed and recorded in his office, and that said company is duly incorporated under the laws of the state of Texas, and authorized to transact the business set forth in its charter, stating same; upon the filing and recording of which charter, said association shall become a body politic and corporate, with the right to transact its said business in this state and elsewhere, according to the provisions of this chapter, to hold property and to alienate same, to contract, sue and be sued under its corporate name, and by that name shall have succession, and may by its board of directors make by-laws not inconsistent with law, and shall carry on its business subject to the provisions of this chapter. (Id. sec. 3a.)

Art. 4798. What constitutes business of mutual assessment companies.—Any corporation which issues any certificate, policy or other evidence of interest to its members, whereby, upon his death or total disability, any money is to be paid by such corporation to such member, or beneficiary designated by him, which money is derived from voluntary contributions or from admission fees, dues and assessments, or any of them, collected, or to be collected, from the members thereof, and interest and accretions upon, and wherein the paying of such money is conditioned upon the same being realized in the manner aforesaid, and wherein the money so realized is applied to the uses and purposes of said corporation and the expense of the management and prosecution of its business, and which has no subordinate lodges or similar bodies, shall be deemed to be engaged in the business of mutual assessment accident insurance as contemplated by this chapter, and shall be subject only to the provisions of this chapter. (Id. sec. 4.)

Art. 4799. What such companies may or may not do.—Such corporations shall issue no certificate of stock, shall declare no dividends, shall pay no profits; and the salaries of all officers shall be designated in its by-laws, and such by-laws shall provide for annual members' meetings, in which each member shall be entitled to vote, only in person, to the amount of insurance held. (Id. sec. 5.)

Art. 4800. Notice of by-laws, how given.—Every such corporation must, before the adoption of any by-laws or amendments thereto, cause the same to be mailed to all the members and directors of such association, together with the notice of the time and place when the same will be considered, and same shall be so mailed at least ten days before the time for such meeting; provided, that the provisions of this article shall not apply to by-laws adopted within sixty days after the incorporation of such company. (Id. sec. 6.)

Art. 4801. Books and papers subject to inspection of members.—All books and papers of such corporation shall, at all reasonable times, be open for examination by members and their representatives. (Id. sec. 7.)

Art. 4802. Commissioner to examine financial condition annually.—The commissioner of insurance and banking shall annually or as often as he deems it necessary, in person or by one or more examiners, commissioned in writing, visit each and every such corporation and examine its financial condition and its ability to meet its liabilities. He shall have free access to all books and papers of the corporation, or agents thereof, and shall have power to examine under oath the officers, agents and employés of such corporation. He may revoke or modify any certificate of authority issued by him, when any conditions prescribed by law for granting it no longer exist. The expense of every such examination shall be paid by the corporation so examined. (Id. sec. 7a.)

Art. 4803. Statement to be filed; filing fees, etc.—Every such corporation shall, on the first day of January of each year, or within sixty days thereafter, make and file with the commissioner of insurance and banking of this state a report of its affairs and operations during the year ending on the thirty-first day of December immediately preceding. Such report shall be upon blank forms to be provided by such commissioner, and shall be verified by the oath of the secretary of such corporation, and shall contain answers to the following questions:

1. Number of certificates or policies issued or members admitted during the year.
2. Amount of indemnity affected thereby.
3. Number of death losses.
4. Number of death losses paid.
5. Number of other losses.
6. Number of other losses paid.
7. The amount received from each assessment in each class.
8. Total amount paid for losses.
9. Number of death claims for which assessments have been made.
10. Number of death claims compromised or resisted, and brief statement of reasons.
11. Number of other claims for which assessment has been made.
12. Number of other claims compromised or resisted, and brief statement of the reasons.
13. Does company charge annual dues, and, if so, how much?
14. Total amount received and the disposition thereof.
15. Does the company use moneys received for payment of claims to pay expense of the company in whole or in part, and, if so, state the amount so used.
16. Give total amount of salaries paid officers, and name of each salaried officer and the amount paid him.
17. Does the company guarantee fixed amount to be paid, regardless of amounts realized from assessments, dues, admissions, fees, etc.
18. If so, state the amount guaranteed and the security therefor.
19. Has the company a reserve fund?
20. If so, how is it created and for what purpose, the amount thereof and in what form and how invested?
21. Has the company more than one class of members?

22. If so, how many and what, and give amount of indemnity in each.
23. Give number of members in each class.
24. State when the company was organized.
25. Number of policies or memberships lapsed during the year.
26. Number of policies of each class at beginning and at the end of the year.
27. All assets applicable to payment of insurance, other than reserve fund, and how invested.
28. Amount received from all sources for payment of losses, and the disposition thereof; and, in case such corporation fails or refuses to make such report in full within said time, its charter and franchise shall be forfeited, as provided in article 4808. The following fees shall be paid annually: Filing annual statement, ten dollars; certificate of authority to corporation, one dollar; each certified copy thereof, one dollar. (Id. sec. 8.)

Art. 4804. Certificate of membership; reserve fund; admission fee; expense fund.—Each certificate of membership, policy or other contract of insurance issued by such company shall bear on its face in red letters the following words: "The payment of the benefit herein provided for is conditioned upon its being collected by this company from assessments and other sources as provided in its by-laws"; provided, that nothing in this chapter shall be construed to prevent the creation of a reserve fund by any such organization, which fund, or its accretions, or both, are to be used only for the payment of losses or benefits, as provided in the by-laws of such corporation; provided, further, that such corporation may charge a membership or admission fee of not exceeding three dollars upon each policy issued, the proceeds of which may be placed in the expense fund, and that at least sixty per cent of all amounts realized from any other sources shall be used only for the payment of losses or benefits as they occur, or the balance thereof remaining after paying such losses or benefits transferred to such reserve fund; provided, further, that such membership fee may also apply as a payment or credit upon the initial assessment or premium, if the by-laws of the corporation so provide. (Acts 1905, p. 311, sec. 9; Acts 1915, ch. 149, sec. 1.)

Art. 4805. Notices of assessment must show what.—Each notice of assessments made by such corporation upon its members, or any of them, shall truly state the cause and purpose of such assessment, amount paid on the last claim paid, the cause of disability or death, the name of the member for whose death or disability such payment was made, the maximum face value of the certificate or policy, and, in case of disability, the maximum amount provided for in such policy or certificate for such disability, and, if not paid in full, the reason therefor. (Acts 1903, p. 174, sec. 10.)

Art. 4806. May change name of beneficiary.—Any member of such corporation shall have the right at any time, with the consent of such corporation, to change the beneficiary in his policy or certificate, without requiring the consent of such beneficiary; and such corporation shall give consent under such regulations as may be prescribed in its by-laws. (Id. sec. 11.)

Art. 4807. Policy shall specify what; liability on.—Every policy or certificate issued by any such corporation shall specify the sum of money which it promises to pay upon the contingency insured against, and the number of days after the receipt of satisfactory proof of the happening of such contingency at which such payment shall be made; and, upon the happening of such contingency, such corporation shall be liable for the payment of such amount in full at the time so specified, subject to such legal defenses as it may have against same; provided, that, if the sum realized by it from assessments made in accordance with its by-laws to meet such payment, together with such other sums as its by-laws may provide shall be used for that purpose, shall be insufficient to pay such sum in full, for which it is so liable, then the payment of the full amount so realized shall discharge such corporation from all liability, by the reason of the happening of such contingency, and in that event such corporation shall be liable only for the amount so actually realized. (Id. sec. 12.)

Art. 4808. Charter forfeited for not complying with provisions of this chapter.—If any corporation not incorporated under this chapter shall engage in any branch of mutual assessment accident insurance, as herein defined, or if any corporation organized under the provisions of this chapter shall transact business in any manner except as herein authorized, such corporation shall, in either event, be subject to the forfeiture of its charter and franchises; and the attorney general of this state shall immediately institute suit to forfeit its charter and dissolve it. (Id. sec. 13.)

Art. 4808a. Insurance against disability from sickness or disease; funeral benefits.—Any corporation now existing or hereafter organized under the provisions of this chapter for the purpose of transacting the business of a mutual assessment accident insurance company shall have and is hereby vested with the authority under its corporate powers to engage in the business, on the assessment plan, as defined in this chapter, of insuring against disability resulting from sickness or disease, and to pay to the beneficiaries of its deceased members a funeral benefit which shall not exceed the sum of one hundred ($100) dollars in event of death of any member resulting from sickness or disease. Provided, however, that in enforcing compliance with the requirements of Article 4796, applications for insurance against disability or death resulting from sickness or disease shall not be taken into consideration. (Acts 1915, ch. 149, sec. 2.)

CHAPTER SIX

CO-OPERATIVE LIFE INSURANCE COMPANIES

Art. 4809. Articles of incorporation; commissioner shall examine.—Nine or more persons, residents of the state of Texas, may form a co-operative life insurance company for the purpose of insuring the lives of individuals on the mutual, level premium, legal reserve plan, subject to the condi-

tions and limitations prescribed in this chapter, by executing and acknowledging before some officer authorized to take acknowledgments to conveyances of real estate, articles of incorporation for that purpose. Such articles shall set forth:

1. The name and residence of each of the incorporators.

2. The name of the proposed company, which shall contain the words, "Co-operative Life Insurance Company," as a part thereof, and which shall not be so similar to that of any other life insurance company or association transacting business in this state as to mislead the public.

3. The location of the principal office from which the business of the company is to be transacted.

4. The number of directors and the name and place of residence, of each of those who are to serve until the first regular election of directors, as provided by this chapter.

Such articles of incorporation shall be filed with the commissioner of insurance and banking, who shall immediately submit them to the attorney general for his examination and approval as complying in all respects with the law. If the attorney general approve them, he shall so certify thereon in writing, and return them to the commissioner of insurance and banking, who shall file the same in his office and issue to the company a certificate of authority, to which shall be attached a certified copy of the articles of incorporation, authorizing it to receive applications for insurance as provided in this chapter, and to collect premiums thereon, and to issue receipts therefor; which certificate shall expressly state that such company is not authorized to issue policies of insurance or transact any business other than that specifically authorized therein until it has received bona fide applications for insurance on the lives of at least two hundred individuals for not less than one thousand dollars each, which applications have been approved by a competent physician and on which the first annual premiums at adequate rates have been paid to the company, nor until these facts shall have been fully shown to the commissioner of insurance and banking, and he shall have issued to the company a certificate of authority to transact business as a co-operative life insurance company. If this showing is not made within six months after the date upon which such articles of incorporation are filed with the commissioner of insurance and banking, it shall be his duty to cancel the certificate of authority of such company to receive applications for insurance, and to notify each incorporator of such action. When the commissioner of insurance and banking shall be notified that any such company has complied with all the foregoing provisions of this article, he shall make, or cause to be made, at the expense of such company, an examination thereof; and, if he shall find that the law has been in all respects fully complied with, it shall be his duty to issue to it a certificate of authority to transact the business of a co-operative life insurance company, in accordance with the terms of this chapter. (Acts 1909, p. 285, sec. 1.)

Art. 4810. Officers, directors and policy holders, their powers and duties.—The business of a co-operative life insurance company shall be controlled and directed by a board of directors consisting of not less than five nor more than nine members, who shall be elected annually as provided in this chapter, those to serve until the first annual election to be named in the charter, and who shall hold office until their successors shall be elected and qualified, or until they shall be removed for improper practices. Such board of directors shall elect the officers of the company, which shall be a president, and such number of vice presidents as the by-laws may provide, a secretary, a treasurer, a medical director, and such other officers as the by-laws of the company may provide for, and shall fix the compensation of all such officers. The duties of all officers shall be prescribed by the by-laws. The by-laws governing the society until the date of its first annual meeting, as provided by this chapter, shall be adopted by the board of directors at their first meeting after the certificate of authority shall be issued authorizing the company to transact the business of a co-operative life insurance company. There shall be an annual meeting of all the policy holders of each co-operative life insurance company at the home office of such company on the second Tuesday in January after it shall have received a certificate of authority to transact the business of life insurance, and annually thereafter, at which the directors shall be elected for the succeeding year, and at which by-laws for the government of the company not inconsistent with the provisions of this chapter or with the laws of this state may be adopted, and at which the existing by-laws may be repealed or amended. At such annual meeting, every policy holder shall be entitled to one vote for each five hundred dollars of insurance held by him; and any policy holder may execute his proxy authorizing and entitling the holder to exercise his voting powers, unless such proxy shall be revoked previous to such annual meeting. The president, secretary and treasurer shall each give a bond for the protection of the company and its policy holders in amount and with securities to be approved by the commissioner of insurance and banking, conditioned for the faithful performance of their respective duties. (Id. sec. 2.)

Art. 4811. Investment and disposition of funds; not to hold real estate, except.—Co-operative life insurance companies shall invest their funds only in bonds of the state of Texas, or of some county, city, town, school district, or other subdivision, organized, or which may hereafter be organized, and authorized, or which may hereafter be authorized, to issue bonds under the constitution and laws of this state, or in mortgages upon improved unincumbered real estate, the title to which is valid, situate within the state of Texas, worth double the amount of the loan thereon exclusive of buildings, unless such buildings are insured in some fire insurance company authorized to transact business under the laws of this state, and the policy or policies transferred to the company, or in not more than one office building located in some city or town of this state in which the home office of such company is located, the actual value of which is not less than the amount invested therein. All moneys of any such company coming into the hands of any officer thereof or subject to

his control, when not invested as prescribed in this article, shall be deposited in the name of such company in some bank or banks in this state which are subject to either state or national regulation and supervision, and which have been approved by the commissioner of insurance and banking as depositories therefor. No co-operative life insurance company shall purchase or hold real estate except the building in which it has its home office and the land upon which it stands, or such as it shall acquire in good faith through foreclosure sale or otherwise in satisfaction of debts contracted or loans made in the course of its dealings. (Id. sec. 3.)

Art. 4812. Shall not borrow money or create debts, except.—No co-operative life insurance company shall have the power to borrow money for any purpose other than the payment of death losses. No such company shall have the power to incur any debt on any account, except under policies issued by it or for money borrowed to pay death losses, for which any portion of its assets over and above that which may represent or be derived from the expense loading of the premiums collected by it, shall in any event be subject to execution upon a judgment therefor. (Id. sec. 4.)

Art. 4813. Policies to be valued by commissioner.—The commissioner of insurance and banking shall annually make valuations of all outstanding policies of co-operative life insurance companies as of December 31 of each year, in accordance with the one year preliminary term method based upon the American Experience Table of Mortality, and three and one-half per cent interest per annum. (Id. sec. 5.)

Art. 4814. Net premiums to be computed.—The net premiums upon all policies issued by any such company shall be computed in accordance with the provisions of this article, and no portion of such net premium collected upon any policy, and no portion of the gross premium collected upon any policy, except the expense loading, shall ever be used or applied for the payment of any expenses of the company of any kind or character, or for any other purpose than the payment of death losses, surrender values, or lawful dividends to policy holders, loans to policy holders, or for the purposes of such investments of the company as are prescribed in this chapter. (Id.)

Art. 4815. May set aside reserve.—Every co-operative life insurance company may maintain and set aside, before declaring any dividends to policy holders, in addition to an amount equal to the net value of its policies, computed as required by this chapter, a contingency reserve not exceeding the following respective percentage of said net values, to-wit: When said net values are less than one hundred thousand dollars, twenty per centum thereof, or the sum of ten thousand dollars, whichever is the greater; when said net values are greater than one hundred thousand dollars, the percentage thereof measuring the contingency reserve shall decrease one-half of one per cent for each one hundred thousand dollars of said net values up to one million dollars; and, thereafter, one-half of one per centum for each additional one million dollars; provided, that as the net values of said policies increase and the maximum percentage measuring the contingency reserve decreases, such company may maintain the contingency reserve already accumulated hereunder, although for the time being it may exceed the maximum percentage herein prescribed, but may not add to the contingency reserve when the addition will bring it beyond the maximum percentage. (Id. sec. 6.)

Art. 4816. Shall make apportionment of surplus.—Every co-operative life insurance company organized under this chapter shall make an annual apportionment and accounting of divisible surplus to each policy holder after the end of the second policy year on all policies issued; and each such policy holder shall be entitled to and credited with or paid, in a manner hereafter provided, such a portion of the entire divisible surplus as has been contributed thereto by his policy. Upon the thirty-first day of December of each year, or as soon thereafter as may be practicable, every such company shall well and truly ascertain the surplus earned by it during such year; and, after setting aside from such surplus the contingency reserve provided in this chapter, it shall apportion to its policies upon which all premiums due and payable for the first two years thereof have been paid, the proportion of the remainder of such surplus which has been contributed by each such policy, and shall immediately submit a detailed report of such apportionment under the oath of its president or secretary to the commissioner of insurance and banking. If such commissioner shall find such apportionment to be equitable and just to the policy holders and to be in accordance with the provisions of this chapter, he shall approve the same, and it shall become effective; and, if he shall not approve such apportionment, he shall make such changes therein as he shall deem equitable and just and necessary to make the same comply with the provisions of this chapter, and shall certify such changes to such company, whereupon such apportionment as changed by the commissioner shall become effective. The dividends declared as aforesaid shall be applied toward the payment of any premium or premiums upon such policy which shall come due more than thirty days after such apportionment shall become effective. (Id. sec. 7.)

Art. 4817. Transact business only in Texas; form of policy.—Co-operative life insurance companies are authorized to transact business only within the state of Texas, and shall issue no policies other than whole life or twenty-payment life policies on the annual dividend plan; and the forms of all policies issued by any such company shall be prescribed by the commissioner of insurance and banking; and all such policies shall have plainly printed both on the face and the reverse side thereof the words, "The form of this policy is prescribed by the commissioner of insurance and banking of the state of Texas;" and it shall be the duty of the commissioner to revoke the certificate of authority of any company which shall issue any policy except upon such form so prescribed. All such policies may provide for not more than one year preliminary term insurance. No such company shall issue any

policy or policies by which it shall be bound for more than five thousand dollars upon any one life at any time when the amount of its total insurance in force is less than ten million dollars. (Id. sec. 8.)

Art. 4818. Medical examination.—No co-operative life insurance company shall enter into any contract of insurance upon the life of any person without having previously made, or caused to be made, a detailed medical examination, prescribed by its medical director and approved by its board of directors, of the insured by a duly qualified and licensed medical practitioner, and without his certificate that the insured was in sound health at the date of examination. (Id. sec. 9.)

Art. 4819. Premiums, when to be paid, and notice of.—The policies issued by a co-operative life insurance company may provide that the premiums thereon may be paid annually, semi-annually, quarterly or monthly; and, in the event that such premiums are payable other than annually, no deduction shall be made from the amounts due on any policy in the event that the death of the policy holder shall occur prior to the completion of a full policy year. It shall be the duty of the company to mail from its home office to each policy holder a notice of the date upon which each premium is to become due at least thirty days prior to such date if the premium is payable annually, semi-annually, or quarterly, and at least ten days prior to such date if the same is payable monthly; provided, that local agents may be authorized and empowered by the board of directors to collect premiums and to give the notice required by this article. (Id. sec. 10.)

Art. 4820. Loan value; non-forfeitable after three years.—After three full years premiums have been paid upon any policy in a co-operative life insurance company, the owner thereof shall be entitled, on proper assignment of such policy and on the sole security thereof, to borrow from the company a sum not greater than the reserve value thereof, and apply the same in payment of any premiums due or to become due upon such policy. In the event of default in the payment of any premium after three full years premiums have been paid upon any policy, the owner, within one month after any default, may elect to accept the value of such policy in cash, or to have the insurance continued in force from the date of default, without future participation and without the right to loans, for its face amount less any indebtedness to the company thereon, or to purchase non-participating paid-up insurance, payable at the same time and on the same conditions as such policy. The cash value will be the reserve at the date of default computed in accordance with the provisions of this chapter, less such surrender charge as may be provided in the policy, not exceeding two and one-half per centum of the amount insured thereby and less any existing indebtedness to the company on such policy. Payment of such cash value may be deferred by the company for not exceeding six months after the application therefor is made. The terms for which the insurance will be continued, or the amount of the paid-up policy, will be such as the cash value will purchase as a net single premium at the attained age of the insured according to the American Experience Mortality Table and interest at the rate of three and one-half per cent per annum. If the owner shall not, within one month from such default, surrender the policy to the company at its home office for a cash surrender value or paid-up insurance, the company shall continue the insurance as above provided. (Id. sec. 11.)

Art. 4821. Annual certificates and statements.—The original certificate of authority to transact the business of a co-operative life insurance company, issued to any such company by the commissioner of insurance and banking, shall expire on March 1 next succeeding the date of its issuance. Each such company is required to render annually, under oath by its president or a vice-president and its secretary or treasurer, and file not later than February 15 of each year, in the office of the commissioner of insurance and banking, a statement, in such form and upon such blanks as may be prescribed by the commissioner of insurance and banking, accompanied by a filing fee of ten dollars, showing the condition of the company on the thirty-first day of December next preceding, which shall include a statement in detail showing the class and character of its assets and liabilities on said date, the amount and character of business transacted, moneys received and disbursed during the preceding calendar year and the number and amount of its policies in force on said date, and such other facts as may be required by the commissioner of insurance and banking. When such annual statement is filed with the commissioner of insurance and banking, upon receipt of a fee of one dollar, if he is satisfied that the company has in all respects complied with the laws of the state, he shall issue a certificate of authority to such company for the year beginning March 1 after the filing of such statement. (Id. sec. 12.)

Art. 4822. Agents shall have certificates.—No agent or other person shall solicit or receive applications for insurance in a co-operative life insurance company without a certificate of authority from the commissioner of insurance and banking, which shall expire on March 1 next after the date of its issuance. Such certificates of authority shall not be issued by such commissioner, except upon application therefor, signed by the president or secretary of the company, which application shall state that the contract between the company and such agent has been made in writing, and that a true copy of such contract is attached to and made a part of such application, and that such contract fully shows the entire compensation that such agent is to receive, directly or indirectly, on account of any services to be rendered by him for such company; and no such certificate of authority shall be issued by such commissioner, unless it shall be shown that the compensation to be paid such agent, together with all other expenses of any sort likely to be incurred in connection with or attributable to the obtaining of new insurance through such agent, shall not exceed eighty per centum of the expense loading in the premiums to be collected therefor. (Id. sec. 13.)

Art. 4823. Annual examination and statement.—It shall be the duty of the commissioner of insurance and banking to have

made, at least once in each calendar year, a thorough and full examination of the affairs of each co-operative life insurance company, the report of which examination shall be made to such commissioner under oath, which shall be accompanied by a list of all policy holders as shown by the books of the company, together with the postoffice address of each; and it shall be the duty of the commissioner of insurance and banking, if he shall approve the report of such examination, after having given the officers of the company an opportunity to be heard, to mail a printed copy of such report to each such policy holder. The expense of each such examination and of mailing the copies of such reports to the policy holders shall be borne by the company examined. (Id. sec. 14.)

Art. 4824. Additional examination; may suspend certificates; receiver.—If at any time the commissioner of insurance and banking deems it necessary to make an additional examination of any such company, he may do so; and, if as a result of any such examination or from other information, he shall have the opinion that the operations of the company are unsafe or hazardous to the policy holders' interests, or in violation of any law of this state, he shall suspend its certificate of authority, and direct its officers to call a special meeting of its policy holders and direct them to cease the further issuance of policies until such meeting is held. At such meeting of the policy holders, the commissioner of insurance and banking shall present the facts for such action as the policy holders may deem advisable. If, in the opinion of the commissioner of insurance and banking, such action of the policy holders when taken will not fully protect the interests of all policy holders, he shall apply to the district court of the county in which the home office of the company is situated, or to the judge thereof, in vacation, for the appointment of a receiver to take temporary charge of the business and affairs of such company, who shall receive the compensation allowed by law to state bank examiners, and who shall have all power and authority of the board of directors to manage and control the business and affairs of such company, subject to the orders of the district court or judge in vacation, until the reasons for his appointment shall, in the opinion of the judge appointing him, have been removed. At any time when the liabilities of any such company, computing its reserve liability upon the American Experience Table of Mortality and three and one-half per cent interest per annum, shall be in excess of its assets, the company shall cease the issuance of new policies until the impairment in its reserves shall be made good. Whenever the liabilities of any such company, computing its reserve liability upon the American Experience Table of Mortality and four and one-half per cent per annum, exceed its assets, the commissioner of insurance and banking may request the attorney general to file suit in the name of the state in the district court of the county in which such company is located for the appointment of a receiver to wind up its affairs, and such action may be maintained. In any such action, such district court, or judge thereof, in vacation, shall have the power, if in his opinion the interests of the policy holders of such company require it, to enter an order providing for the re-insurance of all outstanding risks of such company in some other life insurance company authorized to do business in this state upon such terms and conditions as may be approved by the commissioner of insurance and banking, and by such court, or the judge thereof, in vacation; and such court or judge may for that purpose direct the conveyance of the entire assets of any such company, or of any portion thereof, to such re-insuring company in consideration of such re-insurance. (Id. sec. 15.)

Art. 4825. Taxes, how calculated; authorized to deposit securities.—For the purposes of state, county and city taxation, the amount of the reserve and contingency reserve of all co-operative life insurance companies shall be treated as debts due by them to their policy holders; and the total value of their property for such purposes shall be ascertained by deducting from the total amount of their gross assets the amount of such reserves and contingency reserves. (Id. sec. 16.)

Art. 4826. General law as to deposits applicable to.—The provisions of article 4749 to article 4750, inclusive, in chapter 2 of this title, relating to the deposit of securities by insurance companies, shall likewise apply to and govern co-operative life insurance companies organized under the provisions of this chapter. (Acts 1909, p. 448, 2 S. S. sec. 8.)

CHAPTER SEVEN

FRATERNAL BENEFICIARY ASSOCIATIONS

Art. 4827. Fraternal benefit societies defined.—Any corporation, society, order or voluntary association, without capital stock, organized and carried on solely for the mutual benefit of its members and their beneficiaries, and not for profit, and having a lodge system with ritualistic form of work and representative form of government, and which shall make provision for the payment of benefits in accordance with section 5 hereof [Art. 4832] is hereby declared to be a fraternal benefit society. (Acts 1913, p. 220, sec. 1.)

For repeal of prior acts, see note under Art. 4859a.

Art. 4828. Lodge system defined.—Any society having a supreme governing or legislative body and subordinate lodges or branches by whatever name known, into which members shall be elected, initiated and admitted in accordance with its constitution, laws, rules, regulations and prescribed ritualistic ceremonies, which subordinate lodges or branches shall be required by the laws of such society to hold regular or stated meetings at least once in each month, shall be deemed to be operating on the lodge system. (Id. sec. 2.)

Art. 4829. Representative form of government defined.—Any such society shall be deemed to have a representative form of government when it shall provide in its constitution and laws for a supreme legislative or governing body, composed of representatives, elected either by the members or by delegates elected, directly or indirectly by the members, together with such other members as may be prescribed by its constitution

and laws; provided, that the elective members shall constitute a majority in number and have not less than two-thirds of the votes, nor less than the votes required to amend its constitution and laws; provided, further, that the meetings of the supreme or governing body, and the election of officers, representatives or delegates, shall be held as often as once in four years. The members, officers, representatives or delegates of a fraternal benefit society shall not vote by proxy. (Id. sec. 3.)

Art. 4830. Exemptions.—Except as herein provided, such societies shall be governed by this Act, and shall be exempt from all provisions of the insurance laws of this state, not only in governmental relations with the state, but for every other purpose, and no law hereafter enacted shall apply to them, unless they be expressly designated therein. (Id. sec. 4.)

Art. 4831. Benefits.—Every society transacting business under this Act shall provide for the payment of death benefits and may provide for the payment of benefits in case of temporary or permanent physical disability, either as the result of disease, accident or old age; provided the period of life at which the payment of benefits for disability on account of old age shall commence shall not be under seventy years and may provide for monuments or tombstones to the memory of its deceased members, and for the payment of funeral benefits. Such society shall have the power to give a member, when permanently disabled or on attaining the age of seventy, all or such portion of the face value of his certificate as the laws of the society may provide; provided, that nothing in this Act contained shall be so construed as to prevent the issuing of benefit certificates for a term of years less than the whole of life which are payable upon the death or disability of the member occurring within the term for which the benefit certificates may be issued. Such society shall, upon written application of the member, have the power to accept a part of the periodical contributions in cash, and charge the remainder, not exceeding one-half of the periodical contribution, against the certificate, with interest payable or compounded annually at a rate not lower than four per cent per annum; provided, that this privilege shall not be granted except to societies which have readjusted or may hereafter readjust their rates of contribution, and to contracts affected by such readjustment.

Any society which shall show by the annual valuation hereinafter provided for that it is accumulating and maintaining the reserve not lower than the usual reserve computed by the American Experience Table and five per cent. interest may grant to its members extended and paid-up protection, or such withdrawal equities as its Constitution and laws may provide; provided, that such grants shall in no case exceed in value the portion of the reserve to the credit of such members to whom they are made. (Id. sec. 5.)

Art. 4831a. Benefits to members for death of children; branches for such purpose; scale of benefits.—Any Fraternal Benefit Society authorized to do business in this State and operating on the lodge plan, may provide in its constitution and by-laws, in addition to other benefits provided for therein, for the payment of death or annuity benefits upon the lives of children between the ages of two and eighteen years at next birthday, for whose support and maintenance a number of such Society is responsible. Any such Society may at its option organize and operate branches for such children and membership in local lodges and initiation therein shall not be required of such children, nor shall they have any voice in the management of the Society. The total benefits payable as above provided shall in no case exceed the following amounts at ages at next birthday at time of death, respectively as follows:

Between the ages of	Amount	Between the ages of	Amount
2 and 3	$ 34	8 and 9	$200.00
3 and 4	40	9 and 10	240.00
4 and 5	48	10 and 11	300.00
5 and 6	58	11 and 12	380.00
6 and 7	140	12 and 13	460.00
7 and 8	160	13 and 16	520.00
		16 and 18	600.00

(Acts 1917, ch. 192, sec. 1.)

Art. 4831b. Medical examination; amount of business; contributions; waiver in case of surplus.—No benefit certificates as to any child shall take effect until after medical examination or inspection by a licensed medical practitioner, in accordance with the laws of the Society, nor shall any such benefits certificate be issued unless the Society shall simultaneously put in force or have in force at time of issue of said certificate at least five hundred such certificates, on each of which at least one assessment has been paid, nor where the number of lives represented by like certificates falls below five hundred. The death benefit contributions to be made upon such certificate shall be based upon the "Standard Industrial Mortality Table" or the "English Life Number Six" and a rate of interest not greater than 4 per cent per annum, or upon a higher standard; provided that contributions may be waived or returns may be made from any surplus held in excess of reserve and other liabilities, as provided in the by-laws, and provided further that extra contributions shall be made if the reserves hereafter provided for become impaired. (Id. sec. 2.)

Art. 4831c. Reserve; cancellation and exchange of certificates; rights as to new certificate.—Any Society entering into such insurance agreement shall maintain on all such contracts the reserve required by the standard of mortality and interest adopted by the society for computing contributions, as provided in Section 2 [Art. 4831b], and the funds representing the benefit contributions and all accretions thereon shall be kept as separate and distinct funds, independent of the other funds of the society, and shall not be liable for nor used for the payment of the debts and obligations of the society other than the benefits herein authorized; provided, that a society may provide that when a child reaches the minimum age for initiation into membership in such society, any benefit certificate issued hereunder may be surrendered for cancellation and exchanged for any other form of certificate issued by the society, provided that such surrender will not reduce the number of lives insured in the branch be-

low five hundred, and upon the issuance of such new certificate any reserve upon the original certificate herein provided for shall be transferred to credit of the new certificate. Neither the person who originally made application for benefits on account of such child, nor the beneficiary named in such original certificate, nor the person who paid the contribution, shall have any vested right in such new certificate, the free nomination of a beneficiary under the new certificate being left to the child so admitted to benefit membership. (Id. sec. 3.)

Art. 4831d. Separate financial statements, reports, etc.—An entirely separate financial statement of the business transactions and of assets and liabilities arising therefrom shall be made in its annual report to the Commissioner of Insurance and Banking by any Society availing itself of the provisions hereof. The separation of assets, funds and liabilities required hereby shall not be terminated, rescinded or modified, nor shall the funds be diverted for any use other than as specified in Section 3, as long as any certificates issued hereunder remain in force, and this requirement shall be recognized and enforced in any liquidation, reinsurance, merger, or other change in the condition of the status of the society. (Id. sec. 4.)

Art. 4831e. Payments to expense or general fund.—Any society shall have the right to provide in its laws and the certificate issued hereunder for specified payments on account of the expense or general fund, which payments shall or shall not be mingled with the general fund of the society as its constitution and by-laws may provide. (Id. sec. 5.)

Art. 4831f. Continuation of childrens' certificates on death of parent or member.—In the event of the termination of membership in the society by the person responsible for the support of any child, on whose account a certificate may have been issued, as provided herein, the certificate may be continued for the benefit of the estate of the child, provided, the contributions are continued, or for the benefit of any other person responsible for the support and maintenance of such child, who shall assume the payment of the required contributions. (Id. sec. 6.)

Art. 4832. Beneficiaries.—The payment of death benefits shall be confined to wife, husband, relative by blood to the fourth degree, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepchildren, children by legal adoption, or to a person or persons dependent upon the member; provided, that if after the issuance of the original certificate the member shall become dependent upon an incorporated charitable institution, he shall have the privilege, with the consent of the society, to make such institution his beneficiary. Within the above restrictions each member shall have the right to designate his beneficiary, and from time to time have the same changed in accordance with the laws, rules or regulations of the society, and no beneficiary shall have or obtain any vested interest in the said benefit until the same has become due and payable upon the death of the said member; provided, that any society may, by its laws, limit the scope of beneficiaries within the above classes. (Acts 1913, p. 220, sec. 6.)

See S. C. Am. Legion of Honor v. Storey, 75 S. W. 901; Whaley v. Bankers' Union, etc., 88 S. W. 259; Mellville v. Wickham, 169 S. W. 1123; Wright v. Grand Lodge K. P., 173 S. W. 270; Cole v. Knights of Maccabees of The World, 188 S. W. 699; Carr v. Grand Lodge, United Brothers of Friendship of Texas, 189 S. W. 510; Jones v. Holmes, 195 S. W. 306; International Order of Twelve Knights and Daughters of Tabor v. Reynolds, 195 S. W. 330.

Art. 4832a. Religious, eleemosynary, or educational associations may be named as beneficiaries.—That Fraternal Benefit Societies, heretofore or hereafter incorporated by the State of Texas or licensed to do business therein, shall be authorized to provide in their constitutions, by-laws or fundamental laws for the issuance of benefit Certificates to their members, wherein any association, Society or Corporation, organized and operated for Religious, eleemosynary or educational purposes may be named as beneficiary. (Acts 1917, ch. 162, sec. 1.)

Art. 4833. Qualifications for membership.—Any society may admit to beneficial membership any person not less than sixteen and not more than sixty years of age, who has been examined by a legally qualified physician, and whose examination has been supervised and approved in accordance with the laws of the society; provided, that any beneficiary member of such society who shall apply for a certificate providing for disability benefits need not be required to pass an additional medical examination therefore. Nothing herein contained shall prevent such society from accepting general or social members. (Acts 1913, p. 220, sec. 7.)

Art. 4834. Certificate.—Every certificate issued by any such society shall specify the amount of benefit provided thereby, and shall provide that the certificate, the charter or articles of incorporation (or, if a voluntary association, the articles of association), the Constitution and laws of the society, and the application for membership and medical examination, signed by the applicant, and all amendments to each thereof, shall constitute the agreement between the society and the member, and copies of the same, certified by the secretary of the society, or corresponding officer, shall be received in evidence of the terms and conditions thereof, and any changes, additions or amendments to said charter or articles of incorporation, or articles of association, if a voluntary association, a constitution or laws duly made or enacted subsequent to the issuance of the benefit certificates shall bind the member and his beneficiaries, and shall govern and control the agreement in all respects the same as though such changes, additions or amendments had been made prior to and were in force at the time of the application for membership. (Id. sec. 8.)

Art. 4835. Funds.—Any society may create, maintain, invest, disburse and apply an emergency surplus or other similar fund in accordance with its laws. Unless otherwise provided in the contract, such funds shall be held, invested and disbursed for the use and benefit of the society, and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment or the surrender of any part thereof, except as provided in section 5 of this Act [Art. 4831]. The funds from which

benefits shall be paid and the funds from which the expenses of the society shall be defrayed shall be derived from periodical or other payments by the members of the society and accretions of said funds; provided, that no society, domestic or foreign, shall hereafter be incorporated or admitted to transact business in this state which does not provide for stated periodical contributions sufficient to provide for meeting the mortuary obligations contracted, when valued upon the basis of the National Fraternal Congress Table of Mortality as adopted by the National Fraternal Congress, August 23, 1899, or any higher standard, with interest assumption not more than four per cent. per annum, nor write or accept members for temporary or permanent disability benefits except upon tables based upon reliable experience, with an interest assumption not higher than four per cent. per annum.

Deferred payments or installments of claims shall be considered as fixed liabilities on the happenings of the contingency upon which such payments or installments are thereafter to be paid. Such liability shall be the present value of such future payments or installments upon the rate of interest and mortality assumed by the society for valuation, and every society shall maintain a fund sufficient to meet such liability regardless of proposed future collections to meet any such liabilities. (Id. sec. 9.)

Art. 4836. Investments.—Every society shall invest its funds only in securities permitted by the laws of this state for the investment of the assets of life insurance companies; provided, that any foreign society permitted or seeking to do business in this state which invests funds in accordance with the laws of the state in which it is incorporated shall be held to meet the requirements of this Act for the investment of funds: provided, that in case the constitution and by-laws of the grand lodge or governing body of any such association provides that all or any part of the beneficiary or mortuary or insurance fund of such association that is paid in by or collected from the members of such subordinate or local lodge may be retained in the custody of and controlled and managed by such subordinate or local lodge, and designate what officers of such subordinate or local lodge shall have the custody and control of such fund and authorize such local officers to loan or invest the same, and such local officer shall have executed and filed, and shall from time to time when required by the commissioner of insurance and banking, file with the commissioner of insurance and banking such bond or other written instrument to be prescribed and approved in terms and amount by the commissioner of insurance and banking as will indemnify such fund against waste, depletion or loss through loans, investment or otherwise, then such fund so secured shall be exempt from the provisions of this Act. (Id. sec. 10.)

Art. 4837. [Repealed.]

See note under art. 4859a.

Art. 4838. Distribution of funds.—Every provision of the laws of the society for payment by members of such society, in whatever form made, shall distinctly state the purpose of the same and the proportion thereof which may be used for expenses, and no part of the money collected for mortuary or disability purposes or the net accretions of either or any of said funds shall be used for expenses. (Id. sec. 11.)

Art. 4839. Organization.—Seven or more persons, citizens of the United States, and a majority of whom are citizens of this state, who desire to form a fraternal benefit society, as defined by this Act, may make and sign (giving their addresses) and acknowledge before some officer competent to take acknowledgment of deeds, articles of incorporation, in which shall be stated:

First. The proposed corporate name of the society, which shall so closely resemble the name of any society or insurance company already transacting business in this state as to mislead the public or to lead to confusion.

Second. The purpose for which it is formed, which shall not include more liberal powers than are granted by this Act; provided, that any lawful, social, intellectual, educational, charitable, benevolent, moral or religious advantages may be set forth among the purposes of the society, and the mode in which its corporate powers are to be exercised.

Third. The names, residences and official titles of all the officers, trustees, directors or other persons who are to have and exercise the general control and management of the affairs and funds of the Society for the first year or until the ensuing election at which all such officers shall be elected by the supreme legislative or governing body, which election shall be held not later than one year from the date of the issuance of the permanent certificate.

Fourth. Such articles of incorporation and duly certified copies of the constitution and laws, rules and regulations, and copies of all proposed forms of benefit certificates, applications therefor and circulars to be issued by such society, and a bond in the sum of five thousand dollars, with sureties approved by the commissioner of insurance and banking, conditioned upon the return of the advance payments, as provided in this section, to applicants, if the organization is not completed within one year, shall be filed with the commissioner of insurance and banking, who may require such further information as he deems necessary, and if the purposes of the society conform to the requirements of this Act, and all provisions of law have been complied with, the commissioner of insurance and banking shall so certify and retain and record (or file) the articles of incorporation, and furnish the incorporators a preliminary certificate authorizing said society to solicit members as hereinafter provided.

Upon receipt of said certificate from the commissioner of insurance and banking, said society may solicit members for the purpose of completing its organization and shall collect from each applicant the amount of not less than one regular monthly payment, in accordance with its table of rates as provided by its constitution and laws, and shall issue to each such applicant a receipt for the amount so collected. But no such society shall incur any liability other than for such advanced payments, nor issue any benefit certificate nor pay or allow, or offer or promise to pay or allow, to any person any death or disability

benefit until actual bona fide applications for death benefit certificates have been secured upon at least five hundred lives for at least one thousand dollars each, and all such applications for death benefits shall have been regularly examined by legally qualified practicing physicians, and certificates of such examination have been duly filed and approved by the chief medical examiner of such society; nor until there shall be established ten subordinate lodges or branches into which said five hundred applicants have been initiated; nor until there has been submitted to the commissioner of insurance and banking, under oath of the president and secretary or corresponding officers of such society, a list of such applicants, giving their names, addresses, date examined, date, approved, date initiated, name and number of the subordinate branch of which each applicant is a member, amount of benefits to be granted, rate of stated periodical contributions, which shall be sufficient to provide for meeting the mortuary obligation, contracted, when valued for death benefits upon the basis of the National Fraternal Congress Table of Mortality, as adopted by the National Fraternal Congress, August 23, 1899, or any higher standard, at the option of the society, and for disability benefits by tables based upon reliable experience and for combined death and permanent total disability benefits by tables based upon reliable experience, with an interest assumption not higher than four per cent. per annum; nor until it shall be shown to the commissioner of insurance and banking by the sworn statement of the treasurer or corresponding officer of such society, that at least five hundred applicants have each paid in cash at least one regular monthly payment as herein provided per one thousand dollars of indemnity to be effected, which payments in the aggregate shall amount to at least twenty-five hundred dollars; all of which shall be credited to the mortuary or disability fund on account of such applicants and no part of which may be used for expenses.

Said advanced payments shall, during the period of organization, be held in trust, and if the organization is not completed within one year as hereinafter provided, returned to said applicants.

The commissioner of insurance and banking may make such examination and require such further information as he deems advisable; and upon presentation of satisfactory evidence that the society has compiled [complied] with all the provisions of law, he shall issue to such society a certificate to that effect. Such certificate shall be prima facie evidence of the existence of such society at the date of such certificate. The commissioner of insurance and banking shall cause a record of such certificate to be made and a certified copy of such record may be given in evidence with like effect as the original certificate.

No preliminary certificate granted under the provisions of this section shall be valid after one year from its date, or after such further period, not exceeding one year, as may be authorized by the commissioner of banking and insurance upon cause shown; unless the five hundred applicants herein required have been secured and the organization has been completed as herein provided; and the articles of incorporation and all proceedings thereunder shall become null and void in one year from the date of said preliminary certificate, or at the expiration of said extended period, unless such society shall have completed its organization and commenced business as herein provided. When any domestic society shall have discontinued business for the period of one year, or has less than four hundred members, its charter shall become null and void. Every such society shall have the power to make a constitution and by-laws for the government of the society, the admission of its members, the management of its affairs and the fixing and readjusting of the rates of contribution of its members from time to time; and it shall have the power to change, alter, add to, or amend such constitution and by-laws and shall have such other powers as are necessary and incidental to carrying into effect the object and purposes of the society. (Id. sec. 12.)

Art. 4840. Powers retained; reincorporation; amendments.—Any society now engaged in transacting business in this state may exercise, after the passage of this Act, all of the rights conferred thereby, and all of the rights, powers and privileges now exercised or possessed by it under its charter or articles of incorporation not inconsistent with this Act, if incorporated; or if it be a voluntary association, it may incorporate hereunder. But no society already organized shall be required to reincorporate hereunder, and any such society may amend its articles of incorporation from time to time in the manner provided therein or in its constitution and laws, and all such amendments shall be filed with the commissioner of insurance and banking and shall become operative upon such filing, unless a later time be provided in such amendments or in its articles of incorporation, constitution or laws. (Id. sec. 13.)

Art. 4841. Mergers and transfers.—No domestic society shall merge with or accept the transfer of the membership or funds of any other society unless such merger or transfer is evidenced by a contract in writing, setting out in full the terms and conditions of such merger or transfer, and filed with the commissioner of insurance and banking of this state, together with a sworn statement of the financial condition of each of said societies by its president and secretary, or corresponding officers, and a certificate of such officers, duly verified under oath of said officers of each of the contracting societies, that such merger or transfer has been approved by a vote of two-thirds of the members of the supreme legislative or governing body of each of said societies.

Upon the submission of said contract financial statements and certificates, the commissioner of insurance and banking shall examine the same, and if he shall find such financial statements to be correct and the said contract to be in conformity with the provisions of this section, and that such merger or transfer is just and equitable to the members of each of said societies, he shall approve said merger or transfer, issue his certificate to that effect, and thereupon the said contract or merger or transfer shall be of full force and effect. In case such contract

is not approved, the fact of its submission and its contents shall not be disclosed by the commissioner of insurance and banking. (Id. sec. 14.)

Art. 4842. Annual license.—Societies which are now authorized to transact business in this state may continue such business until the first day of April next succeeding the passage of this Act, and the authority of such societies may thereafter be renewed annually, but in all cases to terminate on the first day of the succeeding April; provided, however, the license shall continue in full force and effect until the new license be issued or specifically refused. For each such license or renewal the society shall pay the commissioner of insurance and banking ten dollars. A duly certified copy or duplicate of such license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of this Act. (Id. sec. 15.)

Art. 4843. Admission of foreign society.—No foreign society now transacting business, organized prior to the passage of this Act, which is not now authorized to transact business in this state, shall transact any business herein without a license from the commissioner of insurance and banking. Any such society shall be entitled to a license to transact business within this state upon filing with the commissioner of insurance and banking a duly certified copy of its charter or articles of association; a copy of its constitution and laws, certified by its secretary or corresponding officer; a power of attorney to the commissioner of insurance and banking as hereinafter provided; a statement of its business under oath of its president and secretary or corresponding officers in the form required by the commissioner of insurance and banking, duly verified by an examination made by the supervising insurance official of its home state or other state satisfactory to the commissioner of insurance and banking of this state; a certificate from the proper official in its home state, province or country that the society is legally organized; a copy of its contract, which must show that benefits are provided for by periodical or other payments by persons holding similar contracts; and upon furnishing the commissioner of insurance and banking such other information as he may deem necessary to a proper exhibit of its business and plan of working, and upon showing that its assets are invested in accordance with the laws of the state, territory, district, province or country where it is organized, he shall issue a license to such society to do business in this state until the first day of the succeeding April, and such license shall, upon compliance with the provisions of this Act, be renewed annually, but in all cases to terminate on the first day of the succeeding April; provided, however, that license shall continue in full force and effect until the new license be issued or specifically refused. Any foreign society desiring admission to this state shall have the qualifications required of domestic societies organized under this Act and have its assets invested as required by the laws of the state, territory, district, country or province where it is organized. For each such license or renewal the society shall pay the commissioner of insurance and banking ten dollars. When the commissioner of insurance and banking refuses to license any society or revokes its authority to do business in this state, he shall reduce his ruling, order or decision to writing and file the same in his office, and shall furnish a copy thereof, together with a statement of his reasons, to the officers of the society, upon request, and the action of the commissioner of insurance and banking shall be reviewable by proper proceedings in any court of competent jurisdiction within the state; provided, however, that nothing contained in this or the preceding section shall be taken or construed as preventing any such society from continuing in good faith all contracts made in this State during the time such society was legally authorized to transact business herein. (Id. sec. 16.)

Art. 4844. Power of attorney and service of process.—Every society, whether domestic or foreign, now transacting business in this state shall, within thirty days after the passage of this Act, any [and] every such society hereafter applying for admission, shall before being licensed, appoint in writing the commissioner of insurance and banking, and his successors in office to be its true and lawful attorney upon whom all legal process in any action or proceeding against it shall be served, and in such writing shall agree that any lawful process against it which is served upon such attorney shall be of the same legal force and validity as if served upon the society and that the authority shall continue in force so long as any liability remains outstanding in this state.

Copies of such appointment certified by said commissioner of insurance and banking shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. Service shall only be made upon such attorney, must be made in duplicate upon the commissioner of insurance and banking, or, in his absence, upon the person in charge of his office, and shall be deemed sufficient service upon such society; provided, however, that no such service shall be valid or binding against any such society when it is required thereunder to file its answer, ploding [pleading] or defense in less than thirty days from the date of mailing the copy of such service to such society. When legal process against any such society is served upon said commissioner of insurance and banking he shall forthwith forward by registered mail, one of the duplicate copies prepaid and directed to its secretary or corresponding officer. Legal process shall not be served upon any such society except in the manner provided herein. (Id. sec. 17.)

See Banker's Union, etc., v. Nabors, 81 S. W. 91; International Order of Twelve, Knights and Daughters of Tabor v. Brown, 190 S. W. 251.

Art. 4845. Place of meeting; location of office.—Any domestic society may provide that the meetings of its legislative or governing body may be held in any state, district, province or territory wherein such society has subordinate branches, and all business transacted at such meetings shall be as valid in all respects as if such meetings were held in this state; but its principal office shall be located in this state. (Id. sec. 18.)

Art. 4846. No personal liability.—Officers and members of the supreme, grand or

any subordinate body of any such incorporated society shall not be individually liable for the payment of any disability or death benefit provided for in the laws and agreements of such society; but the same shall be payable only out of the funds of such society and in the manner provided by its laws. (Id. sec. 19.)

Art. 4847. Waiver of the provisions of the laws; separate jurisdiction.—The constitution and laws of the society may provide that no subordinate body nor any of its subordinate officers or members shall have the power or authority to waive any of the provisions of the laws and constitution of the society, and the same shall be binding on the society and each and every member thereof and on all beneficiaries of members.

All grand lodges, by whatever name known, whether incorporated or not, holding charters from any supreme governing body, which were conducting business in this state upon the passage of this Act as a fraternal beneficiary association, upon what is known as the separate jurisdiction plan, shall be treated as single state organizations, and all reports required by the provisions of this Act shall be made and furnished by the officers of such supreme state governing body and shall embrace and contain the transactions, liabilities and assets of such state organization. (Id. sec. 20.)

Art. 4848. [Repealed.]

See note under art. 4859a. The provisions of this article are included in art. 4847.

Art. 4848a. Benefit not attachable.—No money or other benefit, charity or relief or aid to be paid, provided or rendered by any such society shall be liable to attachment, garnishment, or other process, or be seized, taken or appropriated or applied by any legal or equitable process or operation of law to pay any debt or liability of a member or beneficiary or any other person who may have a right thereunder, either before or after payment. (Id. sec. 21.)

Art. 4849. Constitution and laws; amendments.—Every society transacting business under this Act shall file with the commissioner of insurance and banking a duly certified copy of all amendments of, or additions to its constitution and laws within ninety days after the enactment of the same. Printed copies of the constitution and laws, as amended, changed, or added to, certified by the secretary or corresponding officer of the society, shall be prima facie evidence of the legal adoption thereof. (Id. sec. 22.)

Art. 4850. Annual reports.—Every society transacting business in this state shall annually, on or before the day of March, file with the commissioner of insurance and banking in such form as he may require, a statement under oath of its president and secretary or corresponding officers, of its condition and standing on the thirty-first day of December next preceding, and of its transactions for the year ending on that date, and also shall furnish such other information as the commissioner of insurance and banking may deem necessary to a proper exhibit of its business and plan of working. The commissioner of insurance and banking may at other times require any further statement he may deem necessary to be made relating to such society.

In addition to the annual report herein required, each society shall annually report to the commissioner of insurance and banking a valuation of its certificates in force on December 31st last preceding, excluding those issued within the year for which the report is filed, in cases where the contribution for the first year in whole or in part are used for current mortality and expenses; provided, the first report of valuation shall be made as of December 31st, 1913, such report of valuation shall show, as contingent, liabilities the present mid-year value of the promised benefits provided in the constitution and laws of such society, under certificates the subject to valuation; and, as contingent assets, the present mid-year value of the future net contributions provided in the constitution and laws as the same are in practice actually collected. At the option of any society, in lieu of the above, the valuation may show the net value of the certificates subject to valuation hereinbefore provided, and said net value, when computed in case of monthly contributions, may be the mean of the terminal values for the end of the preceding and of the current insurance years.

Such valuation shall be certified by a competent accountant or actuary, or, at the request and expense of the society, verified by the actuary of the department of insurance of the home state of the society, and shall be filed with the commissioner of insurance and banking within ninety days after the submission of the last preceding annal [annual] report. The legal minimum standard of valuation for all certificates, except for disability benefits, shall be the National Fraternal Congress Table of Mortality as adopted by the National Congress, August 23rd, 1899; or, at the option of the society, any higher table; or, at its option, it may use a table based upon the society's own experience of at least twenty years, and covering not less than one hundred thousand lives with interest assumption not more than four per centum per annum. Each such valuation report shall set forth clearly and fully the mortality and interest basis and the method of valuation. Any society providing for disability benefits shall keep the net contributions for such benefits in a fund separate and apart from all other benefit and expense funds and the valuation of all other business of the society; provided, that where a combined contribution table is used by a society for both death and permanent total disability benefits, the valuation shall be according to tables of reliable experiences, and in such cases a separation of the funds shall not be required.

The valuation herein provided for shall not be considered or regarded as a test of the financial solvency of the society, but each society shall be held to be 'legally solvet [solvent] so long as the founds [funds] in its possession are equal to or in excess of its matured liabilities.

Beginning with the year, 1914, a report of such valuation and an explanation of the facts concerning the condition of the society thereby disclosed, shall be printed and mailed to each beneficiary member of the society not later than June 1st, of each year; or, in lieu thereof, such report of valuation and showing of the society's condition as thereby disclosed may be published in the society's

official paper and the issue containing the same mailed to each beneficiary member of the society. The laws of such society shall provide that if the stated periodical contributions of the members are insufficient to pay all matured death and disability claims in full, and to provide for the creation and maintenance of the funds required by its laws additional, increased or extra rates of contribution shall be collected from the members to meet such deficiency; and such laws may provide that, upon the written application or consent of the member, his certificate may be charged with its proportion of any deficiency disclosed by valuation, with interest not exceeding five per centum per annum. (Id. sec. 23.)

Art. 4850a. Provisions to insure future security.—If the valuation of the certificates, as hereinbefore provided, on December 31st, 1917, shall show that the present value of future net contributions, together with the admitted assets, is less than the present value of the promised benefits and accrued liabilities, such society shall thereafter maintain said financial condition at each succeeding triennial valuation in respect of the degree of deficiency as shown in the valuation as of December 31, 1917. If at any succeeding triennial valuation such society does not show at least the same condition, the commissioner of insurance and banking shall direct that it thereafter comply with the requirements herein specified. If the next succeeding triennial valuation after the receipt of such notice shall show that the society has failed to maintain the condition required herein, the commissioner of insurance and banking may, in the absence of good cause shown for such failure, institute proceedings for the dissolution of such society, in accordance with the provisions of section 24 of this Act [Art. 4851] or in the case of a foreign society, its license may be cancelled in the manner provided in this Act.

Any such society, shown by any triennial valuation, subsequent to December 31, 1917, not to have maintained the condition herein required, shall, within two years thereafter, make such improvement as to show a percentage of deficiency not greater than as of December 31, 1917, or thereafter, as to all new members admitted, be subject, so far as stated rates of contributions are concerned, to the provisions of section 12 of this Act [Art. 4839] applicable in the organization of new societies; provided, that the net mortuary or beneficiary contributions and funds of such new members shall be kept separate and apart from the other funds of the society. If such required improvement is not shown by the succeeding triennial valuation, then the said new members may be placed in a separate class and their certificates valued as an independent society in respect of contributions and funds. (Id. sec. 23a.)

Art. 4850b. Valuation of certificates on accumulation basis; member may transfer to any plan; valuation on tabular basis; deficiency.—In lieu of the requirements of section 23 [Art. 4850] and 23a [Art. 4850a], any society accepting in its laws the provisions of this section, may value its certificates on a basis herein designated, "accumulation basis," by crediting each member with the net amount contributed for each year and with interest at approximately the next rate earned and by charging him with his share of the losses for each year, herein designated "cost of insurance," and carrying the balance, if any, to his credit. The charge for the cost of insurance may be according to the actual experience of the society applied to a table of mortality recognized by the law of this state, and shall take into consideration the amount at risk during each year, which shall be the amount payable at death less the credit to the member, except as specifically provided in its articles of laws or contracts no charge shall be carried forward from the first valuation hereunder against any member for any past share of losses exceeding the contributions and credit. If, after the first valuation, any member's share of losses for any year exceeds his credit, including the contribution for the year, the contribution shall be increased to cover his share of the losses. Any such excess share of losses chargeable to any member may be paid out of a fund or contribution especially created or required for such purpose.

Any member may transfer to any plan adopted by the society with net rates on which tabular reserves are maintained and on such transfer shall be entitled to make such application of his credit as provided in the laws of the society.

Certificates issued, rerated or readjusted on a basis provided for adequate rates with adequate reserves to mature such certificates upon assumption for mortality and interest recognized by the law of this state shall be valued on such basis, herein designated the "tabular basis"; provided, that if on the first valuation under this section a deficiency in reserve shall be shown for any such certificate, the same shall be valued on the accumulation basis.

Whenever in any society having members upon the tabular basis and upon the accumulation basis, the total of all costs of insurance provided for any year shall be insufficient to meet the actual death and disability losses for the year, the deficiency shall be met for the year from the available funds after setting aside all credits in the reserve or from increased contributions or by an increase in the number of assessments applied to the society, as a whole or to classes of members as may be specified in its laws, savings from a lower amount of death losses may be returned in like manner as may be specified in its laws. If the laws of the society so provide, the assets representing the reserves of any separate class of members may be carried separately for such class as if in an independent society, and the required reserve accumulation of such class, so set apart shall not thereafter be mingled with the assets of other classes of the society.

A table showing the credits to individual members for each age and year of entry and showing opposite each credit the tabular reserve required on the whole life or other plan of insurance specified in the contract, according to assumptions for mortality and interest recognized by the law of this state and adopted by the society, shall be filed by the society with each each annual report and also be

furnished to each member before July 1st of each year.

In lieu of the aforesaid statement there may be furnished to each member within the same time a statement giving the credit for such member and giving the tabular reserve and level rate required for a transfer carrying out the plan of insurance specified in the contract. No table or statement need be made or furnished where the reserves are maintained on the tabular basis. For this purpose individual bookkeeping accounts for each member shall not be required and all calculations may be made by actuarial methods.

Nothing herein contained shall prevent the maintenance of such surplus over and above the credits on the accumulation basis, and the reserves on the tabular basis pursuant to its laws; nor be construed as giving to the individual member any right or claim to any such reserve or credit other than in manner as expressed in the contract and its laws; nor as making any such reserve or credits a liability in determining the legal solvency of the society. (Id. sec. 23b.)

Art. 4851. Examination of domestic societies.—The commissioner of insurance and banking, or any person he may appoint, shall have the power of visitation and examination into the affairs of any domestic society. He may employ assistants for the purpose of such examination, and he, or any person he may appoint, shall have, free access to all the books, papers and documents that relate to the business of the society, and may summon and qualify as witnesses under oath and examine its officers, agents and employés or other person in relation to the affairs, transactions and conditions of the society.

The expense of such examination shall be paid by the society examined, upon statement furnished by the commissioner of insurance and banking and the examination shall be made at least once in three years.

Whenever after examination the commissioner of insurance and banking is satisfied that any domestic society has failed to comply with any provisions of this Act, or is exceeding its powers, or is not carrying out its contracts in good faith, or is transacting business fraudulently; or whenever any domestic society, after the existence of one year or more, shall have a membership of less than four hundred, (or shall determine to discontinue business) the commissioner of insurance and banking may present the facts relating thereto to the attorney general, who shall, if he deem the circumstance warrant, commence an action in quo warranto in a court of competent jurisdiction, and such court shall thereupon notify the officers of such society of a hearing, and if it shall then appear that such society should be closed, said society shall be enjoined from carring [carrying] on any further business and some person shall be appointed receiver of such society and shall proceed at once to take possession of the books, papers, moneys and other assets of the society, and shall forthwith, under the direction of the court, proceed to close the affairs of the society, and to distribute its funds to those entitled thereto.

No such proceedings shall be commenced by the attorney general against any such society until after notice has been duly served on the chief executive officers of the society and a reasonable opportunity given to it, on a date to be named in said notice, to show cause why such proceeding should not be commenced. (Id. sec. 24.)

Art. 4852. Application for receiver, etc.—No application for injunction against or proceedings for the dissolution of or the appointment of a receiver for any such domestic society or branch thereof shall be entertained by any court in the state unless the same is made by the attorney general. (Id. sec. 25.)

Art. 4853. Examination of foreign societies.—The commissioner of insurance and banking, or any person whom he may appoint, may examine any foreign society transacting or applying for admission to transact business in this state. The said commissioner of insurance and banking may employ assistants, and he, or any person he may appoint, shall have free access to all the books, papers and documents that relate to the business of the society, and may summon and qualify as witnesses under oath and examine its officers, agents and employés and other persons in relation to the affairs, transactions and conditions of the society. He may, in his discretion, accept in lieu of such examination of the insurance department of the state, territory, district, province or country where such society is organized. The actual expense of examiners making any such examination shall be paid by the society, upon statements furnished by the commissioner of insurance and banking. If any such society or its officers refuse to submit such examination or to comply with the provisions of the section relative thereto, the authority of such society to write new business in this state shall be suspended, or license refused until satisfactory evidence is furnished the commissioner of insurance and banking relating to the condition and affairs of the society, and during such suspension the society shall not write any new business in this state. (Id. sec. 26.)

Art. 4853a. No adverse publications.—Pending during or after an examination or investigation of any such society either domestic or foreign, the commissioner of insurance and banking shall make public no financial statement, report or finding, nor shall he permit to become public any financial statement, report or finding affecting the status, standing or rights of any such society, until a copy thereof shall have been served upon such society, at its home office, nor until such society shall have been afforded a reasonable opportunity to answer any such financial statement, report of finding, and to make such showing in connection therewith as it may desire. (Id. sec. 27.)

Art. 4854. Revocation of license.—When the commissioner of insurance and banking on investigation is satisfied that any foreign society transacting business under this Act has exceeded its powers, or has failed to comply with any provisions of this Act, or is conducting business fraudulently, or is not carrying out its contracts in good faith, he shall notify the society of his findings, and state in writing the grounds of his dissatisfaction, and after reasonable notice require said society, on a date named, to

show cause why its license should not be revoked. If, on the date named in said notice, such objections have not been removed to the satisfaction of said commissioner of insurance and banking, or the society does not present good and sufficient reasons why its authority to transact business in this state should not at that time be revoked, he may revoke the authority of the society to continue business in this state. All decisions and findings of the commissioner of insurance and banking made under the provisions of this section may be reviewed by proper proceedings in any court of competent jurisdiction, as provided in section 16 [Art. 4843] of this Act. (Id. sec. 28.)

Art. 4855. Examination of certain societies.—Nothing contained in this Act shall be construed to affect or apply to grand or subordinate lodges of Masons, Odd Fellows or Knights of Pythias (exclusive of the insurance department of the supreme lodge Knights of Pythias) and the Junior Order of the United American Mechanics (exclusive of the beneficiary degree or insurance branch of the National Council Junior Order United States American Mechanics) or societies which limit their membership to any one hazardous occupation nor to similar societies which do not issue insurance certificates nor to an association of local lodges of a society now doing business in this state which provides death benefits not exceeding five hundred dollars to any one person or disability benefits not exceeding three hundred dollars in any one year to pay one person or both, nor to any contracts of reinsurance business on such plan in this state nor to domestic societies which limit their membership to the employés of a particular city or town, designated firm, business house or corporation, nor to domestic lodges, orders or associations of a purely religious, charitable and benevolent description which do not provide for a death benefit of more than one hundred dollars or for disability benefits of more than one hundred and fifty dollars to any person in one year.

The commissioner of insurance and banking may require from any society such information as will enable him to determine whether such society is exempt from the provisions of this Act.

Any fraternal benefit society heretofore organized and incorporated and operating within the definition set forth in sections 1, 2 and 3 of this Act [Arts. 4827–4829], providing for the benefits in case of death or disability resulting solely from accidents, but which does not obligate itself to pay death or sick benefits, may be licensed under the provisions of this Act and shall have all the privileges and shall be subject to all the provisions and regulations of this Act, except that the provisions of this Act requiring medical examinations, valuations of benefit certificates and that the certificates shall specify the amount of benefits, shall not apply to such society, (Id. sec. 29.)

See Supreme Lodge, etc., Ass'n, v. Johnson, 81 S. W. 18.

Art. 4856. Taxation.—Every fraternal benefit society organized or licensed under this Act is hereby declared to be a charitable and benevolent institution, and all of its funds and property shall be exempt from all and every state, county, district, municipal and school tax, other than taxes on real estate and office equipment, when same is used for other than lodge purposes. (Id. sec. 30.)

Arts. 4857, 4858. [Repealed.]

See note under art. 4859a.

Art. 4859. Provisions not to apply to local mutual aid associations; annual statement by such associations, etc.—The provisions of this chapter shall not apply to incorporated or unincorporated mutual relief or benefits, or burial associations, operating upon the assessment plan, whose business is confined to not more than one county in the State of Texas, or to a territory in two or more adjacent counties included within a radius of not more than 50 miles surrounding the city or town in which its principal office is to be located, which is designated in its charter and which at no time shall have a membership exceeding 2000 members which are hereby denominated local mutual aid associations, provided that such associations are in no manner directly or indirectly connected, federated or associated with any such association and do not directly or indirectly contribute to the expense or support of any other such association, or to the officers, promoters, or manager thereof, and provided that no person or officer shall receive from said association any payment on account of organization or other expenses or salaries who is not a bona fide resident of the county or area in which such association is domiciled. The association above mentioned shall annually, on or before March 1, file a statement with the Commissioner of Insurance and Banking, which shall be signed and sworn to by the president, Secretary and treasurer, or the officer holding positions corresponding thereto. Such statement shall show whether the association has, during the preceding year, done any business outside of the county or areas in which it is domiciled, and shall state whether or not said association is associated, federated or directly or indirectly connected with any other, and shall show what, if anything, has been contributed during the preceding year by said association or the members, to any person or officer, or director thereof for salaries, commissions or promotion expenses, and the name and residence of the party or parties receiving the same. The Commissioner of Insurance and Banking may, at his option and it shall be his duty, if not satisfied with said statement, to demand other and additional statements and examine the books, papers, and records of said association, either himself or by some other suitable person authorized by him. Should it appear to the Commissioner of Insurance and Banking that any such local mutual aid association is not carrying on business as set forth in this article, and is not entitled to the exemption therein set forth, such association shall be subject to and comply with all provisions of this chapter, as a fraternal beneficiary association. Every such local association claiming to be entitled to the benefit of the exemption created by this Article shall plainly state upon its certificates, applications and all advertising matter, in a conspicuous manner, that said association is a local mutual aid association, or same shall be

deemed subject to all provisions of this chapter concerning fraternal beneficiary associations. (Acts 1913, p. 220, sec. 31; Acts 1919, ch. 50, sec. 1.)

Art. 4859a. Penalties.—Any person, officer, member or examining physician of any society authorized to do business under this Act who shall knowingly or willfully make any false or fraudulent statement or representation in or with reference to any application for membership, or for the purpose of obtaining money from or benefit in any society transacting business under this Act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, or imprisonment in the county jail for not less than thirty days, nor more than one year, or both in the discretion of the court; any person who shall wilfully make a false statement of any material fact or thing in a sworn statement as to the death or disability of a certificate holder in any such society for the purpose of procuring payment of a benefit named in the certificate of such holder, and any person who shall wilfully make any false statement in any verified report or declaration [declaration] under oath required or authorized by this Act, shall be guilty of perjury, and shall be proceeded against and punished as provided by the statutes of this state in relation to the crime of perjury.

Any person who shall solicit membership for, or in any manner assist in procuring membership in any fraternal benefit society not licensed to do business in this state, or who shall solicit membership for, or in any manner assist in procuring membership in such society not authorized as herein provided to do business as herein defined in this state, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty nor more than two hundred dollars.

Any person who solicits for or organizes lodges of such association as are described in the first section of this Act without first obtaining from the commissioner of insurance and banking a certificate of authority showing that the association has complied with the provisions of this Act, and is entitled to do business in this state, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred dollars, nor more than two hundred and fifty dollars, or by imprisonment in the county jail for not less than three nor more than six months, or by both such fine and imprisonment; provided, the provisions of this section shall not be so construed as to prohibit any member or members of a local or subordinate lodge from soliciting any person or persons to become a member of any local or subordinate lodge already in existence; and providing, further, the provisions of this section shall not apply to any member or members of any local or subordinate lodge who participate in, supervise or directs or conducts the organization or establishment of any local or subordinate lodge within the limits of the county of his or their residence or lodge district. All certificates of authority for agents or solicitors shall be issued by the commissioner upon application made therefor by any of the general officers of the association, or by any agent whom the properly authorized governing body of the association has, by resolution, filed with the commissioner of insurance and banking, duly empowered to make such application, and all such certificates shall be revoked by the commissioner upon the request of the association and may be revoked for cause upon like ground and in like manner as the certificates of authority of agents for life insurance companies under the laws of this state. All such certificates shall be renewed annually and shall expire on the first day of April of each year, and a fee of $1.00 shall be paid for the use of the state for the issuance of said such certificate.

Any society or any officer, agent or employé thereof neglecting or refusing to comply with or violating any of the provisions of this Act, the penalty for which neglect, refusal or violation is not specified in this section, shall be fined not exceeding two hundred dollars upon conviction thereof. (Acts 1913, p. 220, sec. 32.)

Section 33 of Acts 1913, p. 220 repeals Acts 1909, 1st C. S., p. 357; Acts 1909, 2d C. S., p. 443; and Acts 1911, p. 169. Acts 1909, 1st C. S., p. 357, sec. 37 repealed Acts 1899, p. 195; Acts 1901, p. 250; Acts 1903, p. 179; and Acts 1905, p. 206.

Arts. 4860, 4861. [Repealed.]

See note under art. 4859a.

CHAPTER EIGHT

FIRE AND MARINE INSURANCE COMPANIES

Art. 4862. (3074) Marine, fire and all other than life or health insurance companies, may do what.—It shall be lawful for any insurance company doing business in this state under the proper certificate of authority, except a life or health insurance company to insure houses, buildings and all other kinds of property against loss or damage by fire, and to take all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether on land or water, or any vessel afloat, wherever the same may be; to lend money on bottomry or respondentia; and to cause itself to be insured against any loss or risk it may have incurred in the course of its business and upon the interest which it may have in any property by means of any loan or loans which it may have made on bottomry or respondentia; and generally to do and perform all other matters and things proper to promote these objects; to insure automobiles or other motor vehicles, whether stationary or being operated under their own power, against all or any of the risks of fire, lightning, wind storms, hail storms, tornadoes, cyclones, explosions, transportation by land or water, theft and collisions upon filing with the commissioner of insurance and banking of this state, notification of their purpose to do so. (Act Feb. 17, 1875, p. 34, sec. 8. Acts 1913, p. 209, sec. 1.)

Art. 4863. (3077) Commissioner may permit capital stock of company to be reduced, when.—Whenever the joint stock of any fire, fire and marine, or marine insurance company of this state becomes impaired, the commissioner of insurance and banking may, in his discretion, permit the said company to reduce its capital stock and par value of its shares in proportion to the extent of impairment; but in fixing such reduced capital no sum exceeding twenty-five

thousand dollars shall be deducted from the assets and property on hand, which shall be retained as surplus assets; and no part of such assets and property shall be distributed to the stockholders, nor shall the capital stock of a company in any case be reduced to an amount less than one hundred thousand dollars. (Acts Aug. 21, 1876, p. 222, sec. 8, subdivision 11.)

Art. 4864. (3078) When company is called upon to make good its capital stock, shall do what.—Any fire, marine, or inland, insurance company having received notice from the commissioner of insurance and banking to make good its whole capital stock within sixty days, shall forthwith call upon its stockholders for such amounts as shall make its capital equal to the amount fixed by the charter of such company. (Id. sec. 221.)

Art. 4865. (3079) Stockholder failing to pay when called upon, what course shall be taken.—In case any stockholder of such fire, marine, or inland insurance company shall neglect or refuse to pay the amount so called for, after notice personally given, or by advertisement for such time and in such manner as said commissioner shall approve, it shall be lawful for said company to require the return of the original certificate of stock held by such stockholder, and in lieu thereof to issue new certificate for such number of shares as such defaulting stockholders may be entitled to, in the proportion that the ascertained value of the funds of said company may be found to bear to the original capital of said company; the value of such shares, for which new certificates are issued, to be ascertained under the direction of said commissioner, and the company shall pay for the fractional parts of shares. (Id. sec. 8.)

Art. 4866. (3080) Company may create and dispose of new stock, when.—It shall be lawful for such fire, marine, or inland insurance company to create new stock and dispose of the same, and to issue new certificates therefor, to any amount sufficient to make up the original capital of the company. (Id.)

Art. 4867. (3087) Unlawful dividends.—It shall not be lawful for any life, health, fire, marine, or inland insurance company organized under the laws of this state to make any dividend, except from the surplus profits arising from its business; and in estimating such profits there shall be reserved therefrom a sum equal to forty per cent of the amount received as premiums on unexpired fire risks and policies, and one hundred per cent of the premiums received on unexpired life, health, marine, or inland transportation risks and policies, which amount so reserved is hereby declared to be unearned premiums; and there shall also be reserved the amount of all unpaid losses, whether adjusted or unadjusted; all sums due the company on bonds, mortgages, stocks and book accounts, of which no part of the principal or the interest thereon has been paid during the year preceding such estimate of profits, and upon which suit for foreclosure or collection has not been commenced, or which, after judgment has been obtained thereon, shall have remained more than two years unsatisfied, and upon which interest shall not have been paid; and, in case of any such judgment, the interest due or accrued thereon and remaining unpaid shall also be reserved. (Id. sec. 15.)

Art. 4868. (3088) Penalty for making unlawful dividends.—Any dividends made contrary to the provisions of the preceding article shall subject the company making it to a forfeiture of its charter, and the commissioner of insurance and banking shall forthwith revoke its certificate of authority. (Id.)

Art. 4869. (3076) Insurance companies shall not purchase or hold real estate, except, etc.—No fire, marine, or inland insurance company organized under the laws of this state shall purchase or hold any real estate, except—

1. Such as shall be requisite for its convenient accommodation in the transaction of its business.
2. Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted or for money due.
3. Such as shall have been conveyed to it in satisfaction of debts previously contracted in the legitimate business of the company or for money due.
4. Such as shall have been purchased at sales under judgments, decrees or mortgages obtained or made for such debts.

All lands purchased or held in violation of this article shall be forfeited to the state. (Id. sec. 16.)

Art. 4870. Shall file bond.—Every fire insurance company, not organized under the laws of this state, applying for a certificate of authority to transact any kind of insurance in this state, shall, before obtaining such certificate, file with the commissioner of insurance and banking a bond, with good and sufficient surety or sureties, to be approved by the commissioner of insurance and banking, payable to the commissioner of insurance and banking, and his successors in office, in a sum equal to twenty-five per cent of its premiums collected from citizens or upon property in this state during the preceding calendar year, as shown by its annual report for such year; provided, however, the bond in no case shall exceed fifty thousand dollars, nor be less than ten thousand dollars, conditioned that said company will pay all its lawful obligations to citizens of this state. Such bonds shall be subject to successive suits by citizens of this state so long as any part of the same shall not be exhausted, and the same shall be kept in force unimpaired until all claims of citizens of this state arising out of obligations of said company have been fully satisfied. Such bonds shall provide that, in the event the company shall become insolvent or cease to transact business in this state, at any time when it has outstanding policies of insurance in favor of citizens of this state, or upon property in this state, the commissioner of insurance and banking shall have the power, after having given ten days notice to the officers of such company, or any receiver in charge of its property and affairs, to contract with any other insurance company transacting business in this state for the assumption and reinsurance by it of all the insurance risks outstanding in this state of such company which is insolvent, or which has ceased to transact business in this state, which contract shall also provide for the assumption by such reinsuring company of all outstanding and unsatisfied lawful claims

then outstanding against such company which has become insolvent, or ceased to transact business in this state; and in the event of the commissioner making any such contract, and if the same shall be approved as reasonable by the attorney general and the governor of this state, the reinsuring company shall be entitled to recover from the makers of such bond the amount of the premium or compensation so agreed upon for such reinsurance. Any company desiring to do so may, at its option, in lieu of giving the bond required by this article, deposit securities of any kind, in which it may lawfully invest its funds with the state treasurer of this state upon such terms and conditions as will in all respects afford the same protection and indemnity as is herein provided for to be afforded by said bond. (Acts 1909, p. 182, sec. 1.)

Art. 4871. May deposit securities in lieu of bond.—Every fire insurance company, not organized under the laws of this state, hereafter issuing, or causing or authorizing to be issued, any policy of insurance, other than life insurance, shall first have filed with the commissioner of insurance and banking during the calendar year in which such policy may issue, or authorize or cause to be issued, a bond of good and sufficient sureties to be approved by such commissioner in a sum of not less than ten thousand dollars, conditioned for the payment of all lawful obligations to citizens of this state arising out of any policies or contracts issued by such fire insurance company; which such bond shall be subject to successive suits by citizens of this state so long as any part of the same shall not be adjusted, and so long as there remains outstanding any such obligations or contracts of such fire insurance company. This article shall not apply to any person, firm, or corporation, or association, doing an inter-insurance, co-operative or reciprocal business. (Id. sec. 3.)

Art. 4872. (3083) Annual statement of company.—It shall be the duty of the president or of the vice-president and secretary of each fire, marine or inland insurance company doing business in this state, annually, on the first day of January of each year, or within sixty days thereafter, to prepare under oath and deposit with the commissioner of insurance and banking of this state a full, true and complete statement of the condition of such company on the last day of the month of December preceding. (Acts Feb. 17, 1875, p. 37, sec. 17.)

Art. 4873. (3084) What the annual statement shall exhibit.—The annual statement required by the preceding article shall exhibit the following items and facts:

1. The name of the company and where located.

2. The names and residences of the officers.

3. The amount of capital stock of the company.

4. The amount of capital stock paid up.

5. The property or assets held by the company, viz.: The real estate owned by such company, its location, description and value as near as may be, and if said company be one organized under the laws of this state, shall accompany such statement with an abstract of the title to the same; the amount of cash on hand and deposited in banks to the credit of the company, and in what bank or banks the same is deposited; the amount of cash in the hands of agents, naming such agents; the amount of cash in course of transmission; the amount of loans secured by first mortgages on real estate, with the rate of interest thereon, specifying the location of such real estate, its value and the name of the mortgagor; the amount of all bonds and other loans, with the rate of interest thereon and how secured; the amount due the company in which judgments have been obtained, describing such judgments; the amount of stock of this state, of the United States, of any incorporated city of this state, and of any other stock owned by the company, describing the same and specifying the amount and number of shares, and the par and market value of each kind of stock; The amount of stock held by such company as collateral security for loans, with amount loaned on each kind of stock, its par and market value; the amount of interest actually due to the company and unpaid; all other securities, their description and value.

6. The liabilities of such company, specifying the losses adjusted and due; losses adjusted and not due; losses unadjusted; losses in suspense and the causes thereof; losses resisted and in litigation; dividends, either in scrip or cash, specifying the amount of each declared but not due; dividends declared and due; the amount required to reinsure all outstanding risks on the basis of forty per cent of the premium on all unexpired fire risks and one hundred per cent of the premium on all unexpired marine and inland transportation risks; the amount due banks or other creditors, naming such banks or other creditors and the amount due to each; the amount of money borrowed by the company, of whom borrowed, the rate of interest thereon and how secured; all other claims against the company, describing the same.

7. The income of the company during the preceding year, stating the amount received for premiums, specifying separately fire, marine and inland transportation premiums, deducting reinsurance; the amount received for interest, and from all other sources.

8. The expenditures during the preceding year, specifying the amount of losses paid during said term, stating how much of the same accrued prior, and how much subsequent, to the date of the preceding statement, and the amount at which losses were estimated in such preceding statement; the amount paid for dividends; the amount paid for return premiums, commissions, salaries, expenses and other charges of officers, agents, clerks and other employés; the amount paid for local, state, national, internal revenue and other taxes and duties; the amount paid for all other expenses such as fees, printing, stationery, rents, furniture, etc.

9. The largest amount insured in any one risk, naming the risk.

10. The amount of risks written during the year then ending.

11. The amount of risks in force having less than one year to run.

12. The amount of risks in force having more than one and not over three years to run.

13. The amount of risks having more than three years to run.

14. It shall be stated whether or not dividends are declared on premiums received for risks not terminated. (Id.)

Fire Ass'n of Philadelphia v. Love, 108 S. W. 810.

Art. 4874. (3089) Policy shall be considered a liquidated demand.—A fire insurance policy, in case of a total loss by fire of property insured, shall be held and considered to be a liquidated demand against the company for the full amount of such policy; provided, that the provisions of this article shall not apply to personal property. (Acts 1879, p. 83.)

See Sullivan v. Hartford F. Ins. Co., 36 S. W. 73; Royal Ins. Co. v. McIntyre, 37 S. W. 1068; German Ins. Co. v. Jansen, 45 S. W. 220; Murphy v. Am. Central Ins. Co., 54 S. W. 407; Ætna Ins. Co. v. Shacklett, 57 S. W. 583; American Cent. Ins. Co. v. Murphy, 61 S. W. 956; Co-Operative Ins. Ass'n v. Hubbs, 115 S. W. 670; Wise v. Ferguson, 138 S. W. 816; Co-operative Ins. Ass'n of San Angelo v. Ray, 138 S. W. 1122; Ginners' Mut. Underwriters of San Angelo, Tex., v. Wiley & House, 147 S. W. 629; Northern Assur. Co., Limited, of London, v. Morrison, 162 S. W. 411; Drummond v. White-Swearingen Realty Co., 165 S. W. 20; Camden Fire Ins. Ass'n v. Bomar, 176 S. W. 156; Fidelity-Phœnix Fire Ins. Co. v. O'Bannon, 178 S. W. 731; Fire Ass'n of Philadelphia v. Richards, 179 S. W. 926; Merchants' & Bankers' Fire Underwriters v. Williams, 181 S. W. 859; St. Paul Fire & Marine Ins. Co. v. Laster, 187 S. W. 969; Providence Washington Ins. Co. v. Levy & Rosen, 189 S. W. 1035; National Fire Ins. Co. v. House, 197 S. W. 476.

Art. 4874a. Breach or violation by insured of policy, etc., on personal property, not a defense, when.—No breach or violation by the insured of any of the warranties, conditions or provisions of any fire insurance policy, contract of insurance, or application therefor, upon personal property, shall render void the policy or contract, or constitute a defense to a suit for loss thereon, unless such breach or violation contributed to bring about the destruction of the property. (Acts 1913, p. 194, sec. 1.)

Art. 4874b. Provisions not affected.—The provisions hereof shall in no way affect or repeal the provisions of article 4874 of the Revised Civil Statutes of 1911 in so far as the same relates to fire insurance policies upon real or mixed property. (Id. sec. 2.)

Art. 4875. (3075) Reinsurance.—No fire, fire and marine, marine or inland insurance company doing business in this state shall expose itself to any one risk, except when insuring cotton in bales and grain, to an amount exceeding ten per cent of its paid up capital stock, unless the excess shall be insured by such company in some other solvent insurance company legally authorized to do business in this state.

2. Every fire, fire and marine, marine or inland insurance company doing business in this state may reinsure the whole or any part of any policy obligation in any other insurance company legally authorized to do business in this state. The commissioner of insurance and banking shall require every year from every insurance company doing business in this state a certificate sworn to before an officer legally qualified to administer oaths in the state of Texas, to the effect that no part of the business written by such company in this state has been reinsured in whole or in part by any company, corporation, association or society not authorized to do business in this state. Every insurance company doing business shall also furnish the commissioner of insurance and banking with a list of all reinsurances during the year in authorized companies, showing the name, amount and premium effected in each company.

3. Any insurance company authorized to transact the business of fire, fire and marine, marine and inland insurance in this state, failing to comply with the provisions of this article, shall forfeit its authority to do such business for a period of one year; and it is hereby made the duty of the commissioner of insurance and banking to investigate any complaint as to violation of said article; and, upon satisfactory proof that any company authorized to transact the business of fire, fire and marine, marine or inland insurance in this state has violated the provisions of this article, the said commissioner shall revoke the certificate of authority of the offending company.

4. The commissioner of insurance and banking, upon the payment of license fee of twenty-five dollars, issue to an agent who is regularly commissioned to represent one or more fire, fire and marine insurance companies authorized to do business in this state, a certificate of authority to place excess lines of insurance in companies not authorized to do business in this state; provided, that the party desiring such excess insurance shall first file with the commissioner of insurance and banking an affidavit that he has exhausted all the insurance obtainable from companies duly authorized to do business in the state.

5. Before receiving license provided for in section 4 of this article, party applying for same shall file with the commissioner of insurance and banking a bond in the sum of one thousand dollars payable to the governor of the state, for the faithful observance of the provisions of this article. Said bond to be approved by the commissioner, and to be for the benefit of the state of Texas.

6. Every agent so licensed shall report, under oath, to the commissioner of insurance and banking, within thirty days from the first day of January and July of each year, the amount of gross premiums received by him for such excess insurance, and shall pay the said commissioner a tax of five per cent thereon. The agent procuring a license as provided in this article shall keep a separate record of all transactions herein provided open at all times to the inspection of the commissioner, or his legally appointed representative. In default of the payment of any sums which may be due the state under this article, the said commissioner may sue for the same in any court of record in this state. (Acts 1875, p. 34, sec. 8; Acts 1905, p. 112; Acts 1879, p. 83.)

Glens Falls Ins. Co. v. Hawkins, 126 S. W. 1114.

Art. 4875a. Interest of mortgagee or trustee not invalidated.—The interest of a mortgagee or trustee under any fire insurance contract hereafter issued covering any property situated in this state shall not be invalidated by any act or neglect of the mortgagor or owner of said described property or the happening of any condition beyond his control, and any stipulation in any contract in conflict herewith shall be null and void. (Acts 1919, ch. 15, sec. 1.)

CHAPTER NINE

STATE INSURANCE COMMISSION

Art. 4876. Companies deemed to have accepted provisions of law.—Every fire insurance company, every marine insurance company, every fire and marine insurance company, every fire and tornado insurance company, and each and every insurance company of every kind and name issuing a contract or policy of insurance, or contracts or policies of insurance against loss by fire on property within this state, whether such property be fixed or movable, stationary or in transit, or whether such property is consigned or billed for shipment within or beyond the boundary of this state or to some foreign country, whether such company is organized under the laws of this state or under the laws of any other state, territory or possession of the United States, or foreign country, or by authority of the federal government, now holding a certificate of authority to transact business in this state, shall be deemed to have accepted such certificate and to transact business thereunder, upon condition that it consents to the terms and provisions of this Act and that it agrees to transact business in this state, subject thereto; it being intended that every contract or policy of insurance against the hazard of fire shall be issued in accordance with the terms and provisions of this Act, and the company issuing the same governed thereby, regardless of the kind and character of such property and whether the same is fixed or movable, stationary or in transit, including the shore end of all marine risks insured against loss by fire. (Acts 1913, p. 195, sec. 3.)

Section 1 of Acts 1913, p. 195 repeals Acts 1910, 4th C. S., p. 125. Section 30 of Acts 1910, 4th C. S., p. 125, repealed Acts 1909, 1st C. S., p. 311.

Art. 4876a. Maximum rate of premiums for fire insurance.—After this Act shall take effect, a maximum rate of premiums to be charged or collected by all companies transacting in this state the business of fire insurance, as herein defined, shall be exclusively fixed and determined and promulgated by the state fire insurance commission created by this Act, and no such fire insurance company shall, after this Act takes effect, charge or collect any premium or other compensation for or on account of any policy or contract of fire insurance as herein defined in excess of the maximum rate as herein provided for, but may write insurance at a less rate than the maximum rate as herein provided for; provided, that when insurance is written for less than the maximum rate, such lesser rate shall be applicable to all risks of the same character situated in the same community. (Id. sec. 2.)

Art. 4877. State insurance commission; appointment, etc.—That there may be reasonable and just insurance rates in Texas, there is hereby created a commission to be known as the "State Insurance Commission," which shall be composed of the commissioner of insurance and banking, who shall be chairman thereof, and two commissioners who shall be appointed by the governor by and with the consent of the senate, subject to removal as provided for removal of state officers by article 3528 of the Revised Statutes of Texas [Art. 6027, Rev. St. 1911, and this compilation]; the members of said commission other than the commissioner of insurance and banking shall be appointed as herein provided within ten days after this Act takes effect; one of said members to be so appointed shall be appointed for a term ending February 1, 1914, and biennially thereafter; the other of said members of said commission shall be appointed for a term ending February 1st, 1915, and biennially thereafter, and the governor in making his first appointments to fill these respective offices shall designate which of said officers shall fill the term expiring February 1st, 1914, and which of said officers shall fill the term expiring February 1st, 1915. The commissioner of insurance and banking, for the purpose of this Act, may be referred to as the commissioner of insurance. (Id. sec. 4.)

Art. 4878. Compensation; expenses; payment; maximum expenditure.—The members of the commission other than the Commissioner of Insurance and Banking, shall each receive as compensation for their services the sum of thirty-six hundred dollars ($3,600.00) per annum; and the Commissioner of Insurance and Banking shall receive as compensation or salary for his services under this Act, the sum of five hundred dollars ($500.00) per annum, in addition to his compensation as now fixed by law. Such salary of the two appointed members of said commission and the said five hundred dollars ($500.00) salary of the Commissioner of Insurance and Banking, together with the necessary compensation of experts, clerical force, and other persons employed by said Commission, and all necessary traveling expenses, and such other expenses as may be necessary, incurred in carrying out the provisions of this Act, shall be paid by warrants drawn by the Comptroller upon the State Treasurer upon the order of said Commission; provided, that the total amount of all salaries and said other expenses shall not exceed the sum produced by the assessment of one and one-fourth (1-¼) per cent of the gross premiums of all fire insurance companies doing business in this State as provided in Section 29 [Art. 4903] of said Act. (Acts 1913, p. 195, sec. 5; Acts 1917, ch. 73, sec. 1.)

Art. 4879. Insurance commission to fix rates; expenses; fire statistics.—The State Fire Insurance Commission shall have the sole and exclusive power and authority and it shall be its duty to prescribe, fix, determine and promulgate the rates of premiums to be charged and collected by fire insurance companies transacting business in this State. As soon as practicable after this Act shall take effect, the State Fire Insurance Commission shall begin the work of fixing and determining and promulgating the rates of premiums to be charged and collected by fire insurance companies throughout the State, and the making and adoption of its schedules of such rates, and then until such time as this work shall have been fully completed, said Commission shall have full power and authority to adopt and continue in force the rates of premiums which may be lawfully charged and collected when this Act shall take effect, or any portion thereof, for such time as it may prescribe, or until the work of making such schedules for the entire State shall be completed. Said Commission shall also have authority to alter or amend any

and all such rates of premiums so fixed and determined and adopted by it, and to raise or lower the same, or any part thereof, as herein provided. Said Commission shall have authority to employ clerical help, inspectors, experts and other assistants, and to incur such other expenses as may be necessary in carrying out the provisions of this Act; provided that such expenses, including the salaries of the members of the Commission, shall not exceed in the aggregate, for any fiscal year, the sum of one hundred and thirty thousand dollars ($130,000.00).

It shall be the duty of said Commission to ascertain as soon as practicable, the annual fire loss in this State; to obtain, to make and maintain a record thereof and collect such data and information with respect thereto as will enable said Commission to classify the fire losses of this State, the causes thereof, and the amount of premiums collected therefor for each class of risks and the amount paid thereon, in such manner as will be of assistance in determining equitable insurance rates, methods of reducing such fire losses and reducing the insurance rates of the State, or sub-divisions of the State. (Acts 1913, p. 195, sec. 6; Acts 1917, ch. 73, sec. 2.)

Art. 4880. Secretary and fire marshal.—For the purpose of facilitating the work of said commission, one of the appointed members thereof shall be selected by the commission as its secretary, who shall perform the duties which shall appertain to that position, and whose official title shall be "Secretary of the State Insurance Commission"; the other of said appointed members thereof shall be selected by said commission as fire marshal of the state insurance commission, and his official title shall be "Fire Marshal of the State Insurance Commission;" but the said members so selected as secretary and fire marshal as aforesaid, shall receive no compensation for filling their respective positions, other than their salaries as members of the state insurance commission, and shall perform the duties of those respective positions at the will of the commission, but their expenses incurred in performing the duties of these positions shall be paid as provided in this Act. (Acts 1913, p. 195, sec. 7.)

Art. 4881. Duties of fire marshal.—It shall be the duty of the Fire Marshal of the State Fire Insurance Commission, who, for for the purpose of this Act, shall be referred to as the State Fire Marshal, at the discretion of the board, and upon the request of the mayor of any city or village, or the chief of a fire department of any city or village, or any fire marshal where a fire occurs within such city or village, or of a county or a district judge, or of a sheriff or county attorney of any county where a fire occurs within the district or county of the officers making such request, or of any fire insurance company, or its general, state or special agent, interested in a loss, or of a policy holder sustaining a loss, or upon the direction of the State Fire Insurance Commission to forthwith investigate at the place of such fire before loss can be paid, the origin, cause and circumstances of any fire occurring within this State, whereby property has been destroyed or damaged, and shall ascertain if possible whether the same was the result of any accident, carelessness or design, and shall make a written report thereof to the State Insurance Commission. The State Fire Marshal shall have the power to administer oaths, take testimony, compel the attendance of witnesses and the production of documents. When, in his opinion, further investigation is necessary, he shall take or cause to be taken the testimony on oath of all persons supposed to be cognizant of any facts, or to have knowledge in relation to the matter under investigation, and shall cause the same to be reduced to writing, and if he shall be of the opinion that there is evidence sufficient to charge any person with the crime of arson, or with the attempt to commit arson, or of conspiracy to defraud or criminal conduct in connection with such, he shall arrest or cause to be arrested such person, and shall furnish to the proper prosecuting attorney all evidence secured, together with the names of witnesses and all information obtained by him, including a copy of all pertinent and material testimony taken in the case, and it shall be the duty of the State Fire Marshal to assist in the prosecution of all such complaints filed by him. Provided, that all investigations held by or under the direction of the State Fire Marshal may, in his discretion, be private and persons other than required to be present may be excluded from the place where such investigation is held, and the witnesses may be kept separate and apart from each other and not allowed to communicate with such others until they have been examined; and all testimony taken in an investigation under the provisions of this Act may, at the election of the State Fire Marshal, be withheld from the public. (Acts 1913, p. 195, sec. 8; Acts 1917, ch. 73, sec. 3.)

Art. 4882. Powers of fire marshal.—The State Fire Marshal is hereby authorized to enter at any time any buildings or premises where fire occurred or is in progress, or any place contiguous thereto, for the purpose of investigating the cause, origin and circumstances of such fire. The State Fire Marshal, upon complaint of any person, shall, at all reasonable hours, for the purpose of examination, enter into and upon all buildings and premises within this State, and it shall be his duty to enter upon and make or cause to be entered upon or made, at any time, a thorough examination of mercantile, manufacturing and public buildings, and all places of public amusement, or where public gatherings are held, together with the premises belonging thereto. Whenever he shall find any building or other structure which, for want of repair or by reason of age or dilapidated condition, or which for any cause is liable to fire, and which is so situated as to endanger other buildings or property, or is so occupied that fire would endanger persons or property therein, and whenever he shall find an improper or dangerous arrangement of stoves, ranges, furnaces or other heating appliances of any kind whatsoever, including chimneys, flues and pipes with which the same may be connected, or dangerous arrangement of lighting systems or devices, or a dangerous storage of explosives, compounds, petroleum, gasoline, kerosene, dangerous chemicals, vegetable products, ashes, combustible, inflammable and refuse materials, or other conditions which may be dan-

gerous in character, or liable to cause or promote fire, or create conditions dangerous to firemen or occupants, he shall order the same to be removed or remedied, and such order shall be forthwith complied with by the occupant or owner of such building or premises, and the State Fire Marshal is hereby authorized, when necessary, to apply to a court of competent jurisdiction for the necessary writs or orders to enforce the provisions of this Section and in such case he shall not be required to give bond. (Acts 1913, p. 195, sec. 9; Acts 1917, ch. 73, sec. 4.)

Art. 4883. When state fire marshal is unable to act.—If for any reason the state fire marshal is unable to make any required investigation in person, he may designate the fire marshal of such city or town or some other suitable person to act for him; and such person so designated shall have the same authority as is herein given the state fire marshal with reference to the particular matter to be investigated by him, and shall receive such compensation for his services as may be allowed by the state insurance commission. If the investigation of a fire is made at the request of an insurance company, or at the request of a policyholder sustaining loss, or at the request of the mayor, town clerk or chief of the fire department of any city, village or town in which the fire occurred, then the expenses of the fire marshal, clerical expenses, witnesses and officers fees incident and necessary to such investigation shall be paid by such insurance company, or such policyholder of such city or town as the case may be, otherwise the expenses of such investigation are to be paid as part of the expenses of the state insurance commission. Provided, the party or parties, company or companies, requesting such investigation, shall before such investigation is commenced deposit with the state insurance commission, an amount of money in the judgment of said commission sufficient to defray the expenses of said fire marshal in conducting such investigation. (Acts 1913, p. 195, sec. 10.)

Art. 4884. Action of fire marshal not to affect policies, etc.—No action taken by the state fire marshal shall effect the rights of any policyholder or any company in respect to a loss by reason of any fire so investigated; nor shall the result of any such investigation be given in evidence upon the trial of any civil action upon such policy, nor shall any statement made by any insurance company, its officers, agents or adjusters, nor by any policyholder, or any one representing him, made with reference to the origin, cause or supposed origin or cause of a fire to the fire marshal or to any one acting for him, or under his direction, be admitted in evidence or made the basis for any civil action for damages. (Id. sec. 11.)

Art. 4885. Statements to be made to insurance commission; powers of commission.—That said commission is authorized and empowered to require sworn statements from any insurance company affected by this Act, and from any of its directors, officers, representatives, general agents, state agents, special agents and local agents of the rates and premiums collected for fire insurance on each class of risks, on all property in this state during any or all years for the five years next preceding the first day of January, 1913, and of the causes of fire, if such be known, if they are in possession of such data, and information, or can obtain it at a reasonable expense; and said commission is empowered to require such statements for any period of time after the first day of January, 1913, and said commission is empowered to require such statements showing all necessary facts and information to enable said commission to make, amend and maintain the general basis schedules provided for in this Act, and the rules and regulations for applying same and to determine reasonable and proper maximum specific rates and to determine and assist in the enforcement of the provisions of this Act. The said commission shall also have the right, at its discretion, either personally, or by some one duly authorized by it to visit the office whether general, local or otherwise, of any insurance company doing business in this state, and the home office of said company outside of this state, if there be such, and the office of any officers, directors, general agents, state agents, local agents or representatives of such company, and there require such company, its officers, agents or representatives to produce for inspection by said commission or any of its duly authorized representatives all books records and papers of such company or such agents and representatives; and the said commission or its duly authorized agents or representatives shall have the right to examine such books and papers and make or cause to be made copies thereof; and shall have the right to take testimony under oath with reference thereto, and to compel the attendance of witnesses for such purpose; and any company, its officers, agents or representatives failing to make such statements and reports herein referred to and failing or refusing to permit the examination of books, papers and records as herein required, when so called upon or declining or failing to comply with any provisions of this section shall be subject to the penalties provided for in section 26 of this Act [Art. 4900]. Said commission shall be further authorized and empowered to require the fire insurance companies transacting business in this state or any of them, to furnish said commission with any and all data which may be in their possession, either jointly or severally, including maps, tariffs, inspection reports and any and all data affecting fire insurance risks in this state, or in any portion thereof and said commission shall be authorized and empowered to require any two or more of said companies, or any joint agent or representative of them, to turn over any and all such data in their possession, or any part thereof, to said commission for its use in carrying out the provisions of this Act. (Id. sec. 12.)

Art. 4886. Rates to be reasonable; schedules of rates; powers and duties of commission; when rates take effect, etc.—The rates of premium fixed by said commission under and in pursuance of the provision of this Act shall be at all times reasonable and the schedules thereof made and promulgated by said commission as herein provided, shall be in such form as will in the judgment of the commission, most clearly and definitely and in detail disclose the rate so fixed and determined by said commission to be charged and collected for policies of

fire insurance. Said commission may employ and use any facts and information now in the possession of the present state insurance board, as well as all facts obtainable from and concerning fire insurance companies transacting business in this state, showing their expense and charges for fire insurance premiums, for any period or periods, said commission may deem advisable, which in their opinion will enable them to devise and fix and determine reasonable rates of premium for fire insurance. The said commission in making and publishing schedules of the rates fixed and determined by it shall show all charges, credits, terms privileges and conditions which in any wise affect such rates, and copies of all such schedules shall be furnished by said commission to any and all companies affected by this Act applying therefor, and the same shall be furnished to any citizens of this state applying therefor, upon the payment of the actual cost thereof. No rate or rates fixed or determined by the commission shall take effect until it shall have entered an order or orders fixing and determining same, and shall give notice thereof to all fire insurance companies affected by this Act, authorized to transact business in the state. It shall be the duty of the state fire insurance commission, and of any inspector or other agent or employé thereof, who shall inspect any risk for the purpose of enabling the commission to fix and determine the reasonable rate to be charged thereon, to furnish to the owner of such risk at the date of such inspection, a copy of the inspection report, showing all defects that may operate as charges to increase the insurance rate.

Said commission shall have full power and authority to alter, amend, modify or change any rate fixed and determined by it on thirty days' notice, or to prescribe that any such rate or rates shall be in effect for a limited time, and said commission shall also have full power and authority to prescribe reasonable rules whereby in cases where no rate of premium shall have been fixed and determined by the commission, for certain risks or classes of risks, policies may be written thereon at rates to be determined by the company, provided, however, that such company or companies shall immediately report to said commission such risk so written, and the rates collected therefor, and such rates shall always be subject to review by the commission. (Id. sec. 13.)

Art. 4887. Companies may petition for change of rates, etc.; credits for reduced hazards, etc.—Any fire insurance company or companies affected by this Act shall have the right at any time to petition the commission for an order changing or modifying any rate or rates fixed and determined by the commission, and the commission shall consider such petition in the manner provided in this Act and enter such order thereon as it may deem just and equitable. The commission shall have full authority and power to give each city, town, village or locality credit for each and every hazard they may reduce or entirely remove, and also for all added fire fighting equipment, increased police protection, or any other equipment or improvement that has a tendency to reduce the fire hazard of any such city, town, village or locality, and also to give credit for a good fire record made by any city, town, village or locality. Said commission shall also have the power and authority to compel any company to give any or all policyholders credit for any and all hazards that said policyholder or holders may reduce or remove. Said credit shall be in proportion to such reduction or removal of such hazard and said company or companies shall return to such policy holder or holders such proportional part of the unearned premium charged for such hazard that may be reduced or removed. (Id. sec. 14.)

Art. 4888. Company to furnish policy holder with analysis of rate; schedules open to public.—When a policy of fire insurance shall be issued by any company transacting the business of fire insurance in this state, such company shall furnish the policyholder with a written or printed analysis of the rate or premium charged for such policy, showing the items of charge and credit which determine the rate, unless such policyholder has theretofore been furnished with such analysis of such rate. All schedules of rates promulgated by said commission shall be open to the public at all times, and every local agent of a fire insurance company transacting business in this state shall have and exhibit to the public copies of such schedules covering all risks upon which he is authorized to write insurance. (Id. sec. 15.)

Art. 4889. [Repealed.]

See note under art. 4876.

Art. 4890. Authority to revise schedules of rates.—The commission shall have full power and authority after having given reasonable notice, not exceeding thirty days, of its intention to do so, to alter, amend or revise any rates of premium fixed and determined by it in any schedules of such rates promulgated by it as herein provided, and to give reasonable notice of such alteration, amendment or revision to the public, or to any company or companies affected thereby. Such altered, amended or revised rates shall be the rates thereafter to be charged and collected by all fire insurance companies affected by this Act; provided, that no policy in force prior to the taking effect of such changes or amendments shall be affected thereby, unless there shall be a change in the hazard of the risk, necessitating a change in the rate applicable to such risk, in which event such policy shall be subject to the new rates. (Id. sec. 16.)

Art. 4891. Commission to establish uniform policies, etc.—It shall be the duty of the state insurance commission to make, promulgate and establish uniform policies of insurance applicable to the various risks of this state, copies of which uniform policies shall be furnished each company doing business in this state, or which may hereafter do business in this state. That after such uniform policies shall have been established and promulgated and furnished the respective compies [companies] doing business in this state, such companies shall, within sixty days after the receipt of such forms of policies, adopt and use said form or forms and no other; also all companies which may commence business in this state after the adoption and promulgation of such forms of policies, shall

adopt and use the same and no other forms of policies.

The said state fire insurance commission shall also prescribe all standard forms, clauses and endorsements used on or in connection with insurance policies. All other forms, clauses and endorsements placed upon insurance policies shall be placed thereon subject to the approval of the commission. The commission shall also have authority in its discretion to change, alter or amend such form or forms of policy or policies, and such clauses and endorsements used in connection therewith, upon giving notice and proceedings in accordance with section 21 [Art. 4895] of this Act. (Id. sec. 17.)

Art. 4892. Certain provisions in policies void.—Any provision in any policy of insurance issued by any company subject to the provisions of this Act to the effect that if said property is encumbered by a lien of any character or shall after the issuance of such policy become encumbered by a lien of any character, that such encumbrance shall render such policy void, shall be of no force and effect, and any such provision within or placed upon any such policy shall be absolutely null and void. (Id. sec. 18.)

Art. 4893. Co-insurance clauses.—No company subject to the provisions of this Act may issue any policy or contract of insurance covering property in this state, which shall contain any clause or provision requiring the assured to take out or maintain a larger amount of insurance than that expressed in such policy, nor in any way providing that the assured shall be liable as co-insurer with the company issuing the policy for any part of the loss or damage which may be caused by fire to the property described in such policy, and any such clause or provision shall be null and void, and of no effect; provided that the co-insurance clauses and provisions may be inserted in policies written upon cotton, grain or other products in process of marketing, shipping, storing or manufacture. (Id. sec. 19.)

Art. 4894. Right of persons to petition insurance commission.—Any citizen or number of citizens of this state or any policyholder or policyholders, or any insurance company affected by this Act, or any board of trade, chamber of commerce, or other civic organization, or the civil authorities of any town, city, or village, shall have the right to file a petition with the state fire insurance commission, setting forth any cause of complaint that they may have as to any order made by this commission, or any rate fixed and determined by the commission, and they shall have the right to offer evidence in support of the allegations of such petition by witnesses, or by depositions, or by affidavits; upon the filing of such petition, the party complained of, if other than the commission shall be notified by the commission of the filing of such petition and a copy thereof furnished the party or parties, company or companies, of whom complaint is made, and the said petition shall be set down for a hearing at a time not exceeding thirty days after the filing of such petition and the commission shall hear and determine said petition; but it shall not be necessary for the petitioners or any one of them to be present to present the cause to the commission, but they shall consider the testimony of all witnesses, whether such witnesses testify in person or by depositions, or by affidavits, and if it be found that the complaint made in such petition is a just one, then the matter complained of shall be corrected or required to be corrected by said commission. (Id. sec. 20.)

Art. 4895. Regulations for hearings by insurance commission; actions to vacate or modify; injunctions or restraining orders; appeals, etc.—The state fire insurance commission shall give the public and all insurance companies to be affected by its orders or decisions, reasonable notice thereof, not exceeding thirty days, and an opportunity to appear and be heard with respect to the same; which notice to the public shall be published in one or more daily papers of the state, and such notice to the insurance company or companies to be affected thereby shall be by letter deposited in the postoffice, addressed to the state or general agent of such company or companies if the address of such state or general agent be known to the commission, or if not known, then such letter shall be addressed to some local agent of such company or companies, or if the address of a local agent be unknown to the commission, then by publication in one or more of the daily papers of the state, and the commission shall hear all protests or complaints from any insurance company or any citizen or any city, or town, or village or any commercial or civic organization as to the inadequacy or unreasonableness of any rates fixed by it or approved by it, or as to the inadequacy or unreasonableness of any general basis schedules promulgated by it or the injustice of any order or decision by it, and if any insurance company, or other person, or commercial or civic organization, or any city, town or village, which shall be interested in any such order or decision, shall be dissatisfied with any regulation, schedule or rate adopted by such commission, such company or person, commercial or civic organization, city, town or village shall have the right, within thirty days after the making of such regulation or order, or rate, or schedule or within thirty days after the hearing above provided for, to bring an action against said commission in the district court of Travis county to have such regulation or order or schedule or rate vacated or modified; and shall set forth in a petition therefor the principal ground or grounds of objection to any or all of such regulations, schedules, rates or orders; in any such suit, the issue shall be formed and the controversy tried and determined as in other civil cases, and the court may set aside and vacate or annul any one or more or any part of any of the regulations, schedules, orders or rates promulgated or adopted by said commission, which shall be found by the court to be unreasonable, unjust, excessive or inadequate, without disturbing others. No injunction, interlocutory order or decree suspending or restraing [restraining] directly or indirectly the enforcement of any schedule, rate, order or regulation of said commission shall be granted; provided, that in such suit, the court, by interlocutory order, may authorize the writing and acceptance of fire insurance policies at any rate which in the judgment of the court is fair and reasonable, during the

pending of such suit, upon condition that the party to such suit in whose favor the said interlocutory order of said court may be, shall execute and file with the commissioner of insurance and banking a good and sufficient bond to be first approved by said court, conditioned that the party giving said bond will abide the final judgment of said court and will pay to the commissioner of insurance and banking whatever difference in the rate of insurance, it may be finally determined to exist between the rates as fixed by said state fire insurance commission complained of in such suit, and the rate finally determined to be fair and reasonable by the court in said suit, and the said commissioner of insurance and banking, when he receives such difference in money, shall transmit the same to the parties entitled thereto.

Whenever any action shall be brought by any company under the provisions of this section within said period of thirty days, no penalties nor forfeitures shall attach or accrue on account of the failure of the plaintiff to comply with the orders, schedules, rates or regulations sought to be vacated in such action until the final determination of the same.

Either party to any such action, if dissatisfied with the judgment or decree of said court, may appeal therefrom as in other civil cases. No action shall be brought in any court of the United States to set aside any orders, rates, schedules or regulations made by said commission under the provisions of this Act until all of the remedies provided herein, shall have been exhausted by the party complaining.

If any insurance company affected by the provisions of this Act shall violate any of the provisions of this Act, the commissioner of insurance shall, by and with the consent of the attorney general, cancel its certificate of authority to transact business in this state. (Id. sec. 21.)

Art. 4896. Insurance companies not to do certain things.—No company shall engage or participate in the insuring or reinsuring of any property in this state against loss or damage by fire except in compliance with the terms and provisions of this Act; nor shall any such company knowingly write insurance at any lesser rate than the rates herein provided for, and it shall be unlawful for any company so to do, unless it shall thereafter file an analysis of same with the commission, and it shall be unlawful for any company, or its officers, directors, general agents, state agents, special agents, local agents, or its representatives, to grant or contract for any special favor or advantages in the dividends or other profits to come thereon, or in commissions in the dividends or other profits to accrue thereon, or in commissions or division of commission, or any position or any valuable consideration or any inducement not specified in the policy contract of insurance; nor shall such company give, sell or purchase, offer to give, sell or purchase, directly or indirectly as an inducement to insure or in connection therewith, any stocks, bonds or other securities of any insurance company or other corporation, partnership or individual, or any dividends or profits accrued or to accrue thereon, or anything of value whatsoever, not specified in the policy; but nothing in this section or in this Act shall be construed to prohibit a company from sharing its profits with its policyholders, provided that such agreement as to profit-sharing shall be placed on or in the face of the policy, and such profit-sharing shall be uniform and shall not discriminate between individuals or between classes; provided, however, that no part of the profit shall be paid until the expiration of the policy. Any company, or any of its officers, directors, general agents, state agents, special agents, local agents or its representatives, doing any of the acts in this section prohibited, shall be deemed guilty of unjust discrimination; provided, however, that if any agent of [or] company shall issue a policy without authority, and any policyholder holding such policy shall sustain a loss or damage thereunder, said company or companies shall be liable to the policyholder thereunder, in the same manner and to the same extent as if said company had been authorized to issue said policies, although the company issued said policy in violation of the provisions of this Act. But this shall not be construed to give any company the right to issue any contract or policy of insurance other than as provided in this Act. (Id. sec. 22.)

Art. 4897. Unlawful to accept rebate.—No person shall knowingly receive or accept from any insurance company or from any of its agents, sub-agents, brokers, solicitors, employés, intermediaries or representatives, or any other person, any rebate of premium payable on the policy, or any special favor or advantage in the dividends or other financial profits accrued or to accrue thereon, or any valuable consideration, position or inducement not specified in the policy of insurance, and any person so doing shall be guilty of a violation of the provisions of this section, and shall be punished by a fine of not exceeding one hundred dollars ($100.00) or by imprisonment in the county jail for not exceeding ninety days, or by both such fine and imprisonment. (Id. sec. 23.)

Art. 4898. Law not applicable to collection of premiums; certain policies to be in force.—The provisions of this law shall not deal with the collection of premiums, but each company shall be permitted to make such rules and regulations as it may deem just between the company, its agents, and its policyholders; and no bona fide extension of credit shall be construed as a discrimination, or in violation of the provisions of this Act.

All policies heretofore issued or which shall hereafter be issued by any insurance company prior to the taking effect of this Act which provide that said policies shall be void for non-payment of premiums at a certain specified time, shall be and the same are in full force and effect, provided, that the company or any of its agents have accepted the premium on said policies after the expiration of the dates named in said provisions fixing the date of payment. (Id. sec. 24.)

Art. 4899. Commissioner of insurance may revoke authority of company, when.—The commissioner of insurance, upon ascertaining that any insurance company or officer, agent or representative thereof, has

violated any of the provisions of this Act, may, at his discretion, and with the consent and approval of the attorney general, revoke the certificate of authority of such company, officer, agent or representative; but such revocation of any certificate shall in no manner affect the liability of such company, officer, agent or representative to the infliction of any other penalty provided by this Act, and provided, that any action, decision or determination of the commissioner of insurance and banking and the attorney general in such cases shall be subject to the review of the courts of this state as herein provided. (Id. sec. 25.)

Art. 4900. Unlawful for company or agents to evade law.—Any insurance company affected by this Act, or any officer or director thereof, or any agent or person acting for or employed by any insurance company, who, alone, or in conjunction with any corporation, company or person, who shall wilfully do or cause to be done, or shall wilfully suffer or permit to be done any act, matter or thing prohibited or declared to be unlawful by this Act, or who shall wilfully omit or fail to do any act, matter or thing required to be done by this Act or shall cause or wilfully suffer or permit any act, matter or thing directed not to be done, or who shall be guilty of any wilful infraction of this Act, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than three hundred dollars ($300.00), nor more than one thousand dollars ($1000) for each offense. (Id. sec. 26.)

Art. 4901. Persons testifying in trials for violation of law not to be prosecuted.—No person shall be excused from giving testimony or producing evidence when legally called upon to do so at the trial of any other person or company charged with violating any of the provisions of this Act on the ground that it may incriminate him under the laws of this state; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence under this Act, except for perjury in so testifying. (Id. sec. 27.)

Art. 4902. Law not to apply to certain companies.—This Act shall not apply to purely mutual or to purely profit-sharing fire insurance companies incorporated or unincorporated under the laws of this state, and carried on by the members thereof solely for the protection of their property and not for profit; nor to purely co-operative inter-insurance and reciprocal exchange carried on by the members thereof solely for the protection of their property and not for profit. (Id. sec. 28.)

Art. 4903. Gross premiums tax; limitation on amount.—That there shall be assessed and collected by the State of Texas an additional one and one-fourth (1¼) per cent of the gross fire insurance premiums of all fire insurance companies doing business in this State, according to the reports made to the Commissioner of Insurance and Banking as required by law; and said taxes when collected shall be placed in a separate fund with the State Treasurer to be expended during the current year in carrying out the provisions of this Act; provided that such expenditures, including the salaries of the members of the Commission, shall not exceed in the aggregate the sum of one hundred and thirty thousand ($130,000.00) dollars per annum; and should there be an unexpended balance at the end of any year, the State Fire Insurance Commission shall reduce the assessment for the succeeding year so that the amount produced and paid into the State Treasury, together with said unexpended balance in the Treasury, will not exceed the amount appropriated for the current year, to pay all necessary expenses of maintaining the Commission, which funds shall be paid out upon requisition made out and filed by a majority of the Commission, when the Comptroller shall issue warrants therefor. (Acts 1913, p. 195, sec. 29; Acts 1917, ch. 73, sec. 5.)

Art. 4904. Unconstitutionality of part not to affect whole law.—If any part of this Act be for any reason held unconstitutional, it shall not affect any other portion or part of this Act. (Acts 1913, p. 195, sec. 30.)

CHAPTER TEN

MUTUAL FIRE, STORM AND LIGHTNING INSURANCE COMPANIES

Art. 4905. Incorporation; for what purposes.—Any number of persons, not less than seven, who shall be resident citizens of the state of Texas, may form and incorporate a company for the purpose of mutual insurance against loss or damage by fire, lightning, hail and storms, and for all or either of such purposes; provided, that every company incorporated, under the provisions of this Act shall embody the word "mutual" in its title, which shall appear upon the first page of every policy, and renewal receipt. (Acts 1913, p. 54, sec. 1.)

Art. 4906. Application for permit; contents of application; fee; duty of commissioner of insurance and banking.—When any number of persons, not less than seven, desire to organize a mutual insurance company, as herein provided, they shall make application to the commissioner of insurance and banking of the state of Texas for permission to solicit insurance on the mutual plan.

Such application shall contain:

(1) The name of the company, and the name selected shall not be so similar to that of any other insurance company as to be likely to mislead the public.

(2) The locality of the principal business office of such company.

(3) The kind of insurance business the company proposes to engage in.

(4) The names and places of residence of not less than seven persons making such application for such permit.

(5) An affidavit of at least one of said applicants, stating the places of residence and names of such applicants correctly.

Upon receipt of such application, together with a fee of one dollar, in payment for filing such application, the commissioner of insurance and banking shall at once file said application, and issue to said applicant a permit authorizing said applicant to solicit insurance on the mutual plan, in accordance with the terms of the application, but not to issue policies of insurance. (Id. sec. 2.)

Art. 4907. Conditions, etc., for obtaining charter; charter or articles of asso-

ciation, how executed; shall contain what; duty of commissioner.—No such company shall be granted a charter, or be authorized to issue policies of insurance, until insurance, upon not less than one hundred separate risks, the total amount of which insurance shall not be less than one hundred thousand dollars has been applied for and entered on the books of said company, and until an amount equal to not less than fifty per cent of the first premiums for such insurance has been paid in cash to such company, a premium note being taken for the balance, if any, and such mutual [annual] premiums must aggregate not less than twice the maximum liability to be incurred on any one risk, and no policy of insurance shall be written, or liability, as an insurer, be incurred by said company, until a statement subscribed and sworn to by the president and secretary of said company, stating that the above provisions have been complied with, has been filed with the commissioner of insurance and banking of the state of Texas, together with certified copies of the company's proposed charter, and by-laws.

The charter or articles of association of said company shall be signed and acknowledged by at least four of the original applicants for said permit, and shall contain:

(1) The name of the company.

(2) The purpose for which it is formed.

(3) The place or places where its business is to be transacted, and the location of its principal business office.

(4) The term for which it is to exist.

(5) The number of its directors, or trustees, and the names and residences of those who are elected for the first year.

When said applicants have complied with all of the above requirements, and have filed the necessary copies of their charter and by-laws with the commissioner of insurance and banking of the state of Texas, and have paid the fees and taxes required by the laws of the state of Texas to be paid, the commissioner of insurance and banking shall record said charter, and furnish said company with a certified copy thereof, and shall issue to said company a certificate of authority showing it has complied with the laws of the state of Texas, and authorizing it to do business until the last day of the following February. (Id. sec. 3.)

Art. 4907a. Supervision of commissioner of insurance and banking; duties of commissioner, examination and certificate; suspension of permit; forfeiture.—Every mutual fire, lightning, and storm insurance company incorporated in this state shall be under the supervision of the commissioner of insurance and banking, who shall make or cause to be made, an examination of the affairs of each mutual insurance company, at the company's expense, at least once in every two years and at such other times as he deems proper, and he shall thoroughly and carefully inspect books, accounts and records of the company, and if upon such inspection the affairs of such company are found to be in a sound condition and the company thus solvent and able to fulfill its obligations, he shall issue to the company a certificate showing the result of such examination. If upon examination he is of opinion that the mutual insurance company is insolvent or has exceeded its powers, or has failed to comply with any provisions of law governing it, he may suspend the company's permit and shall give such company written notice of that objected to, and failing such being remied [remedied] within thirty days, he shall report the same to the attorney general, who shall at once bring suit to forfeit the charter of such company. (Id. sec. 4.)

Art. 4907b. Annual statement of company.—Every mutual insurance company transacting business in the state shall, before the month of March in each year, file in the office of the commissioner of insurance a statement showing the exact condition of affairs of the company upon the 31st day of December preceding, such statement being in conformity with such forms as the insurance commissioner may furnish. (Id. sec. 5.)

Art. 4907c. Who are members; right to vote and share in benefits.—Every person to whom a policy of insurance has been issued by a mutual company incorporated in this state shall be a member of such company so long as his policy remains in force and shall be entitled to one vote at the meetings of the members of such companies, and shall further be entitled to his equitable share of all benefits derived from being a member of such company. (Id. sec. 6.)

Art. 4907d. Liability of members.—The by-laws of every company organized under this Act shall provide that every member, in addition to his annual premium paid in cash, or in cash and premium notes, shall be liable for a sum equal to another annual premium, or it may provide, a sum equal to three or five annual premiums, such additional liability being assessable at the discretion of the insurance commissioner or the company's board of directors, for the members proportionate share of losses and expenses should the company's funds become impaired. (Id. sec. 7.)

Art. 4907e. By-laws; premiums or assessments; surplus fund, etc.—The by-laws of such companies shall specifically provide for the rules and regulations of the government, providing for the collection of adequate premiums or assessments, either all in cash or part cash and part by note, such premiums being based upon the greater or less risk attached to the property insured, and they shall state clearly and plainly the extent of each member's liability to other members, shall provide for the accumulation of a surplus fund to which shall be added not less than 10 per cent of the annual saving, being made by the company, shall require [provide] for the bonding of the company's officers and shall name such other provisions and safeguards as may be deemed proper and not contrary to the laws of the state, and a notice in heavy type shall be printed on all policies calling to the attention of the insured that the by-laws are a part of his contract with the company. (Id. sec. 8.)

Art. 4907f. Funds, how invested — Funds of mutual companies may be invested in United States bonds, Texas state bonds, county or city bonds of the state of Texas, provided that such bonds are issued by authority of law and that interest upon them has never been defaulted, or in first mort-

gages on improved real estate within the state where the first mortgage does not exceed 50 per cent of the value of the land and improvements thereon. (Id. sec. 9.)

Art. 4907g. Limitation of expenses.—The expenses of all companies incorporated under this Act must not exceed an amount equal to 35 per cent of the annual premiums, and a statement must be made annually to the commissioner of insurance and banking by the president or secretary of the company that they are being so limited. (Id. sec. 10.)

Art. 4907h. Solvency and profit, how determined; reserve.—In determining the solvency of any mutual company organized for any purpose mentioned in this Act, and in determining the profit or saving to be distributed among members, 40 per cent of the actual cash premiums paid on policies in force for one year and a pro rata of all premiums received on risks that have more than one year to run shall be deemed to be a sufficient reserve under the said policies and no dividends to members shall be paid out of this reserve. (Id. sec. 11.)

Art. 4907i. When assets insufficient; notice to commissioner and examination.—If any time the admitted assets of any mutual company, operating under this Act shall come to be less than the largest single risk for which the company is liable, then the president and the secretary of the company shall at once notify the commissioner of insurance and banking, and he may make an examination into the company's affairs if he deems it best. (Id. sec. 12.)

Art. 4907j. Suspension or revocation of license for insufficient assets; forfeiture.—If, upon the examination of the company's affairs, as required in section 12 [Art. 4907i], it appear that the largest single risk for which the company is liable exceeds the admitted assets of the company, the commissioner of insurance and banking shall immediately suspend or revoke the license of the company until the assets of the company are increased by assessment or otherwise, sufficiently to meet the requirement.

The company shall have thirty days within which to meet this requirement, and if within that time it fails to do so the commissioner of insurance and banking shall refer the matter to the attorney general of the state of Texas, with instructions to institute proper legal proceeding to forfeit the charter of said company. (Id. sec. 13.)

Art. 4907k. Laws applicable.—Every mutual company organized for any purpose mentioned in this Act, shall be amenable to, and subject to, the provisions of all laws of this state governing stock fire insurance companies, in so far as they are applicable to mutual companies, and not in conflict with the provisions of this Act. (Id. sec. 15.)

Art. 4907*l*. Penalties, etc.—Any mutual company that shall wilfully violate, or fail to comply with the provisions of this Act shall be subject to, and liable to pay, a penalty of not less than five dollars, nor more than one hundred dollars for each violation thereof, and such penalty may be collected and recovered in an action brought in the name of the state of Texas, in any court having jurisdiction thereof; and for any violation or failure to comply with any of the provisions of this Act, the commissioner of insurance and banking may suspend a company's permit, or license, and while suspended, such company shall be prohibited from writing or renewing any insurance policies. (Id. sec. 16.)

Art. 4907m. Foreign companies may be admitted, when.—Mutual companies incorporated under the laws of any other state, or foreign government, for any, or all of the purposes, specified in the first section of this Act [Art. 4905], and duly licensed to transact business in such other states or government, and that have not less than one hundred thousand dollars assets in excess of liabilities, shall, when they have complied with the requirements and restrictions of this Act, as far as applicable to them, be admitted to do business in this state, and the commissioner of insurance and banking shall issue to any such company, so complying, a permit authorizing such company to do business in this state until the last day of the following February. (Id. sec. 17.)

Art. 4907n. Fees; taxes.—Every mutual company operating under this Act shall pay to the commissioner of insurance and banking of the state of Texas, for obtaining a charter, a fee of twenty dollars, and for each license granted, or renewal thereof, a fee of one dollar, and for filing each annual statement a fee of ten dollars annually on the 31st day of each December, and when the insurance commissioner has certified to the treasurer of the state of Texas, the correct amount to be paid, every mutual company operating under this Act shall pay to the treasurer of the state of Texas one-half of one per cent of all of the net premiums, or assessments, received by it during the year, and no other tax shall be required of such mutual company, or companies, their officers and agents, except such fees as shall be paid to the commissioner of insurance as required by law. (Id. sec. 18.)

Art. 4907*o*. Withdrawal of securities deposited under former law.—Any mutual fire, lightning, and storm insurance company which has deposited securities with the state treasurer of the state of Texas, in accordance with chapter 10, title 71, of the Revised Statutes of Texas of 1911, repealed in section 20 of this Act [Art. 4907p], may withdraw from such depository any securities so deposited, upon filing with the commissioner of insurance and banking of the state of Texas, a declaration of its intentions to comply with the provisions of this Act, and upon the execution and delivery to the state treasurer of the state of Texas of a proper receipt for such securities, which receipt shall release the state treasurer from all further liabilities on account of such deposit, or the withdrawal thereof. (Id. sec. 19.)

Art. 4907p. Laws repealed.—Chapter 10, title 71, of the Revised Statutes of the state of Texas of 1911, and all other Acts, or laws, or parts of laws, in conflict with this Act, or in conflict with any portion of this Act are hereby repealed, but nothing in this Act shall be deemed to apply in any way to the present law governing county mutual insurance, or farmer's mutuals, now operating under lodge systems, or printers' mutuals and such companies and associations shall not be subject to the provisions of this Act, except that they will make annual reports

to the commissioner of insurance and banking of the state of Texas. (Id. sec. 20.)

Arts. 4908-4918. [Repealed.]

See art. 4907p.

CHAPTER TEN A

FARMERS' MUTUAL HAIL INSURANCE COMPANIES

Art. 4918a. Who may incorporate.—Private corporations may be created without a capital stock within this state by the voluntary association of seven or more persons, resident citizens of this state who collectively own not less than 1,000 acres of growing crops of all kinds for the purpose of mutual insurance against loss or damage by hail; provided, that every company incorporated under the provisions of this Act shall embody the word "mutual" in its title. (Acts 1913, p. 40, sec. 1.)

Art. 4918b. Application for permit; contents; duty of commissioner of insurance and banking; applicants to execute promissory notes, etc.—When any number of persons not less than seven desire to organize a mutual hail insurance company as herein provided, they shall make application to the commissioner of insurance and banking for permission to solicit business under the mutual plan, stating the principal place of business and name of the company; that said company is to be organized for the insurance of growing crops against loss or damage by hail. Upon receipt of said application the commissioner of insurance and banking shall issue said applicants a permit to solicit insurance against loss or damage by hail on the mutual plan in accordance with the terms of the application, but not to issue policies of insurance. Said mutual company shall take from each applicant an obligation specifying the property to be insured and the amount to be paid as the first assessment evidenced by a promissory note for such sum and payable on or before the 31st day of the succeeding December, and upon the state of Texas granting to said mutual insurance company a charter authorizing it to do business in this state. (Id. sec. 2.)

Art. 4918c. Commissioner of insurance and banking, on approval of applications and notes, etc., to certify to secretary of state; permit; charter; license and fees; notes of applicants.—When applications have been secured for insurance with such company from at least two hundred applicants residing in not less than twenty-five different counties of this state, the first assessment or premium on which applications shall amount to at least ten thousand dollars, for which notes of solvent parties founded on actual bona fide applications for insurance payable upon the granting the charter by the state to said mutual hail insurance company, which premium notes shall be a lien on the crop insured, or otherwise secured, and which notes and applications shall be submitted to the commissioner of insurance and banking, and when he finds the applications and notes to be genuine and secured by liens on growing crops or otherwise secured, he shall upon the payment of a fee of twenty-five dollars, certify the fact that he has examined and approved said applications and notes to the secretary of state, who shall upon an application of said persons to which application shall be attached the said certificate of the commissioner of insurance and banking, permit said company to incorporate and issue to it a charter. A certified copy of the charter shall thereupon be filed with the commissioner of insurance and banking, who, upon the payment of the fees required by law, shall issue to said mutual hail insurance company a license to solicit and transact business and issue policies against loss or damage by hail. Every person making application for insurance in such company prior to the granting of a charter to such company and signing a nonnegotiable promissory note shall be liable upon the note upon the granting of a charter by the state, and if payment is refused, suit may be brought on same in any court in this state having jurisdiction of the amount at the principal office of said insurance company. (Id. sec. 3.)

Art. 4918d. Application shall state what.—The application for charter shall state the name of the corporation, the purpose for which it is formed, the place of its principal office, the term for which it is to exist, the number, name, and residence of its directors for the first year and shall be subscribed and acknowledged by seven or more of the applicants. (Id. sec. 4.)

Art. 4918e. Board of directors; officers; bond of treasurer.—Upon the issuance of a charter by the secretary of state to such mutual hail insurance company the persons making application for such charter shall constitute a board of directors for the first year, which board of directors shall, consist of not less than seven persons all of whom shall be residents of this state.

The officers of such company shall be such as may be provided by the by-laws, and the treasurer or the secretary and treasurer, if such offices should be combined in one, shall execute a bond in the sum of ten thousand dollars payable to the commissioner of insurance and banking and his successors in office conditioned for the faithful performance of his duties and that he will account for all moneys, notes or other assets that may come into his hands said bond shall be signed by two or more good and solvent sureties, or be executed by a guaranty company authorized to do business in this state, and shall be approved by the commissioner of insurance and banking. (Id. sec. 5.)

Art. 4918f. Policies on growing crops; applications and contracts; insufficient premiums, etc.—Mutual hail insurance companies organized under the provisions of this Act may issue policies on growing crops of all kinds against loss or damage by hail only. Any person desiring insurance in such company shall make application on blanks furnished by the company and shall pay the full amount of the premium in cash or secured notes. Provided, that no contract shall be made providing for payment of any obligation by the insured or for suit on any such obligation of the insured, except those given by the charter members referred to in section 3 of this Act [Art. 4918c], in any county other than the county in which the insured has his domicile. In case the whole amount of the premium collected by such company for any one year shall be insufficient to pay all

losses occurring during said year, after paying the necessary expenses for said year, the persons insured by such company shall receive their proportionate share of the sums realized from said premiums after deducting the expenses therefrom in full satisfaction of their losses, and no member shall be liable to the company or to any other person for more than the premium, which shall be paid by him or secured to be paid by him in making his application for insurance. (Id. sec. 6.)

Art. 4918g. Premiums, how used; funds, how invested; reserve fund.—All companies incorporated under this Act shall set aside 60 per cent of all premiums collected as a policy holder's fund for the payment of losses which fund shall be used for no other purpose, and the remainder of the gross premiums collected shall be used, if needed, for paying the expenses of said company, and if not needed for such purpose such remainder not so used shall be added to the policy holders' fund at the end of the current year, and if, at the end of such current year the total of said policy holders' fund has not been appropriated or necessary in the payment of losses to policy holders, then such amount of said fund so remaining may be invested in first mortgage notes on lands in this state, said investment not exceeding 50 per cent of the value of said lands, or in bonds of this state, or in county, city, town or school district bonds of this state, provided said bonds have been approved by the attorney general, which funds or securities shall be deposited in trust for said policy holders with any bank approved by the commissioner of insurance and banking as a reserve fund, which fund may be used for the payment of policy holders, if necessary, in case of excessive and unprecedented losses, and such company may collect and receive the interest and dividends thereon to be used in defraying the expenses and paying the losses of said company. (Id. sec. 7.)

Art. 4918h. Rates, how fixed.—The board of directors of such company shall have the authority to fix the rates to be charged for such insurance, and may fix at their discretion different rates for different sections of the states based upon the frequency of hail storms in such sections. (Id. sec. 8.)

Art. 4918i. Annual report of corporation.—Every such corporation shall on or before January 1st, or within thirty days thereafter, each year make and file with the commissioner of insurance and banking, a report upon blank forms to be furnished by such commissioner which report shall be verified by the oath of the secretary of such corporation and shall show the number of policies issued for the preceding year, the number and amount of losses paid, the gross amount received from premiums, the amount of expenses paid, and the amount set aside or invested during the year as a reserve fund, if any, and the books, records, and documents of such corporation shall be subject to the inspection and examination of the attorney general or the commissioner of insurance and banking. (Id. sec. 9.)

Art. 4918j. Fees.—The following fees shall be paid by companies organized under this law:

In addition to the application fee, charter fee, to the secretary of state when charter is issued, $25.00 annual franchise tax of $50.00; and to the commissioner of insurance and banking for filing annual statement, $5.00, certificate of authority to corporation $1.00 and no other fees shall be paid by said companies. (Id. sec. 10.)

CHAPTER ELEVEN

PRINTERS' MUTUAL FIRE AND STORM INSURANCE COMPANIES

Art. 4919. How incorporated.—Private corporations may be created within this state by the voluntary association of three or more persons for the organization of printers' mutual fire and storm insurance associations without an authorized or subscribed capital stock, and for the purpose of insuring against loss by fire or storm only such property as may be owned and operated for the purpose of publishing daily, weekly or other periodical newspapers, or such as may be incident thereto or conducting job printing offices. (Acts 1905, p. 225, sec. 1.)

Art. 4920. Certificate to do business, how obtained.—Before beginning operations, the company provided for in this chapter must obtain from the commissioner of insurance and banking a certificate of authority such as is issued to mutual fire and tornado insurance companies doing business in this state, first making a showing to said commissioner that the company has fully complied with all the requirements of law applicable to such mutual fire and tornado insurance companies; provided, that no officers of printers' mutual fire and storm insurance associations shall be required to give a bond, except the treasurers thereof, who shall annually file a bond with good securities and in amount to be approved by said commissioner. (Id. sec. 2; Acts 1909, p. 219, sec. 2.)

Art. 4921. Shall report annually and pay fee.—All printers' mutual fire and storm insurance associations, which transact business in only one county, shall report annually, on or before the last day of February, to said commissioner on blanks prepared by him, and pay to said commissioner as a fee for filing the same the sum of five dollars; and such associations shall not be required to pay the annual franchise tax collected of other corporations under the laws of this state. (Id. sec. 1a.)

CHAPTER TWELVE

MUTUAL COMPANIES INSURING AGAINST LOSS BY BURGLARY, ETC.

Art. 4922. What companies entitled to license.—Any insurance company organized and incorporated on the mutual plan, under the laws of this state or any other state, for the purpose of insuring against loss or damage resulting from burglary and robbery, or any attempt thereat, and securing against the loss of money and securities in course of transportation, when shipped by registered mail, shall be authorized, admitted and licensed to do business in this state, as provided in this chapter. (Acts 1899, p. 107, sec. 1.)

Art. 4923. Certain conditions; premium contracts to constitute part of assets.—Before any such company shall be authoriz-

ed to transact business in this state, except to solicit and receive applications for insurance and portions of premiums thereon, as provided in this chapter, it shall have in force five hundred or more policies on which the premiums shall have been paid in cash, or shall be evidenced by the written contracts of the policy holders, on which not less than one-fifth of the amount shall have been paid in cash, and the cash and contracts for premiums shall amount in the aggregate to a sum of not less than one hundred thousand dollars. The premium contracts so held shall constitute a part of the assets of the company. (Id. sec. 2.)

Art. 4924. Must file copy of charter and statement; impaired reserve, etc.; line of business; must set aside reserve. —And every such company, association or partnership shall also file a certified copy of its charter, articles of incorporation or deed of settlement, together with a statement under the oath of the president or vice-president and secretary of the company, for which he or they may act, stating the name of the company and place where located, a detailed statement of its assets, showing the number of policy holders, aggregate amount of premium contracts, the amount of cash on hand, in bank or in the hands of agents, the amount of real estate and how the same is encumbered by mortgage, the number of shares of stock of every kind owned by the company, the par and market value of the same, amount loaned on bond and mortgage, the amount loaned on other securities, stating the kind and amount loaned on each, and the estimated value of the whole amount of such securities, and other assets or property of the company, also stating the indebtedness of the company, the amount of losses adjusted and unpaid, the amount incurred and in process of adjustment, the amount resisted by the company as illegal and fraudulent, and all other claims existing against the company; and for a company organized under the laws of any other state, a copy of the last annual report, if any, made under any law of the state by which such company was incorporated; and no agent shall be allowed to transact business for any such company whose reinsurance reserve, as required in this chapter is impaired to the extent of twenty per cent thereof, while such deficiency shall continue. Nor shall it be lawful for any agent or agents to act for any company or companies referred to in this chapter directly or indirectly, in taking risks or transacting the business of burglary and robbery insurance, or the insuring of the safe shipping of money and securities by registered mail in this state, without procuring from the insurance commissioner a certificate of authority stating that such company has complied with all the requirements of this chapter which apply to such companies, and as to companies organized under the laws of any other state, there shall be added the name of the attorney appointed to act for the company.

Any company organized, admitted and licensed to transact business in this state under this chapter shall confine its line of business to that stated in the first article of this chapter, and shall confine its business in this state to banks, bankers, loan companies and county treasurers, and shall not issue any policy or policies to any person, firm or corporation in this state other than banks, bankers, loan companies and county treasurers. Every such company shall set aside a reinsurance reserve of fifty per cent of its premiums, whether collected in cash or represented by the obligations of the policy holders, as written in its policies. (Id. secs. 3 and 4.)

Art. 4925. Policy holders.—Policy holders of any company organized and admitted to transact business in this state under this chapter shall be held liable to pay the membership fee and premium on their insurance as paid, or contracted to be paid, at the time the policy is taken out, and shall not be held liable for any further or other assessments or claims on the part of the company or its policy holders. The membership fees and premiums agreed upon may be collected in cash at the time the policy is issued or evidenced by a written obligation of the policy holder as may be agreed upon by the company and the policy holder. Such payment or obligation shall be the limit of the liability of the policy holder to the company for premium on their insurance. (Id. sec. 5.)

Art. 4926. Commissioner agent for service of process.—It shall not be lawful for any insurance company, association or partnership incorporated by, or organized under, the laws of any other state of the United States for any of the purposes specified in this chapter, directly or indirectly, to take risks or transact any business of insurance in this state by any agent or agents in this state until it shall first appoint an attorney in this state, who shall be the commissioner of insurance and banking, on whom process of law can be served, and filed in the office of the commissioner of insurance and banking a written instrument duly signed and sealed, certifying such appointment; and any process issued by any court of record in this state, and served upon such attorney by the proper officer of the county in which such attorney may reside or be found, shall be deemed a sufficient service of the process upon said company; but service of process upon such company may also be made in any other manner provided by law. (Id. sec. 6.)

Art. 4927. Statement submitted and license issued, annually.—The statement and evidences of new membership, assets, and investments required by article 4924 of this chapter shall be renewed from year to year in such manner and form as may be required by said insurance commissioner, with an additional statement of the amount of premiums received in this state during the preceding year, so long as such agency continues; and the said insurance commissioner, on being satisfied that the membership, assets, securities and investments remain secure, as hereinbefore mentioned, shall furnish a renewal of the certificate as aforesaid. (Id. sec. 7.)

CHAPTER THIRTEEN

FIDELITY, GUARANTY AND SURETY COMPANIES

Art. 4928. To act as trustee, etc., and do general fiduciary and depository business; to act as surety, etc.—Private corporations may be created to act as trustee, assignee, executor, administrator, guardian,

and receiver, when designated by any person, corporation or court to do so, and to do a general fiduciary and depository business; to act as surety and grantor of the fidelity of employés, trustees, executors, administrators, guardians or others appointed to, or assuming the performance of any trust, public or private, under appointment of any court or tribunal, or under contract between private individuals or corporations; also upon any bond or bonds that may be required to be filed in any judiciary proceedings; also to guarantee any contract or undertaking between individuals, or between private corporations, or between individuals or private corporations and the state and municipal corporations or counties, or between corporations and individuals; to act as executor and testamentary guardian when designated by such decedents; or to act as administrator or guardian when appointed by any court having jurisdiction; also, on any bond or bonds that may be required of any state official, district official, county official or official of any school district or of any municipality; provided that the commissioners courts of each county shall have the right to reject any or all official bonds made by surety companies and in their discretion may require any or all officials to make their official bonds by personal sureties; provided, also, that any such bond may be accepted and approved by the officer charged by law with the duty of accepting and approving the same without being signed by other securities than such corporation, and provided further, that when any such bond shall exceed fifty thousand dollars in penal sum, the officer or officers charged by law with the duty of approving and accepting such bond, may require that such bond be signed by two or more surety companies, or by one surety company and two or more good and sufficient personal sureties, in the discretion of the principal or official of whom the bond is required, and any statute or law to the contrary, or requiring any such bond to be signed by two or more good and sufficient sureties, shall be governed and controlled by the provisions of this article; provided also that each corporation, making or offering to make any bond under this article, shall publish in some newspaper of general circulation in the county where such company is organized or has its principal office on the first day of February of each year, a statement of its condition on the previous thirty-first day of December, showing under oath its assets and liabilities that a copy of said statement be filed with the commissioner of insurance and banking before the 1st of March, of the year following, and a fee of $25.00 be paid to that officer for filing the same, and that an examination of its affairs may be made at any time by the commissioner of insurance and banking; such examination to be at the expense of the company; provided that said corporation organized under the provisions of this article shall have a paid up capital stock of not less than $100,000.00, and shall keep on deposit with the state treasurer money, bonds or other securities in an amount not less than $50,000.00; and said securities be approved by the commissioner of insurance and banking, and that this amount be kept intact at all times. And further providing that all foreign corporations transacting the business of a guaranty and fidelity company in this state file with the commissioner of insurance and banking an affidavit showing that such foreign company has on deposit with the state treasurer of its home state $100,000.00 or more, in money, bonds or other securities for the protection of its policyholders. (Acts 1897, p. 128, sec. 37; Acts 1903, p. 197, sec. 1; Acts 1913, p. 123, sec. 1.)

Art. 4929. Surety company's bond is a legal bond, when.—Whenever any bond, undertaking, recognizance or other obligation, is by law or the charter, ordinances, rules and regulations of a municipality, board, body, organization, court, judge or public officer, required or permitted to be made, given, tendered or filed, and whenever the performance of any act, duty or obligation, or the refraining from any act, is required or permitted to be guaranteed, such bond, undertaking, obligation, recognizance or guarantee may be executed by a surety company, qualified as hereinbefore provided; and such execution by such company of such bond, undertaking, obligation, recognizance or guaranty shall be in all respects a full and complete compliance with every law, charter, rule or regulation that such bond, undertaking, obligation, recognizance or guaranty shall be executed by one surety or by one or more sureties, or that such sureties shall be residents, or householders, or freeholders, or either, or both, or possess any other qualification and all courts, judges, heads of departments, boards, bodies, municipalities, and public officers or every character shall accept and treat such bond, undertaking, obligation, recognizance or guaranty, when so executed by such company, as conforming to, and fully and completely complying with, every requirement of every such law, charter, ordinance, rule or regulation; and provided any suit on any bond issued under articles 4928 and 4929, shall be brought at the place provided by article 4934, Revised Statutes, 1911, and if the corporation issuing the bond sued on has no agent in the county where said bond was issued then the commissioner of banking and insurance of this state is made, by consent of the said company, its agent on whom service of process may be held. (Acts 1897, p. 244, sec. 1; Acts 1913, p. 123, sec. 1.)

See Taggart v. Hillman, 93 S. W. 245.

Art. 4930. Requirements to be complied with.—Such company, to be so qualified to so act as surety or guarantor, must comply with the requirements of every law of this state applicable to such company doing business therein; must be authorized under the laws of the state where incorporated, and under its charter, to become surety upon such bond, undertaking, obligation, recognizance or guaranty; must have a fully paid up and safely invested and unimpaired capital of at least one hundred thousand dollars; must have good available assets exceeding its liabilities, which liabilities for the purpose of this chapter shall be taken to be its capital stock, its outstanding debts and a premium reserve at the rate of fifty per centum of the current annual premiums on each outstanding bond, undertaking, recognizance and obligation of like character in force; must file with the commissioner of insurance, statistics, history and agriculture [commissioner of

insurance and banking] a certified copy of its certificate of incorporation, a written application to be authorized to do business under this chapter, and also, with such application, and in each year thereafter, a statement verified under oath made up to December 31, preceding, stating the amount of its paid up cash capital, particularizing each item of investment, the amount of premiums upon existing bonds, undertakings, [recognizances and obligations of like character in force upon which it is surety; the amount of liability for unearned portion thereof estimated at the rate of fifty per centum of the current annual premiums on each such bond, undertaking, recognizance and obligation in force, stating also the amount of its outstanding debts of all kinds, and such further facts as may be by the laws of this state required of such company in transacting business therein; and, if such company be organized under the laws of any other state than this state, it must also have on deposit with a state officer of one of the states of the United States, not less than one hundred thousand dollars in good securities, deposited with, and held by, such officer for the benefit of the holders of its obligations; must also appoint an attorney in this state upon whom process of law can be served, which appointment shall continue until revoked or another attorney substituted, and must file with the commissioner of insurance, statistics and history and agriculture [commissioner of insurance and banking] written evidence of such appointment, which shall state the residence and office of such attorney; and such service of process may also be made upon the commissioner of insurance of this state, by virtue of his office, and shall be as effective as if made upon said attorney; and must also have on deposit with the treasurer of this state at least fifty thousand dollars in good securities, worth at par and market value at least that sum, of the value of which securities the commissioner of insurance shall judge, held for the benefit of the holders of the obligations of such company; said securities so deposited with said treasurer to remain with him in trust to answer any default of said company as surety upon any such bond, undertaking, recognizance or other obligation, established by final judgment upon which execution may lawfully be issued against said company; said treasurer and his successors in office being hereby directed to so receive and hereafter retain such deposit under this act, in trust, for the purposes hereof; such company, however, at all times to have the right to collect the interest, dividends and profits upon such securities, and, from time to time, to withdraw such securities, or portions thereof, substituting therefor others of equally good character and value, to the satisfaction of said treasurer; and such securities and substitutes therefor shall be at all times exempt from, and not subject to, levy under writ or process of attachment; and, further, shall not be sold under any process against such company until after thirty days notice to said company, specifying the time, place and manner of such sale, and the process under which, and purposes for which, it is to be made, accompanied by a copy of such process; provided, however, that whenever any such company, domestic or foreign, has been engaged in this state in the business contemplated by this act, has made deposit in this state, in trust or otherwise, of securities, to answer any default of such company upon any such bond, undertaking, recognizance, guaranty or stipulation, such securities so deposited shall be by the trustee or custodian thereof transferred and delivered to said treasurer of this state in trust for the same purposes under and subject to all the rights and equities of all parties interested, and to the terms and provisions of this act; and thereupon such deposit shall remain in trust under and subject to the terms and provisions of this act; and, whenever such deposit has been made with a trustee by order of any court or other authority, it shall be the duty of the court or other authority, by order or otherwise, to direct such transfer to said treasurer; and, in case such deposit is less than the sum of fifty thousand dollars, then] said company must deposit with said treasurer securities sufficient to increase said deposit to said sum of fifty thousand dollars, as required by this chapter; provided, domestic corporations chartered for the purpose of doing business under this chapter within this state alone shall be required to deposit securities as hereinbefore provided for to the amount of twenty-five thousand dollars. (Acts 1897, p. 244, sec. 2.)

Art. 4931. Certificate to issue, when.—The commissioner of insurance and banking, upon due proof by any such company of its possessing the qualifications in this chapter specified, shall issue to such company a certificate setting forth that such company has qualified, and is authorized for the ensuing year to do business under this chapter, which said certificate shall be evidence of such qualification of such company, and of its authorization to become and to be accepted as sole surety on all bonds, undertakings, recognizances and obligations required or permitted by law or the charter, ordinances, rules or regulations of any municipality, board, body, organization or public officer, and the solvency or credit of such company for all purposes, and its sufficiency as such surety. (Id. sec. 3.)

See Romine v. Howard, 93 S. W. 690.

Art. 4932. Certificate to be surrendered, how.—Any such company, domestic or foreign, may at any time surrender to the commissioner of insurance and banking its said certificate of qualification, and shall thereupon cease to engage in said business of suretyship; and such company shall thereupon be entitled to the release and return of its said deposit as aforesaid, in manner following: Said company shall file with said commissioner of insurance and banking a statement in writing, under oath, giving the date, name, and amount of all its then existing obligations of suretyship in this state, briefly stating the facts of each case to said commissioner, who, after examination of the facts, shall require said company to file with the treasurer of this state a bond, payable to the state, in a sum equal to the whole amount of its liability in this state, under its contracts, conditioned for the faithful performance and fulfillment of all its outstanding obligations, or it may, at its option, reinsure its risks in some surety company authorized to do business in this state, or cancel all bonds

on which it is liable, and return a pro rata of the premium received thereon, whenever such cancellation and return can be done without impairing its obligation to third parties. (Id. sec. 4.)

Art. 4933. May withdraw from bond.—Any surety company may withdraw from the bond of any trustee, guardian, assignee, receiver, executor, administrator or other fiduciary, in like manner and by like proceeding as is now provided by law in the case of individual sureties. (Id. sec. 5.)

Art. 4934. May be sued on bond, where.—If any suit shall be instituted upon any bond or obligation of any surety company, the proper court of the county wherein said bond is filed shall have jurisdiction of said cause; and service therein shall be made, either upon the attorney for said company, by this chapter required to be appointed, or upon the commissioner of insurance and banking; and such service shall be to all intents valid and effectual as service upon said company. And such guaranty, fidelity and surety companies shall be deemed resident of the counties wherever they may do business, and the doing or performing any business in any county shall be deemed an acceptance of the provisions of this chapter. (Id. sec. 6.)

Art. 4935. Defaulting company; claims paid, how.—Should any company of the character named or enumerated in this chapter fail or refuse to pay any loss by it incurred in this state within sixty days after its liability thereupon shall have been by suit finally determined, upon satisfactory proof, to the treasurer of this state, of such liability and of its non-payment, said treasurer shall, out of the deposits so made with him, as by this chapter provided, pay said loss, and, when he shall have done so, he shall, at once, certify to the commissioner of insurance and banking the fact of such default on the part of said company; whereupon said commissioner shall forthwith cancel and annul the certificate of authority of such company to do business in this state; provided, that such payment shall not operate to release the company from payment of any balance which it still may owe after such payment by the treasurer of this state has been made. (Id. sec. 7.)

Art. 4936. Who are agents.—Any person who solicits business for or on behalf of such corporation, or makes or transmits for any person other than himself, any application for guaranty or security, or who advertises or otherwise gives notice that he will receive or transmit same, or who shall receive or transmit same, or who shall receive or deliver a contract of guaranty or security, or who shall examine or investigate the character of any applicant for guaranty or security than himself, or who shall refer any applicant for guaranty or security to such corporation, whether any of said acts shall be done at the instance and request, or by the employment of such corporation, or other corporation or person, or any person who shall issue indemnifying bonds or contracts, whose solvency and compliance with his said bonds or obligations is guaranteed, directly or indirectly, by any corporation, shall be held to be the agent of such corporation so far as relates to all the liabilities and penalties prescribed by this chapter. (Id. sec. 8.)

San Antonio Brewing Ass'n v. J. M. Abbott Oil Co., 129 S. W. 373.

Art. 4937. Penalty for accepting corporation which has not complied with law.—Any person, association of persons, or corporations, who shall accept any corporation created for the purposes, or either of them, mentioned in article 4928, without such corporation having previously complied with the provisions and requirements of this chapter and having received from the commissioner of insurance and banking the certificate of authority provided for in this chapter shall forfeit as a penalty the sum of five hundred dollars, to be recovered by suit in the name of the state in any court of competent jurisdiction. (Id. sec. 9.)

Art. 4938. Cancellation of bond; statement of cause.—When any corporation shall cancel a bond of guaranty or indemnity, or shall notify the employer of the person whose fidelity is guaranteed that said corporation will no longer guarantee or be security for the fidelity of said person, or when said corporation has once guaranteed the fidelity of any person, or acted as security therefor, and on application refuses to do so again, it shall furnish to such person a full statement in writing of the facts on which the action of the corporation is based, and, if such action be based in whole or in part on information, all such information; and any such corporation failing or refusing to furnish any such written statement within thirty days after a request therefor, shall be liable to such person injured in the sum of five hundred dollars, in addition to all other damages caused thereby, which may be sued for and recovered in any court of competent jurisdiction. (Id. sec. 10.)

Art. 4939. Authority revoked, when.—If any such corporation shall fail or refuse to comply with the provisions of this chapter, the commissioner of insurance and banking shall revoke the certificate of authority issued said corporation. (Id. sec. 11.)

Art. 4940. Charged with public use.—Corporations created for the purposes mentioned in article 4928 are hereby declared to be charged with a public use. (Id. sec. 12.)

CHAPTER FOURTEEN

EMPLOYER'S LIABILITY INSURANCE COMPANIES

Art. 4941. Reserve, how reported and calculated.—Every insurance company which has for ten years or more undertaken to insure persons, firms or corporations against loss or damage on account of the bodily injury or death by accident of any person, for which loss or damage said persons, firms or corporations are respectively responsible, shall, on or before the first day of October in each year, render to the insurance commissioner a statement in writing of its business transacted in the United States, which shall show separately for each of the five calendar years constituting the first half of the period of ten years next preceding the thirty-first day of December of the year in which the statement is made:

1. The number of persons reported injured under all its forms of liability policies, whether such injuries were reported to the

home office of the company or to any of its representatives, and whether such injury resulted in loss to the company or not.

2. The amount that, on or before the thirty-first day of August of the year in which the statement is made, had been paid on account or in consequence of all injuries so reported, including therein all payments on suits arising from such injuries.

3. The number of suits or actions under such policies on account of injuries reported which have been settled, either by payments or compromise.

4. The amount paid in settlement of such suits or actions on or before the thirty-first day of August of the year when the statement is made, including therein all payments made on account or in consequence of injuries from which the suits arose, whether prior to or later than the date when the suits were brought. Every such company shall, in its financial statements hereafter made in this state, use the experience so ascertained for computing its outstanding losses under all its forms of liability policies, irrespective of the date when the policies were issued. The average cost per suit of settling such cases, as computed by the data required in this article, shall be multiplied by the number of suits or actions pending on account of injuries reported prior to eighteen months previous to the date on which the condition of the company is to be ascertained and shown, which suits or actions are being defended for or on account of a holder of any such policy, also the average cost on account of each injured person, determined as aforesaid from the company's experience, shall be multiplied by the number [of injuries reported within the eighteen months prior to] making the statement of the company's condition, whether such injuries were reported to the home office of the company or to any of its representatives. From the sum of these two products so ascertained there shall be deducted the amount of all payments made on account or in consequence of said injuries reported within eighteen months, this amount so deducted to be taken as of the date at which the said statement is made. The sum remaining after making this deduction shall be charged as the liability of the company on account of outstanding losses. Any admitted company issuing liability contracts, which, by reason of its limited experience in liability underwriting, cannot furnish the information required by this article shall, nevertheless, until it is able to comply with said requirements, be charged with a liability for outstanding losses upon all kinds of its liability policies an amount not less than the amount resulting from the following process:

The number of suits or actions pending on account of injuries reported prior to eighteen months previous to the date of making up the statement, whether such injuries were reported to the home office of the company or to any of its representatives, which are being defended on account of the holder of any policy, shall be multiplied by the average cost per suit as shown by the average experience of all other admitted liability companies ascertained from the data required by this article, also the number of injuries reported under said policies at any time within eighteen months of making up the statement, whether reported to the home office of the company or to any of its representatives, and whether such injuries resulted in loss to the company or not, shall be multiplied by the average cost for each injured person as shown by the average of said experience of all other admitted liability companies, ascertained from the data required by this article. From the sum of these two products there shall be deducted the amount of all payments made on account or in consequence of said injuries reported within eighteen months, this amount to be taken as of the date at which the statement is made. A sum not less than the amount remaining after this deduction shall be charged as a liability for outstanding losses to liability companies covered by the provisions of this paragraph. The average cost for suits and for injured persons required by this paragraph shall, on or before the first day of December of each year, be furnished by the insurance commissioner to every such company which has not had an experience of ten years in liability underwriting. Besides the reserve provided for in this article, each such company shall be charged as a liability with all unpaid losses of which the company received notice on or before December 31, and all other debts and liabilities. If the capital stock of any such company, computing its liabilities in accordance with the provisions of this article, shall be at any time impaired to the extent of twenty per cent thereof, it shall be the duty of the commissioner of insurance and banking to give notice to the company to make good its whole capital stock within sixty days; and, if this is not done, he shall require the company to cease to do business within this state, and shall thereupon, in case the company is organized under the authority of the state, immediately institute legal proceedings to wind up the affairs of such company. (Acts 1909, p. 193, sec. 54.)

Employers' insurance associations, see Title 77, chapter 5.

Art. 4942. Commissioner may accept certificate, when.—The commissioner of insurance and banking, in calculating the reserve liability of any such company, may accept the certificate of the officer of any other state charged with the duty of supervising such company as to any such company organized under the laws of such state; provided, such certificate shows that such liability has been computed in accordance with the provisions of the preceding article.

CHAPTER FOURTEEN A

CASUALTY AND OTHER INSURANCE COMPANIES, EXCEPT FIRE, MARINE AND LIFE INSURANCE COMPANIES

Art. 4942a. Incorporation.—Any three (3) or more persons, a majority of whom shall be residents of the state of Texas, may associate in accordance with the provisions of this act, and form an incorporated company for any one or more of the following purposes:

(a) To insure any person against bodily injury, disablement or death resulting from accident and against disablement resulting from disease.

(b) To insure against loss or damage resulting from accident to or injury sustained

by an employé or other person for which accident or injury the assured is liable.

(c) To insure against loss or damage by burglary, theft or house breaking.

(d) To insure glass against breakage.

(e) To insure against loss from injury to person or property which results accidentally from steam boilers, elevators, electrical devices, engines and all machinery and appliances used in connection therewith or operated thereby; and to boilers, elevators, electrical devices, engines, machinery, and appliances.

(f) To insure against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers and water pipes.

(g) To insure against loss resulting from accidental damage to automobiles or caused accidentally by automobiles.

(h) To insure against loss or damage resulting from accident to or injury suffered by any person for which loss and damage the insured is liable; excepting employers liability insurance as authorized under subdivision "b" of this section.

(i) To insure persons, associations or corporations against [loss] or damage by reason of giving or extending of credit.

(j) To insure against loss or damage on account of circumstances upon or defects in the title to real estate and against loss by reason of the non-payment of the principal or interest of bonds, mortgages or other evidences of indebtedness.

(k) To insure against any other casualty or insurance risk specified in the articles of incorporation which may be lawfully made the subject of insurance, and the formation of a corporation for issuing against which is not otherwise provided for by this act, excepting fire, marine and life insurance. (Acts 1911, p. 237, sec. 1.)

Art. 4942aa. Same subject; additional purpose.—Casualty insurance companies incorporated under Chapter 117 General Laws passed by the Regular Session of 32nd Legislature, shall hereafter have authority to write marine insurance in which may be included the hazards and perils incident to war. (Acts 1918, 4th C. S., ch. 20, sec. 1.)

Art. 4942b. Articles of incorporation; name.—Such persons shall associate themselves together by articles of incorporation in writing for the purpose of forming an accident or casualty insurance company, which articles shall specify the name by which the company shall be known, the place in which its principal office will be established or located, the amount of its capital stock, the general object of the company, and the proposed duration of the same. Any name not previously in use by any existing company may be adopted. The commissioner of insurance and banking shall reject any name or title, when in his judgement [judgment] it too closely resembles that of any existing company or is likely to mislead the public. (Acts 1911, p. 237, sec. 2.)

Art. 4942c. Same; submission to attorney general; record; stockholder's meeting; directors; by-laws.—When such articles of incorporation are filed with the commissioner of insurance and banking, together with an affidvit [affidavit] made by two or more of its incorporators that all the stock has been subscribed in good faith and fully paid for, together with a charter fee for $20.00, it shall be the duty of the commissioner to submit such articles of incorporation to the attorney general for examination, and if he approves the same as conforming with the law, he shall certify and deliver such articles of incorporation, together with his certificate of approval attached thereto, to the commissioner of insurance and banking, who shall, upon receipt, thereof, record the same in a book kept for that purpose, and upon receipt of a fee of $1.00 he shall furnish a certified copy of the same to the corporators, upon which they shall be a body politic and corporate, and may proceed to complete the organization of the company, for which purpose they shall forthwith call a meeting of the stockholders, who shall adopt by-laws for the government of the company and elect a board of directors not less than three, composed of stockholders, which board shall have full control and management of the affairs of the corporation, subject to the by-laws thereof as adopted or amended from time to time by the stockholders or directors and to the laws of this state. (Id. sec. 3.)

Art. 4942d. Officers; stock books.—The subscribers to said articles of incorporation shall choose from their number a president, a secretary, a treasurer and such number of directors not less than three (3), who shall continue in office for the period of one year from the date of filing articles of incorporation, and until their successors shall be duly chosen and qualified, as hereinafter provided. They shall open books for the subscription of stock in the company at such times and places as they shall deem convenient and proper, and shall keep them open until the full amount specified in the certificate is subscribed. (Id. sec. 4.)

Art. 4942e. Capital stock; investment; deposit of securities; certificate of authority.—Any company organized under the provisions of this act shall have not less than one hundred thousand dollars ($100,000) of capital stock subscribed, paid in, in cash, with an additional fifty thousand dollars ($50,000) of capital stock subscribed and fully paid in, in cash, for every kind of insurance, more than one of which it is authorized to transact as specified in any of the subdivision: provided, that such companies with two hundred thousand dollars ($200,000) of capital stock subscribed and fully paid in, in cash shall be authorized to transact all and every kind of insurance specified in any and all of the subdivisions of section 1 of this act; all of which said capital stock shall be paid up or invested in bonds of the United States or of this state or of any county or of any municipality of this state or in bonds or first liens upon unincumbered real estate in this state or in any other state in which such company may previously have been duly licensed to conduct an insurance business; and provided in either instance such real estate shall be worth at least twice the amount loaned thereon. The value of such real estate shall be determined by a valuation made under oath by two freeholders of the county where the real estate is located, and if buildings are considered as part of the value of such real estate they must be insured for the benefit of the mortgage, upon

such company furnishing evidence satisfactory to the commissioner of insurance and banking that the capital stock as herein prescribed has been all subscribed and paid up in cash in good faith, and that such capital stock has been invested as herein prescribed, and upon the deposit of the sum of fifty thousand dollars ($50,000) of such securities or in cash with the State Treasurer, then the Commissioner of Insurance and Banking shall issue to said company a certificate authorizing it to do business. No part of the capital paid in shall be loaned to any officer of said company. In the event any such company shall be required by the law of any other state, county or province as a requirement prior to doing an insurance business therein, to deposit with the duly appointed officer of such other state, county or province, or with the State Treasurer of this state, any securities or cash in excess of the said deposit of fifty thousand dollars ($50,000) hereinbefore mentioned, such company, at its discretion, may deposit with the State Treasurer securities of the character authorized by this act, or cash, sufficient to enable it to meet such requirements. The State Treasurer is hereby authorized and diricted [directed] to receive such deposit and to hold it exclusively for the protection of all policy holders of the company. Any deposits so made to meet the requirements of any such other state, county or province shall not be withdrawn by the company except upon filing with the Commissioner of Insurance and Banking evidence satisfactory to him that the company has withdrawn from business, and has no unsecured liabilities outstanding in any such other state, county or province by which such additional deposit was required, and upon the filing of such evidence the company may withdraw such additional deposit at any time. (Id. sec. 5.)

Art. 4942f. General powers.—A corporation organized or doing business under the provisions of this act, shall, by the name adopted by such corporation, in law, be capable of suing or being sued, and may have the power to make or enforce contracts in relation to the business of such corporation; may have and use a common seal, and may change and alter the same at pleasure, and in the name of the corporation or by a trustee chosen by the Board of Directors, shall in law, be capable of taking, purchasing, holding and disposing of real and personal property for carrying into effect the purposes of their organization; and may by their board of directors, trustees, or managers, make by-laws and amendments thereto, not inconsistent with the laws or the Constitution of the State, or of the United States, which by-laws shall define the manner of electing directors, trustees or managers and officers of such corporations, together with the qualifications and duties of the same, and fixing the term of office. (Id. sec. 6.)

Art. 4942g. Annual statement.—The president, vice president and secretary, or a majority of directors or trustees of such company organized under the provisions of this Act shall annually on the first day of January or within sixty days thereafter, prepare and deposit in the office of the Commissioner of Insurance and Banking a verified statement of the condition of such company on the 31st day of December of the preceding year, showing:

First. Name and where located, (a) names of officers, (b) the amount of capital stock, (c) the amount of capital stock paid in.

Second. Assets, (a) the value of real estate owned by said company, (b) the amount of cash on hand, (c) the amount of cash deposited in bank or trust company, (d) the amount of bonds of the United States, and all other bonds, giving names and amounts with par and market values of each kind, (e) the amount of loans secured by first mortgage on real estate, (f) the amount of all other bonds, loans and how secured, with rate of interest, (g) the amount notes given for unpaid stock and how secured, (h) the amount of interest due and unpaid, (i) all other credits or assets.

Third. Liabilities, (a) the amount of losses due and unpaid, (b) the amount of claims for losses unadjusted, (c) the amount of claims for losses resisted.

Fourth. Income during the year, (a) the amount of fees received during the year, (b) the amount of interest received from all sources, (c) the amount of receipts from all other sources.

Fifth. Expenditures during the year, (a) the amount paid for losses, (b) the amount of dividends paid to stockholders, (c) the amount of commissions and salaries paid to agents, (d) the amount paid to officers for salaries, (e) the amount paid for taxes, (f) the amount of all other payments or expenditures.

Sixth. Miscellaneous, (a) the amount paid in fees during the year, (b) the amount paid for losses during the year, (c) the whole amount of insurance issued and in force on the 31st day of December of the previous year. (Id. sec. 7.)

Art. 4942h. Same; commissioner may amend form, etc.—The Commissioner of Insurance and Banking is authorized to amend the form of statement and to exact such additional information as he may think necessary in order that a full exhibit of the standing of companies organized and doing business under this Act may be shown. (Id. sec. 8.)

Art. 4942i. Failure to make deposit or file statement.—Upon the failure of any company organized or doing business under this Act to make the deposit or to file the statement in time as stated in the preceding section, the Commissioner of Insurance and Banking shall notify such company to issue no new insurance until there should have been a compliance with said requirements, and it shall be unlawful for any such company to thereafter issue any policy of insurance until such requirements shall be complied with. (Id. sec. 9.)

Art. 4942j. Examinations.—The Commissioner of Insurance and Banking may at any time make personal examination of the books, papers and securities of any company organized and doing business under the provisions of this Act, or may authorize or empower any other suitable person to make such examinations, and for the purpose of securing a full and true exhibit of its affairs, he or the persons elected by him shall have power to examine under oath any officer of said company relative to its business management. (Id. sec. 10.)

Art. 4942k. Revocation of authority; duties of attorney general; receiver.—If the Commissioner of Insurance and Banking shall at any time from the report of examination that the company has not complied with the provisions of this Act, he shall revoke its certificate of authority to do business in this State, and shall refer the facts to the Attorney General, who shall proceed to ask the proper court to appoint a receiver for said company, who shall, under the direction of the court, wind up the affairs of said company. But in no other way can the Commissioner of Insurance and Banking or any other person restrain or interfere with the prosecution of business of any company doing business under provisions of this Act, except in actions by judgment creditor or in proceedings supplementary to execution. (Id. sec. 11.)

Art. 4942*l*. Substitution of; securities deposited.—Companies organized under the provisions of this Act shall have the right at any time to change their securities on deposit with the State Treasurer by substituting for those withdrawn, a like amount in other securities of the character provided for in this Act. (Id. sec. 12.)

Art. 4942m. Increase of capital; stock.—Any company organized under the provisions of this Act may increase the capital stock of the same at any time after the intention to so increase the capital stock shall have been ratified by a two-thirds vote of the stockholders, and after notice of the purpose to so increase the capital stock has been given by publication in some newspaper of general circulation for the period of four consecutive weeks; but no increase of capital stock in less amount than fifty thousand dollars ($50,000) is hereby authorized. (Id. sec. 13.)

Art. 4942n. Dividends.—The directors of any company organized under this Act shall not make any dividends except from the surplus profit arising from their business, no dividends shall be declared except at the close of the year at the time when, by law, the company is required to file its annual statement with the Commissioner of Insurance and Banking. (Id. sec. 14.)

Art. 4942*o*. Interest on securities deposited.—The State Treasurer shall permit companies having securities on deposit with him under the provisions of this Act, to collect the interest as the same may become due, and shall deliver to such companies respectively the coupons or other evidences of interest pertaining to such deposits; provided, however, that upon failure of any company to deposit additional security as called for by the Commissioner of Insurance and Banking, or pending any proceedings to close up or enjoin it, the State Treasurer shall collect the interest as it becomes due and hold the same as additional security in his hands belonging to such company. (Id. sec. 15.)

Art. 4942p. Doing business without certificate; penalty.—Any company organized or doing business under this Act without a certificate as provided for in this Act shall forfeit one hundred dollars ($100.00) for every day it continues to write new business in this State without such certificate. (Id. sec. 16.)

Art. 4942q. Suits to recover penalties.—Suits brought to recover any of the penalties provided for in this Act shall be instituted in the name of the State of Texas, by the Attorney General or by a district or county attorney under his direction, either in the county where the principal office is situated or in the county of Travis. Such penalties, when recovered, shall be paid into the State Treasury for the use of the school fund. (Id. sec. 17.)

Art. 4942r. Investment of funds.—No company organized under the provisions of this Act shall invest its funds over and above its paid up capital stock in any other manner than as follows:

(a) In bonds of the United States or of any of the states of the United States which are at or above par. (b) In bonds or first liens on unencumbered real estate in this State or in any other State, county or province in which such company may be duly licensed to conduct an insurance business, and provided in each instance such real estate shall be worth at least twice the amount loaned thereon. The value of such real estate shall be determined by a valuation made under oath by two freeholders of the county where real estate is located, and if buildings are considered as a part of the value of such real estate they must be insured for the benefit of the mortgages. (c) In bonds or other interest-bearing evidence of indebted[ness] of any county, incorporated city, town or school or sanitary district within this State, or in any other State, county or province in which said company may be duly licensed to conduct an insurance business, and provided that such bonds or other evidences of indebtedness are issued by authority of law, and that interest upon them has never been defaulted. (d) In the stocks or bonds or other evidences of indebtedness of any solvent dividend-paying corporation incorporated under the laws of this State, or of the United States or of any State, county or province in which such company may be duly licensed to conduct an insurance business. (e) In loans upon the pledge of any mortgage, stock or bonds, or other evidence of indebtedness, acceptable as investments under the terms of this Act if the current value of such mortgage stock, bond or other evidence of indebtedness is at least twenty-five (25) per cent more than the amount loaned thereon. (Id. sec. 18.)

Art. 4942s. Real estate.—No company organized under this Act shall be permitted to purchase, hold or convey real estate, except for the purpose and in the manner herein set forth:

First. For the erection and maintenance of buildings at least ample and adequate for the transaction of its own business.

Second. Such as shall have been mortgaged to it in good faith for money due.

Third. Such as shall have been conveyed to it in the satisfaction of debts previously contracted in the course of its dealings and which must be taken in by the company on account of the debt secured by such mortgage.

Fourth. Such as shall have been purchased at sales upon judgment, decrees or mortgages obtained or made for such debts, and no company incorporated as aforesaid shall purchase, hold or convey real estate in any other cases or for any other purpose. (Id. sec. 19.)

Art. 4942t. Same; sale.—All real estate acquired as aforesaid, except such as is occupied by buildings used in whole or in part

for the accommodation of such companies in the transaction of its business, shall, except as hereinafter provided, be sold and disposed of within ten years after such company shall have acquired title to the same. No such company shall have such real estate for a longer period than that above mentioned, unless the said company shall procure a certificate from the Commissioner of Insurance and Banking that the interests of the company will suffer materially by a forced sale of such real estate, in which event the time for the sale may be extended to such time as the Commissioner of Insurance and Banking shall direct in said certificate. (Id. sec. 20.)

Art. 4942u. Annual certificate of authority.—The Commissioner of Insurance and Banking, upon due proof by a company organized under the provisions of this Act, of its possessing the qualifications required, shall issue a certificate setting forth that it has qualified and is authorized for the ensuing year to do business under these statutes, which certificate or a copy thereof shall be evidence of such qualifications and of the company's authority to transact business authorized by this Act, mentioned in the preceding Sections, and of its solvency and credits. (Id. sec. 21.)

Art. 4942v. Companies subject to act.—Only companies organized and doing business under the provisions of this Act shall be subject to its provisions. (Id. sec. 22.)

Art. 4942w. Fees.—The Commissioner of Insurance and Banking shall charge for filing the preliminary statement or for filing the annual statement required by the provisions of this Act, a fee of ten dollars; and for each certificate and seal he shall charge a fee of one dollar. (Id. sec. 23.)

Art. 4942x. Process; service.—Proceed [process] in any civil suit against any casualty company organized under the laws of this State may be served only on the president, or any active vice president or secretary, or general council residing at the city of the home office of the company, or by leaving a copy of same at the home office of such company during business hours. (Id. sec. 24.)

Art. 4942y. Decrease of capital stock.—Any company organized under the provisions of this Act may decrease the capital stock of same at any time after the intention to so decrease the capital stock shall have been ratified by a majority vote of the stockholders, and after notice of the purpose to so decrease the capital stock has been given by publication in some newspaper of general circulation for a period of four consecutive weeks. (Id. sec. 25.)

Art. 4942z. Act cumulative.—This Act is cumulative as to insurance legislation in this State, and as to the mode and manner of organizing and doing insurance business in this State, and shall not be construed to repeal any law now in force in this State. (Id. sec. 26.)

Scottish Union & Nat. Ins. Co. v. Wade, 127 S. W. 1186.

CHAPTER FIFTEEN

GENERAL PROVISIONS

Art. 4943. (3086) Must publish certificate of commissioner.—It shall be the duty of every insurance company doing business in this state, whether life, health, fire, marine or inland, to publish annually, within thirty days after the issuance thereof, a certificate from the commissioner of insurance and banking that such company has in all respects complied with the laws in relation to insurance. (Acts 1909, p. 193, sec. 26.)

Art. 4944. (3087) Companies organized in this state; unlawful dividend.—It shall not be lawful for any life, health, fire, marine or inland insurance company, organized under the laws of this state, to make any dividend except from the surplus profits arising from its business; and, in estimating such profits, there shall be reserved therefrom a sum equal to forty per cent of the amount received as premiums on unexpired fire risks and policies, and one hundred per cent of the premiums received on unexpired life, health, marine or inland transportation risks and policies; which amount so reserved is hereby declared to be unearned premiums; and there shall also be reserved the amount of all unpaid losses, whether adjusted or unadjusted; all sums due the company on bonds, mortgages, stocks and book accounts, of which no part of the principal or the interest thereon has been paid during the year preceding such estimate of profits, and upon which suit for foreclosures or collections has not been commenced, or which, after judgment has been obtained thereon, shall have remained more than two years unsatisfied, and upon which interest shall not have been paid; and, in case of any such judgment, the interest due or accrued thereon and remaining unpaid shall also be reserved.

Art. 4945. (3081) Association of companies not permitted to do business, until.—In the event that any number of insurance companies, whether life, health, fire, marine or inland, should associate themselves together for the purpose of issuing or vending policies or joint policies of insurance, such association shall not be permitted to do business in this state until the taxes and fees due from each of said companies shall have been paid and all the conditions of the law fully complied with by each company; and any company failing or refusing to pay such taxes and fees, and to fully comply with the requirements of law, shall be refused permission by the commissioner of insurance and banking to do business in this state. (Acts 1909, p. 224, sec. 15.)

Art. 4946. (3082) Notice to be published, etc.—Whenever, by any provision of this title, any notice or other matter is required to be published, it shall, unless otherwise provided, be published for three successive weeks in two newspapers printed in the state, and which have a general circulation in the state.

Art. 4946a. Consolidation of companies.—Any two or more insurance companies doing a similar line of business which are and have been substantially owned by same controlling stockholders and which have never been actually competing companies with each other, and where all of them have been previously organized under the laws of this State, may unite or consolidate upon a compliance with the terms of this Act; provided, that such consolidation shall not be effectuated in violation of the anti-trust and anti-monopoly laws of this State. (Acts 1919, ch. 57, sec. 1.)

Art. 4946b. Same subject; meeting and voting.—Before any such consolidation shall take place the parties holding at least two-thirds of the capital stock of each of the companies shall vote in favor thereof at a separate meeting of the stockholders of each company called for such purpose. Such meeting may be called in the manner provided in the by-laws of the respective companies or the laws under which such companies are organized, for calling special meetings of stockholders, except that each stockholder shall be notified by mail of the time and place and object of such meeting. (Id. sec. 2.)

Art. 4946c. Same subject; name and stock of consolidated companies.—Such companies proposing to consolidate may unite their assets or any part thereof and become incorporated in one body under the name of any one or more of such companies or under any other name that may be agreed upon, and issue stock in such corporation to the stockholders of each of the companies consolidated, the actual value of which stock in the new company shall bear the same proportion to the actual value of the stock surrendered by such stockholder as the entire assets of the company surrendering such stock bears to the entire assets of the new company which value shall be agreed upon by the Board of Directors of each company; provided that said stockholders (holding two-thirds of the stock) may at the meeting provided for in Section 2 of this Act [Art. 4946b], delegate the valuation of assets to a committee of stockholders appointed by their respective Boards of Directors. (Id. sec. 3.)

Art. 4946d. Same subject; other method.—Instead of the method provided in Section 3 of this Act [Art. 4946c], one company may take over all the assets of the other companies proposing to consolidate and issue stock to their stockholders in proportion that the value of their stock bears to the entire value of the assets of the company in which they are stockholders, and for this purpose the capital stock of such purchasing company may be increased, as now or may be hereafter provided by law. (Id. sec. 4.)

Art. 4946e. Same subject; commissioner to deliver charter.—In case of consolidation under Section 3 of this Act [Art. 4946c] the Insurance Commissioner shall upon proof furnished of a compliance with the terms hereof and being satisfied that the proposed consolidation is for the best interests of the policy holders of the respective companies and made in accordance with law, and upon the filing of articles of incorporation and other due proceedings had as required by the laws of this State, issue and deliver a charter to such new company. (Id. sec. 5.)

Art. 4946f. Same subject; effect of consolidation.—Such consolidation shall work a dissolution of the companies absorbed but shall in no wise prejudice the right of any creditors of any such corporation to have payment of his debt out of the assets and property thereof, nor shall any creditor be thereby deprived of, nor prejudiced in any right of action then pending or existing or which may thereafter arise against said company, and service or summons of the proper officers or agents of such new or reorganized corporation shall be deemed sufficient as to all or any of such companies. (Id. sec. 6.)

Art. 4946g. Same subject; policies assumed by new company.—All policies of insurance outstanding against all such companies shall by reason of such consolidation be assumed by the reorganized company, and they shall carry out the terms of such policy on the part of the insurer and be entitled to all the rights and privileges thereof and the reserves accumulating on such policy prior to such consolidation. (Id. sec. 7.)

Art. 4947. Misrepresentation must be material to avoid contract.—Any provision in any contract or policy of insurance issued or contracted for in this state, which provides that the answers or statements made in the application for such contract, or in the contract of insurance, if untrue or false, shall render the contract or policy void or voidable, shall be of no effect, and shall not constitute any defense to any suit brought upon such contract, unless it be shown upon the trial thereof that the matter or thing misrepresented was material to the risk or actually contributed to the contingency or event on which said policy became due and payable, and whether it was material and so contributed in any case shall be a question of fact to be determined by the court or jury trying such case. (Acts 1903, p. 94, art. 3096aa.)

Modern Order of Prætorians v. Hollmig, 103 S. W. 474; Modern Order of Prætorians v. Hollmig, 105 S. W. 846; Gross v. Colonial Assur. Co., 121 S. W. 517; Hartford Fire Ins. Co. v. Wright, 125 S. W. 363; Scottish Union & National Ins. Co. v. Wade, 127 S. W. 1186; National Fire Ins. Co. v. J. W. Caraway & Co., 130 S. W. 458; Modern Woodmen of America v. Owens, 130 S. W. 858; Mecca Fire Ins. Co. of Waco v. Stricker, 136 S. W. 599; National Life Ass'n v. Hagelstein, 156 S. W. 353; Indiana & Ohio Live Stock Ins. Co. v. Smith, 157 S. W. 755; American Nat. Ins. Co. v. Fawcett, 162 S. W. 10; St. Paul Fire & Marine Ins. Co. v. Huff, 172 S. W. 755; National Surety Co. v. Murphy-Walker Co., 174 S. W. 997; Liverpool & London & Globe Ins. Co. v. Lester, 176 S. W. 602; Ætna Accident & Liability Co. v. White, 177 S. W. 162; Guarantee Life Ins. Co. v. Evert, 178 S. W. 643; American Nat. Ins. Co. v. Anderson, 179 S. W. 66; National Fire Ins. Co. of Hartford, Conn., v. Carter, 199 S. W. 507; Modern Order of Prætorians v. Davidson, 203 S. W. 379.

Art. 4948. No defense based upon misrepresentation valid, unless, etc.—In all suits brought upon insurance contracts or policies hereafter issued or contracted for in this state, no defense based upon misrepresentations made in the applications for, or in obtaining or securing the said contract, shall be valid, unless the defendant shall show on the trial that, within a reasonable time after discovering the falsity of the misrepresentations so made, it gave notice to the assured, if living, or, if dead, to the owners or beneficiaries of said contract, that it refused to be bound by the contract or policy; provided, that ninety days shall be a reasonable time; provided, also, that this article shall not be construed as to render available as a defense any immaterial misrepresentation, nor to in any wise modify or affect article 3096aa [4947]. (Acts 1903, p. 94.)

Art. 4949. Shall not constitute defense, unless shown, etc.—Any provision in any contract or policy of insurance issued or contracted for in this state, which provides that the same shall be void or voidable, if any misrepresentations or false statements be made in proofs of loss or of death, as the case may be, shall be of no effect, and shall not

constitute any defense to any suit brought upon such contract or policy, unless it be shown upon the trial of such suit that the false statement made in such proofs of loss or death was fraudulently made, and misrepresented a fact material to the question of the liability of the insurance company upon the contract of insurance sued on, and that the insurance company was thereby misled, and caused to waive or lose some valid defense to the policy. (Id. art. 3096cc.)

Art. 4949a. Forfeiture of interest of beneficiary in life policy.—The interest of a beneficiary in a life insurance policy or contract heretofore or hereafter issued shall be forfeited when the beneficiary is the principal or an accomplice in willfully bringing about the death of the insured. However, providing when such is the case, the nearest relative of insured shall receive said insurance. (Acts 1919, ch. 16, sec. 1.)

Art. 4950. Policies governed by laws of Texas, notwithstanding stipulation to the contrary.—Any contract of insurance payable to any citizen or inhabitant of this state by any insurance company or corporation doing business within this state shall be held to be a contract made and entered into under and by virtue of the laws of this state relating to insurance, and governed thereby, notwithstanding such policy or contract of insurance may provide that the contract was executed, and the premiums and policy (in case it becomes a demand) should be payable without this state, or at the home office of the company or corporation issuing the same. (Acts 1903, p. 94, art. 3096dd.)

Art. 4951. Policies of insurance to be accompanied by copy of questions, etc.—Every contract or policy of insurance issued or contracted for in this state shall be accompanied by a written, photographic or printed copy of the application for such insurance policy or contract, as well as a copy of all questions asked and answers given thereto. The provisions of the foregoing articles shall not apply to policies of life insurance in which there is a clause making such policy indisputable after two years or less, provided premiums are duly paid; provided, further, that no defense based upon misrepresentation made in the application for, or in obtaining or securing, any contract of insurance upon the life of any person being or residing in this state shall be valid or enforceable in any suit brought upon such contract two years or more after the date of its issuance, when premiums due on such contract for the said term of two years have been paid to, and received by, the company issuing such contract, without notice to the assured by the company so issuing such contract of its intention to rescind the same on account of misrepresentation so made, unless it shall be shown on the trial that such misrepresentation was material to the risk and intentionally made. (Id. art. 3096eee.)

Art. 4952. No level premium policies shall be issued.—No level premium policy of life insurance shall be issued or sold by any company in this state after December 31, 1909, which provides for more than one year preliminary term insurance. (Acts 1909, p. 192, sec. 16.)

Art. 4953. Policies shall contain entire contract.—Every policy of insurance issued or delivered within this state on or after the first day of January, 1910, by any life insurance company doing business within this state, shall contain the entire contract between the parties, and the application therefor may be made a part thereof. (Id. sec. 17.)

Art. 4954. Companies shall not discriminate.—No insurance company doing business in this state shall make or permit any distinction or discrimination in favor of individuals between insurants (the insured) of the same class and of equal expectation of life in the amount of, or payment of, premiums or rates charged for policies of life or endowment insurance, or in the dividends or other benefits payable thereon; nor shall any such company or agent thereof make any contract of insurance or agreement as to such contract other than as expressed in the policy issued thereon; nor shall any such company, or any officer, agent, solicitor or representative thereof, pay, allow or give, or offer to pay, allow or give, directly or indirectly, as an inducement to insurance, any rebate of premiums payable on the policy, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any paid employment or contract for service of any kind, or any valuable consideration or inducement whatever not specified in the policy contract of insurance; or give, sell or purchase, or offer to give, sell or purchase, as an inducement to insurance, or in connection therewith, any stocks, bonds or other securities of any insurance company or other corporation, association or partnership, or any dividends or profits to accrue thereon, or anything of value whatsoever not specified in the policy, or issue any policy containing any special or board contract or similar provision, by the terms of which said policy will share or participate in any special fund derived from a tax or a charge against any portion of the premium on any other policy. Any company or agent violating the provisions of this article shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished as provided in the Penal Code; and the said company shall, as an additional penalty, forfeit its certificate of authority to do business in this state, and the said agent shall, as an additional penalty, forfeit his license to do business in this state for one year; provided, the company shall not be held liable under this article for any act of its agent, unless such act was authorized by its president, one of its vice presidents, its secretary or an assistant secretary, or by its board of directors. (Id. sec. 19.)

Art. 4955. Shall apply to all companies.—All the provisions of the laws of this state applicable to the life, fire, marine, inland, lightning, or tornado insurance companies, shall, so far as the same are applicable, govern and apply to all companies transacting any other kind of insurance business in this state, so far as they are not in conflict with provisions of law made specially applicable thereto. (Id. sec. 55.)

Held unconstitutional under Const. art. 3, sec. 35. Western Indemnity Co. v. Free & Accepted Masons of Texas, 198 S. W. 1092.

Art. 4956. Corporations may be incorporated to transact one or more kinds of insurance business.—Corporations may be incorporated, under the laws of this state,

to transact any one or more kinds of insurance business other than life, fire, marine, inland, lightning or tornado insurance business in the same manner, and by complying with the same requirements, as prescribed by law for the incorporation of life insurance companies; provided, that no such company shall be incorporated having the power to do a fidelity and surety business or a liability insurance business with a paid up capital stock of less than two hundred thousand dollars. (Id. sec. 62.)

Art. 4957. Chapter does not apply to fraternal beneficiary companies.—None of the terms or provisions of this chapter shall apply to, nor in any wise affect, fraternal beneficiary associations as defined by the laws of this state, nor apply to companies carrying on the business of life or casualty insurance on the assessment or annual premium plan, under the provision of this title. (Id. sec. 65.)

Art. 4958. Shall not misrepresent terms of policies, etc.—No life insurance company doing business in this state, and no officer, director or agent thereof, shall issue or circulate, or cause or permit to be issued or circulated, any estimate, illustration, circular or statement of any sort misrepresenting the terms of any policy issued by it, or benefits or advantages to be promised thereby, or the dividends or share of surplus to be received thereon. (Id. sec. 67.)

Art. 4959. Policy shall not be defeated.—No recovery upon any life, accident or health insurance policy shall ever be defeated because of any misrepresentation in the application which is of an immaterial fact and which does not affect the risks assumed. (Id. sec. 68.)

Art. 4960. (3061) (2943) Insurance unlawful unless authorized by commissioner of insurance.—It shall not be lawful for any person to act within this state, as agent or otherwise, in soliciting or receiving applications for insurance of any kind whatever, or in any manner to aid in the transaction of the business of any insurance company incorporated in this state or out of it, without first procuring a certificate of authority from the commissioner of agriculture, insurance, statistics and history (commissioner of insurance and banking). (Acts May 2, 1874; P. D. 7116g.)

Metropolitan Life Ins. Co. v. Love, 108 S. W. 821; Hughes v. Four States Life Ins. Co., 164 S. W. 898.

Art. 4961. (3093) Who are agents.—Any person who solicits insurance on behalf of any insurance company, whether incorporated under the laws of this or any other state or foreign government, or who takes or transmits other than for himself any application for insurance or any policy of insurance to or from such company, or who advertises or otherwise gives notice that he will receive or transmit the same, or who shall receive or deliver a policy of insurance of any such company, or who shall examine or inspect any risk, or receive, or collect, or transmit any premium of insurance, or make or forward any diagram of any building or buildings, or do or perform any other act or thing in the making or consummating of any contract of insurance for or with any such insurance company other than for himself, or who shall examine into, or adjust or aid in adjusting any loss for or on behalf of any such insurance company, whether any of such acts shall be done at the instance or request, or by the employment of such insurance company, or of or by any broker or other person, shall be held to be the agent of the company for which the act is done, or the risk is taken, as far as relates to all the liabilities, duties, requirements and penalties set forth in this chapter; provided, that the provisions of this chapter shall not apply to citizens of this state who arbitrate in the adjustment of losses between the insurers and insured, nor to the adjustment of particular or general average losses of vessels or cargoes by marine adjusters who have paid an occupation tax of two hundred dollars for the year in which the adjustment is made; provided, further, that the provisions of this chapter shall not apply to practicing attorneys at law in the state of Texas, acting in the regular transaction of their business as such attorneys at law, and who are not local agents, nor acting as adjusters for any insurance company. (Acts 1879, S. S. p. 32.)

See Hartford Fire Ins. Co. v. Walker, 60 S. W. 820; Hudson v. Compere, 61 S. W. 389; Hartford Fire Ins. Co. v. Walker, 61 S. W. 711; Delaware Ins. Co. v. Harris, 64 S. W. 867; Price v. Garvin, 69 S. W. 986; Austin Fire Ins. Co. v. Sayles, 157 S. W. 272; Hughes v. Four States Life Ins. Co., 164 S. W. 898; Drummond v. White-Swearingen Realty Co., 165 S. W. 20; Camden Fire Ins. Ass'n v. Wandell, 195 S. W. 289.

Art. 4962. (3094) (3095) Taxes to be assessed against, when.—Whenever any person shall do or perform within this state any of the acts mentioned in article 4961 for or on behalf of any insurance company therein referred to, such company shall be held to be doing business in this state, and shall be subject to the same taxes, state, county and municipal, as insurance companies that have been legally qualified and admitted to do business in this state by agents or otherwise are subject, the same to be assessed and collected as taxes are assessed and collected against such companies; and such persons so doing or performing any of such acts or things shall be personally liable for such taxes. (Id. sec. 3.)

Penalty, etc.—Any person who shall do any of the acts mentioned in article 4961 for or on behalf of any insurance company without such company has first complied with the requirements of the laws of this state, shall be personally liable to the holder of any policy of insurance in respect of which such act was done for any loss covered by the same. (Id. sec. 4.)

See Hudson v. Compere, 61 S. W. 389; Price v. Garvin, 69 S. W. 986; Drummond v. White-Swearingen Realty Co., 165 S. W. 20.

Art. 4963. Policies to be issued only through resident agents, except.—Any fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety, or fidelity insurance company, legally authorized to do business in this state, is hereby prohibited from authorizing or allowing any person, agent, firm or corporation that is a non-resident of the state of Texas to issue, or cause to be issued, to sign or countersign, or to deliver, or cause to be delivered, any policy or policies of insurance on property, person or persons located in the state of Texas, except through regularly com-

missioned and licensed agents of such companies in Texas; provided, however, that this law shall not apply to property owned by the railroad companies or other common carriers, and provided, further, that upon oath made in writing by any person that he can not procure insurance on property through such agents in Texas it shall be lawful for any insurance company not having an agent in Texas to insure property of any person upon application of said person, upon his filing said oath with the county clerk of the county in which such person resides. (Acts 1903, p. 232, sec. 1.)

Art. 4964. Affidavit to be filed before certificate will issue.—Before a certificate or license to any fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance companies is issued authorizing it to transact business in this state, the insurance commissioner shall require in every case, in addition to the other requirements already made and provided by the law, that each and all such insurance companies herein mentioned shall file with him an affidavit that it has not violated any provision of this law. (Id. sec. 2.)

Art. 4965. Agents, etc., prohibited from paying commissions to non-residents.—Any person, agent, firm or corporation licensed by the commissioner of insurance to act as a fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance agent in the state of Texas, is hereby prohibited from paying, directly or indirectly, any commission, brokerage or other valuable consideration on account of any policy or policies covering property, person or persons, in the state of Texas, to any person, persons, agent, firm or corporation that is a non-resident of the state of Texas, or to any person or persons, agent, firm or corporation not duly licensed by the commissioner of insurance and banking of the state of Texas as a fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance agent. (Id. sec. 3.)

Art. 4966. Penalty for violation.—Whenever the commissioner of insurance and banking shall have or receive notice or information of any violation of any of the provisions of this law, he shall immediately investigate, or cause to be investigated, such violation, and if a fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance company has violated any of such provisions aforesaid, he shall immediately revoke its license for not less than three months, nor more than six months, for the first offense, and, for each offense thereafter, for not less than one year; and, if any person, agent, firm or corporation licensed by the commissioner of insurance and banking as a fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance agent shall violate or cause to be violated any of the provisions of this law, he shall, for the first offense, have his license revoked for all companies for which he has been licensed, for not less than three months, and for the second offense he shall have his license revoked for all companies for which he is licensed and shall not thereafter be licensed for any company for one year from date of such revocation. (Id. sec. 4.)

Art. 4967. Commissioner authorized to examine books, witnesses, to discover violations.—For the purpose of enforcing the provisions of this law, the commissioner of insurance and banking is hereby authorized and it is made his duty, at the expense of the company investigated, to examine at the head office, located within the United States of America, all books, records and papers of such company, and also any officers or employés thereof under oath, as to violations of this law, and he is further hereby empowered to examine person or persons, administer oaths, and send for papers and records, and failure or refusal upon the part of any life [fire], fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance company, person or persons, agent, firm or corporation, licensed to do business in the state of Texas, to appear before the commissioner of insurance and banking when requested to do so, or to produce records and papers, or answer under oath, shall subject such fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance company, person, persons, agent, firm or corporation to the penalties of this law. (Id. sec. 5.)

Art. 4968. Solicitor deemed agent of company.—Any person who shall solicit an application for insurance upon the life of another shall in any controversy between the assured and his beneficiary and the company issuing any policy upon such application be regarded as the agent of the company, and not the agent of the insured, but such agent shall not have the power to waive, change or alter any of the terms or conditions of the application or policy. (Acts 1909, p. 192, sec. 18.)

Art. 4969. What persons debarred from acting as agent.—No corporation or stock company shall be licensed or granted a certificate of authority as the agent or representative of any life insurance company in soliciting, selling or in any manner placing life insurance policies or contracts in this state. No life insurance company shall, after June 30, 1903, be granted a certificate of authority to transact business in this state, which has or is bound by any valid subsisting contract with any other corporation, by virtue of which such other corporation is entitled to receive, directly or indirectly, in [any] percentage or portion of the premium or other income of such life insurance company for any period. No person shall hereafter be granted a certificate of authority as the agent of any life insurance company, who, after June 30, 1903, enters into any contract with any corporation other than such life insurance company, by virtue of which such other corporation is entitled to receive,

directly or indirectly, any compensation earned by him as agent for such life insurance company, or any percentage or portion thereof for any period. (Id. sec. 42.)

Art. 4970. Company to notify commissioner of appointment of general agent.—Every such foreign company shall, by resolution of its board of directors, designate some officer or agent who is empowered to appoint or employ its agents or solicitors in this state, and such officer or agent shall promptly notify the commissioner in writing of the name, title and address of each person so appointed or employed. Upon receipt of this notice, if such person is of good reputation and character, the commissioner shall issue to him a certificate which shall include a copy of the certificate of authority authorizing the company requesting it to do business in this state, and the name and title of the person to whom the certificate is issued. Such certificate, unless sooner revoked by the commissioner for cause or canceled at the request of the company employing the holder thereof, shall continue in force until the first day of March next after its issuance, and must be renewed annually. (Id. sec. 47.)

Art. 4971. Revocation of agent's authority, grounds for.—Cause for the revocation of the certificate of authority of an agent or solicitor for an insurance company may exist for violation of any of the insurance laws, or if it shall appear to the commissioner upon due proof, after notice that such agent or solicitor has knowingly deceived or defrauded a policy holder or a person having been solicited for insurance, or that such agent or solicitor has unreasonably failed and neglected to pay over to the company, or its agent entitled thereto, any premium or part thereof, collected by him on any policy of insurance or application therefor. The commissioner shall publish such revocation in such manner as he deems proper for the protection of the public; and no person whose certificate of authority as agent or solicitor has been revoked shall be entitled to again receive a certificate of authority as such agent or solicitor for any insurance company in this state for a period of one year. (Id. sec. 48.)

Art. 4972. (3096ee) Foreign corporations held to accept provisions of this title.—The provisions of this title are conditions upon which foreign insurance corporations shall be permitted to do business within this state, and any such foreign corporations engaged in issuing insurance contracts or policies within this state shall be held to have assented thereto as a condition precedent to its right to engage in such business within this state. (Act 1903, p. 94.)

CHAPTER SIXTEEN

INDEMNITY CONTRACTS

Art. 4972a. Subscribers may exchange reciprocal contracts of indemnity.—That individuals, partnerships and corporations of this State hereby designated subscribers are hereby authorized to exchange reciprocal or inter-insurance contracts with each other, or with individuals, partnerships and corporations of other States and countries, providing indemnity among themselves from any loss which may be insured against under other provisions of the laws, excepting life insurance. (Acts 1915, ch. 156, sec. 1.)

Section 13 of Acts 1915, p. 269, repeals Acts 1913, p. 210.

Art. 4972b. Execution of contracts by attorney in fact.—That such contracts may be executed by a duly appointed attorney in fact duly authorized and acting for such subscribers. The office or offices of such attorney may be maintained at such place of places as may be designated by the subscribers in the power of attorney. (Id. sec. 2.)

Art. 4972c. Declaration under oath to be filed with Insurance Commissioner.—That such subscribers, so contracting among themselves, shall, through their attorney, file with the Insurance Commissioner of this State a declaration verified by the oath of such attorney setting forth:

(a) The name or the title of the office at which such subscribers propose to exchange such indemnity contracts. Said name or title shall not be so similar to any other name or title previously adopted by a similar organization, or by any insurance corporation or association, as in the opinion of the Insurance Commissioner is calculated to result in confusion or deception. The office or offices through which such indemnity contracts shall be exchanged shall be classified as reciprocal or interinsurance exchanges.

(b) The kind or kinds of insurance to be effected or exchanged.

(c) A copy of the form of policy, contract or agreement under or by which such insurance is to be effected or exchanged.

(d) A copy of the form of power of attorney or authority of such attorney under which such insurance is to be effected or exchanged.

(e) The location of the office or offices from which such contracts or agreements are to be issued.

(f) That applications have been made for indemnity upon at least seventy-five separate risks, aggregating not less than one-half million dollars as represented by executed contracts or bona fide applications to become concurrently effective, or in case of liability or compensation insurance, covering a total pay roll of not less than two thousand employés.

(g) That there is on deposit with some State or National bank as a depository for the payment of losses not less than the sum of ten thousand dollars. (Id. sec. 3.)

Art. 4972d. Consent to service of process on Insurance Commissioner; process, how served.—That concurrently with the filing of the declaration provided for by the terms of Section 3 hereof [Art. 4972c], the attorney shall file with the Insurance Commissioner an instrument in writing, executed by him for said subscribers, conditioned that, upon the issuance of certificates of authority provided for in Section 10 hereof [Art. 4972i], service of process may be had upon the Insurance Commissioner in all suits in this State arising out of such policies, contracts or agreements, which service shall be valid and binding upon all subscribers exchanging at any time reciprocal or inter-insurance contracts through such attorney. Three copies of such process shall be served, and the Insurance Commissioner shall file one copy, forward one copy to said attorney,

and return one copy with his admission of service. (Id. sec. 4.)

Art. 4972e. Statements as to amount of single risks and obligations of subscribers.—That there shall be filed with the Insurance Commissioner of this State by such attorney a statement under the oath of such attorney showing the maximum amount of indemnity upon any single risk, and such attorney shall, whenever and as often as the same shall be required, file with the Insurance Commissioner a statement verified by his oath to the effect that he has examined the commercial rating of such subscribers as shown by the reference book of a commercial agency having at least one hundred thousand subscribers, and that from such examination or from other information in his possession it appears that no subscriber has assumed on any single risk an amount greater than 10 per cent of the net worth of such subscriber. (Id. sec. 5.)

Art. 4972f. Reserve fund.—That there shall at all times be maintained as a reserve a sum in cash or convertible securities equal to 50 per cent of the aggregate net annual deposits collected and credited to the accounts of the subscribers on policies having one year or less to run and pro rata on those for longer periods. For the purpose of said reserve, net annual deposits shall be construed to mean the advance payments of subscribers after deducting therefrom the amounts specifically provided in the subscribers' agreements for expenses and reinsurance. Said sum shall at no time be less than ten thousand dollars, and if at any time 50 per cent of the aggregate deposits so collected and credited shall not equal that amount, then the subscribers, or their attorney for them, shall make up any deficiency. (Id. sec. 6.)

Art. 4972g. Annual report by attorney in fact; examinations.—That such attorney shall make an annual report to the Insurance Commissioner for each calendar year, which report shall be made on or before March the first for the previous calendar year ending December 31, showing that the financial condition of affairs at the office where such contracts are issued is in accordance with the standard of solvency provided for herein, and shall furnish such additional information and reports as may be required to show the total premiums or deposits collected, the total losses paid, the total amounts returned to subscribers, and the amounts retained for expenses; provided, however, that such attorney shall not be required to furnish the names and addresses of any subscribers. The business affairs and assets of said reciprocal or inter-insurance exchanges, as shown at the office of the attorney thereof, shall be subject to examination by the Insurance Commissioner. (Id. sec. 7.)

Art. 4972h. Power of corporations to exchange insurance contracts.—That any corporation now or hereafter organized under the laws of this State shall, in addition to the rights, powers and franchises specified in its articles of incorporation, have full power and authority to exchange insurance contracts of the kind and character herein mentioned. The right to exchange such contracts is hereby declared to be incidental to the purposes for which such corporations are organized and as much granted as the rights and powers expressly conferred. (Id. sec. 8.)

Section 9 makes it an offense for an attorney in fact to exchange contracts without compliance with this act. See Penal Code, art. 693i.

Art. 4972i. Attorney to procure certificate of authority annually; revocation.—That each attorney by whom or through whom are issued any policies of or contracts for indemnity of the character referred to in this Act shall procure from the Insurance Commissioner annually a certificate of authority, stating that all of the requirements of this Act have been complied with, and upon such compliance and the payment of the fees required by this Act, the Insurance Commissioner shall issue such certificate of authority. The Insurance Commissioner may revoke or suspend any certificate of authority issued hereunder in case of breach of any of the conditions imposed by this Act after reasonable notice has been given said attorney, in writing, so that he may appear and show cause why action should not be taken. Any attorney who may have procured a certificate of authority hereunder shall renew same annually thereafter; provided, however, that any certificate of authority shall continue in full force and effect until the new certificate of authority be issued or specifically refused. (Id. sec. 10.)

Art. 4972j. Certificate fee.—That such attorney shall pay as a fee for the issuance of the certificate of authority herein provided for the sum of twenty dollars, which shall be in lieu of all license fees and taxes of whatsoever character in this State. (Id. sec. 11.)

Art. 4972k. Insurance laws not to apply.—That except as herein provided, no insurance law of this State shall apply to the exchange of such indemnity contracts unless they are specifically mentioned. (Id. sec. 12.)

TITLE 72

INTEREST

Art. 4973. (3097) Definition of "interest."—"Interest" is the compensation allowed by law or fixed by the parties to a contract for the use or forbearance or detention of money.

See Parks v. Lubbock, 51 S. W. 322; Hawthorne v. S., 87 S. W. 839; Ft. Worth State Bank v. Little, 168 S. W. 55; Burton v. Stayner, 182 S. W. 394; Morris v. First State Bank of Dallas, 192 S. W. 1074.

Art. 4974. (3098) "Legal interest."—"Legal interest" is that interest which is allowed by law when the parties to a contract have not agreed upon any particular rate of interest.

See Simkins' Contracts and Sales (3d Ed.) 325.

Art. 4975. (3099) "Conventional interest."—"Conventional interest" is that interest which is agreed upon and fixed by the parties to a written contract, not to exceed ten per cent per annum.

Art. 4976. (3100) Distinction between legal and conventional recognized by law.—The distinction between legal and conventional interest shall be known and recognized by the laws of this state. (Acts Jan. 18, 1840; P. D. 3939.)

Art. 4977. (3101) Six per cent the legal rate.—On all written contracts ascertain-

ing the sum payable, when no specified rate of interest is agreed upon by the parties to the contract, interest shall be allowed at the rate of six per cent per annum from and after the time when the sum is due and payable. (Acts 1892, S. S. pp. 4, 5.)

McNeill v. Casey, 135 S. W. 1130; Ewalt v. Holmes, 165 S. W. 39; American Nat. Ins. Co. v. Fulghum, 177 S. W. 1008; Great Eastern Casualty Co. v. Anderson, 183 S. W. 802; Robinson v. Lingner, 183 S. W. 850; Escue v. Hartley, 202 S. W. 159.

Art. 4978. (3102) Six per cent on open accounts, when.—On all open accounts, when no specified rate of interest is agreed upon by the parties, interest shall be allowed at the rate of six per cent per annum from the first day of January, after the same are made. (Id. sec. 2.)

See Frick Co. v. Wright, 55 S. W. 608; J. M. Guffey, etc., Co. v. Hamill, 94 S. W. 458; Erb Springall Co. v. Pittsburg Plate Glass Co., 101 S. W. 1165; Couturie v. Roensch, 134 S. W. 413; Browning v. El Paso Lumber Co., 140 S. W. 386; Robinson v. Lingner, 183 S. W. 850.

Art. 4979. (3103) Ten per cent the conventional rate.—The parties to any written contract may agree to and stipulate for any rate of interest not exceeding ten per cent per annum on the amount of the contract. (Id.)

See Dunman v. Harrison, 41 S. W. 499; G. & H. Inv. Co. v. Grymes, 63 S. W. 860; Bell v. C. J. Gerlach & Bro., 205 S. W. 470.

Art. 4980. (3104) Contracts for greater per cent void.—All written contracts whatsoever, which may in any way, directly or indirectly, violate the preceding article by stipulating for a greater rate of interest than ten per cent per annum shall be void and of no effect for the amount or value of the interest only; but the principal sum of money or value of the contract may be received and recovered. (Id.)

See Simkins' Contracts and Sales (3d Ed.) p. 325; Simkins' Equity (2d Ed.) p. 549; Dunman v. Harrison, 41 S. W. 499; Quinland's Est. v. Smye, 50 S. W. 1068; G. & H. Inv. Co. v. Grymes, 63 S. W. 860; Rosetti v. Rosano, 70 S. W. 204; Baum v. Daniels, 118 S. W. 754.

Art. 4981. (3105) Judgments, rate of interest on.—All judgments of the several courts of this state shall bear interest at the rate of six per cent per annum from and after the date of the judgment, except where the contract upon which the judgment is founded bears a specified interest greater than six per cent per annum and not exceeding ten per cent per annum, in which case the judgment shall bear the same rate of interest specified in such contract and after the date of such judgment. (Id.)

See Sayles' Practice, p. 592; Hawthorne v. S., 87 S. W. 839; Mutual Reserve Life Ins. Co. v. Jay, 109 S. W. 1116; City of San Antonio v. Alamo Nat. Bank, 114 S. W. 909; Baum v. Daniels, 118 S. W. 754; Continental State Bank of Beckville v. Trabue, 150 S. W. 209; Wilkirson v. Bradford, 154 S. W. 691; City of San Antonio v. Alamo Nat. Bank, 155 S. W. 620; Lloyd v. American Nat. Bank, 158 S. W. 785; Hodde v. Malone Real Estate Co., 196 S. W. 347.

Art. 4982. May recover double usurious interest paid.—If usurious interest, as defined by the preceding articles, shall hereafter be received or collected upon any contract, either written or verbal, the person or persons paying same, or their legal representatives, may, by action of debt, instituted in any court of this state having jurisdiction thereof, in the county of the defendant's residence, or in the county where such usurious interest shall have been received or collected, or where said contract has been entered into, or where parties paying same reside when such contract was made, within two years after such payment, recover from the person, firm or corporation receiving the same double the amount of such usurious interest so received and collected. (Id.; Acts 1907, p. 277.)

See Simkins' Contracts and Sales (3d Ed.) p. 325; Simkins' Equity (2d Ed.) p. 549; Smith v. Chilton, 39 S. W. 287; Whitlow v. Culwell, 40 S. W. 642; Mathews v. Interstate B. & L. Ass'n, 50 S. W. 605; Quinland's Est. v. Smye, 50 S. W. 1068; Roberts v. Coffin, 53 S. W. 597; So. Home B. & L. Ass'n v. Thomson, 58 S. W. 202; Cassidy v. Scot. Am. Mortg. Co., 64 S. W. 1023; Am. Mut. B. & S. Ass'n v. Daugherty, 66 S. W. 131; Taylor v. Sturgis, 68 S. W. 538; Rosetti v. Rosano, 70 S. W. 204; Webb v. Galveston & H. Inv. Co., 75 S. W. 356; Western Bk., etc., Co. v. Ogden, 93 S. W. 1102; Wartman v. Empire Loan Co., 101 S. W. 499; Alston v. Orr, 105 S. W. 234; Clayton v. Ingram, 107 S. W. 880; Stewart v. Lattner, 116 S. W. 860; Baum v. Daniels, 118 S. W. 754; Long v. Moore, 126 S. W. 345; Taylor v. Shelton, 134 S. W. 302; Cotton v. Thompson, 159 S. W. 455; Cotton v. Rea, 163 S. W. 2; Lee v. White, 171 S. W. 1056; Gunter v. Merchant, 172 S. W. 191; Braly v. Connally, 180 S. W. 916; Stewart v. Briggs, 190 S. W. 221; Bowman v. Bailey, 203 S. W. 922; Farmers' & Merchants' State Bank of Ballinger v. Cameron, 203 S. W. 1167; Sugg v. Smith, 205 S. W. 363; Burch v. First Guaranty State Bank of Quanah, 207 S. W. 552.

Art. 4983. (3107) Usury, how pleaded.—No evidence of usurious interest shall be received on the trial of any case, unless the same shall be specially pleaded and verified by the affidavit of the party wishing to avail himself of such defense.

See ante, art. 1906, sec. 12; Simkins' Contracts and Sales (3d Ed.) p. 331; First Nat. Bk. of Greenville v. Penman, 47 S. W. 68; Cotton v. Rea, 163 S. W. 2; Bomar v. Smith, 195 S. W. 964.

TITLE 73

IRRIGATION, WATER CONTROL, AND OTHER WATER RIGHTS

See Title 47; Title 83; and Title 96.

CHAPTER ONE

REGULATING THE MODE OF IRRIGATION AND THE USE OF WATER

Arts. 4984-4990. [Repealed.]

See note under art. 4991.

Art. 4991. (3115) Certain waters declared state property.—The unowned and unappropriated waters of the ordinary flow and underflow and tides of every flowing river or natural stream, of all lakes, bays or arms of the Gulf of Mexico, collections of still water, and of the storm, flood or rain waters of every river or natural stream, canyon, ravine, depression or water shed, within the State of Texas, are hereby declared to be the property of the State, and the right to the use thereof may be acquired by appropriation in the manner and for the uses and purposes hereinafter provided. (Acts 1895, p. 25; Acts 1913, p. 358, sec. 1; Acts 1917, ch. 88, sec. 1.)

Acts 1913, p. 358, sec. 101 repealed chapter 1 and 2 of Title 73, Revised Civil Statutes of 1911, and all other conflicting laws. Acts 1917, ch. 88, sec. 139 repeals the Act of 1913, and all other conflicting laws.

Art. 4992. (3116) Purposes for which storm, flood or rain waters may be diverted.—The storm, flood or rain waters described in the preceding Section may be held or stored by dams, in lakes or reservoirs, or diverted by means of canals, ditches, intakes, pumping plants, or other works, constructed by any person, corporation, association of

persons or irrigation district created under the statutes, for the purpose of irrigation, mining, milling, manufacturing, the development of power, the construction and operation of waterworks for cities and towns, or for stock raising. (Acts 1895, p. 25; Acts 1913, p. 358, sec. 2; Acts 1917, ch. 88, sec. 2.)

Art. 4993. (3117) The ordinary flow and underflow of flowing streams may be diverted, etc.—The ordinary flow and underflow of the flowing water and tides of every natural river, or stream, within the State of Texas may be taken or diverted from its natural channel by any of the persons named in the preceding section for any of the purposes stated therein; provided, that such ordinary flow and underflow shall not be diverted to the prejudice of the vested rights of any riparian owner without his consent except after condemnation thereof in the manner hereinafter provided. The waters of any arm or inlet of the Gulf of Mexico, or of any salt water bay, may be changed from salt to sweet or fresh water, and held or stored by dams, dikes or other structures and taken or diverted by any of the persons named in this Section for any of the purposes stated herein. (Acts 1895, p. 25; Acts 1913, p. 358, sec. 3; Acts 1917, ch. 88, sec. 3.)

Art. 4994. (3118) Purposes of appropriation.—The appropriation of water must be for irrigation, mining, milling, manufacturing, the development of power, the construction and operation of waterworks for cities and towns, or for stock raising. Provided, that so far as practicable and within the limits of the public welfare, the water engineering board hereinafter created shall subordinate the appropriation of water for power to the appropriation of water for irrigation. (Acts 1895, p. 25; Acts 1913, p. 358, sec. 4; Acts 1917, ch. 88, sec. 4.)

Art. 4995. (3119) Priority of appropriation; who deemed an appropriator; this act not to work a forfeiture of rights acquired under declaration of appropriation duly acted upon; forfeiture.—As between appropriators, the first in time is the first in right. (Acts 1895, p. 25; Acts 1913, p. 358, sec. 5; Acts 1917, ch. 88, sec. 5.)

For the purpose of this Act, an appropriator is any person, association of persons, corporation or irrigation district, who has heretofore made beneficial use of any water, in a lawful manner, under the provisions of any Act of the Legislature of the State of Texas, prior to the passage of Chapter 171 of the General Laws of the Thirty-third Legislature of Texas, and who has filed with the State board of water engineers a record of his appropriation, as required by said Act of the Thirty-third Legislature, or who has heretofore or may hereafter make beneficial use of any water within the limitations of a permit lawfully issued by the board of water engineers, and no appropriation of any water shall be considered as having been perfected unless such water has been beneficially used for one or more of the purposes named in this Act, and for the purpose or purposes stated in the original declaration of intention to appropriate such water, or stated in the permit issued by the board of water engineers. (Id. sec. 6.)

Neither the foregoing Section [preceding paragraph of this article] nor any other provision of this Act shall be construed as intended to impair or to work or authorize the forfeiture of, or shall impair or work or authorize the forfeiture of, any rights heretofore or hereafter acquired by any declaration of appropriation or by permit when the appropriator has begun, or begins, the work and development contemplated by his declaration of appropriation, within the time provided in the law under which the same was or is made and has prosecuted, and continues to prosecute, the same with all reasonable diligence toward completion; but if any appropriator under this Act, or other law of this State, has failed or fails to begin the work and development contemplated by his declaration of appropriation within the time provided in the law under which the same was or is made, or has failed or fails, to prosecute the same with all reasonable diligence toward completion, his right to so much water as has not been applied, or is not applied, to beneficial use, as defined in Section nine of this Act [Art. 4995aa] shall be considered as, and shall be, forfeited, and such water shall be subject to new appropriation under this Act; provided that no such rights shall be declared forfeited until the person or persons who are the owners of the land and whose rights are claimed to have been forfeited, shall first be given due notice and hearing as required in Section 33 of this Act [Art. 4999] and provided further, that it a permit for the use of such water has been issued, or is issued, under this Act, or under the Act approved April the 9th, 1913, such water shall not be subject to new appropriation until the permit is cancelled by the board in whole, or in part, in accordance with the provisions of Section 33 [Art. 4999] of this Act. (Id. sec. 7.)

Art. 4995a. State divided into water divisions.—The State shall be and is hereby divided into three water divisions, as follows:

All that portion of the State of Texas lying North of the thirtieth parallel, north latitude, and west of the one hundredth meridian west longitude, shall constitute water division No. 1.

All that portion of the State of Texas lying east of the ninety-seventh meridian west longitude, and south of the thirtieth parallel north latitude, together with all that portion lying north of the thirtieth parallel north latitude and east of the one hundredth meridian west longitude, shall constitute water division No. 2.

All that portion of the State of Texas not embraced in water division No. 1 or water division No. 2, as hereinbefore defined, shall constitute water division No. 3. (Acts 1913 p. 358, sec. 6; Acts 1917, ch. 88, sec. 8.)

Art. 4995aa. What constitutes beneficial use.—For the purposes of this Act, beneficial use shall be held to mean the use of such a quantity of water, when reasonable intelligence and reasonable diligence are exercised in its application for a lawful purpose, as is economically necessary for that purpose. (Id. sec. 9.)

Art. 4995b. Board of water engineers continued; constitution of board; appointment and qualification of members; bond; removal; vacancies.—The board of water engineers, created and constituted by the Act of the Thirty-third Legislature, Chapter 171, General Laws, approved April

9, 1913, is hereby continued, and the members constituting such board shall continue in office for the respective terms for which they were appointed, and until their successors are appointed and qualified, unless sooner removed in the manner provided by law. Said board shall be composed of three members, one of whom shall be appointed from each of the respective water divisions described in Section 8 [Art. 4995a]. The members of such board shall be appointed by the Governor, by and with the advice and consent of the Senate, and shall each hold office for a term of six years, and until his successor is appointed and qualified. No person shall be appointed a member of the board who has not such technical knowledge and such practical experience and skill as shall fit him for the duties of the office. Each member of such board shall enter into bond, to be approved by the Governor, in the penal sum of ten thousand dollars, with not less than two personal sureties, or with one surety or guaranty company authorized to do business in this State, conditioned for the faithful discharge of the duties of his office, and for the delivery to his successor or other officer appointed by the Governor to receive same, all moneys, books and other property belonging to the State then in his hands, or under his control, or with which he may be legally chargeable as a member of said board. The Governor shall have power to remove, at any time, for cause, any member of the State board of water engineers, after such member shall have been given a full, free and public hearing by the Governor. The Governor shall fill all vacancies by appointment, with the advice and consent of the Senate. (Acts 1913, p. 358, sec. 7; Acts 1917, ch. 88, sec. 10.)

Art. 4995c. Salary.—Each member of such board shall receive a salary of thirty-six hundred dollars per annum, payable in monthly installments, upon the presentation of salary vouchers, approved by the board. (Acts 1913, p. 358, sec. 8; Acts 1917, ch. 88, sec. 11.)

Art. 4995d. Sessions; quorum; secretary; rules; seal; office, supplies, etc.—The members appointed shall meet at Austin and organize and elect one of their number chairman of said board. A majority of said board shall constitute a quorum to transact business. Said board shall appoint a secretary who shall be thoroughly conversant with irrigation law, at a salary of not more than two thousand dollars per annum, and who shall execute a bond in the sum of twenty-five hundred dollars, to be approved by the board, payable to the board of water engineers, and the board may appoint such experts and employés as may be necessary to perform any duty that may be required of them by this Act, and fix their compensation. The Secretary shall keep full and accurate minutes of all transactions and proceedings of said board and perform such duties as may be required by the board. The board shall have power to make all needful rules for its government and proceedings; and shall have a seal, the form of which it shall prescribe. The board shall be furnished with an office at Austin, with necessary furniture, stationery, supplies, etc., at the expense of the State to be paid for on the order of the board. (Acts 1913, p. 358, sec. 9; Acts 1917, ch. 88, sec. 12.)

Art. 4995e. Expenses.—The members, secretary, experts and employés of the board shall be entitled to receive from the State their necessary traveling expenses while traveling on the business of the board, upon an itemized statement, sworn to by the party who incurred the expense and approved by the board. (Acts 1913, p. 358, sec. 10; Acts 1917, ch. 88, sec. 13.)

Art. 4995f. May hold sessions at any place.—The board may hold sessions at any place in this State, when deemed necessary to facilitate the discharge of its duties. (Acts 1913, p. 358, sec. 11; Acts 1917, ch. 88, sec. 14.)

Arts. 4996-4996b. [Repealed.]

See art. 5011½w, post.

Art. 4996bb. Extension of time for compliance with statute.—That every person, association of persons, corporation or irrigation district who has not already complied with the requirements of Section 12, Chapter 171, of the General Acts of the Thirty-third Legislature shall have one year from and after the passage and approval of this Act within which to comply with the provisions of Section 12. (Acts 1915, ch. 140, sec. 1.)

Art. 4996c. Persons desiring to appropriate water shall make application to board of water engineers; requisites of application; map; no application required in certain cases.—Every person, association of persons, corporation, water improvement or irrigation district, who shall, after this Act shall take effect, desire to acquire the right to appropriate, for the purposes stated in this Act, unappropriated water of the State, shall, before commencing the construction, enlargement or extension of any dam, lake, reservoir or other storage work, or of any ditch, canal, headgate, intake, pumping plant or other distributing work, or performing any work in connection with the storage, taking or diversion of water, make an application in writing to the board for a permit to make such appropriation storage, or diversion.

Such application shall be in writing and sworn to; shall set forth the name and post office address of the applicant; the source of water supply; the nature and purposes of the proposed use; the location and description of the proposed dam, lake, reservoir, headgate, intake, pumping plant, ditch, canal or other work; the time within which it is proposed to begin construction, and the time required for the application of the water to the proposed use; and if such proposed use is for irrigation, a description of the lands proposed to be irrigated, and, as near as may be, the total acreage thereof.

Such application shall be accompanied by a map or plat drawn on tracing linen, on a scale not less than one inch equals two thousand feet, showing substantially the location and extend of the proposed works; the location of the headgate, intake, pumping plant or point of diversion by course and distance from permanent natural objects or land marks; the location of the main ditch of canal and of the laterals or branches thereof; the course of the river, stream or other source of water supply; the position and

area of all lakes, reservoirs or basins intended to be used or created, and the water line thereof, the intersection with all other ditches, canals, laterals, lakes or reservoirs the proposed work will touch or intersect or with which connection will be made; and shall represent in ink of different color from that used to represent the proposed works, the location of all ditches, canals, laterals, reservoirs, lakes, dams, or other work of like character then existing on the ground, with a designation of the name of the owner thereof. Such map or plat shall contain the name of the proposed work or enterprise; the name or names of the applicants, and a certificate of the surveyor, giving the date of his survey, his name and post office address and also the date of the application which it accompanies.

Nothing in this Act shall be held or construed to require the filing of an application or procuring of any permit for the alteration, enlargement, extension or addition to any canal, ditch or other work that does not contemplate, or will not result in an increased appropriation, or the use of a larger volume of water, but before making any such alteration, enlargement, extension or addition, the person, association of persons, corporation or irrigation district desiring to make same, shall file with the board of water engineers a detailed statement and plan, for the information of the board of the work proposed to be done. (Acts 1913, p. 358, sec. 15; Acts 1917, ch. 88, sec. 15.)

Art. 4996cc. Presentation by person desiring to investigate feasibility of reservoir project.—Any person or association of persons, corporation, water improvement or irrigation district who desires to investigate the feasibility of any project having for its object the creation of a reservoir for the impounding of flood waters in quantities greater than five thousand acre-feet, and, which if constructed will probably result in the use of five thousand acre-feet per annum, or more, and who has an organized engineering force adequate to expiditiously proceed with such investigation, shall, upon the presentation of such facts, duly verified, to the board of water engineers, describing the locality of such proposed reservoir, have priority date from the time of the filing of such presentation, should a permit be granted thereafter, for the purposes described in such presentation; provided, how ever, that nothing in this Section or in this Act shall affect or restrict the right of any person or persons, owning lands in this State to construct on his own property any dam or reservoir which would impound or contain less than five hundred acre-feet of water. (Id. sec. 16.)

Art. 4996ccc. Same; fee to be deposited.—Upon the filing of such presentation, a fee of two hundred and fifty dollars shall be paid to the board for the use of the State, as provided for other fees collected under this Act; no part of which shall be returned, except as hereinafter provided. The fee shall be held by the board for a period of twelve months from the date of its receipt, unless disposed of as hereinafter provided. (Id. sec. 17.)

Art. 4996cccc. Same; credit with amount of fee paid on making application for permit.—Any person or association of persons, corporation, water improvement, or irrigation district who has complied with the provisions of Sections 16 and 17 [Arts. 4996cc, 4996ccc], and who shall, within twelve months from the date of such presentation, file an application for a permit to store and use any of the flood waters of this State, in volumes of five thousand acre-feet, or more, for the objects and purposes, and at the locality set out in the presentation described in Sections 16 and 17 [Art. 4996ccc], shall, when paying the fees described in Section 41 [Art. 5001f], be credited with the two hundred and fifty dollars paid in accordance with the provisions of Section 17 [Art. 4996ccc]. (Id. sec. 18.)

Art. 4996ccccc. Same; board may return fee on election not to apply for permit.—If within twelve months after the filing of the presentation of facts described in Section 16 [Art. 4996cc], such relator shall elect not to apply for a permit, and shall file the results of his or its investigation in intelligible form, with the board, the board may, at its option, return all or any part of said two hundred and fifty dollars, if in its judgment such information will be of equivalent value to the State. (Id. sec. 19.)

Art. 4996d. Additional data may be required; fees.—If the proposed taking or diversion of water for irrigation is of greater volume than nine cubic feet per second of time, the board may require the following in addition:

A continuous longitudinal profile; cross sections of the proposed channel; and detail plans and specifications of any structural work of whatever character entering into the proposed project, on such scales and with such definition as the board may deem necessary or expedient.

The board may also require the filing of a copy of the engineer's field notes of any survey of such lake or reservoir, and all plans and specifications, where the project calls for a dam over six feet in height, either for the purpose of diversion or storage; and no work on such project shall proceed until approval of such plans is obtained.

The board may, in case the applicant is an incorporated company, require the filing of a certified copy of the applicant's articles of incorporation, together with a statement of the names and addresses of its directors and officers; and the amount of its authorized and of its paid-up capital stock.

If the applicant be other than an incorporated company, the board may require the filing of a sworn statement, showing the names and addresses of the person or persons interested in same and the extent of such interest and of the financial condition of each such person.

Every such application shall be accompanied by the fees hereinafter provided, and shall not be filed or considered until such fees are paid. (Acts 1913, p. 358, sec. 16; Acts 1917, ch. 88, sec. 20.)

Art. 4996dd. Drainage; plans.—Whenever, in the opinion of the board the successful efficient operation of any existing or proposed irrigation system will, or may, be adversely affected by lack of adequate drainage facilities incident to the work proposed to be done by the applicant or applicants for a permit to appropriate public waters, the said

applicant or applicants shall submit drainage plans adequate, in the opinion of the board, to guard against any present or future injury which the proposed works may entail. (Id. sec. 21.)

Art. 4996e. Preliminary examination.—Upon the filing of such application, accompanied by the data and fees hereinbefore provided, it shall be the duty of the board to make a preliminary examination thereof; and if it appear that there is no unappropriated water in the source of supply, or that, for other reasons, the proposed appropriation should not be allowed, the board may thereupon reject such application; in which case, it the applicant shall elect not to proceed further, the board may return to such applicant any part of the fees accompanying such application.

The board shall determine whether the application, maps, plats, contours, plans, profiles and statements accompanying same, are in compliance with the provisions of this Act, and with the regulations of the board, and may require the amendment thereof. (Acts 1913, p. 358, sec. 17; Acts 1917, ch. 88, sec. 22.)

Art. 4996f. Applications to be recorded.—All applications filed with the board shall be recorded in a well bound book kept for that purpose in the office of said board, and shall be indexed alphabetically in the name of the applicant, of the stream or source from which such appropriation is sought to be made, and the county in which appropriation is sought to be made. (Acts 1913, p. 358, sec. 18; Acts 1917, ch. 88, sec. 23.)

Art. 4996g. Action upon application.—It shall be the duty of the board to reject all applications and refuse to issue the permit asked for, if there is no unappropriated water in the source of supply; or if the proposed use conflicts with existing water rights, or is detrimental to the public welfare. It shall be the duty of the board to approve all applications and issue the permit asked for if such application is made in proper form in compliance with the provisions of this Act and the regulations of said board; and is accompanied by the fees required in this Act; and if the proposed appropriation contemplates the application of water to any of the uses and purposes provided for in this Act; and does not impair existing water rights, or vested riparian rights, and is not detrimental to the public welfare. (Acts 1913, p. 358, sec. 19; Acts 1917, ch. 88, sec. 24.)

Art. 4996h. Notice of hearing of application, etc.—Before the board shall approve any such application and issue any such permit, notice of such application shall be given substantially in the following manner:

Such notice shall be in writing; shall state the name of the applicant and his residence; the date of the filing of the application in the office of the board; the purpose and extent of the proposed appropriation of water; the source of supply; the place at which the water is to be stored; or to be taken or diverted from the source of supply; together with such additional information as the board may deem necessary. If the proposed use is for irrigation, such notice shall contain a general description of the location and the area of the land to be irrigated. Such notice shall also state the time and place when and where such application will be heard by the board. (Acts 1913, p. 358, sec. 20; Acts 1917, ch. 88, sec. 25.)

Art. 4996i. Publication of notices, etc.—Such notice shall be published once in each week for four consecutive weeks prior to the date stated in such notice for the hearing of such application in some newspaper having a general circulation in that section of the State in which the source of water is located. In addition to such publication, a copy of such notice shall be transmitted by the secretary of the board, by registered mail addressed to each claimant or appropriator of water from such source of water supply, the record of whose claim or appropriation has been filed in the office of the board. Such notice shall be mailed not less than twenty days before the date set for the hearing. (Acts 1913, p. 358, sec. 21; Acts 1917, ch. 88, sec. 26.)

Art. 4996j. Hearing upon application.—At the time and place stated in the notice, the board shall sit to hear such application. Any person, association of persons, corporation, or irrigation district may appear, in person or by attorney, and enter appearance in writing in said matter, and present objection to the issuance of permit. The board may receive evidence, orally or by affidavit, in support of and in opposition to the issuance of such permit; and may also hear arguments. It shall have power to adjourn such hearing from time to time and from place to place, and after full hearing to render decision in writing approving or rejecting such application. Such application may be approved or rejected in whole or in part. Provided, however, that nothing herein contained shall prevent the board from rejecting any application in whole, without the issuance of the notice herein required. (Acts 1913, p. 358, sec. 22; Acts 1917, ch. 88, sec. 27.)

Art. 4996k. Cost of publication.—The cost of publication of the notice herein required and the postage for mailing thereof shall in each case be paid by the applicant. (Acts 1913, p. 358, sec. 23; Acts 1917, ch. 88, sec. 28.)

Arts. 4996l-4996s. [Repealed.]

See art. 5011½w, post.

Art. 4996t. Attorney general to represent board.—In all litigation to which the board may be a party, the Attorney General shall represent the board. (Acts 1913, p. 358, sec. 32; Acts 1917, ch. 88, sec. 29.)

Arts. 4996u, 4996v. [Repealed.]

See art. 5011½w, post.

Art. 4996w. Transmission of certified copy of judgment to board of water engineers.—When any court of record in this State shall render any judgment, order or decree, affecting in any manner the title to any water right, claim, appropriation or irrigation works, or any matter over which the board of water engineers is given supervision, under the provisions of this Act, it shall be the duty of the clerk of such court to forthwith transmit to the office of the board a certified copy of such judgment, order or decree. (Acts 1913, p. 358, sec. 35; Acts 1917, ch. 88, sec. 30.)

Art. 4996ww. Inspection of works under construction.—The board or any one

employed by the board, for that purpose, shall have, at all times, authority to inspect any impounding, diversion or distribution works during construction, to determine whether or not they are being constructed in a safe and approved manner, and in accordance with the order of the board theretofore issued. (Id. sec. 31.)

Art. 4996x. [Repealed.]
See art. 5011½w, post.

Art. 4996y. Form of permit, etc.—Every permit issued by the board, under the provisions of this Act, shall be in writing, attested by the seal of said board, and shall contain substantially the following: The name of the applicant to whom issued; the date of the issuance thereof; the date of the filing of the original application therefor in the office of the board; the use or purpose for which the appropriation of water is to be made; the amount or volume of water authorized to be appropriated; a general description of the source of supply from which the appropriation is proposed to be made; and if such appropriation is for irrigation, a description and statement of the approximate area of the lands to be irrigated; together with such other data and information as the board may prescribe. Upon the issuance of such permit, same shall be transmitted by the secretary of the board by registered mail to the county clerk of the county in which the appropriation is to be made; and upon receipt of a recording fee of one dollar, to be paid by the applicant, such clerk shall file and record the same in a well bound book provided and kept for that purpose only, and to index the same alphabetically under the name of the applicant and of the stream or source of water supply, and thereupon to deliver such permit upon demand, to the applicant. Such permit, when thus filed in the office of the county clerk, shall be constructive notice of the filing of the application with the board; of the issuance of the permit; and of all the rights arising thereunder. (Acts 1913, p. 358, sec. 37; Acts 1917, ch. 88, sec. 32.)

Arts. 4997, 4998. [Repealed.]
See note under art. 4991.

Art. 4999. Work to begin in ninety days; revocation of permit on failure, etc.—Within ninety days after the date of issuance of the permit provided for in this Act, the applicant seeking to appropriate water thereunder shall begin actual construction of the proposed ditch, canal, dam, lake, reservoir or other work, and shall prosecute the work thereon diligently and continuously to completion; provided, that the board may, by an order entered of record, extend the time for beginning the actual construction of such work for a period not to exceed twelve months from the date of issuance of such permit; and further provided, that if any applicant shall fail to comply with the requirements of this section, he, they or it shall thereby forfeit all rights under such permit. If any applicant to whom a permit is issued or one owning prior appropriation shall after beginning the actual construction of work, as provided in this section, fail to thereafter prosecute the same diligently and continuously to completion, the board may, after thirty days notice to the applicant or owner of such appropriation, and giving him an opportunity to be heard, by an order entered of record, revoke and cancel such permit or appropriation in whole or in part; provided any party affected by such order shall have the right of appeal to the district court as in this Act provided. A certified copy of such order shall be forthwith transmitted by the secretary of the board, by registered mail, to the clerk of the county in which such permit is recorded and which order shall be recorded by said county clerk. (Acts 1895, p. 25; Acts 1913, p. 358, sec. 38; Acts 1917, ch. 88, sec. 33.)

Arts. 5000, 5001. [Repealed.]
See note under art. 4991.

Art. 5001a. [Repealed by sec. 139 of this act, post, art. 5011½w, but re-enacted in sec. 34 of this act, and set forth post as art. 837a, Penal Code.]

Art. 5001b. State may recover penalty.—In addition to the punishment prescribed in the last preceding section [Penal Code, Art. 837a, post], any person, association of persons, corporation, water improvement or irrigation district, or any agent, officer, employé or representative of any such persons, association of persons, corporation, water improvement or irrigation district, who shall wilfully take, divert or appropriate water of the State, or the use of such water, without first complying with the provisions of this Act, shall be liable to a penalty of one hundred dollars per day for each and every day that such taking, diversion, appropriation, or use may be made, and the State may recover such penalties by suit brought for that purpose in any court of competent jurisdiction. (Acts 1913, p. 358, sec. 40; Acts 1917, ch. 88, sec. 35.)

Art. 5001c. Date of priority.—When any permit is issued under the provisions of this Act, the priority of the appropriation of water, or the claimant's right to the use of such water, shall date from the date of the filing of the original application in the office of the board. (Acts 1913, p. 358, sec. 41; Acts 1917, ch. 88, sec. 36.)

Art. 5001d. Board to measure streams, make reports, etc.—It shall be the duty of the board to make or cause to be made measurements and calculations of the flow of streams from which water may be appropriated, as provided in this Act, commencing such work in those streams most used for irrigation or other beneficial uses; to collect data and make surveys; to determine the most suitable location for constructing works to utilize the waters of the State; to ascertain the location and area of the lands best suited for irrigation; to examine and survey reservoir sites; and wherever practicable, to make estimates of the cost of proposed irrigation works, and the improvements of reservoir sites. It shall be the duty of the board to make itself conversant with the water courses of the State and of the needs of the state concerning irrigation matters, and the storage and conservation of the waters of the State for other purposes. The board shall make biennial reports in writing to the Governor, in which shall be included the data and information collected by said board, and in which shall be included such suggestions as to the amendment of existing laws and the enactment of new laws as the information and experience of the board may suggest. The board shall keep in its office full

and proper records of its work observations and calculations, all of which shall be the property of the State. (Acts 1913, p. 358, sec. 42; Acts 1917, ch. 88, sec. 37.)

Art. 5001dd. Ascertainment of quantities of water required.—It shall be the duty of the board to ascertain the duty of water, and to determine the proper quantities required for irrigation and other lawful uses in the several sections of the State in order to secure the highest beneficial use of such water, such work to be first conducted in those sections where in the judgment of the board, the greatest necessity exists. (Id. sec. 38.)

Art. 5001ddd. Condemnation of existing works.—Full authority is lodged with the board, on its own initiative, to condemn existing works, the existence or operation of which may, in the judgment of the board, become a public menace or dangerous to life and property; provided, that in all cases of proposed condemnation, the party or parties at interest shall be notified of such contemplated action, and may appear at a time stated and be heard. Provided, further, that in such cases the party or parties whose works may be condemned, shall have the right of appeal from the decision of the board, as provided herein, in all other cases of appeal. (Id. sec. 39.)

Art. 5001e. Board to make rules, etc.—The board may adopt, promulgate and enforce such rules, regulations and modes of procedure as it may deem proper for the discharge of the duties incumbent upon it under the provisions of this Act. (Acts 1913, p. 358, sec. 43; Acts 1917, ch. 88, sec. 40.)

Art. 5001f. Fees.—The board shall charge and collect, for the benefit of the State, the following fees:

For filing each and every application for any purpose, a fee of seven and one-half dollars, and in addition thereto:

For filing each and every application for storage of water, except surface waters, a fee of five dollars, provided, that if the application shall contemplate and propose the storage of water in excess of five acre-feet, an additional fee of twenty-five cents shall be charged for each additional acre-foot in excess of five, up to and including one hundred acre-feet; for each additional one hundred acre-feet, or fraction thereof, in excess of one hundred, an additional fee of ten dollars, up to and including one thousand acre-feet; and for each additional thousand acre-feet, above one thousand, an additional fee of twenty-five dollars; provided, that no fee, based on storage, shall be charged for any proposed or contemplated storage of less than five acre-feet.

For filing each application contemplating and proposing the taking or division of water for the purpose of irrigation, ten cents for each and every acre proposed to be irrigated.

For filing each application proposing and contemplating the use of water for the purpose of developing hydraulic power, a fee of two cents for each foot of head for each cubic foot of water per second it is proposed to use.

For filing each application contemplating and proposing the taking, diversion, or use of flowing water for any other purpose than storage, irrigation of land, or the development of hydraulic power, as hereinbefore provided, five cents for each acre-foot of water consumed per annum.

Provided, that in estimating the aforesaid additional fees on a proposed appropriation contemplating the use of water for two or more of the aforesaid purposes, the fees charged shall be cumulative, and a charge made for each use, based on the quantity proposed for each separate use.

For the filing of each and every exhibit, map, affidavit, or other paper authorized to be filed in the office of the board of water engineers, a filing fee of twenty-five cents.

For recording each and every paper authorized or required to be recorded in the records of the office of the board, a fee of one dollar, and in addition thereto, a fee of fifteen cents per folio of one hundred words, in excess of two hundred.

For making and certifying each and every copy of an instrument or paper authorized to be certified under the seal of the board a fee of one dollar, and in addition thereto, a fee of fifteen cents per folio of one hundred words, including the certificate.

For making and certifying copies of any map or blue print thereof, a fee of one dollar, and in addition thereto a fee of seventy-five cents for each hour or fraction thereof necessarily employed by the draughtsman in making such copy.

For filing each application for an extension of time within which to begin actual construction or to complete work, a fee equal to one-half of the original application fees in such case; provided, that if it be simultaneously sought to extend both the time for the beginning and completion of any work theretofore authorized, but one fee shall be charged; and in addition thereto, the usual fees for filing and recording such applications. The fees and charges collected in accordance with the provisions of this Act shall be immediately deposited in the State treasury to the credit of the general revenue and full and detailed verified monthly and annual reports of all such receipts, as well as of the expenditures of the said board shall be filed with the comptroller of public accounts. (Acts 1913, p. 358, sec. 44; Acts 1917, ch. 88, sec. 41.)

Art. 5001g. [Repealed.]

See art. 5011½w, post.

Art. 5001h. Standard unit.—A cubic foot of water per second of time shall be the standard unit for the measurement of flowing water, for the purpose of distributing water for beneficial uses. The standard unit for volume of static water shall be the acre-foot. (Acts 1913, p. 358, sec. 46; Acts 1917, ch. 88, sec. 42.)

Art. 5001hh. Quantity of water constituting unit.—A cubic foot per second of time is the quantity of water that will pass through an area of one square foot in one second, when flowing at an average velocity of one foot per second. An acre foot is the quantity of water required to cover one acre foot deep. (Acts 1913, p. 358, sec. 46; Acts 1917, ch. 88, sec. 43.)

Art. 5001i. Water right.—A water right is the right to use the water of the State when such use has been acquired by the application of water under the statutes of this State and for the purposes stated in this Act. Such use shall be the basis, the measure and

the limit to the right to use water of the State at all times, not exceeding in any case the limit of volume to which the user is entitled and the volume which is necessarily required and can be beneficially used for irrigation or other authorized uses. (Acts 1913, p. 358, sec. 47; Acts 1917, ch. 88, sec. 44.)

Art. 5001j. Right limited to beneficial use.—Rights to the use of water acquired under the provisions of this Act shall be limited and restricted to so much thereof as may be necessarily required when beneficially used for the purposes stated in this Act, irrespective of the capacity of the ditch or other works, and all the water not so applied shall not be considered as appropriated. (Acts 1913, p. 358, sec. 48; Acts 1917, ch. 88, sec. 45.)

Art. 5001k. Right forfeited by abandonment.—Any appropriation or use of water heretofore made under any Statute of this State or hereafter made under the provisions of this Act which shall be wilfully abandoned during any three successive years, shall be forfeited and the water formerly so used or appropriated shall be again subject to appropriation for the purposes stated in this Act. (Acts 1913, p. 358, sec. 49; Acts 1917, ch. 88, sec. 46.)

Art. 5001*l*. Right of owner of dam to appropriate water; application; rights as to persons using water.—Any person, association of persons, corporation, water improvement or irrigation district, who may have heretofore constructed or who may hereafter construct any dam or dams across any river, or other stream, for the purpose of storing water for any of the purposes set forth in Section 2 of this Act [Art. 4992] shall have the right to appropriate the ordinary flow or underflow, or the storm, flood or rain waters of such stream, in amounts and quantities equal to the holding capacity of such dam or dams, by making application as provided for in Section 15 of this Act [Art. 4996c], and such application shall have priority over all other applications; and, provided, that any such person, association of persons, corporations or irrigation district thus impounding water in any river, channel, lake or reservoir and appropriating the same shall have the right to collect from any riparian owner who shall divert such impounded water from said reservoir by pumping or otherwise a reasonable sum for the water so diverted, such sum to be determined by the board of water engineers, based upon the benefits accruing to such riparian owner by reason of the construction of such dam, lake or reservoir and the impounding of such waters therein, provided, the owner of such dam, lake or reservoir, and the owner of riparian rights using such water cannot agree upon the price to be paid therefor. (Acts 1913, p. 358, sec. 49a; Acts 1917, ch. 88, sec. 47.)

Art. 5001*ll*. Corporations may sell or lease water or water rights; lien; obligation under contracts; priority of appropriators not affected.—All such corporations, whether chartered under the provisions of Chapter 2, Title 73, Revised Civil Statutes of Texas, 1911, or under the general corporation laws of the State of Texas, shall have full power and authority to make contracts for the sale of permanent water rights, to any person, corporation, association of persons, or irrigation district and to have the same secured by a lien on the lands or otherwise, and to lease, rent or otherwise dispose of the water controlled by such corporation, for such price as may be agreed upon, and in addition to the lien on the crops hereinafter provided for, such lease or rental contract may be secured by lien on land or otherwise; provided, that such water may be sold, leased, rented or otherwise disposed of to any such person, corporation, association of persons or irrigation district, or to the water tenants thereof, who have heretofore appropriated and complied with the provisions of Chapter 2, Title 73, Revised Civil Statutes of Texas, 1911, regardless of whether or not the water so furnished to lands adjacent or contiguous to the canals of such corporation, association of persons or irrigation district so furnishing water; provided further that any person, corporation, association of persons or irrigation district, shall be under no obligation during the period that water is so taken and utilized, to operate it or their pumping plant, headgate or intake, and failure to so operate its pumping plant, headgate or intake during such period, shall not be deemed an abandonment or waiver of his, their or its rights in such pumping plant, headgate, intake and source of supply.

Provided that nothing herein contained shall affect or alter the existing relative rights of priority of the various appropriators whose supply is derived from the same source. (Id. sec. 48.)

Art. 5001m. Conservation of storm water authorized.—Any person, association of persons, corporation, water improvement or irrigation district having in possession and control storm, flood or rain waters conserved or stored, under the provisions of this Act, may enter into contract to supply same to any person, association of persons, corporation, water improvement or irrigation district having the right to acquire such use; provided that the price and terms of such contract shall be just and reasonable and without discrimination and subject to the same revision and control as hereinafter provided for other water rates and charges; provided, that if any person shall use such stored or conserved water without first entering into contract with the party having stored or conserved the same, such user shall pay for the use thereof such charge or rental as the board shall find to be just and reasonable, and subject to revision by the court, as herein provided for other water rates and charges. (Acts 1913, p. 358, sec. 50; Acts 1917, ch. 88, sec. 49.)

Art. 5001n. Use of streams for conveying stored water.—For the purpose of conveying and delivering storm, flood or rain water from the place of storage to the place of use, as provided in the preceding section, it shall be lawful for any person, association of persons, corporation, water improvement or irrigation district to use the banks and beds of any flowing natural stream within this State, under and in accordance with such rules and regulations as may be prescribed by the board of water engineers, and such board shall prescribe rules and regulations for such purpose. No person, associa-

tion of persons, corporations, water improvement or irrigation district who has not acquired the right to the use of such conserved or stored waters, as provided in the last preceding Section, shall take, use or divert same. (Acts 1913, p. 358, sec. 51; Acts 1917, ch. 88, sec. 50.)

Art. 5001o. [Repealed by sec. 139 of this act, post, art. 5011½w, but re-enacted as sec. 51 of this act, and set forth post as art. 837c of the Penal Code.]

Art. 5001p. Injunction authorized.—It shall be the duty of the district court, or the judge thereof, of any judicial district in or through which the conserved or stored waters described in the last three preceding Sections [Arts. 5001m, 5001n, ante; Art. 837c, Pen. Code, post] may pass, at the suit of any party having an interest therein, upon it being made to appear that any person, association of persons, corporation, water improvement or irrigation district, or any agent, officer, employé, or representative thereof, is interfering with, or threatening or about to interfere with the passage, or is taking, diverting, appropriating, or threatening, or about to take, divert, or appropriate, any conserved or stored waters, in violation of the provisions of the last three preceding Sections; to issue such writ or writs of injunction, mandamus, or other process as may be proper or necessary to prevent such wrongful acts. (Acts 1913, p. 358, sec. 53; Acts 1917, ch. 88, sec. 52.)

Art. 5002. (3125) Formation of corporations authorized.—Corporations may be formed and chartered, under the provisions of this Act, and of the general corporation laws of the State of Texas, for the purpose of constructing, maintaining and operating canals, ditches, flumes, feeders, laterals, dams, reservoirs, lakes and wells, and of conserving, storing, conducting and transferring water to all persons entitled to the use of the same for irrigation, mining, milling, manufacturing, the development of power to cities and towns for waterworks, and for stock-raising. (Acts 1895, p. 27; Acts 1913, p. 358, sec. 54; Acts 1917, ch. 88, sec. 53.)

Art. 5002a. (3125) Same; sale or lease of water and water rights; compliance with statute.—All such corporations shall have full power and authority to make contracts for the sale of permanent water rights, and to have the same secured by liens on the land, or otherwise, and to lease, rent or otherwise dispose of the water controlled by such corporation, for such time as may be agreed upon, and in addition to the lien on the crops hereinafter provided for, the lease or rental contract may be secured by a lien on the land, or otherwise.

Provided, any contract for the sale of water rights shall be voidable unless the seller thereof has complied with the provisions of the statute relating to certified filings, or shall have obtained a permit from the board of water engineers for the purposes and uses proposed to be made by the buyer of such water rights it is proposed to deliver. (Acts 1913, p. 358, sec. 55; Acts 1917, ch. 88, sec. 54.)

The remainder of this section creates an offense. See post, Penal Code, art. 837cc.

Art. 5002b. (3125) Persons entitled to use water.—All persons who own or hold a possessory right or title to land adjoining or contiguous to any dam, reservoir, canal, ditch, flume or lateral, constructed and maintained under the provisions of this Act, and who shall have secured a right to the use of water in said canal, ditch, flume, lateral, reservoir, dam or lake, shall be entitled to be supplied from such canal, ditch, flume, lateral, dam, reservoir or lake with water for irrigation of such land, and for mining, milling, manufacturing, development of power, and stock-raising, in accordance with the terms of his or their contract. (Acts 1913, p. 358, sec. 56; Acts 1917, ch. 88, sec. 55.)

Art. 5002c. (3125) No discrimination against users.—If the person, association of persons, or corporation owning or controlling such water, and the person who owns or holds a possessory right or title to land adjoining or contiguous to any canal, ditch, flume or lateral, lake or reservoir, constructed or maintained under the provisions of this Act, fail to agree upon a price for a permanent water right, or for the use or rental of the necessary water to irrigate the land of such person, or for mining, milling, manufacturing, the development of power, or stock raising; such person, association of persons, or corporation shall, nevertheless, if he, they or it, have or control any water not contracted to others, furnish the necessary water to such person to irrigate his lands or for mining, milling, manufacturing, the development of power or stock raising, at such prices as shall be reasonable and just, and without discrimination. (Acts 1913, p. 358, sec. 57; Acts 1917, ch. 88, sec. 56.)

Art. 5002d. (3125) Water to be prorated.—In case of shortage of water from drouth, accident or other cause, all water to be distributed shall be divided among all customers pro rata, according to the amount he or they may be entitled to, to the end that all shall suffer alike, and preference be given to none; provided, that nothing in this Section contained shall be held to preclude any such person, association of persons, or corporation owning or controlling such water from supplying the same to any person having a prior vested right thereto under the laws of this State. (Acts 1913, p. 358, sec. 58; Acts 1917, ch. 88, sec. 57.)

Art. 5002e. (3125) Permanent water right and easement.—The permanent water right shall be an easement to the land and pass with the title thereto; the owner thereof shall be entitled to the use of the water upon the terms provided in his or their contract with such person, association of persons or corporations, or, in case no contract is entered into, then at just and reasonable prices, and without discrimination. Any instrument of writing conveying a permanent water right shall be admitted to record in the same manner as other instruments relating to the conveyance of land. (Acts 1913, p. 358, sec. 59; Acts 1917, ch. 88, sec. 58.)

Art. 5002f. Regulation of rates; discrimination; complaint; deposit.—If any person entitled to receive or use water from any canal, ditch, flume, lateral, dam, reservoir or lake, or from any conserved or stored supply, shall present to the board his petition in writing, showing that the person, association of persons, corporation, water improvement or irrigation district owning or controlling such water has a supply of water

not contracted to others and available for his use, and fails or refuses to supply such water to him, or that the price or rental demanded therefor is not reasonable and just, or is discriminatory; or that the complainant is entitled to receive or use such water, and is willing and able to pay a just and reasonable price therefor; and shall accompany such petition with a deposit of twenty-five dollars; it shall be the duty of the board to make a preliminary investigation of such complaint and determine whether there is probable ground therefor. If said board shall determine that no probable ground exists for such complaint, same shall be dismissed, and the deposit may, at the discretion of the board, be returned to the complainant or paid into the State treasury. (Acts 1913, p. 358, sec. 60; Acts 1917, ch. 88, sec. 59.)

Art. 5002g. Order on complaint; deposit and bond for costs; certified copy of complaint to be sent to defendants.—If the board shall determine that probable ground exists for such complaint, it shall enter an order setting said matter for hearing at a time and place to be named therein. The board may, in its discretion, require the complainant to make an additional deposit, or to enter into bond in an amount fixed by the board, conditioned for the payment of all costs of such proceeding, and which bond shall be approved by the board. Thereupon it shall be the duty of the secretary of the board to transmit a certified copy of the petition of complainant and of the order setting same for hearing, by registered mail, addressed to the party or parties against whom such complaint is made, and which notice shall be deposited in the mails at least twenty days before the date set for such hearing. (Acts 1913, p. 358, sec. 61; Acts 1917, ch. 88, sec. 60.)

Art. 5002h. Hearing; evidence; adjournments; decision.—At the time and place stated in such order, the board shall sit to hear such complaint. It may hear evidence orally or by affidavit in support of or against such complaint, and may hear arguments, and shall have power to adjourn such hearing from time to time and from place to place, and upon completion thereof shall render decision in writing. (Acts 1913, p. 358, sec. 62; Acts 1917, ch. 88, sec. 61.)

Art. 5002hh. Power to fix rates.—The said Board shall have power and authority and it shall be its duty to fix reasonable rates for the furnishing of water for the purposes or any purpose mentioned in this Chapter. (Acts 1918, 4th C. S., ch. 55, sec. 1.)

Added to Acts 1917, ch. 88, as sec. 61a.

Art. 5002i. Appeal; supersedeas.—Appeal from such decision of the board may be taken within the time and in the manner as herein provided for other appeals from the decision of such board. The decision may be suspended by the filing of a supersedeas bond, in the same manner as now provided in other civil cases; provided, that the board shall fix the amount of the bond necessary to stay the execution of any such order. (Acts 1913, p. 358, sec. 63; Acts 1917, ch. 88, sec. 62.)

Art. 5002j. Issuance of subpœnas authorized, etc.—In any examination, investigation or proceeding authorized before the board of water engineers, such board shall have power to issue subpœnas for the attendance of witnesses, under such rules as the board may prescribe. Each witness who shall appear before the board by order of the board, at a place outside of the county of his residence, shall receive for his attendance, one dollar per day and three cents per mile traveled by nearest practicable route, in going to and returning from the place of meeting of said board which shall be ordered paid by the comptroller of public accounts upon the presentation of proper vouchers, sworn to by such witness and approved by the chairman of the board; provided, that no witness shall be entitled to any witness fees or mileage who is directly interested in such proceeding. (Acts 1913, p. 358, sec. 64; Acts 1917, ch. 88, sec. 63.)

Art. 5002k. Who may administer oaths, etc.—In any examination or hearing held before the board of water engineers, the board shall have authority to adjourn such hearing from time to time and from place to place. Each member of such board and the secretary thereof shall be authorized to administer oaths. (Acts 1913, p. 358, sec. 65; Acts 1917, ch. 88, sec. 64.)

Art. 5002kk. Petition to district court from decision, etc., of board; appeal to appellate court.—If any person, firm, association of persons, or corporations engaged in furnishing water, or other persons at interest be dissatisfied with the decision of any rate, charge, order or Act of regulation adopted by the Board, such dissatisfied company or party may file a petition setting forth the particular cause or causes of objection to such decision, act, rule, rate, charge or order, or to either or all of them, in a District Court of Travis County, Texas, against said Board as defendant. Said Action shall have precedence over all other causes on the docket of a different nature, and shall be tried and determined as other civil causes in said Court. Any party to said action may appeal to the Appellate Court having jurisdiction of said cause; and said appeal shall be at once returnable to said Appellate Court at any term thereof; said action so appealed shall have precedence in said Appellate Court of all causes of a different character therein pending; provided that if the Court be in session at the time such right of action accrues, the suit may be filed during such term and stand ready for trial after ten days notice. (Acts 1918, 4th C. S., ch. 55, sec. 1.)

Added to Acts 1917, ch. 88, as sec. 64a.

Art. 5002kkk. Trials under preceding article.—In all trials under the foregoing article the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that the rates, regulations, acts, orders or charges complained of are unreasonable and unjust to it or them. (Id.)

Added to Acts 1917, ch. 88, as sec. 64b.

Art. 5002*l*. Certified copies.—Upon application of any person, the board shall furnish certified copies of any order or decision of record of such board, or of any paper, map or other document filed in the office of such board, and such certified copies, under the hand of the secretary and seal of the board, shall be admissible in evidence in any court, in the same manner and with like effect that the original would be entitled to.

(Acts 1913, p. 358, sec. 66; Acts 1917, ch. 88, sec. 65.)

Art. 5002m. Rules may be prescribed, etc.—Every person, association of persons, corporation or irrigation district, conserving or supplying water for any of the purposes authorized by this Act, shall make and publish reasonable rules and regulations relating to the method and manner of supply, use and distribution of water, and prescribing the time and manner of making application for the use of water and of payment therefor. (Acts 1913, p. 358, sec. 67; Acts 1917, ch. 88, sec. 66.)

Art. 5002n. Conveyances, how made.—Every conveyance of a ditch, canal or reservoir, or other irrigation work, or any interest therein, shall hereafter be executed and acknowledged in the same manner as the conveyance of real estate, and recorded in the deed records of the county or counties in which such ditch, canal or reservoir is situated, and any such conveyance which shall not be made in conformity with the provisions of this Act, shall be null and void, as against subsequent purchasers thereof in good faith and for valuable consideration. (Acts 1913, p. 358, sec. 68; Acts 1917, ch. 88, sec. 67.)

Art. 5002o. Partnership ditches.—In all cases where irrigation ditches are owned or used by two or more persons, or by mutual or co-operative companies or corporations, and one or more of such persons, or shareholders shall fail or neglect to do or to pay for his proportionate share of the work necessary for the proper maintenance and operation of such ditch, the owners or shareholders, desiring the performance of such work as is reasonably necessary to maintain and operate the ditch, may, after having given ten days' written notice to such joint owner, or owners, or shareholders who have failed to pay for or refused to perform their proportionate share of work necessary for the operation and maintenance of said ditch, proceed themselves to do such work, or cause the same to be done, and may recover therefor from such person so failing to perform or pay for his share of such work, in any court having jurisdiction over the amount, the reasonable expense or value of such work or labor so performed. (Acts 1913, p. 358, sec. 72; Acts 1917, ch. 88, sec. 71.)

Art. 5002p. Surplus water to be returned.—All surplus water taken or diverted from any running stream and not used by the appropriator or disposed of to consumers for the purposes stated in this Act, shall be conducted back to the stream from which taken or diverted, wherever such water may be returned by gravity flow, whenever reasonably practicable. (Acts 1913, p. 358, sec. 73; Acts 1917, ch. 88, sec. 72.)

Art. 5003. (704) Preliminary surveys; members of board and employés may enter upon land to make investigations.—Every person, association of persons, corporation, water improvement or irrigation district shall have power to cause an examination and survey for its proposed work to be made as may be necessary to the selection of the most advantageous reservoir sites and rights of way for any of the purposes authorized by this Act, and for such purposes shall have the right to enter upon the lands or waters of any person.

Any member or employee of the board shall have authority to enter upon the lands and any or all waterways, either natural or artificial, for the purpose of making any investigation that would, in the judgment of the board, assist in the discharge of its duties. (Acts 1895, p. 27; Acts 1913, p. 358, sec. 74; Acts 1917, ch. 88, sec. 73.)

Art. 5004. (3126) Right of way over public lands.—Every person, association of persons, corporation, water improvement or irrigation district formed for any of the purposes authorized by this Act, are hereby granted the right of way, not to exceed one hundred feet in width, and the necessary area for any dam and reservoir site over all public free school, University and asylum lands of this State, with the use of the rock, gravel and timber on such reservoir site and right of way for construction purposes, after paying such compensation as the board of engineers may determine, and may acquite such reservoir site and rights of way over private lands by contract. (Acts 1895, p. 21; Acts 1913, p. 358, sec. 75; Acts 1917, ch. 88, sec. 74.)

Art. 5004a. Eminent domain; application to board; institution of proceedings by board.—Any person, association of persons, corporation, irrigation or water improvement district, or any city or town, may also obtain the right of way over private lands and also the lands for pumping plants, intakes, headgates and storage reservoirs, by condemnation, by causing the damages for any private property appropriated by any such person, association of persons, corporation, water improvement or irrigation district, or city or town, to be assessed and paid for as provided in cases of railroads; provided, however, that when the power granted by this section is sought to be exercised by any person or association of persons, he or they shall first make application to the Board of Water Engineers for such condemnation and said Board shall make due investigation and if it deems advisable shall give notice to the party owning the land sought to be condemned, and after hearing, may institute such condemnation proceedings in the name of the State of Texas for the use and benefit of said person or persons and all others similarly situated, the costs of said suit and condemnation to be paid by the person or persons at whose instance the same in instituted in proportion to the benefits received by each as fixed by said Board and to be paid before use is made of such condemned rights or property; and thereafter all persons seeking to take the benefits of such condemnation proceedings shall make application therefor to the Board of Water Engineers and if such application is granted shall pay such fees and charges as may be fixed by said Board. (Acts 1913, p. 358, sec. 76; Acts 1917, ch. 88, sec. 75.)

Art. 5005. [Repealed.]

See note under art. 4991.

Art. 5006. (3128) Public roads and bridges.—All persons, associations of persons, corporations, and water improvement or irrigation districts shall have the right to run along or across all roads and highways necessary in the construction of their work, and shall at all such crossings construct and maintain necessary bridges, culverts, or si-

phons, and shall not impair the uses of such road or highway; provided, that if any public road or highway or public bridge shall be upon the ground necessary for the dam site, reservoir, or lake, it shall be the duty of the commissioners' court to change said road and to remove such bridge that the same may not interfere with the construction of the proposed dam, reservoir, or lake; provided, further, that the expense of making such change shall be paid by the person, association of persons, corporation, water improvement or irrigation district desiring to construct such dam, lake or reservoir. (Acts 1895, p. 21; Acts 1913, p. 358, sec. 77; Acts 1917, ch. 88, sec. 76.)

Art. 5007. [Repealed.]

See note under art. 4991.

Art. 5008. (704) May cross streams, etc.—Such person, association of persons, corporation or irrigation district shall have power to construct its ditch or canal across, along or upon any stream of water. (Acts 1895, p. 25; Acts 1913, p. 358, sec. 78; Acts 1917, ch. 88, sec. 77.)

Arts. 5009, 5009a. [Repealed.]

See art. 5011½w, post. Re-enacted in Acts 1917, ch. 88, as sections 87 and 88, set forth post as arts. 5011ff and 5011fff.

Art. 5010. [Repealed.]

See note under art. 4991.

Art. 5011. Surveys under reclamation act.—When, in the examination of any irrigation or reclamation project, under the provisions of the Act of Congress, known as the Reclamation Act, approved June 17, 1902, it shall be found advisable or necessary to irrigate or reclaim lands within the limits of this State, the Secretary of the Department of the Interior is authorized to make all necessary examinations and surveys for, and to locate and construct irrigation or reclamation works within this State, and to perform any and all acts necessary to carry into effect the provisions, limitations, charges, terms and conditions of said Reclamation Act. (Acts 1905, p. 151; Acts 1913, p. 358, sec. 79; Acts 1917, ch. 88, sec. 78.)

Art. 5011a. Reclamation projects.—The provisions of this Act shall in all things apply to the construction, maintenance and operation of any irrigation works in this State, constructed under what is known as the Federal Reclamation Act, approved June 17, 1902, and the amendments thereto, in so far as the provisions of this Act are not inconsistent with said Act of Congress, or the amendments thereto, or the regulations prescribed by the Secretary of the Department of the Interior in conformity to such Reclamation Act and the amendments thereto. (Acts 1913, p. 358, sec. 80; Acts 1917, ch. 88, sec. 79.)

Art. 5011b. Diversion of water from watershed prohibited when.—It shall be unlawful for any person, association of persons, corporation, water improvement or irrigation district to take or divert any of the water of the ordinary flow, underflow, or storm flow of any stream, water course, or watershed, in this State into any other natural stream, water course or watershed, to the prejudice of any person or property situated within the watershed from which such water is proposed to be taken or diverted. (Acts 1913, p. 358, sec. 81; Acts 1917, ch. 88, sec. 80.)

Art. 5011c. Application to board of water engineers; hearing; appeals.—Before any person, association of persons, corporation, water improvement or irrigation district shall take any water from any natural stream, water course, or watershed in this State into any other watershed, such person, association of persons, corporation, water improvement or irrigation district shall make application to the Board of Water Engineers for a permit so to take or divert such waters, and no such permit shall be issued by the board until after full hearing before said board as to the rights to be affected thereby, and such hearing shall be held and notice thereof given at such time and such place, in such mode and manner as the board may prescribe; and from any decision of the board an appeal may be taken to the district court of the county in which such diversion is proposed to be made, in the mode and manner prescribed in this Act for other appeals from the decision of the board. (Acts 1913, p. 358, sec. 82; Acts 1917, ch. 88, sec. 81.)

Art. 5011cc. Prescriptive right to appropriation.—Whenever any appropriator of water from any stream or other source of water supply located in whole or in part within this State, shall have obtained from the Board of Water Engineers a permit for the use of water, and shall have made use of the water under the terms of such permit; or whenever any such appropriator of water shall have filed an appropriation, in accordance with the laws of this State in force at the time of such filing, and shall have filed with the Board of Water Engineers a certified record of such appropriation, as required by Chapter 171 of the Acts of the regular session of the Thirty-third Legislature, and shall have made use of the water, under the terms of such filing or permit for a period of three years after this Act shall take effect, he shall be deemed to have acquired a title to such appropriation by limitation, as against any and all other claimants of water from the same stream, or other source of water supply, and as against any and all riparian owners upon said stream or other source of water supply. (Id. sec. 83.)

Art. 5011d. Reservoirs and canals, etc., to be fenced.—Unless the person, association of persons, corporation, water improvement or irrigation district owning or controlling any ditch, canal, reservoir, dam or lake, shall keep the same securely fenced, no cause of action shall accrue in their favor against owners of live stock for any trespass thereon. (Acts 1913, p. 358, sec. 84; Acts 1917, ch. 88, sec. 84.)

Art. 5011e. Alienation of land required, etc.—Any corporation organized under the provisions of the General Laws of this State, or the provisions of this Act, for any of the purposes stated in this Act, shall have the power to acquire lands by voluntary donation or purchase in payment of stock or bonds or water rights; and to hold, improve, subdivide and dispose of all such land and other property; and to borrow money for the construction, maintenance and operation of its canals, ditches, flumes, feeders, reservoirs, dams, lakes, wells and other property and franchises, to the extent of the value thereof, to secure the payment of any debts contracted for same; provided, no corpora-

tion shall issue stock or bonds except for money paid, labor done, or property actually received, and all fictitious increases in stock or indebtedness shall be void; provided further, all lands acquired by such corporation, except such as are used for the construction, maintenance or operation of such canals, ditches, laterals, feeders, reservoirs, dams, lakes, wells and other necessary works, shall be alienated within fifteen years from the date of acquiring said land or be subject to judicial forfeiture. (Acts 1913, p. 358, sec. 85; Acts 1917, ch. 88, sec. 85.)

Art. 5011f. Directors may be elected.—Any corporation organized under the provisions of the General Laws of this State, or the provisions of this Act, for any of the purposes stated in this Act, may elect directors or trustees to hold office for a period of three years, and may provide for the election of one-third in number thereof each year. (Acts 1913, p. 358, sec. 86; Acts 1917, ch. 88, sec. 86.)

Art. 5011ff. Preference lien upon crops raised on land irrigated.—Every person, association of persons, corporation, water improvement or irrigation district, who has heretofore constructed, or may hereafter construct any ditch, canal, dam, lake or reservoir, for the purposes of irrigation, and who shall lease, rent, furnish, or supply water to any person, association of persons, water improvement or corporation, for the purpose of irrigation, shall, irrespective of contract, have a preference lien superior to every other lien upon the crop or crops raised upon the land thus irrigated. (Acts 1895, p. 21; Acts 1913, p. 358, sec. 87; Acts 1917, ch. 88, sec. 87.)

Art. 5011fff. Enforcement of lien.—For the enforcement of the lien provided for in the preceding Section, every such person, association of persons, corporation, water improvement or irrigation district shall be entitled to all the rights and remedies prescribed by Chapter 1, Title 80, of the Revised Civil Statutes of this State for the enforcement of the lien as between landlord and tenant. (Acts 1913, p. 358, sec. 88; Acts 1917, ch. 88, sec. 88.)

Art. 5011g. Artesian wells.—An artesian well is defined, for the purposes of this Act, to be an artificial well in which, if properly cased, the waters will rise by natural pressure above the first impervious stratum below the surface of the ground. (Acts 1913, p. 358, sec. 91; Acts 1917, ch. 88, sec. 90.)

Art. 5011h. Certain artesian wells declared nuisances.—Any artesian well which is not tightly cased, capped and furnished with such mechanical appliances as will readily and effectively arrest and prevent the flow from such well, either over the surface of the ground about the well, or wasting from the well through the strata through which it passes, is hereby declared a public nuisance and subject to be abated as such, upon the order of the board. (Acts 1913, p. 358, sec. 92; Acts 1917, ch. 88, sec. 91.)

Art. 5011i. Waste in relation to artesian wells defined.—Waste is defined, for the purposes of this Act, in relation to artesian wells, to be the causing, suffering or permitting the waters of an artesian well to run into any river, creek, or other natural water course or drain, superficial or underground channel, bayou, or into any sewer, street, road, highway, or upon the land of any other person than that of the owner of such well, or upon the public lands, or to run or percolate through the strata above that in which the water is found; unless it be used for the purposes and in the manner in which it may be lawfully used on the premises of the owner of such well; provided, that nothing in this Section shall be construed to prevent the use of such water, if suitable, for proper irrigation of trees standing along or upon any street, road or highway, or for ornamental ponds or fountains, or the propagation of fish, or for the purposes authorized by this Act. (Acts 1913, p. 358, sec. 93; Acts 1917, ch. 88, sec. 92.)

Art. 5011j. [Repealed.]

See art. 5011½w, post. Re-enacted by Acts 1917, ch. 88, sec. 94, set forth post as art. 837n, Pen. Code.

Art. 5011k. [Repealed and re-enacted as section 104 of this act, set forth post as art. 5011½ee.]

Arts. 5011*l*, 5011m. [Repealed and re-enacted as sections 136 and 137 of this act, set forth post as arts. 5011½uu and 5011½v.]

Art. 5011n. [Repealed.]

See post, art. 5011½w.

Art. 5011*o*. [Repealed and re-enacted as section 138 of this act, set forth post as art. 5011½vv.]

Art. 5011p. Water-users' associations incorporated under United States reclamation act; no charter fees or franchise taxes.—Whereas, The congress of the United States has set apart certain funds arising from the sale of public lands of the United States, for the reclamation of arid land in certain states of the Union, by the construction of reservoirs and irrigation works therein; and,

Whereas, By special act of the congress of the United States, the benefits of such reclamation act have been extended to the state of Texas; and,

Whereas, By the terms of such Act the beneficiaries thereunder are required to refund to the government the cost of such works, and under the regulations of the department of the interior the farmers applying for water from such irrigation works are required to incorporate themselves into water-users associations, having an authorized capital equivalent to their debt to the United States government, such capital stock being appurtenant to the land and representing the mortgage placed upon the land to reimburse the government the cost of the irrigation works;

Now, therefore, be it enacted: That water-users associations, incorporated under the terms of the United States reclamation act, approved June 17, 1902, and the regulations of the United States department of the interior, made in pursuance of such Act, organized and carried on for the purpose of enabling citizens and residents of this state to avail themselves of the benefits of said reclamation act, shall not be subject to the laws of this state relating to charter fees and franchise taxes. (Acts 1911, p. 42, sec. 1.)

Art. 5011q. Lease of water rights in Guadalupe river; purposes of lease; supply to consumers; monopoly prohibited; rights of lienholders or purchasers.—The governor, the attorney general and the commissioner of the general land office of the state of Texas, or any two of them, be and

are hereby authorized to lease to Cuero Light and Power Company or any other person, firm or corporation upon such terms and for such consideration as they may prescribe for a period not to exceed fifty years, any or all the water rights belonging to the state of Texas in and to the Guadalupe river in DeWitt county; Provided, also that the governor, the attorney general and the commissioner of the general land office, shall lease said water rights to said Cuero Light & Power Company, or to any other parties, at a rate of not less than one-tenth of one per cent annually, upon the gross earnings of said lessees.

Provided, however, that the water rights granted shall be for hydroelectric and power purposes only, and no one person, firm or corporation shall be granted the right to construct a greater number of dams in said river than is sufficient to generate with machinery ordinarily used for such purposes, not exceeding 1800 h. p. measured when the river is at its minimum flow, calculated by the standard method of hydraulic measurement.

Provided, further, that any firm, corporation or person to whom such lease is made shall distribute the power when sold to the public without discrimination, and shall sell the same to consumers in the same class and under like conditions at the same price and upon the same terms.

Provided, however, said leasehold may be sold, but no encumbrance or sale of leasehold which creates a trust or monopoly shall ever be made, nor shall any sale or leasehold ever be made to any trust or monopoly.

Provided, also, that any lien-holder, bondholder or purchaser shall have no greater rights than the lessee hereunder, and shall be subject to the same liabilities and duties to the State. (Acts 1913, S. S., p. 29, sec. 1.)

Art. 5011r. Mode of use; priority of right; compensation to third persons; duties of governor, attorney general and commissioner of the general land office; arbitration.—Said lessee or lessees shall have the right, power, privilege and authority to maintain any dam already in existence and to erect, build, construct, maintain and operate additional dams across the Guadalupe river in DeWitt county, Texas, and to build reservoirs, lakes, locks, abutments and buildings across the Guadalupe river in said county, necessary for the use of the privileges and rights hereby granted them, and any person firm or corporation now owning dams or having acquired property for the purpose of building a dam or dams under this Act, shall have priority over others in making such lease or leases and in the event a lease or leases shall be made to some person, firm or corporation other than one having a dam or dams or having acquired property for the purpose of constructing a dam or dams across said river in said county, then the person, firm or corporation so leasing said water rights and bed of said stream shall under the condition of such lease or leases be required by the governor, attorney general and commissioner of the general land office, or any two of them, to compensate the owner of said dam or dams now constructed, or property now acquired in such amount, and upon such terms as may be fixed by the governor, attorney general and commissioner of the general land office, and if lease or leases are made to others than the owners of the property above described, then the fact of leasing will require party leasing to submit to the arbitration herein provided. (Id. sec. 2.)

Art. 5011s. Right to dam river.—Said lessee shall have the right, power, privilege and authority, in any manner to dam and overflow the Guadalupe river and its tributaries in said county, and in any manner to deepen, lower, drain and excavate said channel to said river, its bed and banks and up said stream as far as the water from said dams may be backed or impounded and to include said Guadalupe river and its tributaries from said point up said stream as far as the water being backed or impounded from said dam shall extend. (Id. sec. 3.)

Art. 5011ss. Construction of gates, breakwaters, dams or dikes in tide waters to prevent pollution of fresh water.—Persons, associations of persons, corporations or districts, operating under the statutes of Texas relating to irrigation, are hereby authorized, (subject to the conditions and regulations which may be required or prescribed by the authorities of the United States Government in respect to navigation), to construct such gates or breakwaters, dams or dikes, with gates, as may be required in any waters wholly in the State of Texas where gulf tides ebb and flow to prevent the pollution of the fresh water of any stream, river or bayou, through ebb and flow of salt tides from the Gulf of Mexico and to conserve such fresh water in a condition fit for irrigation; provided that such work shall, in every case, be done so as not to obstruct navigation by any vessels operated on such waterway, and provided that in every case where gates are required to avoid obstruction of navigation, such persons, association, corporation or district responsible for the construction shall at all times keep a competent person at such gates to operate same when required for purposes of navigation; provided further that such dam, dike or breakwater hereby authorized shall not be placed at any point in such waters, except where the gulf tides ebb and flow, and not so as to obstruct the flow of fresh water to any appropriator or riparian owner below on the same stream. (Acts 1918, 4th C. S., ch. 35, sec. 1.)

Art. 5011t. Diversion of surface waters; remedies; provisos.—That it shall hereafter be unlawful for any person, firm or private corporation to divert the natural flow of the surface waters in this State or to permit a diversion thereof caused by him to continue after the passage of this Act, or to impound such waters, or to permit the impounding thereof caused by him to continue after the passage of this Act, in such a manner as to damage the property of another, by the overflow of said water so diverted or impounded, and that in all such cases the injured party shall have remedies in both law and equity, including damages occasioned thereby, provided that the passage of this Act shall in no way affect the construction and maintenance of levees and other improvements for the purpose of controlling floods, overflows and freshets in rivers, creeks and streams, nor the construction of canals for the purpose of conveying waters for irrigation; and provided further that

nothing in this Act shall be so construed as to authorize or give authority to persons or corporations owning or constructing canals for irrigation or other purposes, to construct or maintain any canal, lateral canal or ditch in such manner as to obstruct any river, creek, bayou, gully, slough, ditch or other well defined natural drainage. (Acts 1915, 1st C. S., ch. 7, sec. 1.)

Art. 5011½. Artesian wells may be dug if securely cased.—Whenever any person desires to drill a well upon his own land for domestic purposes or use for stock raising purposes or use, that comes within the definition of artesian well, as defined in this Act, he shall have the right to do so without subjecting himself to the provisions of this Act; provided, that said well shall be properly and securely cased, and whenever water is reached containing mineral or other substances injurious to vegetation or agriculture it shall be the duty of owner of said well to securely cap same or to control its flow so as not to injure the land of any other person, or to fill it up so as to prevent the water of said well to rise above the first impervious stratum below the surface of the ground. (Acts 1917, ch. 88, sec. 93.)

Art. 5011½a. Waste of water; nuisance; abatement; closing water gates against person guilty.—Any person, association of persons or the agent of any corporations owning or acquiring any possessory right to lands contiguous to any canal or irrigation system and who acquires the right to the use of water from such canal or irrigation system, by contract as in this Act provided, who wilfully and knowingly permits the excessive or wasteful use of water by any of the agents, servants or employés of said parties, or who wilfully and knowingly permits water to be wasted and not applied to a beneficial purpose, shall be deemed guilty of a misdemeanor, and shall be punished as provided in Section 101 [Art. 837nnn, Penal Code, post], and such use or waste of water shall be declared a public nuisance and abated as such by the Board of Water Engineers; said Board of Water Engineers being empowered to direct the canal company or irrigation system to close the water gates of said persons and to keep them closed until such time as such unlawful use of water shall be corrected and the determination of this question shall be controlled entirely by the Board of Water Engineers, or its agents, servants and employés. (Id. sec. 95.)

Art. 5011½b. Waste of water a public nuisance.—Any person, association of persons, corporation, water improvement or irrigation district who owns or operates any works which make use of water for any of the purposes named in this Act, and who permits unreasonable loss of water in the operation of such works, through the faulty design or negligent operation of such works, shall be deemed guilty of waste, and such works, or any part thereof may be declared a public nuisance and abated as such by the Board of Water Engineers. (Id. sec. 96.)

For section 97 of this act, see Penal Code, art. 837nn.

Art. 5011½c. Jurisdiction and venue of suits.—In any and all civil suits instituted by or under the direction of the board of water engineers, suit may be prosecuted and instituted in any court of competent jurisdiction in the county or in any of the counties where the land lies. (Id. sec. 98.)

Art. 5011½cc. Who may sue for injuries due to waste of water.—Action may be brought before any district court of this State, having jurisdiction over the irrigation district in question by any person, association of persons, corporation, water improvement or irrigation district, who may be injured by waste, as herein defined, for the determination of questions arising under Sections 96 and 97 [Art. 5011½b, ante; Art. 837nn, Pen. Code, post] of this Act. (Id. sec. 99.)

Art. 5011½d. Operator of irrigation system to keep records, annual statement to board of water engineers.—Any person, association of persons, corporation, irrigation or water improvement district who owns and operates any system of works used for the irrigation of land, or for any of the purposes named in the law, shall keep such detailed record of daily operations as may be necessary to determine the quantity of water taken or diverted each calendar year. If the use is for irrigation, there shall also be kept a record of the number of acres irrigated, as near as may be, without making actual surveys for the purpose and the character of crop or crops grown, and the yield per acre.

On or before the first day of March of each year, every person, association of persons, corporation, water improvement or irrigation district who, during any part of the preceding calendar year, owned or operated any of the works described in this Section, shall furnish, under oath, to the Board of Water Engineers, upon blanks to be furnished by the board, the information required to be kept for such preceding year, or part thereof, together with such other available information as the board may require, covering the uses made of water for any of the purposes named in the law. (Id. sec. 100.)

For section 101 of this act, see Penal Code, art. 837nnn.

Art. 5011½dd. Statement to board as to test of artesian well.—Any person, association of persons, corporation, or water improvement or irrigation district, owning or operating any artesian well, as defined for the purposes of this Act, at the time of its taking effect, shall, within one year thereafter, transmit to the Board of Water Engineers a sworn statement showing the result of such test, together with a declaration of the use or uses to which the newly developed supply will be devoted, and the contemplated extent of such use. (Id. sec. 102.)

Art. 5011½e. Annual report as to public artesian wells.—On or before the first day of March of each year, every person, association of persons, corporation, water improvement or irrigation district who, during any part of the preceding calendar year, owned or operated any artesian well for any purpose other than that of domestic use, shall furnish, under oath, to the Board of Water Engineers, upon blanks to be furnished by the board, a detailed statement showing the quantity of water which has been derived from such well, and the character of use to which same has been applied, together with the change in level of the water table of said well, and if used in irrigation, the acreage

and yield of each crop, together with such additional data as the board may require. (Id. sec. 103.)

Art. 5011½ee. Regulations relating to artesian wells not to apply to oil wells.—Nothing in the preceding Sections, relating to artesian wells, shall be construed to apply to any oil well, and the status of such oil wells shall be unaffected by this Act; provided that abandoned oil wells shall be safeguarded as required in Section 91 [Art. 5011h] of this Act. (Acts 1913, p. 358, sec. 96; Acts 1917, ch. 88, sec. 104.)

Art. 5011½f. Board to determine relative rights of claimants to waters; taking testimony; transfer of cases from courts to board.—Upon a petition to the Board of Water Engineers, signed by one or more water users, upon any stream or other source of water supply, requesting the determination of the relative rights of the various claimants to the waters of such streams or other source of supply, it shall be the duty of the Board of Water Engineers, if upon investigation they find the facts and conditions are such as to justify, to make a determination of such rights, fixing a time for beginning the taking of testimony, and the making of such examinations as will enable them to determine the rights of the various claimants. In case suit is brought in any court for the determination of rights to the use of water, the case may, in the discretion of the court, be transferred to the Board of Water Engineers for determination, as in this Act provided. (Id. sec. 105.)

Art. 5011½ff. Notice; adjournment of taking of testimony; sessions; members of board who may preside.—The Board shall prepare a notice setting forth the date when the investigation will begin of the flow of the stream and of the ditches and pumps taking water therefrom, and a place and time certain when one or more members of the Board of Water Engineers will begin the taking of testimony as to the rights of the parties claiming water therefrom. Said notice shall be published in two issues of one or more newspapers having general circulation in the portion of the State in which said water supply is situated, the last publication of said notice to be not less than thirty days prior to the beginning of taking testimony and for the measurement of the stream. The member or members of the board taking such testimony shall have the power to adjourn the taking of testimony from time to time and from place to place, to suit the convenience of those interested. Provided that the hearing for the taking of testimony shall be held in each county through which such stream may flow, or in which a portion of such water supply is situated. Such hearing may be held by any one or more members of the Board of Water Engineers, and when taken before any one or more members, shall have the same force and effect as if the whole board were sitting at such hearing. (Id. sec. 106.)

Art. 5011½g. Special notice to claimants of sessions of board.—It shall be the duty of the Board of Water Engineers to cause a notice to be sent by registered mail to each person, firm or corporation shown by the Records of the Board to the Board to be a user or claimant to the use of water upon such stream or other source of water supply, which said notice shall set forth the date when a member or members of the board will sit within the county of such claimant's residence, or the county in which may be situated the land to which such water right may be appurtenant, and also setting forth the date when the examination of the stream or other source of water supply, and the ditches and pumps diverting water therefrom, will begin; and also the date when testimony will be taken as to the rights to the water of said stream, or other source of water supply. Said notice shall be mailed at least thirty days prior to the date set therein for making examination of such stream, or other source of water supply, and the taking of testimony. (Id. sec. 107.)

Art. 5011½gg. Claimant shall make statement in writing of extent of claim.—Accompanying each such notice there shall, in addition, be enclosed with said notice a blank form on which said claimant or owner shall present in writing all the particulars necessary for the determination of his right to the waters of the stream or other source of water supply to which he lays claim, the said statement to include the following: The name and post office address of the claimant; the nature of the right or use on which the claim is based; the time of initiation of such right, or the commencement of such use, and, if distributing works are required, the date of beginning of construction; the date when completed; the date of beginning and completion of enlargements; the dimensions of the ditch as originally constructed and as enlarged; the date when water was first used for irrigation or other beneficial purposes, and if used for irrigation, the amount of land reclaimed the first year, and the amount in subsequent use with the dates of reclamation and the amount and general location of the land such ditch or pump is intended to irrigate; the character of the soil, and the kind of crops cultivated, and such other facts as will show a compliance with the law in acquiring the right claimed. (Id. sec. 108.)

Art. 5011½h. Verification of statement.—Each claimant or owner shall be required to certify to his statement under oath, and any member of the Board of Water Engineers, or the secretary of the board, is hereby authorized to administer such oaths, which shall be done without charge, as also shall be the furnishing of blank forms for said statement, above provided for. (Id. sec. 109.)

Art. 5011½hh. Taking of testimony; disqualification of members of board.—Upon the date named in the notice above provided for, for the taking of testimony, a member or members of the Board of Water Engineers shall begin the taking of such testimony, and shall continue the same until completed. Provided, that the meetings may be adjourned from time to time and place to place, to suit the convenience of the parties. In case any member of the Board of Water Engineers is directly or indirectly interested in the water of any stream, or other source of water supply, upon which an investigation and hearing shall be undertaken, or is pre-

vented by illness, or otherwise from taking part in such hearing, the taking of testimony, so far as relates to said stream, or other source of water supply, shall be carried on by another member or members of the board, and such member so interested shall be deemed to be disqualified, and shall not participate in the taking of testimony or the determination of such cause. (Id. sec. 110.)

Art. 5011½i. Notice of completion of testimony; inspection by claimants.—Upon the completion of the taking of testimony, it shall be the duty of the board, or the member or members thereof taking such testimony, to give notice, by registered mail, to the various claimants, that at a time and place named in the notice, not less than ten days thereafter, all of said evidence shall be open to inspection of the various claimants or owners, and others, and said member or members of the board conducting such hearing, shall keep such evidence open to inspection at said places for such a length of times as, in the opinion of the board, shall be necessary to permit anyone interested to examine the same. (Id. sec. 111.)

Art. 5011½ii. Employment of stenographers, experts, etc.—Whenever in the judgment of the Board of Water Engineers it is deemed necessary or expedient to employ stenographers, hydrographers and other experts, in order to properly perform its duties as required by Section 111 to 123 [Arts. 5011½i–5011½o], inclusive, the board shall have the authority to make such employment, at just and reasonable rates of compensation for such services and for their necessary traveling expenses, to be paid out of a fund created for that purpose, and the Legislature shall create such fund by appropriating a sufficient sum therefor out of money not otherwise appropriated for the use of the Board of Water Engineers. (Id. sec. 112.)

Art. 5011½j. Expenditures charged as costs.—Any money expended in accordance with the provisions of the preceding section shall be charged as costs in the proceedings creating the necessity for its expenditure, and upon collection thereof by the proper authority shall be thereupon deposited with the State Treasurer, who shall place the same to the credit of the fund required by the preceding section. (Id. sec. 113.)

Art. 5011½jj. Contest of claims; notice.—Should any person, corporation, water improvement or irrigation district, or association of persons owning irrigation works deriving water from, or claiming any interest in the stream or other source of water supply involving the determination, desire to contest any of the rights of the persons who have submitted evidence, as aforesaid, such persons, corporations or associations shall, within thirty days after the expiration of the period as fixed in the notice for public inspection, notify the Board of Water Engineers, or the member or members conducting such hearing, in writing, stating with reasonable certainty the grounds for his proposed contest, which statement shall be verified by the affidavit of the contestant or his agent of attorney, and the said board, or the member or members thereof conducting such hearing, shall notify the said contestant and the person, corporation, water improvement, and irrigation district or association whose rights are contested, to appear before such board, or the member or members thereof conducting such hearing, at such convenient time and place as shall be designated in such notice. (Id. sec. 114.)

Art. 5011½k. Hearing; compelling attendance of witnesses; depositions; fees and costs.—The time fixed for the hearing in the foregoing section provided for shall be not less than thirty nor more than sixty days from the date the notice is issued to the person, corporation, water improvement, or irrigation district, or association of persons whose rights are contested, which notices may be served and returns thereof may be made in the same manner as citations are served in civil actions in the district court. The Board of Water Engineers, or the member or members so conducting such hearing, shall have the right and power to issue subpœnas and compel the attendance of witnesses to testify upon such hearing, which shall be served in the same manner as subpœnas issued out of the district courts, and shall have the power to compel such witnesses so subpœnaed to testify, and to give evidence in said matter, and shall have the power to order the taking of depositions, and to issue, through their secretary, commissions to take depositions, in such manner as the Board of Water Engineers, by written rule, may provide, and said witnesses shall receive the same fees as in civil cases, the costs to be taxed as the Board of Water Engineers may direct. (Id. sec. 115.)

Art. 5011½kk. Transmission of evidence to office of board.—Upon the expiration of the period for which the evidence is kept open for inspection, the evidence in the original hearing before the Board of Water Engineers, or any member or members thereof, together with the evidence taken in all contests, if any, shall be transmitted to the office of the Board of Water Engineers, either by some member of the Board, or the secretary of the Board, in person, or by registered mail, and such evidence shall thereupon be filed as a public document in the office of the Board of Water Engineers. (Id. sec. 116.)

Art. 5011½*l*. Examination of stream or water supply; measurements; map.—It shall be the duty of the Board of Water Engineers, either through one of its own members, or a qualified agent or employé, to proceed, at the time specified in the notice to the parties on such stream or other source of water supply, to make an examination of such stream or other source of water supply, and the works diverting water therefrom, said examination to include the measurements of the discharge of such stream, and of the carrying capacity of the various ditches and canals, an examination of the irrigated lands, and an approximate measurement of the lands irrigated or susceptible of irrigation from the various ditches and canals, and to take such other steps and gather such other data and information as may be essential to the proper understanding of the relative rights of the parties interested, which said observation and measurement shall be reduced to writing and made a matter of record in the office of the board, and it shall be the duty of the board to make or

cause to be made map or plat, on a scale of not less than one inch to a mile, showing with substantial accuracy the course of said stream, the location of each ditch and canal diverting water therefrom, and the legal subdivisions of lands which have been irrigated or which are susceptible of irrigation from the ditches and canals already constructed. (Id. sec. 117.)

Art. 5011½*ll*. Findings of fact and determination; rights determined; certified copy sent to counties through which stream flows.—As soon as practicable after the compilation of said data and the filing of said evidence in the office of the Board of Water Engineers, the board shall make and cause to be entered of record in its office, findings of fact and an order of determination, determining and establishing the several rights to the waters of said stream. And where the evidence taken at such a hearing as herein provided shall disclose existing water rights not represented at such a hearing, said rights shall be included in such findings of fact of said board and shall be likewise determined and established. A certified copy of such order of determination and findings shall be filed in every county in which such stream or any portion of a tributary is situated, or by which it flows, with the county clerk of said county. (Id. sec. 118.)

Art. 5011½m. Certificates of determination; registration.—Upon the final determination of the rights to the waters of any stream or other source of water supply, it shall be the duty of the secretary of the Board of Water Engineers to issue to each person, association or corporation represented in such determination, upon payment of the fee required by law, a certificate to be signed by the chairman of the Board of Water Engineers, and attested under seal by the secretary of said board, setting forth the name and post office address of the owner of the right, the date of the priority, extent and purpose of such right, and if such water be for irrigation purposes, a description of the legal subdivisions of the land to which the water is appurtenant. Such certificate shall be transmitted by the secretary in person or by registered mail, to the county clerk of the county in which such right is located, and it shall be the duty of the county clerk, upon receipt of the statutory recording fee, to record the same in a book prepared and kept for that purpose, and the clerk shall, upon receipt of the filing fee and the recording of said certificate, immediately transmit the certificate to the owner. (Id. sec. 119.)

Art. 5011½mm. Appeal to district court; parties.—Any party or any number of parties, acting jointly, who may feel themselves aggrieved by the determination of the Board of Water Engineers, may take an appeal from the decision of the board to the district court. All persons joining in the appeal shall be joined as appellants, and all others, parties to the proceedings, shall be joined as appellees. (Id. sec. 120.)

Art. 5011½n. Notice of appeal; bond; consolidation of appeals.—The party or parties appealing shall, within sixty days of the determination by the Board of Water Engineers, which is appealed from, and the entry thereof in the records of the board, file in the district court to which the appeal is taken, a notice in writing stating that such party or parties appeal to such district court from the determination and order of the Board of Water Engineers, and upon the filing of such notice, the appeal shall be deemed to have been perfected. Provided, however, that the party or parties appealing shall, within sixty days mentioned, enter into a bond, to be approved by the district clerk, to be made payable to all the parties in said suit or proceeding, other than the parties appealing, which bond shall be in such an amount as the district clerk shall fix, conditioned that the parties taking such appeal will prosecute their appeal to effect, and pay all costs which may be adjudged against them, or either or any of them. In the event that more than one appeal shall be perfected, the district court shall have the right to order such appeals consolidated in such manner and upon such terms as the district court shall direct. (Id. sec. 121.)

Art. 5011½nn. Notice to board of perfection of appeal; service on appellees.—The clerk of the district court, immediately upon the filing of said notice of appeal, and the approval of the bond mentioned in the preceding section, shall transmit to the secretary of the Board of Water Engineers a notice over the seal of the court, to the effect that said appeal has been perfected, which notice shall be entered of record by the secretary in the records of the board. The appellant or appellants shall cause a certified copy of said notice to be served on each of the appellees, the same to be served in the same manner provided for other process issuing out of the district court. (Id. sec. 122.)

Art. 5011½*o*. Appellant shall file in district court certified transcript of record and determination of board.—The appellant or appellants shall, within ninety days after the appeal is perfected, as provided for, file in the office of the clerk of the district court of the proper county, a certified transcript of the order of determination made by the Board of Water Engineers, which order is appealed from, together with a certified copy of all of the records of the Board of Water Engineers relating to such determination, and the originals or certified copies of all documentary evidence offered before the board, or prepared by the board, including the measurements of streams, tributaries and ditches, together with a petition setting out the cause of complaint of the party or parties appealing. (Id. sec. 123.)

Art. 5011½*oo*. Trial de novo in district court.—When any appeal to the district court shall have been perfected, as provided in the aforesaid sections, a trial de novo shall be held in the district court, and the practice in the taking of testimony and the pleadings therein shall follow as nearly as may be the procedure provided by law in appeals in probate cases from the county to the district court, except as herein otherwise provided. (Id. sec. 124.)

Art. 5011½p. Testimony taken before boards, maps, etc., admissible in evidence.—All surveys, maps, plats and plans, together with stream measurements and scientific and other data collected or prepared by the board, or under its authority, and evidence taken before such board or member thereof, shall be admissible in evidence, under cer-

tificate of the secretary of the board, in all hearings before the board, and in any of the courts of this state. (Id. sec. 125.)

Art. 5011½pp. Decree of district court; costs; appeal.—After final hearing, the court shall enter a decree affirming or modifying the order of the Board of Water Engineers, and may assess such costs and apportion the same, as it deems just. Appeals may be taken from the judgment of the district court to the court of civil appeals and supreme court, in the same manner as in other cases. (Id. sec. 126.)

Art. 5011½q. Order of board effective pending appeal.—Pending final determination of the cause on appeal, the order of the Board of Water Engineers shall be in full force and effect, and the operation thereof shall not be suspended by the appeal. (Id. sec. 127.)

Art. 5011½qq. Determination of board as affirmed or modified conclusive.—The determination of the Board of Water Engineers, as confirmed or modified on appeal, as provided in this Act, shall be conclusive as to all prior rights, and upon the rights of all existing claimants, upon the stream or other body of water embraced in such determination. (Id. sec. 128.)

Art. 5011½r. Persons not presenting claims to board shall be barred after three years; rights of riparian owners not affected.—Whenever the Board of Water Engineers shall, as provided by law, and after publication of notice, as hereinbefore provided, proceed to determine the right of the various claimants to the use of water upon any stream or other source of water supply, it shall be the duty of all claimants interested in such streams or other source of water supply, to appear and submit its or their respective claims or appropriations, at the time and in the manner required by law, and by said published notice, and any claimant who shall fail to appear in such proceedings and submit proof of his claim or appropriation, and who are required by this Act to appear, shall, after three years from the date of the entering of the order of said hearing be barred and estopped from subsequently asserting any rights theretofore acquired upon the stream or other source of water supply, embraced in such jurisdiction and shall be held to have forfeited all rights to appropriate or use the said waters theretofore claimed by him; provided that nothing herein contained shall be held to in any way destroy, infringe or impair the right of any riparian owner to the use of the water from such stream for domestic purposes and use or for the use of stock, and it shall not be necessary for the claimant of this right to appear or assert his right to such use, but the same shall be respected. (Id. sec. 129.)

Art. 5011½rr. Each county shall constitute a water district; resolution of commissioners' court for water commissioner; salary and expenses.—Each county in this State, now existing or hereafter organized, shall constitute a water district, provided, that no water commissioner shall be appointed for any such district until the Commissioners' Court of such county shall, by resolution duly entered in the minutes of such court, call upon the Board of Water Engineers to appoint a Water Commissioner. At the same time that said County Commissioners shall call upon the Board of Water Engineers for the appointment of a Water Commissioner for their district, such Commissioners' Court shall, by resolution, fix the salary or compensation to be paid such commissioner, and the salary and necessary traveling expenses of such Water Commissioner shall be paid by said county, in the mode and manner that may be provided by the Commissioners' Court. As soon as the Commissioners' Court shall have acted upon any such resolution, a certified copy of the order of said court shall be forthwith transmitted to the secretary of the Board of Water Engineers by the clerk of the county court. (Id. sec. 130.)

Art. 5011½s. Board shall appoint water commissioner for each district; tenure, removal, and vacancies; oath and bond.—There shall be appointed by the Board of Water Engineers, by a majority vote of such board, one water commissioner for each water district, after the commissioners' court shall have acted, as in the last preceding section set forth, which commissioner shall hold his office for the term of two years, unless sooner removed by the Board of Water Engineers; provided, that any such water commissioner may, at any time, be removed by the Board of Water Engineers, by a majority vote thereof, and in case of such removal, the board shall specify in its order the reason for such removal. All vacancies in the office of water commissioner, created by removal, resignation or otherwise, shall be filled by the Board of Water Engineers. Before entering upon the discharge of the duties of his office, the water commissioner shall take the oath of office prescribed by the constitution, and shall enter into bond with at least two personal sureties or with one surety or guaranty company authorized to do business in this state, payable to the Board of Water Engineers, to be approved by such board, in the penal sum of Five Thousand ($5,000.00) Dollars, conditioned for the faithful performance of his duties. (Id. sec. 131.)

Art. 5011½ss. Duties of water commissioner.—It shall be the duty of such water commissioner to divide the water of the streams, canals, ditches, or other sources of water supply of his district, among the several users and appropriators thereof, according to the prior right of each, respectively, as determined by the order of the Board of Water Engineers. He shall shut and fasten or cause to be shut and fastened, the headgates of all ditches, or of intakes of all pumps, and shall regulate or cause to be regulated the controlling works of reservoirs in times of scarcity, in accordance with the orders of the Board of Water Engineers, as may be necessary by reason of priority of right existing upon such stream or other sources of water supply in his district. Such water commissioner shall have authority to regulate the distribution of water among the various users under any partnership or other canal, ditch or reservoir, in accordance with the respective rights of the appropriators, as determined by the Board of Water Engineers. Whenever, in the pursuance of his duties, the water commissioner regulates the headgate of a ditch or the

controlling works of a reservoir, or the intake of any pumping plant, it shall be his duty to attach to said headgate, pump or controlling works, a written notice, dated and signed by him, setting forth the fact that said headgate, pump or controlling works has been properly regulated and is wholly under his control, and such notice shall be legal notice to all parties interested in the division and distribution of the waters of such stream, canal, ditch, pump or reservoir. (Id. sec. 132.)

Art. 5011½t. Same; division, etc., of water; appeal to board.—Said water commissioner shall, as near as may be, divide, regulate and control the use of the water of all streams and other sources of water supply within his district under the orders of the Board of Water Engineers, by such closing or partial closing of the headgates as will prevent the waste of water, or its use in excess of the volume to which the appropriator is legally entitled, and any person who may be injured by the action of any water commissioner or his failure to act pursuant to this Act, shall have the right to appeal to the Board of Water Engineers, and from the decision of the said Board of Water Engineers an appeal may be taken to the district court. Provided, however, that the decision of the water commissioner, or other authority appealed from, shall remain in full force and effect, pending such appeal, and until reversed or altered by the authority to which such appeal shall be taken. (Id. sec. 133.)

Art. 5011½tt. Assistants for water commissioner; compensation; discharge.—The Board of Water Engineers shall have the power to authorize the water commissioner to employ an assistant or assistants to aid him in the discharge of the duties of his office, but such assistant shall have no authority except such as may be delegated to him by the water commissioner, and the water commissioner shall be in all things responsible for the actions of his assistant or assistants. Such assistant shall receive such compensation as may be allowed by the County Commissioners' Court, and the time and method of paying the same shall be settled by the Commissioners' Court in an order or resolution authorizing their appointment. Such assistant or assistants may be discharged by the water commissioner at any time, for any reason satisfactory to himself. (Id. sec. 134.)

Art. 5011½u. Act shall apply to what streams, etc.—The provisions of this Act shall apply to all streams or other sources of water supply lying upon or forming a part of the boundaries of this State. (Id. sec. 135.)

Art. 5011½uu. Recognition of riparian rights.—Nothing in this Act contained shall be construed as a recognition of any riparian right in the owner of any lands the title to which shall have passed out of the State of Texas subsequent to the first day of July, A. D. 1895. (Acts 1913, p. 358, sec. 97; Acts 1917, ch. 88, sec. 136.)

Art. 5011½v. Not to affect vested rights.—Nothing in this Act contained shall be held or construed to alter, affect, impair, increase, destroy, validate or invalidate any existing or vested right of property existing at the date when this Act shall go into effect. (Acts 1913, p. 358, sec. 98; Acts 1917, ch. 88, sec. 137.)

Art. 5011½vv. Partial invalidity.—If any Section or provision of this Act shall be held unconstitutional, it shall not be held to invalidate any other provision of this Act. (Acts 1913, p. 358, sec. 99; Acts 1917, ch. 88, sec. 138.)

Art. 5011½w. Repeal.—Chapter 171 of the General Laws of the regular session of the Thirty-Third Legislature, and all other laws and parts of laws in conflict with the provisions of this Act, are hereby repealed. (Id. sec. 139.)

CHAPTER TWO

WATER IMPROVEMENT DISTRICTS

Arts. 5012-5107. [Repealed.]

See art. 5107—105.

Art. 5107—1. Commissioners' Court may establish districts; boundaries; powers; petition and proceedings therein.—The county commissioners' court of any county in this State at any regular or called session thereof may establish one or more water improvement districts in their respective counties, or parts of such districts therein, in the manner hereinafter provided. Such districts may or may not include within their boundaries villages, towns, cities and municipal corporations, or any part thereof, but no land shall be at the same time included within the boundaries of more than one water improvement district created under this Act. Such districts when so established may make improvements or may purchase improvements already existing, or may purchase improvements and make additions thereto, and may issue bonds in payment therefor, as herein provided. Such districts being authorized to provide for the irrigation of the land included therein, and when operating under Section 59 of Article 16 of the Constitution, furnish water for domestic, power and commercial purposes. Such districts may be formed for corporation with the United States under the Federal Reclamation Laws for the purpose of the construction of irrigation works, including drainage works, necessary to maintain the irrigability of the land for the purchase, extension operation or maintenance of constructed works or for the assumption, as principal or guarantor, of indebtedness to the United States on account of district lands.

The petition herein provided for to be presented to the county commissioners' court shall be signed by a majority in number of the holders of title to the lands situated within the proposed district and representing a majority in value of the lands therein as indicated by the county tax rolls; provided, however, that such petition shall be sufficient if same is signed by fifty holders of title or evidence of title to the land situated within the proposed district, in the event that the number of such land owners should be greater than fifty in number. Upon presentation to the Commissioners' court either at a regular or special session, of a petition as herein provided, praying for the establishment of a water improvement district, setting forth the boundaries thereof and designating a name for the district, the commissioners court shall set the same for hearing at some

regular or special session to be held not less than fifteen days nor more than forty days from the presentation of said petition. The Clerk of said court shall issue a notice of the said hearing, giving the date and place of hearing, and a copy of the order of the court setting same for hearing. Said notice shall be directed to the sheriff of the county requiring him to serve the notice in the manner provided by law. Said notice shall be sufficient if it contains the matter herein provided, and all persons interested shall take notice of the boundaries of said district as set out in the petition and may inspect same by examining the same in the office of the clerk of said court.

The sheriff shall execute said notice by posting true copies thereof in three public places within said proposed district and one at the courthouse door of the county, or on the bulletin board used for public notices at the county courthouse. Said notices shall be posted for ten full days prior to the date of said hearing. Said notice shall also be published in a newspaper of general circulation in the county, if a newspaper is published therein, one time and at least five days prior to such hearing. The sheriff shall make due return of a true copy of said notice, showing the time when and the places where such notice was posted and published. The said return to be delivered to the clerk of the commissioners court, and to be recorded in the minutes of said court.

The duties herein imposed upon the clerk and sheriff may be performed by them acting by themselves or their deputies as provided by law for other similar duties. When conditions may make desirable, the petition herein provided for may be signed and presented to the court in several copies. When such petition is so presented in more than one copy the clerk shall file all such copies and shall make a true copy thereof, including a list of all those who have signed the several copies, and certify thereto and file same. Such certified copy shall be considered the petition in all other proceedings provided for by this Act.

Water improvement districts to be organized as provided herein are defined districts under the authority granted by Section 52 of Article 3 of the Constitution of the State. (Acts 1905, p. 235; Acts 1913, p. 380, sec. 1; Acts 1917, ch. 87, sec. 1; Acts 1919, 2d C. S., ch. 28, sec. 1.)

Acts 1919, 2d C. S., ch. 28, sec. 1, amends secs. 1, 7-10, 13, 17, 19, 23, 33, 53, 56, 57, 60, 65, 70, 80, and 108 of Acts 1917, ch. 87, and sec. 15 of said act, as amended by Acts 1918, 4th C. S., ch. 53, sec. 1.

Art. 5107—2. Contest of petition; hearing.—Upon the day set by said county commissioners' court for the hearing of said petition, any person whose lands are included in and would be affected by the creation of said district may appear before said court and contest the creation of such district, or contend for the creation thereof, and may offer testimony to show that such district is or is not necessary and would or would not be of public utility, and that the creation of such district would or would not be feasible or practicable. Said county commissioners' shall have exclusive jurisdiction to hear and determine all contests and objections to the creation of such district and all matters pertaining to the same, except as is hereinafter provided, and may adjourn the hearing on any matter connected therewith from day to day and all judgments rendered by said court in relation thereto shall be final, except as herein otherwise provided. (Acts 1913, p. 380, sec. 2; Acts 1917, ch. 87, sec. 2.)

Art. 5107—3. Findings of commissioners' court.—If, at the hearing of such petition, it shall appear to the satisfaction of the court that the organization of such district and the construction or purchase, or the construction and purchase of the proposed irrigation system, or that co-operation with the United States as in Section 1 [Art. 5107—1] provided, is feasible and practicable, and that it is needed and would be a public benefit and a benefit to the lands included in the district, then the court shall so find, and cause its findings to be entered of record; but if the court should find that the irrigation of the lands in such district is not feasible and practicable and that it would not be a public benefit or is not needed or would not be a public utility, then the court may enter such findings of record and dismiss the petition at the cost of petitioners. (Acts 1913, p. 380, sec. 3; Acts 1917, ch. 87, sec. 3.)

Art. 5107—4. Appeal to district court; certification of result.—If at the hearing provided for in Section 3 of this Act [Art. 5107—108] the court shall enter an order granting or dismissing the petition for the organization of said district at the cost of petitioners, then and in that event the petitioners, or any one or more of them, or any one owning land in such district, may appeal from said order to the district court, and in the event of such appeal, said cause shall be tried under the rules prescribed for practice in the district court and shall be de novo, and the clerk of the commissioners' court shall transfer to the clerk of the district court, within thirty days from the date of such judgment all records filed with the county commissioners' court, and it shall be unnecessary to file any other additional pleadings in said court. The final judgment on appeal shall be certified to the commissioners' court for their further action. (Acts 1913, p. 380, sec. 4; Acts 1917, ch. 87, sec. 4.)

Art. 5107—5. Order for election.—After the hearing of the petition, as provided for in Sections 2 and 3 of this Act [Arts. 5107—2, 5107—3], if the commissioners' court shall find in favor of the petitioners for the establishment of a district according to the boundaries as set out in said petition, the county commissioners' court shall order an election to be held within said proposed district, at which election there shall be submitted the following propositions: "For the Water Improvement District," "Against the Water Improvement District," and the election of five directors as is hereafter provided. (Acts 1913, p. 380, sec. 5; Acts 1917, ch. 87, sec. 5.)

Art. 5107—6. Notice of election.—After the ordering of the election as provided in the preceding section, notices of such election shall be given, stating the time and place or places of holding the election, and showing the boundaries of said proposed district, and such notices shall also show the presiding officer or officers appointed for the holding of said election. Such notices shall be posted in four places in such proposed district, and one shall be posted at the court house door

of the county in which such proposed district is situated, such posting to be for twenty days previous to the date of the election and shall contain the proposition to be voted upon and names of offices to be filled at such election. (Acts 1913, p. 380, sec. 6; Acts 1917, ch. 87, sec. 6.)

Art. 5107—7. Conduct of election; ballots.—The manner of conducting elections herein provided for shall be governed by the general election laws of the State, except as herein otherwise provided. At such elections none but resident property tax payers who are qualified voters under the laws of the State shall be entitled to vote. The county commissioners court shall at the time of ordering said first election by an order entered of record, create said proposed district, or the part thereof within said county, into one or more election precincts and shall name a polling place in each voting precinct, and shall appoint two judges and two clerks for each polling place, one of the judges to be designated as presiding judge. If said officers so selected fail to serve, his place shall be filled in the manner provided by the general election laws. The court shall order printed one and a half times as many ballots for said election as there are estimated to be qualified voters within such district. Said ballots for said first election shall have printed thereon substantially the following: "For Water Improvement District" and "Against Water Improvement District," and said ballot shall contain five blank lines on which to write names "of the persons voted for, for the office of director, with a heading "For Directors, five to be elected." No other matter shall be placed on said ballot except the heading "Official Ballot."

The election precincts herein provided to be created shall be and continue the election precincts of said district until changed by an order of the board of directors. (Acts 1913, p. 380, sec. 7; Acts 1917, ch. 87, sec. 7; Acts 1919, 2d C. S., ch. 28, sec. 1.)

Art. 5107—8. List of property tax payers to be furnished for judges of election; oath of voters.—It shall be the duty of the tax collector of the county before a water improvement district is formed, and of the tax collector of the district after its organization, to make a certified list of the property tax payers of said district, or part thereof in the county, and to furnish same to the officers of the election of each polling place, and before any person is entitled to vote at any election under this Act his name must appear in said certified list of property tax payers; provided, however, that a qualified voter who is a property tax payer in said district or proposed district, and whose name does not appear upon said list, shall be entitled to vote if he shall first take the following oath, to be administered by an election judge and which the judges of the election are authorized to administer; "I do solemnly swear (Or affirm) that I am a qualified voter under the laws of the State of Texas, and that I am a resident property tax payer of ——— (inserting the name of the district) and I did not acquire such property prior to this election for the purpose of voting, but I am a bona fide property taxpayer." (Acts 1913, p. 380, sec. 8; Acts 1917, ch. 87, sec. 8; Acts 1919, 2d C. S., ch. 28, sec. 1.)

Art. 5107—9. Returns and canvass of election; directors.—The officers of the election shall make returns for each polling place in the same manner as provided by law for general elections, and the county commissioners court shall canvass said returns in the manner provided by law. If a majority of said votes be cast in favor of the organization of said district, then the court shall declare the result of said election in favor of the establishment of said district and shall enter same in the minutes of said court. The court shall also canvass the votes for directors and declare the election of the five persons receiving the highest number of votes for said office; provided, that should it be found that two or more persons had received the same number of votes so as to make it a tie for the office between them, then the said court shall select one of said persons to fill such position. In the event said district is composed of territory lying in two or more counties the said returns shall be canvassed and the result declared as hereinafter provided. (Acts 1913, p. 380, sec. 9; Acts 1917, ch. 87, sec. 9; Acts 1919, 2d C. S., ch. 28, sec. 1.)

Art. 5107—10. Order for establishment of district; name and number of district; change of name; number created.—If the result of said election be in favor of the establishment of the district, the county commissioners court shall make and enter in the minutes of said court an order setting forth facts substantially as follows: "In the matter of the petition of....., and others praying for the establishment of a water improvement district, as in said petition described, and named:....., be it known that an election was called for that purpose in said district, and held on the ..... day ..... A. D. 19.., and a majority of the resident tax payers voting thereat voted in favor of the creation of said district. Now, therefore, it is declared that said district has been legally established under the name of ..... with the following metes and bounds: (here copy description of boundaries.)"

When a district is created including territory in two or more counties the officer charged with the duty of declaring result of said election shall use substantially the same form.

All districts lying wholly in one county shall include in its name the name of the county in which it is located as a part of its name, and shall be numbered consecutively as created and established. A district lying partly in two or more counties may include the names of said counties in its name or may adopt any appropriate name.

The numbers of districts created hereafter shall not conflict with the numbers of irrigation or water improvement districts heretofore created, but shall be consecutively continued, and when a district lying in two or more counties has adopted a number as part of its name such number shall not be the same as that of any other district in either of said counties, and the numbers of districts created in either of said counties shall not conflict therewith. (Acts 1913, p. 380, sec. 10; Acts 1917, ch. 87, sec. 10; Acts 1919, 2d C. S., ch. 28, sec. 1.)

Art. 5107—11. Recording certified copy of orders.—After the making and entering by the commissioners' court of the or-

der establishing such districts as herein provided, or an order changing the name of a district, the said court shall cause to be made a certified copy of such order, which shall be filed with the county clerk of the county in which such district is situated, and shall cause same to be duly recorded in the deed records of said county and properly indexed in the same manner provided for the recording and indexing of deeds, and such recordation shall have the same effect, in so far as notice is concerned, as is provided for the record of deeds, and all costs in connection with the making and recording of such copies shall be paid by the district. (Acts 1913, p. 380, sec. 11; Acts 1917, ch. 87, sec. 11.)

Art. 5107—12. Directors to give bond; approval; oath of office; filing.—Within ten days after the making and entry of the order of the commissioners' court declaring the result of the election and the establishment of the district as hereinbefore provided, or as soon thereafter as is practicable, the directors elected at such election shall each make and enter into a good and sufficient bond in the sum of five thousand ($5,000 00) dollars each, payable to such district conditioned upon the faithful performance of their duties, to be approved by the commissioners' court. Provided, however, that after the organization of such district, all bonds required to be given by any director, officer or employé of such district shall be approved by the directors of such district, and said directors shall take the oath of office prescribed by statute for the commissioners' court, except that the name of the district shall be substituted for the name of the county in said oath of office; and the bond and oath herein provided for shall be filed with the county clerk of the county within which said district is situated and be by him recorded in the official bond record for said county, and after its record, said bond shall be delivered by the county clerk to the depository selected by such district under the provisions of this Act, and shall be by it safely kept and preserved as a part of the records of said district. (Acts 1913, p. 380, sec. 12; Acts 1917, ch. 87, sec. 12.)

Art. 5107—13. Organization of directors; quorum.—The directors of such district shall organize by electing one of their number as president and one as secretary. The directors may elect a president pro tem, and a secretary pro tem, to act in the absence or inability of the president or secretary. Any three directors shall constitute a quorum at any meeting, and a concurrence of three shall be sufficient in all matters pertaining to the business of the district except the letting of construction contracts and the drawing of warrants on the depository, which shall require the concurrence of four of such directors; provided, however, warrants to pay the current expenses, salaries, and labor and material accounts, may be drawn by an officer or employee, designated by standing order of the directors, when such accounts have been contracted and ordered paid by the directors. (Acts 1913, p. 380, sec. 13; Acts 1917, ch. 87, sec. 13; Acts 1919, 2d C. S., ch. 28, sec. 1.)

Art. 5107—14. Qualifications of directors.—No persons shall be elected a director of any district created under this Act unless he is a resident of the State of Texas and owns land subject to taxation within said district, and who, at the time of such election, shall be more than twenty-one years of age. (Acts 1913, p. 380, sec. 14; Acts 1917, ch. 87, sec. 14.)

Art. 5107—15. Assessor and collector; bond; qualifications; compensation; additional bond; duties; additional compensation; deputies.—The office of tax assessor and collector is one office to be filled by one person. The tax assessor and collector shall be appointed by the directors, or if the directors so order, may be elected by an election held for that purpose. He shall qualify by making and entering into a good and sufficient bond, signed also by at least two good and sufficient sureties, to be approved by the board of directors, in the sum of five thousand dollars ($5,000.00), conditioned for the faithful performance of his duties as tax assessor and collector and for the paying over to the depository all funds or sums of money or other thing of value, coming into his hands as such collector. The directors may require additional bonds or a bond in a larger amount or additional security at any time that same may be advisable in their judgment. The assessor and collector shall be a resident of the district, or any town within the general boundaries of the district, and shall be a qualified voter in the county of his residence. The compensation to be paid to the tax assessor and collector, or deputy tax assessor and collector shall be fixed by the board of directors, but shall not exceed $3,000.00 per year. One or more deputies may be appointed by the board of directors to assist the tax assessor and collector for such time not to exceed one year as may be ordered by the board. Such deputies shall perform such duties as the board may order and may be discharged at any time by the board. The amount of bond given by such deputies shall be determined at the time of their appointment or as occasion may require. The board of directors may require the tax assessor and collector to perform other duties than those herein fixed and may fix his additional compensation if any therefor. In case any district organized hereunder is appointed fiscal agent of the United States, or by the United States is authorized to make collections of money for and on behalf of the United States in connection with any Federal reclamation project, such assessor and collector and each director, shall execute a further additional bond in such sum as the Secretary of the Interior may require, conditioned for the faithful discharge of the duties of his respective office and the faithful discharge by the district of its duties as fiscal or other agent of the United States under such appointment or authorization; such additional bonds to be approved, recorded and filed as herein provided for other official bonds, and any such additional bonds may be used on by the United States or by any person injured by the failure of such officer or the district, to fully, promptly and completely perform their respective duties. (Acts 1913, p. 380, sec. 15; Acts 1915, ch. 138, sec. 1; Acts 1917, ch. 87, sec. 15; Acts 1918, 4th C. S., ch. 53, sec. 1; Acts 1919, 2d C. S., ch. 28, sec. 1.)

Acts 1915, ch. 138, sec. 1, amends sections 15, 21, 58, 59, 69, 70, 75, 83, 85, and 97 of chapter 172 of

Acts 33d Leg., regular session. Acts 1915, ch. 138, is expressly repealed by Acts 1917, ch. 87, sec. 107 (post, art. 5107—107).

Art. 5107—16. Survey of boundaries of district.—It shall be the duty of the directors, immediately after they qualify as such, to cause an actual survey of the boundaries of such district to be made according to the boundaries designated in the petition for the establishment of such district, or to adopt in whole or in part such boundaries where already established, and to have said boundary marked by suitable monuments. (Acts 1913, p. 380, sec. 16; Acts 1917, ch. 87, sec. 16.)

Art. 5107—17. Exclusion of land from district; petition of owner.—The owner or owners of the fee of any land constituting a portion of any district may file with the board of directors of such district a petition praying that certain lands owned by them be excluded from and taken out of said district. The petition shall describe the lands which the petitioners desire to have excluded by metes and bounds and such petition must be acknowledged in the same manner and form as is required by law for the conveyance of real estate. Such petition may be filed at any time prior to the issuance of bonds by such district. (Acts 1913, p. 380, sec. 17; Acts 1917, ch. 87, sec. 17; Acts 1919, 2d C. S., ch. 28, sec. 1.)

Art. 5107—18. Same; notice.—Upon the filing of a petition for the exclusion of any lands from said district with the board of directors, they shall immediately set said petition down for hearing for a day certain, not to exceed twenty days, however, from the date of the filing thereof and shall cause notice of such hearing to be given by the posting of written or printed notices of the time and place of such hearing at three public places within said district. Such notice shall contain a copy of the petition for exclusion, and shall be posted for at least eight days prior to such hearing. (Acts 1913, p. 380, sec. 18: Acts 1917, ch. 87, sec. 18.)

Art. 5107—19. Same; order excluding non-irrigable land; effect.—The board of directors, at any time and place designated in such notice, or at such time and place as such hearing may from time to time be adjourned to, shall proceed to hear the petition and all objections thereto, and shall determine whether or not said lands, or any portion thereof, shall remain as a portion of said district or be excluded therefrom; and if upon such hearing the directors shall determine that the land desired to be withdrawn or any portion thereof is not susceptible to irrigation by gravity from the system to be provided, or for other reasons should be allowed to be withdrawn, then such lands shall be excluded by granting such petition in whole or in part, and such excluded lands and the owners thereof thereby waive all right to be served with water from such irrigation system or by said district. (Acts 1913, p. 380, sec. 19; Acts 1917, ch. 87, sec. 19: Acts 1919, 2d C. S., ch. 28, sec. 1.)

Art. 5107—20. Addition of contiguous land to district; petition; survey; recording proceedings; consent of Secretary of the Interior.—The owner or owners of the fee to lands contiguous to any district created under this Act may file with the board of directors of said district a petition in writing, praying that such land be included in such district. The petition shall describe the tract or body of land owned by the petitioners by metes and bounds, and upon the filing of such petition with the board of directors, said board of directors shall cause an accurate survey of the said tract of land to be made and the boundaries thereof marked upon the ground, and said tract of land may be admitted as a part of the district; provided it can be irrigated without prejudice to the rights of any of the lands originally contained therein to be first furnished with an adequate supply of water, and when said lands are so admitted, they shall immediately become subject to their proportionate share of any taxation or bonded indebtedness that may have been created against said district and subject to such reasonable charge against such lands for the purpose of defraying its part of the expenses of maintenance, operation or other necessary expenditures previously made as may be determined by the board of directors. If the lands described in said petition are admitted as a part of the district, the application for such admission shall be signed and acknowledged as provided for deeds, and shall be recorded in the deed records of the county in which such district is situated, together with the order of the directors endorsed thereon. No land shall be added to any irrigation district with which contract with the United States shall have been made without the written consent of the Secretary of the Interior. (Acts 1913, p. 380, sec. 20; Acts 1917, ch. 87, sec. 20.)

Art. 5107—21. Powers of board of directors; employés; general manager; contracts; contracts with United States; levy of tax; district as federal fiscal agent.—The board of directors herein provided for shall have control over and management of all the affairs of such district, shall make all contracts pertaining thereto, and shall employ all necessary employés for the proper handling and operating of such district, and especially may employ a general manager, an assessor and collector, attorneys, a bookkeeper, an engineer, water master and such other assistants and such other laborers as may be required, and they may also buy all necessary work animals, motors, pumps, engines, boilers, machinery and supplies as may be required in the erection, operation and repair of the improvements of the district; a director may be employed as general manager, and at such compensation as may be fixed by the other four directors and when so employed he shall also perform the duties of a director, but he shall not receive the compensation in this Act provided to be paid to directors. The board of directors on behalf of said district may enter into any obligation or contract with the United States for the construction, operation and maintenance of the necessary work for the delivery and distribution of water therefrom, or for the drainage of district lands or for the assumption of indebtedness to the United States for district lands, or for the temporary rental of water from the United States for district lands or a part thereof, under the provisions of the Federal reclamation Act, and all acts amendatory thereof or supplementary thereto, and the rules and reg-

ulations established thereunder; or the board may contract with the United States for a water supply under any Act of Congress providing for or permitting such contract, and in case contract has been or hereafter may be made with the United States as herein provided, bonds of the district may be deposited with the United States at ninety (90) per cent of their par value, to the amount to be paid by the district to the United States under any such contract, the interest on said bonds to be provided for by assessment and levy as in the case of other bonds of the district, and regularly paid to the United States to be applied as provided in such contracts, and if bonds of the district are not so deposited it shall be the duty of the board of directors to include as part of any levy or assessment now provided for by law, an amount sufficient to meet each year all payments accruing under the terms of any such contract; and the board may accept on behalf of the district appointment of the district as fiscal agent of the United States in connection with any Federal reclamation project, whereupon the district shall be authorized to so act, and to assume the duties and liabilities incident to such action, and the said board shall have full power to do any and all things required by the Federal statutes now or hereafter enacted in connection therewith and all things required by the rules and regulations now or that may hereafter be established by any department of the Federal Government in regard thereto. (Acts 1913, p. 380, sec. 21; Acts 1915, ch. 138, sec. 1; Acts 1917, ch. 87, sec. 21.)

Art. 5107—22. [Repealed by Acts 1917, ch. 87, sec. 107, post art. 5107—107, and reenacted as sec. 22 of the repealing act, and set forth post as art. 379 of the Penal Code.]

Art. 5107—23. District may sue and be sued; judicial notice of district; contracts.—All districts established under the provisions of this Act may sue and be used in any and all courts of this State in the name of such district, and all courts of this State shall take judicial knowledge and notice of the establishment of such district and the boundaries thereof, and such district shall contract and be contracted within the name of such districts. (Acts 1913, p. 380, sec. 23; Acts 1917, ch. 87, sec. 23; Acts 1919, 2d C. S., ch. 28, sec. 1.)

Art. 5107—24. Construction of works; acquisition of right of way by condemnation or otherwise; purchase of established works; conveyance to United States.—Districts created under the provisions of this Act are hereby empowered to own and construct reservoirs, dams, wells, canals, etc., and to acquire the necessary rights-of-way for, and buy or construct all reservoirs, dams, wells, canals, laterals, sites for pumping plants and all other improvements required for the irrigation of the lands in such district by gift, grant, purchase or condemnation, and they may acquire the title to any and all lands necessary or incident to the successful operation thereof, in addition to any of the above, in the manner provided, including the authority by purchase or condemnation, to acquire rights-of-way for the enlargement, extension or improvement of any existing canals, or ditches for the purpose of raising such canals and ditches jointly with the owners thereof.

Any property acquired may be conveyed to the United States in so far as the same shall be necessary for the construction, operation and maintenance of works by the United States for the benefit of the district under any contract that may be entered into thereunder. (Acts 1913, p. 380, sec. 24; Acts 1917, ch. 87, sec. 24; Acts 1919, 2d C. S., ch. 77, sec. 1.)

Art. 5107—25. Duties of assessor and collector; assessment of lands; listing of lands not rendered by owners.—Immediately upon the qualification of the assessor and collector, as hereinbefore provided, he shall enter upon the discharge of his duties, and shall at once proceed to make an assessment of all the taxable property, both real, personal and mixed, in his said district; and such assessment shall be made annually thereafter. Said assessment shall be made upon blanks to be provided by the directors for such district. Said assessment shall consist of a full statement of all property owned by the party rendering same in said district and subject to taxation therein, and shall state the full value thereof. There shall be attached to each such assessment an affidavit made by the owner or his agent rendering said property for taxation to the effect that said assessment or rendition contains a true and complete statement of all property owned by the party for whom said rendition is made in said district and subject to State and county taxation therein; and in addition to all such assessments or renditions made by the owner or agents of such property, the tax assessor shall make out similar lists of all property not rendered for taxation in such districts that is subject to State and county taxation therein. Each and every person, partnership or corporation owning taxable property in such district shall render same for taxation to the assessor when called upon so to do, and if not called upon be the assessor, the owner shall on or before June 1 of each year nevertheless render for taxation all property owned by him in the district subject to taxation. And all laws and penal statutes of this State providing for securing the rendition of property for State and county taxes, and providing penalties for the failure to render such properties shall apply to all persons, partnerships or corporations owning or holding property in any such district. The tax assessor shall have authority to administer oaths to fully carry out the provisions of this section. (Acts 1913, p. 380, sec. 25; Acts 1917, ch. 87, sec. 25.)

Art. 5107—26. Appointment of commissioners to act as Board of Equalization; meetings of board; secretary; records.—The directors for such district created under the provisions of this Act shall, at their first meeting, or as soon thereafter as practicable, and annually thereafter, appoint three commissioners, each being a qualified voter and resident property owner of said district, who shall be styled the "Board of Equalization," and at the same meeting the same Board of Directors shall fix the time for the meeting of such Board of Equalization for the first year; and said Board of Equalization shall convene at the time fixed by the directors to receive all assessment

lists or books of the assessor for said district for examination, correction, equalization, appraisement and approval, and at all meetings of said Board the secretary of the Board of Directors shall act as secretary thereof and keep a permanent record of all the proceedings of said Board of Equalization. (Acts 1913, p. 380, sec. 26; Acts 1917, ch. 87, sec. 26.)

Art. 5107—27. Oath of members of Board of Equalization.—Before entering upon the duties as such Board of Equalization, each of the members thereof shall take and subscribe the following oath: "I ..... do solemnly swear (or affirm) that I will, to the best of my ability, make a full and complete examination, correction, equalization and appraisement of all property contained within said district, as shown by the assessment lists or books of the assessor for said district, and add thereto all property not included therein of which I have knowledge," and said oath shall be spread upon the minutes to be kept by the secretary of said board. (Acts 1913, p. 380, sec. 27; Acts 1917, ch. 87, sec. 27.)

Art. 5107—28. Equalization of assessments; omitted property.—The Board of Equalization herein provided for shall cause the assessor to bring before them, at the time fixed for the convening of said Board, all the assessment lists or books of the assessor of said district for their examination, that they may see that each and every person has rendered his property at its full value; and said board shall have power to send for persons and papers to swear and qualify persons who testify, to ascertain the value of such property, and if they are satisfied it is too high, they shall lower it to its proper value; and if too low they shall raise the value of such property to a proper figure. Said board shall have power to correct any and all errors that may appear on the assessors lists or books, and shall have further authority to add any and all property to said lists of inventories that may have been omitted therefrom. (Acts 1913, p. 380, sec. 28; Acts 1917, ch. 87, sec. 28.)

Art. 5107—29. Mode of equalization; complaints.—The Board of Equalization shall equalize, as near as possible the value of all property situated within said district, having reference to the location of said property and the improvements thereon situated. Any person may file with the said Board at any time before the final action of said Board, a complaint as to the assessment of his or any other person's property, and said Board shall hear said complaint, and said complainant shall have the right to have witnesses examined to sustain said complaint as to the assessment of said property, or as to a failure to render any property owned by any person, partnership or corporation situated within said district subject to taxation which has not been properly assessed. (Acts 1913, p. 380, sec. 29; Acts 1917, ch. 87, sec. 29.)

Art. 5107—30. Appraisal of property not listed by owners.—The assessor for such district, at the same time that he delivers to said Board his lists and books, shall also furnish to said Board a certified list of the names of all persons who either refuse to swear to, or to sign, the oath or affirmation as required by this law, together with the list of the property of such persons situated within said district who have failed or refused to list their property, as made, by him through other information, and said Board shall examine the list and appraise the property so listed by the assessor. (Acts 1913, p. 380, sec. 30; Acts 1917, ch. 87, sec. 30.)

Art. 5107—31. Notice to owners of action of Board of Equalization; appearance by owners.—In all cases where the Board of Equalization shall find it their duty to raise the value of any property appearing on the lists or books of the assessor, or to add property omitted therefrom, they shall, after having fully examined such lists or books, and corrected all errors appearing therein, adjourn to a day not less than ten nor more than fifteen days from the date of adjournment, such day to be fixed in the order of adjournment, and shall cause the secretary of said Board to give a written notice to the owner of such property, or to the person rendering same, of the time to which said Board may have adjourned, and that such owner or person may at that time appear and show cause why the value of such property should not be raised, which notices may be served by depositing the same, properly addressed and postage paid, in any postoffice within the county. (Acts 1913, p. 380, sec. 31; Acts 1917, ch. 87, sec. 31.)

Art. 5107—32. Hearing of objections; approval of lists; reconvening of board to approve rolls.—The Board of Equalization shall meet at the time specified in said order of adjournment and shall hear all persons the value of whose property has been raised; and if said Board is satisfied they have raised the value of such property too high, they shall lower the same to its proper value; and said Board of Equalization, after they have finally examined and equalized the value of all the property on the assessor's lists or books or that may have been placed thereon by said Board of Equalization, shall approve said lists or books and return them, together with the lists of unrendered property to the assessor that he may make up therefrom his general rules as required by this Act; and when said general rolls are so made up the Board shall immediately reconvene to examine said rolls and approve the same if found correct; and the action of the Board at the meeting last provided for in this article shall be final and shall not be subject to revision by said Board or by any other tribunal thereafter. (Acts 1913, p. 380, sec. 32; Acts 1917, ch. 87, sec. 32.)

Art. 5107—33. Compensation of members of Board of Equalization and its secretary.—The members of the board of equalization and the secretary while acting as secretary of said board, shall receive such compensation for their services as may be fixed by the board of directors of the district, not to exceed, however, the sum of six dollars per day for the time actually engaged in the discharge of such duties. (Acts 1913, p. 380, sec. 33; Acts 1917, ch. 87, sec. 33; Acts 1919, 2d C. S., ch. 28, sec. 1.)

Art. 5107—34. Duplicate tax rolls.—After the return to the assessor and collector of the assessment lists and books duly approved by the Board of Equalization, as hereinbefore provided for, the said assessor and collector shall make up the assessment of all

taxable property situated in said district upon duplicate rolls and after the approval of said rolls by the Board of Equalization, he shall retain one of same in his office and shall deliver the other copy to the directors of said district, to be kept by them as a permanent record in their office, and all lists and books of said assessor shall be caused to be substantially bound and by him kept as a permanent record of his office, and be delivered, together with all other records of his office to his successor, upon his election and qualification, or, in case of a vacancy in such office to the directors for said district. (Acts 1913, p. 380, sec. 34; Acts 1917, ch. 87, sec. 34.)

Art. 5107—35. Collection of taxes; payment to depository; general duties of assessor and collector.—The assessor and collector shall collect all taxes due to said district, and shall, at the expiration of each week, pay over to the depository selected by said district all moneys by him collected, and shall report to the directors for such district on the fourth Saturday in every month all moneys so collected by him and paid over to the depository as hereinbefore provided, and shall perform all such other duties, and in such manner and according to such rules and regulations as the Board of Directors may prescribe and for the convenience of the persons, firms or corporations owning such tax, shall keep and maintain an office with the Board of Directors for such district, where all such taxes may be paid. (Acts 1913, p. 380, sec. 35; Acts 1917, ch. 87, sec. 35.)

Art. 5107—36. Assessor and collector chargeable with total assessment; credits; report; audit.—The assessor and collector shall be charged by the directors for such district, upon a permanent finance ledger to be kept for said purpose by said district, with the total assessment as shown by the assessment rolls; and proper credit shall be given to the assessor and collector for all sums of money paid over to the depository, as shown by his monthly reports as hereinbefore provided for, and upon the final annual settlement, the said assessor and collector shall make up a full complete report of all taxes that have not been collected, which said report shall be audited by said Board of Directors, and proper credits given therefor, and such annual settlements shall be made on the first Monday in September of each year. (Acts 1913, p. 380, sec. 36; Acts 1917, ch. 87, sec. 36.)

Art. 5107—37. [Repealed.]

See art. 5107—107, post.

Art. 5107—38. Date of assessment; time for completion.—The assessment provided for in this Act shall be made upon all property subject to taxation in said district on the first day of January of each year, and such assessment shall be completed and the lists and books ready to deliver on or before the first day of June of each year. (Acts 1913, p. 380, sec. 38; Acts 1917, ch. 87, sec. 37.)

Art. 5107—39. Annual meeting of Board of Equalization; time for completion and delivery of rolls.—The Board of Equalization, after the first year, shall convene annually on the first Monday in June of each year to receive all of the assessment lists or books of the assessor of said district for examination, correction, equalization, appraisement and approval, and for the addition thereto of any property found to be unrendered in said district, and shall complete and deliver said lists and rolls to the assessor and collector by the third Monday in July of said year, and the said assessment rolls shall be completed by the assessor and approved by the Board of Equalization, and returned to said assessor and collector by the first Monday in October of each year after the first assessment as hereinbefore provided. (Acts 1913, p. 380, sec. 39; Acts 1917, ch. 87, sec. 38.)

Art. 5107—40. When taxes become due.—All taxes provided for by this Act shall become due and payable on the first day of November of each year and shall be paid on or before the 31st day of January thereafter. (Acts 1913, p. 380, sec. 40; Acts 1917, ch. 87, sec. 39.)

Art. 5107—41. Lien for taxes delinquent; sale of land.—All lands or other property which have been returned delinquent, or which may hereafter be returned delinquent shall be subject to the provisions of this Act and said taxes shall remain a lien upon said land although the owner be unknown, or though it be listed in the name of a person not the actual owner, and though the ownership be changed, the land may be sold under the judgment of the court for all taxes, interest, penalty and cost shown to be due by such assessment for any preceding year. (Acts 1913, p. 380, sec. 41; Acts 1917, ch. 87, sec. 40.)

Art. 5107—42. Delinquent tax roll.—It shall be the duty of the directors for such district to cause to be prepared by the tax collector, at the expense of such district, a list of all lands upon which the taxes remain unpaid on the 31st day of January of each year, and such list of lands shall be known as a delinquent tax roll, and such delinquent tax roll shall be delivered to the secretary of such district to be by him safely kept as a part of the record of his office. Such delinquent record shall carry a sufficient description to properly identify the land shown to be delinquent therein. Such description may be made by reference to lot or block number. (Acts 1913, p. 380, sec. 42; Acts 1917, ch. 87, sec. 41.)

Art. 5107—43. Same; record and index.—Upon receipt of such delinquent tax roll by the directors of said district, the said directors shall cause said record to be recorded in a book which shall be labeled, "The delinquent tax record of ..... county, water improvement district No. .....," and shall be accompanied by an index showing the name of delinquents in alphabetical order. (Acts 1913, p. 380, sec. 43; Acts 1917, ch. 87, sec. 42.)

Art. 5107—44. Same; publication.—Upon the completion of said delinquent tax record by any such district, it shall be the duty of the directors thereof to cause the same to be published in some newspaper published in the county in which said district is situated for three consecutive weeks, but if no newspaper is published in the county, such list may be published in a newspaper outside of the county to be designated by such directors by a contract duly entered into, and a

publisher's fee of not to exceed twenty-five ($.25) cents for each tract of land so advertised; and said publication, and any other publication, in a newspaper provided for in this Act may be proven by the affidavit of the proprietor of the newspaper in which the publication was made, his foreman or principal clerk, annexed to a copy of the publication, specifying the time when and the paper in which the publication was made. (Acts 1913, p. 380, sec. 44; Acts 1917, ch. 87, sec. 43.)

Art. 5107—45. Suit for delinquent taxes; employment of attorney; petition; precedence over other cases.—Twenty days after the publication of such notice, or as soon thereafter as practicable, the directors for such water improvement or irrigation district shall employ an attorney to bring suit in the name of the district in the district court of said county for the purpose of collecting all taxes, interest, penalty and costs due upon said land. Said petition shall describe all lands upon which taxes and penalties shall remain unpaid and the total amount of taxes and penalties due thereon with interest computed to the time fixed for the sale of said land at the rate of six (6%) per cent per annum, and shall pray for a judgment for said amount, and for the fixing, establishing and foreclosing of the lien existing against such land; that said lands be sold to satisfy said judgment for all taxes, interest, penalty and costs, and for such other relief to which such district may be entitled under the law and facts. All suits to enforce the collection of taxes as provided in this Act shall take precedence and have priority over all other suits pending in the district court. (Acts 1913, p. 380, sec. 45; Acts 1917, ch. 87, sec. 44.)

Art. 5107—46. Same; parties and process; sale in parcels; disposition of proceeds.—The proper persons shall be made parties defendants in all such suits, and shall be served with process and other proceedings due therein as provided by law for suits of like character in the district court of this State, and in case of foreclosure, order of sale shall issue thereunder as in other cases of foreclosure; but if the defendant or his attorney shall, at any time before the sale, file with the sheriff or other officer in whose hands any such order of sale shall be placed a written request that the property described therein shall be divided and sold in less tracts than the whole, together with a description of such sub-division as the defendant may request, provided same are reasonable, and in such case, shall sell only as may sub-divisions as may be necessary to satisfy the judgment, interest, penalties and cost, and after the payment of the taxes, interest, penalties and costs adjudged against it, the remainder of the purchase price, if any, shall be paid by the sheriff or other officer executing said order of sale to the defendant or his attorneys of record. (Acts 1913, p. 380, sec. 46; Acts 1917, ch. 87, sec. 45.)

Art. 5107—47. Conveyance to purchaser.—In all cases in which lands may be sold for default in the payment of taxes under the preceding section, it shall be lawful for the sheriff or other officers selling the same, or any of his successors in office, to make a deed or deeds to the purchaser, or to any other person to whom the purchaser may direct the deed to be made, and any such deed shall be held in any court of law or equity in this State to vest a good and perfect title in the purchaser thereof subject to be impeached only for actual fraud. (Acts 1913, p. 380, sec. 47; Acts 1917, ch. 87, sec. 46.)

Art. 5107—48. Fees of attorneys and officers.—The attorneys representing such district in all suits against delinquent taxpayers that are provided for in this Act shall receive for such services such compensation to be paid out of delinquent taxes collected, as may be allowed by the directors for such district; provided, however, that in no event shall said fee exceed fifteen (15%) per cent of the amount of taxes so collected. The sheriffs, district clerks and other officers, executing any writ or performing any service in the foreclosure of delinquent taxes on any lands situated in such district shall receive the same fees for such services as is provided by statute as fees for like services performed in connection with the discharge of the duty of their respective offices. (Acts 1913, p. 380, sec. 48; Acts 1917, ch. 87, sec. 47.)

Art. 5107—49. Penalty for non-payment of taxes; interest; levy on personal property; delinquent list.—If any person shall fail or refuse to pay the taxes imposed upon him or his property by this Act until after the 31st day of January next succeeding the return of the assessment roll for said district, a penalty of ten (10%) per cent on the entire amount of such tax shall accrue, which penalty, when collected, shall be paid over to such district. Such delinquent taxes shall bear interest from August 1st after due at the rate of six per cent per annum. And the collector of taxes shall, by virtue of his tax roll, seize and levy upon and sell so much personal property as shall be sufficient to make the amount of such taxes, together with the penalty above provided interest thereon at the rate of six (6%) per cent per annum and all costs accruing thereon. If no personal property be found for seizure and sale as above provided, the collector shall make up and file with the secretary of the district the delinquent tax list hereinbefore provided for, charging against same all taxes, penalties and interest assessed against same and the owner thereof. (Acts 1913, p. 380, sec. 49; Acts 1917, ch. 87, sec. 48.)

Art. 5107—50. Redemption of lands before sale.—Any delinquent taxpayer whose lands have been returned delinquent, or any one having an interest therein, may redeem the same at any time before his lands are sold under the provisions of this Act by paying to the collector the taxes due thereon with interest at the rate of six (6%) per cent and all costs and the penalty of ten (10%) per cent as provided in this Act. (Acts 1913, p. 380, sec. 50; Acts 1917, ch. 87, sec. 49.)

Art. 5107—50a. Levy, etc., of tax on equitable or ad valorem basis; election to determine.—Any Water Improvement District organized under authority of Section 59 of Article 16 of the Constitution, and chapter 25 General Laws, Fourth Called Session, Thirty-fifth Legislature, as well as any Water Improvement District which may have been created prior to the adoption of such constitutional amendment, and which shall have availed itself, or may hereafter avail

itself, of the benefits of section 59 or article 16 of the Constitution, may, at the time of its creation, or at any time thereafter before such district shall have issued bonds, submit to the qualified electors of such district the question whether the taxes to be levied therein, or any part thereof, shall be levied, assessed and collected upon an "equitable" basis in proportion to benefits to be conferred by the organization, operation and maintenance of such district and the work and improvements to be created thereby, or whether such taxation or any portion thereof shall be levied upon an ad valorem basis. Such question shall be submitted to the qualified voters of such district at any time and in any manner that the governing body of such Water Improvement District may elect, and the ballots to be used shall have printed thereon in substance the following: "For the levy of taxes upon a benefit basis instead of an ad valorem basis," and, "Against the levy of taxes on a benefit basis instead of on an ad valorem basis." And such election shall be governed by the provisions of Chapter 87 of the General Laws of the Thirty-fifth Legislature, Regular Session, so far as applicable. If a majority of the votes cast at such election shall be in favor of the levy and collection of the taxes, or any part thereof, upon an equitable basis in proportion to benefits, instead of upon an ad valorem basis, then the directors of such district shall at some convenient time thereafter, and from time to time as may be necessary, sit as a board to apportion and assess the benefits conferred upon any and all property situated within such water improvement district, and shall cause a record to be made, showing the amount and value of the benefits computed to accrue to all of the property situated within such district and subject to taxation, and the amount of taxes upon such basis to be levied against and collected from such property; provided, that no taxes so assessed or adjudged against such property shall be in excess of the benefit accruing and to accrue to such property from the organization, operation and maintenance of such district and the improvements to be acquired or constructed thereby. After such record shall have been made up, the board shall cause notice to be mailed to each property owner whose name appears upon such record, showing the amount of taxes to be levied against such property, and fixing a date and place at which such owner may appear and contest the correctness and equitableness of such tax. And after such hearing such board of directors or other governing body shall determine the equitableness of the tax and sustain, reduce, or increase the same, as in their judgment shall be just and equitable; and the decision of such board shall be final. All of the provisions of Chapter 87, General Laws, Thirty-fifth Legislature, Regular Session, and amendments thereto, not inconsistent herewith shall apply to the levy, assessments and collection of the taxes herein provided for. (Acts 1919, 2d C. S., ch. 12, sec. 3.)

This section was added to Acts 1918, 4th C. S., ch. 25, as sec. 5a, by Acts 1919, 2d C. S., ch. 12, sec. 3. For the remainder of said Acts 1918, 4th C. S., ch. 25, see post, arts. 5107-267 to 5107-276.

Acts 1917, ch. 87 is set forth in this chapter.

Art. 5107—51. Survey; map and profile; adoption of previous surveys.—After the establishment of any such district, and after the qualification of the board of directors, and after the return of the list of assessments of the taxable property situated in such district, the board of directors for such district may appoint an engineer, whose duty it shall be to make a complete survey of the lands contained in said district, and to make a map and profile of the several canals, laterals, reservoirs, dams and pumping sites in such district and connected therewith, which shall also show any part of said canals, laterals, reservoirs and dams or pumping sites extending beyond the limits of such district, which said map shall show the name and number of each survey and shall also show the area in number of acres contained in such district. Provided, however, that such engineer may adopt any and all surveys heretofore made by any person, firm or corporation who have applied for or appropriated any water for irrigation under the general laws of this State; and provided, further, that said engineer may adopt all surveys for canals, laterals, reservoirs, dams or pumping sites shown on said maps or plats, or may adopt other maps, plats and surveys of the correctness of which he may be satisfied. (Acts 1913, p. 380, sec. 51; Acts 1917, ch. 87, sec. 50.)

Art. 5107—52. Requisites of maps; profile map.—The maps hereinbefore provided for shall show the relation that each canal and lateral bears to each tract of land through which it passes and the shapes into which it divides each tract, and how much and what part of each tract can be irrigated therefrom, and where the canal or lateral cuts off any less than twenty acres of land from any tract, the map shall show the number of acres so divided therefrom and the number of acres in the whole tract, showing the shape of such small tract and its relation to the canal or lateral. And such profile map shall also show in detail the number of cubic yards necessary to be moved or excavated in order to make such reservoir, canal or lateral, and shall show in detail the specification for all other works necessary to the construction of all improvements proposed to be made in such district, and give the estimated cost of each, and when said map, profile, specifications and estimates shall have been completed by the engineer as herein provided, he shall sign the same in his official capacity and file them with the secretary of said board. Provided, however, that where said district contains any pumping plants, canals, dams, ditches or reservoirs heretofore created, and which is contemplated to be purchased or acquired by said district, then such map or plat and estimates as hereinbefore provided for shall show such improvements and the price or probable price at which the same may be acquired, and where additional improvements of canals, ditches, laterals, reservoirs or pumping plants are to be constructed, such report shall contain the detailed information with reference to such additional improvements as is provided for in this Section. Provided, further, that none of the maps and data prescribed by this and the preceding sections except such as are required for use in the making of assessments and levies for district purposes shall be required where contract is entered into with the Unit-

ed States under Federal laws. (Acts 1913, p. 380, sec. 52; Acts 1917, ch. 87, sec. 51.)

Art. 5107—53. Order for election to determine question of issuance of bonds and making of contract with United States.—After the establishment of any such district and the qualification of the directors thereof, and after the making and filing of such maps, profiles, specifications and estimate as provided for in the preceding section of this Act, and after the making and return of the assessment roll by the assessor and collector for said district, as provided for in this Act, the board of directors may order an election to be held within such district at the earliest possible legal time, at which election there shall be submitted the proposition and none other: "For the issuance of bonds and levy of tax and payment therefor"; "Against the issuance of bonds and levy of tax and payment therefor." In the event that contract is proposed to be made with the United States under the Federal reclamation laws, the question which shall be submitted to the voters at such election shall be: "For contract with the United States and levy of taxes and payment therefor," and "Against contract with the United States and levy of taxes and payment therefor." (Acts 1913, p. 380, sec. 53; Acts 1917, ch. 87, sec. 52.)

Art. 5107—54. Notice of election.—Notice of such election stating the maximum amount of bonds to be issued, which amount shall not exceed the engineers estimate, together with the amount of incidental expenses, organization expenses, and the cost of additional work which it may become necessary to add to the engineer's estimate by any change or modification made by the directors of the district in the proposed work; also stating the proposed maximum interest rate thereon, and the proposed maximum maturity date of said bonds; also stating the time and place or places of holding the election, shall be given by the secretary of the board of directors, as ordered by the directors, by posting notices thereof in four public places in such district and one at the courthouse door of the county or counties in which said district is situated. Such notice shall be posted for at least twenty days prior to the date of the election. Said notice shall also be published in the manner prescribed in Section 43 Chapter 87, Acts Thirty-fifth Legislature Regular Session.

The said notice shall contain substantially the proposition to be voted on as herein provided; provided, however, the bonds so voted upon may be issued to mature in serial form at any date not to exceed the maximum date stated in the notice and may be issued at any rate of interest not to exceed the rate of interest stated in such notice. Said notice shall also contain a summary of the engineer's estimate of the cost of construction of the proposed improvements, and estimate of cost of purchase of any existing improvements to be purchased, together with additions thereto as herein provided. If, however, contract with the United States is proposed for election, the notice shall state the maximum amount of money payable for construction purposes, exclusive of penalties and interest. (Acts 1913, p. 380, sec. 54; Acts 1917, ch. 87, sec. 53; Acts 1919, 2d C. S., ch. 28, sec. 1.)

Art. 5107—55. Conduct of election; qualification of voters; polling places; election officers; ballots.—The manner of conducting all elections herein provided for shall be governed by the election laws of the State of Texas, except as herein otherwise provided. None but resident property taxpayers who are qualified voters of said district shall be entitled to vote at any election on any question submitted to the voters thereof by the directors for such district at such election. The directors for such district shall name a polling place for such election in each voting precinct or part of the voting precinct embraced in said district, and shall also select and appoint two judges, one of whom shall be the presiding judge, and two clerks, for each voting precinct designated in said order; and shall provide one and one-half times as many ballots for said election as there are qualified resident taxpaying voters within such district, as shown by the tax rolls of said county. Said ballot shall have written or printed thereon these words, and no others, "For the issuance of bonds and levy of tax in payment therefor;" and "Against the issuance of bonds and levy of tax in payment therefor." If it is proposed that contract be entered into with the United States the ballot shall contain the following words and no others: "For Contract with the United States and levy of taxes and payment therefor," and "Against Contract with the United States and levy of taxes and payment therefor." (Acts 1913, p. 380, sec. 55; Acts 1917, ch. 87, sec. 54.)

Art. 5107—56. Oath of voters.—Every person who offers to vote in any election held under the provisions of this Act shall first take the following oath before the presiding judge of the polling place where he offers to vote, and the presiding judge is hereby authorized to administer same: "I do solemnly swear (or affirm) that I am a qualified voter of ——— county, water improvement District No. ———, and that I am a resident property taxpayer of said district, and that I have not voted before at this election." (Acts 1913, p. 380, sec. 56; Acts 1917, ch. 87, sec. 55.)

Art. 5107—57. Returns of election; canvass and declaration of result.—Immediately after the election the presiding judge at each polling place shall make return of the result in the same manner as provided by law in general elections, such return to be made to the Secretary of such district, who shall keep same in a safe place, and deliver them together with the returns from the several polling places to the directors of such district, who shall at a regular session or a special session called for that purpose, canvass said returns and declare the results thereof. In a district operating under authority of Section 59 of Article 16 of the Constitution a majority vote is required in favor of the issuance of bonds and in other districts a two-thirds majority is required. If said canvass of said returns shows said bond issue to have been adopted or said election to have been in favor of making contract with the United States, as the case may be, and the levy of tax, then said directors shall declare the result of said election to be in favor of the issuance of the bonds, or in favor of the making of contract with the United

States, and the levy of tax and payment therefor, and shall cause the same to be entered in their minutes. (Acts 1913, p. 380, sec. 57; Acts 1917, ch. 87, sec. 56; Acts 1919, 2d C. S., ch. 28, sec. 1.)

Art. 5107—58. Order for issuance of bonds; amount of bonds; additional bonds; election; notes.—After the canvass of the vote and declaring the result, as provided for in the preceding section, the directors for said district shall make, enter and order directing the issuance of bonds, or authorizing the execution of contract with the United States for such district, as the case may be, sufficient in amount to pay for such proposed improvements, together with all necessary incidental expense connected therewith, not to exceed the amount specified in the order for the election and the notice of election. In districts organized under the authority of Article 52 of Section 3 of the Constitution the amount of such bonds, or the amount of contract indebtedness with the United States, shall not exceed in amount one-fourth of the actual assessed value of the real property in such district, as shown by the assessment thereof made for the purpose of determining the value thereof, or at the last annual assessment as provided for in this Act. This limitation of indebtedness of one-fourth of the assessed value shall not apply to districts organized under the authority of Section 59 of Article 16 of the Constitution. Provided, however, that if, after an election has been held for the issuance of bonds or for contract with the United States, and the tax authorized and levied, and bonds have been authorized to be issued, or have been issued as provided for in this Act, or contract with the United States authorized or executed, as the case may be, the directors for said district shall consider it necessary to make any modifications in said district, or in any of the improvements thereof, or shall determine to purchase or construct any further or additional improvements therein and issue additional bonds upon the report of the engineers, or shall determine to make supplemental contract with the United States, or upon its own motion may find it necessary to make said additional improvements, or purchase additional property in order to carry out the purpose for which said district was organized, or to best serve the interests of said district, said finding shall be entered of record, and notice of an election for the issuance of said bonds, or for the authorization of contract with the United States, shall be given, and such election held within such times, and the returns of such election made as hereinbefore provided for in cases of original election, and the result thereof determined in the same manner. If the result of such election be declared to be in favor of the issuance of such bonds or the making of such contract with the United States, said directors may order such bonds to be issued, or may negotiate and execute supplemental contract with the United States as in the manner provided in this Act. And provided, that if a contract is made with the United States as in Section 21 [art. 5107—21] hereof provided, and bonds are not to be deposited with the United States in connection with said contract, bonds need not be issued, or if required to raise funds in addition to the amount of such contract, said bonds shall be issued only in the amount needed in addition thereto. Provided further, that whenever such a district shall have constructed or purchased improvements and same shall be damaged so that it may be necessary to raise funds to repair such damage, such district may either issue bonds to secure such funds or may issue its notes to run not to exceed twenty years, and to bear interest at not to exceed six per cent per annum. Before such notes are issued, the board of directors shall order an election and give notice thereof as required in bond issues stating the purpose for which they are to be issued, the time they are to run, and the rate of interest they are to bear, and the time and place of said election. The ballots for such election shall have printed thereon "For Issuance of Notes" and "Against Issuance of Notes". The election shall be held and returns made and canvassed as provided for bond elections. If two-thirds majority of those voting at such election voted in favor of the issuance of such notes, the board of directors may issue same and sell same for the benefit of said district. Such notes shall not be issued in an amount of more than thirty thousand dollars. At the time such notes are issued or sold the board of directors shall levy a tax for the purpose of paying the interest thereon and creating a sinking fund sufficient to pay such interest and to pay said notes within the time of their maturity. Said notes may be issued in serial form to mature in installments as determined by the directors. (Acts 1913, p. 380, sec. 58; Acts 1915, ch. 138, sec. 1; Acts 1917, ch. 87, sec. 57.)

Art. 5107—59. Execution of bonds; denomination and provisions; lien for payments to United States.—The bonds issued under the provisions of this Act shall be issued in the name of the district, signed by the president and attested by the secretary, with the seal of said district affixed thereto, and such bonds shall be issued in denominations of not less than one hundred (100) dollars nor more than one thousand (1000) dollars each, and such bonds shall bear interest at the rate of not to exceed six (6%) per cent per annum, payable annually or semiannually. Such bonds shall by their terms provide the time, place or places, manner and conditions of their payment, and the interest thereon, as may be determined and ordered by the directors for such district, and none of such bonds shall be made payable more than forty years after the date thereof. Provided, that the lien for the payments due the United States under any contract between the district and the United States accompanying which bonds have not been deposited with the United States, shall be a preferred lien to that of any issue of bonds or any series of any issue subsequent to the date of such contract. (Acts 1913, p. 380, sec. 59; Acts 1915, ch. 138, sec. 1; Acts 1917, ch. 87, sec. 58.)

Art. 5107—60. Validity of formation of district or of bonds not to be contested except by suit brought at instance of Attorney General.—No suit shall be permitted to be brought in any court of this State contesting or enjoining the validity of the formation of any district created under the provisions of this Act, or any bonds issued hereunder, or contesting the validity of con-

tract with the United States or of the authorization thereof by the district except in the name of the State of Texas, by the Attorney General, upon his own motion, or upon the motion of any party affected thereby upon good cause shown, except as herein provided. (Acts 1913, p. 380, sec. 60; Acts 1917, ch. 87, sec. 59.)

Art. 5107—61. Validation of bonds; form of suit; notice.—Any such district in this State desiring to issue bonds in accordance with this Act shall, before such bonds are offered for sale, bring an action in the district court in any county of the judicial district in which said district, or any part thereof, may be situated or in the district court of Travis County, to determine the validity of any such bonds, or such district contracting with the United States in accordance with this Act, shall, if requested by the Secretary of the Interior, bring an action in said court to determine the validity of said contract. Such action shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested may be had by publication of a general notice thereof once each week for at least two consecutive weeks in some paper of general circulation published in the county or counties in which such district is situated, and if no paper is published in the county then same shall be published in a paper in the nearest county thereto where a paper is published. Notice shall also be served upon the Attorney General of the State of Texas of the pendency of said action in the same manner as in civil suits. The Attorney General may waive service in such suits when furnished a full transcript of the proceedings had in the formation of such district and in connection with the issuance of said bonds, or in connection with the authorization of said contract with the United States and a copy of the contract. (Acts 1913, p. 380, sec. 61; Acts 1917, ch. 87, sec. 60; Acts 1919, 2d C. S., ch. 28, sec. 1.)

Art. 5107—62. Same; duties of Attorney General; trial; intervention; preferred cause.—It shall be the duty of the Attorney General to make a careful examination of all such proceedings and require such further evidence and make such further investigation as may seem to him advisable. He shall then file an answer tendering the issue as to whether such bonds are legal and binding obligations upon such district, or, as the case may be, as to whether such contract with the United States is legal and binding upon the district. The issue thus made shall be tried and determined by the court and judgment entered upon such finding. Upon the trial of such cause the court may permit any person having an interest in the issues to be determined to intervene and participate in the trial of the issues made. All suits brought under the provisions of this Act shall have preference over all other actions in order that a speedy determination as to the matters involved may be reached. (Acts 1913, p. 380, sec. 62; Acts 1917, ch. 87, sec. 61.)

Art. 5107—63. Same; judgment; correction of bond proceedings; conclusiveness.—Upon the trial of the issues made under the preceding section of this Act, if the judgment of the court shall be adverse to the district, then such judgment may be by said district accepted, and the error pointed out in such proceedings may be corrected in the manner designated or directed by said court, and when so corrected, the judgment of the district court shall be rendered showing that said corrections had been made, and that the bonds issued thereunder, or the said contract with the United States, are binding obligations upon said district. And thereafter the judgment, when so finally made and entered, shall be received as res adjudicata in all cases arising in connection with the collection of said bonds or any interest due thereon, or in connection with the collection of moneys required by contract with the United States, and as to all matters pertaining to the organization and validity of said district, or pertaining to the validity of the bonds or of the said contract with the United States. (Acts 1913, p. 380, sec. 63; Acts 1917, ch. 87, sec. 62.)

Art. 5107—64. Same; filing certified copy of judgment with Comptroller of Public Accounts; evidence.—After the making and entry of the judgment of the district court, as hereinbefore provided, the clerk of said court shall make a certified copy of such decree, which shall be a part of the orders and decrees connected with such election, and said court decree shall be filed with the Comptroller of Public Accounts, and to be by him recorded in a book kept for that purpose, and said certified copy or a duly certified copy of said record made by the Comptroller shall be received in evidence in all litigation thereafter arising which may affect the validity of such bonds or of such contract with the United States, and shall be conclusive evidence of such validity. (Acts 1913, p. 380, sec. 64; Acts 1917, ch. 87, sec. 63.)

Art. 5107—65. Registration of bonds and of judgment of validation; certificate.—Upon the presentation of said bonds, together with certified copy of the decree of the district court, as provided for in the preceding section, the Comptroller shall register said bonds, together with a certified copy of the judgment, as herein provided for, in a book to be provided for that purpose, and shall attach to each of said bonds a certificate of the fact that the decree of the district court as required by this Act has been filed with him in his office; such certificate to be signed by him officially, and the seal of his office attached thereto. (Acts 1913, p. 380, sec. 65; Acts 1917, ch. 87, sec. 64.)

Art. 5107—66. Record of bonds kept by county clerk.—The county commissioners court in the county in which such district may be situated, in whole or in part, shall provide a well bound book in which a list of said bonds shall be kept by the county clerk, showing their numbers, amount, rate of interest, date of issue, when due, where payable, and said book shall be a public record. (Acts 1913, p. 380, sec. 66; Acts 1917, ch. 87, sec. 65; Acts 1919, 2d C. S., ch. 28, sec. 1.)

Art. 5107—67. Sale of bonds; exchange of bonds for property, work, etc.—After the issuance of said bonds, and after the registration by the Comptroller of Public Accounts for the State of Texas, as provided by this Act, the board of directors for such district shall offer for sale and sell said

bonds on the best terms and for the best possible price, but none of said bonds shall be sold for less than the face value thereof and the accrued interest thereon, and as said bonds are sold, all moneys received therefrom shall be immediately paid over by the board of directors to the depository for said district. Provided, however, that the board of directors may exchange bonds for property to be acquired by purchase under contract, or in payment of the contract price for work to be done for the use and benefit of said district. (Acts 1913, p. 380, sec. 67; Acts 1917, ch. 87, sec. 66.)

Art. 5107—68. Construction and maintenance fund.—All expenses, debts and obligations necessarily incurred in the creation and establishment and maintenance of any district organized under the provisions of this Act shall be paid out of the construction and maintenance fund of such district, which fund shall consist of all moneys received by said district from the sale of the bonds of such district, or as hereinafter provided, or if contract is proposed to be made with the United States for the construction of the irrigation system, said expenses, debts and obligations may be paid out of the maintenance and operating fund. (Acts 1913, p. 380, sec. 68; Acts 1917, ch. 87, sec. 67.)

Art. 5107—69. Levy of tax to pay interest on bonds and to create a sinking fund; in case of contract with United States.—Whenever such bonds shall have been voted, the directors for such district shall levy a tax upon all property within such district sufficient in amount to pay the interest on such bonds, together with an additional amount to be placed in the sinking fund, sufficient to discharge and redeem said bonds at their maturity, and said directors for such district shall annually levy or cause to be assessed and collected taxes upon all property within said district sufficient in amount to pay for the expenses for assessing and collecting such taxes. Whenever contract shall be made with the United States, taxes shall similarly be levied sufficient in amount to meet all installments, as they become payable, and interest, if any, and the directors shall cause due levy annually to be made until all such contracts and obligations shall have been discharged. Such bonds may be issued in serial form, or payable in installments, as determined by said directors, and such tax levy shall be sufficient if it provides an amount sufficient to pay the interest on such bonds and to meet the proportional amount of the principal of the next maturing series of said bonds, and the expenses of assessing and collecting such taxes for such year. (Acts 1913, p. 380, sec. 69; Acts 1915, ch. 138, sec. 1; Acts 1917, ch. 87, sec. 68.)

Art. 5107—70. Interest and sinking fund.—There is hereby created what shall be termed the "Interest and Sinking Fund" for such district, and all taxes collected under the provisions of this Act, for such fund, shall be credited to such fund, and shall never be paid out, except for the purpose of satisfying and discharging the interest on said bonds, or for the payment of such bonds, and to defray the expense of assessing and collecting such tax, and for the payment of principal and interest due or to become due to the United States under any contract between the district and the United States accompanying which bonds of the district have not been deposited with the United States, as in Section 21 hereof provided, such fund shall be paid out upon order of the directors of such district upon warrants drawn therefor, as hereinbefore provided, and at the time of such payment the depository for such district shall receive and cancel any interest coupon so paid or any bond so paid, and when any such interest coupon or bond has been paid it shall be delivered to the directors and be cancelled and destroyed. (Acts 1913, p. 380, sec. 70; Acts 1915, ch. 138, sec. 1; Acts 1917, ch. 87, sec. 69; Acts 1919, 2d C. S., ch. 28, sec. 1.)

Art. 5107—71. Maintenance and operating fund.—There shall also be created a fund to be known as "Maintenance and Operating Fund" and such fund shall consist of all moneys collected by assessment or otherwise for the maintenance and operation of the properties owned or acquired by such district, or for temporary annual rental due to the United States, and out of this fund shall be paid all expenses of operation of every kind except the expenses of assessing and collecting taxes for the interest and sinking fund; and for the payment of any balance due on construction or for extensions and improvements, not otherwise provided for, such debts to be paid upon warrants executed as otherwise provided herein. (Acts 1913, p. 380, sec. 71; Acts 1917, ch. 87, sec. 70.)

Art. 5107—72. Terms of office of district officers.—The terms of office of all officers elected for such district shall be for two years, and until their successors are elected and qualified; provided, however, that all officers elected at the first election held under the provisions of this Act shall hold office only until the next regular election to be held in said district for the election of such officers. (Acts 1913, p. 380, sec. 72; Acts 1917, ch. 87, sec. 71.)

Art. 5107—73. Biennial election of directors.—There shall be held on the second Tuesday in January, 1918, and every two years thereafter, a general election, at which time there shall be elected five directors for such district, who shall be the elective officers for such district. (Acts 1913, p. 380, sec. 73; Acts 1917, ch. 87, sec. 72.)

Art. 5107—73a. General election laws to apply; directors to appoint election officers, etc.—All elections held in such districts shall be held in accordance with the provisions of the general election laws of this State, except as herein otherwise provided; provided, however, that the board of directors shall appoint all necessary officers to hold such elections, and shall name the polling places in said district, and shall receive and canvass the election returns and do and perform all other duties necessary to the holding of said elections and canvassing the returns thereof and declaring the result thereof. (Id. sec. 73.)

Art. 5107—74. Directors to appoint employés; duration of employment; compensation.—All other persons employed or representing said district shall be employed by the board of directors for such time and under such terms and conditions as said board of directors shall deem best for the

interest of said district; provided, however, that no contract shall ever be made with any person or employé for a longer period of time, at any one time, than one year, and the salaries of all such employés, or the compensation to be received by them, shall be fixed by the board of directors at the time of the employment. (Acts 1913, p. 380, sec. 74; Acts 1917, ch. 87, sec. 74.)

Art. 5107—75. [Repealed.]

See art. 5107—107, post. See, also, note under art. 5107—15, ante.

Art. 5107—76. Vacancies in board of directors, how filled; special election in case of more than two vacancies; order for election; county commissioners to approve bonds of directors where no quorum of directors.—All vacancies in the office of director for such district shall be filled by the board of directors by appointment, and the director so appointed shall hold office until the next regular election, and until his successor has been elected and qualified. Provided, however, that where the number of directors shall have been reduced by death or resignation or from other cause to less than three, then such vacancies shall be filled by a special election to be ordered by the president of said board of directors, or by any two members of said board, said election to be ordered and held after the giving of notice for the election of said officers as provided for the holding of general elections; and further provided, that if said president or two of the directors shall fail or refuse to order such election, then said election may be ordered by the district judge of any judicial district in which said district may be situated upon a petition signed by any five parties interested in the election of said directors, whether said interested parties be taxpayers or bond holders; and when so ordered, notices shall be given of said election, and such election held in the manner provided for the holding of general elections, but under the orders of said court, and the directors elected at such election shall hold their office until the next general election, and until their successors shall have been elected and qualified. In the event that less than a quorum exists to approve bonds of such elected directors, then such bonds shall be approved by the county commissioners court of the county in which such directors reside. (Acts 1913, p. 380, sec. 76; Acts 1917, ch. 87, sec. 75.)

Art. 5107—77. Compensation of directors.—The directors provided for by this Act shall receive as compensation for their services the sum of five dollars per day for each and every day necessarily taken in the discharge of their duties as such directors, and said directors shall file with the secretary for such district a statement verified by their affidavit of the number of days actually taken by them in the service of said district, said statement to be filed on the last Saturday in each month, or as nearly thereafter as practicable, and before a warrant shall issue for the payment of such services. (Acts 1913, p. 380, sec. 77; Acts 1917, ch. 87, sec. 76.)

Art. 5107—78. Power of eminent domain; condemnation proceedings.—The right of eminent domain is hereby conferred upon all districts established under the provisions of this Act for the purpose of condemning and acquiring the right-of-way over and through all lands, private and public, except as hereinafter indicated, necessary for making reservoirs, canals, laterals, and for pumping sites, drainage ditches, levees and all other improvements necessary and proper for such districts, and the authority hereby conferred shall authorize and empower such districts to condemn all lands, private and public, for the purpose herein indicated beyond the boundary of such districts and in any county within the State of Texas; the right of eminent domain shall not extend to land used for cemetery purposes, nor to property owned by any person, association of persons, corporation or water improvement district, and used for the purpose of supplying water under the laws of this State and necessary for the making of reservoirs, canals, laterals, pumping sites, levee and drainage ditches, or other appurtenant work by such owner. All such condemnation proceedings shall be under the direction of the directors and in the name of the irrigation or water improvement district, and the assessing of damages and all procedure with reference to condemnation, appeal and payment shall be in conformity with the statutes of the State for condemning and acquiring right-of-way by railroad companies, and all such compensation and damages adjudicated in such condemnation proceedings shall be paid out of the construction and maintenance fund of said district. (Acts 1913, p. 380, sec. 78; Acts 1917, ch. 87, sec. 77.)

Art. 5107—78a. Proceedings had under chapter 172, Acts 33rd Legislature for establishment of districts to be effective as though petition filed under this act; acts validated.—In all cases where districts have been heretofore established or wherein proceedings are now pending to establish same, and a hearing has heretofore been had upon a petition to establish such districts, and action thereon has been taken by the commissioners' court, or where a public hearing is now pending upon such petition, and the notices thereof and therefor have been given as provided for by Chapter 172, of the Acts of the Thirty-third Legislature, such notices are hereby deemed and declared to be and to have been due and regular notices of such publication under the full meaning, intents and purposes of this Act, and all such districts so established are hereby declared to be duly and regularly established and are hereby declared to be defined districts, or territory within the meaning of the Constitution, and all acts or things done by said district, under the provisions of said Chapter 172, of the Thirty-third Legislature are hereby validated and declared to be the regular and binding act of such district. (Id. sec. 78.)

Art. 5107—79. District, when and how dissolved; debts, how collected, etc.—In the event that any district established under the provisions of Chapter 172 of the Acts of the Thirty-third Legislature shall not within two years after the taking effect of this Act, or that any district which may hereafter be established under the provisions of this Act shall not within two years after the conclusion of the organization of such district begin to acquire the necessary canals, ditches, flumes, laterals, reservoirs, sites, dam sites, pumping plants or other things necessary to the successful operation of such a dis-

trict, or shall not diligently pursue the purposes for which said district was created, then and in that event, such district may be dissolved without the necessity of taking any action in connection therewith, and any party having interest therein, or to whom any debt may be due and owing by said district, may collect such debt in the same manner provided by law for the collection of any debt due by any person, association of persons or corporation, and such debt shall be a lien upon the property of such district when established by any court of competent jurisdiction, and the judgment of said court shall provide for the payment of such debt and judgment in the same manner as judgments for debt against cities or towns that have been dissolved may be enforced; and provided further, that any district heretofore organized, or hereafter organized under the provisions of this Act, may voluntarily dissolve by the same vote and in the same manner herein provided for the organization of districts, such election to be held in the manner herein provided for the holding of elections in such districts, but provided further, that no dissolution shall be had until all debts and obligations have been fully paid and discharged. Any such district may also voluntarily abolish its corporate existence in the same manner as provided by law for the dissolution of drainage districts, as set forth in Chapter 28 of the Acts of the Thirty-third Legislature, first called session [Art. 2625a et seq.], and each and all of the provisions of said Act shall apply to and control the abolition of said districts and the legal consequences thereof. (Acts 1913, p. 380, sec. 79; Acts 1917, ch. 87, sec. 79.)

Art. 5107—80. District in two or more counties, how established.—Where any such district proposed to be established lies partly within two or more counties a petition in accordance with the requirements of this Act shall be presented to the county commissioners court of each county in which a portion of said district shall lie. Said petition shall describe the whole district and also that portion of same in the county where said petition is presented. The court shall have jurisdiction over all matters, herein provided for, pertaining to the territory lying in their county. All notices and procedure provided for in this Act in the formation of such districts shall be followed and carried out by the court in each county as applying to the territory therein to be included in said district. The election herein provided for, for the establishment of such district and the election of directors thereof shall be ordered as herein provided by the county commissioners court of each county in which any portion of said district shall lie, for the portion of said district in said county. Said election shall be ordered, provided for and conducted as if the territory lying in said county was in itself to be incorporated in such district, but such orders and notices shall state that same is part of such entire proposed district. The said election shall be held in the territory lying in each county on the same day. The returns of said election shall be made to the officers of the county wherein said election is held and shall be canvassed by the county commissioners court, as provided by law. Said court shall determine and certify to the number of votes cast in favor of the formation of said district and the number of votes cast against the formation of said district and the number of votes cast for each person voted for the office of directors. Within five days, or as soon as possible, after said election returns have been canvassed by said court, the clerk of the said commissioners court shall certify and report the result of said election and the number of votes polled for each side of said proposition and the number of votes polled for each person voted for for director to the county judge of the county in which the largest portion of said district is situated, and said county judge shall canvass said entire vote and determine the number of votes received for the formation of said entire district and the number of votes received against the formation of said entire district, and also the number of votes received by each person voted for as directors in said entire district, and shall declare the result thereof. If it be found and determined that a majority of the property tax paying voters voting thereon in said entire district have voted in favor of the creating of said district the said county judge shall declare the result thereof in the manner herein provided in Section 10 of this Act [Art. 5107—10], and copies thereof shall be filed for record in the deed records of each county in which a part of the district lies as provided in Section 11 hereof [Art. 5107—11]. Said county judge shall issue to the five persons receiving the highest number of votes for the office of director certificates of their election. In the event two persons should receive the same number of votes the other directors elected may proceed to qualify as herein provided, and such directors so elected and qualified shall order a new election to fill such vacancy caused by such tie vote. The board of directors elected for such district shall qualify and meet as herein provided and shall have charge of the affairs of the district in the same manner as herein provided for districts lying wholly within one county. The bonds of such directors shall be approved by the commissioners court of the county embracing the part of said district in which they live or in which their property is situated. (Acts 1913, p. 380, sec. 80; Acts 1917, ch. 87, sec. 80; Acts 1919, 2d C. S., ch. 28, sec. 1.)

Art. 5107—81. Official bonds and oaths.—Where a district lies in two or more counties the officers of such district shall furnish bonds and take the oath of office and qualify before the commissioners' court of the county in which the portion of the district lies in which they reside or in which their property is situated. (Acts 1913, p. 380, sec. 81; Acts 1917, ch. 87, sec. 81.)

Art. 5107—82. Petition for district in two or more counties, how heard; appeal from dismissal, etc.—When a petition asking for the establishment of such district is filed in two or more counties, the commissioners court of each county shall proceed to hear and determine the matters therein set forth with reference to the territory within their said county in the same manner as provided herein for territory wholly within one county, and in the event any one or more commissioners' courts in which any part of said district is situated shall dismiss the pe-

tition and find against the petitioners, then the said petitioners or any part of them may appeal from the decision of such court to the district court, in which event they shall file notices of appeal with the commissioners' court of each county in which said petition has been acted upon, and the clerk of each said court shall transmit all original papers and a true copy of all orders made by each said courts to the court to which said appeal is taken, and the said court shall hear and determine said matters by consolidating said causes. The appeal herein provided for shall be taken in the same manner as provided in Section 4 of this Act [Art. 5107—4], and the district court of any county in which any portion of said district is situated shall have jurisdiction to hear and determine said appeal, and said cause shall be tried in said court as provided for the trial and appeal of any civil action, except that no formal pleadings shall be required other than the notices of appeal herein provided. (Acts 1913, p. 380, sec. 82; Acts 1917, ch. 87, sec. 82.)

Art. 5107—83. Lands in adjoining county may be included, how; election.—Whenever any water improvement district has been formed under this Act, or under the provisions of Chapter 172 of the Acts of 1913, lying wholly within one county, and it is to the advantage of such district and of land owner lying in the adjoining county or counties to have such adjoining lands added to or included in such established district then same may be so included in or added to the territory already included in such established district in the following manner: The owners of the fee shall make application to the directors of the established district to which they desire to be annexed, which application shall be in writing and shall describe the lands covered by the application by metes and bounds and same shall be acknowledged in the same manner and form as now required for the acknowledgment of deeds, and if said land is a homestead or the separate property of a married woman it shall be acknowledged by both husband and wife. The directors of the district shall set said petition or application down for hearing on some certain date and shall give notice of such hearing in the same manner as provided in Section 1 of this Act [Art. 5107—1], and shall consider same in the same manner as provided for the consideration of petitions by the county commissioners' court as set out and provided in Sections 2 and 3 of this Act [Arts. 5107—2, 5107—3], and in the event that they shall find and determine that it is for the advantage of such established district and for advantage of the lands sought to be added thereto, to so include said lands in said district, then they shall so find and enter said findings of record in the minutes of said directors and they shall thereupon order an election to be held in said established district to determine whether or not said additional territory shall be permitted to be added thereto, which election shall be held after thirty days notice, which notice shall be given by posting copies of such notice in five public places in said district for at least twenty days next preceding the day of election, and if there be a newspaper published in said district, by publishing such notice for at least once a week for three weeks next preceding the day of said election. The said notice shall be given by the directors, which said directors shall furnish all necessary supplies for said election and shall appoint two judges and two clerks for all polling places in said district to conduct said election and make return thereof, which officers shall take the oath of office prescribed by the general election laws of the State, and they shall make returns of said election to the directors of the district, but in all other things said election shall be held in conformity with the general election laws of the State. At such election there shall be submitted the question, and none other, "Shall the proposed territory be added to the district?" and there shall follow said sentence the word "Yes" and just below it the word "No."

If two-thirds majority of the resident property taxpayers of said district vote yes, then the said territory may be added and become a part of said district in the same manner as if originally incorporated therein and subject to all laws governing said district; provided, that the directors of said district may require the owners of said lands to pay into the interest and sinking fund of said district their proper pro rata part of charges theretofore made against the lands in said district to pay the interest and sinking fund upon bonds of said district. If the application or petition for the addition of lands to the district as herein provided for shall cover a number of different tracts of land, or if there be included in the territory so described in said application or petition property taxpayers other than those signing and acknowledging such application, or if there be included in such territory as many as ten property taxpaying voters, then, at the same time the election above provided for is held in said established district, there shall also be held and conducted under the same rules and regulations as above provided for elections within such established territory, an election in such territory that is proposed to be added, except that the notice of election shall include a full description by metes and bounds of the territory included within such proposed addition. The ballot for such election shall have printed thereon "For addition to irrigation district" and "Against addition to irrigation district", but shall not contain any other matter whatever. In the event that two-thirds majority of the resident property taxpaying voters voting thereon at said election vote in favor of the addition of such territory, then same may be added to such irrigation district by a proper order of the directors entered upon the minutes of such established district, said order to be made within twenty days after the holding of such election, and said territory so added shall thereafter be and become an integral part of said district subject to all laws governing said district as completely and as fully as if same had been included in the district in its original formation; provided, however, that no water shall be furnished for irrigation of land included within said district until the owners and holders thereof shall have fully paid the charges fixed against each such land by the directors as a condition to their admission into the district as provided for in this Act. Such additions to such district shall not in any manner affect the officers,

employés and affairs of such district, but the voters of such added territory shall have a right to participate in all matters of the district considered or voted upon thereafter, and in case contract has been made with the United States as aforesaid, the Secretary of the Interior may assent to such change. (Acts 1913, p. 380, sec. 83; Acts 1915, ch. 138, sec. 1; Acts 1917, ch. 87, sec. 83.)

Art. 5107—84. Directors and employés may enter lands, etc.—The directors of any district and the engineer and employés thereof are hereby authorized to go upon any lands lying within said district, for the purpose of examining same, locating reservoirs, canals, dams, pumping plants, and all other improvements, to make maps and profiles thereof; and are hereby authorized to go upon the lands beyond the boundaries of such districts in any county for the purposes stated, and for any other purposes necessarily connected therewith, whether herein enumerated or not. (Acts 1913, p. 380, sec. 84; Acts 1917, ch. 87, sec. 84.)

See Penal Code, art. 343a.

Art. 5107—85. Contracts, how let; notice; contracts with United States.—Contracts for making and constructing reservoirs, dams, canals, laterals, pumping plants, check gates, sluice gates, and all improvements whatsoever of said district shall be made by the directors, to the lowest responsible bidder, after giving notice by advertising same in one or more newspapers of general circulation in the State of Texas, and in one newspaper published in the county, if there be one in the county, and one newspaper in such district, if there be one in the irrigation district, which notice shall be published once a week for four consecutive weeks; and also by posting notices for at least twenty days in five public places in the district, and one at the court house door of the county or counties in which such district is situated; provided that the provisions of this section shall not apply in case of any contract between the district and the United States. (Acts 1913, p. 380, sec. 85; Acts 1915, ch. 138, sec. 1; Acts 1917, ch. 87, sec. 85.)

Art. 5107—86. Bidders to receive copies of reports and profiles; bids, how made, etc.—Any person, corporation or firm, desiring to bid on the construction of any work advertised as provided for herein, shall upon application to the directors be furnished with a copy of the engineer's report, and profile, showing the work to be done, provided the directors may charge therefor the actual cost of having such report and profiles made and furnished. All bids or offers to do any such work shall be in writing, and sealed and delivered to the president or secretary of the board of directors, together with a certified check for at least two per cent of the total amount bid, which said amount shall be forfeited to the district in the event the bidder refused to enter into a proper contract for his bid as accepted. Any or all bids may be rejected in the judgment of the directors. All bids shall be opened at the same time. (Acts 1913, p. 380, sec. 86; Acts 1917, ch. 87, sec. 86.)

Art. 5107—87. Contracts to conform to act; how executed, filed and recorded.—All contracts made by the districts shall be in conformity with and subject to the provisions of this Act, and the provisions of this Act shall be a part of all contracts in so far as applicable to either the contractor of the district, and the provisions of this Act shall govern whenever the contract is in conflict herewith. The contract shall be reduced to writing and signed by the contractors and directors, and a copy of same so executed shall be filed with the county clerk of the county or counties in which said district is situated, which said copy so filed with said county clerk shall be recorded in a book kept for that purpose, and be subject to public inspection. (Acts 1913, p. 380, sec. 87; Acts 1917, ch. 87, sec. 87.)

Art. 5107—88. Contractors' bonds.—The person, firm or corporation to whom such contract is let shall give bond payable to the district in such amount as the director may determine, not to exceed the contract price, conditioned that he, they, or it will faithfully perform the obligations, agreements and covenants of such contract, and that in default thereof they will pay to said district all damage sustained by reason thereof. Such bond shall be approved by the directors, and shall be deposited with the depository of the district, a true copy thereof being retained in the office of such directors. (Acts 1913, p. 380, sec. 88; Acts 1917, ch. 87, sec. 88.)

Art. 5107—89. Contracts to contain specifications; supervision; reports of engineer; bridges and culverts across railroads.—All such contracts shall contain a full statement of the specifications for all work included in the contract, and all such work shall be done in accordance with the specifications under the supervisions of the directors and the district engineer. As the work progresses the engineer of such district will make full reports to the directors, showing in detail whether the contract is being complied with or not in the construction, and when the work is completed the engineer shall make a detailed report of same to the directors, showing whether or not the contract has been fully complied with according to its terms, and if not in what particular it has not been so complied with. The directors, however, will not be bound by such report, but may in addition thereto fully investigate such work and determine whether or not such contract has been complied with. The district is hereby authorized and empowered to make all necessary bridges and culverts across or under any railroad track and roadway of such railway to enable them to construct and maintain any canal, lateral, or ditch necessary to be constructed as a part of the improvements of such district. Such bridges or culverts shall be paid for by the district; provided, however, that notice shall first be given by such district directors by delivering a written notice to any legal agent, division superintendent or roadmaster of such railway, and the railway company shall be allowed thirty days to build such bridges or culverts at their own expense, if they should desire to do so, and according to their own plans; provided such canal, culvert or ditch shall be constructed of sufficient size not to interfere with the free and unobstructed flow of water passing through the canal or ditch, and shall be placed at such points as are designated by the district engineer, or

directors. (Acts 1913, p. 380, sec. 89; Acts 1917, ch. 87, sec. 89.)

Art. 5107—90. Bridges and culverts across canals, etc.—Such districts are hereby authorized and required to build all necessary bridges and culverts across and over all canals, laterals and ditches made and constructed by such district, whenever the same crosses a county or public road, and shall pay for the same out of the funds of such district. (Acts 1913, p. 380, sec. 90; Acts 1917, ch. 87, sec. 90.)

Art. 5107—91. Surplus moneys, how used.—After the full and final completion of all the improvements of such district as herein provided for, and after the payment of all the expense incurred under the provisions of this Act, the directors are authorized to use the remaining funds of the district for the best interests of such district in the preservation, upkeep and repair of the works of such district. (Acts 1913, p. 380, sec. 91; Acts 1917, ch. 87, sec. 91.)

Art. 5107—92. Duties of directors; inspection; payment of contract price; contracts with partial payments.—The directors shall have the right, and it is hereby made their duty, at all times during the progress of the work being done under any contract, to inspect the same; and upon the completion of any contract in accordance with its terms, they shall draw a warrant on the depository of the district for the amount of the contract price in favor of the contractor or his assignee; and if the directors shall deem it advisable in order to obtain more favorable contracts, they may advertise a contract to be paid for in partial payments as the work progresses, and such partial payments shall not exceed in the aggregate eighty-five (85) per cent of the amount of work done, the said amount of work completed to be shown by certified report of the engineer of the district. (Acts 1913, p. 380, sec. 92; Acts 1917, ch. 87, sec. 92.)

Art. 5107—93. Directors to make semi-annual reports.—The directors shall make a semi-annual report on the first days of July and January of each year, showing in detail the kind, character, and amount of work done in the district, the cost of same, the amount of each warrant drawn, and to whom paid, and for what purpose paid, and other data necessary to show the condition of improvements made under the provisions of this Act, and each report shall be verified by them, a copy of which shall be filed in the office of the county clerk of the county or counties in which such district is situated, and shall be open to public inspection. (Acts 1913, p. 380, sec. 93; Acts 1917, ch. 87, sec. 93.)

Art. 5107—94. District acquiring established system to continue to supply water, etc.—When a district acquires an established irrigation system which has supplied water to lot owners in a city, town or village, and such city, town or village is not included in such district, such district shall continue to supply water to such lot owners for a reasonable annual rental. (Acts 1913, p. 380, sec. 94; Acts 1917, ch. 87, sec. 94.)

Art. 5107—95. Person desiring to receive water to furnish statement; directors to estimate expense; expense, how paid; assessments; contracts with users; borrowing money; liens, interest; delinquents; contracts with United States.—Every person desiring to receive water during the course of the year, or at any time during the year, shall furnish to the secretary of the board of directors a statement in writing of the acreage intended by him to be put under irrigation, and for which water is to be used, and as near as may be, a statement of the several crops to be planted, with the acreage of each, and shall at the same time pay such proportion of the water charge or assessment therefor as may be prescribed by the board of directors. If such statement should not be furnished, or such payment should not be made before the date for fixing the assessments, there shall be no obligation upon the district to furnish such water to such person for that year. The board of directors, on or as soon as practicable after a date in each year to be fixed by a standing order of the board, shall carefully estimate the expense to be incurred during the course of the next succeeding twelve months for the maintenance and operation of the irrigation system. A proportionate part of the amount so estimated not less than one-third, nor more than two-thirds, to be determined from year to year, by the board of directors, shall be paid by assessment against all irrigable lands within the district, pro rata per acre; that is to say, against all lands to which the district is in condition to furnish water by its then system of canals and laterals, or through extensions thereto of then existing laterals, but without reference as to whether such land is to be actually irrigated or not; and the remainder of the amount so estimated shall be paid by the persons taking water; or applying for water as aforesaid. This remaining amount shall be equitably pro rated, as nearly as may be, among the applicants for water, and in pro rating same, the board of directors may take into consideration the acreage to be planted by each application for water, the crop to be grown by him, and the amount of water per acre to be used by him provided, however that each water user shall pay the same price per acre for use of upon the same class of crops. All assessments shall be paid in installments and at times to be fixed by the order of the board of directors, but if the crop for which such water was furnished shall be harvested prior to time fixed for the payment of any installment, the entire unpaid assessment shall at once become due and shall be paid within ten days after the harvesting of such crop and before the removal of same from the county or counties in which grown. The board of directors shall have power and authority from time to time to adopt, alter and rescind rules, regulations, standing orders and temporary orders, not in conflict with this Act, governing the methods, ways, terms and conditions of water service, applications for water, assessments for maintenance and operation and the payment and the enforcement of payment of such assessments, and the furnishing of water to persons who have not applied for same before the date of assessment, and to persons who desire to take water for irrigation in excess of their original applications, or for use on other lands than those covered by such applications. The board of directors may, at their discretion, require ev-

ery person desiring water during the course of the year to enter into a contract with the district, which contract shall indicate the acreage to be watered, the crops to be planted, and the amount to become due and the terms of payment; and it may be further required that the water taker shall execute a negotiable note or notes for such amounts, or for parts thereof. The making of such contracts shall not constitute a waiver of the lien given by this Act upon the crops of the water taker for the service furnished to him. If the water taker shall water more land than is called for in his contract, he shall pay for the additional service rendered as and at the times hereinbefore indicated. To secure money for the operating and maintenance expense of the district, the board of directors shall have authority to borrow money with interest not exceeding ten per cent per annum, and may hypothecate any of its notes or contracts with water takers or accounts against them. The district shall have a first lien superior to all other liens upon all crops of whatsoever kind grown upon each tract of land in the district to secure the payment of the assessment herein provided for, and all such assessments shall bear interest from the time due and payable at the rate of ten per cent per annum. And if suit should be filed therefor, or the same should be collected by any legal proceedings, an additional amount of ten per cent on unpaid principal and interest shall be added to the same as collection or attorney's fees, which collection fees, as well as principal and interest of such assessments shall stand secured by the lien aforesaid. Suits for delinquent water assessments may be brought either in the county in which the irrigation district is situated or in the county in which the defendant resides. All land owners shall be personally liable for all assessments herein provided for, and if they shall fail or refuse to pay same when due the water supply shall be cut off and no water shall be furnished to the land until all back dues are fully paid. This provision shall bind all parties, persons and corporations owning or thereafter acquiring any interest in said lands; provided however, that each and every person, land owner and tenant holding, owning or possessing land in an irrigation or water improvement district shall be entitled to the use of his proportionate part of the available water supply and whenever he shall have paid or make a proper tender of the current annual dues or assessments under the rules of such districts due for the maintenance fund, he shall be supplied such water without discrimination, and such district shall be liable for a failure to furnish same or for any discrimination against him and his right thereto may be protected by the issuance of an injunction. The directors of all districts shall, within ten days after any assessment is due post at a public place in said district a list of all delinquents and shall thereafter keep posted a correct list of all such delinquents; provided however, that if the parties owning such assessments shall have executed notes and contracts as hereinbefore provided they shall not be placed upon such delinquent list until after the maturity of such notes and contracts. In the event that contract shall be made with the United States, the remedies in this Section hereinbefore provided in favor of the district shall apply with regard to the operation and maintenance and rental charges which may become due to the United States. Provided, however, that the Federal reclamation laws and in particular the Reclamation Extension Act approved August 13, 1914, and any Acts amendatory thereof, shall be applicable. Moreover, all water the right to the use of which is acquired by the district under contract with the United States, shall be distributed and apportioned by the district in accordance with the Acts of Congress and rules and regulations of the Secretary of the Interior and the provisions of such contract in relation thereto. (Acts 1913, p. 380, sec. 95; Acts 1917, ch. 87, sec. 95; Acts 1919, 2d C. S., ch. 76, sec. 1.)

Art. 5107—96. When assessments are more than sufficient, or are insufficient; notice of additional assessments.—In the event the assessments made as provided for in the preceding section should be more than sufficient to meet the necessary obligations of the district, the balance shall be carried over to the next season; and in the event the assessments made are not sufficient to meet the necessary expenses of such district the balance unpaid shall be assessed, pro rate, in accordance with the assessments previously made for the then current year, and shall be paid under the same conditions and penalties within thirty days from the time such assessment is made. Public notice of all such assessments shall be given by posting printed notices thereof in at least three public places in the district, and printed notices shall be mailed to each land owner; provided, however, each land owner shall furnish to the board of directors his correct postoffice address. Such notice shall be given by posting and mailing such notice five days before the assessment is due, and in the event of special assessments such notice shall be given within ten days after such assessments are levied. (Acts 1913, p. 380, sec. 96; Acts 1917, ch. 87, sec. 96.)

Art. 5107—97. District may construct or purchase drainage or levee system.—Included in the plans of any such district may be the necessary drainage ditches, or other facilities for drainage, and necessary levees for the protection of land under the system; and every such district may purchase the system or any part of any system belonging to a drainage district. The purchase, however, shall provide for the payment of the debts of the drainage district, or the assumption of such debts, and the amount of such debts paid or assumed is to be considered in determining the bond issuing capacity of the district. (Acts 1913, p. 380, sec. 97; Acts 1915, ch. 138, sec. 1; Acts 1917, ch. 87, sec. 97.)

Art. 5107—98. Assessments for operation and maintenance, how collected; bond and duties of collector.—All assessments for operation and maintenance expenses made under the provisions of this Act shall be collected under the direction of the directors, by the assessor and collector of taxes, or other person designated by them, which said officer shall give bond in such sum as they may direct conditioned upon the faithful performance of his duties and accounting for all money collected. He shall

keep a true account of all money collected, and deposit the same as collected in the district depository, and shall file with the secretary of the directors a true statement of all money collected once each week. The collector shall use duplicate receipt books, and shall give a true receipt for each collection made, retaining in such book a true copy thereof, which shall be preserved as a record of the district. (Acts 1913, p. 380, sec. 98; Acts 1917, ch. 87, sec. 98.)

Art. 5107—99. Accounts and records of district.—The directors of such district shall keep a true account of all their meetings and proceedings, and shall preserve all contracts, records and notices, duplicate vouchers, duplicate receipts, and all accounts and records of whatsoever kind, in a fireproof vault or safe, and the same shall be the property of the district and shall be delivered to their successors in office. (Acts 1913, p. 380, sec. 99; Acts 1917, ch. 87, sec. 99.)

Art. 5107—100. District depositories.—The directors for such district shall select a depository for such district under the same provisions as are now provided for the selection of depositories for the counties in this State; and the duties of such depositories shall be the same as now prescribed by law for county depositories. However, in the selection of depositories the directors of such district shall act in the same capacity and perform the same duties as is incumbent upon the county judge and members of the commissioners' court in the selection of county depositories; and all laws now in force or hereafter to be enacted for the government of county depositories shall apply to and become a part of this Act. (Acts 1913, p. 380, sec. 100; Acts 1917, ch. 87, sec. 100.)

Art. 5107—101. Monthly reports of depositories, etc.—The district depository shall make a report of all moneys received, and of all moneys paid out, at the end of each month, and file such reports with such vouchers among the records of said district in its own vault, and shall furnish a true copy thereof to the directors, and shall, when called upon, allow same to be inspected by any taxpayer or resident of such district. Such records shall be preserved as the property of such district and shall be delivered to the successor of such depository. (Acts 1913, p. 380, sec. 101; Acts 1917, ch. 87, sec. 101.)

Art. 5107—102. Directors to maintain office; meetings.—The directors of each district shall have and maintain a regular office suitable for conducting the affairs of such district, within such district, or within a town situated within the general boundary lines of such district, and not removed therefrom. And such directors shall hold regular meetings at said office on the first Monday in February, May, August and November of each year, at ten o'clock a. m., and shall hold such other regular special meetings as they may see fit. And any such resident taxpayer or interested party may attend any such meeting of such directors, but shall not participate in any such meetings without the consent of the directors and shall have no authority to vote upon any matter considered by such directors, but may present such matters as they desire to such directors in an orderly manner. (Acts 1913, p. 380, sec. 102; Acts 1917, ch. 87, sec. 102.)

Art. 5107—103. Surety company bonds.—All officers and employés of any district who may be required to give bond or security, may furnish bonds of surety companies subject to the approval of the directors; provided, however, whenever such surety company bond is furnished by any such officer or employé, the surety company furnishing same shall file for record in the office of the county clerk of the county where such district is situated a duly executed power of attorney, showing the authority of the person signing such bond for said company, to so sign same, and said power of attorney shall be duly executed by the officers of said company, and have attached the company seal; and such power of attorney shall remain on file in said office. All such official bonds shall be preserved by it as the property of said district. (Acts 1913, p. 380, sec. 103; Acts 1917, ch. 87, sec. 103.)

Art. 5107—104. Meetings, where held; vouchers; accounts, etc.—All meetings of the directors shall be held at the regular office of the district. All vouchers issued for the payment of any funds of the district shall be signed by at least four directors and shall refer to the book and page of the minutes allowing such account. All vouchers shall be issued from a regular duplicate book containing a duplicate which shall be preserved. The directors shall have kept a complete book of accounts for such district, and shall on September first of each year select a competent auditor who shall examine the accounts, books and reports of the depository, the assessor and collector and the directors, and make a full report thereon, a copy of which shall be filed with the depository and a copy with the directors and one with the county clerk of the county or counties in which such district is situated. Such report shall be filed by November 1 of each year. (Acts 1913, p. 380, sec. 104; Acts 1917, ch. 87, sec. 104.)

Art. 5107—105. [Repealed.]

See art. 5107—107.

This article, which was sec. 105 of Acts 1913, p. 380, repealed Acts 1905, ch. 50 (arts. 5012-5107 of the Revised Civil Statutes, 1911).

Art. 5107—105a. Taxes levied under prior acts may be cancelled where bonds are unsold.—Where a district organized under prior Acts has issued bonds and levied taxes to provide the interest and sinking fund thereon and said bonds or a portion thereof have not been sold at such time, the directors of such district may return all unearned portion of said taxes, if collected, and may cancel, all unearned portion of said taxes not collected and all penalty, interest and costs thereon. At the time of the sale of such bonds, however, a sufficient tax shall be levied to provide all interest and charges thereon. (Acts 1917, ch. 87, sec. 105.)

Art. 5107—106. Joint ownership of works by two or more districts; election; letting of contracts; general manager for joint enterprise; terms of contract between districts.—Two or more districts may jointly own and construct irrigation works and reservoirs under the terms and conditions to be set out in a written contract. Any such contract shall not be binding until same shall have been ratified by a majority

vote of each such district. An election shall be held in each such district upon the same day to determine whether such contract shall be adopted. Such contract shall be printed or in writing, and a true copy shall be filed in the office of each district fifteen days prior to such election and be subject to public inspection, and one true copy of same shall be furnished each voter calling at such office for same at any time within fifteen days prior to such election. When improvements are constructed by two or more districts, bids may be jointly called for and may be opened and considered at the designated office of either of such districts, and such districts shall approve the letting of the contract, and the contractor's bond, and may meet for that purpose at a place outside of their district, or at any office established for such joint project and at which office all business of such joint project may be transacted, all bids, bonds, contracts, etc., of said joint project may be in the names of said joint project districts, such districts being empowered and authorized to do all acts by joint action that one district may do. The action of each district being determined by its board of directors, a general manager may be employed for such joint enterprise whose duties may be set forth in the joint ownership contract.

The terms and conditions of such joint ownership contract shall not conflict with the provisions of the law providing for the organization and conduct of districts, but may include provisions for joint construction and operation of same. Such contracts may be amended in the same manner. (Id. sec. 106.)

Art. 5107—107. Repeal; validation of districts created under repealed acts; government of such districts; bonds; change of name; districts in process of organization.—The Act of the Twenty-ninth Legislature, being Chapter 50 of the Acts of 1905, and the act of the Thirty-third Legislature, being Chapter 172 of the Acts of 1913, and Chapter 138 of the Acts of 1915, are hereby repealed. All districts heretofore organized under the terms and in accordance with the provisions of said Acts, are hereby expressly declared to be validly created, organized, described and defined with boundaries as prescribed by the order of the commissioners court organizing the same, or as the same have since been changed by the board of directors thereof in the manner provided by said Acts. Such districts, however, shall hereafter be governed by the provisions of this Act, provided, however, that the duly constituted and qualified officers of such districts shall continue to perform the duties of such offices until the next general election held under the provision of this Act.

All bonds issued by such district, which have been declared valid by a judgment of the District Court, shall be and be held to be valid and binding obligations of such district and not subject to attack, except for actual fraud. Any such district may change its name to the name herein provided for such districts by filing a declaration to that effect with the commissioners court of the county or counties in which it is situated, and which said declaration shall be in the form of a deed of conveyance and duly acknowledged by the president and secretary of the district, and shall embody and set forth a copy of the minutes of said board of directors, and show the resolution adopted for the change of such name, and when such instrument shall have been so recorded, the name of such district shall thereby be changed.

All districts in the process of organization under existing laws repealed by this Act, are hereby declared to be valid districts and entitled to proceed in accordance with the provisions of said Act so repealed until the date upon which this Act shall take effect after which, said districts shall be governed by the provisions of this Act, and said districts shall change their name to conform to the provisions of this Act by filing a declaration as above provided, in the office of the county clerk of the county or counties in which they are situated; and if they have not proceeded to the point of election of directors, they shall change such name by making application to the county commissioners court having jurisdiction thereof, which said court shall change said name upon all orders thereafter issued relating to said district. (Id. sec. 107.)

Art. 5107—108. Power to construct works for irrigation of lands, etc.; authority of directors.—All districts organized under the provisions of this Act shall have full authority, acting by and through its board of directors, to construct all works and improvements necessary for the irrigation of lands in said districts, and to supply, deliver and sell water for domestic power, and commercial purposes when operating under the authority of Section 59 of Article 16 of the Constitution; and to fully carry out the purpose of its organization and the conservation and use of water for the several purposes authorized by the Constitution and laws of this State, and to acquire the right to the use of water in the manner provided by law, and the directors of such districts, subject only to the provisions hereof, shall have full authority to manage such districts and the business of such districts for the purpose of carrying out the intention and purposes of the organization. (Acts 1917, ch. 87, sec. 108; Acts 1919, 2d C. S., ch. 28, sec. 1.)

Art. 5107—109. Inclusion of land without district but served by irrigation system within district.—Where a district is organized embracing land irrigated by an established irrigation system and lands entitled to be served with water from such irrigation system are not included in such district, in the manner provided by law, and when so admitted to or included in such district the said land shall become part of said district as if originally included therein and shall be entitled to water service upon an equal basis with the lands originally included in said district. (Acts 1917, ch. 87, sec. 109.)

Art. 5107—110. Transfer of water right appurtenant to nonirrigable lands.—Where there is included in a district lands having a water right from a source of supply acquired by such district but which lands it is difficult or impracticable to irrigate, the said district may allow such water rights to be transferred to other lands adjacent to said district and may admit such lands to said district upon an equal basis as to water service with the lands originally included in such district. (Id. sec. 110.)

Art. 5107—111. Release from assessment of lands receiving insufficient water service.—Whenever any district organized or hereafter organized has failed or neglected to furnish water sufficient to irrigate any land within such district within two years from its organization, then such lands shall be relieved of any and all assessments and charges except taxes until such district shall construct the necessary canals and furnish the necessary water to enable the owner of said land to irrigate all of said land on demand therefor. (Id. sec. 111.)

Art. 5107—112. Bond tax to remain in force from year to year; increase or diminution.—The tax as levied in connection with the original issuance of bonds shall remain in force from year to year as the levy for that purpose, until a new levy shall be made. The board of directors may, from time to time, increase or diminish such tax so as to adjust the same to the taxable values of the property subject to taxation by the district and the amount to be collected, and in such manner as to raise an amount sufficient to pay the annual interest and sinking fund on said bonds then outstanding. (Id. sec. 112.)

Art. 5107—113. Investment of sinking fund.—The board of directors are authorized and empowered, whenever they may deem it advisable, to invest any sinking funds of the district, acquired for the redemption and payment of any of its outstanding bonds, in bonds of the United States, of the State of Texas, of any county of the State of Texas, any irrigation or water improvement bonds or of any incorporated city or town, or of any independent school district, or of any other school district in the State of Texas authorized to issue bonds; provided that no bonds shall be so purchased that according to their terms mature at a date subsequent to the time of maturity of the bonds for the payment of which such sinking fund was created. (Id. sec. 113.)

Art. 5107—114. Fees of county clerk for registering bonds, etc.—The county clerk shall receive for his services in registering said bonds the sum of ten cents for each bond so registered; for entering a payment of any bond, the sum of ten cents; for recording of instruments of the district required to be recorded, and for which no fees are hereinbefore fixed, he shall receive the same fees as provided by law for recording deeds. (Id. sec. 114.)

Art. 5107—115. Directors may employ a manager; limitations as to employment contracts.—The board of directors may employ a manager, who shall have general charge and management of the water distribution system of the district, subject to the general rules and regulations made by the board of directors, and who shall have power to appoint and discharge all other employés except the president and the secretary of the board and the assessor and collector, to purchase and contract for all supplies necessary for the water distribution system, after the board has authorized such purchases, to collect all assessments for operation and maintenance, and to execute on behalf of the district all water contracts and other contracts that are not required by law to be executed by the board or by the president and secretary of the board, and who shall have such other powers and perform such other duties as may be provided by the board of directors. Unless such manager is appointed, all persons employed by or representing the district shall be employed by the board of directors. No contract shall ever be made with any manager or other person or employé, whether employed by the board of directors or by the manager, for a longer period of time than one year, and the salaries of all employés, or the compensation to be received by them, shall be fixed at the time of their employment. (Id. sec. 115.)

Art. 5107—116. Issuance of bonds in lieu of bonds issued under prior acts; registration; election; refunding bonds; election; registration.—Where bonds have been issued, or may be hereafter issued, by a district organized under and in accordance with the provisions of this Act, or where bonds have been issued by any district organized under the Act of the Twenty-ninth Legislature, being Chapter 50 of the Acts of 1905, or the Act of the Thirty-third Legislature, being Chapter 172 of the Acts of 1913, in accordance with the provisions of said Acts, respectively, new bonds bearing the same or a lower rate of interest may be issued in lieu thereof. Such new bonds may be exchanged for old bonds, provided the old bonds are taken in exchange at their face value or at a discount, or they may be sold and the net proceeds applied to the purchase of the old bonds redeemed at par or at a discount. The Comptroller of Public Accounts shall not register said new bonds until the old bonds in lieu of which they are issued are presented to him for cancellation or until a valid contract has been entered into and a copy thereof filed with the Comptroller for the purchase of a corresponding amount of such old bonds. After registration of the new bonds, the Comptroller shall keep the same in his possession until the old bonds are surrendered to him and cancelled by him, whereupon he shall deliver the new bonds to the proper party or parties; provided, that the old bonds may be so presented for payment, in installments, and a like amount of the new bonds registered and delivered as herein provided.

If the new bonds are in the same amounts and have the same dates of maturity as the old bonds intended to be replaced thereby, they may be authorized by resolution of the board of directors and issued without submitting the question of their issuance to the vote of the property taxpayers, who are qualified voters in the district, and they shall be registered by the Comptroller in the manner hereinbefore provided, and upon the filing with him of a copy of the resolution of the board of directors providing for the cancellation of said old bonds and the issuance of the new bonds in place thereof; and when said old bonds shall have been cancelled and the new bonds registered by the Comptroller, such new bonds shall be the valid and binding obligations of the district, without further proceedings in regard thereto; and the same are hereby declared to have, and are hereby given, the same force, effect and validity as the original issue of bonds that they have replaced.

Any such district is authorized to issue

new or refunding bonds in lieu of bonds heretofore or hereafter issued as aforesaid, in such amount, of such denominations, bearing such rates of interest and periods of maturity as may be provided by resolution of the board of directors thereof, within the limits prescribed in this Act in the case of an original issuance of bonds, whenever the board of directors may deem such action advisable, but if such new or refunding bonds are in greater amount, bear a greater rate of interest or have longer periods of maturity, or in any other respect create a greater burden on the district than the old bonds then outstanding, the issuance of such new or refunding bonds shall be submitted to the vote of the resident property taxpayers who are qualified voters of the district, and all provisions of this Act governing the election and the issuance, approval, validation, registration and sale of bonds in the case of an original issue of bonds shall apply to and govern such new or refunding bonds. All such bonds shall be registered and delivered only in the manner provided in this Section. (Id. sec. 116.)

Art. 5107—117. Establishment of districts in unorganized counties.—Should any parties in any unorganized county wish to organize a Water improvement district, under the provisions of this Act, such parties shall have the right to do so by applying to the commissioners' court of the county to which said unorganized county is attached for judicial purposes, and such commissioners' court is hereby authorized to perform for said unorganized county all things which in this Act is required of Commissioners' court of organized counties. (Id. sec. 117.)

Art. 5107—118. Election in town, city or municipal corporation within district; separate canvass of result; district not to include town, etc., when.—Whenever a district proposed to be organized as herein provided contains within its boundaries as proposed and described in the petition for organization, a town, city or municipal corporation, or part thereof, when the county commissioners court calling the election to determine said question as herein provided shall constitute said territory within said town, city or municipal corporation, a separate election precinct, with one or more polling places, and the vote received for and against the proposition within said town, city or municipal corporation shall be separately canvassed by the court to determine whether or not a majority of those voting at said election within said town, city or municipal corporation voted for or against said proposition. If a majority of those voting at said election within such town, city or municipal corporation vote against the formation of such district the same shall not be formed including such town, city or municipal corporation, but if the majority of the votes therein is in favor of the formation of such district then such votes shall be canvassed with the votes of the balance of said entire district to determine the result of said election. (Acts 1919, 2d C. S., ch. 28, sec. 2.)

This article, and articles 5107—119, 5107—120, 5107—121 were added to Acts 1917, ch. 87, as secs. 118a, 119, 120, and 121 thereof, by Acts 1919, 2d C. S., ch. 28, sec. 2.

Art. 5107—119. Maintenance charges, how fixed; measuring devices.—The maintenance charges may be fixed as provided in Section 95 of this Act [Art. 5107—95], or same may be determined upon the basis of the quantity of water used, and if based upon the use of water a fixed charge may be made on all lands or water connections entitled to receive and use water, and an additional charge may be made, or a graduated scale adopted, for the use of water in excess of that covered by the minimum charge. The district may install proper measuring devices. (Id.)

Art. 5107—120. Contract with city or town to supply water.—Where a district includes a city or town, or contracts with a city or town to supply it water, the charge for the use and delivery of such water, and the time and manner of payment therefor shall be determined by the board of directors and be specified in a standing order of said board. (Id.)

Art. 5107—121. Consolidation of districts; election; procedure; taxes; debts; officers.—Any two or more irrigation districts, or water improvement districts, governed by the provisions of this Act and amendments thereof, may be consolidated into one district in the following manner: The terms and conditions upon which such consolidation is to be effected shall be agreed upon by the board of directors of each district, and then the question shall be submitted to a vote in each district after giving notice thereof for at least twenty days in the manner provided by law for other elections. The election shall be held in such districts on the same day. The consolidation to be effected only in the event same is adopted by each and all such districts. When two or more districts are consolidated their obligations shall not be impaired but shall be protected and paid by taxes levied upon the property in the district creating said debt or by assessments in the same manner and extent as if said consolidation had not been effected. After consolidation such taxes shall be assessed and collected by the officers of the consolidated district and in the event they should fail or refuse to so assess and collect same, for such purpose, in due order and time, then same may be assessed and collected, and paid on such obligations, by a receiver appointed by and acting under the orders of a district court, in a proper suit which may be brought by a creditor or by five or more tax payers of such district. When two or more districts are consolidated into one district, same shall be governed as and be one district, except that the debts of each district, created prior to such consolidation, shall be paid as herein provided; provided, however, such consolidated district may contribute to such payments upon the terms stated in the consolidated agreement. When two or more districts are consolidated the officers of said respective districts shall continue to act jointly as the officers of said district, and to wind up, the affairs of their respective districts as affected by said consolidation, for a period of ninety days after the date of the election, and they may continue to so act until the next general election if so provided by the consolidation agreement, or the consolidation agreement may provide who shall constitute the first board of directors to serve until the next general election if the officers then serving agree to resign. Said new of-

ficers shall within the period of ninety days after the election qualify as such officers of the consolidated district and assume such offices at the expiration of said period. All bonds of such officers will be approved by the then existing boards of directors. (Id.)

Art. 5107—122. Repeal.—Any and all Acts of the Legislature in conflict with the provisions hereof are repealed insofar as they conflict with the provisions hereof; provided this Act shall not in any manner affect or repeal other laws providing other methods of forming similar districts. (Id. sec. 3.)

CHAPTER THREE

WATER CONTROL AND PRESERVATION DISTRICTS

Art. 5107—123. Districts may be established; territory included; purposes of.—One or more Water Control and Preservation Districts may be established in the several counties, or a part of any county, of this State, or in two or more adjacent counties, or in parts of one or more adjacent counties, or in one county and part of an adjacent county or counties, in the manner herein after provided. Said districts may or may not include within their boundaries villages, towns and municipal corporations, or any part thereof but no land shall be at the same time included within more than one Water Control and Preservation District created under this Act; the said districts, when so established, to be for the purpose of the control and preservation of the purity of the waters of any rivers, creeks, bayous, lakes, canals, streams or other waters of any kind and character situated or flowing, in whole or in part, through the said district, or any part thereof, by the prevention of the inflow of salt water or other deleterious substances, or by the changing of said waters from salt to fresh water, and the impounding of fresh water for the above mentioned purposes; such districts when so established being fully empowered to erect, construct, maintain, repair and reconstruct dams, bulkheads, jetties, locks, gates, or any other character of improvement or construction necessary to the accomplishment of said purposes, or any of them, and such construction, or any part of same, may be without the boundaries of the district, where same may be deemed necessary to the preservation or the improvement of the purity and irrigable quality of the waters of any river, creek, bayou, lake, canal, stream or other waters, or any part thereof, situated or flowing, in whole or in part, through the said district, or any part thereof; and may issue bonds in payment thereof as hereinafter provided. (Acts 1918, 4th C. S., ch. 43, sec. 1.)

Art. 5107—124. Petition for establishment; contents; hearing by commissioners' court thereon; notice of.—Upon the presentation to the County Commissioners' Court of any county of this State of a petition, accompanied by the deposit as hereinafter provided, signed by twenty-five of the resident property taxpayers of any proposed Water Control and Preservation District, praying for the establishment of a Water Control and Preservation District within said county and setting forth the boundaries of the proposed district, accompanied by a map thereof, the general nature of the improvement, or improvements, proposed and an estimate of the probable cost thereof, and praying for the issuance of bonds and levy of a tax in payment thereof, and designing a name for such Water Control and Preservation District, which name shall include the name of the county; said petitioners shall make affidavit to accompany said petition of their said qualification: the said Commissioners' Court shall, at the same session when said petition is presented, enter an order setting same down for hearing at some regular term of said court or at some special session of said court called for the purpose, not less than thirty days nor more than sixty days from the presentation of said petition, and shall order the Clerk of said Court to give notice of the date and place of said hearing by posting, or causing to be posted, a copy of said petition and the order of the Court thereon in five public places in said county, one of which shall be at the Court House door of said county and the other four of which shall be within the limits of said proposed Water Control and Preservation District, which said notice shall be posted not less than twenty days prior to the time set for the hearing. The said Clerk shall receive as compensation for such services One Dollar for each such notice and five cents per mile for each mile necessarily traveled in posting such notices. (Id. sec. 2.)

Art. 5107—125. Duties and powers imposed on County Judges, Commissioners' Court, county clerk, etc., made part of regular duties.—The duties and powers herein conferred upon the County Judges and members of the Commissioners' Court, the County Clerk and other officers are made a part of the regular duties of said officials which they shall render and perform without additional compensation unless otherwise provided herein. (Id. sec. 3.)

Art. 5107—126. Contest of establishment of district; hearing.—Upon the day set for the hearing of said petition before the County Commissioner's Court, any person who has taxable property within the proposed district, or who may be affected thereby, may appear before the said court and contest the creation of said district, or contend for the creation of said district, and may offer testimony in favor of or against the boundaries of said district to show that the proposed improvement or improvements would or would not be of any public utility and would or would not be feasible or practicable and the probable cost of such improvement or improvements, or as to any other matter pertaining to the proposed district. Said County Commissioners' Court shall have exclusive jurisdiction to hear and determine all contests and objections to the creation and establishment of the same, and shall have exclusive jurisdiction in all subsequent proceedings of any district when organized, except as herein otherwise provided, and may adjourn hearing on any matter connected therewith from day to day and all judgments, decrees or orders rendered or entered by said Court in relation thereto shall be final except as herein otherwise provided. (Id. sec. 4.)

Art. 5107—127. Order establishing or denying establishment of district; contents.—If at the hearing of said petition it

shall appear to the Commissioners' Court that the organization of such district and the proposed improvement is feasible and practicable, that it would be a public benefit or public utility, then the Court shall so find and shall also find the amount of money necessary for said improvement or improvements, for all expenses incident thereto and the expenses necessarily incurred in connection with the creation and establishment of the district, and shall specify the amount of bonds to issue, the length of time the bonds shall run and the rate of interest said bonds shall bear, and cause its findings to be recorded in the records of the Commissioners' Court. If the Court shall find that the organization of such district and the proposed improvement is not feasible or practicable, or that it would not be a public benefit or public utility, then the Court shall enter such findings of record and dismiss the petition at the cost of petitioners; but the order dismissing said petition shall not prevent or conclude the presentation at any subsequent time of a similar petition with changed boundaries, but the presentation of a similar petition with identical boundaries shall not be permitted until the expiration of six months after such dismissal. (Id. sec. 5.)

Art. 5107—128. Appeal to District Court from order establishing, etc., district; notice of; bond of appellant; hearing and judgment.—If at the hearing of said petition, as herein provided for, the Commissioners' Court shall enter an order granting or dismissing the petition for the establishment of said district at the cost of petitioners, then and in that event the petitioners, or any one or more of them, or any taxpayer in such district, may appeal from said order to the District Court of said county which appeal shall be perfected in the following manner, to-wit: notice of appeal shall be given at the time of the entry of said order by announcement of same before said Court, which notice of appeal shall be entered on the minutes of said Court, or by giving written notice within two days after the entry of such order, said notice to be a simple statement in writing to the effect that the undersigned gives notice of appeal from the order entered on the date stated, which notice shall be filed with the Clerk of the County Court, and the appellant shall, within five days from the date of the entry of said order, file an appeal bond with two or more good and sufficient sureties in the sum of One Hundred Dollars, payable to the County Judge of the county, to be approved by the County Clerk; conditioned, upon the due prosecution of the appeal and payment of all costs incident thereto, and unless the appeal be thus perfected within five days after the rendition of the order, such order shall be final and conclusive and there shall be no extension of time granted for the filing of the appeal bond; the County Clerk shall, within five days after the filing of said appeal bond, transfer to the Clerk of such District Court all records filed with the County Commissioners' Court, pertaining to the establishment of said district, and it shall be unnecessary to file any other or additional pleadings in said court. The Court shall set the matter down for hearing, giving it precedence over all other cases, and the matters shall be tried and determined by the court, the hearing being de novo. The judgment of the District Court shall be final and conclusive, and the same shall be certified to the Commissioners' Court for its further action. The provisions of Section 5, hereof [art. 5107—128], as to the presentation of a subsequent petition or petitions, as the case may be, shall be applied in case of such appeal. (Id. sec. 6.)

Art. 5107—129. Election to determine establishment; propositions to be submitted.—After the hearing upon the petition, as herein provided, if the Commissioners' Court shall find in favor of the petitioners for the establishment of a Water Control and Preservation District according to the boundaries as set out in said petition, then the Commissioners' Court shall order an election, in which order provision shall be made for submitting to the qualified property tax paying voters, resident in said district, whether or not such Water Control and Preservation District shall be created and whether or not a tax shall be levied sufficient to pay the interest and provide a sinking fund sufficient to redeem said bonds at maturity, said order specifying the amount of bonds to be issued together with the length of time said bonds shall run and the rate of interest said bonds shall bear, as said matters have been determined by the Commissioners' Court under the provisions thereof; said election to be held within such proposed Water Control and Preservation District at the earliest legal time, at which election there shall be submitted the following propositions and none other: "For the Water Control and Preservation District and issuance of bonds and levy of tax in payment thereof." "Against the Water Control and Preservation District and issuance of bonds and levy of tax in payment thereof." Provided that said bonds shall not exceed in amount one-fourth of the assessed valuation of the real property of such district as made by last annual assessment thereof for state and county taxation. (Id. sec. 7.)

Art. 5107—130. Notice of election.—Notice of such election stating the time and place of holding the same shall be given by the Clerk of the County Court by posting, or causing to be posted, notices thereof in four public places in such Water Control and Preservation District and one at the Court House door of the county in which such district is situated for thirty days prior to the date of said election; such notices shall contain the proposition to be voted upon as set forth in Section 7, of this Act [art. 5107—129], and shall also specify the purpose for which said bonds are to be issued and the amount of such bonds, and shall contain a copy of the order of the court ordering the election. (Id. sec. 8.)

Art. 5107—131. Conduct of election; qualified voters; voting precincts; election officers; ballots.—The manner of conducting said election shall be governed by the election laws of the State of Texas, except as herein otherwise provided. None but resident property taxpayers, who are qualified voters of said proposed district, shall be entitled to vote at any election on any question submitted to the voters thereof by the County Commissioner's Court at such elec-

tion. The County Commissioner's Court shall create and define, by an order of the Court, the voting precincts in the proposed Water Control and Preservation District, and shall name a Polling place or places within said precincts, taking into consideration the convenience of the voters in the proposed district, and shall also select and appoint the judges and other necessary officers of the election, and shall provide one and one-half times as many ballots as there are qualified resident property tax paying voters within such Water Control and Preservation District; said ballots shall have printed thereon the words and none others: "For the Water Control and Preservation District, and issuance of bonds and levy of tax in payment thereof"; "Against the Water Control and Preservation District, and issuance of bonds and levy of tax in payment thereof." (Id. sec. 9.)

Art. 5107—132. Lists of property taxpayers for election judges; oath administered to voters.—It shall be the duty of the tax collectors of the county, wherein such proposed district is situated, prior to the day set for the election, to make a certified list of the property taxpayers of said district and to furnish to the presiding judge of each precinct a list of such voters in such precinct, and before any person is entitled to vote at any election under this Act his name must appear in said certified list of property taxpayers, unless such person acquired property in said district after the first day of January of the preceding year, and in such event before he shall be permitted to vote he must take the following oath to be administered by the presiding judge of the polling place where he offers to vote, and for such purpose the presiding judge is hereby authorized to administer the same; "I do solemnly swear (or affirm) that I am a qualified voter of ..... County and that I am a resident property taxpayer of the proposed district, that I was not subject to pay property tax in said district for the preceding year and have not voted before at this election"; or unless the person offering to vote is in fact a resident property taxpayer who has in fact paid his property tax for the preceding year but whose name was for some reason omitted from said list before being permitted to vote, such person shall take the same oath as hereinabove set out except that in lieu of the Clause "That I was not subject to pay property tax in said district for the preceding year," there shall be substituted "that I was subject to and did pay property tax in said district for the preceding year," which oath shall be administered by the presiding judge. (Id. sec. 10.)

Art. 5107—133. Returns and declaration of result of election; form for.—Immediately after the election, the presiding judge at each polling place shall make return of the result in the same manner as provided for in elections for state and county officers, and return the ballot boxes to the County Clerk, who shall keep same in a safe place and deliver them, together with the returns from the several polling places, to the Commissioners' Court at its next regular session, or special session called for the purpose of canvassing the vote, and the County Commissioners shall, at such session, canvass the vote; and, if it be found that a two-thirds majority of those voting at such election shall have been cast in favor of the Water Control and Preservation District and the issuance of bonds and levy of tax, then the Court shall declare the result of said election to be in favor of said Water Control and Preservation District, and shall enter same in the minutes of the Court as follows:

"Commissioners' Court of..... County, Texas,.....day of..... A. D.....in the matter of petition of .....and .....others, praying for the establishment of a Water Control and Preservation District, and issuance of bonds and levy of taxes in said petition fully described and designated by the name of ..... Water Control and Preservation District..... Be it known that at an election called for that purpose in said district, held on the ..... day of.....A. D. ....., a two-thirds majority of the resident property taxpayers voting thereon voted in favor of the creation of said Water Control and Preservation District, and the issuance of bonds and levy of a tax. Now, therefore, it is considered and ordered by the Court that said Water Control and Preservation District be and the same is hereby established by the name of .....Water Control and Preservation District ....., and that the bonds of said District in an amount not exceeding ..... Dollars be issued by the Directors of said Water Control and Preservation District, and that said Board of Directors levy a tax of.....cents on the hundred dollars of valuation, or so much thereof as may be necessary, upon all property within said Water Control and Preservation District, whether real, personal, mixed or otherwise, sufficient in amount to pay the interest on such bonds and provide a sinking fund sufficient to redeem them at maturity, and that if said tax shall at any time become insufficient for such purpose, same shall be increased by the Directors of said district until same is sufficient. The metes and bounds of said district being as follows, to-wit: (Giving the metes and bounds)." (Id. sec. 11.)

Art. 5107—134. District board of directors; number; appointment; qualifications; compensation; terms of office; vacancies in office of.—After the establishment of any Water Control and Preservation District, as herein provided, the Commissioners' Court, at the same meeting at which the result of said election is determined and declared, or at a meeting called for the purpose not more than five days after such first mentioned meeting, shall appoint a Board of Directors consisting of three members, all of whom shall be residents of the Water Control and Preservation District, who shall be freehold property taxpayers and legal voters of the county embraced, in whole or in part, within the district, and at the time of said election more than twenty-one years of age, whose duties shall be as hereinafter provided; they shall each receive as compensation for their services the sum of Three ($3.00) Dollars per day for each day necessarily taken in the discharge of their duties as such directors; said directors shall hold office for the term of two years and until their suc-

cessors have qualified, unless sooner by a majority vote of the Commissioners Court. Upon the expiration of the term of office of said directors, the Commissioners' Court shall appoint their successors by majority vote. Should any vacancy occur through death, resignation or otherwise, of any directors, the same shall be filled by the Commissioners' Court. (Id. sec. 12.)

Art. 5107—135. Proposed district partly within two or more counties; petition, election, etc.—Where any such district proposed to be established lies partly within two or more counties, the petition provided for in this Act, shall be presented to the County Commissioners' Court of each county in which a portion of said district shall lie, and all notices provided for in this Act, to be given in the formation of such district, shall be given in each and every county in which any portion of said territory proposed to be included in such district shall lie. The elections herein provided for, for the establishment of such district, shall be ordered as herein provided by the County Commissioners' Court of each County, in which any portion of said district may lie, for the portion of said district lying in said county. The election returns in such county shall be made to the Commissioners' Court and the said Commissioners' Court shall appoint all necessary officers, furnish all necessary supplies and give all necessary notice as herein provided in the same manner as if the territory lying in said county was, in itself, to be incorporated in such district, but stating that same is a part of such entire district. The said election shall be held in each county in the portion of the district therein situated and the returns of such election shall be made to the County Commissioners' Court, and shall be by it duly canvassed and the result duly declared. After canvassing, determining and declaring the result of said election, the County Judge or presiding officer of the Commissioners' Court shall certify and report the result of said election to the County Judge of the county in which the largest portion of any such district is situated and said County Judge shall canvass said vote and declare the result thereof, and if it be determined that at least two-thirds of the property tax payers, voting thereon, in said entire district have voted in favor of the creation of said district, the said County Judge shall declare the result thereof in the manner herein provided. Said County Judge shall make the order provided for in this Act, relating to districts wholly within one county, and shall cause copies of such order to be filed with the County Clerk of each county in which any portion of said district may lie, which shall be held to be a proclamation of the result of said election. (Id. sec. 13.)

Art. 5107—136. Same subject; hearing and determination by Commissioners Court; appeals.—When a petition praying the establishment of such district is filed in two or more counties, the Commissioners' Court of each county shall proceed to hear and determine the matters therein set forth with reference to the territory within their said county in the same manner as herein provided for districts wholly within one county, and appeals may be taken for the order entered upon such petition, in the manner as herein provided where the district lies wholly within one county, and the District Court of any county in which any portion of said district is situated, shall have jurisdiction to hear and determine said appeal, the procedure of such appeal, the effect of the judgment entered and the certification thereof, shall be the same as herein provided for districts wholly within one county. (Id. sec. 14.)

Art. 5107—137. Same subject; board of directors.—Where the proposed district lies partly within two or more counties, the Board of Directors, instead of consisting of three members shall consist of five and instead of being appointed, as herein provided for, when districts lie wholly within one county, shall be elected at the same time that the question of the establishment of the district is submitted to the voters, and the ballot in addition to the words printed thereon, as provided in Section 9 hereof [art. 5107—131], may have printed the names of the candidates for director, or the voter may write upon his ballot the names of the persons voted for as directors; the five persons receiving the highest number of votes so cast shall be the directors of said district, and the vote for directors shall be canvassed and the result declared at the same time and in the same manner as herein provided for the establishment of the district. (Id. sec. 15.)

Art. 5107—138. Same subject; board of directors; election; terms of office; vacancies in office of.—The directors so elected shall hold their office for two years and until their successors are elected and qualified, provided however, that the directors elected at the time of the establishment of the district, shall hold office only until the next regular election to be held in said district for the election of directors, as hereinafter provided and until their successors are elected and qualified. All vacancies in the office of director shall be filled by the Board of Directors, by appointment, and the director so appointed shall hold office until, the next regular election and until his successor has been elected and qualified. Where the number of directors shall have been reduced by death, resignation or otherwise, to less than three, an election shall be held in the manner provided in Section 75 of Chapter 87, Acts of the Thirty-fifth Legislature, Regular Session [Art. 5107—76], and all the provisions of said section shall apply. There shall be held on the second Tuesday in January, after the establishment of such district, and every two years thereafter, an election within the district, where the land in the district lies in two or more counties, at which time there shall be elected five directors for such district, said elections to be held in accordance with the election laws of the State of Texas, and the provisions of this Act for elections for the establishment of districts, provided however, the Board of Directors shall give notice of the election, appoint all necessary officers, name the polling places in the district, receive and canvass the election returns and do and perform all other duties necessary to the holding of said elections, canvassing the returns and declaring the result thereof. None but resident property taxpayers, who are qualified voters of such district,

shall be entitled to vote at such election. (Id. sec. 16.)

Art. 5107—139. Board of directors; bonds and oath of office.—Within ten days after their appointment or election, or as soon as thereafter as practicable, the directors so appointed or elected, shall make and enter into a good and sufficient bond, in the sum of Five Thousand ($5,000.00) Dollars, each, payable to such district, conditioned upon the faithful performance of his duties, the said bond, when the district lies wholly within one county, to be approved by the Commissioners' Court and when said district includes lands within two or more counties the bonds of such directors shall be approved by the Commissioners' Court of the county in which they reside, a copy of the order approving the bond shall be filed with the County Clerk of the county in which the largest part of the district is situated, together with the bond, and such clerk shall record same in the deed records of the county and shall properly index the same in the manner provided for the recording and indexing of deeds; provided however, that after the organization of such district, all bonds required to be given by any director, officer or employé of such district, shall be approved by the directors of such district. The said directors shall take the oath of office prescribed by the Constitution for officers; the said oath of office, when the district is composed of land lying wholly within one county, to be taken before the County Clerk of such county; and where lands within the district lie partly within two or more counties, the oath of office shall be taken before the County Clerk of the County within the district in which such director resides, and the said bonds and oaths shall be delivered by said Clerks to the depository selected by such district under the provisions of this Act, and shall be by it safely kept and preserved for the said district. (Id. sec. 17.)

Art. 5107—140. Organization of board of directors; quorum.—The directors of such district shall, as soon as possible after their appointment or election and qualification, organize by electing one of their number as President and one as Secretary. When the board of directors consists of three members any two of said directors shall constitute a quorum, when the board of directors consists of five members any three of said directors shall constitute a quorum. (Id. sec. 18.)

Art. 5107—141. Bonds of district; order for issue; amount; tax levy.—The Board of Directors, as soon as practicable after their appointment, or election, qualification and organization, shall enter an order directing the issuance of water control and preservation bonds for such Water Control and Preservation District, in an amount sufficient to cover the cost of the proposed improvement or improvements, all of the expenses incident thereto and the expenses necessarily incurred in connection with the creation and establishment of the district, provided that the amount of the bonds shall not exceed the amount authorized by the election theretofore held; and the directors shall levy a tax upon all property, subject to taxation within such district, sufficient in amount to pay the interest on such bonds, together with an additional amount to be placed in the sinking fund sufficient to discharge and redeem said bonds at maturity; and said directors for such district shall annually levy and cause to be assessed taxes upon all property within said district sufficient in amount to pay for the expenses of assessing and collecting such taxes, and a tax sufficient for the expenses incident to the maintenance of the district; provided that the tax so levied in connection with any original issuance of bonds shall remain and shall be from year to year as a levy for that purpose until a new levy shall be made. The Board of Directors may from time to time increase or diminish such tax so as to adjust the same to the taxable value of the property subject to taxation by the district, and the directors shall certify to the Commissioners' Court or courts, as the case may be, the levy of such taxes. (Id. sec. 19.)

Art. 5107—142. Tax levy; books for tax officers; assessment of property; lien of tax; duties of tax officers.—When the lands embraced within such district shall be wholly within the boundaries of one county, the County Commissioners' Court shall provide all necessary additional books for the use of the assessor and collector of taxes for such water control and Preservation District and charge the cost of same to the said district. It shall be the duty of the Commissioners' Court, when the directors of the district certify any tax levy to order the county tax assessor to assess all property within such Water Control and Preservation District and list the same for taxation in the books or rolls furnished him by said Commissioners' Court for that purpose, and return said books or rolls at the same time when he returns the other books or rolls of the state and county taxes for correction and approval, and if the said Commissioners' Court shall find said books or rolls correct they shall approve the same, and all matters pertaining to the assessment of property for taxation in said district, the tax assessor and Board of Equalization of the County in which said district is located shall be authorized to act and shall be governed by the laws of Texas for assessing and equalizing property for state and county taxes, except as herein otherwise provided. In the event such district lies partly within two or more counties, the directors shall certify the tax levies to the Commissioners' Court of the respective counties, and it shall be the duty of such Commissioners' Courts to order the county tax assessor to assess all property in said county within said Water Control and Preservation District and list the same for taxation in the books or rolls furnished him by said Commissioners' Court for that purpose at the cost of said district, and return said books or rolls for approval of such Commissioners' Court, and said court shall examine and approve the same in the manner hereinabove provided; and in all matters pertaining to the assessment of property for taxation in the part of the county included within such district, the tax assessor and Board of Equalization of such county shall be authorized to act and shall be governed by the laws of Texas for assessing and equalizing property for

state and county taxes, except as herein provided. All taxes authorized to be levied by this Act shall be a lien upon the property upon which said taxes are assessed, and said taxes shall mature and be paid at the time provided by the laws of this state for the payment of state and county taxes, and all penalties provided by the laws of this state for the non-payment of state and county taxes shall apply to all taxes authorized to be levied by this Act. The tax assessor, or assessors, as the case may be, shall receive for said service such compensation as the directors of the Water Control and Preservation District shall determine proper, provided that in no event shall they be allowed more than is now allowed by law for like services. Should any tax assessor fail or refuse to comply with the orders of the Commissioners' Court requiring him to assess and list for taxation all the property in the county within the boundaries of said district, as herein provided, he shall be suspended from the further discharge of his duties by the Commissioners' Court of his county, and he shall be removed from office in the mode prescribed by law for the removal of county officers. And any Commissioners' Court refusing or failing, upon being notified of the levy of such tax by the Board of Directors, to order the county tax assessor to make assessment as herein provided, shall be subject to mandamus by any court of competent jurisdiction on a petition in the name of the district, and the order of court upon such hearing may require the assessor to perform the duty without the intervention of an order of the Commissioners' Court. (Id. sec. 20.)

Art. 5107—143. Same subject; collection of tax; duties of tax collector.—The tax collector of the county in which said district is situated, and in each county wherein any part of the district may be situated, shall be charged by the Commissioners' Court of such county or counties with the assessment rolls of the Water Control and Preservation District, of that part of said district situated within the county, and it shall be his duty to collect the said taxes within his said county. He shall receive for his services such compensation as the directors of said district shall deem proper, but in no event shall he be allowed more than he is now allowed by law for like services. The county Commissioners' Court shall require the tax collector of the county or of their respective counties, as the case may be, to give an additional bond or security in such sum as they may deem proper and safe to secure the collection of said taxes, payable to the district, conditioned as provided by law for tax collectors' bonds, and in all matters pertaining to the collection of taxes levied under the provisions of this Act, the tax collector shall be authorized to act and shall be governed by the laws of Texas for the collection of state and county taxes, except as herein otherwise provided, and suits may be brought for the collection of said taxes and the enforcement of the tax liens created by this Act. Should any tax collector fail or refuse to give such additional bond or security as herein provided, when requested by the Commissioners' Court, within the time prescribed by law for such purposes, or shall fail or refuse to collect the taxes so levied on the property of said district within his county, he shall be suspended from office by the Commissioners' Court of his county and immediately thereafter be removed from office in the mode prescribed by law. (Id. sec. 21.)

Art. 5107—144. Same subject; delinquent property; sale; redemption from sale.—It shall be the duty of the county tax collector to make a certified list of all delinquent property upon which the water control and preservation tax has not been paid within his county and return the same to the Commissioners' Court of said county which shall proceed to have the same collected the sale of such delinquent property in the same manner, both by suit and otherwise, as is now provided for the sale of property for the collection of state and county taxes, and all the provisions of law with reference to delinquent state and county taxes, the collection thereof by suit or otherwise and the redemption of same from such sale, shall apply except as herein otherwise provided, such proceedings and suits to be in the name of the said district and be brought and prosecuted by the same officers as provided for state and county taxes, who shall receive the same fees for such services as provided for like proceedings for state and county taxes; in the sale of any property for delinquent taxes, the directors may become the purchasers of same for the benefit of the district. (Id. sec. 22.)

Art. 5107—145. Tax levy for maintenance, etc., of district; assessment, collection, etc.—The Board of Directors shall have authority from time to time, as occasion may require and demand, in its discretion, to levy a tax on all property within such district in an amount sufficient to pay for the proper maintenance, operation and repair of any dams, bulkheads, jetties, locks, gates or any other improvement constructed by said district, the directors shall certify to the Commissioners' Court, or courts, as the case may be, the levy of such tax as provided in Section 19 hereof [art. 5107—141], whereupon it shall be the duty of such Commissioners' Court or Courts, as the case may be, to order the tax assessor to assess the property, and same shall be assessed, as provided in Section 20 hereof [art. 5107—142], such tax shall be collected in the manner as provided in Section 21 hereof [art. 5107—143], and all the provisions of Sections 19, 20, 21 and 22 hereof [art. 5107—141 to 144] shall be applied to the tax hereby authorized. (Id. sec. 23.)

Art. 5107—146. District depository; selection; duties.—The directors for such district shall select a depository for such district in the same manner as now provided for the selection of depositories for the counties in this State, and the duties of such depository shall be the same as now prescribed by law for county depositories, except as herein otherwise provided. In the selection of depositories the directors of such district shall act in the same capacity and perform the same duties as are incumbent upon the county Judge and members of the Commissioners' Court in the selection of county depositories, and all the laws now in force, or hereafter to be enacted, for county depositories, shall apply and become a part of this Act is so far as the same be applicable. (Id. sec. 24.)

Art. 5107—147. Same subject; payment of money collected to.—The tax collector of the county or counties, as the case may be, in which said district is situated, shall pay all moneys collected by him or them for said district to the district depository monthly and as often as they may be directed so to do by the Board of Directors of said district, as now prescribed by law for payment by tax collectors to county and city treasurers. (Id. sec. 25.)

Art. 5107—148. Same subject; reports and vouchers.—The district depository shall make a report of all moneys received and of all moneys paid out at the end of each month, and shall file such reports with such vouchers among the records of said district in its own vault, and shall furnish a true copy thereof to the directors, and shall, when called upon, allow same to be inspected by any taxpayer or resident of such district; such records shall be preserved as the property of such district and shall be delivered to the successor of such depository. (Id. sec. 26.)

Art. 5107—149. Funds of district; payments from; accounts; audit.—All payments of any funds of the district shall be by voucher upon the district depository, and all vouchers issued for the payment of any funds of the district shall be signed by the President of the Board of Directors or any two of said directors; all vouchers shall be issued from a regular duplicate book containing a duplicate, which shall be preserved. The directors shall have kept complete books of accounts for such district, and shall on September 1st of each year select a permanent auditor who shall examine the accounts, books and reports of the depository, the assessors and collectors and the directors, and make a full report thereof, a copy of which shall be filed with the depository and a copy with the directors, and one with the County Clerk of the county in which the said district is situated; or if the district be composed of lands situated in two or more counties, then with the clerk of the county in which the largest portion of such district is situated; such report shall be filed by November 1st of each year. (Id. sec. 27.)

Art. 5107—150. Bonds of district; issue; denominations; interest; payment.—All bonds issued under the provisions of this Act shall be issued in the name of the Water Control and Preservation District, signed by the President and attested by the Secretary of the Board of Directors, with the seal of said District attached thereto, and such bonds shall be issued in denominations of not less than One Hundred Dollars nor more than One Thousand Dollars each, and such bonds shall bear interest at the rate of not to exceed six per cent per annum, payable annually or semi-annually; such bonds shall by their terms provide the term, place or places, manner and conditions of their payment and the interest thereon as may be determined and ordered by the directors for such district, and no bonds shall be made payable more than forty years after date thereof. (Id. sec. 28.)

Art. 5107—151. Suit to test validity of district or bonds issued thereby.—No suit shall be permitted to be brought in any court of this State, contesting or enjoining the validity of the formation of any district created under the provisions of this Act, or any bonds issued hereunder, or in anywise affecting the establishment of the district or issuance of bonds by such district, except in the name of the State of Texas by the Attorney General upon his own motion, or upon the motion of any party affected thereby, upon good cause shown, except as herein otherwise provided. (Id. sec. 29.)

Art. 5107—152. Action to determine validity of bond issue prior to sale thereof.—Any such district issuing bonds in accordance with this Act shall, before such bonds are offered for sale, bring an action in the District Court in any county of the judicial district in which said district may be situated, in whole or part, or in the District Court of Travis County, to determine the validity of any such bonds; such action shall be in the nature of a proceeding in rem and jurisdiction of all parties interested may be had by publication of a notice thereof once each week for at least three consecutive weeks in some paper of general circulation published in the county where the action is pending and in the county in which said district is situated, where all of the lands embraced within the district lie in one county, and where lands of two or more counties are situated within said district, then in the county in which the largest portion of any such district is situated. Notice shall also be served upon the Attorney General of the State of Texas of the term of court to which said suit is made returnable, such notice to the Attorney General shall contain a copy of all of the proceedings had in the formation of such district and in connection with the issuance of said bonds. The Attorney General may waive service when furnished a full transcript of such proceedings. (Id. sec. 30.)

Art. 5107—153. Same subject; duty of Attorney General.—It shall be the duty of the attorney general to make a careful examination of all such proceedings and require such further evidence and make such further investigation as may seem to him advisable. He shall then file an answer tendering the issue as to the due organization and the validity of the district and whether such bonds are legal and binding obligations upon such district. The issues thus made shall be tried and determined by the court and judgment entered upon such finding upon the trial of such cause. The court may permit any person having an interest in the issue to be determined to intervene and participate in the trial of the issue made. All suits brought under the provisions of this Act shall have preference over all other actions in order that a speedy determination as to the matters involved may be reached. (Id. sec. 31.)

Art. 5107—154. Same subject; judgment.—Upon the trial of the issues made under the preceding section of this Act, if the judgment of the court shall be favorable to the district, such judgment shall be so rendered; if the judgment of the court shall be adverse to the district, then such judgment may be by said district accepted, and the error pointed out in such proceedings may be corrected in the manner designated or directed by said court, and when so corrected the judgment of the District Court shall be rendered showing that said corrections had

been made and that the bonds issued thereunder are binding obligations upon said district, and such judgment shall be final; and thereafter the judgment, when so finally made out and entered, shall be received as res adjudicata in all cases arising in connection with the collection of said bonds or any interest due thereon, and as to all matters pertaining to the organization and validity of said district or pertaining to the validity of said bonds. After the making and entry of the judgment of the District Court, as hereinabove provided, the Clerk of said court shall make a certified copy of such decree, and said court decree shall be filed with the Comptroller of Public Accounts and be by him recorded in a book kept for that purpose, and said certified copy, or a duly certified copy of said record made by the Comptroller, shall be received in evidence in all litigations thereafter arising which may affect the validity of said bonds or any matter pertaining to the organization and validity of said district, and shall be conclusive evidence of such validity. (Id. sec. 32.)

Art. 5107—155. Bonds of district; registration; record of.—Upon the presentation of said bonds together with a certified copy of the decree of the District Court as provided in the preceding section, the Comptroller shall register said bonds together with a certified copy of the judgment as herein provided for in a book to be provided for that purpose, and shall attach to each of said bonds a certificate of the fact that the decree of the District Court, as required by this Act, has been filed with him in his office, such certificate to be signed by him officially and the seal of his office attached thereto. The Board of Directors of the district shall provide a well bound book in which a record shall be kept by the County Clerk or Clerks of the county in which the largest portion of such district is situated, of all bonds issued with their numbers, amounts, rate of interest, date of issue, when due, where payable, and the annual rate per cent of tax levy made each year to pay the interest on said bonds and to provide a sinking fund for their payment. Said book shall be at all times open to the inspection of all parties interested in said district, either as taxpayers or bond holders, and upon the payment of any bond an entry shall be made in said book showing such payment, and the Secretary of such district shall furnish to the proper County Clerk a certified copy of all orders made in connection with the issuance and levy and assessment of taxes for the payment of interest and creating a sinking fund for the final payment of such bonds. The County Clerk or Clerks shall receive for their services in registering said bonds the sum of ten cents for each bond and a like sum for entering payment of each bond, and for recording any instruments of the district required to be recorded, the same fees as are provided by law for other like services. (Id. sec. 33.)

Art. 5107—156. Same subject; sale.—After the issuance of said bonds and after the registration by the Comptroller of Public Accounts for the State of Texas, as hereinabove provided, the Board of Directors for such district shall offer for sale and sell said bonds on the best terms and for the best price possible, but none of said bonds shall be sold for less than the face value thereof and the accrued interest thereon, and after said bonds are sold all moneys received therefrom shall be immediately paid over by the Board of Directors to the depository of said district; provided, however, that the Board of Directors may exchange bonds in payment of the contract price for work to be done for the use and benefit of said district. (Id. sec. 34.)

Art. 5107—157. Modification or change in proposed improvement; procedure; additional bonds; election to determine issue.—If after an ek[l]ection has been held for the issuance of bonds the Directors of said district shall consider it necessary to make any modifications or changes in any proposed improvements, they shall be authorized thereto, provided that any change or modification of any improvement or construction shall require the concurrence of four Directors.

In the event the Board of Directors shall determine to make additional improvements, works or constructions in order to carry out the purposes for which said district was organized, or to reconstruct any improvements theretofore made, and the amount derived from the bonds issued or authorized shall not be sufficient, a resolution to that effect shall be duly entered upon the minutes of the board, which said resolution shall set forth the modification or changes proposed, or the new improvements proposed, or the proposed reconstruction, as the case may be, the amount of bonds to be issued to pay for same, together with the length of time said bonds shall run and the rate of interest said bonds shall bear, and shall embody therein a request to the Commissioner's Court of the County, if all the land of the district be embraced in one county, or to the Commissioners' Court of several counties in which any part of the lands embraced in the district is situated, to order an election to submit to the qualified property tax paying voters, resident in said district, at a day specified in said resolution, whether or not such Water Control and Preservation District shall issue additional bonds in the amount named and whether or not a tax shall be levied sufficient to pay the interest and provide a sinking fund to redeem said bonds at maturity; that a certified copy of said resolution shall be presented to the Commissioners' Court or the several Commissioners' Courts, as the case may be, and thereupon it shall be and become the duty of the Commissioners' Court of said County, if all of the lands within the district lies within one county, or of the Commissioners' Courts of the several counties in which any part of the lands of the district are situated, to order an election on the day specified in said resolution to be held in the county or such part of such respective counties embraced within the district, and notice of such election shall be given, returns made, result declared orders entered, tax levied, certified, assessed and collected in the same manner as herein provided in case of elections for original bonds, and all provisions as to the issuance, approval, validation, registration, recordation and sale of original bonds shall be applicable to such additional bonds, the calling of the election at the date

specified in the resolution of said Board of Directors as certified to the Commissioners' Court or Commissioners' Courts, as the case may be, shall not be discretionary with such Commissioners' Court or Courts, but the same shall be and is hereby made mandatory, and all the provisions with reference to the election for the original bond issue, in so far as applicable, shall apply to any election for such additional bonds. The ballots shall have printed thereon the words and none other: "For the issuance of additional Water Control and Preservation bonds and levy of tax in payment thereof;" "Against the issuance of additional Water Control and Preservation bonds and levy of tax in payment thereof." (Id. sec. 35.)

Art. 5107—158. Construction and Maintenance Fund; how constituted; expenses of elections; how paid.—There is hereby created what shall be termed the "Construction and Maintenance Fund" of such district, which fund shall consist of all moneys received from the sale of bonds and all other amounts received by said district from whatever source, except the tax collections applied to the sinking fund and payment of interest on bonds. All expenses of any kind prior to and after the filing of the original petition, necessarily incurred in connection with the creation, establishment and maintenance of any district organized under the provisions of this Act and improvement or improvements, repairs, cost of maintenance, the salaries of all officers and of all employés of every kind whatsoever, and all expenditures for any purposes of the district, other than the payment of bonds or interest thereon shall be paid out of such "Construction and Maintenance Fund" of said district. Provided, that should the proposition of the creation of such district and issuance of bonds be defeated at the election called to vote upon same, then all expenses up to and including said election shall be paid in the following manner; when the original petition praying for the establishment of a Water Control and Preservation District is filed, as herein provided, it shall be accompanied by Five Hundred Dollars in cash, which shall be deposited with the Clerk of the County Commissioners' Court, if all the lands in the boundaries of the district are situated in one county, or, where the lands embraced in the district lie partly in two or more counties, then with the Clerk of the County Court of the county in which the largest portion of the proposed district is situated, and shall be held by such Clerk until after the result of the election for the creation of said district has been declared and entered of record as hereinbefore provided. Should the results of said election be in favor of the establishment of said district, then the said Five Hundred Dollars shall be by the said Clerk returned to the signers of said original petition, or their agent or attorney. But should the result of said election be against the establishment of said district, then the said Clerk shall pay out of said Five-Hundred Dollars, upon vouchers signed by the County Judge of the county wherein the district is situated, if all the lands are embraced in one county, or, if the lands embraced in the district lie in two or more counties, then by the County Judge of the county in which the largest portion of such proposed district is situated, all expenses and costs pertaining to the said proposed district up to and including the said election and shall return the balance, if any, of said Five Hundred dollars, to the signers of said original petition, or their agent or attorney. (Id. sec. 36.)

Art. 5107—159. Interest and Sinking Fund; how constituted; payments from.—There is hereby created what shall be termed the "Interest and Sinking Fund" for such district, and all taxes collected under the provisions of this Act for the payment of bonds and interest thereon, shall be credited to such fund and shall never be paid out except for the purpose of satisfying and discharging the interest on said bonds, or for the payment, cancellation and surrender of said bonds, and such fund shall be paid out upon vouchers drawn as hereinbefore provided, and at the time of such payment the depository for such district shall receive and cancel any interest coupon so paid or any bond so satisfied or discharged, and when such interest coupon or bond shall be turned over to the directors the account of such depository shall be credited with the amount thereof and such bond or interest coupon shall be cancelled and destroyed. (Id. sec. 37.)

Art. 5107—160. Right of eminent domain conferred; procedure.—The right of eminent domain is hereby conferred upon all Water Control and Preservation Districts established under the provisions of this Act, for the purpose of condemning and acquiring the right of way over, and through all lands, private and public, except property used for cemetery purposes, necessary for making and maintaining dams, bulkheads, jetties, locks, gates and all other improvements necessary and proper for such construction, and to effectuate the purposes of such district, and the authority hereby conferred shall authorize and empower such district to condemn all lands, private and public, for the purposes herein designated, beyond the boundaries of such district and in any county within the State of Texas. All such condemnation proceedings shall be under the direction of the directors and in the name of the district. The assessment of all damages and all procedure with reference to condemnation, appeal and payment shall be in conformity with the statutes of the State for condemning and acquiring right of way by railroad companies, and all such compensation and damages adjudicated in such condemnation proceedings shall be paid out of the "Construction and Maintenance Fund." (Id. sec. 38.)

Art. 5107—161. Engineer; employment; duties; directors to co-operate with United States.—The directors of any such district shall have authority to employ a competent engineer whose term of office shall be at the will of said directors. It shall be the duty of the engineer to make all necessary surveys, examinations, investigations, maps, plans and drawings with reference to the proposed improvements. He shall make an estimate, or estimates, of the cost of same, shall supervise the work of improvements, and shall do and perform all such duties as may be required of him by the directors. If it be necessary to erect and maintain dams, bulkheads, jetties, locks,

gates or any other character of improvement or construction, in order to the preservation of the purity and irrigable qualities of the waters of any rivers, creeks, bayous, lakes, canals or streams, or other waters of any kind or character, and the improvement proposed be of such nature as requires the permission or consent of the Government of the United States, or any department or officer of the United States, the said directors shall have authority to obtain the required permission or consent, provided that in lieu of the employment of an engineer, as herein provided, or in addition thereto, the said directors shall have power to adopt any survey of any river, creek, canal, stream, bay, lake or other waters, theretofore made by the United States, or and department thereof, and to arrange for surveys, examination and investigation of the proposed improvement, and supervision of the work of improvement by the United States, or the proper department or officer thereof. And said directors shall have full power and authority to co-operate and act with the United States, or any officer or department thereof, in any and all matters pertaining or relating to the construction and maintenance of any improvement whether by survey, work or expenditure of money made, or to be made, either by said directors or by the United States, or any proper officer or department thereof, or by both; and to the end that the United States may aid in all such matters, the said directors shall have authority to agree and consent to the United States entering upon and taking management and control of said work of construction, repair or reconstruction and maintenance, in so far as it may be necessary or permissible under the laws of the United States and the regulations and orders of any department thereof. (Id. sec. 39.)

Art. 5107—162. Joinder of districts in construction of improvement; contracts; general manager.—Two or more districts may, in the discretion of the directors of the respective districts, join in the construction of any improvement or improvements and enter upon any work authorized under this Act as a joint project where in the judgment of the majority of the directors of each of said districts such improvements, works or constructions will be advantageous to the respective district. To this end a contract may be entered into between such districts by the respective directors, stipulating the pro rata amount to be paid by such district for such joint project and to provide for its maintenance, repair and reconstruction, and such joint projects may be undertaken whether the improvement or improvements, works or constructions are wholly within one district or partly in each of said districts, or partly in either said district and without the bounds of either district, or wholly without the bounds of either district, and such contracts may be enforced and specific performance compelled by any court of competent jurisdiction. When improvements are constructed by two or more districts, bids may be jointly called for and may be opened and considered at the designated office of either of said districts, and the directors of such districts shall approve the letting of the contract and contractor's bond, and may meet for that purpose and for all purposes concerning the joint project at a place outside the district, or at any office established for such joint project, and at which office all business of such joint project may be transacted. All bids, bonds, contracts, etc., of said profect shall be in the name of said joint project districts, such districts being empowered and authorized to do all acts by joint action that one district may do, the action of each district being determined by its Board of Directors. A General Manager may be employed for such project, whose duties may be set forth in the joint ownership contract; such manager may be a director of either of such districts. (Id. sec. 40.)

Art. 5107—163. Contracts for improvements; letting; advertisement; several improvements.—If the improvement or improvements, works or constructions be not carried out and performed by the United States as herein provided, the contract or contracts for such improvement or improvements shall be let by the directors and the same shall be awarded to the lowest and best responsible bidder after giving notice by advertising the same in one or more newspapers of general circulation in the State of Texas once a week for four consecutive weeks, and by posting notices for at least thirty days at the Court House door of the county or counties in which the lands of the district may be situated. Nothing herein contained shall prevent the making of more than one improvement and where more than one improvement is to be made, the contract may be let separately for each or one contract for all such improvements. (Id. sec. 41.)

Art. 5107—164. Same subject; surveys, plans, etc., for bidders; acceptance or rejection of bids; contracts; requisites of.—Any person, firm or corporation desiring to bid on the construction of any work advertised for as provided in the preceding section of this Act, shall upon application to the Secretary of the district be furnished the surveys, plans for the said work, and all bids or offers for any such work shall be in the writing and sealed and delivered to the President or Secretary of the Board of Directors, together with a certified check for at least two per cent of the total amount bid, which shall be forfeited to the district in case the bidder refuses to enter into a proper contract and make the necessary bond, if his bid is accepted, or returned to the bidder if his bid is rejected. Any and all bids may be rejected at the discretion of the directors, all contracts made by the directors shall be reduced to writing and signed by the contractors and President of the Board of Directors and attested by the Secretary of the Board of Directors and a copy of same shall be filed with the County Clerk of said county, if the lands embraced in the district lie wholly within one county, or if in two or more counties, with the clerk of the county in which the largest portion of such district is situated. (Id. sec. 42.)

Art. 5107—165. Same subject; bond of contractor.—The person, firm or corporation to whom any such contract is let shall give bond, payable to the district, in such amount as may be determined by the directors not to exceed the contract price and not less than

fifty per cent thereof, conditioned that he, they or it will faithfully perform the obligations, agreements and covenants of their contract and that in default thereof will pay to said district all damages sustained by reason thereof; and such other conditions as may be required by law of contractors for public work; said bond to be approved by the Board of Directors. (Id. sec. 43.)

Art. 5107—166. Supervision of work by district engineer.—All work contracted for by the Board of Directors, unless done under the supervision of the United States, or the proper department of officer thereof, as hereinbefore provided, shall be done under the supervision of the engineer of the district; and when the work is completed according to the contract, the engineer shall make a detailed report of the same to the Board of Directors showing whether the contract has been fully complied with according to its terms; and if not, in what particular it has not been so complied with. The directors, however, shall not be bound by such report, but may in addition thereto fully investigate such work and determine whether or not such contract has been complied with. (Id. sec. 44.)

Art. 5107—167. Inspection of work by directors; payments to contractors.—The directors shall have the right, and it is hereby made their duty, during the progress of work being done under contract, to inspect the same, and upon the completion of any contract they shall draw a voucher on the district depository for the amount of the contract price in favor of the contractor or his assignee, which voucher shall be drawn in the manner as hereinabove provided; said voucher to be paid out of the "Construction and Maintenance Fund" of such district; provided that if the directors shall deem it advisable they may contract for the work to be paid for in partial payments as the work progresses, but such partial payments shall not exceed in amount in the aggregate eighty per cent of the total amount to be paid under the contract the amount of work completed shall be shown by a certificate of the engineer; and provided further that nothing in this section shall effect the provision of this Act providing for the carrying out and performing of the improvement of improvements by the United States. (Id. sec. 45.)

Art. 5107—168. Report of work done by directors.—The directors shall make an annual report on the first day of January of each year showing in detail the kind, character and amount of work done in the district, the cost of same, the amount of each voucher drawn and to whom paid, and for what purpose paid, and other data necessary to show the condition of improvements made under the provisions of this Act, a copy of which report shall be filed in the office of the County Clerk of the county, where the lands embraced lie wholly within one county or where the district is composed of land lying in two or more counties, then with the clerk of the county in which the largest part of the lands of the district are situated, which report shall be opened to public inspection. (Id. sec. 46.)

Art. 5107—169. General powers and duties of directors; director may be general manager.—The Board of Directors shall have control over the management of all of the affairs of such district, shall make all contracts pertaining thereto and shall employ all necessary employés for the proper conduct and operation of such district; including engineers, bookkeepers and such other assistants and such other laborers as may be required, paying such compensation as the Directors may determine; and the directors are authorized to employ an attorney or attorneys to represent such district in the preparation of any contract or the conduct of any proceedings in or out of court, and to be the legal advisor or advisors of the directors on such terms and for such fees as may be agreed upon by them, provided that where the district lies wholly within one county the directors shall not, after the completion of the improvements, employ any attorneys as legal advisers of the district or an engineer as engineer of such district, or any other employés except with the concurrence and consent of the Commissioners' Court of such county and the compensation to be paid such attorney, engineer or employé, so employed after the completion of the improvements, shall be fixed by the directors subject to the approval of said Commissioners' Court. They may require bonds of any employés in any amount within their discretion. The directors may also employ a general manager to have general charge of the work, paying such compensation as may be agreed by the directors. A director may be appointed as general manager and at such compensation as may be fixed by the other directors, and when so employed he shall also perform the duties of a director but he shall not receive the compensation to be paid to the directors. The directors may also buy all necessary work animals, machinery and supplies and material of all description as may be required in the construction, operation or repairing of the improvements of the district, and may do and perform all things necessary and proper in carrying out the purposes of said district. (Id. sec. 47.)

Art. 5107—170. Director, etc., not to have pecuniary interest in contract, etc.; punishment for violation.—No director of any such district, engineer or other employé thereof, shall be directly or indirectly interested either for themselves or as agents for any one else, in any contract for the construction of any work or improvement, or repair or reconstruction of such improvements by said district, and if any such person shall directly or indirectly be or become interested in any such contract, he shall be guilty of a felony, and upon conviction thereof be punished by confinement in the penitentiary for a term not less than one year nor more than five. (Id. sec. 48.)

Art. 5107—171. Suits by or against district; judicial notice of district; contracts with district; seal of district.—All districts established under the provisions of this Act are hereby declared to be defined districts within the meaning of Section 52, Article 3 of the Constitution, and may by and through its directors sue and be sued in the name of such district, and all courts of this State shall take judicial notice of the establishment of such districts; and said district shall contract and be contracted with in the name of such districts. Such districts shall have a seal, which shall be circular in form

containing a five pointed star in the center and around the margin thereof the name of the district. (Id. sec. 49.)

Art. 5107—172. Acquisition by directors of rights of way, etc.; condemnation; conveyance of property to United States.—The directors of any district are hereby empowered to acquire the necessary right of way and property of any kind or character whatsoever for all necessary improvements contemplated by this Act, by gift, grant, purchase or condemnation proceedings, whether the same be within or without the boundaries of the district; and any property acquired may be conveyed to the United States in so far as the same shall be necessary for the construction, operation and maintenance of works by the United States under any contract that may be entered into between the district and the United States. (Id. sec. 50.)

Art. 5107—173. Right of entry by directors upon lands for examination thereof; interference with; punishment.—The directors of any district and the engineers and employés thereof are hereby authorized to go upon any land lying within said district for the purpose of examining same for locating dams, bulkheads, jetties, locks, gates or any other character of improvement or construction necessary to the accomplishment of the purposes of the district, to make maps and profiles thereof, and are hereby authorized to go upon lands beyond the boundaries of such districts for the purposes stated and for any other purposes necessarily connected therewith whether herein enumerated or not; and any person who shall wilfully prevent or prohibit any such officer or employé from entering upon such land for such purpose shall be guilty of a misdemeanor and upon conviction shall be fined One Hundred Dollars for each day he shall prevent or prohibit such officer or employé from entering upon any lands. (Id. sec. 51.)

Art. 5107—174. Investment of sinking fund.—The Board of Directors are authorized and empowered whenever they may deem it advisable to invest from time to time any sinking fund of the district, acquired for the redemption and payment of any of its outstanding bonds and interest thereon, in bonds of the United States or of the State of Texas, of any county of the State of Texas, any irrigation or water improvement or navigation bonds, or bonds or any other school district in the State of Texas authorized to issue bonds, provided that no bonds shall be so purchased that according to their terms mature at a date subsequent to the time of the maturity of the bonds for the payment of which such sinking fund was created. (Id. sec. 52.)

Art. 5107—175. Directors to keep accounts, and preserve contracts, records, etc.—The Board of Directors of such district, through the Secretary, shall keep a true account of all matters and proceedings of the board and shall preserve all contracts, records and notices, duplicate vouchers, duplicate receipts, and all accounts and records of whatsoever kind, and the same shall be the property of the district and shall be delivered to their successors in office. (Id. sec. 53.)

Art. 5107—176. Office to be maintained by directors; meetings.—The directors of each district shall, during the progress of the construction of any improvement under contract, have and maintain a regular office within such district and may in their discretion when deemed necessary have and maintain a regular office in the district during any other time or times. The directors shall hold an annual meeting on the first day of December of each year at ten o'clock A. M. and may provide for meetings at stated intervals by resolution duly passed, and the President or any two directors may call special meetings at any time that may be deemed proper or necessary. (Id. sec. 54.)

Art. 5107—177. Bonds of officers and employés of district.—All officers and employés of any district who may be required to give bond or security may furnish bonds of surety companies subject to the approval of the directors; all such bonds shall be preserved by directors as the property of said district. (Id. sec. 55.)

Art. 5107—178. Disposition of remainder of Construction and Maintenance Fund.—After the full and final completion of all of the improvements of such district, as herein provided for, and after payment of all expenses incurred under the provisions of this Act, the directors are authorized to use the funds remaining in the "Construction and Maintenance Fund" for the best interest of such district in the preservation, upkeep, repair and reconstruction of the works of such district. (Id. sec. 56.)

Art. 5107—179. Repeal.—All laws and parts of laws in conflict with this Act are hereby repealed. Provided however, the provisions of this Act shall not repeal or affect any of the provisions of the law contained in Chapter 87 Acts of the Thirty-fifth Legislature, at its regular session 1917, or any amendment thereto, but are independent thereof. (Id. sec. 57.)

See chapter 2 of this title.

CHAPTER FOUR

FRESH WATER SUPPLY DISTRICTS

Art. 5107—180. Purposes for which districts may be created.—There may be created within this state conservation districts to be known as Fresh Water Supply Districts, for the purpose of conserving, transporting and distributing Fresh Water from lakes, pools, reservoirs, wells, springs, creeks, and rivers for domestic and commercial purposes, as contemplated by Section 59, Article 16 of the Constitution of this State, which said districts shall have and may exercise all the rights, privileges and powers given by this Act and in accordance with its directions, limitations and provisions. Such districts may or may not include cities and towns. (Acts 1919, 2d C. S., ch. 48, sec. 1.)

Art. 5107—181. Petition for establishment; contents; hearing; notice thereof.—When is is proposed to create a Fresh Water Supply District, there shall be presented to the Commissioners' Court in which the lands to be included in such district are located, or to the County Judge of the County, if the Commissioners' Court is not in session, a petition signed by fifty or by a majority of the qualified voters of such proposed district who shall own land within the District proposes, setting forth the proposed boundaries thereof, the general nature of

the work proposed to be done, the necessity therefor, and the feasibility thereof and designating a name therefor, which shall include the nake of the county in which it is situated and upon presentation of such petition it shall be the duty of the Commissioners' Court or the County Judge of such county if the court be not in session to forthwith fix a time and place at which said petition shall be heard before the Commissioners' Court of the County herein it is filed, which date shall be not less than fifteen nor more than thirty days from the date of the order, and to order and direct the County Clerk of such County, as ex-officio Clerk of the Commissioners' Court thereof, to issue notice of such time and place of hearing, which notice shall inform all persons concerned of the time and place of hearing and their right to appear and contest the genuineness of such petition and the signature thereto and whether said petitioners are qualified voters of such proposed district, and owners of land therein and to deliver such notice to any adult who is willing to execute the same by posting as herein directed. (Id. sec. 2.)

Art. 5107—182. Posting copies of notice of hearing on petition.—Upon receipt of the notice above provided for by any adult person willing to receive and execute the same it shall be the duty of such person, or persons if more than one shall act, to post a copy of such notice at the door of the Court House of said County, and a copy at four different places within such proposed district. Such posting shall be for not less than ten days prior to the date fixed for the hearing and the person or persons so posting shall make affidavit, before some officer authorized by law to administer oaths of his or their action in respect to such posting, and such affidavit when so made shall be conclusive of the facts sworn to. (Id. sec. 3.)

Art. 5107—183. Deposit to accompany petition.—A petition for the formation of such a district shall be accompanied by a deposit of One Hundred Dollars, which deposit shall be paid to the clerk of the County Court, who shall therefrom upon vouchers approved by the County Judge, pay all expenses incident to the hearing and the election for the creation of the District herein provided for, returning any excess to the petitioners or their attorney. (Id. sec. 4.)

Art. 5107—184. Determination of sufficiency of petition.—At the time and place set for the hearing of the petition or such subsequent date as may then be fixed the court shall proceed to examine such petition for the purpose of ascertaining the sufficiency thereof, and any person interested may appear before the court in person or by attorney and offer testimony touching the sufficiency of such petition. Such court shall have jurisdiction to determine all issues raised touching the sufficiency of such petition. Such hearing may be adjourned from day to day and from time to time as the facts may require. The court shall have power to make all incidental orders necessary in respect to the matters before it. (Id. sec. 5.)

Art. 5107—185. Election to determine establishment of district; order for; proposition to be submitted; election of supervisors, and assessor and collector.—If upon the hearing of such petition it be found that the same is signed by the requisite number of qualified voters of such proposed district, who own land therein and that such petition conforms to the provisions of Section 2 of this act [Art. 5107—181], then the court shall so find in favor of the petitioners for the establishment of a district according to the boundaries as set forth in said petition and the County Commissioners' Court hearing said petition shall order an election to be held within said proposed Fresh Water Supply District at a time not less than twenty nor more than thirty days from the date of such order. At which election there shall be submitted the following propositions:

"For the Fresh Water Supply District," "Against the Fresh Water Supply District," and the election of five supervisors and an assessor and collector as hereinafter provided. (Id. sec. 6.)

Art. 5107—186. Same subject; notice; posting.—After the ordering of an election as provided in the preceding section, notice of such election shall be given stating the time and place or places of holding the election and showing the boundaries of said proposed district, and such notice shall also show the presiding officer or officers appointed for the holding of said election. Such notice shall be posted at the Court House door of the County in which said proposed district is situated, and shall be posted for twenty days previous to the day of the election and shall contain the proposition to be voted upon and names of officers to be filled at such election. (Id. sec. 7.)

Art. 5107—187. Same subject; conduct of; polling places and voting precincts; election officers; ballots.—The manner of conducting such election shall be governed by the election laws of the State of Texas, except as herein provided, and at such election none but resident property tax payers who are qualified voters of such proposed district shall be entitled to vote on any question submitted to the voters thereof at such election. The County Commissioners' Court shall name a polling place or polling places for such election. Each and every Fresh Water Supply District is hereby constituted an election precinct for the purposes of the election above specified, and all other elections which may be ordered or held under any provisions of this Act. The Commissioners' Court ordering said election shall select and appoint two judges, one of whom shall be presiding judge, and two clerks at each polling place name, and shall provide the necessary ballots for such election. Said ballot shall have printed thereon the following: "For the Fresh Water Supply District," "Against the Fresh Water Supply District," and the names of the persons recommended for supervisors and officers in the petition presented to the Commissioners' Court. Said ballot shall also have five blank places after the name of those printed on which each voter may write the names of other persons supervisors and assessor and collector, and there shall be no other matter placed on said ballot. (Id. sec. 8.)

Art. 5107—188. Same subject; oath of voters.—Every person who offers to vote in any election held under the provisions of this Act shall take the following oath before the

presiding judge of the polling place where he offers to vote and for such purpose the presiding judge is hereby authorized to administer the same:

"I do solemnly swear (or affirm) that I am a qualified voter of ——— County and that I am a resident property tax payer of the proposed Fresh Water Supply District voted on at this election, and have not voted before in this election." (Id. sec. 9.)

Art. 5107—189. Same subject; returns; canvass; certificate of result.—Immediately after the election the presiding Judge at each polling place shall make returns of the result in the same manner as provided for in general elections for State and County Officers, and the Commissioners' Court shall forthwith at a regular Session, if said court be in regular session, or a special session called for that purpose if said Commissioners' Court be not in regular session, canvass such vote and if it be found that the votes of a majority of the resident property tax payers voting thereon shall have been cast in favor of the Fresh Water Supply District, then the court shall declare the result of said election in favor of the establishment of said district, and shall enter the same in the minutes of said court, and shall also canvass the vote for supervisors and assessor and collector and issue or cause to be issued to the five supervisors receiving the highest number of votes certificates of their election and to the person receiving the highest number of votes for assessor and collector a certificate of his election as provided under the general election law. Provided, however, that should it be found that two or more persons had received the same number of votes for the position of fifth supervisor the said Commissioners' Court shall select one of said persons to fill said position. (Id. sec. 10.)

Art. 5107—190. Same subject; order establishing district; form and contents.—If the Commissioners' Court shall declare the result of said election to be in favor of the establishment of the Fresh Water Supply District, then said court shall cause to be made and entered in the minutes of said court an order setting forth substantially as follows: "In the matter of the petition of ——— and ——— others praying for the establishment of a Fresh Water Supply District as in said petition described and designated, as ——— County Fresh Water Supply District No. ———; be it known that an election was called for that purpose in said district and held on the ——— day of ——— Month, A. D. 19— and a majority of the resident tax payers voting thereat voted in favor of the creation of the said Fresh Water Supply District. Now, therefore, it is ordered by the Court that a Fresh Water Supply District be and the same is hereby established under the name of ——— County Fresh Water Supply District No. ——— with the following metes and bounds." (Which field notes shall be copied in the record). The first district created under this Act in any county shall assume the number "ONE", the second district created shall assume the number "TWO", and so on consecutively. (Id. sec. 11.)

Art. 5107—191. Certified copy of order establishing district; filing and recording.—After the making and entering by the Commissioners Court of the order establishing a Fresh Water Supply District as herein provided, the court shall cause to be made a certified copy of such order, which shall be filed with the County Clerk of the county in which such district is situated, and the same shall be duly recorded in the deed records of said County, and such recordation shall have the same effect in so far as notice is concerned, as is provided for the record of deeds and all costs in connection with the making and recording of such copy shall be paid by the District. (Id. sec. 12.)

Art. 5107—192. Supervisors; bonds and oaths of office.—Within ten days after the making and entry of the order of the Commissioners' Court declaring the result of the election and the establishment of the Fresh Water Supply District as herein provided, or as soon thereafter as practicable, the supervisors elected at such election shall give and enter into a good and sufficient bond in the sum of $5000.00 each payable to the Fresh Water Supply District, conditioned upon the faithful performance of their duties to be approved by the Commissioners' Court provided, however, that after the organization of such district all bonds required to be given by any supervisor, officer or employé of such supply district shall be approved by the supervisors of such districts instead of the Commissioners' Court. The supervisors shall take the oath of office prescribed by the Statute for Commissioners' Court except that the name of the Supply District shall be substituted for the name of the county in said oath of office, and the bond and oath herein provided for shall be filed with the County Clerk of the County wherein the order was entered creating said district, and by him recorded in the official bond records of said County, and after it is recorded said bond shall be delivered by the County Clerk to the depository selected by such district under the provisions of this Act, and shall be by it safely kept as part of the records of said district. (Id. sec. 13.)

Art. 5107—193. Same subject; organization; quorum; secretary.—The supervisors of such Fresh Water Supply District shall organize by electing one of their number as President, and any three of whom shall constitute a quorum, and a concurrence of three shall be sufficient in all matters pertaining to the business of their district. They shall have power to appoint a secretary who shall receive such compensation as the Board of Supervisors may fix, not to exceed One Hundred Fifty ($150.00) Dollars per month. (Id. sec. 14.)

Art. 5107—194. Same subject; qualifications.—No person shall be elected as supervisor for any Fresh Water Supply District created under this Act unless he is a resident of said district and owns land subject to taxation within such district, and who at the time of such election shall be more than twenty-one years of age. (Id. sec. 15.)

Art. 5107—195. Same subject; powers and duties enumerated.—The Board of Supervisors herein provided for shall have control over and management of all the affairs of such Fresh Water Supply District, shall make all contracts pertaining thereto and such supervisors shall have control of the

construction of all improvements and works within and without the boundaries of such district and the transportation and distribution of the water of such district, and shall prescribe the manner and terms upon which water shall be furnished, and shall be authorized to fix the rate to be charged users of water from such supply district, and shall promulgate rules and regulations governing the distribution and use of water and the revenue from the sale of such water shall be applied to operating expenses and the upkeep of the system of improvements installed in said district, and any surplus that may be left after paying such expenses shall be from year to year applied to the payment of interest on the bonds or other indebtedness that may be incurred by the district, and if there be more than enough to pay operating and upkeep expenses, and the interest on the indebtedness of the district, then such surplus shall be passed by the supervisors to the sinking fund provided in this act, and the board of supervisors shall employ all necessary employés for the proper handling and operation of such district, and especially may employ a general manager, attorneys, a bookkeeper and an engineer and such assistants and laborers as may be required, and they may also buy all necessary implements, machinery, work animals, equipment and supplies, as may be required for the construction, operation, and maintenance of the system of works and improvement of such Fresh Water Supply District. (Id. sec. 16.)

Art. 5107—196. Districts declared bodies corporate; general powers.—All Fresh Water Supply Districts created as herein specified shall be governmental agencies and bodies politic and corporate with such powers of government, and with authority to exercise such rights, privileges and functions concerning the purposes for which they are created, as may be conferred by this act, or any other law in this State, to the benefit of which they may become entitled, and such districts are hereby declared to be defined districts within the meaning of Section 59, Article 16 of the Constitution and may by and through their supervisors, sue and be sued in any and all courts of this state in the name of such fresh water supply districts, and all courts of this state shall take judicial notice of the establishment of such districts, and said districts shall contract and be contracted with in the name of such districts. And all such Fresh Water Supply Districts shall have full authority and right to acquire water rights and privileges in any way that any individual or corporation may acquire same, and to hold the same either by gift, purchase, device, appropriation or otherwise. (Id. sec. 17.)

Art. 5107—197. Construction, etc., of works and improvements; taking over existing plants and systems; power to issue bonds and incur indebtedness; election to determine issue of bonds, etc.—Fresh Water Supply Districts created under this Act are entitled to the benefits of this provision, and subject to the limitations of this act contained, shall have full power and authority to build, construct, complete, carry out, maintain and in case of necessity add to and re-build all works and improvements within and without such districts necessary to accomplish any plan of conservation, transportation and distribution of fresh water adopted for or on behalf of such districts and may make all necessary and proper contracts, and employ all persons and means necessary to that end, and such districts are authorized, if the governing bodies thereof shall deem it necessary, to take over in whole or in part by purchase or otherwise, any water plants or systems within such districts; and in the accomplishment of such purposes they may or may not issue bonds, and may or may not incur indebtedness, provided that no bonds by or on behalf of such district shall be issued nor shall any indebtedness against the same be incurred unless the proposition to issue such bonds or to incur such indebtedness, shall be first submitted to the qualified property tax paying voters of such district, and the proposition adopted by a majority vote of the property tax paying voters of the district voting at an election held to determine such question, and no enumeration of specific powers in this Act shall be held a limitation upon the general powers hereby conferred except as may be distinctly expressed. (Id. sec. 18.)

Art. 5107—198. Power of eminent domain conferred; procedure, etc.—The right of eminent domain is hereby expressly conferred on all Fresh Water Supply Districts established under the provisions of this act for the purpose of enabling such district to acquire the fee simple title, easement, or right-of-way over and through any and all lands, water, or lands under water, private or public (except lands and property used for parks, manufacturing industries and established and developed water powers existing at the time of the creation of such district, and cemetery purposes) within and without such districts necessary for making, constructing and maintaining all canals, conduits, aqueducts, pipe lines, pumping plants and other improvements necessary for the conservation, transportation and distribution of fresh water for the purpose herein named. In the event of the condemnation or taking, damaging or destroying of any property for such purposes, the Supply Districts shall pay to the owner thereof adequate compensation for the property taken, damaged or destroyed. All condemnation proceedings or suits in the exercise of eminent domain under this Act shall be instituted under the direction of the district supervisors, and in the name of the Fresh Water Supply District, and all suits or other proceedings for such purposes and for the assessing of damages, and all procedure with reference to condemnation, the assessment of and estimating of damages, payment, appeal, the entering upon the property pending the appeal, etc., shall be in conformity with the statutes of this state, for the condemning and acquiring of right of way by railroad company, and all such compensation and damages adjudicated in such condemnation proceedings and all damage which may be done to the property of any person or corporation in the construction and maintenance of canals, conduits, pipe lines, pumping plants and other improvements under the provisions of this Act shall be paid out of any funds or properties of the said Fresh Water Supply District, except taxes

necessarily applied to the sinking fund and interest on the district bonds. (Id. sec. 19.)

Art. 5107—199. Rights of way; power to acquire.—The District Supervisors of any District are hereby empowered to acquire the necessary right of way for canals, conduits, pipe lines, pumping plants and other necessary improvements contemplated by this act, by gift, grant, purchase or condemnation proceedings as hereinbefore provided. (Id. sec. 20.)

Art. 5107—200. Power to enter upon lands for examination, etc.—The supervisors of any district, and the engineers and employés thereof are hereby authorized to go upon any lands lying within or without said district, for the purpose of examining the same with reference to the location of canals, conduits, pipe lines, pumping plants and all other kinds of improvements to be constructed for such district, and for any other lawful purpose connected with their plan of conservation, transportation and distribution of water, whether herein enumerated or not, and such necessary improvements may be constructed and maintained within and without such proposed districts upon lands acquired as herein authorized. (Id. sec. 21.)

Art. 5107—201. Levees, bridges, etc., across or under railroad tracks or public or private roads.—The said Fresh Water Supply Districts are hereby authorized and empowered to make all necessary levees, bridges and other improvements across or under any railroad embankments, tracks, or rights of way, or public or private roads or the rights of way thereof, or rivers or other public improvements of other districts, or other such improvements and the rights of way thereof, for the purpose of enabling the Fresh Water Supply necessary for said district; provided, however, that notice shall first be given by said Fresh Water Supply District to the proper railroad authorities or other authorities or persons relative to the additions or changes to result from the improvements contemplated by the said Fresh Water Supply District; and the said railroad authorities or other authorities, or persons shall be given thirty (30) days in which to agree to said work to be done in the manner proposed by said District, or to refuse to agree thereto, in case of refusal, they shall at their own expense, construct the said improvements in their own manner: provided such design or manner of construction shall be satisfactory to said Fresh Water Supply District. (Id. sec. 22.)

Art. 5107—202. Rights of way across public or county roads.—Fresh Water Supply Districts are hereby given the right of way across all public or county roads, but they shall restore such roads where crossed to their previous condition for use, as near as may be. (Id. sec. 23.)

Art. 5107—203. Joint action with other political subdivisions.—Fresh Water Supply Districts shall have authority to act jointly with each other with political subdivisions of the state, with other states, with cities and towns, and with the government of the United States, in performance of any of the things permitted by this act; such joint acts to be done upon such terms as may be agreed upon by their supervisors. (Id. sec. 24.)

Art. 5107—204. Assessor and collector; bond; qualifications; compensation.—The office of assessor and collector herein provided for shall be filled by the same person, and before entering upon his duties as such assessor and collector he shall qualify by making and entering into a good and sufficient bond in the sum of Five Thousand ($5,000) Dollars conditioned upon the faithful performance of his duties as assessor and collector and upon the paying over to the district depository of all sums of money coming into his hands as such collector; provided, however, that the supervisor shall require additional security in the event, in their judgment, the same may become necessary; and such assessor and collector shall be a resident of the district and a qualified voter in the district and shall receive such compensation for his services as may be provided by the board of supervisors, not to exceed $2,400.00 per annum, which salary shall be paid by the district upon vouchers issued by the Board of Supervisors. (Id. sec. 25.)

Art. 5107—205. Election to determine bond issue; proposition submitted.—After the establishment of any such Fresh Water Supply District, and the qualification of the Supervisors thereof, the Board of Supervisors may order an election to be held within such organized districts at a time not less than twenty nor more than thirty days from the date of said order, at which election, there shall be submitted this proposition and none other; "For the issuance of bonds and levy of taxes in payment thereof," "Against the issuance of bonds and levy of taxes in payment thereof." (Id. sec. 26.)

Art. 5107—206. Same subject; notice; conduct of; qualified voters; voting places; ballots.—Notice of such election, stating the amount of bonds as determined by the Board of Supervisors to be necessary to be issued, shall be given by the Board of Supervisors, by posting a copy of said notice in four public places in said Fresh Water Supply District, one at the court house door of the county in which said District is situated; copies of which notice shall be posted for twenty days previous to the date of the election, and shall contain the proposition to be voted upon as set forth in the preceding section, together with an estimate of the probable cost of construction of the proposed improvement, and incidental expenses connected therewith, and an estimate of the cost of the purchase of the improvements already existing, if the same is contemplated, or the purchase of said necessary improvements, and the construction of additions thereto as the case may be. The manner of conducting such election shall be governed by the election laws of the State of Texas, except as hereinbefore otherwise provided. None but resident property tax payers who are qualified voters of such proposed district shall be entitled to vote on any question submitted to the voters thereof by the board of supervisors for said Fresh Water Supply District. The Board of Supervisors for such district shall name a poling place, or places, in such district and shall also select and appoint two judges, one of whom shall be presiding judge, and two clerks for each voting place designated by them and shall provide the necessary ballots for said election. Said ballot

shall have written or printed thereon the words and none other: "For the issuance of bonds and levy of taxes in payment thereof," "Against the issuance of bonds and levy of taxes in payment thereof." All expense incident to the calling and holding of such election or any other election authorized by this Act shall be paid out of any funds of said Fresh Water Supply District except interest and sinking fund provided for in this act upon vouchers drawn by the Board of Supervisors. (Id. sec. 27.)

Art. 5107—207. Same subject; oath of voters.—Every person who offers to vote in any such election shall first take the oath hereinbefore set forth in section No. 9 of this Act [art. 5107—188] before the presiding judge or any one of the judges of the polling place where he offers to vote, and the presiding judges are hereby authorized to administer said oath. (Id. sec. 28.)

Art. 5107—208. Same subject; returns; canvass; declaration of result.—Immediately after the election, the presiding judge of each polling place shall make return of the result in the same manner as provided for in general election for State and County officers, such return shall be made to the Board of Supervisors who shall at a regular or special session called for the purpose of canvassing said vote, canvass said vote and if it be found that the votes of a majority of the resident property tax paying voters voting therein shall have been cast in favor of the issuance of the bonds and levy of taxes, then said supervisors shall declare the result of said election to be in favor of the issuance of bonds and levy of taxes. then said supervisors shall declare the result of said election to be in favor of the issuance of bonds and levy taxes and in payment thereof and shall cause same to be entered in their minutes. (Id. sec. 29.)

Art. 5107—209. Bonds; order for issue of.—After the canvass of the vote and declaring the result as provided for in the preceding section, the supervisors for said Fresh Water Supply District shall make and enter an order in their minutes directing the issuance of bonds for such district sufficient in amount to pay for such purposed improvements together with all necessary actual and incidental expenses connected therewith, and not to exceed the amount specified in said order and notice of election. (Id. sec. 30.)

Art. 5107—210. Same subject; issue; denominations; interest; maturity.—The bonds issued under the provisions of this Act shall be issued in the name of the Fresh Water Supply District, signed by the president of the board of supervisors and attested by the secretary with the seal of said district affixed thereto and such bonds shall be issued in denominations of not less than one hundred (100.00) Dollars nor more than One Thousand (1000.00) Dollars each, and such bonds shall bear interest at the rate of not to exceed six (6) per cent, payable annually or semi-annually. Such bonds shall by their terms provide the time, place or places, manner and conditions of their payment and the purpose for which they are issued and the interest thereon as may be determined and ordered by the board of supervisors for such Supply District and none of such bonds shall be made payable more forty years after the date thereof. (Id. sec. 31.)

Art. 5107—211. Same subject; record of.—When bonds shall beve [have] been issued by and on behalf of any Fresh Water Supply District, the supervisors of such district shall procure and deliver to the treasurer of the county in which such district is located, a well bound book in which a list shall be kept of all such bonds with their manner, amount, rate of interest, date of issuance, when due, where payable, amount received for same and the tax levy to pay interest on and to provide a sinking fund for their payment which book shall at all times be opened to the inspection of the parties interested, either as tax payers or bondholders; and upon the payment of any bond, an entry thereof shall be made on such book. The County Treasurer shall receive for his services in recording all these matters the same fees as may be allowed by law to the County Clerk for recording deeds. (Id. sec. 32.)

Art. 5107—212. Same subject; determination of validity by Attorney General.—Before any bonds issued by or on behalf of any Fresh Water Supply District are offered for sale there shall be forwarded to the Attorney General a certified copy of all proceedings had in the organization of the district and with reference to the issuance of such bonds in connection with the bonds themselves and such other information with respect thereto as may be required by the Attorney General shall be furnished; and it shall be the duty of the Attorney General to carefully examine said bonds in connection with the record and Constitution and laws of this State governing the issuance of such bonds, and, if, as a result of his examination, the Attorney General shall find that such bonds are issued in conformity with the Constitution and laws of the State and that they are valid and binding obligations upon the district by or on behalf of which they are issued, he shall so officially certify, and until he shall so officially certify, and until registered by the Comptroller as hereinafter required, the said bonds shall be without validity. (Id. sec. 33.)

Art. 5107—213. Same subject; registration by Comptroller.—When the bonds of any Fresh Water Supply District have been examined and approved by the Attorney General and his certificate thereto has been issued, they shall be registered by the State Comptroller in a book kept for that purpose and the certificate of the Attorney General as to the validity of such bonds shall be preserved of record. Such bonds after receiving the certificate of the Attorney General, and after having been registered in the Comptroller's Office, as herein provided, shall be held, in every action suit or proceeding in which their validity may be brought into question, prima facio valid; and in every action brought to enforce collection of such bonds and interest thereon, the only available defense against the validity of such bonds shall be forgery or fraud. (Id. sec. 34.)

Art. 5107—214. Same subject; sale.—When bonds shall have been issued, approved and registered as provided in this Act, the board of supervisors shall sell said bonds on the best terms and for the best price possible. The supervisors selling said bonds shall

promptly pay over to the depository of said district the proceeds of said bonds to be placed to the credit of such district; but none of said bonds shall be sold for less than face value thereof and accrued interest. (Id. sec. 35.)

Art. 5107—215. Taxes; assessment; mode of.—Immediately after the voting of bonds in any Fresh Water Supply District as provided by this Act, the assessor and collector as hereinbefore provided, shall at once proceed to make an assessment of all of the taxable property, both real, personal and mixed in his district; and such assessment shall be made annually thereafter. Said assessment shall be made upon blanks to be provided by the supervisors for such district. Said assessment shall consist of a full statement of all property owned by the party rendering same in said district and subject to taxation therein and shall state the full value thereof. There shall be attached to each such assessment an affidavit made by the owner or his agent rendering said property for taxation to the effect that said assessment or rendition contains a true and complete statement of all property owned by the party for whom said rendition is made in said district and subject to state and county taxation therein; and in addition to all such assessments or rendition made by the owner or agents of such property, the tax assessor shall make out similar lists of all poerty [property] not rendered for taxation in such district that is subject to State and County taxation. Each and every person, partnership or corporation owning taxable property in such district shall render same for taxation to the assessor when called upon to do so, and if not called upon by the assessor, the owner shall on or before June first of each year, nevertheless, render for taxation all property owned by him in the district subject to taxation.

And all penal laws and penal statutes of this State providing for securing the rendition of property for state and county taxes, and providing penalties for the failure to render such properties shall apply to all persons, partnerships or corporations owning or holding property in any Fresh Water Supply District. The tax assessor shall have authority to administer oaths to fully carry out the provisions of this Section. (Id. sec. 36.)

Art. 5107—216. Same subject; levy, assessment and collection; sinking funds.—When the bonds shall have been issued by any Fresh Water Supply District, the board of supervisors of such district shall levy and cause to be assessed and collected taxes upon all property, real and personal and mixed, within such district based upon the full value of each piece of property, which taxes shall be sufficient in amount to pay the interest on such bonds as it shall fall due, and to raise an additional fund which shall create a sinking fund sufficient to redeem and discharge such bonds at maturity; and such taxes shall thereafter be levied annually so long as such bonds, or any of them, are outstanding, sufficient in amount to accomplish the purposes indicated. Sinking funds shall from time to time be invested in such county, municipal, district or other bonds as other sinking funds may by law be invested in, or in bonds of the series to which such funds apply if offered for redemption before maturity upon terms deemed advantageous to the district by its Supervisors. (Id. sec. 37.)

Art. 5107—217. Maintenance tax; election to determine; levy, assessment and collection.—If at any time it should be deemed necessary by the board of supervisors to vote a maintenance tax in such district, they shall call an election in such district, at which election shall be submitted the question "For a maintenance tax", "Against a maintenance tax"; the supervisors calling said election shall state the amount of said maintenance tax proposed to be voted and such election shall be called and held and the votes returned and canvassed in the same manner as provided for the issuance of bonds in this act. And when a maintenance tax shall have been voted as herein provided, the supervisors of said district shall thereafter levy and cause to be assessed and collected upon all property, real, personal and mixed of such district based upon the full valuation of same, to an amount not exceeding the specific sum voted, and the vote in such cases may be for a specific sum, or not to exceed a specific sum. The proceeds of such taxes shall be used for the maintenance, upkeep, repairs and additions to the improvements, and the district, or other lawful expense incurred by and on behalf of such district and for no other purposes. The right to levy such taxes shall remain in force until abrogated in whole or in part by another election to be called and held in the same manner as the election for the voting of maintenance taxes; but elections upon the question of repeal or reduction of maintenance taxes shall not be held oftener than every five years; provided, however, that the supervisors of such district may, or may not, levy from time to time the maintenance tax voted if such taxes are not necessary. (Id. sec. 38.)

Art. 5107—218. Collection of taxes by assessor and collector of district.—All taxes provided for herein including the maintenance and operating taxes shall be collected under the direction of the supervisor by the assessor and collector for such district. He shall keep a true account of all moneys collected and deposit the same as collected in the district depository, and shall file with the secretary of the board of supervisors a true statement of all money collected once a week. He shall use a duplicate receipt book and shall give a true receipt for each collections made, retaining in such book a true copy thereof which shall be preserved as a record of the district. (Id. sec. 39.)

Art. 5107—219. Board of equalization; number; appointment; meetings; secretary; record; compensation.—The supervisors for each fresh water supply district created under the provisions of this act shall at their first meeting or as soon thereafter as practicable and annually thereafter, appoint three commissioners, each being a qualified voter and resident property owner of said district who shall be styled the "Board of Equalization" and at the same meeting the said Board of Supervisors shall fix the time for the meeting of such Board of Equalization for the first year; and said Board of Equalization shall convene at the time fixed by the

Supervisors to receive all assessments, lists or books of the assessor for said District for examination, correction, equalization, appraisement and approval and at all meetings of said board, the secretary shall keep a permanent record of all proceedings of said board of equalization, and such commissioners shall each receive as compensation for such service not to exceed Five (5) Dollars per day. (Id. sec. 40.)

Art. 5107—220. Same subject; oath of members.—Before entering upon the duties as such Board of Equalization, each of the members thereof shall take and subscribe to the following oath:

"I, ——— do solemnly swear (or affirm) that I will to the best of my ability make a full and complete examination, correction equalization and appraisement of all property contained within said district, as shown by the assessment list or books of the assessor for said district."

and said oath shall be spread upon the minutes to be kept by the secretary of said board. (Id. sec. 41.)

Art. 5107—221. Same subject; general powers.—The Board of equalization herein provided for shall cause the assessor to bring before them, at the time fixed for the convening of said board all the assessment lists or books of the assessor of said district for their examination, that they may see that each and every person has rendered his property at its full value; and said board shall have power to send for persons and papers, to swear and qualify persons who testify, to ascertain the value of such property and if they are satisfied it is too high, they shall lower it to its proper value, and if too low, they shall raise the value of such property to the proper figure. Said board shall have power to correct any and all errors that may appear on the assessors list or books and shall have further authority to add any and all property to said list or inventories that may have been omitted therefrom. (Id. sec. 42.)

Art. 5107—222. Equalization of taxes; complaints; witnesses.—The Board of Equalization shall equalize as near as possible the value of all the property situated within said district having reference to the location of said property and the improvements thereon situated, and any person may file with said board at any time before the final action of said board a complaint as to the assessment of his, or any other persons, property, and said board shall bear said complaint and said complaint shall have the right to have witnesses examined to sustain said complaint as to the assessment of said property, or as to failure to render any property owned by any person, partnership or corporation, situated within said district, subject to taxation which has not been properly assessed. (Id. sec. 43.)

Art. 5107—223. Same subject; list of tax payers refusing to make returns.—The assessor for such district, at the same time that he delivers to said board his lists and books shall also furnish to said board a certified list of the names of all persons who either refuse to swear to or to sign the oath or affirmation as required by this law, together with a list of the property of such persons situated within said district as made by him through other information, and said board shall examine the list and appraise the property so listed by the assessor. (Id. sec. 44.)

Art. 5107—224. Same subject; raising valuation.—In all cases where the Board of Equalization shall find it their duty to raise the value of any property appearing on the lists or books of the assessor, they shall, after having fully examined such lists or books and corrected all errors appearing thereon adjourn to a day not less than ten nor more than fifteen days from the date of adjournment, such day to be fixed in the order of adjournment, and shall cause the secretary of the board to give written notice to the owner of such property, or to the person rendering same, of the time to which said board may have adjourned, and that such owner or person may at any time appear and show why the value of such property should not be raised, which notice may be served by depositing the same, properly addressed, and with necessary postage in any post office within the county. (Id. sec. 45.)

Art. 5107—225. Same subject; meetings of board; hearings; approval of lists and rolls.—The Board of Equalization shall meet at the time specified in said order of adjournment, and shall hear all persons the value of whose property has been raised, and if said board is satisfied they have raised the value of such property too high, they shall lower the same to its proper value; and said Board of Equalization, after they have finally examined and equalized the value of all the property on the assessor's lists or books, or that they may have been placed thereon by said board of equalization shall approve said lists or books and return them, together with the lists of unrendered property to the assessor, that he may make up therefrom his general rolls as required by this act; and when said general rolls are so made up, the board shall immediately reconvene to examine said rolls, and to approve the same if found correct, and the action of the board at the meeting last provided for in this article shall be final, and shall not be subject to revision by said board or by any other tribunal thereafter. (Id. sec. 46.)

Art. 5107—226. Compensation of members of board of equalization.—The members of the board of equalization and the secretary of said board, shall each receive such compensation for their services to be allowed by the supervisors of said district, as they may deem just and reasonable, not to exceed however the sum of Five (5) Dollars per day for the time actually engaged in the discharge of such duties. (Id. sec. 47.)

Art. 5107—227. Taxes; assessment rolls.—After the return to the assessor and collector of the assessment lists or books duly approved by the Board of Equalization, as hereinbefore provided for, the said assessor and collector shall make up the assessment of all taxable property situated in said district upon duplicate rolls, and after the approval of said rolls by the Board of Equalization, one of the same shall be delivered to the Supervisors of said Fresh Water Supply District, to be by them kept as a permanent record in their office, and all lists and books of said assessor shall be caused to be substantially bound and by him kept as a

permanent record of his office and be delivered, together with all other records of his office, to his successor, upon his election and qualification or in case of a vacancy in such office to the supervisors of said Fresh Water Supply District. (Id. sec. 48.)

Art. 5107—228. Same subject; collection; payments to depository.—The assessor and collector shall collect all taxes due to said Fresh Water Supply District, and shall, at the expiration of each week, pay over to the depository selected by said district, all moneys by him collected, and shall report to the supervisors of such district on the fourth Saturday of every month all moneys so collected by him and paid over to the depository, as hereinbefore provided, and shall perform all such duties and in such manner and according to such rules and regulations as the board of supervisors may prescribe, and for the convenience of the persons, firms or corporations owing such tax, shall keep and maintain an office with the Board of Supervisors for such Fresh Water Supply District where all such taxes may be paid. (Id. sec. 49.)

Art. 5107—229. Same subject; charges against and credits to assessor and collector.—The assessor and collector shall be charged by the Supervisor for such Fresh Water Supply District, upon a permanent finance ledger, to be kept for said purpose by said District, with the total assessment as shown by the assessment rolls; and proper credit shall be given to the assessor and collector for all sums of money paid over to the depository as shown by his monthly reports as hereinbefore provided for, and upon the final annual settlement, the said assessor and collector shall make up a full complete report of all taxes that have not been collected, which said report shall be audited by said board of supervisors and proper credits given therefor, and such annual settlements shall be made on the first Monday in May of each year. (Id. sec. 50.)

Art. 5107—230. Term of office of assessor and collector.—The assessor and collector for said district shall hold office for the term of two years, and until his successor has been elected and qualified; provided, that the assessor and collector first elected to said office shall hold office only until the next general election to be held in said district for the election of officers as provided by this act. (Id. sec. 51.)

Art. 5107—231. Taxes; assessment; time of making.—The assessment provided for in this Act shall be made upon all property subject to taxation in said district on the first day of January of each year, and such assessment shall be completed and the lists and books ready to deliver on or before the first day of June of each year. (Id. sec. 52.)

Art. 5107—232. Same subject; meetings of board of equalization; completion of assessment rolls.—The Board of Equalization after the first year, shall convene annually on the first Monday in June in each year to receive all of the assessment lists or books of the assessor of said district for examination, correction, equalization, appraisement and approval, and for the addition thereto of any property found to be unrendered in said district, and shall complete the examination and equalization of said lists and rolls by the second Monday in June of said year, and shall complete and deliver said rolls to the assessor and collector by the second Monday in July of said year and the said assessment rolls shall be completed by the assessor and approved by the Board of Equalization, and returned to said assessor and collector by the first Monday in September of each year after the first assessment as hereinbefore provided. (Id. sec. 53.)

Art. 5107—233. Same subject; when due and payable.—All taxes provided for by this Act shall become due and payable on the first day of October of each year, and shall be paid on or before the 31st day of January thereafter. (Id. sec. 54.)

Art. 5107—234. Delinquent taxes; lien; sale of land.—All lands or other property which have been returned delinquent or which may hereafter be returned delinquent shall be subject to the provisions of this act, and said taxes shall remain a lien upon said land, although the owner be unknown, or though it be listed in the name of a person not the actual owner, and though the ownership be changed; the land may be sold under the judgment of the Court for all taxes, interest, penalty and costs shown to be due by such assessment for any preceding year. (Id. sec. 55.)

Art. 5107—235. Same subject; delinquent tax roll; making and delivery to secretary of district.—It shall be the duty of the Supervisors for such Fresh Water Supply District to cause to be prepared by the tax collector, at the expense of such district, a list of all lands upon which the taxes remain unpaid on the 31st day of January of each year, and such list of lands shall be known as the delinquent tax roll, and such tax roll shall be delivered to the secretary of such district to be by him safely kept as a part of the record to his office. Such delinquent record shall carry a sufficient description to properly identify the land shown to be delinquent therein. Such description may be made by reference to lot or block number. (Id. sec. 56.)

Art. 5107—236. Same subject; book record of delinquent tax roll.—Upon receipt of such delinquent tax roll by the Supervisors of said Fresh Water Supply District, the said Supervisors shall cause same to be recorded in a book which shall be labeled "The Delinquent Tax Record of ——— County. Fresh Water Supply District, No. ———" and shall be accompanied by an index showing the name of delinquents in alphabetical order. (Id. sec. 57.)

Art. 5107—237. Same subject; publication of delinquent tax record.—Upon the completion of said delinquent tax record by any Fresh Water Supply District, it shall be the duty of the Supervisors thereof to cause the same to be published in some newspaper published in the county in which said district is situated for three consecutive weeks, but if no newspaper is published in the county, such list may be published in a newspaper outside of the county to be designated by such Supervisor, by a contract duly entered into, and a publisher's fee of not to exceed twenty-five cents for each tract of land so advertised; and said publication and any other publication in a newspaper provid-

ed for in this Act may be proven by the affidavit of the proprietor of the newspaper in which the publication was made, his foreman or principal clerk, annexed to a copy of the publication, specifying the time when and the paper in which the publication was made. (Id. sec. 58.)

Art. 5107—238; Same subject; suit to collect; petition.—Twenty days after the publication of such notice, or as soon thereafter as practicable, the supervisors for such Fresh Water Supply District shall employ an attorney to bring suit in the name of the Fresh Water Supply District in the district court of said county for the purpose of collecting all taxes, interest, penalty and costs due upon said land. Said petition shall describe all lands upon which taxes and penalties shall remain unpaid and the total amount of taxes and penalties due thereon with interest computed thereon to the time fixed for the sale of said land at the rate of six per cent per annum, and shall pray for a judgment for said amount, and for the fixing, establishing and foreclosing of the lien existing against said land; that said lands be sold to satisfy said judgment for all taxes, interest, penalty and costs, and for such other relief to which such district may be entitled under the law and facts. (Id. sec. 59.)

Art. 5107—239. Same subject; suit to collect; parties; process; order of sale.—The proper persons shall be made parties defendants in all such suits, and shall be served with process and other proceedings due therein as provided by law for suits of like character in the district court of this State, and in case of foreclosure, order of sale shall issue to the lands sold thereunder as in other cases for foreclosures; but if the defendant or his attorneys at any time before the sale, file with the sheriff or other officer in whose hands any such order of sale shall be placed, a written request that the property described therein shall be divided and sold in less tracts than whole, together with a description of such subdivision, then such officer shall sell the lands in said subdivision as the defendant may request, provided same are reasonable, and in such case, shall sell only as many subdivisions as may be necessary to satisfy the judgment, interest, and penalties and cost, and after the payment of the taxes, interest and penalties and costs adjudged against it, the remainder of the purchase price, if any, shall be paid by the sheriff, or other officer executing said order of sale, to the defendant, or his attorney of record. (Id. sec. 60.)

Art. 5107—240. Same subject; tax deed on sale.—In all cases in which lands may be sold for default, in the payment of taxes under the preceding section, it shall be lawful for the sheriff, or other officer, selling the same, or any of his successors in office, to make a deed or deeds to the purchaser, or to any other person to whom the purchaser may direct the deed to be made, and any such deed shall be held in any court of law or equity in this state to vest a good and perfect title in the purchaser thereof, subject to be impeached only for actual fraud (Id. sec. 61.)

Art. 5107—241. Same subject; suit to collect; compensation of attorney, etc.—The attorney representing such district in all suits against delinquent tax payers that are provided for in this act shall receive for such service such compensation as may be allowed by the supervisors for such Fresh Water Supply District; provided, however, that in no event shall said fees exceed fifteen per cent of the amount of the taxes so collected. The sheriffs, district clerks, and other officers executing any writ or performing any service in the foreclosure of delinquent taxes on any land situated in such Fresh Water Supply District, shall receive the same fees for such service as is provided by statute as fees for like services performed in connection with the discharge of the duty of their respective offices. (Id. sec. 62.)

Art. 5107—242. Same subject; penalty; collection.—If any person shall fail or refuse to pay the taxes imposed upon him or his property by this act until after the 31st day of January next succeeding the return of the assessment roll for said Fresh Water Supply District, a penalty of ten per cent on the entire amount of such tax shall accrue, which penalty, when collected, shall be paid over to such District. And the collector of taxes shall by virtue of his tax roll seize and levy upon and sell so much personal property as shall be sufficient to make the amount of such taxes, together with the penalty above provided, interest thereon at the rate of six per cent per annum, and all costs accruing thereon. If no personal property be found for seizure and sale as above provided, the collector shall make up and file with the Secretary of the District the delinquent tax list hereinbefore provided for, charging against same all taxes, penalties and interest assessed against the owner thereof. (Id. sec. 63.)

Art. 5107—243. Same subject; redemption from sale.—Any delinquent tax payer whose lands have been returned delinquent, or any one having an interest therein, may redeem the same at any time before his lands are sold, under the provisions of this act, by paying to the collector the taxes due thereon, with interest at the rate of six per cent, and all costs and the penalty of ten per cent as provided for in this Act. (Id. sec. 64.)

Art. 5107—244. Accounts and records of supervisors.—The Supervisors of Fresh Water Supply Districts shall keep a true account of all their meetings and proceedings, and shall preserve all contracts, records of notices, duplicate vouchers, duplicate receipts, and all accounts and records of whatever kind, in a fire proof vault or safe, and same shall be the property of the district, and shall be delivered to their successors in office. (Id. sec. 65.)

Art. 5107—245. District depository; selection; laws applicable to.—The Supervisors of such Supply District shall select a depository for such district under the same provisions as now provided for the selection of the depositories for the counties within this State; and the duties of such depositories shall be the same as now prescribed by law for county depositories. In the selection of depositories, the Supervisors of such Supply District shall act in the same capacity and perform the same duties as are incumbent upon the county judge and members of the commissioners' court in the selection of

the county depositories; and all laws now in force or hereinafter to be enacted for the government of county depositories, shall apply to and become a part of this Act. (Id. sec. 66.)

Art. 5107—246. Same subject; reports and vouchers.—The Fresh Water Supply District depository shall make a report of all moneys received and of all moneys paid out at the end of each month and file such reports with such vouchers among the records of such district in its own vault, and shall furnish a true copy thereof to the district supervisors and shall when called upon, allow same to be inspected by any tax payer, or resident of such district; such record shall be preserved as the property of such district and shall be delivered to the successor of such depository. (Id. sec. 67.)

Art. 5107—247. Office and meetings of supervisors.—The supervisors of each Fresh Water Supply District shall have and maintain a regular office suitable for conducting the affairs of such district within such Supply District and such supervisors shall hold regular meetings at said office, on the first Monday in February, May, August and November of each year, at ten o'clock A. M., and shall hold such regular and special meetings as they may see fit, any tax payer or resident or interested party may attend any such meeting, but shall not participate in same without the consent of the supervisors and may present to said supervisors such matters as they desire in an orderly manner. (Id. sec. 68.)

Art. 5107—248. Meetings of supervisors; vouchers; books of accounts.—All meetings of the supervisors shall be held at the regular office of the district. All vouchers issued for the payment of any funds of the district shall be signed by at least three supervisors and shall refer to the book and page of the minutes allowing such act. All vouchers shall be issued from a regular duplicate book, retaining a duplicate which shall be preserved. The supervisor shall have kept a complete book of accounts for such district, and shall on June 1st of each year select a competent auditor who shall examine the accounts, books and reports of the depository, the assessor and collector and supervisors, and make full report thereon, copy of which shall be filed with the depository, and a copy with the supervisors, and one with the county clerk of the county in which such district is situated. Such reports shall be filed by September 1st of each year, and such reports shall show in detail for what purposes the money from each fund has been expended. (Id. sec. 69.)

Art. 5107—249. Bonds of officers and employés of district.—The officers and employés of any Fresh Water Supply District who may be required to give bond or security, may furnish bonds of surety companies to be approved by the District Supervisors, provided, however, that when such a surety company bond is furnished by any such officer or employé, the surety company furnishing the same shall file for record in the office of the county clerk in the county wherein such district was created, a duly executed power of attorney showing the authority of the person signing such bond for such company to sign same, and said power of attorney shall be duly executed by the officers of said company and have attached the company's seal; and such power of attorney shall remain on file in said office. All such official bonds shall be deposited with the district depository and be preserved by it as the property of said district. (Id. sec. 70.)

Art. 5107—250. Vacancies in office of assessor and collector.—The supervisors for any district created under this act shall have authority to fill all vacancies in the office of assessor by appointment, and the person so appointed shall hold his office until the next regular election held under this act, and until his successor shall have been elected and qualified. (Id. sec. 71.)

Art. 5107—251. Vacancies in office of supervisor; how filled.—All vacancies in the office of supervisors shall be filled by the Board of Supervisors by appointment, and the supervisor so appointed shall hold office until the next regular election, and until his successor shall have been elected and qualified: provided, however, that where the number of supervisors shall have been reduced by death or resignation, or other cause, to less than two, then such vacancies shall be filled by special election to be ordered by the remaining member of said board of supervisors, said election to be ordered and held after the giving of notice for the election of said officers as provided for the holding of general elections; and further provided that if said remaining member shall fail or refuse to order such election, or if there be no remaining member on said board, then said election shall be ordered by the county judge of the county within which such district is situated, upon a petition signed by five persons interested in the election of said supervisors, whether said interested persons be tax-payers or bond-holders and when so ordered, notice shall be given of said election, and such election held in the manner provided for the holding of general elections, and the supervisors elected at such election shall hold their office until the next general election, and until their successors shall have been elected and qualified. In the event that less than a quorum exists to approve the bonds of such elected supervisors, then such bonds shall be approved by the County Commissioners' Court of such county. (Id. sec. 72.)

Art. 5107—252. Terms of office of district officers.—The term of office of all officers elected for such district shall be for two years and until their successors are elected and qualified; provided, however, that all officers elected at the first election held under the provisions of this Act shall hold office only until the next regular election to be held in said district for the election of officers. (Id. sec. 73.)

Art. 5107—253. Election of supervisors and assessor and collector.—There shall be held on the first Tuesday in January, 1921, and every two years thereafter, a general election, at which time there shall be elected five supervisors for such districts and one assessor and collector who shall be the elective officers for such districts. (Id. sec. 74.)

Art. 5107—254. Compensation of supervisors.—The Supervisors provided for by this Act shall each receive as compensation for their services a sum not to exceed Ten ($10.00) Dollars for each and every day nec-

essarily taken in the discharge of their duties as such supervisors, and said supervisors shall file with the secretary of such district a statement verified by their affidavit of the number of days actually taken by them in the service of said district, said statement to be filed on the last Saturday of each month, or as nearly thereafter as practicable, and before a warrant shall be issued for the payment of such service. (Id. sec. 75.)

Art. 5107—255. Compensation of other officers, etc.—For all service performed by any officer or individual under this act, the compensation for which is not expressly provided for, such officer or individual shall receive the same compensation as he would for like service if rendered as an officer for the county. Clerks recording orders hereunder shall receive the same compensation as would a county clerk for recording deeds, and persons posting notices hereunder shall receive the same compensation as would a sheriff for posting notices as would by law be required by him for posting notices officially. (Id. sec. 76.)

Art. 5107—256. Contracts for work; letting; notice of; making of contract.—Contracts for the making and construction of all improvements contemplated in this Act and all necessary work in connection with such improvement district, when the cost price exceeds $10,000.00 shall be let to the lowest responsible bidder furnishing satisfactory evidence of possessing equipment and facilities essential to the proper performance of such contract; after giving notice by advertising the same in one or more newspapers in general circulation in the State of Texas, which notice shall be published once a week for ten (10) days, and also by posting a notice for at least ten (10) days at the courthouse door of the county within which the district lies.

Such contract shall be reduced to writing and signed by the contractors and supervisors, and a copy of same so executed shall be filed with the District Depository subject to the inspection of all parties interested. (Id. sec. 77.)

Art. 5107—257. Bond of contractor.—The person, firm or corporation or association to whom such contract is let shall give bond to the district in such amount as the board of supervisors may determine, not to exceed the contract price conditioned that he, they, or it will faithfully perform the obligations, agreements and covenants of such contract, and that in default thereof they will pay the said District all damages sustained by reason thereof; such bond shall be approved by the supervisors and shall be deposited with the depository of the district, a true copy thereof being retained in the office of the secretary of the board of supervisors. (Id. sec. 78.)

Art. 5107—258. Work under contracts; how done; supervision.—All work included in the contract shall be done in accordance with the specifications under the supervision of the supervisors and district engineer. As the work progresses the engineer of such district shall make report to the supervisors showing in detail whether the contract is being complied with, and when the work is completed, he shall make a detailed report of same to the supervisors showing whether or not the contract has been fully complied with according to its terms, and if not in what particular it has not been complied with. (Id. sec. 79.)

Art. 5107—259. Inspection, etc., of work; partial payments on contracts.—The supervisors shall during the progress of the work under any contract, inspect the same, and upon the completion of any work in accordance with the contract, they shall draw a warrant on the depository of the district for the unpaid amount of the contract price, in favor of the contractor, and if the Supervisors shall deem it advisable, they may enter into a contract to be paid in partial payments as the work progresses; but such partial payments shall not exceed in the aggregate, eighty per cent of the amount of work done, the said amount of work completed to be shown by certified report of the engineer of the district. (Id. sec. 80.)

Art. 5107—260. Seal of districts.—Fresh Water Supply Districts created under this Act shall have a common seal which shall be circular in form, with the name of the District within the circle and a star of five points in the center. (Id. sec. 81.)

Art. 5107—261. Engineer; powers and duties.—After the establishment of any such Fresh Water Supply District, and after the qualification of the Board of Supervisors, the Board of Supervisors for such district may appoint an engineer whose duty shall be to make maps and profile of the several canals, reservoirs, aqueducts, conduits, pipe lines, pumping plants and all other works in such district and connected therewith, and shall also show any part of said canals, reservoirs, aqueducts, conduits, pipe lines, pumping plants or other works extending beyond the limits of such district. And to do such other and further work connected with such district as may be directed by the Board of Supervisors. Such engineer to receive a salary not to exceed Thirty-six Hundred ($3600.00) Dollars per year as may be fixed by the Board of Supervisors for such District; provided said engineer may adopt other maps, plats and surveys of the correctness of which he may be satisfied. (Id. sec. 82.)

Art. 5107—262. Interest and sinking fund; how constituted; payments from.—There is hereby created what shall be termed the "interest and Sinking Fund" for such district, and all taxes collected under the provisions of this Act shall be credited to such fund, and shall never be paid out, except for the purpose of satisfying and discharging the interest on said bonds or for the cancellation and surrender of such bonds and to defray the expenses of assessing and collecting such tax and such funds shall be paid out upon orders of the supervisors for such district upon warrants drawn therefor, as hereinbefore provided, and at the time of such payment the depository for said district shall receive and cancel any interest coupons so paid or any bonds so satisfied or discharged, and when such interest coupon or bond shall be turned over to the Supervisors, the account of such depository shall be credited with the amount thereof, and such bond or interest coupon shall be cancelled and destroyed. (Id. sec. 83.)

Art. 5107—263. Maintenance and operating fund; how constituted; payments from.—There shall also be created a fund known as the "Maintenance and Operating Fund", and such fund shall consist of all moneys collected by assessment or otherwise for the maintenance and operation of the properties purchased or constructed or otherwise acquired by such district and out of this fund shall be paid the salaries of all officers other than the assessor and collector and of all employés of every kind whatsoever, and all expenses of operation of every kind, such debts to be paid upon a warrant executed as otherwise provided herein. (Id. sec. 84.)

For section 85 of this act, see Penal Code, art. 122b.

Art. 5107—264. Depository to act as treasurer, when.—The Depository of each Fresh Water Supply District when designated as provided in this act, shall perform the services as treasurer of the district, and shall execute a bond as such treasurer as may be required by the supervisors. (Id. sec. 86.)

Art. 5107—265. Costs of creation of district.—The Board of Supervisors are hereby authorized to pay all necessary costs and expenses necessarily incurred in the creation and organization of any Fresh Water Supply District, and reimburse any person, corporation, or association for money advanced for such purposes, such payment to be made for money obtained from the sale of bonds. (Id. sec. 87.)

Art. 5107—266. Acts not affected.—Provided, however, this Act shall in no manner repeal or affect the several Acts of the Legislature, providing other or different methods of organization and operating, conservation districts; and provided further that nothing in this Act shall be construed as repealing or in any manner affecting any laws providing for the reclamation of the overflow and swamp lands of this state, and the duties and powers of the State Reclamation Engineer as heretofore provided by law. (Id. sec. 88.)

CHAPTER FIVE

CONSERVATION AND RECLAMATION DISTRICTS

Art. 5107—267. Purposes of; manner of establishment.—Conservation and Reclamation Districts may be created and organized in any manner that Water Improvement districts, Drainage Districts, or Levee Improvement Districts are now authorized by the laws of this State to be created, and for the several purposes therein provided. (Acts 1918, 4th C. S., ch. 25, sec. 1.)

Art. 5107—268. Water Improvement Districts, Drainage Districts, or Levee Improvement Districts may become.—Any Water Improvement District, Drainage District, or Levee Improvement District heretofore organized or hereafter organized or hereafter to be organized under the laws of this State, as Defined Districts, under Section 52 of Article 3 of the Constitution, may avail itself of the benefits of Section 59 of Article 16 of the Constitution, and thereby become a Conservation and Reclamation District without change of name. (Id. sec. 2.)

Art. 5107—269. Incurring indebtedness and levy of taxes.—Any Conservation and Reclamation District hereafter organized under this Act, and any Water Improvement District, Drainage District or Levee Improvement District which may be constituted a Conservation and Reclamation District under this Act, may incur indebtedness and levy taxes to fully carry out each and all of the purposes of its organization, and for the payment of its obligations and the maintenance and operation of said district. (Id. sec. 3.)

Art. 5107—270. Same subject; limitations removed.—All limitations of indebtedness authorized to be incurred and taxes to be levied, imposed by Section 52 of Article 3 of the Constitution, and any and all laws under which any such district has been or may be organized, are removed as to all districts which may become Conservation and Reclamation Districts under the terms of this Act. (Id. sec. 4.)

Art. 5107—271. Establishment of Water Improvement District or Irrigation District as; election; ballots; canvass and declaration of result.—Any Water Improvement District, or Irrigation District heretofore or hereafter organized under the laws of this State may become and be made a Conservation and Reclamation District, as herein provided, in the following manner: When a petition signed by twenty per cent of the owners of land in such district, praying therefor, is presented to the Directors, they shall order an election to be held to determine such issue, such election to be conducted as provided for general elections in such districts. The ballots shall have printed thereon the following: "For Conservation and Reclamation." The Directors shall canvass the returns and declare the result of such election, and have recorded in the deed records of the county or counties in which such district is situated a full copy of the order declaring the result of such election; and when such order is in favor of so making such district a Conservation and Reclamation District, it shall become such district without change of name or impairment of its obligations, upon the result of such election being declared and recorded as herein provided. (Id. sec. 5.)

Section 5a of this act, added by Acts 1919, 2d C. S., ch. 12, sec. 3, relates solely to Water Improvement Districts. See ante, art. 5107—50a.

Art. 5107—272. Laws governing districts.—Any Conservation and Reclamation District organized for the purpose for which Water Improvement Districts and Irrigation Districts have heretofore been organized, or any Water Improvement District or Irrigation District becoming a Conservation and Reclamation District under the terms hereof, shall be governed and controlled by the provisions of Chapter 87, Acts of the Thirty-fifth Legislature, Regular Session, and amendments thereof, except as herein otherwise provided. (Acts 1918, 4th C. S., ch. 25, sec. 6; Acts 1919, 2d C. S., ch. 12, sec. 1.)

For Acts 1917, ch. 87, see ante, arts. 5107—1 to 5107—117.

Art. 5107—273. Drainage District may become Conservation and Reclamation District.—Any drainage district heretofore organized or hereafter to be organized under the laws of this State, may, by a petition in writing to the Commissioners' Court, on hearing before such Court, as provided for in

Sections 2, 3, and 4, Chapter 118, Acts of the Thirty-second Legislature, passed at its regular session in 1911, and prior laws and amendments thereof, upon the order of said Court to that effect entered of record, become such conversation and reclamation district without change of name or impairment of its obligations. (Acts 1918, 4th C. S., ch. 25, sec. 7; Acts 1919, 2d C. S., ch. 12, sec. 2.)

For Acts 1911, c. 118, p. 245, secs. 2, 3, and 4, see ante, arts. 2568, 2569, and 2570.

Art. 5107—274. Laws governing districts.—Any Conservation and Reclamation District organized for the purpose for which Drainage Districts have heretofore been organized under Chapter 4, Title 47, of the Revised Civil Statutes of 1911, and amendments thereof, and prior laws relating to the same subject, and any such Drainage Districts becoming a Conservation and Reclamation District under the terms of this law shall be governed and controlled by the provisions of Chapter 4 of Title 47 of the Revised Civil Statutes of 1911 and amendments thereof, except as herein otherwise provided. (Acts 1918, 4th C. S., ch. 25, sec. 8.)

See ante, title 47, Drainage, chapter 4, Drainage by Districts, etc.

Art. 5107—275. Improvement District or Levee Improvement District may become Conservation and Reclamation District.—Any Improvement District or Levee Improvement District heretofore organized or hereafter to be organized under the laws of this State, may, by a petition in writing to the Commissioners' Court, on hearing before such Court, as provided in Sections 2, 3, 5, and 6, of Chapter 146, Acts of the Thirty-fourth Legislature, upon order of said Court to that effect, entered of record, become such Conservation and Reclamation District without change of name or impairment of its obligation. (Id. sec. 9.)

For Acts 1915, ch. 146, secs. 2, 3, 5, and 6, see post, arts. 5532, 5532a, 5533, and 5534.

Art. 5107—276. Laws governing districts.—Any Conservation and Reclamation District organized for the purposes for which levee improvement districts have heretofore been organized under Chapter 146, Acts of the Thirty-fourth Legislature, Regular Session, 1915, and prior laws relating to the same subject, or amendments thereof, or any levee improvement district becoming a Conservation and Reclamation District under the terms of this Act, shall be governed and controlled by the provisions of Chapter 146, Acts of the Thirty-fourth Legislature, Regular Session, and amendments thereof, except as herein otherwise provided. (Id. sec. 10.)

See post, title 83, chapter 2.

TITLE 74

JAILS

Art. 5108. (3132) Commissioners' court shall provide jails, etc.—The commissioners' courts of the several counties shall provide safe and suitable jails for their respective counties, and shall cause the same to be kept in good repair. (Act July 22, 1876, p. 57, sec. 4.)

Art. 5109. (3133) Sheriffs the keepers of jails, etc.—Each sheriff is the keeper of the jail of his county; and he shall safely keep therein all prisoners committed thereto by lawful authority, subject to the order of the proper court, and shall be responsible for the safe keeping of such prisoners. (Act Aug. 26, 1856; May 12, 1846. P. D. 2504, 5718. C. C. P. 49.)

Art. 5110. (3134) Jails shall be so constructed that the penalty of death may be executed within the walls thereof.—All jails hereafter erected shall be so constructed that the penalty of death may be conveniently executed within the walls thereof; and it shall be the duty of the commissioners' court of any county having a jail already erected, if the same is not so constructed as that the penalty of death can be conveniently executed therein, to have the construction of the same so altered as that the penalty of death may be conveniently executed within its walls, if practicable to do so without too great an expense to the county.

Art. 5111. (3135) Duty of commissioners' courts to see that jails are properly kept.—It shall be the duty of the commissioners' courts of the counties to see that the jails of their respective counties are kept in a clean and healthy condition, properly ventilated, and not over-crowded with prisoners, and that they are furnished with clean and comfortable mattresses and blankets sufficient for the comfort of the prisoners therein confined.

Art. 5112. (3136) United States marshal may use jail.—Sheriffs and jailers shall receive into the jails of their respective counties such prisoners as may be delivered or tendered to them by any United States marshal or his deputy for any district of Texas, and shall safely keep such prisoners until they are demanded by such marshal or his deputy, or are discharged by due course of law. (Act Aug. 30, 1856, p. 88, sec. 1. P. D. 4796.)

Art. 5113. (3137) Marshal liable for jail fees.—In the cases provided for in the preceding article the marshal, by whose authority such prisoners are received and kept, shall be directly and personally liable to the sheriff or jailer for the jail fees and all other expenses of the keeping of such prisoners, such fees and expenses to be estimated according to the laws regulating the same in other cases. (Id. sec. 2. P. D. 4797.)

TITLE 75

JURIES IN CIVIL CASES

CHAPTER ONE

JURORS—THEIR QUALIFICATIONS AND EXEMPTIONS

Art. 5114. (3138) (3009) Who are competent jurors.—All male persons over twenty-one years of age are competent jurors, unless disqualified under some provision of this chapter.

See Sayles' Practice, p. 141.

Art. 5115. (3139) (3010) Who are disqualified, in general.—No person shall be qualified to serve as a juror who does not possess the following qualifications:

1. He must be a citizen of the state and of the county in which he is to serve, and qualified under the constitution and laws to vote in said county; provided, that his failure to pay poll tax as required by law shall not be

held to disqualify him for jury service in any instance.

2. He must be a freeholder within the state, or a householder within the county.

3. He must be of sound mind and good moral character.

4. He must be able to read and write, except in cases provided for in the succeeding article.

5. He must not have served as a juror for six days during the preceding six months in the district court, or during the preceding three months in the county court.

6. He must not have been convicted of felony.

7. He must not be under indictment or other legal accusation of theft or of any felony. (Acts 1876, p. 78, secs. 1, 2, 26; Const., art. 16, p. 19; Amended Act 1903, 1 S. S. p. 15, sec. 1; Amended Act 1905, p. 207.)

See Sayles' Practice, p. 141; Thorp v. S., 59 S. W. 43; Taylor v. S., 81 S. W. 933; Ry. v. Lester, 89 S. W. 752; King v. S., 100 S. W. 387; Stone v. Pettus, 103 S. W. 413; Sinsheimer v. Edward Weil Co., 129 S. W. 187; Wickizer v. Williams, 173 S. W. 288.

Art. 5116. (3140) (3011) Exception in certain cases.—Whenever it shall be made to appear to the court that the requisite number of jurors able to read and write can not be found within the county, the court may dispense with the exception provided for in the fourth subdivision of the preceding article; and the court may in like manner dispense with the exception provided for in the fifth subdivision, when the county is so sparsely populated as to make its enforcement seriously inconvenient. (Id. secs. 16, 26.)

See Stone v. Pettus, 103 S. W. 413.

Art. 5117. (3141) (3012) Jurors disqualified to try a particular case.—The following persons shall be disqualified to serve as jurors in any particular case:

1. Any witness in the case.

2. Any person interested, directly or indirectly, in the subject matter of the suit.

3. Any person related by consanguinity or affinity within the third degree to either of the parties to the suit.

4. Any person who has a bias or prejudice in favor of or against either of the parties.

5. Any person who has sat as a petit juror in a former trial of the same case, or of another case involving the same questions of fact. (Acts 1876, p. 83, sec. 26.)

See Watson v. Dewitt Co., 46 S. W. 1062; T. & P. Ry. v. Elliott, 54 S. W. 410; Mundine v. Pauls, 66 S. W. 254; Ry. v. True, 80 S. W. 120; Ry. v. Sage, 94 S. W. 1074; Walker v. Dickey, 98 S. W. 658.

Art. 5118. (3142) (3013) Who are liable to jury service; who are exempt from jury service.—All competent jurors are liable to jury service, except the following persons:

1. All persons over sixty years of age.

2. All civil officers of this state and of the United States.

3. All overseers of roads.

4. All ministers of the gospel engaged in the active discharge of their ministerial duties.

5. All physicians and attorneys, engaged in actual practice.

6. All publishers of newspapers, school masters, druggists, undertakers, telegraph operators, railroad station agents, ferrymen, and all millers engaged in grist, flouring and saw mills.

7. All presidents, vice-presidents, conductors and engineers of railroad companies when engaged in the regular and actual discharge of the duties of their respective positions.

8. Any person who has acted as jury commissioner within the preceding twelve months.

9. All members of the national guard of this state under the provisions of the title, "Militia."

10. In cities and towns having a population of fifteen hundred or more inhabitants, according to the last preceding United States census, the active members of organized fire companies, not to exceed twenty to each one thousand of such inhabitants. (Id. p. 78, sec. 25.)

See Sayles' Practice, p. 143; Ex parte Krupp, 54 S. W. 590; Thomas v. S., 95 S. W. 1069.

Art. 5119. (3143) (3015) Where several fire companies in one town, etc.—If there be more than one organized fire company in such town or city, the whole number of exemptions provided for under subdivision 10 of the preceding article shall be equally divided between such companies. (Id. sec. 2.)

Art. 5120. (3144) (3016) List of members selected to be delivered to the clerk.—Before such exemption of any member of such fire company shall be made available, the members so to be exempted shall be selected by their respective companies; and their names shall be handed in to the clerks of the district and county courts, respectively, by the chief of the fire department of such city or town, or in case there be no such officer, then by the foreman of the company. (Id. sec. 2.)

Art. 5121. Filing of exemptions.—All persons summoned as jurors in any court of this state, who are exempt by statutory law from jury service; may, if they so desire to claim their exemptions, make oath before any officer authorized by law to administer oaths, or before the officers summoning such persons, stating their exemptions, and file said affidavit at any time before the convening of said court with the clerk of said court, which shall constitute sufficient excuse without appearing in person. (Act 1907, p. 216.)

CHAPTER TWO

JURY COMMISSIONERS FOR THE DISTRICT COURT, APPOINTMENT, QUALIFICATION, ETC.

Art. 5122. (3145) (3017) Jury commissioners, appointment and qualifications.—The district court of each county shall, at each term thereof, appoint three persons to perform the duties of jury commissioners for said court, who shall possess the following qualifications:

1. They shall be intelligent citizens of the county and able to read and write.

2. They shall be qualified jurors and freeholders of the county.

3. They shall be residents of different portions of the county.

4. They shall have no suit in such court

which requires the intervention of a jury. (Acts 1876, p. 79, sec. 4.)

See Sayles' Practice, p. 144; Whittle v. S., 66 S. W. 771; Columbo v. S., 145 S. W. 910; Woolen v. S., 150 S. W. 1165.

Art. 5123. (3146) (3018) Shall serve but once in a year.—The same person shall not act as a jury commissioner more than once in the same year. (Id. sec. 5.)

Art. 5124. (3147) (3019) Commissioners to be notified of their appointment, etc.—The court shall cause the persons appointed as jury commissioners to be notified by the sheriff or any constable of such appointment, and of the time and place when and where they are to appear before the court. (Id. sec. 4.)

See Medlin v. Seideman, 88 S. W. 250.

Art. 5125. (3148) (3020) Failing to attend, shall be fined.—If any person appointed a jury commissioner shall fail or refuse to attend and perform the duties required without a reasonable excuse, he shall be fined by the court in any sum not less than twenty-five dollars nor more than one hundred dollars. (Id. sec. 5.)

Art. 5126. (3149) (3021) Oath of jury commissioners.—When the persons appointed appear before the court, the judge shall administer to them the following oath: "You do swear faithfully to discharge the duties required of you as jury commissioners; that you will not knowingly elect any man as a juryman whom you believe to be unfit and not qualified; that you will not make known to any one the name of any juryman selected by you and reported to the court; that you will not, directly or indirectly, converse with any one selected by you as a juryman concerning the merits of any case to be tried at the next term of this court until after said cause may be tried or continued, or the jury discharged." (Id. sec. 4.)

Art. 5127. (3150) (3022) Failure of commissioners, etc.—If from any cause the jury commissioners should not be appointed at the time prescribed, or should fail to select jurors as required, or should the panels selected be set aside, or the jury lists returned into court be lost or destroyed, the court shall forthwith proceed to supply a sufficient number of jurors for the term under the provisions of this title, and may, when it may be deemed necessary, appoint commissioners for that purpose. (Id. sec. 13.)

See H. E. & W. T. Ry. v. Vinson, 38 S. W. 540; Sanches v. S., 46 S. W. 249; T. & P. Ry. v. Fambrough, 55 S. W. 188; Lang v. Henke, 55 S. W. 374; Ry. v. Pullen, 75 S. W. 1084; Gray v. Phillips, 117 S. W. 870; Schuh v. S., 124 S. W. 908.

Art. 5128. (3151) (3023) To be instructed as to their duties.—When the jury commissioners have been sworn and organized, the judge shall proceed to instruct them as to their duties, and shall designate to them for what weeks they shall select petit jurors, and the number of jurors selected for each week. Each person serving as jury commissioner shall receive as compensation therefor the same amount as now provided by law for the services of petit and grand jurors; provided, that no such commissioner shall receive any pay as such for any day for which he has received, or is entitled to receive, compensation as petit or grand juror. (Id. sec. 6; amended Act 1909, p. 178.)

Art. 5129. (3152) (3024) To be kept free from intrusion and not to separate.—The jury commissioners shall retire in charge of the sheriff or constable to some suitable apartment, and shall be kept free from the intrusion of any person during their session, and shall not separate, without leave of the court, until they have completed the duties required of them. (Id.)

See Medlin v. Seideman, 88 S. W. 250.

Art. 5130. (3153) (3025) Clerk to furnish stationery and list of exempt persons, etc.—It shall be the duty of the clerk to furnish the jury commissioners with all necessary stationery, and also with a list of the names of all persons appearing, from the records of the court, to be exempt or disqualified from serving on the petit jury at each term. He shall also deliver to them the envelope mentioned in article 5148, and shall take their receipt therefor, showing whether or not such seal remained unbroken. (Id. secs. 4, 6; Acts 1876, p. 170, sec. 6; Revision, 1879.)

Art. 5131. (3154) (3026) To have use of assessment roll.—It shall be the duty of the county clerk, or other legal custodian of the same, to furnish the jury commissioners with the last assessment roll of the county. (Acts 1876, p. 79, sec. 6.)

Art. 5131a. Compensation.—Each jury commissioner of either the district court or the county court shall receive as compensation for his services the sum of Three Dollars for each day and each fraction of a day that he may serve as a jury commissioner in said court. (Acts 1919, ch. 26, sec. 2.)

CHAPTER THREE

JURY COMMISSIONERS FOR THE COUNTY COURT, APPOINTMENT, QUALIFICATIONS, ETC.

Art. 5132. (3155) (3027) Jury commissioners for the county court, appointment and qualification, powers and duties.—The county court shall, at its first term after the thirty-first day of December and the thirtieth day of June of each year, appoint three persons to perform the duties of jury commissioners for said court, who shall possess the same qualifications as jury commissioners for the district court, and the same proceedings shall be had in the county court by the officers thereof and by the commissioners for procuring jurors as are required by this title for similar proceedings in the district court, except as modified by the provisions of this chapter. (Acts 1876, p. 81, sec. 15; Acts 1884, p. 27.)

See White v. S., 78 S. W. 1066.

Art. 5133. (3156) (3028) Oath.—The oath to be administered to the jury commissioners for the county courts shall be as follows: "You do solemnly swear faithfully to discharge the duties required of you as jury commissioners; that you will not knowingly elect any man as a juryman whom you believe to be unfit and not qualified; that you will not make known to any one the name of any juryman selected by you and reported to the court; that you will not, directly or indirectly, communicate with any one selected by you as a juryman concerning the merits of any case to be tried by this court within the next six months, until said case shall have been tried or otherwise disposed of." (Acts 1876, p. 79, sec. 4.)

Art. 5134. (3157) (3029) To select jurors for six months.—Such commissioners shall select jurors for all the terms of the county court to be holden within six months next after the adjournment of the first term of said court after the said thirty-first day of December and the thirtieth day of June of each year, and the county judge shall designate the number of jurors to be so selected for each term and week. (Acts 1884, p. 28.)

CHAPTER FOUR

PROCEEDINGS OF THE JURY COMMISSIONERS IN THE SELECTION OF JURORS

Art. 5135. (3158) (3030) Selection of jurors, how made.—The jury commissioners shall select from the citizens of the different portions of the county, liable to serve as jurors, one hundred persons, or a greater or less number if so directed by the court, free from all legal exceptions, of good moral character, of sound judgment, well-informed, and, so far as practicable, able to read and write, to serve as petit jurors at the next term, if in the district court, and for the next six months, if in the county court, and shall write the names of such persons on separate pieces of paper, as near the same size and appearance as may be, and fold the same so that the names can not be seen. (Acts 1876, p. 79, sec. 7.)

Art. 5136. (3159) (3031) Drawing of jurors, how conducted.—The names of the persons so written and folded shall be deposited in a box, and, after being well shaken and mixed, the commissioners shall draw therefrom the names, one by one, of thirty-six persons, or a greater or less number where the judge has so directed, for each week of the term of the district court or terms of the county court for which a jury may be required, and shall record such names as they are drawn upon as many separate sheets of paper as there are weeks of such term or terms for which juries will be required. (Id.)

See Sayles' Practice, p. 147.

Art. 5137. Special venire list.—The jury commissioners shall furthermore select one man for every one hundred of population in any county, or a greater or less number if so directed by the court, and these shall constitute a special venire list, from which shall be drawn the names of those who shall answer summons to the special venire facias, after the petit jurors for the term have been drawn on any venire one time during such term, and the drawing of the veniremen from the special venire list shall be done in the same manner as prescribed for other jurors, and no citizen who has served as a petit juror for one week during any term of court shall, during said term, be compelled to answer summons to more than one special venire facias; nor shall any citizen be compelled to answer summons to a special venire facias more than twice during any one term of court; provided, that the provisions of this chapter shall not apply in counties having a population of less than two thousand inhabitants. (Acts 1905, p. 17; Acts 1907, p. 269, sec. 13.)

See Moore v. S., 95 S. W. 514; Keith v. S., 94 S. W. 1044; Wallace v. S., 97 S. W. 471.

Repealed by Acts 1907, p. 272, sec. 13, as to counties designated in chapter 5.

Art. 5138. (3160) (3032) Lists to be certified, sealed up and indorsed.—The several lists of names drawn, as provided in the preceding article, shall be certified under the hands of the commissioners to be the lists drawn by them for the said several weeks, and shall be sealed up in separate envelopes, indorsed, "List of petit jurors for the —— week of the ——— term of the ——— court of ——— county," [filling the blanks]. (Act 1876, p. 79, sec. 7.)

Art. 5139. (3161) (3033) To be delivered to the judge.—The commissioners shall write their names across the seals of the envelopes and deliver them to the judge. (Id.)

Art. 5139a. (3162) (3034) And by him to the clerk.—The judge shall deliver such envelopes to the clerk, or to one of his deputies in open court, and the court may instruct the clerk to indorse on any of such envelopes that the jury for that week shall be summoned for some other day than Monday of said week. (Id. sec. 8.)

Art. 5140. (3163) (3035) Clerk and deputies to be sworn.—The judge shall at the same time administer to the clerk and each of his deputies an oath, in substance as follows: "You do solemnly swear that you will not open the jury lists now delivered to you, nor permit them to be opened until the time prescribed by law; that you will not, directly nor indirectly, converse or communicate with any one selected as a juror concerning any case pending for trial in this court at its next term," if in the district court; or if in the county court, "within the next six months." (Id. secs. 8, 28.)

Art. 5141. (3164) (3036) Same.—If for any reason such oath should not be administered to any of the deputies, or should the clerk subsequently appoint a deputy, the clerk shall administer to such deputy a like oath. (Id. sec. 8.)

Art. 5142. (3165) (3037) District court commissioners to make out jury lists for county court.—The jury commissioners for the district court shall, in addition to the other duties required of them, make out for the use of the jury commissioners of the county court a complete list of the names of all the persons selected by them as grand and petit jurors, and shall place said list in an envelope and seal the same and write their names across the seal; and shall address said envelope to the jury commissioners of the county court of the proper county, and shall deliver the same to the district judge in open court. (Acts 1876, p. 170, sec. 1.)

Art. 5143. (3166) (3038) Which shall be delivered to the county clerk.—The district judge shall, without delay, deliver said envelope to the county clerk or one of his deputies, and, at the time of delivery, administer to said clerk or deputy, as the case may be, the following oath: "You do solemnly swear that you will, to the best of your ability, safely keep this envelope, and that you will neither open the same nor allow it to be opened, except as provided by law; and that you will cause it to be delivered to the jury commissioners of the county court next hereafter appointed in and for this county." (Id. sec. 2.)

Art. 5144. (3167) (3039) And by him to the commissioners for his court.—At the first term of the county court thereafter held, at which jury commissioners are appointed, it shall be the duty of the county clerk to deliver said envelope to the jury commissioners or one of them appointed at said term, and take a receipt therefor; and said receipt shall state whether the seal of said envelope be broken or not. (Id. sec. 3.)

Art. 5145. (3168) (3040) Persons included in such lists not to be selected as jurors in county court.—After the jury commissioners, appointed by said county court, shall have assembled for business, they shall open said envelope and read said list of names, and no person named on said list shall be selected as a juror by said commissioners. (Id. sec. 4.)

Art. 5146. (3169) (3041) County court commissioners to make out lists for district court.—The jury commissioners of the county court shall, in addition to the other duties required of them, make out for the use of the jury commissioners of the district court a complete list of the names of all persons selected by them as jurors, and shall place said list in an envelope and seal the same, and write their names across the seal and address said envelope to the jury commissioners of the district court of the proper county, and shall deliver the same to the county judge in open court. (Id. sec. 5.)

Art. 5147. (3170) (3042) To be delivered to the district clerk.—The county judge shall, without delay, deliver said envelope to the district clerk, or one of his deputies, and, at the time of delivery, administer to said clerk, or his deputy, as the case may be, the following oath: "You do solemnly swear that you will, to the best of your ability, safely keep this envelope, and that you will neither open the same nor allow it to be opened, except as provided by law, and that you will cause it to be delivered to the jury commissioners of the district court next hereafter appointed in and for this county." (Id. sec. 6.)

Art. 5148. (3171) (3043) And by him to the commissioners for his court.—At the first term of the district court thereafter held, it shall be the duty of the clerk to deliver said envelope to the jury commissioners or one of them appointed at said term, and to take a receipt therefor, and said receipt shall state whether the seal of said envelope be broken or not. (Id. sec. 7.)

Art. 5149. (3172) (3044) Persons included in such lists not to be selected as jurors in district court.—After the jury commissioners appointed at said term of the district court shall have assembled for business, they shall open said envelope and read said list of names, and no person named on said list shall be selected as juror by said commissioners. (Id. sec. 8.)

Art. 5150. (3173) (3045) Lists of jurors to be destroyed.—It shall be the duty of the jury commissioners, in both the district and county courts, before leaving the apartment in which they shall have selected jurors, to destroy said list of names; and it shall be unlawful for them, or any of them, to make known to any person the name of any juror on said lists. (Id. sec. 9.)

See White v. S., 78 S. W. 1066.

CHAPTER FIVE

SELECTION OF JURORS IN COUNTIES WITH CITIES OF CERTAIN POPULATION

Art. 5151. Selection of jurors in certain counties.—That between the 1st and 15th days of August of each year, in all counties in this State having therein a city or cities containing a population aggregating twenty thousand (20,000) or more people, as shown by the United States census of date next preceding such action, the tax collector of such county or one of his deputies, together with the tax assessor of such county or one of his deputies, together with the sheriff of such county or one of his deputies, together with the county clerk of such county or one of his deputies, together with the district clerk of such county or one of his deputies, shall meet at the court house of such county and shall select from the list of qualified jurors of such county as shown by the tax lists in the tax assessor's office for the current year, the jurors for service in the district and county courts of such county for the ensuing year in the manner hereinafter provided. (Acts 1907, p. 269, sec. 1; Acts 1911, p. 150.)

Art. 5152. Names written on cards.—The aforesaid officers shall write the names of all men who are known to be qualified jurors under the law, residing in their respective counties, on separate cards of uniform size and color, writing also on said cards, whenever possible, the postoffice address of the jurors so selected. (Acts 1907, p. 269, sec. 2.)

Art. 5153. Cards placed in wheel, etc.—The cards containing the aforesaid names shall be deposited in a circular, hollow wheel, to be provided for such purpose by the commissioners' court of the county; and said wheel shall be made of iron or steel and shall be so constructed as to freely revolve on its axle; and said wheel shall be kept locked at all times, except when in use as hereinafter provided, by the use of two separate locks, so arranged that the key to one will not open the other lock; and said wheel, and the clasps thereto attached into which the locks shall be fitted, shall be so arranged that said wheel can not be opened unless both of said locks are unlocked at the time the wheel is opened; and the keys to such locks shall be kept, one by the sheriff and the other by the district clerk; and the sheriff and the clerk shall not open such wheel, nor permit the same to be opened by any person, except at the time specified in this chapter, and in the manner and by the persons herein specified; but said sheriff and clerk shall keep such wheel, when not in use, in a safe and secure place, where the same can not be tampered with. (Id. sec. 3.)

Art. 5154. Jurors drawn by whom, when and how.—Not less than ten days prior to the first day of a term of court, the clerk of the district court, or one of his deputies, and the sheriff, or one of his deputies, in the presence and under the direction of the district judge, if jurors are to be drawn for the district court, or the clerk of the county court, or one of his deputies, and the sheriff, or one of his deputies, in the presence and under the direction of the county judge, if

jurors are to be drawn for the county court, shall draw from the wheel containing the names of jurors, after the same has been well turned so that the cards therein are thoroughly mixed, one by one the names of thirty-six jurors, or a greater or less number where such judge has so directed, for each week of the term of the district or county courts for which a jury may be required, and shall record such names as they are drawn upon as many separate sheets of paper as there are weeks for such term or terms, for which jurors will be required; and, at such drawing, no person other than those above named shall be permitted to be present; and the officers attending such drawing shall not divulge the name of any person that may be drawn as a juror to any person. (Id. sec. 4.)

Art. 5155. List to be certified, etc.—The several lists of names drawn, as provided in the preceding article, shall be certified under the hand of the clerk or the deputy doing the drawing, and the district or county judge in whose presence said names of jurors were drawn from the wheel, to be the list drawn by said clerk for the said several weeks, and shall be sealed up in separate envelopes indorsed, "List of petit jurors for the ——— week of the ——— term of the ——— court of ——— county," (filling in the blanks properly) and the clerk, or his deputy doing the drawing, shall write his name across the seals of the envelopes and shall then immediately deliver the same to the judge in whose presence such names were drawn, or to his successor in office, in case of the death of such judge before such delivery can be made to him. (Id. sec. 5.)

Art. 5156. Judges to deliver list to clerk.—The judge shall deliver such envelopes to the clerk, or to one of his deputies, and shall in his discretion instruct the clerk to indorse on any of such envelopes that the jury for that week shall be summoned for some other day than Monday of said week, and the judge shall, at the same time, administer to the clerk and to each of his deputies an oath in substance as follows: "You and each of you do solemnly swear that you will not open the jury lists now delivered to you, nor permit them to be opened, until the time prescribed by law, nor communicate to any one the name or names of the men appearing on any of the jury lists, that you will not, directly or indirectly, converse or communicate with any one selected as juror concerning any case pending for trial in this court at its next term. So help you God." (Id. sec. 6.)

Art. 5157. Jurors drawn; disposition of cards.—When the names are drawn, as provided in article [5154], the cards containing such names shall be sealed in separate envelopes, indorsed, "Cards containing the names of jurors for the ——— week of the ——— term of the ——— court of ——— county," (filling in the blanks properly); and said envelopes shall be retained securely by the clerk, unopened, until after the jury has been impanelled for such week; and, after such jurors so impanelled have served four or more days, the envelopes containing the cards bearing the names of the jurors for that week shall then be opened by the clerk, or his deputy, and those cards bearing the names of men who have not been impanelled and who have not served as many as four days, shall be immediately returned to the wheel by the clerk, or his deputy; and the cards bearing the names of the men serving as many as four days shall be put in a box provided for that purpose for the use of the officers mentioned in article 5151, who shall next select the jurors for the wheel. (Id. sec. 7.)

Art. 5158. Loss of wheel, etc.—If, for any reason, the wheel containing the names of jurors be lost or destroyed, with the contents thereof, or if all the cards in said wheel be drawn out, such wheel shall immediately be refurnished, and cards bearing the names of jurors shall be placed therein immediately, in accordance with articles 5151, 5152 and 5153; and the judge of the court desiring jurors for a regular or special term of his court may have the same selected in accordance with chapters 2, 3 and 4 of this title, in the event that such new wheel can not be furnished in time to comply with the provisions of this chapter. (Id. sec. 8.)

Section 9 of this act provides for selection of special venire in counties with cities of 20,000 population. See C. C. P., art. 660.

CHAPTER FIVE A

INTERCHANGEABLE JURIES

Art. 5158½. Applicable to counties having three or more district courts; criminal courts.—The provisions of this law shall be applicable only to such counties of this State as may now maintain three or more district courts, or in which three or more district courts may be hereafter established. A criminal court in any county possessed of jurisdiction in felony cases shall be considered a district court within the meaning of this Act. (Acts 1917, ch. 78, sec. 1.)

Art. 5158½a. Jury wheel law to remain in force except as modified.—All provisions of the Act of the Thirtieth Legislature of 1907, approved April 18, 1907, and being Articles 5151 to 5158, inclusive, Revised Civil Statutes of Texas, 1911, commonly known as the Jury Wheel Law, shall remain in full force in the counties governed by this Act, except as modified by the special provisions of this Act. (Id. sec. 2.)

Art. 5158½b. Judges shall meet and determine number of jurors required; designation of judge to organize juries.—In every county in this State which now has three or more district courts it shall be the duty of the judges of said district courts to meet together, as soon as practicable after the passage of this Act, and determine approximately the number of jurors that are reasonably necessary for jury service in all the county and district courts of such county, for each week during the period of time the said courts may hold during the year, and shall thereupon order the drawing of such number of jurors from the wheel for each of said weeks, which said jury shall be known as the general panel of jurors for service in all county and district courts of such county for the respective weeks for which they are designated to serve. A majority of the said district judges are authorized to act in carrying out the provisions of this Act. They can at any time, as suggested by their experience in enforcing this Act, increase or diminish the number of jurors to be selected

for any week and shall order said jurors drawn for as many weeks in advance of service as they may deem proper. They shall also designate from time to time the judge to whom the said general panel of jurors shall report for duty, and said judge, for the period of time that he is selected to act in that capacity, shall organize said juries and have immediate supervision and control of the same. (Id. sec. 3.)

Art. 5158½c. Summoning jurors; hearing excuses.—The said jurors so limited in number shall, after being regularly drawn from the wheel, be served by the sheriff to appear and report for jury service before the judge of the said district court, as designated in the order of the said judges directing the selection of said general panel. Said judge shall hear the excuses of the said jury and swear them in for service for the week that they are to serve, to try all cases that may be submitted to them in any of the county or district courts in said county. (Id. sec. 4.)

Art. 5158½d. Use of jurors impaneled; additional jurors.—Said jurors, when impaneled, shall constitute a general panel for the week, for service as jurors in all the county and district courts in said county, and shall be used interchangeably in all of the said courts. In the event of a deficiency of said jurors at any given time to meet the requirement of all said courts, the judge having control of said general panel for the week shall order such additional jurors to be drawn from the wheel as may be sufficient to meet such emergency, but such jurors shall act only as special jurors and shall be discharged as soon as their services are no further needed. Resort to the wheel shall be had in all cases to fill out the general panel, except where waived by the parties or their attorneys; provided that by written agreement entered into by all parties to any cause or suit, or the attorneys of record in such suit or cause filed therein, the sheriff or other officer in attendance upon said court, may summon the jury needed, or any part of same, in such cause or suit by talesmen, without resorting to the jury wheel, and in such cause or suit said jurors so selected shall be paid as if regularly drawn from the jury wheel. (Acts 1917, ch. 78, sec. 5; Acts 1918, 4th C. S., ch. 59, sec. 1.)

Art. 5158½e. Commissioners' court to provide jury room; custody of jurors.—The commissioners court of each county subject to the provisions of this Act shall set apart for the use and convenience of said general panel of jurors some room or place in or near the court house, which shall be comfortably furnished and fitted up for them to stay when not required for actual jury service. Said quarters shall be occupied by said panel when not in service and they shall remain in or conveniently near thereto so as to be at all times subject to duty in any court when called for, without delaying the proceedings of such court. The sheriff shall assign one of his deputies to look after the said panel, call them when needed by the judges, provide for their wants and to have the general custody and control of them when not in actual service. (Acts 1917, ch. 78, sec. 6.)

Art. 5158½f. Placing names on the general panel.—The names of the Jurors shall be placed upon the general panel in the order in which they are drawn from the wheel, and jurors shall be assigned for service from the top thereof in the order in which they shall be needed, and jurors returned to the general panel after service in any one of the Courts, shall be enrolled at the bottom of the list in the order of their respective return, provided however, that the trial judge, upon the demand of any party to any case reached for trial by jury, or of the attorney for any such party, shall cause the names of all the members of the general panel available for service as jurors in such case, to be placed in a hat or other receptacle and well shaken and said trial Judge shall draw therefrom the names of a sufficient number of jurors from which a jury may be selected to try such case, and such names shall be transcribed in the order drawn on the jury list from which the jury is to be selected to try such case. (Acts 1917, ch. 78, sec. 7; Acts 1919, ch. 6, sec. 1.)

Art. 5158½g. Reducing number in general panel.—When it becomes necessary to diminish the general panel for the week of its selection on account of lack of work in any court or for any other cause, the judge having supervision of said jury for the week shall designate the number to remain. He shall cause the clerk to draw from the names of the general panel the number required and those jurors whose names are so drawn shall continue in service for the remainder of the week and the others excused. (Acts 1917, ch. 78, sec. 8.)

Art. 5158½h. Not to apply to capital and lunacy cases.—This Act shall not apply to a selection of jurors in lunacy cases or in capital cases. (Id. sec. 9.)

Art. 5158½i. When act takes effect.—This Act shall take effect on September 1, 1917, and all laws in conflict herewith are hereby repealed. (Id. sec. 10.)

CHAPTER SIX

SELECTED JURORS—HOW SUMMONED, ETC.

Art. 5159. (3174) (3046) Clerk to make out jury lists and deliver to sheriff.—Within not more than thirty days and not less than ten days prior to each term of the court, it shall be the duty of the clerk of the district and county courts, respectively, to open the list of jurors selected for such term, and to make out a copy of the same, duly certified under his hand and the seal of his office, and deliver the same to the sheriff. Where the judge has directed that the jurors for any week shall be summoned for some other day than Monday, the clerk shall note such order for the information of the sheriff. (Acts 1876, p. 171, sec. 10.)

Art. 5160. (3175) (3047) Sheriff to notify jurors.—On the receipt of such lists it shall be the duty of the sheriff immediately to notify the several persons named in such lists to be in attendance on the court on the day and week for which they were respectively drawn to serve as jurors for said week. (Id.)

Art. 5161. Special venire, how summoned.—Whenever district court shall have convened, and a day shall have been set for

the trial of the different capital cases which call for a special venire, the men whose names may have been drawn to answer summons to the venire facias in the different capital cases shall be immediately notified by the sheriff to be in attendance on the court on the day and week for which they were respectively drawn to serve as veniremen for said day and week; and such notice shall be given at least one day prior to the time when such duty is to be performed, exclusive of the day of service. (Acts 1905, p. 17.)

Art. 5162. (3176) (3048) Notice to jurors, how served.—Such notice may be orally delivered by the sheriff to the juror in person, or in case such juror can not be found, then a written memorandum thereof, signed by the sheriff officially, may be left at the juror's place of residence, with some member of his family over sixteen years of age. (Acts 1876, p. 171.)

See Freeman v. Wilson, 149 S. W. 413; Miller v. Burgess, 154 S. W. 591.

Art. 5163. (3177) (3049) Time of service.—Such notice shall be served at least three days prior to the first day of the term of court, exclusive of the day of service.

Art. 5164. (3178) (3050) Sheriff's return.—The sheriff executing such summons shall return the lists on the first day of the term of the court at which such jurors are to serve, with a certificate thereon of the date and manner of service upon each juror; and, if any of said jurors have not been summoned, he shall also state the diligence used to summon them, and the reason why they have not been summoned. (Id.)

CHAPTER SEVEN

JURIES FOR THE WEEK—HOW MADE UP

Art. 5165. (3179) (3051) Jurors for the week, how selected.—On Monday of each week of the court for which a jury shall be summoned, and for which there may be jury trials, or where the jury trials for the week have been set for some other day, then on such day the court shall select thirty qualified jurors, or a greater or less number, in its discretion, to serve as jurors for the week. (Acts 1876, p. 171.)

See Sayles' Practice, p. 150.

Art. 5166. (3180) (3052) If not selected on day appointed, may be subsequently done.—Should such selection from any cause not be made on the day appointed, it may be made on any subsequent day.

Art. 5167. (3181) (3053) If practicable, to be of jurors selected by jury commissioners.—Such jurors shall be selected from the names included in the jury list for the week, if there be the requisite number of such in attendance who are not excused by the court.

See G. C. & S. F. Ry. v. Gilvin, 55 S. W. 985; Ry. v. Perry, 85 S. W. 62; Galveston, H. & S. A. Ry. Co. v. Miller, 191 S. W. 374; Leahy v. Timon, 204 S. W. 1029.

Art. 5168. (3182) (3054) May be filled up, how.—If the requisite number of such jurors be not in attendance at any time, the court shall direct the sheriff to summon a sufficient number of qualified persons to make up the requisite number of jurors. (Acts 1876, p. 80, sec. 11.)

See T. & P. Ry. v. Fambrough, 55 S. W. 188; Lange v. Henke, 55 S. W. 374; G. C. & S. F. Ry. v. Gilvin, 55 S. W. 985; Ry. v. Perry, 85 S. W. 62; Leahy v. Timon, 204 S. W. 1029.

Art. 5169. (3183) (3055) May be adjourned.—The court may adjourn the whole number of jurors for the week, or any part thereof, to any subsequent day of the term, but jurors shall not be paid for the time they may so stand adjourned. (Id. p. 83, sec. 24.)

Art. 5170. (3184) (3056) Oath to be administered to the sheriff when jurors not selected are to be summoned by him.—Whenever it may be necessary to summon jurors who have not been selected by jury commissioners under the provisions of this title, the court shall administer to the sheriff and each of his deputies the following oath: "You do solemnly swear that you will, to the best of your skill and ability, and without bias or favor toward any party, summon such jurors as may be ordered by the court; that you will select none but impartial, sensible and sober men, having the qualifications of jurors under the law; that you will not, directly or indirectly, converse or communicate with any juryman touching any case pending for trial; and that you will not by any means attempt to influence, advise or control any juryman in his opinion in any case which may be tried by him. So help you God." (Id. sec. 12.)

See Gray v. Phillips, 117 S. W. 870.

Art. 5171. (3185) (3057) Court may hear excuses of jurors.—The court may hear any reasonable excuse of a juror, supported by oath or affirmation, and may either release him entirely or until some other day of the term.

Art. 5172. (3186) (3058) Defaulting juror to be fined.—Should any juror who has been lawfully notified fail to be in attendance on the court in obedience to such notice without some reasonable excuse, to be judged of by the court, he shall be fined in any sum not less than ten nor more than one hundred dollars. (Id. sec. 10.)

CHAPTER EIGHT

JURY TRIALS—AUTHORIZED WHEN AND HOW

Art. 5173. (3187) (3059) Right of trial by jury to remain inviolate, subject, etc.—The right of trial by jury shall remain inviolate, subject to the following rules and regulations. (Const., art. 1, sec. 15.)

Art. 5174. (3188) (3060) Must be demanded and jury fee be paid.—No jury trial shall be had in any civil suit, unless an application therefor be made in open court and a jury fee be deposited, or an affidavit be made of inability to make such deposit, as hereinafter prescribed. (Const., art. 5, secs. 10, 17.)

See ante, art. 1945; Sayles' Practice, pp. 425, 430; W. U. Tel. Co. v. Thompson, 44 S. W. 402; Gibson v. Singer Sewing Mach. Co., 147 S. W. 285.

Art. 5175. (3189) (3061) Time of demand.—Any party to a civil suit in the district or county court desiring to have the same tried by jury, shall make application therefor in open court on the first day of the term of the court at which the suit is to be tried, unless the same be an appearance

case, in which event the application shall be made on default day. (Acts 1876, p. 171, sec. 11.)

See Sayles' Practice, pp. 412, 425, 431; San Jacinto Oil Co. v. Culberson, 101 S. W. 197; Magee v. Snell, 197 S. W. 364; Rusk County v. Hightower, 202 S. W. 802.

Art. 5176. (3190) (3062) Same.—Should any court be in session when the preceding article shall go into effect, the application for a jury trial in any cause pending therein, and which is to be tried at such term, may be made at any time before the case is called for trial.

Art. 5177. (3191) (3063) Rules for justices' courts elsewhere prescribed.—The manner of applying for a jury trial in the justices' courts, and the proceedings thereon, are prescribed in the title relating to justices' courts.

Art. 5178. (3192) (3064) Call of docket for demands for jury trial.—On the first day of each term of the court, the court shall call over the docket, except appearance cases, and shall note thereon in each case whether or not a jury trial is applied for therein, and by which party.

See ante, art. 1935.

Art. 5179. (3193) (3065) Same as to appearance docket.—On the call of the appearance docket at each term of the court, the court shall in like manner note in each appearance case whether or not a jury trial is applied for, and by whom.

See W. U. Tel. Co. v. Thompson, 44 S. W. 402.

Art. 5180. (3194) (3066) Jury fee.—The party applying for a jury trial in the district or county court shall, on the same day, deposit with the clerk, to the use of the county, a jury fee of five dollars if in the district court, and of three dollars if in the county court. (Acts 1876, p. 171, sec. 11.)

See Sayles' Practice, pp. 425, 433; W. U. Tel. Co. v. Thompson, 44 S. W. 402; Magee v. Snell, 197 S. W. 364; Arispe v. Clark, 204 S. W. 373.

Art. 5181. (3195) (3067) Oath of inability to make jury fee deposit.—The deposit mentioned in the preceding article shall not be required when the party shall, within the time limited for making such deposit, file with the clerk an affidavit in writing signed by him, to the effect that he is unable to make such deposit, and that he can not, by the pledge of property or otherwise, obtain the money necessary for that purpose. (Acts 1876, p. 81, sec. 18.)

Art. 5182. (3196) (3068) Cases heretofore entered on jury trial docket, excepted.—The preceding article shall not apply to cases which have been heretofore properly entered on the jury trial docket in accordance with former laws.

Art. 5183. (3197) (3069) Order of court.—Upon a compliance with the foregoing provisions, the court shall order the clerk to enter the suit on the jury docket. (Acts 1876, p. 171, sec. 11.)

Art. 5184. (3198) (3070) Clerk to keep jury docket.—It shall be the duty of the clerks of the district and county courts each to keep a docket, to be styled, "The Jury Docket," in which shall be entered in their order the cases in which jury trials have been ordered by the court. (Id.)

Art. 5185. (3199) (3071) Jury trial day to be fixed.—The court shall, by an order entered on the minutes, designate any day during the term for the taking up of the jury docket and the trial of causes thereon; and such order may be revoked or changed at discretion. (Acts 1876, p. 81, sec. 14.)

See ante, art. 1945.

Art. 5186. (3200) (3072) Application for jury not to be withdrawn, unless, etc.—When one party has applied for a jury trial, as herein provided, he shall not be permitted to withdraw such application without the consent of the parties adversely interested.

See Cocke v. Texas & N. O. R. Co., 103 S. W. 407.

Art. 5187. (3201) (3073) When application withdrawn, court may permit jury fee to be withdrawn also.—When a party who has applied for a jury trial has been permitted under the preceding article to withdraw such application, the court may, in its discretion, by an order permit him to withdraw also his jury fee deposit.

CHAPTER NINE

CHALLENGES

Art. 5188. (3202) (3074) Challenge to the array of jurors.—Any party to a suit which is to be tried by a jury may, before the jury is drawn, challenge the array of jurors upon making it to appear that the officer summoning the jury has acted corruptly, and has wilfully summoned jurors known to be prejudiced against the party challenging or biased in favor of the adverse party. (Acts 1876, p. 83, sec. 25.)

See Sayles' Practice, p. 435; Sanches v. S., 46 S. W. 249; R'y v. Pullen, 75 S. W. 1084; R'y v. Perry, 85 S. W. 62; Hayward Lumber Co. v. Cox, 104 S. W. 403; Freeman v. McElroy, 149 S. W. 428.

Generally under this chapter, see Miller v. Burgess, 154 S. W. 591.

Art. 5189. (3203) (3075) Not allowed, when.—No challenge to the array shall be entertained where the jurors have been selected by jury commissioners under the provisions of this title.

See Columbo v. S., 145 S. W. 910; Freeman v. McElroy, 149 S. W. 428.

Art. 5190. (3204) (3076) Challenge to array must be in writing, etc.—All challenges to the array must be in writing, setting forth distinctly the grounds of such challenge, and must be supported by the affidavit of the party, or some other credible person.

See G. C. & S. F. R'y v. Gilvin, 55 S. W. 985.

Art. 5191. (3205) (3077) Court shall decide at once.—When a challenge to the array is made, the court shall hear evidence, and shall decide without delay whether the challenge shall be sustained or not.

Art. 5192. (3206) (3078) Proceedings when challenge to the array is sustained.—If the challenge be sustained, the array of jurors summoned shall be discharged, and the court shall order other jurors to be summoned in their stead, and shall direct that the officer who summoned the persons so discharged, and on account of whose misconduct the challenge has been sustained, shall not summon any other jurors in the case. (Id.)

Art. 5193. (3207) (3079) Challenge to a particular juror.—A challenge to an individual juror is either—

1. A challenge for cause; or
2. A peremptory challenge.

See Sayles' Practice, p. 437; Groesbeck v. Crow, 40 S. W. 1028; Nat. Bk. of Dangerfield v. Ragland, 51 S. W. 661.

Art. 5194. (3208) (3080) Challenge for cause.—A challenge for cause is an objection made to a particular juror, alleging some fact which, under the provisions of the first chapter of this title, disqualifies him to serve as a juror in any case, or in the particular case, or which, in the opinion of the court, renders him an unfit person to sit on the jury.

See R'y v. Sage, 94 S. W. 1074; Sayles' Practice, p. 440; Gulf, C. & S. F. Ry. Co. v. Dickens, 118 S. W. 612.

Art. 5195. (3209) (3081) On trial of challenge for cause, evidence to be heard.—Upon a challenge for cause the examination shall not be confined to the answers of the juror, but other evidence may be heard in support of or against the challenge.

See Laguerenne v. Farrar, 61 S. W. 953; Gulf, C. & S. F. Ry. Co. v. Dickens, 118 S. W. 612.

Art. 5196. (3210) (3082) Juror not to be asked certain questions.—In examining a juror, he shall not be asked a question the answer to which may show that he has been convicted of an offense which disqualifies him, or that he stands charged by indictment or other legal accusation with theft or any felony.

See Sinsheimer v. Edward Weil Co., 129 S. W. 187.

Art. 5197. (3211) (3083) Peremptory challenge.—A peremptory challenge is made to a juror without assigning any reason therefor.

See Sayles' Practice, p. 438.

Art. 5198. (3212) (3084) Number of peremptory challenges in district court.—Each party to civil suit in the district court shall be entitled to six peremptory challenges. (Acts 1871, p. 61, sec. 6.)

See Waggoner v. Dodson, 69 S. W. 993; Logan's Heirs v. Logan, 72 S. W. 416.

Art. 5199. (3213) (3085) In the county court.—Each party to civil suit in the county court shall be entitled to three peremptory challenges. (Acts 1878, p. 83, sec. 27.)

See T. & P. Ry. v. Stell, 61 S. W. 980; Ry. v. Bingham, 89 S. W. 1113.

Art. 5200. (3214) (3086) Challenge to a particular juror made orally, etc.—Challenges for cause and peremptory challenges to a particular juror may be made orally on the formation of a jury to try the case, as provided in articles 5206 and 5208.

Art. 5201. (3215) (3087) Court to decide challenges promptly.—The court shall decide without delay any challenge to a particular juror; and when the challenge is sustained the juror shall be discharged from further attendance or from the particular case, as the case may be.

CHAPTER TEN

FORMATION OF THE JURY FOR THE TRIAL OF A CAUSE

Art. 5202. (3216) (3088) Clerks to provide a box for use in drawing jurors.—The clerks of the district and county courts shall each provide and keep a box with a sliding lid, suitable for the purposes indicated in this chapter. (Acts 1876, p. 82, sec. 21.)

Art. 5203. (3217) (3089) Shall place names of jurors in the box.—When the parties to a civil cause, which is to be tried by a jury, have announced themselves ready for trial and no challenge to the array is made, the clerk shall write the names of all the regular panel for the week on separate slips of paper, as near the same size and appearance as may be, and shall place such slips in the box provided for in the preceding article, and shall mix them well. (Id.)

See G. H. & S. A. Ry. v. Wessendorf, 39 S. W. 132.

Generally under this chapter, see Galveston, H. & S. A. Ry. Co. v. Miller, 191 S. W. 374.

Art. 5204. (3218) (3090) Shall draw and record names.—The clerk shall draw from the box, in the presence of the court, the names, one by one, of twenty-four jurors, if in the district court, or so many as there may be, if there be a less number in the box; and the names of twelve jurors if in the county court, or so many as there may be if there be a less number in the box; and shall write the names as they are drawn upon several slips of paper and deliver one slip to each of the parties to the suit or their attorneys. (Id. sec. 22.)

See Morgan v. Baker, 40 S. W. 27; Gray v. S., 49 S. W. 699.

Art. 5205. (3219) (3091) Where names of full jury not found in the box.—Where there are not so many names drawn from the box as twelve, if in the district court, or six, if in the county court, the court shall direct the sheriff to summon such number of qualified persons as it may deem necessary to complete the panel; and the names of the persons so summoned shall be placed in the box and drawn and entered upon slips as provided in the preceding article.

See Gray v. State, 49 S. W. 699; Houston Electric Co. v. Seegar, 117 S. W. 900.

Art. 5206. (3220) (3092) Challenge for cause to be made, when.—When as many as twelve or more jurors, if in the district court, or six or more, if in the county court, are drawn, and the slips containing their names are delivered to the parties, if either party desire to challenge any juror for cause, such challenge shall now be made.

See ante, art. 5200.

Art. 5207. (3221) (3093) When number reduced, etc., by challenge for cause.—If the number of jurors be reduced by challenge for cause to less than twelve in the district court, or six in the county court, the court shall order other jurors to be drawn or summoned, as the case may be, and entered upon the slips in place of those who have been set aside for cause.

See Waggoner v. Sneed, 118 S. W. 547.

Art. 5208. (3222) (3094) Peremptory challenge to be made, when.—When a juror has been challenged and set aside for cause, his name shall be erased from the slips furnished the parties; and, if there be remaining on such slips not subject to challenge for cause, twelve names, if in the district court, or six names, if in the county court, the parties shall proceed to make their peremptory challenges if they desire to make any. (Id.)

See ante, art. 5200.

Art. 5209. (3223) (3095) Lists to be returned to the clerk and jury to be called.—When the parties have made their peremptory challenges, or when they decline to make any, they shall deliver their slips to the clerk; and the clerk shall, if the case be in the district court, call off the

first twelve names on the slips that have not been erased, and if the case be in the county court, the clerk shall call off the first six names on the slips that have not been erased, who shall constitute the jury to try the case.

Art. 5210. (3224) (3096) When jury is left incomplete.—When, by peremptory challenges, the jury is left incomplete, the court shall direct such number of other jurors to be drawn or summoned, as the case may be, as the court may consider sufficient to complete the jury; and the same proceedings shall be had in selecting and impaneling such jurors as are had in the first instance.

Ry. v. Wessendorf, 39 S. W. 132; Waggoner v. Sneed, 118 S. W. 547.

Art. 5211. (3225) (3097) Jurors to be sworn.—When the jury has been selected, such of them as have not been previously sworn for the trial of civil causes, shall be sworn by the court, or under its direction.

See post, art. 5212.

CHAPTER ELEVEN

OATH OF JURORS IN CIVIL CASES

Art. 5212. (3226) (3098) Jury shall be sworn.—Before the trial of any civil cause, the jurors shall be sworn by the court, or under its direction. (Act Feb. 13, 1858, sec. 10; P. D. 3984.)

Art. 5213. (3227) (3099) Form of oath.—The form of the oath to be administered to jurors in civil cases shall be in substance as follows: "You, and each of you, do solemnly swear that in all cases between parties which shall be to you submitted, you will a true verdict render, according to the law, as it may be given you in charge by the court, and to the evidence submitted to you under the rulings of the court. So help you God." (Id.; P. D. 3984.)

CHAPTER TWELVE

JURIES—HOW CONSTITUTED, AND THEIR VERDICTS

Art. 5214. (3228) (3100) Jury in district court.—The jury in the district courts shall be composed of twelve men; but the parties may by consent agree, in a particular case, to try with a less number. (Const., art. 5, sec. 13.)

See Gray v. Freeman, 84 S. W. 1105; Crosby v. Stevens, 184 S. W. 705.

Art. 5215. (3229) (3101) Death or inability of jurors in district court pending trial.—Where, pending the trial of any case in the district court, one or more of the jurors, not exceeding three, may die or be disabled from sitting, the remainder of the jury shall have power to render the verdict; but in such case the verdict shall be signed by every remaining member of the jury. (Id.; Acts 1876, p. 82, sec. 19.)

See ante, arts. 1966, 1977; Gray v. Freeman, 84 S. W. 1105; Routledge v. Elmendorf, 116 S. W. 156; Waggoner v. Sneed, 118 S. W. 547; Sunset Wood Co. v. Broadnax, 136 S. W. 487.

Art. 5216. (3230) (3102) Jury in county and justices' courts.—The jury in the county courts and in courts of justices of the peace shall be composed of six men. (Id. sec. 27.)

Art. 5217. (3231) (3103) Entire jury must concur in verdict.—No verdict shall be rendered in any cause except upon the concurrence of all the members of the jury trying the same. (Id. sec. 19; Const., art. 5, sec. 13.)

See ante, art. 1977.

CHAPTER THIRTEEN

COMPENSATION OF JURORS OF THE DISTRICT AND COUNTY COURTS IN CIVIL CASES

Art. 5218. (3232) (3104) Pay of jurors.—Each juror in civil cases shall receive two dollars and fifty cents for each day, and for each fraction of a day, he may serve or attend as such juror. (Acts Nov. 12, 1866, p. 201, sec. 1; Acts 1911, p. 104.)

Art. 5218a. Same subject.—Each juror in the district or county court, except special veniremen, whose compensation is now fixed by law, shall receive Three Dollars for each day and for each fraction of a day that he may attend as such juror to be paid out of the jury fund of the county in which he may serve as a juror. (Acts 1919, ch. 26, sec. 1.)

Art. 5219. (3233) (3105) Certificate of jury service.—The amount due to jurors shall be paid by the county treasurer upon the certificate of the clerk of the district or county court in which such service was rendered; which certificate shall state the service, when rendered, by whom rendered, and the amount due therefor. (Acts Nov. 12, 1866, p. 201, sec. 1.)

Art. 5220. (3234) (3106) Jury scrip receivable at par for all county taxes.—All certificates issued under the provisions of the foregoing article shall, without further action by any authority, be receivable at par for all county taxes. The same may be transferred by delivery, and no rule or regulation made by the commissioners' court or other officer or officers of a county shall defeat the right of the holder of any such certificate to pay county taxes therewith. (Id.)

TITLE 76

JUVENILES

CHAPTER ONE

THE STATE JUVENILE TRAINING SCHOOL

Art. 5221. (2941) Name of institution; board of trustees; tenure; qualifications; compensation; approval of accounts.—The institution known as "The State Institution for the Training of Juveniles," located at Gatesville, shall be named and known as "The State Juvenile Training School," hereafter to be designated as "The Training School." The government of the said school shall be vested in a board of trustees, composed of six persons. The members of the board shall be appointed by the governor, with the advice and consent of the senate, and may be removed by him for cause stated in writing, after an opportunity to be heard. Two members of the board so appointed shall serve for a term of two years; two members for a term of four years, and two members for a term of six years, the length of their respective terms to be determined by lot. All succeeding appointments shall be for a term of six years each; provided, that if vacancies occur, appointments shall be made for the unexpired term.

The members appointed shall be persons of high character and ability, known for their interest in the welfare of the unfortunate classes. Each member shall receive $5.00 per day and traveling and other necessary expenses while engaged in the performance of official duties, for which the comptroller shall issue his warrant on the account, verified by said member and approved by the chairman of the board. The chairman of said board shall not approve any expense account of any trustee until same has been allowed by a majority of the board. (Acts 1909, p. 103. Acts 1913, S. S., p. 7, sec. 1, amending Art. 5221, Rev. St. 1911.)

Art. 5222. (2942) Election of chairman and secretary; meetings of board.—Said board shall elect one of their members as chairman and one as secretary of the board. The board shall hold four regular meetings each year and shall hold such special meetings at such times and places as are deemed necessary, when requested so to do in writing by two members of the board. (Id. sec. 2, amending Art. 5222, Rev. St. 1911.)

Art. 5223. (2943) Board to have advisory control; employment of superintendent; annual reports.—The board of trustees shall have advisory control of the said training school. It shall employ the superintendent. It shall make an annual report to the governor setting forth in full all the facts pertaining to the school, including receipts and disbursements; the number and salaries of all employés; the number of inmates received and discharged and the number still on hand, and estimates for appropriation required for two years of maintenance. It shall include in its report the general condition of the students committed to its care, and the success with which the reformatory measures of the school have been administered. (Id. sec. 3, amending Art. 5223, Rev. St. 1911.)

Art. 5224. (2944) Provision of suitable instruction; what shall be taught.—Said board of trustees and the superintendent shall provide for, establish and maintain suitable instruction and training of the inmates of said institution. Said instruction shall include common school, as well as industrial, or agricultural branches, or either or all, as may be deemed desirable by said board and superintendent; provided that it shall be the duty of said board and superintendent to arrange that each student of said training school shall receive a reasonable amount of instruction in the school of letters and industrial branch each year. Each inmate shall be given definite instruction and training in some useful occupation. Each inmate shall be given such moral training and discipline as he is capable of receiving. The prime end to be sought by said board is to reform, educate and train the children committed to the institution, into industrious and useful law-abiding citizens, strengthen their self-control and place them in a moral environment that will build character and inculcate correct ideas of civic virtue and responsibility. (Id. sec. 4, amending Art. 5224, Rev. St. 1911.)

Art. 5225. (2945) The superintendent; removal; qualifications; oath and bond.—The board of trustees shall appoint a superintendent of said school who shall not be removed without cause, which shall be stated by said board in writing and filed with the secretary of state for public record, and in case board desires to dismiss said superintendent it shall give him two months' notice. The superintendent shall be a man of high moral character, education and training, and who shall have had experience in handling wayward and delinquent boys. The superintendent shall before entering upon the duties of his office take the oath of office prescribed by the constitution, and shall give a bond in the sum of $10,000 payable to the governor or his successors in office, conditioned for the faithful performance of the duties of his office. Said bond shall be signed by the superintendent and two good and sufficient sureties, or by himself and some solvent surety company, authorized to transact business in Texas, and shall be approved by the secretary of state and be deposited in his office. (Id. sec. 5, amending Art. 5225, Rev. St. 1911.)

Art. 5226. (2946) Powers and duties of superintendent.—The superintendent shall have control and management of the training school, subject to the provisions of this law and the regulations adopted by the board.

1. It shall be the duty of the superintendent to keep a register in which he shall enter the name, date of reception, previous moral character, habits and education, so far as can be ascertained, his conduct and deportment, educational and vocational advancement while in said school, the discharge, death, escape, commutation of time, parolment and punishment of each inmate or person admitted to said institution.

2. He shall see that the buildings are kept in good and sanitary order, and that the premises are kept in a healthful and cleanly condition.

3. He shall keep or cause to be kept, the books of the institution fully exhibiting all moneys received and disbursed, the source from which received and purposes for which the same is expended; provided, that all supplies for the institution shall be purchased by the state purchasing agent the same as for other similar institutions. The said books shall give a complete record of all products produced on the farm, or received from any source, and shall show the disposition made of the same, whether sold or consumed. Said books shall at all times be open for the inspection of the board of trustees or the governor, or to any one appointed by the governor to inspect or audit said books.

4. At the first regular meeting after the first of the months of March and September the superintendent shall make a semi-annual report in duplicate, in writing under oath, showing in detail the fiscal operations of the institution since the last report, giving under appropriate heads the total number of inmates in the institution at the date of the report, the number received since last report, the number discharged since last report, the number paroled, or otherwise discharged, with such recommendations for the improvement of management or other matter as he may deem proper. One of said reports, shall be presented to the board of trustees at their regular quarterly meeting and the other shall be forwarded to the governor.

5. It shall be the duty of the superintendent to make supplemental reports in writing to the board of trustees on any matter within the scope of his duties, when requested to do so by the president of the board of trustees. (Id. sec. 6, amending Art. 5226, Rev. St. 1911.)

Art. 5227. (2947) Employment of subordinate officers, teachers and employés; character and habits of employés; salaries; accounts.—The superintendent shall employ and may dismiss for cause stated in writing to the board, such sub-ordinate officers, teachers and employés as may be deemed requisite, and necessary to the conduct, administration and maintenance of said institution, up to the standards of efficiency and utility essential to accomplish the best results; provided that it shall be a violation of the rules of said institution for any employé to use tobacco or intoxicating liquors in any form while on duty, and should any employé be guilty of violating this rule, it shall be the duty of the superintendent to discharge such employé.

The salaries and compensation of all subordinate officers, teachers and employés aforesaid, shall be fixed by the board of trustees, not to exceed the amounts appropriated for same, and the same shall be prescribed by said board in the form of an itemized account sworn to by said superintendent; and the same shall be paid monthly on the comptroller's warrants based upon such sworn itemized account aforesaid. Said account shall contain the name and address of each person and the amount due and for what service; provided, that no account for salary shall be presented by said superintendent until the same has been fixed by said board as herein provided. (Id. sec. 7, amending Art. 5227, Rev. St. 1911.)

Art. 5227a. Religious services; chaplain; salary.—The board of trustees shall provide for religious services at said state institution, for the benefit of the inmates thereof, and to that end shall employ a chaplain, who shall be an ordained minister of the gospel, and the superintendent shall require all inmates in said institution, who are physically able, to attend at least one religious service on each Sunday. Such chaplain shall, under the direction of the superintendent, devote his time to the religious and moral training and education of said inmates, and to visiting sick inmates at such times and occasions as may be necessary, and shall receive an annual salary not to exceed ($720.00) seven hundred and twenty dollars; provided, such chaplain may also be a teacher, such as is provided in article 2947. (Acts 1911, p. 211, sec. 1.)

Art. 5228. (2948) Who to be confined; discharge of inmates.—There shall be confined in said state training school for boys all persons confined in the state institution for the training of juveniles at the time this law takes effect, and all persons committed to the state training school for boys, and all persons who may be sentenced to a term in said state institution for the training of juveniles before this law takes effect, and their present status and terms of sentence shall not be affected by this law; also all juveniles committed to said institution by any court within this state acting under authority of law. Provided, that all inmates sentenced to the state institution for the training of juveniles shall only be required to serve out their unexpired terms in said institution, at which time they shall be released. (Acts 1909, p. 103. Acts 1913, S. S, p. 7, sec. 8, amending Art. 5228, Rev. St. 1911.)

Art. 5229. (2949) Same; separation of races.—Hereafter all male persons under the age of seventeen years who shall be convicted of a felony, or other delinquency in any court within this state, unless his sentence be suspended, as provided by law, or otherwise disposed of or unless by reason of the length of the term for which he is sentenced, he is required under the law to be confined in the state penitentiary, shall be confined in the Texas training school for boys, provided that the white boys shall be kept, worked and educated entirely separate from the boys of other races, and shall be kept apart in all respects. (Id. sec. 9, amending Art. 5229, Rev. St. 1911.)

Art. 5230. (2950) Grading and promotion of inmates; leave of probation; final discharge; return to institution.—The said board of trustees shall establish and maintain in the said school a system of grading and promotion on a basis of the moral, intellectual and industrial advancement of the pupils. When the superintendent is satisfied that any inmate has acquired sufficient self-control, moral habits and industrial efficiency, and suitable employment, under responsible, sober and moral person, can be found for the said inmate, he shall with the approval of the chairman of said board of trustees, grant said inmate a "leave of probation." For the purpose of securing homes and employment for the inmates of the school and of visiting and supervising them while on probation, a furlough officer shall be employed who shall, when not engaged with his duties as furlough officer, assist in teaching, and in the general work of the school, under the direction of the superintendent. When employment has been secured for any inmate he shall be sent out on a furlough, with the condition that the person furloughed, and his employer, shall send a written report, at the end of each month thereafter for a period of twelve months, to the furlough officer, stating the habits and demeanor of the said furloughed person. If each of the said reports be favorable the superintendent shall recommend to the governor that a full release be granted to the said furloughed person and that his term of commitment be terminated. Upon the termination of the term of commitment by the governor the furloughed person shall be finally discharged, with none of his legal rights impaired or abrogated. In the event any of said monthly reports shall be deemed unfavorable, or for any reason be not sent as herein provided, and the said superintendent should for any reason become convinced before the expiration of the said twelve months that the said furloughed person should be returned to the state training school for further training or discipline, the said furloughed person shall, in that event, forfeit his leave of probation, and shall be returned to said institution. If his said em-

ployers shall fail or refuse to return said furloughed person to said institution, it shall be the duty of the furlough officer, any sheriff, or other peace officer, upon notice from the superintendent, to take said furloughed person into custody, under the same conditions as if said person were an escaped inmate, and return him to said institution in the manner prescribed in the law for apprehending and returning escaped inmates. No inmate of the said state training school for boys, who shall be committed to said school by a judgment of a district court after the conviction upon a charge of felony, shall be granted a leave of probation, furloughed or released before the expiration of the term for which he shall be so committed, unless same be recommended by the superintendent and a majority of the board of trustees, and is approved by the governor. In case any such inmate convicted of a felony or other delinquency is granted a leave on probation, as herein provided, the procedure shall be the same as herein provided for inmates not confined on a judgment of felony; provided, that the governor shall, at all times, have full power to grant an unconditional pardon or commute sentence of any inmate committed to said school. (Id. sec. 10, amending Art. 5230, Rev. St. 1911.)

Art. 5231. (2951) Indeterminate sentence; limitation of term; majority of inmate.—Commitments to the training school shall be upon the indeterminate sentence plan; provided that no inmate shall be committed to said institution for a longer period than five years; provided, that no inmate shall remain or be detained in said institution or upon parole under the control of the officers of said school, after he has reached the age of twenty-one years. (Id. sec. 11, amending Art. 5231, Rev. St. 1911.)

Art. 5232. Inmates to be classified; care and training.—The superintendent shall divide inmates into such classes and shall house, feed and train such inmates in such manner as he may deem best for the development and advancement of the child. (Id. sec. 12, amending Art. 5232, Rev. St. 1911.)

Art. 5233. (2952) Shelter, food, clothing, books, etc.—All inmates of said institution shall be provided with shelter, wholesome food and suitable clothing, books, means of healthful recreation, and other material necessary for their training, at the expense of the state, except as otherwise provided by law. (Id. sec. 13, amending Art. 5233, Rev. St. 1911.)

Art. 5234. (2953) Escape of inmates; failure to return on breach of furlough; apprehension; costs.—If any inmate confined in the state training school for boys shall escape therefrom, or if on leave of probation or furlough, and is ordered returned and the employer of said furloughed person fails or refuses to return him as provided in this law, it shall be the duty of the superintendent of said institution or any officer or employé of same, or the sheriff or any peace officer, to apprehend and detain him. It shall be lawful for any person to apprehend such escaped inmate and forthwith deliver him to any sheriff or peace officer; any such escaped inmate shall be returned to said school by any sheriff, peace, furlough or probation officer; and the costs of his return shall be paid by the county from which said inmate was sentenced; provided, if any inmate committed to said institution on a charge of felony shall escape, the costs of his return to said institution shall be paid by the state, on warrant of comptroller, based upon a sworn itemized statement of said expense account, approved by said superintendent. (Id. sec. 14, amending Art. 5234, Rev. St. 1911.)

Art. 5234a. Corporal punishment prohibited, except; mode of punishment; violation of act; penalty.—Corporal punishment in any form shall not be inflicted upon the inmates of said institution except as a last resort to maintain discipline, and then only in the presence of the superintendent, and a resident nurse; and at no time shall any inmate be struck more than twenty times, and that only with such instrument and in such manner as will inflict reasonable and moderate punishment, considering the age, size and strength of the culprit and the strength of the person administering such punishment, and at no time shall any weapon or instrument of torture be used, or any instrument which by its make, coupled with the manner of its use would be calculated to inflict bodily injury. Any one violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be fined not less than $25.00 nor more than $100.00 or sentenced to not less than thirty days, nor more than ninety days in jail, or by both such fine and imprisonment. (Id. sec. 15.)

CHAPTER TWO

GIRLS' TRAINING SCHOOL

Art. 5234b. School to be established.—That there be established and maintained at some place in the state of Texas, to be selected by persons in authority, where suitable farm lands may be secured, a school upon the cottage plan for the education and training of the dependent and delinquent girls of the state, to be known as the girls' training school. (Acts 1913, p. 289, sec. 1.)

Art. 5234c. Purpose of school; duties of board of control; hospital.—It shall be the purpose of this home and school to provide an institution of training for girls who, by their own misconduct, or by their unfavorable surroundings, have become dependent or delinquent and need the care and attention not heretofore provided, and in the accomplishment of the purposes of this Act, the board of control shall provide wholesome and proper quarters, and exercise and diversion, and shall make provision for training in all of the useful arts and sciences to which women are adapted, to prepare them for future womanhood and independence. A proper hospital is to be provided, and instructions given therein in nursing, sanitation and hygiene. (Id. sec. 2.)

Art. 5234d. School shall be under state board of control for eleemosynary institutions; if no such board, shall be under board of control, composed and appointed, how; terms; site, etc.—The girls' training school shall be under the control and management of the state board of control for the eleemosynary institutions of

this state. Should there be no such board created, then the school shall be under the management of a board of control, composed of five persons, one of whom shall be the superintendent of public instruction of the state of Texas; another shall be the ranking professor of domestic economy in the college of industrial arts; the remaining three to be appointed by the governor, at least one of whom shall be a woman.

One of three members to be selected by the governor shall be appointed for a term to end January 1, 1915, one other for a term to end January 1, 1917, and the third for a term to end January 1, 1919. At the expiration of each term a successor shall be appointed by the governor then in office for a term of six years. The said board is hereby empowered to select a site for the location of said school, to purchase the same and to build and equip such modern buildings, on the cottage plan, as the appropriation herein provided for will permit. (Id. sec. 3.)

Art. 5234e. Superintendent, officials and teachers; salaries; removal of superintendent.—The board of control shall employ as superintendent of this school a woman of previous experience and training in a similar or like institution, who shall have power to appoint and discharge all subordinate officials and teachers for the school which it may be necessary to employ. The board of control shall fix the salary of the superintendent and all employés. The said board shall also have authority to remove the superintendent on account of inefficiency, incompetency, inattention to the duties of a superintendent, misconduct or malfeasance in office, and the decision of said board as to such inefficiency, incompetency, inattention to the duties of a superintendent, misconduct or malfeasance in office shall be final. (Id. sec. 4.)

For sections 5 and 6 of this act, see ante, arts. 2201a, 2201b.

Art. 5234f. Dismissal or parole of inmates; duties and powers of board, superintendent, etc.—No girl shall be dismissed or paroled until some suitable home has been found for her and only then upon the written recommendation of the superintendent to the board of control, or she has become married with the consent of the authority of such institution and the superintendent, provided, that the provision of this Act shall not be construed to interfere with the governor of the state in exercising executive clemency when in his judgment it may seem best. Any girl who is thus paroled from the institution shall be under the supervision and guidance of the superintendent, who shall require that she write bi-weekly letters to the superintendent or matron of the school for the first six months, and monthly letters thereafter; that the person under whose care or employ the girl is placed shall write monthly letters to the superintendent or matron of the school for the first six months and semi-annually thereafter.

The board of control, superintendent or some other employé of said training school may visit the place where the girl is living or is employed, and it shall be the duty of the person having the girl in custody to answer all questions asked by said visiting committee concerning the conduct, employment or treatment of said girl. If, in the judgment of the board, it should be to the best interests of the girl that she be returned to the school, the board is hereby empowered to have her returned. (Id. sec. 7.)

Art. 5234g. Rules and regulations; time of pupils, how distributed, etc.—The superintendent, with the approval of the board of control, shall make all necessary rules and regulations for the government of the training school, and shall provide that the time of the pupils is properly distributed between the school of letters and the industrial and domestic pursuits, according to the needs of pupil and the facilities at hand. Provision shall be made for giving diplomas or certificates of proficiency for graduates from the nurses training school or any industrial school that may be established by the directors. (Id. sec. 8.)

For section 9 of this act see Penal Code, art. 334a.

Art. 5234h. Expenses of members of board, etc.—If, at the time this bill becomes effective, there shall be no board of control and it becomes necessary for the board herein authorized to be created, to act, they shall be paid such amounts as will be necessary to cover the actual expenses incurred in the discharge of the duties as members of such board. (Id. sec. 10.)

Art. 5234i. Appropriation, not accessible until subscriptions from counties and cities, etc.; committee to secure funds, etc.—There is hereby appropriated out of the general revenue of the state of Texas, not otherwise appropriated, the sum of twenty-five thousand dollars ($25,000.00) for the purchase of land for a site and for the erection of buildings herein provided for, provided, however, that such appropriation shall not be accessible until a like sum of $25,000.00 shall have been subscribed and paid to said board of control, by private subscription or gifts from counties and cities and for the purpose of securing such funds of $25,000.00 and such other funds as they may be able to secure by private subscription or gifts from counties and cities of this state, there is hereby created the following committee composed of five members to work in conjunction with said board of control: President Humane Society of Texas, President Federated Clubs of Texas, President Mothers' Council and Parent-Teachers Association, and two other persons to be selected by the governor.

This committee in conjunction with the board of control of said school, are hereby empowered to adopt such plans as they deem wise and expedient to be used in the securing of such funds.

Authority is hereby granted unto the several cities and counties of this state to donate from their general funds such amounts as the proper authorities deem wise to be used in the establishment of the said school. (Id. sec. 11.)

CHAPTER THREE

STATE TRAINING SCHOOL FOR NEGRO BOYS

Art. 5234½. School established; management and control; rules and regulations.—There shall be established and maintained at the Ferguson State Farm in Madi-

son County, a school for the education and training of delinquent negro boys, to be named and known as the State Training School for Negro Boys, the government of which shall be vested in the Board of Prison Commissioners, of this State. The said Board of Prison Commissioners shall manage and control said institution in accordance with the law, rules and regulations now governing the State Training School for Boys, located in Coryell County, Texas, so far as said law, rules and regulations are applicable, and practicable. Said Board of Prison Commissioners shall have the same powers as are now conferred upon the Board of Trustees of the State Juvenile Training School and the State Training School for Boys, in the management of the institution, known as the State Training School for Negro Boys. (Acts 1917, 3d C. S., ch. 7, sec. 1.)

Art. 5234½a. Transfer of inmates to new school.—All negro boys that are now confined in the State Training School for Boys, located in Coryell County, Texas, shall as soon as this law be passed and take effect and not later than January, 1, 1918, be transferred to the Ferguson State Farm in Madison County, by the said Board of Prison Commissioners, and the Board of Trustees of the said State Juvenile Training School for Boys, are hereby authorized and are required to deliver to said Board of Prison Commissioners all negro boys now confined in said institution, in order that they may be transferred to the Ferguson State Farm. (Id. sec. 2.)

Art. 5234½b. Land and buildings to be provided by Board of Prison Commissioners.—The Board of Prison Commissioners shall set apart for the use of the State Training School for Negro Boys, all necessary grounds, lands, equipments, buildings, etc., now under the supervision of said Board of Prison Commissioners at the Ferguson State Farm, which shall be used for the State Training School for Negro Boys, provided that the unexpended balance of the public free school fund apportioned to said Colored Juveniles at Gatesville in Coryell County, be transferred for their credit to Madison County. (Id. sec. 4.)

CHAPTER FOUR

STATE HOME FOR DEPENDENT AND NEGLECTED CHILDREN

Art. 5234¾. Establishment; board for selection of site, etc.—That there be established and maintained at some place in the State of Texas to be selected by the Lieutenant Governor, Comptroller and Superintendent of Public Instruction, where suitable farm lands may be secured, a home or homes upon the cottage plan for the proper care, education and training of dependent and neglected white children, to be known as the State Home for Dependent and Neglected Children. And the Lieutenant Governor, together with the Comptroller and State Superintendent of Public Instruction, shall constitute a Board for the purpose of selecting a site and having said buildings erected, and shall have full power and authority to do and perform the things necessary to carry out the purposes of this Act. (Acts 1919, ch. 159, sec. 1; Acts 1919, 2d C. S., ch. 33, sec. 1.)

Art. 5234¾a. Purpose of home.—It shall be the purpose of this Home and School to provide an institution of care, education and training for the dependent and neglected white children of this State, who by their unfavorably surroundings have become dependent or children who have become neglected from the want of care or attention of their parents or guardian and need the care and attention not heretofore provided and in the accomplishment of this Act the Board of Control shall provide wholesome and proper quarters, exercise and diversion and shall make provisions for training in all the useful arts and sciences to which such children are adapted and to prepare them for manhood and womanhood and independence. (Acts 1919, ch. 159, sec. 2.)

Art. 5234¾b. Board of control; members; appointment; terms of office.—The State Home for Dependent and Neglected White Children shall be under the control and management of a board of control composed of five persons, one of whom shall be the State Superintendent of Public Instruction of the State of Texas; another shall be the State Health Officer; the remaining three to be appointed by the Governor of Texas, at least one of whom shall be a woman. One of the three members to be selected by the Governor shall be appointed for a term to end January 1st, 1921, one of them for a term to end January 1, 1925. At the expiration of each term a successor shall be appointed by the Governor then in office for a term of six years. (Id. sec. 3.)

Art. 5234¾c. Superintendent; employment; qualifications; compensation; other officers.—The Board of Control shall employ as superintendent of this Home a person of previous experience and training in a similar institution who shall have power to appoint and discharge all subordinate officials and teachers for said Home which may be necessary to employ, and said board shall fix the salary of Superintendent and all employés, and said board shall also, have full authority to remove the Superintendent on account of inefficiency, incompetency, inattention to the duties of a Superintendent, misconduct or malfeasance in office, and the decision of said board as to such inefficiency, inattention to the duties of a superintendent, misconduct or malfeasance in office shall be final. (Id. sec. 4.)

Art. 5234¾d. Commitment of children.—Whenever any child, male or female, under the age of sixteen years shall be brought before any juvenile court within this State, upon petition of any person within this State, or the Humane Society, or any institution of a similar purpose or character, charged with being a dependent or neglected child as these terms are defined in the Statutes of this State the Court may, if in the opinion of the Judge, the Home for Dependent and Neglected Children is the proper place for said children, commit such child to said Home during its minority; provided that no child who is feebleminded, epileptic or insane and that any child who is afflicted with a venereal, tubercular or other communicable disease shall not be assigned to this institution until cured of such disease or diseases. No child shall be admitted to the Home until he has been examined by the physician of the Home

to be appointed by the Board of Control of same and such physician issuing certificate showing the exact state or condition in reference to said qualifications herein above enumerated. (Id. sec. 5.)

Art. 5234¾e. Same subject; transcript of proceedings.—It shall be the duty of the Court committing any child to the State Home for Dependent and Neglected Children to prepare a transcript of all proceedings had and done in same and attach thereto a certificate of the County Health Officer of such County to said transcript. If it be a girl or baby or infant committed to said Home, the Judge of the Court shall designate some reputable woman to convey said girl, baby or infant to said Institution. The cost of conveying any child to said Institution shall be paid out of the general fund of the county from which they are committed and provided that no compensation shall be allowed beyond actual and necessary expenses of the party conveying and the child conveyed. (Id. sec. 6.)

Art. 5234¾f. Dismissal from home; adoption of inmates.—No child shall be dismissed until some suitable home has been found for it or it has become able to be self-supporting and only then upon the written recommendation of the Superintendent to the Board of Control or when any ward committed to said Institution has become married with the consent of the Board of Control and Superintendent. Children shall be placed for adoption only in homes where proper support and training can and will be given. Any child above the age of ten years and not adopted, but who goes out from this Home, either under the custody of some adult or as self-supporting shall continue under the supervision and guidance of the Board of Control of said Institution who shall require that the person or persons under whose care the child is placed or the child himself or herself shall write bi-weekly letters to the Board of Control for first six months and then monthly thereafter. The Board of Control, the Superintendent of said Home or some other employé of said Home may visit the place where said child is adopted, living or employed and it shall be the duty of the person having said child in adoption or custody to answer all questions asked by said visiting committee concerning the conduct, employment, treatment or conditions of said child. If in the judgment of the Board of Control it should be to the best interests of said child that it be returned to said Home, the Board is hereby empowered to have it returned. (Id. sec. 7.)

Art. 5234¾g. Rules and regulations for Home.—The Board of Control shall make all necessary rules and regulations for the proper government of said Home, and shall see to it that the time of children is properly distributed between the school of letters and the industrial and domestic pursuits according to what is deemed for their best interests and the facilities at hand, and the Superintendent shall from time to time make such recommendation to said Board as may to him or her seem to the best interests of all the children committed to said Home.—(Id. sec. 8.)

Art. 5234¾h. Diplomas to inmates.—It shall be the duty of the Board of Control to give diplomas or certificates of proficiency for grades of literary or any industrial school that may be established by the Board. (Id. sec. 9.)

Art. 5234¾i. Persons who must and who may not be committed to Home.—It shall be the duty of all Juvenile Courts in this State to give preference to this Home to those children of tender years, and said courts shall not commit to said Home children under the age of sixteen years who are known to be habitual violators of the laws of this State or who have therefor been committed to any other institution of this State or to the State School for the Training of Juveniles at Gatesville and Gainesville, Texas, and the Board of Control is hereby authorized and empowered to refuse admittance to such juveniles or if, after they are committed to the State Home for Dependent and Neglected Children, their conduct should be of such nature and character as to contaminate the interests of other children in said Home, the Board of Control, upon proper application, shall have the authority and it shall be the duty of the Superintendent of the State School for the training of juveniles to accept said child in said institution. (Id. sec. 10.)

For sec. 11 of this act see Penal Code, art. 334b.

Art. 5234¾j. Expenses of board of control.—If at the time this Act becomes effective there shall be no Board of Control and it becomes necessary for the Board herein authorized to be created to act they shall be paid such amounts as will be necessary to cover actual expenses incurred in the discharge of the duties of such Board. (Id. sec. 12.)

Section 13 makes an appropriation.

TITLE 77

LABOR

CHAPTER ONE

BUREAU OF LABOR STATISTICS

Art. 5235. Bureau to be under commissioner of labor.—The bureau of labor statistics shall be under the charge and control of a commissioner of labor statistics. (Acts 1909, p. 59, sec. 1.)

Art. 5236. Oath; bond; office to be at capitol; governor may remove.—The commissioner of labor statistics shall be appointed by the governor, whose term of office shall begin on the first day of February of every odd-numbered year, and shall continue for two years and until his successor is appointed and qualified. The commissioner may be removed for cause by the governor, record thereof being made in his office, and any vacancy shall be filled in the same manner as the original appointment. Said commissioner shall give bond in the sum of two thousand dollars, with sureties to be approved by the governor, conditioned for the faithful discharge of the duties of his office, and he shall also take the oath of office prescribed by the constitution. He shall have an office in the capitol building; and, except as hereinafter provided, he shall safely keep and shall deliver to his successors all records, papers, documents, correspondence and property pertaining to or coming into his hands by virtue of his office. (Id. sec. 2.)

Art. 5237. Biennial report of commissioner; his general duties.—The commissioner shall collect, assort, systematize and present in biennial reports to the governor, statistical details relating to all departments of labor in Texas, and especially as affecting or bearing upon the commercial, social, educational and sanitary conditions of the employés and their families, the means of escape from dangers incident to their employment, the protection of life and health in factories and other places of employment, the labor of children and of women and the number of hours of labor exacted of them, and, in general, all matters and things which affect or tend to affect the prosperity of the mechanical, manufacturing and productive industries of this state, and of the persons employed therein. Said commissioner shall, also, as fully as may be done, collect reliable reports and information from each county, showing the amount and condition of the mechanical, mining and manufacturing interests therein, and all sites offering natural or acquired advantages for the location and operation of any of the different branches of industry, and he shall, by correspondence with interested parties in other parts of the United States, or in foreign countries, impart to them such information as may tend to induce the location of manufacturing and producing plants within the state, together with such information as may tend to increase the employment of labor and the products of such employment in Texas. (Id. sec. 3.)

Art. 5238. Report to contain what; to be printed and distributed.—In each biennial report, the commissioner shall give a full statement of the business of the bureau since the last preceding report, and such information as may be of value to the industrial interests and to persons employed therein, showing, among other things, the number of laborers and mechanics employed, the number of apprentices in each trade, with the nativity of such laborers, mechanics and apprentices, the wages earned, the savings from the same, the age and sex of the persons employed, the number and character of accidents, the sanitary conditions of places where persons are employed, the restrictions put upon apprentices when indentured, the proportion of married employés living in rented houses, with the average rental paid, the value of property owned by such employés, and a statement as to the progress made in schools in operation for the instruction of students in mechanic arts, and what systems have been found most practical; but such reports shall not contain more than six hundred printed pages, and the same shall be printed and distributed in such manner as is or may be provided by law. (Id. sec. 4.)

Art. 5239. Commissioner may issue process, administer oaths, etc.—The commissioner shall have power to issue subpœnas, administer oaths and take testimony in all matters related to the duties herein required of the said bureau, but such testimony must be taken in the vicinity of the residence or office of the person testifying. (Id. sec. 5.)

Art. 5240. Reports and return, how long preserved.—No report or return made to the bureau under the provisions of this chapter, or the penal laws of this state, and no schedule, record or document gathered or returned by its officers or employés shall be destroyed within two years of the collection or receipt thereof; but, at the expiration of two years all such reports, returns, schedules, records and documents as shall be considered by the commissioner to be of no further value, shall be destroyed, provided that the permission of the governor shall first be obtained for such destruction. (Id. sec. 8.)

Art. 5241. Commissioner may enter factories, mills, etc.—Upon the written complaint of two or more persons, or upon his failure otherwise to obtain information in accordance with the provisions of this law, the commissioner shall have the power to enter any factory, mill, workshop, mine, store, business house, public or private work, or other establishment or place where five or more persons are employed at work when the same is open and in operation, for the purpose of gathering facts and statistics, such as are contemplated by this chapter, and for the purpose of examining into the methods of protecting employés from danger and the sanitary conditions in and around such building or place, of all of which the said commissioner shall make and return the bureau of labor statistics a true and detailed record in writing. (Id. sec. 9.)

Art. 5242. Commissioner to report violations to district and county attorneys.—If the commissioner shall learn of any violation of the law with respect to the employment of children, or fire escapes, or the safety of employés, or the preservation of health, or in any other way affecting the employés, he shall at once give written notice of the facts to the county or district attorney of the county in which the law has been violated, or of some other county, if any there be, having jurisdiction of the offense, and the county or district attorney to whom such notice has been given shall immediately institute the proper proceedings against the guilty person. (Id. sec. 10.)

Art. 5243. Salary and compensation of commissioner and employés.—The Commissioner of the Bureau of Labor Statistics shall receive a salary of $3,000.00 per annum, payable monthly, and he shall be allowed a secretary at a salary of $1800.00 per annum; an assistant secretary and stenographer at a salary of $1500. per annum, a chief deputy at a salary of $2,000.00 per annum; six deputies at a salary of $1800.00 each per annum; a chief of the Woman's Division at a salary of $2000.00 per annum, and two women inspectors at a salary of $1800.00 each per annum—each to be appointed by him—and such assistants and employés as the Legislature may at any time in the future authorize, within the limits of the appropriations made therefor. The Commissioner shall also be allowed necessary postage, stationery, printing, and other expenses to transact the business of the Bureau, within the limits of the appropriations made therefor, and the salary shall be paid as in the case of other State officers and employés. In addition to his salary, the Commissioner and any employé of the Bureau shall be allowed his actual necessary traveling expenses while in the performance of duties required by this Act, and within the limits of the appropriations

made therefor. (Acts 1909, p. 59, sec. 12; Acts 1911, p. 17; Acts 1913, p. 237, amending art. 5243, Rev. St. 1911; Acts 1919, ch. 106, sec. 1.)

CHAPTER ONE A

INDUSTRIAL WELFARE COMMISSION

Art. 5243½. Industrial Welfare Commission established.—There is hereby established a commission to be known as the Industrial Welfare Commission, hereinafter called the Commission. Said Commission shall be composed of three persons as follows: The head of the Bureau of Labor Statistics, who shall be chairman of the Commission, the representative of employers of labor on the Industrial Accident Board, and the State Superintendent of Public Instruction. Two members of the Commission shall constitute a quorum, the concurrence of two members shall be necessary to determine any question that may arise for decision, and a vacancy on the commission shall not impair the right of the remaining members to perform all the duties and exercise all the powers and authority of the commission. (Acts 1919, ch. 160, sec. 1.)

Art. 5243½a. Employees of Commission.—The Commission may employ a secretary and two (2) investigators to carry out the purpose of this Act, and shall fix the compensation of such employees, not to exceed the sum of $1800.00 per annum for each one, and all necessary traveling expenses, within the appropriation made therefor. (Id. sec. 2.)

Art. 5243½b. Investigations as to wages and labor conditions.—(a) It shall be the duty of the Commission to ascertain the wages paid, the hours and conditions of labor and employment in the various occupations, trades, and industries in which women and minors are employed in the State of Texas, and to make investigations into the comfort, health, safety and welfare of such women and minors.

(b) It shall be the duty of every person, firm and corporation employing labor in this State;

1. To furnish to the Commission, at its request, any and all reports or information which the Commission may require pertaining to the working conditions and wages paid women and minors to carry out the purpose of this Act; such reports and information to be verified by the oath of the person, or a member of the firm, or the president, secretary, or manager of the corporation furnishing the same, if and when requested by the commission or any member thereof.

2. To allow any member of the Commission, or its secretary or any of its duly authorized employés, free access to the place of business or employment of such person, firm, or corporation, for the purpose of making an investigation authorized by this Act, relating to the working conditions and wages of women and minors.

3. To keep a register of the names, ages and residence addresses of all women and minors employed.

(c) For the purpose of this Act, a minor is defined to be a person of either sex under the age of fifteen years. (Id. sec. 3.)

Art. 5243½c. Hearings by Commission.—The commission may specify times to hold public hearings, at which time employers, employés or other interested persons may appear and give testimony as to the matter under consideration. The Commission or any member thereof, or the secretary or any investigator employed by said Commission, shall have power to subpœna witnesses and to administer oaths. All witnesses subpœnaed by the Commission shall be paid the fee and mileage fixed by law in civil cases. In case of failure on the part of any person to comply with any order of the commission or any member thereof or any subpœna, or upon the refusal of any witness to testify to any matter regarding which he may lawfully be interrogated before any wage board or the Commission, it shall be the duty of any district court or the judge thereof, to whom application is made, on the application of a member of the Commission, to compel obedience in the same manner, by contempt proceedings or otherwise, that such obedience would be compelled in a proceeding pending before said court. The Commission shall have power to make and enforce reasonable and proper rules of practice and procedure and shall not be bound by technical rules of evidence. (Id. sec. 4.)

Art. 5243½d. Fixing minimum wage and establishing standards for labor conditions; hearings; orders.—The Commission shall have further power, after a public hearing before any member of the Commission, or before any investigator employed by said Commission, and upon its own motion or upon petition, to fix;

1. A minimum wage to be paid to women and minors engaged in any occupation, trade or industry in this State, which shall not be less than a wage adequate to supply such women and minors the necessary cost of proper living and to maintain the health and welfare of such women and minors.

2. The standard conditions of labor demanded by the health and welfare of the women and minors engaged in any occupation, trade or industry in this State.

(b) Upon the fixing of a time and place for the holding of a hearing for the purpose of considering and acting upon any matters referred to in sub-section (a) hereof, the Commission shall give public notice by advertisement in at least one newspaper published in the county where the hearing is to be held, and by mailing a copy of said notice to the county clerk of such county where the hearing is to be held, and to the individual, firm, or corporation, to be investigated, which notice shall state the time and place of such hearing to be held, which shall not be earlier than ten days from the date of publishing and mailing such notice.

(c) After such public hearing the Commission may, in its discretion, make a mandatory order to be effective in sixty days from the making of such order, specifying the minimum wage for women and minors in the occupation in question and the standard conditions of labor for said women and minors; provided, however, that no such order shall become effective until November 1st, 1919.

Such order shall be published in at least one newspaper in the cities of Dallas, Houston, San Antonio, Ft. Worth, El Paso and Austin; and a copy thereof mailed to the county clerk of each county in the State, and such copy shall be recorded without charge,

and copies shall be mailed to each employer in the occupation in question, and each employer in the occupation in question shall be required to post a copy of such order in a conspicuous place in the building in which the women or minors affected by the order are employed. Failure of the employer to receive such notice shall not relieve the employer from the duty to comply with such order. Finding by the Commission that there has been such publication and mailing to the county clerk shall be conclusive to the service. (Id. sec. 5.)

Art. 5243½e. Alteration, etc., of original orders.—Whenever wages or conditions of labor have been so made mandatory in any occupation, trade or industry, the Commission may at any time in its discretion upon its own motion or upon petition of either employers or employés, after a public hearing held upon the notice prescribed for an original hearing, rescind, alter or amend any prior order. Any order rescinding a prior order shall have the same effects as herein provided for in an original order. (Id. sec. 6.)

Art. 5243½f. License to employ at less than minimum wage.—For any occupation in which a minimum wage has been established, the Commission may issue to any person subject to this Act, a special license authorizing the employment of such person for a period of six months for a wage less than such legal minimum wage; and the Commission shall fix a special minimum wage for such person; provided that at no time shall the special licenses exceed ten per cent of the total number of employees in said industry. Any such license may be renewed for a like period of six months. (Id. sec. 7.)

Art. 5243½g. Statistics.—Upon the request of the Commission, the labor commissioner shall cause such statistics and other data and information to be gathered and investigation made, as the Commission may require pertaining to the wages and working conditions of women and minors. (Id. sec. 8.)

Sections 9 and 10 contain penal provisions. See post, Penal Code, arts, 1451s, 1451t.

Art. 5243½h. Review of findings of Commission.—In every prosecution for the violation of any provision of this Act the minimum wage established by the Commission as herein provided, shall be prima facie presumed to be reasonable and lawful, and to be the living wage required herein to be paid women and minors. The finding of facts made by the Commission acting within its powers shall, in the absence of fraud, be conclusive; and the determinations made by the Commission shall be subject to review only in a manner and upon the grounds following; Within thirty days from the date of determination, any party aggrieved thereby may commence action in the district court in and for the county in which the aggrieved party resides, or in the district court of Travis County, against the Commission for review of such determination. In such action a complaint which shall state the grounds upon which a review is sought shall be served with the summons. Service upon the secretary of the Commission or upon any member of the Commission, shall be deemed a complete service. The Commission shall file its answer within twenty days after the service of the complaint. With its answer, the Commission shall make a return to the court of all documents and papers on file in the matter, and of all testimony and evidence which may have been taken before it and of its findings and determinations in the matter. The action may thereupon be brought on for hearing before the court upon such record by either party on ten days notice to the other. Upon such hearing the court may confirm or set aside such determination, but the same shall be set aside only upon the following grounds:

(1) That the Commission acted without or in excess of its powers, or on insufficient grounds.

2. That the determination was procured by fraud.

Upon the setting aside of any determination the court may recommit the controversy and remand the record in the case to the Commission for further proceedings. The Commission or any party aggrieved, by a decree entered upon the review of a determination, may appeal therefrom within the time and in the manner provided for an appeal from the orders of the said district court. (Id. sec. 11.)

Art. 5243½i. Recovery of difference between minimum wage and amount paid.—Any employee receiving less than the minimum wage applicable to such employee shall be entitled to recover in a civil action the unpaid balance of the full amount of such minimum wage, together with costs of suit, and an additional amount for attorneys fees, notwithstanding any agreement to work for such lesser wage. (Id. sec. 12.)

Art. 5243½j. Investigation as to payment of wage less than that established.—Any person or persons for whom the Commission may have established a living wage may register a complaint with the Commission that the wages paid to him or them are less than that rate, and the Commission shall thereupon investigate the matter and take all proceedings necessary to enforce the payment of such established wage. (Id. sec. 13.)

Art. 5243½k. Report of Commission.—The Commission shall biennially make a report to the Governor and the State Legislature of its investigations and proceedings. (Id. sec. 14.)

Art. 5243½l. Appropriation.—There is hereby appropriated out of the moneys of the State Treasury, not otherwise appropriated, the sum of Five Thousand ($5,000.00) Dollars, or so much thereof as may be necessary, to be used by the Commission in carrying out the provisions of this Act to August 31, 1919, and the Comptroller is hereby directed from time to time to draw warrants upon presentation of properly itemized, verified and approved vouchers on the general fund in favor of the Commission for the amounts expended under its direction, and the treasurer is hereby authorized and directed to pay the same. (Id. sec. 15.)

Art. 5243½m. Commission not to act as board of arbitration.—The Commission shall not act as a board of arbitration during a strike or lockout. (Id. sec. 16.)

Art. 5243½n. Construction and partial invalidity of act.—(a) Whenever this act, or any part or section thereof is interpreted by a court, it shall be liberally construed by such court.

(b) If any section, or sub-section or sub-division of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act, and each section, sub-section, sub-division, sentence, clause and phrase thereof; irrespective of the fact that any one or more sections, sub-sections, subdivisions, sentences or clauses or phrases is declared unconstitutional. (Id. sec. 17.)

Art. 5243½0. Persons within scope of act.—The provisions of this Act shall apply to and include women and minors employed in any occupation, trade or industry and whose compensation for labor is measured by time, piece or otherwise, except those engaged as domestic servants, nurses, student nurses, farm or ranch labor and students in schools and colleges while actually attending such schools and colleges during their session or in vacation and who are working their way through such school or college, either in whole or in part. (Id. sec. 18.)

CHAPTER TWO
LABOR ORGANIZATIONS

Art. 5244. Right to organize.—It shall be lawful for any and all persons engaged in any kind of work or labor, manual or mental, or both, to associate themselves together and form trades unions and other organizations for the purpose of protecting themselves in their personal work, personal labor, and personal service, in their respective pursuits and employments. (Acts 1899, p. 262, sec. 1.)

Art. 5245. Other rights and privileges.—It shall not be held unlawful for any member or members of such trades union or other organization or association, or any other person, to induce or attempt to induce by peaceable and lawful means, any person to accept any particular employment, or quit or relinquish any particular employment in which such person may then be engaged, or to enter any pursuit, or refuse to enter any pursuit, or quit or relinquish any pursuit in which such person may then be engaged; provided, that such member or members shall not have the right to invade or trespass upon the premises of another without the consent of the owner thereof. (Id. sec. 2.)

Art. 5246. Not to apply to what organizations.—The foregoing articles shall not be held to apply to any combination or combinations, association or associations of capital, or capital and persons, natural or artificial, formed for the purpose of limiting the production or consumption of labor's products, or for any other purpose in restraint of trade; provided, that nothing herein contained shall be held to interfere with the terms and conditions of private contract with regard to the time of service, or other stipulations between employers and employés; provided, further, that nothing herein contained shall be construed to repeal, affect or diminish the force and effect of any statute now existing on the subject of trusts, conspiracies against trade, pools and monopolies. (Id. sec. 3.)

CHAPTER THREE
HOURS OF LABOR OF FEMALES

Art. 5246a. Hours of labor in certain employments; emergencies; stenographers and pharmacists excepted.—No female shall be employed in any factory, mine, mill, workshop, mechanical or mercantile establishment, laundry, hotel, restaurant or rooming house, theater or moving picture show, barber shop, telegraph, telephone or other office, express or transportation company, or any State institution, or any other establishment, institution or enterprise where females are employed, except as hereinafter provided, for more than nine hours in any one calendar day, nor more than fifty-four hours in any one calendar week; provided, however, that in case of extraordinary emergencies, such as great public calamities, or where it becomes necessary for the protection of human life or property, longer hours may be worked, but for such time not less than double time shall be paid such female with the consent of the said female; provided, this Act shall not apply to stenographers and pharmacists. (Acts 1915, ch. 56, sec. 1.)

Art. 5246b. Laundries.—No female shall be employed in any laundry for more than fifty-four hours in one calendar week; the hours of such employment to be so arranged as to permit the employment of such female at any time so that she shall not work more than a maximum of eleven hours during the twenty-four hours' period of one day; provided that if such female is employed for more than nine hours in any one day she shall receive pay at the rate of double her regular pay for such time as she is employed for more than nine hours per day. (Id. sec. 1a.)

Art. 5246bb. Cotton and woolen factories.—No female shall be employed in any factory engaged in the manufacture of cotton, woolen or worsted goods or articles of merchandise manufactured out of cotton goods for more than ten hours in any one calendar day, nor for more than sixty hours in any one calendar week.

Provided, that if such female is employed for more than nine hours in any one day she shall receive pay at the rate of double her regular pay for such time as she may be employed for more than nine hours per day. (Id. sec. 1b.)

Art. 5246c. Seats to be provided.—Every employer owning or operating any factory, mine, mill, workshop, mechanical or mercantile establishment, laundry, hotel, restaurant or rooming house, theater or moving picture show, barber shop, telegraph or telephone or other office, express or transportation company, the superintendent of any State institution or any other establishment, institution or enterprise where females are employed, as provided by Sections 1, 1a and 1b [Arts. 5246a, 5246b, 5246bb], shall provide and furnish suitable seats, to be used by such employés when not engaged in the active duties of their employment, and shall give notice to all such female employés by posting in a conspicuous place, on the premises of such employment in letters not less than one inch in height, that all such female employés will be permitted to use such seats when not so engaged. (Id. sec. 2.)

Section 3 makes it a misdemeanor to violate the provisions of the act. See Pen. Code, art. 1451*l*.

Art. 5246cc. Partial invalidity.—If any section or provision of this Act is for any reason held or declared to be unconstitutional it shall not affect nor impair nor render invalid

the rest of this Act, and changing other sections to conform thereto. (Id. sec. 4.)

Section 5 repeals Acts 1913, p. 421.

Art. 5246ccc. Repeal.—All laws or parts of laws in conflict herewith, and especially Senate Bill No. 30, entitled "An Act limiting the hours of labor for females, etc., of the Acts of the Thirty-third Legislature, approved April 16, 1913," are hereby repealed. (Id. sec. 5.)

Art. 5246d. [Repealed and carried into new act set forth above as Art. 5246a.]

CHAPTER FOUR

HOURS OF LABOR UPON PUBLIC WORKS

Art. 5246e. Eight hour day.—Eight hours shall constitute a day's work for all laborers, workmen or mechanics now employed or who may hereafter be employed by or on behalf of the state of Texas, or by or on behalf of any county, municipality, or political subdivision of the state, county or municipality in any one calendar day, where such employment, contract or work is for the purpose of constructing, repairing or improving buildings, bridges, roads, highways, streams, levees, or other work of a similar character, requiring the service of laborers, workmen or mechanics. (Acts 1913, p. 127, sec. 1.)

Art. 5246f. Contracts deemed on basis of eight hour day; laborers employed by contractors; emergencies, etc.—All contracts hereafter made by or on behalf of the state of Texas, or by or on behalf of any county, municipality or other legal or political subdivision of the state, with any corporation, persons or association of persons for the performance of any work, shall be deemed and considered as made upon the basis of eight hours constituting a day's work. It shall be unlawful for any corporation, person or association of persons having a contract with the state or any political subdivision thereof, to require or permit any such laborers, workmen, mechanics or other persons to work more than eight hours per calendar day in doing such work, except in case of emergency, which may arise in times of war, or in cases where it may become necessary to work more than eight hours per calendar day for the protection of property, human life or the necessity of housing inmates of public institutions in case of fire or destruction by the elements. In such emergencies the laborers, workmen, mechanics or other persons so employed and working to exceed eight hours per calendar day shall be paid on the basis of eight hours constituting a day's work; provided that not less than the current rate of per diem wages in the locality where the work is being performed shall be paid to the laborers, workmen, mechanics or other persons so employed by or on behalf of the state of Texas, or for any county, municipality or other legal or political subdivision of the state, county or municipality, and every contract hereafter made for the performance of work for the state of Texas, or for any county, municipality or other legal or political subdivision of the state, county or municipality, must comply with the requirements of this section; provided, that nothing in this Act shall affect contracts in existence at the time of the taking effect of this Act; provided further, that nothing in this Act shall be construed to affect the present law governing state and county convict labor while serving their sentences as such. (Id. sec. 2.)

For sec. 3, which is penal in its provisions, see Penal Code, art. 1451c.

Art. 5246g. Laws repealed.—All laws or parts of laws in conflict herewith are hereby repealed, and expressly an Act passed at the regular session of the thirty-second legislature, known as House Bill No. 98, and being the same Act that was attempted to be vetoed by the governor, but which veto was held ineffective by the supreme court because the veto message was filed with the secretary of state after the expiration of twenty days as held by the supreme court in the case of R. B. Minor, et al., vs. C. C. McDonald, Secretary of State. (Id. sec. 4.)

CHAPTER FIVE

WORKMEN'S COMPENSATION LAW

PART I

Art. 5246—1. (5246h) Actions for personal injuries or resulting death; defenses excluded.—In an action to recover damages for personal injuries sustained by an employé in the course of his employment, or for death resulting from personal injury so sustained, it shall not be a defense:

1. That the employé was guilty of contributory negligence.

2. That the injury was caused by the negligence of a fellow employé.

3. That the employé had assumed the risk of the injury incident to his employment; but such employer may defend in such action on the ground that the injury was caused by the willful intention of the employé to bring about the injury, or was so caused while the employé was in a state of intoxication.

4. Provided, however, that in all such actions against an employer who is not a subscriber, as defined hereafter in this Act, it shall be necessary to a recovery for the plaintiff to prove negligence of such employer or some agent or servant of such employer acting within the general scope of his employment. (Acts 1913, p. 429, pt. 1, sec. 1; Acts 1917, ch. 103, pt. 1, sec. 1.)

The title of the act purports to amend chapter 179 of the general laws of the State of Texas passed at the regular session of the 33rd Legislature, entitled "An Act relating to employers' liability and providing for the compensation of certain employés," etc. The enacting part recites the same, except that it does not state the session of the Legislature at which the former act was passed.

Art. 5246—2. (5246hh) Inapplicable to certain classes of employés.—The provisions of this Act shall not apply to actions to recover damages for the personal injuries nor for death resulting from personal injuries sustained by domestic servants, farm laborers, nor to employés of any firm, person or corporation having in his or their employ less than three (3) employés, nor to the employés of any person, firm or corporation operating any steam, electric, street, or interurban railway as a common carrier. Provided, that any employer of three or more employés at the time of becoming a subscriber shall remain a subscriber subject to all the rights, liabilities, duties and exemptions of such, notwithstanding after having become a subscriber the number of employés may at

times be less than three. (Acts 1913, p. 429, pt. 1, sec. 2; Acts 1917, ch. 103, pt. 1, sec. 2.)

Art. 5246—3. (5246i) No right of action against subscribing employer; compensation from Texas Employers Insurance Association.—The employés of a subscriber shall have no right of action against their employer for damages for personal injuries, and the representatives and beneficiaries of deceased employés shall have no right of action against such subscribing employer for damages for injuries resulting in death, but such employés and their representatives and beneficiaries shall look for compensation solely to the association, as the same is hereinafter provided for; provided that all compensation allowed under the succeeding sections herein shall be exempt from garnishment, attachment, judgment and all other suits or claims, and no such right of action and no such compensation and no part thereof or of either shall be assignable, except as otherwise herein provided, and any attempt to assign the same shall be void. (Acts 1913, p. 429, pt. 1, sec. 3; Acts 1917, ch. 103, pt. 1, sec. 3.)

Art. 5246—4. Notice by employé of election to assert common law liability; subsequent waiver; common law action preserved.—An employé of a subscriber shall be held to have waived his right of action at common law or under any statute of this State to recover damages for injuries sustained in the course of his employment if he shall not have given his employer, at the time of his contract of hire, notice in writing that he claimed said right or if the contract of hire was made before the employer became a subscriber, if the employé shall not have given the said notice within five (5) days of notice of such subscription. An employé who has given notice to his employer that he claimed his right of action at common law or under any statute may thereafter waive such claim by notice in writing, which shall take effect five (5) days after its delivery to his employer or his agent; provided further, that any employé of a subscriber who has not waived his right of action at common law or under any statute to recover damages for injury sustained in the course of his employment, as above provided in this section, shall, as well as his legal beneficiaries and representatives have his or their cause of action for such injuries as now exist by the common law and statutes of this State, which action shall be subject to all defenses under the common law and statutes of this State. (Id. sec. 3a.)

Art. 5246—5. Employés waiving common law rights to recover compensation.—If an employé who has not given notice of his claim of common law or statutory rights of action, as provided in Section 3a, Part I of this Act [Art. 5246—4], or who has given such notice and waived the same, sustains an injury in the course of his employment, he shall be paid compensation by the association as hereinafter provided, if his employer is a subscriber at the time of the injury. (Id. sec. 3b.)

Art. 5246—6 (5246ii) Employés, etc., of nonsubscribing employer may sue at common law; may not participate in benefits of association.—Employés whose employers are not at the time of the injury subscribers to said association, and the representatives and beneficiaries of deceased employés who at the time of the injury were working for nonsubscribing employers can not participate in the benefits of said insurance association, but they shall be entitled to bring suit and may recover judgment against such employers, or any of them, for all damages, sustained by reason of any personal injury received in the course of employment or by reason of death resulting from such injury, and the provisions of Section 1 of this Act [Art. 5246—1] shall be applied in all such actions. (Acts 1913, p. 429, pt. 1, sec. 4; Acts 1917, ch. 103, pt. 1, sec. 4.)

Art. 5246—7. (5246j) Recovery of exemplary damages in certain cases not excluded; award not to be pleaded or introduced in evidence.—Nothing in this Act shall be taken or held to prohibit the recovery of exemplary damages by the surviving husband, wife, heirs of his or her body, or such of them as there may be of any deceased employé whose death is occasioned by homicide from the willful act or omission or gross negligence of any person, firm or corporation from the employer of such employé at the time of the injury causing the death of the latter. Provided, that in any suit so brought for exemplary damages the trial shall be de novo, and no presumption shall exist that any award, ruling or finding of the Industrial Accident Board was correct; and in such suit brought by the employé or his legal heirs or representatives against such association or employer, such award, ruling or finding shall neither be pleaded nor introduced in evidence. (Acts 1913, p. 429, pt. 1, sec. 5; Acts 1917, ch. 103, pt. 1, sec. 5.)

Art. 5246—8. (5246jj) No compensation for incapacity not extending beyond one week; medical aid.—No compensation shall be paid under this Act for an injury which does not incapacitate the employé for a period of at least one week from earning full wages, but if incapacity extends beyond one week compensation shall begin to accrue on the eighth day after the injury. Provided, however, the medical aid, hospital services, and medicines, as provided for in Section 7 hereof [Art. 5246—9], shall be supplied as and when needed and according to the terms and provisions of said Section 7. And provided further, that if incapacity does not follow at once after the infliction of the injury or within eight (8) days thereof but does result subsequently that compensation shall begin to accrue with the eighth day after the date incapacity commenced. In any event the employé shall be entitled to the medical aid, hospital services and medicines as provided elsewhere in this Act. (Acts 1913, p. 429, pt. 1, sec. 6; Acts 1917, ch. 103, pt. 1, sec. 6.)

Art. 5246—9. (5246k) Medical and hospital aid during first two weeks; notice of injury; additional hospital services on certificate of attending physician.—During the first two weeks of the injury, dating from the date of its infliction, the association shall furnish reasonable medical aid, hospital services and medicines. If the association fails to so furnish same as and when needed during the time specified, after notice of the injury to the association

or subscriber, the injured employé may provide said medical aid, hospital services and medicines at the cost and expense of the association. The employé shall not be entitled to recover any amount expended or incurred by him for said medical aid, hospital services or medicines nor shall any person who supplied the same be entitled to recover of the association therefor, unless the association or subscriber shall have had notice of the injury and shall have refused, failed or neglected to furnish it or them within a reasonable time. Provided, however, that at the time of the injury or immediately thereafter, if necessary, the employé shall have the right to call in any available physician or surgeon to administer first-aid treatment as may be reasonably necessary at the expense of the association. During the second or any subsequent week of continuous total incapacity requiring the confinement to a hospital, the association shall, upon application of the attending physician or surgeon certifying the necessity therefor to the Industrial Accident Board and to the association, furnish such additional hospital services as may be deemed necessary, not to exceed one week, unless at the end of such additional week the attending physician shall certify to the necessity for another week of hospital services, or so much thereof, as may be needed; provided, however, that such additional hospital services as are provided for in this paragraph shall not be held to include any obligation on the part of the association to pay for medical or surgical services not ordinarily provided by hospitals as a part of their services. (Acts 1913, p. 429, pt. 1, sec. 7; Acts 1917, ch. 103, pt. 1, sec. 7.)

Art. 5246—10. Board may order change of physician or of treatment.—If it be shown that the association is furnishing medical aid, hospital services and medicines provided for by Section 7 hereof [Art. 5246—9], in such manner that there is reasonable ground for believing that the life, health or recovery of the employé is being endangered or impaired thereby, the board may order a change in the physician or other requirements of said section, and if the association fails promptly to comply with such order after receiving it, the board may permit the employé or some one for him to provide the same at the expense of the association under such reasonable regulations as may be provided by said board. (Id. sec. 7a.)

Art. 5246—11. Board may regulate medical and hospital fees and charges; payment.—All fees and charges under Sections 7 and 7a hereof [Arts. 5246—9, 5246—10] shall be fair and reasonable, shall be subject to regulation of the board and shall be limited to such charges as are reasonable for similar treatment of injured persons of a like standard of living where such treatment is paid for by the injured person himself or some one acting for him. In determining what fees are reasonable, the board may also consider the increased security of payment afforded by this Act. Where such medical aid, hospital service or medicines are furnished by a public hospital or other institution, payment thereof shall be made to the proper authorities conducting the same, and the amount so paid shall be promptly reported to the board. (Id. sec. 7b.)

Art. 5246—12. Attorney's fees subject to approval of board; amount of fees; expenses; payment; lien.—All fees of attorneys for representing claimants before the board under the provisions of this Act shall be subject to the approval of the board. No attorney's fees for representing claimants before the board shall be allowed or approved against any party or parties not represented by such attorney, nor exceeding an amount equal to fifteen per cent of the amount of the first one thousand dollars or fraction thereof recovered, nor ten per cent of the excess of such recovery, if any, over one thousand dollars. And in addition to the reasonable expenses incurred by the attorney in the preparation and presentation of the said claim before the Board, such expenses to be allowed by the Board; further provided that where an attorney represents only a part of those interested in the allowance of a claim before the Board and his services in prosecuting such claim and obtaining an award therein inures to the benefit of others jointly interested therein, then the Board may take these facts into consideration and allow the attorney a reasonable charge, to be assessed against the interest of those receiving benefits of the service of such attorney. The attorney's fees herein provided for may be redeemed by the association by the payment of a lump sum or may be commuted by agreement of the parties subject to the approval of the board, but not until the claim represented by said attorney has been finally determined by the board and recognized and accepted by the association. After the approval, as first above provided for, if the association be notified in writing of such claim or agreement for legal services, the same shall be a lien against any amount thereafter to be paid as compensation; provided, however, that where the employés compensation is payable by the association in periodical installments the board shall fix at the time of approval the proportion of each installment to be paid on account of said legal services. (Id. sec. 7c.)

Art. 5246—13. Contract of attorneys with beneficiaries where case is carried into courts; amount of fee; allowance by court.—For representing the interest of any Claimant in any manner carried from the Board into the Courts, it shall be lawful for the attorneys representing such interest to contract with any of the beneficiaries under this Act for an attorney's fee for such representation, not to exceed one third (⅓) of the amount recovered, such fee for services so rendered to be fixed and allowed by the trial court in which such matter may be heard and determined. (Id. sec. 7d.)

Art. 5246—14. (5246kk) Compensation where death results.—If death should result from the injury, the association hereinafter created shall pay the legal beneficiaries of the deceased employé a weekly payment equal to sixty per cent of his average weekly wages, but not more than $15.00 nor less than $5.00 a week, for a period of three hundred and sixty weeks from the date of the injury. (Acts 1913, p. 429, pt. 1, sec. 8; Acts 1917, ch. 103, pt. 1, sec. 8.)

Art. 5246—15. Beneficiaries in case of death; exempt from execution; mode of distribution; to whom paid; how paid.—

The compensation provided for in the foregoing section of this Act shall be for the sole and exclusive benefit of the surviving husband who has not for good cause and for a period of three years prior thereto abandoned his wife at the time of the injury, the wife who has not at the time of the injury without good cause and for a period of three years prior thereto abandoned her husband and the minor children, without regard to the question of dependency, dependent parents and dependent grandparents and dependent step-mothers and dependent children or dependent brothers and sisters of the deceased employé, and the amount recovered thereunder shall not be liable for the debts of the deceased nor the debts of the beneficiary or beneficiaries, and shall be distributed among such beneficiaries as may be entitled to same as hereinbefore provided according to the laws of descent and distribution of this State; and provided such compensation shall not pass to the estate of the deceased to be administered upon, but shall be paid directly to said beneficiaries when the same are capable of taking, under the laws of the State, or to their guardian or next friend, in case of lunacy, infancy or other disqualifying cause of any beneficiary. And the compensation provided for in this Act shall be paid weekly to the beneficiaries herein named and specified, subject to the other provisions of this Act. (Id. sec. 8a.)

Art. 5246—16. Deduction from death benefit of amount paid for incapacity.—In case death occurs as a result of the injury after a period of total or partial incapacity, for which compensation has been paid, the period of incapacity shall be deducted from the total period of compensation and the benefits paid thereunder from the maximum allowed for the death, respectively state in this Act. (Id. sec. 8b.)

Art. 5246—17. (5246*l*) Where there are no beneficiaries association shall pay expenses of last sickness and funeral expenses.—If the deceased employé leaves no legal beneficiaries, the association shall pay all expenses incident to his last sickness as a result of the injury and in addition a funeral benefit not to exceed $100.00; provided, however, that where any deceased employé leaves legal beneficiaries, but who is buried at the expense of his employer or any other person, the expense of such burial, not to exceed $100.00, shall be payable out of the compensation due the beneficiary or beneficiaries of such deceased employé, subject to the approval of the Board. (Acts 1913, p. 429, pt. 1, sec. 9; Acts 1917, ch. 103, pt. 1, sec. 9.)

Art. 5246—18. (5246*ll*) Compensation for total incapacity.—While the incapacity for work resulting from injury is total, the association shall pay the injured employé a weekly compensation equal to sixty per cent of his average weekly wages, but not more than $15.00 nor less than $5.00, and in no case shall the period covered by such compensation be greater than four hundred and one (401) weeks from the date of the injury. (Acts 1913, p. 429, pt. 1, sec. 10; Acts 1917, ch. 103, pt. 1, sec. 10.)

Art. 5246—19. (5246m) Compensation for partial incapacity.—While the incapacity for work resulting from the injury is partial, the association shall pay the injured employé a weekly compensation equal to sixty per cent of the difference between his average weekly wages before the injury and his average weekly wage earning capacity during the existence of such partial incapacity, but in no case more than $15.00 per week; and the period covered by such compensation to be in no case greater than three hundred weeks; provided that in no case shall the period of compensation for total and partial incapacity exceed four hundred and one (401) weeks from the date of the injury. (Acts 1913, p. 429, pt. 1, sec. 11; Acts 1917, ch. 103, pt. 1, sec. 11.)

Art. 5246—20. What constitutes total incapacity; burden of proof.—In cases of the following injuries, the incapacity shall conclusively be held to be total and permanent, to wit:

(1) The total and permanent loss of the sight in both eyes.

(2) The loss of both feet at or above the ankle.

(3) The loss of both hands at or above the wrist.

(4) A similar loss of one hand and one foot.

(5) An injury to the spine resulting in permanent and complete paralysis of both arms or both legs or of one arm and one leg.

(6) An injury to the skull resulting in incurable insanity or imbecility.

In any of the above enumerated cases it shall be considered that the total loss of the use of a member shall be equivalent to and draw the same compensation during the time of such total loss of the use thereof as for the total and permanent loss of such member.

The above enumeration is not to be taken as exclusive, but in all other cases the burden of proof shall be on the claimant to prove that his injuries have resulted in permanent, total incapacity. (Id. sec. 11a.)

Art. 5246—21. (5246mm) Compensation for specified injuries.—For the injuries enumerated in the following schedule the employé shall receive in lieu of all other compensation except medical aid, hospital services and medicines as elsewhere herein provided, a weekly compensation equal to sixty per cent of the average weekly wages of such employé, but not less than $5.00 per week nor exceeding $15.00 per week, for the respective periods stated herein, to-wit:

For the loss of a thumb sixty per cent of the average weekly wages during sixty weeks.

For the loss of a first finger, commonly called the index finger, sixty per cent of the average weekly wages during forty-five weeks.

For the loss of a second finger 60 per cent of the average weekly wages during 30 weeks.

For the loss of a third finger 60 per cent of the average weekly wages during 21 weeks.

For the loss of a fourth finger, commonly known as the little finger, 60 per cent of the average weekly wages during 15 weeks.

The loss of the second or distal phalange of the thumb shall be considered to be equal to the loss of one-half of such thumb; the loss of more than one-half of such thumb shall be considered to be equal to the loss of the whole thumb.

The loss of the third or distal phalange or any finger shall be considered to be equal to the loss of one-third of such finger.

The loss of the middle or second phalange or any finger shall be considered to be equal to the loss of two-thirds of such finger.

The loss of more than the middle or distal phalange of any finger shall be considered to be equal to the loss of the whole finger; provided, however, that in no case shall the amount received for the loss of a thumb and more than one finger on the same hand exceed the amount provided in this schedule for the loss of a hand.

For the loss of the metacarpal bone (bone of palm) for the corresponding thumb, finger, or fingers above, add ten weeks to the number of weeks as above, subject to the limitation that in no case shall the amount received for the loss or injury to any one hand be more than for the loss of the hand.

For ankylosis (total stiffness of) or contracture (due to sears or injuries) which make the fingers useless, the same number of weeks shall apply to such finger or fingers or parts of fingers (not thumb) as given above.

For the loss of a hand 60 per cent of the average weekly wages during 150 weeks.

For the loss of an arm at or above the elbow 60 per cent of the average weekly wages during 200 weeks.

For the loss of one of the toes, other than the great toe, 60 per cent of the average weekly wages during 10 weeks.

For the loss of the great toe 60 per cent of the average weekly wages during 30 weeks.

The loss of more than two-thirds of any toe shall be considered to be equal to the loss of the whole toe.

The loss of less than two-thirds of any toe shall be considered to be equal to the loss of one-half of the toe.

For the loss of a foot 60 per cent of the average weekly wages during 125 weeks.

For the loss of a leg at or above the knee 60 per cent of the average weekly wages during 200 weeks.

For the total and permanent loss of the sight of one eye 60 per cent of the average weekly wages during 100 weeks.

In the foregoing enumerated cases of permanent, partial incapacity, it shall be considered that the permanent loss of the use of a member shall be equivalent to and draw the same compensation as the loss of that member.

For the complete and permanent loss of the hearing in both ears 60 per cent of the weekly wages during 150 weeks.

For the loss of an eye and leg above the knee 60 per cent of the average weekly wages during a period of 350 weeks.

For the loss of an eye and an arm above the elbow 60 per cent of the average weekly wages during a period of 350 weeks.

For the loss of an eye and a hand 60 per cent of the average weekly wages during a period of 325 weeks.

For the loss of an eye and a foot 60 per cent of the average weekly wages during a period of 300 weeks.

Where the employé sustains concurrent injuries resulting in concurrent incapacities, he shall receive compensation only for the injury which produces the longest period of incapacity; but this section shall not affect liability for the concurrent loss or the loss of the use thereof of more than one member, for which members compensation is provided in this schedule; compensation for specific injuries under this act shall be cumulative as to time and not concurrent.

In all cases or permanent, partial, incapacity, it shall be considered that the permanent loss of the use of the member be equivalent to and draw the same compensation as the loss of that member; but the compensation in and by said schedule provided shall be in lieu of all other compensation in such cases.

In all other cases, partial incapacity, including any disfigurement which will impair the future usefulness or occupational opportunities of the injured employé, compensation shall be determined according to the percentage of incapacity, taking into account, among other things, any previous incapacity, the nature of the physical injury or disfigurement, the occupation of the injured employé and the age at the time of the injury; the compensation paid therefor shall be 60 per cent of the average weekly wages of the employé, but not to exceed $15.00 per week, multiplied by the percentage of incapacity caused by the injury for such period as the board may determine not exceeding 300 weeks. Whenever the weekly payments under this paragraph would be less than $3.00 per week, the period may be shortened, and the payments correspondingly increased by the board. (Acts 1913, p. 429, pt. 1, sec. 12; Acts 1917, ch. 103, pt. 1, sec. 12.)

Art. 5246—22. Refusal of employé to accept proffered employment suited to his physical condition.—If the injured employé refuses employment reasonably suited to his incapacity and physical condition, procured for him in the locality where injured or at a place agreeable to him, he shall not be entitled to compensation during the period of such refusal, unless in the opinion of the Board such refusal is justifiable. This section shall not apply in cases of specific injuries for which a schedule is fixed by this Act. (Id. sec. 12a.)

Art. 5246—23. Claims for hernia; surgical operation; refusal of employé to submit to; examination; compensation in case of successful operation, and in case of resulting death.—In all claims for hernia resulting from injury sustained in the course of employment, it must be definitely proven to the satisfaction of the Board.

First. That there was an injury resulting in hernia.

Second. That the hernia appeared suddenly and immediately following the injury.

Third. That the hernia did not exist in any degree prior to the injury for which compensation is claimed.

Fourth. That the injury was accompanied by pain.

In all such cases where liability for compensation exists, the association shall provide competent surgical treatment by radical operation. In case the injured employé refuses to submit to the operation, the Board shall immediately order a medical examination of such employé by a physician or physicians of its own selection at a time and place to be by them named, at which examination the employé and the association, or either of them, shall have the right to have his or their physician present. The physician or physicians so selected shall make to the Board a report in writing, signed and sworn

to, setting forth the facts developed at such examination and giving his or their opinion as to the advisability or non-advisability of an operation. If it be shown to the Board by such examination and the written report thereof and the expert opinions thereon that the employé has any chronic disease or is otherwise in such physical condition as to render it more than ordinarily unsafe to submit to such operation he shall, if unwilling to submit to the operation, be entitled to compensation for incapacity under the general provisions of this Act. If the examination and the written report thereof and the expert opinions thereon then on file before the Board do not show to the Board the existence of disease or other physical condition rendering the operation more than ordinarily unsafe and the board shall unanimously so find and so reduce its findings to writing and file the same in the case and furnish the employé and the association with a copy of its findings, then if the employé with the knowledge of the result of such examination, such report, such opinions and such findings, thereafter refuses to submit within a reasonable time, which time shall be fixed in the findings of the Board, to such operation, he shall be entitled to compensation for incapacity under the general provisions of this Act, for a period not exceeding one year.

If the employé submits to the operation and the same is successful, which shall be determined by the Board, he shall in addition to the surgical benefits herein provided for be entitled to compensation for 26 weeks from the date of the operation. If such operation is not successful and does not result in death, he shall be paid compensation under the general provisions of this Act the same as if such operation had not been had; other than in determining the quantum of compensation to be paid to the employé, the Board may take into consideration any minor benefits that accrued to the employé by reason thereof or any aggravation or increased injury which accrued to him by reason thereof.

If the hernia results in death within one year after it is sustained, or the operation results in death, such death shall be held a result of the injury causing such hernia and compensated accordingly under the provisions of this Act. This paragraph shall not apply where the employé has wilfully refused to submit to an operation which has been found by the examination herein provided for not to be more than ordinarily unsafe. (Id. sec. 12b.)

Art. 5246—24. Compensation for subsequent injury.—If an employé who has suffered a previous injury shall suffer a subsequent injury which results in a condition of incapacity to which both injuries or their effects have contributed, the association shall be liable because of such injury only for the compensation to which the subsequent injury would have entitled the injured employé had there been no previous injury. (Id. sec. 12c.)

Art. 5246—25. Change in compensation awarded during incapacity; review.—Upon its own motion or upon the application of any person interested showing a change of conditions, mistake, or fraud, the board at any time within the compensation period may review any award or order, ending, diminishing or increasing compensation previously awarded within the maximum and minimum provided in this Act, or change or revoke its previous order sending immediately to the parties a copy of its subsequent order or award. Review under this section shall be only upon notice to the parties interested. (Id. sec. 12d.)

Art. 5246—26. Demand for surgical operation by employé or the association; examination and report; refusal to submit to operation.—In all cases where liability for compensation exists for an injury sustained by an employé in the course of his employment and a surgical operation for such injury will effect a cure of the employé or will materially and beneficially improve his condition the association or the employé may demand that a surgical operation be had upon the employé as herein provided, and the association shall provide and pay for all necessary surgical treatment, medicines and hospital services incident to the performance of said operation, provided the same is had. In case either of said parties demands in writing to the board such operation the board shall immediately order a medical examination of the employé in the same manner as is provided for in the section of this Act relating to hernia. If it be shown by the examination, report of facts and opinions of experts, all reduced to writing and filed with the board, that such operation is advisable and will relieve the condition of the injured employé or will materially benefit him, the board shall so state in writing and upon unanimous order of said board in writing, a copy of which shall be delivered to the employé and the association, shall direct the employé at a time and place therein stated to submit himself to an operation for said injury. If the board should find that said operation is not advisable, then the employé shall continue to be compensated for his incapacity under the general provisions of this Act. If the board shall unanimously find and so state in writing that said operation is advisable, it shall make its order to that effect, stating the time and place when and where such operation is to be performed, naming the physicians therein who shall perform said operation, and if the employé refuses to submit to such operation, the board may order or direct the association to suspend the whole or any part of his compensation during the time of said period of refusal. The results of such operation, the question as to whether the injured employé shall be required to submit thereto and the benefits and liabilities arising therefrom shall attach, be treated, handled and determined by the board in the same way as is provided in the case of hernia in this Act. (Id. sec. 12e.)

Art. 5246—27. Contracts with physician to be in writing and filed with board; where not filed employé may procure medical aid.—In all cases where a subscriber or the association has in his or its employ a physician or physicians regularly paid in any manner whatsoever by such subscriber or association to administer to or treat injured employés, the name or names of such physicians at the date of employment of the same shall be filed with the board together with a copy of the contract of such employment. If the contract of such physician or physicians is not in writing, then the

same shall be reduced to writing and a copy thereof filed with the board. Such contract shall state fully the extent and scope of the employment and the compensation to be paid such physician or physicians. If the association or subscriber wilfully fails or refuses to comply with this provision of this Act, then an injured employé or any person acting for him shall have the right to provide hospital services, medical aid and medicine for said injured employé, at the expense of and the same shall be charged to the association, and the subscriber or association shall notify the employé at or before the time of injury what physician or physicians are contracted with to treat his or its employés. (Id. sec. 12f.)

Art. 5246—28. Contributions from employés prohibited; effect of violation.—It shall be unlawful for any subscriber or any employer who seeks to comply with the provisions of this Act to either directly or indirectly collect of or from his employés by any means or pretense whatever any premium under this Act or part thereof paid or to be paid upon any policy of such insurance under this Act which covers such employés, or any intended policy of such insurance designed to cover such employés, and, if any such subscriber or any employer of labor in this State violates this provision of this Act, then any employé or the legal beneficiary of any employé of such employer or subscriber shall be entitled to all the benefits of this Act and in addition thereto shall have a separate right of action to recover damages against such employer without regard to the compensation paid or to be paid to such employé or beneficiary under this Act, and the association shall in no wise be responsible because of such separate action by such employé or beneficiary against such employer on such separate cause of action. (Id. sec. 12g.)

Art. 5246—29. Contracts to indemnify subscriber void; insurance similar to that provided herein prohibited.—Every contract or agreement of an employer, the purpose of which is to indemnify him from loss or damage on account of the injury of an employé by accidental means or on account of the negligence of such employer or his officer, agent or servant, shall be absolutely void unless it also covers liability for the payment of the compensation provided for by this Act. Provided, that this section of this Act shall not apply to employers of labor who are not eligible under the terms of this Act to become subscribers thereto, nor to employers whose employés have elected to reject the provisions of this Act, nor to employers eligible to come under the terms of this Act who do not elect to do so, but who choose to carry insurance upon their employés independently of this law and without attempting in such insurance to provide compensation under the terms of this Act; but further provided that any evasion of this section whereby an insurance company shall under-take, under the guise of writing insurance against the risk of the employers who do not see proper to come under this Act, to write insurance substantially or in any material respect similar to the insurance provided for by this Act, that such insurance shall be void as provided for by the foregoing provisions of this Section. (Id. sec. 12h.)

Art. 5246—30. Mode of estimating weekly wage of minors; hazardous employments.—If it be established that the injured employé was a minor when injured and that under normal condition his wages would be expected to increase, that fact may be considered in arriving at his average weekly wages and compensation may be fixed accordingly. This section shall not be considered as authorizing the employment of a minor in any hazardous employment which is prohibited by any statute of this State. (Id. sec. 12i.)

Art. 5246—31. (5246n) Guardian or next friend of minor or incompetent; payments direct to minor.—If an injured employé is mentally incompetent or is a minor or is under any other disqualifying cause at the time when any rights or privileges accrue to him or exist under this Act, his guardian or next friend may in his behalf claim and exercise such rights and privileges except as otherwise herein provided.

In case of partial incapacity or temporary total incapacity payment of compensation may be made direct to the minor and his receipts taken therefor, if the authority to so pay and receipt for said compensation is first obtained from the board. (Acts 1913, p. 429, pt. 1, sec. 13; Acts 1917, ch. 103, pt. 1, sec. 13.)

Art. 5246—32. (5246nn) No waiver of rights.—No agreement by any employé to waive his rights to compensation under this Act shall be valid. (Acts 1913, p. 429, pt. 1, sec. 14; Acts 1917, ch. 103, pt. 1, sec. 14.)

Art. 5246—33. (5246nnn) Lump sum for death or total permanent incapacity.—In cases where death or total permanent incapacity results from an injury, the liability of the association may be redeemed by payment of a lump sum by agreement of the parties thereto, subject to the approval of the Industrial Accident Board hereinafter created. This section shall be construed as excluding any other character of lump sum settlement save and except as herein specified; provided, however, that in special cases where in the judgment of the board manifest hardship and injustice would otherwise result, the board may compel the association in the cases provided for in this section to redeem their liability by payment of a lump sum as may be determined by the Board. (Acts 1913, p. 429, pt. 1, sec. 15; Acts 1917, ch. 103, pt. 1, sec. 15.)

Art. 5246—34. Increasing amount of weekly installments.—In any case where compensation is payable weekly at a definite sum and for a definite period, and it appears to the Board that the amount of compensation being paid is inadequate to meet the necessities of the beneficiary the Board shall have the power to increase the amount of compensation by correspondingly decreasing the number of weeks for which the same is to be paid allowing such discount to the company increasing such payments as is applicable in cases of lump sum settlement. (Id. sec. 15a.)

Art. 5246—35. (5246o) Causes of action for death survive.—In all cases of injury resulting in death, where such injury was sustained in the course of employment,

cause of action shall survive. (Acts 1913, p. 429, pt. 1, sec. 16; Acts 1917, ch. 103, pt. 1, sec. 16.)

Art. 5246—36. Aliens entitled to compensation; consular officers may represent claimants; commutation.—Non-resident, alien beneficiaries and resident alien beneficiaries shall be entitled to compensation under this Act. Non-resident alien beneficiaries may be officially represented by the consular officers of the nation of which such alien or aliens may be citizens or subject, and in such cases the consular officers shall have the right to receive for distribution for such non-resident, alien beneficiaries all compensation awarded hereunder, and the receipt of such consular officers shall be a full discharge of all sums paid to and received by them. The association may at any time, subject to the approval of the Board, commute all future installments of compensation payable to alien beneficiaries, not resident of the United States, by paying to such alien beneficiaries the sum agreed upon and filing receipts therefor with the Board. (Id. sec. 17.)

Art. 5246—37. Failure of association to make payments; forfeiture of right to do business.—It is the purpose of this Act that the compensation herein provided for shall be paid from week to week and as it accrues and directly to the person entitled thereto, unless the liability is redeemed as in such cases provided elsewhere herein, and, if the association wilfully fails or refuses to pay compensation as and when the same matures and accrues, the Board shall notify said association that such is the course it is pursuing and if after such notice the association continues to wilfully refuse and fail to meet these payments of compensation as provided for in this Act, the Board shall have the power to hold that such association is not complying with the provisions of this Act. And shall certify such fact to the Commissioner of Insurance and Banking and said certificate shall be sufficient cause to justify said Commissioner of Insurance and Banking to revoke or forfeit the license or permit of such Association to do business in Texas; provided, said power of the Board shall not be held to deny the association the right to bring suit or suits to set aside any ruling, order or decision of the Board. (Id. sec. 18.)

Art. 5246—38. Injury to employé outside the state.—If an employé who has been hired in this State sustained injury in the course of his employment he shall be entitled to compensation according to the law of this State, even though such injury was received outside of the State. (Id. sec. 19.)

PART II

Art. 5246—39. (5246*oo*) Industrial accident board created; how constituted and appointed; terms of members.—There shall be an Industrial Accident Board consisting of three members, and the same is hereby created to be appointed by the governor, one of whom shall be Chairman and said board shall have the powers, duties and functions hereinafter conferred. Beginning with September 1, 1917, one member thereof shall be appointed for a term of two years, one for four years and one for six years; thereafter the term of office for members of the board shall be six years. Appointments to fill vacancies on the board shall be for the unexpired terms. (Acts 1913, p. 429, pt. 2, sec. 1; Acts 1917, ch. 103, pt. 2, sec. 1.)

Art. 5246—40. (5246*ooo*) Qualifications of members; legal adviser and chairman.—One member of the Industrial Accident Board shall be at the time of his appointment an employer of labor in some industry or business covered by this Act; one shall be at the time of his appointment employed in some business industry as a wage earner, and the third member shall be at the time of his appointment a practicing attorney of recognized ability, said member to act in the capacity of legal adviser to the Board, in addition to his other duties as a member thereof and to be Chairman of said Board. (Acts 1913, p. 429, pt. 2, sec. 2; Acts 1917, ch. 103, pt. 2, sec. 2.)

Art. 5246—41. (5246p) Salaries and expenses; secretary, clerks, etc.; offices; free transportation.—The salaries and expenses of the Industrial Accident Board shall be paid by the State. The salaries of the said members of the Board shall be as follows: For the Chairman of said Board $3000.00 per year, and for each of the other members thereof $2500.00, payable in equal monthly installments. The Board may appoint a Secretary at a salary not to exceed $2000.00 a year. And may appoint such other clerical and other assistants as may be necessary to properly administer this Act. It shall also be allowed an annual sum, the amount to be determined by the Legislature, for clerical and other services, office equipment, traveling and all other necessary expenses. The board shall be provided suitable offices in the Capitol or some convenient building in the city of Austin where its records shall be kept.

The members of said board, or any employé thereof, shall have the right to travel upon free railroad transportation in the prosecution of the duties of their respective offices in the State of Texas without violating any provision of the anti-pass laws of this State, and any railroad company issuing such transportation shall not be deemed nor held to have violated any law of this State by reason thereof. (Acts 1913, p. 429, pt. 2, sec. 3; Acts 1917, ch. 103, pt. 2, sec. 3.)

The salary of the chairman of the board is fixed at $4,000, and of the other two members of the board at $3,000 each, by Acts 1917, 1st C. S., ch. 48, sec. 2, post, art. 7085b.

Art. 5246—42. (5246pp) Duties and powers of board; examination of injured employés; reduction or suspension of compensation; process and procedure; subpœna of witnesses; oaths; examination of books, etc.; rulings to be on questions of fact.—The Board may make rules not inconsistent with this Act for carrying out and enforcing its provisions, and may require any employé claiming to have sustained injury to submit himself for examination before such board or someone acting under its authority at some reasonable time and place within the State, and as often as may be reasonably ordered by the board to a physician or physicians authorized to practice under the laws of this State. If the em-

ployé or the association requests, he or it shall be entitled to have a physician or physicians of his or its own selection present to participate in such examination. Refusal of the employé to submit to such examination shall deprive him of his right to compensation during the continuance of such refusal. When a right to compensation is thus suspended no compensation shall be payable in respect to the period of suspension. If any employé shall persist in unsanitary or injurious practices which tend to either imperil or retard his recovery, or shall refuse to submit to such medical or surgical treatment as is reasonably essential to promote his recovery, the board may in its discretion order or direct the association to reduce or suspend the compensation of any such injured employé. No compensation shall be reduced or suspended under the terms of this section without reasonable notice to the employé and an opportunity to be heard.

The association shall have the privilege of having any injured employé examined by a physician or physicians of its own selection, at reasonable times, at a place or places suitable to the condition of the injured employé and convenient; and accessible to him; provided, however, that the association shall pay for such examination and the reasonable expense incident to the injured employé in submitting thereto; and provided further that the injured employé shall have the privilege to have a physician or physicians of his own selection, at the expense of such injured employé, present to participate in such examination.

Process and procedure shall be as summary as may be under this Act. The board or any member thereof shall have power to subpœna witnesses, administer oaths, inquire into matters of fact, and to examine such parts of the books and records of the parties to a proceeding as relate to questions in dispute. All rulings and decisions of the board relating to disputed claims shall be upon questions of fact and in accord with the provisions of this Act. (Acts 1913, p. 429, pt. 2, sec. 4; Acts 1917, ch. 103, pt. 2, sec. 4.)

Art. 5246—43. (5246ppp) Employé shall give notice of injury and file claim within what time; waiver of limitation by board.—Unless the association or subscriber have notice of the injury, no proceeding for compensation for injury under this Act shall be maintained unless a notice of the injury shall have been given to the association or subscriber within thirty (30) days after the happening thereof, and unless a claim for compensation with respect to such injury shall have been made within six (6) months after the occurrence of same; or, in case of death of the employé or in the event of his physical or mental incapacity within six (6) months after the death or the removal of such physical or mental incapacity. Provided that for good cause the Board may, in meritorious cases, waive the strict compliance with the foregoing limitations as to notice, and the filing the claim before the Board. (Acts 1913, p. 429, pt. 2, sec. 4a; Acts 1917, ch. 103, pt. 2, sec. 4a.)

Art. 5246—44. (5246q) Questions to be determined by board; suit by person aggrieved; notice; suit how determined; parties; if suit not brought within 20 days award of board may be enforced by forfeiture of license of association.—All questions arising under this Act, if not settled by agreement of the parties interested therein and within the terms and provisions of this Act, shall, except as otherwise provided, be determined by the board. Any interested party who is not willing and does not consent to abide by the final ruling and decision of said board shall within twenty days after the rendition of said final ruling and decision by said board give notice to the adverse party and to the board that he will not abide by said final ruling and decision. And he shall within twenty days after giving such notice bring suit in some court of competent jurisdiction in the county where the injury occurred to set aside said final ruling and decision and said board shall proceed no further toward the adjustment of such claim, other than as hereinafter provided; provided, however, that whenever such suit is brought, the rights and liability of the parties thereto shall be determined by the provisions of this Act, and the suit of the injured employé or person suing on account of the death of such employé shall be against the association if the employer of such injured or deceased employé at the time of such injury or death was a subscribed as defined in this Act. If the final order of the board is against the association then the association and not the employer shall bring suit to set aside said final ruling and decision of the board, if it so desires, and the court shall in either event determine the issues in such cause instead of the board upon trial de novo and the burden of proof shall be upon the party claiming compensation. In case of recovery the same shall not exceed the maximum compensation allowed under the provisions of this Act. If any party to any such final ruling and decision of the board, after having given notice as above provided, fails within said twenty days to institute and prosecute a suit to set the same aside, then said final ruling and decision shall be binding upon all parties thereto, and, if the same is against the association, it shall at once comply with such final ruling and decision, and failing to do so the board shall certify that fact to the Commissioner of Insurance and Banking, and such certificate shall be sufficient cause to justify said Commissioner of Insurance and Banking to revoke or forfeit the license or permit of such association to do business in Texas. (Acts 1913, p. 429, pt. 2, sec. 5; Acts 1917, ch. 103, pt. 2, sec. 5.)

Art. 5246—45. Suit to enforce award; damages and attorney's fee; maturity of installments on failure to make payment; venue.—In all cases where the board shall make a final order, ruling or decision as provided in the foregoing Section 5 hereof [Art. 5246—44], and against the association, and the association shall fail and refuse to obey or comply with the same and shall fail or refuse to bring suit to set the same aside as in said Section 5 is provided, then in that event, the claimant in addition to the rights and remedies given him and the board in said Section 5 may bring suit in some court of competent jurisdiction where the injury occurred, upon said order, ruling or decision, and if he secures a judgment in said court sustaining such order, ruling or deci-

sion in whole or in part, he shall also be entitled to recover the further sum of twelve per cent as damages upon the amount of compensation so recovered in said judgment, together with a reasonable attorney's fee for the prosecution and collection of such claim.

It is further provided that where the Board has made an award against an association requiring the payment to an injured employé or his beneficiaries of any weekly or monthly payments, under the terms of this Act, and such association should thereafter fail or refuse, without justifiable cause, to continue to make said payments promptly as they mature, then the said injured employé or his beneficiaries, in case of his death, shall have the right to mature the entire claim and to institute suit thereon in any court of competent jurisdiction where the injury occurred to collect the full amount thereof, together with twelve per cent penalties and attorney's fees, as provided for in the foregoing paragraph of this Section. Suit may be brought under the provisions of this Section of the Act, either in the county where the accident occurred, or in any county where the claimants reside, or where one or more of such claimants may have his place of residence at the time of the institution of the suit. (Id. sec. 5a.)

Art. 5246—46. (5246qq) Compensation where sub-contractor is employed; right of action against sub-contractor.—If any subscriber to this Act with the purpose and intention of avoiding any liability imposed by the terms of the Act sublets the whole or any part of the work to be performed or done by said subscriber to any sub-contractor, then in the event any employé of such sub-contractor sustains an injury in the course of his employment he shall be deemed to be and taken for all purposes of this Act to be the employé of the subscriber, and in addition thereto such employé shall have an independent right of action against such sub-contractor, which shall in no way be affected by any compensation to be received by him under the terms and provisions of this Act. (Acts 1913, p. 429, pt. 2, sec. 6; Acts 1917, ch. 103, pt. 2, sec. 6.)

Art. 5246—47. Where injury caused by third person employé shall elect; subrogation of association; compromise; notice; approval of board.—Where the injury for which compensation is payable under this Act was caused under circumstances creating a legal liability in some person other than the subscriber to pay damages in respect thereof, the employé may at his option proceed either at law against that person to recover damages or against the association for compensation under this Act, but not against both, and if he elects to proceed at law against the person other than the subscriber, then he shall not be entitled to compensation under the provisions of this Act; if compensation be claimed under this Act by the injured employé or his legal beneficiaries, then the association shall be subrogated to the rights of the injured employé in so far as may be necessary and may enforce in the name of the injured employé or of his legal beneficiaries or in its own name and for the joint use and benefit of said employé or beneficiaries and the association the liability of said other person, and in case the association recovers a sum greater than that paid or assumed by the association to the employé or his legal beneficiaries, together with a reasonable cost of enforcing such liability, which shall be determined by the court trying the case, then out of the sum so recovered the association shall reimburse itself and pay said cost and the excess so recovered shall be paid to the injured employé or his beneficiaries. The association shall not have the right to adjust or compromise such liability against such third person without notice to the injured employé or his beneficiaries. The association shall not have the right to adjust or compromise such liability against such third person without notice to the injured employé or his beneficiaries and the approval of the board, upon a hearing thereof. (Id. sec. 6a.)

Art. 5246—48. (5246qqq) Employer to keep record of injuries; reports; penalty for failure.—Every subscriber shall hereafter keep a record of all injuries, fatal or otherwise, sustained by his employés in the course of their employment. Within eight days after the occurrence of an accident resulting in an injury to an employé, causing his absence from work for more than one day, a report thereof shall be made in writing to the board on blanks to be procured from the board for that purpose. Upon the termination of the incapacity of the injured employé, or if such incapacity extends beyond a period of sixty days, the subscriber shall make a supplemental report upon blanks to be procured for that purpose. The said report shall contain the name and nature of the business of the employer, the location of the establishment, the name, age, sex and occupation of the injured employé and the character of work in which he was engaged at the time of the injury, and shall state the date and hour of receiving such injury and the nature and cause of the injury, and such other information as the board may require. Any employer willfully failing or refusing to make any such report within the time herein provided, or willfully failing or refusing to give said board any information demanded by said board relating to any injury to any employé, which information is in the possession of or can be ascertained by the employer by the use of reasonable diligence, shall be liable for and shall pay to the State of Texas a penalty of not more than one thousand dollars for each and every offense, the same to be recovered in a suit to be instituted and prosecuted in Travis county by the Attorney General or by the district or county attorney under his direction in a district court thereof. (Acts 1913, p. 429, pt. 2, sec. 7; Acts 1917, ch. 103, pt. 2, sec. 7.)

Art. 5246—49. Quorum of board; vacancy; seal; orders, etc., admissible in evidence.—A majority of the Board shall constitute a quorum to transact business, and the act or decision of any two members of the Board shall be held the act or decision of the Board, except as otherwise herein specifically provided. No vacancy shall impair the right of the remaining member or members of the Board to exercise all the powers of the Board. The Board shall provide itself with a seal for the authentication of its orders, awards or proceedings on which shall be inscribed the words "Industrial Accident

Board, State of Texas, Official Seal." And any order, award or proceeding of said Board when duly attested and sealed by the Board or its secretary shall be admissible as evidence of the act of said Board in any court in this State. (Id. sec. 8.)

Art. 5246—50. Certified copies of orders; fees, and disposition thereof; fund for clerk hire.—Upon the written request and payment of the fees therefor, which fees shall be the same as those charged for similar services in the Secretary of State's office, the Board shall furnish to any person entitled thereto a certified copy of any order, award, decision or paper on file in the office of said Board, and the fees so received for such copies shall be covered into the Treasury of the State of Texas into the fund for assistant clerical hire in the department of the Industrial Accident Board, and so much thereof as may be necessary may be used by said department upon proper voucher therefor to pay the necessary clerks to make such copies, and any excess that may exist at the end of any fiscal year in such fund shall lapse into the general revenue fund of this State, and no fee or salary shall be paid to any clerk or other person in said department for making such copies in excess of the fees charged for such copies. (Id. sec. 9.)

Art. 5246—51. Sessions of board or members; inspectors and adjusters.—Said Board or any member thereof may hold hearings or take testimony or make investigations at any point within the State of Texas, reporting the result thereof, if the same is made by one member, to the Board, or it can employ or use the assistance of an inspector or adjuster for the purpose of adjusting and settling claims for compensation or developing the facts relating to any claim for compensation. (Id. sec. 10.)

Art. 5246—52. Association to notify board of suspension of payments.—When the association suspends or stops payment of compensation, it shall immediately notify the Board of that fact, giving to said Board the name, number and style of the claim, the amount paid thereon, the date of the suspension or stopping of payment thereon and the reason for such suspension or stopping of payment of compensation. (Id. sec. 11.)

Art. 5246—53. Compensation may be paid monthly or quarterly; compromise or commutation in doubtful cases.—The Board upon application of either party may, in its discretion, having regard to the welfare of the employé and the convenience of the association, authorize compensation to be paid monthly or quarterly.

In any case where the liability of the association or the extent of the injury of the employé is uncertain, indefinite or incapable of being satisfactorily established the Board may approve any compromise, adjustment, settlement or commutation thereof made between the parties. (Id. sec. 12.)

PART III

Art. 5246—54. (5246r) Texas Employers' Insurance Association created; corporate powers.—The "Texas Employers' Insurance Association" is hereby created, a body corporate with the powers provided in this Act and with all the general corporate powers incident thereto. (Acts 1913, p. 429, pt. 3, sec. 1; Acts 1917, ch. 103, pt. 3, sec. 1.)

Art. 5246—55. (5246rr) Governor to appoint first directors; term and election of successors; increase or decrease of number.—The Governor shall appoint a board of directors of the association consisting of twelve members, who shall serve for a term of one year or until their successors are elected by ballot by the subscribers at such time and for such term as the by-laws shall provide; provided that at any annual meeting of subscribers the number of directors may be increased or decreased by resolution duly recorded in the minutes of such meeting. (Acts 1913, p. 429, pt. 3, sec. 2; Acts 1917, ch. 103, pt. 3, sec. 2.)

Art. 5246—56. (5246rrr) To exercise powers of subscribers until first meeting; by-laws.—Until the first meeting of the subscribers, the board of directors shall have and exercise all the powers of the subscribers and may adopt by-laws, not inconsistent with the provisions of this Act, which shall be in effect until amended or repealed by the subscribers. (Acts 1913, p. 429, pt. 3, sec. 3; Acts 1917, ch. 103, pt. 3, sec. 3.)

Art. 5246—57. (5246s) Election of president and officers.—The board of directors shall immediately choose by ballot a president, who shall be a member of the board, a secretary, a treasurer, and such other officials as the by-laws may provide. (Acts 1913, p. 429, pt. 3, sec. 4; Acts 1917, ch. 103, pt. 3, sec. 4.)

Art. 5246—58. (5246ss) Quorum of directors; vacancies.—Seven or more of the directors shall constitute a quorum for the transaction of business. Vacancies in any office may be filled in such manner as the by-laws shall provide. (Acts 1913, p. 429, pt. 3, sec. 5; Acts 1917, ch. 103, pt. 3, sec. 5.)

Art. 5246—59. Executive committee.—The board of directors may appoint an executive committee which may have and exercise all of the powers of the board of directors except when the board is in session. (Id. sec. 5a.)

Art. 5246—60. (5246sss) Who may become subscribers.—Any employer of labor in this State may become a subscriber except as provided in Section 2, Part. I [Art. 5246—2], of this Act. (Acts 1913, p. 429, pt. 3, sec. 6; Acts 1917, ch. 103, pt. 3, sec. 6.)

Art. 5246—61. (5246t) First meeting of board; notice.—The board of directors shall, within thirty days of the subscription of twenty-five employers, call the first meeting of the subscribers by a notice in writing mailed to each subscriber at his residence or place of business not less than ten days before the date fixed for the meeting. (Acts 1913, p. 429, pt. 3, sec. 7; Acts 1917, ch. 103, pt. 3, sec. 7.)

Art. 5246—62. (5246tt) Voting power of subscribers.—In any meeting of the subscribers each subscriber shall have one vote, and if a subscriber has 500 employés to whom the association is bound to pay compensation he shall be entitled to two votes and he shall be entitled to one additional vote for each additional 500 employés to whom the association is bound to pay compensation, but no subscriber shall cast, by his own right or by right of proxy, more than 20

votes. (Acts 1913, p. 429, pt. 3, sec. 8; Acts 1917, ch. 103, pt. 3, sec. 8.)

Art. 5246—63. (5246ttt) When association may issue policies.—No policies shall be issued by the association until not less than 50 members have subscribed, who have not less than 2,000 employés to whom the association may be bound to pay compensation. (Acts 1913, p. 429, pt. 3, sec. 9; Acts 1917, ch. 103, pt. 3, sec. 9.)

Art. 5246—64. (5246u) Statement and certificate before issuance of policies; license to association.—No policies shall be issued by the association until a list of the subscribers with the number of employés of each, together with such information as the Commissioner of Insurance and Banking may require, shall have been filed with the Department of Insurance and Banking, nor until the president and secretary of the association shall have certified under oath that every subscription on the list so filed is genuine and made with an agreement with each subscriber that he will take the policy so subscribed for by him within thirty days of the granting of a license to the association by the Commissioner of Insurance and Banking to issue policies. (Acts 1913, p. 429, pt. 3, sec. 10; Acts 1917, ch. 103, pt. 3, sec. 10.)

Art. 5246—65. (5246uu) Issuance of policies to be suspended, when.—If the number of subscribers falls below fifty, or the number of employés to whom the association may be bound to pay compensation falls below 2,000, no further policies shall be issued until other employers have subscribed who, together with existing subscribers, amount to not less than fifty, who have not less than 2,000 employés to whom the association may be bound to pay compensation, said subscriptions to be subject to the provisions of the preceding section. (Acts 1913, p. 429, pt. 3, sec. 11; Acts 1917, ch. 103, pt. 3, sec. 11.)

Art. 5246—66. (5246uuu) License to issue policies, when granted.—Upon the filing of the certificates provided for in the two preceding sections, the Commissioner of Insurance and Banking shall make such investigations as he may deem proper and, if his findings warrant it, grant a license to the association to issue policies. (Acts 1913, p. 429, pt. 3, sec. 12; Acts 1917, ch. 103, pt. 3, sec. 12.)

Art. 5246—67. (5246v) Groups of subscribers; premiums, dividends, etc.—The Board of directors may distribute the subscribers into groups for the purpose of segregating the experience of each such group as to premiums and losses, and for the purpose of determining dividends payable to and assessments payable by the subscribers within each group, but for the purpose of determining the solvency of the association the funds of the association shall be deemed one and indivisible. The board of directors shall have power to re-arrange any of the groups by withdrawing any subscriber and transferring him wholly or in part to any group and to set up new groups at its discretion. (Acts 1913, p. 429, pt. 3, sec. 13; Acts 1917, ch. 103, pt. 3, sec. 13.)

Art. 5246—68. (5246vv) May fix limit of liability.—The association may, in its by-laws and policies, fix the limit of liability of the subscribers for the payment of assessments hereinafter provided, for, but such limit of liability of the subscribers shall not, except by special agreement in writing between the association and subscriber, be fixed at an amount greater than an amount equal to and in addition to an annual premium. (Acts 1913, p. 429, pt. 3, sec. 14; Acts 1917, ch. 103, pt. 3, sec. 14.)

Art. 5246—69. (5246vvv) Assessments; duty to pay.—If the association, at the end of any calendar year, is not possessed of admitted assets in excess of unearned premiums sufficient for the payment of its incurred losses and expenses, it shall make an assessment for the amount needed to pay such losses and expenses, first upon the subscribers within each group whose earned premiums compared with its incurred losses and expenses shows a deficiency for the group, and second only upon the subscribers within each group whose earned premiums compared with its incurred losses and expenses shows a surplus, and in no event shall it make an assessment for any aggregate amount more than is needed to pay losses and expenses. Every subscriber shall, in accordance with the law and his contract, pay his proportionate part of any assessment which may be levied by the association on account of losses and expenses incurred during any calendar year while he is a subscriber. (Acts 1913, p. 429, pt. 3, sec. 15; Acts 1917, ch. 103, pt. 3, sec. 15.)

Art. 5246—70. (5246w) Dividends; groups; assets liable for compensation claims.—The board of directors may by vote from time to time fix the amount to be paid as dividends on the policies in force during each calendar year after retaining sums sufficient to pay all compensation which may be payable on account of injuries sustained and expenses incurred during the calendar year. Dividends and assessments shall be fixed by and for groups, but the entire assets of the association, including the liability of the subscriber to assessment within the limits fixed by the by-laws or by special agreement in writing as authorized, shall be subject to the payment of any approved claim for compensation against the association. (Acts 1913, p. 429, pt. 3, sec. 16; Acts 1917, ch. 103, pt. 3, sec. 16.)

Art. 5246—71. Assessments suspended in case of surplus; certificate of insurance commissioner.—Whenever the association shall have accumulated at the end of any calendar year an admitted surplus in excess of incurred losses, expenses and unearned premiums amounting to the sum of two hundred thousand dollars, the liability of its members to assessment shall be suspended during the ensuing calendar year, or for such further period as the association shall maintain unimpaired such surplus of two hundred thousand dollars or more, and the certificate of the Commissioner of Insurance and Banking, after an examination and report, shall be conclusive evidence as to the fact in any proceeding in which the fact may be an issue. (Id. sec. 16a.)

Art. 5246—72. Nonparticipating policies.—Whenever by reason of having qualified under Section 16a, Part III [Art. 5246—71], to issue policies which are not subject to assessment, the association may issue policies which will not entitle the holder to

participate in any distribution of surplus. (Id. sec. 16b.)

Art. 5246—73. Classes and rates.—The board of directors shall determine hazards by classes, and fix the rates of premium which shall be applicable to the pay roll in each of such classes at the lowest possible rate consistent with the maintenance of solvency and the creation of adequate reserves and a reasonable surplus, and for such purpose may adopt a system of schedule and experience rating in such a manner as to take account of the peculiar hazard of each individual risk. (Id. sec. 16c.)

Art. 5246—74. (5246ww) Acts subject to approval of Commissioner of Insurance and Banking.—Any proposed rate of premium, assessment or dividend or any distribution of subscribers shall not take effect until approved by the Commissioner of Insurance and Banking after such investigation as he may deem necessary. (Acts 1913, p. 429, pt. 3, sec. 17; Acts 1917, ch. 103, pt. 3, sec. 17.)

Art. 5246—75. (5246www) Rules for prevention of accidents; access to premises; review of rules.—The association shall make and enforce reasonable rules for the prevention of injuries on the premises of subscribers and for this purpose the inspector of the association or of the board shall have free access to all such premises during regular working hours. Any subscriber aggrieved by such rule or regulation may petition the board for a review and it may affirm, amend or annul the rule or regulation. (Acts 1913, p. 429, pt. 3, sec. 18; Acts 1917, ch. 103, pt. 3, sec. 18.)

Art. 5246—76. Employer shall give notice to board on becoming a subscriber; association to give notice; penalty for failure.—Whenever any employer of labor in this State becomes a subscriber to this Act, he shall immediately notify the board of such fact, stating in such notice his name, place of business, character of the business, approximate number of employés, estimated amount of his pay roll and the name of the insurance company carrying his insurance, the date of issuing the policy and the date when the same will expire, and whenever any policy is renewed that fact shall be made known to the board and the notice thereof shall contain the above facts. The association shall also report the same to the board, giving the name of the employer, place of business, character of the business, approximate number of employés, estimated amount of pay roll, date of issuance and date of expiration of said policy. Any employer or association willfully failing or refusing to make any such report shall be liable for and shall pay to the State of Texas a penalty of not more than one thousand dollars ($1,000.00) for each and every offense, the same to be recovered in a suit to be instituted and prosecuted in Travis County by the Attorney General or by the district or county attorney under his direction in the district court thereof. (Id. sec. 18a.)

Art. 5246—77. (5246x) Notice to employés of securing of policy.—Every subscriber shall, as soon as he secures a policy, give notice in writing or print, or in such manner or way as may be directed or approved by the Board, to all persons under contract of hire with him that he has provided for payment of compensation for injuries with the association. (Acts 1913, p. 429, pt. 3, sec. 19; Acts 1917, ch. 103, pt. 3, sec. 19.)

Art. 5246—78. (5246xx) Notice to incoming employés; notice of discontinuance of policy; filing copy of notice with board.—Every subscriber shall, after receiving a policy, give notice in writing or print, or in such manner or way as may be directed or approved by the Board to all persons with whom he is about to enter into a contract of hire that he has provided for payment of compensation for injuries by the association. If any employer ceases to be a subscriber, he shall on or before the date on which his policy expires, give notice to that effect in writing or print or in such other manner or way as the Board may direct or approve to all persons under contract of hire with him. In case of the renewal of his policy no notice shall be required under this Act. He shall file a copy of said notice with the Board. (Acts 1913, p. 429, pt. 3, sec. 20; Acts 1917, ch. 103, pt. 3, sec. 20.)

Art. 5246—79. (5246xxx) Association shall pay subscriber amount of judgment, when.—If a subscriber who has complied with all the rules, regulations and demands of the association is required by any judgment of a court at law to pay any employé any damages actual or exemplary, on account of any personal injury sustained by such employé in the course of his employment during the period of subscription, the association shall pay to the subscriber the full amount of the judgment and the cost assessed therewith, if the subscriber shall have given the association notice of the bringing of the action upon which the judgment was recovered and an opportunity to appear and defend same in his or its name. (Acts 1913, p. 429, pt. 3, sec. 21; Acts 1917, ch. 103, pt. 3, sec. 21.)

Art. 5246—80. (5246y) Corporate powers shall not expire, etc.—The corporate powers of the association shall not expire because of failure to issue policies or to make insurance. (Acts 1913, p. 429, pt. 3, sec. 22; Acts 1917, ch. 103, pt. 3, sec. 22.)

Art. 5246—81. (5246yy) Reserves.—The association shall set up and maintain reserves adequate to meet anticipated losses and carry all claims to maturity and policies to termination, which reserves shall be computed in accordance with such rules as shall be approved by the Commissioner of Insurance and Banking. (Acts 1913, p. 429, pt. 3, sec. 23; Acts 1917, ch. 103, pt. 3, sec. 23.)

PART IV

Art. 5246—82. (5246yyy) Terms defined.—The following words and phrases as used in this Act shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

"Employer" shall mean any person, firm, partnership, association of persons or corporations or their legal representatives that makes contracts of hire.

"Employé" shall mean every person in the service of another under any contract of hire, expressed or implied, oral or written, except masters of or seamen on vessels engaged in interstate or foreign commerce, and except

one whose employment is not in the usual course of trade, business, profession or occupation of his employer.

The words "legal beneficiaries" as used in this Act shall mean the relatives named in Section 8a, Part I of this Act [Art. 5246—15]. "Association" shall mean the "Texas Employers' Insurance Association" or any other insurance company authorized under this Act to insure the payment of compensation to injured employés or to the beneficiaries of deceased employés.

"Subscriber" shall mean any employé who has become a member of the association by paying the required premium; provided that the association holds a license issued by the Commissioner of Insurance and Banking, as provided for in Section 12, Part III of this Act [Art. 5246—66].

"Average weekly wages" shall mean,

1. If the injured employé shall have worked in the employment in which he was working at the time of the injury, whether for the same employer or not, substantially the whole of the year immediately preceding the injury, his average annual wages shall consist of three hundred times the average daily wage or salary which he shall have earned in such employment during the days when so employed.

2. If the injured employé shall not have worked in such employment during substantially the whole of the year, his average annual wages shall consist of three hundred times the average daily wage or salary which an employé of the same class working substantially the whole of such immediately preceding year in the same or in a similar employment in the same or a neighboring place, shall have earned in such employment during the days when so employed.

3. When by reason of the shortness of the time of the employment of the employé, or other employé engaged in the same class of work in the manner and for the length of time specified in the above subsections 1 and 2, or other good and sufficient reasons, it is impracticable to compute the average weekly wages as above defined, it shall be computed by the Board in any manner which may seem just and fair to both parties.

4. Said wages shall include the market value of board, lodging, laundry, fuel, and other advantage which can be estimated in money, which the employé receives from the employer as part of his remuneration. Any sums, however, which the einployer has paid to the employé to cover any special expenses entailed on him by the act of his employment shall not be included.

5. The average weekly wages of an employé shall be one-fifty-second ($^1/_{52}$) part of the average annual wages.

The terms "injury" of "personal injury" as used in this Act shall be construed to mean damage or harm to the physical structure of the body and such diseases or infection as naturally result therefrom.

The term "injury sustained in the course of employment," as used in this Act, shall not include:

1. An injury caused by the act of God, unless the employé is at the time engaged in the performance of duties that subject him to a greater hazard from the act of God responsible for the injury than ordinarily applies to the general public.

2. An injury caused by an act of a third person intended to injure the employé because of reasons personal to him and not directed against him as an employé, or because of his employment.

3. An injury received while in a state of intoxication.

4. An injury caused by the employé's willful intention and attempt to injure himself, or to unlawfully injure some other person, but shall include all other injuries of every kind and character having to do with and originating in the work, business, trade or profession of the employer received by an employé while engaged in or about the furtherance of the affairs or business of his employer whether upon the employer's premises or elsewhere. (Acts 1913, p. 429, pt. 4, sec. 1; Acts 1917, ch. 103, pt. 4, sec. 1.)

Art. 5246—83. Officers and directors of subscriber corporation not deemed "employés."—The president, vice president or vice presidents, secretary or other officers thereof provided in its charter or by-laws and the directors of any corporation which is a subscriber to this Act shall not be deemed or held to be an employé within the meaning of that term as defined in the preceding section hereof. (Id. sec. 1a.)

Art. 5246—84. (5246yyyy) Employer holding policy of insurance company deemed a subscriber; insurer subject to provisions of this Act; rates; mutual organizations.—Any insurance company which term shall include mutual and reciprocal companies, lawfully transacting a liability or accident business in this State shall have the same right to insure the liability and pay the compensation provided for in Part I of this Act, and when such company issues a policy conditioned to pay such compensation, the holder of such said policy shall be regarded as a subscriber so far as applicable under this Act, and when such company insures such payment of compensation it shall be subject to the provisions of Parts I, II, and IV and of Sections 10, 17, 18a, and 21 of Part III of this Act [Arts. 5246—64, 5246—74, 5246—76, 5246—79], and shall file with the Commissioner of Insurance and Banking its classification of hazards with the rates of premium respectively applicable to each, none of which shall take effect until the Commissioner of Insurance and Banking has approved same as adequate to the risks to which they respectively apply and not less than charged by the association, and such company may have and exercise all of the rights and powers conferred by this Act on the association created hereby, but such rights and powers shall not be exercised by a mutual or reciprocal organization unless such organization has at least fifty subscribers who have not less than 2,000 employés. (Acts 1913, p. 429, pt. 4, sec. 2; Acts 1917, ch. 103, pt. 4, sec. 2.)

Art. 5246—85. (5246z) Employer may withdraw as subscriber.—Any subscriber who has paid a premium as provided in Section 1, Part IV of this Act [Art. 5246—82], may upon application to the board and to the association and after a showing satisfactory to the board that he has notified all of his employés in such manner as may be required

by the board cease to be a subscriber and be entitled to a refund of the unearned portion of his premium, subject, however, to any rule approved by the Commissioner of Insurance and Banking as to the minimum premiums or short rate cancellation. (Acts 1913, p. 429, pt. 4, sec. 3; Acts 1917, ch. 103, pt. 4, sec. 3.)

Art. 5246—86. Misrepresentations affecting premium rates; penalty.—Any subscriber who shall willfully misrepresent the amount of his pay roll to the association writing his insurance upon which any premium under this Act is to be based shall be liable to the association insuring the compensation of his employés in an amount not to exceed ten times the amount of the difference between the premium which he paid and the amount which said subscriber should have paid had his pay roll been correctly computed; and the liability to said association for such misrepresentation if it was deceived thereby, may be enforced in a civil action in any court of competent jurisdiction in this State. (Id. sec. 3a.)

Art. 5246—87. Effect of amendment on rights acquired under previous law.—No inchoate, vested, matured, existing or other rights, remedies, powers, duties or authority, either of any employé or legal beneficiary, or of the board, or of the association, or of any other person shall be in any way affected by any of the amendments herein made to the original law hereby amended, but all such rights, remedies, powers, duties, and authority shall remain and be in force as under the original law just as if the amendments hereby adopted had never been made, and to that end it is hereby declared that said original law is not repealed, but the same is, and shall remain in full force and effect as to all such rights, remedies, powers, duties and authority; and further this Act in so far as it adopts the law of which it is an amendment is a continuation thereof, and only in other respects a new enactment. (Id. sec. 3b.)

Art. 5246—88. Meaning of words "employé" and "board"; singular and plural; gender.—Any reference to any employé herein who has been injured shall, when the employé is dead, also include the legal beneficiaries, as that term is herein used, of such employé to whom compensation may be payable. Whenever the word "board" is used in this Act it shall be construed to mean Industrial Accident Board created by this Act. Whenever in this Act the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and neuter shall be included. (Id. sec. 3c.)

Art. 5246—89. (5246zz) Partial invalidity.—Should any part of this Act for any reason be held to be invalid, unconstitutional or inoperative, no other part or parts thereof shall be held affected thereby, and if any exception to or any limitation upon any general provision herein contained shall be held to be unconstitutional or invalid or ineffective the general provisions shall nevertheless stand effective and valid as if it has been enacted without limitation or exceptions. (Acts 1913, p. 429, pt. 4, sec. 4; Acts 1917, ch. 103, pt. 4, sec. 4.)

Art. 5246—90. Advance payments of compensation.—In cases of emergency or impending necessity the association may make advance payments of compensation to any employé during the period of his incapacity or to his beneficiaries within the terms of this Act, and when the same is either directed or approved by the Board it shall be credited as against any unaccrued compensation due said employé or beneficiaries. (Id. sec. 5.)

Art. 5246—91. Reports of subscriber not evidence against association or subscriber.—The reports of accidents required by this Act to be made by subscribers shall not be deemed and considered as admissions and evidence against the association or the subscriber in any proceedings before the Board or elsewhere in a contested case where the facts set out therein or in any one of them is sought to be contradicted by the association or subscriber. (Id. sec. 6.)

CHAPTER SIX

PRIVATE EMPLOYMENT AGENCIES

Art. 5246—92. License required; bond.—No person, firm or corporation in this state shall open, operate or maintain a private employment agency for hire, or where a fee is charged to either applicant for employment or for help, without first obtaining a license for the same from the Commissioner of Labor Statistics, and such license fee shall be $25.00 (twenty-five dollars). Such license shall be of force for one year, but may be renewed from year to year upon the payment of a fee of $25.00 (twenty-five dollars) for each renewal. Every license shall contain a designation of the city, street and number of the building in which the licensed party conducts said employment agencies. The license, together with a copy of this Act shall be posted in a conspicuous place in each and every employment agency. The Commissioner of Labor Statistics shall require with each application for a license a good and sufficient bond in the penal sum of five hundred ($500.00) dollars, to be approved by said commissioner, and conditioned that the obligor will not violate any of the duties, terms, conditions, provisions, or requirements of this Act. The said Commissioner of Labor Statistics is authorized to cause an action to be brought on said bond in name of the State for any violation of any of its conditions, and may revoke, upon a full hearing, any license whenever, in his judgment, the party licensed shall have violated any of the provisions of this Act. (Acts 1915, ch. 108, sec. 1.)

Art. 5246—93. Register to be kept; amount of fee; repayment to applicant.—It shall be the duty of every licensed agency to keep a register in a substantial book, in the form prescribed by the Commissioner of Labor Statistics, in which shall be entered the age, sex, nativity, trade or occupation, name and address of every applicant. Such licensed agency shall also enter in a register the name and address of every person who shall make application for help or servants, and the name and nature of the employment for which such help shall be wanted. Such register shall, at all reasonable hours, be open to the inspection and examination of the Commissioner of Labor Statistics or his deputies or inspectors. Where a registration fee is charged for filing or receiving application for employment or help, said fee shall in no case exceed the sum of two ($2.00) dol-

lars, for which a receipt shall be given, in which shall be stated the name of the applicant, the amount of the fee, the date, the name or character of the work or the situation to be secured. In case the said applicant shall not obtain a situation or employment through such licensed agency within one month after registration as aforesaid, then said licensed agency shall forthwith repay and return to such applicant, upon demand being made therefor, the full amount of the fee paid or delivered by said applicant to said licensed agency; provided, that such demand be made within thirty (30) days after the expiration of the period aforesaid. (Id. sec. 2.)

Art. 5246—94. Securing employment in houses of ill fame prohibited; false advertising and entries; inducing employés to leave employment.—No agency shall send or cause to be sent any female help or servants to any place of bad repute, house of ill fame or assignation house, or any house or place kept for immoral purposes. No such licensed agency shall publish, or cause to be published, any false information, or to make any false promise concerning or relating to work or employment to anyone who shall register for employment, and no such licensed agency shall make any false entries in the register to be kept as herein provided, and all entries in such registers shall be made in ink. Any licensed person or agency shall not by himself or itself, agent or otherwise, induce, or attempt to induce, any employé to leave his employment with a view to obtaining other employment through such agency. (Id. sec. 3.)

Section 4 prescribes penalties for violation of the act. See Pen. Code, art. 999nnn.

Art. 5246—95. Private agency defined.—A private agency for hire is defined and interpreted to mean any person, firm or corporation engaging in the occupation of furnishing employment or help, or giving information as to where employment or help may be secured, or displaying any employment sign or bulletin, or, through the medium of any card, circular or pamphlet, offering to secure employment or help; provided, that charitable organizations not charging a fee shall not be included in said term. (Id. sec. 5.)

Art. 5246—96. Employment agency fund; transfer of unexpended balance to school fund.—The Commissioner of Labor Statistics shall, at the end of each month, make an itemized account of all moneys received by him from fees and fines, under the provisions of this Act, and pay the same into the State Treasury, to be held in a separate fund known as the employment agency fund, and to be used for expenses incurred in inspecting, regulating and printing blanks and books to be furnished such employment agencies by the Commissioner of Labor Statistics. The unexpended moneys remaining in the State Treasury at the end of the fiscal year shall be transferred into the school fund. (Id. sec. 6.)

Section 7 relates to disposition of fines assessed. See Pen. Code, art. 999ooo.

Art. 5246—97. Books and forms.—The Commissioner of Labor Statistics shall furnish to each licensed employment agency blank books upon which their record shall be kept, as provided for in this Act, together with forms for receipts, etc., and all necessary blanks upon which reports shall be made to the Commissioner of Labor Statistics. (Id. sec. 8.)

CHAPTER SEVEN
PAYMENT OF WAGES

Art. 5246—98. Time when wages shall be paid; absent employés.—From and after January 1, 1916, each and every manufacturing, mercantile, mining, quarrying, railroad, street railway, canal, oil, steamboat, telegraph, telephone and express company, employing more than ten persons, and each and every water company not operated by a municipal corporation, and each and every wharf company, and every other corporation engaged in any business within the State of Texas, which employs more than ten persons, or any person, firm or corporation engaged in or upon any public work for the State or for any county or any municipal corporation thereof, either as a contractor or a sub-contractor, therewith, shall pay each of its employés the wages earned by him or her as often as semi-monthly, and pay to a day not more than sixteen days prior to the day of payment.

An employé who is absent at the time fixed for payment, or who for any other reason is not paid at that time, shall be paid thereafter on six days' demand, and any employé leaving his or her employment, or discharged therefrom, shall be paid in full on six days' demand. (Acts 1915, ch. 25, sec. 1.)

See arts. 5646 and 6623.

Art. 5246—99. Penalty for violation of act; suits to recover.—Every person, partnership or corporation, wilfully failing or refusing to pay the wages of any employé at the time and in the manner provided in this statute shall forfeit to the State of Texas the sum of fifty ($50.00) dollars for each and every such failure or refusal, and suits for penalties accruing under this act shall be brought in any court having jurisdiction of the amount in the county in which the employés should have been paid, or where employed. Such suits shall be instituted at the direction of the Commissioner of Labor Statistics by the Attorney General or under his direction or by the County or District Attorney for the county or district in which suit is brought; and the attorney bringing any such suit shall be entitled to receive and shall receive as compensation for his service therein $10.00 of the penalty or penalties recovered in such suit, and the fees and compensation so allowed shall be over and above the fees allowed to the Attorney General, County or District Attorneys under the general fee act. (Id. sec. 2.)

Art. 5246—100. Enforcement of act.—It shall be the duty of the Commissioner of Labor Statistics to inquire diligently for violations of this Act and institute prosecutions and see that the same are carried to final termination and generally to see to the enforcement of the provision hereof. (Id. sec. 3.)

CHAPTER EIGHT
EMIGRANT AGENTS

Art. 5246—101. Shall procure license.—That no person, firm or private employment agency shall carry on the business of an emigrant agent in this State without first having

obtained a license therefor from the Commissioner of Labor Statistics of the State of Texas. (Acts 1917, 3d C. S., ch. 36, sec. 1.)

Art. 5246—102. Definition of "Emigrant Agent."—The term "Emigrant Agent" as contemplated in this Act shall be construed to mean any person who for compensation or fees paid or to be paid directly or indirectly by those employed or solicited to emigrate is engaged in hiring laborers of soliciting emigrants in this State to be employed beyond the limits of this State. (Id. sec. 2.)

Art. 5246—103. Application for license; fee; bond; action on bond; revocation of license.—Any person, firm or private employment agency desiring to be licensed hereunder as an emigrant agent shall make application to the Commissioner of Labor Statistics on forms to be prescribed by said Commissioner, in which he shall state his name, age, place where his business is to be conducted, his previous occupation for the past five years, and the names of the counties of the State in which he expects to engaged in the business of hiring laborers or soliciting emigrants in this State to be employed beyond the limits of the State, such application shall, also, be accompanied by affidavits of at least three credible men that the applicant is to good moral character. The Commissioner of Labor Statistics may require other and additional evidence of the moral character of the applicant, if necessary; and no license shall be granted to any person except one of good moral character. Such application shall be examined by the Commissioner of Labor Statistics and if he finds that the same in all respects complies with the law and that the applicant is entitled to a license under this Act, then he shall issue a license to the applicant for each county for which applications is made, and shall deliver such license to the applicant upon the payment of a license fee of Fifty Dollars for each county in which an office is to be maintained by said agent, and the execution of a good and sufficient bond in the penal sum of Five Hundred Dollars for each county to be approved by said Commissioner of Labor Statistics and conditioned that the obligor will not violate any of the duties, terms, conditions and requirements of this Act. Said Commissioner is authorized to cause action to be brought on said bond by the Attorney General for any violation of any of its conditions; and any person aggrieved by any action or conduct of any such licensed party may bring action for damages against such party on said bond and recover thereon and against the bondsmen in any Court of competent jurisdiction without the necessity of making the State a party thereto. On a full hearing the Commissioner may revoke any license for any violation of the provisions of this Act. (Id. sec. 3.)

Art. 5246—104. Office and record to be kept by licensee; examination by Commissioner of Labor Statistics; limitation of fees that may be collected from laborers; return of fees collected where employment not secured.—It shall be the duty of every party licensed hereunder to keep and maintain an office, at which office a complete record of the business transacted shall be kept; there shall be kept a substantial book in the form prescribed by the Commissioner of Labor Statistics, in which shall be entered the age, sex, nativity, trade or occupation, name and address of every person or laborer hired or emigrant solicited to be employed beyond the limits of this State and where such person or emigrant was directed to go, and the address of such person or emigrant was directed to go, and the address of such person or emigrant, if known. Such licensed party shall also enter in a register the name and address of every person who shall make application for laborers or emigrants to be employed beyond the limits of this State. All the books and registers, correspondence, memoranda, papers and records of every party licensed hereunder shall be subject to examination at any time by the Commissioner of Labor Statistics, his deputies and inspectors. The fees charged for hiring laborers or soliciting emigrants in this State for employment beyond the limits of this State shall not exceed Two Dollars ($2.00) for each such person or emigrant; and the fees charged any person who desires to find labor beyond the State or to emigrants beyond the boundaries of the State for the purpose of obtaining employment shall not exceed Two Dollars ($2.00) for each such person, and in no event shall more than Two Dollars ($2.00) be collected from any one for the same person who seeks employment beyond the State as a laborer or emigrant. Provided that all cases where the applicant who seeks employment beyond the State does not obtain such employment through the party licensed hereunder, then such party must return all fees collected from such applicant within thirty days after same has been collected. (Id. sec. 4.)

Art. 5246—105. Duties of Commissioner of Labor Statistics.—It shall be the duty of the Commissioner of Labor Statistics to enforce this Act, and when any violation thereof comes to his knowledge it shall be his duty to institute criminal proceedings for the enforcement of its penalties before any court of competent jurisdiction. (Id. sec. 5.)

For section 6 of this act, see Penal Code, art. 999½.

Art. 5246—106. Disposition of license fees.—The license fees collected under the provisions of this Act by the Commissioner of Labor Statistics shall be paid directly into the State Treasury, provided that all such fees collected during the fiscal year, beginning September 1, 1917, and ending August 31, 1918, and during the fiscal year beginning September 1, 1918 and ending August 31, 1919, are hereby appropriated for the use of the Commissioner of Labor Statistics to be used by him in the enforcement of the provisions of this Act and shall be paid out on warrants properly drawn by the Commissioner of Labor Statistics and approved and countersigned by the Comptroller of the State of Texas, and any surplus thereof remaining at the end of either of said years shall remain in the State Treasury and be by the State Treasurer placed in the General Funds of the State. (Id. sec. 7.)

Art. 5246—107. Appropriations available.—All appropriations heretofore made for the support and maintenance of the Department of the Commissioner of Labor

Statistics may be used in the enforcement and administration of this Act. (Id. sec. 8.)

CHAPTER NINE

PROTECTION OF LABORERS ON BUILDINGS

Art. 5246—108. Certain buildings being constructed or repaired; temporary flooring; projecting scaffolding.—Hereafter any building three or more stories in height, in the course of construction or repairs, shall have the joists, beams or girders of each and every floor below the floor level where any work is being done, or about to be done, covered with planking laid close together, said planking to be of not less than one and one-half inches in thickness, in buildings that have steel framework, and what is commonly known as one-inch plank in all others where joists are set on two feet centers or less, to protect the workmen engaged in the erections or construction of such buildings from falling through joists, girders, and from falling planks, bricks, rivets, tools or other substances, whereby life and limb are endangered. Where any scaffolding is placed on the outside of any of said buildings, over any public street or alley where persons are in the habit of passing, then said scaffolding shall be so constructed as to prevent any material, tools or other things from falling off and endangering the life of passersby. (Acts 1919, ch. 152, sec. 1.)

Art. 5246—109. Same subject; removal of flooring.—Such flooring shall not be removed until the same is replaced by a permanent flooring in such building. (Id. sec. 2.)

Art. 5246—110. Same subject; elevators and hoisting apparatus; protection of shafts and openings.—If elevators, elevating machines or hod hoisting apparatus are used within a building in the course of construction, for the purpose of lifting materials to be used in such construction the contractor or owners, or the agents of the owners, shall cause the shafts or openings in each floor to be inclosed or fenced in on all sides, two sides of which must be at least six feet, and two sides where material is to be taken off or on, shall be protected by automatic safety gates. (Id. sec. 3.)

Art. 5246—111. Duty of general contractor.—It shall be the duty of the general contractor having charge of the erection and construction of such building to provide for the flooring as herein required, and to make such arrangements as may be necessary with the sub-contractor in order that the provisions of this Act may be carried out. (Id. sec. 4.)

Art. 5246—112. Duty of owner or agent of building.—It shall be the duty of the owner, or the agent of the owner, of such building, to see that the general contractor or sub-contractors carry out the provisions of this Act. (Id. sec. 5.)

Art. 5246—113. Same subject; where contractor neglects duty.—Should the general contractor or sub-contractors of such building fail to provide for the flooring of such buildings as herein provided, then it shall be the duty of the owner or the agent of the owner of such buildings to see that the provisions of this Act are carried out. (Id. sec. 6.)

For section 7 of this act see Penal Code, art. 1451zz.

TITLE 78

LANDS—ACQUISITION FOR PUBLIC USE

CHAPTER ONE

AUTHORIZING GOVERNOR TO PURCHASE LANDS FOR STATE USE

Art. 5247. Governor to purchase, when.—When any land shall be required by the state for the use of the state penitentiaries, or any other of the public institutions of the state, or for any other public use, the governor of the state is hereby authorized and empowered to purchase said land, or the right to the use thereof, for the purpose for which the same may be required. (Acts 1903, 1 S. S., p. 10, sec. 1.)

Art. 5248. Land may be condemned.—Should the governor in the exercise of the power conferred by the preceding article not be able to agree with the owners of any land which, or the use of which, may be needed for any public use as aforesaid, upon the compensation to be paid therefor, such land may be condemned for such public use in the name of the state of Texas as herein provided. (Id. sec. 2.)

Art. 5249. Land, how condemned.—Whenever it may become necessary to condemn any land for any public use as hereinbefore provided, upon the direction of the governor, proceedings shall be instituted against the owner of said land, and of any interest therein, by the attorney general of the state, or under his direction, by the proper district or county attorney, who shall file with the county judge of the county in which said land, or a part thereof, may be situated, a statement showing the land sought to be condemned, and the purpose thereof, the names and places or residences of the owners of the same, or if not known, stating that fact. Upon the filing of the statement provided for in this article, it shall be the duty of said county judge, in term time or vacation, to appoint three disinterested freeholders of said county who are qualified voters therein, as special commissioners to assess the damages to accrue to the owner of said property by reason of such condemnation. Said special commissioners shall, in their proceedings, be governed and controlled by the laws in force in reference to the condemnation of right of way for railroad companies and the assessment of damages therefor; and the proceedings shall be in accordance with such law, the State of Texas occupying the position of the railroad company; and all laws in reference to the applications for the condemnation for right of way of railroad companies, including the measure of damages, the service of notice, actual or constructive, on the owners of said property, the right of appeal and the like not inconsistent with the other provisions of this chapter, shall apply to the application by the state and these proceedings. But it is expressly provided that in case of such condemnation of property, should the award of damages be deemed by the governor excessive, the same shall not be paid; but in such case the state shall pay the costs of such proceedings, and no further action shall be taken thereunder. (Id. sec. 3.)

Art. 5250. Costs.—Should the damages awarded be less than had been offered by the

state to said property owner, the costs of such proceedings shall be taxed against said owner, and may be collected by execution as in other cases or paid by the state and deducted from the amount to be paid said owner upon such award. Should the amount awarded be greater than the amount offered by the state, such costs shall be paid by the state. (Id. sec. 4.)

Art. 5251. Right of way for penitentiary railroad.—Should any land be purchased by the governor, or condemned as herein provided, for the purpose of obtaining right of way for any railroad or train road, to be built or extended and operated in connection with, or for the use of, any of the penitentiaries of this state, or any of the farms of this state, and used in connection with the state penitentiaries, the penitentiary board is hereby authorized and required to pay, out of any money authorized by law to be used for the support and maintenance of said penitentiaries, the damages and costs herein provided for in case of condemnation, or the price of said property if purchased by voluntary purchase by the governor as herein provided. (Id. sec. 5.)

CHAPTER TWO

UNITED STATES GOVERNMENT AUTHORIZED TO OBTAIN TITLE TO LANDS IN TEXAS

Art. 5252. May purchase for certain purposes.—The United States government may purchase, acquire, hold, own, occupy and possess such lands within the limits of the 'state of Texas as they' shall deem expedient and may seek to occupy and hold as sites on which to erect and maintain light houses, forts, military stations, magazines, arsenals, dock yards, custom houses, post-offices, and all other needful public buildings and for the purpose of erecting and constructing dams, locks and dams, for the straightening of streams by making cutoffs, building levees, or for the erection of any other structures or improvements that may become necessary in developing or improving the waterways, rivers and harbors of Texas; and the consent of the legislature of the state of Texas as is hereby expressly given to any such purchase or acquisition made in accordance with the provisions of this law. (Acts 1905, p. 101, sec. 1.)

Art. 5253. May institute condemnation proceedings.—All purchases or acquisitions of land by the United States government for any of the purposes mentioned in the preceding article shall be effected by the proper agent of the United States government with the owners thereof, or by any judicial proceedings as hereinafter prescribed; that is to say, whenever the owners of the land desired by the United States government can not agree with the United States authorities thereto authorized upon the price thereto, then the said United States government is authorized, under the direction of the proper law officer to institute proceedings against the owner of said land, or the owners of any interest therein in the county court of the county in which the land may be situated, and in the same manner as is provided for the condemnation for right of way for railroads, except as hereinafter indicated. (Id. sec. 2.)

Art. 5254. Statement to be made in writing.—If the said government of the United States and said owner can not agree upon the value of said land, or the damages thereto, caused by the erection or construction of the improvement required, it shall be the duty of the United States officer having the matter in hand and authorized thereto by the United States government, to state in writing the real estate and property condemned, the object for which it is to be condemned, the name of the owner thereof and his residence, if known, and file same with the county judge of the county in which said property, or a part thereof, is situated; provided, if the owner resides in either county in which the land is situated, the same shall be filed in the county of his residence. (Id. sec. 3.)

Art. 5255. Commissioners to be appointed.—Upon the filing of said statement, the county judge shall, either in term time or in vacation, appoint three disinterested freeholders of said county as commissioners to assess said damages, giving preference to those that may be agreed upon between the United States government and the owner of said property. (Id. sec. 4.)

Art. 5256. Commissioners to be sworn.—The said commissioners shall be sworn by the county judge, or by any officer qualified to administer oaths, to assess said damages impartially and according to law. (Id. sec. 5.)

Art. 5257. Hearing, when and how.—Said commissioners shall, without delay, appoint a time and place for the hearing of said parties; and the day appointed shall be the earliest day practicable, and the place, the nearest practicable place to the said property, or at the said county seat of the county in which the property is situated, or a part thereof. (Id. sec. 6.)

Art. 5258. Notice to be given.—The commissioners shall issue a notice in writing to each of the parties, notifying them of the time and place selected for the hearing. (Id. sec. 7.)

Art. 5259. Notice to be served.—Said notice shall be served upon said parties at least five days before the date of the hearing, exclusive of the day of service, and shall be served by the delivery of the copy of same to the party, his agent or attorney, and may be served by any person competent to testify. (Id. sec. 8.)

Art. 5260. Return of notice.—The party making such service shall return the original notice to said commissioners, or any one of them, on or before the day set for said hearing, with his statement thereon, showing how and when same was served. (Id. sec. 9.)

Art. 5261. In case of minor, lunatic, etc.—When the property in controversy is the property of a deceased person, or minor, or of a person of unsound mind, and such estate has a legal representative, or such minor, or person of unsound mind, has a guardian, the notice shall be served upon such a legal representative or guardian. But if said minor, or person of unsound mind, have no legal representative, then said commissioner shall appoint a guardian ad litem, as courts of record are authorized to do, to protect the interest of said minor, or person of unsound mind, and shall allow reasonable

compensation therefor, which shall be allowed and taxed as part of the costs of the proceedings. (Id. sec. 10.)

Art. 5262. In case of non-resident.—When the property in controversy belongs to a non-resident of this state, or to an unknown person, or to persons whose residence is unknown, or who secrete themselves so that service can not be had on them, then such notice may be served upon said owner by publication in the same manner as provided in article 1874 of the Revised Statutes of the state of Texas; provided, that said cause may be tried by said commission on any day not less than four weeks after the publication of said notice. (Id. sec. 11.)

Art. 5263. Hearing postponed, for what.—When the service of notice has been perfected, the commissioners shall at the time and place appointed or at any other time or place to which said hearing has been adjourned, proceed to hear said parties, but if upon the day set for the hearing, the serving of notice has not been perfected, the hearing shall be postponed from time to time until the service has been perfected. (Id. sec. 12.)

Art. 5264. Witnesses.—Said commissioners, for the purpose mentioned in this law, shall have the power to compel the attendance of witnesses and the giving of testimony and to administer oath and punish for contempt as fully as is provided by law for the district or county court. The rules for damages to be applied in these cases shall be the same as those prescribed for ascertaining the amount of damages in condemnation for right of way proceedings for railroads. (Id. sec. 13.)

Art. 5265. Compensation.—The compensation for the commissioners shall be the same as is prescribed by law for commissioners in performing similar services in condemnation of right of way for railroads. (Id. sec. 14.)

Art. 5266. Decision in writing.—When the said commissioners shall have assessed the damages, they shall reduce their decision to writing, stating therein the amount of damages due to the owner of such real estate, if any be found to be due, and shall date same, sign it, and file it with the county judge without delay. (Id. sec. 15.)

Art. 5267. Vacancies, how filled.—If said commissioners, or either of them, from any cause be unable or fail to act as such, the county judge shall appoint another commissioner or commissioners to fill the place or places left vacant by those who are unable or fail to act. (Id. sec. 16.)

Art. 5268. Commissioners may adjudge cost.—The commissioners may adjudge the cost against either party, and shall in their finding state against whom it is adjudged and the amount thereof, and file same with their award with the county judge. (Id. sec. 17.)

Art. 5269. Tried in county court, when.—If either party be dissatisfied with the decision of such commissioners, he may, within ten days after the same has been filed with the county judge, file his opposition thereto in writing, setting forth the particular cause or causes of his opposition, and thereupon the case shall be set down on the county court docket for trial as other civil cases. (Id. sec. 18.)

Art. 5270. County judge to enforce decree, etc.—If no objections are filed to such decision within the time prescribed in preceding article the said judge shall have same entered on the record and shall make necessary provisions to enforce the same. (Id. sec. 19.)

Art. 5271. United States to deposit money, etc.—Upon the filing of the award of the commissioners with the county judge, stating the amount of damages and costs which the United States government shall pay before taking possession of the property, if the United States government shall deposit the amount of the award of the commissioners, together with all costs adjudged against the said United States, they may proceed immediately to the occupancy of the said land and to the construction of their said improvements without awaiting the decision of the county court. (Id. sec. 20.)

Art. 5272. United States liable for costs, when.—If, after the filing of the objections to the award, the case shall be retried in the county court and a judgment rendered against the United States for a larger sum than that found in the award of the commissioners, then the said United States government shall be responsible for the costs of said appeal, as well as for the amount adjudged against it in said county court. (Id. sec. 21.)

Art. 5273. (372) (331) Acquisition of public land by United States.—When the state of Texas may be the owner of any land desired by the United State[s] for any of the purposes specified in this title, the governor may sell such land to the United States, and upon payment of the purchase money therefor into the treasury of the state, it shall be the duty of the commissioner of the general land office, upon the order of the governor, to issue a patent to the United States for such land in like manner as other patents are issued. (Act Feb. 13, 1854, p. 102. P. D. 5450.)

Art. 5274. (373) (332) Title to United States to be recorded.—All deeds of conveyances, decrees, patents, or other instruments vesting title in lands lying within this state in the United States, shall be recorded in the land records of the county in which such lands, or a part thereof, may be situate, or in the county to which such county may be attached for such purpose; and until filed for record in the proper county they shall not take effect as to subsequent purchasers in good faith, for a valuable consideration, and without notice. (Act April 4, 1871, p. 19. P. D. 7693, 4th ed. 7810.)

Art. 5275. (374) (333) Governor may cede jurisdiction.—Whenever the United States shall acquire any lands in this state, for any of the purposes and in either of the modes authorized by this title, and shall desire to acquire constitutional jurisdiction over such lands for said purposes, it shall be lawful for the governor of this state, in the name and behalf of the state, to cede to the United States exclusive jurisdiction over any lands so acquired, when application may be made to him for that purpose, which application shall be in writing and accompanied with the proper evidence of such acquisition,

duly authenticated and recorded, containing, or having annexed thereto, an accurate description by metes and bounds of the lands sought to be ceded. (Act Dec. 19, 1849, p. 12. P. D. 5449.)

Art. 5276. (375) (334) State to retain concurrent jurisdiction.—No such cession of jurisdiction shall ever be made, except upon the express condition that the state of Texas shall retain concurrent jurisdiction with the United States over the lands so ceded, and every portion thereof, so far, that all process, civil or criminal, issuing under the authority of this state, or any of the courts or judicial officers thereof, may be executed by the proper officers of the state, upon any person amenable to the same, within the limits of the land so ceded, in like manner and with like effect as if no such cession had taken place; and such condition shall be always inserted in any instrument of cession under the provisions of this title. (Id.)

Art. 5277. (376) (335) U. S. lands to be exempt from taxation.—The United States shall be secure in their possession and enjoyment of all lands acquired under the provisions of this title; and such lands and all improvements thereon shall be exempt from any taxation under the authority of this state so long as the same are held, owned, used and occupied by the United States for the purposes expressed in this title, and not otherwise. (Act April 4, 1871, p. 19. Id.)

TITLE 79

LANDS—PUBLIC

CHAPTER ONE

PUBLIC DOMAIN

Art. 5278. Vacant public lands belong to free school fund.—All vacant public lands, not otherwise appropriated, except islands, lakes and bays within tidewater limits along the gulf of Mexico, are the property of the public free school fund. (Acts 1900, p. 29.)

Art. 5279. (4036) All public lands retained at annexation.—In order that the provisions of law relating to the public domain may be brought together, the following extract is made from the joint resolutions of the congress of the United States for annexing Texas to the United States, approved March 1, 1845, and the joint resolution of the congress of the republic of Texas assenting to the same, approved June 23, 1845, viz:

"Said state, when admitted into the Union, * * * shall also retain all the vacant and unappropriated lands lying within its limits, to be applied to the payment of the debts and liabilities of said republic of Texas, and the residue of said lands, after discharging said debts and liabilities, to be disposed of as said state may direct," etc. (Joint Res., June 23, 1845.)

CHAPTER TWO

GENERAL LAND OFFICE

Art. 5280. (4042) General land office established.—There shall be one general land office, which shall be at the seat of government, where all land titles which have emanated, or may hereafter emanate, from the state shall be registered, except those titles the registration of which may be prohibited by the constitution. (Id. sec. 1.)

Art. 5281. (4043) Commissioner to have custody of books, etc.—The commissioner of the general land office shall have custody and control of all books, records, papers, maps and original documents appertaining to the titles of lands heretofore and by the provisions of the law denominated archives; and the said books, records, papers and original documents shall become and be deemed the books and papers of said office. (Act Dec. 14, 1837. P. D. 71.)

Art. 5282. (4044) Night watchmen.—The said commissioner is hereby authorized to employ one night watchman for the general land office, at a salary not to exceed six hundred dollars per annum. (Act Feb. 27, 1875, p. 56.)

Art. 5283. Papers to be kept in land office, how.—The commissioner shall adopt the most convenient method for filing papers and preserving the records of said office; provided, a list of all papers in each file shall be retained in the file, and each employé who files a paper shall place his own name thereon. (Acts 1909, p. 429, sec. 6.)

Art. 5284. (4045) Examination of papers, etc., permitted, when.—Any one desirous to examine any of the papers, records or files in the general land office shall first obtain the consent of the commissioner, or the chief clerk, in writing so to do, and an order for the detail of a clerk of said office to be present and superintend such examination. (Act June 2, 1873, p. 180. P. D. 7099kk.)

Art. 5285. (4048) Clerk to examine papers after, etc.—After an examination is made, the clerk in charge of same shall carefully examine the papers of said file and see that they are all in place. (Id. sec. 3. P. D. 7099mm.)

Art. 5286. (4049) Lithographic copies of maps to be printed.—The commissioner of the general land office is authorized to contract for the printing and delivery to him of lithographic copies of maps of the various counties of this state; provided, that the cost of such printing and delivery shall not exceed two cents per copy. (Acts 1879, p. 40.)

Art. 5287. (4050) To be copyrighted.—When said commissioner has prepared the official copy of the map of any county from which such lithographic copies are to be printed, he shall copyright the same in the name and for the benefit of the state of Texas, in accordance with the laws of copyright of the United States. (Id. sec. 2.)

Art. 5288. (4051) To be sold at fifty cents.—When such copies are received by the commissioner, he shall offer the same for sale at not less than fifty cents nor more than one dollar per copy, regulating the price by the amount of labor required in the original compilation of such maps and transcribing same; provided, that when a party desires to purchase at any one time one hundred or more copies of the maps of any county or counties, he shall be allowed a discount on the fixed price of the same of twenty per cent. (Id. sec. 3.)

Art. 5289. (4052) Proceeds to be placed in state treasury.—All moneys received from the sale of maps, as above provided, shall be paid into the state treasury as are all other fees received by the general land office. (Id. sec. 4.)

Art. 5290. (4053) No transfers, etc., shall be withdrawn.—No transfer or deed that may be a link in any chain of title to any certificate on file in the general land office shall be withdrawn by any one; but the commissioner shall, on demand, deliver to the interested party certified copies, which shall have the same force and effect as the originals; provided, if in any suit there is any question as to the genuineness of any such original, the commissioner shall deliver the same to the party to whom the same may be ordered by the court where such suit is pending; and in such case it shall be the duty of the commissioner of the general land office to retain in his office a duly certified copy of such original, which, in case of the loss of the original, shall have the same force and effect as the original. (Id. sec. 4. P. D. 7099nn.)

Art. 5291. (4061) Receipts for papers, etc.—No paper, certificate, copy or document, other than a patent, shall be delivered by the commissioner to the owner until he has receipted for the same, in which receipt shall be stated his place of residence, his postoffice, and, if delivered to the agent or attorney, shall state in addition his residence and postoffice, which receipt shall be filed by the commissioner with the other papers; provided, that, when the commissioner has good reason to doubt the genuineness of any transfer, power of attorney, or other paper on file in the general land office, he shall not permit any one to obtain an official copy thereof until such doubts have been removed. (Id. sec. 9. P. D. 7099ss.)

Art. 5292. (4062) Commissioner and sureties responsible, when.—The commissioner of the general land office and the sureties on his official bond shall be responsible to any party injured by removal, withdrawal or alteration of any record or file in said general land office, unless said commissioner can show that such removal, withdrawal or alteration has taken place by permission of the party owning said file or record. (Id. sec. 12. P. D. 7099uu.)

CHAPTER THREE

LAND DISTRICTS

Art. 5293. (4063) What counties are separate land districts.—Every organized county which has heretofore complied, or may hereafter comply, with the laws in force permitting a county to become a land district, is hereby declared a separate land district. (R. S. 1879.)

Art. 5294. (4064) When county becomes a land district.—When any organized county shall elect a surveyor, and he shall give bond and be qualified as provided by law, said county shall be a separate land district. (Acts Jan. 26, 1858. P. D. 1082.)

Art. 5295. (4065) When county to have a surveyor.—Each county becoming a land district shall have at least one surveyor, who shall keep his office at the county seat; and such office shall be supplied with a map or maps of all the surveys made in such county, with a file or entry book, and a record book of the field-notes of all surveys in the county.

Art. 5296. (4066) "Land districts" defined.—All "land districts" now created by law and having a district surveyor shall remain and continue as such, subject, however, to alteration by any organized county within its limits, or any part of such district, becoming a separate land district as provided by law.

Art. 5297. (4067) County or district failing to organize as separate land district.—Any organized county, or newly created district, which may fail or refuse to organize as a separate land district as provided by law shall continue to form a part of the land district to which it was formerly attached until it shall have complied with the provisions of law relating to the election and qualification of a surveyor, and until such surveyor shall have procured the necessary maps, field-notes, copies and records as required by law. (Act Feb. 8, 1860. P. D. 1090.)

Art. 5298. (4067a) Unorganized counties attached for land purposes, etc.—Each county in this state that is unorganized, or that has not so completed its organization as to become a separate land district under the requirements of the law, shall be attached to some organized county for surveying purposes; and the county surveyor of such organized county shall be the surveyor for the land district thus constituted, and the records of all files and surveys of land in such district shall be kept at his office. (Amend. 1895, Sen. Jour., p. 481.)

Art. 5299. (4067b) Counties attached.—The land districts composed of more than one county are defined and the unorganized counties are attached for surveying purposes as follows:

The county of Bailey is attached to Crosby county. (R. S., 1895.)

The county of Crane is attached to Ector county. (Act Feb. 3, 1909, p. 11.)

The county of Loving is attached to Reeves county. (Id.)

The counties of Cochran and Hockley are attached to Lubbock county. (Act Mar. 13, 1905, p. 31.)

CHAPTER FOUR

COUNTY AND DISTRICT SURVEYORS

Art. 5300. (4068) County surveyor, when elected.—At each regular biennial election for state and county officers, there shall be elected in each county, by the qualified voters thereof, a county surveyor, who shall reside in the county and keep his office at the county seat, who shall hold his office for two years and until his successor may be elected and qualified. (Const., art. 16, sec. 44. Act Jan. 26, 1858, p. 199. Act Aug. 19, 1876.)

Art. 5301. (4069) Oath and bond required.—Before entering upon his duties, the county surveyor shall take the oath of office prescribed by the constitution, and shall enter into bond, with two or more good and sufficient sureties, to be approved by the commissioners' court of the county, in such sum as may be fixed by such commissioners' court, not to be less than five hundred dollars nor more than ten thousand dollars payable to

the governor and his successors in office, conditioned that he will faithfully perform all of the duties of his office, which bond shall be deposited and recorded in the county clerk's office of the county. (Act Dec. 14, 1837. P. D. 1081, 4522. Amended Acts 1897, p. 26.)

Art. 5302. (4070) Commissioners' court to fill vacancy.—Whenever there shall be a vacancy in the office of county or district surveyor in any of the counties, it shall be the duty of the county commissioners' court of the county in which such vacancy occurs to fill by appointment such vacancy, such appointment to continue in force until the next general election. In the event such commissioners' court shall fail to appoint a person to fill such vacancy, or if they shall appoint a person to fill same and he shall fail to qualify and act as such surveyor, then any county or district surveyor of the nearest county or district to such county, who may be accessable and willing to act shall be authorized to do surveying in such county, and for his services he shall be entitled to receive the same fees and compensation as are now provided by law for county and district surveyors, and such surveyor shall be subject to the same law as is now applicable to county and district surveyors for the faithful performance of their duties. In making a survey under the provisions hereof, said surveyor shall make out and return said field-notes in the manner and form as required under article 5336, but he shall sign the field-notes officially, as the surveyor of his own county or district, and also cause to be attached to said field-notes, so made by him, a certificate of the county clerk of proper county, to the fact that there is no qualified surveyor of such county. (Act Aug. 19, 1876, p. 219. Amended Acts 1905, p. 371.)

Art. 5303. (4071) Duties of county surveyor.—Each county surveyor shall receive and examine all field-notes of surveys which have been, or may hereafter be, made in said county, and upon which patents are to be obtained, and shall certify to the same according to law, and shall record such field-notes in a book to be kept by him for that purpose; and he shall perform such other duties as may be required of him by law. (Act Dec. 14, 1837. P. D. 4522.)

Art. 5304. (4072) Surveyor to report to commissioners' court as to inclosed school lands.—It shall be the duty of the surveyor of each county to make a report to the county commissioners' court on the first Monday in June each year of the number of sections of public school lands in his county inclosed during the past year, and the names of the person or persons controlling such inclosed lands, and the number of sections controlled by him or them respectively. (Acts 1879, p. 101.)

Art. 5305. (4073) Shall record all field-notes in his district.—The surveyors of the several counties of this state shall record in a well-bound book all the surveys in the county or district for which he was elected, with the plats thereof that he may make, whether private or official; and such record shall be open to the inspection of the public; for which service the surveyor may charge, in addition to the fees now allowed by law for field work, twenty cents per hundred words for such record. (Acts 1881, p. 71.)

Art. 5306. (4074) Shall plat surveys upon map, etc.—It shall be the duty of every district, county and special county surveyor, once in every three months, to plat upon the map of his district or county all surveys made to that date within the three preceding months, and transmit sketches and field-notes of same to the commissioner of the general land office, together with a list of all land certificates or warrants on file in his office, giving the number, date and quantity in acres of each, stating by whom and to whom the same purports to have been issued, and when and by whom filed; and any surveyor failing or refusing to comply with the provisions of this article shall be subject to a fine of five hundred dollars for each offense, to be recovered by the state before the district court on complaint of any party aggrieved, or of the proper county or district attorney, whose duty it shall be to prosecute all such suits. A certificate from a postmaster certifying that a letter or package containing the returns herein provided for was mailed in his office, addressed to the commissioner of the general land office, shall be evidence of the fact in any suit against a surveyor under this article. (Act Jan. 26, 1858. P. D. 1087.)

Art. 5307. (4075) Record books furnished.—The commissioners' courts of the several counties shall furnish the county surveyors of their respective counties with the necessary books of record pertaining thereto. (Act March 9, 1875. Act Feb. 2, 1860. P. D. 1089.)

Art. 5308. (4076) Deputies appointed; oath and bond required, etc.—The county or district surveyor shall appoint as many deputy surveyors as he may deem necessary for the county or district, and shall administer to them the oath of office, and take the bond hereinafter prescribed, and shall furnish them such instructions as may be furnished to him from time to time by the commissioner of the general land office; and such deputy surveyor, before he enters upon the duties of his office, shall enter into bond with two or more good and sufficient sureties, to be approved by the commissioners' court, in the sum of five thousand dollars, payable to the governor and his successors in office, conditioned for the faithful performance of the duties of his office, which bond shall be deposited and recorded in the clerk's office of the same county; and the county or district surveyor shall immediately report such appointment to the commissioner of the general land office, and state when such deputy entered upon the discharge of the duties of his office. (Act Dec. 14, 1837. P. D. 4522.)

Art. 5309. (4077) Chain carriers and markers.—It shall be the duty of each deputy district or county surveyor to administer an oath to each individual employed by him as chain carrier or marker for the faithful performance of his duties as such, in accordance with the instructions given him; and no person under the age of sixteen years shall be employed in either of the above capacities; and, further, it shall be the duty of said deputy to subscribe the name of each of the chain carriers to his field-notes previous to returning the same to the county surveyor. (Act Dec. 14, 1837. P. D. 4523.)

Art. 5310. (4078) Deputy surveyors shall return field-notes.—It shall be the

duty of all deputy surveyors to make returns of the field-notes of every survey by them made, within three months after making the survey, to the county or district surveyor for his approval; and any deputy neglecting to do so shall be liable for damages at the suit of any person thereby injured. (Act Feb. 5, 1840. P. D. 4112.)

Art. 5311. (4079) County surveyor may do work of deputy.—Any county surveyor may do the work of a practical surveyor, and may also perform all the duties required of a deputy surveyor, and in such case he shall make out, certify to, record and return the field-notes under his own official signature. (Act Dec. 20, 1837.)

Art. 5312. (4080) Shall keep a map in his office for inspection.—It shall be the duty of each county or district surveyor to make out and keep in his office, free for the inspection of all persons, a map on which all the surveys made in his county shall be laid down and properly connected; which map shall be corrected at the end of every three months. (Act Feb. 5, 1840.)

Art. 5313. (4081) Duty on change of boundary.—Hereafter, when any change may take place in the boundaries of any county, it shall be the duty of the surveyor of any county from which territory may be so taken, to furnish the surveyor of the county including such territory with a full and complete copy of all the field-notes of surveys made in the same. (Act Feb. 5, 1840.)

Art. 5314. (4082) Contested elections, by what court tried.—Whenever the election of any person to the office of county or district surveyor may be contested, like notice shall be given and proceedings had as in case of contested elections for county officers. When the district is composed of one county, the contest shall be tried in such county, but where the district is composed of more than one county, then such contest shall be tried in the county from which the district takes its name. (Act Feb. 7, 1853.)

Art. 5315. (4083) Their duties, how regulated.—All district surveyors shall be governed in the discharge of their official duties by the same provisions of law which regulate and prescribe the duties of county surveyors so far as the same may be applicable; and, upon their removal from office or at the expiration of their term of office, they shall deliver to their successors all records, books, papers, maps and other things appertaining to the office. (Act May 12, 1846.)

Art. 5316. (4084) Deputy district surveyors.—Each district surveyor shall appoint one or more deputy surveyors, who shall qualify and give bond in manner and form as required of deputy county surveyors, and whose duties shall be the same as those of deputy county surveyors so far as the same may be applicable; and, when such surveyor does the work of surveying in a new county, he shall notify the special county surveyor acting under his direction, and report his work to him to be mapped and noted on his records.

Art. 5317. (4085) Special county surveyor for unorganized county.—It shall be the duty of each district surveyor, within twenty days after his election, to appoint as his deputy a special county surveyor for each unorganized county within his district, who shall hold his office during the term of his principal, unless sooner superseded by the appointment of another as his successor. The district surveyor shall immediately notify the commissioner of the general land office of every such appointment. Each special county surveyor so appointed shall have all the powers, perform all the duties and be subject to all the penalties appertaining to county surveyors, and shall keep, in addition to the returns to be made to his principal, a record and map of all the transactions in his office, to become part of the county surveyor's records of such county whenever it may be organized. All such special county surveyors shall reside and keep their offices in their respective counties, if there be settlements in the same, but if there be no settlements in the county, then at the nearest town to such county. Whenever any county may elect a county surveyor, who shall have qualified and given bond, and who shall have procured the maps and records required by law, the district surveyor within whose district such county may have been, or may be at the time, and his deputy shall cease to exercise any official acts within the same. (Act Jan. 26, 1858. P. D. 1085.)

Art. 5318. (4086) Deputy surveyor of new county to procure maps.—Deputy surveyors of the several new counties shall procure from the district surveyors of their respective districts, or make out the same, a map of all the surveyed lands situated in the new county to which such deputy may be assigned, which shall be kept in the office of such deputy at the county site, for the inspection of all persons interested. (Act May 11, 1846. P. D. 4276.)

Art. 5319. (4087) Surveys of deputy to be placed on map.—All surveys made by a deputy surveyor in a new county, after being examined and placed upon the map of the district, shall be placed upon the county map. (Id. P. D. 4277.)

Art. 5320. (4088) Surveys in unorganized counties.—In any unorganized county to which a special deputy surveyor may have been appointed, or may hereafter be appointed, the district surveyor of the land district to which it is attached, or his deputies, may make surveys, the field-notes of which shall be recorded in a separate book for each of such unorganized counties, and also in the ordinary record books of the land district; but before making such surveys he shall notify the special deputy surveyor thereof and afterward report the field-notes to him, to be mapped out and noted on his records. (Act Feb. 8, 1860. P. D. 1091.)

Art. 5321. (4089) Special deputies, bond, etc.—The district or county surveyor of any county shall have the power to appoint a special deputy, who shall be empowered to perform all official acts which said district or county surveyor may legally perform; and the said special deputy surveyor, before entering on the discharge of his duties, shall give bond with two or more good and sufficient sureties, in the sum of five thousand dollars, payable to the governor, for the faithful discharge of the same, which shall be approved by the commissioners'

court of the county and filed with the county clerk thereof. (Id. P. D. 1092.)

Art. 5322. (4090) Surveyor not authorized to survey, until, etc.—Any surveyor, elected as provided by law, in a county not previously a separate land district, shall procure a certified map of the surveys in said county, and a certified copy of all files, applications and locations of lands therein from the surveyor's office of the land districts to which said county belonged, and file the same in his office for the inspection of anyone interested in examining the same. (Act Jan. 26, 1858.)

Art. 5323. (4091) To return field-notes of county boundaries.—When the surveyor shall have complied with the provisions of the preceding article, it shall be his duty immediately to make out and return to the general land office field-notes properly certified to, of the boundaries of such county; and the commissioners' court of said county shall make the necessary provision for paying the expenses thereof. (R. S. 1879.)

Art. 5324. (4092) Transcript to be obtained from land office, when.—Whenever the maps, field-notes of surveys or other records, or any part thereof, of the surveyor's office in any county or land district shall from any cause be lost or destroyed, or when any new county shall organize, or new land district is created, it shall be the duty of such county or district surveyor to obtain from the commissioner of the general land office a transcript of such maps, field-notes of surveys or other records of his office of his county or land district, certified to as required by law, and for obtaining which he shall be entitled to five cents per hundred words, and the state shall be entitled to ten cents per hundred words, to be paid by the commissioners' court of his county; said transcript of records so certified shall answer all the purposes and have the same force and effect in law that the original could have. (Acts 1885, p. 92. Amend. 1895, Sen. Jour., p. 482.)

Art. 5325. (4093) Authorized to rent office.—The district and county surveyors are authorized to rent some suitable building or room in which to keep their offices in case the said surveyors can not be provided with offices in the court houses of their respective counties. (Act Aug. 18, 1876, p. 196.)

Art. 5326. (4094) Rent of office, how paid.—The county commissioners' court shall make the necessary arrangement for paying the rent of an office rented by said surveyors, upon satisfactory evidence showing that the rent was reasonable and the office necessary, and that there was no office provided for said surveyors in the court house of their county. (Id.)

Art. 5327. (4095) To have a deputy in office, when.—In all cases where the county surveyors do not reside at the county seats of their respective counties, they shall and are hereby required to have deputies in their respective offices residing at said county seats, who shall keep their offices open and the records thereof subject to the examination of any person interested therein, and who shall have authority to receive and file land certificates or other evidences of right to land, and also to receive and record all files or designations of land to be surveyed. (Act Feb. 25, 1863. P. D. 1093.)

Art. 5328. (4098) Right to examine books, etc.—Any person interested for himself, or as agent or attorney of another, shall at all times have the right to examine the books, papers, plats, maps or other archives belonging to the office of any district, county or special surveyor, on the payment of the fee fixed by law. (Act Jan. 26, 1858. P. D. 1086.)

Art. 5329. (4100) Transcripts, etc., by whom paid for.—The transcripts of records and maps, together with the examination of the same, shall be paid for by the county for the benefit of which they are made, allowing ten cents for every one hundred words in copying said records, and three dollars per day for each day the draftsman may be actually and necessarily engaged in copying maps, as provided by law; and clerks and district surveyors for examining and certifying transcripts of records shall have three dollars per day. (Act March 20, 1848. P. D. 1078.)

Art. 5330. (4101) Surveyors to establish true meridian, etc.—The district or county surveyors of the several counties, in order to secure uniformity in the courses indicated by the different surveyors' compasses or other instruments used within their several jurisdictions, shall, in some convenient place at their respective county seats, establish a true meridian by a substantial monument, to be erected at the expense of the county, and shall adjust, or cause to be adjusted, to the said meridian all such instruments before being used within their respective jurisdictions, and shall keep in their offices a standard chain of the true measurement of ten varas, to which all chains used by themselves or their deputies shall be adjusted before being used in the measurement of lines of surveys. (Act June 2, 1873, p. 173. P. D. 7099sss.)

Art. 5331. (4102) Responsible for neglect or failure, etc.—All surveyors shall be held responsible to parties interested for any cost that may accrue in rectifying any errors that may occur in their work by reason of neglect or failure to comply with the requirements of the preceding article. (Id. P. D. 7099ttt.)

Art. 5332. (4103) Shall turn over records, etc.—Upon the removal from office, or at the expiration of the term of office, of any county or district surveyor, he shall deliver to his successor all records, books, papers, maps and other things appertaining to his office. (Act May 12, 1846. P. D. 4525.)

Art. 5333. (4104) County clerk shall take charge of books, etc., when.—Whenever an organized county from any cause has not a qualified county surveyor, the county clerk of such county is hereby required to take charge of all records, maps and papers belonging to the county surveyor's office and safely keep the same in his office. (Act Oct. 18, 1866, p. 31.)

Art. 5334. (4105) Surveyor's records may be transcribed.—Whenever the county commissioners' court of any county shall deem the same necessary, they shall order the surveyor's records to be transcribed in good and substantial books, in a plain hand, by the surveyor or special deputies sworn to make

true copies of the same, for which services they shall be allowed not more than ten cents per hundred words, to be paid out of the county treasury. (Act Nov. 6, 1871, p. 18.)

CHAPTER FIVE

SURVEYS AND FIELD-NOTES

Art. 5335. (4142) What authorizes a survey.—All surveys shall be made by authority of law, and by a county, district or deputy surveyor duly appointed or elected and qualified.

Art. 5336. (4144) Field-notes shall describe what.—The field-notes of every survey shall state—

1. The county or land district in which the land is situated.
2. The authority under or by virtue of which it is made, giving a true description of same.
3. The land by proper field-notes with the necessary calls and connections for identification (observing the Spanish measurement by varas).
4. A diagram of the survey.
5. The variation at which the running was made.
6. It shall show the names of the chain carriers.
7. It shall be dated and signed by the surveyor.
8. The correctness of the survey, and that it was made according to law, shall be certified to officially by the surveyor who made the same; and also that such survey was actually made in the field, and that the field-notes have been duly recorded, giving book and page.
9. When the survey has been made by a deputy, the county or district surveyor shall certify officially that he has examined the field-notes, has found them correct, and that they are duly recorded, giving book and page of record.

Art. 5337. (4146) Copy obtained on loss of original field-notes.—When the original field-notes of any survey made by authority of law shall have been heretofore, or may be hereafter, lost or destroyed, it shall be lawful for the party who owned the same, or his agent, on making affidavit of the loss or destruction of such field-notes and filing the same in the office of the county or district surveyor, to apply to such surveyor of the county where the survey was made and recorded and obtain from him a certified copy of the record thereof, which copy shall be as valid and efficient in law as the original was, and shall secure to the party all the rights before the commissioner of the general land office that the original would have done. (Id. P. D. 4552.)

Art. 5338. (4147) Surveys on navigable streams.—All lands surveyed for individuals, lying on navigable water courses, shall front one-half of the square on the water course and the line running at right angles with the general course of the stream, if circumstances of lines previously surveyed under the laws will permit; and all streams, so far as they retain an average width of thirty feet, shall be considered navigable streams within the meaning hereof, and they shall not be crossed by the lines of any survey. (Act Dec. 14, 1837. P. D. 4529.)

Art. 5339. (4148) Surveys shall be in a square.—All surveys not made upon navigable water courses shall be in a square, so far as lines previously surveyed will permit. (Id.)

Art. 5340. (4150) Notice to settlers.—It shall be the duty of the surveyor in all cases, before he runs a division line between two settlers or occupants claiming lands, to notify in writing the parties interested before running the same; and any survey which may be made contrary to the true intent and meaning of this article shall not be a lawful one. (Act Dec. 14, 1837. P. D. 4528.)

Art. 5341. (4151) Trial as to disputed line before justice of the peace.—When two or more persons cannot agree to a division line of any land which has never been surveyed agreeably to law, it shall be lawful for either party to apply to any justice of the county or territory in which the land lies, or if there be no justice of the peace in the county or territory, then to the nearest justice in any county or territory, and make oath that he has tried and has not been able to settle the dispute between himself and one or more other persons (naming them) concerning a division line; and the said justice shall issue a warrant to any lawful officer to summon the party or parties defendant, together with six disinterested jurors, to meet upon the premises in dispute, together with such witnesses as either party may choose to have summoned, to give evidence on a certain day, naming at what time and place; the justice shall also meet the parties, examine all the testimony before the jury, who shall on oath hear and determine the case in dispute, and shall also determine who shall pay the costs of suit; each juror in such case shall be allowed two dollars per day for such services, the other officers, such fees as have already been established by law for other similar services; provided, that, if the land in dispute shall be on a county line, it shall be lawful for a justice of either county in which part of the land may be to act in such case; and in case either party be dissatisfied with the decision they shall have the right to appeal to the county court within ten days upon giving bond and security for the costs. (Id. P. D. 4527.)

Art. 5342. (4152) When surveys void.—All surveys represented upon the maps of the general land office, the field-notes of which shall not be returned to the general land office, under the provisions of this chapter, and for which there are no titles on file in said office, shall be null and void, and be stricken from the maps of said office, when it is made to appear to the commissioner of the general land office, by the certificate of the county clerk of the county in which the land is situated, that there is no title to said survey on record in said county, and by the affidavits of two credible citizens of said county that the said land is not occupied by the owner nor by some person holding for him. (Acts 1885, p. 50.)

Art. 5343. (4153) Liability for failing to survey.—If any district or county surveyor shall fail, neglect or refuse, when the amount of lawful surveying fees of any location of land may be tendered to him by any person legally entitled to the survey, to make or cause the survey of the same to be made

within one month of the time of the tender to him of said surveying fees, he and his sureties shall be liable on his official bond to the party or parties legally entitled to the same, in the amount of damages or injury said party or parties may sustain by reason of such neglect, refusal or failure, to be recovered before any competent tribunal. (Id. P. D. 4569.)

Art. 5344. (4154) Field-notes to be sent back for correction, when.—If, upon examination of the field-notes of a survey in the general land office, they are found to be incorrect, it shall be the duty of the commissioners to cause a plain statement of the errors, with a sketch of the map, to be forwarded by mail, or by the party interested, to the surveyor who made the survey, with a requisition to correct the same and return corrected field-notes to the general land office. (Act Oct. 24, 1871, p. 11. P. D. 7091.)

Art. 5345. (4155) The same corrected and returned, how.—It is hereby made the duty of surveyors who shall have made and delivered incorrect field-notes, upon the requisition of the commissioner of the general land office, provided for in the preceding article, or of the party interested, to make corrected field-notes and return the same to the general land office without delay and without any additional compensation. (Id. P. D. 7092.)

Art. 5346. (4156) Correction by certificate, when made.—When a conflict of survey does not exist on the ground, but appears only on the maps or in the field-notes, it shall only be required of the surveyor to make an official certificate of the facts and furnish a true sketch of the survey with its connections. (Id.)

Art. 5347. (4261) Commissioner to have surveys made, when.—For the purpose of ascertaining the conflicts and errors in and making proper corrections of surveys of lands made for the common school, university or asylum funds, or other surveys in which the state may be interested, directly or indirectly, in cases where, from discrepancies or imperfections in field-notes, it may become necessary for the proper compilation of maps, or for the proper location and identification of said lands upon the ground, the commissioner of the general land office is hereby invested with full power and authority to have such surveys made as he may deem necessary, and to appoint competent surveyors for this purpose. (Acts 1887, p. 107.)

Art. 5348. (4262) Bonds, etc.—Any surveyor appointed under the provisions of this law shall make and execute a bond in the sum of ten thousand dollars, conditioned and payable the same as bonds of county and district surveyors; he shall also take the oath prescribed by the constitution for other officers; said bond to be approved by the commissioner of the general land office and shall be conditioned as other surveyor's bonds. He shall be under the control and direction of the commissioner of the general land office; and, under such direction, may survey the common school, university and asylum lands, or other lands in which the state may be interested, and prepare and return field-notes of same and certify to any and all facts, and generally do and perform such official acts as might lawfully be done by a county or district surveyor, and shall sign his name officially as "state surveyor." (Id. sec. 2.)

Art. 5349. (4263) May have lands surveyed, when.—The commissioner of the general land office may have any lands belonging to the common school, university or asylum funds, or other lands in which the state may be interested, or lands alternating therewith, surveyed or resurveyed, and field-notes or corrected field-notes of same returned to his office by any surveyor appointed under this law, which field-notes shall have the same force and effect as if made by the county or district surveyor of the county or district in which said land lies; and, upon the adoption and approval of said field-notes by the commissioner of the general land office, he shall forward to the surveyor of the county or district in which said land lies, certified copies of said field-notes, which thereafter shall be a part of the records of said surveyor's office. In carrying out the provisions of this law, the commissioner of the general land office may, when requested by the owner of lands alternating with the lands resurveyed under the provisions of this law, cancel patents, and in lieu thereof issue patents in accordance with said resurvey; provided, that all such owners shall pay the expenses incurred in making such corrected surveys of their lands and in issuing said patents; provided, that no claims shall be created against the state for services performed under this law in the absence of a previous appropriation therefor. (Id.)

Art. 5350. Mineral lands to be surveyed; points marked; surveyor appointed; his salary.—The commissioner of the general land office of Texas may employ a state surveyor, or surveyors, whose duty it shall be to definitely locate on the ground such school land surveys, or blocks of surveys as the said commissioner may designate between the Pecos river and the Rio Grande, commencing at such point in the mineral bearing territory of Brewster county as may appear to be most advantageous to the state. The said surveyor, or surveyors, shall qualify as now provided by statute for state surveyors before entering upon his duties, and shall be under the direction of and subject to the orders of said commissioner. He shall file in the general land office the field notes and maps of his work; and, when approved by the commissioner, the lines so established, as evidenced by such field-notes and maps, shall be the established lines of the surveys or blocks of surveys represented thereby. All surveys made shall be marked by permanent natural or artificial objects. The said surveyor shall receive for his services, not to exceed one hundred and sixty-five dollars per month, and to be paid in the same manner as are other employés of the said land office. (Acts 1907, p. 285, sec. 1.)

Art. 5351. Land commissioner to co-operate with United States geological survey; regulations as to co-operation.—The commissioner of the general land office is hereby authorized to confer with the director of the United States geological survey, and to accept the co-operation of the United States with this state in the execution of a topographic survey and map of the territory which is hereby authorized to be surveyed,

The said commissioner shall have the power to arrange with said director, or other authorized representative of the United States geological survey, concerning the details of said work and the method of its execution; provided, that the said director of the United States geological survey shall agree to expend on the part of the United States upon said work a sum equal to that hereby appropriated, or so much thereof as may be necessary, to secure the proper topographic map or maps. In arranging details heretofore referred to, the said commissioner shall, in addition to such other provisions as he may deem wise, require that the topographer in charge shall give a bond in the sum of five thousand dollars, conditioned and payable the same as that required of the surveyor provided for above, and that the maps resulting from this survey shall be similar in general design and quality to the Van Horn quadrangle of El Paso county, edition of March, 1906, made by the United States geological survey, and shall show the outlines of all surveys, and kinds of timber and vegetable growth of commercial value, the location of all natural or artificial water roads and shall show the contour lines showing the elevation and depression for every one hundred feet in vertical interval of the surface of the county; that the resulting map or maps shall wholly recognize the co-operation of the state of Texas and that as each manuscript quadrangle of the map or maps is completed, the commissioner shall be furnished by the United States geological survey with photographic copies of the same, and as the engraving on each quadrangle is completed, the commissioner shall be furnished by said director with the resulting maps. (Id. sec. 2.)

Art. 5352. Persons owning private lands may co-operate.—Should any person or persons, owning private lands which alternate with the school land, desire to co-operate with the commissioner of the general land office in having the surveying done and in having the topographic map or maps made, as above provided for, such services and co-operation may be accepted upon a fair division of the expense. (Id. sec. 3.)

Art. 5353. General authority of commissioner to have surveys made; compensation of official; state surveys, etc.—Whenever the commissioner of the general land office shall deem it to the best interest of the state to cause to be made a survey or resurvey of any land or lands which are now, or which may be, owned or claimed by the state of Texas, or which commissioner may deem it expedient to have surveyed, or resurveyed, in order to determine whether such land or lands are owned or should be claimed or sued for by the state of Texas, he may designate and employ one or more competent and experienced surveyors, each to be known as, "Special state surveyor," to do such work, and shall be authorized to allow and pay, as hereinafter provided, reasonable compensation for such services, the amount of such compensation to be determined by such commissioner, not exceeding in any instance the rate of two hundred dollars per month, and may also incur and pay, as hereinafter provided, any and all reasonable expenses which may be incidentally involved in or connected with the making of any and all such surveys and resurveys. (Id. sec. 6.)

Art. 5354. Official surveyors, how commissioned; qualified.—Any such designation of any and all such surveyors shall be evidenced by a written instrument which shall be signed by the commissioner of the general land office, officially, and attested by his seal of office, and such written instrument shall designate, in at least general terms, the land or lands which such surveyor or surveyors may be so designated and employed to survey or resurvey; and before doing any such work, such surveyor or surveyors shall take and subscribe before an officer authorized by law to administer oaths within this state, an affidavit to the effect that affiant will faithfully, impartially and to the best of his knowledge and ability make the survey or resurvey called for in such instrument of designation; and such affidavit shall be endorsed upon or attached to such instrument of designation. Such instrument of designation, together with such affidavits, shall be filed in the general land office before any such work shall be done thereunder. (Id. sec. 7.)

Art. 5355. Field-notes to be returned; force and effect of.—Field-notes and a plat of any and all such surveys and resurveys, signed by such special state surveyor, or surveyors, shall be returned to and filed in the general land office, and shall thereafter have the same force and effect as if made and returned by a district or county surveyor under existing laws. (Id. sec. 8.)

Art. 5356. Conflicts in alternate surveys; how adjusted.—In all cases where land certificates granted by the state have been located in a block or blocks of two or more alternate surveys, and either or all of such surveys are found to be either wholly or partly in conflict with older valid surveys, such individual surveys as may not be patented in such block or blocks, and which may conflict as aforesaid, and such school surveys, except those which may be sold, or those which may have been sold and were in good standing on the thirty-first day of October, 1898, or those for which there may be pending purchase applications in general land office at the time said commissioner of the general land office shall issue his instructions to the surveyor, as hereinafter provided, may be adjusted under the direction of the commissioner of the general land office as provided herein. (Acts 1899, p. 330, sec. 1.)

Art. 5357. Surveyor's duties in adjusting conflicts.—When any such adjustment is desired, as mentioned in the preceding article, the said commissioner shall, upon request of the party owning such individual survey or surveys, or, in the absence of such application, upon his own judgment, direct the proper surveyor of the county in which such conflicting surveys may be situated, to survey such sections as may be in conflict, and so alter or change the field-notes of each and every survey for which an adjustment is sought, except where the school survey has been sold or applied for as above provided; and, in making such change or alteration, the said surveyor shall divide the total area of the individual survey and its alternate school survey equally between the individual and the school survey, unless there is an excess,

in which case the excess shall go to the school survey, and patents shall issue accordingly; provided, that the state shall not be required to pay any costs in the matter of resurveying and setting the boundary lines of said lands as provided for in this chapter. (Id. sec. 2.)

Art. 5358. In case of conflict, to issue in what cases.—The commissioner of the general land office shall ascertain the entire number of acres in the school surveys wholly or partly free from conflict, exclusive of any excess there may be in each of said school sections, in any particular block, and also the entire number of acres in the individual surveys free from conflict in such block, and shall issue patents on enough of the individual surveys, if there be enough, to equal in area the total area of said school surveys so wholly or in part free from conflict, without considering the excess of each school section; and, in case the total area of the individual surveys in any particular block exceeds the total area of the school surveys, then such excess shall be equally divided between the individual and the school surveys, and patents shall issue accordingly; and if in any case the total area of the school surveys in any particular block, not including any excess there may be in each school section, nor to give any individual any more than their respective total complement by reason of such resurvey, exceeds the total area of the individual surveys, then such excess shall be equally divided between the individual and school surveys, and patents shall issue accordingly; provided, sufficient amount of the school surveys not sold or applied as aforesaid remain to admit of such division. (Id. sec. 3.)

Art. 5359. In cases of conflict number of surveys changed; correction made to protect purchasers.—Where purchasers of school lands have been misled as to the correct lines of their surveys, and have improvements thereon, the commissioner of the general land office may, by the written consent of the purchaser of the school survey and the owner of the individual survey, filed in the general land office, be authorized to change the number of surveys, or have them so corrected as to protect the improvements of the purchaser of the school lands. (Id. sec. 4.)

Art. 5360. Third persons protected.—The provisions of this chapter shall not affect prior valid rights of third persons. (Id. sec. 5.)

CHAPTER SIX

PATENTS

Art. 5361. (4175) Requisites of patent.—Every patent for land emanating from the state shall be issued in the name and by the authority of the state, under the seal of the state, and under the seal of the general land office, and shall be signed by the governor and countersigned by the commissioner of the general land office; and before the delivery thereof to the party entitled thereto it shall be registered in a well-bound book kept in the general land office for the recording of patents. (Act May 12, 1846. P. D. 4279, 4281.)

Art. 5362. (4176) When patent to be issued.—Whenever the field-notes of a survey and the land certificate by virtue of which the same was made have been returned to and filed in the general land office within the time prescribed by law, if it shall appear after due examination that such survey was correctly and legally made upon vacant and unappropriated land, and that the land certificate is genuine and unsatisfied, it shall be the duty of the commissioner of the general land office to make out and deliver to the rightful owner thereof, his agent or legal representative, a patent for the land described in said survey. (Act Jan. 20, 1840. P. D. 4286.)

Art. 5363. (4177) When to be referred to attorney general.—Should it appear to the commissioner of the general land office, from the records of his office or from information on oath given him, that there is some illegality in the claim, he shall, if he deems it necessary, refer the matter to the attorney general, whose decision in writing shall be sufficient authority for him to issue or withhold the patent as the case may be.

Art. 5364. (4178) Map of county to be filed.—No patent shall be issued upon any claim, unless a map of the county in which the same is situated shall be on file in the general land office. (Act Jan. 19, 1841. P. D. 4305. Acts 1879, ch. 121, p. 129.)

Art. 5365. (4179) Patents on surveys in two counties.—The commissioner of the general land office is hereby authorized and required to issue patents in all cases upon surveys of land lying in two or more counties or districts, where no conflict between such surveys and others exist, and to which there is no other objection than that of a division in said surveys, occasioned by a county or district boundary passing through them; provided, the field-notes shall have been recorded in the office of the county or district surveyor of both counties or districts. (Act May 9, 1846. P. D. 4315.)

Art. 5366. (4180) Patents on more than two surveys, when.—The commissioner of the general land office is hereby authorized and required to issue patents to the legal owner of a land certificate in all cases where the same has been located in two surveys, and where the same is bounded by other surveys. (Act April 7, 1846. P. D. 4314.)

Art. 5367. (4181) In case of conflict, how patent may issue.—In cases where conflicts exist between surveys, the commissioner of the general land office shall be authorized and is hereby required to issue patents to such portions of such surveys as are free from conflicts. (Act May 9, 1846. P. D. 4316.)

Art. 5368. (4182) Shall issue patent to assignee, when.—The commissioner of the general land office is hereby required to issue patents to, and in the name of, the assignee of any genuine land certificate issued in conformity to law. (Act May 12, 1846. P. D. 4294.)

Art. 5369. (4183) Before issuing to assignee, transfers, etc., must be filed.—Before any patent shall issue to the assignee under the preceding article, he must present and file a sufficient and properly authenticated chain of transfer, assignment or obligation for title, or a power of attorney showing a transfer from the original grantee to the assignee. (Id.)

Art. 5370. (4184) Patent may issue to assignee without transfer, when.—All patents may issue in the name of the assignee when the certificate was granted in the name of the assignee, without an exhibition of a chain of transfers as prescribed in the preceding article. (Act Feb. 3, 1845. P. D. 4292.)

Art. 5371. (4185) Patents to deceased persons shall inure to whom.—All patents which have heretofore been issued by the authorities of the republic or the state of Texas, in the names of persons deceased at the time of issuing such patents, and all patents for lands which may be issued hereafter by authority of the state of Texas, in the names of persons deceased at the time at which said patents may be issued, shall be, to all intents and purposes, as valid and effectual to convey and secure to the heirs or assignee, as the case may be, of such deceased persons, the land so patented, or which may be so patented, as though such deceased persons had been in being at the time such patents bear date. (Act Dec. 24, 1851. P. D. 4228a.)

Art. 5372. (4186) In what order patents shall issue.—The commissioner of the general land office is authorized and required to patent surveys in the order in which they may be made ready for patenting, without regard to the order of filing in the general land office or the order of application; provided, that, when application is made for patent on any claim, and the office fees therefor have been paid, such claim shall have preference over claims for which no application has been made; provided, such surveys shall have been regularly mapped, or there be sufficient evidence that no previous survey has been legally filed in the land office covering the same ground as represented on the maps of the office. (Act April 8, 1861. P. D. 4300. Acts 1879, S. S., ch. 27.)

Art. 5373. (4187) Patents on unrecommended certificates prohibited.—The commissioner of the general land office is hereby prohibited from issuing a patent upon any survey that shall have been made by authority of a certificate issued prior to March 16, 1840, and has not been returned as genuine and legal by the commissioners appointed by the act of January 29, 1840, or by authority of a warrant issued for military services, unless the same shall have been presented to and approved by the secretary of war, the adjutant general, or the commissioner of the court of claims, as heretofore prescribed by law, or unless said certificate or warrant shall have been issued by authority of a special act of the legislature; and any patent issued contrary to the provisions of this article shall be null and void, unless the person claiming such patent shall produce to the commissioner of the general land office the judgment or decree of a district court of the republic or state of Texas, from which no appeal was taken within the time prescribed by law, that he is justly entitled to the amount of land under the constitution and laws. (Act Jan. 29, 1840. P. D. 4288. Acts 1879, ch. 121, p. 129.)

Art. 5374. (4189) Patent may be canceled in whole or in part, where issued by mistake.—Where a patent to land has been or may hereafter through mistake be issued upon any valid claim for land which is afterward found to be in conflict with any older title, it shall be competent for the owner of such patent, or any part of the land embraced therein, and within such conflict, to return the same to the commissioner of the general land office for cancellation, or in case the owner of such land in conflict can not obtain the patent, then he shall return instead thereof legal evidence of his title to such patent, or part thereof; and in either case he shall make and file with the said commissioner an affidavit in writing that he is still the owner of the same, and has not sold or transferred it; and, should it appear from the records of the general land office, or from a duly certified copy of a judgment of any court of competent jurisdiction before which the title to such land may have been adjudicated, that such conflict really exists, it shall be lawful for him to cancel the patent, or such part thereof as shall appear to belong to the party so applying. (Act March 10, 1885, p. 76.)

Art. 5375. (4190) When in partial conflict, may be canceled.—In cases where there is only a partial conflict, the commissioner of the general land office may, under like circumstances and in like manner as is provided for in the preceding article, cancel any patent presented to him, and issue a patent to the applicant for such portion of the land covered by his patent as may not be in conflict with the older title, where from the field-notes the same may be done. (Act Feb. 3, 1874. P. D. 4302.)

Art. 5376. (4191) Commissioner to deliver patent, when; fee for.—The Commissioner of the General Land Office is hereby authorized and required to issue patents when it appears from the books of said office that full payment for the land has been made, where payment is required, and all legal fees due thereon have paid into said office and not withdrawn, including the legal fee or fees for the recording of said patent in the county or counties in which the land may be located. When one applies for a patent such person shall, in addition to other sums of money legally due as payment for the land and other sums due as legal fees, remit to the land Office the sum of one dollar for each and every county in which the land may be wholly or partly located and give the name and address of the owner or agent. When the patent is ready for delivery the Commissioner shall send it by registered mail to the county clerk of the county in which the land, or a part thereof is located, or to the clerk of the county in which such county may be attached for judicial purposes, together with the Receiver's check for one dollar for each and every county in which the land may be wholly or partly located, and accompany same with the name and address of the owner or his agent. Upon receipt of the patent and the fee, the clerk shall record the patent and deliver it to the owner or his agent either in person or by registered mail, if the land be wholly located in such county. If the land be located in two or more counties the patent, together with the required fee and the name and address of the owner or his agent, shall be forwarded by registered mail by each clerk to the clerk of another proper county until the patent shall have been recorded in each county and thereupon the patent shall be delivered to the owner or his agent either in per-

son or by registered mail. All undelivered patents now in the Land Office on which fees have been paid shall be sent to the clerk of the county in which the land, or a part thereof is located, or to the clerk of the county to which such county may be attached for judicial purposes, and after being recorded in the last county as provided herein for other patents the clerk shall deliver the patent to the proper person upon payment of the recording fee. (Acts 1891, p. 182; Acts 1918, 4th C. S., ch. 47, sec. 1.)

Art. 5377. Patents on homestead claims, to issue when.—The commissioner is directed to issue patents to all homestead claimants, pre-emptors, and other persons who settled upon public lands in good faith and attempted to purchase the same and had the field-notes thereto returned to and actually filed in said land office prior to October 23, 1898, where the law under which said settlement, pre-emption or purchase was made is complied with, and patent could legally issue thereto, had it not been for the decision of the supreme court of the state of Texas in the case of Hoge vs. Baker, rendered on October 23, 1898; provided, proof of occupancy shall be filed in the land office and payment of patent fees made. (Amended Acts 1903, p. 228, sec. 9.)

Art. 5378. (4192) Refunding of fee when patent can not issue.—Upon proper proof being made to the comptroller that deposits have been made in any special funds of moneys, for which deposits and payments no patents for lands can be issued for which such payment may have been or may hereafter be made, the comptroller is authorized to issue his warrant in favor of such parties for such amount as may be found to be due; provided, this article shall not apply to surveys, the errors in which may be corrected. (Acts 1883, p. 113.)

Art. 5379. [Repealed by Acts 1918, 4th C. S., ch. 47, sec. 2.]

Art. 5380. (4194) Commissioner required to issue patents on certificates not reported by clerks, when.—The commissioner of the general land office is authorized and required to issue patents to lands that have been surveyed and returned to the general land office and have been suspended because the clerks of the county courts have failed to make reports as required by law, when said commissioner is satisfied from evidence in his office that such patents should issue. (Acts 1883, p. 82.)

Art. 5381. (4195) Penalty for failure to pay fees on patents; venue, etc.—If any patents remain in the land office six months after the owners are notified of the issuance, and to pay the dues on the same, it shall be the duty of the commission to add to the amount of said fees a penalty of ten per cent per month for the whole time the fees may remain unpaid, and to collect said penalty and fees from the persons or corporations to whom said patents have been granted; and said commissioner shall have no authority to deliver any patent for land or certified copy of field-notes or certificate thereof until the whole amount of said fees and penalty shall have been paid, and it is made the duty of the attorney general to bring suit for the same in the district court of Travis county. (Acts 1879, p. 62.)

Art. 5382. (4196) State shall have a lien to secure the fees.—The state of Texas has and shall hereafter have a lien upon all the land conveyed by or included in all patents to land granted by the state for the amount of fees and penalties provided for in the preceding article, and said land shall be subject to be sold in satisfaction of the same. (Id.)

Art. 5382a. Surveys validated; when patent to be issued.—That in all cases where parties resurveyed or re-located lands by virtue of any valid land certificates previously surveyed and on file in the general land office, with or without having taken out certified copies thereof, and thereby failed to comply strictly with the law, such last named survey, which in law might be deemed a relocation, shall be valid, and the owner shall hold thereunder, thereby abandoning all other surveys previously made, and the commissioner of the general land office is authorized to issue patents therefor. Provided such relocation shall not be patented if made in conflict with any valid location or survey previously made. (Acts 1889, p. 107, sec. 1. Amended Acts 1913, p. 357, sec. 1.)

CHAPTER SEVEN
LAND RESERVATIONS

Art. 5383. (4265) Locations validated.—Any and all public lands heretofore surveyed by railroads, or corporations, or any company, or any person in this state, for the benefit of the public free schools of this state, by virtue of any certificate, valid or invalid, void or voidable, be and the same are hereby declared to be lands belonging to the public free schools of this state. (Acts 1883, p. 4.)

Art. 5384. (4266) Lands sold for taxes to state, etc.—When lands are sold in unorganized counties and bid in by the comptroller for the state for the taxes due thereon, and are not redeemed by the owner thereof, nor his agent, within two years, by the party redeeming the same paying double the amount for which said land was sold, then the land thus sold and unredeemed shall become vacant and revert to and become a part of the public free school fund, to be sold and disposed of as other lands belonging to the public free school fund are to be sold and disposed of by law. (Acts 1879, p. 140.)

Art. 5385. All unappropriated lands declared part of permanent school fund.—All lands heretofore set apart under the constitution and laws of Texas, and all of the unappropriated public domain remaining in the state of Texas, of whatever character, and wheresoever located, including any lands hereafter recovered by the state, except that included in lakes, bays and islands along the gulf of Mexico within tidewater limits, is set apart and granted to the permanent school fund of the state; and all such lands heretofore or hereafter recovered from railway companies, firms, persons, or other corporations by the state, by suit or otherwise, and constituting a part of said school fund as herein provided, shall be disposed of as other school lands, except as otherwise provided by law. In all cases where said land, or any portion thereof, has been surveyed into tracts of six hundred and forty acres,

more or less, and field-notes thereof returned to and filed in the general land office, the same is hereby declared a sufficient designation of said land; and the commissioner of the general land office shall dispose of the same by the survey and block numbers contained in said field-notes. (Acts 1900, p. 29; Acts 1899, p. 123.)

Art. 5386. (4253) One-half of public domain added to permanent fund, etc.—After the payment of the amounts due from the state to the common free school fund out of the proceeds of the sales heretofore made, or hereafter to be made, of that portion of the public lands set aside for the payment of the public debt by an act approved July 14, 1879, and an act amendatory thereof approved March 11, 1881, and the payment directed to be made to the common school and university funds by an act approved February 23, 1883, the remainder of said land, not to exceed two million of acres, contained in the counties and territory specially mentioned in said acts, or the proceeds thereof, set aside by said acts for the payment of the public debt, heretofore or hereafter to be received by the state, shall one-half thereof constitute a permanent endowment fund for the university of Texas and its branches, including the branch for the instruction of colored youths. (Acts 1883, p. 71.)

Art. 5387. (4254) The asylum lands.—The four hundred thousand acres of land set apart for the lunatic asylum, the blind asylum, the asylum for the deaf and dumb, and an orphan asylum, in equal portions of one hundred thousand acres for each of said asylums, by the provisions of an act of the legislature entitled, "An act setting aside and appropriating land for the benefit of asylums," approved August 30, 1856, is hereby recognized and set apart to provide a permanent fund for the support, maintenance and improvement of such asylums. (Const., art. 7, sec. 9; Act Aug. 30, 1856, p. 76.)

CHAPTER EIGHT

GENERAL PROVISIONS

Art. 5388. (4211) No officer shall be interested in public land, etc.—No person elected or appointed to any position of trust in the general land office, or employed in such land office, shall, directly or indirectly, be concerned in the purchase of any right, title or interest in any public land, either in his own name, right or interest for any other person, or in the name or right of any other person in trust for himself; nor shall take nor receive any fee or emolument for negotiating or transacting the business of said office, other than those fees allowed by law. (Act Dec. 14, 1837; P. D. 4090.)

Art. 5389. (4215) Abstract to be corrected when necessary.—The commissioner of the general land office shall make it the special duty of one of his clerks to constantly correct the abstract of patented, titled and surveyed lands required to be kept in his office according to errors discovered, changes by cancellation of patents, changes of county lines, and creation of new counties, and to add all new patented surveys at the date of the patent. (Id. sec. 4.)

Art. 5390. (4216) Supplemental abstract furnished, when.—During the month of August of each year hereafter, the commissioner of the general land office shall have made out and furnished to the comptroller of public accounts a supplementary abstract of all patents that have been issued from his office during the year ending on the thirty-first day of August. (Id. sec. 5.)

Art. 5391. (4217) Abstract to be printed, etc.—The comptroller of public accounts is hereby authorized to have one thousand copies of said supplementary abstracts printed and bound for distribution among those officers of the state and counties whose duties require the use of said abstract, the surplus copies to be sold at a reasonable price to parties applying for them; provided, that, if the demand for copies of said abstract shall be greater than the supply provided for by this article, an additional number of five hundred copies may be printed. (Id. sec. 6.)

Art. 5392. (4218) Printing of, how paid for, etc.—The sum necessary to pay for the printing and binding of said supplemental abstracts shall be paid out of the general appropriation made by the legislature for printing; and all moneys received by the comptroller by the sale of said abstracts shall be paid into the treasury to the credit of said appropriation. (Id. sec. 7.)

Art. 5393. (4218a) Certain locations validated.—The titles to all lands located by virtue of certificates issued to railroad companies in whole or in part for sidings, switches or turnouts, and which lands were transferred by any of said companies, or their duly appointed receivers or assigns, prior to the first day of January, A. D. 1891, to purchasers in actual good faith for value, and are now owned by such purchasers, their heirs or assigns, be and the same are hereby validated to such purchasers, their heirs or assigns, and also to all actual settlers on such lands so far as the state may have any claim, and that the titles to all public free school, university, or asylum lands located by virtue of such certificates are also validated, whether the locations were voidable or not by reason of their having been made by the wrong surveyor; provided, that this article shall not apply to lands for the recovery of which suit has already been instituted by the state, nor be construed to validate locations made on lands that were at the time appropriated or reserved from such locations, nor shall it be construed to in any manner apply to or affect the rights of third parties heretofore acquired in good faith; provided, further, this article shall not apply or be held to validate titles in the following other cases:

1. Where said lands were transferred through foreclosure proceedings against such companies to trustees or mortgagees or other persons or corporations interested in mortgages on said lands, or who held said lands for such interested persons or corporations, and where the apparent title to said lands was still in said companies or their receivers or their transferees at such foreclosure sale on January 1, 1891, and have not been subsequently transferred to actual settlers on such land or to bona fide purchasers thereof for value and without notice.

2. Where said lands have been transferred by said companies in evasion and fraud of the laws of alienation applicable thereto and

the title is now in the name of the original vendees of said companies. (Acts 1895, p. 36.)

Art. 5393a. Validation of grants and allotments by towns or villages under authority of Spain or Mexico.—That all sales actually made and all allottments in severalty of land actually made to individuals by any town or village in this State of lands granted by any officers acting as authorities of Spain or Mexico, or of any State of Mexico, and ratified and patented by the State of Texas to such towns or villages, or to the inhabitants thereof, be and the same are hereby validated in favor of the original purchasers or allottees from any such town or village, or their heirs, devisees, vendees, assigns, or successors in the claim of title which originated out of any such sale or allottment, and whether the sale or allottment was made without authority under the laws existing at the time the sale was made, or without complying with said existing laws, or by a valid or invalid corporation or re-incorporation under the General Laws of Texas, or without incorporation, or was invalid because the land sold or allotted lay outside of the corporate limits of any incorporation under the General Laws of Texas, or was invalid for other reasons, and whether or not such new incorporation was valid or invalid, or had jurisdiction to deal with the lands formerly granted to said town or not, and whether such town or village was incorporated or not; provided that when there exist two or more invalid sales or allottments made by any such town or village, the first in point of time only of said sales is hereby validated without prejudice to the rights of claimants under a subsequent sale to establish the validity of the sale or allottment under which they claim or to show that their titles under which they may hold, if invalid, may afford them under existing laws in establishing their titles under the statutes of limitations, but in all such cases the person or persons or corporations claiming under such junior sale or sales or attempted sale or allottment shall bring his suit to establish his title within one year from the time this Act takes effect, or he or they shall be forever barred from maintaining any suit to establish such junior title, and this whether there be adverse possession thereof or not; and provided, further, that in any case wherein the junior purchaser or purchasers may establish his or their title by judgment of court against such senior purchasers or allottees the said junior purchasers' or purchasers' title shall be held to be valid as against the State and said town or village. No claimant to the title of land shall be entitled to claim the benefit of the provisions of this Act unless such claimant shall have had actual, visible possession of such land so claimed by him, controlling the same under fence or actually cultivating the same for a period of one year next immediately preceding the assertion of such right; providing, that the provisions of this Act shall not apply to any grant of land made to any individual person or persons under or by authority of the Colonization Laws of the Republic of Mexico or any of the states thereof. (Acts 1915, 1st C. S., ch. 12, sec. 1.)

Art. 5393b. Same; incorporation of towns and villages validated.—That the incorporation or attempted incorporation of such towns and villages to whom lands have been granted as aforesaid and which are at the time of the taking effect of this Act organized and acting as such corporations are hereby validated and are declared to be valid municipal corporations for the purpose of disposing of any lands granted to such towns or villages, whether incorporated or not, other than streets, alleys, parks and other public places in such towns and desaguas, and whether such lands are situated in corporate limits of such towns or not and whether they in fact have any charter or organization now in force or not; this validation of such towns or villages to apply only for the purpose of disposing of lands which such towns and villages may not have heretofore sold or allotted to others or attempted to sell or allot to others; and such towns or villages shall have power to sell or dispose of all such lands as to which they are validated, and which are not within the validating provisions of Section 1, of this Act [Art. 5393a], owing to there not having been any disposition made or attempted to be made thereof by said corporation, but said corporations are not by this Act validated for any other purposes other than with respect to such future sales or dispositions of such lands, their validity or invalidity is not to be affected by this Act otherwise than for the limited purpose of disposing of lands which they have not disposed of or attempted to dispose of prior to the passage of this law. And in cases wherein former incorporations of such towns and villages have been repealed or abolished by vote of the voters therein without having sold or attempted to sell such lands as were granted to them as aforesaid the inhabitants thereof may organize a corporation under the laws now in force as to the incorporation of towns and villages, which corporations when thus organized shall have power to sell any lands granted and patented as aforesaid, whether the land be situated within the boundaries of such corporation or not except as some prior corporation or town or village organization may have sold or attempted to sell, and except said public streets, alleys, parks, desaguas, and other public places. (Id. sec. 2.)

Art. 5394. Failure to alienate, no forfeiture when.—The failure of any railway company or other original grantee of any valid alternate land certificate to alienate their lands or any portion thereof, granted to them within the periods specified in the laws under which said lands were granted, or by any other law of the state of Texas, shall not be deemed a sufficient cause for forfeiting such lands, or any part thereof, by the state of Texas; provided, it shall appear that such lands have in fact, by a bona fide sale, been already alienated to actual purchasers; and provided, further, that all lands now held by such original grantee shall be sold to actual bona fide purchasers on or before the first day of July, 1910, otherwise such lands as are not so alienated shall revert to and become the property of the state of Texas; provided, further, that all lands affected by this article shall be alienated in tracts not to exceed four sections to any one person or persons, and that no person, persons, or corporations shall make more than one purchase of said lands. (Acts 1903, p. 130.)

Art. 5395. Must alienate within what time.—Any railway company which has in any manner whatsoever acquired title to or interest in any land in this state, not required in the construction, operation or repair of its railway, or for yards, stations, or other facilities, shall alienate the same in good faith on or before the first day of July, 1910, otherwise the same shall be forfeited to the state at the suit of the attorney general. (Id.)

Art. 5396. (4274) Surplus segregated from public domain, when.—Surveys and blocks of surveys made by virtue of valid alternate scrip be and the same are hereby declared to segregate from the mass of the public domain all land embraced in said surveys, or blocks of surveys, as evidenced by the corners and lines of same, or by calls for natural or artificial objects, or the calls for the corners and boundaries of other surveys, or by the maps and other records in the general land office. (Acts 1889, p. 104.)

Art. 5397. (4275) Belong to public free school fund.—All excess in said surveys are donated and declared to belong to the public free school fund of the state; and it shall be the duty of the commissioner of the general land office to ascertain, by any and all means practicable, the existence and extent of such excesses, and to provide for and direct such surveys, or corrected surveys, as may be necessary for this purpose; provided, that, where such surveys were made in blocks of two or more surveys, said respective surveys shall remain on the ground consecutively as placed therein, as shown by the maps, sketches and field-notes originally returned to the general land office; provided, that the person who has already purchased, or who may hereafter purchase from the state the particular section to which surplus shall by such resurvey be made contiguous, shall have the prior right for the period of six months after such resurvey shall have been made, in which to purchase such excess on the same terms on which such purchaser has already bought or may buy. (Id. sec. 2.)

Art. 5398. (4276) Excess to be added.—All such surveys which, under the direction of the commissioner of the general land office have been or may be hereafter corrected, so that all excess in the original surveys shall be placed in the surveys belonging to the public free schools, are hereby validated, and the action of the commissioner is hereby ratified; and he is directed and authorized to issue patents to the owners thereof, and to sell such surveys belonging to the public free schools, securing to the state the benefit of such excesses. (Id. sec. 3.)

Art. 5399. (4277) Shall not affect.—The provisions of this law shall not apply to nor affect the rights of the third persons heretofore acquired in good faith. (Id. sec. 4.)

Art. 5400. (4278) Conflicts.—Nothing in the preceding four articles shall apply to any lands for which patents have been issued. (Id. sec. 5.)

Art. 5401. (4279) Even numbered surveys in conflict, etc.—Where the common school or even numbered surveys in conflicting locations, made by virtue of alternate land certificates, are not identical or upon the same land, the commissioner of the general land office may, where he deems it to the interest of the state to do so, change the numbers of the surveys in the conflicting locations so as to make the common school or even numbered surveys in both locations identical; provided, that the commissioner of the general land office shall not change the numbers of surveys without the written consent of the owner of the certificates by virtue of which said surveys are made. (Acts 1889, p. 104.)

Art. 5402. (4271) Land, how sold and proceeds invested.—Each county may sell or dispose of the lands granted to it for educational purposes in such manner as may be provided by the Commissioners Court of such county, and the proceeds of any such sale shall be invested in bonds of the United States, the State of Texas, the bonds of the counties of the State, and the independent or common school districts, road precinct, drainage, irrigation, navigation and levee districts of said State, and the bonds of incorporated cities and towns, and the bonds of road precincts of any county of Texas, and the bonds of drainage, irrigation, navigation and levee districts of any county or counties of Texas; "And held by such county alone as a trust for the benefit of public free schools therein, only the interest thereon to be used and expended annually." (Acts 1889, p. 104; Acts 1915, ch. 136, sec. 1.)

Art. 5403. (4272) Actual settlers to have preference.—In any sale of county school lands, under the provisions of the preceding article, the actual settlers residing on said lands shall be protected in the prior right of purchasing the same to the extent of their settlement, not to exceed one hundred and sixty acres, at the price fixed by the commissioners' court, which price shall not include the value of existing improvements made thereon by such settlers. (Acts 1889, p. 104.)

Art. 5404. (4159c) Land purchase money refunded, when.—Upon proper proof being made to the comptroller that money has been in good faith paid into the state treasury upon lands for taxes, lease and purchase money, for which, on account of conflicts, erroneous surveys, or illegal sales, patents can not legally issue, or upon lands which patents have issued and have been or may hereafter be legally canceled, the comptroller is hereby authorized to issue his warrant for the amount so paid into the treasury in favor of the parties who have in good faith paid such money, for which they receive no consideration; provided, that this article shall not apply to surveys, the errors in which may be corrected; and provided, further, that whenever the official records of the general land office shall show that patents for such lands can not legally issue upon such surveys, on account of conflicts, erroneous or illegal sales, or that patents issued on such lands have been legally canceled, it shall be the duty of the commissioner to issue his certificate to that effect, which certificate filed with the comptroller shall be sufficient proof to authorize him to act under the provisions hereof. (Id. p. 162.)

CHAPTER NINE

SALE AND LEASE OF PUBLIC FREE SCHOOL AND ASYLUM LANDS

Art. 5405. (4218b) Sale and lease of public lands provided for.—All lands set apart for the benefit of the public free schools, the lunatic asylum, the blind asylum, the deaf and dumb asylum, and the orphan asylum shall be sold and leased under the provisions of this chapter. (Acts 1895, p. 63.)

Art. 5405a. Sale of unsold lands.—On the first day of September 1919, and the first day of each January, May and September of each year thereafter, all the unsold lands set apart for the benefit of the public free school fund, the Lunatic Asylum fund, the Blind Asylum fund, the Deaf and Dumb Asylum fund, the Orphan Asylum fund, which have heretofore been surveyed or that may hereafter be surveyed and unsold portions of same shall be subject to sale by the Commissioner of the General Land Office under the regulations and upon the terms provided in this Act; provided, no land leased before the passage of this Act shall be subject to sale until the first sale date after the termination of the lease. No corporation shall purchase any land under this Act. (Acts 1919, ch. 163, sec. 1.)

Art. 5406. (4218c) Duties of commissioner of the general land office.—The commissioner of the general land office is hereby vested with all the power and authority necessary to carry into effect the provisions of this chapter, and shall have full charge and discretion of all matters pertaining to the sale and lease of said lands, and their protection from free use and occupancy and from unlawful enclosure, with such exceptions and under such restrictions as may be imposed by the provisions of this chapter, or by the constitution of the state. He shall, as soon as practicable, adopt such regulations not inconsistent with the constitution or this chapter as may be deemed necessary for carrying into effect the provisions of this chapter, and may from time to time alter or amend such regulations so as to protect the public interest; but all regulations shall be submitted to the governor for his approval before adoption or promulgation. He shall adopt all necessary forms of applications for sales or leases, and all other forms necessary or proper for the transaction of the business imposed upon him by this chapter, and may, from time to time, call upon the attorney general to prepare such forms; and it shall be the duty of that officer to furnish the commissioner of the general land office with such advice and legal assistance as may be requisite for the due execution of the provisions of this chapter; and it shall be the duty of such commissioner to call upon the attorney general for advice whenever there is any doubt as to the meaning of this chapter, or any provisions thereof. (Acts 1895, p. 63.)

Art. 5407. Classification and valuation; sale of timber.—The Commissioner of the General Land Office shall from time to time, as the public interest may require, classify or reclassify, value or revalue, any of the lands included in this Act, designating the same as agricultural, grazing or timber, or a combination of said classifications, according to the facts in the particular case, and when entry of the classification and the appraisement is made on the records of the General Land Office, no further action on the part of the Commissioner, nor notice to the County Clerk shall be required to give effect thereto. No land classed as agricultural shall be sold for less than one dollar and fifty cents per acre and no land classed as grazing shall be sold for less than one dollar per acre. The land included in this Act shall be sold with the reservation of the oil, gas, coal and all other minerals that may be therein to the fund to which the land belongs and all applications shall so state. Timber on land shall be sold for cash at its fair market value. The Commissioner shall notify the clerk of the proper county of the sale of each tract, giving the name and address of the purchaser together with the price of the land. When informed of the sale of any land the clerk shall enter on his books opposite the description of the land sold, the name of the purchaser and the date sold, and the notice of such sale and the books of record and entry shall be considered public records, and be open to public inspection, and it is hereby made the duty of the county clerk to exhibit the said records to any person who shall apply therefor. (Acts 1905, p. 159, sec. 1. Art. 4218e, Act 1895, amended Acts 1897, p. 184. Art. 4218b, Act 1895. Art. 4218e, Act 1895, amended Acts 1897, p. 184. Act of 1905, p. 159, part of sec. 1. Art. 4218f, Act 1895. Acts 1919, ch. 163, sec. 2.)

Art. 5408. Advertisement of land.—In cases where any land included in this Act may be leased and the same may come on the market by reason of the expiration or cancellation of such lease or in cases where land may be sold and revert to the fund to which it originally belonged by reason of the forfeiture or cancellation of the sale, it shall be the duty of the Commissioner to classify and value same before the next sale date thereafter and adopt such means as may be at his command that will give the widest publicity and general information as to when such land and other unsold land will be on the market for sale, together with the terms and conditions upon which the land may be purchased. No tract of land shall be subject to sale until it shall have been advertised. If there are no other satisfactory or sufficient means at the command of the Commissioner that will give the necessary publicity he shall have printed at the expense of the State, to be paid out of the appropriation for public printing, lists of the land for free distribution to the public. The lists shall contain a brief statement of how one shall proceed to buy the land. (Acts 1905, p. 159, sec. 2; Acts 1919, ch. 163, sec. 3.)

Art. 5409. (4218g) Sale by commissioner, how made.—One desiring to buy any portion of the land included in this Act shall transmit to the Commissioner of the General Land Office a separate application for each tract applied for together with the affidavit of the applicant to the effect that he desires to purchase the land for himself and that no other person or corporation is interested in the purchase thereof either directly or indirectly and one-fortieth of the aggregate price offered for the land and the obligation

of the applicant in a sum equal to the amount of the unpaid purchase price offered for the land, binding the purchaser to pay to the State at the General Land Office at Austin, Texas, on the first day of November thereafter and on the first day of November of each year thereafter until the whole purchase price is paid, one-fortieth of the aggregate price with interest on the unpaid purchase price at the rate of five per cent per annum. Upon receipt and filing of the application, affidavit, obligation and the one-fortieth part of the price offered, the sale shall be held effective from that date. If the interest on any sale should not be paid when due, the land shall be subject to forfeiture by the Commissioner entering on the wrapper containing the papers "Land Forfeited," or words of similar import, with the date of such action and sign it officially, and thereupon the land and all payments shall be forfeited to the State and offered for sale on a subsequent sale date. (Acts 1895; Acts 1919, ch. 163, sec. 4.)

Art. 5409a. Extension of time of payment on certain sales.—The time for the payment of principal due on sales heretofore made of the land belonging to the public free school fund, the University fund, and the several asylum funds, under the Acts of 1874, 1879, 1881 and 1883, is hereby extended for a period of twenty years from the date such principal matured by the terms of the Act under which it was purchased and which has matured under former Acts extending the time for the payment of the principal of the sales under the Acts of 1874, 1879 and 1881. Failure to pay any installment of interest when due shall mature the principal. (Acts 1915, 1st C. S., ch. 13, sec. 1.)

Art. 5409b. Sale in whole tracts only; separate applications; lease of unsold portions.—The surveyed land and unsold portions of surveys included in this Act shall be sold in whole tracts only and without condition of settlement and residence and in quantities not to exceed eight sections to one purchaser. A separate application in writing shall be made for each tract applied for. Any unsold land may be leased at any time at not less than five cents per annum, payable in advance each year and for a term not to exceed five years, but all land so leased and unsold shall be subject to sale on each succeeding sale date. All tracts containing less than 80 acres shall be sold for cash. (Acts 1919, ch. 163, sec. 5.)

Art. 5410. Application for purchase; opening; rejection.—All sales shall be made by the Commissioner of the General Land Office or under his direction. Any person desiring to purchase any of the surveyed land included in this Act shall make a separate application in writing for each tract as a whole and be addressed to the Commissioner of the General Land Office. It shall sufficiently designate the tract applied for and state the amount offered therefor which shall not be less than the appraised value fixed thereon by the Commissioner. The Application shall be delivered to the General Land Office in a sealed envelope addressed to the Commissioner of the General Land Office at Austin, Texas, and the envelope shall have endorsed thereon in effect: "Application to buy land," and date when the land will be on the market. Applications received at the Land Office in envelopes not so endorsed shall nevertheless be valid. When the envelopes so endorsed and applications without endorsement on envelopes are received in the General Land Office, the envelopes shall remain unopened and the applications shall remain unfiled and all shall be safely and securely kept by the Commissioner or his chief Clerk until the day following the day when the land comes on the market and at ten o'clock A. M. on said day one or both of them shall begin to open the envelopes and file all applications and take such action thereon as may be provided by law; provided, if the opening day should be Sunday or other legal holliday, the opening shall be postponed until the first work day thereafter. Those desiring to be present at such opening may do so. All sales shall be made to the applicant who offers the most for the land, not less than the price fixed by the Commissioner. Should two or more applicants offer the same price for any tract the same being the highest price offered therefor on any sale date, all shall be rejected and the land offered for sale on the next sale date. Payments on all rejected applications shall be returned to the applicant by the State Treasurer. Land heretofore purchased by one shall be counted against him under this Act. (Acts 1905, p. 159, sec. 3; Acts 1919, ch. 163, sec. 6.)

Art. 5411. Cash payments, how remitted.—Such applicants shall transmit with their applications the required first payment in the form of money or remittance collectible on demand in Austin, and convertible at par into money on the order of the state treasurer, without liability; provided, that, should a remittance be made payable to the commissioner of the general land office, such payment shall not be invalid for that reason, but the commissioner shall endorse it to the state treasurer without incurring liability and the same shall be treated as if payable to the treasurer. If the payment is not made as required in this article, the application shall be void. (Acts 1909, p. 429.)

Art. 5412. Remittances, how accounts kept.—When an envelope enclosing an application to purchase land is opened and the remittance for the first payment is in the general land office, the commissioner shall cause such remittance to be listed in triplicate daily, and in such form as to show the purpose and amount of each remittance, the name and address of the applicant, and transmit the remittance and two of the lists to the treasurer. On receipt thereof, the treasurer shall check the remittances with the lists, and, if found to be correct, he shall receipt one of the lists and return it to the commissioner and retain the other list; and thereupon the commissioner shall deliver the third list retained by him to the comptroller of public accounts. The treasurer shall at once collect all collectible remittances and report to the commissioner and comptroller all remittances not collectible in Austin. The items not collected shall be returned to the commissioner, and the application for which such remittances were made shall be void. All first payments thus collected by the treasurer shall be retained by him until he receives notice from the commissioner of the final disposition of the applications to pur-

chase; and thereupon he shall at once return to each applicant the amount shown to have been paid on his rejected applications. A duplicate of the notice to the treasurer of accepted and rejected applications and the amount of first payment shall be transmitted to the comptroller. On the last working day of each month, the treasurer shall deposit in the treasury to the credit of the proper fund the sum collected by him on accepted applications during that month. (Id.)

Art. 5413. Awards, how made; notice and accounts of.—Notices of awards shall be prepared and issued by the commissioner, and shall be appropriately numbered, and shall be so worded as to constitute a receipt for first payment when signed as such by the commissioner. Books shall be prepared containing two copies of the notice of award and a suitable number of coupons to be used by the applicant in making subsequent payments on the land. The notice of award shall be prepared in duplicate, one to be detached from the book and retained in the land office, the other, with the coupons attached, to be sent to the applicant. The coupons in each book shall be prepared in duplicate, each of which shall be numbered with the same number as that on the notice of award. The form of the coupons shall be so prepared as to be suitable for, and shall be used by the remitter in making all subsequent payments on the land, the original to be so worded as to be used as a receipt for remittances when signed as such by the commissioner. The remitter shall describe each tract of land on which he is making remittance by properly filling in the blanks on both the original and duplicate coupons, and shall enter in the proper blanks the amount remitted as interest, and the amount remitted as principal, and both the original and duplicate shall be mailed to the commissioner with the remittance. The commissioner shall likewise furnish former purchasers with similar coupon books, without notice of award, which coupon shall be used by them in the same manner as herein provided when making remittances for interest or principal, or both. (Id. sec. 3.)

Art. 5414. Remittances, disposition of and accounts of.—All accounts with purchasers and lessees of the lands mentioned in the preceding articles and university land shall be kept in the general land office. A remittance payable to the commissioner of the general land office shall not be invalid for that reason, but he shall endorse it to the treasurer without incurring liability. Immediately on receipt thereof the commissioner shall list in triplicate, separate from first payments, all money and other forms of remittances received for the purposes stated in this article and in such form as to show the amount of each remittance, the name and address of the remitter, and the probable fund to which the remittance should be deposited. The remittances and two of the lists aforesaid shall be transmitted to the treasurer. On receipt thereof, the treasurer shall check the remittances with the list, and if found to be correct he shall receipt one of the lists and return it to the commissioner and retain the other list, and thereupon the commissioner shall deliver the third list retained by him to the comptroller. The treasurer shall at once collect all collectible remittances and report to the commissioner and comptroller all remittances not collectible in Austin. The items not collected shall be returned to the commissioner. On the last working day of each month, the treasurer shall deposit into the treasury to the credit of the proper fund, as indicated by the lists theretofore furnished him by the commissioner, eighty per cent of all collections which have come into his hands during that month upon such lists, and hold the remaining twenty per cent thereof upon deposit receipts issued therefor by the comptroller; provided, when the commissioner shall have issued receipts to the remitters for remittances, he shall immediately notify the comptroller and treasurer definitely the fund or funds to which the whole of such remittances so receipted for should have been applied; and thereupon the treasurer shall deposit to the credit of the proper fund or funds the remaining twenty per cent of such remittances so receipted for. The commissioner shall furnish all available data to the state board of education when requested to do so by said board. The commissioner, treasurer and comptroller shall each keep an account with each fund mentioned in the preceding articles according to the lists and notices given and received by them. (Id.)

Art. 5415. Purchaser's name to be given; permanent records to be kept.—Persons making payments of interest, principal or lease rentals on land shall give the name of the original purchaser or lessee and sufficiently designate the land. All lists and notices provided in the preceding articles, to be given by the commissioner to the treasurer and comptroller, shall be retained in each of those departments as permanent records thereof. (Id. sec. 5.)

Art. 5416. Award and settlement.—When the applications and obligations aforesaid have been filed in the general land office, and upon inspection they are found correct and the land is found to be classified and valued, and on the market for sale the day the application was filed, or on any prior date and still unsold, and the first payment made as required by law, it shall be the duty of the commissioner to award the land to the one offering the highest price therefor. If two or more applicants offer the same price for the same land, the same being the highest price offered, they shall be advised of that fact and a date fixed not less than thirty days thereafter within which time they may again file applications, and notice shall be sent to the clerk and other publicity shall be given that said lands are still on the market to any one, and the time in which applications to purchase the same may be filed as in the first instance. The applicant offering the highest price shall receive the award. If the second or subsequent applications should be found to offer the same price, the procedure shall be as in the first instance. An application at a less price than the former application contained shall not be considered. An application to purchase land coming on the market at some future date shall not be considered for award prior to the day next following the day the land comes on the market for sale. Land that is or may be on the market, and not filed on as herein provided, may be filed on and sold to any one at any time

upon proper applications filed in the land office as herein provided, and in accordance with law, except the envelope enclosing the application shall not be required to have any memorandum thereon, and, if two or more applications should be filed the same day for the same land, the one offering the highest price shall be accepted, but, if two or more such applicants should offer the same price, the commissioner shall proceed as herein provided for in the first filing. All sales shall date from the day the successful applicant's application was filed in the land office. The applicant shall have ninety days from the date of the acceptance of his application within which to actually settle upon the land so purchased; and he shall within thirty days after the expiration of said ninety days given within which to make settlement, file in the land office his affidavit that he has in good faith actually in person settled upon the land purchased by him. Should the applicant fail to make and file the affidavit and proof of settlement as herein provided within the time specified, the commissioner of the general land office shall indorse that fact upon his application, cancelling the same, and immediately place the same upon the market by notice to the clerk, fixing a date not less than thirty days thereafter when applications may be filed for the purchase thereof; and any sum which may have been paid upon a former application, canceled as aforesaid, shall be forfeited to the fund to which the same belonged. All sums paid in by an unsuccessful applicant shall be returned to him. Provided, if for any cause a designated home tract cannot be awarded to an applicant and there be no other obstacle to the award of one or more tracts as additional thereto, such applicant shall be permitted, without prejudice, to designate one of the additional tracts as a home tract, which shall, with such other tracts as he has applied for and are within five miles thereof, be awarded to the applicant. The commissioner shall advise the applicant why he can not award to him the home tract and request a new designation by his affidavit; and, in default of such affidavit being filed in the land office within thirty days after such notice, the commissioner may reject all the applications of such applicant, but, should no rights intervene, such affidavit may be considered at any time prior to a rejection. The affidavit shall be sufficient authority for the change of the home tract, and shall relate back to the date of the filing of the application in the land office. A purchaser may live on any tract designated as a home, or move from any designated home tract to any of his additional land, at any time during the required three years residence on the land. The applicant shall accompany the application aforesaid with his obligation to the state, duly executed, binding the purchaser to pay to the state at the land office at Austin, Texas, on the first day of November of each year thereafter, until the whole purchase price is paid, one-fortieth of the aggregate price, with interest at the rate of three per cent per annum on the whole unpaid purchase money, which interest shall also be payable on the first day of November of each year; and in default of the interest the land shall be forfeited as now provided by law. At the same time the applicant applies to purchase the land, he shall also deposit in the land office one-fortieth of the aggregate price of the same as the first payment thereon. A purchaser shall not transfer his land prior to his actual settlement thereon, and evidence of that fact filed as herein provided; and any attempt to so transfer by deed, bond for title, or other agreement shall operate as a forfeiture of the land to the fund to which the same belonged, together with all the payments made thereon; and when sufficiently informed of the facts which operate as a forfeiture, the commissioner shall note the fact of forfeiture upon the application and proceed to place the land on the market by notice to the proper county clerk and advertisement in the manner provided for canceled leases. (Acts 1905, p. 159, sec. 4.)

Art. 5416a. Validating act.—That in all cases where persons have on file in the general land office valid application to purchase school and other public lands and awards to them have been duly made on such application and such persons failed to settle on their lands within the ninety days required by law, but have in fact settled thereon in good faith to make the same their home, and in all cases where the applicant did become an actual settler on the land but failed to file his affidavit of settlement within the time required by law but did file the affidavit and such purchaser or his legal assignee has continued to reside thereon then and in that event such settlement and attempted purchases are hereby declared to be valid. (Acts 1913, S. S., p. 21, sec. 1.)

Art. 5416b. Validation of sales in cases where purchaser failed to file affidavit or make settlement within required time.—In all cases where public school land has been purchased from the State on condition of settlement and residence and the purchaser made settlement within the time required by law, but failed to file his affidavit of settlement in the General Land Office within the time required by law, but has filed such affidavit, and in all cases where the purchaser failed to settle within the time required by law but did settle before the expiration of one hundred twenty days from date of award and filed his affidavit of settlement within the time required by law, the title under such purchase is hereby validated. (Acts 1917, ch. 18, sec. 2.)

Art. 5416c. Validation of sales to persons prevented from making settlement by being called into military service.—In all cases where public school land has been purchased from the State on condition of settlement by a member of the National Guard and such purchaser has been prevented from making settlement by being called into military service, the title under such purchase is hereby validated. (Id. sec. 3.)

Art. 5416d. Validation of sales where settlement has been made but affidavit has not been filed within time required.—In any case where school land has been purchased from the State on condition of settlement and residence and where settlement thereon has been made by the purchaser who has failed to file his affidavit of settlement in the General Land Office within the time required by law, but has since filed such affidavit in said office, such purchase is

hereby validated. (Acts 1917, 1st C. S., ch. 13, sec. 1.)

Art. 5416e. Validation of sales where supported by proof of settlement and residence.—In any case where school land has been or shall be purchased on condition of settlement and residence and satisfactory proof showing the occupancy thereof as required by law for three years from the date of award, or from the date of award to the death of the purchaser, as the case may be, has been or shall be filed in the General Land Office and approved by the Commissioner, same is hereby validated and he shall issue to the purchaser, his heirs or assigns, a certificate showing that fact. (Id. sec. 2.)

Art. 5417. To whom awarded, when application rejected.—If for any cause an application for land or timber which offers the highest price can not be accepted, those offering the next highest price and filed on same day shall be considered in their order of price until one may be awarded. (Acts 1907, p. 490, sec. 6e.)

Art. 5418. Eight section counties; complement of land.—One who has not purchased any land since April 19, 1901, may purchase, on condition of settlement, in the counties of Brewster, Crockett, Edwards, El Paso, Jeff Davis, Kinney, Pecos, Presidio, Sutton, Terrell and Val Verde, not to exceed eight sections of six hundred and forty acres each, more or less, which are wholly within said counties. One who has heretofore, or who may hereafter, purchase a complement as aforesaid, shall not purchase any more. One who has purchased or may hereafter purchase on condition of settlement four sections of six hundred and forty acres each, more or less, wholly or partly within any county other than those hereinabove named since said date, shall not purchase any more on condition of settlement. One who has purchased less than a complement, as aforesaid, may hereafter purchase in any county such number of sections as his lack of a complement in the county of the former purchase bears to a complement in the county of such former purchase. One who has heretofore purchased land on condition of settlement, which lies partly within an eight-section county and partly within a four-section county, shall be considered for the purpose of future purchase by him as having purchased in a four-section county. Every additional survey applied for shall be situated within five miles of the designated home tract, except the survey on which the lessee, who may apply [to buy] out of his lease, may have placed permanent and immovable improvements of the value of five hundred dollars, need not be within such radius. No survey shall be sold in any county except as a whole, notwithstanding it may be leased in two or more parts. (Acts 1907, 1 S. S., p. 490, sec. 6.)

Art. 5419. Settlement and residence.—All of the surveyed school land wholly or partly within the counties of Andrews, Brewster, Cameron, Crane, Crockett, Dimmit, Duval, Ector, Edwards, El Paso, Gaines, Hidalgo, Jeff Davis, Kimble, Kinney, La Salle, Loving, Maverick, McMullen, Midland, Pecos, Presidio, Reeves, Starr, Sutton, Terrell, Terry, Upton, Uvalde, Val Verde, Ward, Webb, Winkler, Yoakum, Zapata and Zavala shall be sold on condition of settlement as provided by this act and existing statutes, except tracts of one hundred acres or less shall be sold for cash. The land purchased by one, either for cash or on deferred payment without condition of settlement, shall not be computed against him in his purchase on condition of settlement. Every purchaser on condition of settlement shall in person reside continuously on either the designated home tract or on some portion of the land purchased as additional thereto, for three consecutive years next succeeding the date of the award of the home tract, or from the date of the award of the first tract, as additional to a home already owned, as the case may be, including the ninety days allowed to settle. The proof of such settlement and residence shall be made as now provided by statute. (Id. sec. 6a.)

Art. 5420. Limitations as to purchases.—The commissioner of the general land office is hereby prohibited from selling to the same party more than one complement of four or eight sections of land, according to the county; and all applications to purchase land shall also disclose the prior lands purchased by the applicant from the state, if any, and the residence of the applicant at said time; and, if it appear therefrom, or from the records in the land office, that said applicant has already purchased land aggregating four or eight sections, according to county, since April 19, 1901, his application shall be rejected; provided, this shall not apply to sales made to a purchaser and afterwards canceled as invalid for some reason other than abandonment, and where the purchaser himself was not at fault. (Acts 1901, p. 292, sec. 3.)

This section was in part superseded by Act April 5, 1915, which was repealed by Acts 1919, ch. 163, sec. 10, set forth post as arts. 5420a-5420g.

Arts. 5420a-5420g. [Repealed by Acts 1919, ch. 163, sec. 10.]

Art. 5421. Right of lessees.—An original lessee of a lease executed prior to April 15, 1905, who has never parted with any interest in his lease, except by purchase, may purchase out of such lease in whole surveys only one complement of sections, or such part thereof as will make his total purchase since April 19, 1901, not to exceed eight or four sections, according to the county; provided, an original lessee who has not heretofore exercised his right to buy one complement of sections out of one or more leases and should not hereafter desire to do so, may assign one or more leases to a qualified purchaser, and his assignee shall have the same right to purchase out of the leases one complement of sections, or such number thereof as the assignor may be qualified to purchase, or such number as the assignee may be qualified to purchase; provided, that in case the assignment should have been made and acknowledged before an officer authorized to take acknowledgments the assignee may exercise that right as provided for under the act of April 15, 1905. Only one complement shall be sold out of any lease, including that heretofore sold out of it. One who desires to buy land out of his lease shall first give written notice to the commissioner of the general land office, and specify the land he wants to buy not less than sixty days prior to expiration of the lease. The commissioner shall

make, or cause to be made, an inspection of the land, if he is not already in possession of sufficient information, and appraise same at its reasonable market value, and advise such person and the proper county clerk of the value placed thereon. Thereafter the land shall be subject to sale to the lessee only during the life of the lease. After a lease expires or is canceled, no one shall have any preference to purchase any land contained therein. (Acts 1907, p. 490, sec. 5.)

Art. 5421a. Certain sales and leases validated, etc.—All sales made out of leases of unsurveyed school lands that may have been erroneous by reason of a lack of definiteness of lease-holds and unmarked survey lines, and all sales made on lines of four-section counties and eight-section counties, and such sales of land as may have been [made] in a four-section county, and other sales as may have been made in an eight-section county, as may have been erroneous on account of a lack of clearness in the statute regulating the rights of purchasers in four-section counties and eight-section counties, are hereby validated and declared to be good sales so far as probable errors herein mentioned may affect such sales; provided that nothing in this Act shall validate or affect any land sales or titles for which suits may be now pending in any of the courts of this state on behalf of the state. The commissioner of the general land office may issue his official certificate on all proofs of occupancy now on file in the general land office previous to the taking effect of this Act, whether such proofs were filed within two years' period of grace as provided by law, or not. (Acts 1911, p. 206, sec. 1.)

Art. 5421b. Certain settlements and attempted purchases validated.—In all cases where persons have made valid applications to purchase land on the condition of becoming an actual settler thereon within ninety days after the date of acceptance and award under the Act of April 15, 1905 [Arts. 5407, 5408, 5410, 5416], and Acts amendatory thereto, and the land was subject to sale and the application was accepted and award was issued as required by law, and the applicant did become in person an actual bona fide settler on the land within the time required by law, but did not file in the general land office the required affidavit of settlement within the time required by law, but did file the affidavit, and such purchaser, or his legal assignee, has continued to reside thereon, then, and in that event, such settlement and attempted purchases are hereby declared to be valid; provided that this Act shall not validate any land acquired by fraud. (Id. sec. 2.)

Art. 5422. Sales without settlement.—The surveyed school and asylum land and the timber thereon situated wholly within any county other than those named in article 5419 shall be sold in whole tracts only, and without condition of settlement or limit as to quantity, and either for cash with the right to patent at once, or for one-fortieth cash with five per cent interest on the deferred payment, together with all the pains and penalties of forfeiture for non-payment as is now or may hereafter be provided by law. All applications for the purchase of land without settlement, and either for cash or on deferred payment, shall be in writing and accompanied by the affidavit of the applicant that he desires the land for his own benefit and not for any other person or corporation. When any such purchase is fully paid for, the land may be patented. No land on which there is merchantable timber shall be sold until the timber is sold for cash and fully paid for. Should two or more applicants offer the same price for any tract on the same date, the same being the highest price offered, and one should offer full cash payment and another should offer one-fortieth cash payment and balance on time, the application on deferred payment shall be accepted. Such of the land in the counties included within this section as is now sold, but which may hereafter become subject to sale, shall not be subject to sale until the former sale shall have been canceled and the land and timber, if any thereon, shall be reappraised by the commissioner, and a date fixed not more than sixty days from the date of such cancellation, when it may be subject to sale to the one offering the highest price therefor. Notice of such cancellation and reappraisement shall be mailed to the proper county clerk, together with the date when the land and timber, if any, will be subject to sale. (Acts 1907, p. 490, secs. 6b and 6e.)

Art. 5423. (4218*l*) Forfeiture of purchase by non-payment of interest, etc.—If upon the first day of November of any year any portion of the interest due on any obligation remains unpaid, the commissioner of the general land office shall endorse on such obligation, "Land Forfeited," and shall cause an entry to that effect to be made on the account kept with the purchaser; and thereupon said land shall thereby be forfeited to the state without the necessity of re-entry or judicial ascertainment, and shall revert to the particular fund to which it originally belonged, and be resold under the provisions of this chapter, or any future law; provided, the purchaser of land prior to August 20, 1897, shall have the right, at any time within six months after such endorsement of "Lands Forfeited" to institute a suit in district court of Travis county, Texas, against the commissioner of the general land office, for the purpose of contesting such forfeiture and setting aside the same, upon the ground that the facts did not exist authorizing such forfeiture, but, if no such suit has been instituted as above provided, such forfeiture of the commissioner of the general land office shall then become fixed and conclusive. In any cases where lands have been forfeited to the state for the non-payment of interest, the purchasers, or their vendees, may have their claims reinstated on their written request, by paying into the treasury the full amount of interest due on such claim up to the date of reinstatement, provided that no rights of third persons may have intervened. In all such cases, the original obligations and penalties shall thereby become as binding as if no forfeiture had ever occurred. If any purchaser shall die, his heirs or legal representatives shall have one year in which to make payment after the first day of November next after such death, and shall be absolved and

exempt from the requirement of settlement and residence thereon; provided, that all necessary and temporary absence from such land of such purchaser, for the time of not more than six months in any one year, for the purpose of earning money with which to pay for the land, or for the purpose of schooling his children, shall not work a forfeiture of his title; provided, further, that nothing in this article contained shall be construed to inhibit the state from instituting such legal proceedings as may be necessary to enforce such forfeiture, or to recover the full amount of the interest and such penalties as may be due the state at the time such forfeiture occurred, or to protect any other right to such land; which suits may be instituted by the attorney general, or under his direction, in the proper court of the county in which the land lies, or of the county to which such county is attached for judicial purposes. (Acts 1895. Acts 1897, p. 39, sec. 1. Art. 4218*l*, Acts 1895, amended Acts 1897, p. 184. Art. 4218*l*, Acts 1895.)

Art. 5423a. Purchasers after January 1, 1907, and before January 1, 1913, who have forfeited for non-payment of interest, may repurchase, when.—In case any of the public free school lands that has been purchased from the state after January 1st, 1907 and prior to January 1st, 1913, on condition of settlement and residence may hereafter be forfeited for the non-payment of interest in the manner now provided by law the owner of such land at the date of forfeiture, provided the forfeiture was made by reason of interest accrued or accruing prior to the passage of this Act, shall have the right for a period of ninety days after notice of classification and appraisement of his land, as herein provided, to repurchase any of such tracts, not to exceed one complement of sections upon the terms and conditions prescribed in this Act. (Acts 1913, p. 336, sec. 1.)

Art. 5423b. Owner to advise commissioner of wish to repurchase; duties of commissioner.—When any of the land included within the preceding section has been forfeited for the non-payment of interest, the commissioner of the general land office shall forward such a list of land to the proper county clerk, and within thirty days after the receipt of said list by the clerk, the owner mentioned in the preceding section, who may wish to repurchase any or all of the land, not to exceed one complement of sections, as now provided by law, that he may have permitted to be forfeited, shall advise the commissioner of the general land office of such wish. As soon as practicable after the receipt of such advice by the commissioner, he shall furnish the board of appraisers hereinafter provided for, a complete list of all such lands, together with the names of all persons who have advised him of this desire to repurchase their said lands, or a part of their complements of sections, giving the post-office address of each person, as well as such other information he may have in his possession as will enable said board to properly appraise said lands as hereinafter provided. (Id. sec. 2.)

Art. 5423c. Board of appraisers, how constituted, etc.; duties; forfeited owner to file application to repurchase, etc.; provisions applicable.—There is hereby created a board of appraisers, consisting of three members, to be composed of the commissioner of the general land office, and two members to be appointed by the governor of the state. Said board shall organize, take the constitutional oath of office and elect one of its members chairman and one secretary thereof, which board and each member thereof shall have the power to administer oaths and take testimony by depositions or otherwise, and said board when organized shall notify the commissioner of the general land office of the facts of its organization and that it is ready to receive from him the list of lands, names of forfeiting purchasers, and other information and data, as provided for in section 2 of this Act [Art. 5423b]. Upon receipt of such data and information, said board shall ascertain the reasonable values of said land and appraise accordingly, and shall prepare triplicate notices of the appraisement and classification, sending one to each of the forfeiting owners and to the commissioner of the general land office, and retaining one in its possession until the completion of its duties under this Act; when same, together with all the papers and data in the possession of said board, shall be deposited by the secretary thereof with the commissioner of the general land office, who shall keep same on file in his office as an archive thereof. If such forfeiting owner desires to repurchase the land at the appraised value placed thereon by said board, he shall file his application therefore [therefor] in the general land office within ninety days after the date of notice of appraisement, together with one-fortieth of the appraised value and his obligation for the remaining portion of the purchase price, bearing 3 per cent. interest per annum. The said one-fortieth cash payment shall conform to the requirements now prescribed for the first payments on applications for the purchase of other public free school lands. Before any application shall be accepted and the award issued thereon under the right herein given, the applicant shall deposit in the general land office for the use of the general fund a sum of money equal to seven and one-half dollars for each section of land awarded herein, for the purpose of reimbursing said fund for the moneys drawn therefrom under the provisions of this Act. The land commissioner shall pay into the state treasury all money paid into his office under this section of this Act, and the treasurer shall place same to the credit of the general fund. All terms, conditions and penalties now provided for the sale of public free school lands shall apply, govern and control all sales made under this Act, except as may be otherwise provided herein. If the land purchased under the right given herein shall have been resided upon, for three years as required by law prior to the date of purchase, and sufficient proof of that fact shall be in the general land office, the purchaser shall not be required again to reside on it; but, if such residence shall not have been completed prior to the date of repurchase, then the purchaser shall purchase the land upon condition of settlement and residence and continue to reside upon the land in person until he shall have completed the required three years of continuous residence next succeeding the date that the original residence was begun. (Id. sec. 3.)

Art. 5423d. Commissioner to sell if right to repurchase not exercised, etc.—If the owner at the date of forfeiture shall not exercise his right to repurchase, the commissioner of the general land office shall again place the land on the market for sale as is now provided by law for the sale of leased land. In all such sales the same terms, conditions, limitations, pains and penalties and regulations now prescribed by law for the sale of other public free school land in the same county and the payments therefor, shall govern such sales. (Id. sec. 4.)

Art. 5423e. Liens on repurchased land unimpaired.—Provided, that whenever any land, affected by this Act, is forfeited and afterwards repurchased under the rights of repurchase given by this Act, to the owner at the time of forfeiture, any lien legal or equitable, and any valid contractual right in favor of any person, firm or corporation, existing against, in and to, said land, or any part of same at the time of forfeiture, shall remain unimpaired and in full force and effect as if no such forfeiture had occurred. (Id. sec. 5.)

Art. 5423f. Compensation of board of appraisers; appropriation; payment.—Each member of the Board of Appraisers provided for by this Act, except the Commissioner of the General Land Office, shall receive as compensation for his services the sum of ten dollars per day for each day actually employed in the performance of his duties as a member of said board, not to exceed one hundred and fifty days, and in addition thereto each of the three members shall receive his necessary traveling expenses. The number of days of actual service for which said board receives compensation, as well as expenses incurred by said board, in the performance of its duties, shall be stated under oath in writing by said board or by some member thereof, and which, when approved by the Governor, shall be filed with the Comptroller. There is hereby appropriated the sum of ten thousand dollars, or so much thereof as may be necessary, to carry out the provisions of this Act. Upon proper requisition approved by the Governor, there may be advanced from the State Treasury, upon warrant from the Comptroller, a sufficient sum to meet the current expenses of the board in advance of entering upon its duties. (Acts 1913, p. 336, sec. 6; Acts 1915, ch. 89, sec. 1.)

Art. 5424. Permanent improvements to be erected by purchaser; forfeiture.—Every purchaser shall be required within three years after his purchase to erect permanent and valuable improvements on the land purchased by him, which improvements shall be of the reasonable market value of three hundred dollars. If any purchaser shall fail to reside upon and improve in good faith the land purchased by him as required by law, he shall forfeit said land and all payments made thereon to the state, to the same extent as for the non-payment of interest, and such land shall be again upon the market as if no such sale and forfeiture had occurred; and all forfeitures for non-occupancy shall have the effect of placing the land upon the market without any action whatever on the part of the commissioner of the general land office; and, if any purchaser shall be forced to yield possession of the land purchased by him from the state on account of any writ or other judicial process issued from a court of competent jurisdiction, or be compelled to temporarily yield his possession from a well-grounded fear of death or serious bodily injury, such absence shall not work the forfeiture provided by law for non-occupancy; but no writ of injunction shall issue in any case involving the title or possession of lands herein referred to where the applicant has an adequate remedy at law by sequestration or otherwise. (Acts 1901, p. 292, sec. 3.)

Art. 5425. Forfeiture for failure to settle on land, etc.—One who has heretofore, or who may hereafter, purchase land out of a lease or otherwise on condition of settlement in the counties named in article 5419 and fails to settle thereon within the required time, or fails to file in the land office his affidavit of settlement within the required time, or fails to comply with the law as to residence on the land, or executes a transfer contrary to the provisions hereof, except those stated in this chapter as not being void, he shall forfeit the land and all payments made thereon to the fund to which the land belongs; and, when the commissioner shall be sufficiently informed of the facts which operate as a forfeiture, he shall cancel the award or sale by noting the act of forfeiture on the obligation, and mail notice of that fact to the proper county clerk. Such land shall not be subject to sale again at a less price than the former sale price, unless the commissioner shall have re-appraised the land at a less price after noting the act of forfeiture. (Acts 1907, p. 490, sec. 6e.)

Art. 5425a. Validation of re-sales made before entry of forfeiture of former sale for non-payment of interest or failure to reside on land.—All sales of public free school land, University land and asylum land which were made after a former sale had been forfeited for non-payment of interest and before the entry of such forfeiture had been entered on the account kept with the owner, and all sales of said land which were made upon purchase applications filed before a former sale had been cancelled for the failure of the owner to reside upon the land are hereby validated and shall hereafter be deemed valid so far as the State is concerned; provided, no rights of third persons shall be affected. (Acts 1917, ch. 138, sec. 1.)

Art. 5426. (4218ff) Forfeiture of home tract works forfeiture of other land, when.—When any purchaser buys and settles upon a section, or part of a section, of school lands, and buys, either at the same time or subsequently, other lands in addition thereto, a forfeiture for any legal cause of the part on which he resides, at any time before the three years residence thereon has been completed, shall work a forfeiture of the entire purchase, except such part thereof as he may have previously sold to another. But, after the three years residence has been completed, a forfeiture of the home tract shall not of itself work a forfeiture of the other tract or tracts. (Acts 1895, amended 1897, p. 184.)

Art. 5427. (4218h) Terms of repurchase of forfeited agricultural lands.—The owner of land which is in fact agricultural, purchased prior to August 20, 1897, and

which land is not subject to forfeiture at said date, shall not be permitted, in case said land is forfeited, to purchase said forfeited land from the state for a less price per acre than the contract price under the former sale. (Acts 1895, amended 1897, p. 184.)

Art. 5428. (4218f) Purchasers prior to July 30, 1895; rights of under forfeiture.—Where any of the lands referred to have been sold prior to July 30, 1895, in quantities greater or less than forty acres or multiples thereof, and are in good standing as to interest payments, they may be patented in such quantities. Any owner of land purchased prior to said date, and which land has been or may be forfeited for non-payment of interest, shall have ninety days prior right, after the land is again placed upon the market, to purchase said land without the condition of settlement and occupancy, in case it has been occupied for three consecutive years as required by law; but, if not, then he shall reside thereon until the occupancy under the first and last purchase shall together amount to said term of three years; provided, that, when any forfeiture has been made, the commissioner of the general land office shall add to the appraised value of such land the amount of interest due thereon at the time of forfeiture, which shall be paid in cash with the first payment of one-fortieth of the appraised value of the land when purchased under the preference right to purchase given herein. (Acts 1895, amended 1897, p. 184. Art. 4218j, Acts 1895.)

Art. 5428a. Lien in favor of state for unpaid purchase money.—For the purpose of securing the payment of all principal and interest now due and that which may hereafter become due upon any former sale or upon any sale that may hereafter be made by the State of any public free school land, University land and the several asylums land, the State shall have an express lien for the use and benefit of the fund to which the land belongs in addition to any right and remedy that it now has for the enforcement of the payment of any principal or interest that may become due and be unpaid. (Acts 1917, 3d C. S., ch. 29, sec. 1.)

Art. 5428b. Consent of purchaser to payment by third person or federal farm loan bank; transfer of claim of state; admission as to ownership.—If the owner of any land mentioned in this Act should consent for any person, firm or corporation or the Federal Farm Loan Bank to pay to the State the principal and interest due upon any obligation given for any land included in this Act, and such person, firm or corporation or the Federal Farm Loan Bank should make such payment, the Commissioner of the General Land Office shall be authorized upon the written request of such owner duly acknowledged in the manner required for the conveyance of real estate coupled with an affidavit of ownership to execute, acknowledge and deliver a written transfer of the indebtedness held by the State to such person, firm or corporation or the Federal Farm Loan Bank as may be authorized to receive to transfer; provided, if the land claimed by the one representing himself to be the owner, should be held under such evidence of title as the law or rules of the General Land Office will not authorize or permit to be filed in said Land Office, then and in that event, the said Commissioner may, for the purpose of executing the assignment or transfer herein provided for admit the owner to be such person as the person, firm or corporation or the Federal Farm Loan Bank paying the indebtedness shall admit to be the owner, and upon such admission the instrument of transfer shall be executed; provided further, that nothing herein shall be construed to change in any particular whatever, the law or rules that obtain in the General Land Office relative to titles to land and the issuance of patents thereon. (Id. sec. 2.)

Art. 5428c. Occupancy of land for required period.—Provided that no transfer of the State's Lien or debt be made until the land, which is security for said lien or debt, has been occupied for the full period of time, and in the manner as provided by law. (Id. sec. 2a.)

Art. 5428d. Subrogation to rights of state.—Any person, firm or corporation or the Federal Farm Loan Bank that shall pay to the State the balance due upon any land included in this Act at the request of the owner as provided herein, shall be subrogated to all the rights, liens and remedies held by the State to secure and enforce the payment of the amount of principal and interest so paid to the State. (Id. sec. 3.)

Art. 5429. Timber lands defined; regulations for sale of.—The commissioner of the general land office shall adopt such regulations for the sale of timber on timbered lands as may be deemed necessary and judicious, subject to the provisions of this chapter. By timbered lands is meant lands valued chiefly for the timber thereon. (Acts 1901, p. 296, sec. 8.)

Art. 5430. Same.—One who applies to purchase the timber shall file his application in writing in the general land office in the manner now provided for the filing of applications for the purchase of land, and pay to the land office the full cash payment according to the price offered therefor, but not at a less price than that fixed by the commissioner. Should two or more persons each apply to purchase the timber and land on the same day, and one should offer more for the timber but less for the land than a competitor, then the one offering the highest price for the timber shall have an option for thirty days, as now provided by law for designating home tracts, to take the land at the highest price offered by such competitor. Should the one offering the highest price for the timber not want the land at such highest price, but should want the timber, it shall be awarded to him. Should one who applies for both timber and land offer the highest price for the land, but a lower price for the timber, he shall have an option of thirty days as aforesaid to purchase the land, if it should not be purchased by the one who offers the highest price for the timber; but, should the one who offers the highest price for the timber and the lesser price for the land not want the land at such high price, nor should he exercise his option by purchasing the timber alone, then the land and timber shall be awarded to the one offering the highest price for the land, and next highest price for the timber. The commissioner shall appraise all timber at its reasonable market value, and it shall not be sold at a

price less than that so fixed by him. Should two or more applications for timber alone be filed on the same day, the one offering the most therefor shall be accepted. All timber shall be sold in full tracts. The purchaser of timber without the land shall have the right of ingress and egress upon the land for a period of five years after date of award for the purpose of removing or protecting the timber thereon, and the purchaser shall be entitled to all the timber thereon for that period and no longer. After that time the title to the timber shall revert to the fund to which the land belonged and be again subject to sale by the state, unless the land shall sooner be sold and fully paid for and patent issued thereon; and in that even[t] the timber shall revert to the owner of the land. The owners of timber heretofore purchased, which has not been removed and the five years in which to remove same or to purchase the land have not expired, but may expire on or before November 1, 1907, may purchase the land on that date at the price fixed by the commissioner and without condition of settlement, either for cash or on deferred payment, with five per cent interest as provided in this chapter for other purchasers without settlement. In case the five years do not expire before said date, only the owner of the timber shall have the right to purchase the land as herein provided at any time prior to the removal of the timber and within the five years allowed in which to remove same. Land on which timber has heretofore been sold, and the timber has been or may be removed, or the five years shall have expired and the land not purchased by the owner of the timber, shall not be sold until it is reclassified and re-appraised by the commissioner, and a date fixed not more than sixty days after such action for the sale thereof. Notice of such action and date fixed for sale shall be mailed to the proper county clerk. (Acts 1907, p. 490, sec. 6c.)

Art. 5431. Timber and lands sold prior to August 12, 1907.—The purchaser of timber prior to August 12, 1907, shall have five years from that date within which to remove the timber therefrom, and, in case of failure to do so, such timber shall thereby be forfeited to the state without judicial ascertainment; provided, that all timbered lands sold prior to such date, from which the timber has been cut and taken off, may be placed on the market and sold as agricultural or grazing lands, according to classifications to be made by the land commissioner; provided, that upon application of the purchaser or his vendees of any such timber made within five years from the purchase of such timber, the commissioner of the general land office shall have said land classified at the expense of the owner of said timber as agricultural or grazing land, and the owner of said timber shall have the right to purchase said land at the valuation fixed by said commissioner on the same terms and conditions as other lands of like classification are sold under the provisions of this chapter. (Acts 1901, p. 296, sec. 8.)

Art. 5432. Unsurveyed or scrap lands.—One desiring to purchase any portion of the unsurveyed land believed to belong to the school fund shall make a written application of inquiry to the Commissioner of the General Land Office. The inquiry shall give the applicant's post office address, state in effect that he desires to buy the land if it should be for sale and sufficiently designate it. If it should appear from the records of the Land Office the area belongs to the public free school fund or if there should be doubt as to the existence of the area as public free school land the applicant shall be advised and given the name and address of an authorized surveyor with whom he may contract for the survey of the land at the expense of the applicant. The applicant shall file an application with the surveyor accompanied by one dollar as a filing fee. The Application shall be filed and recorded and sufficiently describe the land. The survey shall be made and returned to the Land Office within ninety days after the date of the Commissioner's advice as to an available authorized surveyor. If the Commissioner should decline to recognize the existence of the area as public school land and refuse to authorize a survey to be made such person may file a suit against the county surveyor in the District Court of the county in which the land is located or in the county to which such county may be attached for judicial purposes to compel him to make the survey and thereupon the surveyor shall impead the claimant of the land and in such proceedings determine if the area be public land. In such proceedings the surveyor shall not be held for any cost incurred. If the final judgment of the Court should decree the area or part thereof to be school land the surveyor shall make the survey and the application, field notes and one dollar filing fee shall be filed in the Land Office within ninety days from date of the final decree. When the surveyor returns the field notes and a plat of the survey to the Land Office, together with one dollar filing fee to be paid by applicant, he shall report under oath the classification and reasonable market value of the land and also the timber thereon and its value which may be considered in connection with such other evidence as may be required by the Commissioner in determining the price to be given the land and timber. If upon inspection of the papers the Commissioner is satisfied from the report of the surveyor and the records of the Land Office the land belongs to the public free school fund and the survey has been made according to law, he shall approve same by classifying and valuing the land and mail notice of such action to the applicant, giving the classification price and terms. Such land shall be sold without condition of settlement and residence, and the timber, if any thereon, shall be sold for cash at its reasonable market value. No award shall be issued for the land until the timber shall have been fully paid for. The applicant shall file in the Land Office his application for the purchase of the land together with one-fortieth of the appraised value fixed thereon within sixty days from the date of the notice of the classification and valuation together with the applicant's obligation for the balance of the unpaid purchase price bearing interest at the rate of five per cent per annum and the obligation and other conditions of sale shall be the same as that for surveyed land. If such application should not be filed within the time prescribed herein, the Commissioner shall place the land on the

market for sale upon the same terms as are herein provided for other surveyed school land. The land shall be sold with the minerals therein reserved to the school fund. All tracts of less than 80 acres shall be sold as a whole for full cash payment which payment shall accompany the purchase application. If upon the inspection of any application, field notes and records of the Land Office, there should appear to be a greater area belonging to the school fund than that included in the application and field notes, the Commissioner may, in his discretion, require the applicant to include the whole area in his field notes. If it should appear that another than the applicant claims an unsurveyed area which belongs to the school fund, the Commissioner may, in his discretion, refer the removal of such claim to the Attorney General before making a sale to an applicant. If the Attorney General should refuse to institute proceedings for the removal of such claim, the Commissioner may, nevertheless, sell the area. (Acts 1907, p. 490, sec. 8; Acts 1919, ch. 163, sec. 7.)

Art. 5432a. Prior right to purchase privately surveyed land for which patent can not issue.—If for any cause a patent cannot be lawfully issued upon a tract of land heretofore surveyed by virtue of any private right and such land shall be claimed in good faith by one by virtue of an original right or by a chain of title from the original holder of such right duly executed before the passage if this Act, and if such claimant has paid all taxes, he shall have the preference right to purchase the survey as surveyed school land at any time within sixty days after the date of the notice from the Land Office to the claimant that patent cannot be issued thereon, but if the said land should not be so purchased the Commissioner shall place the same on the market for sale as other surveyed public free school land. (Id. sec. 8.)

Art. 5433. Minerals, gayule and lechuguilla reserved.—The land which is now or may hereafter be classed as mineral may be sold for agricultural or grazing purposes, but all sales of such land shall be upon the express condition that the minerals shall be and are reserved to the fund to which the land belongs, and such reservation shall be stated in all applications to purchase; provided, should any person who has no authority or right to do so cut or remove any mineral, gayule or lechuguilla from the land belonging to the public free school fund, he shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished as provided in the Penal Code, and in addition thereto judgment shall be rendered against the defendant in behalf of the state in a sum of money equal to the value of the substance so cut or removed, which shall be collected as under execution; and when collected, the money shall be remitted to the state treasurer and by him credited to the fund to which the land belongs. The commissioner shall adopt all the necessary rules and regulations for the execution of the several provisions of this chapter. (Acts 1907, p. 490, sec. 6f.)

Art. 5434. Sale of gayule and lechuguilla.—The commissioner of the general land office may, with the consent and approval of the governor and attorney general, sell the gayule, lechuguilla, growing or found upon the public free school land, exclusive of timber. The sales may be upon such terms, conditions and limitations as they may deem most advantageous, having in view the protection of the interest of the school fund and the state. They may also enter into such contracts as they may deem wise for the purpose of having determined the commercial properties and value of any and all such material, and for such purpose they may enter into executory contracts of sale; provided, they shall not in such contracts cause the expenditure of public money nor incur any liability on the state. (Acts 1907, p. 251.)

Art. 5435. Transfers.—Purchasers on condition of settlement under any former law may sell their lands or a part thereof in tracts of any size. A vendee may be substituted for the original purchaser or his vendor and thereby become a purchaser direct from the State by filing in the General Land Office a complete chain of title through personal transfers which have been duly executed and recorded in the county or counties in which the land is situated, or in the county to which such county may be attached for judicial purposes and the payment of the lawful fees, and by so doing the vendee shall thereby assume and become liable to the State for the amount due the State upon the unpaid purchase price, together with all interest due and to become due thereon, and the obligation of the original purchaser or any vendor shall be enforceable against the vendee as if he were the original purchaser; In case the three years residence on the land should not have been completed before the date of the signing of the deed by the vendor, the vendee shall be in good faith an actual bona fide settler on the land on that date and shall continue to reside upon the land until his residence together with that of his vendor or vendors shall aggregate the required three consecutive years continuous residence. Every vendee before the completion of the required residence by his vendor shall file in the General Land Office an application, affidavit and obligation the same as is required of an original purchaser, together with the partial proof of his vendor's continuous residence to the date of the deed of transfer. When the required three years continuous residence shall have been completed and proof of that fact satisfactory to the Commissioner shall be filed in the General Land Office at any time thereafter, the Commissioner shall issue a certificate of its sufficiency upon payment of the lawful fee and such certificate shall have the same force and effect as is now provided by law. Provided further that in all cases where land belonging to the Public Free School Fund or any of the Asylum Funds, has been purchased on condition of settlement and the purchaser settled thereon, but failed to file in the General Land Office his affidavit of settlement within the time prescribed by law, but has since filed his affidavit, such sales are hereby validated. Purchasers without condition of settlement and residence under this Act or any former law in the counties of Brewster, Bandera, Crockett, Culberson, Edwards, El Paso, Hudspeth, Jeff Davis, Kerr, Kimble, Menard, Pecos, Presidio, Real, Terrell, and Val Verde, may sell their lands at any time and in whole tracts only according to the original purchase and

the vendee may become a substitute purchaser therefor direct from the State in the same manner as is provided in this section for other vendees so far as same may be applicable. When purchasers have completed the required residence and filed in the Land Office satisfactory proof of that fact, and all purchasers without condition of settlement and residence shall have the option of paying the purchase price in full at any time together with lawful fees and obtain a patent for the land. (Acts 1907, p. 490, sec. 6d; Acts 1919, ch. 163, sec. 9.)

Art. 5435a. Transfers other than personal; accounts with transferees, etc.—Upon presenting to the commissioner of the general land office of a regular chain of transfer to any of the sold public free school, university or asylum lands of this state, where same have been or may hereafter become matured under occupancy as required by law, in cases where occupancy is required, and where the terms and conditions of sale by the state to the original purchaser thereof have been otherwise complied with in cases where occupancy is not required, from the heir or heirs, executor, administrator or survivor in community of any deceased owner thereof, or from the guardian of any minor or person of unsound mind, who are the owners thereof, or from any trustee under deed of trust, or mortgagee in any mortgage with power of sale, or transfer executed by the sheriff or other officer of any court of this state having competent jurisdiction, by virtue of any execution or order of sale issued out of such court, and in all cases where title emanates from and is authorized by any court proceedings of the courts of this state, it shall be the duty of said commissioner to cause such chain of transfer to be filed together with the proper and necessary obligations and other instruments of verification hereinafter provided for, and thereupon the commissioner shall separate the account of the land so transferred from the account of the original or parent tract, and shall open a new account for the land so transferred in the name of the person filing such transfer, in the same manner as accounts are now opened with persons filing personal transfers. (Acts 1911, p. 32, sec. 1.)

Art. 5435b. Certified copies to be filed with transfers, etc.—When the transfer of any executor, administrator, or guardian is so filed it shall be accompanied by a copy of the order of the probate court appointing such executor, administrator or guardian of such estate and approving and confirming the sale of which such transfer is the evidence, duly certified to by the clerk of the county court of the county in which such order of confirmation was made. When the transfer of any survivor in community is so filed it shall be accompanied by a copy of the order of the probate court appointing such survivor in community, and also by a copy of the oath and bond, and the order approving same, of such survivor in community, all duly certified to under the hand and seal of the county clerk of the county where such orders were made and such oath and bond are filed. When the transfer of any trustee in any deed of trust, or any mortgagee under a mortgage with power of sale is filed as provided in this Act, it shall be accompanied by a copy of the deed of trust or mortgage, as the case may be, under which such transfer was made, duly certified to under the hand and seal of the county clerk of the county in which such land may be situated. When any transfer of a sheriff or other officer of a court is filed as provided in this Act, it shall be accompanied by a copy of the execution, order of sale or other process authorizing the execution of such transfer, together with the sheriff's return thereon, which copy shall be duly certified to under the hand and seal of the clerk of the court from which such execution or order of sale issued. When the judgment or decree of any court of this state is filed wherein the title to any of such lands is decreed out of the owner, such judgment shall be duly certified to by the clerk of the court in which judgment was rendered. (Id. sec. 2.)

Art. 5435c. Transfer fees.—The commissioner shall charge and collect such fees for filing the transfers provided for in this Act as are now charged for filing personal transfers, and in addition thereto he shall charge and collect a fee of fifty cents for the certified copies which accompany each transfer, the same to be paid into the state treasury as other fees are now paid. (Id. sec. 3.)

Art. 5435d. Provisions applicable to transfers other than personal.—The lands described in section 1 [Art. 5435a] of this Act shall be subject to patent in like manner as lands that are transferred by chain of personal transfer, and shall be subject to the same conditions and penalties as are prescribed by law for other free school, university and asylum lands of this state; provided that patent when issued shall issue in the name of the person to whom said land was last transferred by personal transfer as shown by such transfers on file in the land office; provided, that the commissioner of the general land office shall deliver said patent to the party entitled thereto as shown by the mesne conveyances on file in his office; provided, that no account shall be opened and no patent issued as provided for in this Act, except in such quantities as are now provided by law in cases of personal transfer. (Id. sec. 4.)

Art. 5435e. Purchasers of land in certain counties may sell within year, etc.—One who has heretofore bought or who may hereafter buy public free school land on condition of settlement and occupancy in the counties of Andrews and Bailey, Cameron, Cochran, Crane, Dimmit, Duval, Ector, Gaines, Hidalgo, La Salle, Loving, McMullen, Midland, Starr, Terry, Upton, Winkler, Yoakum and Zavala, may sell after one year from date of award any portion of said land to another in the manner provided in article 4218k, Revised Civil Statutes of 1895, but such assignee shall complete the residence thereon as provided in section 6 of the land sales act of 1907 [Art. 5435], approved May 16th, 1907. (Acts 1911, p. 154, sec. 1.)

Art. 5435f. Validation of sales not followed by residence in favor of purchasers in good faith.—In all sales of public free school lands by the state on condition of settlement and residence, June 12, 1901, on which land the purchaser actually settled and resided according to law until he sold same to another, who was substitut-

ed on the records of the General Land Office as an actual settler, but who, in fact, did not settle on the land, but did afterwards sell the same to another for full value, who had no knowledge of the lack of such residence, but who has in good faith continued to have the land improved and cultivated, such sales are hereby validated, and when fully paid out, together with all fees, shall be patented. Proof of the facts necessary to bring such sales within the provisions of this Act shall be filed in the General Land Office before patent shall be issued; provided, this Act shall not apply to nor validate sales of tracts of more than 160 acres to any one individual. (Acts 1915, ch. 62, sec. 1.)

Art. 5435g. Validation of sales made before expiration of one year from date of award.—In all cases where public school land has been purchased from the State on condition of settlement and residence and the purchaser complied with the law in making settlement thereon and filed his affidavit of settlement in the General Land Office, but before the expiration of one year from the date of award transferred the land to another qualified purchaser who became a settler thereon at the date of transfer to himself and who has continued to reside thereon in good faith making the same his home, the title under such purchase is hereby validated. (Acts 1917, ch. 18, sec. 1.)

Art. 5435h. Transfers before completion of occupancy validated.—In all cases where public school land has been purchased from the State on condition of settlement and residence and the purchaser made settlement thereon, as required by law, and before the expiration of three years from date of award transferred the land but completed the occupancy and obtained a certificate of occupancy, and in all cases where lands bought as additional have been transferred before the occupancy of the home tract has been completed either by the original purchaser or his assignee and proof thereof filed in the Land Office, the title under such purchase is hereby validated. (Acts 1917, ch. 95, sec. 1.)

Art. 5436. (4218k) Lands patented, when.—Purchasers shall have the option of paying the purchase money for their lands in full at any time after they have occupied the same for three consecutive years; and when they have made such payment in full, together with the proof that they have occupied the land for three consecutive years, they shall receive patents for the same upon payment of the patent fee prescribed by law. Purchasers prior to August 12, 1907, may also sell their lands, or a part of the same, in quantities of forty acres, or multiples thereof, at any time after the sale; and in such cases the vendee, or any subsequent vendee, or his heirs or legatees, shall file his own obligation with the commissioner of the general land office, together with the duly authenticated conveyance or transfer from the original purchaser and the intermediate vendee's conveyance or transfer, if any there be, duly recorded in the county where the land lies, or to which said county may be attached for judicial purposes, together with his affidavit, in case three years residence has not already been had upon said land and proof made of that fact, stating that he desires to purchase the land for a home, and that he has in good faith settled thereon, and that he has not acted in collusion with others for the purpose of buying the land for any other person or corporation, and that no other person or corporation is interested in the purchase, save himself; and thereupon the original obligation shall be surrendered or canceled or properly credited, as the case may be, and the vendee shall become the purchaser direct from the state, and be subject to all the obligations and penalties prescribed by law, and the original purchaser shall be absolved in whole or in part, as the case may be, from further liability thereon; and, if he or his vendor has already resided on his home section for three years, or when he or his vendor, or both together, shall have resided upon it for three years, the additional lands purchased may be patented at any time. (Acts 1895.)

Art. 5436a. Transfers by purchasers of irrigable lands in certain counties; subdividing sections.—Where land has been sold in whole sections in the counties of Loving, Brewster, Jeff Davis, Irion, Schleicher, Presidio, Tom Green, Sterling, Culberson, Pecos, Reeves and Ward, and which sections are of uniform quality and topography and water has been, or may be, developed either by wells, ditches, canals or reservoirs so as to irrigate such sections or to render such sections capable of being irrigated, the owners of such sections may sell the same in forty-acre tracts, or multiples thereof, and the assignees may file their deeds and obligations in the General Land Office and have the portion so purchased divided from the parent account upon the same terms, conditions, limitations and regulations as are provided in Article 5436, Revised Civil Statutes of 1911, except as further limited by this Act. (Acts 1915, ch. 93, sec. 1.)

Art. 5436b. Same; transfers not to impair value of remaining land.—Before such subdivisions as are provided for in the preceding section shall be made upon the records of the General Land Office, the Commissioner of the General Land Office shall determine whether or not the sections so sought to be subdivided are of such uniform quality and topography that, if such subdivision, or subdivisions, were made and a portion should thereafter be forfeited for non-payment of interest, or other cause, the public free school fund would not suffer any loss by reason of that portion which might be forfeited being of less value than the portion not so forfeited. In the event the Commissioner should be of the opinion that the school fund would suffer loss by reason of such subdivision, he shall not accept transfers, but shall decline to permit the filing of the papers and shall not recognize such subdivision, and the parties shall have no right to enforce the recognition of such subdivision. (Id. sec. 2.)

Art. 5437. Same.—Any part of a tract of land heretofore or hereafter sold by the State, may, in the discretion of the Commissioner of the General Land Office, and regardless of the number of acres contained therein, be patented at any time upon the payment of the balance due the State for such part together with the patent fees prescribed by law; provided, however, that no part of any tract of land so sold by the State shall be patented until after the occupancy and im-

provements thereon required by law, if any, have been completed and proof thereof filed in the General Land Office. (Acts 1905, p. 159, sec. 9; Acts 1919, ch. 79, sec. 1.)

Section 22, Acts 1919, ch. 79, repeals all conflicting laws.

Art. 5438. (4218k) Payments and patents for town sites.—Whenever a town shall be located and established upon any lands sold under this or any former law, the purchaser or his vendee shall be permitted to pay the entire balance of principal and interest due the state upon such land and obtain a patent therefor at any time; but no such payment shall be permitted or patent issued until such purchaser or owner of such land shall file in the general land office a certified plat of such town, made by a surveyor, which shall be accompanied by the affidavit of the owner of such land, corroborated by the affidavit of five disinterested and credible citizens of the county, to the effect that a town, giving its name, has been located and established upon the land, and that there has been erected therein, and is being occupied by bona fide citizens, twenty business and residence houses, or either, or both. (Acts 1895.)

Art. 5439. Application of railroad to buy, to contain what.—Any railroad company owning, operating or constructing a line of railway in this state, desiring to purchase any portion of the public free school, university or asylum lands in this state, under the provisions of this law and the succeeding articles, for the location and establishment thereon of town sites, depots, stations, yards, divisional terminals, shops, round houses or water stations, shall file with the commissioner of the general land office, if the land desired be public free school or asylum lands, and with the board of regents of the state university, if the land desired is university land, an application to purchase each tract so desired, supported by the affidavit of its president, vice-president or chief engineer, which application shall:

First. Describe by metes and bounds or otherwise sufficient to satisfy the commissioner of the general land office, or the board of regents of the state university, as the case may be, of the particular tract or tracts of land that it desires to purchase under the provisions of this law.

Second. Said application shall show that said land so applied for is desired and needed by said railway company for some one or more of the purposes for which the sale of such lands are authorized by this article, and that it is the intention of said railway company to speedily use said land for such purpose or purposes.

Third. That said application is not made for the use or benefit of any other person or corporation than the applicant, nor in collusion with, or in the interest of any other person or corporation whatsoever; and

Fourth. That said railway company applying for said land shall furnish the commissioner of the general land office, or board of regents of the state university, as the case may be, with a plat and map, together with the field-notes of each tract of land so applied for, if required by such commissioner, or board of regents, which plat and map shall accompany said application and affidavit. (Acts 1905, p. 58.)

Art. 5440. Land, how sold and patent issued.—When any such application or applications shall be filed with the commissioner of the general land office for the purchase of public school land, or with the board of regents for the purchase of university land, under the provisions hereof, said commissioner, or said board of regents, as the case may be, shall investigate the matter therein set forth; and, if after such investigation, he or they shall be satisfied that the statements made in such application are true, he or they shall then determine and fix the fair and reasonable value of such tract or tracts of land, regardless of any lease thereon, unless the lessee should have two hundred dollars worth of improvements thereon, in which event the consent of the lessee shall be first obtained, and he or they shall advise the applicant of the price so fixed; and, if said railway company desires said land at the price so fixed, it shall pay therefor in cash to the state treasurer the price so fixed by the commissioner of the general land office, or said board of regents, as the case may be; and the treasurer shall give his receipt showing such payment, whereupon there shall be issued and delivered to the said railway company a patent for said tract or tracts of land, to be properly executed by the governor and the commissioner of the general land office upon payment of the patent fee therefor; provided, that no mineral land shall be sold under this law. (Acts 1903, p. 127.)

Art. 5441. Limitations as to purchase.—The amount of land that may be purchased by any one railway company, or for any one railway company, under the provisions of this law, for the several purposes named in these articles, and the conditions and limitations imposed thereon, shall be as follows: If such land is desired for the purpose of the location and establishment thereon of depots, stations, yards, divisional terminals, shops or round houses, said railway company shall be permitted to purchase only such an amount of land as may be necessary for the proper operation and maintenance of said railway, which fact shall be determined by said commissioner of the general land office, or said board of regents, as the case may be; and, if desired by them, they may, for that purpose, have the advice and assistance of the engineer of the railroad commission of Texas; and, if said land applied for be desired for water stations at points on or near said line of railway where it is necessary to construct and maintain a dam and reservoir for the impounding of rain water, for the operation and use of said railway, sufficient land may be sold for such purpose as may be necessary for the proper construction, preservation and maintenance of such water station, not to exceed six hundred and forty acres for each water station. And, if said land be desired for the location and establishment thereon of a town site, not exceeding three hundred and twenty acres shall be sold for each town site. Provided, that, if any railway company shall fail to use said land so purchased by it under any of the provisions of these articles, for the purpose for which same was sold, within five years from the date of the patent for each tract of land sold, said land, and all improvements thereon belonging to said railway company shall revert to the fund

to which it formerly belonged. And provided, further, that, if said land is sold for town site purposes, such tract must be at least eight miles distant from any other tract of land sold for the same purpose to said railway company, and, after such sale, no other tract or tracts of land shall ever be sold to said railway company, or its assigns, for town site purposes, adjoining said tract sold for such purpose. And provided, further, that if the land applied for be for the purpose of depots, stations, yards, divisional terminals, shops or round houses, the land applied for for such purposes must adjoin the line of road, railroad tracks or right of way of said railway company; and all lands sold for town sites must either adjoin said railway tracks, line of road or right of way, or adjoin land sold under the provisions hereof to said railway company for depots, stations, yards, divisional terminals, shops or round houses. And provided, further, that all lands acquired for town site purposes under these articles shall be in good faith placed upon the market for sale, and said railway company shall alienate the title to said land so sold to said railway company within the term of ten years after acquiring title to same. And provided, further, that, if said land be desired for a water station and reservoir for the impounding of rain water for the use and operation of said railway, each tract sold for such purpose must be within three miles of the line of road of said railway company, and must be at least eight miles distant from any other tract sold to the same railway company for same purpose; and, when said tract of land sold for water stations does not adjoin said line of road of said railway company, said railway shall have the right of way over any lands belonging to either of the funds mentioned in this act for its water mains from its said water station to its line of railway. (Acts 1905, p. 58.)

Art. 5442. Applications for less than 320 acres to particularly describe.—If any railway company desires to purchase any public free school land under the conditions and provisions of the foregoing articles out of any tract of such public free school land containing less than three hundred and twenty acres, it shall, in its application therefor, describe by metes and bounds, or otherwise, to the satisfaction of the commissioner of the general land office, the particular portion of any existing survey which it may so desire to purchase, and such commissioner shall be and is hereby authorized to sell such number of acres so applied for, though less than the whole survey, under the provisions and conditions of the foregoing articles, but all sales of less than the entire tract shall be in eighty acre tracts, or multiples thereof. (Id. sec. 4.)

Art. 5443. No actual settlement required.—This law shall not be construed to require any character of actual settlement to be made upon the land sold under its provisions previous to the sale and patent thereof, nor shall it be construed as in any way changing or modifying the present laws in relation to the sale of public free school, university and asylum lands of this state, except as provided for in the preceding articles. Whenever any land is sold to railway companies for the purposes mentioned in this chapter and shall be used for any other purposes than those mentioned in this chapter, then such land shall revert back to the state. All laws and parts of laws in conflict herewith are hereby repealed. (Acts 1903, p. 127.)

Art. 5444. (4218j) Regulations as to occupancy.—The commissioner of the general land office shall prescribe suitable regulations whereby all purchasers shall be required to reside upon, as a home, the land purchased by them for three consecutive years next succeeding the date of their purchase, except when otherwise provided. Such regulations shall require the purchaser to reside upon the land for three consecutive years herein mentioned, and to make proper proof of such residence and occupancy to the commissioner of the general land office within two years next after the expiration of said three years, by his affidavit, corroborated by the affidavits of three disinterested and credible persons, to be certified by some officer authorized to administer oaths; and on making such proof the commissioner shall issue to the purchaser, his heirs and assigns, a certificate showing that fact. If any person has sold the whole, or any part of, his purchase under this or any former law, his vendee, or if he refuses to do so, the vendor himself, may make proof of occupancy as provided herein.

Art. 5445. Certificates of occupancy to be recorded, etc.—If a proof of occupancy has heretofore been, or should hereafter be, filed in the general land office, in accordance with the statute under which the purchase was made, or may be made, and it should be approved by the commissioner by the issuance of the certificate of its sufficiency, the said certificate may be recorded in the office of the clerk of the county or counties in which the land is situated, and shall thereafter be a muniment of title of the home tract and additional land purchased to such home tract. (Acts 1907, p. 490.)

Art. 5446. (4218m) Coupling occupancy under second purchase to cure defects of first.—In all cases where persons have purchased, or may hereafter purchase, state, school or asylum lands under any act of the legislature authorizing the sale thereof and requiring a residence of three years thereon, and said persons have so resided upon said land, or may hereafter reside thereon, for the period of three years as required by law, and their files have been, or may hereafter be, canceled and purchases annulled by the commissioner of the general land office on account of conflict with other surveys, said persons shall have the right to purchase other lands of the classes mentioned in this article without being required to reside thereon. Persons desiring to avail themselves of the benefits of this provision shall make satisfactory proof to the commissioner of the three years' residence under their first purchase. (Acts 1895, p. 163.)

Art. 5447. (4218n) Vendees of original purchasers protected.—In all cases where any of the lands mentioned in this chapter have been sold prior to July 30, 1895, under any law authorizing the sale thereof, and the original purchaser shall have sold, or may hereafter sell, any part of his purchase in quantities of forty acres or multiples thereof, and the conveyance to his vendee or vendees is filed in the general land office after having been duly recorded in the proper coun-

ty, the commissioner shall credit his account with the value of the land sold, and shall open up new accounts with the original purchaser and such vendee or vendees, and the commissioner shall patent said land to the owners thereof in quantities of forty acres or multiples thereof; provided, that when any of such land is situated within three miles of a county seat it may be patented in twenty acre tracts. (Id.)

Art. 5448. (4218o) Cemetery, church and school house sites.—The commissioner of the general land office is hereby authorized to patent in quantities of not less than one nor more than five acres any of the vacant and unappropriated public domain of Texas, or any of the lands mentioned in this chapter, as sites for cemeteries, churches or school houses. When the land is desired as a location for a school house, the patent shall issue to the county judge of the proper county and his successors in office in trust for that purpose; and, when desired for a church house or a cemetery, it shall be issued to trustees designated by those requesting the patent. If the land has been previously sold by the state and not patented, the owner thereof shall execute a deed therefor to the county judge, or trustees, as the case may be, and cause the same to be recorded in the office of the county clerk of the proper county, and to be filed in the general land office, and shall be entitled to credit on his account with the state for the value therefor. The value of the land and patent fee shall be paid to the commissioner of the general land office before patent issues. Such land shall be taken from the margin of a tract or section, or of a subdivision thereof, as the case may be. (Id.)

Art. 5449. (4218p) Accounts, etc., with purchasers to be kept.—The commissioner of the general land office shall retain in his custody as records of his office all applications, affidavits, obligations and all other papers relating to sales of said lands, and shall cause to be kept accurate accounts with each purchaser. All purchase money due upon lands, as well as accrued interest, and all other moneys arising from the sales or leases of said lands shall be paid by the purchaser or lessee direct to the land commissioner, who shall cause an accurate account to be kept with each purchaser. (Id.)

Art. 5449a. Relief to certain persons compelled to defend suit because of erroneous award, etc.—That any person who has filed on any of the public school lands of this state, subsequent to January 1st, 1907, and prior to January 1st, 1913, and to whom an award was made, and afterwards canceled, or withdrawn before the expiration of the time required by law, to make settlement on said land; and to whom said land was again awarded by the commissioner of the general land office, after the cancellation by him of a prior erroneous award, to third parties; and who has been compelled to defend a lawsuit to obtain title to, or possession of said land because of such erroneous award, or awards of said land, made by the commissioner of the general land office, to an adverse party or parties; shall in making proof of occupancy of said land, be entitled to credit for the full time said land was in litigation, and from the date of the applications to purchase were filed as a result of said erroneous award or awards; and, be it further provided, that the party to whom the land should have been awarded, in the first instance, in estimating the cost of the improvements required by law to be put upon said land; shall be entitled to credit for the value of all improvements placed on said land subsequent to January 1st, 1907, and prior to January 1st, 1913. (Acts 1913, p. 66, sec. 1.)

Art. 5449b. Certain sales and patents validated.—All public school lands sold by the State of Texas, and patented prior to the first day of October, 1883, applied for and sold by virtue of the Act of 1879, approved July 18th [8th], 1879, relating to the sale of public free school lands in organized counties, and the Act approved April 6, 1881, relating to the sale of such lands in unorganized counties sold and patented prior to said October 1, 1883, wherein the original patentee has paid the state school fund for said land, and has sold and parted with the title thereto, prior to the first day of June, 1895, and wherein said lands are now owned and in the possession of subsequent purchasers for value the title to same in the present owners is hereby quieted, and the said sales and patents validated. (Acts 1913, p. 351, sec. 1.)

Art. 5449c. Certain other sales validated.—All sales of public free school lands which were purchased from the State and fully paid for and for which patents were signed by Governor J. S. Hogg on the twenty-second and twenty-third days of October, 1894, and on the thirtieth day of November, 1894, are hereby validated and all rights and claim in and to the land embraced in said patents is hereby relinquished to the owners thereof. (Acts 1917, ch. 28, sec. 1.)

Art. 5449d. Same subject.—In all cases where school land has been sold on condition of settlement and the purchaser has complied or may hereafter comply with the law relative to settlement thereof and has been compelled to leave the same or may hereafter be compelled to leave the same for the purpose of earning a support for himself and family, and also in such cases where a purchaser is drafted into the Federal Service before he has time to settle on the land, or where he may be drafted into the Federal Service before the completion of three years residence on the land after settlement has been made, such sales are hereby validated and the Commissioner of the General Land Office shall not cancel such sales. (Acts 1918, 4th C. S., ch. 57, sec. 1.)

Art. 5449e. Same subject; affidavit of purchaser.—In all cases within the provisions of this Act the purchaser shall file in the General Land Office his affidavit stating the facts pertaining thereto, corroborated by the affidavit of three disinterested persons and when such affidavits shall have been filed the owner shall have a good and perfect title, subject only to the State's lien for the unpaid purchase price. (Id. sec. 2.)

Art. 5449f. Same subject.—In all cases of sales of public lands made by the State on February 21, 1907, requiring three years residence on said land, and the purchaser entered upon the land within the time required by law, and, in good faith, made the necessary improvements, but whose occupancy was broken within three years from the

entry; and the purchaser has kept his interest payments up, and has completed a period of three years occupancy of the lands awarded, such purchases are hereby validated, and shall, upon proof of such facts, be entitled to receive a certificate of occupancy of said lands. (Acts 1918, 4th C. S., ch. 64, sec. 1.)

Art. 5449g. Same subject.—All sales of public free school land made on October 22, 1903, in quantities not exceeding forty acres, and the same have been fully paid for, be and the same are hereby in all respects validated, and the commissioner of the General Land Office is authorized and directed to issue patents to same. (Acts 1919, 2d C. S., ch. 26, sec. 1.)

Art. 5449h. Same subject.—All sales of Public Free School Land which were sold on the 25th day of September, 1895, are hereby validated and when fully paid out in accordance with the purchase the Commissioner of the General Land Office shall issue a patent therefor. (Acts 1919, ch. 81, sec. 1.)

Art. 5449i. Same subject.—In all cases where the Public Free School land sold on condition of settlement and residence, and the purchaser settled on the land, but failed to file in the General Land Office his affidavit of settlement within the time required by law, but did file, or offered to file, such affidavit, and in all cases where said lands were sold on condition of settlement, and the purchaser abandoned same on account of drouth, and in all cases where said land was sold on condition of settlement and the purchaser was drafted or volunteered into the service of the United States on account of the war, are hereby declared validated and declared to be valid, and those who abandoned the land on account of the drouth and those who were drafted or volunteered into the service of the United States on account of the war, shall not be further required to reside on the land, but those who did settle and failed to get their affidavit of settlement in the Land Office in the time required by law, shall continue to reside on the land as required by law. (Acts 1919, ch. 90, sec. 1.)

Art. 5449j. Same subject.—In all sales of public free school lands, University, Asylum and public lands made by the State of Texas, by authority of the Acts of the Legislature of date April 12th and 14th, 1883, wherein the mineral rights in said lands were not, by the State specially reserved, in its award of sale or classification of such lands, at the time of such sale, reserved to the State of Texas, the sales of such land by the State be, and the same are hereby validated, and the State of Texas hereby relinquishes unto the owners of said lands, when paid for, all of its rights and title to said minerals. (Acts 1919, ch. 121, sec. 1.)

Art. 5449k. Same subject.—That where sales of Public Free School Lands, made the third day of March, A. D. 1896, were made under, and in accord with, the provisions and requirements of Chapter 48 of the Acts of the Twenty-fourth Legislature and where the purchasers of said lands have met all the requirements of purchase and payment, and have failed to meet the requirement of settlement, that said sales be, and the same are hereby declared to be, as legal and valid as if settlement had been made on said lands, and the Acts of the purchasers had been in all respects in strict compliance with the requirements of the law, and all such sales are hereby validated and made binding. (Acts 1919, ch. 166, sec. 1.)

Art. 5449½. Sale of lands and flats under waters of Matagorda Bay.—That the Commissioner of the General Land Office be and he is hereby authorized to sell those certain lands and flats in and under the waters of Matagorda Bay, belonging to the State of Texas, upon the terms and conditions and within the limitations hereinafter provided. (Acts 1919, 2d C. S., ch. 70, sec. 1.)

Art. 5449½a. Same subject; persons entitled to purchase; price.—Any person, or any corporation heretofore organized, or which may hereafter be organized under the laws of the State of Texas, which has heretofore dredged a channel, or which may hereafter dredge a channel from the mainland through and across or partly across Matagorda Bay, and the lands and flats covered by the waters of said Bay to give access to the Intercoastal Canal and said proposed or constructed channel to have a depth of not less than six feet, and to be not less than one hundred feet wide at the bottom, shall have the right to purchase from the State of Texas, at the rate of Two Dollars per acre, a strip of land occupied by and adjacent to such proposed or constructed channel not to exceed eight hundred feet in width for the entire length of said channel, extending from the mainland into Matagorda Bay, for such a distance as is necessary to enable all water craft which navigate the intercoastal canal to reach said channel, which right to purchase shall include the right to drive such piling and to construct such jetties as are necessary in connection with the dredging, deepening, widening or maintaining of such channel, and the right to waste the spoil from such channel within or without the eight hundred feet so acquired. (Id. sec. 2.)

Art. 5449½b. Same subject; application; fee; approval.—Any person or corporation desiring to purchase any of the lands hereinbefore referred to for such channel purposes under the provisions of this Act, shall file an application in writing for the survey thereof with the County Surveyor of the County in which the area is situated, and said County Surveyor shall, immediately upon the receipt thereof, make a survey and furnish such applicant with full field notes duly certified by him. Within ninety days after such applicant receives from said County Surveyor said certified full field notes, such applicant shall file an application and said certified field notes, together with One Dollar filing fee, in the General Land Office, together with Two Dollars per acre for each acre included in the application and field notes. Said application filed with the Commissioner of the General Land Office shall also contain a brief description of the improvements which such person or corporation may have made, or proposes to make, on the area sought to be purchased, together with an estimate of the cost of such improvements, including the dredging of the channel; and said application shall further state that it is made in good faith, and that the applicant intends to do the work and make the improvements described within the period of

time therein stated, and shall also state when or about when, such person or corporation intends to begin the work of making such improvements. The Commissioner of the General Land Office shall immediately upon receipt of such application, examine the same particularly as to the improvements made or contemplated to be made, and if upon such investigation as he desires to make, he is satisfied that such application is made in good faith, and is of the opinion that such improvements have been made, or will be made as stated in said applications, and if further of the opinion that such improvements are of a substantial nature and suitable for the purposes for which the area is desired, the Commissioner shall fix the time within which work shall begin on such improvements, if the beginning of work thereon has not already been commenced, which shall not be more than six months from the date of the approval of such application, and shall also fix the time within which such improvements shall be completed, which time shall be not more than two years from the date of the granting of such application; provided that for good cause shown, the Commissioner may extend the time for the completion of such work, for a term not to exceed two years.

If after the investigation herein provided for, the Commissioner of the General Land Office shall be of the opinion that said application is made in good faith and that person or corporation making such application intends to do the work and make the improvements therein described within the period stated in such application, and is of the further opinion that such improvements are of a substantial nature and suitable for the purposes for which the area is desired, then the said Commissioner having fixed the time within which work shall be begun on such improvements, and the time in which such improvements shall be completed, shall thereupon approve said application and grant the right therein applied for; provided, no patent shall issue to such applicant or to his or its successors or assigns, until the improvements provided for shall have been completed. (Id. sec. 3.)

Art. 5449½c. Same subject; forfeiture of application.—Should such applicant fail or refuse to complete the improvements prescribed, within the time fixed for the completion thereof, or any extension of such time, then the said Commissioner of the General Land Office shall declare such application forfeited, and the person or corporation making such application shall forfeit to the State of Texas all rights acquired in and to the lands and flats in Matagorda Bay or the waters thereof, described in the application and field notes, together with all improvements made and all sums paid thereon. (Id. sec. 4.)

Art. 5449½d. Same subject; patent.—Should the applicant complete the improvements provided for, within the time allowed, a patent to the lands described in the application shall then be issued by the State of Texas to such applicant, or to the successors or assigns of such applicant, upon the payment of the lawful patent fee. (Id. sec. 5.)

Art. 5449½e. Same subject; disposal of purchase price.—All moneys received by the Commissioner of the General Land Office under the provisions of this Act, shall be transmitted by him to the State Treasurer and credited to the General Revenue. (Id. sec. 6.)

Art. 5449½f. Same subject; petroleum, etc., in land applied for.—From and after the filing of an application with the County Surveyor under this Act, and Commissioner of the General Land Office shall not receive any applications for permit to prospect for petroleum, oil or natural gas in, on or under the area of waters that may be included in said application, or any part thereof, and shall not grant or extend any right to prospect for said minerals in, on or under said area; provided that the State shall and does reserve all the minerals that may be within the area which may be acquired under this Act, which reservation shall be recited in the patents to said lands. (Id. sec. 7.)

Art. 5449½g. Same subject; use of channels dug.—If a channel should be dug under the provisions of this Act it shall be open to the ingress and egress of every ship, boat, tug or barge and every other kind of commercial transport upon such terms, rates of charges and conditions as may be prescribed by the Railroad Commission, and said Commission shall have the same jurisdiction over such channel as is conferred upon it over railroads. (Id. sec. 8.)

LEASES

Art. 5450. (4218y) Commissioner may withhold agricultural lands from lease, when.—The commissioner of the general land office may withhold from lease any agricultural lands necessary for the purpose of settlement; and no agricultural lands shall be leased, if, in the judgment of the commissioner, they may be in immediate demand for settlement, but such lands shall be held for settlement, and sold to actual settlers only, under the provisions of this chapter. (Amended 1897, p. 184.)

Art. 5451. (4218r) Commissioner to advertise lands for lease, how.—All leases under the provisions of this chapter may be advertised by the commissioner in such manner as he may think best, and let to the highest responsible bidder in such quantities and under such regulations as he may think to the best interest of the state not inconsistent with the equities of the occupant. All bids and offers to lease may be rejected by him prior to signing the lease contract, for fraud or collusion, or other good and sufficient cause.

Art. 5452. Leases, how and when made.—Any person desiring to lease any portion of the lands belonging to any of the funds mentioned in this chapter shall make application in writing to the commissioner of the general land office, specifying and describing the particular lands he desires to lease; and thereupon the commissioner, if the lands applied for are subject to lease, and not in immediate demand for actual settlement, shall notify the applicant in writing who offers the highest price, that his proposition to lease is accepted; and thereupon he shall execute to the lessee in the name and by the authority of the state of Texas a lease of said lands for such time as may be agreed upon, not to exceed five years; and, when satisfied that the lessee has paid to the state

the rent for one year in advance, he shall deliver said lease to the clerk of the county court of the county in which the land is situated, or of the county to which said county is attached for judicial purposes; and it shall be the duty of the clerk to record in a well-bound book kept in his office, open to public inspection, a memorandum or abstract of said lease, showing the number of the survey or surveys leased, the name of the original grantee, the amount leased, the name of the lessee, the date of the lease and the number of years it has to run; and for entering said memorandum the clerk shall be entitled to a fee of twenty-five cents. Upon payment of said fee, the clerk shall deliver the lease to the lessee, and no other record of leases hereafter made shall be required, except said memorandum. When any of such leases are filed for record, the clerk shall make the memorandum or abstract above provided for. All lands which may be leased shall be subject to sale at any time, except where otherwise provided herein. This provision in regard to the sale of leased lands shall apply to leases heretofore made as well as to those hereafter to be made. Any section, or part of a section, which may be leased shall not be sold except to the lessee, nor shall the lessee be disturbed in his possession thereof during the term of his lease, when he has placed on such section, or part of a section, improvements to the value of two hundred dollars. (Acts 1901, p. 292, sec. 4.)

Art. 5453. Regulations as to leases in absolute lease districts.—The following counties shall constitute the absolute lease district, to wit: El Paso, Jeff Davis, Presidio, Brewster, Reeves, Pecos, Loving, Winkler, Ward, Yoakum, Terry, Gaines, Andrews, Ector, Midland, Upton, Crane, Crockett, Sutton, Val Verde, Edwards, Kinney, Maverick, Zavala, Dimmit, La Salle, McMullen, Webb, Duval, Nueces, Kimble, Zapata, Starr, Hidalgo and Cameron. All tracts of land lying partly inside and partly outside of the absolute lease district shall be considered, for the purpose of sale and lease, as being wholly without said district. And land situated in the absolute lease district which may be leased shall not be sold during the term of the lease, except as provided herein. On the expiration of any lease in the absolute lease district, the lands shall remain subject to sale for a period of ninety days, and, if it has been previously classified and valued by the commissioner of the general land office, and notice given to the county clerk, it shall not be necessary to give the clerk any further notice in order to put the land on the market, but it shall be considered as already on the market and subject to sale. During said period of ninety days, the commissioner of the general land office shall suspend action upon any application to lease said land, and shall award it upon any legal application to purchase made during said time. The party purchasing any of said lands, whether inside or outside of the absolute lease district, within the inclosure of another, shall not turn loose any stock within the inclosure until he shall have provided sufficient water for the stock so turned loose, and any violation of this provision shall be an offense, and, upon conviction, the party so offending shall be punished as provided in the Penal Code. If no application to purchase has been filed within ninety days after the expiration of the lease, then the former lessee shall have a preference right over any one else for thirty days thereafter to re-lease such lands, or any part thereof, but his lease shall run from the expiration of his old lease. In all cases where the lease is terminated under any of the provisions of this chapter before the expiration of the term of lease, the lessee shall have a pro rata credit upon his next year's rent or the money refunded to him by the treasurer, as he may elect. On the expiration of his lease or its termination under the provisions of law, or by a final judgment of any court of competent jurisdiction, the lessee shall have the right for the period of sixty days to remove any or all improvements he shall have placed upon the leased premises. No purchaser or other person than the lessee shall be permitted to turn loose within such lessee's inclosure more than one head of horses, mules or cattle or in lieu thereof, four head of sheep or goats, for every ten acres of land so purchased, owned or controlled by him and uninclosed. Each violation of the provisions of this chapter which restrict the number of stock which may be turned loose in such inclosure shall be an offense, and the offender, on conviction, shall be punished as provided in the Penal Code. The commissioner of the general land office is hereby prohibited from renewing any lease before its expiration, as shown on the face of the original lease contract; and no lease contract shall be canceled, except in cases where the land has been, or may be, sold as provided by law, or where the lessee fails to pay the annual rental due the state within sixty days from the date it becomes due. And when the lessee shall fail to pay his annual rental within sixty days after it becomes due, the commissioner of the general land office shall cancel said lease, and immediately notify the county clerk of the county in which the land, or a part thereof, is situated, of the cancellation and the date when canceled, and the clerk shall note the date of cancellation on his lease record. (Acts 1901, p. 292, sec. 5.)

Art. 5454. Expired leases; regulations as to.—When a lease expires or is canceled for any cause, the commissioner shall not consider an application to lease the land prior to ninety days from such expiration or cancellation, and no lease on any land shall be made if it is in demand by purchasers. An original lessee, or the assignee of an entire leasehold, who was such owner at the date of the termination thereof, shall have a preference to another lease of the land at the expiration of the ninety days over another applicant to lease, provided he is willing to pay and will pay as much therefor as another, after due publicity; provided, no lease shall be made at less than three cents per acre. (Acts 1905, p. 159, sec. 7.)

Art. 5455. (4218t) Where lessee secure permanent water, rights of.—Any person desiring to lease any portion of the lands aforesaid on which no permanent water supply exists, shall notify the commissioner of the general land office in writing that he desires to lease lands, specifying and describing them, provided he can obtain the necessary supply of water by boring or other-

wise, and that he will within ninety days lease said lands, provided such water supply can be obtained: he shall also make and file with the commissioner of the general land office his bond, with good and sufficient personal security, in a sum equal to one year's rental of the quantity of land applied for, payable to the state of Texas, conditioned that he will diligently and in good faith try to secure water on such land during such ninety days, and if secured will lease the designated lands for the term prescribed herein; and thereupon the commissioner shall for such ninety days withhold the lands thus designated from lease to any other person; within or at the expiration of said ninety days and annually thereafter such applicant to lease shall pay to the state of Texas, in advance, one year's rental of the land applied for by him; on satisfactory proof of which payment the commissioner shall execute and deliver to the lessee a lease of the said lands, signed by himself officially and attested by the seal of the land office, together with which he shall deliver up the bond of said lessee, marked, "Satisfied." If the said lessee shall fail to apply for his lease and make the payment aforesaid within said ninety days, and shall also within said ninety days fail to make proof to the satisfaction of the commissioner of the general land office within that time that he has in good faith and diligently used proper means and expended proper efforts to secure a water supply on such land and failed, then and in that case the commissioner shall mark said bond, "Forfeited," and shall deliver the same to the attorney general of the state, who shall at once cause the said bond to be sued upon and collected; and such collection shall become a part of the available school fund. The penalty stated in such bond is hereby declared to be liquidated damages, and judgment for that sum shall in all cases be recovered by the state. Proof satisfactory to the commissioner of the general land office that proper, suitable and diligent effort had been made by such applicant to secure water, and that sufficient water could not be secured, shall relieve the principal and sureties on said bond from all responsibility therein, and it shall be marked, "Satisfied," by said commissioner and delivered to the principal therein. No lease of less than four sections of unwatered pasture lands shall be made, unless such less number includes all unleased land in that vicinity belonging to the several funds mentioned in this chapter. Lessees or their vendees who shall have at their own expense secured water on their leaseholds in accordance with the provisions of this article shall, at the expiration of their lease contract, have the right to a renewal of their leases for another term of five years at the price then provided by law, by giving sixty days' written notice to the commissioner, as provided in the preceding article. (Acts 1895, p. 63.)

Art. 5456. (4218v.) Lease, how forfeited; lien on improvements for rents.—If any lessee shall fail to pay the annual rent due, in advance, for any year, within sixty days after such rent shall become due, the commissioner shall cancel said lease by writing under his hand and seal of office, which writing shall be filed with the other papers relating to such lease, and thereupon such lease shall immediately terminate. During the continuance of all leases, and after forfeiture, the state shall have a lien upon all property owned by the lessee upon the leased premises to secure the payment of all rents due, which lien shall be superior to all other liens whatsoever; and it shall not be essential to the preservation or validity of such lien that it shall be reserved in the instrument of lease. (Acts 1901, p. 29, sec. 5.)

Art. 5457. (4218w) Lessees may remove improvements, when.—All improvements made by lessees on lands leased by them are hereby declared to be personal property, which may be removed by such lessees on the expiration of their lease contracts; and they shall have sixty days after such expiration in which to remove the same.

Art. 5458. One year to assert right to leased or sold land.—All persons claiming the right to purchase or lease any public free school lands, or any lands belonging to the state university, or either of the state asylums, which have been heretofore, or which may be hereafter, sold or leased to any other person under any provision of the law authorizing the sale or lease of any of said lands, shall bring his suit therefor within one year after the date of the award of such sale or lease, and not thereafter. (Acts 1905, p. 35.)

Art. 5459. Same.—If no suit has been instituted by any person claiming the right to purchase or lease any of said land within the period of time limited in the foregoing article, it shall be conclusive evidence that all the requirements of the law with reference to the sale or lease of such lands have been complied with; provided, that nothing in this and the preceding article shall be construed to affect the state of Texas in any action or proceeding that may be brought by it in respect to any of said lands. (Id.)

CHAPTER TEN

SUITS TO RECOVER PUBLIC LANDS, RENTS AND DAMAGES

Art. 5460. State land agents, appointment and salary.—The commissioner of the general land office, with the consent and approval of the governor, shall appoint two state land agents, who shall hold their office at the pleasure of the governor and commissioner, and receive a salary of thirteen hundred dollars each per annum. (Acts 1899, p. 176, sec. 1.)

Art. 5461. Duties of such agents.—Such agents shall have the power, and it is made their duty, to investigate and make inquiries into and concerning the location, valuation and condition of any and all lands controlled or owned by the state; also concerning the free use, occupancy, or inclosure of any of said lands without authority of law, and all depredations upon timber of said lands. They shall also procure and furnish information as to location and quality of such lands to all persons desiring to purchase or lease same. (Id.)

Art. 5462. Agents to make monthly reports.—Such agents shall make monthly reports to the commissioner or governor touching any and all matters investigated by them, and make such other reports and perform such other duties relating to such lands

as may be required of them by the commissioner and governor. (Id.)

Art. 5463. May administer oaths; traveling expenses paid.—For the purpose of this law, such agents shall have authority to administer oaths. In addition to the salary of such agents, they shall be allowed their actual traveling expenses, not to exceed the sum of one thousand and five hundred dollars per annum, for the expenses incurred by both of such agents, the same to be allowed only upon the duly sworn itemized statement that said sum was actually paid and necessary to the discharge of their duties. (Id.)

Art. 5464. Suits to be brought.—When said agents shall have reported that any public free school, asylum, or other public lands is or has been used or occupied or inclosed without authority of law, or that any timbered land belonging to any of said fund has been or is being destroyed, or depredated upon to the injury of such land, or the detriment of such fund, the governor shall investigate same, and in his discretion direct that suit be instituted for the recovery of such sums as may appear to be proper under this law and article 5467, or he may transmit such documents as he may deem proper to the proper officer or court for the purpose of criminal proceeding, as provided for in articles 850, 851, 852, 853, 859, 860 of the Penal Code and neither of said remedies shall be exclusive of the other, but the one shall be cumulative of the other, and the state may use either or both remedies; provided, that this shall not repeal any pre-existing criminal law. (Id. sec. 2.)

Art. 5465. Damages recoverable.—In civil suits, the amount of damage for use or occupancy, or unlawful inclosure, shall be not less than five cents per acre per annum. (Id.)

Art. 5466. Sums recovered, how appropriated.—All recoveries under the preceding articles shall be paid into the state treasury for the benefit of the available school fund, or to the fund to which such land, upon which such recovery is had, may belong. For the purpose of recovery herein, the state shall not be required to prove a continuous daily use or occupancy or herding or line riding by the defendant, or any one for him: provided, that, if any person who is so unlawfully using any of said lands will either buy or lease same, and pay the arrears due thereon, no action shall be begun or continued against him. This action shall apply to individuals or corporations. (Id.)

Art. 5467. (4218x) Suits to recover lands illegally occupied.—If the governor shall at any time be credibly informed that any portion of the public lands, or the lands belonging to any of the several funds named in this chapter, have been inclosed or that fences have been erected thereon without authority of law, he is authorized in his discretion to direct the attorney general to institute suit in the name of the state for the recovery of such lands and damages, and a fee of not less than ten dollars for the attorney when the sum recovered is less than one hundred dollars, and, when it is over that sum, the fee shall be ten per cent, to be paid by the defendant for the use and occupancy of the same, and the removal of such inclosures and fences; and such damages shall not be for a less sum than five cents per acre per annum during such occupancy. For the recovery by the state of all lands sold under the provisions of this or former laws which have been, or may hereafter be, forfeited to the state for any reason, and for the recovery of any money due the state on leases made under this or former laws, and for the recovery of damages for the unlawful use and occupancy of such lands, as provided in this article, or any former laws, jurisdiction is expressly conferred on the courts of Travis county having jurisdiction thereof under the constitution concurrently with courts of the districts in which the land is situated; and all such suits shall be instituted by the attorney general, or under his direction. In suits provided for in this article, the court shall issue a writ of sequestration directed to any sheriff of the state, commanding and requiring such officer to take such land and all property thereon belonging to the person or persons so unlawfully occupying said lands into his actual custody, and hold the same subject to further orders of the court; and the state shall not be required to give bond. Such writ of sequestration may be executed by any sheriff of the state into whose hands it may be delivered, and it shall be the duty of any sheriff into whose hands it may come to proceed and execute such writ. The defendant in such suit may replevy as in ordinary cases by giving bond as prescribed by law; and such cases shall have precedence on the docket and stand for trial before all other cases; and, in case judgment is recovered by the state in such suit, the court shall order such inclosure or fences to be removed, and shall tax the costs of the suit against the defendant; and all property found upon the land belonging to the defendant, not exempt from execution, shall be liable to the payment of such costs and damages in addition to the personal liability of the defendant. Appeals may be prosecuted from all judgments in such cases as in ordinary cases, except that the state shall not be required to give bond to perfect its appeal, and such cases on appeal shall have precedence over all other cases. If any person shall make a lease contract, and after the same is inclosed by fence shall for any cause decide not to continue payment of his lease, either in whole or in part, he shall give public notice by publication in any local paper having the largest circulation, for at least sixty days before the time in which his next annual payment shall become due, that he will not continue his lease after the year for which payment is made, and shall also state the number and block of the land which he will not lease inside his inclosure if he only intends to surrender a part of his lease, and shall post and shall keep posted for said sixty days notice on all gates of his pasture of such intention; then, and then only, he shall not be subject to the suit nor liable for the damages provided for in this article. (Acts 1895, p. 63, amended p. 75. Acts 1899, p. 176.)

Art. 5468. The attorney general to bring suits for lands.—When any of the lands described in this title, or any of the other public lands of the state held or owned by any fund, or any lands in which this state, or any such funds, have an interest, are held,

occupied or claimed by any person or association or corporation adversely to the state, or to such fund, it shall be the duty of the attorney general to institute suit therefor, together for rent thereon, for any damages thereto; and for the purpose of any such suits for such lands, or affecting the title thereto, or right growing out of the same, the venue thereof is fixed in Travis county, Texas, concurrently with the county of defendant's residence, and the county where the land is situated; and the courts of said county shall have the same jurisdiction over the defendant and the subject matter of the same as if such defendant resided, and such property was situated, in said county. (Acts 1900, p. 29, sec. 8.)

Art. 5469. Suit for mineral and timber depredations.—It shall be the duty of the attorney general of the state of Texas to bring suit against every person, firm, association of persons, or corporations, for the value of all minerals or other property of value taken from school, university, asylum and other public lands and for all timber which has been, or may hereafter be, cut, destroyed, sold, used or otherwise appropriated by them off of any such public lands. (Acts 1905, p. 38.)

Art. 5470. Venue.—The venue of said suits shall be in any county in Texas, or in the county where the injury occurs, or a part thereof, or in the county of the residence of the defendant, at the discretion of the attorney general. (Id.)

Art. 5471. To report offenders to attorney general.—It shall be the duty of the commissioner of the general land office and the county attorneys of the state to report to the attorney general semi-annually, or oftener if they desire, the names and residence of every person, firm, association of persons or corporations, who have cut, used, destroyed, sold or otherwise appropriated any timber on the aforesaid lands or taken any minerals or other property of value therefrom, and such other data and evidence as shall come to their knowledge. (Id.)

Art. 5472. Attorney general may compromise.—The attorney general shall have power by and with the consent of the governor to compromise and settle with or without suit any of the aforesaid liabilities. (Id.)

Art. 5473. Money to be turned over to school fund.—Whatever sums are collected or received by the attorney general shall be turned over by him to the permanent funds to which they belong. (Id.)

Art. 5474. Attorneys' fees in such cases.—As compensation for said services, the attorney general and county attorneys shall receive the following compensation, respectively, to be paid by the defendant as part of the costs to be taxed against the defendant, to wit: The attorney general, ten per cent; the county attorney, five per cent of the amount recovered if recovered by suit, and if recovered by compromise, then said officers shall receive one-half of the above amounts, respectively; provided, that the county attorneys shall receive compensation only from cases reported by them to the attorney general. It shall be the duty of county attorneys to assist the attorney general in whatever way they may be requested in relation to such cases. (Id.)

TITLE 80

LANDLORD AND TENANT

Art. 5475. (3235) Landlord shall have preference lien; contracts under which lien shall not attach; certain contracts void; recovery of excessive payments of rent; penalty.—All persons leasing or renting lands or tenements at will or for a term of years shall have a preference lien upon the property of the tenant, as hereinafter indicated, upon such premises, for any rent that may become due and for all money and the value of all animals, tools, provisions and supplies furnished by the landlord to the tenant to make a crop on such premises, and together secure, house and put the same in condition for marketing, the money, animals and tools and provisions and supplies so furnished being necessary for that purpose, whether the same is to be paid in money, agricultural products or other property; and this lien shall apply only to animals, tools and other property furnished by the landlord to the tenant, and to the crop raised on such premises; provided, however, this Article shall not apply in any way nor in any case where any person leases or rents lands or tenements at will or for a term of years for agricultural purposes where the same is cultivated by the tenant who furnishes everything except the land, and where the landlord charges a rental of more than one-third of the value of the grain and more than one-fourth of the value of the cotton raised on said land; nor where the landlord furnishes everything except the labor and the tenant furnishes the labor and the landlord directly or indirectly charges a rental of more than one-half of the value of the grain and more than one-half of the value of the cotton raised on said land, and any contract for the leasing or renting of land or tenements at will or for a term of years for agricultural purposes stipulating or fixing a higher or greater rental that that herein provided for, shall be null and void, and shall not be enforceable in any court in this state by an action either at law or in equity and no lien of any kind, either contractual or statutory, shall attach in favor of the landlord, his estate or assigns, upon any of the property named, nor for the purpose mentioned in this Article; and provided, further, that if any landlord or any person for him shall violate or attempt to evade any of the provisions of this Article by collecting or receiving a greater amount of rent for such land than herein provided, shall be collected or received by him upon any contract, either written or verbal, the tenant or person paying the same, or the legal representatives thereof, may, by an action of debt instituted in any court of this State, having jurisdiction thereof, in the county of the defendant's residence or in the county where such rents or money may have been received or collected, or where said contract may have been entered into, or where the party or parties paying the same resided when such contract was made, within two years after such

payment, recover from the person, firm or corporation receiving the same, double the full amount of such rent or money so received or collected. All laws and parts of laws in conflict with this Article are hereby expressly repealed. (Acts 1874, p. 55; P. D. 7418c; Acts 1915, ch. 38, sec. 1.)

See ante art. 3793; Simkins' Equity (2d Ed.) p. 491; Estes v. McKinney, 43 S. W. 556; Meyer v. O'Dell, 44 S. W. 545; Newman v. Ward, 46 S. W. 868; Manis v. Flood, 47 S. W. 1017; Polk v. King, 48 S. W. 601; American Cot. Co. v. Phillips, 71 S. W. 320; Allen v. Brewing Co., 97 S. W. 1063; Small v. Rush, 132 S. W. 874; Lasater v. Streetman, 154 S. W. 657; Neblett v. Barron, 160 S. W. 1167; Ivy v. Pugh, 161 S. W. 939; Senters v. First State Bank of Weatherford, 176 S. W. 878; Kimbrough v. Bevering, 182 S. W. 403; Garden Valley Mercantile Co. v. Falkner, 189 S. W. 300; Green v. Prince, 201 S. W. 200; Hawthorn v. Coates Bros., 202 S. W. 804; McKelvy v. Gugenheim, 208 S. W. 757.

Art. 5476. (3236) Tenant not to remove property, subject.—It shall not be lawful for the tenant, while the rent and such advances remain unpaid, to remove, or permit to be removed, from the premises so leased or rented any of the agricultural products produced thereon, or any of the animals, tools or property furnished as aforesaid, without the consent of the landlord. (Acts 1874, p. 55; P. D. 7418c.)

See Leverett v. Meeks, 68 S. W. 302; Mensing Bros. & Co. v. Cardwell, 75 S. W. 347; Small v. Rush, 132 S. W. 874.

Art. 5477. (3237) Duration of lien; goods stored in warehouse; exemptions.—Such preference lien shall continue as to such agricultural products and as to animals, tools and other property furnished to the tenant, as aforesaid, so long as they remain on such rented or leased premises, and for one month thereafter; and such lien as to agricultural products, if stored in public or bonded warehouses controlled or regulated by the laws of the State within thirty days after the removal of said products from said rented premises, shall continue so long as they remain in such warehouses; and such lien, as to agricultural products and as to animals and tools furnished as aforesaid, shall be superior to all laws exempting such property from forced sale. (Act April 4, 1874, p. 55; P. D. 7418c; Acts 1914, 2d C. S., ch. 6, sec. 1.)

See ante art. 3793; post art. 5644a; Simkins' Equity (2d Ed.) p. 493; Shumate v. Champion, 39 S. W. 128; Champion v. Shumate, 40 S. W. 394; Am. Cot. Co. v. Phillips, 71 S. W. 320; Small v. Rush, 132 S. W. 874; Neblett v. Barron, 160 S. W. 1167; Morris v. Burrows, 180 S. W. 1108; Horton v. Lee, 180 S. W. 1169.

Art. 5478. (3238) Does not apply to, etc.—Such lien shall not attach to the goods, wares and merchandise of a merchant, trader or mechanic, sold and delivered in good faith in the regular course of business to the tenant. (Acts 1874, p. 55; P. D. 7418c.)

See Freeman v. Collier Racket Co., 101 S. W. 202; Freeman v. Collier Racket Co., 105 S. W. 1129.

Art. 5478a. (3239) Removal not a waiver, etc.—The removal of the agricultural products with the consent of the landlord for the purpose of being prepared for market shall not be considered a waiver of such lien, but such lien shall continue and attach to the products so removed the same as if they had remained on such rented or leased premises. (Id.)

Art. 5479. (3240) Distress warrant.—When any rent or advances shall become due, or the tenant shall be about to remove from such leased or rented premises, or to remove his property from such premises, it shall be lawful for the person to whom the rents or advances are payable, his agent, attorney, assigns, heirs, or legal representatives to apply to a justice of the peace of the precinct where the premises are situated, or in which the property upon which a lien for rents or advances exists, may be found, or to any justice having jurisdiction of the cause of action, for a warrant to seize the property of such tenant; provided, that when a distress warrant shall be issued by any justice, other than the justice of the peace of the precinct in which the rented premises may be situated, or in which the defendant may reside, such warrant shall be made returnable to, and the affidavit and bond upon which it is issued shall be transmitted by, the justice issuing such distress warrant to some justice of the precinct in which the rented premises may be situated, or in which the defendant may reside. (P. D. 7418d; Revision, 1879; Acts 1881, p. 98.)

See McKee v. Sims, 45 S. W. 564; Manis v. Flood, 47 S. W. 1017; Egger v. Kimmel, 60 S. W. 335; Jackson v. Corley, 70 S. W. 570; Allen v. Brunner, 75 S. W. 821.

Art. 5480. (3241) Oath and bond.—The plaintiff, his agent or attorney, shall make oath that the amount sued for is for rent or advances, such as are mentioned in the first article of this title, or shall produce a writing signed by such tenant to that effect, and shall further swear that such warrant is not sued out for the purpose of vexing and harassing the defendant; and the person applying for such warrant shall execute a bond with two or more good and sufficient sureties, to be approved by the justice of the peace, payable to the defendant, conditioned that the plaintiff will pay the defendant such damages as he may sustain in case such warrant has been illegally and unjustly sued out, which bond shall be filed among the papers of the cause; and, in case the suit shall be finally decided in favor of the defendant, he may bring suit against the plaintiff and his sureties on such bond, and shall recover such damages as may be awarded to him by the proper tribunal. (Id.)

See McTeer v. Young, 44 S. W. 194; McKee v. Sims, 45 S. W. 564; Jackson v. Corley, 70 S. W. 570.

Art. 5481. (3242) Distress warrant, issued by whom.—Upon the filing of such oath and bond, it shall be the duty of such justice of the peace to issue his warrant to the sheriff or any constable of the county, commanding him to seize the property of the defendant, or so much thereof as will satisfy the demand, which warrant shall be, if the same is within the jurisdiction of a justice of the peace, returnable to said justice; but, if the amount in controversy exceeds two hundred dollars, exclusive of interest, and does not exceed five hundred dollars, exclusive of interest, the writ shall be made returnable to the county court. If the amount in controversy exceeds five hundred dollars, exclusive of interest, and does not exceed one thousand dollars, exclusive of interest, the writ shall be made returnable to either the county or district court of the county, as the plaintiff in such writ may direct. If the amount in controversy shall exceed one thousand dollars, exclusive of interest, the writ shall be made returnable to the district court of the county. When the writ is made re-

turnable to the district or county court, the justice of the peace shall transmit all the papers in said cause to the court to which such writ is made returnable, on or before the first day of the next term thereof.

See McKee v. Sims, 45 S. W. 37; Egger v. Kimmel, 60 S. W. 335.

Art. 5482. (3243) Duty of officer.—It shall be the duty of the officer to whom such warrant is directed to seize the property of such tenant, or so much thereof as shall be of value sufficient to satisfy such debt and costs, and the same in his possession safely keep, unless the same is replevied as herein provided, and make due return thereof to the court to which said warrant is returnable, at the next term thereof.

Art. 5483. (3244) Defendant may replevy.—The defendant shall have the right at any time within ten days from the date of said levy to replevy the property so seized, by giving bond payable to the plaintiff, with two or more good and sufficient sureties in double the amount of the debt, or, at his election, for the value of the property so seized, conditioned that if the defendant be cast in the action he shall satisfy the judgment that may be rendered against him or pay the estimated value of the property, with lawful interest thereon from the date of the bond.

Art. 5484. (3245) Judgment against sureties.—When the property levied on has been replevied as provided in the preceding article, and final judgment shall be rendered against the defendant, such judgment shall be also against him and his sureties on his replevy bond for the amount of the judgment, interest and costs, or for the value of the property replevied and interest, according to the terms of such bond.

Art. 5485. (3246) Perishable property sold.—If the property is of a perishable or wasting kind, and the defendant fails to replevy as herein provided, the officer making the levy, or the plaintiff, or the defendant, may apply to the court, or judge thereof, to which the warrant is returnable, either in term time or vacation, for an order to sell such property; and, if any person other than the defendant apply for such order of sale, the court shall not grant such order, unless the person applying shall file with such court an obligation, payable to the defendant, with two or more good and sufficient sureties, to be approved by said court, that they will be responsible to the defendant for such damages as he may sustain in case such sale be illegally and unjustly applied for, or be illegally and unjustly made, which sale shall be conducted as sales under execution. (Revision, 1879.)

Art. 5486. (3247) Citation for defendant.—It shall be the duty of the justice of the peace at the time he issues the warrant to issue a citation to the defendant requiring him to answer before such justice, if he has jurisdiction to finally try the cause, and, upon its being returned served, to proceed to judgment as in ordinary cases; and, if he has not such jurisdiction, the citation shall require the defendant to answer before the court to which the warrant was made returnable, and shall be returned with the other papers to such court; provided, that, if the defendant has removed from the county without service, the proper officer shall state this fact in his return on the citation; and the court shall proceed to try the case ex parte, and may enter the proper judgment. (P. D. 7418f.)

Art. 5487. (3248) Petition.—When the warrant is made returnable to the district or county court, the plaintiff shall not be obliged to file his petition before suing out said warrant, but may file the same on or before the appearance day of the term of the court to which said papers are returnable. (Id.)

See Scoggins v. Thompson, 45 S. W. 217.

Art. 5488. (3249) Rights of tenant.—Nothing in this title shall be so construed as to prevent landlords and tenants from entering into such stipulations or contracts in regard to rents and advances as they may think proper; and, should the landlord, without any default on the part of the tenant or lessee, fail to comply in any respect with his part of the contract, he shall be responsible to said tenant or lessee for whatever damages may be sustained thereby; and, to secure such damages to such tenant or lessee, he shall have a lien on all the property in his possession not exempt from forced sale, as well as upon all rents due to said landlord under said contract. (Acts 1876, p. 137.)

Art. 5489. (3250) Tenants shall not sub-let without consent, etc.—If lands or tenements are rented by the landlord to any person or persons, such person or persons renting said lands or tenements shall not rent or lease said lands or tenements during the term of said lease to any other person without first obtaining the consent of the landlord, his agent or attorney. (Id.)

See Simkins' Contracts and Sales (3d Ed.) p. 433; Lindley v. S., 44 S. W. 165; Gartrell v. S., 61 S. W. 487; Brown v. Pope, 65 S. W. 42; Stokes v. Riley, 68 S. W. 703; Adkinson v. Porter, 73 S. W. 43; Wildey Lodge, etc., v. City of Paris, 73 S. W. 69; Ascarete v. Pfaff, 78 S. W. 974; Waggoner v. Snody, 82 S. W. 356; Morrow v. Camp, 101 S. W. 819; Hudgins v. Bowes, 110 S. W. 178; Gay v. S., 125 S. W. 896; Tandy v. Fowler, 150 S. W. 481; Clayton D. Brown Co. v. O'Connor, 151 S. W. 339; Huffstutler & Howell v. McKenzie, 163 S. W. 652; Johnson v. Ft. Worth Driving Club, 164 S. W. 875; Birchfield v. Bourland, 187 S. W. 422.

Art. 5490. (3251) Owners of buildings to have preference lien, etc.—All persons leasing or renting any residence, storehouse or other building, shall have a preference lien upon all property of the tenant in such residence, storehouse or other building, for the payment of rents due and to become due, provided that in order to fix and secure the lien for rents that are more than six months due, it shall be necessary for the person leasing or renting any storehouse or other building which is used for commercial purposes, to file in the office of the county clerk of the county in which such storehouse or such other building is situated, a statement of the amount of rent due, itemized as to the months for which it is claimed to be due, together with the name and address of the tenant, a description of the rented premises, the date on which the rental contract began and that on which it is to terminate, which statements shall be verified by the oath or affirmation of the person claiming such lien, his agent or attorney, taken before some officer duly authorized to take oaths or affirmations, and such statement when so verified shall be recorded by the County Clerk in a book to be provided for such purpose. No lien for rent more than

six months past due upon any storehouse or other building rented for commercial purposes shall be valid as against bone fide purchasers or unsecured or lien creditors of said tenant, unless said statement shall be verified, filed and recorded as above provided.

The several county clerks of the State shall each keep an alphabetical index for the purpose of recording the rental liens above described, and for their services in indexing and filing such liens they shall receive a fee of twenty-five cents for each lien so filed and indexed.

And provided that the lien for rents to become due shall not continue or be enforced for a longer period than the current contract years, it being intended by the term "current contract years" to embrace a period of twelve months, reckoning from the beginning of the lease or rental contract, whether the same be in the first or any other year of such lease or rental contract. Such lien shall continue and be in force so long as the tenant shall occupy the rented premises, and for one month thereafter; but this Article shall not be construed as in any manner repealing or affecting any act exempting property from forced sale. (Acts 1889, p. 11; Acts 1919, ch. 110, sec. 1.)

See ante art. 3793; see Simkins' Equity (2d Ed.) p. 492; Constantine v. Fresche Brewing Co., 43 S. W. 1045; Meyer v. O'Dell, 44 S. W. 545; York v. Carlisle, 46 S. W. 257; Austin v. Welch, 72 S. W. 882; Allen v. Brewing Co., 97 S. W. 1063; Freeman v. Collier Racket Co., 101 S. W. 202; Freeman v. Collier Racket Co., 105 S. W. 1129; Johnson v. Hulett, 120 S. W. 257; Hartford Fire Ins. Co. v. Wright, 125 S. W. 363; Low v. Troy Laundry Machinery Co., 160 S. W. 136; Harris v. Townley, 161 S. W. 5; Meacham v. O'Keefe, 198 S. W. 1000.

Art. 5491. (3252) Distress warrant, how obtained.—When any rent shall become due, or the tenant about to remove from such leased or rented buildings, or remove his property therefrom, it shall be lawful for the person to whom the rent is payable, his agent, attorney or assignee, to apply to a justice of the peace of the precinct where the building is situated for a distress warrant, which shall be issued on an affidavit and bond; and the same proceedings shall be had on the issuance, trial and return of such warrant as is now provided by law in this chapter; the object of this and the preceding article being to extend the operation of such law so as to include and protect liens on residences and storehouses and other buildings occupied or used by tenants, and conferring on the owners thereof the same rights and privileges as are now conferred by law on other landlords. (Acts 1879, p. 128.)

See York v. Carlisle, 46 S. W. 257.

TITLE 80A

LAND SURVEYORS

Art. 5491½. Board of examiners; members; appointment; qualifications.—A Board of Examiners of Land Surveyors is here by created to be composed of the Commissioner of the General Land Office and two reputable land surveyors, to be appointed by the Governor, who have had not less than fifteen years practical and active experience in the field as land surveyors. The first two surveyors so appointed shall receive a license from the said Board without examination and shall hold their membership on such board at the pleasure of the appointing authority. (Acts 1919, 2d C. S., ch. 67, sec. 1.)

Art. 5491½a. Same subject; organization; quorum.—Within sixty days after the taking effect of this Act the Board shall organize by electing a Chairman and a Secretary-Treasurer. Two members shall constitute a quorum for the transaction of business and the concurrence of two members shall be necessary for the adoption or rejection of any question. (Id. sec. 2.)

Art. 5491½b. Examinations; questions; applicants for license; deposit; conduct of examinations.—The Board shall prepare in writing questions upon the theory of surveying, practical surveying, theory and use of surveyor's instruments, calculation of areas, closing of field notes, the law of land boundaries and touching such other matters pertaining to surveying as the Board may deem important. No one shall either directly or indirectly make known to any applicant for surveyors license the questions upon which such examination shall be given prior to the commencement of the examination. When the questions shall have been prepared by the Board they shall be forwarded to the custodian of questions for teachers certificates in each county under proper enclosures with suitable words on the enclosure indicating the contents. The questions shall be held unopened by such custodian and opened only in the presence of such applicants for surveyors license as may present themselves for examination at the same time and place as may be required of applicants for teachers certificates. Each applicant shall deposit the sum of ten dollars with the authority that may be authorized to receive such fees from applicants for teachers certificates. When such sum shall have been deposited the authority conducting the examination for teachers certificates shall likewise conduct the examination for land surveyors license in the same manner as for that for teachers certificates. When such applicants shall have returned the questions and answers to the source from which they were received, the authority receiving them shall return both questions and answers to the Chairman of the Board of Examiners of Surveyors, together with eight dollars of the ten dollars deposited by each applicant, and retain two dollars which two dollars shall be disposed of as are the fees paid by applicants for teachers certificates. The sum received by the Board, or so much thereof as may be necessary, may be used to defray the actual expense incurred by said Board in the execution of this Act and the remainder shall be deposited annually into the State Treasury; provided that no appropriation shall ever be made to defray the expenses of said Board or to carry into effect any of the provisions of this Act. (Id. sec. 3.)

Art. 5491½c. Same subject; custody of questions and answers; second examination; license to successful applicants; duration of; revocation.—When the questions and answers shall have been received by the Chairman of the Board as aforesaid, he shall either convene the Board for the purpose of passing upon the answers made to the questions and the issuance of the License or the refusal to so issue the license; or the said Chairman may transmit the questions

and answers to the other members for their consideration and action as herein contemplated. All questions and answers made thereon with the action of the Board shall be deposited in the General Land Office and there safely kept not less than one year. Should a license be refused an applicant such applicant may take any subsequent examination under the same conditions as in the first instance. Every applicant who successfully passes the examination shall receive from said Board a Land Surveyors License attested by the seal of the Board and shall be valid for life unless sooner revoked by the Board for any of the following causes; to wit: the holder declared by any court to have committed a felony, theft or fraud, to be insane or incompetent; found by the Board to have unlawfully given information concerning any undisclosed public land; found to have been directly or indirectly interested in the purchase or in the acquisition of the title to any public land; found guilty of any act or default discreditable to the surveying profession. Before any license shall be revoked the holder thereof shall be advised by written notice from the Board being mailed to him at his last known address at least thirty days before the date fixed for hearing any charge against him, stating the charge, and the time and place for such hearing. Should the Board find the charge sustained by the facts the license of such surveyor shall be revoked. The facts adduced at such hearing shall be reduced to writing. The surveyor whose license shall have been revoked may appeal from such revocation to the district court of any county. Upon such appeal the court shall admit in evidence the written record of the Board, together with such other evidence as may be offered on either side in accordance with the rules of evidence in district courts. After a revocation of a surveyor's license such surveyor shall not perform the duties of a licensed surveyor unless such license shall have been restored; provided, that applicants, who are reputable land surveyors of fifteen years actual experience in the field as such land surveyors, shall receive a license with the exemption when they shall have filed with said Board the affidavits of three credible persons to the effect that applicant is a reputable land surveyor of fifteen actual experience in the field as such and upon the payment of a fee of Two ($2.00) Dollars to the said Board. (Id. sec. 4.)

Art. 5491½d. Licensed surveyors; oath of office; bond.—Before one who receives a land surveyors license shall be authorized to perform the duties of a land surveyor, he shall take the oath of office prescribed by the constitution, and shall make a good and sufficient bond in the sum of one thousand dollars, payable to the Governor and his successors in office, conditioned that he will faithfully, impartially and honestly perform all the duties of a surveyor to the best of his skill and ability in all matters wherein he may be employed. The said bond shall not be void upon first recovery nor until the whole may be exhausted. The said oath and bond shall be recorded in the office of the county clerk of the county in which the licensee resides, and after being so recorded the said bond and oath of office shall be filed in the General Land Office, accompanied with one dollar as filing fee and thereupon the licensee shall be authorized to enter upon the discharge of the duties of a land surveyor. The other records and books of the Board relating to the execution of this Act shall be deposited in the General Land Office for safe keeping when not in use by the Board. (Id. sec. 5.)

Art. 5491½e. Same subject; powers and duties; signature to field notes.—Land Surveyors, licensed and otherwise qualified as provided in this Act, are hereby authorized to perform the duties that are now or may hereafter be required of county surveyors and shall be subject to the direction of the Governor, Commissioner of the General Land Office, the Attorney General, and the courts of the State in the matter of land surveying in such cases as may come under the jurisdiction of said authorities. Their jurisdiction shall be co-extensive with the limits of the State. They may be elected county surveyor of the county in which they reside and if so elected shall qualify as provided by law for county surveyors, but such election for any particular county shall not limit the jurisdiction of said surveyor to such county, nor shall the election of a county surveyor for any particular county prevent any other licensed surveyor from performing the duties of a surveyor in such county. Every field note made by one licensed under this Act shall be signed by the surveyor and followed by the designation "Licensed Land Surveyor." (Id. sec. 6.)

Art. 5491½f. Field notes and plats.—The field notes of every survey made by a licensed land surveyor shall in every respect conform to the requirements that are now or may hereafter to required for field notes and every survey made shall be recorded in the county surveyor's records of the proper county, and for the purpose of such record and for all other purposes licensed surveyors shall have free and unrestrained access to the county surveyor's records therein. The field notes of all surveys and plats of same made by any licensed land surveyor affecting the lines, boundaries and areas of unpatented land shall be forwarded to the General Land Office. If a licensed land surveyor should discover an undisclosed tract of public land, he shall not make known that fact to any one except to such person or persons as may have it enclosed, but he shall forward to the General Land Office a report of the existence of such tract and the acreage therein, and its probable value. (Id. sec. 7.)

Art. 5491½g. Compensation of licensed surveyor; force and effect of field notes.—A licensed land surveyor shall receive as compensation for his services not to exceed ten dollars per day and other expenses incident to the survey shall be agreed upon between the surveyor and the interested party, whether that be a private person, a county, a court, or the State. All field notes made by a licensed land surveyor in whatsoever county shall have the same force and effect and be admissible in evidence the same as field notes heretofore made by county surveyors and their deputies. (Id. sec. 8.)

Art. 5491½h. Rights of unlicensed surveyors.—A surveyor who does not hold a license under this Act may nevertheless be elected to the office of county surveyor and

perform the duties of that office and one who does not hold such license may be appointed deputy county surveyor and perform the duties of that office and they shall receive such compensation for their services as licensed State land surveyors; and nothing herein contained shall be construed to prevent any surveyor or person to survey for another by private contract and the criminal penalties contained herein shall not apply to such surveyor or person surveying for another by private contract nor to any surveyor surveying lands by order of court. (Id. sec. 9.)

Art. 5491½i. Certificates of facts shown by books, etc., in county surveyor's office.—Surveyors qualified under this Act and County Surveyors may make a certificate of any fact shown by the books, documents and records of any county surveyor's office and may make a certified copy of any book, document or record or entry therein shown by the record of said office, and said certificate and certified copy shall be admissible in evidence as to what said decords may disclose, and for such service the surveyor may charge a fee of one dollar for each certificate and thirty-five cents for each one hundred words contained in any certified copy; provided, when a county has a county surveyor such surveyor alone shall be authorized to make certificates and certified copies and receive the fees therefor. (Id. sec. 10.)

Art. 5491½j. Seal of licensed surveyors.—Licensed land surveyors under the provisions of this Chapter shall procure a seal of offices similar to that of a Notary Public, with this exception, around the margin shall be the words "licensed state land surveyor" and between the points of the star in the said seal shall be the words "Texas," with which seal he shall authenticate all certificates and other official acts issued under the provisions of this chapter and no certificate or other instrument issued by such land surveyor shall be admitted in evidence, or have any legal effect, unless, such seal is impressed thereon. (Id. sec. 11.)

For section 12 of this act, see Penal Code, art. 1617b.

Art. 5491½k. Repeal.—All laws and parts of laws in conflict with the provisions of this Act are hereby repealed. (Id. sec. 13.)

TITLE 81

LAWS

CHAPTER ONE

COMMON LAW

Art. 5492. (3258) Common law of England adopted.—The common law of England, so far as it is not inconsistent with the constitution and laws of this state, shall, together with such constitution and laws, be the rule of decision, and shall continue in force until altered or repealed by the legislature. (Acts 1840, p. 3; P. D. 978.)

See ante art. 3687; post, Final Title, secs. 3, 22; Sayles' Practice, p. 330; Speer's Marital Rights, p. 89; Baker v. McRimmon, 48 S. W. 742; Gembler v. Echterhoff, 57 S. W. 313; R'y v. Cluck, 77 S. W. 403; Abilene Cot. Oil Co. v. R'y, 85 S. E. 1052; Grigsby v. Reib, 153 S. W. 1124, L. R. A. 1915E, 1, Ann. Cas. 1915C, 1011; Palacios v. Corbett, 172 S. W. 777; Walenta v. Wolter, 186 S. W. 873; City of Dallas v. Gill, 199 S. W. 1144.

Art. 5493. (3259) Executors, etc., governed by, when.—The rights, powers and duties of executors and administrators shall be governed by the common law, when not otherwise provided by statute. (Acts 1876, p. 130, sec. 141.)

See ante art. 3233; Herron's Probate Guide, p. 151.

CHAPTER TWO

SPECIAL LAWS

Art. 5494. (3260) Notice of intention to apply for special law, etc.—Any person intending to apply for the passage of any local or special law shall give notice of such intention by having a statement of the substance of such law published in some newspaper published in the county embracing the locality to be affected by said law, at least once a week for the period of thirty days prior to the introduction into the legislature of such contemplated law. (Const. art. 3, sec. 57; Acts 1876, p. 7, sec. 1.)

See Moller v. City of Galveston, 57 S. W. 1116; Cravens v. S., 122 S. W. 29, 136 Am. St. Rep. 977.

Art. 5495. (3261) Where no newspaper is published, notice, how.—Where there is no newspaper published in said county, a written copy of such statement shall be posted on the court house door and in five other public places in the immediate locality to be affected thereby in said county, for said thirty days, and such notice shall accurately define the locality to be affected by said law. (Id.)

Art. 5496. (3262) Notice in more than one county, when.—Where the locality to be affected by said law shall extend beyond the limits of any one county, such notice shall be given for each county to be affected.

Art. 5497. (3263) Affecting persons, where published.—Whenever any person intends applying for the passage of a special law which shall affect persons chiefly, and not directly affect any particular locality more than others, such persons, if residing within this state, shall make publication of notice of such intention in the county of the residence of such person in the same manner as if the said law was to affect such locality. (Const. art. 3, sec. 2.)

Art. 5498. (3264) Where applicant is a non-resident.—If residing without the limits of this state, said publication need only be made in a newspaper published at the capital, in like manner as if such person resided at the seat of government. (Id.)

Art. 5499. (3265) Details need not be embraced in notice.—It shall not be necessary to embrace in said notice the particular form and terms of such contemplated law, but a statement only of the general purposes and nature of the same shall be sufficient. (Id. sec. 3.)

Art. 5500. (3266) Proof of publication in newspaper.—The publication in a newspaper at the county of the locality, or at the residence, or at the state capital, as the case may be, may be shown by the affidavit of the publisher, or one of the several publishers of such newspapers, accompanied with the printed copy of the notice as published. (Id. sec. 4.)

Art. 5501. (3267) Proof of posting.—The posting on the court house door, and at five other public places of the county, provided for in this chapter, may be shown by the return of the sheriff or constable, or by the affidavit of any credible person made on a written copy of the notice so posted, showing

the fact of such posting, and such proof or other competent proof of the giving of said notice shall accompany the introduction of every local or special law. (Id. sec. 4.)

CHAPTER THREE
CONSTRUCTION OF LAWS

Art. 5502. (3268) General rules of construction.—The following rules shall govern in the construction of all civil statutory enactments:

1. The ordinary signification shall be applied to words, except words of art or words connected with a particular trade or subject matter, when they shall have the signification attached to them by experts in such art or trade, or with reference to such subject matter.

2. The present or past tense shall include the future.

3. The masculine gender shall include the feminine and neuter.

4. The singular and plural number shall each include the other, unless otherwise expressly provided.

5. A joint authority given to any number of persons or officers may be executed by a majority of them, unless it is otherwise declared.

6. In all interpretations, the court shall look diligently for the intention of the legislature, keeping in view at all times the old law, the evil and the remedy.

7. Whenever one law which shall have repealed another shall itself be repealed, the former law shall not be thereby revived without express words to that effect. (Acts Jan. 16, 1840; P. D. 4577.)

See post, Final Title, sec. 3; Riggins v. Richards, 77 S. W. 946; Doty v. Moore, 112 S. W. 1038; Texas Cent. R. Co. v. Wheeler, 116 S. W. 83; Clarey v. Hurst, 136 S. W. 840; Smith v. City Nat. Bank of Wichita Falls, 140 S. W. 1145; Chickasha Milling Co. v. Crutcher, 141 S. W. 355; Oliver v. S., 144 S. W. 604; McClung v. Watson, 165 S. W. 532; Bradfield v. S., 166 S. W. 734, Ann. Cas. 1917C, 696; Texas Traction Co. v. Scoggins, 175 S. W. 1128; City of Terrell v. Terrell Electric Light Co., 187 S. W. 966; Barton v. Wichita River Oil Co., 187 S. W. 1043; Price v. County School Trustees of Navarro County, 192 S. W. 1140; Sparks v. Kaufman County, 194 S. W. 605; Gibson v. Wood, 199 S. W. 893; Debenham v. Short, 199 S. W. 1147; City of San Antonio v. Spears, 206 S. W. 703.

Art. 5503. (3269) Grammatical errors, etc., shall not vitiate.—Grammatical errors shall not vitiate a law, and a transposition of words and clauses may be resorted to when the sentence or clause is without meaning as it stands; and in no case shall the punctuation of a law control or affect the intention of the legislature in the enactment thereof.

Art. 5504. (3270) Meaning of certain words.—The following meaning shall be given to each of the following words, unless a different meaning is apparent from the context:

1. "Property" includes real and personal property.

2. "Person" includes a corporation.

3. "Written" or "in writing" includes any representation of words, letters or figures, whether by writing, printing or otherwise.

4. "Oath" includes affirmation.

5. "Swear" or "sworn" includes affirm.

6. "Signature" or "subscribe" includes the mark of a person unable to write.

7. "Justice," when applied to a magistrate, means justice of the peace.

8. "Preceding," when used by way of reference to title, chapter or article, means the next preceding.

9. "Succeeding," in like manner, means the next succeeding.

10. "Month" means a calendar month.

11. "Year" means a calendar year.

12. "Effects" includes all personal property and all interest therein.

TITLE 82
LEGISLATURE

CHAPTER ONE
TIME OF MEETING

Art. 5505. (3271) Time of meeting.—The thirty-third legislature shall assemble to hold its biennial session on the second Tuesday in January, A. D. 1912 (1913) at 12 o'clock m., and shall meet biennially thereafter on the same day and hour until otherwise provided by law.

See Const. art. 3, sec. 5.

CHAPTER TWO
ORGANIZATION

Art. 5506. (3272) Who may organize the legislature.—Those persons receiving certificates of election to the senate and house of representatives of the legislature, and those senators whose terms of office shall not have terminated, and none others, shall be competent to organize the senate and house of representatives. (Acts 1876, p. 311, sec. 29.)

Art. 5507. (3273) Secretary of state to preside for purpose of organization.—For the purpose of organization, as provided for in the preceding article, it shall be the duty of the secretary of state to preside at each recurring session of the legislature. (P. D. 5437.)

Art. 5508. (3274) Secretary of state to attend meeting and appoint clerk.—He shall attend at the time and place designated for the meeting of the legislature, and shall appoint a clerk, who shall have been chief clerk of the house the preceding session, if he be present, to take a minute of the proceedings. (Id.)

Art. 5509. (3275) The clerk to call counties in alphabetical order.—The clerk, under direction of the secretary of state, shall call all the counties in alphabetical order. (Id.)

Art. 5510. (3276) Clerk to administer oath.—When the counties are called and the members elect appear and present their credentials, it shall be the duty of the clerk, under the order and direction of the secretary of state, to administer to each the oath prescribed by the constitution. (Id.)

Art. 5511. (3277) All counties to be called whether election returns are made or not.—Should returns of election in any county for members of the legislature not be made to the office of secretary of state, the clerk shall nevertheless call such county. (Id.; P. D. 5438.)

Art. 5512. (3278) Parties sworn in on any proper evidence.—Any person appearing at said call and presenting the proper evidence of his election shall be admitted or qualified in the same manner as though the

return of his election had been made to the office of secretary of state. (P. D. 5438.)

Art. 5513. (3279) When quorum not present on day for meeting.—Should there not be a quorum in attendance on the day appointed for the meeting of the legislature, it shall be the duty of the secretary of state and clerk to attend from day to day until a quorum shall appear and be qualified as above. (P. D. 5439.)

See Const. art. 3, sec. 10.

Art. 5514. (3280) Election of speaker.—When a quorum shall have appeared and been qualified, the house shall proceed to the election of a speaker, unless a majority of the members present shall think proper to defer said election. (P. D. 5440.)

Art. 5515. (3281) Election of necessary officers.—When an election for speaker shall have been had, the speaker elect shall immediately take the chair, and the house proceed to its further organization by electing the necessary officers, to whom the speaker shall administer the oath of office. (P. D. 5441.)

Art. 5516. (3282) In absence of secretary of state, attorney general to preside.—Should there be no secretary of state, or in case he be absent or unable to attend from any cause, the attorney general shall attend and perform the duties prescribed in this title. (P. D. 5442.)

CHAPTER THREE

INVESTIGATING COMMITTEES—PROCEDURE

Art. 5517. May administer oaths, etc.—In the investigation of any public officer elected by the legislature, or the qualified voters of the state of Texas, or of any nominee of any political party in said state for election by the legislature, or qualified voters thereof, to any public office in respect to matters or charges that reflect upon the personal or official integrity of such public officer or nominee, or that disqualifies, or tends to disqualify, such public officer to hold the office to which he has been elected or nominated by any political party, or any investigation of any other matter, or for any other purpose that may be ordered by the legislature of this state, or either house of such legislature, before any committee heretofore appointed by the legislature of this state, or by either house of said legislature, and now pending, or before any committee that may hereafter be appointed by the legislature of this state, or either house thereof, at this or any subsequent session, such investigating committee, and each member thereof, shall have full power and authority to administer oaths to officers, clerks and stenographers that it may employ in connection with the performance of its duties, and to any witnesses and parties called to testify before it; and said investigating committee shall have full power and authority to issue any and all process that may be necessary to compel the attendance of witnesses and the production of any books, papers and other written documents it may designate, and to compel any witness to testify in respect to any matter or charge by it being investigated, in answer to all pertinent questions propounded by it, or under its direction, and to fine or imprison any witness for his failure or refusal to obey the process served on him by such committee, or to answer any such pertinent questions propounded; provided, that such fine shall not exceed one hundred dollars, nor shall imprisonment extend beyond the date of adjournment of the legislature then in session; and provided, further, that the testimony given by a witness before such investigating committee shall not be used against him in any criminal action or proceeding, nor shall any criminal action or proceeding be brought against such witness on account of any testimony so given by him, except for perjury committed before such committee. (Acts 1907, p. 6, sec. 1.)

Art. 5518. Sergeant-at-arms may serve process.—The sergeant-at-arms, or assistant sergeant-at-arms, of either house of the legislature of this state, or any sheriff or constable of this state, may serve any process that may be issued by said investigating committee, or by any commission by them appointed, for the attendance of witnesses who reside within this state; and, if such service is made by any sheriff or constable, he shall be allowed the same fees and mileage allowed for similar process by the district courts of this state in civil cases. Should said investigating committee so direct, any witness visiting or being within the state may be summoned before such committee by having a brief statement of the process issued for such witness transmitted by telegram to any sheriff or constable of the county within which such witness may reside, or is supposed to be, at the time such process may be issued. (Id. sec. 2.)

Art. 5519. Special committee to take certain testimony.—Whenever such investigating committee before which any investigation, such as herein above defined, is pending, shall deem it necessary or advisable to procure the testimony of any witness or witnesses residing or being at a great distance from the city of Austin, within this state, or residing or being without this state, or procure the evidence contained, or supposed to be contained, in any books, papers or written documents without this state, such investigating committee may name, appoint and delegate any two of its members as a special commission to go to any such distant point or points within this state, or beyond the confines of this state, where such witness resides, or is supposed to be, or where such evidence may probably be had, for the purpose of procuring the testimony of such witness or witnesses, or of such evidence, and shall seek to procure the same as hereinafter provided. (Id. sec. 3.)

Art. 5520. Notice of taking same to be given.—When such special commission as hereinabove defined shall be appointed and delegated by said investigating committee, notice thereof shall be forthwith given to the party under investigation, or his attorneys of record, and the point or points to which such special commission is directed to go, as far as may then be known, shall be stated in such notice, and the order in which such points are to be visited as far as may then be known; provided, that such special commission may visit any other point or points than those named by such investigating committee, if in the judgment of such commission

necessary to procure such testimony or any other material testimony. (Id. sec. 4.)

Art. 5521. Authority to issue process, etc.—Such special commission shall have authority to issue any and all process that may be necessary to compel the attendance of witnesses before them, administer oaths to witnesses, compel witnesses to produce before them any books, papers and other written documents designated in any process by them issued, and take the testimony of any witness in respect to any matters or charges pending before said investigating committee, and to compel any witness to answer any questions propounded by them, or under their direction, pertinent to such matters or charges; and, should said commissioners disagree as to the admissibility of any evidence to which objection is made, they shall receive the same, together with such objections, to be referred to the investigating committee for its decision. Whenever any witness is subpœnaed by said commissioners to appear before them, such subpœna shall state the time when and the place where such witness is expected to appear to testify in respect to such matters and charges; and reasonable time, to be determined by said commissioners, shall be given such witness to make his appearance and produce any books, papers and documents that he may be required by the process served on him to produce before said commissioners. Said commissioners shall employ an expert stenographer to take down all questions propounded to any witness and his answers thereto, whether said witness is examined before them or before some officer of the state in which such examination is being had as hereinafter provided. (Id. sec. 5.)

Art. 5522. Judges and other officers may take testimony, when.—Said commissioners, if they elect so to do, may file with any judge of any court of record, justice of the peace, commissioner of deeds for the state of Texas, or notary public of the county and state where any witness whose testimony is desired may reside or be found, a brief statement of the matters or charges under investigation by the legislature of the state of Texas, or either house of such legislature, in respect to which the testimony of such witness is sought, the name of the witness and where he can probably be found, the reasons why such witness is believed to possess the information sought, and, when books, papers and other documents are accessible to such witness are desired, such a description thereof as will enable the witness to produce the same, and thereupon ask that such judge, justice of the peace, or commissioner of deeds, or notary public, shall summon such witness to appear before him with any books, papers, and other written documents that may be so designated, and testify in answer to any and all pertinent questions that may be propounded to him by said commissioners, or under their direction, in respect to said matters and charges. Any subpœna or other process issued by said judge, justice of the peace, commissioner of deeds, or notary public, shall state the time and place of holding such examination, and otherwise conform to the laws of the state in which the same is issued; and the examination of such witness shall be in the same manner and subject to the same rules of procedure as provided by law for taking the deposition of witnesses in answer to oral interrogatories and cross interrogatories under a commission issued upon agreements of the parties litigant by the district courts of the state of Texas to take the deposition of nonresident witnesses, except, that no notice shall be required to be given to any one other than the witness and the party being investigated by the legislature of the state of Texas, or either house of said legislature. Any process that may be issued by any officer without this state hereinabove named may be served by any sheriff, constable or policeman of the county and state in which such witness may reside or be found, and for such service shall receive the same fees and mileage as may be provided by the law of said state for service of process in the district or circuit courts of such state in civil cases. (Id. sec. 6.)

Art. 5523. Process by whom served.—Any process issued by said commissioners, or by any of the officers named in article 5522, when the same is to be served without this state, shall be served by any of the officers named in article 5522, by delivering a true copy of such process to the witness therein named; and such officer shall make his return on such service showing how and when the same has been served and service of process in this state shall be the same as service of similar process in civil cases in the district courts of this state. (Id. sec. 7.)

Art. 5524. Testimony to be written, etc.—When any witness appears to testify either before said commissioners or any of the officers named in article 5522, the questions propounded and answers thereto shall be taken down by a competent stenographer and thereafter transcribed, together with all objections thereto, and shall be returned to the investigating committee to be incorporated in the record as a part of the evidence in such investigation, subject to the ruling of said investigating committee as to the admissibility of any evidence therein contained. Any officer named in article 5522 shall have power and authority to compel any witness appearing before him to testify in answer to any and all pertinent questions propounded; and upon the failure or refusal of such witness to testify such officer may fine or imprison such witness for contempt to the extent and as may be provided by the laws of the state in which such witness is examined. The commission provided for by this act shall have the authority to employ and have to accompany them not more than one attorney who is not a member of such committee and who is a citizen of the state of Texas, at the expense of the state, but shall not have the authority to employ attorneys who are not citizens of this state at the expense thereof. (Id. sec. 8.)

TITLE 83

LEVEES, IMPROVEMENT DISTRICTS AND SEAWALLS

See Title 47; Title 73; and Title 96.

CHAPTER ONE

STATE RECLAMATION ENGINEER

Arts. 5525-5529. [Superseded.]

See note under art. 5529a.

Art. 5529a. Primary object of act; work authorized, etc.—That the primary

object of this Act shall be to devise and plan and mark out upon the ground all the improvements necessary to reclaim or cause to become suitable for agricultural uses, the overflowed and swamp lands and overflowed areas in the costal plain, and other lands within this state, which, by reason of the temporary or permanent excessive accumulation of water thereon, or contiguous thereto, are not suitable for such uses, and, to accomplish the said primary purpose, it is hereby authorized and ordered that the necessary investigations, examinations, measurements, computations, estimates, surveys, maps, reports and publications shall be made, and any other necessary work incident thereto shall be done, which may be required in the process of designing, planning or marking out upon the ground the most effective, practical, permanent, economical, feasible and equitable improvements or systems of improvements such as levees, dikes, dams, canals, drains, water-ways, reservoirs or any or all of them, and other improvements incidental thereto, and that in so far as possible the said improvements shall be designed, planned or marked out upon the ground with primary consideration to the topographic and hydrographic conditions, and in such manner that each division of the said improvements shall be a complete, united project, forming a coordinate part of an ultimately finished series of projects, so constituted that the successful operation of the improvements in each united project existing within the same hydraulic influence; and the said improvements and system of improvements shall be discussed in reports, shown on maps, drawings or diagrams, or otherwise recorded, reproduced, delineated or published; and all such final results of the work herein authorized, which are or may be of value to the state of Texas, shall be filed for public reference as hereinafter provided. And provided, that no part of the money herein appropriated shall be used in the actual construction of any of the improvements herein authorized to be devised, planned or marked out upon the ground. (Acts 1909, p. 136. Amended Acts 1911, p. 160, § 2. Acts 1913, p. 292, sec. 2.)

Acts 1909, ch. 81, p. 136 was amended by Acts 1911, ch. 88 so as to read as set forth in articles 5529a-5529j. Acts 1909, ch. 81, p. 136 was carried into the Rev. Civ. St. 1911, as arts. 5525-5529.

Art. 5529b. State reclamation engineer; qualifications.—For the purpose of carrying out the provisions of this Act there is hereby created and established the office of state reclamation engineer. The said state reclamation engineer shall himself be a thoroughly experienced and skilled topographer and hydrographer and draftsman and reclamation engineer; and he shall have had not less than five years actual experience in the organizing and supervising of geodetic and topographic surveying and mapping of large areas, and in the general direction of field and office engineering corps. He shall be thoroughly experienced in making and passing upon reclamation plans and estimates, and in the preparation and writing of technical reports and publications, and in the reproduction of maps. (Id. sec. 3.)

Art. 5529c. Duties and powers of engineer.—The said engineer shall have general supervision of all work authorized by this Act, and shall have power to determine at what points, within the territory herein prescribed, the said work shall be done, and, when not in conflict with the provisions of this Act, shall make such division and allotment of the money herein appropriated as to properly carry out the provisions of this Act; and shall determine the manner and the season that the results of said work shall be made public. The said engineer shall have the further power, if in his judgment it will subserve the best interests of the state of Texas, to accomplish the objects herein provided for, to make and approve agreements or contracts for co-operation with any branch or branches of the federal, state, county or city governments for the doing of all or any part of the work herein authorized; provided, that said engineer shall also have the power to cancel the said co-operative agreements or contracts upon ten days' written notice to the branch or branches of the federal, state, county or city governments concerned; and provided, that if said engineer shall deem the said co-operation not to be to the best interests of the state of Texas, then it is hereby made the duty of said engineer to cause to be accomplished the objects of this Act independent of the co-operation of federal, state, county or city governments. (Id. sec. 4.)

Art. 5529d. Engineer, how appointed; compensation.—The said state reclamation engineer shall be appointed by the governor with the advice and consent of the senate, and shall serve for a term of two years and until his successor is appointed and qualified. The said state reclamation engineer shall receive as compensation for his services the sum of thirty-six hundred dollars ($3600.00) per annum payable monthly; and in addition to his salary he shall be reimbursed for his necessary traveling and station expenses, or shall be reimbursed therefor by an equivalent per diem allowance in lieu thereof, while engaged upon his official duties in the field. (Id. sec. 5.)

Art. 5529e. Further powers and duties of engineer.—The said engineer shall have power to employ such assistants, to make or authorize to be made such purchases, to incur or authorize to be incurred such other expenses, and to formulate and enforce such reasonable and proper rules and regulations governing his official work, and the work of his assistants, both in the office and in the field, as may be necessary to perform with correct dispatch and economy the work herein authorized to be done. And the said engineer is further empowered to confer with any branch of the federal, state, county or city governments with a view to obtaining authority, assistance or advice in connection with his official work, whenever necessary or desirable, and he shall solicit the co-operation of any other branch of the federal, state, county or city governments whenever such co-operation may be to the best interests of the state of Texas. It shall be the duty of the said engineer to perform, conduct or supervise the work herein authorized, and to execute such additional or supplemental orders and instructions not incompatible with his prescribed duties, as may be necessary to properly carry out the provisions of this Act. It shall further be the duty of the said engineer to confer in a technical capacity with communities or districts within this state that have

requested his technical advice with a view to the adequate execution of proposed levee, drainage and irrigation reclamation improvements contemplated in such communities or districts, for which technical advice the said engineer shall receive no extra compensation. (Id. sec. 6.)

Art. 5529f. Record of expenditures; districts to reimburse state, etc.; bonds.—That hereafter the said state reclamation engineer shall keep an accurate record of all moneys spent by the state in the making of the authorized surveys of each individual district, and upon the completion of such surveys shall certify what the pro rata cost of making the survey has been within the district in question. That hereafter any improvement district, drainage district or levee district organized under the provisions of the law authorizing the organization and conducting such improvement districts, drainage districts, or levee districts which takes advantage of the information furnished by the hydrographic and topographic survey provided for in this Act, shall, when such improvement district, drainage district, or levee district is organized and issues bonds, pay to the state reclamation engineer such sum as the said engineer may direct, provided, that the said engineer shall not require the district in question to reimburse the state in a greater amount than the pro rata cost of making the survey as certified by the said engineer as above specified; and, that all funds reimbursed to the state in this manner shall be placed in the state treasury to the credit of said engineer to be used again for the purpose of further carrying out the provisions of this Act. It is further provided that such improvement districts, drainage districts, or levee districts are hereby authorized to issue bonds in amounts equal to that charged by the said engineer for the cost of making the said survey with which to reimburse the state as hereinbefore provided. (Id. sec. 7.)

Art. 5529g. Districts to file record, etc., with engineer.—Hereafter all improvement districts, drainage districts, or levee districts shall, immediately prior to the approval of their bonds by the attorney general, as authorized by law, file with the said state reclamation engineer a complete record showing all the steps in their legal organizations, and showing the boundaries, area, and amount of bonds to be issued, to be given upon forms furnished by said engineer, together with the plans of improvements, maps, profiles, the estimates and the engineer's report of the said district. (Id. sec. 8.)

Art. 5529h. Engineer to maintain office, etc.—The said engineer shall have and maintain in the state capitol an office suitable for the proper performance of his technical and general office work, and in which it shall be his duty to safely file for public reference all final results of the work herein authorized, and provided in section 2 [Art. 5529a] of this Act. (Id. sec. 10.)

Art. 5529i. Appropriations.—For the purpose of carrying out the provisions of this Act, there is hereby re-appropriated all of the unexpended balance in the appropriation made by chapter 88, of the General Laws of the state of Texas passed at the regular session of the thirty-second legislature, entitled "An Act to amend Chapter 81, of the General Laws of the State of Texas passed at the Regular Session of the Thirty-First Legislature of the state of Texas." Provided, further, that in addition to the foregoing reappropriation of the said unexpended balance as hereby appropriated out of any money in the state treasury not otherwise appropriated, the sum of forty thousand ($40,000) dollars to be expended in carrying out the provisions of this Act, and to be paid upon vouchers approved by the said state reclamation engineer. (Id. sec. 11.)

Art. 5529j. Laws repealed.—That all laws and parts of laws in conflict with the provisions of this Act be and the same are hereby expressly repealed. (Id. sec. 12.)

CHAPTER TWO
IMPROVEMENT DISTRICTS.

Art. 5530. Commissioners' court to establish improvement districts; powers of districts.—The commissioners courts of the several counties of this State may hereafter create, establish and define one or more levee improvement districts in their respective counties in the manner hereinafter provided, and may, or may not, include within the boundaries and limits of such districts, villages, towns and municipal corporations, or any portion thereof, but no land at the same time shall be included within the boundaries of more than one levee improvement district created under the provisions of this Act. Such districts, when so created, established and defined, may build and construct, or cause to be built and constructed and maintained, levees or other improvements on all rivers, creeks and streams within such district, or which may border on the same, to prevent overflows thereof, and may, or may not, issue bonds in payment therefor, and the maintenance thereof, and may levy and collect taxes for the payment of said bonds and interest thereon; and may levy and collect taxes for the maintenance and upkeep of the levees and other improvements in said district, as hereinafter provided; and may acquire by grant, condemnation or otherwise such levees or other improvements as may already have been constructed in such district. (Acts 1909, p. 140, sec. 1; Acts 1915, ch. 146, sec. 1.)

Art. 5531. [Repealed and substance carried into sec. 1 of Act April 1, 1915, ante, art. 5530.]

Art. 5532. Petition for establishment of district; notice; fees of clerk; filing in vacation with county judge.—Upon the presentation to the commissioners court of any county in the State of a petition signed by the owners of a majority of the acreage in a proposed levee improvement district, acknowledged by the petitioners before some officer authorized to take acknowledgments, praying for the establishment of a levee improvement district, setting forth the necessity, feasibility and proposed boundaries thereof, designating a name therefor, which name shall include the name of the county in which it is situated, and accompanied by a deposit as hereinafter provided, the said commissioners court shall, if in session when said petition is presented, at said session of the court set said petition down for a hearing at some regular or special session of the court, not less than fifteen nor more than thirty days

from the date of the presentation of said petition, and shall order the clerk of said court to give notice of the filing of the said petition, and of the date and place of hearing, by posting written or printed notices thereof in five public places in said county, one of which shall be at the court house door of the said county, and four of which shall be within the limits of the proposed levee improvement district. Such notices shall be posted for ten days prior to the time set for such hearing. Said clerk may deputize some other person to perform such service, and the affidavit of such clerk or his deputy that such notices have been so posted shall be held conclusive thereof. Said clerk shall receive as compensation for such service one ($1) dollar for each of such notices and five (5) cents per mile for each mile necessary to be traveled in posting same. Should said commissioners court not be in session at the time of the filing of said petition, it may be filed with the county judge of the county, who shall thereupon make and enter an order upon the minutes of said commissioners court, setting said petition for hearing at some regular or special term of said commissioners court, not less than fifteen nor more than thirty days from the filing of said petition, and shall order the clerk of the said commissioners court to give said notice as is herein provided for in this section, which notice shall be posted for the time and as is provided for in this section. (Acts 1909, p. 140, sec. 2; Acts 1915, ch. 146, sec. 2.)

Art. 5532a. Deposit for expenses.—When the petition praying for the establishment of a levee improvement district is filed as herein provided, it shall be accompanied by fifty ($50) dollars in cash, which shall be deposited with the clerk of the county commissioners court, and by him held until after the result of the hearing on said petition herein provided for has been declared and entered of record by the said commissioners court; and the said clerk shall pay out of the said sum of fifty dollars, upon vouchers signed by the county judge, all costs and expenses pertaining to the said hearing, and shall return the balance, if any, to the signers of said petition or their agent or attorney. (Id. sec. 3.)

Art. 5532b. Notice to and attendance of State Reclamation Engineer.—When said petition is so set down for hearing, the clerk of said commissioners court shall immediately give written notice to the State Reclamation Engineer, setting forth the time, place and purpose of said hearing. The State Reclamation Engineer or his deputy shall thereupon examine the said proposed district and, prior to said hearing shall file with the clerk of said court a report showing the general character, approximate location and estimated cost of the improvement required, with an estimate of the cost of organizing the proposed district; and the said State Reclamation Engineer or his deputy shall be present at said hearing and shall furnish such supplemental information as may be required by said court. (Id. sec. 4.)

Art. 5533. Objection to creation of district; jurisdiction of commissioners' court.—At the time set down for the hearing of said petition any person who would be affected by the creation of said district may appear before the said court and contest or contend for the creation of said district, and may offer testimony to show that the said district is or is not necessary and would or would not be a public utility, and that the creation of said district would or would not be feasible or practicable. Said commissioners court shall have exclusive or final jurisdiction to hear and determine all contests and objections to the creation of such districts and all matters pertaining to the same, and said court shall have exclusive jurisdiction over all subsequent proceedings of said district when organized, except as herein provided, and may adjourn hearings on any matter connected therewith from day to day; and all judgments, orders or decrees rendered by said court in relation thereto shall be final, except as hereinafter provided. (Acts 1909, p. 140, sec. 3; Acts 1915, ch. 146, sec. 5.)

Art. 5534. Order establishing district; dismissal of petition.—If upon the hearing of said petition it shall appear to the court that the proposed improvements are feasible and practicable, and are needed, and would be conducive to public health, or would be a public benefit or a public utility, then the court shall so find and shall render judgment reciting such findings and create and establish such district, and by its order entered of record duly define its boundaries and declare and decree the said district a body corporate, with full authority to effect the reclamation, protection and improvement of the lands and other property authorized by this Act. But if the court should not so find, then the court shall dismiss the petition at the cost of the petitioners and enter such finding of record. (Acts 1909, p. 140, sec. 4; Acts 1915, ch. 146, sec. 6.)

Art. 5534a. Construction of improvement without issuance of bonds; supervision of work by State Reclamation Engineer; records and reports.—If, after being declared a body corporate, as hereinbefore provided, any levee improvement district shall desire to accomplish the reclamation authorized by this Act, without the issuance of district bonds, it is hereby empowered to do so, and may employ all the necessary assistance, make all the necessary purchases, and do all things needful to effect such reclamation, and may provide the funds therefor in such manner as such district may deem best; and all expenses of whatsoever nature incurred in connection with such work shall be a liability against such district. Such district shall have all the rights, powers, privileges and obligations provided in this Act, and shall be subject to all the supervision, approval and control of the State Reclamation Engineer herein provided, and may procure from the State Reclamation Engineer all the information, assistance and advice herein made available to district engineers. Provided, that a suitable record of the names, residences, postoffice addresses and duties of the chief engineer and principal officers authorized to govern and represent the affairs of such district shall immediately be filed for public reference with the clerk of the commissioners court and with the State Reclamation Engineer; and all subsequent changes therein shall immediately be filed in like manner; provided, further, that in all things pertaining to engineering, surveying and oth-

er such work, such district shall be governed by the provisions of this Act which relate to districts that issue bonds, and shall make surveys, maps, profiles, estimates and reports, and file identical copies thereof with the clerk of the commissioners court, and with the State Reclamation Engineer for his approval or disapproval, as required of such districts. (Id. sec. 7.)

Art. 5534b. Procedure in case of issuance of bonds; expenses, how paid.—But when a levee improvement district, organized as hereinbefore provided, shall propose to issue bonds for the construction of the improvements herein authorized, the commissioners court shall proceed as hereinafter set out. And if such bonds be issued, all the proper expenses incurred by such district from and after the order and decree of the commissioner's court creating the district a body corporate shall be paid out of the proceeds of said bonds. But if the election hereinafter provided shall be against the issuance of bonds, then all the proper expenses incurred by such district from its creation shall be paid out of the deposit of five hundred ($500) dollars hereinafter provided. (Id. sec. 8.)

Arts. 5535-5540. [Repealed by Acts 1915, ch. 146, set forth as art. 5530 et seq.]

Art. 5541. Order for election; form of ballot.—The commissioners court, upon presentation of a petition signed by the owners of a majority of the acreage in the said district praying therefor, shall order an election to be held within such levee improvement district at the earliest possible time, which shall not be less than fifteen days nor more than thirty days, at which election there shall be submitted the following proposition and none other: "For the issuance of bonds and levy of taxes in payment thereof." "Against the issuance of bonds and levy of taxes in payment thereof." (Acts 1909, p. 140, sec. 11; Acts 1915, ch. 146, sec. 9.)

Art. 5541a. Deposit for expenses of election for issuance of bonds; reimbursement from bond issue; unexpended balance; additional deposit.—When the petition praying for an election for the issuance of bonds is filed with the commissioners court, as provided herein, it shall be accompanied by five hundred ($500) dollars in cash, which shall be deposited with the county treasurer, who shall open an account with said district; and out of such sum, upon vouchers approved by the county judge, shall be paid all the proper and necessary expenses of said district as they are incurred, including the expenses of such election. Should the result of such election be in favor of the issuance of bonds and levy of taxes, the said five hundred ($500) dollars shall be returned by the said county treasurer to the said petitioners or their agent or attorney, out of the proceeds of said bonds, as elsewhere provided in this Act; but should the result of such election be against the issuance of bonds and levy of taxes, then the said treasurer shall return any unexpended balance of the said sum to the said petitioners or their agent or attorney. And if such sum of five hundred ($500) dollars shall be found insufficient to meet all the proper and necessary expenses of such district up to the time of the sale of the district bonds hereinafter provided for, the said petitioners shall make such further deposits with the county treasurer as from time to time may be required to meet such expenses, and such additional deposits shall be handled in the same manner as the first. (Id. sec. 10.)

Art. 5542. Notice of election; contents.—Notice of said election, stating the time and place or places of holding the same, shall be given by the clerk of the county commissioners court by posting written or printed notices thereof in five public places in such district, and one at the court house door of the county in which such district is situated. Such notices shall contain the propositions to be voted upon as set forth in Section 9 of this Act [Art. 5541], and shall also state the estimated cost of such improvements as reported by the State Reclamation Engineer, and also the amount of bonds proposed to be issued, together with the rate of interest the same shall bear, and that taxes are to be levied and collected to pay said bonds and the interest thereon. (Acts 1909, p. 140, secs. 12, 13; Acts 1915, ch. 146, sec. 11.)

Art. 5542a. Election, how conducted; who entitled to vote; polling places; election officers; ballot.—The manner of conducting said election shall be governed by the election law of the State of Texas, except as herein otherwise provided. None but resident property tax payers who are qualified voters of the said proposed district shall be entitled to vote at any election on any question submitted to the voters thereof by the county commissioners court at such election. The commissioners court shall name the polling place or places for such election within the proposed district, and shall also select and appoint judges and other necessary officers of the election, and shall provide one and one-half times as many ballots for said election as there are qualified resident tax paying voters within such district as shown by the tax rolls of the county. Such ballots shall have printed thereon these words and none others: "For the issuance of bonds and levy of taxes in payment therefor." "Against the issuance of bonds and levy of taxes in payment therefor." (Id. sec. 12.)

Art. 5543. Oath of voters.—Every person who offers to vote in any election held under the provisions of this Act shall first take the following oath before the presiding judge of the polling place where he offers to vote, and the presiding judge is hereby authorized to administer same: "I do solemnly swear (or affirm) that I am a qualified voter of ..... County, and that I am a resident property tax payer of the ..... levee improvement district, and that I have not voted before at this election." (Acts 1909, p. 140, sec. 14; Acts 1915, ch. 146, sec. 13.)

Art. 5544. Returns of election; canvass and declaration of result; form of order.—Immediately after the election the presiding judge at each polling place shall make returns of the result in the same manner as is provided for in elections for State and county officers, and return the ballot boxes to the clerk of the county commissioners court, who shall keep the same in a safe place and deliver them, together with the re-

turns from the several polling places, to the commissioners court at its next regular or special session; and the county commissioners court shall at such session canvass the vote, and if it be found that two-thirds of all of the resident property tax payers voting thereon shall have voted in favor of the issuance of bonds and levy of taxes, then the court shall declare the result of the election to be in favor of the said bonds and taxes, and shall enter the same in the minutes of the said court as follows:

"The County Commissioners Court of ——— County, Texas, ——— term, A. D. ——— in the matter of the petition of ——— and others, praying for the issuance of bonds and levy of taxes in payment thereof, by the levee improvement district fully described and designated in said petition by the name of ——— Levee Improvement District ———. Be it known that an election held for said purposes in said district on the ——— day of ——— A. D. ——— two-thirds of all of the resident property tax payers voting at said election voted in favor of the issuance of bonds and the levy of taxes." (Acts 1909, p. 140, sec. 15; Acts 1915, ch. 146, sec. 14.)

Art. 5545. Supervisors appointed; compensation; report; tenure; successors.—If the result of such election shall be in favor of the issuance of bonds and levy of taxes, the commissioners court shall appoint three district supervisors by a majority vote of said court, whose duties shall be as hereinafter provided, who shall each receive for his services a sum of not more than three ($3) dollars per day for the time actually engaged in the work of said district; provided, that the compensation, if any, shall have been definitely fixed in the order of the court making said appointment, and before any amount shall be paid to said supervisors, or any of them, they shall make a detailed report to the commissioners court of the time actually engaged in the work for said district, and of the work done, and such report shall be audited and approved by the commissioners court. Said supervisors shall hold office for a term of two years, and until their successors shall be qualified, unless removed by a majority vote of the commissioners court for malfeasance, or for nonfeasance in office. Upon the expiration of the term of office of the said supervisors, or in case of the resignation, death or refusal to act of any such district supervisors, the commissioners court shall appoint their successors by a majority vote of said court. (Acts 1909, p. 140, sec. 16; Acts 1915, ch. 146, sec. 15.)

Art. 5546. Oath of supervisors.—Before entering upon their duties, all district supervisors shall take and subscribe before the county judge an oath to faithfully discharge the duties of their office without favor or partiality, and to render a true account of their work to the court by which they are appointed, whenever required to do so, which oath shall be filed by the clerk of said commissioners court and preserved as a part of the records of said district. (Acts 1909, p. 140, sec. 17; Acts 1915, ch. 146, sec. 16.)

Art. 5547. Bond of supervisors.—Before entering upon their duties, each of the said district supervisors shall make and enter into a good and sufficient bond in the sum of one thousand ($1,000) dollars, payable to the county judge for the use and benefit of the said levee improvement district, conditioned upon the faithful performance of his duty. (Acts 1909, p. 140, sec. 18; Acts 1915, ch. 146, sec. 17.)

Art. 5548. Organization of board of supervisors.—The district supervisors shall organize by electing one of their number chairman and one secretary, and two of whom shall constitute a quorum, and the concurrence of two shall be sufficient in all matters pertaining to the business of said district. (Acts 1909, p. 140, sec. 19; Acts 1915, ch. 146, sec. 18.)

Art. 5549. Employment of district engineer; salary; duties; co-operation with State Reclamation Engineer; maps and profiles.—After the said district supervisors shall have completed their organization as prescribed in the foregoing section of this Act [Art. 5548], they shall employ a competent civil engineer, to be known as the district engineer, upon a salary not to exceed the sum of ten dollars ($10) per day for the time actually engaged in the work, whose term of office shall be at the will of the said supervisors; which district engineer shall confer with the State Reclamation Engineer upon all matters relating to the design and location of all improvement works pertaining to the district, and shall procure from the State Reclamation Engineer such information, assistance and advice pertaining thereto as may be or may become available. And the State Reclamation Engineer is hereby authorized and directed to furnish the same for the official use of the said district without pro rata cost or other charge.

When such information, assistance and advice are not available and cannot be made available, then the said district engineer shall proceed to make a map of such district, showing the boundary lines thereof, with the original surveys therein, and also make maps and profiles of the several levees or such other improvements located in, near by, or adjacent, or opposite such district, but a copy of the land map of the county as it applies to such district showing the name and number of surveys and showing the area or number of acres contained in such district, shall be a sufficient compliance with such order insofar as making a map of the district is required, and any recognized map of any city or town which may be embraced within the boundaries of the district shall be sufficient as to such site of the city or town; unless the said land map of the county, as it applies to such district, or the said recognized map of any city or town, is inaccurate or inadequate in any essential particular; and in that event the said district engineer shall make supplemental surveys upon the ground and do all other work necessary to make all said maps accurate and adequate for all the purposes in hand; provided, however, that where boundary lines of such improvements or any of them cornered at original surveys, the map shall show how many acres of such original surveys are included within such district; and when necessary, the said district engineer shall also show upon the said map or profiles of the said district, or shall otherwise indicate in a suitable manner, any or all of the following information, to wit: The correct relative po-

sitions of the proposed levees or other improvements, with all other existing or proposed improvements near by, adjacent or opposite, or which in any manner may become materially affected by any or all of the proposed levees or other improvements when any or all of them shall be built; the distance from the said proposed levees or other improvements to the adjacent banks of the principal streams or rivers or other places of water which the proposed improvements are intended to control, regulate or otherwise affect; complete cross sectional determination at any or all localities where the position of the said proposed levees or other improvements most nearly approaches any adjacent or opposite levee or existing or proposed improvements, or hills or high ground, or wherever it is proposed to provide a restricted or other passageway, place or reservoir for water, or in stream channels, or elsewhere where cross sections are necessary; the accurate location and elevation of available, reliable or necessary high water marks of the greater or the lesser floods, or other high water marks, or any other marks or measurements necessary to determine the slopes or fall, if any, of the surface water, or to ascertain the velocity, if any, or volume or magnitude thereof, and the accurate elevation of the general ground surface underneath the said marks or measurements, and elsewhere if needed; the actual or anticipated discharge in second-feet through natural, actual or proposed passageways or places of the streams to be improved or regulated, or the suitable measurement of other existing or anticipated bodies of water; the necessary hydraulic or topographic grades, or other such necessary factors. And the said district engineer shall further do all things necessary for the proper working out of a suitable system of improvements for the said district, and he shall establish or reestablish upon the ground all land marks, bench marks, reference marks or other marks of a permanent or temporary character which may be necessary for the most convenient, permanent and accurate marking out of all of said improvements upon the ground, or the joining of same to any other existing or proposed improvements that may become affected thereby. (Acts 1909, p. 140, sec. 20; Acts 1915, ch. 146, sec. 19.)

Art. 5550. Profiles and estimates; report; district engineer to supervise construction.—The map or profile of such levees and other improvements required by the provisions of this Act to be made shall show the relations that each levee or other improvement bears to each tract of land through which it passes, and the shape in which it divides each tract, and where the levees or other improvements cut off any tract of land less than twenty acres, then the map shall show the number of acres so divided therefrom, and the number of acres in the whole tracts, and their relation to such levees or other improvements; and such profile map shall also show the number of cubic yards of earth necessary to be excavated to make each levee or other improvement located in such district, and give the estimated cost of each; and when said maps, profiles and estimates, and all necessary surveying and other necessary work of this nature shall have been completed by said district engineer, or shall have been procured as herein otherwise provided, the said district engineer shall thereupon design a complete system of levees or other improvements for said district. He shall then prepare and sign in his official capacity a suitable report, with maps, profiles, estimates and other necessary information relative to the system of levees and other improvements which he proposes, and shall file one complete copy thereof with the clerk of the commissioners court of the county in which the said district is located, and an identical copy with the State Reclamation Engineer for his approval or disapproval as hereinafter provided. It is hereby further made the duty of such district engineer to supervise the construction of any levee or other improvements made in said district. (Acts 1909, p. 140, sec. 21; Acts 1915, ch. 146, sec. 20.)

Art. 5550a. Approval of report by State Reclamation Engineer.—Upon the receipt, in complete finished form, of the said district engineer's report, with maps, profiles, estimates and other necessary information, signed by the said district engineer, the State Reclamation Engineer shall examine the same, and within thirty days from the receipt thereof he shall approve or disapprove all or any part of the said plans for the proposed levees or other improvements, and shall then, in writing, immediately notify the clerk of the commissioners court of his approval or disapproval of the said plans; which written notice of his approval or disapproval shall be filed and recorded by the said clerk; provided, that in case corrections, surveys or other work shall be required by the State Reclamation Engineer for the proper consideration of the plans submitted, sixty days' additional time for the same may be allowed before he shall approve or disapprove the said plans. When the State Reclamation Engineer shall have approved the said plans he shall sign the same in his official capacity, and file them in his office. But if the State Reclamation Engineer shall disapprove any or all of the said plans for levees or other improvements, he shall return said plans to said clerk with written notice of such disapproval, which notice shall contain a brief statement of the reasons for his disapproval. (Id. sec. 21.)

Art. 5550b. Objections to approval; proceedings in district court; appeal; judgment.—If the levee improvement district, or any person or corporation whose interests are affected thereby, be dissatisfied with the action of the State Reclamation Engineer in approving or finally disapproving the plans referred to in the preceding section, such district or such person or corporation may file a petition in the District Court of Travis County against the State Reclamation Engineer as defendant, but such petition must be filed within thirty days from the filing by the county clerk of the written notice of the State Reclamation Engineer approving or disapproving such plans, as provided in the preceding section. The petition shall set forth with particularity the cause or causes of the objection to such action of the State Reclamation Engineer, and show wherein the interests of the petitioner are affected by his action. If the petition complains of the action of said officer in ap-

proving the plans, the levee improvement district shall be made a party defendant, and in any suit authorized by this section any party directly at interest may intervene. All such causes shall be tried and determined as other civil causes in said court. Any party to said action may appeal to the appellate court having jurisdiction of said cause; and said appeal shall be at once returnable to said appellate court at either of its terms. The plaintiff shall show that the action of the State Reclamation Engineer, in approving or disapproving said plans, is unjust or unreasonable. If, as the final result of such suit, it is adjudged that the plans, if disapproved by the State Reclamation Engineer, should have been approved, the judgment of the court shall have the same effect and serve the same purposes as the written notice of the State Reclamation Engineer approving such plans, if, as the final result of such suit, it is adjudged that such plans, if approved by the State Reclamation Engineer, should have been disapproved, the judgment of the court shall have the same effect and serve the same purposes as the written notice of the State Reclamation Engineer disapproving such plans; provided, the court may order the approval of such plans with such alterations or modifications as it may prescribe. (Id. sec. 22.)

Art. 5551. Bonds to be issued; amount; additional bonds; election; result.—After the establishment of any such levee improvement district, and after the making and filing of such maps, profiles and estimates as are herein provided for, and after the said election authorizing the issuance of bonds and levy of taxes, the commissioners court shall make an order directing the issuance of levee improvement bonds for such district sufficient to pay for the proposed improvements and the maintenance thereof for a period of not exceeding two years, which bonds shall state upon their face the purpose for which they were issued; that is, "for the purpose of the construction and maintenance of levees and other improvements in said district"; provided, however, that said bonds shall not exceed in amount one-fourth of the assessed value of the real property of such district, as shown by the last annual assessment thereof made for State and county taxation, and shall not exceed the estimate made by the State Reclamation Engineer before the election, and voted on at the election in this Act provided for; provided, however, that if after an election has been held authorizing the levy of a tax and the issuance of bonds it should become necessary for said district to make further improvements or alterations in the improvements already constructed, or to repair or maintain the improvements so created, and there shall be no sufficient funds in the construction and maintenance funds with which such improvements, alterations, repairs and maintenance may be made, then the district supervisors may apply to the commissioners court for an election to be ordered by said court to issue additional bonds, stating the necessity therefor and the amount of bonds necessary, and the character of such improvements, repairs and maintenance, and the estimated cost thereof as made by the district engineer, which shall accompany said application; and upon the filing of such application the commissioners court shall set same down for hearing at its next regular or special session, and cause the clerk of said court to give notice of such hearing, which notice shall state the character of such improvements, etc., together with the estimated cost thereof, the amount of such bonds and the rate of interest thereon. Said written or printed notices shall be posted in the same manner and places, and for the same length of time, as required by this Act for the original petition for the issuance of bonds. If, upon said hearing, the court should find that the necessity for the issuance of such additional bonds exists, and that the taxable values of the real property of the said district, as shown by the last annual assessment rolls for State and county taxes, will admit of an additional bond issue, then the court shall order an election within said district for the purpose of voting on said proposed bond issue and the levy of taxes to pay said bonds and the interest thereon. The manner of holding such election and making returns, and the notices for said election, manner and time of giving notice thereof, and the qualifications of the persons entitled to vote therein, shall be the same as, and in all things governed by, the provisions of this Act for the election held for the issuance of bonds and levy of tax in the first instance, and the commissioners court shall meet and canvass the returns of such election as in the said first election, and if it be found that two-thirds of the resident property tax payers voting at said election vote in favor of the issuance of said additional bonds and the levy of said tax, then the said commissioners court shall enter an order reciting the result of said election, and ordering the issuance of said additional bonds and issuance and sale and registration of such additional bonds and levy of said tax; and the issuance and sale and registration of such additional bonds shall in all things be governed by the provisions of this Act in regard to the bonds first issued. (Acts 1909, p. 140, sec. 22; Acts 1915, ch. 146, sec. 23.)

Art. 5552. Form, denomination, and terms of bonds.—All bonds issued under the provisions of this Act shall be issued in the name of the levee improvement district, shall be signed by the county judge, and attested by the clerk of the county commissioners court, with the seal of the county commissioners court affixed thereto; and such bonds shall be issued in denominations of not less than one hundred ($100) dollars nor more than one thousand ($1,000) dollars each, and shall bear interest at a rate not to exceed six per cent per annum, payable annually or semiannually. Such bonds shall, by their terms, provide the time, place or places, manner and condition of their payment, and the rate of interest thereon, as may be determined and ordered by the commissioners court; but none of such bonds shall be made payable more than thirty years after the date thereof; and they shall be issued in serial installments as nearly equal in amount as practicable, the first installment of which shall become due not more than two years from the date that such

bonds bear; and such issues of bonds shall conform to the general statutes of the State relating to bond issue authorized by recognized subdivisions of the State. (Acts 1909, p. 140, sec. 23; Acts 1915, ch. 146, sec. 24.)

Art. 5553. Bonds to be submitted to attorney general.—Any levee improvement district in the State of Texas desiring to issue bonds in accordance with this Act shall, before such bonds are offered for sale, forward to the Attorney General of this State a certified record of the proceedings had in the organization of the district, together with a certified copy of the proceedings had with reference to the issuance of the bonds of the district, and including a certified statement made by the county treasurer of the total bonded indebtedness of such levee improvement district; and a certified statement made by the tax assessor of the county, of the taxable values of the district, real and personal, separately, taken from the last official assessment for State and county taxes; and a certified copy of the written notice of the State Reclamation Engineer approving the plans for the levees and other improvements of the said district, together with such other information as the Attorney General may require. Provided, that no bond issue for such levees or other improvements shall be approved by the Attorney General unless a certified copy of the said notice of approval signed by the State Reclamation Engineers shall accompany and be part of said bond record. Whereupon, it shall be the duty of the Attorney General to carefully examine the said bonds in connection with the facts and the Constitution and laws of the State of Texas governing and controlling the execution of such bonds, and if, as a result of the examination, the Attorney General shall find that such bonds are issued in conformity with the Constitution and laws and that they are valid and binding obligations upon said levee improvement district in which they are issued he shall so officially certify. (Acts 1909, p. 140, sec. 24; Acts 1915, ch. 146, sec. 25.)

Art. 5554. Bonds registered by Comptroller; not to be impeached.—When such bonds have been examined by the Attorney General and his certificate has been attached thereto, they shall be registered by the State Comptroller in a book to be kept for that purpose, and the certificate of the Attorney General as to the validity of such bonds shall be preserved of record for use in the event of litigation. Such bonds, after receiving the certificate of the Attorney General and having been registered in the Comptroller's office, as herein provided, shall thereafter be held in every action, suit or proceeding in which their validity is or may be brought into question a prima facie, valid and complete obligation, and in every action brought to enforce the collection of such bonds, the certificate of the Attorney General, or a duly certified copy thereof, shall be admitted and received in evidence of the validity of such bonds, together with the interest coupons thereto attached; provided, that the only defense that can be offered against the validity of such bonds shall be forgery or fraud. But this article shall not be construed to give validity to any such bonds as may be issued in excess of the limits fixed by the Constitution, or contrary to its provisions, but all such bonds shall to the extent of such excess be void. (Acts 1909, p. 140, sec. 25; Acts 1915, ch. 146, sec. 26.)

Art. 5555. Record of bonds; sinking fund; fees for recording.—Before issuing any bonds under the provisions of this Act, the county commissioners court shall first provide a well bound book in which a record shall be kept by the county treasurer of all bonds issued, with their number, amount, rate of interest and date of issuance, when due, where payable, amount received for the same, and the tax levy to pay the interest on said bonds; and said commissioners court shall provide a sinking fund for their payment, which shall be set forth in said book; and said book shall at all times be open to the inspection of all parties interested in said district, either as tax payers or as bond holders; and upon the payment of any bond an entry thereof shall be made in said book. The county treasurer shall receive for his services in recording all bonds and other instruments of the levee improvement district the same fees as are now provided by law for the county clerk for recording deeds. (Acts 1909, p. 140, sec. 26; Acts 1915, ch. 146, sec. 27.)

Art. 5556. Sale of bonds; disposition of proceeds.—When such bonds have been registered as provided for in this Act, the county commissioners court may appoint the county judge or some other suitable person to sell said bonds on the best terms and for the best price possible; and as fast as said bonds are sold all money received therefrom shall be paid into the county treasurer and shall by him be placed to the credit of such levee improvement district. (Acts 1909, p. 140, sec. 27; Acts 1915, ch. 146, sec. 28.)

Art. 5557. County judge to give bond before selling bonds.—Before the county judge or such other person as may be appointed by the commissioners court shall be authorized to sell any of said improvement bonds, the county judge or other person so appointed shall execute a good and sufficient bond, payable to the supervisors of such levee improvement district, to be approved by the commissioners court of said county, for an amount not less than the amount of the bonds issued, conditioned upon the faithful discharge of his duty, and the person selling said bonds shall be allowed one-half of one per cent of the amount received for the sale of the bonds sold by him in full payment for his services. (Acts 1909, p. 140, sec. 28; Acts 1915, ch. 146, sec. 29.)

Art. 5558. Expenses, how paid; fund.—If the said district shall issue bonds as herein provided for the construction of the improvements authorized by this Act, all proper expenses incurred by said district from and after its creation shall be paid out of the construction and maintenance funds of said district, which funds shall consist of all moneys or property received by such district, whatsoever the source, except tax collections applied to sinking funds and the payment of interest on the district bonds.

(Acts 1909, p. 140, sec. 29; Acts 1915, ch. 146, sec. 30.)

Art. 5559. [Repealed.]

See arts. 5532a, 5541a, 5584d.

Art. 5560. Tax to be levied; sinking fund to be invested; redemption of bonds.—Whenever any such district bonds shall have been voted, the commissioners court shall levy and cause to be assessed and collected taxes upon all property within said improvement district, whether real, personal or mixed, or otherwise, and sufficient in amount to pay the interest on such bonds as it shall fall due, together with an additional amount to be placed annually in the sinking fund, sufficient to discharge and redeem said bonds at their maturity. If advisable, the sinking fund shall, from time to time, be invested in such county, municipal, district or other bonds as shall be approved by the Attorney General of the State. If any bonds shall be offered for payment and redemption before the date of their maturity, it shall be the duty of the county judge of the county, and the county treasurer, to pay and redeem same upon request of the district supervisors, if there be at the time a sufficient amount of money in said sinking fund for that purpose. (Acts 1909, p. 140, sec. 31; Acts 1915, ch. 146, sec. 31.)

Art. 5561. County assessor to assess property; compensation; failure to assess cause for removal.—The county commissioners court shall provide all necessary additional books for the use of the assessor and collector of taxes, and the county treasurer, for such levee improvement district, and charge the cost of same to the said district. It shall be the duty of the county tax assessor, when ordered to do so by the commissioners court, to assess all property within such district and list the same for taxation in the books or rolls furnished by the said commissioners court for that purpose, and return said books or rolls at the same time when he returns the other books or rolls of the State and county taxes for correction and approval. If the said commissioners court shall find said books or rolls correct, they shall approve the same and order the county clerk to issue a warrant against the county treasurer in favor of said tax assessor, to be paid from the funds of said district. The tax assessor shall receive for his services such compensation as the said county commissioners court shall deem proper for the amount of work done; provided, that the said county assessor shall in no event be allowed more than he is now allowed by law for like services. Should the tax assessor fail or refuse to comply with the orders of the commissioners court requiring him to assess and list for taxation all property in such improvement district as herein provided, he shall be suspended from the further discharge of his duty by the commissioners court of his county, and he shall be removed from office in the mode prescribed by law for the removal of county officers. (Acts 1909, p. 140, sec. 32; Acts 1915, ch. 146, sec. 32.)

Art. 5562. Duties of tax collector; compensation; additional bond.—The tax collector of the county shall be charged by the county commissioners court with the assessment rolls of the levee improvement district, and he shall be allowed such compensation for the collection of such taxes as he is now allowed for the collection of other taxes. The county commissioners court shall require the tax collector of the county to give an additional bond of security in such sum as they may deem proper and safe, to secure the collection of said taxes; and should any collector of taxes fail or refuse to give such additional bond or surety as herein provided when required by the commissioners court within the time prescribed by law for such purposes, he shall be suspended from office by the commissioners court of his county, and immediately thereafter be removed from office in the mode prescribed by law. All bonds required by this Act to be given, except as herein otherwise specified, shall be made payable to the county judge for the benefit of the levee improvement district. (Acts 1909, p. 140, sec. 33; Acts 1915, ch. 146, sec. 33.)

Art. 5563. Delinquent taxes to be collected as other taxes.—It shall be the duty of the tax collector to make a certified list of all delinquent property upon which the improvement taxes have not been paid, and return the same to the county commissioners court, and the said court shall proceed to have said taxes collected by sale by the collector, or by suit, in the same manner as now provided for the collection of delinquent State and county taxes; and at any sale of such property for such delinquent taxes the district supervisors may become the purchasers of the same for the benefit of the said district. (Acts 1909, p. 140, sec. 34; Acts 1915, ch. 146, sec. 34.)

Art. 5564. County treasurer to keep account; disbursements.—It shall be the duty of the county treasurer to open an account with the levee improvement district, and to keep an accurate account of all moneys received by him belonging to such district, and all moneys paid out by him. He shall pay out no money except upon a voucher signed by two of the district supervisors and countersigned by the county judge, and he shall carefully preserve all orders for the payment of money; and as often as required by the said district supervisors or the commissioners court he shall render a correct account to them on all matters pertaining to the financial condition of such district. (Acts 1909, p. 140, sec. 35; Acts 1915, ch. 146, sec. 35.)

Art. 5565. Penalties; tax a lien; general law as to assessment and collection of taxes to apply.—All taxes levied or authorized to be levied by this Act shall be payable and shall mature and become delinquent as is provided by the laws of this state, for state and county taxes, and upon the failure to pay such taxes when due, the same penalties shall accrue and be collected as are provided by the laws of the State of Texas for the non-payment of state and county taxes. All taxes shall be a lien upon the property against which such taxes are assessed. In the assessment and collection of the taxes levied or authorized to be levied by this Act, the assessor and collector of taxes shall, respectively, have the same powers and shall be governed by the same rules and regulations as are provided by the laws of the state of Texas for the assessment and collection of state and county taxes, unless herein otherwise provided. (Acts 1909, p. 140, sec. 36; Acts 1915, ch. 146, sec. 36.)

Art. 5566. Treasurer to give additional bond; compensation.—The county treasurer shall execute a good and sufficient bond payable to the district supervisors and their successors in office, and in the county where such district is located, in a sum equal to one and one-fourth the amount of the bonds issued, conditioned upon the faithful performance of his duty as treasurer of such district, which bond shall be approved by the district supervisors; and the treasurer shall be allowed as compensation for his services as such treasurer one-half of one per cent. Such treasurer may make said bond with any guaranty or surety company which may be approved by such district supervisors, and the premiums due such guaranty or surety company making said bond shall be paid out of the maintenance fund of the district, and shall not be a charge against the county treasurer. (Acts 1909, p. 140, sec. 37; Acts 1915, ch. 146, sec. 37.)

Art. 5567. Power of eminent domain; condemnation proceedings; damages, how paid.—The right of eminent domain is hereby expressly conferred upon all levee improvement districts established under the provisions of this Act, for the purpose of enabling such districts to acquire the fee simple title, easement or right of way to, over and through any and all lands, waters, or lands under waters, private or public (except land and property used for cemetery purposes), within, bordering upon, adjacent or opposite to such districts, necessary for making, constructing and maintaining all levees and other improvements for the improvement of a river or rivers, creek or creeks, or streams, within or bordering upon such districts, to prevent overflows thereof. In the event of the condemnation, or the taking, damaging or destroying of any property for such purposes, the improvement district shall pay to the owner thereof adequate compensation for the property taken, damaged or destroyed. All condemnation proceedings or suits in the exercise of eminent domain under this Act shall be instituted under the direction of the district supervisors, and in the name of the levee improvement district, and all suits or other proceeds for such purposes and for the assessing of damages, and all procedure with reference to condemnation, the assessment of and estimating of damages, payment, appeal, the entering upon the property pending the appeal, etc., shall be in conformity with the statutes of this state for the condemning and acquiring of right of way by railroad companies, and all such compensation and damages adjudicated in such condemnation proceedings, and all damages which may be done to the property of any person or corporation in the construction and maintenance of levees or other improvements under the provisions of this Act shall be paid out of any funds or properties of said levee improvement district, except taxes necessarily applied to the payment of the sinking fund and the interest on the district bonds. (Acts 1909, p. 140, secs. 38, 39; Acts 1915, ch. 146, sec. 38.)

Art. 5568. Supervisors may acquire right of way or other improvement.—The district supervisors of any district are hereby empowered to acquire the necessary right-of-way for all levees and other necessary improvements contemplated by this Act, by gift, grant, purchase or condemnation proceedings; and they may by the same methods acquire any levees or other improvements already constructed, and if acquired by gift, grant or purchase, such acquisition shall be subject to the approval of the County Commissioners Court. (Acts 1909, p. 140, sec. 41; Acts 1915, ch. 146, sec. 39.)

For sections 40, 41, of Acts 1915, ch. 146, see Penal Code, arts. 1254, 1254a.

Art. 5568a. Supervisors and other officers not liable for trespass.—The district supervisors of any levee improvement district, and the district engineer and his assistants, from the time of their appointments, and the state reclamation engineer and his deputies, are hereby authorized to go upon any lands or waters for the purpose of examining the same and locating all levees and other improvements, making plans, surveys, maps and profiles, together with all necessary teams, help and instruments, without subjecting themselves to an act of trespass * * *. (Id. sec. 42.)

See Penal Code, art. 342.

Art. 5569. Duty of supervisors to make repairs.—It shall be the duty of the district supervisors, and they are hereby authorized, to keep the levees and other improvements made or acquired under the provisions of this Act in repair. (Acts 1909, p. 140, sec. 42; Acts 1915, ch. 146, sec. 43.)

Art. 5569a. Tax for upkeep of levees previously constructed.—In all such levee improvement districts heretofore created under any law of this state, or that may hereafter be created, the commissioners courts of the respective counties are hereby authorized to levy and cause to be assessed and collected, for the maintenance and upkeep of the levees and other improvements in such districts, an annual tax not to exceed fifty cents on the one hundred dollars valuation upon all the property, real, personal and mixed within the said district. (Id. sec. 44.)

Art. 5570. Contracts let to lowest bidder; separate sections or parts of work.—Contracts for making and constructing levees and other improvements and all necessary work in connection with any levee improvement district, shall be let by the district supervisors to the lowest bidder, after giving notice by advertising the same in one or more newspapers of general circulation in the state of Texas once a week for four consecutive weeks, and by posting notices for at least thirty days in five public places in the county, one of which shall be at the courthouse door, and at least two of which shall be within said district; and the contract for such levees and other improvements may be let in separate sections or parcels, or all together; provided, that all the improvements included in the report of the district engineer and approved by the State Reclamation Engineer, as provided for in this Act, shall be constructed. (Acts 1909, p. 140, sec. 43; Acts 1915, ch. 146, sec. 45.)

Art. 5571. Bids, how submitted.—Any person or corporation or firm desiring to bid on the construction of any work advertised as provided for in this Act, shall, upon application to the district supervisors, be furnished a copy of the engineer's report, showing location, profiles and estimates of such work, as is provided for in this Act, provid-

ed such person shall pay the district supervisors for making same; and all bids or offers to do any work shall be in writing, and shall be sealed and delivered to the chairman of the district supervisors, together with a certified check for at least two (2) per cent of the total amount bid, which shall be forfeited to the district in case the bidder refuses to enter into the proper contract if his bid is accepted, and any and all bids may be rejected by the said supervisors. (Acts 1909, p. 140, sec. 44; Acts 1915, ch. 146, sec. 46.)

Art. 5572. Contracts to be in writing and approved; filing.—All contracts made by the district supervisors shall be reduced to writing and signed by the contractor and the supervisors, and approved by the county judge, and a copy of same shall be filed with the clerk of the County Commissioners Court for reference. (Acts 1909, p. 140, sec. 45; Acts 1915, ch. 146, sec. 47.)

Art. 5573. Contractor's bond.—The party, firm or corporation to whom any such contract is let shall give bond, payable to the district supervisors for said district, and in the county where said district is located, in the amount of the contract price, conditioned that he, they or it will faithfully perform the obligations, agreements and covenants of their contracts, or in default thereof will pay to said district all damages sustained by reason thereof. Said bond shall be approved by the supervisors and the County Judge. (Acts 1909, p. 140, sec. 46; Acts 1915, ch. 146, sec. 48.)

Art. 5574. District engineer to furnish profiles and supervise work; report to supervisors.—The district engineer shall furnish the contractor with a sectionized profile of the work contracted for, showing the height, width and slope, brim and location, of all levees, and the number of cubic yards of earth to be removed and other work to be done by the contractor, together with drawn plans and specifications for such work, and such work shall be done by the contractor under the supervision of said district engineer and district supervisors, who shall indicate to the said contractor the beginning point and termination of all levees and other improvements called for by said contract, and when such work is completed according to the contract the district engineer shall make a detailed report of the same to the district supervisors, showing whether the contract has been fully complied with according to its terms, and if not, in what particulars it has not been complied with. (Acts 1909, p. 140, sec. 47; Acts 1915, ch. 146, sec. 49.)

Art. 5575. Construction over railroad right of way.—The said district supervisors are hereby authorized and empowered to make all the necessary levees, bridges and other improvements across or under any railroad embankments, tracks or rights of way, or public or private roads or the rights of way thereof, or levees or other improvements of other districts, or other such improvements and the rights of way thereof, or to join such improvements thereto, for the purpose of enabling the said district supervisors to construct and maintain any or all of the improvements necessary for the said district; provided, however, that notice shall first be given by said district supervisors to the proper railroad authorities or other authorities or persons, relative to the additions or changes to result from the improvements contemplated by said supervisors, and the said railroad authorities or other authorities, or persons, shall be given thirty days in which to agree to the said work, or to refuse to agree thereto, or in which they, if they so desire, may at their own expense construct the said improvements in their own manner; provided, such design or manner of construction shall be satisfactory to the said district supervisors and approved by the State Reclamation Engineer or his deputy. But if the said authorities or persons shall refuse to permit the said improvements to be made by said district, or shall refuse to make them at their own expense, then the said district supervisors shall proceed by due process of law, as provided in this Act. (Acts 1909, p. 140, sec. 48; Acts 1915, ch. 146, sec. 50.)

Art. 5576. Payment of warrants.—The said district supervisors shall have the right, and it is hereby made their duty, at all times during the progress of the work being done under contract, to inspect the same, and upon the completion of any contract to their satisfaction, and when they have accepted the improvements as completed according to contract, they shall draw a warrant on the County Treasurer for the amount of the contract price, or so much thereof as remains unpaid at that time, in favor of the contractor or his assigns, which warrant shall, when approved by the County Judge, be paid out of the improvement funds of said district. (Acts 1909, p. 140, sec. 49; Acts 1915, ch. 146, sec. 51.)

Art. 5577. Partial payments.—If the said district supervisors shall deem it advisable, in order to obtain more favorable contracts, they may advertise and contract for work to be paid in partial payments as the work progresses; but such partial payments shall not exceed in the aggregate seventy-five per cent. of the amount to be paid under the contract, the amount of work completed to be shown by a certified report of the district engineer, and no payment to be made for work not completed. (Acts 1909, p. 140, sec. 50; Acts 1915, ch. 146, sec. 52.)

Art. 5578. Annual report of supervisors.—The district supervisors shall make an annual report of their acts as such supervisors, and file the same with the clerk of the County Commissioners Court on or before the first day of January of each year; which report shall show in detail the kind, character and amount of work done in the district, the cost of the same, and other data necessary to show the condition of the improvements made under the provisions of this Act. (Acts 1909, p. 140, sec. 51; Acts 1915, ch. 146, sec. 53.)

Art. 5579. Employment of attorneys.—The district supervisors are hereby empowered and authorized to employ counsel to represent such districts in the preparation of any contracts, or in the conduct of any proceedings in or out of court, and to be the legal advisers of such district supervisors upon such terms and for such fees as may be agreed upon by them and approved by the County Judge, and such supervisors may draw a warrant in payment of such legal services to be paid out of the funds of said district upon the approval by the County

Judge. (Acts 1909, p. 140, sec. 52; Acts 1915, ch. 146, sec. 54.)

For section 55 of Acts 1915, ch. 146, see Penal Code, art. 378.

Art. 5580. Districts may acquire property; may sue and be sued.—Any levee improvement district established under this Act may acquire property, and through the district supervisors may sue and be sued in all the courts of this state in the name of such district, and all courts of this state shall take judicial notice of the existence of such districts. (Acts 1909, p. 140, sec. 54; Acts 1915, ch. 146, sec. 56.)

Art. 5581. Prevention of obstruction of stream space; may lease land acquired.—The district supervisors, for the purpose of protecting any levees or other improvements constructed under the authority of this Act, shall be authorized to keep the space between any levees or other improvements, and the stream or streams the overflow of which is intended to be prevented, free and clear from all obstructions, and if any district should, by gift, purchase or condemnation, become the owner of any such land, or any other land not needed and used for the purposes of the district, the said district supervisors shall have authority to lease any such land for any purpose which shall not interfere with the work or use of such district, on such terms and for such rental as said district supervisors may see fit, and all moneys received therefrom shall be paid to the County Treasurer for the use of said district. (Acts 1909, p. 140, sec. 55; Acts 1915, ch. 146, sec. 57.)

Art. 5582. May let use of levees; cost of maintenance of levee.—The district supervisors shall have the authority, with the consent of the County Judge, to let the use of any levee for a public highway, or street or railway, upon such terms as the district supervisors, the State Reclamation Engineer or his deputy and the County Judge shall deem proper; but provision shall be made in any such contract for the payment of an equitable portion of the cost and expense of thereafter maintaining such levee in good condition for the purposes for which such levee was constructed; and any money received for such rental use shall be paid to the County Treasurer for the use of such district. (Acts 1909, p. 140, sec. 56; Acts 1915, ch. 146, sec. 58.)

Art. 5583. Supervisors may sell material and equipment.—The district supervisors shall have authority to sell any and all material or equipment acquired by the district and not needed for the construction or maintenance of the improvements authorized under the provisions of this Act pertaining to the district, and any money received from the same shall be paid to the County Treasurer for the use and benefit of the district. (Acts 1909, p. 140, sec. 57; Acts 1915, ch. 146, sec. 59.)

Art. 5584. May sell land acquired in fee.—The district supervisors, with the consent of the Commissioners Court, shall have authority to sell and convey any land, the fee of which has been acquired by such district by purchase, gift or condemnation, upon such terms as the said district supervisors and the County Judge may deem best for the district, and the money received from any such sale shall be paid to the County Treasurer for the use of the district. The deed of conveyance of such land shall be executed by the chairman of such district supervisors in the name of the district. (Acts 1909, p. 140, sec. 58; Acts 1915, ch. 146, sec. 60.)

Art. 5584a. Improvements not to be constructed without approval of State Reclamation Engineer; injunction.—From and after the taking effect of this Act it shall be unlawful for any levee improvement district, whether it proposes to construct its levees or other improvements with or without the issuance of bonds, to construct, to undertake to construct, or maintain any levee or other improvements, without first obtaining the approval by the State Reclamation Engineer, as provided in this Act, of the plans for such levees or other improvements; and in the event any such levee improvement district undertakes to construct, constructs or maintains any levee or other improvement without first obtaining the approval of the State Reclamation Engineer of the plans for the same, as provided in this Act, it shall be the duty of the Attorney General, on the request of the State Reclamation Engineer, to file suit in one of the district courts of Travis county, Texas, in which the venue of such suits is hereby fixed, to enjoin the construction or maintenance of such levee or other improvement. (Id. sec. 61.)

For sec. 62 of this act see Penal Code, art. 342a.

Art. 5584b. Laws not repealed.—This Act shall not be construed to repeal any of the provisions of Chapter 118, General Laws of the Thirty-second Legislature, Regular Session, entitled "Drainage Districts—Authorizing the Commissioners Courts of the Several Counties of the State to Establish Same," nor of Chapter 36, General Laws, Thirty-third Legislature, First Called Session, entitled, "Drainage Districts—Amending Sections 7, 8, 23, 29, 36 and 61, Chapter 118, General Laws, Regular Session, Thirty-second Legislature, Relating Thereto," nor any of the irrigation laws of this State. (Id. sec. 63.)

See ante, arts. 2567-2625.

Art. 5584c. Validation of bonds issued under former act.—All bonds heretofore issued by any levee improvement district organized and created under Chapter 2, Title 83, Revised Civil Statutes of 1911, or other law, which have been approved by the Attorney General and registered by the Comptroller, are hereby in all things validated and declared to be valid and binding obligations of the districts by which such bonds were issued. (Id. sec. 64.)

Art. 5584d. Repeal.—Chapter 85, General Laws of the State of Texas, passed by the Thirty-first Legislature, Regular Session, entitled "An Act to authorize the Commissioners Court of the several counties in Texas to create and establish improvement districts to prevent overflows and to construct and maintain levees and other improvements on rivers, creeks and streams to prevent overflows, etc., etc., and declaring an emergency," is hereby expressly repealed, and all other laws and parts of laws in conflict with the provisions of this Act are also hereby expressly repealed. (Id. sec. 65.)

CHAPTER TWO A

IMPROVEMENT DISTRICTS IN ONE OR MORE COUNTIES

Art. 5584½. District may be created; purposes of.—There may be created within this State conservation and reclamation districts, to be known as Levee Improvement Districts, for the purpose of constructing and maintaining levees and other improvements on, along and contiguous to rivers, creeks and streams, for the purpose of reclaiming lands from overflow from such streams, and for the proper drainage and other improvement of such lands, all as contemplated by Section 59, Article 16, of the Constitution of this State, for the conservation and development of the natural resources of this State, which said districts shall have and may exercise all the rights, powers and privileges given by this Act, and in accordance with its directions, limitations and provisions. (Acts 1918, 4th C. S., ch. 44, sec. 1.)

Art. 5584½a. Petition; for creation of district wholly within one county, contents; for creation of district in two or more counties, contents; hearing on petition; order and notice.—When it is proposed to create a levee improvement district wholly within one county there shall be presented to the commissioners' court of the county in which the lands to be included in such district are located, or to the county judge of the county if the commissioners' court is not in session, a petition signed by the owners of a majority of the acreage of such proposed district, setting forth the proposed boundaries thereof, the general nature of the work proposed to be done, the necessity therefor and the feasibility thereof, and designating a name therefore, which shall include the name of the county in which it is situated, which petition shall be accompanied by a deposit of fifty dollars; and when it is proposed to create such a district to be composed of lands in two or more counties then a petition of the nature above indicated, signed by the owners of a majority of the acreage of such proposed district, shall be presented to the commissioners' court of the county, or, if the court is not in session, to the county judge thereof, in which is located the greater amount of acreage of such proposed district, which shall be the county of jurisdiction in respect to all matters concerning said district, and the name of which county shall be included in the name of such district; and, upon presentation of either such petition, it shall be the duty of the court to which it is presented, or the county judge of such county if the court be not in session, to fix a time and place at which such petition shall be heard before the commissioners' court of the county wherein it is filed, which date shall be not less than fifteen nor more than thirty days from the date of the order, and to order and direct the county clerk of such county, as ex officio clerk of the commissioners' court thereof, to issue a notice of such time and place of hearing, which notice shall inform all persons concerned of the time and place of hearing and of their right to appear at such hearing and contend for or contest the formation of such district, as their interests may dictate, and to deliver notice to any adult person who is willing to execute the same by posting, as hereinbefore directed. The order shall further direct the clerk forthwith to issue a notice of the filing of such petition and of its general purport, stating the time and place of hearing, which shall be mailed forthwith to the State Reclamation Engineer at his office in Austin, Texas. (Id. sec. 2.)

Art. 5584½aa. Same subject; posting copy.—Upon receipt of the notice above provided for by any adult person willing to receive and execute the same, it shall be the duty of such person, or persons, if more than one shall act, if the district is wholly within a county, to post a copy of such notice at the door of the court house of said county, and copies at four different places within such proposed district; and if the district be composed of more than one county then there shall be posted a copy of such notice at the door of the court house of each county in which any portion of the proposed district is located, and four copies in four different places within the boundaries of the proposed district and within each county in which any portion of the lands to be included in said district is located. Such posting shall be for not less than ten days prior to the date fixed for the hearing, and the person, or persons, so posting shall make affidavit, before some officer authorized by law to administer oaths, of his, or their, action in respect to such posting, and such affidavit when so made shall be conclusive of the facts sworn to. (Id. sec. 3.)

Art. 5584½aaa. Same subject; deposit accompanying.—A petition for the formation of such a district, if the district is wholly within one county, shall be accompanied by a deposit of fifty dollars, and if the district is proposed to be located in more than one county it shall be accompanied by a deposit of seventy-five dollars, which deposit shall be paid to the clerk of the court of jurisdiction, who shall therefrom, upon vouchers approved by the county judge, pay all expenses incident to the hearing herein provided for, returning any excess to the petitioners or their attorney. (Id. sec. 4.)

Art. 5584½b. Examination of proposed district by State Reclamation Engineer.—The State Reclamation Engineer, upon receipt of the notice to him herein provided for, shall forthwith, by himself, or deputy, examine said proposed district and do, or cause to be done, such work in respect thereto as may be necessary to enable him to determine the necessity, feasibility and probable costs of reclaiming the lands of such districts from overflows, and the proper drainage thereof, together with the costs of organizing such district and the maintenance thereof for a period of two years, and he shall, by himself or deputy, attend the hearing and file his written report in respect to the matters concerning which he has investigated, and give to the court such further additional information as may then be required. (Id. sec. 5.)

Art. 5584½bb. Hearing on petition; contests; jurisdiction of commissioners' court.—At the time and place set for the hearing of the petition, or such subsequent date as may then be fixed, the court shall proceed to hear such petition and all issues in respect to the creation of such proposed

district, and any person interested may appear before the court in person or by attorney and contend for or contest the creation of such district, and offer testimony pertinent to any issue presented. Such court shall have exclusive jurisdiction to determine all issues in respect to the creation, or not, of such district, and of all subsequent proceedings in respect to said district if the same should be created. Such hearing may be adjourned from day to day and from time to time, as the facts may require. The court shall have power to make all incidental orders deemed proper in respect to the matters before it. (Id. sec. 6.)

Art. 5584½bbb. Judgment and order creating district; district to be governmental agency and body corporate; general powers.—If, upon the hearing of such petition, it be found that the same is signed by the owners of a majority of the acreage of the proposed district, and that due notice has been given, and that the proposed improvements are desirable, feasible, and practicable, and would be a public utility and a public benefit, and would be conducive to public health, then such court shall so find and render judgment reciting such findings and creating and establishing such district, which judgment and findings shall be embodied in an order which shall be entered of record in the minutes of said court, which order shall define the boundaries of such district, which need not include all of the lands described in the petition, if, upon the hearing, a modification or change is found necessary or desirable. A levee improvement district created as herein specified shall be a governmental agency and a body politic and corporate, with such powers of government and with the authority to exercise such rights, privileges and functions concerning the purposes for which it is created as may be conferred by this Act, or any other law of this State to the benefits of which it may become entitled. (Id. sec. 7.)

Art. 5584½c. Works of improvement; powers of district as to; bonds and indebtedness.—Levee improvement districts created under this Act or entitled to the benefits of its provisions, subject to the supervision and direction of the State Reclamation Engineer, or other superior authority created by law, and subject to the limitations in this Act contained, shall have full power and authority to build, construct, complete, carry out, maintain, protect, and, in case of necessity, add to and rebuild, all works and improvements within their district necessary or proper to fully accomplish any plan of reclamation lawfully adopted for or on behalf of such district, and may make all necessary and proper contracts, and employ all persons and means necessary or proper to that end; and in the accomplishment of such purposes they may or may not issue bonds, and may or may not incur indebtedness; provided, that no bonds by or on behalf of such district shall be issued nor shall any indebtedness against the same be incurred unless the proposition to issue such bonds or to incur such indebtedness shall be first submitted to the qualified property tax paying voters of such district, and the proposition adopted by a majority vote of the tax paying voters of the district voting at an election held to determine such question; and no enumeration of specific powers in this Act shall be held to be a limitation upon the general powers hereby conferred except as may be distinctly expressed. (Id. sec. 8.)

Art. 5584½cc. Power of eminent domain; procedure.—The right of eminent domain is hereby expressly conferred upon all levee improvement districts established under the provisions of this Act, for the purpose of enabling such districts to acquire the fee simple title, easement or right of way to, over and through and any all lands, waters, or lands under waters, private or public (except land and property used for cemetery purposes), within, bordering upon, adjacent or opposite to such districts, necessary for making, constructing and maintaining all levees and other improvements for the improvement of a river or rivers, creek or creeks, or streams, within or bordering upon such districts, to prevent overflows thereof. In the event of the condemnation, or the taking, damaging or destroying of any property for such purposes, the improvement district shall pay to the owner thereof adequate compensation for the property taken, damaged or destroyed. All condemnation proceedings or suits in the exercise of eminent domain under this Act shall be instituted under the direction of the district supervisors, and in the name of the levee improvement district, and all suits or other proceedings for such purposes and for the assessing of damages, and all procedure with reference to condemnation, the assessment of and estimating of damages, payment, appeal, the entering upon the property pending the appeal, etc., shall be in conformity with the statutes of this State for the condemning and acquiring of right of way by railroad companies, and all such compensation and damages adjudicated in such condemnation proceedings, and all damages which may be done to the property of any person or corporation in the construction and maintenance of levees or other improvements under the provisions of this Act shall be paid out of any funds or properties of said levee improvement district, except taxes necessarily applied to the payment of the sinking fund and the interest on the district bonds. (Id. sec. 9.)

Art. 5584½ccc. Rights of way; power to acquire.—The district supervisors of any district are hereby empowered to acquire the necessary right of way for all levees and other necessary improvements contemplated by this Act, by gift, grant, purchase or condemnation proceedings; and they may by the same methods acquire any levee or other improvements already constructed. (Id. sec. 10.)

Art. 5584½d. Entry upon lands; power of supervisors, etc.—The supervisors of any district and the engineer and employees thereof are hereby authorized to go upon any lands lying within or adjacent to said district for the purpose of examining same with reference to the location of levees, drainage ditches and all other kinds of improvements to be constructed for or within such district, and for any other lawful purpose connected with their plan of reclamation, whether herein enumerated or not. (Id. sec. 11.)

Art. 5584½dd. Levees, bridges, etc., across or under railroad tracks, etc., or

public or private roads.—The said levee improvement districts are hereby authorized and empowered to make all the necessary levees, bridges and other improvements across or under any railroad embankment, tracks, or rights of way, or public or private roads or the rights of way thereof, or levees or other public improvements of other districts, or other such improvements and the rights of way thereof, or to join such improvements thereto, for the purpose of enabling the said levee improvement districts to construct and maintain any or all of the improvements necessary for the said district; provided, however, that notice shall first be given by said levee improvement district to the proper railroad authorities or other authorities or persons, relative to the additions or changes to result from the improvements contemplated by the said levee improvement district; and the said railroad authorities or other authorities, or persons, shall be given thirty days in which to agree to the said work, or to refuse to agree thereto, or in which they, if they so desire, may at their own expense construct the said improvements in their own manner; provided, such design or manner of construction shall be satisfactory to the said levee improvement district and approved by the State Reclamation Engineer or his deputy. (Id. sec. 12.)

Art. 5584½ddd. Rights of way across public or county roads.—Levee improvement districts are hereby given the right of way across all public or county roads, but they shall restore such roads where crossed to their previous condition for use, as near as may be. (Id. sec. 13.)

Art. 5584½e. Joint action with other districts, etc.—Levee improvement districts shall have authority to act jointly with each other, with political subdivisions of the State, with other States, and with the Government of the United States, in the performance of any of the things permitted by this Act; such joint acts to be done upon such terms as may be agreed upon by their supervisors, subject to the approval of the State Reclamation Engineer. (Id. sec. 14.)

Art. 5584½ee. District supervisors; appointment; qualifications; duties; compensation; terms of office; vacancies in office.—When a levee improvement district has been created under this Act the court creating the same shall forthwith appoint by a majority vote three supervisors for such district, who shall be known as "district supervisors," and who shall be owners of real property within such district, and whose duties shall be as hereinafter provided. Said supervisors shall each receive for his services not more than five dollars per day for the time actually engaged in work for said district and all expenses while so engaged, to be paid upon rendition of sworn accounts, approved by the county judge of the county having jurisdiction; and they shall hold their offices for two years, and until their successors are appointed and qualified, unless sooner removed by a majority vote of the court of jurisdiction; and any vacancy in office shall be filled by a majority vote of the court having jurisdiction, which court shall continue from time to time to appoint supervisors in order that the board may always be full. (Id. sec. 15.)

Art. 5584½eee. Same subject; oaths and bonds.—Before entering upon their duties the district supervisors shall each take and subscribe before some officer authorized to administer oaths, an oath to faithfully and impartially discharge his duties as supervisor and render true accounts of his services and expenses, and each shall enter into bond with good and sufficient security, payable to the levee improvement district, in the sum of one thousand dollars, unless the court of jurisdiction shall fix a larger amount, which it may do when in its judgment the interests of the district may so require, which bond shall be conditioned for the faithful performance of the duties of such supervisor and that he will render true accounts of his services and expenses, which bond shall be approved by the county judge of the county the commissioners' court of which has jurisdiction, and shall be filed with the clerk of the court having jurisdiction and by him entered of record in his office, and the original bond shall be retained on file. (Id. sec. 16.)

Art. 5584½f. Same subject; organization; officers; district engineer.—District supervisors, after their qualification, shall organize by electing one of their number chairman and one vice-chairman, and shall elect a secretary, who need not be a member of the board; and an engineer and such other employees or assistants as may from time to time be found necessary to the successful carrying on and completion of the work and business of the district; they shall certify their organization and the name of their engineer, who shall be known as "district engineer," to the commissioners' court of the county having jurisdiction. (Id. sec. 17.)

Art. 5584½ff. District engineer; powers and duties; report; plan of reclamation.—The district engineer, subject to the authority of the State Reclamation Engineer, shall have control of the engineering work of the district, and shall, with such assistants as may be necessary in the judgment of the board of supervisors, as soon as practicable after his appointment, make a survey of the lands within the boundaries of the district and of all lands adjacent thereto that will be improved or reclaimed, in whole or in part, by any system of levees and drainage that may be adopted; and shall make report in writing to the board of supervisors of his work in this regard, with maps and profiles of his surveys, which report shall contain a full and complete plan for draining, constructing levees and reclaiming the lands of the district from overflow of or damage by water from the streams in or adjacent to such district, and whose waters may in anywise affect the same, which plan may include, and where necessary shall include, costs of straightening streams from which injury to the lands of said district may result; and shall also in such report indicate the physical characteristics of the lands within the district, the location of any public roads, railroads, or the rights of way or roadways and other property or improvements located on said lands; a duplicate of which report shall be filed with the State Reclamation Engineer, for his approval. Such report before adoption may be modified by the State Reclamation Engineer, or by the board of supervisors, with his approval, and when approved by the State

Reclamation Engineer and adopted by the board of supervisors, the same shall be known as and shall be designated as "The plan of reclamation." (Id. sec. 18.)

Art. 5584½fff. Commissioners of appraisement; appointment; qualifications.—As soon after the approval and adoption of the plan of reclamation as practicable the board of district supervisors shall appoint three disinterested commissioners who shall be known as "commissioners of appraisement," and who shall be freeholders but not owners of land within the district for which they are to act, and neither shall be related within the fourth degree of affinity or consanguinity to either of the district supervisors; and such commissioners of appraisement shall proceed as follows: (Id. sec. 19.)

Art. 5584½g. Same subject; notice to of appointment; oaths of office; organization; secretary.—The secretary of the board of supervisors, immediately following the appointment of the commissioners above mentioned shall in writing notify each of his appointment, and in the notice designate a time and place for the first meeting of such commissioners; it shall be the duty of the commissioners to meet at the time and place specified, or as soon thereafter as may be found practicable at some time and place to be agreed upon by them, when they shall each take and subscribe an oath that they will faithfully and impartially discharge their duties as such commissioners, and make true report of the work done by them, and at such meeting the commissioners shall organize by electing one of their number chairman and one vice chairman, and the secretary of the board of supervisors, or, in his absence, such person as the board of supervisors may appoint, shall be secretary of said board of commissioners during their continuance in office, and shall furnish to them such information and such assistance as may be within his power and necessary to the performance of their duties. (Id. sec. 20.)

Art. 5584½gg. Same subject; view of land; assessment of benefits and damages; report of findings; contents.—Within thirty days after qualifying and organizing, as above directed, the commissioners shall begin their duties, and they may at any time call upon the attorney of the district for legal advice and information relative to such duties, and may, if necessary, require the presence of the district engineer, or one of his assistants, at such times and for so long as may be necessary to the proper performance of their duties. Said commissioners shall proceed to view the lands within such district, or that will be affected by the plan of reclamation for such district, if carried out, and all public roads, railroads, rights of way and other property or improvements located upon such lands, and all such lands without the district as may be acquired under the provision of this Act for any purpose connected with or incident to the fully carrying out of the plan of reclamation; they shall assess the amounts of benefits and all damages, if any, that will accrue to any tract of land within such district, or to any public highway, railroad, and other rights of way, roadways or other property, from carrying out and putting into effect the plan of reclamation for such district. The board shall prepare a report of their findings, which shall show the owner of each piece of property examined, and on or concerning which any assessment is made, together with such description of said property as may identify the same, with the amount of damages and all benefits assessed for and on account of or against the same, as well as the value of all property to be taken or acquired for rights of way or any other purpose connected with the carrying out of the plan of reclamation as finally approved by the State Reclamation Engineer; which report shall be signed by at least a majority of the commissioners and filed with the secretary of the board of supervisors of the district, which report shall also show the number of days each commissioner has been employed and the actual expenses incurred by each during his service as commissioner; and each shall be paid by the district five dollars per day for his services, and all necessary expenses in addition thereto, upon the approval of his accounts for such per diem and expenses by the board of supervisors. Said commissioners shall in their report fix a time and place when and where they will hear objections thereto, and such date shall be not less than twenty days from the filing of such report. (Id. sec. 21.)

Art. 5584½ggg. Hearing on report of commissioners; notice of.—When the report of the commissioners shall have been field [filed] with the secretary of the board of supervisors he shall forthwith give notice by publication in a newspaper published in each county wherein any portion of the district is located, for at least once a week for two consecutive weeks prior to the date fixed for such hearing, of the time and place of such hearing, and he shall also mail a written notice to each person whose property will be in anywise affected by the carrying out of the plan of reclamation, if his post office is known, stating the time and place of such meeting, which notice shall state in substance that the report of the commissioners to assess benefits and damages accruing to the land and other property by reason of the plan of reclamation for the district in question has been filed in his office, and that all persons interested may examine the same and make objections thereto in whole or in part, and that the commissioners will meet on the day and at the place named for the purpose of hearing and acting on objections to such report; and the secretary upon the day of the hearing shall file in his office the original notice, with his affidavit thereto, showing the manner of publication and the names of all persons to whom notices have been mailed, and that the post offices of those to be affected to whom notices were not mailed were unknown to him and could not be ascertained by reasonable diligence; and copies of such notice and affidavit shall be filed, one with the commissioners of appraisement and one with the clerk of the commissioners' court having jurisdiction. (Id. sec. 22.)

Art. 5584½h. Exceptions to report of commissioners; confirmation of report; findings.—At or before the hearing upon the report of the commissioners of appraisement any owner of land or other property affected by such report or the plan of reclamation may file exceptions to any or all parts of

such report, and said commissioners at the time and place specified in the notice shall proceed to hear and pass upon all such objections, and where such objections are sustained, in whole or in part, may make such changes and modifications from time to time as may be necessary to conform the report to their findings. When the commissioners shall have finally acted they shall make decree confirming such report, in so far as it is confirmed, and approving and confirming the same as modified or changed, in so far as it may be modified or changed. The commissioners shall have power to adjudge and apportion costs incurred upon the hearing in such manner as may be deemed equitable. The findings of the commissioners as to benefits and damages to lands, railroads and other real property within the district shall be final and conclusive. The final decree and judgment of the commissioners shall be entered of record in the minutes of the board of supervisors and certified copies thereof shall be filed with the county clerk of each county in which any portion of the lands within such district are located, as a permanent record of such county; and such filing shall be notice to all persons of the contents and purposes of such decree. (Id. sec. 23.)

Art. 5584½hh. Final findings, etc., to be basis of tax levy.—After the action of the commissioners of appraisement, as aforesaid, their final findings, judgment and decree, until lawfully changed or modified, shall form the basis of taxation within and for the levee improvement district for which they shall have acted for all purposes for which taxes may be levied by, for or on behalf of such district, and all taxes shall be apportioned and levied on each tract of land, railroad and other real property in the district in proportion to net benefits to the property named in such final judgment or decree, as shown thereby. In all matters before the commissioners of appraisement, parties interested may not only appear in person or by attorney, or both in person and by attorney, but they shall be entitled to process for witnesses, to be issued by the chairman of the commissioners of appraisement on demand, and such commissioners shall have the same power as a court of record to enforce the attendance of witnesses. (Id. sec. 24.)

Art. 5584½hhh. Funds for improvements; raising by other means than bond issue.—Levee improvement districts created under this Act, desiring to effect and carry out their plans of reclamation without the issuance of bonds, shall, subject to the limitations hereinabove stated, be authorized and empowered, through their boards of supervisors, to make such arrangements by contributions from land owners, or otherwise, as may be necessary to provide the funds requisite to the completion of their improvements; and may, by vote of the resident property taxpayers of such districts, create such indebtedness, to be evidenced otherwise than by bonds, as may be deemed requisite. Provided, such indebtedness shall never exceed the cost of construction of improvements to be made according to the adopted plan of reclamation approved by the State Reclamation Engineer, and the cost of maintenance of such improvements for two years as estimated by him, plus ten per cent additional to meet emergencies, modifications and changes lawfully made. (Id. sec. 25.)

Art. 5584½i. Bonds; petition for issue; contents.—Where any levee improvement district desires to issue bonds to raise funds for its works of improvement, there shall be presented to the commissioners' court having jurisdiction, or to the judge thereof, in vacation, a petition signed by the owners of a majority of the acreage of lands included within such district, praying for the issuance of bonds to an amount stated, which amount shall not exceed the estimated costs of the improvements to be made, and the maintenance of the works of improvement for two years, as approved by the State Reclamation Engineer, plus ten per cent additional to meet emergencies, modifications and changes lawfully made. The petition shall state the rate of interest to be borne by such bonds, and pray that an election be ordered within and for such district to determine whether or not bonds shall be issued by and on behalf of said district for the purposes above indicated, and to the amount stated, and whether taxes shall be levied within and for said district in payment thereof; provided, that said bonds shall bear a rate of interest not exceeding six per cent per annum. (Id. sec. 26.)

Art. 5584½ii. Same subject; order for election; ballots; polling places; election officers.—Upon presentation of such petition such commissioners' court, if in session, or the judge thereof if the court be not in session, shall make and cause to be entered of record upon the minutes of said court an order directing that an election be held within and for such levee improvement district at a date to be fixed in the order, to be not less than fifteen nor more than thirty days after the date of such order, for the purpose of determining the questions mentioned in such petition. At such election those desiring to vote in favor of the issuance of bonds and levy of taxes in payment thereof, shall have written or printed on their ballots: "For the issuance of bonds and levy of taxes in payment thereof"; and those desiring to vote against the proposition submitted shall have printed or written on their ballots: "Against the issuance of bonds and levy of taxes in payment thereof." Each and every levee improvement district is hereby constituted an election precinct for the purpose of the election above specified, and all other elections which may be ordered or held under any provisions of this Act. When elections are ordered the judge or court ordering the same shall fix the polling place or places for the holding of such election, and name a judge and two clerks at each polling place, and more judges or clerks if deemed necessary; and there shall be at least one polling place in each county in which any portion of the district is located. (Id. sec. 27.)

Art. 5584½iii. Same subject; deposit accompanying petition.—When a petition for a bond election is presented it shall be accompanied by a deposit of two hundred dollars, from which shall be paid all expenses of such election, and such other expenses as may be properly incurred up to the sale and issuance of bonds, and any excess shall be returned to the petitioners or their attorney; and when bonds are issued the amount

of such expense shall be refunded to the petitioners or their attorney from the proceeds of the bonds. (Id. sec. 28.)

Art. 5584½j. Same subject; notice of order for election.—When an order for an election has been made, the clerk of the commissioners' court of the county having jurisdiction shall forthwith issue and place in the hands of the sheriff of the county, if the district is wholly within one county, a notice stating in substance the contents of such election order, and the time and place or places of such election, and it shall be the duty of such sheriff, by himself or deputy, forthwith to post a copy of such notice at the door of the court house of his county, and four other copies at four different places within the boundaries of such district, which posting shall be done not less than ten days prior to the date fixed for said election; if such district is located in more counties than one, then such notice may be delivered to any adult person, who shall post copies of the same, one at the door of the court house of each county in which any portion of such district is situated, and four copies at four separate places within the boundaries of those portions of the district situated in each county, which posting shall be for not less than ten days prior to the date of said election; such sheriff or person posting shall make due return to the clerk of the court having jurisdiction of his action in the premises; the return of the individual other than the sheriff to be under oath, before some person authorized by law to administer oaths, and the return of the sheriff and such oath shall be conclusive evidence of the facts stated. (Id. sec. 29.)

Art. 5584½jj. Same subject; election; conduct of; voters.—All elections held under any provisions of this Act shall be governed as near as may be by the general election laws of this State, except as modified hereby, and shall be held and conducted by the judges and clerks appointed by the court of jurisdiction, or, in their absence or refusal to act, by others chosen by the voters, and the supervisors of the district shall furnish all necessary ballots and other election supplies requisite to such elections. None but qualified property tax paying voters of such district shall vote at any election to authorize the issuance of bonds by or on behalf of the district or for the creation of any indebtedness against any district. (Id. sec. 30.)

Art. 5584½jjj. Same subject; election; returns; canvass; declaration of result.—Immediately after any election under this Act the officers holding the same shall make returns of the result thereof to the commissioners' court having jurisdiction, and return the ballot boxes to the clerk of said court, who shall safely keep the same and deliver them, together with the returns of the election, to the commissioners' court of jurisdiction at its next regular or special session, and said court shall at such session canvass the vote and returns, and if it be found that the proposition submitted has been adopted by a majority of the qualified property tax paying voters of such district voting at said election, then the court shall declare the result, and, if the election be for the issuance of bonds, shall declare that it resulted in favor of the issuance of bonds and the levy of taxes in payment thereof; and, if the result be against the issuance of bonds, then it shall declare that the result was against the issuance of bonds and the levy of taxes in payment thereof; and, if the question be for a maintenance tax, or other tax, then it shall declare the result to be for or against such tax, as the case may be; or, if the question be any other proposition which may be properly submitted at an election, the order shall declare the result to be for or against the proposition submitted, as the case may be, and an order, or orders, declaring such result shall be entered upon the minutes of such court. (Id. sec. 31.)

Art. 5584½k. Maintenance tax; election to determine.—If, at the time of petition for a bond election, or at any other time, the supervisors of any district created under this Act, or entitled to its benefits, shall desire to be submitted to the voters of the district the question of a maintenance tax, or other proposition proper to be submitted to them, they shall petition the commissioners' court of jurisdiction for an election upon the question so desired to be submitted, and it shall be the duty of the court to order an election, and that notice be given substantially as in case of a bond election, and notice shall be given substantially as in case of such elections, and all other proceedings shall be had in respect to the question so submitted substantially in accordance with the provisions hereof in respect to a bond election. (Id. sec. 32.)

Art. 5584½kk. Bonds; order directing issue; issue; denominations; maturity; interest.—If a bond election in any district created under this Act or entitled to its benefits shall have resulted in favor of the issuance of bonds and levy of taxes in payment thereof, after such result has been duly declared the commissioners' court of jurisdiction shall make an order directing the issuance of bonds of such district, to be known as "Levee Improvement Bonds," to the amount voted, unless a less amount was requested by the district supervisors, which bonds shall state upon their faces the purposes for which they are issued. Said bonds shall be issued in the name of the levee improvement district by and on behalf of which they are voted, shall be signed by the county judge of the county whose commissioners' court has jurisdiction, and shall be attested by the county clerk of said county, and the seal of the commissioners' court of such county shall be affixed to each; they shall be issued in such denominations, and payable at such time or times, not exceeding thirty years from their date, as may be deemed most expedient by the issuing authority, and shall bear interest not to exceed six per cent per annum. (Id. sec. 33.)

Art. 5584½kkk. Same subject; record of.—When bonds shall have been issued by and on behalf of any levee improvement district the supervisors of such district shall procure and deliver to the treasurer of the county whose commissioners' court has jurisdiction a well bound book in which a record shall be kept of all such bonds, with their number, amount, rate of interest, date of issuance, when due, where payable, amount received for same, and the tax levy

to pay interest on and to provide sinking funds for their payment, which book shall at all times be open to the inspection of the parties interested, either as tax payers or bondholders; and upon the payment of any bond an entry thereof shall be made on such book. The county treasurer shall receive for his services in recording all these matters the same fees as may be allowed by law to the county clerk for recording deeds. (Id. sec. 34.)

Art. 5584½*l*. Same subject; determination of validity.—Before any bonds issued by or on behalf of any levee improvement district are offered for sale there shall be forwarded to the Attorney-General a certified copy of all proceedings had in the organization of the district and with reference to the issuance of such bonds in connection with the bonds themselves, and such other information with respect thereto as may be required by the Attorney-General shall be furnished; and it shall be the duty of the Attorney-General to carefully examine said bonds, in connection with the record and the Constitution and laws of this State governing the issuance of such bonds, and, if, as a result of his examination, the Attorney-General shall find that such bonds are issued in conformity with the Constitution and laws of this State and that they are valid and binding obligations upon the district by or on behalf of which they are issued, he shall so officially certify, and, until he shall so officially certify, and until registered by the Comptroller, as hereinafter required, said bonds shall be without validity. (Id. sec. 35.)

Art. 5584½*ll*. Same subject; registration.—When the bonds of any levee improvement district have been examined and approved by the Attorney-General and his certificate thereto has issued, they shall be registered by the State Comptroller in a book kept for that purpose, and the certificate of the Attorney-General as to the validity of such bonds shall be preserved of record. Such bonds after receiving the certificate of the Attorney-General, and after having been registered in the Comptroller's office, as herein provided, shall be held, in every action, suit or proceeding in which their validity may be brought into question, prima facie valid; and in every action brought to enforce collection of such bonds and interest thereon, the only available defense against the validity of such bonds shall be forgery or fraud. (Id. sec. 36.)

Art. 5584½*lll*. Same subject; sale.—When bonds shall have been issued, approved and registered as provided in this Act, the court of jurisdiction may appoint the county judge of the county of jurisdiction, or other suitable person, to sell said bonds on the best terms and for the best price possible and approved by the district supervisors, and no sale shall be complete until approved by such supervisors. The judge or person selling such bonds shall be allowed, as full compensation for all services performed in respect thereto, one-fourth of one per cent of the amount received, and, except such commission, shall promptly pay over to the proper treasurer or depository the proceeds of said bonds, to be placed to the credit of such levee improvement district; but, before proceeding to make any sale, such judge, or any person appointed, shall execute a good and sufficient bond, payable to the levee improvement district, and approved by the commissioners' court having jurisdiction, for an amount not less than the par value of the bonds to be sold, conditioned for the faithful discharge of his duty under his appointment. (Id. sec. 37.)

Art. 5584½*m*. Tax levy to pay bonds; sinking funds.—When bonds shall have been issued by any levee improvement district the taxing authorities of such district shall levy and cause to be assessed and collected taxes upon all the real property and railroads within such district, based upon and proportioned, as to each piece of property, to the net benefits which it shall have been found will accrue to such property from the completion of the plan of reclamation or other duly authorized work, which taxes shall be sufficient in amount to pay the interest on such bonds as it shall fall due, and to raise an additional sum which will create a sinking fund sufficient to discharge and redeem such bonds at maturity; and such taxes shall thereafter be levied annually so long as such bonds or any of them are outstanding, sufficient in amount to accomplish the purposes above indicated. Sinking funds shall from time to time be invested in such county, municipal, district or other bonds as other sinking funds may by law be invested in, or in bonds of the series to which such funds apply, if offered for redemption before maturity upon terms deemed advantageous to the district, by its supervisors, or the court of jurisdiction. (Id. sec. 38.)

Art. 5584½*mm*. Maintenance tax; levy; amount.—When a maintenance tax shall have been voted in any district entitled to the benefits of this Act, the taxing authorities of such district shall thereafter levy and cause to be assessed and collected taxes upon the real property of such district, based upon the net benefits thereto contemplated to be accomplished through the plan of reclamation, to an amount not exceeding the specific sum voted, and the vote in such cases may be for a specific sum, or not to exceed a specific sum. The proceeds of such taxes shall be used for the maintenance, upkeep, repairs and additions to the levees and other improvements in the district, or other lawful expense incurred by and on behalf of such district, and for no other purposes. The right to levy such taxes shall remain in force until abrogated, in whole or in part, by another election; but elections upon the question of the repeal or reduction of maintenance taxes shall not be held oftener than every five years. (Id. sec. 39.)

Art. 5584½*mmm*. Tax assessor; tax roll.—The secretary of the board of supervisors of levee improvement districts shall be ex officio tax assessor for such districts, and it shall be his duty when any tax is levied, at the expense of the district, to prepare a tax roll in form substantially as the assessment roll made up by county tax assessors, except that instead of ad valorem valuation it shall state net benefits assessed against property, and he shall compute against each piece of property the amount of taxes assessed against it, and enter on such roll the amount of such taxes. A certified copy of such roll, in so far as it appertains to each

county in which any portion of the district is located, shall be filed with the tax collector of such county. (Id. sec. 40.)

Art. 5584½n. Collection of tax by county tax collectors; special collectors.—The tax collectors of the several counties shall be charged with the assessment rolls of levee improvement districts, and are required to make collections of all taxes levied and assessed against property within such district, and promptly pay over the same to the treasurer of the district; and the bonds of such collectors shall stand as security for the proper performance of their duties as tax collectors of such levee improvement districts, or, if in the judgment of the supervisors of such district it be necessary, additional bonds, payable to such districts, may be required, and any collector failing to act hereunder or failing to give the additional bond required, shall be deemed guilty of malfeasance in office and shall be suspended from office by the commissioners' Court of his county, and may be removed from office in the mode prescribed by law; and in case of suspension the boards of supervisors may appoint special collectors for their respective districts and require such security of them as may be deemed proper, and the persons so chosen shall have and exercise within and for the district all the rights and powers which tax collectors have or may by law in their respective counties. (Id. sec. 41.)

Art. 5584½nn. Delinquent taxes; collection; lien of tax; penalty for non-payment of tax.—Tax collectors of levee improvement districts shall perform all duties and exercise all powers in respect to delinquent taxes due levee improvement districts as may be provided by law for the collection of delinquent State and county taxes, and the collection of such delinquent levee improvement district taxes and sales of property therefor shall be governed by the laws applying to the collection of delinquent State and county taxes. Taxes levied under this Act shall be a lien upon the property against which they are assessed, and shall be payable and shall mature and become delinquent as may be provided by law for State and county taxes, and upon failure to pay such taxes when due the same penalty shall accrue and be collected as may be provided by law in case of non-payment of State and county taxes. (Id. sec. 42.)

Art. 5584½nnn. Treasurer of district; county treasurer to be; bond; compensation.—The county treasurer of the county, the commissioners' Court of which has jurisdiction, shall be treasurer of all levee improvement districts of which such court has jurisdiction, and as such shall execute a good and sufficient bond, payable to the levee improvement district, in a sum equal to one and one-fourth of the taxes contemplated to be paid over in any one year, or such other or further amount as the board of supervisors of the district may require, which bond shall be conditioned for the faithful performance of the duties of the principal as treasurer of the levee improvement district, and shall be approved by the board of supervisors of such district. Such bond may be made by any guaranty or surety company approved by the board of district supervisors, and premiums therefor may be paid out of the maintenance fund of the district. The treasurer, as compensation for his services, shall be allowed not exceeding one-fourth of one per cent upon sums received by him by and on behalf of such levee improvement district. (Id. sec. 43.)

Art. 5584½o. Same subject; accounts with districts; payments by.—It shall be the duty of the county treasurer whose commissioners' court has jurisdiction, as treasurer of the levee improvement district, to open an account with each such district and to keep an accurate account of all moneys received by him belonging to such district, and all moneys paid out by him. He shall pay out no money except upon a voucher signed by two of the district supervisors and countersigned by the county judge, and he shall carefully preserve all orders for the payment of money; and as often as required by the said district supervisors or the commissioners' court he shall render a correct account to them on all matters pertaining to the financial condition of such district. (Id. sec. 44.)

Art. 5584½oo. District depository; selection.—Where the county, whose commissioners' court may have jurisdiction of any levee improvement district, has a depository, such county depository shall be the depository of the funds of the levee improvement district, and where such county has no depository then it shall be the duty of the board of supervisors of the levee improvement district to select a depository as depositories are selected for counties, and the laws applying to county depositories shall apply and govern in such cases. (Id. sec. 45.)

Art. 5584½ooo. Compensation for services by officers, etc.—For all services performed by any officer or individual under this Act, the compensation for which is not expressly provided for, such officer or individual shall receive the same compensation as he would for like services if rendered as an officer of a county. Clerks recording orders hereunder shall receive the same compensation as would a county clerk for recording deeds, and persons posting notices hereunder shall receive the same compensation as would a sheriff for posting notices required by law to be posted by him officially. (Id. sec. 46.)

Art. 5584½p. Contracts for improvements; letting; advertisement for bids.—Contracts for making and constructing levees and other improvements and all necessary work in connection with any levee improvement district shall be let by the district supervisors to the lowest bidder, after giving notice by advertising the same in one or more newspapers of general circulation in the State of Texas once a week for three consecutive weeks, and by posting notices for at least three weeks in five public places in the county of jurisdiction, one of which shall be at the court house door, and at least two of which shall be within said district; and the contract for such levees and other improvements may be let in separate sections or parcels, or all together; provided, that all the improvements included in the plan of reclamation as approved by the State Reclamation Engineer shall be constructed; provided further, that such work may be let without advertisement upon contracts approved jointly by the district supervisors and the county judge of the county whose com-

missioners' court has jurisdiction. (Id. sec. 47.)

Art. 5584½pp. Bond of contractor.—The person, firm or corporation to whom such contract is let shall give bond payable to the district in such amount as the board of supervisors may determine, not to exceed the contract price, conditioned that he, they or it will faithfully perform the obligations, agreements and covenants of such contract, and that in default thereof they will pay to said district all damages sustained by reason thereof. Such bond shall be approved by the supervisors, and shall be deposited with the depository of the district, a true copy thereof being retained in the office of the secretary of the board of supervisors. (Id. sec. 48.)

Art. 5584½ppp. Supervision of and report on work.—All work included in the contract shall be done in accordance with the specifications under the supervision of the supervisors and the district engineer. As the work progresses the engineer of such district shall make report to the supervisors, showing in detail whether the contract is being complied with, and when the work is completed he shall make a detailed report of same to the supervisors, showing whether or not the contract has been fully complied with according to its terms, and if not in what particular it has not been so complied with. (Id. sec. 49.)

Art. 5584½q. Inspection of work; payments for work.—The supervisors shall, during the progress of the work under any contract, inspect the same; and upon the completion of any work in accordance with the contract, they shall draw a warrant on the treasurer of the district for the unpaid amount of the contract price in favor of the contractor. Payments pending the work shall not exceed in the aggregate eighty-five per cent of the contract price of the work done, the said amount of work completed to be shown by estimates of the engineer of the district. (Id. sec. 50.)

Art. 5584½qq. District seal.—Levee improvement districts created under this Act, or entitled to its benefits, shall each have a common seal which shall be circular in form, with the name of the district within the circle, with a star of five points in the center; and such districts may use [sue] and be sued in the courts of this State in and by their corporate names, and all courts of this State shall take judicial notice of their existence. (Id. sec. 51.)

Art. 5584½qqq. Approval of plans by State Reclamation Engineer; necessity for.—From and after the taking effect of this Act it shall be unlawful for any levee improvement district, whether it proposes to construct its levees or other improvements with or without the issuance of bonds, to construct, to undertake to construct, or maintain any levee or other improvements, without first obtaining the approval by the State Reclamation Engineer, as provided in this Act, of the plans for such levees or other improvements; and in the event any such levee improvement district undertakes to construct, constructs or maintains any levee or other improvement without first obtaining the approval of the State Reclamation Engineer of the plans for the same, as provided in this Act, it shall be the duty of the Attorney-General, on the request of the State Reclamation Engineer, to file suit in one of the district courts of Travis County, Texas, in which the venue of such suits is hereby fixed, to enjoin the construction or maintenance of such levee or other improvement. (Id. sec. 52.)

Art. 5584½r. Same subject; work by private individuals or corporations.—From and after the taking effect of this Act it shall be unlawful for any person, corporation or levee improvement district, without first obtaining the approval of plans for the same by the State Reclamation Engineer, to construct, attempt to construct, cause to be constructed, maintain or cause to be maintained, any levee or other such improvement on, along or near any stream of this State which is subject to floods, freshets or overflows, so as to control, regulate or otherwise change the flood waters of such stream; and any person, corporation or district violating this section of this Act shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for a period of not more than one year, or by both such fine and imprisonment; and each day any such structure is maintained or caused to be maintained shall constitute a separate offense. And in the event any such structure is about to be constructed, is constructed, or maintained by any person or corporation without approval of the plans by the State Reclamation Engineer, it shall be the duty of the Attorney-General, on the request of the State Reclamation Engineer, to file suit in one of the district courts of Travis County, in which the venue of such suits is hereby fixed, to enjoin the construction or maintenance of such structure. Provided, that the provisions of this section shall not apply to dams, canals or other improvements made or to be made by irrigation, water improvements or irrigation improvements made by individuals or corporations. (Id. sec. 53.)

Art. 5584½rr. Abolition of district; effect.—If any levee improvement district heretofore created or that hereafter may be created shall find, at any time prior to the sale of its bonds or final lending of its credit in other form, that the proposed undertaking for any reason is impracticable or apparently cannot be successfully carried out, the commissioners' court is hereby authorized to abolish such district upon petition signed by the owners of a majority of the acreage in the district, praying for the dissolution of such district, setting forth the reasons therefor, and accompanied by a deposit of fifty dollars. Such petition shall be set for hearing, notice of such hearing shall be given, the hearing thereon shall be held, and the expense thereof paid out of said deposit, all in conformity with the procedure prescribed in this Act in connection with the petition for the establishment of the district; and the commissioners' court shall have the same powers with respect to the abolition of such districts that it has with respect to their creation. If upon the hearing it shall appear to the court that such district should be abolished, the court shall so find and shall render judgment re-

citing such finding, and by its orders entered of record declare and decree such district abolished, and appoint the chairman of the supervisors or some other suitable person as trustee to close up its affairs without delay; the term and compensation of such trustee to be at the pleasure of the said court. If the court should not so find, it shall dismiss the petition at the cost of the petitioners, and enter such finding of record. Where any taxes have been levied and collected in the name of the district in anticipation of an issue of bonds, such taxes, so far as unexpended, shall in the event of dissolution of the district as herein provided, and on order of the commissioners' court duly entered, be returned to the taxpayers ratably, after deducting the compensation of the assessor, collector and treasurer in connection therewith, and any other claims properly chargeable against such taxes; proper receipt for all sums so refunded to be taken and filed by the treasurer. (Id. sec. 54.)

Art. 5584½rrr. Additional work and funds therefor.—If it should develop that the works and improvements set out in any plan of reclamation adopted by or on behalf of a levee improvement district are found insufficient to reclaim in whole or in part any or all of the lands and other property within the district, or if extensive repairs or additions to such works are deemed necessary, then in respect thereto the board of supervisors of the district, upon petition of the owners of a majority of the acreage of the district, may proceed in all respects to provide additional funds for such additional works, in accordance with the provisions of this Act, in respect to the original plan of reclamation, and may, under like limitations, create additional indebtedness or issue additional bonds, but always subject to every limitation in respect to such original proceedings, as well as the approval of the new or amended plan of reclamation by the State Reclamation Engineer. (Id. sec. 55.)

Art. 5584½s. Reassessment of benefits.—Whenever, at any time after three years from the completion of any plan of reclamation, the owners of twenty-five per cent or more of acreage of the lands within any levee improvement district shall file a petition with the board of supervisors of such district, alleging that previous assessments of benefits are inequitable and praying for a readjustment of the assessment of benefits for the purpose of making a more equitable basis for the levy of taxes, the board of supervisors shall set a day for a hearing of said petition and cause notice of such hearing to be issued by the secretary of the board and to be posted in all respects as in case of an original hearing, and at the time and place set for the hearing the board of supervisors shall proceed to hear such petition and proof for or against the same, and if it finds that there has been a material change in the relative value of the benefits conferred on the property in the district, or that for other reasons, the last previous assessment of benefits is inequitable it shall order that there be made a readjustment of the assessment of benefits for the purpose of providing a more equitable basis of taxation for all purposes within such district; and, thereupon, it shall proceed to appoint commissioners of appraisement, as in the first instance, which commissioners shall proceed in all respects as in the first instance, and with all the powers, rights, privileges and duties, both to the commissioners and persons interested, and such commissioners shall finally make their findings and enter their judgment and decree in the matter, which thereafter shall be the basis of the assessment of taxes within and for the district. Provided, that there shall be no reassessment of benefits that will in any way render insecure any outstanding bonds or other indebtedness of any district availing itself of the benefits of this section, nor shall the sum of benefits as reassessed ever be less in amount than the sum total of all outstanding bonds and other indebtedness of such district; and it shall be the duty of the taxing authorities of such district to annually levy and cause to be assessed and collected taxes based upon such reassessment, at rates sufficient to provide funds requisite to pay interest upon all outstanding bonds and other indebtedness of such district and to pay off such bonds or other indebtedness at maturity. (Acts 1918, 4th C. S., ch. 44, sec. 56; Acts 1919, ch. 135, sec. 1.)

Art. 5584½ss. Suit by person, etc., objecting to approval or disapproval of reclamation plan by State Reclamation Engineer; determination; appeal.—If the supervisors of any levee improvement district, or any person or corporation whose interests are affected thereby, be dissatisfied with the action of the State Reclamation Engineer in finally approving or disapproving any plan of reclamation for such district, the district or person or corporation dissatisfied may within fifteen days after such final action, file suit in the district court of the county whose commissioners' court has jurisdiction of the district in question, against the State Reclamation Engineer, and to which suit the district shall be made a party defendant, if the suit be on behalf of any other complaining person or corporation. The petition shall set forth the cause or causes of objection and show wherein the interests of the petitioner are injuriously affected by the action of the State Reclamation Engineer complained of. Process shall issue as in other cases and the case shall have preference of trial in the court wherein it is filed, and upon final hearing the court shall render its judgment and decree approving or disapproving of the plan of reclamation, in whole or in part, as it may find to be equitable and just; and such judgment shall stand for the action of the State Reclamation Engineer in such matters. There may be an appeal, as in ordinary cases, from the judgment of the trial court, which appeal shall have preference of hearing in the Court of Civil Appeals, the judgment of which in the matter shall be final, and shall stand for the action of the State Reclamation Engineer in respect to the matters at issue in such suit. (Acts 1918, 4th C. S., ch. 44, sec. 57.)

For sections 58, 59 of this act, see Penal Code, arts. 1254, 1254a.

Art. 5584½sss. Other laws applicable.—In all matters not herein provided for levee improvement districts created hereunder shall be governed by the provisions of Chapter 146 of the General Laws of the Regular Session of the Thirty-fourth Legisla-

ture, authorizing the commissioners' court of counties to establish levee improvement districts, and amendments to such law, save that in no instance except as is specially required or permitted in this Act shall it be necessary for any county judge to approve any contract made by a board of supervisors. (Id. sec. 60.)

See ante, ch. 2 of this title.

Art. 5584½ssss. Other districts may exercise powers, etc., conferred by act.—Levee improvement districts heretofore organized under any law of this State, and districts organized under any law of this State having for their objects the reclamation of lands through a system of levees and drainage, whether denominated levee improvement districts or not, may become entitled to and may hereafter exercise all the rights, powers and privileges conferred by this Act upon districts created under it, and to all of the enlarged powers which may be conferred under Section 59, Article 16, of the Constitution of this State, by proceeding as follows: (Id. sec. 61.)

Art. 5584½t. Same subject; procedure.—Whenever the owners of a majority of the acreage of any district mentioned in the preceding section [art. 5584½ssss] shall present to the commissioners' court of the county in which such district is located their petition praying that a hearing be ordered to determine whether such district may avail itself of the provisions of this Act, it shall be the duty of the court to fix a time and place for such hearing, and cause notice thereof to be given, substantially in all respects as notice of the hearing upon the matters of the formation of a district under this Act, and at the time and place of such hearing the court shall proceed to hear and determine the issue presented by the petition, and evidence for and against the same, and if it finds that the interests of the district in question would be promoted by granting the prayer of the petition it shall so decree and enter its judgment of record, declaring it to be to the interest of such district that it avail itself of all the rights, powers and privileges conferred by this Act upon districts created under it, and that the district on behalf of which the petition is filed shall thereafter be entitled to and may exercise all rights, powers and privileges conferred by this Act upon districts created by it, and thereafter such district shall have and may exercise all such rights, powers and privileges as if created under this Act, and thereafter it shall proceed in all things as it would if created hereunder, but such decree shall not in any respect injuriously affect any financial liability of such district. (Id. sec. 62.)

Art. 5584½tt. Acts not repealed.—Nothing contained in this Act shall be construed to repeal any law upon this subject passed at the Fourth Called Session of the Thirty-fifth Legislature, but any such law shall be deemed cumulative. (Id. sec. 63.)

CHAPTER THREE
SEAWALLS

Art. 5585. Construction and maintenance of seawalls; powers of counties and cities; levy of tax.—The county commissioners' court of all counties, and the municipal authorities of all cities, bordering on the coast of the gulf of Mexico, shall have the power and are authorized from time to time to establish, locate, erect, construct, extend, protect, strengthen, maintain, and keep in repair and otherwise improve any sea wall or breakwater, and to improve, maintain and beautify any boulevard erected in connection with such sea wall or breakwater, and to incur indebtedness therefor, the payment of which may be provided for either with or without the issuance of bond. And said commissioners' courts and municipal authorities shall also have power and are hereby authorized to levy taxes not to exceed in any one year fifty cents on the one hundred dollars of taxable values of said county or city for the payment of said indebtedness, provided that when the taxes are levied as herein provided for, will not pay off said indebtedness within five years; then the payment of said indebtedness shall be provided for by the issuance of bonds as hereinafter provided. (Acts 1901, 1 S. S., p. 23, sec. 1. Acts 1913, 1st C. S., p. 3, sec. 1, amending Art. 5585, Rev. St. 1911.)

Art. 5586. Burdens on streets and highways for seawalls.—Said county commissioners' court, and municipal authorities, shall have the power to impose such additional uses and burdens upon all streets, alleys, public highways and other public grounds as they may deem necessary for the location, erection, construction and maintenance of seawalls and breakwaters, and to license, regulate or grant such additional uses of said seawalls or breakwaters as will not impair their efficiency. (Acts 1901, 1 S. S., p. 23, sec. 2.)

Art. 5587. To take land for; exercise right of eminent domain.—Said counties and cities shall have the power to take and appropriate such land and other property as may be deemed necessary for the establishment, location, construction and maintenance of said seawalls and breakwaters, and to define the area of land needed, and to acquire, take, hold and enjoy the same for the purposes aforesaid, and to that end shall have the right to exercise the right of eminent domain and to condemn lands for the uses and purposes aforesaid, in the manner and under the conditions provided by law in case of railroad corporations; provided, nevertheless, that said county commissioners' court, or said municipal authorities, shall be empowered to take the fee simple estate to the land condemned or acquired hereunder, whenever deemed necessary for the purposes of this act; and, provided, further, that before exercising the power of eminent domain hereunder said county commissioners' court, or said municipal authorities, shall, by order, ordinance, or resolution duly entered on the minutes of the county commissioners' court, or the city council, define and describe lands needed, and determine whether an easement or fee-simple estate in said land shall be taken. (Id. sec. 3.)

Art. 5588. Issuing bonds; election.—Before issuing the bonds of the county, or city, for the purposes authorized by this chapter, said county commissioners' court or municipal authorities, shall prescribe the amount of the bonds to be issued, the rate of interest thereon, and provide for an election at which all tax payers who are qualified voters entitled to vote in said county or

city, shall be allowed to vote for or against the proposed taxation for the payment of said bonds and interest thereon. (Acts 1901, 1 S. S., p. 23, sec. 1. Acts 1913, 1st C. S., p. 3, sec. 2, amending Art. 5588, Rev. St. 1911.)

Art. 5589. Election, how conducted; board of inquiry, duties of.—For the purpose of ascertaining whether two-thirds of the taxpayers of said county, or city, have voted in favor of the proposed taxation, the county judge, the county assessor and the county collector, or three members of their own body selected by the municipal authorities, as the case may be, are hereby constituted and appointed a board of inquiry. Whenever an election is ordered hereunder, said board shall make out from the latest completed assessment rolls of said county, or city, a list of all taxpayers of said county, or city, who are qualified voters and taxpayers entitled to vote hereunder; and from the date of the notice of said election until five days before the day thereof, said board shall sit daily for the purpose of making additions to and corrections of said list, and all taxpayers being qualified voters shall, during said period, have the right to apply to said board and to have their names entered on said list. During the period of five days before said election, said board shall make out under certificate and file with the county or city clerk, as the case may be, a complete alphabetical list of all taxpayers who are qualified voters at said election, and shall furnish printed copies of said list to the officers at each poll at said election. Said printed list furnished by said board, and the returns and poll lists of said election, shall be returned to the county, or city clerk, as the case may be. The ballots at said election shall be printed or written on white paper, without any outward mark or device to distinguish the same, and shall contain the words, in substance, "In favor of the proposed tax," or, "Against the proposed tax." Said election shall, except as herein otherwise provided, be ordered and conducted in the same manner in all respects as are general state and county, or municipal, elections, so far as the same are applicable, not including, however, registration, and provisions incidental thereto, and the returns thereof shall be made in like manner, as far as may be; provided, nevertheless, that said election may be held on thirty days' notice thereof at any time fixed by the county commissioners' court, or municipal authorities. And the proposition to levy a tax hereunder may be renewed until the power to tax hereunder shall have been exhausted. (Acts 1901, 1 S. S., p. 23, sec. 5.)

Art. 5590. Election returns; canvass; two-thirds vote required.—The county commissioners' court, or municipal authorities, shall, as soon as practicable after said election, meet and canvass the returns thereof, and with the aid of the returns and lists herein provided for, together with such other evidence as may be required, ascertain and record in the minutes of the commissioners' court, or of the municipal authorities, the total number of taxpayers of said county or city who are qualified voters on the day of said election, the number of said taxpayers voting in favor of the proposed taxation, and the number of said taxpayers voting against the same. In the event that two-thirds of the taxpayers of said county or city, who are qualified voters therein, shall have voted in favor of the proposed tax, the said county or city shall thereupon have power to issue its bonds for the construction and maintenance of seawalls and breakwaters. (Id. sec. 6.)

Art. 5591. Interest, sinking fund; levy of taxes for.—Whenever bonds are issued under the preceding article, the county commissioners' court, or municipal authorities, shall annually levy, assess and collect, in the mode prescribed by law for other county or municipal taxes, a tax on the real estate and personal or mixed property in said county, or city, sufficient to pay the interest and provide a sinking fund of not less than two per cent of the principal of all of said bonds: and all taxes collected by virtue hereof shall be held in trust by said county, or city, as a special and inviolable fund for the payment of interest and principal of said bonds; provided, however, that any surplus above the amount required to meet the annual interest may be invested for the benefit of the sinking fund in the bonds issued hereunder, or in bonds of the state of Texas, or of the United States. (Id. sec. 7.)

Art. 5592. Cession of state lands for the benefit of.—The better to enable said counties and cities to secure the protection herein provided for, and to aid in the construction of said works, the right to the use and control for the purposes prescribed by this chapter, of so much of the land or sea bottom below high tide as may be deemed necessary by said county commissioners' court, or municipal authorities, is hereby ceded by the state of Texas to counties and cities availing themselves of the provisions of this chapter. (Id. sec. 8.)

Art. 5593. City and county treasurers custodian of funds, exclusive use of.—All funds, revenues and moneys derived from the sale of the bonds herein authorized, and from the sale or rent of reclaimed or other lands acquired under this chapter and from additional uses of said works as herein authorized, shall be deposited with the county or city treasurer, as the case may be, and shall be held in trust exclusively for the construction and maintenance of seawalls and breakwaters, including the purchase of the right of way therefor; and all moneys derived from the assessment and levy of taxes as aforesaid are declared to be a trust fund for the payment of interest and principal of bonds to be issued under this chapter; and the use or diversion of such moneys for any other purposes whatsoever is hereby prohibited, and a violation of this article shall constitute a misapplication of public money, and the person or persons so offending shall be punished as provided in article 96 of the Penal Code of the state of Texas. (Id. sec. 9.)

Art. 5594. Bonds to be issued in cases of counties, cities and towns.—All bonds issued hereunder shall be issued under and subject to the provisions of articles 616–620, 622–625, inclusive, of the Revised Statutes of this state now in force, in so far as said articles do not conflict with the provisions of this chapter, and this chapter shall apply to all cities bordering on the coast of the gulf of Mexico, whether said cities are incorporat-

ed by general or special laws; and all laws and parts of laws in conflict herewith are hereby repealed. (Id. sec. 10.)

TITLE 84

LIBEL

Art. 5595. Definition.—A libel is a defamation expressed in printing or writing, or by signs and pictures, or drawings, tending to blacken the memory of the dead, or tending to injure the reputation of one who is alive, and thereby expose him to public hatred, contempt or ridicule, or financial injury, or to impeach the honesty, integrity, or virtue, or reputation of any one, or to publish the natural defects of any one and thereby expose such person to public hatred, ridicule, or financial injury. (Acts 1901, p. 30, sec. 1.)

See Walker v. San Antonio Light Pub. Co., 70 S. W. 555; Guisti v. Galveston Tribune, 150 S. W. 874; Blum v. Kusenberger, 158 S. W. 779; Texas Furniture Co. v. Meyers, 167 S. W. 766; Cobb v. Garlington, 193 S. W. 463; Hibdon v. Moyer, 197 S. W. 1117; Light Pub. Co. v. Huntress, 199 S. W. 1168.

Art. 5596. Mitigation of damages.—In any action for libel, the defendant may give in evidence, if specially pleaded, in mitigation of exemplary or punitive damages, the circumstances and intentions under which the libelous publication was made, and any public apology, correction or retraction made and published by him of the libel complained of. The truth of the statement or statements in such publication shall be a defense to such action. (Id. sec. 2.)

Art. 5597. What matters deemed privileged.—The publication of the following matters by any newspaper or periodical, as defined in Article 5595, shall be deemed privileged, and shall not be made the basis of any action for libel without proof of actual malice:

1. A fair, true and impartial account of the proceedings in a court of justice, unless the court prohibits the publication of the same, when in the judgment of the court the ends of justice demand that the same should not be published, and the court so orders; or any other official proceedings authorized by law in the administration of the law.

2. A fair, true and impartial account of all executive and legislative proceedings, including all reports of and proceedings in or before legislative committees, and of any debate or statement in or before the Legislature or in or before any of its committees, and including also, all reports of and proceedings in or before the managing boards of educational and eleemosynary institutions supported from the public revenue, of city councils or other governing bodies of cities or towns, of the commissioners' court of any county, and of the board of trustees of the public schools of any district or city, and of any debate or statement in or before any such body.

3. A fair, true and impartial account of public meetings organized and conducted for public purposes only.

4. A reasonable and fair comment or criticism of the official acts of public officials and of other matters of public concern published for general information. (Acts 1901, p. 30, sec. 3; Acts 1919, ch. 25, sec. 1.)

Art. 5598. To be construed, how.—Nothing in this title shall be construed to amend or repeal any penal law on the subject of libel, nor to take away any now or at any time heretofore existing defense to a civil action for libel, either at common law or otherwise, but all such defenses are hereby expressly preserved. (Acts 1901, p. 30, sec. 4; Acts 1917, ch. 206, sec. 1.)

Art. 5598a. Not to affect pending suits or accrued causes of action.—That this Act shall not be construed to affect any suit now pending or that may be hereafter brought upon any cause of action arising prior to the taking effect of this Act. (Id. sec. 2.)

Art. 5598b. Venue of action.—Action for damages for libel or slander shall be brought, and can only be maintained, in the county in which the plaintiff in any such action resided at the time of the accrual of the cause of action, or in the county where the plaintiff resided at the time of filing suit, or in the county of the residence of the defendants, or any of them, or the domicile of any corporate defendant, at the election of the plaintiff. (Acts 1919, ch. 87, sec. 1.)

TITLE 85

LIBRARY AND HISTORICAL COMMISSION

Art. 5599. Object and purposes of commission.—The Texas library and historical commission shall consist of five members, which commission shall be assigned suitable offices at the capitol, and whose object and purposes shall be to control and administer the state library, and to adopt and to enforce reasonable rules and regulations governing its administration and control, to aid and encourage libraries, to collect materials relating to the history of Texas and the adjoining states, to preserve, classify and publish the manuscript archives and such other matters as it may deem proper, to diffuse knowledge in regard to the history of Texas, to encourage historical work and research, to mark historic sites and houses and secure their preservation, to aid those who are studying the problems to be dealt with by legislation, and to perform such other duties as may be enjoined by law. (Acts 1909, p. 122, sec. 1.)

Art. 5600. Commission, how constituted.—The Governor, shall, by and with the advice and consent of the Senate, appoint five persons who shall constitute the Texas Library and Historical Commission. Appointments shall be made for the term of six years, except appointments to fill vacancies, which shall be made by the Governor for the unexpired term. Provided: That

The members of the Commission shall at their first meeting be divided by lot into three groups, two members to serve two years, two four years, and one six years from the date of appointment, and that all appointments shall thereafter be for six years. (Acts 1909, p. 122, sec. 2; Acts 1919, 2d C. S., ch. 60, sec. 1.)

Art. 5601. Meetings; compensation.—The Commission shall hold at the State Capitol at least one regular meeting annually, and as many special meetings as may be necessary. Each member of the Commission shall receive while in attendance at the

meetings of Commission a per diem of $5.00, and the actual expenses incurred in attending the meetings. (Acts 1909, p. 122, sec. 2; Acts 1913, p. 281, sec. 1; Acts 1919, 2d C. S., ch. 60, sec. 1.)

Art. 5601a. State Librarian; appointment, qualifications, compensation.—The Commission shall elect a state librarian, who shall not be of their number and who shall be a trained and experienced librarian of administrative ability. Said state librarian shall serve at the will of the Commission and shall give to the governor an acceptable bond in the sum of five thousand ($5,000.00) dollars for the proper care of the State Library and its equipment. In addition to his salary, the state librarian shall be allowed his actual expenses when travelling in the service of the Commission. Such expenses shall be certified to under oath in the same form as other accounts of the State Library.

The term, "trained and experienced librarian" is for the purpose of this law defined as a man or woman who shall have had at least one year's training in a library school and at least three year's administrative experience as head of a free public or institutional library, or as an assistant of high rank in such library. (Acts 1919, 2d C. S., ch. 60, sec. 1.)

Art. 5601b. Assistant librarian; appointment, duties, bond, compensation.—The Commission shall appoint an assistant librarian who shall rank as head of a department and who in the absence of the State Librarian may sign and certify accounts and documents in the same manner and with the same legal authority as the State Librarian.

The said Assistant Librarian shall give acceptable bond to the Governor in the sum of $3,000 and shall take oath of office in the same manner as the state Librarian. (Id.)

Art. 5601c. Assistants in the State Library; appointment and qualifications.—Assistants in the State Library shall be appointed by the Library and Historical Commission and shall be divided into four grades: Heads of departments, library assistants, clarks [clerks], and laborers. Heads of departments and library assistants shall be required to have technical library training; heads of departments shall have had at least one year of experience in library work prior to appointment. Clerks shall be required to hold a diploma from a first class high school according to the standards of the State Department of Public Instruction or the University of Texas, or to present satisfactory evidence of educational training equal to that provided by such high school, and also to present satisfactory evidence of proficiency in stenography and typewriting or book-keeping.

Laborers must present satisfactory evidence of education sufficient to do such elementary clerical work as shall be required of them.

Provided: That the archivist must present satisfactory evidence of one year's advanced work in American or Southwestern history in a standard college and of a fluent reading knowledge of Spanish and French; and that the Archivist is not required to have technical library school training or any library experience. (Id.)

Art. 5602. Powers and duties of the Commission.—The Commission is authorized and empowered to purchase within the limits of the annual appropriation allowed by Act of the legislature from time to time, suitable books, pictures, etc., the same to be the property of the State. The Commission shall give advice to such persons as contemplate the establishment of public libraries in regard to such matters as the maintenance of public libraries, selection of books, cataloguing, and library management. The Commission shall conduct library institutes, and encourage library associations. (Acts 1909, p. 122, sec. 3; Acts 1919, 2d C. S., ch. 60, sec. 1.)

Art. 5602a. Style; official seal.—The style of the Library governed by the Texas Library and Historical Commission shall be "Texas State Library." A circular seal of not less than one and one-half inches, and not more than two inches in diameter, bearing a star of five points, surrounded by two concentric circles, between which are printed the words, "Texas State Library," is hereby designated as the official seal of the Texas State Library; and the seal above designated shall be used in authentication of the official acts of the State Library. (Acts 1919, 2d C. S., ch. 60, sec. 1.)

Art. 5603. Commission may receive gifts.—The commission shall have power and authority to receive donations or gifts of money or property upon such terms and conditions as it may deem proper; provided, no financial liability is thereby entailed upon the state. (Acts 1909, p. 122, sec. 4.)

Art. 5604. State library, all books, etc., belong to.—All books, pictures, documents, publications and manuscripts received through gift, purchase or exchange, or on deposit, from any source, for the use of the state, shall constitute a part of the state library, and shall be placed therein for the use of the public. (Id. sec. 5.)

Art. 5605. Books, pictures, etc., transferred from department of insurance and banking.—So much of the law relating to the department of insurance and banking as places under the jurisdiction of that department the custody and control of books, documents, newspapers, manuscripts, archives, relics, mementoes, flags, works of art, etc., now in said department, and places upon said department the duty of collecting and preserving historical data, is hereby repealed. The custody and control of books, documents, newspapers, manuscripts, archives, relics, mementoes, flags, works of art, etc., and the duty of collecting and preserving historical data, is transferred to the Texas library and historical commission. To avoid all misunderstanding, it is hereby expressly declared that the gallery of the portraits of the presidents of the republic and of the governors of the state of Texas constitutes a part of the state library. The commission shall adopt such rules and regulations for the government of the state library as will insure the careful preservation of the books, documents, newspapers, manuscripts, archives, relics, mementoes flags, works of art, etc., deposited therein and particularly shall all materials relating to the history of Texas be carefully safeguarded. (Id. sec. 7.)

Art. 5606. Duties of the State Librarian.—The duties of the State Librarian, acting under the direction of the Texas Library and Historical Commission, shall be as follows:

First. He shall record the proceedings of the Commission, keep an accurate account of its financial transactions, and perform such other duties as may be asigned him by said Commission.

Second. He shall have charge of the State Library and all books, pictures, documents, newspapers, manuscripts, archives, relics, mementos, flags, etc., therein contained.

Third. He shall endeavor to collect all manuscript records relating to the history of Texas in the hands of private individuals, and where the originals cannot be obtained he shall endeavor to procure authenticated copies. He shall be authorized to expend the money appropriated for the purchase of books relating to Texas, and he shall seek diligently to procure a copy of every book, pamphlet, map or other printed matter giving valuable information concerning this State. He shall collect portraits or photographs of as many of the prominent men of Texas as possible. He shall endeavor to complete the files of the early Texas newspapers in the State Library; and he shall cause to be bound the current files of not less than ten of the leading newspapers of the state, and the current files of not less than four leading newspapers of other states, and of as many county papers, professional journals, denominational papers, agricultural papers, trade journals and other publications of this state as seem necessary to preserve in the State Library an accurate record of the history of Texas.

Fourth. He shall demand and receive from the officers of state departments having them in charge, all books, maps, papers, manuscripts, documents, memoranda, and data not connected with or necessary to the current duties of said officers, relating to the history of Texas, and carefully classify, catalogue and preserve the same. The attorney general shall decide as to the proper custody of such books, etc., whenever there is any disagreement as to the same.

Fifth. Any state, county or other official is hereby authorized and empowered in his discretion to turn over to the State Library for permanent preservation therein any official books, records, documents, original papers, maps, charts, newspaper files and printed books not in current use in his office, and the state librarian shall receipt for the same.

Sixth. The state librarian shall endeavor to procure from Mexico the original archives which have been removed from Texas and relate to the history and settlement thereof, and in case he can not procure the originals, he shall endeavor to procure authentic copies, thereof. In like manner, he shall procure the originals or authentic copies of manuscripts preserved in other archives beyond the limits of this state, in so far as said manuscripts relate to the history of Texas.

Seventh. He shall preserve all historical relics, mementos, antiquities, and works of art connected with and relating to the history of Texas, which may in any way come into his possession as state librarian. He shall constantly endeavor to build up an historical museum worthy of the interesting and important history of this state.

Eighth. He shall make and certify to copies of papers or documents in the State Library, upon application of any person interested, and shall charge the same fees as are allowed the secretary of state for similar services. And such certified copies of papers and documents shall be received in evidence by the courts the same as like papers and documents of other state departments. He shall collect all such fees in advance and turn them over to the state treasurer in the form required by law, and shall be authorized to approve the vouchers for all expenditures made in connection with the State Library.

Ninth. He shall give careful attention to the proper classification, indexing and preserving of the official archives that are now or may hereafter come into his custody.

Tenth. He shall make a biennial report to the Texas Library and Historical Commission, to be by them transmitted to the governor, to be accompanied by such historical papers and documents as he may deem of sufficient importance.

Eleventh. He shall ascertain the condition of all public libraries in this state, and report the results to the commission. He is authorized in his discretion to withhold from libraries refusing or neglecting to furnish their annual reports or such other information as he may request, public documents furnished the Commission for distribution, or interlibrary loans desired by such libraries. (Acts 1909, p. 122, sec. 9; Acts 1919, 2d C. S., ch. 60, sec. 1.)

Art. 5607. Books, pictures, etc., transferred from other departments.—All books, pictures, papers, maps, documents, manuscripts, memoranda and data which relate to the history of Texas as a province, colony, republic, or state, which have been, or may hereafter be, delivered to the state librarian by the secretary of state, comptroller, commissioner of the general land office, or by any of the heads of the departments, or by any persons or officers in pursuance of law, shall be deemed books and papers of said state library, and shall constitute a part of the archives of said state library; and copies therefrom shall be made and certified by the said state librarian upon application of any person interested; which certificate shall have the same force and effect as if made by the officer originally in custody of them, and for which the same fees shall be charged, to be collected in advance and turned over to the state treasurer quarterly. (Acts 1909, p. 122, sec. 10.)

Art. 5607a. Distribution of reports.—That until a permanent state agency for the distribution of state documents to the public and institutional libraries of Texas and the exchange with libraries elsewhere shall be provided for by law, 150 copies of all annual, biennial and special reports of state departments, boards, and institutions, findings of all investigations, bulletins, circulars, laws issued as separates, legislative manuals, 75 copies of all daily legislative journals, bound journals, bills, resolutions, session laws and compiled statutes, and 150 copies of all other publications, except routine business forms and court reports shall be delivered by the

State Contract Printer to the State Library for distribution and exchange. All requisitions for such publications as must by law be approved by the state expert printer or other official or officials performing the duties appertaining to the state expert printer, shall be sent to him in duplicate, one copy to be kept for his files, the other to be delivered to the State Library on the day on which the work is by him assigned to the state contract printer. All daily legislative journals, bills, resolutions, and other legislative documents hereinbefore required to be delivered to the State Library shall be delivered daily to the said State Library by the state contract printer, and at the close of each legislative session, all daily journals, bills, and resolutions, in the hands of the sergeants-at-arms of the House and the Senate shall be delivered to to the State Library to be disposed of at the discretion of the librarian. No accounts of the state contract printer for the printing of documents hereinbefore required to be delivered to the State Library shall be approved by the State Printing Board or other state officials or officials performing the function appertaining to the State Printing Board nor warrants therefor issued by the comptroller unless the state contract printer shall show a receipt from the State Library for such delivery as hereinbefore required.

Provided: That the state librarian shall at the beginning of each fiscal year revise the mailing list of libraries entitled to receive state publications under the provisions of this act and desiring to receive them: and if the number of such publications hereinbefore required to be delivered to the state librarian shall be insufficient to supply such libraries, the said state librarian is hereby authorized to request of the state printer or Board or the official or officials performing the functions appertaining to the State Printing Board such a number of copies as will supply such libraries.

Provided further: That the State Printing Board or the official or officials performing the duties appertaining to the State Printing Board shall upon receiving such request of the state librarian cause to be printed such a total number as will enable the state contract printer to deliver to the said state librarian the number requested: and the state contract printer shall deliver to the state librarian the said number of copies instead of the number hereinbefore specified. (Acts 1913, p. 281, sec. 1; Acts 1919, 2d C. S., ch. 60, sec. 1.)

Art. 5607b. Sale and distribution of copies of archives.—That the library and historical commission is authorized to sell copies of the Texas Archives, printed with funds appropriated for that purpose, at a price not to exceed twenty-five per cent above cost of publishing, provided that any money realized in excess of the costs attending such sale shall be placed to the account of the general revenue in the state treasury; provided further that one copy of each volume of the Texas Archives may be distributed free to the governor, the members of the legislature and to the libraries indicated in article 5607a above. (Acts 1913, p. 281, sec. 1.)

Art. 5608. Legislative reference section.—The said Library is authorized and directed to maintain for the use and information of the members of the Legislature, the heads of the several state departments, and such other citizens as may desire to consult the same, a section of the State Library for legislative reference and information. This section shall possess available for use, explanatory check lists and catalogues of the current legislation of this and other states, catalogues of the bills and resolutions presented in either branch of the legislature, check lists of the public documents of the several states, including all reports issued by the various departments, boards and commissions of this state, digests of such public laws of this and other states as may best be made available for legislative use. The Legislature Reference Section shall give the members of the legislature such aid and assistance in the drafting of bills and resolutions as may be asked. (Acts 1909, p. 122, sec. 11; Acts 1919, 2d C. S., ch. 60, sec. 1.)

Art. 5609. Biennial report of commission shall contain what.—The commission shall make a biennial report to the governor, which shall include the biennial report of the state librarian. Said report shall present a comprehensive view of the operation of the said commission in the discharge of the duties imposed by this chapter, shall present a review of the library conditions in this state, present an itemized statement of the expenditures of the commission, make such recommendations as their experience shall suggest, and present careful estimates of the sum or sums of money necessary for the carrying out of the provisions of this chapter. Said report shall be made and printed, and by the governor be laid before the legislature as are other department reports. (Acts 1909, p. 122, sec. 12.)

Art. 5609a. Penalty for detaining books, etc.—That whoever wilfully detains any book, newspaper, magazine, pamphlet, manuscript, or other property belonging to any public or incorporated library, reading room, museum, or other educational institution for thirty days after notice in writing to return the same, given after the expiration of the time which by the rules of such institution such articles or other property may be kept, shall be punished by a fine of not less than $1.00 nor more than $25.00, and the said notice shall bear on its face a copy of this section. (Acts 1913, p. 281, sec. 1.)

Art. 5609b. Penalty for injuring or defacing library property.—Penalty for injuring or defacing library property. That whoever wilfully injures or defaces any book, newspaper, magazine, pamphlet, manuscript, or other property belonging to any public library, reading room, museum, or other educational institution, by writing, marking, tearing, breaking, or otherwise mutilating, shall be punished by a fine not greater than the replacement value of the property injured, and that a copy of this article shall be posted in a conspicuous place in such library, reading room, museum, or other educational institution. (Acts 1919, 2d C. S., ch. 60, sec. 1.)

Art. 5609c. Repeal.—All laws or parts of laws in conflict with this Act, or any part thereof are hereby repealed. (Id. sec. 2.)

TITLE 86

LIENS

For lis pendens and levies, see arts. 6837-6840. For attachment liens, see arts. 267, 6858.

CHAPTER ONE

JUDGMENT LIENS

For judgment liens against receivers, see Title 37, Chapter 21, Article 2138.

Art. 5610. (3283) Clerk of county court shall keep a judgment record.—Each clerk of the county court shall keep in his office a well-bound book, to be called the "Judgment record," in which he shall record all abstracts of judgments filed in his office for record, which are authenticated in the manner hereinafter required.

See post, arts. 6796, 6832; Simkins' Equity (2d Ed.) p. 455; Sayles' Practice, p. 1214; Vidor v. Rawlins, 54 S. W. 1026.

Art. 5611. (3284) Clerks of courts shall make and deliver abstracts of judgments.—It shall be the duty of each clerk of a court, when the person in whose favor the judgment was rendered, his agent, attorney or assignee, applies therefor, to make out and deliver to such applicant, upon the payment of the fee allowed therefor by law, an abstract of such judgment, and certify thereto under his hand and official seal.

See Simkins' Equity (2d Ed.) p. 455.

Art. 5612. (3285) Abstract shall show what.—The abstract provided for in the preceding article shall show:

1. The names of the plaintiff and of the defendant in such judgment.

2. The number of the suit in which the judgment was rendered.

3. The date when such judgment was rendered.

4. The amount for which the same was rendered and the amount still due upon the same.

5. The rate of interest, if any is specified in the judgment.

See Sayles' Practice, p. 1216; Willis v. Sanger, 40 S. W. 229; Spaulding Mfg. Co. v. Blankenship, 191 S. W. 1167; Lemons v. Epley Hardware Co., 197 S. W. 1118.

Art. 5613. (3286) Justice of the peace shall deliver abstracts.—It shall also be the duty of each justice of the peace to make out and deliver an abstract of any judgment rendered in his court in the manner provided in the two preceding articles, certified to under his hand.

See post, art. 6834; Atteridge v. Maxey, 45 S. W. 606.

Art. 5614. (3287) Clerk of county court shall record and index abstracts.—When any such abstract, as is provided for in the three preceding articles, is presented to the clerk of the county court for record, he shall file and immediately record the same in the judgment record, noting in such record the day and hour of such record, and shall also at the same time enter it upon the index.

See post, arts. 6796, 6832; Simkins' Equity (2d Ed.) p. 456; Atteridge v. Maxey, 45 S. W. 606; Vidor v. Rawlins, 54 S. W. 1026; McLarry v. Studebaker Bros.. Co. of Texas, 146 S. W. 676; Whitaker v. Hill, 179 S. W. 539.

Art. 5615. (3288) Index shall show what.—The index to such judgment record shall be alphabetical, and shall show the name of each plaintiff and of each defendant in the judgment, and the number of the page of the book upon which the abstract is recorded.

See post, art. 6792; Simkins' Equity (2d Ed.) p. 456; Willis v. Downes, 46 S. W. 920; Noble v. Barner, 55 S. W. 382; McLarry v. Studebaker Bros. Co. of Texas, 146 S. W. 676; Whitaker v. Hill, 179 S. W. 539.

Art. 5616. (3289) Lien of judgment, when.—When any judgment has been recorded and indexed, as provided in the preceding articles, it shall, from the date of such record and index, operate as a lien upon all of the real estate of the defendant situated in the county where such record and index are made, and upon all real estate which the defendant may thereafter acquire situated in said county.

See post, arts. 6785, 6793; Sayles' Practice, p. 1214; Simkins' Equity (2d Ed.) p. 456; Vidor v. Rawlins, 54 S. W. 1026; Matula v. Lane, 55 S. W. 504; Wallis v. Wendler, 65 S. W. 43; First Nat. Bk. of Crockett v. Adams, 72 S. W. 403; Schneider v. Dorsey, 74 S. W. 526; Dixon v. McNeese, 152 S. W. 675; Davidson v. Lee, 162 S. W. 414; Hooker v. Eakin, 176 S. W. 80; Whitaker v. Hill, 179 S. W. 539; Reyes v. Kingman Texas Implement Co., 188 S. W. 450; Hirt v. Werneburg, 191 S. W. 711; Lewis v. San Antonio Belt & Terminal Ry. Co., 208 S. W. 552.

Art. 5617. (3290) Lien exists, how long.—When a lien has been acquired, as provided in this chapter, it shall continue for ten years from the date of such record and index, unless the plaintiff shall fail to have execution issued upon his judgment within twelve months after the rendition thereof, in which case said lien shall cease to exist.

See ante, art. 3717; post, art. 5696; Boyd v. Ghent, 64 S. W. 929; Schneider v. Dorsey, 74 S. W. 527; Pfeuffer v. Werner, 65 S. W. 888; White v. Pingenot, 90 S. W. 672; Kingman Texas Implement Co. v. Borders, 156 S. W. 614; Spaulding Mfg. Co. v. Blankenship, 191 S. W. 1167.

Art. 5618. (3291) Satisfaction of judgment, shown how.—Satisfaction of any judgment in whole or in part may be shown:

1. By return upon an execution issued upon said judgment, or by a certified copy of such return, certified by the officer to whom the return is made, such certificate showing the names of the parties to the judgment, the number and style of the suit, the date and amount of the judgment, the court in which rendered, and the dates of the issuance and return of the execution.

2. By a receipt, acknowledgment or release signed by the party entitled to receive payment of the judgment, or his agent, or attorney of record, and acknowledged or proven for record in the same manner as deeds are required to be.

See Sayles' Practice, pp. 1214, 1222.

Art. 5619. (3292) Satisfaction of judgment to be entered on judgment record.—Sufficient space shall be left at the foot of each abstract of a judgment recorded in the judgment record for the entry of credits upon and satisfaction of such judgment, and it shall be the duty of the clerk to enter such credits and satisfaction whenever the same are made to appear, as provided in the preceding article.

Art. 5620. (3293) Abstract from U. S. courts may be recorded, etc.—An abstract of a judgment rendered in this state by any United States court may be recorded and indexed in the same manner provided for the judgments of the courts of this state, upon the certificates of the clerks of such United States courts; and the record and index of such judgments shall have the same force

and effect as that of a judgment of a court of this state.

See Simkins' Equity (2d Ed.) p. 457.

CHAPTER TWO

MECHANICS, CONTRACTORS, BUILDERS AND MATERIAL MEN

Art. 5621. (3294) In favor of whom.—Any person or firm, lumber dealer or corporation, artisan, laborer, mechanic or subcontractor who may labor or furnish material, machinery, fixtures or tools to erect any house or improvement or to repair any building or improvement whatever, or who may labor or furnish material, machinery, fixtures or tools for the construction or repair of levees or embankments to be erected for the reclamation of overflow lands along any river or creek in this State, or furnish any material for the construction or repair of any railroad within this State under or by virtue of a contract with the owner, owners, or his or their agent, trustee, receiver, contractor or contractors, upon complying with the provisions of this chapter, shall have a lien on such house, building, fixtures, improvements, land reclaimed from overflow or railroad, and all its properties, and shall have a lien on the lot or lots of land necessarily connected therewith, or reclaimed thereby, to secure payment for the labor done, lumber, material, machinery or fixtures and tools furnished for construction or repair. The word "improvement," as used herein, shall be construed so as to include clearing, grubbing, draining or fencing of land, and shall include wells, cisterns, tanks, reservoirs or artificial lakes or pools made for supplying or storing water and all pumps, siphons and wind mills or other machinery or apparatus used for raising water for stock, domestic use or for irrigation purposes. (Acts 1895, p. 194; Acts 1913, p. 252, sec. 1; Acts 1917, ch. 171, sec. 1.)

See Const. art. 16, sec. 37; Sayles' Practice, pp. 913-4; Simkins' Contracts and Sales (3d Ed.) p. 705; Simkins' Equity (2d Ed.) p. 403; Cain v. Texas B. & L. Assn., 51 S. W. 879; Faber v. Muir, 64 S. W. 938; Nat. Bk. of Cleburne v. G. C. & S. F. Ry., 66 S. W. 203; Summerville v. King, 83 S. W. 680; Guaranty, etc., Co. v. Cash, 91 S. W. 781; Waters-Pierce Oil Co. v. U. S. & Mex. Trust Co., 99 S. W. 212; Hubbell v. Texas Southern Ry. Co., 126 S. W. 313; Sanguinett & Staats v. Colorado Salt Co., 150 S. W. 490; A. Leschen & Sons Rope Co. v. Moser, 159 S. W. 1018; William Cameron & Co. v. Trueheart, 165 S. W. 58; King v. Collins, 179 S. W. 899; Norton v. Elliott, 184 S. W. 1096; American Indemnity Co. v. Burrows Hardware Co., 191 S. W. 574; Lyon-Gray Lumber Co. v. Nocona Cotton Oil Co., 194 S. W. 633; First Nat. Bank of Paris v. Lyon-Gray Lumber Co., 194 S. W. 1146; San Antonio, U. & G. R. Co. v. Hales, 196 S. W. 903; Fox v. Christopher & Simpson Iron Works Co., 199 S. W. 833; Wichita Falls Sash & Door Co. v. Jackson, 203 S. W. 100.

Generally under this chapter, see Dilworth & Green v. Ed Steves & Sons, 169 S. W. 630; De Bruin v. Santo Domingo Land & Irrigation Co., 194 S. W. 654; Bryan College Interurban Ry. Co. v. Kropp, 197 S. W. 733.

Art. 5622. (3295) When to be filed.—In order to fix and secure the lien herein provided for, it shall be the duty of every original contractor, within four months, and every journeyman, day laborer or other person seeking to obtain the benefits of the provisions of this law, within thirty days after the indebtedness shall have accrued, to file his or their contract in the office of the county clerk of the county in which such property is situated, and cause the same to be recorded in a book to be kept by the county clerk for that purpose; provided, that, if such journeyman, day laborer or other persons have no written contract, it shall be sufficient for them to file an itemized account of their claim, supported by affidavit, showing that the account is just and correct, and that all just and lawful offsets, payments and credits known to the affiant have been allowed. (Acts 1889, p. 110.)

See Simkins' Contracts and Sales (3d Ed.) p. 708; Sayles' Practice, pp. 915, 920, 922-3; Farmers & Mechanics Nat. Bk. of Ft. W. v. Taylor, 40 S. W. 876; Baxter Lbr. Co. v. Nicholl, 60 S. W. 450; Guarantee Savings, etc., Co. v. Cash, 87 S. W. 749; Texas Builders' Supply Co. v. Beaumont Const. Co., 150 S. W. 770; A. Leschen & Sons Rope Co. v. Moser, 159 S. W. 1018; William Cameron & Co. v. Trueheart, 165 S. W. 58; Norton v. Elliott, 184 S. W. 1096; Collinsville Mfg. Co. v. Street, 196 S. W. 284; Wichita Falls Sash & Door Co. v. Jackson, 203 S. W. 100.

Art. 5623. (3296) Written notice to owner; filing with county clerk; owner to file contract and bond of contractor; effect.—Any person, firm or corporation who may furnish any material to or perform any labor for any contractor, sub-contractor, building or improvement, or to repair any house, building or improvement, or to construct any railroad, or its properties, by giving written notice to the owner or his agent of such house, building or improvement, or the railroad company, its agent or receiver, of each and every item furnished, and by showing how much there is due and unpaid on each bill of lumber or material furnished, or labor performed, by such person, firm or corporation, or at any time within ninety days after the indebtedness shall have accrued, may fix and secure the lien provided for in this chapter as to the material or labor furnished at the time or subsequent to the giving of the written notice above provided for, by filing in the office of the county clerk of the county in which such property is located, and if it be a railroad company in any county through which its road may pass, an itemized account of his or their claim as provided in this article, and cause the same to be recorded in a book kept by the county clerk for that purpose. Said owner, railroad company, its agent or receiver, shall cause to be executed a written contract for such erection, repair or improvement, and cause same to be filed with the county clerk of the county where the property is situated, and shall also cause to be executed and filed with said county clerk before the work is begun, a good and sufficient bond by said contractor, conditioned as hereinafter provided; and when said bond and contract shall be so executed and filed, the said owner, railroad company, its agent or receiver, shall in no case be compelled to pay a greater sum for or on account of labor performed, or material, machinery, fixtures or tools furnished, than the price or sum stipulated in the original contract between such owner and contractor. (Amend. 1895, p. 194; Acts 1915, ch. 143, sec. 1.)

See Simkins' Contracts and Sales (3d Ed.) p. 708; Sayles' Practice, pp. 918, 920; Simkins' Equity (2d Ed.) p. 405; Gilmer v. Wells, 43 S. W. 1058; Patgitt v. Dallas Brick, etc., Co., 50 S. W. 1010; Berry v. McAdams, 55 S. W. 1112; Herring-Hall-Marvin Co. v. Kraeger, 57 S. W. 930; Meyers v. Wood, 65 S. W. 174, 671; Nichols v. Dixon, 85 S. W. 1051; Id., 89 S. W. 765; Beilharz v. Illingsworth, 132 S. W. 106; Texas Glass & Paint Co. v. Southwestern Iron Co., 147 S. W. 620; Seeling v. Alamo Iron Works, 173 S. W. 520; First Baptist Church of Tyler v. Carlton Lumber Co., 173 S. W. 1179; Norton v. Elliott, 184 S. W. 1096; American Indemnity Co. v. Burrows Hard-

ware Co., 191 S. W. 574; First Nat. Bank of Paris v. Lyon Gray-Lumber Co., 194 S. W. 1146; Texas Fidelity & Bonding Co. v. Elliott, 195 S. W. 301; Garrett v. Dodson, 199 S. W. 675; Fox v. Christopher & Simpson Iron Works Co., 199 S. W. 833; Gordon-Jones Const. Co. v. Welder, 201 S. W. 681.

Art. 5623a. Duty of owner to take bond; form and contents; suit on bond; change of plans not to discharge sureties. —The owner, railroad, receiver or his agent shall take from every contractor described in this chapter a good and sufficient bond in the sum of at least the full amount of the contract price, where said contract price is equal to or less than one thousand dollars; three-fourths of the contract price where said contract price exceeds one thousand dollars, but does not exceed five thousand dollars; one-half the contract price where said contract exceeds five thousand dollars, but does not exceed one hundred thousand dollars; and one-third of the contract price where said contract exceeds one thousand dollars, payable to the said owner, railroad or receiver. The condition of said bond shall be the true and faithful performance of the contract, and the payment of all sub-contractors, workmen, laborers, mechanics and furnishers of material by the undertaker, contractor, master mechanic or engineer, the said bond to be made in favor of the owner, sub-contractors, workmen, laborers, mechanics and furnishers of material as their interest may appear, all of whom shall have the right to sue upon said bond; and regardless of the provisions or wording of any such bond, said bond shall be construed by the courts, whether so specified or not, to guarantee the true and faithful performance of the contract and the payment of all claims of each and every sub-contractor, workman, laborer, mechanic and furnisher of material against the undertaker, contractor, master mechanic or engineer, and it shall guarantee the payment of such claims, regardless of whether or not they are secured by any lien. Suit may be brought on said bond by the owner, sub-contractor, workmen, laborers, mechanics and furnishers of materials, or any of them, and they and each of them shall have the right to recover on said bond in the same manner as if the bond were made payable directly to them. Suit on such bond may be brought in the county where the owner resides or where the work is performed, and at any other place provided by law. No change or alteration in the plans, building, construction or method of payment shall in any way avoid or affect the liability on said bond, and the sureties on said bond shall be limited to such defenses only as the principal on said bond could make. (Id. sec. 2.)

Art. 5623b. Cumulative of other remedies.—The provisions of Articles 5623 and 5623a shall not be construed to deprive or abridge material men, artisans, laborers or mechanics of any rights and remedies now given them by law, and by other articles of this chapter and the provisions of said Articles 5623 and 5623a shall be cumulative of the other provisions of this chapter. (Id. sec. 3.)

Art. 5623c. Extent of liability of owner.—Nothing in this Act shall be construed to fix a greater liability against the owner than the price or sum stipulated to be paid in the contract between such owner and contractor. (Id. sec. 4.)

Art. 5623d. Partial invalidity.—It is provided hereby that if any of the provisions of this Act shall for any reason be held to be invalid or unenforceable, the remainder of this Act shall, nevertheless, not be affected thereby, but shall remain in full force and effect. (Id. sec. 5.)

Art. 5624. (3297) Form of fixing lien on unwritten contract.—If there be no written contract, it shall be the duty of the person seeking to obtain the benefit of this chapter to deliver to the clerk of the county court a sworn account as provided for in articles 5622 and 5623, to be filed and recorded as therein provided, and in such cases when the labor is performed for or the material is furnished to the owner of the building or improvements, or the owner or receiver of any railroad, the following form may be used, and will be sufficient to fix the meaning contemplated by this chapter:

The State of Texas,
County of ———.

A B, affiant, makes oath and says that the annexed is a true and correct account of the labor performed (or material furnished) C D, of ——— county, Texas, and that the prices thereof as set forth in said account hereto annexed are just and reasonable, and the same is unpaid; that said labor was performed (or material furnished, or both) for said C D at the time in said account mentioned, under and by virtue of a contract between affiant (or affiant's principal) and C D, and that due notice was given by affiant (or his principal) of the labor performed (or material furnished) in accordance with article 3296 (5623); and affiant further makes oath and says that he is informed that C D was at the time said contract was made and entered into and said labor was performed (or material furnished) the owner of the house (or improvements) described as follows: (Here describe the house or improvements.) And the said house (or improvements) is situated upon a certain lot or tract of land which affiant is informed is owned by said C D, and which is described as follows: (Here describe the lot or lots or the land.) And this affiant (or his principal) claims a lien upon said house (or improvements) and upon said land. (Or if the material was furnished to any railroad company, its agent or receiver, to construct or repair its railroad or other property, then the affiant shall describe said railroad by giving its charter name and the name of the receiver, if any, and the agent of said company, if any, with whom the contract was made, and that affiant or his principal claims a lien on said railroad and its property); provided, however, a substantial compliance with the above form shall be deemed sufficient to fix and secure the lien. (Acts 1889, p. 110, sec. 4; Acts 1895, p. 194.)

See Simkins' Contracts and Sales (3d Ed.) p. 709; Sayles' Practice, pp. 915, 920; Wichita Falls Sash & Door Co. v. Jackson, 203 S. W. 100.

Art. 5625. (3298) Form when material is furnished to contractor or builder and not the owner of property.—If the labor is performed for, or the material is furnished to, a contractor, builder, agent or receiver, and not the owner of the property, then the following form shall be deemed sufficient to fix the lien provided for by this chapter:

The State of Texas,
County of ———.

A B, affiant, makes oath and says that the annexed is a true and correct account of the labor performed for (or the material furnished to) C D, a contractor (builder, agent, or receiver) by affiant (or his principal), and the prices therefor as set forth in the annexed account are just and reasonable, and that the same is unpaid (or the sum of $———, as shown by said account, is unpaid) after allowing all just and lawful offsets, payments and credits known to affiant; that said labor was performed (or material furnished, or both) for (or to) said C D, to be used in the erection of a house (or building or improvements, or in the repair of the house, building or improvement, or in the construction or improvement of the railroad or its property), owned, as affiant is informed and believes, by E F, of ——— county, Texas, and that said labor was performed (or material furnished, or both) to (or for) said C D, under and by virtue of his contract between affiant (or his principal) and said C D. (And in case of material furnished, affiant shall further swear that he has given to the owner, his agent or representative or receiver, notice in writing of each item of said account as required in article 3296 [5623] as the same was furnished to said C D; provided, however, that a substantial compliance with the above form shall be deemed sufficient to fix and secure the lien.) (Acts 1889, p. 110, sec. 5; Acts 1895, p. 194.)

See Sayles' Practice, pp. 920-1.

Art. 5626. (3299) Description of property.—In case the contract is filed and recorded as provided for in article 5527 (5622), a like description of the house, building or improvement, and the lot or tract of land, shall accompany the same, as is required in the foregoing forms, except that the same is not required to be under oath. (Acts 1889, p. 110, sec. 6.)

See Sayles' Practice, pp. 915, 922; Simkins' Contracts and Sales (3d Ed.) p. 721; Guaranty, etc., Co. v. Cash, 91 S. W. 781.

Art. 5627. (3300) What is sufficient diligence; what included on property in city and country.—When a contract or account is filed and recorded as required by the preceding article, it shall be deemed sufficient diligence to fix and secure this lien. If this lien is against land in a city, town or village, it shall extend to or into the lot or lots upon which such house, building or improvement is situated, or upon which such labor was performed; and, if the lien is against land in the country, it shall extend to and include fifty acres upon which such house, building or improvements are situated, or upon which such labor has been performed; and, if the lien is against a railroad company, it shall extend to and include all of its property. (Acts 1889, p. 110, sec. 7; Acts 1895, p. 194.)

See Guaranty, etc., Co. v. Cash, 91 S. W. 781; Sayles' Practice, p. 923.

Art. 5628. (3301) Priority of lien.—The lien herein provided for shall attach to the house, building, improvements or railroad for which they were furnished, or the work was done, in preference to any prior lien or encumbrance or mortgage upon the land upon which the houses, buildings or improvements, or railroad, have been put, or labor performed, and the person enforcing the same may have such house, building or improvement, or any piece of the railroad property, sold separately; provided, any lien, encumbrance or mortgage on the land or improvement at the time of the inception of the lien herein provided for shall not be affected thereby, and holders of such liens need not be made parties in suits to foreclose liens herein provided for. (Acts 1889, p. 110, sec. 8; Acts 1895, p. 194.)

See Simkins' Equity (2d Ed.) p. 432; Sayles' Practice, p. 924; Simkins' Contracts and Sales (3d Ed.) p. 737; Owens v. Heidbreder, 44 S. W. 1079; Sullivan v. Texas B. & C. Co., 63 S. W. 307; Summerville v. King, 83 S. W. 680; Hubbell v. Texas Southern Ry. Co., 126 S. W. 313; William Cameron & Co. v. Trueheart, 165 S. W. 58.

Art. 5629. (3302) When improvements sold separately, purchaser may remove.—When the house, building, improvement, or any piece of the railroad's property are sold separately the officers making the sale shall place the purchaser in possession thereof; and such purchaser shall have the right to remove the same within a reasonable time from the date of the purchase. (Acts 1889, p. 110, sec. 9; Acts 1895, p. 194.)

See Sayles' Practice, p. 926.

Art. 5630. (3303) Sale must be under judgment.—Every sale must be upon judgment rendered by some court of competent jurisdiction, foreclosing such lien and ordering sale of such property. (Acts 1889, p. 110, sec. 10.)

See Simkins' Equity (2d Ed.) p. 446.

Art. 5631. (3304) On homestead, how fixed.—When material is furnished, labor performed, improvements as defined in this chapter and title made, or erections or repairs made upon homesteads, if the owner thereof is a married man, then, to fix and secure the lien upon the same, it shall be necessary for the person or persons who furnish the material or perform the labor before such material is furnished or labor is performed, to make and enter into a contract in writing, setting forth the terms thereof, which shall be signed by the owner and his wife, and privily acknowledged by her, as is required in making sale of homestead. And such contract shall be recorded in the office of the county clerk in the county where such homestead is situated, in a well-bound book to be kept for that purpose; provided, when such contract has been made and entered into by the husband and wife and the contractor or builder, and the same has been recorded, as heretofore provided, then the same shall inure to the benefit of any and all persons who shall furnish material or labor thereon for such contractor or builder. (Acts 1889, p. 110, sec. 11; Acts 1917, ch. 171, sec. 1.)

See ante, arts. 1115, 3792; Sayles' Practice, p. 926; Simkins' Contracts and Sales (3d Ed.) p. 744 et seq.; Speer's Marital Rights, pp. 291, 521; Simkins' Equity (2d Ed.) p. 439; Gilmer v. Wells, 43 S. W. 1058; Interstate B. & L. Ass'n v. Goforth, 59 S. W. 871; Lewis v. Roach Manigan Paving Co., 184 S. W. 680; Norton v. Elliott, 184 S. W. 1096; Colleps v. George W. Smith Lumber Co., 185 S. W. 1043; Herring v. Barber, 203 S. W. 142; Harrop v. National Loan & Investment Co. of Detroit, Mich., 204 S. W. 878.

Art. 5632. (3305) Notice of sub-contractor or laborer to owner of property.—Every person, except the original contractor or builder, or those claiming under article 5523 [5623] who may wish to avail himself of the benefits of this law, shall give at least ten days' notice in writing before the filing of

the lien, as herein required, to the owner or owners, or agent, or either of them, that he holds a claim against such house, building or improvement, setting forth the amount, and from whom the same is due; and thereafter said owner, or owners, or agent, shall be authorized to retain in his hands the amount claimed until the same is settled or determined not to be owing. (Acts 1889, p. 110, sec. 12.)

See Sayles' Practice, p. 919; Simkins' Equity (2d Ed.) p. 417; Tex. Builders Supply Co. v. National Loan & Inv. Co., 54 S. W. 1059.

Art. 5633. (3306) Diligence, what is sufficient.—A compliance with the provisions of the preceding article shall be deemed sufficient diligence to fix the liability of the owner of such house, building or improvement for the payment of such demand, subject to the subsequent provisions of this law. (Id. sec. 13.)

See Nichols v. Dixon, 85 S. W. 1051.

Art. 5634. (3307) Contractor to be furnished by owner with account.—Whenever any such account shall be placed in the hands of such owner, or his authorized agent, it shall be the duty of such owner, or his agent, to furnish his contractor with a true copy of said attested account; and, if said contractor shall not, within ten days after the receipt of said copy of attested account, give the owner written notice that he intends to dispute said claim, he shall be considered as assenting to the demand, which shall be paid by the owner when it becomes due. (Acts 1876, p. 91, sec. 7.)

Art. 5635. (3308) Original contractor to defend suits by sub-contractors, etc.—In all cases when a lien shall be filed under a provision of this chapter by any person other than the original contractor or builder, it shall be the duty of the original contractor to defend any action brought thereupon, at his own expense; and, during the pending of such action, the owner may withhold from the contractor or builder the amount of money for which such lien shall be filed, and, in case of judgment against the owner or his property upon the lien, he shall be entitled to deduct from any amount due by him to the contractor the amount of said judgment and costs; and, if he shall have settled with the contractor or builder in full, he shall be entitled to recover back from the contractor any amount so paid by the owner for which the contractor or builder was originally the party liable. But no owner or proprietor shall in any case be required to pay, nor his property be liable for, any money that he may have paid to the contractor before the fixing of the lien or before he has received written notice of the existence of the debt; and all sub-contractors, laborers and material men shall have preference over other creditors of the principal contractor or builder; provided, further, a copy of each bill of lumber furnished to the contractor or builder, as the same is furnished, shall be delivered to the owner of said homestead, said bill specifying each item so furnished, how much is paid thereon, and what is due for lumber or material furnished for said contract prior thereto; provided, when the debt is paid under the contract for such building or improvements, the party for whose interest the contract was recorded shall enter a relinquishment showing a full compliance of said contract to the extent of all money due them from the original contractor or builder on account of labor done or material furnished; and the money due said original contractor or builder from the person owning or having improvements made shall not be garnisheed by other creditors to the prejudice of such sub-contractors, mechanics, laborers or material men. (Acts 1889, p. 110, sec. 14.)

See Sayles' Practice, pp. 205, 925-6; Simkins' Contracts and Sales (3d Ed.) p. 752; Simkins' Equity (2d Ed.) p. 446; Patgitt v. Dallas, etc., Co., 50 S. W. 1010; Berry v. McAdams, 55 S. W. 1112; Nichols v. Dixon, 89 S. W. 765; Beilharz v. Illingsworth, 132 S. W. 107.

Art. 5636. (3309) When indebtedness accrues.—When labor is performed by the day or week, then the indebtedness shall be deemed to have accrued at the end of each week during which labor is performed. When material is furnished, the indebtedness shall be deemed to have accrued at the date of the last delivery of such material, unless there is an agreement to pay for such material at a specified time. (Id. sec. 15.)

See Sayles' Practice, p. 923; Baxter Lbr. Co. v. Nicholl, 60 S. W. 450; Cruz v. Texas Glass & Paint Co., 199 S. W. 819.

Art. 5637. (3310) Liens upon equal footing.—The liens for work and labor done or material furnished, as provided in this chapter, shall be upon an equal footing, without reference to date of filing the account or lien; and, in all cases when a sale shall be ordered and the property sold, which may be described in any account or lien, the proceeds arising from such sale, if not sufficient to discharge all the liens against the same, without reference to the date of filing the account or lien, shall be paid pro rata on the respective liens; provided, such accounts or liens shall have been filed and suit brought as provided by this law; provided, that nothing in this law shall be so construed as in any manner affecting the contract between said owner and original contractor as to the amount, manner or time of payment of said contract price. (Id. sec. 16.)

See Sayles' Practice, pp. 911, 925; Simkins' Equity (2d Ed.) p. 435; Simkins' Contracts and Sales (3d Ed.) p. 741; Baumgarten v. Mauer, 60 S. W. 452; Nichols v. Dixon, 89 S. W. 765; Slade v. Amarillo Lbr. Co., 93 S. W. 475; Beilharz v. Illingsworth, 132 S. W. 106.

Art. 5638. Enforcement of.—Whenever any mechanic or artisan shall perform any labor or service for any contractor, sub-contractor, agent or receiver, in the erection of any house, building, fixture or improvement, or to repair any house, building, fixture or improvement, or as a necessary incident in connection with such work of construction or repair, it shall be the duty of the owner of such property, or such agent or receiver, to retain in his hands, to secure the payment of the artisans and mechanics who may perform such labor or service, ten per cent of the contract price of such building, fixture or improvement, or the repair thereof, and, in the event there be no fixed contract price, then a sum equivalent to ten per cent of the value of such building, fixture or improvement, or the repair thereof; provided, that the amount so retained by the owner, agent or receiver as the work progresses shall not fall below one-tenth of the value of such building, fixture or improvement, or the repair thereof, measured by the proportion that the work done bears to the work to be done thereon, and using the

contract price or the reasonable value of the completed building, fixture or improvement, or the repair thereof, as a basis of computation of value. Such fund or funds shall be retained by the owner, or agent, or receiver for the purpose herein named during the progress of the work of construction upon such building, fixture or improvement, or the repair thereon, and for thirty days subsequent to the completion thereof. Any mechanic or artisan who may file a mechanic's lien upon said building, fixture or improvement so made or erected or repaired in accordance with the law applying thereto, shall have a preference lien upon said fund so retained in the hands of such owner, or agent, or receiver; provided, that all mechanics and artisans filing such lien shall be entitled to share ratably therein. In the event the owner of such building, fixture or improvement, or such agent, or receiver shall refuse or fail to comply with the provisions of this law, and to retain such fund or funds in his hands as herein provided, the mechanics and artisans performing work thereon and in connection therewith, who may file liens thereon in accordance with law, shall have ratably among themselves preference liens, to be preferred above all other liens and claims whatsoever upon such house, building, structure, fixture or improvement, and all its properties, and on the lot or lots of land necessarily connected therewith, to secure payment for such labor thereon. The provisions of this article shall not be construed to deprive artisans and mechanics of the remedies given them for enforcement of their liens as set out in other provisions of this chapter, except in so far as they may be in conflict herewith; and the provisions of this article shall be cumulative of the other provisions of this chapter. (Acts 1909, p. 184, sec. 1.)

Art. 5639. (3311) Release to be filed by mechanics, etc., when.—All parties who are authorized under this law to file a lien, and have done so, and had such lien recorded, shall, when such lien is paid or satisfied, or have received their proper lienable parts for which the owner of the building would be liable under this law, shall record a relinquishment and satisfaction of such lien. (Acts 1876, p. 91, sec. 18; Acts 1889, p. 110, sec. 18.)

See Sayles' Practice, p. 928.

CHAPTER TWO A

LIENS ON OIL, GAS, OR WATER WELLS, MINES, QUARRIES, AND PIPE LINES

Art. 5639a. Contracting laborers and materialmen entitled to lien.—Any person, corporation, firm, association, partnership, materialman, artisan, laborer or mechanic, who shall, under contract, express or implied, with the owner of any land, mine or quarry, or the owner of any gas, oil or mineral leasehold interest in land, or the owner of any gas pipe line or oil pipe line, or owner of any oil or gas pipe line right of way, or with the trustee, agent or receiver of any such owner, perform labor or furnish material, machinery or supplies, used in the digging, drilling, torpedoing, operating, completing, maintaining or repairing any such oil or gas well, water well, mine or quarry, or oil or gas pipe line, shall have a lien on the whole of such land or leasehold interest therein, or oil pipe line or gas pipe line, including the right of way for same, or lease for oil and gas purposes, the buildings and appurtenances, and upon the materials and supplies so furnished, and upon said oil well, gas well, water well, oil or gas pipe line, mine or quarry for which same are furnished, and upon all of the other oil wells, gas wells, buildings and appurtenances, including pipe line, leasehold interest and land used in operating for oil, gas and other minerals, upon such leasehold or land or pipe line and the right of way therefor, for which said material and supplies were furnished or labor performed. Provided, that if labor supplies, machinery, or material is furnished to a leaseholder the lien hereby created shall not attach to the underlying fee title to the land. (Acts 1917, ch. 17, sec. 1.)

Art. 5639b. Subcontractors entitled to lien.—Any person, corporation, firm, association, partnership or materialman, who shall furnish such machinery, material or supplies to a contractor or sub-contractor, or any person who shall perform such labor under a sub-contract with a contractor, or who as an artisan or day laborer in the employ of such contractor or sub-contractor, shall perform any such labor, shall have a lien upon the said land or leasehold interest therein, or oil pipe line or gas pipe line, including the right of way therefor, or lease for oil and gas purposes, the buildings and appurtenances, and upon the materials and supplies so furnished, and upon said oil well, gas well, water well, oil or gas pipe line and the right of way therefor, mine or quarry, for which same are furnished, and upon all of the other oil wells, buildings and appurtenances, leasehold interest, oil or gas pipe line including right of way, or land used in the operating for oil, gas or other minerals upon said leasehold or land for which said material and supplies were furnished and labor performed, in the same manner and to the same extent as the original contractor, for the amount due him for material furnished or labor performed. (Id. sec. 2.)

Art. 5639c. Priority of lien.—The lien herein provided for shall attach to the machinery, material, supplies and the specific improvements made, in preference to any prior lien or encumbrance or mortgage upon the land or leasehold interest upon which the said machinery, material, supplies or specific improvements are placed or located, provided however, that any lien, encumbrance, or mortgage upon the land or leasehold interest at the time of the inception of the lien herein provided, for, shall not be affected thereby; and the holders of such liens upon such land or leasehold interest shall not be necessary parties in suits to foreclose the liens hereby created. (Id. sec. 3.)

Art. 5639d. Proceedings to fix lien; removal of property.—The liens herein created shall be fixed and secured and notice thereof shall be given and such liens shall attach and be enforced in the same manner, and materialman's statement, or the lien of any laborer herein mentioned shall be filed and recorded within the same time, and in the same manner as provided for in Chapter 2, Titie 86, entitled "Liens," of the Revised Statutes of 1911 of the State of Texas, relating to liens for mechanics, contractors, builders and materialmen as the same now exists or may hereafter be amended. Whenever

any person shall remove any such property to a county other than the one in which the lien has been filed, the lien holder may within 90 days thereafter file an itemized inventory of the property so removed, showing how much there is due and unpaid thereon, with the clerk of the county to which it has been removed, which shall be recorded in the materialman's lien records of such county, and such filing shall operate as notice of the existence of the lien and the lien shall attach and extend to the land or leasehold and other premises, properties and appurtenances to which said properties so removed shall attach, of the kind and character enumerated in Sections one and two hereof. (Id. sec. 4.)

Art. 5639e. Sale or removal of property; remedies of lienholders.—When the lien herein provided for shall have attached to the property covered thereby, neither the owner of the land nor the owner of said oil, gas or mineral leasehold interest therein, nor the owner of any gas pipe line or oil pipe line nor the contractor, nor the sub-contractor, nor the purchaser, nor the trustee, receiver or agent, of any such owner, lessor, lessee, contractor, sub-contractor or purchaser, shall either sell or remove the property subject to said lien or cause same to be removed from the land or premises upon which they were to be used, or otherwise sell or dispose of the same, without the written consent of the holder of the lien hereby created; and in case of any violation of the provision of this article, the said lien holder shall be entitled to the possession of the property upon which said lien exists wherever found, and to have the same then sold for the payment of his debt, whether said debt has become due or not. (Id. sec. 5.)

Section 6 makes it a misdemeanor to remove property subject to the lien. See Pen. Code, art. 1430a.

Art. 5639f. Remedy cumulative.—The provisions of this Act shall not be construed to deprive or abridge materialmen, artisans, laborers, or mechanics of any rights and remedies, now given them by law, and the provisions of this Act shall be cumulative of the present lien laws. (Id. sec. 7.)

Art. 5639g. Extent of liability of owner.—Nothing in this Act shall be construed to fix a greater liability against the owner of the land or leasehold interest therein than the price or sum stipulated to be paid in the contract under which such material is furnished, or labor performed. (Id. sec. 8.)

Art. 5639h. Partial invalidity.—It is hereby provided that if any of the provisions of this Act, shall, for any reason, be held to be invalid or unenforcible, the remainder of this Act shall, nevertheless, not be affected hereby, but shall remain in full force and effect. (Id. sec. 9.)

CHAPTER THREE

LIENS OF RAILROAD LABORERS

Art. 5640. (3312) Railroad laborers, etc., to have lien, when.—All mechanics, laborers and operatives who may have performed labor, or worked with tools, teams or otherwise, in the construction, operation or repair of any railroad, locomotive, car or other equipment of a railroad, and to whom wages are due or owing for such work, or for the work of tools or teams thus employed, or for work otherwise performed, shall hereafter have a lien prior to all others upon such railroad and its equipments for the amount due him for personal services, or for the use of tools or teams. (Acts 1887, p. 17, sec. 1.)

See Simkins' Equity (2d Ed.) p. 451; Sayles' Practice, pp. 919, 930; Milligan v. Ry. Co., 46 S. W. 918; G. & B. V. Ry. v. Winder, 63 S. W. 1043; Nat. Bk. of Cleburne v. Ry., 66 S. W. 203; Ry. v. Foley, 69 S. W. 1030; Ry. v. Berry, 72 S. W. 1049; Ry. v. Davis, 83 S. W. 883; Ft. Worth & D. C. Ry. Co. v. Read Bros. & Montgomery, 140 S. W. 111; Concho S. S. & L. V. Ry. Co. v. Kennedy, 146 S. W. 345; Ft. Worth & D. C. Ry. Co. v. Read Bros. & Montgomery, 154 S. W. 1027; Texas Bldg. Co. v. Collins, 187 S. W. 404; San Antonio, U. & G. R. Co. v. Hales, 196 S. W. 903; Bryan College Interurban Ry. Co. v. Kropp, 197 S. W. 733.

Art. 5641. (3313) Lien, how foreclosed.—In all suits for wages due by a railroad company for such labor as heretofore mentioned, upon proof being satisfactorily made that such labor had been performed, either at the instance of said company, a contractor or sub-contractor, or agent of said company, and that such wages are due, and the lien given by the preceding article is sought to be enforced, it shall be the duty of the court having jurisdiction to try the same to render judgment for the amount of wages found to be due, and to adjudge and order said railroad and equipments, or so much thereof as may be necessary, to be sold to satisfy said judgment. In all suits of this kind, it shall not be necessary for the plaintiff to make other lienholders defendants hereto, but such lienholders may intervene and become parties thereto and have their respective rights adjusted and determined by the court. (Acts 1879, p. 8, sec. 2.)

See post art. 6623; Sayles' Practice, pp. 205, 240, 919, 932; G. & B. V. Ry. v. Barnett, 55 S. W. 986; Weddington v. Carver, 100 S. W. 786.

Art. 5642. (3314) Venue.—Suits by mechanics, laborers and operatives for their wages due by railroad companies, may be instituted and prosecuted in any county in this state where such labor was performed, or in which the cause of action, or part thereof, accrued, or in the county in which the principal office of such railroad company is situated, and in all such suits service of process may be made in the manner now required by law. (Id. sec. 3.)

See ante, art. 1830, sec. 24; Sayles' Practice, pp. 277, 919, 932.

Art. 5643. (3315) Lien ceases, when.—The lien created by article 5640 shall cease to be operative in twelve months after the creation of the lien, if no steps be sooner taken to enforce it. (Id. sec. 4.)

See Sayles' Practice, pp. 919, 930; Ry. v. Berry, 72 S. W. 1049.

CHAPTER FOUR

LIENS OF ACCOUNTANTS, BOOKKEEPERS, ARTISANS, CRAFTSMEN, FACTORY OPERATIVES, MILL OPERATIVES, SERVANTS, MECHANICS, QUARRYMEN, COMMON LABORERS AND FARM HANDS

Art. 5644. Who entitled to liens.—That whenever any clerk, accountant, book-keeper, artisan, craftsman, factory operator, mill operator, servant, mechanic, quarryman, or common laborer, farm hand, male or female, may labor or perform any service in any office, store, saloon, hotel, shop, mine, quarry, factory or mill of any character, or who may perform any service in the cutting, prepara-

tion, hauling, handling, or transporting to any mill, or other point for sale, manufacture or other disposition, logs or timber, or who shall perform any service upon any wagon, cart, tram, or railroad or other means or methods of transporting such logs or timber, and in the construction or maintenance of such tram or railroad, constructed or used for the transportation of logs or timber to or for such mills or to its owner or operator, or to points for sale, shipment or other disposition, or any farm hands, under or by virtue of any contract or agreement, written or verbal, with any person, employer, firm, corporation, or his, her, or their agent or agents, receiver or receivers trustee or trustees, in order to secure the payment of the amount due or owing under such contract or agreement, written or verbal, the hereinbefore mentioned employees shall have a first lien upon all products, machinery, tools, fixtures, appurtenances, goods, wares, merchandise, chattels, wagons, carts, tram roads, railroads, rolling stock, and appurtenances, or thing or things of value of whatsoever character that may be created in whole or in part by the labor of or that may be used by such person or persons, or necessarily connected with the performance of such labor or service, which may be owned by or in the possession or under the control of the aforesaid employer, person, firm, corporation, or his, or their agent or agents, receiver or receivers, trustee or trustees; provided, that the lien herein given to a farm hand shall be subordinate to the landlord's lien now provided by law. (Acts 1897, p. 218, sec. 1; Acts 1913, p. 151, sec. 1.)

See Simkins' Equity (2d Ed.) p. 453; Cash v. Bank, 61 S. W. 723; Mudgett v. Texas Tobacco Growing & Mfg. Co., 61 S. W. 150; Sparks v. Crescent Lbr. Co., 89 S. W. 423; Red Deer Oil Development Co. v. Huggins, 155 S. W. 949; Ferrell-Michael Abstract & Title Co. v. McCormac, 184 S. W. 1081; Barton v. Wichita River Oil Co., 187 S. W. 1043; Farmers' Elevator Co. v. Advance Thresher Co., 189 S. W. 1018; Gibson v. Wood, 199 S. W. 893; Debenham v. Short, 199 S. W. 1147; Security Trust Co. of Houston v. Roberts, 208 S. W. 892.

Section 2 of Acts 1913, p. 151, repeals all inconsistent laws, and provides that the act shall not be construed to repeal chapter 2 of Title 86.

Art. 5644a. Newspaper workers in editorial, advertising and business departments.—Whenever any newspaper worker in the editorial or reportorial department of any newspaper, publication or periodical, whether daily or otherwise, also any solicitor, clerk or other employee in the advertising or business office of any newspaper, publication or periodical, whether daily or otherwise, shall labor or perform any service in any of the departments or offices of such newspaper or periodical, under or by virtue of any contracts or agreements, written or verbal, with any person, employer, firm, corporation, or his, her or their agent or agents, receiver, or receivers, trustee or trustees, in order to secure the payment of the amount due by such contract or agreement, written or verbal, the hereinbefore mentioned employees shall have a first lien upon all products, papers, machinery, tools, fixtures, appurtenances, goods, wares, merchandise, subscription contracts, chattels, thing or things of value of whatsoever character that may be created in whole or in part by the labor of such persons, or necessarily connected with the performance of such labor or service which may be owned by, or in possession of the aforesaid employer, person, firm, corporation or his, her, or their agent or agents, receiver or receivers, trustee or trustees. (Acts 1917, ch. 126, sec. 1.)

Art. 5645. Liens, how fixed.—Whenever any person, employer, firm, corporation, his, her or their agent or agents, receiver or receivers, trustee or trustees, shall fail or refuse to make payments as hereinafter prescribed in this law, the said clerk, accountant, bookkeeper, farm hand, artisan, craftsman, operative, servant, mechanic, quarryman, or laborer, who shall have performed service of any character, shall make or have made duplicate accounts of such service, with amount due him or her for the same, and present, or have presented, to aforesaid employer, person, firm or corporation, his, her or their agent or agents, receiver or receivers, trustee or trustees, one of the aforesaid duplicate accounts within thirty days after the said indebtedness shall have accrued. The other of the said duplicate accounts shall, within the time hereinbefore prescribed, be filed with the county clerk of the county in which said service was rendered, and shall be recorded by the county clerk in a book kept for that purpose. The party or parties presenting the aforesaid account shall make affidavit as to the correctness of the same. A compliance with the foregoing requirements in this article shall be necessary to fix and preserve the lien given under this law; and the liens of different persons shall take precedence in the order in which they are filed; provided, that all persons claiming the benefit of this law shall have six months within which to bring suit to foreclose the aforesaid lien; and provided, further, that a substantial compliance with the provisions of this article shall be deemed sufficient diligence to fix and secure the lien hereinbefore given; provided, that any purchaser of such products from the owner thereof shall acquire a good title thereto, unless he has at the time of the purchase actual or constructive notice of the claim of such lienholder upon such products, said constructive notice to be given by record of such claim, as provided for in this law, or by suit filed. (Acts 1897, p. 218, sec. 2.)

See Bank v. Hollis, 84 S. W. 269; Red Deer Oil Development Co. v. Huggins, 155 S. W. 949; Farmers' Elevator Co. v. Advance Thresher Co., 189 S. W. 1018; Debenham v. Short, 199 S. W. 1147; Security Trust Co. of Houston v. Roberts, 208 S. W. 892.

Art. 5646. Wages, when paid.—Under the operation of this law, all wages, if service is by agreement performed by the day or week, shall be due and payable weekly, or, if by the month, shall be due and payable monthly; all payments to be made in lawful money of the United States. (Id. sec. 3.)

This article is to some extent superseded and modified by Act March 1, 1915, ante, arts. 5246—98 to 5246—100.

Art. 5647. Right of assignment.—Any of the parties named in article 5644 may transfer or assign their rights hereunder, and their assignee or assignees shall have the same rights and privileges as are conferred upon such persons enumerated in article 5644. (Id. sec. 4.)

Art. 5648. Lien ceases, when.—The lien created by this chapter shall cease to be operative after six months after the same is

fixed, unless suit is brought within said time to enforce such lien. (Id. sec. 5.)

Art. 5649. Laws not repealed.—This chapter shall not be so construed as to repeal chapter 2 of this title, relating to liens of mechanics, contractors, builders and material men. (Id. sec. 6.)

CHAPTER FIVE
LIENS ON DOMESTIC VESSELS

Art. 5650. (3316) Lien on vessels, when.—Every person who may furnish supplies or materials, or do repairs or labor for or on account of any domestic vessel, owned in whole or in part in this state, shall have a lien on such vessel, her tackle, apparel, furniture and freight money, for the security and payment of the same. (Act Feb. 3, 1848; P. D. 4600.)

Art. 5651. (3317) Not to affect laws of liens for seamen's wages.—The provisions of the preceding article shall not be construed to alter or affect in any way the general law regulating the liens of seamen on foreign vessels. (P. D. 4601.)

CHAPTER SIX
LIEN—LIVE STOCK

Art. 5652. (3335) Keeper of stallion, etc., a lien.—The owner or keeper of any stallion, jack, bull or boar, who keeps the same confined for the purpose of standing him for profit, shall have a preference lien upon the progeny of such stallion, jack, bull or boar to secure the payment of the amount due such owner or keeper, for the services of such stallion, jack, bull or boar, and such lien shall exist by reason of the force and effect of the provisions hereof, and it shall never be necessary in order to secure and fix said lien to secure, file or register any contract or statement thereof with any officer, nor shall it be necessary that the owner of such progeny execute any contract whatever, but that such preference lien may be foreclosed in the same manner as the statutory landlord's lien is by law enforced; provided, that where parties misrepresent their stock by false pedigree, no lien shall obtain. (Acts 1889, p. 115; Acts 1905, p. 24.)

Art. 5653. (3336) Period of such lien.—The lien herein provided for shall remain in force for a period of ten months from the birth of said progeny, but shall not be enforced until five months shall have elapsed after such birth. (Id.; Acts 1905, p. 24.)

CHAPTER SEVEN
CHATTEL MORTGAGES

Art. 5654. (3327) Reservations of title, mortgages, and to be recorded.—All reservation of the title to or property in chattels, as security for the purchase money thereof, shall be held to be chattel mortgages, and shall, when possession is delivered to the vendee, be void as to creditors and bona fide purchasers, unless such reservations be in writing and registered as required of chattel mortgages; provided, that nothing in this law shall be construed to contravene the landlord and tenant act. (Acts 1885, p. 76.)

See post art. 5655; Simkins' Equity (2d Ed.) p. 463 et seq.; Simkins' Contracts and Sales (3d Ed.) pp. 44, 940; Avery v. Mansur & Tibbetts Impl. Co., 37 S. W. 466; Lewis v. Bell, 40 S. W. 747; Bowen v. Lansing Wagon Wks., 43 S. W. 873; Eastland v. Williams' Est., 45 S. W. 412; Moore v. Masterson, 46 S. W. 855; Wheeler v. Duke, 67 S. W. 909; Eason v. De Long, 86 S. W. 347; Crews v. Harlan, 87 S. W. 656; Wright v. Tex. Moline Plow Co., 90 S. W. 905; Low v. Troy Laundry Machinery Co., 160 S. W. 136; Wing & Son v. Padgett, 160 S. W. 422; J. M. Radford Grocery Co. v. Pace, 172 S. W. 146; Crenshaw v. Staples, 173 S. W. 1184; Hamilton v. Fireman's Fund Ins. Co., 177 S. W. 173; Mayfield Co. v. Harlan & Harlan, 184 S. W. 313; Lee v. S., 193 S. W. 313; Joseph W. Moon Buggy Co. v. Moore-Hustead Co., 196 S. W. 328; Park v. South Bend Chilled Plow Co., 199 S. W. 843; Chase-Hackley Piano Co. v. Clymer, 202 S. W. 214; Renfroe v. Hall, 202 S. W. 218; Menke v. First Nat. Bank of Amarillo, 206 S. W. 693; Willys-Overland Co. of California v. Chapman, 206 S. W. 978.

Art. 5655. (3328) All instruments intended to operate as liens to be recorded.—Every chattel mortgage, deed of trust, or other instrument of writing, intended to operate as a mortgage of or lien upon personal property, which shall not be accompanied by an immediate delivery and be followed by an actual and continued change of possession of the property mortgaged or pledged by such instrument, shall be absolutely void as against the creditors of the mortgagor or person making same, and as against subsequent purchasers and mortgagees or lien holders in good faith, unless such instrument, or a true copy thereof, shall be forthwith deposited with and filed in the office of the county clerk of the county where the property shall then be situated, or if the mortgagor or person making the same be a resident of this state, then, of the county of which he shall at that time be a resident; provided, that written contracts for the conditional sale, lease or hire of railroad equipments and rolling stock, by which the purchase money is therein agreed to be paid at any time or times after the date of such contract, with a reservation of title or lien in the vendor, lessor or bailor until the same has been fully paid, shall be recorded in the office of the secretary of state, in a book of records to be kept by him for that purpose; and, on payment in full of the purchase money and the performance of the terms and conditions stipulated in any such contract, a declaration in writing to that effect may be made by the vendor, lessor or bailor, or his or its assignee, which declaration may be made on the margin of the record of the contract, duly attested, or it may be made by a separate instrument to be acknowledged by the lessor, vendor or bailor, or his or its assignee, and recorded as aforesaid; and for such services the secretary of state shall be entitled to a fee of five dollars for recording each of said contracts and each of said declarations, and a fee of one dollar for entering such declaration on the margin of the record. (Acts 1879, p. 134, sec. 1; Acts 1897, p. 209.)

See post, art. 6841; Simkins' Contracts and Sales (3d Ed.) p. 940; Simkins' Equity (2d Ed.) pp. 463, 465, 588; Maverick v. Bohemian Club, 36 S. W. 147; Barnes v. Gray, 37 S. W. 162; Oxsheer v. Watt, 44 S. W. 67; Avery v. Popper, 48 S. W. 572; Oak Cliff College v. Armstrong, 50 S. W. 611; Cameron Ice Co. v. Wallace, 50 S. W. 628; Hackney v. Schow, 53 S. W. 713; Williams v. Farmers Nat. Bk., 56 S. W. 261; Scott v. Cox, 70 S. W. 802; Austin v. Welch, 72 S. W. 882; Hockaday-Gray Co. v. Jonett & Campbell, 74 S. W. 71; Eason v. Garrison & Kelly, 82 S. W. 800; McCarthy v. North Tex. Traction Co., 101 S. W. 835; First Nat. Bank of Portales, N. M., v. McElroy, 112 S. W. 801; American Type Founder Co. v. First Nat. Bank of Teague, 156 S. W. 300; Sublett v. Hurst, 164 S. W. 448; Burlington State Bank v. Marlin Nat. Bank, 166 S. W. 499; J. M. Radford Grocery Co. v. Pace, 172 S. W. 146; Western Automatic Music Co. v. Fisher, 185 S. W. 675; Maloney v. Greenwood, 186 S. W. 228; Farmer

v. Evans, 192 S. W. 342; Chase-Hackley Piano Co. v. Clymer, 202 S. W. 214; Willys-Overland Co. of California v. Chapman, 206 S. W. 978.

Art. 5656. (3329) Duty of clerk receiving.—Upon the receipt of such instrument, the clerk shall endorse thereon the day and hour when the same was deposited in his office for record, and shall keep the same on file in his office for the inspection of all parties interested until satisfaction thereof shall be entered, as provided in article 5659; provided, that if a copy be presented to the clerk for filing, instead of the original instrument, he shall carefully compare such copy with the original, and the same shall not be filed unless it is a true copy thereof, and a copy can be filed only when the original has been witnessed by two subscribing witnesses or acknowledged or proven for record and certified as required in case of other instruments for the purpose of being recorded. (Sen. Jour., 1895, p. 479.)

Art. 5657. (3330) Copy of instrument evidence of what.—A certified copy of any such instrument so filed as aforesaid, certified to under the hand and seal of the clerk of the county court in whose office the same shall have been filed, shall be admitted in evidence in like manner as the original might be, unless the execution of the original has been denied under oath by the party sought to be charged thereby; provided, that the party desiring to use such instrument shall file the same in the papers of the cause before announcing ready for trial, and not afterwards; and such certified copy shall in all cases be received as evidence of filing and entry thereof in chattel mortgage record according to the endorsement of the clerk thereon. (Id. p. 480.)

See Simkins' Equity (2d Ed.) pp. 464, 468; Sayles' Practice, p. 472; Oxsheer v. Watt, 44 S. W. 67.

Art. 5658. (3331) County clerk to keep book.—The county clerk shall keep a book in which shall be entered a minute of all such instruments, which shall be ruled off into separate columns, with heads as follows: Time of reception, name of mortgagor, name of mortgagee or trustee and cestui que trust, date of instrument, amount secured, when due, property mortgaged, and remarks; and the proper entry shall be made under each of such heads. Under the head of property mortgaged, it will be sufficient to enter a general description of the property pledged and the particular place where located, and index shall be kept in the manner as required for other records. (Id. sec. 4.)

Art. 5659. (3332) Satisfaction to be entered.—When the debt secured by any such instrument shall have been paid or satisfied, it shall be the duty of the mortgagee, his assignee, attorney or legal representative to enter, or cause to be entered, and attested by the clerk, as aforesaid, satisfaction thereof, in the record book in which the instrument is entered, which may be done under the head of "remarks;" and any instrument acknowledging payment or satisfaction need not be recorded at length, but the entry as above provided showing the same has been paid shall be sufficient, and the original instrument or copy thereof on file shall then be delivered to the mortgagor or maker upon demand, or the clerk may mail the same to him. (Sen. Jour., 1895, p. 480.)

Art. 5660. (3333) Property not to be removed.—The person making any such instrument shall not remove the property pledged from the county, nor otherwise sell or dispose of the same without the consent of the mortgagee; and, in case of any violation of the provisions of this article, the mortgagee shall be entitled to the possession of the property, and to have the same then sold for the payment of his debt, whether the same has become due or not. (Id. sec. 6.)

See Simkins' Equity (2d Ed.) p. 470; Hargadine, etc., Dry Goods Co. v. First Nat. Bk., 37 S. W. 622; McMillan v. Moon, 44 S. W. 414; Kelly v. Wimbish, 65 S. W. 386; Oswald v. Giles, 178 S. W. 677; Hunter v. Abernathy, 188 S. W. 269; Equitable Loan Soc. v. Taylor Bros. Jewelry Co., 189 S. W. 516; Joseph W. Moon Buggy Co. v. Moore-Hustead Co., 196 S. W. 328.

Art. 5661. (3334) Not to be recorded at length; mortgages on articles attached to realty described in instrument; form of instrument; separate record book.—Chattel mortgages and other instruments intended to operate as mortgages or liens upon personal property shall not hereafter be recorded at length as heretofore required; and when deposited and filed in accordance with the provisions of this law, shall have the force and effect heretofore given to a full registration thereof, and all persons shall be thereby charged with notice thereof, and of the rights of the mortgagee, his assignee or representatives thereunder, but nothing herein contained shall be so construed as to in any manner affect the rights of any person under any instrument heretofore recorded as required by law. Provided, that when any machinery or other manufactured article is susceptible of being attached to the realty in such a way as to become a fixture thereto and is located upon real estate in such manner as the same may be deemed a fixture thereto, and at the time of its location upon such real estate there is a lien or mortgage evidenced by written instrument or any instrument reserving title in such machinery or other manufactured article to secure an indebtedness thereon, executed by the purchaser or owner of such machinery or other manufactured article at the time of its location on such real estate, and the instrument evidencing said lien, mortgage or reservation of title contains a description of said machinery or other manufactured article, as well as the real estate upon which it is to be located or situated, reasonably sufficient to identify said real estate, and such instrument is registered under the provisions of this Act, then the registration of such instrument evidencing said lien, mortgage, or reservation of title as provided for by this Act, shall be notice to all persons thereafter dealing with or acquiring any right or interest in said machinery or other manufactured article, or the realty upon which the same is located or other improvements or property situated on said real estate, of all of the rights of the owners or holders of the indebtedness secured by said instrument the same as if recorded at length in the deed records or records of mortgages upon realty of the county where the real estate is situated, and such lien, mortgage or reservation of title upon or to such machinery or other manufactured article shall be as to such machinery and other manufactured article superior to any lien or rights existing in any one to said real estate or other im-

provements or other property located and situated thereon existing at the time of the location of said machinery or other manufactured article thereon, but nothing herein contained shall be held to give the holder of such lien, mortgage or reservation of title any right to or claim upon the real estate save and except the right to establish and foreclose his lien, mortgage or reservation of title upon such machinery or other manufactured article, and to enforce his rights thereto under the instrument evidencing his lien, mortgage or reservation of title, as in other cases of liens upon personal property hereunder. Provided, further that all such instruments shall be endorsed on the back thereof, to wit, "Liens on machinery situated on realty," and shall be registered in the county the real estate is located in the same manner as other chattel mortgages except that there shall be kept, indexed and recorded, as now herein provided for chattel mortgages, a separate book to be endorsed "chattel mortgage records on realty." The record thereof shall in addition to the other requirements of this Act contain a brief description of said real estate to which said fixtures are to be attached. (Acts 1879, p. 134, sec. 7; Acts 1917, ch. 153, sec. 1.)

Art. 5662. Destruction of chattel mortgages.—All chattel mortgages filed with the county clerks of this state in accordance with law shall be prima facie presumed to have been paid after the expiration of six years from the date of the maturity of the debts such mortgages were intended to secure, unless the owner or holder of such mortgage, his agent or attorney, shall, within three months next before the expiration of said time, file an affidavit in writing with the county clerk stating that such debt has not been paid, and the amount still due thereon. If such affidavit is not filed, the clerk shall, at the expiration of said time, make disposition of such mortgage, either by delivering the same to the maker or by burning the same. (Acts 1907, p. 272.)

CHAPTER EIGHT

OTHER LIENS

Art. 5663. (3318) Lien in favor of hotels and boarding houses.—Proprietors of hotels, boarding houses or inns, whether individual, partnership or corporation shall have a special lien upon all baggage and other property in and about such hotel, inn or boarding house brought to the same by or under control of his guests or boarders for the accommodations, board and lodging or either and for all money paid for and advanced to them and for such other extras as are furnished at the request of such guests and said inn keeper, boarding house keeper and hotel-keeper, shall have the right to detain such baggage and other property until the amount of such charges are paid and such baggage and other property shall be exempt from attachment or execution until such lien and the costs of satisfying it are paid. (Acts 1874, p. 200, sec. 1; P. D. 7116f; Acts 1919, ch. 71, sec. 1.)

See Sayles' Practice, p. 932; Torrey v. McClellan, 43 S. W. 64; Kingsbury v. Price, 59 S. W. 52; Johnson v. S., 159 S. W. 849; Kieffer v. Keough, 188 S. W. 44.

Art. 5663a. Same subject; satisfaction of lien.—The inn keeper, boarding house keeper, or hotel keeper shall retain such baggage and other property upon which he has a lien for a period of thirty days, at the expiration of such time if such lien is not satisfied, he may sell such baggage or other property, at public auction, first giving notice of the time and place of sale by posting at least three notices thereof in public places in the county where the inn, hotel or boarding house is situated and also by mailing a copy of such notices to said guest or boarder at the place of residence designated by the register of such inn or hotel if the register shows a place of residence; and after satisfying the lien and any costs that may accrue, and residue remaining shall on demand, within sixty days, be paid such guest or boarder and if not demanded within sixty days from date of sale, such residue shall be deposited by such proprietor with the treasurer of the county in which said hotel, inn or boarding house is located, accompanied with a true and correct statement made under oath and which residue shall be retained by the county treasurer for a period of one year, and if not claimed within that time by the owner thereof, the county treasurer shall pay the same into the State Treasury, and it shall be placed to the credit of the escheat fund. (Id. sec. 2.)

Art. 5663b. Same subject; hotel or inn defined.—Under the meaning of this Act a hotel or inn is a place where the proprietor makes it his business to furnish food or lodging, or both to all who apply, paying suitable compensation therefor, provided further that the words hotel or inns shall be construed to include rooming houses. (Id. sec. 3.)

Art. 5664. (3319) Lien of livery stable keepers and pasturers.—Proprietors of livery or public stables shall have a special lien on all animals placed with them for feed, care and attention, as also upon such carriages, buggies or other vehicles as may have been placed in their care, for the amount of the charges against the same; and this article shall apply to and include owners or lessees of pastures, who shall have a similar lien on all animals placed with them for pasturage. (Acts 1874, p. 200, sec. 1; 1895, p. 96.)

See Simkins' Equity (2d Ed.) p. 402; Blackford v. Ryan, 67 S. W. 161; Masterson v. Petz, 86 S. W. 56; McKnight v. S., 156 S. W. 1188.

Art. 5665. (3320) Mechanics may retain possession of article repaired, when.—Whenever any article, implement, utensil or vehicle shall be repaired with labor and material, or with labor and without furnishing material, by any carpenter, mechanic, artisan or other workman in this state, such carpenter, mechanic, artisan or other workman is authorized to retain possession of said article, implement, utensil or vehicle until the amount due on same for repairing by contract shall be fully paid off and discharged. (Acts 1874, p. 68, sec. 1; P. D. 7116a.)

See Simkins' Equity (2d Ed.) p. 402; Speer's Marital Rights, p. 291; Lithgow v. Sweedberg, 78 S. W. 246; Caldwell v. Auto Sales & Supply Co., 158 S. W. 1030; Nunn v. Padgitt Bros., 161 S. W. 921; McBride v. Beakley, 203 S. W. 1137.

Art. 5666. (3321) Where no price is agreed upon.—In case no amount is agreed upon by contract, then said carpenter, mechanic, artisan or other workman shall re-

tain possession of such article, implement, utensil or vehicle, until all reasonable, customary and usual compensation shall be paid in full. (Id. sec. 1.)

Art. 5667. (3322) When property may be sold for charges.—When possession of any of the property embraced in the four preceding articles has continued for sixty days after the charges accrue, and the charges so due have not been paid, it shall be the duty of the persons so holding said property to notify the owner, if in the state and his residence be known, to come forward and pay the charges due, and, on his failure within ten days after such notice has been given him to pay said charges, the persons so holding said property, after twenty days' notice, are authorized to sell said property at public sale and apply the proceeds to the payment of said charges, and shall pay over the balance to the person entitled to the same.

See Lithgow v. Sweedberg, 78 S. W. 246; McBride v. Beakley, 203 S. W. 1137.

Art. 5668. (3323) When owner lives out of the state or residence is unknown.—If the owner's residence is beyond the state or is unknown, the person holding said property shall not be required to give the ten days' notice mentioned in the preceding article before proceeding to sell.

Art. 5669. (3324) Balance, how disposed of.—If the person who is legally entitled to receive the balance mentioned in this chapter is not known, or has removed from the state or from the county in which such repairing was done, or such property was so held, it shall be the duty of the person so holding said property to pay the balance to the county treasurer of the county in which said property is held, and take his receipt therefor. (Id. sec. 3.)

Art. 5670. (3325) What is to be done finally with the balance.—Whenever any balance mentioned in this chapter shall remain in the possession of the county treasurer for the period of two years unclaimed by the party legally entitled to the same, such balance shall become a part of the county fund of the county in which the property was so sold, and shall be applied as any other county fund or money of such county is applied or used. (Id. sec. 4.)

Art. 5671. (3326) Other liens and contracts not affected.—Nothing in this title shall be construed or considered as in any manner impairing or affecting the right of parties to create liens by special contract or agreement, nor shall it in any manner affect or impair other liens arising at common law or in equity, or by any statute of this state, or any other lien not treated of under this title.

See Sayles' Practice, p. 912; Masterson v. Petz, 86 S. W. 56; Malcolm v. Sims-Thompson Motor Car Co., 164 S. W. 924; Barton v. Wichita River Oil Co., 187 S. W. 1043; McBride v. Beakley, 203 S. W. 1137.

TITLE 87

LIMITATIONS

CHAPTER ONE

LIMITATION OF ACTIONS FOR LANDS

Art. 5672. (3340) (3191) Three years' possession, when a bar.—Every suit to be [in] instituted to recover real estate, as against any person in peaceable and adverse possession thereof under title or color of title, shall be instituted within three years next after the cause of action shall have accrued, and not afterward. (Acts 1841, p. 119, sec. 15; P. D. 4622.)

See Sayles' Practice, p. 1018; Black v. Garner, 63 S. W. 918; White v. Pingenot, 90 S. W. 672; Dunn v. Taylor, 113 S. W. 265; Phelps v. Pecos Valley Southern Ry. Co., 182 S. W. 1156; Spikes-Nash Co. v. Manning, 204 S. W. 374.

Generally, under this chapter, see Harry v. Hamilton, 154 S. W. 637.

Art. 5673. (3341) (3192) "Title" and "color of title" defined.—By the term "title," as used in the preceding article, is meant a regular chain of transfer from or under the sovereignty of the soil, and by "color of title" is meant a consecutive chain of such transfer down to such person in possession, without being regular, as if one or more of the memorials or muniments be not registered, or not duly registered, or be only in writing, or such like defect as may not extend to or include the want of intrinsic fairness and honesty; or when the party in possession shall hold the same by a certificate of headright, land warrant, or land scrip, with a chain of transfer down to him in possession. (Id. sec. 15; P. D. 4622.)

See Sayles' Practice, p. 1018; Watson v. Watson, 55 S. W. 183; Phelps v. Pecos Valley Southern Ry. Co., 182 S. W. 1156.

Art. 5674. (3342) (3193) Five years' possession, when a bar.—Every suit to be instituted to recover real estate as against any person having peaceable and adverse possession thereof, cultivating, using or enjoying the same and paying taxes thereon, if any, and claiming under a deed or deeds duly registered, shall be instituted within five years next after the cause of action shall have accrued, and not afterward; provided, that this article shall not apply to any one in possession of land, who in the absence of this article would deraign title through a forged deed; provided, further, that no one claiming under a forged deed, or deed executed under a forged power of attorney, shall be allowed the benefits of this article. (Id. sec. 16; P. D. 4623; Acts 1879, ch. 125, p. 132.)

See Sayles' Practice, p. 1019; Harris v. Linberg, 39 S. W. 651; Wood v. Mistretta, 49 S. W. 237; Cunningham v. Mathews, 57 S. W. 1114; Weisman v. Thomson, 78 S. W. 728; Thomson v. Weisman, 82 S. W. 503; Logan v. Robertson, 83 S. W. 395; Wall v. Club L. & C. Co., 88 S. W. 534; White v. Pingenot, 90 S. W. 672; Lambrida v. Barnum, 90 S. W. 698; Dunn v. Taylor, 113 S. W. 265; Glasscock v. Dimmitt, 141 S. W. 822; Wichita Valley Ry. Co. v. Somerville, 179 S. W. 671; Billingsley v. Houston Oil Co. of Texas, 182 S. W. 373; Village Mills Co. v. Houston Oil Co. of Texas, 186 S. W. 785; Barksdale v. Benskin, 194 S. W. 402; Fogle v. Baker, 205 S. W. 752.

Art. 5675. (3343) (3194) Ten years' possession, when a bar.—Any person who has the right of action for the recovery of any lands, tenements or hereditaments against another having peaceable and adverse possession thereof, cultivating, using or enjoying the same, shall institute his suit therefor within ten years next after his cause of action shall have accrued, and not afterward. (Id. sec. 17; P. D. 4621–4624.)

See Sayles' Practice, p. 1019; Cox v. Sherman Hotel Co., 47 S. W. 808; Nativel v. Raymond, 59 S. W. 311; Daughtrey v. N. Y. & T. Land Co., 61 S. W. 948; Fischer v. Giddings, 74 S. W. 85; Parker v. Wm. Cameron & Co., 86 S. W. 647; Logan v.

Meade, 98 S. W. 210; State Nat. Bank of New Orleans v. Roberts, 103 S. W. 454; Sellman v. Daniel, 110 S. W. 81; Dunn v. Taylor, 113 S. W. 265; Louisiana & T. Lumber Co. v. Kennedy, 126 S. W. 1110; McAllen v. Crafts, 139 S. W. 41; Trustees of College of De Kalb v. Williams, 143 S. W. 348; Ball v. Filba, 153 S. W. 685; Howard's Unknown Heirs v. Skolant, 162 S. W. 978; J. D. Fields & Co. v. Allison, 171 S. W. 274; Wickizer v. Williams, 173 S. W. 288; Schaeffer v. Williams, 208 S. W. 220.

See Vernon's Real Prop. 1918 II Page 123.

Art. 5676. (3344) (3195) Ten years' possession construed to embrace, what.—The peaceable and adverse possession contemplated in the preceding article, as against the person having right of action, shall be construed to embrace not more than one hundred and sixty acres, including the improvements or the number of acres actually inclosed, should the same exceed one hundred and sixty acres; but when such possession is taken and held under some written memorandum of title, other than a deed, which fixes the boundaries of the possessor's claim and is duly registered, such peaceable possession shall be construed to be co-extensive with the boundaries specified in such instrument. (Id.; P. D. 4624.)

See Hodges v. Robbins, 56 S. W. 565; Nativel v. Raymond, 59 S. W. 311; Watts v. Bruce, 72 S. W. 258; Fischer v. Giddings, 74 S. W. 85; Doom v. Taylor, 79 S. W. 1086; Parker v. Wm. Cameron & Co., 86 S. W. 647; Webb v. Lyerla, 94 S. W. 1095; State Nat. Bank of New Orleans v. Roberts, 103 S. W. 454; Dunn v. Taylor, 113 S. W. 265; Simpson Bank v. Smith, 114 S. W. 445; Wall v. Lubbock, 118 S. W. 886; Louisiana & T. Lumber Co. v. Kennedy, 126 S. W. 1110; Louisiana & Texas Lumber Co. v. Stewart, 130 S. W. 199; Stevens v. Pedregon, 140 S. W. 236; Ball v. Filba, 153 S. W. 685; Fulshear v. Deadman, 154 S. W. 616; Mixon v. Wallis, 161 S. W. 907; Wickizer v. Williams, 173 S. W. 288; Chapman v. Weaver, 178 S. W. 660; Hays v. Hinkle, 193 S. W. 153; Mackechney v. Temple Lumber Co., 197 S. W. 744.

Art. 5677. (3345) Land surrounded by other lands, etc., peaceable possession of defined.—A tract of land owned by one person, entirely surrounded by a tract or tracts owned, claimed or fenced by another, shall not be considered inclosed by a fence inclosing the circumscribing tract or tracts, or any part thereof; nor shall the possession by the owner or claimant of such circumscribing land of such interior tract be the peaceable and adverse possession contemplated by article 5675, unless the same be segregated and separated from the circumscribing land by a fence, or unless at least one-tenth thereof be cultivated and used for agricultural purposes, or used for manufacturing purposes. (Acts 1891, p. 76.)

See Daughtrey v. Land Co., 61 S. W. 948; Dunn v. Taylor, 113 S. W. 265; Huling v. Moore, 194 S. W. 188.

Art. 5678. (3346) Same subject.—Possession of land belonging to another by a person owning or claiming five thousand acres or more of lands inclosed by a fence in connection therewith, or adjoining thereto, shall not be the peaceable and adverse possession contemplated by article 5675, unless said land so belonging to another shall be segregated and separated by a substantial fence from said lands connected therewith or thereto adjoining or unless at least one-tenth thereof shall be cultivated and used for agricultural purposes, or used for manufacturing purposes, or unless there be actual possession thereof. (Id.)

See Flack v. Braman, 101 S. W. 527; Dunn v. Taylor, 113 S. W. 265; Howard's Unknown Heirs v. Skolant, 162 S. W. 978; J. D. Fields & Co. v. Allison, 171 S. W. 274; Huling v. Moore, 194 S. W. 188; Schaeffer v. Williams, 208 S. W. 220.

Art. 5679. (3347) (3196) Possession gives full title, when.—Whenever in any case the action of a person for the recovery of real estate is barred by any of the provisions of this chapter, the person having such peaceable and adverse possession shall be held to have full title, precluding all claims.

See Townes' Texas Pleading (2d Ed.) p. 618; T. & N. O. Ry. v. Bancroft, 56 S. W. 607; Travis v. Hall, 65 S. W. 1077; Burton's Heirs v. Carroll, 72 S. W. 581; Lamberida v. Barnum, 90 S. W. 698; Latta v. Wiley, 92 S. W. 433.

Art. 5680. (3348) (3197) "Peaceable possession" defined.—"Peaceable possession," within the meaning of this chapter, is such as is continuous and not interrupted by adverse suit to recover the estate. (Acts 1841, p. 119, sec. 14; P. D. 4621.)

See Sayles' Practice, p. 1035; E. T. L. & Imp. Co. v. Shelby, 41 S. W. 542; Cox v. Sherman Hotel Co., 47 S. W. 808; Logan v. Meade, 98 S. W. 210; Dunn v. Taylor, 113 S. W. 265.

Art. 5681. (3349) (3198) "Adverse possession" defined.—"Adverse possession" is an actual and visible appropriation of the land, commenced and continued under a claim of right inconsistent with and hostile to the claim of another.

See Preston v. Hilburn, 44 S. W. 698; Cox v. Hotel Co., 47 S. W. 808; McAdams v. Moody, 50 S. W. 628; Link v. Bland, 95 S. W. 1110; Logan v. Meade, 98 S. W. 210; Dunn v. Taylor, 113 S. W. 265; Lake v. Earnest, 116 S. W. 865; Stevens v. Pedregon, 140 S. W. 236; Id., 173 S. W. 210; O'Hanlon v. Morrison, 187 S. W. 692; Houston Oil Co. of Texas v. Stepney, 187 S. W. 1078; Nerio v. Christen, 189 S. W. 1038; Houston Oil Co. of Texas v. Jones, 198 S. W. 290.

Art. 5682. (3350) (3199) Possession may be held by different persons.—Peaceable and adverse possession need not be continued in the same person, but when held by different persons successively there must be a privity of estate between them.

See Lamberida v. Barnum, 90 S. W. 698; Moran v. Moseley, 164 S. W. 1093.

Art. 5683. (3351) (3200) Right of the state not barred, etc.—The right of the state shall not be barred by any of the provisions of this chapter, nor shall any person ever acquire, by occupancy or adverse possession, any right or title to any part or portion of any road, street, sidewalk or grounds which belong to any town, city or county, or which have been donated or dedicated for public use to any such town, city or county by the owner thereof, or which have been laid out or dedicated in any manner to public use in any town, city or county in this state; provided, this law shall not apply to any alley laid out across any block or square in any city or town. (Id. secs. 15, 16, 17; P. D. 4622–4; Acts 1887, p. 28.)

See Sayles' Practice, p. 1019; Johnston v. Llano County, 39 S. W. 995; Gillean v. City of Frost, 61 S. W. 346; Krause v. El Paso, 101 S. W. 828; Trustees of College of De Kalb v. Williams, 143 S. W. 348; Guadalupe County v. Poth, 163 S. W. 1050; Spencer v. Levy, 173 S. W. 550; Buchanan v. Houston & T. C. R. Co., 180 S. W. 625; City of El Paso v. Wiley, 180 S. W. 661; Walton v. Harigel, 183 S. W. 785; City of Laredo v. De Moreno, 183 S. W. 827; Brown v. Fisher, 193 S. W. 357.

Art. 5684. (3352) Does not run against infants, etc.—If a person entitled to commence suit for the recovery of real property or to make any defense founded on the title thereto, be at the time such title shall first descend or the adverse possession commence:

(1) A person, including a married woman, under twenty-one years or age, or

(2) In time of war, a person in the military or naval service of the United States, or

(3) A person of unsound mind, or

(4) A person imprisoned, the time during which such disability or status shall continue shall not be deemed any portion of the time limited for the commencement of such suit, or the making of such defense; and such person shall have the same time after the removal of his disability that is allowed to others by the provisions of this chapter; providing that on and after the first day of November, A. D. 1920, the period of limitation shall not be extended so as to authorize any person who has the right of action for the recovery of any lands, tenements, hereditaments to institute suit therefor against another having peaceable and adverse possession thereof, using and enjoying the same after the expiration of twenty-five years next after the cause of action shall have accrued, and provided further that this article shall in no way affect suits pending when this Act takes effect, and all such suits shall be tried and disposed of under the law then in force. (Acts 1841, p. 109, secs. 14–17; P. D. 4621–4; 1895, p. 35; Acts 1919, 2d C. S., ch. 55, sec. 1.)

See post, art. 5708; Sayles' Practice, p. 1019; Speer's Marital Rights, p. 603; Broom v. Parsons, 81 S. W. 753; Shook v. Laufer, 100 S. W. 1042; Kidd v. Prince, 182 S. W. 725; Huling v. Moore, 194 S. W. 188.

Art. 5684a. Adverse possession under chain of title.—On and after the first day of November A. D. 1920, a person who has had, and held the peaceable and adverse possession of lands, tenements and hereditaments, the title to which has passed out of the State, using and enjoying the same under deed or deeds duly recorded constituting a regular chain of title, for a period of twenty-five years immediately preceding shall have a good marketable title thereto. (Id. sec. 2.)

CHAPTER TWO

LIMITATION OF PERSONAL ACTIONS

Art. 5685. (3353) (3202) Actions to be commenced in one year.—There shall be commenced and prosecuted within one year after the cause of action shall have accrued, and not afterward, all actions or suits in courts of the following description:

1. Actions for malicious prosecution or for injuries done to the character or reputation of another by libel or slander.

2. Actions for damages for seduction, or breach of promise of marriage. (Acts 1897, p. 12; Act Feb. 5, 1841, sec. 1; Feb. 2, 1860, sec. 1; P. D. 15, 4604.)

See post, art. 5687; Sayles' Practice, p. 986; Voigt v. Ry., 59 S. W. 578; Id., 60 S. W. 658; Huggins v. Carey, 149 S. W. 390; Dickson v. Lights, 170 S. W. 834.

Art. 5686. (3353a) Survival of cause of action.—Causes of action upon which suit has been or may hereafter be brought by the injured party for personal injuries other than those resulting in death, whether such injuries be to the health or to the reputation, or to the person of the injured party, shall not abate by reason of his death, nor by reason of the death of the person against whom such cause of action shall have accrued; but, in the case of the death of either or both, such cause of action shall survive to and in favor of the heirs and legal representatives of such injured party and against the person, receiver or corporation liable for such injuries and his legal representatives; and so surviving, such cause may be thereafter prosecuted in like manner and with like legal effect as would a cause of action for injuries to personal property. (Acts 1895, p. 143.)

See Sayles' Practice, p. 336; Townes' Texas Pleading (2d Ed.) p. 651; H. & T. C. Ry. v. Rogers, 39 S. W. 1112; Fitzgerald v. W. U. Tel. Co., 40 S. W. 421; City of Marshall v. McAllister, 43 S. W. 1043; Houston Prtg. Co. v. Dement, 44 S. W. 558; M. K. & T. Ry. v. Settle, 47 S. W. 826; Mex. Cent. Ry. v. Goodman, 48 S. W. 778; G. C. & S. F. Ry. v. Miller, 53 S. W. 709; G. C. & S. F. Ry. v. Moore, 68 S. W. 559; Ry. v. Ginther, 72 S. W. 166; Ellyson v. Ry., 75 S. W. 868; Ry. v. Eldredge, 80 S. W. 556; Ry. v. Ellyson, 94 S. W. 910; Houston & T. C. R. Co. v. Maxwell, 128 S. W. 160; Missouri, K. & T. Ry. Co. of Texas v. Groseclose, 134 S. W. 736; Black v. Texas & P. Ry. Co., 161 S. W. 1077; Houston & T. C. R. Co. v. Walker, 167 S. W. 199; Gulf, C. & S. F. Ry. Co. v. Sullivan, 190 S. W. 739; Ex parte McCloskey, 199 S. W. 1101.

Art. 5687. (3354) (3203) Actions to be commenced in two years.—There shall be commenced and prosecuted within two years after the cause of action shall have accrued, and not afterward, all actions or suits in court of the following description:

1. Actions of trespass for injury done to the estate or the property of another.

2. Actions for detaining the personal property of another, and for converting such personal property to one's own use.

3. Actions for taking or carrying away the goods and chattels of another.

4. Actions for debt where the indebtedness is not evidenced by a contract in writing.

5. Actions upon stated or open accounts, other than such mutual and current accounts as concern the trade of merchandise between merchant and merchant, their factors or agents. In all accounts, except those between merchant and merchant, as aforesaid, their factors and agents, the respective times or dates of the delivery of the several articles charged shall be particularly specified, and limitations shall run against each item from the date of such delivery, unless otherwise specially contracted. (Acts 1841, p. 163, secs. 4, 5; P. D. 4611–12.)

6. Action for injury done to the person of another.

7. Action for injury done to the person of another where death ensued from such injury; and the cause of action shall be considered as having accrued at the death of the party injured. (Acts 1897, p. 12; Acts 1841, p. 163, sec. 1; 1852, p. 128, sec. 1; P. D. 4604.)

See Ry. v. Clemons, 47 S. W. 731; Darrow v. Summerhill, 53 S. W. 680; Mutual Life Ins. Co. v. Garland, 56 S. W. 551; Luter v. Hutchinson, 70 S. W. 1013; McCord v. Nabours, 109 S. W. 913; Gordon v. Rhodes & Daniel, 116 S. W. 40; Davies v. Texas Cent. R. Co., 133 S. W. 295; Elder, Dempster & Co. v. St. Louis Southwestern Ry. Co. of Texas, 154 S. W. 975; Howell v. Bank of Snyder, 158 S. W. 574; Bostick v. Heard, 164 S. W. 34; Shaw v. Faires, 165 S. W. 501; Adams v. San Antonio Life Ins. Co., 185 S. W. 610; Ft. Worth Belt Ry. Co. v. Jones, 182 S. W. 1184; McCavick v. McBride, 189 S. W. 795; Slate v. City of Ft. Worth, 193 S. W. 1143; Caffarelli Bros. v. Lyons Bros. Co., 199 S. W. 685; Canadian Oil & Gas Co. v. Webb, 203 S. W. 135; Johnson v. Johnson, 206 S. W. 369.

Art. 5688. (3356) (3205) What actions barred in four years.—There shall be commenced and prosecuted within four years after the cause of action shall have accrued, and not afterward, all actions or suits in court of the following description:

1. Actions for debt where the indebtedness is evidenced by or founded upon any contract in writing.

2. Actions for the penalty or for damages on the penal clause of a bond to convey real estate.

3. Actions by one partner against his copartner for a settlement of the partnership accounts, or upon mutual and current accounts concerning the trade of merchandise between merchant and merchant, their factors or agents; and the cause of action shall be considered as having accrued on a cessation of the dealings in which they were interested together. (Acts 1841, p. 163, sec. 1; P. D. 4604.)

See Flewellen v. Cochran, 48 S. W. 39; Peel v. Giesen, 51 S. W. 44; Dwight v. Matthews, 62 S. W. 1052; Wylie v. Langhorne, 101 S. W. 527; Hillman v. Gallagher, 128 S. W. 899; Davies v. Texas Cent. R. Co., 133 S. W. 295; Elder, Dempster & Co. v. St. Louis Southwestern Ry. Co. of Texas, 154 S. W. 975; Roberts v. Nunn, 169 S. W. 1086; Texas & P. Ry. Co. v. R. W. Williamson & Co., 187 S. W. 354; McCutcheon & Church v. Smith, 194 S. W. 831; Neal Commission Co. v. Golston, 197 S. W. 1124; Cameron Automobile Co. v. Berry, 198 S. W. 411; Caffarelli Bros. v. Lyons Bros. Co., 199 S. W. 685.

Art. 5689. (3357) (3206) On bond of executor, administrator or guardian.—All suits on the bond of any executor, administrator or guardian shall be commenced and prosecuted within four years next after the death, resignation, removal or discharge of such executor, administrator or guardian, and not thereafter. (Acts March 20, 1848; 1876, p. 102, sec. 42; P. D. 1375, 3923.)

See Allen v. Stovall, 63 S. W. 863; McClellan v. Mangum, 75 S. W. 840; Whitfield v. Burrell, 118 S. W. 153; Martinez v. Gutierrez's Heirs, 172 S. W. 766.

Art. 5690. (3358) (3207) All other actions barred, when.—Every action other than for the recovery of real estate, for which no limitation is otherwise prescribed, shall be brought within four years next after the right to bring the same shall have accrued, and not afterward.

See Simkins' Equity (2d Ed.) p. 132; Flewellen v. Cochran, 48 S. W. 39; Starnes v. Beitel, 50 S. W. 202; Farmers L. & T. Co. v. Beckley, 54 S. W. 1027; Waters v. East, 56 S. W. 939; Gans v. Marx, 61 S. W. 527; Stewart v. Robbins, 65 S. W. 899; McLane v. S. A. Nat. Bk., 68 S. W. 63; Stafford v. Stafford, 70 S. W. 75; Foust v. Warren, 72 S. W. 405; Watson v. R'y, 73 S. W. 830; State v. Dashiell, 74 S. W. 779; Rose v. Darby, 76 S. W. 799; Rutherford v. Carr, 84 S. W. 659; Id., 87 S. W. 815; Sanborn v. Crowdus, etc., 99 S. W. 444; McCord v. Nabours, 109 S. W. 913; Gordon v. Rhodes & Daniel, 116 S. W. 40; Whitfield v. Burrell, 118 S. W. 153; William Carlisle & Co. v. King, 122 S. W. 581; Smith v. Olivarri, 127 S. W. 235; Gale Mfg. Co. v. Dupree, 146 S. W. 1048; Spiller v. Hollinger, 148 S. W. 338; Rogers v. Waggoner, 149 S. W. 561; Coleman v. Zapp, 151 S. W. 1040; Broussard v. Cruse, 154 S. W. 347; Harry v. Hamilton, 154 S. W. 637; Holland v. Ashley, 158 S. W. 1033; Hamilton v. Green, 166 S. W. 97; Texas & P. Ry. Co. v. Miller, 171 S. W. 1069; Cook v. Hardin, 174 S. W. 633; Converse v. Galveston City Co., 189 S. W. 539; Waggoner v. Rogers, 193 S. W. 136; Johnson v. Johnson, 206 S. W. 369.

Art. 5691. (3359) (3208) Actions on foreign judgments barred, when.—Every action upon a judgment or decree rendered in any other state or territory of the United States, in the District of Columbia, or in any foreign country, shall be barred, if by the laws of such state or country such action would there be barred, and the judgment or decree be incapable of being otherwise enforced there; and, whether so barred or not, no action against a person who shall have resided in this state during the ten years next preceding such action shall be brought upon any such judgment or decree rendered more than ten years before the commencement of such action.

See post arts. 5709, 5710.

Art. 5692. (3360) (3209) Actions for specific performance.—Any action for the specific performance of a contract for the conveyance of real estate shall be commenced within four years next after the cause of action shall have accrued, and not thereafter. (Acts 1917, 3d C. S., ch. 26, sec. 1.)

See Simkins' Equity (2d Ed.) p. 134; Robinson v. Thompson, 52 S. W. 117; Wright v. Riley, 118 S. W. 1134; Cubit v. Jackson, 194 S. W. 594.

Art. 5693. Time in which power of sale may be exercised.—No power of sale conferred by any deed of trust or any mortgage on read [real] estate heretofore executed, or that may hereafter be executed, shall be enforced after the expiration of four years from the maturity of the indebtedness secured thereby, and any sale under such power after the expiration of such time shall be void, and such sale may be enjoined and the lien created in such mortgages or deeds of trust shall cease to exist four years after the maturity of the debt secured thereby. Provided, if several obligations are secured by said mortgage or deed of trust, the same may be enforced at any time prior to four years after the note or obligation last maturing has matured and may be enforced as to all notes or obligations not then barred by the four years statute of limitations. (Act 1905, p. 334, sec. 1; Acts 1913, p. 250, sec. 1.)

Art. 5694. Rights under vendor's lien barred, when.—The right to recover any real estate by virtue of a superior title retained in any deed of conveyance heretofore or hereafter executed, or in any vendor's lien note or notes heretofore or hereafter executed, given for the purchase money of such real estate, shall be barred after the expiration of four years from the maturity of such indebtedness, and if suit is not brought for recovery of such real estate, or for the foreclosure of the lien to secure such note or notes within four years from the date of the maturity of such indebtedness, or if suit is not brought within such time for the recovery of the land by the original vendor, or his transferee, or for the foreclosure of the lien given to secure such notes, the purchase money therefor shall be conclusively presumed to have been paid in any suit to recover such land or to enforce a lien thereon, and the lien reserved in any such notes and deeds conveying the land shall cease to exist four years after the note or notes have matured, provided the lien reserved in such note or notes may be extended as provided in section 5695 of this chapter and provided, if several obligations are secured by said deed of conveyance, the same may be enforced at any time prior to four years after the note or obligation last maturing has matured and may be enforced as to all notes not then barred by the four years statute of limitations. (Acts 1905, p. 334, sec. 2; Acts 1913, p. 250, sec. 2.)

Art. 5695. Contracts of extension, how made and construed; proviso.—When the date of maturity of either debt referred to in either of the foregoing articles is extended, if the contract of extension is signed and acknowledged as provided for in the law relating to the execution of deeds of conveyance by the party or parties obligated to pay such

indebtedness as extended and filed for record in the county clerk's office in the county in which the land is situated, the lien shall continue and be in force until four years after maturity of the notes as provided in such extension, the same as in the original contract and the lien shall so continue for any succeeding or additional extension so made and recorded. The date of maturity set forth in the deed of conveyance or deed of trust or mortgage or the recorded renewal and extension of the same shall be conclusive evidence of the date of maturity of the indebtedness therein mentioned. Provided that the owners of all notes secured by deeds of trust or other liens and the owners of all vendors lien notes reserved in deeds of conveyance which were executed prior to July 14, 1905, and which are more than four years past due at the time this Act takes effect as shown by the original mortgage, deed of trust or conveyance, or last record extension shall have twelve months after this Act takes effect within which they may obtain such record extension as hereinbefore provided for, or bring suit to enforce the liens securing them if same are valid obligations when this Act takes effect and if such debt is not so extended of record, or suit is not brought within such time, the right to extend such debt of record, or bring suit to enforce such liens shall be forever barred; and provided that the owners of all notes secured by deeds of trust or other liens and the owners of all vendors lien notes reserved in deeds of conveyance which were executed subsequent to July 14, 1905, shall have four years after this Act takes effect within which they may obtain such recorded extension as herein provided for, or bring suit to enforce the liens securing them if same are valid obligations and not already barred by the four years statutes of limitation when this Act takes effect, and if such debt is not extended of record, or suit is not brought within such four years or four years after they mature, they shall be forever barred from the right to extend such debt of record, or bring suit to enforce the lien securing the same, and further provided if any such obligations executed subsequent to July 14, 1905, were barred by the four years statute of limitation on the 30th of June, 1913, the owners thereof shall have four years within which to bring suit to enforce the lien securing the same; and providing those owning the superior title to land retained in any deed of conveyance or his transferee and those subsequently acquiring such superior title by transfer, shall have twelve months after this Act takes effect within which to bring suit for the land if their claim to the land is not otherwise invalid and unless such suit is brought within twelve months after this Act takes effect, they shall be forever barred from bringing suit to recover the same. (Acts 1905, p. 334, sec. 3; Acts 1913, p. 250, sec. 3; Acts 1913, 1st C. S., p. 39, sec. 1.)

Art. 5696. (3361) (3210) Judgment shall be revived, when.—A judgment in any court of record within this state, where execution has not issued within twelve months after the rendition of the judgment, may be revived by scire facias or an action of debt brought thereon within ten years after the date of such judgment, and not after. (Act Feb. 5, 1841, sec. 2; P. D. 4608.)

See ante arts. 3717, 5617; Sayles' Practice, p. 1215; Wilcox v. First Nat. Bk. of Austin, 55 S. W. 317; Stevens v. Stone, 60 S. W. 959; Stone v. McGregor, 84 S. W. 399; Henry v. Lbr. Co., 102 S. W. 749; Gale Mfg. Co. v. Dupree, 146 S. W. 1048; Spiller v. Hollinger, 148 S. W. 338; Collin County Nat. Bank v. Hughes, 154 S. W. 1181; Tourtelot v. Booker, 160 S. W. 293; Ogg v. Ogg, 165 S. W. 912; Dupree v. Gale Mfg. Co., 184 S. W. 184; Teel v. Brown, 185 S. W. 319; Farmers' Nat. Bank v. Crumley, 204 S. W. 358.

Art. 5697. (3362) (3211) On motion for returning execution.—Where execution has issued and no return is made thereon, the party in whose favor the same was issued may move against any sheriff or other officer and his sureties for not returning the same within five years from the day on which it was returnable, and not after. (Id.; P. D. 4608.)

See Sayles' Practice, p. 1230.

Art. 5698. (3363) (3212) On the action of forcible entry, etc.—No action of forcible entry or forcible detainer, as provided for by law, shall be prosecuted at any time after two years from the commencement of the forcible entry or detainer.

Art. 5699. (3364) (3213) On actions to contest a will.—Any person interested in any will which shall have been probated under the laws of this state may institute suit in the proper court to contest the validity thereof, within four years after such will shall have been admitted to probate, and not afterward. (Acts 1876, p. 94, sec. 3.)

See ante art. 4300; Herron's Probate Guide, p. 55; Dew v. Dew, 57 S. W. 926.

Art. 5700. (3365) (3214) In case of forgery, etc., action accrues, when.—Any heir at law of the testator, or any other person interested in his estate, may institute suit in the proper court to cancel a will for forgery or other fraud within four years after the discovery of such forgery or fraud, and not afterward. (Id. sec. 3.)

See Dew v. Dew, 57 S. W. 926.

CHAPTER THREE
GENERAL PROVISIONS

Art. 5701. (3366) (3215) Suspension during late war.—The laws of limitation of civil suits in this state shall be considered as suspended during the late civil war, commencing on the twenty-eighth day of January, 1861, and ending on the thirtieth day of March, 1870; but nothing herein shall be held to revive any cause of action heretofore barred. (Const. art. 16, sec. 18.)

See Collier v. Couts, 45 S. W. 485; Id., 47 S. W. 525; McConnico v. Thompson, 47 S. W. 537.

Art. 5702. (3367) (3216) Time of temporary absence not counted.—If any person against whom there shall be cause of action shall be without the limits of this state at the time of the accruing of such action, or at any time during which the same might have been maintained, the person entitled to such action shall be at liberty to bring the same against such person after his return to the state, and the time of such person's absence shall not be accounted or taken as a part of the time limited by any of the provisions of this title. (Act Feb. 5, 1841, sec. 22; P. D. 24.)

See Bemis v. Ward, 84 S. W. 291; Beale's heirs v. Johnson, 99 S. W. 1045; Dignowity v. Sullivan, 109 S. W. 428; Spiller v. Hollinger, 148 S. W. 338;

Sweeten v. Taylor, 184 S. W. 693; Cameron Automobile Co. v. Berry, 198 S. W. 411; Watts v. McCloud, 205 S. W. 381.

Art. 5703. (3368) (3217) Death of owner, etc., shall stop limitation until, etc.—In case of the death of any person in whose favor there may be cause of action, the law of limitation shall cease to run against such cause of action until twelve months after such death, unless an administrator or executor shall have sooner qualified according to law upon such deceased person's estate; then and in that case the said law of limitation shall only cease to run until such qualification. (Act Feb. 16, 1852, sec. 3; P. D. 4607.)

See Herron's Probate Guide, pp. 275-7; Carter v. Hussey, 46 S. W. 270; Coleman v. Texas Produce Co., 204 S. W. 382.

Art. 5704. (3369) (3218) Death of person, etc., against whom, etc.—In case of the death of any person against whom there may be a cause of action, the law of limitation shall cease to run against such cause of action until twelve months after such death, unless an administrator or executor shall have sooner qualified according to law upon such deceased person's estate; then and in that case the said law of limitation shall only cease to run until such qualification. (Id. sec. 2; P. D. 4606.)

See ante art. 3449; Groesbeeck v. Crow, 40 S. W. 1028; Acers v. Acers, 56 S. W. 196; First Nat. Bank of New Boston v. Daniel, 172 S. W. 747; Orange Lumber Co. v. Toole, 181 S. W. 823.

Art. 5705. (3370) (3219) Acknowledgment must be in writing.—When an action may appear to be barred by a law of limitation, no acknowledgment of the justness of the claim made subsequent to the time it became due shall be admitted in evidence to take the case out of the operation of the law, unless such acknowledgment be in writing and signed by the party to be charged thereby. (Act Feb. 5, 1841, sec. 12; P. D. 4617a.)

See Simkins' Contracts and Sales (3d Ed.) p. 43; Flewellen v. Cochran, 48 S. W. 44; Montague Co. v. Meadows, 51 S. W. 556; Martin v. Somerville Co., 52 S. W. 556; S. A. Real Est. B. & L. Ass'n v. Stewart, 65 S. W. 665; Wells v. Moore, 93 S. W. 220; Cotulla v. Urbahn, 135 S. W. 1159, 34 L. R. A. (N. S.) 345; Adams v. Harris, 190 S. W. 245; Butler v. Fechner, 200 S. W. 1126; First State Bank of Eustace v. Bowman, 203 S. W. 75; Poythress v. Ivey, 203 S. W. 103.

Art. 5706. (3371) (3220) Limitation must be pleaded, etc.—The laws of limitation of this state shall not be made available to any person in any suit in any of the courts of this state, unless it be specially set forth as a defense in his answer. (Act Feb. 16, 1852, sec. 5; P. D. 4629.)

See Townes' Texas Pleading (2d Ed.) p. 543; Sayles' Practice, p. 1030; Benavides v. Molino, 60 S. W. 260; Tillman v. Erp, 121 S. W. 547; Erp v. Tillman, 131 S. W. 1057; Ogg v. Ogg, 165 S. W. 912; Oswald v. Giles, 178 S. W. 677.

Art. 5707. (3372) (3221) Presumption of death when, etc.—Any person absenting himself beyond sea or elsewhere for seven years successively shall be presumed to be dead, in any cause wherein his death may come in question, unless proof be made that he was alive within that time; but an estate recovered on such presumption, if in a subsequent action or suit the person presumed to be dead shall be proved to be living, shall be restored to him who shall have been evicted, and he may moreover demand and recover the rents and profits of the estate during such time as he shall be deprived thereof, with lawful interest. (Act Feb. 5, 1841, sec. 10; P. D. 23.)

See Turner v. Sealock, 54 S. W. 358; Latham v. Tombs, 73 S. W. 1060; Sovereign Camp Woodmen of the World v. Ruedrich, 158 S. W. 170; Wells v. Margraves, 164 S. W. 881; Supreme Ruling of Fraternal Mystic Circle v. Hoskins, 171 S. W. 812; Sovereign Camp of Woodmen of the World v. Robinson, 187 S. W. 215; Barrios v. S., 204 S. W. 326; Supreme Lodge, Knights of Pythias v. Wilson, 204 S. W. 891; Stiles v. Hawkins, 207 S. W. 89.

Art. 5708. (3373) (3222) Limitation shall not run against infants, etc.—If a person entitled to bring any action other than those mentioned in chapter one of this title be at the time the cause of action accrues, either—

1. Under the age of twenty-one years;
2. A married woman;
3. Of unsound mind; or
4. A person imprisoned; the time of such disability shall not be deemed a portion of the time limited for the commencement of the action; and such person shall have the same time after the removal of his disability that is allowed to others by the provisions of this title.

See ante art. 5684; Speer's Marital Rights, p. 602; Killfoil v. Moore, 45 S. W. 1024; Harrison v. City of Sulphur Springs, 50 S. W. 1064; Lasater v. Waites, 67 S. W. 518; M. K. & T. R'y v. Scarborough, 68 S. W. 196; Harry v. Hamilton, 154 S. W. 637.

Art. 5709. (3374) (3223) Action against immigrant barred, when.—No action shall be brought against any immigrant of the state to recover a claim which was barred by the law of limitations of that state or country from which he emigrated; nor shall any action be brought to recover money from an immigrant who was released from its payment by the bankrupt or insolvent laws of the state or country from which he emigrated. (Id. sec. 13; P. D. 4618.)

See ante art. 5691.

Art. 5710. (3375) (3224) Debts incurred prior to removal of person to this state.—No demand against any person who shall hereafter remove to this state, incurred prior to his removal, shall be barred by the statute of limitation until he shall have resided in this state for the space of twelve months; provided, that nothing in this article shall be construed to affect the provisions of the preceding article. (Id. sec. 4; P. D. 4620.)

Art. 5711. (3376) (3225) One disability not tacked to another.—The period of limitation shall not be extended by the connection of one disability with another; and, when the law of limitation shall begin to run, it shall continue to run, notwithstanding any supervening disability of the party entitled to sue or liable to be sued.

See Speer's Marital Rights, p. 613; Laird v. Murray, 111 S. W. 780; Houston Oil Co. of Texas v. Griffin, 166 S. W. 902.

Art. 5712. (3377) (3226) Claims barred under pre-existing laws, etc.—No one of the provisions of this title shall be so construed as to revive any claim which is barred by pre-existing laws; and all claims against which limitation under said laws had commenced to run shall be barred by the lapse of time which would have barred them had those laws continued in force; provided, the said time be shorter than that by which they

would have been barred by the other articles of this title.

See ante arts. 5685-5687; Voigt v. G. W. T. & P. R'y, 59 S. W. 578; Id., 60 S. W. 658.

Art. 5713. (3378) No agreement shortening period of limitation valid.—It shall be unlawful for any person, firm, corporation, association or combination of whatsoever kind to enter into any stipulation, contract, or agreement, by reason whereof the time in which to sue thereon is limited to a shorter period than two years. And no stipulation, contract, or agreement for any such shorter limitation in which to sue shall ever be valid in this state. (Acts 1891, p. 20, sec. 1.)

See Sayles' Practice, p. 288; W. U. Tel. Co. v. Burgess, 43 S. W. 1033; Armstrong v. R'y, 46 S. W. 33; R'y v. Hambrick, 97 S. W. 1072; Texas & P. Ry. Co. v. Langbehn, 150 S. W. 1188; International Travelers' Ass'n v. Bosworth, 156 S. W. 346; Texas & P. Ry. Co. v. Langbehn, 158 S. W. 244; Fire Ass'n of Philadelphia v. Richards, 179 S. W. 926; Southern Kansas Ry. Co. of Texas v. Hughey, 182 S. W. 361; Home Life & Accident Co. v. General Bonding & Casualty Ins. Co., 198 S. W. 1064.

Art. 5714. (3379) Notice of claims for damages; rule as to.—No stipulation in any contract requiring notice to be given of any claim for damages as a condition precedent to the right to sue thereon shall ever be valid, unless such stipulation is reasonable; and any such stipulation fixing the time within which such notice shall be given at a less period than ninety days shall be void, and, when any such notice is required, the same may be given to the nearest or to any other convenient local agent of the company requiring the same; provided, that no stipulation in any contract between a person, corporation or receiver operating railroad, or street railway, or interurban railroad, and an employé or servant requiring notice of a claim by an employé or servant for damages for injury received to the person, or by a husband, wife, father, mother, child or children of a deceased employé for his or her death, caused by negligence as a condition precedent to liability, shall ever be valid. In any suit brought under this and the preceding article it shall be presumed that notice has been given, unless the want of notice is especially pleaded under oath. (Acts 1907, p. 241; Acts 1891, p. 20, sec. 2.)

See St. L., etc., R'y v. Hays, 35 S. W. 476; Armstrong v. R'y Co., 46 S. W. 33; Burgess v. W. U. Tel. Co., 46 S. W. 794; W. U. Tel. Co. v. Lovely, 52 S. W. 563; Maryland Casualty Co. v. Hudgins, 72 S. W. 1047; R'y v. Honea, 84 S. W. 267; R'y v. Thompson, 93 S. W. 702; R'y v. Mayes, 97 S. W. 318; R'y v. Thompson, 97 S. W. 459; Western Union Telegraph Co. v. Douglass, 124 S. W. 488; Western Union Telegraph Co. v. Taber, 127 S. W. 268; Missouri, K. & T. Ry. Co. of Texas v. Newton, 127 S. W. 873; International & G. N. R. Co. v. Williams, 129 S. W. 847; Western Union Telegraph Co. v. Smith, 130 S. W. 622; Western Union Telegraph Co. v. Douglass, 133 S. W. 877; St. Louis & S. W. Ry. Co. of Texas v. Brass, 133 S. W. 1075; Western Union Tel. Co. v. Timmons, 136 S. W. 1169; Taber v. Western Union Tel. Co., 137 S. W. 106, 34 L. R. A. (N. S.) 185; Smith v. International & G. N. R. Co., 138 S. W. 1074; Texas & P. Ry. Co. v. Langbehn, 150 S. W. 1188; Royal Casualty Co. v. Nelson, 153 S. W. 674; San Antonio & A. P. Ry. Co. v. Bracht, 172 S. W. 1116; Walsh v. Methodist Episcopal Church South of Paducah, 173 S. W. 241; Gulf, C. & S. F. Ry. Co. v. Graham, 175 S. W. 472; Pecos & N. T. Ry. Co. v. Winkler, 179 S. W. 691; Fire Ass'n of Philadelphia v. Richards, 179 S. W. 926; First Texas State Ins. Co. v. Hare, 180 S. W. 282; Southern Kansas Ry. Co. of Texas v. Hughey, 182 S. W. 361; First Texas State Ins. Co. v. Herndon, 184 S. W. 283; St. Louis, B. & M. Ry. Co. v. Marcofich, 185 S. W. 51; United States Fidelity & Guaranty Co. v. Pressler, 185 S. W. 326; Floyd v. Illinois Bankers' Life Ass'n of Monmouth, 192 S. W. 407; North American Accident Ins. Co. v. Miller, 193 S. W. 750; Western Indemnity Co. v. Free and Accepted Masons of Texas, 198 S. W. 1092; Western Union Telegraph v. Love & Walters, 200 S. W. 889; Western Union Telegraph Co. v. Verhalen, 204 S. W. 240; St. Paul Fire & Marine Ins. Co. v. Pipkin, 207 S. W. 360; Mexico Northwestern Ry. Co. v. Williams, 208 S. W. 712.

TITLE 88

LOCAL OPTION

Arts. 5715-5730. [Superseded.]

These articles are superseded by the amendment of art. 16, § 20 of the state Constitution, and by Acts 1919, 2d C. S., ch. 78, Penal Code, arts. 588¼-588¼tt, and also by the Prohibition amendment to the Constitution of the United States, and the National Prohibition Act (the Volstead Act).

TITLE 89

MANDAMUS

Art. 5731. (1450) (1446) No mandamus on ex parte hearing.—No mandamus shall be granted on ex parte hearing; and any peremptory mandamus granted without notice shall be abated on motion. (Acts 1846, p. 300, sec. 4; P. D. 1407.)

See Sayles' Practice, p. 1005; Townes' Texas Pleadings (2d Ed.) p. 570; Jackson v. Swain, 47 S. W. 711.

Art. 5732. (4861) Mandamus, etc., not to issue against officer of executive department, except by supreme court.—No court of this state (except the supreme court, as provided by article 1526) shall have power, authority or jurisdiction to issue the writ of mandamus or injunction or any other mandatory or compulsory writ of process against any of the officers of the executive departments of the government of this state to order or compel the performance of any act or duty which, by the laws of this state, they, or either of them, are authorized to perform, whether such act or duty be judicial, ministerial or discretionary. (Acts of 1881, p. 7, sec. 4.)

For jurisdiction of several courts in mandamus, see arts. 1526, 1528, 1592, 1713, 1772.

TITLE 90

MEDICINE—PRACTICE OF

CHAPTER ONE

PHYSICIANS AND SURGEONS

See, also, Penal Code, arts. 750-758e.

Art. 5733. Medical board established.—A board, to be known as the board of medical examiners for the state of Texas, shall consist of eleven men learned in medicine, legal and active practitioners in the state of Texas, who shall have resided and practiced medicine in this state under a diploma from a legal and reputable college of medicine of the school to which said practitioner shall belong for more than three years prior to their appointment, and no one school shall have a majority representation on said board. Said board shall be appointed by the governor of this state within ninety days after his inauguration, and the term of office of its members shall be two years or until their successors shall be appointed and qualified. No member of said board shall be a stockholder or a member of the faculty or a board of trustees of any medical school. Vacancies occurring in the board shall be filled by the

governor. The word "medicine," as used in this article, shall have the same meaning and scope as given to it in article 5745. (Acts 1907, p. 224, sec. 1.)

Art. 5734. Organization, meetings, etc., of the board.—The members of said board shall qualify by taking the oath of office before a notary public, or other officer empowered to administer oaths, in the county in which each shall respectively reside. At the first meeting of said board after each biennial appointment, the board shall elect a president, vice-president and secretary-treasurer. Six members shall constitute a quorum. Regular meetings shall be held at least twice a year, at such times and places as shall be deemed most convenient for applicants. Due notice of such meetings shall be given by publication in such papers as may be selected by the board. Special meetings may be held upon a call of three members of the board. The board may prescribe rules, regulations and by-laws, in harmony with the provisions of this chapter, for its own proceedings and government for the examination of applicants for the practice of medicine and obstetrics. Said board, or any member, shall have power to administer oaths for all purposes required in the discharge of its duties, and to adopt a seal to be affixed to all of its official documents. (Id. sec. 2.)

Art. 5735. Board shall keep register.—The board of examiners shall preserve a record of its proceedings in a book kept for that purpose, showing name, age, place and duration of residence of each applicant, the time spent in medical study in respective medical schools, and the year and school from which degrees were granted; said register shall also show whether applicants were rejected or licensed, and shall be prima facie evidence of all matters contained therein. The secretary of the board shall, on March 1 of each year, transmit an official copy of said register to the secretary of state for permanent record, certified copy of which, with hand and seal of the secretary of said board, or secretary of state, shall be admitted in evidence in all courts. (Id. sec. 3.)

Art. 5736. Physicians required to register.—It shall be unlawful for any one to practice medicine in any of its branches upon human beings within the limits of this state, who has not registered, in the district clerk's office of the county in which he resides, his authority for so practicing, as herein prescribed, together with his age, post-office address, place of birth, school of practice to which he professes to belong, subscribed and verified by oath, which, if willfully false, shall subject the applicant to conviction and punishment for false swearing as provided by law. The fact of such oath and record shall be indorsed by the district clerk upon the certificate. The holder of the certificate must have the same recorded upon each change of residence to another county, and the absence of such record shall be prima facie evidence of the want of possession of such certificate. (Id. sec. 4.)

Art. 5737. District clerks to keep register.—It is hereby made the duty of the district clerk of each county in this state to purchase a book of suitable size, to be known as the "Medical Register" of such county, and set apart one full page for the registration of each physician, and to record in the same the name and record of each practitioner who presents a certificate from the state board of examiners, issued under this law. The clerk shall receive the sum of one dollar from each physician so registered, which shall be his full compensation for all duties required under this law. When any physician shall die, or remove from the county, or have his license revoked, it shall be the duty of said clerk to make a note of facts at the bottom of the page as closing the record. On the first day of January in each year, said clerk shall, on request of the board, certify to the office of the state board of medical examiners a correct list of the physicians then registered in the county, together with such other information as said board may require. A copy from the medical register pertaining to any person, certified to by said clerk under the seal of said court, also a certificate issued by said officer certifying that any person named has or has not registered in said office as required by this chapter, shall be admitted as evidence in all trial courts. (Id. sec. 5.)

Art. 5738. Reciprocal arrangements with other states.—The Board of Medical Examiners may, at its discretion, arrange for reciprocity in license with the authorities of other states and territories having requirements equal to those established by this law. License may be granted applicants for license under such reciprocity on payment of fifty ($50.00) dollars. (Acts 1907, p. 224, sec. 6; Acts 1915, ch. 63, sec. 1.)

Art. 5739. Examination of applicants; qualifications of applicants; application; fee; obstetricians; second examination.—All applicants for license to practice medicine in this State, not otherwise licensed under the provisions of law, must successfully pass an examination before the Board of Medical Examiners established by this law. Applicants, to be eligible for examination, must present satisfactory evidence to the board that they are more than twenty-one years of age, of good moral character, and graduates of bona fide, reputable medical schools. Such schools shall be considered reputable within the meaning of this law, whose entrance requirements and courses of instruction are as high as those adopted by the better class of medical schools of the United States, whose course of instruction shall embrace not less than four terms of five months each. Application for examination must be made in writing under affidavit to the secretary of the board, on forms prepared by the board, accompanied by a fee of twenty-five ($25.00) dollars; except when an applicant desires to practice obstetrics alone, the fee shall be five ($5.00) dollars. Such applicant shall be given due notice of the date and place of examination. Applicants to practice obstetrics in the State of Texas, upon proper application, shall be examined by the Board in obstetrics only, and upon satisfactory examination shall be licensed to practice that branch only; provided, this shall not apply to those who do not follow obstetrics as a profession, and who do not advertise themselves as obstetricians or midwives, or hold themselves out to the public as so practicing. In case any applicant, because of failure to pass examination, be refused a license, he or she shall, after one year, be per-

mitted to take a second examination without an additional fee. (Acts 1907, p. 224, sec. 7; Acts 1915, ch. 63, sec. 1.)

Art. 5740. Disposition of fees.—The fund realized from the aforesaid fees shall be applied first to the payment of necessary expenses of the board of examiners; any remaining funds shall be applied by the order of the board to compensating members of the board in proportion to their labors. (Acts 1907, p. 224, sec. 8.)

Art. 5741. Examination, how conducted, and to include what.—All examinations shall be conducted in writing, and in such manner as shall be entirely fair and impartial to all individuals and every school of medicine, the applicants being known by numbers, without names or other method of identification on examination papers by which members of the board may be able to identify such papers, until after the applicants have been granted licenses or rejected. Examinations shall be conducted on the scientific branches of medicine only, and shall include anatomy, physiology, chemistry, histology, pathology, bacteriology, physical diagnosis, surgery, obstetrics, gynecology, hygiene, and medical jurisprudence. Upon satisfactory examination under the rules of the board, applicants shall be granted licenses to practice medicine. All questions and answers, with grades attached, shall be preserved for one year. All applicants examined at the same time shall be given identical questions in each of the above branches. All certificates shall be attested by the seal and signed by all members of the board, or a quorum thereof. (Id. sec. 9.)

Art. 5742. Does not apply to whom.—Nothing in this law shall be so construed as to discriminate against any particular school or system of medical practice. This law shall not apply to dentists legally qualified and registered under the laws of this state who confine their practice strictly to dentistry; nor to nurses who practice only nursing; nor to masseurs, in their particular sphere of labor, who publicly represent themselves as such; nor to commissioned or contract surgeons of the United States army, navy or public health and marine hospital service, in the performance of their duties, but such shall not engage in private practice without license from the board of medical examiners; nor to legally qualified physicians of other states called in consultation, but who do not open offices or appoint places in this state where patients may be met or called to see. This law shall be so construed as to apply to persons other than licensed druggists of this state not pretending to be physicians, who offer for sale on the streets or other public places remedies which they recommend for the cure of disease. (Id. sec. 10.)

Art. 5743. Board may refuse to admit certain persons.—The state board of medical examiners may refuse to admit persons to its examinations, or to issue the certificate provided for in this law, for any of the following causes:

1. The presentation to the board of any license, certificate or diploma which was illegally or fraudulently obtained, or when fraud or deception has been practiced in passing the examination.

2. Conviction of a crime of the grade of a felony, or one which involves moral turpitude, or procuring, or aiding or abetting the procuring of a criminal abortion.

3. Other grossly unprofessional or dishonorable conduct of a character likely to deceive or defraud the public; or for habits of intemperance or drug addiction calculated to endanger the lives of patients; provided, that any applicant who may be refused admittance to examination before said board shall have his right of action to have such issue tried in the district court of the county in which some member of the board shall reside. (Id. sec. 11.)

Art. 5744. Revocation of license.—The right to practice medicine in this state may be revoked by any court of competent jurisdiction, upon proof of the violation of the law in any respect in regard thereto, or for any cause for which the state board of medical examiners is authorized to refuse to admit persons to its examinations as provided in the preceding article; and it shall be the duty of the several district and county attorneys of this state to file and prosecute appropriate judicial proceedings in the name of the state, on request of any member of said board. (Id. sec. 12.)

Art. 5744a. Cancellation of license on conviction of crime.—The State Board of Medical Examiners of this State, be and it is hereby authorized and empowered, and it is made its duty, to immediately cancel the license of any licensed "practitioner of medicine" in this State, when the facts are made known to the Board, that such party has been convicted either in a state or Federal court of the crime of the grade of a felony, or one which involves moral turpitude or procuring or aiding or abetting the procuring of a criminal abortion. (Acts 1919, ch. 129, sec. 1.)

Section 2 of this act repeals all conflicting Acts.

Art. 5745. Who regarded as practicing medicine.—Any person shall be regarded as practicing medicine within the meaning of this law:

1. Who shall publicly profess to be a physician or surgeon and shall treat, or offer to treat, any disease or disorder, mental or physical, or any physical deformity or injury, by any system or method, or to effect cures thereof;

2. Or who shall treat or offer to treat any disease or disorder, mental or physical, or any physical deformity or injury by any system or method, or to effect cures thereof and charge therefor, directly or indirectly, money or other compensation. (Acts 1907, p. 224, sec. 13.)

Art. 5746. Definitions.—The terms, "physician," and, "surgeon," as used in this law, shall be construed as synonymous, and the terms, "practitioners" and "practitioners of medicine," and, "practice of medicine," as used in this law, shall be construed to refer to and include physicians and surgeons. (Id. sec. 16.)

Art. 5747. Malpractice cause for revoking license.—Any physician or person who is engaged in the practice of medicine, surgery, osteopathy, or who belongs to any other school of medicine, whether they use the medicines in their practice or not, who shall be guilty of any fraudulent or dishonorable conduct, or of any malpractice, or

shall, by any untrue or fraudulent statement or representations made as such physician or person to a patient or other person being treated by such physician or person, procure and withhold, or cause to be withheld, from another any money, negotiable note, or thing of value, may be suspended in his right to practice medicine or his license may be revoked by the district court of the county in which such physician or person resides, or of the county where such conduct or malpractice or false representations occurred, in the manner and form as is provided for revoking or suspending license of attorneys at law in this state. (Acts 1905, p. 370, sec. 1.)

CHAPTER TWO

NURSES

See, also, Penal Code, arts. 782, 783.

Art. 5748. Board of nurse examiners; qualifications; appointment, etc.—That a board to be known as the board of nurse examiners for the state of Texas is hereby established. Said board shall be composed of five registered nurses, who shall be trained nurses of at least twenty-three (23) years of age, of good moral character and graduates of a training school connected with a general hospital or sanitarium of good standing presided over by a graduate nurse where a two years' training with a systematic course of instruction is given in the wards. Two members of said board must be nurses who have had at least two years experience in educational work among nurses. Said board shall be appointed by the governor of this state within sixty days after this Act shall go into effect, and biennially thereafter within sixty days after his inauguration, and the term of office shall be two years, or until their successors shall be appointed and qualified. Vacancies occurring in the board shall be filled by the governor. (Acts 1909, p. 228, sec. 1. Amended Acts 1911, p. 165, sec. 1, superseding Arts. 5748, 5749, Rev. St. 1911.)

Art. 5749. [Superseded.]

See art. 5748.

Art. 5750. Regulations governing board.—The members of said board shall as soon as organized, annually in the month of April, elect from their members a president and secretary who shall also be the treasurer. Three members shall constitute a quorum, and special meetings shall be called by the secretary upon the written request of any two members. The board is authorized to make such by-laws and rules as shall be necessary to govern its proceedings, and to carry into effect the purpose of this law. The board shall adopt Robert's Rules of Order to guide it in the transaction of its business. The secretary shall keep a record of all the meetings of said board, including a register of the names of all nurses duly registered under this law, which shall at all seasonable times be open to public scrutiny; and said board shall cause the prosecution of all persons violating any of the provisions of this law, and may incur necessary expenses on that behalf. The president and secretary shall make biennial report to the governor on or before the first day of January immediately preceding the convening of the legislature, together with a statement of the receipts and disbursements of said board. (Acts 1909, p. 228, sec. 2.)

Art. 5751. Board to meet, examine applicants, etc.—That after organization it shall be the duty of said board to meet regularly once in every six (6) months, notice of which meeting shall be given to the public press and in one nursing journal one month previous to the meeting. At every regular meeting, namely, every six months, it shall be the duty of the board to examine all applicants for registration under this act. Applicants must be graduated from a chartered training school, presided over by a graduate nurse. Upon filing application for examination, each applicant shall pay an examination fee of five dollars, which shall be in no case returned to the applicant, whether the examination be passed or not, but in case the applicant passes the examination, then no further fee shall be required for registration. The examination shall be of such a character as to determine the fitness of the applicant to practice professional nursing as contemplated by this Act; provided, said board shall prepare questions for examinations and shall examine applicants on the following subjects: Practical nursing, surgical nursing, obstetrical nursing, materia medica, anatomy, physiology, hygiene, dietetics and gynecology. If the results of the examination shall be satisfactory to the majority of the board, the board shall sign and issue a certificate to the applicant to that effect, which certificate shall be attested by the secretary, whereupon the person named in the certificate shall be duly qualified to practice professional nursing in this state. Any registered nurse from any other state where the laws with reference to professional nursing are up to the standard of the laws of the state of Texas, who shall show to the satisfaction of the board that he or she is a trained, graduate nurse of a hospital or sanitarium, the standard of instruction and training of which shall meet the requirements of the rules prescribed by said board, and who shall be otherwise properly qualified, may receive a certificate and be registered as a nurse of this state without examination. (Acts 1909, p. 228, sec. 3. Amended Acts 1911, p. 165, sec. 1, superseding Art. 5751, Rev. St. 1911.)

Art. 5752. Persons entitled to registration without examination, etc.; certificate of registration, etc.—That all nurses who are engaged in nursing at the time of the passage of this Act, and who shall show to the satisfaction of the said board that they are of good moral character and were graduated prior to April, 1909, from a training school connected with a hospital or sanitarium giving two years general training, or prior to the year 1901, having given 18 months general training, and who maintains in other respects proper standards, shall be entitled to registration without examination, provided they register prior to January 1st, 1912. All persons who have heretofore received registration certificates in compliance with an Act of the regular session of the thirty-first legislature, being "An Act to define and regulate the practice of professional nursing, to create a board of nurse examiners for the examina-

tion and licening [licensing] of nurses, and to prescribe their qualifications, to provide for their proper registration and for the revocation of certificates, and to fix suitable penalties for the violation of this Act," shall not be required to obtain new registration certificates, but such certificates heretofore secured under said Act of the thirty-first legislature shall be in all things valid and binding and of full force and effect. All persons who are in training in the wards of a general hospital or sanitarium in this state where a two-years' training with a systematic course of instruction is given at the time of the passage of this Act, and shall graduate hereafter, and possess the above qualifications, shall be entitled to registration without examination. Provided application for registration certificate shall be made to the board herein provided for, who shall issue proper certificate of registration without examination, if the applicant be found entitled thereto under the provisions of this Act. All nurses who have served in the army or navy of the United States, and have been honorably discharged, shall be entitled to registration without examination. It shall be unlawful hereafter for any person to practice nursing as a registered nurse, without a certificate from the state board of nurse examiners. A nurse who has received his or her certificate according to the provisions of this Act shall be styled and known as a "Registered Nurse." No other person shall assume such title or use the abbreviation "R. N." or any other letters to indicate that he or she is a registered nurse. The board in each instance shall require a registration fee of five ($5.00) dollars. (Acts 1909, p. 228, sec. 4. Amended Acts 1911, p. 165, sec. 1, superseding Art. 5752, Rev. St. 1911.)

Art. 5753. Board to have power to revoke certificates, etc.—The state board of nurse examiners shall have the power to revoke any certificate issued in accordance with this law, by a unanimous vote of said board, for gross incompetency, dishonesty, habitual intemperance, or any act derogatory to the morals or standing of the profession of nursing as may be determined by the board; but, before any certificate shall be revoked, the holder thereof shall be entitled to at least thirty days notice in writing of the charge against him or her and of the time and place of hearing and determining of such charges, at which time and place he or she shall be entitled to be heard; and, in the event said certificate shall be revoked by said board, the holder of such certificate shall have right of action within thirty days thereafter in the district court of the county of the residence of any member of the board, and said certificate shall remain in force until the question is finally decided by the courts. Upon revocation of any certificate, it shall be the duty of the secretary of the board to strike the name of the holder thereof from the roll of registered nurses. (Acts 1909, p. 228, sec. 5.)

Art. 5754. Disposition of fees.—All fees received by the state board of nurse examiners under this law shall be paid to the treasurer of said board, who shall pay the same out on vouchers issued and signed by the president and secretary of said board upon warrants drawn by the president of the state board of examiners. All money so received and placed in said fund may be used by the state board of nurse examiners in defraying its expenses in carrying out the provisions of this law. (Id. sec. 6.)

Art. 5755. Law does not apply, when.—This law shall not be construed to affect or apply to the gratuitous nursing of the sick by friends or members of the family, or to any person nursing the sick for hire who does not in any way assume the practice as a trained, graduate, or registered nurse. (Id. sec. 7.)

Art. 5755a. Lecturing nurses; employment.—That the Board of Nurse Examiners for the State of Texas, be and it is hereby authorized to employ at least three lecturers from among the registered nurses of this State to visit and lecture to the young women students of the high schools, colleges and Universities of the State, those supported by public as well as by private patronage or endowment, with the view of securing volunteers from among the young women of the State willing to begin at once to take training for service as professional nurses to meet the demands for trained nurses to care for our sick and wounded in the war, as well as to properly serve the civilian population in the meantime. (Acts 1918, 4th C. S., ch. 51, sec. 1.)

Art. 5755b. Same subject; compensation.—That the said Board be and it is hereby authorized to fix the salary or compensation for said lecturers, to agree upon the term of service and pay the same from the accumulated fees now on hand and under the control of said Board amounting to something over three thousand dollars, to be vouchered and paid as is provided in Section 6 of the Act of 1909 creating the Board of Nurse Examiners, as amended by the Act of 1911 [Art. 5754]. (Id. sec. 2.)

CHAPTER THREE

ANATOMICAL BOARD

Art. 5756. Board, how constituted; duties of.—The professor of anatomy and the professor of surgery of each of the medical schools or colleges now incorporated, and the several medical and dental schools and colleges which may hereafter be incorporated in this state are constituted a board, to be known as the anatomical board of the state of Texas, for the distribution and delivery of dead human bodies, hereinafter described, to and among such institutions as, under the provisions of this chapter, are entitled thereto. The said board shall have the power to establish rules and regulations for its government, and to appoint and remove proper officers, and shall keep full and complete minutes of its transactions, and records sufficient for identification shall also be kept, under its direction, of all bodies received and distributed by said board and of persons to whom the same may be distributed, which minutes and records shall be open at all times to the inspection of each member of said board and of any district attorney or county attorney of this state. (Acts 1907, p. 117, sec. 1.)

Art. 5757. Regulations for delivering dead bodies.—All public officers, agents, and servants, and all officers, agents, and serv-

ants of any county, city, town, district, or other municipality, and of any and every almshouse, prison, morgue, hospital, or any other public institution, other than the state orphans' home, the confederate home, the state blind institute, and the state deaf and dumb institute, insane asylum, and epileptic colony, or any other home for the indigent, or other eleemosynary institution maintained by the state, having charge of, or control of, dead human bodies required to be buried at public expense, are hereby required, after notification in writing by said board of distribution or its duly authorized officers, or persons designated by the authorities of said board, then and thereafter to announce to said board, its authorized officer or agent, whenever such body or bodies come into his or their possession, charge, or control, and shall without fee or reward greater than the value of such fee as may be paid in any county, city, town, or municipality on the third day of April, 1907, for the burial of pauper bodies, deliver such body or bodies, and permit and suffer the said board and its agents and the physicians and surgeons, from time to time designated by them, who may comply with the provisions of this chapter, to take and remove all such bodies as are not desired for post mortem examinations by the medical staff of public hospitals or institutions for the insane, to be used within this state for the advancement of medical science; but no such notice need be given, nor any such body be delivered, if any person claiming to be and satisfying the authorities in charge of such body that he or she is of a kindred or is related by marriage to the deceased, or is a bona fide friend or representative of an organization of which the deceased was a member, shall claim the said body for burial, but it shall be surrendered, without cost to such claimant for interment, or shall, upon such claimant's request, be interred in the manner provided for the interment of bodies not coming within the operation of this chapter, nor shall notice be given for the body to be delivered, if the deceased died of contagious disease, save tuberculosis, or syphilis; nor shall notice be given, if such deceased person were a traveler who died suddenly, in which case, the body shall be buried. It is further required that due effort be made by those in charge of such almshouse, prison, morgue, hospital, or other public institution having charge or control of such dead human bodies, to find kindred or relatives of such deceased and notify him or her of the death; and failure to claim such body by kindred or relation within twenty-four hours after receipt of such notification shall be recognized as bringing such body under the provisions of this chapter, and delivery shall be made as soon thereafter to said board, its officers, or agents as may be possible. Such person in charge of such public institution shall file with the county judge an affidavit that he has made diligent inquiry and stating such inquiry as he has made. In case a body is claimed by relatives within ten days after it has been delivered to an institution or person entitled to receive the same under the provisions of this chapter, it shall be delivered to them for burial and without cost. (Id. sec. 2.)

Art. 5758. Distribution of bodies to various institutions.—The board, or their duly authorized agents, may take and receive such bodies so delivered as aforesaid, and shall, upon receiving them, distribute and deliver to and among the schools, colleges, physicians and surgeons aforesaid in the manner following: Those bodies needed for lecture and demonstration, in the said incorporated schools and colleges, shall first be supplied; the remaining bodies shall then be distributed proportionately and equitably, the number assigned to each to be based upon the number of students receiving instruction or demonstration in normal or morbid anatomy and operative surgery, which number shall be certified by the dean of each school or college to the board at such times as it may direct. Instead of receiving and delivering said bodies themselves through their agent or servant, the said board may, from time to time, either directly or by their designated officer or agent, authorize physicians and surgeons who shall receive them, and the number which each shall receive. (Id. sec. 3.)

Art. 5759. Regulations for moving bodies; records to be kept.—The board may employ public carriers for the conveyance of said bodies, which shall be carefully deposited, with the least possible public display. Sender shall keep on permanent file a description by name, color, sex, age, place and cause of death of each body transmitted by him; or where the body shall be one of a person unknown, the color, age, sex, place and supposed cause of death; and any other data available for identification, such as scars, deformities, etc., shall be put on record. A duplicate of this description shall be mailed, or otherwise safely conveyed, to the person or institution to whom the body is being sent; and the person or institution receiving such body shall, without delay, mail or otherwise safely convey to sender a receipt for the same in the full terms of the description furnished by sender. All these records shall be filed in a manner to be determined by the board so that they may be at any time available for inspection by the board, or any district or county attorney of this state. (Id. sec. 4.)

Art. 5760. Schools, colleges, etc., may dissect bodies.—Any and all schools, colleges, and persons who may be designated by said anatomical board of the state of Texas, shall be, and are, by this chapter authorized to dissect, operate upon, examine, and experiment upon such bodies hereinbefore described and distributed for the furtherance of medical science; and such dissections, operations, examinations, and experiments shall not be considered as amenable under any already existing laws for the prevention of mutilation of dead human bodies. Such persons, schools, or colleges shall keep a permanent record, sufficient for identification of each body received from such anatomical board or agent, which record shall be subject to inspection by the board, or its authorized officer or agent. The board shall also have power to authorize incorporated schools or colleges and individual physicians and surgeons to experiment on the lower animals under bond as hereinafter designated. (Id. sec. 5.)

Art. 5761. Parties receiving bodies to give bond.—No school, college, physician, or surgeon shall be allowed or permitted to receive any such body or bodies until bond shall have been given to the state by such physician or surgeon, or by or in behalf of such school or college, to be approved by the clerk of the county court in and for the county in which such physician or surgeon may reside, or in which such school or college may be situated, and to be filed in the office of said clerk; which bond shall be in the penal sum of one thousand dollars, conditioned that all such bodies which the said physician or surgeon, or said college, shall receive thereafter shall be used, and all such experiments on the lower animals shall be conducted only for the promotion of medical science; and whosoever shall sell or buy such body or bodies, or in any way traffic in the same, or shall transmit or convey, or cause or procure to be transmitted or conveyed, said bodies to any place outside the state, shall be guilty of a misdemeanor, and shall, on conviction, be punished as provided in the Penal Code. (Id. sec. 6.)

Art. 5762. Expenses, by whom paid.—Neither the state, nor any county, nor municipality, nor any officer, agent or servant thereof, shall be at any expense by reason of the delivery or distribution of any such body; but all expense thereof, and of said board of distribution, shall be paid by those receiving the bodies in such manner as may be specified by said anatomical board of the state of Texas, or otherwise agreed upon. (Id. sec. 7.)

Art. 5763. Compensation of board.—No compensation other than actual traveling expenses shall be received for their services in this capacity by members of this board. (Id. sec. 9.)

TITLE 91

MILITIA

CHAPTER ONE

GENERAL PROVISIONS

Art. 5764. Active and reserve militia.—The militia of this state shall be divided into two classes, the active and the reserve militia. The active militia shall consist of the organized and uniformed military forces of this state, which shall be known as the Texas national guard; the reserve militia shall consist of all those liable to service in the militia, but not serving in the Texas national guard. (Acts 1905, p. 167, sec. 2.)

Art. 5765. Who are subject to military duty.—All able-bodied male citizens, and able-bodied males of foreign birth who have declared their intention to become citizens, who are more than eighteen and less than forty-five years of age, who are residents of this state and who are not exempted by the laws of the United States, or of this state, shall constitute the militia and be subject to military duty. (Id. sec. 1.)

Art. 5766. Exemptions.—In addition to the persons exempted by the laws of the United States, the following persons shall be exempt from military duty in this state, namely:

1. The lieutenant governor and the heads of the several departments.

2. The judges and clerks of all courts of record.

3. The members and officers of both houses of the legislature.

4. The sheriffs, district attorneys, county attorneys, county assessors, county collectors, county treasurers, and county commissioners.

5. The mayor, alderman, assessor and collector of incorporated cities and towns.

6. The officers and guards of state prisons, houses of correction, and the officers and instructors and attendants of other state institutions; keepers, attendants and assistants of poor houses; superintendents, nurses and assistants of all hospitals.

7. The members of any regularly organized and paid fire or police department in any city or town, but no member of the active militia shall be relieved from duty because of his joining any such fire company or department.

8. All ministers of the gospel exclusively engaged in their calling; all teachers engaged in public institutions and public schools.

9. All persons who shall have served in the active militia of this state for the term of seven years, and have been honorably discharged therefrom.

10. Idiots, lunatics, vagabonds, confirmed drunkards, persons addicted to the use of narcotic drugs, and persons convicted of infamous crimes.

11. Any person who conscientiously scruples to bear arms; provided he shall pay an equivalent for personal service.

12. All such exempted persons, except those enumerated in subdivision 10, shall be liable to military duty in case of war, insurrection, invasion or imminent danger thereof. (Id. sec. 3.)

Art. 5767. Governor to be commander-in-chief.—The governor of this state, by virtue of his office, shall be the commander-in-chief of the military forces of this state, except of such portions as may at times be in the service of the United States. Whenever the governor is unable to perform the duties of commander-in-chief, the adjutant general of this state shall command the military forces of this state, except in cases where the lieutenant governor, or the president of the senate, under the laws of this state, is required to perform the duties of governor. (Id. sec. 4.)

Art. 5767a. Appropriation for expenses of military forces of state; pay of Adjutant General, Chief Clerk, etc.—That as a measure of national and State preparedness, there is hereby appropriated out of the general revenue of the State of Texas, Seven Hundred and Fifty Thousand Dollars, or so much thereof as may be necessary for the purpose of affording protection or relief to the State of Texas, by providing for the pay, transportation, subsistence, and all other expenses of the military forces of the State, when ordered on duty or when mobilized for instruction, or in recruiting or organizing any or all troops, required under the National Defense Act, or when ordered on any other military duty; for pay, transportation and all other expenses of officers while on active duty or while serving on military courts or boards or on other details; for mileage, per diem and other expenses of witnesses appearing before military courts and board which mileage

and per diem shall be the same as that prescribed by the statutes of this State for witnesses attending the District Courts of this State in felony cases; for providing adequate and suitable storage and armory facilities for all headquarters and organizations of the military forces of this State; for the purpose of training, organizing, mobilizing, transporting, subsisting, paying, equipping, preparing for muster into and out of federal service, and for paying, subsisting, transporting and all other expenses of troops on and after muster out of federal service; for pay, transportation, subsistence and all expenses in organizing and maintaining schools of instruction for officers or enlisted men and for the purchase or manufacture of text-books and blank forms; and for the necessary clerical assistance and labor in storage, rooms, arsenals, armories or headquarters; and for the transportation and storage of military stores and supplies; and for the laundry and repair of uniforms and equipment; and for the hire, purchase, transportation and subsistence of animals; and for printing, stationery, postage, telephoning, telegraphing; and for the purchase of military stores, supplies, uniforms, arms and equipment; and all other military expenses of whatsoever character; for the maintenance of the Adjutant General's Department, as follows:

Pay of [the Adjutant General, $3600.00 per year; pay of chief clerk $1800.00 per year;] one stenographer at $1200.00 per year; pay of porter $480.00 per year; and for such additional clerical force not to exceed six clerks who shall draw salaries not exceeding $1200.00 per year each, said clerks to be only retained for such times as their services may be absolutely necessary; and for stationery, postage, telegraphing, telephoning and all other expenses as may be necessary; provided that none of the funds herein appropriated shall be expended for equipment, training, organizing, mobilizing, transporting, subsisting, paying, purchasing equipment for, and mustering into the Federal service of, any additional State troops until the Units are designated to the proper State authorities by the proper authorities of the Federal Government, and provided further, that no part of the amount herein appropriated shall be in any wise spent for the ranger service. (Acts 1917, 1st C. S., ch. 5, sec. 1.)

Art. 5767b. Expenditures, how made.—Any and all amounts that may be expended as provided by this Act shall be paid only on itemized accounts sworn to by the party expending the same and showing the time, purpose and for what said amount was expended and by whom, which said itemized accounts shall be approved by both the Adjutant General and the Governor of Texas before their payment; provided that no part of the amount herein appropriated shall be paid out for any purpose other than as herein specifically provided; and provided further, that no deficiency shall be created, nor shall any warrants be issued or obligations incurred in excess of the amount herein appropriated and the Comptroller of Public Accounts shall not issue warrants upon the State Treasury for any moneys expended under this Act until said itemized accounts have been filed in the Comptroller's office. (Id. sec. 2.)

CHAPTER TWO

RESERVE MILITIA

Art. 5768. Reserve militia not subject to military duty, except, etc.—The reserve militia shall not be subject to active military duty, except when called into the service of this state, or of the United States, in case of war, insurrection, invasion, or for the prevention of invasion, the suppression of riot, tumults and breaches of the peace, or to aid the civil officers in the execution of the law and the service of process, in which case, they or so many of them as the necessity requires, may be ordered out for actual service by draft or otherwise, as the governor may direct. The portion of the reserve militia ordered out or accepted shall be mustered into the service for such period as may be required, and the governor may assign them to existing organizations of the active militia, or organize them as the exigency of the occasion may require. (Acts 1905, p. 167, sec. 5.)

Art. 5769. Governor may order enrollment.—Whenever the governor deems it necessary, he may order an enrollment of all persons, other than members of the active militia, liable to military duty, to be made by the county assessor of each county, or by other persons designated by the governor. Such enrollment shall state the name, residence, age, color, and occupation of the persons enrolled. Enrolling officers shall have power to question under oath, which they are hereby authorized to administer, any person deemed liable to perform military duty, but who denies the same; and, if any person refuses to be sworn, the enrolling officer shall enroll his name in the same manner as though he had admitted his liability. The assessor, or such other person as may be designated by the governor to act as enrolling officer, shall, within such time as may be required by the governor, prepare and file three copies of such enrollment, properly certifying that he has enrolled all persons residing in his county, who are liable to perform military duty, one copy to be filed in the office of the adjutant general, one copy in the office of the county clerk of the county in which the enrollment was made, and one copy retained by the enrolling officer. Upon filing the lists of enrollment, as herein provided, the enrolling officer shall be paid eight cents for each person so enrolled and notified, as hereinafter set out, out of the treasury of the county. (Id. sec. 6.)

Art. 5770. Officer making enrollment to serve notice, etc.—The officer making the enrollment shall, at the time of making the same, serve a notice of such enrollment upon each person enrolled, by delivering such notice to him, or leaving it with some person of suitable age and discretion, at his place of residence, or by mailing such notice at the expense of the county to his last known place of residence or abode. All persons claiming exemption must, within ten days after receiving such notice, file a written statement of such exemption, verified by affidavit, in the office of the county clerk. Such clerk shall thereupon, if such person be exempted ac-

cording to law, mark the word, "exempt," opposite his name; and the remainder of all thus enrolled, and not thus found to be exempt, shall constitute the militia of this state and be subject to military duty; and such clerk shall transmit a copy of such corrected list of enrollment to the adjutant general within twenty days after the filing of the original list of enrollment by the enrolling officer, for which he shall be allowed two cents for each name on such list, to be paid by the county. The officer highest in rank in the active militia, and the heads of the fire and police departments in each city or town, shall, whenever an enrollment is ordered, file, within ten days, in the office of such county clerk a certified list of the names of all persons in the active militia of such county or in such department. (Id. sec. 7.)

Art. 5771. Persons making enrollment to have access to assessment rolls.—The assessor in each county of this state shall allow persons appointed to make such enrollment, if persons other than the assessor be appointed, at all proper times to examine their assessment rolls and make copies thereof. All persons shall, upon the application of any person making such enrollment, give the name of and all other information concerning any person within their knowledge liable to be enrolled, under penalty of ten dollars for every concealment, or false information, or refusal to give the information requested, to be recovered in the name of the state of Texas by a judge advocate, district or county attorney in the justice court, Austin, Texas, or precinct of his residence, with costs. The officer making the enrollment shall, within ten days, report all persons who shall fail or neglect to give information to the adjutant general. (Id. sec. 8.)

Art. 5772. Governor may draft for military duty, when.—Whenever it shall be necessary to call out any portion of the reserve militia for active duty, the governor may apportion the number by draft according to the population of the several counties of the state, or otherwise, as he shall direct. The governor shall direct his order to the sheriff of each county from which any draft is required, setting forth the number of persons such county is to furnish. Upon the requisition of the governor being received by the sheriff, he shall immediately personally notify the county clerk, who shall repair to his office and in public shall copy by name or number, from the corrected list of enrollment of such county on file in his office, all persons who are so returned as liable to perform military duty; such names, or their corresponding numbers, shall be placed on slips of paper of the same size and appearance, as near as practicable, which slips, so named or numbered, shall be placed in a box suitable for that purpose, and the number required to fill such draft or requisition shall be drawn therefrom, in the same manner as jurors are by law now drawn. All persons so drawn and liable to perform military duty shall be determined to be legally held to serve, in the manner and for the purpose and time specified in the requisition; and the sheriff shall notify the persons so drafted by registered letter, or personally in writing, at what time and place they shall appear; for which service he shall receive expense of postage and five cents each, to be paid by the county. (Id. sec. 9.)

Art. 5773. Persons drafted shall report, etc.—Every member of the reserve militia ordered out, or who volunteers, or is drafted, under the provisions of this law, who does not appear at the time and place designated by the sheriff, or his commanding officer, within twenty-four hours from such time, or who does not produce a sworn statement of physical disability from a physician in good standing, to so appear, shall be taken to be a deserter and dealt with as prescribed for deserters by law. (Id. sec. 10.)

Art. 5774. Persons drafted may furnish substitute.—Any person in the reserve militia of this state, who has been drawn to perform military duty, may, at any time, be exempt until again required in his turn to serve, by furnishing an acceptable substitute on or before the day fixed for his appearance; but, if, during any period of service, any man who is serving in the active militia as a substitute for another, becomes liable to service in his own person, he shall be taken for such service, and his place as substitute shall be supplied by the man in whose stead he was serving, or another substitute. (Id. sec. 11.)

Art. 5775. Officer neglecting or refusing to perform duty in drafting, liable for penalty.—If any sheriff, or constable, county assessor, or county clerk, shall neglect or refuse to perform any duty enjoined upon him by this law, in addition to criminal liability, the person or persons guilty of such refusal or neglect shall be liable to a penalty of not less than one hundred dollars nor more than one thousand dollars, to be recovered against him or his bondsmen in the name of the state of Texas, by suit instituted by a judge advocate, district or county attorney, in the proper court of Travis county, or the county of which such person is the sheriff, constable, assessor or clerk. (Id. sec. 12.)

Art. 5776. Power of governor to call out militia.—The governor shall have power, in case of insurrection, invasion, tumult, riot, or breach of peace, or imminent danger thereof, to order into the active service of this state any part of the militia that he may deem proper. When the militia of this state, or a part thereof, is called forth under the constitution and laws of the United States, the governor shall order out for service the active militia, or such part thereof as may be necessary; and, if the number available be insufficient, he shall order out such part of the reserve militia as he may deem necessary. During the absence of organizations of the militia in the service of the United States, their state designations shall not be given to new organizations. (Id. sec. 13.)

Art. 5777. Reserve militia to be mustered in, when.—The portion of the reserve militia ordered out or accepted into the service, as indicated in articles 5768 and 5772 of this chapter, shall be immediately mustered into the service for such period as the governor may direct, and shall be organized into troops, batteries, companies and such other organizations as may be neces-

sary, which may be arranged in squadrons, battalions, regiments, or corps, or assigned to organizations of the active militia already existing. The governor is authorized to appoint the officers necessary to commence or complete, or to command any organization thus created. Such new organization shall be equipped, disciplined and governed according to the military laws and military regulations of this state. (Id. sec. 14.)

CHAPTER THREE
NATIONAL GUARD

ORGANIZATION

Art. 5778. National guard to consist of existing military organizations.—The Texas national guard shall consist of the existing military organizations, and such others as may be organized hereafter, and such persons as are held to military duty under the laws of this state, or such persons as are exempt under said laws who may accept appointment or voluntarily enlist therein, or of such persons of the reserve militia as may be mustered therein, as provided in articles 5768 and 5777 of this title; but at no time, except in case of war, insurrection, invasion, the prevention of invasion, the suppression of riot, or the aiding of the civil authorities in the execution of the laws of this state, shall the maximum strength thereof exceed seven thousand officers and enlisted men. (Acts 1905, p. 167, sec. 15.)

Art. 5779. Governor to prescribe regulations for government of national guard.—The governor is hereby authorized, and it shall be his duty, to prescribe such regulations as he may see fit for the organization of the Texas national guard; and he shall, from time to time, as he may deem for the best interests of the service, change such regulations, which shall be in accordance with this chapter, and conform as near as practicable to the organization of the regular army of the United States. He may, at any time for cause deemed good and sufficient by him, muster out of the service or reorganize any portion of the Texas national guard or the reserve militia, or discharge any officer or enlisted man thereof, and he shall have full control and authority over all matters touching the military forces of this state, its organization, equipment and discipline. (Id. sec. 16.)

Art. 5780. Governor to make and publish regulations.—The governor is hereby authorized, and it shall be his duty, to make and publish regulations in accordance with existing military laws, for the government of the military forces of this state, which shall embrace all necessary orders and forms of general character for the performance of all duties incumbent on officers and men in the military service, including rules for the government of courts martial; the existing regulations to remain in force until the governor shall have published such regulations. The governor shall, as he may see fit from time to time, create new regulations, or amend, modify, or repeal existing regulations. (Id. sec. 17.)

Art. 5781. Governor's staff.—The governor shall have a staff consisting of the adjutant general and twelve aides-de-camp. The adjutant general shall have rank and be appointed as provided by this Act; the twelve aides-de-camp shall have the rank of lieutenant colonel while so serving, and shall be appointed by, and serve during the pleasure of the governor. Three of the aides-de-camp shall be selected from the officers of the Texas national guard below the grade of colonel, and nine shall be selected without restriction as to the source of selection; provided, further, that said aides-de-camp shall not be ineligible from holding any office of emolument, trust or honor within this state, nor shall said aides-de-camp be ineligible from serving as chairman or member of any committee of any political party or organization. (Acts 1907, p. 224, sec. 18. Amended Acts 1911, p. 25, sec. 1, superseding Art. 5781, Rev. St. 1911.)

Art. 5782. Military organizations deemed bodies corporate, etc.—Whenever any troop, battery, company, signal corps or band is mustered into the active militia of this state by the authority of the governor, such troop, battery, company, signal corps or band shall, from the date of such muster-in, be deemed and held in law a body corporate and politic, with power under its corporate name to take, purchase, own in fee simple, hold, transfer, mortgage, pledge and convey real or personal property to an amount in value, at the time of its acquisition, of two hundred thousand dollars (provided that the natural enhancement in value of any property properly acquired by any such company shall not affect the right of such company to hold or otherwise handle such property), and with like power under its corporate name to sue and be sued, plead and be impleaded, and to prosecute and defend in the courts of this state or elsewhere; to have and use a common seal of such device as it may adopt; to ordain and establish by-laws for the government and regulation of the company affairs not inconsistent with the constitution and laws of this state and of the United States, and the orders and regulations of the governor; and such by-laws to alter and amend at will; and generally to do and perform any and all things necessary and proper to be done in carrying out and perfecting the purpose of its organization, of which the officers, and in case of a band, the non-commissioned officers, shall be directors, the senior the president. (Acts 1907, p. 224, sec. 54. Amended Acts 1911, p. 149, sec. 1, superseding Art. 5782, Rev. St. 1911.)

Art. 5783. Discipline to conform to that of the United States army.—The system of discipline and exercise of the active militia of this state shall conform generally to that of the army of the United States, as it is now or may hereafter be prescribed by the president, and to the provisions of the laws of the United States, except as otherwise provided by law, or by the regulations issued by the governor. (Acts 1905, p. 167, sec. 67.)

Art. 5784. Prohibiting organization of military companies, except, etc.—No body of men, other than the regularly organized militia of this state and the troops of the United States, shall associate themselves together as a military company or organization or parade in public with firearms in any city or town of this state; but students

in the educational institutions where military science is a prescribed part of the course of instruction, and soldiers honorably discharged from the service of the United States, and confederate veterans, may, with the consent of the governor, drill and parade with firearms in public. This article shall not be construed to prevent parades by the active militia of any other state as hereinafter provided. (Id. sec. 74.)

ADJUTANT GENERAL

Art. 5785. Adjutant general's department.—There shall be at the seat of government of this state an executive department known as the adjutant general's department, and the adjutant general shall be the head thereof. (Id. sec. 19.)

Art. 5786. Rank of adjutant general.—The adjutant general shall have the rank of brigadier general, and shall be appointed by the governor, by and with the advice and consent of the senate, if in session. (Id. sec. 20.)

Art. 5787. Term of office and salary of adjutant general.—The adjutant general shall hold his office for the term of two years, and until the appointment and qualification of his successor in office. In case of a vacancy in such office, the appointment shall be made for the unexpired term only. He shall receive an annual salary of two thousand dollars. (Id. sec. 21.)

This section is superseded as to the salary of the Adjutant General by art. 7054, post.

Art. 5788. Oath and bond of adjutant general.—Before entering upon the duties of his office, the person appointed adjutant general shall enter into a bond with two or more good and sufficient sureties, to be approved by the governor, which bond shall be in the sum of ten thousand dollars, payable to the governor of this state and his successors in office, and conditioned for the faithful performance of the duties of said office. He shall also take and subscribe the oath of office prescribed by the constitution for all officers, which oath and bond shall be deposited in the office of the secretary of state. (Id. sec. 22.)

Art. 5789. Shall have a seal.—The adjutant general shall procure and keep in his office a seal for the authentication of all certificates and other instruments emanating from his office, when such authentication is required by law or necessary, the device upon which seal shall consist of a star of five points with the words, "Office of Adjutant General, State of Texas," around the margin. (Id. sec. 23.)

Art. 5790. Shall have control of military department of the state.—The adjutant general shall be in control of the military department of this state and subordinate only to the governor in matters pertaining to said department, or the military forces of this state; and he shall perform such duties as may, from time to time, be entrusted to him by the governor relative to the military commissions, the military forces, the military stores and supplies, or to other matters respecting military affairs of this state; and he shall conduct the business of the department in such manner as the governor shall direct. And he shall have the custody and charge of all books, records, papers, furniture, fixtures, and other property relating to his department; and shall perform, as near as practicable, such duties as pertain to the chief of staff, the military secretary and other chiefs of staff departments, under the regulations and customs of the United States army. (Id. sec. 24.)

Art. 5791. Duties of adjutant general.—The adjutant general shall, from time to time, define and prescribe the kind as well as the amount of supplies to be purchased for the military forces of this state, and the duties and powers respecting such purchases; and shall prescribe general regulations for the transportation of the articles of supply from the places of purchase to the several camps, stations of companies, or other necessary places for the safe-keeping of such articles, and for the distribution of an adequate and timely supply of the same to the regimental quartermasters, and to such other officers as may, by virtue of such regulations, be entrusted with the same; and shall fix and make reasonable allowance for the store rent and storage necessary for the safe-keeping of all military stores and supplies; and shall control and supervise the transportation of troops, munitions of war, equipments, military property and stores throughout the state. (Id. sec. 25.)

Art. 5792. Same.—The adjutant general is authorized to prescribe rules and regulations to be observed in the preparation and submission and opening of bids for contracts under the adjutant general's department; and he may, at his discretion, require any bid to be accompanied by a bond in such penal sum as he may deem advisable, with good and sufficient security, conditioned that the bidder will enter into a contract agreeable to the terms of his bid, if the same be awarded to him, within sixty days from the date of the opening of the bids, or otherwise pay the penalty. No bid shall be withdrawn by the bidder within the said period of sixty days. (Id. sec. 26.)

Art. 5793. Same.—The adjutant general is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, the custody, use and preservation of the records, papers and property appertaining to it. He shall superintend the preparation of such returns and reports as may be required by the laws of the United States from this state, and perform such other duties prescribed for him by this act or by other laws of this state, or by the governor. He shall keep a register of all officers of the militia of this state, and keep in his office all records and papers required to be kept and filed therein. He shall, at the expense of this state, when necessary, cause the military law and regulations of this state to be printed, indexed and bound in proper and compact form and distributed to the commissioned officers, sheriffs, clerks and assessors of the counties of this state at the rate of one copy to each; and to each commissioned officer and headquarters he shall issue one copy of the necessary text books, and of such annual reports concerning the militia as the gover-

nor may direct. He shall cause to be prepared and issued all necessary blank books, blanks, forms and notices required to carry into full effect the provisions of this act. All such books and blanks shall be and remain the property of this state. He shall make such regulations pertaining to the preparation of the reports and returns, and to the care and preservation of property for military purposes, whether belonging to this state or to the United States, as, in his opinion, the conditions demand; such regulations to be operative and in force when promulgated in the form of general orders, circulars, or letters of instruction. He shall report annually to the governor:

1. A statement of all moneys received or disbursed by him since his last annual report.

2. An account of all arms, ammunition, and other military property belonging to this state, or in possession of this state, from what source received, to whom issued, and its present condition, so far as he may be informed.

3. The number, condition and organization of the Texas national guard and reserve militia.

4. Any suggestions which he may deem of importance to the military interests and conditions of this state and the perfection of its military organization. (Id. sec. 27.)

Art. 5794. Annual report to be printed.—The annual report provided for in the preceding article shall be printed annually and laid before the legislature for its information. (Id. sec. 28.)

Art. 5795. To hire clerks and laborers.—All necessary clerks and employés will be appointed and laborers will be hired by the adjutant general. (Id. sec. 29.)

Art. 5796. Assistant adjutant general.—The adjutant general shall have one assistant adjutant general, who shall fill the position of chief clerk, with the rank of colonel, one assistant quartermaster general, with the rank of colonel, and such necessary clerks, employés, and laborers as may be required, from time to time, to carry on the operations of his department, all of whom shall be under the direction and control of the adjutant general. (Id. sec. 30.)

Art. 5797. Assistant adjutant general to be appointed by the governor.—The assistant adjutant general shall be appointed by the governor on the recommendation of the adjutant general, and shall remain in office during the pleasure of the governor, and until his successor is appointed and qualifies. He shall receive an annual salary of twelve hundred dollars, and shall, during his term of office, be entitled to all rights, privileges and immunities granted officers of like rank in the Texas national guard. He shall, before entering upon the duties of his office, take and subscribe to the oath of office prescribed for officers of the Texas national guard, which oath shall be deposited in the office of the adjutant general. He shall aid the adjutant general by the performance of such duties as may be assigned him, and shall, in case of absence or inability of the adjutant general to act, perform all such portions of the duties of the adjutant general as the latter may expressly delegate to him. (Id. sec. 31.)

Art. 5798. Authorized to administer oaths to officers of militia, etc.—The assistant adjutant general is hereby authorized and directed, on application and without compensation therefor, to administer oaths of office to officers of the active militia, and to employés of the adjutant general's office required to be taken on their appointment or promotion. (Id. sec. 32.)

Art. 5799. To issue certificates to organizations, etc.—On the muster-in to the active militia of this state of any troop, battery, company, signal corps, or band, the adjutant general shall issue to such organization a certificate to the effect that such organization has been duly organized in accordance with the laws and regulations of the militia service of this state, and that such organization is entitled to all the rights, powers, privileges and immunities conferred by such laws and regulations. Such certificate shall be in such form as the adjutant general may prescribe. Such certificate shall be evidence in all courts of this state that the organization therein named is duly incorporated; but, in suits by or against any troop, battery, company, signal corps, or band of the active militia of this state, it shall not be necessary for either party, where the incorporation is alleged, to prove such incorporation, unless that fact is denied under oath by the opposite party. (Id. sec. 55.)

Art. 5800. To purchase certain military stores, etc.—The adjutant general may, after the appropriations are made for that purpose, purchase and keep ready for use, or issue to the military forces of this state, as the best interests of the service may require, such amount and kind of quartermaster's, ordnance, subsistence, medical, signal, engineer's, and all other military stores and supplies as shall be necessary; he shall see that all military stores and supplies, both the property of this state and of the United States, are properly cared for and kept in good order, ready for use; and all accounts which may accrue against this state under the provisions of this chapter shall, if correct, be certified and approved by the adjutant general and paid out of the state treasury as other claims are paid. Any military stores belonging to this state which may become unserviceable, obsolete, or unfit for further use, may be disposed of in such manner as the governor or adjutant general may prescribe by regulations or order; and the adjutant general is hereby authorized to sell or destroy, as he may see fit for the best interests of the service, any unserviceable, or obsolete, or unsuitable military stores belonging to this state, the sums realized from the sale thereof to be turned into the state treasury, to be credited to any fund appropriated for the use of the active militia of this state, as shall be determined at the time by the governor or adjutant general; or he may, in his discretion, exchange such stores for such other military stores as the interest of the service may require, for the use of the active militia of this state. (Id. sec. 101.)

ASSISTANT QUARTERMASTER GENERAL

Art. 5801. Assistant quartermaster general.—The assistant quartermaster gen-

eral shall be appointed by the governor on recommendation of the adjutant general, and shall remain in office during the pleasure of the governor, and until his successor is appointed and qualified. He shall receive an annual salary of fifteen hundred dollars, and shall, during his term of office, be entitled to all rights, privileges and immunities granted officers of like rank in the Texas national guard. He shall, before entering upon the duties of his office, enter into a bond, with two or more good and sufficient sureties, to be approved by the governor, which bond shall be in the sum of ten thousand dollars, payable to the governor of this state and his successors in office, and conditioned faithfully to discharge the duties of his office and disburse and account for all moneys, and to faithfully keep, issue and account for all military stores, supplies and other property of this state, or of the United States, coming into his possession or entrusted to his care for the use of the military forces of this state. He shall take and subscribe the oath of office prescribed for officers of the Texas national guard, which oath and bond shall be deposited in the office of the adjutant general. He shall, under the immediate direction of the adjutant general, perform, as near as may be, the duties pertaining to the chiefs of the quartermaster, subsistence, and ordnance departments under the regulation and customs of the United States army. He shall, upon assuming the duties of his office, receipt to the adjutant general for all military property of whatever kind belonging to this state, or to the United States, which may be on hand and intended for the use of or issue to the military forces of this state, and he shall also receipt to the adjutant general for such other military property as may, from time to time, be received from the United States, or from other sources. He shall be responsible for all quartermaster's, subsistence, ordnance, medical, signal, and all other military stores and supplies belonging to this state, or which may be issued to this state by the United States, except such of the above mentioned stores and supplies as may be issued to officers and organizations of the military forces of this state in accordance with the regulations in force. He shall issue and receive such quartermaster's, subsistence, ordnance, medical, signal, and all other military stores and supplies as the governor, or the adjutant general, may direct. He shall attend to the care, preservation, safe keeping, and repairing of the arms, ordnance, accoutrements, equipments and all other military property belonging to this state, or issued to this state by the United States, for the purpose of arming and equipping the military forces of this state. He shall prepare such returns of all quartermasters, subsistence, ordnance, medical, signal, and all other military stores and supplies that have been issued this state by the United States at the times and in the manner required by the secretary of war, and shall render semi-annually to the adjutant general returns of all military stores and supplies on hand or issued, in such manner as required by the adjutant general. He shall render to the adjutant general annually, or oftener if required, a statement of all moneys received or disbursed by him since last report. He shall perform the duties of quartermaster, commissary, and paymaster of the ranger force, and such other duties as may be required of him by the governor or the adjutant general. (Id. sec. 33.)

COMMISSIONED OFFICERS

Art. 5802. Officers to be commissioned by governor; term.—All officers of the National Guard of Texas shall be appointed and commissioned by the Governor, and shall hold their positions until they shall have reached the age of sixty-four years, unless retired prior to that time by reason of resignations, disability or for cause to be determined by a court martial or an efficiency board legally convened for that purpose. (Acts 1905, p. 167, sec. 34; Acts 1917, 1st C. S., ch. 3, sec. 1.)

Section 5 of Acts 1917, 1st C. S., ch. 3, repeals art. 5802, and art. 5804.

Art. 5803. Commissions.—All commissions in the military service of this state shall be in the name and by the authority of the state of Texas, sealed with the state seal, signed by the governor, and attested by the secretary of state, and recorded by the adjutant general in a record book kept in his office for that purpose; provided, no fee for issuing such commissions shall be charged, or collected. (Acts 1905, p. 167, sec. 35.)

Art. 5804. Qualifications of officers.—Staff officers, including officers of the pay, inspection, subsistence and medical departments, hereafter appointed shall have had previous military experience and vacancies among said officers shall be filled by the appointment from the officers of the militia of the State of Texas. All other officers of the National Guard of Texas shall be selected from the following classes:

Officers and enlisted men of the National Guard, officers on the reserve or unassigned list of the National Guard: officers, active or retired, and former officers of the United States Army, Navy and Marine Corps; graduates of the United States Military and Naval Academies, and graduates of schools, colleges and universities where military science is taught under the supervision of an officer of the Regular Army, and, for the technical branches and staff corps or departments, such other civilians as may be especially qualified for duty therein. (Acts 1905, p. 167, sec. 36; Acts 1917, 1st C. S., ch. 3, sec. 2.)

Art. 5804a. Same; citizenship; age; oath; physical examination.—All officers of the National Guard of Texas shall be citizens of the United States, over twenty-one and under sixty-four years of age, and shall take and subscribe the oath of office, and shall have successfully passed the physical examination as prescribed by the laws of the United States. (Id. sec. 3.)

Art. 5805. Officers to pass examination.—Before receiving a commission consequent upon an original appointment, or before being commissioned to a higher grade as a result of promotion, every officer must have passed a satisfactory examination before a board as to his knowledge of military affairs and general knowledge and fitness for the service. Anyone failing to pass such examination shall not be eligible for an of-

fice in the militia of this state, or for promotion, for the period of one year from the date of such failure. Judge advocates, medical officers, and veterinary surgeons shall be examined as to their general and professional knowledge and fitness for the service only. The following are exempt from examination: General officers, chaplains and enlisted men placed on the retired list as brevet second lieutenants. (Acts 1905, p. 167, sec. 37.)

Art. 5806. Boards of examiners to be appointed by governor.—Boards of examination under the preceding article shall be appointed by the governor. Such boards shall consist of not less than three officers, and shall have the same power to take evidence, administer oaths, and compel witnesses to attend and testify and produce books and papers, and punish their failure to do so, as is possessed by a general court martial. When returns of appointments are received by a board, the persons appointed shall by it be ordered before it for examination, and the result of the examination, with all papers in the case, shall be forwarded to the adjutant general. (Id. sec. 38.)

Art. 5807. Officers to take oath within ten days after appointment.—Every officer duly commissioned shall, within ten days after his commission is tendered to him, or within ten days after he shall have been notified personally or by mail that the same is held in readiness for him by a superior officer, take and subscribe the constitutional oath of office. Such oath shall be taken and subscribed before an officer authorized to administer an oath, or some general or field officer, or an officer who shall hold the assimilated grade of a field officer, who has taken the oath himself, and who is hereby authorized to administer the same. In case of neglect or refusal to take and subscribe such oath within the time mentioned, such commission shall be canceled by the governor, and a new appointment shall be made; such oath of office shall be filed in the office of the adjutant general. (Id. sec. 39.)

Art. 5808. Governor may confer brevet commissions.—The governor may, upon the recommendation of their commanding officers, confer brevet commissions of a grade higher than the ordinary or brevet commissions ever held by them, upon officers of the military service of this state for gallant conduct, or meritorious service of not less than twenty-five years. He may also confer upon officers in active service in the military service of this state, who have previously served in the forces of the United States in time of war, brevet commissions of a grade equal to the highest grade in which they previously served. Such commissions shall carry with them only such privileges or rights as are allowed in like cases in military service of the United States. (Id. sec. 40.)

Art. 5809. Supernumerary list.—Officers who shall be rendered surplus by reduction or disbandment of organizations, or in any manner provided by this law, now or hereafter, shall, at the discretion of the governor, be withdrawn from active service and placed upon the supernumerary list. The governor may detail supernumerary officers for active duty, in which case they shall rank in their grade from the date of such detail, and he may relieve them from such duty and return them to the supernumerary list at his discretion. (Id. sec. 41.)

Art. 5810. Retirement.—Any officer of the active militia who has reached the age of sixty-four years may be placed upon the retired list by the governor. Any officer who shall have served as an officer in the same grade in the military service of this state for the continuous period of eight years, or as an officer in the military service of this state continuously for ten years, or as an officer in the military service of this state for twelve years, or as an officer and enlisted man in the military service of this state for eighteen years, may, upon his own request, be placed upon the retired list and withdrawn from active service and command by the governor. Any officer who has become, or who shall hereafter become, disabled, and thereby incapable of performing the duties of his office, shall be withdrawn from active service and placed on the retired list by the governor. Any officer who has become, or shall hereafter become, unfit or incompetent, and thereby incapable of performing the duties of his office, shall be discharged upon the recommendation of his commanding officer, or the recommendation of an inspecting officer. Such retirement or discharge shall be by order of the governor, and, in either case, shall be subject to the provisions of this article. Before making such order, the governor shall, at his discretion, appoint a board of not less than five commissioned officers, one of whom shall be a surgeon, whose duty it shall be to determine the fact as to the nature and cause of incapacity of such officer as appears disabled or unfit, or incompetent, from any cause to perform military service, and whose case shall be referred to it. No officer whose grade or promotion would be affected by the decision of such board, in any case that may come before it, shall participate in the examination or decisions of the board in such case. Such board is hereby invested with the powers of courts of inquiry and courts martial, and, whenever it finds an officer incapacitated for active service, shall report such fact to the governor, stating cause of incapacity, whether from disability, unfitness, or incompetency, and if he approves such finding such officer shall be placed on the retired list, or discharged, as herein provided. The members of the board shall, before entering upon the discharge of their duties, be sworn to an honest and impartial performance of their duties as members of such board. No officer shall be placed upon the retired list, or discharged by the action of such board, if appointed by the governor, without having had a fair and full hearing before the board, if upon the notice he shall demand it, and the governor in his discretion shall think proper to appoint such board. It shall not be necessary to refer to any case for the action of such board arising under this article, unless the officer designated be placed on the retired list or discharged shall, within twenty days after being notified that he will be so retired or discharged, serve on the adjutant general a notice in writing that he demands a hearing and examination before such board, and the governor approve such demand. The governor may withdraw from active service and command and place

upon the retired list any officer who has been twenty-five years in the military service of this state, on the recommendation of the commanding officer of his organization and the commanding officer of the brigade or division. Vacancies created by the operations of this article shall be filled in the same manner as other vacancies. (Id. sec. 42.)

Art. 5811. Governor may order board to examine character, etc., of officers.—The governor may, whenever he may deem that the good of the service requires it, order any officer before a board of examination, to consist of not less than three nor more than five officers above the grade of captain, which is hereby invested with the powers of courts of inquiry and courts martial, and such board shall examine into the moral character, capacity, and general fitness for the service of such officer, and record and return the testimony taken and a record of its proceedings. If the findings of such board be unfavorable to such officer and be approved by the governor, he shall be discharged from the service. No officer whose grade or promotion would in any way be affected by the decision of such board, in any case that may come before it, shall participate in the examination or decision of the board in such case. Failure to appear when ordered before a board constituted under this article shall be a sufficient ground for a finding by such board that the officer ordered to appear be discharged. (Id. sec. 43.)

Art. 5812. Governor may require bond from officers.—When required to do so by the governor, any officer of the active militia of this state shall give good and sufficient bond in such sum as the adjutant general may direct, payable to the governor of this state and his successors in office, at Austin, Texas, conditioned faithfully to discharge the duties of his office, and faithfully to expend all public money of this state and account for the same, and to account for and safely keep all public property of this state or of the United States issued and intended for use of the military forces of this state, which he may receive from time to time, and to promptly turn over the same to whomsoever the governor may direct. Such bond shall be signed by at least two good and sufficient sureties, or executed and guaranteed by any corporation having power to guarantee the fidelity of persons holding positions of public or private trust, which such corporations are hereby authorized to execute, which may be authorized to carry on business in this state; such bond shall be in such sum as may be prescribed by the adjutant general, and shall be approved by him and filed in his office; and such bond shall not extend to the reasonable wear and tear of arms, equipments, and other military supplies, incident to the military service; provided, that the commanding officer of every troop, battery, company, or signal corps and the chief musician of every band mustered into the military service of this state shall file the bond provided by this article in the office of the adjutant general, before the commission of such officer shall be issued, or any arms, uniforms, equipments, or other military property shall be issued for the use of his organization; and, provided, further, that when required to do so by the governor any noncommissioned officer or enlisted man of the military forces of this state shall make and file the bond as provided by this article. Whenever such bond is sued upon, the principal and sureties therein shall pay a reasonable attorneys' fee, not to exceed ten per cent, and said fee shall not be less than ten dollars, and they shall also pay all court costs in connection with such suit. (Id. sec. 52.)

Art. 5813. Records admissible as evidence.—Copies of all bonds and other papers filed in the office of the adjutant general, in accordance with the provisions of this chapter or any other law of this state, certified under the hand and seal of office of the adjutant general, shall be admitted in evidence in all courts of this state, in the same manner and with like effect as the original would be if duly proven. (Id. sec. 53.)

Art. 5814. Commanding officers may make certain deductions.—The commanding officer of any troop, battery, company, signal corps, or band is hereby authorized to deduct from any pay for military service due any officer or enlisted man of his organization such amount as such officer or enlisted man may owe his organization for dues and fines, as provided by the by-laws of such organization. (Id. sec. 56.)

Art. 5815. Company commanders custodians of company funds.—The commanding officer of each company shall be the custodian of the company fund, and it shall be his duty to receive, safely keep, and properly disburse, as may be required by the governor, all money that may be entrusted to his care, and to render, on June 30 and December 31 of each year, to adjutant general, an itemized statement of all money by him received and disbursed for the preceding six months. (Id. sec. 60.)

Art. 5816. In case of absence or disability duty shall descend to next ranking officer.—The duties assigned to an officer by title in this chapter shall devolve, in case of absence or disability to command of the officer named, upon the line officer next in rank, except as otherwise provided in this chapter. (Id. sec. 63.)

Art. 5817. Officer can excuse from duty, when.—The officer ordering any military duty shall have the power to excuse any officer or enlisted man for absence therefrom upon good and sufficient grounds. (Id. sec. 65.)

Art. 5818. Commissioned officers to furnish arms, etc.—Every commissioned officer shall provide himself with the arms, uniforms, and equipments prescribed and approved by the governor. (Id. sec. 66.)

Art. 5819. Certain applicants for commissions exempt from examination.—Any person who graduates from any college or school of this state, wherein there is a prescribed course of military instruction under the supervision of an officer of the United States army, or an officer of the active militia of this state, shall, if he applies for appointment as a commissioned officer in the active militia of this state, in the grade of second lieutenant, within two years after graduation, be exempt from examination in all military subjects, except the militia law of this state, and examination as to personal qualifications and physical condition; and in no case shall such graduate be drafted to serve

in any capacity other than that of a commissioned officer; provided, that, when an officer of the active militia of this state is military instructor, the adjutant general shall prescribe the course of military instruction to be given, and when such colleges or schools do not follow the course of instructions so prescribed, the graduates thereof shall not be entitled to the exemptions and privileges specified in this article. (Id. sec. 102.)

NON-COMMISSIONED OFFICERS AND ENLISTED MEN

Art. 5820. Who may voluntarily enlist in militia.—Any male citizen of the United States, or any male who has declared his intention to become such citizen, who is a resident of this state, if more than eighteen or less than forty-five years of age, able-bodied, free of disease, and of good character and temperate habits, may voluntarily enlist in the active militia of this state; provided, persons may enlist who are under eighteen and over forty-five years of age on the written authority of the adjutant general. (Id. sec. 44.)

Art. 5821. Enlistment for a term of three years.—All enlistments in the active militia of this state shall be for the term of three years; and no soldier shall be again enlisted in the active militia of this state whose service during his last preceding term of enlistment has not been honest and faithful. (Id. sec. 45.)

Art. 5822. Persons enlisting shall take oath.—Every person who enlists or re-enlists in the active militia of this state shall sign and make oath to an enlistment paper, which shall be filed in the office of the adjutant general. Such oath shall be taken and subscribed to before a field officer, or the commanding officer of a signal corps, troop, battery, or company who are hereby authorized to administer such oaths; and such oaths may be taken before any officer authorized by the laws of this state to administer oaths. A person making a false oath to any statement contained in such enlistment paper shall, upon conviction, be deemed guilty of false swearing and punished accordingly. (Id. sec. 46.)

Art. 5823. Disqualifications for enlistment, how removed.—No minor shall be enlisted without the written consent of his parents or guardian. A man who has been expelled, or dishonorably discharged, from the military service of this state, or of the United States, shall not be eligible for enlistment or re-enlistment, unless he produce the written consent to such enlistment of the commanding officer of the organization from which he was expelled, or dishonorably discharged, and of the commanding officer who approved such expulsion, or issued such dishonorable discharge. (Id. sec. 47.)

Art. 5823a. Term of and requirements for enlisted men.—The term of, and requirements for enlistment and the qualifications of enlisted men in the National Guard shall be that which is now or may hereafter be prescribed by the laws of the United States. (Acts 1917, 1st C. S., ch. 3, sec. 4.)

Art. 5824. Non-commissioned officers, how appointed.—Commanding officers of regiments and of battalions and squadrons not part of regiments shall appoint and warrant the non-commissioned staff officers of their respective regiments, battalions, or squadrons, and they shall, in their discretion, warrant the non-commissioned officers of the troops, batteries and companies of their respective regiments, battalions and squadrons from the members thereof, upon the written nomination of the commanding officer of the troops, batteries and companies, respectively. In troops, batteries and companies not a part of a regiment, battalion or squadron, and in signal and hospital corps, the non-commissioned officers shall be warranted by the commanding officer of the brigade or division, in his discretion, to which such organization may be attached, from the members of such organization upon the written nomination of the commanding officer of the troop, battery, company, signal, or hospital corps. To be eligible for appointment as sergeant, first class, of the hospital corps, a candidate must be a registered pharmacist. A sergeant of the hospital corps must be appointed from the hospital corps. The officer warranting a non-commissioned officer shall have power to reduce to the ranks for good and sufficient reasons the non-commissioned officers named in this article. (Acts 1905, p. 167, sec. 48.)

Art. 5825. Discharged and re-enlisted men entitled to credit.—Men who have been discharged by reason of disbandment may be re-enlisted, and shall then receive credit for the period served at the time of such disbandment. A man discharged for physical disabilities shall, if such disability cease, and he again enlists, or a man discharged upon his own request shall, if he again enlists, receive credit for the period served prior to such discharge. (Id. sec. 49.)

Art. 5826. Governor may appoint second lieutenants by brevet.—The governor may appoint and commission enlisted men, who have served well and faithfully in the active militia of this state for a period of not less than twenty-five years, without examination, second lieutenants by brevet; provided, such enlisted men, so appointed and commissioned, shall be immediately placed on the retired list. (Id. sec. 50.)

Art. 5827. Physical examination.—No applicant for appointment or enlistment in the active militia of this state will be commissioned or enlisted without first passing a satisfactory physical examination. (Id. sec. 57.)

Art. 5828. Assignment of pay invalid.—No assignment of pay by any officer or an enlisted man shall be valid, except as otherwise provided by the governor. (Id. sec. 58.)

Art. 5829. Veterans of Spanish-American war entitled to credit for time served in service of United States.—For all purposes under this title, officers and enlisted men of the active militia of this state who entered the United States service in the Spanish-American war shall, on re-entering the active militia of this state, be entitled to credit for the time served in the forces of the United States in that war, as if this service had been rendered in the active militia of this state. (Id. sec. 61.)

Art. 5830. No fee allowed for administering oaths, etc., to soldiers.—No officer, civil or military, shall be entitled to charge or receive any fee or compensation for administering or certifying any oath ad-

ministered or certified under the provisions of this title. (Id. sec. 62.)

SERVICE AND DUTIES

Art. 5831. Governor may call out militia, when.—When an invasion of, or an insurrection in, this state is made or threatened, or when the governor may deem it necessary for the enforcement of the laws of this state, he shall call forth the active militia, or any part thereof, to repel, suppress, or enforce the same, and if the number available is insufficient he shall order out such part of the reserve militia as he may deem necessary. (Id. sec. 75.)

Art. 5832. Same.—When there is in any county, city, or town in this state tumult, riot, or body of men acting together by force with intent to commit a felony, or breach of the peace, or to do violence to person or property, or by force to break or resist the laws of this state, or when such tumult, riot, mob, or other unlawful act or violence is threatened and that fact is made to appear to the governor, he may issue his order to any commander of a division, brigade, regiment, squadron, battalion, troop, battery or company of the active militia of this state to appear at the time and place directed, to aid the civil authorities to suppress or prevent such violence and in executing the laws; provided, whenever the necessity for military aid in preventing or suppressing such violence and in executing the laws is immediate and urgent, and it is impracticable to furnish such information to the governor in time and secure military aid by his order, the district judge of the judicial district in which the disturbance occurs, or the sheriff of such county, or the mayor of such city, or town may call for aid upon the commanding officer of the active militia stationed therein, or adjacent thereto; such call shall be in writing, and the civil officer making the call shall as soon as possible notify the governor of his action. (Id. sec. 76.)

Art. 5833. Duty of officer on receipt of order.—The officer to whom the order of the governor, or the call of the civil authority, is directed shall, upon its receipt, forthwith order his command, or such portion thereof as may be ordered or called for, to parade at the time and place appointed, and shall immediately notify the governor of his action. (Id. sec. 77.)

Art. 5834. Commanding officer's duty in case of riot.—When such troops have appeared at the appointed place, the commanding officer thereof shall obey and execute such general instructions, which shall be in writing if practicable, otherwise verbal instructions given in the presence of two or more credible witnesses, as he may there and then receive from the civil authorities charged by law with the suppression of riot, or tumult, or the preservation of the public peace, but such commanding officer shall exercise his discretion as to the proper method of practically accomplishing the instructions received; the kind and extent of force to be used, and the particular means to be employed to accomplish the object specified by the civil authority shall be left solely to such commanding officer. (Id. sec. 78.)

Art. 5835. Governor may order active militia to assist civil authorities, etc.—The governor may order the active militia, or any part thereof, to assist the civil authorities in guarding prisoners, or in conveying prisoners from and to any point in this state, or discharging other duties in connection with the execution of the law as the public interest or safety at any time may require. (Id. sec. 79.)

Art. 5836. Commanding officer may order closing of saloons, when.—Whenever any part of the active militia of this state is on active duty pursuant to the order of the governor, or call of civil authority, to aid in the enforcement of the law, the commanding officer of such troops may order the closing of any place where intoxicating liquors, arms, ammunition, dynamite or other explosives are sold, and forbid the selling, bartering, lending, or giving away any of said articles so long as any of the troops remain on duty in such place or in the vicinity where such place may be located, whether any civil officer has forbidden the same or not. (Id. sec. 80.)

Art. 5837. Organizations shall drill, etc.—Officers and enlisted men of each troop, battery, and company of the active militia of this state shall assemble for and undergo drill and instruction at company, battalion, or regimental armories (troop, squadron, or battery armories for cavalry or field artillery) or rendezvous or for target practice, not less than twenty-four times during each calendar year preceding the annual allotment of funds under section 1661, Revised Statutes of the United States, as amended. During the same period, there shall be at least one inspection of each troop, battery, and company by an officer of the active militia of this state, or by an officer of the regular army of the United States, at such times as the governor may direct. In addition to such drills and parades, the commanding officer of any organization may require the officers and enlisted men of his command to meet for parade, drill, or instruction at such times and places as he may appoint. (Id. sec. 93.)

Art. 5838. Shall participate in practice marches, etc.—Each troop, battery, or company of the active militia of this state, not especially excused by the governor, will be required to participate for at least five consecutive days annually in practice marches or camps of instruction, under such regulations as the governor may prescribe, and under such instructors as he may appoint. (Id. sec. 94.)

COMPENSATION AND PRIVILEGES

Art. 5839. Pay of militia in active service.—The military forces of this state, when called into actual service of this state in time of war, insurrection, invasion or imminent danger thereof, or the prevention of invasion, shall, during their time of service, be entitled to the same pay, rations, and allowances for clothing as is now or may hereafter be established by the laws for the army of the United States. (Id. sec. 81.)

Art. 5840. Same.—When the military forces of this state, or any part thereof, are called into active service under articles 5832, 5833, 5834 and 5835, officers shall, during their term of service, receive the same pay as is now or may hereafter be established by law for the army of the United States, and

enlisted men shall be paid for such time per day as follows: Chief musician of cavalry, artillery, infantry and engineers, three dollars; first-class sergeants of signal corps and hospital corps, two dollars and seventy-five cents; battalion sergeants major of engineers, battalion quartermaster sergeants of engineers, sergeants major of artillery senior grade, first sergeants of engineers, company quarter-master sergeants of engineers, sergeants of engineers, sergeants of signal corps, regimental quartermaster sergeants, regimental commissary sergeants, and regimental sergeants major, two dollars and fifty cents; sergeants major of artillery, junior grade, first sergeants of infantry, cavalry and artillery, sergeants of hospital corps, drum majors, sergeants major of squadron and batallion, color sergeants, chief trumpeters of cavalry and artillery, principal musicians of cavalry, artillery, infantry and engineers, two dollars and twenty-five cents; corporals of engineers and signal corps, cooks of engineers and signal corps, sergeants and cooks of infantry, cavalry, artillery and bands, mechanics of coast artillery, stable sergeants of field artillery, privates of hospital corps, company quartermaster sergeants of cavalry, artillery and infantry, two dollars; first-class privates of engineers and signal corps, corporals of cavalry, artillery, infantry and bands, artificers of field artillery and infantry, farriers, blacksmiths, saddlers and wagoners of cavalry, one dollar and seventy-five cents; privates of cavalry, artillery, infantry, signal corps and bands, second class privates of engineers, musicians of artillery, infantry and engineers, trumpeters cavalry, one dollar and fifty cents. (Id. sec. 82.)

Art. 5841. Members of militia exempt from certain taxes.—All officers and enlisted men of the active militia of this state, who comply with their military duties as prescribed by this chapter, shall be entitled to exemption from the payment of all poll taxes, except the poll tax prescribed by the constitution for the support of the public schools; exemption from the payment of any road or street tax, and from any road duty whatsoever under the laws of this state, and exemption from jury service or duty of every character and description. (Id. sec. 83.)

Art. 5842. Same.—In order to entitle any troop, battery, company, signal corps, or band of the active militia of this state to the exemption from the payment of poll taxes as specified in the preceding article, the commanding officer of such organization shall, between the first days of January and April of each year, file with the assessor of taxes for his county a list of all members of his command who have discharged the military duties required of them for the preceding year, and who have been present for at least twenty-four drills or parades, or have been excused for non-attendance thereof by reason of illness or other necessary cause; such list shall be certified to by such commanding officer, and the persons whose names appear on such list shall not be assessed for any poll taxes whatever, other than the poll tax of one dollar prescribed by the constitution for the support of public schools for the current year; and it shall be the duty of assessors with whom such lists are filed to note the exemptions on his assessment roll as set forth in such lists, and furnish such information to all concerned as may be necessary in carrying out the provisions of this article. (Id. sec. 84.)

Art. 5843. Same.—In order to entitle any troop, battery, company, signal corps, or band of the active militia of this state to exemption from the payment of road or street taxes, jury service or duty, and road duty as specified in article 5841 of this chapter, the commanding officer of such organization shall, between the first and thirty-first days of January of each year, file lists similar to that set forth in the preceding article, certified to by him, one copy with the clerk of the district court of his county, and one copy with the clerk of the county court of his county; and the names appearing on such lists shall thereafter be exempt from jury service or duty of every character and description, from the performance of any road duty, and from the payment of any road or street tax in such county for the current year. Clerks of the county courts shall furnish information of the person so exempt to the proper road overseers and to all others concerned. (Id. sec. 85.)

Art. 5844. Same.—In order to entitle any general, field or staff officer of the active militia of this state to the exemptions as set forth in article 5841 of this chapter, such officer shall, between the first days of January and April of each year, file with the assessor of taxes for his county his certificate to the effect that he is an officer of the active militia of this state in good standing, and that he has faithfully discharged all the military duties required of him during the preceding year, and, on filing the certificate as herein required, such officer shall not be assessed for any poll tax whatever other than the poll tax of one dollar prescribed by the constitution for the support of public schools for the current year; and such officer shall file similar certificates between the first and thirty-first days of January of each year, with the district and county clerks of his county, and, on filing such certificates, shall thereafter be exempt from jury service or duty of every character and description, from the performance of any road duty and from the payment of any road or street tax in such county for the current year. (Id. sec. 86.)

Art. 5845. Same.—In order to entitle any non-commissioned staff officer, member of the engineer or hospital corps, or other enlisted man of the active militia of this state, not belonging to the regular organization, to the exemptions as set forth in article 5841 of this chapter, such non-commissioned officer or soldier shall prepare and file affidavits similar to the certificate provided in the preceding article for officers, with the assessor, district and county clerks of his county; such affidavits shall be filed during the same period and in the same manner as set forth above for officers, and, on filing such affidavits, such non-commissioned officer or soldier shall be entitled to the same exemptions in the same manner as provided for such officers. (Id. sec. 87.)

Art. 5846. State to provide for wounded or disabled, when.—Every member of the military forces of this state who shall be wounded or disabled while in the service of this state, in case of riot, tumult, breach of

the peace, resistance to process, invasion, insurrection or imminent danger thereof, or whenever called upon in aid of the civil authorities shall be taken care of and provided for at the expense of this state. (Id. sec. 88.)

Art. 5847. State to pay for transportation, etc.—The state shall make suitable provision for the pay, transportation, subsistence and quarters of all troops of this state who may attend at any annual encampment, or when called into active service of this state. (Id. sec. 95.)

Art. 5848. Members of militia exempt from arrest, when.—No persons belonging to the active militia of this state shall be arrested on any civil process while going on duty to or returning from any place at which he may be required to attend for military duty, except in cases of treason, felony, or breach of the peace. (Id. sec. 70.)

ARMS, EQUIPMENT, ETC.

Art. 5849. Enlisted men to return property.—An enlisted man who has not returned all the public property for which he is responsible shall, under no circumstances, receive a full and honorable discharge. (Id. sec. 51.)

Art. 5850. Officers and soldiers liable for damage to equipment, etc.—The cost of arms, equipment and all other military supplies and stores, and the cost of repairs or damage done to arms, equipment and all other military supplies and stores, shall be deducted from the pay of any officer or soldier in whose care or use the same were when such loss, destruction or damage occurred, if said loss, destruction or damage was occasioned by the carelessness, neglect or abuse of said officer or soldier. (Id. sec. 59.)

Art. 5851. Government property not for private use.—No officer or enlisted man of the active militia of this state having property in charge shall loan for private use, or permit to be used for any other purpose than the legitimate purpose intended, any public property that he may be responsible for to the governor. All property issued to a brigade, regimental, battalion, or company commander, or to any band, corps, or auxiliary squad or to any military organization whatever, when not in legitimate use, shall be carefully stored and protected from waste, theft, loss or injury. (Id. sec. 64.)

Art. 5852. Arms, equipment, etc., to be provided by state.—All organizations shall be provided by this state with such arms, equipments, books of instruction and of record and other supplies as may be necessary for the proper performance of the duty required of them by this chapter; and each organization shall keep such property in proper repair and in good condition. (Id. sec. 68.)

Art. 5853. Sheriff may seize arms, etc., when.—Whenever it shall come to the knowledge of the governor, on the affidavit of a credible person, that persons having arms, equipments, or other military property issued by this state for the use of the military forces of this state, without authority of law, and that such persons fail or refuse to deliver up such property, it shall be his duty forthwith to issue his warrant to the sheriff of the county where such persons may be or reside, commanding such sheriff to seize and take into his possession such arms, equipments or other military property, and the same keep subject to the further order of the governor. (Id. sec. 89.)

Art. 5854. Sheriff in executing such warrant may call on militia.—Any sheriff receiving a warrant such as is specified in the preceding article shall proceed without delay to execute the same in the manner therein directed, and in executing such warrant he may summon to his aid the power of the county and any command of the active militia of this state that may be convenient. (Id. sec. 90.)

Art. 5855. Sheriff to collect arms, etc., when.—The sheriffs of the several counties of this state shall, from time to time, collect such arms or property as may be liable to loss or in the hands of unauthorized persons, and such property, when collected and turned over to them, safely keep subject to the order of the governor, to whom a report of such collection shall be made; and the official bond of sheriffs shall extend to and include the faithful performance of their duties under this and the preceding articles. (Id. sec. 91.)

Art. 5856. Arms, etc., exempt from forced sale.—Arms, equipments, clothing, or other military supplies issued by this state to organizations or members of the active militia for military purposes, shall be exempt from levy and sale by virtue of an execution for debt, or in any other legal proceedings. (Id. sec. 92.)

Art. 5857. Governor to draw arms, etc., from U. S. government.—The governor in his official capacity is authorized to draw from the United States government all arms, equipments, munitions, or other military stores to which this state may, from time to time, be entitled, for the use of the militia, and may execute such bonds in the name of the state of Texas as may be necessary or requisite to secure their issuance. (Id. sec. 96.)

Art. 5858. Arms, etc., to be stored, where.—The governor shall cause all arms, equipment, munitions, or other military property belonging to or under the control of this state, to be stored at such points as he may deem most conducive to the interests of this state and the convenience of the people. (Id. sec. 97.)

Art. 5859. Uniform, same as that prescribed for United States army.—The uniform for officers and enlisted men of the active militia of this state shall be the same as that prescribed for the United States army, with such modifications as the governor may deem necessary from time to time. All uniforms and other military property issued by this state shall be used for military purposes only, and when issued shall be receipted for, and kept and accounted for in such manner as the adjutant general may prescribe. (Id. sec. 100.)

ARTICLES OF WAR

Art. 5860. Rules and articles for the government of the military forces.—The military forces of this state shall be governed by the following rules and articles:

The word, "officer," as used therein, shall be understood to designate commissioned officers; the word, "soldier," shall be understood to include non-commissioned officers,

musicians, artificers, privates and other enlisted men; the word, "company," shall be understood to include troops, batteries, companies, signal corps, hospital corps, bands and detachments, and the convictions mentioned therein shall be understood to be convictions by court martial.

Article 1. Enlistment in the active militia of this state shall be voluntary, and every person who enlists therein shall take and subscribe an oath (or affirmation) in the following form:

"I, ..., do solemnly swear (or affirm) that I will bear true faith and allegiance to the state of Texas and to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever, and that I will obey the orders of the governor of Texas, and the orders of the officers appointed over me, according to the laws, rules and articles for the government of the military forces of the state of Texas."

Art. 2. Every officer who knowingly enlists or musters into the military service of this state any minor over the age of sixteen years without the written consent of his parents or guardian, or any minor under the age of sixteen years, or any insane or intoxicated persons, or any deserter from the military service of this state or of the United States, or any person who has been convicted of any infamous crime, shall, upon conviction, be dismissed from the service or suffer such other punishment as a court martial may direct.

Art. 3. No enlisted man, duly sworn, shall be discharged from service without a discharge in writing, signed by a field officer of the regiment to which he belongs, or by the commanding officer when no field officer is present; and no discharge shall be given to any enlisted man before his term of service has expired, except by order of the governor, the adjutant general, or by order of a court martial.

Art. 4. Any officer who knowingly musters as a soldier a person who is not a soldier, shall be deemed guilty of knowingly making a false muster, and punished as a court martial may direct.

Art. 5. Any officer who takes money, or other thing, by way of gratification, on mustering any regiment, or company, or on signing muster rolls, shall be dismissed from the service, and shall thereby be disabled to hold any office or employment, civil or military, in the service of the state of Texas, or suffer such other punishment as a court martial may direct.

Art. 6. Every commanding officer shall, in the beginning of January and July of each year, and oftener if required by the governor, transmit to the adjutant general's department an exact return of the troops under his command, specifying the names of the officers absent from their posts, with the reasons for and the time of their absence. Such returns shall be made in the form and forwarded in the manner prescribed by the adjutant general; and any such officer, who through neglect or design omits to send such return, shall, on conviction thereof, be punished as a court martial may direct.

Art. 7. Every officer who knowingly makes a false return to the adjutant general's department, or to any of his superior officers authorized to call for such returns, of the state of the regiment or company under his command, or of any arms, ammunition, clothing or other stores thereunto belonging, shall be punished as a court martial may direct.

Art. 8. Every officer who signs a false certificate relating to the absence or pay of any officer or soldier shall be dismissed from the service, or suffer such other punishment as a court martial may direct.

Art. 9. Any officer who knowingly makes a false muster of man or horse, or who signs, or directs, or allows, the signing of any muster roll, knowing the same to contain a false muster, shall, upon proof thereof by two witnesses before a court martial, be dismissed from the service, and shall thereby be disabled to hold any office or employment, civil or military, in the service of the state of Texas.

Art. 10. Any officer who willfully or through neglect suffers to be lost, damaged, or spoiled any military stores or supplies belonging to this state, or to the United States, which have been received for use of the military forces of this state, shall make good the loss or damage and suffer such punishment as a court martial may direct.

Art. 11. Any soldier who sells or through neglect loses or spoils the arms, uniforms, equipments, accoutrements, or any other military stores or supplies issued to him for his use or in his charge, shall make good the loss or damage, and suffer such punishment as a court martial may direct.

Art. 12. Any officer or soldier who shall strike his superior officer, or offers any violence to him, the said superior officer being engaged in the reasonable execution of his official duties, or if any officer or soldier disobeys any lawful command of his superior officer, he shall suffer punishment as a court martial may direct.

Art. 13. Any officer or soldier who begins, excites, causes, or joins in any mutiny or sedition in any regiment, company quarters or guard, shall suffer such punishment as a court martial may direct.

Art. 14. Any officer or soldier who, being present at any mutiny or sedition, does not use his utmost endeavor to suppress the same, or having knowledge of any intended mutiny or sedition, does not, without delay, give information thereof to his commanding officer, shall suffer such punishment as a court martial may direct.

Art. 15. All officers, of what conditions soever, have power to part and quell all quarrels, frays and disorders, whether among persons belonging to their own or to any regiment or company, and to order officers into arrest, and non-commissioned officers and soldiers into confinement who take part in same, until their proper superior officer is acquainted therewith. And whosoever being so ordered refuses to obey such officer or non-commissioned officer, or draws a weapon upon him, shall be punished as a court martial may direct.

Art. 16. No officer or soldier shall send a challenge to another officer or soldier to fight a duel, or accept a challenge so sent.

Any officer who so offends shall be dismissed from the service. Any soldier who so offends shall suffer such punishment as a court martial may direct.

Art. 17. Any soldier who absents himself from his company or guard, without leave from his commanding officer, shall be punished as a court martial may direct.

Art. 18. Any officer or soldier who fails, except when prevented by sickness or other necessity, to repair, at the fixed time, to the place of parade, exercise, or other rendezvous appointed by his commanding officer, or goes from the same, without leave from his commanding officer, before he is dismissed or relieved, shall be punished as a court martial may direct.

Art. 19. Any soldier who is found one mile from camp, without leave in writing from his commanding officer, shall be punished as a court martial may direct.

Art. 20. Any officer who is found drunk on his guard, party or other duty, shall be dismissed from the service. Any soldier who so offends shall suffer such punishment as a court martial may direct.

Art. 21. Any sentinel who is found sleeping upon his post, or who leaves it before he is regularly relieved, shall suffer such punishment as a court martial may direct.

Art. 22. Any officer or soldier who quits his guard, without leave from his superior officer, except in case of urgent necessity, shall be punished as a court martial may direct.

Art. 23. Any officer who, by any means whatsoever, occasions false alarms in camp, command, or quarters, shall suffer such punishment as a court martial may direct.

Art. 24. Any officer or soldier who misbehaves himself before the enemy, runs away, or shamefully abandons any place, post or guard, which he is commanded to defend, or speaks words inducing others to do the like, or casts away his arms or ammunition, or quits his post or colors to plunder or pillage, shall suffer such punishment as a court martial may direct.

Art. 25. Any officer or soldier who, having been duly enlisted or drafted in the military service of this state, deserts the same, shall suffer such punishment as a court martial may direct.

Art. 26. Every soldier who deserts the military service of this state shall be liable to serve for such period as shall, with the time he may have served previous to his desertion, amount to the full term of his enlistment; and such soldier shall be tried by a court martial and punished, although the term of his enlistment may have elapsed previous to his being apprehended and tried.

Art. 27. Any officer who, having tendered his resignation, quits his post or proper duties, without leave and with intent to remain permanently absent therefrom, prior to due notice of the acceptance of the same, shall be deemed and punished as a deserter.

Art. 28. No soldier shall enlist himself in any other regiment or company, without a regular discharge from the regiment or company in which he last served, on a penalty of being reputed a deserter and suffering accordingly. And in case any officer shall knowingly receive and entertain such soldier, or shall not, after his being discovered to be a deserter, immediately give notice thereof to the command in which he last served, the said officer shall, by court martial, be dismissed.

Art. 29. In time of war, insurrection or rebellion, larceny, robbery, burglary, arson, mayhem, manslaughter, murder, assault and battery with intent to kill, wounding by shooting or stabbing with intent to commit murder, rape, or assault and battery with an intent to commit rape, shall be punishable by the sentence of a general court martial when committed by persons in the military service of the state; and punishment in every such case shall not be less than the punishment provided for like offenses by the Penal Code of this state.

Art. 30. When any officer or soldier is accused of a capital crime, or of any offense against the person or property of any citizen of this state, which is punishable by the laws of this state, the commanding officer and the officers of the regiment or company to which the person so accused belongs are required, except in time of war, upon application duly made by or in behalf of the party injured, to use their utmost endeavors to deliver him over to the civil authority and to aid the officers of justice in apprehending and securing him in order to bring him to trial. If, upon application, any officer refuses or wilfully neglects, except in time of war, to deliver over such accused person to the civil authorities, or to aid the officers of justice in apprehending him, he shall be punished as a court martial may direct.

Art. 31. Any person in the military service of this state who makes, or causes to be made, any claim against this state or the United States, or any officer thereof, knowing such claim to be false or fraudulent; or

Who presents, or causes to be presented, to any person in the civil or military service thereof, for approval or payment, any claim against this state, or the United States, or any officer thereof, knowing such claim to be false or fraudulent; or

Who enters into any agreement or conspiracy to defraud this state, or the United States, by obtaining, or aiding others to obtain, the allowance or payment of any false or fraudulent claim; or

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance or payment of any claim against this state, or the United States, or against any officer thereof makes or uses, or procures or advises the making or use of, any writing, or other papers, knowing the same to contain any false or fraudulent statement; or

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance or payment of any claim against this state, or the United States, or any officer thereof, makes, or procures or advises the making of, any oath to any fact or to any writing or other paper, knowing such oath to be false; or

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against this state, or the United States, or any officer thereof, forges or counterfeits or procures or advises the forging or counterfeiting of any signature upon any writing or other paper, or uses, or procures or advises the use of, any such sig-

nature, knowing the same to be forged or counterfeited; or

Who, having charge, possession, custody or control of any money or other property of this state, or the United States, furnished or intended for the military service of this state, knowingly delivers, or causes to be delivered, to any person having authority to receive the same, any amount less than that for which he receives a certificate or receipt; or

Who, being authorized to make or deliver any papers certifying the receipt of any property of this state, or the United States, furnished or intended for the military service of this state, makes or delivers to any person, such writing, without having full knowledge of the truth of the statements therein contained, or with intent to defraud this state, or the United States; or

Who steals, embezzles, knowingly and wilfully misappropriates, applies to his own use or benefit, or wrongfully or knowingly sells or disposes of any ordnance, arms, equipments, ammunition, clothing, subsistence stores, money or other property of this state, or the United States, furnished or intended for the military service of this state; or

Who knowingly purchases, or receives in pledge for any obligation or indebtedness, from any soldier, officer or other person who is a part of, or employed in, said forces or service, any ordinance, arms, equipments, ammunition, clothing, subsistence stores or other property of this state, or the United States, such soldier or officer, or other person not having lawful right to sell or pledge the same, shall, on conviction thereof, be punished by fine or imprisonment, or by such other punishment as a court martial may adjudge, or by any or all of said penalties. And if any person, being guilty of any of the offenses aforesaid, while in the military service of this state, receives his discharge, or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court martial, in the same manner and to the same extent as if he had not received such discharge or been dismissed.

Art. 32. Any officer, who is convicted of conduct unbecoming an officer and a gentleman, shall be dismissed from the service.

Art. 33. All crimes not capital, and all disorders and neglects, which officers and soldiers may be guilty of, to the prejudice of good order and military discipline, though not mentioned in the foregoing articles, are to be taken cognizance of by a general or a regimental, or a summary court martial, according to the nature and degree of the offense, and punished at the discretion of such court.

Art. 34. Whenever, by any of these articles of war for the government of the military forces of this state, the punishment or conviction of any military offense, is left to the discretion of the court martial, the punishment therefor shall not be in excess of a limit which the governor may prescribe.

Art. 35. The officers and soldiers of any troops, whether active or reserve militia of this state or otherwise, appointed, enlisted, mustered or drafted into the military forces of this state, shall at all times, and in all places be governed by these articles, and shall be tried by courts martial.

Art. 36. All retainers of the camp and all persons serving with the military forces of this state in the field, though not enlisted soldiers, shall be subject to these rules and articles in the same manner as enlisted men.

Art. 37. Officers charged with crime shall be arrested and confined in their quarters or tents, or other place, and deprived of their swords by the commanding officer. And any officer who leaves his confinement before he is set at liberty by his commanding officer shall be dismissed from the service, and suffer such other punishment as a court martial may direct.

Art. 38. Soldiers charged with crime shall be confined until tried by court martial, or released by proper authority.

Art. 39. Any provost marshal, or any officer commanding a guard, who shall refuse to receive or keep any prisoner committed to his charge by an officer belonging to the military forces of this state, shall suffer such punishment as a court martial may direct; provided, the officer committing shall, at the same time, deliver a statement in writing, signed by himself, of the crime charged against the prisoner.

Art. 40. Every officer to whose charge a prisoner is committed shall, within twenty-four hours after such commitment, or as soon as he is relieved from his guard, report in writing to the commanding officer the name of such prisoner, the crime charged against him, and the name of the officer committing him; and, if he fails to make such report, he shall be punished as a court martial may direct.

Art. 41. Any officer who presumes, without proper authority, to release a prisoner committed to his charge, or suffers any prisoner so committed to escape, shall be punished as a court martial may direct.

Art. 42. No officer or soldier put in arrest shall be continued in confinement more than five days, or until such time as a court martial can be assembled.

Art. 43. When an officer is put in arrest for the purpose of trial, except at remote stations, the officer by whose order he is arrested shall see that a copy of the charges on which he is to be tried is served upon him within five days after his arrest, and that he is brought to trial within ten days thereafter, unless the necessities of the service prevent such trial; and then he shall be brought to trial within thirty days after the expiration of said ten days. If a copy of the charges be not served, or the arrested officer be not brought to trial, as herein required, the arrest shall cease. But officers released from arrest, under the provisions of this article, may be tried, whenever the exigencies of the service shall permit, within twelve months after such release from arrest.

Art. 44. The governor, or any general, or other officer, commanding a division or brigade, may appoint general courts martial whenever necessary. But when any such general or other officer is the accuser or prosecutor of any officer under his command, the court shall be appointed by the governor; and its proceedings and sentence shall be sent directly to the adjutant general, by whom they shall be laid before the governor for his approval or orders in the case.

Art. 45. Officers who may appoint a court

martial shall be competent to appoint a judge advocate for the same.

Art. 46. General courts martial may consist of any number of officers, from five to thirteen, inclusive, but they shall not consist of less than thirteen when that number can be convened without injury to the service. A decision of the appointing authority as to the number that can be assembled without injury to the service is conclusive.

Art. 47. When the requisite number of officers to form a general court martial is not present in any command or detachment, the commanding officer shall, in cases which require the cognizance of such a court, report to the governor, who shall thereupon order a court to be assembled at the nearest and most convenient place at or near which there may be such a requisite number of officers, and shall order the party accused, with the necessary witnesses, to be transported to the place where the said court shall be assembled.

Art. 48. Every officer commanding a camp or other place where the troops consist of different corps, and every officer commanding a regiment, separate squadron or battalion, shall be competent to appoint for such camp or other place, or such regiment, separate squadron or battalion, regimental courts martial, consisting of three officers, to try enlisted men for offenses not capital; but such courts martial shall be appointed and the officers designated by superior authority when by him deemed desirable. Such courts martial shall have power to award punishment not to exceed confinement at hard labor for thirty days, or forfeiture of thirty dollars pay, or a fine of thirty dollars, or any or all of such confinement, forfeiture of pay and fine, and, in case of a non-commissioned officer, reduction to the ranks in addition thereto.

Art. 49. Every commanding officer of each camp or other place, regiment or corps, detached battalion or company, and the commanding officer of each company at its home station, shall have power to appoint for such place, command or station summary courts martial to consist of one officer to be designated by him, to try enlisted men for offenses not capital; but such summary courts martial may be appointed and the officer designated by superior authority when by him deemed desirable; and, when but one commissioned officer is present with a command, he shall hear and finally determine such cases. Such summary courts shall have power to adjudge punishment not to exceed confinement at hard labor for thirty days, forfeiture of thirty dollars pay, or a fine of thirty dollars or any or all of such confinement, forfeiture of pay and fine, and, in case of non-commissioned officers, reduction to the ranks in addition thereto; provided such summary courts shall not adjudge confinement for more than ten days, forfeiture of more than ten dollars pay, or a fine of more than ten dollars, or any or all of such confinement, forfeiture of pay and fine, unless the accused shall, before trial, consent in writing to trial by said court; but, in case of refusal to so consent, the trial may be had either by general, regimental or by said summary court, but in case of trial by said summary court, without consent of as aforesaid, the court shall not adjudge confinement for more than ten days, or forfeiture of more than ten dollars pay, or a fine of more than ten dollars, or any or all of such confinement, forfeiture of pay and fine. The officer holding the summary court shall have power to administer oaths and to hear and determine cases cognizable by said court, and when satisfied of the guilt of the accused, adjudge the punishment to be inflicted, which said punishment shall not exceed the limit prescribed in this article.

Art. 50. There shall be a summary court record kept at the headquarters of the proper command in the field, each regiment or corps, detached battalion or company, and each company at its home station, for which summary courts martial have been appointed, in which shall be entered a record of all cases heard and determined and the action had thereon. And the commanding officer of each camp or other place, regiment or corps, detached battalion or company, and each company at its home station, for which summary courts martial have been appointed shall, on the last day of every month and oftener if required, make a report to the adjutant general of the number of cases determined by summary courts, during the period, setting forth the offenses committed and the penalties awarded.

Art. 51. The judge advocate of any general or regimental court martial shall administer to each member of such court, before they proceed upon any trial, the following oath (or affirmation): "You, A. B., do swear (or affirm) that you will well and truly try and determine, according to evidence, the matter now before you, between the state of Texas and the prisoner to be tried, and that you will duly administer justice, without partiality, favor or affection, according to the provisions of the rules and articles for the government of the military forces of this state, and if any doubt should arise, not explained by said articles, then according to your conscience, the best of your understanding, and the customs in like cases; and you do further swear (or affirm) that you will not divulge the sentence of the court until it shall be published by the proper authority, except to the judge advocate; neither will you disclose or discover the vote or opinion of any particular member of the court martial, unless required to give evidence thereof as a witness by a court of justice in due course of law. So help you God."

Art. 52. When the oath (or affirmation) has been administered to the members of a court martial, the president of the court shall administer to the judge advocate, or person officiating as such, an oath (or affirmation) in the following form: "You, A. B., do swear (or affirm) that you will not disclose or discover the vote or opinion of any particular member of the court martial, unless required to give evidence thereof as a witness by a court of justice in due course of law; nor divulge the sentence of the court to any but the proper authority until it shall be duly disclosed by the same. So help me God."

Art. 53. A court martial may punish, at discretion, any person who uses any menacing words, signs or gestures in its presence, or who disturbs its proceedings by any riot or disorder.

Art. 54. All members of a court martial are to behave with decency and calmness.

Art. 55. Members of a court martial may be challenged by a prisoner, but only for causes stated to the court. The court shall determine the relevancy and validity thereof, and shall not receive a challenge to more than one member at a time.

Art. 56. When a prisoner, arraigned before a court martial, from obstinacy and deliberate design, stands mute or answers foreign to the purpose, the court may proceed to trial and judgment as if the prisoner had pleaded not guilty.

Art. 57. The judge advocate general, or some person deputed by him, or by the governor, or general, or officer commanding the division, brigade, camp or other place, regiment, separate squadron or battalion shall prosecute in the name of the state of Texas; but when the prisoner has made his plea he shall so far consider himself counsel for the prisoner as to object to any leading question to any of the witnesses and to any question to the prisoner, the answer to which might tend to criminate himself. And whenever a court martial shall sit in closed session the judge advocate shall withdraw, and, whenever his legal advice or his assistance in referring to recorded evidence is required, it shall be obtained in open court.

Art. 58. The judge advocate general and the officers of his department, the judge advocate of court martial and the trial officers of summary courts are hereby authorized to administer oaths for the purpose of the administration of military justice and for other military purposes.

Art. 59. The depositions of witnesses for the accused residing beyond the limits of the state, or the county in which any military court may be ordered to sit, may be taken and read in evidence as provided by the laws of this state.

Art. 60. All persons who give evidence before a court martial shall be examined on oath (or affirmation) which shall be administered by the judge advocate in the following form: "You swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth and nothing but the truth. So help you God."

Art. 61. A court martial shall, for reasonable cause, grant a continuance to either party for such time and as often as may appear to be just; provided, that if the prisoner be in close confinement the trial shall not be delayed for a longer period than sixty days.

Art. 62. Members of a court martial, in giving their votes, shall begin with the youngest in commission.

Art. 63. Officers shall be tried only by general courts martial; and no officer shall, when it can be avoided, be tried by officers inferior to him in rank.

Art. 64. No officer shall be discharged or dismissed from the service, except by order of the governor, or by sentence of a general court martial.

Art. 65. When an officer is dismissed from the service for cowardice or fraud, the sentence shall direct that the crime, punishment, name and place of abode of the delinquent shall be published in the newspapers in and about the state and in the county in which the offender lives, or where he usually resides; and, after such publication, it shall be scandalous for an officer to associate with him.

Art. 66. When a court martial suspends an officer from command, it may also suspend his pay and emoluments for the same time, according to the nature of his offense.

Art. 67. No person shall be tried the second time for the same offense.

Art. 68. No person shall be liable to be tried or punished by a general court martial for any offense, except for desertion in the face of an enemy, committed more than two years before the arraignment of such person for such offense, unless he shall meanwhile have absented himself from this state, in which case the time of his absence shall be excluded in computing the period of the limitation; provided, that said limitation shall not begin until the end of the term for which said person was mustered into service.

Art. 69. No sentence of a court martial respecting a general officer, and no sentence of a court martial directing the dismissal of any officer, shall be carried into execution until it shall have been confirmed by the governor.

Art. 70. No sentence of a court martial shall be carried into execution until the same shall have been approved by the officer ordering the court, or by the officer commanding for the time being.

Art. 71. All sentences of a court martial may be confirmed and carried into execution by the officer ordering the court, or by the officer commanding for the time being, where confirmation by the governor is not required by these articles.

Art. 72. Any officer who is authorized to confirm and carry into execution the sentence of a court martial shall have power to pardon or mitigate any punishment adjudged by it, except the punishment of dismissal of an officer; and the governor shall have power to pardon or mitigate any punishment adjudged by any court martial.

Art. 73. Every judge advocate, or person acting as such, at any general or regimental court martial, shall, with such expedition as the opportunity of time and distance of place may admit, forward the original proceedings and sentences of such court to the adjutant general, in whose office they shall be carefully preserved.

Art. 74. Every party tried by a general or regimental court martial shall, upon demand thereof, made by himself or by any person in his behalf, be entitled to a copy of the proceedings and sentence of such court.

Art. 75. A court of inquiry to examine into the nature of any transaction of, or accusation or imputation against, any officer or soldier may be ordered by the governor, or by any commanding officer; but such courts of inquiry shall never be ordered by any commanding officer, except upon a demand by the officer or soldier whose conduct is to be inquired of.

Art. 76. A court of inquiry shall consist of one or more officers, not exceeding three, and a recorder to reduce the proceedings and evidence to writing.

Art. 77. The recorder of a court of inquiry shall administer to the members the

following oath: "You shall well and truly examine and inquire, according to the evidence, into the matter now before you, without partiality, favor, affection, prejudice or hope of reward. So help you God." After which the president of the court shall administer to the recorder the following oath: "You, A. B., do swear that you will, according to your best abilities, accurately and impartially record the proceedings of the court and the evidence to be given in the case in hearing. So help you God."

Art. 78. A court of inquiry and the recorder thereof shall have the same power to summon and examine witnesses as is given to courts martial and the judge advocates thereof. Such witnesses shall take the same oath which is taken by witnesses before courts martial, and the party accused shall be permitted to examine and cross-examine them so as fully to investigate the circumstances in question.

Art. 79. A court of inquiry shall not give an opinion on the merits of the case inquired of, unless specially ordered to do so.

Art. 80. The proceedings of a court of inquiry must be authenticated by the signatures of the recorder and the president thereof, and delivered to the commanding officer.

Art. 81. The proceedings of a court of inquiry may be admitted as evidence by a court martial in cases not extending to the dismissal of an officer; provided, that the circumstances are such that oral testimony can be obtained.

Art. 82. The foregoing articles shall be read once in every twelve months to every company in the military service of this state, and shall be duly observed and obeyed by all officers and soldiers in said service. (Id. sec. 103.)

COURTS MARTIAL

Art. 5861. Evidence in courts martial.—The rules of evidence in all courts martial shall follow in general, so far as apposite, the common law rules of evidence as observed by the courts of this state in criminal cases; but a certain latitude in the introduction of evidence and the examination of witnesses by an avoidance of restrictive rules is permissible, when it is in the interest of the administration of military justice. (Id. sec. 104.)

Art. 5862. Privileges of accused.—In all trials before courts martial, the accused shall have the right to demand the nature and cause of the accusation against him, and to be presented with a copy of the charges. He shall have the right of being heard by himself or counsel, or both; shall be confronted with the witnesses against him, and shall have compulsory process for obtaining witnesses in his favor. (Id. sec. 105.)

Art. 5863. Counsel for defendant to be detailed, when.—The officer ordering a general or regimental court martial will at the request of any prisoner who is to be arraigned, detail as counsel for his defense a suitable officer, one not acting as a summary court; provided, such request is made within a reasonable time before trial. If there be no such officer available, the fact will be reported to the adjutant general for his action. An officer so detailed should perform such duties as usually devolve upon counsel for defendant before civil courts in criminal cases. (Id. sec. 106.)

Art. 5864. Judge advocate to appoint reporter.—The judge advocate of a military court shall have power to appoint a reporter, who shall record the proceedings of, and testimony taken before, such court, and may set down the same, in the first instance in shorthand. The reporter shall, before entering upon his duty, be sworn or affirmed faithfully to perform the same. (Id. sec. 107.)

Art. 5865. Judge advocate may issue process, etc.—The president or judge advocate of every general or regimental court martial shall have power to issue like process to compel witnesses to appear and testify, which courts of criminal jurisdiction within this state may lawfully issue; and such process shall be issued in the same style and manner and executed by the same officers as when issued by such court. (Id. sec. 108.)

Art. 5866. Process generally.—The president of any court martial, and any summary court officer, shall have authority to issue, under his hand, in the name of the state of Texas, directed to any sheriff or constable, whose duty it shall be to serve or execute the same in the same manner in which like process is served or executed when issued by a magistrate, all necessary process, subpœnas, attachments, warrants of arrest and warrant of commitment. (Id. sec. 109.)

Art. 5867. Penalty for disobeying, etc.—Every person, who being duly subpœnaed to appear as a witness before a regimental or general court martial, who willfully neglects or refuses to appear, or refuses to qualify as a witness or produce documentary evidence which such person may have been legally subpœnaed to produce, shall be guilty of a misdemeanor, and prosecuted in the proper justice court, and punished by a fine not exceeding one hundred dollars; provided, such witness may plead as a defense that he was not tendered or paid one day's fee and mileage for the journey to and from the place of trial, as provided by this chapter, such amounts to be paid by the adjutant general's department out of any appropriation or funds available for that purpose; provided, that no witness shall be compelled to incriminate himself, or to answer any questions which may tend to incriminate or degrade him. (Id. sec. 110.)

Art. 5868. Witnesses entitled to transportation.—Persons in the employ of this state, but not belonging to the military forces thereof, when traveling upon summons as witnesses before military courts, are entitled to transportation in kind from their place of residence to the place where the court is in session and return. If no transportation be furnished, they are entitled to reimbursement of the cost of travel actually performed by the shortest usually traveled route. They are also entitled to reimbursement of the actual cost of meals and rooms at a rate not to exceed two dollars per day for each day actually and unavoidably consumed in travel, or in attendance upon the court under the order or summons. No allowance will be made to them when attendance upon court does not require them to leave their place of residence. (Id. sec. 111.)

Art. 5869. Compensation of.—A person not in the employ of this state and not belonging to the active military forces thereof, who has been duly summoned to appear as a witness before a military court, will receive one dollar and fifty cents per day for each day actually in attendance upon the court, and six cents a mile for going from his place of residence to the place of trial or hearing, and six cents a mile for returning. Civilian witnesses will be paid by the adjutant general's department. (Id. sec. 112.)

Art. 5870. Same.—The charges for return journeys of witnesses will be made upon the basis of the actual charges allowed for travel to the court, and the entire account thus completed will be paid upon discharge from attendance without waiting for completion of return travel. (Id. sec. 113.)

Art. 5871. Attachment may issue for witnesses.—In all cases where a witness has been subpœnaed and fails to attend, attachment shall issue, and he shall be liable for the costs of such attachment, unless good cause be shown to the court why he failed to obey the subpœna, which cost may be recovered by civil suit in any court having jurisdiction of the amount involved. (Id. sec. 114.)

Art. 5872. No fees allowed, except, etc.—No fees shall be allowed to a person as witness fees, unless such person has been subpœnaed, attached, or recognized as a witness in the case. (Id. sec. 115.)

Art. 5873. Governor may order arrest, etc.—When charges against any person in the military service of this state come before the governor, or any officer authorized to order a court martial for the trial of such person, and the governor, or such officer, believes that such charges can be sustained, and has reason to believe that the person so charged will not appear for trial, or intends to flee from justice, the governor, or such officer, may issue a warrant of arrest to the sheriff or any constable of the county in which the person so charged, resides, or wherein he is supposed to be, commanding such sheriff or constable to take the body of the person so charged and confine him in jail until such time as his case may finally be disposed of; and it shall be the duty of the sheriff or constable, on the order of the governor, or officer ordering the court, to bring the person so charged before the court martial for trial, or to turn over to whoever the order may direct; it shall be the duty of the governor, or the officer issuing the warrant of arrest, to indorse thereon the amount of bail to be required; and it shall be a violation of duty on the part of any sheriff or constable to permit a person so committed to remain out of jail, except that he may, when such person desires it, permit him to give bail in the sum indorsed on the warrant of arrest, conditioned for his appearance, from time to time, before such court martial as he may be ordered for trial, and until his case is finally disposed of, or until such time as he may surrender to the sheriff or constable as directed by the reviewing authority of the court martial before which he may be ordered for trial. (Id. sec. 116.)

Art. 5874. Suit on bonds, etc.—Upon the failure of any person, who has been admitted to bail conditioned for his appearance for trial before a court martial, or upon the failure of any person admitted to bail to appear as a witness in any case before a court martial, as conditioned in the bail bond of any such person, the court martial shall certify the fact of such failure to so appear to the officer ordering the court martial, or the officer commanding for the time being, as the case may be; and it shall be the duty of such officer to cause a judge advocate, district or county attorney, to file suit in any court having jurisdiction of the amount involved in Austin, Texas. (Id. sec. 117.)

Art. 5875. Code of Criminal Procedure to govern in giving bail, etc.—The rules laid down in the Code of Criminal Procedure of this state relating to the giving of bail, the amount of bail, the number of sureties, the persons who may be sureties, the property exempt from liability, the responsibility of parties to the same and all other rules of a general nature not inconsistent with this law are applicable to bail taken as provided by this chapter. (Id. sec. 118.)

Art. 5876. Warrant of arrest to extend to every part of the state, etc.—A warrant of arrest issued by the governor, or other officer authorized to order a general court martial, and all subpœnas and other process issued by general courts martial shall extend to every part of the state; but warrants of arrest issued by an officer, other than those named above, and all subpœnas and other process issued by other military courts can not be executed in any other county than the one in which they were issued, except they be indorsed by the governor, or an officer authorized to order a general court martial, in which case they can be executed anywhere in the state. The indorsement may be, "Let this process be executed in any county of the state of Texas." The indorsement shall be dated and signed officially by the governor, or officer making it. (Id. sec. 119.)

Art. 5877. Defendant liable for costs.—The judgment of every court martial shall direct that all costs incurred in any trial shall be paid by the defendant; and it shall be the duty of the officer ordering the court, or the officer commanding for the time being, as the case may be, to enforce the collection thereof in the manner prescribed by this law; and when the defendant is imprisoned for costs, as hereinafter provided by this law, the adjutant general shall pay said cost out of any funds which may be available. (Id. sec. 120.)

Art. 5878. Same.—Upon conviction of any person by a court martial, the cost accruing for witness fees and the fees for sheriffs or constables for executing the process, subpœnas, writs of attachment, warrant of arrest, warrant of commitment, or any other authorized writs, shall be taxed against defendant; and any sheriff or constable executing any process, subpœna, writ of attachment, warrant of arrest, warrant of commitment, or any other authorized writs, shall be allowed the same fees as provided by the Code of Criminal Procedure in this state. (Id. sec. 121.)

Art. 5879. Procedure in cases of conviction of felony.—When the sentence of a court martial adjudges confinement, and the

reviewing authority has approved the same in whole or in part, and such sentence as approved exceeds two years confinement, the reviewing authority, or the commanding officer for the time being, as the case may be, shall issue a warrant of commitment to the sheriff of the county in which such court martial was held, directing such sheriff to take the body of the person so sentenced and confine him in the county jail of such county until a duly accredited agent of the state penitentiary shall take charge of such person for confinement in the state penitentiary; and it shall be the duty of such reviewing authority, or the commanding officer for the time being, as the case may be, to certify a/ copy of the proceedings, as approved, of the court martial in the case of such person to be confined, to the superintendent of the state penitentiary, which shall be sufficient authority for, and it shall be the duty of, such superintendent to send for and confine such person in the state penitentiary for the period named in the proceedings of the court martial as approved, or until he may be directed to release him by proper authority; and it shall be the duty of the state penitentiary board to make such provisions as may be necessary for receiving from the sheriff as aforesaid and confining such person in such manner as persons are received and confined in the state penitentiary on sentence of district courts in this state. (Id. sec. 122.)

Art. 5880. Procedure in cases of misdemeanor with jail sentence.—When the sentence of a court martial adjudges confinement, and the reviewing authority has approved the same, in whole or in part, and such sentence, as approved, does not exceed two years confinement, the reviewing authority, or the commanding officer for the time being, as the case may be, shall issue a warrant of commitment to the sheriff of the county in which such court martial was held, directing such sheriff to take the body of the person so sentenced and confine him in the county jail of such county for the period named in such sentence, as approved, or until he may be directed to release him by proper authority; and such confinement shall be carried out as prescribed for confinement in the county jail by the Code of Criminal Procedure of this state. (Id. sec. 123.)

Art. 5881. Conviction in cases of fine and costs.—When the sentence of a court martial adjudges a fine and cost against any person, and such fine and cost has not been fully paid within ten days after the confirmation thereof, the governor, or officer ordering the court, or the officer commanding for the time being, as the case may be, shall issue a warrant of commitment directed to the sheriff of the county in which the court martial was held, directing him to take the body of the person so convicted and confine him in the county jail; and it shall be the duty of the sheriff to take the body of the person convicted and confine him in the county jail for one day for any fine not exceeding one dollar, and one additional day for every dollar above that sum, and one additional day for each dollar of cost. (Id. sec. 124.)

Art. 5882. Fines to be paid to whom in cases of general court martial.—All fines and forfeitures, imposed by general or regimental courts martial, shall be paid to the officer ordering such courts, or to the officer commanding for the time being, and by said officer, within five days from the receipt thereof, paid to the adjutant general, who shall disburse the same as he may see fit for military purposes. (Id. sec. 125.)

Art. 5883. Fines to be paid in cases of summary courts.—All fines and forfeitures imposed by summary courts martial shall be paid to the officer ordering the court, or the officer commanding for the time being, and by such officer, within five days from the receipt thereof, placed to the credit of the company fund of the company of which the person fined was a member when the fine was imposed. (Id. sec. 126.)

Art. 5884. Sheriff to execute lawful process from courts martial.—When any lawful process, issued by the proper officer of any court martial, comes to the hand of any sheriff or constable, he shall perform the usual duties of such officer and perform all acts and duties by this chapter imposed or authorized to be performed by any sheriff or constable. (Id. sec. 127.)

Art. 5885. Jurisdiction presumed.—The jurisdiction of the courts and boards established by this chapter shall be presumed, and the burden of proof shall rest on any person seeking to oust such courts or boards of jurisdiction in any action or proceeding. (Id. sec. 131.)

Art. 5886. Acts by or under military authority exempt from punishment.—No action or proceeding shall be prosecuted or maintained against a member of the military forces of this state or officer or person acting under its authority or reviewing its proceedings on account of the approval or imposition or execution of any sentence, or the imposition or collection of any fine or penalty, or the execution of any warrant, writ, execution, process, or mandate of a military court. (Id. sec. 132.)

Art. 5887. Change of venue in certain cases.—Any officer or member of the military forces of this state, who is indicted or sued for any injury to persons or property done while performing, or endeavoring to perform, any duty required of him by this law, shall have the right, and it is hereby made the duty of the court in which such indictment or suit is pending, upon the application of the person so indicted or sued, to remove the venue of such cause to some court of competent jurisdiction in another county not subject to the same or some other disqualification; provided, such application is supported by the affidavit of two credible persons to the effect that they have good reason to believe that the defendant can not have a fair and impartial trial before such court. (Id. sec. 133.)

GENERALLY

Art. 5888. Commissioners' court and city council may make appropriations for militia.—The commissioners' court of

each [county,] and the council of any city or town in this state, are hereby authorized and empowered, in their discretion, to appropriate a sufficient sum, not otherwise appropriated, to pay the necessary expenses of the troops, batteries, companies, signal corps, hospital corps and bands of the active militia of this state located in their respective counties, cities or towns, not to exceed the sum of one hundred dollars per month for such expenses of any one organization. (Id. sec. 69.)

Art. 5889. Militia entitled to right of way on streets.—The commanding officer of any portion of the active militia of this state, parading or performing any military duty in any street or highway, may require any or all persons in such street or highway to yield to the right of way to such militia; provided, that carriage of the United States mails, the legitimate functions of the police and the progress and operations of hospital ambulances, fire engines and fire departments shall not be interfered with thereby. (Id. sec. 71.)

Art. 5890. Unlawful disposition or use of arms, uniform, etc.; discrimination against persons in military service.—Any person who shall secrete, sell, dispose of, offer for sale, purchase, retain after demand made by a commissioned officer of the active militia of this State, or in any manner pawn or pledge any arms, uniforms, equipment, or other military property issued under the provisions of this chapter, or of the military regulations of this State, and any person who shall wear any uniform or part thereof, or device, strap, knot, or insignia of any design or character used as a designation of grade, rank or office, such as are by law or by general regulations duly promulgated, prescribed for the use of the active militia of this State, or similar thereto, except members of the army of the United States or the active militia of this State, or any other State; and provided further that every person who shall subject or cause to be subjected any other person to the deprivation of any rights, privileges or immunities usually enjoyed by the public on account of membership in the army, navy, marine corps or revenue cutter service of the United States, or of the National Guard or naval service of this State, or otherwise in the military or naval service of the United States or of this State, wearing the uniform prescribed for him at that time or place by law, regulation of the service or custom, on account of his wearing such uniform or of his being in such service, shall deprive any other person of the full and equal enjoyment of any advantages, facilities, accommodations, amusement or transportation, subject only to the limitations established by law and applicable alike to all persons, or who on account of such membership or the wearing of such uniform shall make or cause to be made such discrimination, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than one hundred ($100.00) dollars nor more than five hundred ($500.00) dollars, and in addition thereto shall forfeit to this State one hundred ($100.00) dollars for each offense, to be sued for in the name of the State of Texas by a judge advocate, district or county attorney. All money recovered by any action or proceeding under this Article shall be paid to the Adjutant General, who shall apply the same to the use of the active militia of this State. (Acts 1905, p. 167, sec. 72; Acts 1917, 1st C. S., ch. 15, sec. 1.)

Art. 5891. Arrest of trespassers; may prohibit sale of liquor, etc.—The commanding officer upon any occasion of duty may place in arrest, during the continuance thereof, any person who shall trespass upon the camp ground, parade ground, armory or other place devoted to such duty, or shall in any way or manner interrupt or molest the orderly discharge of duty by those under arms, or shall disturb or prevent the passage of troops going to and returning from any duty. He may prohibit and prevent the sale or use of all spirituous liquors, wine, ale or beer, the holding of huckster or auction sales, and all gambling within the limit of the post, camp ground, place of encampment, parade or drill under his command, or within limits not exceeding one mile therefrom, as he may prescribe. And he may in his discretion abate as common nuisances all such sales. (Acts 1905, p. 167, sec. 73.)

Art. 5892. Insurrection may be declared, when.—Whenever any portion of the military forces of this state is employed in aid of the civil authority, the governor, if in his judgment the maintenance of law and order will thereby be promoted, may, by proclamation, declare the county or city in which the troops are serving, or any specified portion thereof, to be in a state of insurrection. (Id. sec. 98.)

Art. 5893. Troops to enter state only by permission.—No armed military force from another state, territory or district shall be permitted to enter this state without the permission of the governor, unless such force is part of the United States army. (Id. sec. 99.)

CHAPTER FOUR
STATE NAVAL MILITIA

Art. 5893a. Texas Naval Board created; duties.—That a board to be styled "Texas Naval Board" be, and is hereby, created, consisting of the Governor of the State of Texas, and one other to be appointed by him, which board shall have power and be and is hereby authorized to make, adopt and promulgate all such rules, orders and regulations as may be advisable and necessary for the creating and maintaining of an efficient naval militia, and is further empowered to co-operate with the Secretary of the Navy of the United States in putting into effect in the State of Texas, the provisions of an Act passed by the Sixty-third Congress, entitled: "An Act to promulgate the efficiency of the naval militia, and for other purposes." (Acts 1915, ch. 71, sec. 1.)

TITLE 92

MILL PRODUCTS

Art. 5894. Packages, how marked; standard weights.—Every lot or parcel of concentrated feeding stuffs, as defined in article 5896, used for feeding farm live stock, sold, offered, or exposed for sale in the state of Texas for use within this state, shall have printed on a tag described in article 5898, a plainly printed statement clearly and truly certifying the number of net pounds of feeding stuff in the package, stating the name or names of material of which such weight is composed, where the contents are of a mixed nature, the name, brand, or trade mark under which the article is sold, the name and address of the manufacturer or importer, the place of manufacture, such information as is required by article 5902, if any, and a chemical analysis stating the minimum percentages it contains of crude protein, allowing one per cent of nitrogen to equal six and one-fourth per cent of protein, of crude fat, of nitrogen-free extract, and the maximum percentage it contains of crude fiber; these constituents to be determined by the methods adopted at the time by the association of official agricultural chemists of the United States. Mill products hereinafter mentioned shall have the following standard weights, viz.: Flour, one hundred and ninety-six pounds per barrel, or forty-eight pounds per sack; corn meal, bolted or unbolted, thirty-five pounds per sack; rice bran, one hundred and forty-three pounds per sack; rice polish, two hundred pounds per sack; and other feeds made from cereals of any kind, whether pure, mixed, or adulterated, one hundred pounds per sack. Fractional barrels and sacks shall weigh in the same proportion, and those weights shall be net and exclusive of the barrel or sack in which said product is packed. (Acts 1905, p. 207. Amended Acts 1907, p. 243, sec. 1.)

Art. 5895. Unground or unbroken grain or seed not included in definition.—The term, "concentrated commercial feeding stuffs," as herein used, shall not include hay or straw, the whole seed or grains of wheat, rye, barley, oats, Indian corn, rice, buckwheat, or broom corn, or any other whole or unground grains or seeds. (Acts 1905, p. 207, sec. 2.)

Art. 5896. Concentrated feed stuffs, definition.—The term, "concentrated feed stuffs," as herein used, shall include wheat bran, wheat shorts, linseed meals, cotton seed meals, pea meals, cocoanut meals, gluten meals, gluten feeds, maize feeds, starch feeds, sugar feeds, dried brewer's grains, malt sprouts, hominy feeds, cerealine feeds, rice meal, rice bean, rice polish, rice hulls, oat feeds, corn and oat chops, corn chops, ground beef, or mixed fish feeds, and all other materials of similar nature not included herein. (Id. sec. 3.)

Art. 5897. Sample to be deposited.—Before any concentrated feeding stuff, as defined in article 5896 of this chapter, is so offered or exposed for sale, the importer, manufacturer and party who causes it to be sold, or offered for sale, within the state of Texas for use within this state, shall, for each and every feed stuff bearing a distinguishing name and trade mark, file with the director of the Texas agricultural and experiment station a certified copy of the statement named in article 5894, and shall also deposit with said director a sealed glass jar or bottle containing not less than one pound of the feeding stuff to be sold, or offered for sale, accompanied by an affidavit that it is a fair average sample thereof, and corresponds within reasonable limits to the feeding stuff which it represents in the percentage of protein, fat and crude fiber, and nitrogen-free extract which it contains. This shall not be construed to apply to farmers who grind their own feed stuff, and who do not adulterate same. (Acts 1905, p. 207. Amended 1907, p. 243, sec. 4.)

Art. 5898. Tax tags; disposition of funds collected.—The manufacturer, importer, agent or seller of each concentrated commercial feeding stuff as defined in article 5896 of this chapter, shall, before the article is offered for sale, pay to the director of the Texas agricultural experiment station an inspection tax of ten cents per ton for each ton of such concentrated feeding stuff sold, or offered for sale, in the state of Texas for use within this state, and shall affix to each lot shipped in bulk, and to each bag, barrel or other package of such concentrated feeding stuffs, a tag to be furnished by said director, stating that all charges specified in said article have been paid. The director of said Texas agricultural experiment station is hereby empowered to prescribe the form of such tags, and adopt such regulations as may be necessary for the enforcement of this law. Whenever the manufacturer or importer or shipper of a concentrated feeding stuff shall have filed a statement named in article 5894 of this chapter, and have paid the inspection tax, no agent or seller of said manufacturer, inspector or shipper shall be required to file such statement or pay such tax. The amount of the inspection tax and penalties received by said director shall be paid into the state treasury. So much of the inspection tax and penalties collected under this chapter shall be paid by the state treasurer to the treasurer of the Texas agricultural and mechanical college as the director of the Texas agricultural experiment station may show by his bills has been expended in performing the duties required by this chapter, but in no case to exceed the amount of the inspection tax and penalties received by the state treasurer under this chapter. (Id. sec. 5.)

Art. 5899. Manufacturers and importers to furnish list of, and marks.—All manufacturers and importers of concentrated commercial feeding stuffs, or dealers in same, shall, when requested, furnish the director of the Texas experiment station with a complete list of names or trade marks of such feeding stuffs. (Acts 1905, p. 207, sec. 8.)

Art. 5900. How samples secured; analysis; publication.—The director of the Texas agricultural experiment station shall cause one analysis or more to be made annually of each concentrated commercial feeding stuff sold or offered for sale under the provisions of this chapter. Said director is hereby authorized in person or by deputy to take a sample not exceeding two pounds in weight for analysis from any lot or package of concentrated commercial feeding stuff which may be in the possession of any man-

ufacturer, importer, agent, dealer or buyer in this state; but said sample shall be drawn or taken in the presence of said party or parties in interest, or their representatives, and shall be taken from a parcel, lot or number of parcels which shall not be less than five per cent of the whole lot inspected, and shall be thoroughly mixed and divided into two samples, and placed in glass or metal vessels carefully sealed, and a label placed on each, stating the name or brand of the feeding stuff, or material sampled, the name of the party from whose stock the sample is drawn, and the date and place of taking such sample, and said label shall be signed by the director or his deputy and the party or parties at interest, or their representative present at the taking and sealing of said sample; provided, that where the party or parties at interest refuse to be present and take part in the sampling of the said feed stuffs, the director or his deputy may take said samples in the presence of two disinterested witnesses, one of said duplicate samples shall be retained by the director and the other shall be left with the party whose stock was sampled, and the sample or samples retained by the director shall be for comparison with the certified statements made in articles 5894 and 5897 of this chapter. The result of the analysis of the sample or samples so prescribed, together with such additional information as circumstances advise, shall be published in reports or bulletins by the Texas agricultural and mechanical college from time to time. (Acts 1905, p. 207, sec. 9.)

Art. 5901. Term "importer" defined.—The term, "importer," for all the purposes of this chapter shall be taken to mean all such persons as shall bring into or offer for sale within this state concentrated commercial feeding stuffs manufactured without this state. (Acts 1905, p. 207, sec. 10.)

Art. 5902. What feed stuffs deemed adulterated.—For the purpose of this chapter, a feeding stuff shall be deemed to be adulterated if it contains any sawdust, dirt, damaged feed, or any foreign matter whatever, or if it is in any respect not what it is represented to be, or if any rice hulls or chaff, peanut shells, corncobs, oat hulls, or other similar substances of little or no feeding value are admixed therewith; provided, that no wholesome mixture of feeding stuffs shall be deemed to be adulterated if the true percentage of constituents thereof is plainly and clearly stated on the package and made known to the purchaser at the time of the sale. It shall be the duty of the director of the experiment station to examine, or have examined for adulteration, all suspicious samples of feeding stuffs, and such other samples as may be desirable. (Acts 1905, p. 207. Amended Acts 1907, p. 243, sec. 11.)

Art. 5903. Duties and powers of director of experiment station.—The director of the experiment station is empowered to adopt standards or definitions for concentrated feeding stuffs, and such regulations as may be necessary for the enforcement of the law. The said director shall have the power to refuse the registration of any feeding stuff, under a name which would be misleading as to the material of which it is made up, or which does not conform to the standards or definitions aforesaid. Should any of said materials be registered and it is afterwards discovered that they are in violation of the above provisions, the said director shall have the power to cancel the registration ten days after notice. The director of the Texas experiment station is hereby empowered to adopt such regulations as may be necessary for the enforcement of all the provisions of this chapter. (Acts 1907, p. 243, sec. 11a.)

Art. 5903a. Disposition of funds for concentrated commercial feed stuffs.—That all money or moneys heretofore or hereafter collected by the officers and employés of the agricultural and mechanical college, under the provisions of the pure feed acts, passed by the twenty-ninth legislature, being chapters 108 and 118 of said acts, and amended by chapter 131, Acts of the thirtieth legislature, regulating the sale of concentrated commercial feed stuffs and so forth, and paid into the state treasury, and not heretofore expended for and on behalf of the agricultural and mechanical college, be and the same are hereby transferred and appropriated to the use and benefit of the agricultural and mechanical college of Texas; and the treasurer of this state shall keep an account on his books, to be designated and known as "Pure Feed Fund of the Agricultural and Mechanical College," and to which said fund he shall at once transfer from the general fund all funds heretofore collected and paid into the general fund by said pure feed department of the agricultural and mechanical college under said acts (and not expended for the use of the agricultural and mechanical college), and shall place all funds hereafter collected under said acts to said fund.

Art. 5903b. Same.—Said fund so appropriated and collected shall be used by the board of directors of the agricultural and mechanical college for making all necessary repairs at the agricultural and mechanical college, erection of buildings and other improvements, and for such other purposes as may be deemed advisable by the board of directors; and said funds shall be paid out by the state treasurer on warrants issued by the president and secretary of the board of directors. The said board of directors shall, on the thirty-first day of August of each year, file a sworn report with the governor, giving an itemized statement of all receipts and disbursements of said fund for the year ending on said date.

TITLE 93

MINES AND MINING

CHAPTER ONE

MINING CLAIMS, PERMITS AND LEASES

Art. 5904. (3498a) Lands open to prospecting for minerals.—All public school, University and Asylum land and other public lands, fresh water lakes, river beds and channels, islands, bays, marshes, reefs and salt water lakes belonging to the State and all lands which may hereafter be so owned and all of said lands which have heretofore been sold or disposed of by the State or by its authority with a reserva-

tion of minerals or mineral rights therein as well as all lands which may hereafter be sold with the reservation of minerals or mineral rights therein, and lands purchased with a relinquishment of the minerals therein, shall be included within the provisions of this Act and shall be open to the prospecting for and the development of the minerals and substances known as gold, silver, cinnabar, lead, tin, copper, zinc, platinum, radio-active minerals, tungsten, ores of aluminum, coal, lignite, iron ore, kaolin, fire clays, barite, marble, petroleum, natural gas, gypsum, nitrates, asbestos, marls, salt, onyx, turquois, mica, guano, bismuth and bismuth bearing minerals, asphalt, potash compounds, sulphur, granite, magnesia, fuller's earth and molybdenum and molybdenum bearing minerals upon the terms and conditions provided in this Act. (Acts 1913, p. 409, sec. 1; Acts 1917, ch. 83, sec. 1.)

Section 28 repeals said Acts 1913, p. 409, ch. 173. Acts 1917, ch. 83, amends Acts 1913, p. 409, ch. 173. See, also, post, arts. 5904k—1 to 5904k—14.

Art. 5904a. Persons entitled to prospect for minerals; rules.—Any person or association of persons, corporate or otherwise, being a citizen of the United States or having declared an intention of becoming such, desiring to obtain the right to prospect for and develop the minerals and substances named above that may be in any of the areas, included herein may do so under the provisions of this Act together with such rules and regulations as may be adopted by the Commissioner of the General Land Office relative thereto and necessary for the execution of the purposes of this Act. (Acts 1913, p. 409, sec. 2; Acts 1917, ch. 83, sec. 2.)

Art. 5904b. Application for right to prospect for petroleum oil and natural gas in surveyed lands; amount and location of lands.—One desiring to obtain the right to prospect for and develop petroleum oil and natural gas that may be in any of the surveyed areas included herein shall file with the county clerk an application in writing giving a designation of same sufficient to identify it. The county clerk shall, upon receipt of one dollar as a filing fee, file and record the application and note the same on his record of surveys opposite the entry of the proper survey, giving the time of filing. When one has obtained four sections or that equivalent eligible to be embraced in one permit such applicant shall not obtain any more land within two miles thereof, but if one obtains less than four sections eligible to be embraced in one permit such one may obtain such additional area within two miles of the other area as will equal four sections. One shall not obtain more than one thousand acres within one mile of a well producing petroleum. (Acts 1913, p. 409, sec. 3; Acts 1913, 1st C. S., p. 26, sec. 1; Acts 1917, ch. 83, sec. 3.)

Art. 5904c. Permit to prospect for petroleum and gas in unsurveyed lands; number of acres.—One desiring to obtain the right to prospect for and develop petroleum and natural gas in any of the State's unsurveyed areas named in this Act shall file with the county surveyor an application in writing for each area applied for, giving a designation of same sufficient to identify it, but such area shall not exceed 2560 acres. Upon receipt of one dollar filing fee the surveyor shall file and record the application. (Acts 1913, p. 409, sec. 4; Acts 1913, 1st C. S., p. 26, sec. 2; Acts 1917, ch. 83, sec. 4.)

Art. 5904d. Issuance of permit to prospect for oil and gas.—When the Commissioner receives an application that was filed with the county clerk or an application that was filed with the surveyor and the field notes and plat, one dollar filing fee and ten cents per acre for each acre applied for and a sworn statement by the applicant showing what interest he has in other permit, lease or patent issued under this Act and in good standing, he shall file same, and if upon examination the application or the application and field notes are found correct and the area applied for is within the provisions of this Act the Commission shall issue to the applicant or his assignee a permit conferring upon him an exclusive right to prospect for and develop petroleum and natural gas within the designated area for a term not to exceed two years. (Acts 1913, p. 409, sec. 5; Acts 1917, ch. 83, sec. 5.)

Art. 5904e. Development work for petroleum and gas; filing statement in General Land Office; forfeiture; removal of product before obtaining lease, prohibited.—Before the expiration of twelve months after the date of the permit the owner thereof shall in good faith begin actual work necessary to the physical development of said area and if petroleum or natural gas is not sooner developed in commercial quantities the owner or manager shall, within thirty days after the expiration of one year from the date of the permit file in the General Land Office a sworn statement supported by two disinterested credible persons that such actual work was begun within the first twelve months aforesaid and that a bonafide effort to develop the said area was made during the twelve months preceding the filing of the statement and showing what work was done and expenditures incurred and whether or not petroleum or natural gas had been discovered in commercial quantities. A failure to file the statement herein provided for within the time specified or the filing of a statement untrue or false in material matters shall subject the permit to forfeiture and the termination of the rights of the owner. The owner of a permit shall not take, carry away or sell any petroleum or natural gas before obtaining a lease therefore: provided, such quantity as may be necessary for the continued development of the area before obtaining a lease may be used without accounting therefor. (Acts 1913, p. 409, sec. 6; Acts 1917, ch. 83, sec. 6; Acts 1917, ch. 170, sec. 1.)

Art. 5904f. [Repealed, and subject-matter carried into art. 5904e, ante.]

Art. 5904g. Lease of area for development of petroleum or natural gas; conditions of lease.—If at any time within the life of a permit one should develop petroleum or natural gas in commercial quantities the owner or manager shall file in the General Land Office a statement of such development within thirty days thereafter, and thereupon the owner of the permit shall have the right to lease the area included in the permit upon the following conditions:

1. An application and a first payment of two dollars per acre for a lease of the area included in the permit shall be made to the Commissioner of the General Land Office within thirty days after the discovery of petroleum or natural gas in commercial quantities.

2. Upon the payment of two dollars per acre for each acre in the permit a lease shall be issued for a term of ten years or less, as may be desired by the applicant, and with the option of a renewal or renewals for an equal or shorter period, and annually after the expiration of the first year after the date of the lease the sum of two dollars per acre shall be paid during the life of the lease, and in addition thereto the owner of the lease shall pay a sum of money equal to a royalty of one-eighth of the value of the gross production of petroleum. The owner of a gas well shall pay a royalty of one-tenth of the value of the meter output of all gas disposed of off the premises.

3. The royalties shall be paid to the State through the Commissioner of the General Land Office at Austin, monthly during the life of the lease. All payments shall be accompanied by the sworn statement of the owner or manager or other authorized agent showing the amount produced since the last report and the market value of the output and a copy of all pipe line receipts, tank receipts, guage of all tanks into which petroleum may have been run, or other checks and memoranda of amount put out or into pipe lines or tanks or pools. The books and accounts, the receipts and discharges of all pipe lines, tanks and pools and gas lines and gas pipes and all other matters pertaining to the production, transportation and marketing of the output shall be open to the examination and inspection at all times by the Commissioner of the General Land Office or his representative or any other person authorized by the Governor or Attorney General to represent the State. The Value of any unpaid royalty and any sum due the State under this Act upon any lease shall become as prior lien upon all production produced upon the leased areas and the improvements situated thereon to secure the payment of any royalty and any sum due the State arising under the operation of any portion of this Act.

4. The permit or lease shall contain the terms upon which it is issued including the authority of the Commissioner to require the drilling of wells necessary to offset wells drilled upon adjacent private land, and such other matters as the commissioner may deem important to the rights of the applicant or the State. (Acts 1913, p. 409, sec. 8; Acts 1917, ch. 83, sec. 7.)

Art. 5904h. Compensation to surface owners.—In the event the surface of an area included within the operations of this Act has heretofore been or may hereafter be acquired by one prior to the filing of an application under the provisions herein such area shall nevertheless be subject to prospect and lease as provided herein but the owner of the permit or lease shall pay to the owner of the surface annually in advance during the life of the permit or lease, ten cents per acre and the sum so paid and accepted by the surface owner shall be full compensation for all damages to the surface. (Acts 1913, p. 409, sec. 9; Acts 1917, ch. 83, sec. 8.)

Art. 5904i.

Section 10 of the repealed act was amended by Acts 1913, 1st called session, p. 26, sec. 3. The amendatory act is not expressly repealed, but it is, no doubt, superseded by section 2 of the new act, set forth ante as art. 5904b, limiting the amount of land that can be embraced in one permit within a given locality.

Art. 5904j. Association applying to file statement of membership; permit; lease.—Every person or association of persons, corporate or otherwise, applying for a permit, lease or patent shall file with the application a sworn statement showing what interest the applicant has in any other permit or lease issued by the State and in good standing at the date of the statement. (Acts 1913, p. 409, sec. 11; Acts 1917, ch. 83, sec. 9.)

Art. 5904k. [Repealed, and its subject-matter carried into sec. 6 of the new act, ante, art. 5904e.]

Art. 5904k—1. Lands included; oil, natural gas, coal, and lignite excluded.—All valuable mineral bearing deposits, placers, veins, lodes and rock carrying metallic or non-metallic substances of value except oil, natural gas, coal and lignite that may be in any public free school land, University land, Asylum land, which has heretofore been sold with a reservation of mineral therein and all of said substances that amy be in or upon said land that was purchased with the relinquishment of the mineral therein, and all lands of which the mineral rights therein have reverted to the State of Texas as the Sovereign Government and all of said substances that may be in or upon any other public land including islands and river beds and channels, which belong to the State shall be included in this Act and subject to sale as provided herein, together with such rules as the Commissioner of the General Land Office may prescribe not inconsistent with the provision hereof. (Acts 1919, 2d C. S., ch. 79, sec. 1.)

Art. 5904k—2. Extent and shape of claims; superficial areas.—A mining claim upon mineral lands as described under Section 1 of this Act [Art. 5904k—1] may equal, but shall not exceed 1500 feet in length and 600 feet in width. Such claims may be of unlimited depth, but shall be bounded by four vertical planes from the side and end lines. All claims shall be in the form of a parallelogram unless such form is prevented by adjoining rights and the locator shall be entitled to the use of all superficial area bounded by the enclosed lines of the claim and to all minerals therein except coal, natural gas, oil and lignite, upon the terms hereinafter provided. (Id. sec. 2.)

Art. 5904k—3. Location notice; posting; temporary monuments; permanent monuments; interference with notice or monuments.—The locator of any mining claim as described under the preceding section of this Act shall post up at the center of one of the end lines of the claim a written notice giving the name of the locator and of the claim, and date of posting and shall describe the claim by giving the number of feet in length, width and approximate directions the claim lies in length from the notice, together with the section number, if known, and the county, and shall place temporary

posts, or stone markers at the four approximate corners of the claim at the time of making the location. The temporary monuments shall be replaced by permanent monuments at the four corners as given by the county surveyor within one hundred days after the issue of award to said claim. These permanent monuments shall be of timber posts four inches, or equivalent, or of stone or concrete and shall be not less than three feet high. The location notice shall be posted in a conspicuous manner so that it can be easily seen. In all conflicts, priority of location shall decide. Anyone interfering with, removing or destroying any monument, post or notice of any locator shall be subject to a fine of not to exceed $100 or 30 days in jail, either or both, and it shall be the duty of the district judges in the respective judicial districts of Texas, to charge the grand juries with an investigation of such offenses. (Id. sec. 3.)

Art. 5904k—4. Application for survey of claim; contents; filing fee; award for claim; monuments.—The locator shall within thirty days after posting the required notice, file with the county surveyor of the county in which the land or a part thereof is situated an application in writing for the survey of the claim. Such application shall be accompanied by One Dollar ($1.00) as a filing fee, and the application shall be recorded by the surveyor. The application shall give the name of the claim and the locator and such description of the boundary and location as will enable the surveyor to identify the area of the land. Within one hundred days after the application has been filed with the surveyor the application and field notes for the area applied for shall be filed in the General Land Office accompanied by One Dollar ($1.00) as a filing fee. When the application has been considered and all things have been in compliance with the Law, the Commissioner shall issue to the applicant an award for the area, and within one hundred days thereafter the owner shall erect the monuments provided for in Section 3 [Art. 5904k—3]. Nothing in this Section shall be construed to interfere with the right of the locator to proceed with the development and operation of the property from and after the posting of the location, provided such operation does not conflict with the mineral rights of a prior locator or owner. (Id. sec. 4.)

Art. 5904k—5. Survey of claim; boundaries; location and marking of corners; field notes and plat; compensation of surveyor.—In making the survey, it shall be obligatory on the surveyor that he locate and mark the corners of the claim on the ground as described in the location notice and that he shall determine the direction and distance to a corner of a section on which the claim is located, that he shall also determine the direction and distance to some prominent and permanent land mark other than a section corner which may serve as a mineral monument or marker and in the event of any conflict, this direction and distance to said prominent and permanent land mark shall have priority over all other distances and directions in serving to locate the mining claim. In making a record on the field notes and plat of the survey the directions and distances herein required shall be incorporated in and made a part of the record. For services rendered under this Act a surveyor shall not charge exceeding Ten ($10.00) Dollars per day.[9] (Id. sec. 5.)

Art. 5904k—6. Rights of locator; assessment work.—After the date of an award the owner shall have the exclusive right to the possession and use of the minerals within the area of the claim so long as he shall continue to do the annual assessment work or cause it to be done consisting of excavation in the form of a shaft or a tunnel or an open cut to the extent of ten feet in depth or length and at least four feet by five feet for the other dimensions for each claim. If an award shall be issued prior to the first day of October of any year the first annual assessment work shall be done before the end of that calendar year and during the month of January following, such owner shall file in the General Land Office his affidavit that such work has been done and shall state of what it consisted. Such owner of the minerals in such area shall during the next calendar year beginning January 1st, next after the date of such award, perform or cause to be performed, the required annual assessment work and file an affidavit thereof as in the first instance in the General Land Office during January of each succeeding year. All the assessment work for a group of claims may be done on one claim if such claims be contiguous. (Id. sec. 6.)

Art. 5904k—7. Separate or joint locations; rights and liabilities of co-owners.—Said mining claim or claims may be filed upon by one or more persons as provided for herein, separately or jointly, and if any mining claim of any character shall be filed upon jointly by two or more locators and any one or more them shall fail to pay his part of the annual rentals when due, or fail to contribute his proportion of any expenses or assessment work required in this Act within the required time, the co-owners paying their proportional part of said rentals, expenses and assessment work shall not be prejudiced thereby in their interest or title in said claim, but the right, interest, title and claim of such co-owner so defaulting shall ipso facto cease and terminate, and the same shall revert thereupon to the State or the fund to which it originally belonged. The co-owners so paying as required herein shall after such forfeitures, have the prior and preference right for ninety days thereafter, to make the delinquent payments of rentals and expenses and to do the required assessment work required of said delinquent co-owner, or finish making the payment and doing such assessment work, if any had been previously done by said delinquent co-owner, upon making of payment and doing said work as required herein by said co-owners within said ninety days, he or they shall have thirty days, after the expiration of said ninety days, within which to make affidavit to the Commissioner of the General Land Office to the effect that all of said provisions had been carried out and said work done within said time, and for the location thereon by said co-owner or co-owners of his or their mining claim covering the interest so forfeited in the same manner as if no location had ever been made by said forfeiting owner thereon. (Id. sec. 7.)

Art. 5904k—8. Forfeiture of claim; relocation.—Failure of the locator or owner of

any claim or claims to comply with any provisions of this Act prior to receiving patent thereto, shall constitute an ipso facto forfeiture of all his rights in the claim, and the claim shall be open to location by others as prescribed in this Act, the same as if no location had ever been made. Any claim which shall have been forfeited by any locator or locators, owner or owners, shall not be relocated either in whole or in part by such forfeiting locator or owner within a period of six months from time of forfeiture. (Id. sec. 8.)

Art. 5904k—9. Purchase price; assessment work; royalties.—All sales under this Act shall be upon the further condition that the applicant for the minerals in any claim shall pay the sum of fifty cents per acre, which sum shall be paid annually in advance after the award of the area and during the month of each succeeding January of each year thereafter, also upon the condition that the owner shall perform or cause to be performed the annual assessment work as provided for, and in addition thereto, pay 2 per cent royalty upon the production of such claim as shown by the net smelter, mill, mint, or refinery returns or of the sums arising from the sale of the ore or products from the claim, and received by the owner. Royalty payments arising from the sale of ores, mineral, or other products, shall be due quarterly in January, April, July and October for the quarters preceding the months and shall be accompanied by affidavit of owners, showing amounts of money received during the quarter from the sale of ore or other products and accompanied by copies of smelter or mint, mill or refinery returns or other documents setting forth the amounts received by the owner. The royalties and annual payments shall be paid to the State through the Commissioner of the General Land Office at Austin. The annual payments of 50 cents per acre shall apply on the purchase price of the claim. The owner shall have the right at any time after five years from the date of the award, to pay the balance due on the purchase price of the claim and obtain a patent thereto and after the issuance of the patent no further assessment work shall be required. The purchase price shall be Ten ($10.00) Dollars per acre. (Id. sec. 9.)

Art. 5904k—10. Other lands included.—All State land belonging to or under the jurisdiction and control of the Prison Commission of this State, or the Board of Trustees for the State Institution for the Training of Juveniles, and all other farms belonging to the State and administered by other Boards, shall become subject to the provisions of this Act; but with the express reservation that in sales of the mineral rights in or under such farms, the annual payments and the royalties shall be made so long as the purchasers of said rights shall desire to operate their respective claims; and in no event shall a patent issue upon any claim filed upon any such farms belonging to the State, and all rights of the claimant to any land or filings hereunder, shall terminate upon permanent cessation by such claimant of operation under such claim. (Id. sec. 9a.)

Art. 5904k—11. Surface rights of locator; rights of way.—The locator or owner of a mining claim shall have the right to occupy within the limits of his claim so much of the surface ground as is strictly necessary for the use and exploration of the mineral deposits and for the building and works necessary for mining operations and for the treating and smelting of the ore produced on such claims and to occupy within and without the limits of his claim the necessary land for right of way, for ingress and egress to and from his claim, for roadways or railways; provided that if the locator or owner of the mineral right cannot agree with the owner or lessee of the surface right in regard to the acquiring of same and in regard to the compensation for the injury incident to the opening and the working of such mine and the access thereto, he may apply to the judge of the county court of the County in which such mining claim is located by filing a written petition setting forth with a sufficient description the property and surface right sought to be taken and the purpose for which the same is to be taken and it shall be the duty of such County Judge of such County to appoint three disinterested freeholders to examine, pass upon and determine the damages and compensation to be paid to the owner of such surface right or other property necessary to be taken, and the proceedings for acquiring or condemning such surface right or other property shall, at all times, so far as possible, be covered by the laws relating to the condemnation of rights of way for railway companies, locator or owner of such mining claim, occupying the position of the railway company, and an appeal may be taken from the decision of the Commissioners upon the same terms and conditions and subject to the same regulations and qualifications prescribed by law for the condemnation of right-of-way for railways. Nothing in this section shall be construed as giving the prospector, or locator any grazing right or rights to any surface or well water in use for livestock or to any timber rights either on or off the claim located to the detriment of the surface owner or lessee. In case minerals are produced upon the claim or claims provided for herein, then whether same be worked as a claim or sold and patented to the purchaser thereof, said 2 per cent royalty upon the production of such claim shall be perpetual, and payable as provided for herein. (Id. sec. 10.)

Art. 5904k—12. Sale of land without minerals; discovery of other minerals.—The issuance of an award of the filing of a prospector's location on unsold land included within this Act, shall not prevent the sale of the land without minerals on which such mineral or mining claim may be located under the laws applicable to such land, but in case of such sale after an application has been filed with the Commissioner of the Land Office as herein provided the purchaser of such land shall not be entitled to any part of the proceeds of such minerals or mining location nor other compensation, nor shall such purchaser have any action for damages done to such land by or resulting from the proper working of or operation under such award or prospector's location. Should any mineral or substance within the provisions of this Act, other than those included in the permit or lease, under which one is operating be discovered while the area is being worked,

for the mineral and substances embraced in such permit or lease, the owner thereof shall have a preference right for 60 (sixty) days after such discovery in which to file on the area allowed one for such minerals or other substances by complying with the provisions of this Act, relating to the mineral or substances discovered. (Id. sec. 11.)

Art. 5904k—13. Partial invalidity of act.—If any provisions of this bill be held to be unconstitutional either as applied to any character of land described in Section 1 [art. 5904k—1] or in any other respect, such decision shall not be construed to invalidate the provision of this Act with regard to any other character of land described in Section 1 or any other provision of this Act. (Id. sec. 12.)

Art. 5904k—14. Repeal.—All laws and parts of laws in conflict with this Act are hereby repealed. (Id. sec. 13.)

COAL AND LIGNITE

Art. 5904*l*. Coal, lignite, and sulphur may be prospected for and mined; notice; application; survey and field notes.—Any person, association of persons, corporate or otherwise, that may desire to acquire the right to prospect for and mine coal, lignite or sulphur may do so by complying with the following conditions, namely:

1. Post up a notice to the effect that the applicant has located a coal, lignite or sulphur mine, stating the area desired not to exceed 2560 acres or four sections of 640 acres each, more or less, and give the approximate courses and the approximate distances that the lines shall extend from the point at which the notice is posted and date the notice.

2. Within thirty days after the date of such posting the applicant shall file an application for a survey of the claim and accompany it with one dollar as a filing fee. The application shall state when the claim was first posted; provided, if an applicant files on whole tracts or upon eighty acres or multiples thereof of surveyed land the application shall be filed in the office of the clerk of the proper county with one dollar as a filing fee and after being recorded by the clerk shall be filed in the General Land Office without field notes within thirty days after being filed with the county clerk and accompanied with one dollar as filing fee.

3. Within ninety days from the filing of the application the surveyor shall survey the area in substantial compliance with the posted notice, record the field notes and make a plat of the survey. The application, field notes and plat shall be filed in the General Land Office within one hundred days after the application was filed with the surveyor, accompanied by one dollar as a filing fee and ten cents per acre for each acre included within the area embraced in the field notes or in the application if no field notes are required, and accompanied by a sworn statement by the applicant showing what interest he has in any other permit, lease or patent issued under this Act and in good standing. (Acts 1913, p. 409, sec. 13; Acts 1917, ch. 83, sec. 10.)

Art. 5904*ll*. Conformity to posted notice; lines of previous surveys; compensation to surface owners.—The application and survey shall not differ so materially from the original posted notice as to defeat the rights of subsequent locators. Lines of previous surveys need not be regarded by an applicant unless he may desire to do so. When the surface is owned by another than the applicant the applicant shall pay to the surface owner ten cents per acre in advance each year during the life of the owner's claim. (Id. sec. 11.)

Art. 5904*lll*. Issuance of permit; development; annual statement; lease; termination of rights under permit; royalty to state; books, etc., open to inspection; mode of operation.—When the conditions imposed relating to coal, lignite and sulphur have been complied with and the application, field notes and plat have been approved by the Commissioner of the General Land Office, and the area found to be within the provisions hereof, the said Commissioner shall issue to the applicants or his assignee a separate permit for each area, according to the applicant's application, conferring upon the owner an exclusive right to prospect for, develop and put out coal, lignite and sulphur within the designated area for a term not to exceed five years. Before the expiration of one year after the date of the permit the owner thereof shall in good faith begin actual work necessary to the physical development of the area in each permit and if coal lignite or sulphur is not sooner developed in commercial quantities the owner or manager shall, within thirty days after the expiration of each year, except the fifth, from the date of the permit, file in the General Land Office a sworn statement supported by two disinterested credible persons that such actual work was begun within the required time and that a bona fide effort to develop the said area was made during each preceding year of the permit and showing what work was done and expenditures incurred and whether or not coal or lignite had been discovered in commercial quantities. If the Commissioner is satisfied that the owner has been diligent and has made a bona fide effort to develop the area such owner shall have the right to prospect the area for another year. Within thirty days after coal, lignite or sulphur has been found in commercial quantities the owner shall apply for a lease of the area included in the permit and such lease may be granted for a term not to exceed ten years with the right of renewal or renewals for the same or a less term. If coal, lignite or sulphur should not be developed in commercial quantities and a lease applied for within five years after the date of the permit the rights of the owner shall terminate and the area be again subject to prospect and development by another than the forfeiting owner. For every ton of coal mined the owner shall pay to the State a royalty of ten cents, and for every ton of lignite mined the owner shall pay to the State a royalty of seven cents, and for every ton of sulphur mined the owner shall pay to the State a royalty of twenty-five cents, said payments to be made monthly through the Commissioner of the General Land Office at Austin and the remittances shall be accompanied by the sworn statement of the owner or manager showing the number of tons mined and to whom sold and the

selling price. All the books, accounts, weights and wage contracts, correspondence and other papers in any way pertaining to the operation of any mine under this Act shall be open to the inspection of the Commissioner of the General Land Office or his representative and any other representative of the State appointed by the Governor or Attorney General. All coal and lignite mines shall be kept in reasonably continuous operation, and shall be operated in conformity with rules and regulations prescribed by the State Inspector of Mines and the General Statute relating thereto. (Id. sec. 12.)

OTHER MINERALS

Art. 5904m. Number of acres in claims; what minerals may be mined.—A mining claim upon any mineral or other substance mentioned in this Act except petroleum, natural gas, coal or lignite and sulphur shall not exceed eighty acres, and such claim shall be of unlimited depth and bounded by four vertical planes. The locator shall be entitled to all the minerals and substances in the area that are named in this Act except petroleum, natural gas, coal, lignite and sulphur and shall have the exclusive right to prospect for, develop and put out the minerals and substances upon the terms and conditions imposed by the provisions of this Act. (Acts 1917, ch. 83, sec. 13.)

Art. 5904n. Proceedings to acquire claim; shape of claim; separate tracts to be contiguous; number of tracts that may be acquired by one person.—One desiring to file on any area for any mineral or other substance included within the operation of this Act except petroleum, natural gas, coal, lignite and sulphur shall proceed in the manner provided for under coal, lignite and sulphur and the terms and conditions prescribed therein shall be the precedure and required in all other cases except for petroleum and natural gas. The length of no claim nor combination of claims shall exceed twice the width. If an area applied for in one application is composed of two or more tracts of not more than eighty acres each nor more than five tracts all of such areas shall be contiguous. When one has obtained five claims eligible to be embraced in one permit such applicant shall not obtain any more claims within one mile thereof, but if one obtains less than five claims eligible to be embraced in one permit such one may obtain such additional area within one mile of the other as will equal five full claims of eighty acres each. (Id. sec. 14.)

Art. 5904o. Issuance of permit; lease; conditions; royalty to state; commutation.—When the application, field notes and plat have been filed in the General Land Office together with a sworn statement by the applicant showing what interest he had in any other permit, lease or patent issued under this Act and still in good standing, and the papers have been approved by the Commissioner, the applicant or his assignee shall be entitled to the right to prospect for, develop and put out all the minerals and substances named in this Act that may be found in the area, except petroleum, natural gas, coal, lignite and sulphur for a period of five years and upon the terms and conditions provided herein, and as evidence of such right, the Commissioner shall issue to the applicant or his assignee a permit for the term of five years upon the same terms, conditions and requirements that are provided for permits for coal, lignite and sulphur so far as applicable. And leases shall be applied for and issued within the five years upon the same terms, conditions and requirements that are provided for leases for coal, lignite and sulphur so far as applicable. In all reports of development work the kind of mineral or other substances found shall be given. So far as applicable every provision and requirement relating to coal, lignite, and sulphur shall apply to the applicant and the State in the matter of other minerals and substances except petroleum and natural gas unless otherwise provided herein. In full payment to the State for the right to take from any mining claim for any mineral or substance included in this Act except petroleum, natural gas, coal, lignite of sulphur, the owner shall pay to the State through the Commissioner of the General Land Office at Austin a royalty equivalent to five percentum of the value of the total gross production sold or disposed of from such mining claim or one hundred dollars per acre as provided in this Act. (Id. sec. 15.)

LEASE OF LANDS FOR PRODUCTION OF OIL AND NATURAL GAS

Art. 5904o—1. Lands included.—All islands, salt water lakes, bays, inlets, marshes and reefs owned by the State within tide water limits, and that portion of the Gulf of Mexico within the jurisdiction of Texas, and the unsurveyed public free school lands shall be included herein and shall be subject to lease by the Commissioner of the General Land Office to any person, firm, or corporation for the production of oil and natural gas that may be therein or thereunder in accordance with the provisions of this Act, and such rules and regulations as may be adopted by said Commissioners as being necessary to the proper execution of its purposes. (Acts 1919, 2d C. S., ch. 19, sec. 1.)

Art. 5904o—2. Rental and royalties; amount.—The areas included herein shall be leased for one-eighth of the gross production of oil, or the value of same, that may be produced and saved and one-eighth of the gross production of gas, or the value of same, that may be produced and sold off of the area, and ten cents per acre in advance for the first year and thereafter in advance an additional sum of twenty-five cents per acre for the second year, and fifty cents per acre for the third year and one dollar per acre for each and every year thereafter, not to exceed ten years, that the owner of the lease shall desire to hold the rights granted therein, and until production is secured in commercial quantities, and in addition thereto such sum of money, if any, that one may pay therefor; provided, whenever production shall have been secured in commercial quantities, and the payment of royalty begins and continues to be paid, as provided herein, the owner shall be exempt from further annual payments on the acre-

age. If production should cease and royalty not be paid, the owner of the lease shall, at the end of the lease year in which royalty ceased to be paid, and annually thereafter in advance pay one dollar per acre so long as such owner may desire to maintain the rights acquired under the lease not to exceed ten years from the date of said lease. (Id. sec. 2.)

Art. 5904*o*—3. Advertisement of areas.—The Commissioner of the General Land Office shall fix the day and hour when an area or areas will be subject to lease and he shall advertise or readvertise such area or areas at least thirty days before such lease date, except as elsewhere provided in the event of tie bids. If there should be no other sufficient means for giving the necessary publicity as to what areas will be subject to lease and the time when applications may be filed the Commissioner shall have lists of such areas printed for free distribution at the expense of the State which expense shall be paid out of the appropriation for public printing. Such lists shall contain a brief designation of the areas subject to lease and the terms upon which they may be leased and the time when applications therefor may be filed in the General Land Office. (Id. sec. 3.)

Art. 5904*o*—4. Applications for separate areas; lease; term.—Applications for separate areas and the first payment of ten cents per acre and the sum offered in addition thereto, if any, for any area shall be delivered into the General Land Office on or before the day and hour on which the area will be subject to lease in sealed envelopes on which shall be endorsed in substance "Application to lease Minerals," and in addition thereto the date the area will be subject to lease. All envelopes so endorsed shall be securely kept by the Commissioner or his Chief Clerk unopened until the date on which applications are to be opened and at said hour either or both of them shall begin to open the envelopes in the presence of such persons as may desire to be present. All applications received up to the opening hour whether open or sealed, endorsed or not endorsed, shall be considered as properly delivered into the General Land Office. An application which includes two or more areas or is for a price less than the fixed royalty and price per acre shall be void. When an application shall have been filed and considered and the area found to be subject to lease, the lease shall be issued for a term not to exceed twenty-five years to the applicant that pays the most, if any sum, for the area in addition to the fixed price per acre and the stipulated royalty. If production should not be secured in ten years the lease shall terminate and the area again be subject to lease as in the first instance. A duplicate of the lease shall be kept on file in the General Land Office. If two or more persons should offer the same price for the same area and the same should be the highest price offered, all shall be rejected and a date fixed within the discretion of the Commissioner, but not later than the fifteenth day of the following month, when the area will be subject to lease as in the first instance; provided, if the time so fixed should be a date prior to the said fifteenth day of the next month an application at a price less than the former sum offered shall not be considered. All sums paid upon rejected applications shall be returned by the State Treasurer. (Id. sec. 4.)

Art. 5904*o*—5. Surveyed and unsurveyed areas.—For the purpose of executing the provisions of this Act to the best interest of the State the Commissioner of the General Land Office may recognize or decline to recognize any survey or surveys heretofore made of any area included herein. Such survey as may be so recognized shall be advertised and shall be subject to lease as a whole. Such surveys as may not be so recognized shall be deemed, together with all adjacent unsurveyed areas, as one unsurveyed area, and the said Commissioner shall advertise the whole or designated portions thereof for lease, and such whole area or designated portions thereof as may be so advertised shall be subject to lease as a whole according to the advertisement; provided, field notes for such unsurveyed area may, in the discretion of the Commissioner, be required before a lease is issued therefor. (Id. sec. 5.)

Art. 5904*o*—6. Royalties; payment; books and accounts.—Royalty equal to one-eighth of the value of the gross production, as herein, provided, shall be paid to the State on or before the twentieth day of each month for the preceding month during the life of the lease, and it shall be accompanied by the sworn statement of the owner, manager, or other authorized agent, showing the gross amount of oil produced and saved since the last report, and the amount of gas produced and sold off the area, and the market value of the oil and gas together with a copy of all daily guages of tanks, gas meter readings, if any, pipe line receipts, gas line receipts and other checks or memoranda of amount produced and put into pipe lines, tanks, or pools, and gas lines or gas storage. The books and accounts, the receipts and discharges of all lines, tanks, pools and meters, and all contracts and other records pertaining to the production, transportation, sale and marketing of the oil and gas shall at all times be subject to inspection and examination by the Commissioner of the General Land Office, the Attorney General, the Governor, or the representative of either. (Id. sec. 6.)

Art. 5904*o*—7. Royalties and other sums due; where and to whom paid; disposition of.—Royalty and all other sums shall be due and payable to the State at Austin, Texas, and shall be paid to the Commissioner of the General Land Office and he shall transmit all remittances in the form received to the State Treasurer who shall credit the permanent free school fund with all amounts received from the unsurveyed school lands and with two-thirds of the amount so received from other areas and shall credit the general revenue fund with the remaining one-third from said other areas. All payments shall be in the form of cash, bank draft on some State or National Bank in Texas, or Post-Office or Express money order, or such other form as may be

prescribed by law, for making remittances to the State Treasury. (Id. sec. 7.)

Art. 5904*o*—8. Lien of state for royalties, etc.—The State shall have a first lien upon all oil and gas produced upon any lease area to secure the payment of all unpaid royalty and other sum or sums of money that may be due and become due under the provisions of this Act. (Id. sec. 8.)

Art. 5904*o*—9. Offset wells.—If oil or gas should be produced in commercial quantities in a well on an area privately owned which well should be within one thousand feet of an area leased under this Act, the owner of the lease on such State area shall, within sixty days after the initial production on such privately owned area, begin in good faith and prosecute diligently the drilling of an offset well or wells on the area so leased from the State and such offset well or wells shall be drilled to such depth and use such means as may be necessary to prevent the undue drainage of oil or gas from beneath such State area. A log of each well, whether producer or non-producer, shall be filed in the General Land Office within thirty days after the well has been completed or abandoned. (Id. sec. 9.)

Art. 5904*o*—10. Pollution of waters.—The development of wells and the development and operation upon the areas included herein shall be done so far as practicable in such manner as to prevent such pollution of the water as will destroy fish, oysters and other sea food and it shall be the duty of the Game, Fish & Oyster Commissioner to enforce such rules and regulations as may be prescribed for that purpose by the Commissioner of the General Land Office. (Id. sec. 10.)

Art. 5904*o*—11. Transfer or relinquishment of lease.—One may transfer his lease at any time and such transfer shall be recorded in the County or counties in which the area or part thereof is situated and within ninety days after the date of its execution the recorded transfer or certified copy of same shall be filed in the General Land Office accompanied by one dollar as filing fee, and thereby the assignee shall succeed to all the rights and be subject to all the obligations and penalties of the original lessee. An owner may relinquish his lease to the State at any time by having the relinquishment recorded in the county or counties in which the area or part thereof is situated and within ninety days after the date of its execution the recorded relinquishment or certified copy of same shall be filed in the General Land Office accompanied by one dollar as filing fee, and thereby the owner of such lease shall be relieved of any further obligations to the State, but such relinquishment shall not have the effect to release the owner from any obligations or liabilities. theretofore accrued in favor of the State. (Id. sec. 11.)

Art. 5904*o*—12. Forfeiture of lease.—If the owner of a lease should fail or refuse to make the payment of any sum due either on an area or royalty on the production within thirty days after same shall become due, or if such owner or his authorized agent should knowingly make any false return or false report concerning production, royalty, or drilling, or if such owner should fail or refuse to drill any offset well or wells in good faith as required by this Act and the rules and regulations adopted by the Commissioner of the General Land Office, or if such owner or his agent should refuse the proper authority access to the records pertaining to the operations under this Act, or if such owner or his authorized agent should knowingly fail or refuse to give correct information to the proper authority, or fail or refuse to furnish the log of any well as provided herein, such lease shall be subject to forfeiture by the Commissioner of the General Land Office and when sufficiently informed of the facts which authorize a forfeiture, the Commissioner of the General Land Office shall forfeit same, and the area shall be subject to lease again to another than to such forfeiting owner after due advertisement; provided, such forfeiture may be set aside and the lease and all rights thereunder reinstated before the rights of another intervene upon satisfactory evidence of future compliance with the provisions of this Act and the rules and regulations authorized to be adopted for the purpose of executing its provisions. (Id. sec. 12.)

Art. 5904*o*—13. Right of way for entry, etc., onto land.—Whenever it may be necessary for the owner of a lease acquired under this Act to enter the enclosed land of another for the purpose of ingress and egress to and from the area so leased from the State and such lessee and owner of enclosure or agent of such owner cannot agree upon the place of such entry, nor the conditions of such entry, the lessee or his agent may petition the Commissioners Court of the County or Counties in which such enclosure may be situated in whole or in part for the opening of such way of ingress and egress aforesaid as may be necessary. Upon the filing of such petition it shall be the duty of said Court or Courts to proceed to lay out and establish in the manner provided for the laying out of third class public roads, such road or roads as may be necessary for the purposes named herein. (Id. sec. 13.)

Art. 5904*o*—14. Prior rights.—Nothing in this Act shall be construed to affect or impair valid rights that may have been acquired by virtue of any valid application heretofore filed nor any valid permit or lease heretofore issued upon any area included in this Act, but such rights, obligations, and penalties attaching thereto shall remain in full force and effect so far as it may relate to the areas included herein. (Id. sec. 14.)

Art. 5904*o*—15. Repeal.—So much of Chapter 83, of an Act approved March 16, 1917, as relates to the leasing of the areas included in this Act is hereby repealed so far as it includes and provides for the leasing of said areas. (Id. sec. 15.)

See ante, 5904-5904*j*, 5904*l*-5904*o*, post, 5904p-5904w.

OIL AND NATURAL GAS ON SURVEYED FREE SCHOOL AND ASYLUM LANDS

Art. 5904*o*—16. Owners of soil constituted agents of state; relinquishment to owners of undivided part of oil and gas; remainder reserved for public free school fund and asylum funds.—To promote the active co-operation of the owner of the soil and to facilitate the development of its oil and gas resources the State hereby constitutes the owner of the soil, its agent for

the purposes herein named, and in consideration therefor, relinquishes to and vests in the owner of the soil an undivided fifteen-sixteenths of all oil and gas and the value of the same that may be upon or within the surveyed free school and asylum lands and portions of such surveys that have heretofore been sold with a mineral classification and that which may hereafter be sold with a mineral classification or mineral reservation, subject to the terms and conditions of this Act and any future law; and the remaining undivided portion of said oil and gas and the value of same is hereby reserved for the use and benefit of the public free school fund and the several asylum funds. (Acts 1919, 2d C. S., ch. 81, sec. 1.)

Art. 5904*o*—17. Sale or lease of oil or gas by owners of land; terms and conditions; minimum price and royalties; rentals; payments to state.—The owner of said land is hereby authorized to sell or lease to any person, firm or corporation the oil and gas that may be thereon or therein upon such terms and conditions as such owner may deem best, subject only to the provisions of this Act and the reservations herein, for the benefit of the school and asylum funds. All leases and sales so made shall be assignable; provided that no oil or gas rights shall be sold or leased hereunder for less than ten cents per acre per year, plus royalty, and the lessee or purchaser shall in every case pay to the State ten cents per acre per year of sales and rentals, and, in case of production, shall pay to the State the undivided one-sixteenth of the value of the oil and gas as reserved in Section 1 of this Act [Art. 5904*o*—15];—it being expressly provided that all sales or leases of the land made by the owner under this Section of the Act shall, as respects the rental to be paid, be made for and inure to the benefit of the State to the extent herein provided. (Id. sec. 2.)

Art. 5904*o*—18. Offset wells on lands not included in act; requirements as to drilling.—If oil or gas should be discovered in paying quantities on land that is not included in this Act and within one thousand feet of land that is so included, the owner, lessee, sub-lessee or receiver or other agent in control of such land as is included herein, shall in good faith begin the drilling of an offset well or wells upon such land as is included herein within one hundred days after the first discover, and prosecute same with diligence to completion. Every offset well shall be drilled to the depth necessary for effective protection against undue drainage by other wells on other lands in that locality. (Id. sec. 3.)

Art. 5904*o*—19. Same subject; failure or refusal to drill or develop such wells; relinquishment forfeited.—If the persons aforesaid, who own or control land included in this Act, should fail or refuse to begin such drilling of offset wells thereon within the time required or fail or refuse to drill such well or wells diligently and in good faith or fail or refuse to drill such well or wells to the depth necessary for the purpose intended, or fail or refuse to use the means necessary to the development of any well or wells thereon within the time required or fail or refuse to drill such well drilled thereon, thereupon the relinquishment herein granted shall ipso facto terminate and the rights acquired thereunder shall likewise terminate, and the oil and gas relinquished herein shall revert to and become the property of the State's General Revenue Fund and when the Commissioner of the General Land Office is sufficiently informed of the facts which so terminate such rights, he shall indorse on the wrapper containing the papers relating to the sale of the land words indicating such termination and sign it officially. (Id. sec. 4.)

Art. 5904*o*—20. Same subject; sale of oil and gas on forfeiture of relinquishment; price, etc.—When the relinquishment granted herein and the rights acquired thereunder shall have been terminated as provided in the preceding section, the Commissioner shall take possession of the land and advertise the oil and gas therein for sale. All such sales shall be made at such times as the Commissioner may determine and in the same manner as is now provided for the sale of public free school land. The sale shall be made to the person, firm or corporation that will pay the highest price therefor in addition to one-eighth of the oil and gas produced or the value of same, which shall be reserved to the public free school fund. The sum received in addition to the reserved one-eighth shall be divided equally between the General Revenue Fund of the State and the owner of the soil after deducting the expenses incident to the advertisement and sale. Purchasers at such sales shall begin the drilling of the necessary offset wells within sixty days after the acceptance of their offer and the failure to do so and the failure to comply with the provisions of this Act relating to the drilling of offset wells shall likewise operate as a termination of the right acquired thereunder and the substances therein shall be subject to sale as herein provided. (Id. sec. 5.)

Art. 5904*o*—21. Payments of value of gross production of oil and gas to state and owners of soil; books, accounts, etc.—One-sixteenth of the value of the gross production of oil saved and one-sixteenth of the gross production of gas saved and sold off the premises shall be paid to the State and like amounts to the owner of the soil on or before the twentieth day of each month for the preceding months and it shall be accompanied by a sworn statement of the owner, manager, or other authorized agent, showing the gross amount of oil produced and saved since the last report and the gross amount of gas produced and sold off the premises, and the market value of same, together with a copy of all daily guages of tanks, gas meter readings, if any, pipe line receipts, gas line receipts and other checks or memoranda of amount produced and put into the pipe lines, tanks or pools and gas lines or gas storage. The books and accounts, the receipts and discharges of all lines, tanks, pools and meters, and all contracts and other records pertaining to production, sale and marketing of oil or gas shall at all times be subject to inspection and examination by the Commissioner of the General Land Office, the Attorney General, the Governor, or the representative of either. (Id. sec. 6.)

Art. 5904*o*—22. Amounts due state, where and to whom paid.—All sums due

the State under the operations of this Act shall be due and payable at Austin, Travis County, and shall be paid to the Commissioner of the General Land Office and he shall transmit all remittances in the form received to the State Treasurer, who shall credit the fund to which the land originally belonged with the amount paid upon production. (Id. sec. 7.)

Art. 5904o—23. Lien of state on wells to secure payment of amounts due.—The State shall have a first lien upon all oil and gas produced upon the land to secure the payment of all sums of money that may be due or become due under the provisions of this Act; and the owner of the soil shall have a second lien thereon to secure the payment of any sum that may be due him. (Id. sec. 8.)

Art. 5904o—24. Failure or refusal to pay amounts due; false returns or reports; refusal of or giving false information; forfeiture of rights acquired under permit or lease.—If any person, firm or corporation, operating under this Act should fail or refuse to make the payment of any sum of money due within thirty days after it becomes due, or if such one or an authorized agent should knowingly make any false return or false report concerning production or drilling, or if such one should fail or refuse the proper authority access to the records pertaining to the operations, or if such one or an authorized agent should knowingly fail or refuse to give correct information to the proper authority, or knowingly fail or refuse to furnish to the General Land Office a correct log of any well, the rights acquired under the permit or lease shall be subject to forfeiture by the Commissioner of the General Land Office, and when sufficiently informed of the facts which authorize a forfeiture, he shall forfeit same, and the oil and gas shall be subject to sale in the manner as provided in Section five of this Act; except the owner of the soil shall not thereby forfeit his interest in the oil and gas; provided such forfeiture may be set aside and all rights theretofore existing shall be reinstated at any time before the rights of another intervene upon satisfactory evidence of future compliance with the provisions of this Act. (Id. sec. 9.)

Art. 5904o—25. Relinquishments to owners of soil subject to rights under permits to prospect for oil and gas already existing or hereafter granted.—The provisions of this Act relinquishing to the owner of the soil fifteen-sixteenths of the oil and gas in or under such soil is made subject to the rights now existing under valid permits to prospect for oil and gas that have heretofore been issued or which may hereafter be issued upon valid application now on file for such permit; and the rights secured under such permits or applications for permits shall be terminated in the manner provided by the law under which such rights were secured or under the provisions of this Act, but when such rights shall be so terminated, such relinquishments shall be fully effective; provided a relinquishment to the State of a lease that may be producing oil or gas in paying quantities shall not operate to relinquish or convey to the owner of the soil any interest whatever in the oil and gas that may be in the land included in such lease. (Id. sec. 10.)

Art. 5904o—26. Subsequent purchasers of unsold public free school or asylum lands for which prospecting permits have issued.—If one has heretofore or should hereafter acquire any valid right to the oil and gas in any unsold public free school or asylum land under any other law, a subsequent purchaser of such land shall not acquire any rights to any of the oil and gas that may be therein, but when such rights shall be terminated in the manner provided in the law under which such rights were obtained, then the owner of the soil shall become the owner of that portion of the oil and gas herein relinquished and shall be thereafter subject to the provisions of this Act. A forfeiture of the purchase of any survey or tract for any cause shall operate as a forfeiture of the minerals therein to the State. (Id. sec. 11.)

Art. 5904o—27. Permits; assignment; record of.—Permits issued, or to be issued upon applications heretofore filed, or hereafter filed upon any land included in this Act may be assigned as a whole into one ownership or may be grouped or combined into one organization, upon such terms as the owners may agree, and in one or more groups or combinations not to exceed sixteen sections of 640 acres each, more or less, in one group, for the purpose of developing oil and gas. All such assignments and agreements shall be recorded in the county or counties in which the land or part thereof is situated and shall be filed in the General Land Office within sixty days after the execution of the same, accompanied by one dollar as a filing fee. (Id. sec. 12.)

Art. 5904o—28. Permittees to begin drilling well, when; limitation of time for completing development of wells.—The owner of a permit issued upon applications heretofore or hereafter filed shall have eighteen months from the date thereof in which to begin the drilling of a well for oil and gas on some portion of the land included therein. The owner or owners of a combination of permits, held by assignment or agreement shall have a like period of eighteen months from the average date of the permits included therein in which to begin the drilling of a well for oil and gas on some portion of the land included therein, and the drilling on one permit shall be sufficient for the protection against forfeiture of all the permits included in such combination. Owners of permits included herein shall have three years after the date of the permit and the same time after the average date of the permits placed in a combination of permits in which to complete the development of oil and gas thereon, and if oil and gas should not be found in paying quantities and a lease applied for within said time, all rights in such permit or combination of permits shall terminate, and the oil and gas in such land shall become subject to the provisions of this Act relating to the relinquishment of oil and gas to the owner of the soil. (Id. sec. 13.)

Art. 5904o—29. Report of development of well by permittee; application for lease; log of well or wells; issue of lease.—If oil or gas should be produced in

paying quantities upon any land included in this Act, the owner of the permit shall report the development to the Commissioner of the General Land Office within thirty days thereafter and apply for a lease upon such whole surveys or tracts in each permit as the owner or owners of a combination of permits may desire to be leased and accompany the application with a log of the well or wells, and the correctness of the log shall be sworn to by the owner, manager or driller, and thereupon a lease shall be issued without the payment of any additional sum of money and for a period not to exceed ten years, subject to renewal or renewals. (Id. sec. 14.)

Art. 5904*o*—30. Royalties payable by permittee to state and owners of soil.—The owner of a permit or combination of permits that desire to avail themselves of the terms of this Act shall pay to the State ten cents per acre, annually in advance, for the second and third years and shall likewise pay to the owner of the soil ten cents per acre for the first year of such permit before availing himself of the privileges of this Act, and a like sum thereafter annually in advance. A failure to make either of said payments shall subject the permit or permits to forfeiture by the Commissioner of the General Land Office, and when sufficiently informed of the facts which subjects the permit or permits to forfeiture the said Commissioner shall forfeit the permit or permits by an endorsement of forfeiture upon the wrapper containing the papers relating to the permit or permits and sign it officially. The payment of the ten cents per acre to the owner of the soil may be made in person or by payment to the County Clerk of the county in which the land is situated, and the said clerk shall deposit such payment in some bank at the county seat to the credit of the record owner of such land. If the owner of the soil should refuse to accept such payment, the said clerk shall withdraw such deposit and return same to the owner of the permit or permits. The payment, or the tender of payment, shall be evidenced by the receipt of the owner or part owner or County Clerk filed among the papers in the General Land Office relating to such permit or permits. (Id. sec. 15.)

Art. 5904*o*—31. Relinquishment of permits.—The owner of a permit or combination of permits may relinquish to the State a permit or combination of permits or any whole survey or whole tract included in a permit at any time before obtaining a lease therefor by having such relinquishment recorded in the county or counties in which the land or a part thereof is situated and file it in the General Land Office within sixty days after its execution, accompanied by one dollar as a filing fee. (Id. sec. 16.)

Art. 5904*o*—32. Retroactive operation of act.—The provisions of this Act, so far as they relate to a combination of permits and extensions of time for beginning development and time for development, shall apply to permits heretofore issued and those hereafter issued upon University land. (Id. sec. 17.)

Art. 5904*o*—33. Damage to soil.—The payment of the ten cents per acre and the obligation to pay the owner of the soil one-sixteenth of the production and the payment of same when produced and the acceptance of same by the owner, shall be in lieu of all damages to the soil. (Id. sec. 18.)

Art. 5904*o*—34. Laws relating to permits continued in force.—All the terms, conditions, limitations and obligations provided in the law under which permits included herein have been or may be issued and rights secured therein shall continue and remain in full force and effect except as changed or modified by this Act. (Id. sec. 19.)

Section 20 of this act repeals all conflicting laws.

GENERAL PROVISIONS

Art. 5904p. Definitions and requirements; abandonment or relinquishment.—The general provisions in this and the following section shall apply to all the foregoing provisions so far as applicable.

Surveyed land within the meaning of this Act shall include all tracts for which there are approved field notes on file in the General Land Office and eighty acre tracts and multiples thereof of such surveys.

Unsurveyed areas within the meaning of this Act include all areas for which there are no approved field notes on file in the General Land Office.

All applications for surveyed land shall be filed with the clerk of the county in which the tract or a portion thereof is situated or with the clerk of the county to which such county may be attached for judicial purposes and accompanied by one dollar filing fee, and it shall be filed in the General Land Office within thirty days after it was filed with the county clerk and accompanied by one dollar filing fee.

All applications for unsurveyed areas shall be filed with the county surveyor, or his deputy, of the county in which the area or a part thereof is situated, accompanied by one dollar filing fee, but if such county has no surveyor then the application shall be filed with the clerk of the proper county and by him recorded in the surveyor's records, and in that event the area may be surveyed by the surveyor of the nearest county as now provided by law. The area shall be surveyed within ninety days and the application, field notes and plat shall be filed in the General Land Office, accompanied by a filing fee of one dollar, within one hundred days after the date of the filing of the application.

The payment per acre required to be made before the issuance of a permit shall be paid annually thereafter during the life of the permit or lease.

A separate written application shall be made for the area desired in a permit. No permit, lease or patent shall embrace the area in two or more applications.

No application, permit, lease or patent shall embrace a divided area.

Whole tracts of surveyed land may be applied for as a whole or in eighty acre tracts or multiples thereof without furnishing field notes therefor.

A duplicate of every permit and lease shall be kept in the General Land Office.

The area in each permit shall be developed independently of other areas.

When one desires a lease or patent any one or more whole tracts in the permit may be abandoned by relinquishment filed in the

General Land Office as herein provided and thereupon obtain a lease or patent upon the remaining area; provided such remaining areas is in a solid body.

An owner may relinquish a permit or lease at any time by having the deed of relinquishment acknowledged, recorded by the proper county clerk and filed in the General Land Office accompanied by one dollar filing fee. The Commissioner of the General Land Office shall mail notice to the proper county clerk of the filing of the relinquishment and when said notice has had time through due course of mail to reach said clerk the area shall be subject to applications as in the first instance. (Acts 1917, ch. 83, sec. 16.)

Art. 5904q. Disposition of proceeds.—The proceeds arising from the activities under this Act which affects land belonging to the permanent Public Free School Fund, the permanent University Fund and the permanent funds of the several asylums shall be credited to the permanent funds of said institutions, and the proceeds arising from the activities affecting other areas shall be credited to the general revenue. (Acts 1917, ch. 83, sec. 17; Acts 1917, 3d C. S., ch. 21, sec. 1.)

Art. 5904r. Sale or other disposition of permit or lease; registration; sublease.—The owner of a file or permit or lease under any provision of this Act may sell same and the rights secured thereby at any time, also fix a lien of any kind thereon to any person, association of persons, corporate or otherwise, who may be qualified to receive a permit or lease in the first instance; provided, the instrument evidencing the sale or lien shall be recorded in the county where the area or part thereof is situated or in the county to which such county may be attached for judicial purposes and same shall be filed in the General Land Office within sixty days after the date thereof accompanied with a filing fee of one dollar, and if not so filed the contract evidenced by said instrument shall be void and the obligations therein assumed shall not be enforceable; provided further, a sublease contract need not be filed in the General Land office. (Acts 1917, ch. 83, sec. 18.)

Art. 5904s. Forfeiture of rights under permit or lease.—If a permit or lease should be issued upon a statement by the applicant which is false or untrue in material matters, or should the owner of a permit fail or refuse to begin in good faith the work necessary to the development of the area within the time required, or should the owner of a permit fail or refuse to proceed in good faith and with reasonable diligence in a bona fide effort to develop an area included in his permit after having begun the development, or should the owner of a permit fail or refuse to apply for a lease within the prescribed time, or should the owner of a lease fail or refuse to proceed in good faith and with reasonable diligence and in a bona fide effort to develop, operate and put out the mineral or other substance at any time during the life of the lease, or should the owner of a lease fail or refuse to make proper remittances in payment of royalty or other payments or fail or refuse to make the proper statement, or fail to furnish the required evidence of the output and market value and material matters relating thereto when requested, or fail to make the annual payment on the area when requested so to do the permit or lease, as the case may be, shall be subject to forfeiture, and when the Commissioner is sufficiently informed of the facts which subject the permit or lease to forfeiture he may declare same forfeited by proper entry upon the duplicate permit or lease kept in the General Land Office. When forfeiture has been declared a notice of that fact shall be mailed to the proper county clerk and the area shall be subject to the application of another than the forfeiting owner when the notice has had time to reach the county clerk through due course of mail; provided, the Commissioner may exercise large discretion in the matter of requiring one to develop gas wells, and provided further, that all forfeitures may, within the discretion of the Commissioner be set aside and all rights reinstated before the rights of another intervene. (Id. sec. 19.)

Art. 5904ss. Use of timber and occupancy of surface; compensation to surface owner.—An owner of any claim for any mineral or substance included in this Act may fell and remove for building or mining purposes any timber upon any of the unsold areas included within this Act, and shall also have the right to occupy within the limits of his application, permit or lease, so much of the surface thereof as may be necessary for the development of the minerals and substances therein, and shall have the right of ingress to and from the area embraced in the file, permit, lease or patent. Ten cents per acre shall be paid to the owner of the surface and when accepted by the owner, it shall be deemed full compensation for such damages as may be occasioned to the surface through the occupancy and operation by the owner of the permit, lease or patent. (Id. sec. 20.)

Art. 5904t. Sale of surface without minerals.—Neither the filing of an application under any provision of this Act nor the issuance of a permit or lease on any of the unsold land included herein shall prevent the sale of the surface without the minerals and in case of such sale subsequent to the posting of any notice or the filing of an application the purchaser shall not be entitled to the ten cents per acre that is provided for owners of the surface at the time of filing nor shall such owner be entitled to any damages that may be occasioned by the working of any area. (Id. sec. 21.)

Art. 5904tt. Prevention of pollution of water.—All development in water or on islands, marshes, reefs or river beds and channels shall be done under such regulations as will prevent the pollution of the water and for the prevention of such pollution the Commissioner of the General Land office may call upon the Game, Fish and Oyster Commissioner for assistance in the adoption and enforcement of rules and regulations for the protection of the waters from such pollution. The Commissioner of the General Land Office may cancel a claim, location, file, permit or lease or patent for a failure or refusal of the owner to comply with such rules and regulations as may be adopted. (Id. sec. 22.)

Art. 5904u. Discovery of mineral substance other than that included in permit; preference right to file claim.—Should any mineral or substance within the provisions of this Act, other than those included in the permit or lease under which one is operating, be discovered while the area is being worked for the minerals and substances embraced in such permit or lease, the owner thereof shall have a preference right for sixty days after such discovery in which to file on the area allowed one for such mineral or other substance by complying with the provisions of this Act relating to the mineral or substance so discovered but shall not be required to pay either of the additional ten cents per acre to the State or the owner of the surface, and the remaining portion of said area shall be subject to the application of others in the same manner as if there were no pre-existing file thereon. (Id. sec. 23.)

Art. 5904uu. Owners of claims acquired under previous law may accept provisions of this act.—If the owner of a claim upon any mineral or other substance named in this Act, other than petroleum and natural gas which has been acquired under any previous statute, should desire to accept the provisions of this Act and operate hereunder he may do so by filing a declaration to that effect in the General Land Office together with the payment required in the particular instance and obtain a permit or lease by complying with the provisions hereof relating thereto. The rights under such acceptance shall begin from the date the declaration is filed and the owner shall have the same rights thereafter as is accorded those who make original filings under this Act. (Id. sec. 24.)

Art. 5904v. Commutation and acceptance of patent.—At any time during the life of a permit but prior to accepting a lease upon any area for any mineral or other substance included within the provisions of this Act, except petroleum and natural gas, the owner of a permit may elect to pay one hundred dollars per acre for the area embraced in his permit and obtain, under the rules governing the issuance of patents to land, a patent for all the minerals that may be in such area except petroleum and natural gas in lieu of the payment of the royalty as provided in this Act; provided, however, one shall pay the prescribed royalty on all minerals and substances put out and disposed of while developing the area prior to obtaining a lease or patent. (Id. sec. 25.)

Art. 5904vv. Administration of act; rules.—The Commissioner of the General Land Office shall have the general supervision of all matters necessary for the proper administration of this Act and he is authorized to adopt rules and regulations and to alter or amend them from time to time as he may deem necessary for the protection of the interests involved and not inconsistent with the provisions herein. (Id. sec. 26.)

Art. 5904w. Rights subject to taxation.—Rights acquired under this Act shall be subject to taxation as is other property. (Id. sec. 27.)

Art. 5905. [Repealed.]
See note under art. 5904.

Arts. 5906-5909. [Repealed by Acts 1917, ch. 83, sec. 28.]
See arts. 5904-5904w, ante.

Arts. 5910-5916. [Repealed.]
See note under art. 5904.

Arts. 5917, 5917a. [Repealed by Acts 1917, ch. 83, sec. 28.]
See arts. 5904-5904w, ante.

Art. 5918. [Repealed.]
See note under art. 5904.

Arts. 5919-5920j. [Repealed by Acts 1917, ch. 83, sec. 28.]
See arts. 5904-5904w, ante.

Arts. 5921, 5922. [Repealed.]
See note under art. 5904.

CHAPTER TWO

STATE MINING BOARD AND COAL MINING REGULATIONS

Art. 5923. State mining board; duties of.—For the purpose of securing efficiency in the mine inspection service, a board of examiners, to be known as the state mining board, whose duty it shall be to make formal inquiry into and pass upon the practical and technical qualifications and personal fitness of persons seeking appointments as state inspector of mines, shall be appointed by the governor. (Acts 1907, p. 331, sec. 14.)

Art. 5924. Appointment, qualifications and terms of office of members of board.—Said board shall be composed of seven members, three of whom shall be practical miners, three shall be mine operators; and it shall be the first duty of the six members thus appointed to nominate to the governor the seventh member of said board; provided, that if the six members aforesaid shall fail for a period of ten days after their appointment to so nominate the seventh member, the same shall be appointed by the governor. Said board shall hold office for a period of two years and until their successors have been appointed and qualified. (Id. sec. 15.)

Art. 5925. Board to select mining inspector; place of meeting.—The board shall meet in the capitol building at Austin biennially, for the purpose of hearing applications for the office of state mining inspector. It shall be the duty of the board to thoroughy examine all applicants who may come before it, and to select from among such applicants the person who in its opinion is best qualified to perform the duties of state mining inspector; and, upon the nomination of said board the governor shall appoint the person so recommended. (Id. sec. 16.)

Art. 5926. Qualifications of mining inspector; term of office.—The state mine inspector shall be a citizen of the United States, and shall have resided in the state of Texas for one year, of temperate habits, of good repute, a man of personal integrity, shall have attained the age of thirty years, and shall have had at least five years experience working in and around coal mines, and shall not have any pecuniary interest whatever in any mine in this state. He shall hold office for a period of two years, unless sooner removed as provided herein. (Id. sec. 17.)

Art. 5927. State mine inspector under supervision of board; how removed from office.—It shall be the duty of the state

mining board to exercise supervision over the acts of the state mine inspector, and, in the event of his incompetency or the neglect of his duty being proved to the board, said board shall recommend to the governor that he be removed from office, and his successor shall be chosen as herein provided. (Id. sec. 18.)

Art. 5928. Semi-annual meetings of board; reports of inspector.—The state mining board shall meet twice each year, and at such time and place as the majority may select, for the purpose of receiving reports from the inspector and instructing him in the performance of his duty. (Id. sec. 19.)

Art. 5929. Compensation of members of board.—The members of the state mining board shall receive as compensation for their services the sum of five dollars per day for a period not exceeding thirty days in any one year, and traveling expenses in going to and returning from board meetings. (Id. sec. 20.)

Art. 5930. Inspector to enforce law; salary and expenses.—It shall be the duty of the state mining inspector to enforce the provisions of this chapter under the instructions of the state mining board, and to make a report to said board at its semi-annual meetings, and oftener if required. He shall receive for his services the sum of two thousand dollars per year, and actual traveling expenses incurred in the discharge of his duty; provided, that his traveling expenses shall not in any one year exceed the sum of one thousand dollars. Said mining inspector shall file an itemized statement, showing the actual amounts expended, and the number of times he inspected each mine or mines. (Acts 1907, p. 331, sec. 21; amended Acts 1909, p. 163.)

Superseded as to salary by art. 7085, post.

Art. 5931. Discrimination prohibited.—It shall be the duty of the state mining inspector to enforce the provisions of this chapter under the instruction of the state mining board, and to make report to said board at its semi-annual meetings and oftener if required; provided, that neither the instructions of said board nor the acts of said inspector shall ever discriminate in favor of or against any mine or mines, nor against any owner, operator or employé, of any mine or mines; but said acts, either of the board, or of the inspector, shall be impartial, fair and just to all persons or corporations subject to the provisions of this chapter. (Id.)

Art. 5932. Bond of inspector; liability for discrimination.—Before receiving his appointment by the governor, the inspector of mines shall be required to enter into and deliver to the governor a good and sufficient bond in the sum of ten thousand dollars, with at least three good, lawful and sufficient sureties for the faithful and impartial performance of his duty; and the sureties herein required shall make affidavit before some officer authorized to administer oaths that they, in their own right, over and above all exemption, are worth the full amount of the bond they sign as sureties, said bond to be approved by the governor, provided he is satisfied as to its sufficiency, and said bond shall be conditioned that there shall be no discrimination in favor of or against any mine or mines, nor against any owner, operator or employé of any mine or mines; provided, further, if the fact may be shown that said inspector has discriminated against and to the injury of any mine or mines, or against and to the injury of any owner, operator or employé, then the said owner, operator or employé may sue upon the bond herein provided for, and shall be entitled to recover such liquidated damages as may be proven and shown in such suit.

MINING REGULATIONS

Art. 5933. Mine shafts, how constructed and equipped.—Any shaft in process of sinking, and any opening projected for the purpose of mining coal of all kinds, shall be subjected to the provisions of this chapter. At the bottom of every shaft and every caging place therein, a safe commodious passageway must be cut around said landing place, to serve as a traveling way by which employés shall pass from one side of the shaft to the other without passing under or on the cage. The upper and lower landings at the top of each shaft, and the openings of each intermediate seam from or to the shaft, shall be clear and free from loose materials and shall be securely fenced with automatic or other gates or bars so as to prevent either men or materials from falling into the shaft. Every hoisting shaft must be equipped with substantial cages fitted to guide rails running from the top to the bottom. Said cages must be safely constructed, they must be furnished with suitable boiler iron covers to protect persons riding thereon from falling objects, and they must be equipped with safety catches. Every cage on which people are carried must be fitted with iron bars, rings or chains in proper place and in sufficient number to furnish a secure handhold for every person permitted to ride thereon. At the top landing, cage supports, where necessary, must be carefully set and adjusted so as to work properly and securely hold the cages when at rest. In all cases where the human voice cannot be distinctly heard, there shall be provided a metal tube or telephone from the top to the bottom of the shaft or slope through which conversation may be held between persons at the bottom and top of such shaft or slope, and that there shall also be maintained an efficient system of signaling to and from the top of the shaft or slope and each seam or opening. Every underground place on which persons travel, worked by self-acting engines, windlasses or machinery of any description, shall be provided with practical means of signaling between the stopping places and the ends of the plane, and shall further be provided, at intervals of not more than sixty feet, with sufficient manholes for places of refuge. (Acts 1907, p. 331, sec. 1.)

See Penal Code, arts. 1592, 1593.

Art. 5934. Mine must be suitably propped.—Every mine shall be supplied with props and timbers of suitable length and size; and, if from any cause the timbers are not supplied when required, the miners shall vacate any and all such working places until supplied with timber needed. (Id.)

Art. 5935. Abandoned workings to be cut off.—All openings connecting with worked-out or abandoned portions of every op-

erated mine likely to accumulate explosive gases or dangerous conditions shall be securely gobbed and blocked off from the operated portions thereof, so as to protect every person working in such mines from all danger that may be caused or produced by such worked-out portions of such mines. (Id.)

Art. 5936. Ventilation.—Throughout every mine there shall be maintained currents of fresh air sufficient for the health and safety of all men and animals employed therein, and such ventilation shall be produced by a fan or some other artificial means; provided, a furnace shall not be used for ventilating any mine in which explosive gases are generated. The quantity of air required to be kept in circulation and passing a given point shall be not less than one hundred cubic feet per minute for each person, and not less than three hundred cubic feet per minute for each animal, in the mine, measured at the foot of the downcast; and this quantity may be increased at the discretion of the inspector, whenever in his judgment unusual conditions make a stronger current necessary. Said current shall be forced into every working place throughout the mine, so that all parts of the same shall be reasonably free from standing powder smoke and deleterious air of any kind. The measurement of the current of air shall be taken with an anemometer at the foot of the downcast, at the foot of the upcast and at the working face of each division or split of the air current. The main current of air shall be split or subdivided as to provide a separate current of reasonably pure air to every one hundred men at work; and the inspector shall have authority to order separate currents for smaller groups of men, if in his judgment special conditions make it necessary. The air current for ventilating the stable shall not pass into the intake air current for ventilating the working parts of the mine. Whenever the inspector shall find men working without sufficient air, he shall at once give the mine manager or operator notice and a reasonable time in which to restore the current; and, upon his or their refusal or neglect to act promptly, the inspector may order the endangered men out of the mine. (Id. sec. 2.)

Art. 5937. Same.—It shall be the duty of the mine foreman to see that proper cut-throughs are made in all the pillars at such distances as in the judgment of the mine inspector may be deemed requisite, not more than twenty yards nor less than ten yards apart, for the purpose of ventilation; and the ventilation shall be conducted through said cut-throughs into the rooms and entries by means of check doors made of canvas or other material, placed on the entries or in other suitable places; and he shall not permit any room to be opened in advance of the ventilating current. Should the mine inspector discover any room, entry, airway, or other working place, being driven in advance of the air current contrary to the requirements of this article, he shall order the workmen in such places to cease work at once until the law is complied with. (Id. sec. 6.)

Art. 5938. Dangerous gases and fires; inspector notified.—Immediate notice must be conveyed by the miner or mine owner to the inspector upon the appearance of any large body of fire damp in any mine, whether accompanied by any explosion or not, and upon the concurrence of any serious fire within the mine or on the surface (Id. sec. 3.)

Art. 5939. Cages, how operated.—Cages on which men are riding shall not be lifted or lowered at a rate greater than six hundred feet per minute, except with the written consent of the inspector. No persons shall carry any tools or material with him on a cage in motion, except for use in making repairs; and no one shall ride on a cage while the other cage contains a loaded car. No cage having an unstable or self-dumping platform shall be used for the carriage of men or materials, unless the same is provided with some convenient device by which said platform can be securely locked, and unless it is so locked whenever men or material are being conveyed thereon. (Id. sec. 4.)

Art. 5940. Powder.—No miner or other person shall carry powder into the mine, except in the original keg, or in a regulation powder can securely fastened, and the can in otherwise air tight condition. (Id. sec. 5.)

Art. 5941. Inspector may require use of safety lamp.—At any mine where the inspector shall find fire damp is being generated so as to require the use of a safety lamp in any part thereof, the operator of such mine, upon receiving notice from the inspector that one or more such lamps are necessary for the safety of the men in the mines, shall at once procure and keep for use such number of safety lamps as may be necessary. (Id. sec. 7.)

Art. 5942. Rules to be observed by miners.—It shall be unlawful for any miner, workman or other person knowingly or carelessly to injure any shaft, safety lamp, instrument, air-course or brattice, or to obstruct or throw open an air-way, or to carry any open lamp or lighted pipe, or fire in any form, into a place worked by the light of safety lamps, or within three feet of any open powder, or to handle or disturb any part of the hoisting machinery, or to enter any part of the mine against caution, or to do any wilful act whereby the lives or health of persons working in mines, or the security of the mine machinery thereof, is endangered. (Id. sec. 8.)

Art. 5943. Rules to be posted.—It shall be the duty of every operator to post on the engine house and at the pit top of his mine, in such manner that the employés of the mine can read them, rules not inconsistent with this law, plainly printed in the English language, which shall govern all persons working in the mine. And the posting of such notice, as provided, shall charge all employés of such mine with legal notice of the contents thereof. (Id. sec. 9.)

Art. 5944. Coal scales.—The owner or operator of every mine shall provide adequate and accurate scales for weighing coal; and it shall be the duty of the mine inspector to examine such scales; and, if same are not found to be accurate, he shall notify the owner to repair same; and, if such owner fails or refuses to repair same within a reasonable time, said inspector shall institute proceedings under the law against the proper parties. (Id. sec. 10.)

Art. 5945. Employés may employ check weighman.—The employés in any mine in this state shall have the right to em-

ploy a check weighman at their own option and their own expense. (Id. sec. 11.)

Art. 5946. Kind of oil to be used.—No miner, or other person employed in a mine, shall use any kind of oil other than a good quality of lard oil for lighting purposes, except when repairing downcast or upcast shafts. (Id. sec. 12.)

Art. 5946a. Electric wires to be insulated; trolley wires, how placed.—From and after September 1, 1911, in all mines in this state where electricity is or hereafter shall be used as a part of the system, power or means of mining and procuring the coal or other mineral from any of said mines, that the owners or operators of every such mine shall cause all wires conducting electricity in and about said mine to be carefully and thoroughly insulated or protected in a safe manner, so that the person or animals coming in contact therewith shall not be injured thereby; all wires as aforesaid shall either be thoroughly insulated or placed where persons employed in and about the mines can not come in contact therewith, or shall be covered, protected or shielded in a safe manner, so as to prevent any injuries or accidents therefrom to those in or about the mines; provided, however, it shall not be necessary to insulate or cover trolley wires, but they shall all be hung and kept not less than five feet and six inches above the rail, and shall be securely fastened, and not permitted to sag less than said height. Where there is sufficient height in existing entries to permit this, but where sufficient height is not available in existing entries, then the trolley wires shall be placed to one side of the entry, six inches outside the rail; and in all such cases the trolley wire shall be placed on the side of the entry opposite from the working rooms, except where there are rooms on both sides of the entry, in which event, the trolley wires may be placed over the opening of said rooms, said trolley wires to be safely shielded; provided, where it is impracticable in existing entries to place trolley wires six inches outside of the rail, or five feet, six inches high, and where separate travel way is not provided, then the trolley wire shall be safely shielded; and it is further provided that this Act shall not apply to entries that are not used as travel ways for workmen or work animals; provided, however, that this section shall not apply to mines in operation in this state on January 1, 1902, and prior thereto, and which have developed until there is at least two thousand (2000) feet distance from the shaft to the face of the coal being operated, except as to extensions of trolley wires made and to be made after January 1, 1910, in such mines. (Acts 1911, p. 196, sec. 1.)

For section 2 of this act, see Penal Code, art. 1606b.

Art. 5946b. Penalty for violation.—Each and every person, company, corporation or receiver, who shall in any manner violate any of the provisions of this Act, shall for each and every offense committed forfeit and pay to the state a penalty of not less than one hundred ($100.00) dollars nor more than five hundred ($500.00) dollars, and it shall be the duty of the district or county attorney to institute suit in the name of the state for the recovery of same. (Id. sec. 2a.)

Art. 5946c. Duties of state mining inspector.—It shall be the duty of the state mining inspector to see that the provisions of this Act are complied with, and shall report all violations hereof to the state mining board and to the district or county attorney of the county where the offense is committed. (Id. sec. 3.)

Art. 5946d. Map of underground workings to be filed.—It shall be the duty of every operator of a coal mine in the state of Texas to make a map of the underground workings of every mine in his charge, under operation on the first day of January, 1912, or that may be opened thereafter; said map shall be drawn on a scale of one inch to one hundred feet, and shall indicate the surface land lines as well as the rooms, entries or openings under ground. It shall be brought up to date at least once each month, covering operations for the preceding month. The original of said map shall be on file at the office of the operator at or near said mine. Said map shall be extended or brought up to date at any time requested by the state mine inspector, at least every three months, if, for any reason, a mine should be closed, then a final map shall be made and filed; provided, however, that maps existing on the date of the passage of this Act may be continued on the same scale as begun, if not smaller than one-half inch to one hundred feet. (Id. sec. 4.)

For section 5 of this act, see Penal Code, art. —.

Art. 5946e. Feeding animal in mine, etc., unlawful.—It shall be unlawful for any person, association of persons, corporation or receiver, owning, operating or managing any mine in this state, to feed or permit to be fed any work animal in said mines, or to store or keep any feed for such animals in said mines. (Acts 1911, p. 205, sec. 1.)

Art. 5946f. Permitting animal to remain over ten hours unlawful.—It shall be unlawful for any person, association of persons, corporation or receiver, owning, operating or managing any mine in this state, to permit any work animal to remain in any mine longer than ten consecutive hours. (Id. sec. 2.)

Art. 5946g. Not applicable to certain mines; open light in stable prohibited; inflammable stock food.—It is further provided that sections 1 and 2 [Arts. 5946e, 5946f] shall not apply to mines complying with the following provisions:

All stables in mines in which work animals are kept shall be equipped with fire proof doors at each opening, with a door frame of concrete, stone or brick, laid in mortar, and such stable door shall be kept closed during working hours of mines.

All feed, hay, grass, cane, etc., except corn, corn chops, bran and shelled oats, shall not be taken down the hoisting shaft until after the regular day shift is out of the mine.

It is further provided that no open light shall be taken into any underground stable by any person.

It is further provided that not over twenty-four (24) hours' supply of hay, grass or cane, or any other kind of inflammable stock food except corn, corn chops, bran and shelled

oats, shall be taken down in any one day. (Id. sec. 2a.)

Art. 5946h. Penalty for violation.—Each and every person, company, corporation or receiver who shall in any manner violate any of the provisions of this Act shall for each and every offense committed forfeit and pay to the state a penalty of not less than one hundred dollars nor more than five hundred dollars, and it shall be the duty of the district or county attorney to institute suit in the name of the state for the recovery of same. (Id. sec. 3.)

For section 4 of this act, see Penal Code, art. 1606i.

Art. 5946i. Duties of state mining inspector.—It shall be the duty of the state mining inspector to see that the provisions of this Act are complied with, and he shall report all violations thereof to the state mining board and to the district or county attorney of the county where the offense is committed. (Id. sec. 5.)

Art. 5946j. Bathing facilities for coal miners; separate accommodations for negroes.—It shall be the duty of the operator, owner, lessees or superintendent of any coal mine in this State employing ten or more men to provide a suitable building convenient to the principal entrance of such mine, for the use of persons employed in and about said mine, for the purpose of washing themselves and changing their clothing when entering or leaving the mine. Such building shall be provided with proper light and heat, with a supply of hot and cold water and shower baths, and with properly constructed individual lockers for the use of such employés. The employés shall furnish their own towels, soap and locks for their lockers, and shall exercise control over and be responsible for all property by them left in such house. The baths and lockers for negroes shall be separate from those for whites, but may be in the same building. (Acts 1915, ch. 51, sec. 1.)

Art. 5946k. Employer not liable for loss or destruction of property.—Any operator, owner, lessee or superintendent or company, its officers or agents maintaining such a bath house at his or its mine, as required in Section 1 hereof [Art. 5946j], shall not be liable for the loss or destruction of any property left at or in said house. (Id. sec. 2.)

For section 3 of this act, see Penal Code, art. 1606*l*.

Art. 5946*l*. Time act takes effect.—This Act shall take effect and be in force from and after September 1, 1916. (Id. sec. 4.)

Art. 5946m. Duties of Commissioner of Labor.—It shall be the duty of the Commissioner of Labor Statistics of the State of Texas to enforce the provisions of this Act. (Id. sec. 5.)

TITLE 94

MINORS

REMOVAL OF DISABILITIES OF

Art. 5947. (3499) When may have disabilities removed.—Any minor in this state over the age of nineteen years, who may desire to have his disabilities as a minor removed, shall, by a bill or petition, present to the district court of the county where he may reside the cause or causes existing which make it advisable or advantageous to said minor to have his disabilities removed, which bill or petition shall be sworn to by some person cognizant of the facts set out in said bill or petition. (Acts 1881, p. 16, sec. 1.)

See Sayles' Practice, pp. 117, 248; Simkins' Contracts and Sales (3d Ed.) p. 154; Stewart v. Robbins, 65 S. W. 899; Texas Cent. R. Co. v. Wheeler, 116 S. W. 83; Cunningham v. Robison, 136 S. W. 441; Gulf, C. & S. F. Ry. Co. v. Lemons, 152 S. W. 1189; Rainer v. Durrill, 156 S. W. 589; Gulf, C. & S. F. Ry. Co. v. Lemons, 206 S. W. 75.

Art. 5948. (3500) Proceedings for removal.—Said petition or bill shall be docketed on the trial docket of the court, and may be heard by the court, either in regular order or at any time during term time; and, if it shall appear to the court that the ground or causes set out are sufficient, and that it is advisable, or will be advantageous to such minor, in person or property, to have his disabilities as a minor removed, the court shall enter up a decree removing the disabilities of said minor, and cause it to be entered of record among the decrees and judgments of court. (Id. sec. 2.)

Texas Cent. R. Co. v. Wheeler, 116 S. W. 83.

Art. 5949. (3501) Shall be deemed of full age.—After the removal of such disabilities of minority, the said minor shall be deemed and held, for all legal purposes, of full age, and shall be held responsible, and shall have all the privileges and advantages as if he were of full age, saving only that he shall not vote until he arrives at the full age of twenty-one years. (Id. sec. 3.)

Texas Cent. R. Co. v. Wheeler, 116 S. W. 83.

Art. 5950. (3502) Notice, on whom served.—In all proceedings under this title, a copy of the petition shall be served upon the father of the minor, if living within the state, and, if he be dead, that fact shall be mentioned in the petition. If the father of the minor be not living, then a copy of the petition shall be served upon the county judge of the county in which the proceeding is instituted; and in all such cases the court hearing the application shall appoint a special guardian, whose duty it shall be, in connection with the county judge, to represent the true interests of the minor, as they shall understand it, in aiding or resisting the application of the minor. An allowance shall be made by the district judge presiding to the special guardian, which shall be paid out of the estate of the minor. (Id. sec. 4.)

TITLE 95

NAME—CHANGE OF

Art. 5951. (377) (336) Application for change of name to district court.—When any person shall desire to change either his Christian or surname, or both, and to adopt another name instead thereof, he shall file his application in the district court of the county of his residence, setting forth the causes which induce him to desire a change of name and to adopt another; whereupon the judge of the said court, if in his opinion it should be for the interest or benefit of the applicant to change his name and to adopt another, shall by a judgment of said court order that the adopted name of the

party shall be substituted for the original name. (Act Feb. 5, 1856; P. D. 32.)

Art. 5952. (378) (337) Minors by guardian.—Whenever it shall be to the interest of any minor under the age of twenty-one years to change his name and to adopt another name instead of the original name, the guardian or next friend of said minor shall file his application in the district court of the county of the said minor's residence, setting forth the causes which induced the minor to desire to change the original name, accompanied with the full name which the minor wishes to adopt; whereupon the judge of said court, if the facts contained in the application shall satisfy him that it will be for the benefit and interest of the minor to change his name and to adopt another, shall grant authority to change his original name and to adopt another instead thereof. (Id.; P. D. 33.)

Art. 5953. (379) (338) Not to injure third persons.—Whenever any person shall change his original name and adopt another instead thereof, it shall not operate so as to release the person from any responsibility which he may have incurred by the original name, nor shall it operate by said change of name to defeat or destroy any rights or property or action which the person had or held in his original name. (Id.; P. D. 34.)

Art. 5954. (380) (339) In divorce suits name may be changed.—In suits for divorce, the court may, in its discretion, on the final disposition of the case, enter a decree changing the name of either party to said suit, if such change of name is specially prayed for in the pleadings of such party.

TITLE 96

NAVIGATION DISTRICT

See Title 47; Title 73; and Title 83.

Art. 5955. Districts may include, what.—One or more districts may be established in the several counties of this state, to be known as navigation districts, in the manner hereinafter provided; and such districts may or may not include within their boundaries and limits villages, towns and municipal corporations, or any parts thereof. Such navigation districts, when so established, may make improvement of rivers, bays, creeks, streams and canals running or flowing through such districts, or any part thereof, and may construct and maintain canals and waterways to permit of navigation or in aid thereof, may issue bonds in payment thereof as hereinafter provided. (Acts 1909, p. 32, sec. 1.)

Art. 5956. Application to commissioners' court to contain what; notice given.—Upon the presentation to the county commissioners' court of any county of this state of a petition, accompanied by the deposit provided for in article 5981 of this chapter, signed by twenty-five of the resident property taxpayers, or in the event there are less than seventy-five resident property taxpayers in the proposed district, then by one-third of such resident property taxpayers of any proposed navigation district, praying for the establishment of a navigation district, and setting forth the boundaries of the proposed district, accompanied by a map thereof, the general nature of the improvement or improvements proposed, and an estimate of the probable cost thereof, and praying for the issuance of bonds and levy of tax in payment thereof, and designating a name for such navigation district, which name shall include the name of the county, said petitioners shall make affidavit to accompany said petition of their said qualification; and the said commissioners' court shall, at the same session when said petition is presented, set same down for hearing at some regular term of said court, or at some special session of said court called for the purpose, not less than thirty nor more than sixty days from the presentation of said petition, and shall order the clerk of said court to give notice of the date and place of said hearing by posting a copy of said petition, and the order of the court thereon, in five public places in said county, one of which shall be at the court house door of said county, and four of which shall be within the limits of said proposed navigation district, which said notices shall be posted not less than twenty days prior to the time set for the hearing. The said clerk shall receive as compensation for such services one dollar for each such notice and five cents per mile for each mile necessarily traveled in posting such notices. (Id. sec. 2.)

Art. 5957. Navigation boards in cities and towns with special charters.—In the event the boundaries of the proposed district shall include a city or cities, or a part or parts thereof, acting under special charter granted by the legislature, the hearing of said petition, hereinafter provided for, shall be had before the county judge and members of the commissioners' court and the mayor and aldermen or commissioners, as the case may be, of said city or cities; and said persons shall constitute a board to be known and designated as the navigation board, to pass upon the petition aforesaid. Each individual member of the said board shall be entitled to a vote. A majority in number of the individuals composing said board shall constitute a quorum, and the action of a majority of the quorum shall control. (Id.)

Art. 5958. Notice of hearing before navigation board.—In the event, the hearing of said petition shall be had before the navigation board, the commissioners' court of said county shall set the petition down for hearing not less than thirty nor more than sixty days from the date of the presentation of said petition without reference to any term of the commissioners' court, but said hearing shall be held at the regular place of meeting of the commissioners' court, and notice shall be given of the hearing in the manner and for the time as hereinbefore provided. (Id.)

Art. 5959. Proceedings to be recorded by county clerk.—The county clerk shall enter and record the proceedings of the navigation board in a record book kept for this purpose, which record shall be a public archive. (Id.)

Art. 5960. Duties imposed without compensation.—The duties and powers herein conferred upon the county judge and members of the commissioners' court, and upon the mayor and aldermen or commissioners of cities, and upon the county clerk and other officers, are made a part of the legal duty of said officials, which they shall render and

perform without additional compensation, unless otherwise provided herein. (Id.)

Art. 5961. Objections and contest on hearing.—Upon the day set by said county commissioners for the hearing of said petition, any person who has taxable property within the proposed district, or who may be affected thereby, may appear before the said court, or navigation board, as the case may be, and contest the creation of said district, or contend for the creation of said district, and may offer testimony in favor of or against the boundaries of the said district, to show that the proposed improvement or improvements would or would not be of any public utility and would or would not be feasible or practicable, and the probable cost of such improvement or improvements, or as to any other matter pertaining to the proposed district. Said county commissioners' court, or navigation board, shall have exclusive jurisdiction to hear and determine all contests and objections to the creation of such districts, and all matters pertaining to the creation and establishment of the same, and shall have exclusive jurisdiction in all subsequent proceedings of the district when organized, except as hereinafter provided, and may adjourn hearing on any matter connected therewith from day to day; and all judgments or decisions rendered by said court, or navigation board, in relation thereto shall be final, except as herein otherwise provided. (Id. sec. 3.)

Art. 5962. Finding of board at hearing.—If, at the hearing of said petition, it shall appear to the commissioners' court, or navigation board, as the case may be, that the proposed improvement is feasible and practicable, that it would be a public benefit and a public utility; and, if the court, or navigation board, as the case may be, shall approve the boundaries of the proposed district as set out in said petition, then the court, or navigation board, shall so find, and shall also find the amount of money necessary for said improvement or improvements and for all expenses incident thereto, and shall determine whether to issue bonds for said full amount or in the first instance for a less amount, and shall specify the amount of bonds to issue, the length of time the bonds shall run, and the rate of interest said bonds shall bear, and cause its findings to be recorded in the records of the commissioners' court, or minutes of the navigation board, as the case may be. If the court, or navigation board, shall find that the proposed improvement is feasible and practicable, that it would be a public benefit and a public utility, but does not approve the boundaries of the proposed district as set forth in the petition, the court, or navigation board, shall so find, and shall also find the amount of money necessary for said improvement or improvements, and for all expenses incident thereto, and shall determine whether to issue bonds for said full amount or in the first instance for a less amount, and shall specify the amount of bonds to issue, the length of time the bonds shall run, and the rate of interest said bonds shall bear, and cause its findings to be entered of record, together with a map thereof. Providing, however, that before any change is made by said court, or navigation board, as the case may be, of the boundaries, notice and a hearing thereof shall be given and had as provided for in article 5956 of this chapter. If the court, or navigation board, shall find that the proposed improvement is not feasible or practicable, or that it would not be a public benefit or public utility, and that the establishment of such navigation district is therefore unnecessary, then the court, or navigation board, shall enter such findings of record and dismiss the petition at the cost of petitioners, but the order dismissing said petition shall not prevent or conclude the presentation at a later date of a similar petition. (Id. sec. 4.)

Art. 5963. Election; form of ballot.—After the hearing upon the petition, as herein provided, if the court, or navigation board, as the case may be, shall find in favor of the petitioners for the establishment of a navigation district according to the boundaries as set out in said petition, or as changed or modified as above provided by the said court, or navigation board, the commissioners' court of said county shall order an election, in which order provision shall be made for submitting to the qualified property taxpaying voters resident in said district whether or not such navigation district shall be created, and whether or not a tax shall be levied sufficient to pay the interest and provide a sinking fund sufficient to redeem said bonds at maturity, said order specifying the amount of bonds to be issued, together with the length of time the bonds shall run, and the rate of interest said bonds shall bear as said matters have been determined by the commissioners' court, or navigation board, as the case may be, under the provisions of article 5962 of this chapter. Said election to be held within such proposed navigation district at the earliest legal time; at which election there shall be submitted the following propositions and none other: "For the navigation district, and issuance of bonds and levy of tax in payment thereof;" "Against the navigation district, and issuance of bonds and levy of tax in payment thereof." Provided, that said bonds shall not exceed in amount one-fourth of the assessed valuation of the real property of such district as made by the last annual assessment thereof for state and county taxation. (Id.)

Art. 5964. Election notice.—Notice of such election, stating the time and place of holding the same, shall be given by the clerk of the county court by posting notices thereof in four public places in such proposed navigation district, and one at the court house door of the county in which such district is situated, for thirty days prior to the date set for the election. Such notices shall contain the proposition to be voted upon as set forth in article 5963 of this chapter, and shall also specify the purpose for which said bonds are to be issued, and the amount of said bonds, and shall contain a copy of the order of the court ordering the election. (Id. sec. 6.)

Art. 5965. Election to conform to general election law.—The manner of conducting said election shall be governed by the election laws of the state of Texas, except as herein otherwise provided. None but resident property taxpayers, who are qualified voters of said proposed district, shall be entitled to vote at any election on any question submitted to the voters thereof by the county com-

missioners' court at such election. The county commissioners' court shall create and define, by an order of the court, the voting precincts in the proposed navigation district, and shall name a polling place or places within said precincts, taking into consideration the convenience of the voters in the proposed navigation district, and shall also select and appoint the judges and other necessary officers of the election, and shall provide one and one-half times as many ballots as there are qualified resident property taxpaying voters within such navigation district. Said ballot shall have printed thereon the words and none others: "For the navigation district, and issuance of bonds and levy of tax in payment thereof;" "Against the navigation district, and issuance of bonds and levy of tax in payment thereof." (Id. sec. 7.)

Art. 5966. Electors; form of oath before voting.—Every person who offers to vote in any election held under the provisions of this chapter shall first take the following oath before the presiding judge of the polling place wherein he offers to vote, and the presiding judge is hereby authorized to administer same: "I do solemnly swear (or affirm) that I am a qualified voter of ——— county, and that I am a resident property taxpayer of the proposed navigation district voted on at this election, and I have not voted before at this election." (Id. sec. 8.)

Art. 5967. Commissioners' court to canvass returns; declare result.—Immediately after the election, the presiding judge at each polling place shall make return of the result in the same manner as provided for in elections for state and county officers, and return the ballot boxes to the county clerk, who shall keep same in a safe place and deliver them, together with the returns from the several polling places, to the commissioners' court at its next regular session, or special session called for the purpose of canvassing the vote, and the county commissioners shall, at such session, canvass the vote; and, if it be found that a two-thirds majority of those voting at such election shall have been cast in favor of the navigation district and the issuance of bonds and levy of tax, then the court shall declare the result of said election to be in favor of said navigation district, and shall enter same in the minutes of the court as follows:

"Commissioners' court of ——— county, Texas ——— term, A. D. ——, in the matter of petition of ——— and ——— others, praying for the establishment of a navigation district, and issuance of bonds and levy of taxes in said petition fully described and designated by the name of ——— Navigation District ———. Be it known that an election called for that purpose in said district, held on the ——— day of ———, A. D. ——, a two-thirds majority of the resident property taxpayers voting thereon voted in favor of the creation of said navigation district, and the issuance of bonds and the levy of a tax. Now, therefore, it is considered and ordered by the court that said navigation district be, and the same is hereby established by the name of ——— Navigation District, and that the bonds of said district in the amount of ——— dollars be issued, and a tax of ——— cents on the hundred dollars of valuation, or so much thereof as may be necessary, be levied upon all property within said navigation district, whether real, personal, mixed or otherwise, sufficient in amount to pay the interest on such bonds and provide a sinking fund sufficient to redeem them at maturity, and that if said tax shall at any time become insufficient for such purposes, same shall be increased until same is sufficient. The metes and bounds of said district, being as follows, to wit: [Giving the metes and bounds]." (Id. sec. 9.)

Art. 5968. Navigation commissioners, how appointed; qualifications; compensation, term of office.—After the establishment of any navigation district, as herein provided, the commissioners' court, or navigation board, as the case may be, shall appoint three navigation and canal commissioners, all of whom shall be residents of the proposed navigation district, who shall be freehold property taxpayers and legal voters of the county, whose duties shall be as hereinafter provided, and who shall each receive for their services such compensation as may be fixed by the commissioners' court and made of record. Said navigation and canal commissioners shall hold office for the term of two years, and until their successors have qualified, unless sooner removed by a majority vote of the county commissioners, or navigation board, as the case may be, for malfeasance or nonfeasance in office. Upon the expiration of the term of office of said navigation and canal commissioners, the commissioners' court, or navigation board, as the case may be, shall appoint their successors by a majority vote. Should any vacancy occur through the death or resignation or otherwise of any commissioner, the same shall be filled by the commissioners' court, or the navigation board, as the case may be. (Id. sec. 10.)

Art. 5969. Oath of commissioners.—Before entering upon their duties, all navigation and canal commissioners shall take and subscribe before the county judge an oath to faithfully discharge the duties of their office without favor or partiality, and to render a true account of their doings to the court, or navigation board, by which they are appointed whenever required to do so, which oath shall be filed by the county clerk and preserved as a part of the records of said navigation district. (Id. sec. 11.)

Art. 5970. Bond of commissioners.—Before entering upon their duties, each of the navigation and canal commissioners shall make and enter into a good and sufficient bond in the sum of one thousand dollars, payable to the county judge for the use and benefit of said navigation district, and conditioned upon the faithful performance of their duties. (Id. sec. 12.)

Art. 5971. Organization; quorum.—Said commissioners shall also organize by electing one of their number chairman and one secretary, and two of the commissioners shall constitute a quorum, and a concurrence of two shall be sufficient in all matters pertaining to the business of said district. (Id. sec. 13.)

Art. 5972. Engineers appointed; duties; compensation; U. S. government aid; proceedings in case of.—Said commissioners shall have authority to employ a competent engineer, whose term of office shall be at the will of said commissioners,

and who shall receive such compensation as may be determined by said commissioners. It shall be the duty of the engineer to make all necessary surveys, examinations, investigations, maps, plans and drawings with reference to the proposed improvements. He shall make estimate or estimates of the cost of same, shall supervise the work of improvement, and shall do and perform all such duties as may be required of him by the commissioners. Provided, that if the river, creek, stream, bay, canal, or waterway, to be improved is navigable or the improvement proposed be of such nature as requires the permission or consent of the government of the United States, or any department or officer of the government of the United States, the navigation and canal commissioners shall be authorized to obtain the required permission or consent of the government of the United States, or any proper officer or department thereof; and, in lieu of the employment of an engineer as herein provided, or in addition thereto, the navigation and canal commissioners shall have power to adopt any survey of the river, creek, canal, stream, bay, or waterway theretofore made by the government of the United States, or any department thereof, and to arrange for surveys, examinations and investigations of the proposed improvement, and for supervision of the work of improvement by the government of the United States, or the proper department or officer thereof; provided, that said commissioners shall have full power and authority to cooperate and act with the government of the United States, or any officer or department thereof, in any and all matters pertaining to or relating to the construction and maintenance of said canals, and the improvement and navigation of all such navigable rivers, bays, creeks, streams, canals, and waterways, whether by survey, work or expenditure of money made or to be made either by said navigation and canal commissioners, or by said government of the United States, or any proper officer or department thereof, or by both; and, to the end that the said government of the United States may aid in all such matters, the said commissioners shall have authority to agree and consent to the said government of the United States entering upon and taking management and control of said work, in so far as it may be necessary or permissible under the laws of the United States, and the regulations and orders of any department thereof. (Id. sec. 14.)

Art. 5973. Commissioners' court to issue bonds, when and how.—When said commissioners shall have determined the cost of the proposed improvement or improvements, all of the expenses incident thereto and cost of maintenance thereof, they shall certify to the commissioners' court of the county in which such district is situated the amount of bonds necessary to be issued; and thereupon the said court, at a regular or special meeting, shall make an order directing the issuance of navigation bonds for such navigation district in the amount so certified; provided, that the amount of bonds shall not exceed the amount authorized by the election theretofore held. In the event the proceeds of bonds issued by such navigation district should be insufficient to complete the proposed improvement or construction, or in the event said commissioners shall determine to make other and further construction or improvements, or shall require additional funds with which to maintain the improvements made, they shall certify to the commissioners' court of the county in which such district is situated the necessity for an additional bond issue, stating the amount required and the purpose of the same, the rate of interest of said bonds and the time for which they are to run; whereupon the commissioners' court shall issue such bonds, unless the amount previously authorized shall have been exhausted, in which case the commissioners' court shall order an election on the issuance of said bonds to be held within such navigation district at the earliest possible legal time, and in the manner hereinbefore provided for the original issue of bonds, at which election there shall be submitted the following propositions and none other: "For the issuance of bonds, and levy of tax in payment thereof;" "Against the issuance of bonds, and levy of tax in payment thereof." Notices of such election shall be given as provided in article 5964 of this chapter; and the election shall be held and conducted in the manner provided in articles 5965 and 5966 of this chapter. Only those who are qualified property taxpaying voters, as provided in this chapter, shall vote at such election, and the returns of such election shall be canvassed as provided in article 5964 [5967] of this chapter. (Id. sec. 15.)

Art. 5974. Bonds, when issued; assessments, limitation of.—If, upon a canvass of the vote the commissioners' court shall determine that a two-thirds majority of the votes cast at said election shall have been cast in favor of the issuance of bonds and levy of tax, the said court shall make an order directing the issuance of said bonds and levy of tax; provided, however, that the outstanding bonds and the additional bonds so ordered shall not exceed in amount one-fourth of the assessed value of the real property in such district, as shown by the last annual assessment thereof made for state and county taxation. (Id. sec. 15a.)

Art. 5975. Bonds, form of; denominations; term.—All bonds issued under the provisions of this chapter shall be issued in the name of the navigation district, signed by the county judge and attested by the clerk of the county court, with the seal of the commissioners' court affixed thereto, and such bonds shall be issued in denominations of not less than one hundred dollars nor more than one thousand dollars each, and such bonds shall bear interest at a rate not to exceed five per cent per annum. Such bonds and interest shall by their terms be made payable at the county treasurer's office of the county in which such navigation district is located, or elsewhere, as may be fixed by said navigation and canal commissioners; and no bonds shall be made payable more than forty years after date. (Id. sec. 16.)

Art. 5976. Attorney general to certify to validity of.—Any navigation district in the state of Texas desiring to issue bonds

in accordance with this chapter shall, before such bonds are offered for sale, forward to the attorney general a copy of the bonds to be issued, a certified copy of the order of the commissioners' court levying the tax, copy of the order of the commissioners' court levying the tax to pay interest and provide a sinking fund, and a statement of the total bonded indebtedness of such navigation district as such, including the series of bonds proposed and the assessed value of property for the purpose of taxation, as shown by the last official assessment by the county, together with such other information as the attorney general may require; whereupon it shall be the duty of the attorney general to carefully examine said bonds in connection with the facts and the constitution and laws on the subject of the execution of such bonds; and, if as the result of such examination the attorney general shall find that such bonds were issued in conformity with the constitution and laws, and that they are valid and binding obligations upon such navigation district by which they are issued, he shall so officially certify. (Id. sec. 17.)

Art. 5977. Certificate of attorney general; effect of.—When said bonds have been examined by the attorney general, and his certificate issued to that effect, they shall be registered by the state comptroller, in a book to be kept for that purpose; and the certificate of the attorney general to the validity of such bonds shall be preserved of record for use in the event of litigation. Such bonds, after being approved by the attorney general, and after having been registered in the comptroller's office as herein provided, shall thereafter be held in every action, suit or proceeding in which their validity is or may be brought in question, prima facie valid and binding obligations. And, in every action brought to enforce collection of said bonds or interest thereon, the certificate of the attorney general, or a duly certified copy thereof, shall be admitted and received as prima facie evidence of the validity of such bonds, together with the coupons thereto attached; provided, that the only defense that can be offered against the validity of said bonds or coupons shall be forgery or fraud. But this article shall not be construed to give validity to any such bonds or coupons as may be issued in excess of the limit fixed by the constitution, or contrary to its provisions, but all such bonds shall, to the extent of such excess, be held void. (Id. sec. 18.)

Art. 5978. Record of bonds to be kept; duties and fees of clerk.—Before issuing any bonds under the provisions of this chapter, the county commissioners' court shall provide a well bound book, in which a record shall be kept by the county clerk of all bonds issued, with their numbers, amount, rate of interest, and date of issue, when due, where payable and amount received for the same, and the annual rate per cent assessment made each year to pay the interest on said bonds and provide a sinking fund for their payment. And said book shall at all times be open to the inspection of all parties interested in said district, either as taxpayers or bond holders or otherwise; and, upon the payment of any bond, an entry thereof shall be made in said book. The county clerk shall receive for his services in recording all bonds and other instruments of the navigation district the same fees as provided by law for other like records. (Id. sec. 19.)

Art. 5979. Bonds sold, how; limitations on sale.—When such bonds have been registered, as provided for in the preceding article of this chapter, the chairman of the navigation and canal commission shall offer for sale and sell said bonds on the best terms and for the best price possible, but none of said bonds shall be sold for less than the face par value thereof and accrued interest thereon; and, as fast as said bonds are sold, all moneys received therefor shall be paid to the county treasurer, and shall by him be placed to the credit of such navigation district. (Id. sec. 20.)

Art. 5980. Chairman to give bond.—Before the said chairman of the navigation and canal commissioners shall be authorized to sell any of the navigation bonds, he shall execute a good and sufficient bond, payable to the county judge or his successors in office, to be approved by the county commissioners' court of said county, for an amount not less than the amount of the bonds issued, conditioned upon the faithful discharge of his duties. (Id. sec. 21.)

Art. 5981. Cost of proceedings to establish district; how provided.—All expenses of any kind, after the filing of the original petition, necessarily incurred in connection with the creation, establishment and maintenance of any navigation district organized under the provisions of this chapter, shall be paid out of the "Construction and Maintenance Fund" of such navigation district; which fund shall consist of all moneys received from the sale of bonds and all other amounts received by said district from whatever source, except the tax collections applied to the sinking fund and payment of interest on the navigation bonds; provided, that, should the proposition of the creation of such navigation district and issuance of bonds be defeated at the election called to vote upon same, then all expenses up to and including said election shall be paid in the following manner: When the original petition praying for the establishment of a navigation district is filed with the county commissioners' court, it shall be accompanied by five hundred dollars in cash, which shall be deposited with the clerk of said county commissioners' court, and by him held until after the result of the election for the creation of said navigation district has been declared and entered of record by the commissioners' court, as hereinbefore provided; and, should the result of said election be in favor of the establishment of said district, then the said five hundred dollars shall be by said clerk returned to the signers of said original petition, or their agent or attorney; but, should the result of said election be against the establishment of said district, then the said clerk shall pay out of the said five hundred dollars, upon vouchers signed by the county judge, all costs and expenses pertaining to the said proposed district up to and including the said election, and shall return the balance,

if any, of said five hundred dollars to the signers of said original petition, or their agent or attorney. (Id. sec. 22.)

Art. 5982. Tax to pay interest and create sinking fund; maintenance tax.—Whenever such Navigation District bonds shall have been voted, the Commissioners' Court shall levy and cause to be assessed and collected improvement taxes upon all property within said Navigation District, whether real, personal, mixed or otherwise, and sufficient in amount to pay the interest on such bonds, together with an additional amount to be annually placed in a sinking fund sufficient to discharge and redeem said bonds at their maturity, and in all such Navigation Districts which have heretofore been created or may hereafter be created, the Commissioners' Courts of the respective counties wherein said districts may be created, shall be and are hereby authorized to levy and cause to be assessed and collected for the maintenance, operation and up-keep of such Navigation District and the improvements constructed by said district, an annual tax not to exceed ten cents on the one hundred dollar valuation upon all property within such Navigation District, whether real, personal, mixed or otherwise. (Acts 1909, p. 32, sec. 23; Acts 1917, ch. 40, sec. 1.)

Art. 5983. Available sinking fund, how invested.—If advisable, the sinking fund shall, from time to time, be invested by the commissioners' court of the county in such county, municipal, district or other bonds as shall be approved by the attorney general of the state. (Acts 1909, p. 32, sec. 23.)

Art. 5984. Tax proceedings; compensation of assessor.—The county commissioners' court shall provide all necessary additional books for the use of the assessor and collector of taxes and the county clerk for such navigation district, and charge the cost of same to the said navigation district. It shall be the duty of the county tax assessor, when ordered to do so by the commissioners' court, to assess all property within such navigation district and list the same for taxation in the books or rolls furnished him by said commissioners' court for that purpose, and return said books or rolls at the same time when he returns the other books or rolls of the state and county taxes for correction and approval; and, if the said commissioners' court shall find said books or rolls correct, they shall approve the same, and, in all matters pertaining to the assessment of property for taxation in said district, the tax assessor and board of equalization of the county in which said district is located shall be authorized to act, and shall be governed by the laws of Texas for assessing and equalizing property for state and county taxes, except as herein provided. All taxes authorized to be levied by this chapter shall be a lien upon the property upon which said taxes are assessed, and said taxes may be paid and shall mature and be paid at the time provided by the laws of this state for the payment of state and county taxes; and all the penalties provided by the laws of this state for the non-payment of state and county taxes shall apply to all taxes authorized to be levied by this chapter. The tax assessor shall receive for said services such compensation as the said navigation and canal commissioners shall deem proper; provided, that said county assessor shall in no event be allowed more than he is now allowed by law for the like services. Should the tax assessor fail or refuse to comply with the orders of the commissioners' court requiring him to assess and list for taxation all the property in such navigation districts, as herein provided, he shall be suspended from the further discharge of his duties by the commissioners' court of his county, and he shall be removed from office in the mode prescribed by law for the removal of county officers. (Id. sec. 24.)

Art. 5985. Compensation of tax collector; additional bond required.—The tax collector of the county shall be charged by the county commissioners' court with the assessment rolls of the navigation district, and he shall be allowed no more compensation for the collection of said taxes than he is now allowed for the collection of other taxes, same to be fixed by the navigation and canal commissioners. The county commissioners' court shall require the tax collector of the county to give an additional bond or security in such a sum as they may deem proper and safe to secure the collection of said taxes; and, in all matters pertaining to the collection of taxes levied under the provisions of this chapter, the tax collector shall be authorized to act and shall be governed by the laws of Texas for the collection of state and county taxes, except as herein provided; and suits may be brought for the collection of said taxes and the enforcement of the tax liens created by this chapter. Should any collector of taxes fail or refuse to give such additional bond or security, as herein provided, when requested by the commissioners' court, within the time prescribed by law for such purposes, he shall be suspended from office by the commissioners' court of his county, and immediately thereafter be removed from office in the mode prescribed by law. (Id. sec. 25.)

Art. 5986. Delinquents; tax sales.—It shall be the duty of the tax collector to make a certified list of all delinquent property upon which the navigation tax has not been paid, and return the same to the county commissioners' court, which shall proceed to have the same collected by the sale of such delinquent property in the same manner, both by suit and otherwise, as is now provided for the sale of property for the collection of state and county taxes; and, at the sale of any property for any delinquent tax, the navigation and canal commissioners may become the purchasers of the same for the benefit of the navigation district. (Id. sec. 26.)

Art. 5987. County treasurer; duties.—It shall be the duty of the county treasurer to open an account with the navigation district, and to keep an accurate account of all moneys received by him belonging to such district and of all amounts paid out by him. He shall pay out no money, except upon a voucher signed by the chairman or any two of the said navigation and canal commissioners, and he shall carefully preserve on file all orders for the payment of money; and, as often as required by the said commissioners, or the county commissioners' court, he shall render a correct account to

them of all matters pertaining to the financial condition of such district. (Id. sec. 27.)

Art. 5988. County Treasurer to give special bond; additional bond.—The County Treasurer shall execute a good and sufficient bond, payable to the Navigation and Canal Commissioners of such District, in a sum equal to twice the amount of funds he will have in his hands as Treasurer of such District, at any time as estimated by said Navigation and Canal Commissioners, such bond to be conditioned for the faithful performance of his duty as Treasurer of such District and to be approved by said Navigation and Canal Commissioners; provided, whenever any bonds are voted by such Navigation District the County Treasurer before receiving the proceeds of the sale thereof shall execute additional good and sufficient bond payable to the Navigation and Canal Commissioners of such District in the sum equal to twice the amount of bonds so issued, which bond shall likewise be conditioned and approved as aforesaid, but such additional bond shall not be required after such Treasurer shall have properly disbursed the proceeds of such bond issue; and the County Treasurer shall be allowed such compensation for his services as Treasurer for such Navigation District as may be determined by said Navigation and Canal Commissioners not exceeding the same per cent as is now authorized by law for his services as County Treasurer. (Acts 1909, p. 32, sec. 28; Acts 1917. ch, 40, sec. 2.)

Art. 5989. Condemnation proceedings.—The right of eminent domain is hereby conferred upon all navigation districts established under the provisions of this chapter for the purpose of condemning and acquiring the right of way over and through any and all lands, private or public, except property used for cemetery purposes, necessary for the improvement of any river, bay, creek, or stream, and the construction and maintenance of any canal or waterway, and for any and all purposes authorized by this chapter. All such condemnation proceedings shall be instituted under the direction of the navigation and canal commissioners, and in the name of the navigation district, and the assessing of damages shall be in conformity to the statutes of the state of Texas for condemning and acquiring the right of way by railroads; provided, that no appeal from the finding and assessment of damage by the commissioners appointed for that purpose shall have the effect of causing a suspension of work by the navigation commissioners in prosecuting the work of improvement in all of its details; provided, that no right of way can be condemned through any part of an incorporated city or town without the consent of the lawful authorities of such city or town. (Acts 1909, p. 32, sec. 29.)

Art. 5990. May acquire property for navigation purposes.—The navigation and canal commissioners of any district are hereby empowered to acquire the necessary right of way and property of any kind for all necessary improvements contemplated by this chapter by gift, grant, purchase or condemnation proceedings. (Id. sec. 30.)

Art. 5991. Commissioners may enter lands to make surveys.—The navigation and canal commissioners of any district, and the engineers, from the time of their appointment, are hereby authorized to go upon any lands lying within said district for the purpose of examining the same, making plans, surveys, maps and profiles, together with all necessary teams, help, tools and instruments, without subjecting themselves to action of trespass. (Id. sec. 31.)

Art. 5992. Work, how done; contracts, how let when U. S. Government fails to act.—If the improvement or improvements be not carried out and performed by the government of the United States, as herein provided, the contract or contracts for such improvement or improvements shall be let by the navigation and canal commissioners, and the same shall be awarded to the lowest and best responsible bidder, after giving notice by advertising the same in one or more newspapers of general circulation in the state of Texas once a week for four consecutive weeks, and by posting notices for at least thirty days in five public places in the county, one of which shall be at the court house door, and at least two of which shall be within said navigation district. Nothing herein contained shall prevent the making of more than one improvement, and where more than one improvement is to be made, the contract may be let separately for each or one contract for all such improvements. (Id. sec. 32.)

Art. 5993. Bids for work, how awarded.—Any person, corporation, or firm, desiring to bid on the construction of any work advertised for as provided under the preceding article of this chapter, shall, upon application to the navigation and canal commissioners, be furnished the survey, plans and estimates for the said work, and all bids or offers for any of such work shall be in writing and sealed and delivered to the chairman of the navigation and canal commissioners, together with a certified check for at least five per cent of the total amount bid, which shall be forfeited to the district in case the bidder refuses to enter into a proper contract, if his bid is accepted. Any and all bids may be rejected at the discretion of the navigation and canal commissioners. (Id. sec. 33.)

Art. 5994. Contracts to be in writing and filed.—All contracts made by the navigation and canal commissioners shall be reduced to writing and signed by the contractors, and navigation and canal commissioners, or any two of said commissioners, and a copy of same filed with the county clerk for reference. (Id. sec. 34.)

Art. 5995. Contractor's bond.—The party, firm, or corporation, to whom any such contract is let, shall give bond, payable to the navigation and canal commissioners for said district, in twice the amount of the contract price, conditioned that he, they or it, will faithfully perform the obligations, agreements and covenants of their contract, and that in default thereof will pay to said district all damages sustained by reason thereof. Said bond shall be approved by such navigation and canal commissioners. (Id. sec. 35.)

Art. 5996. Work supervised by engineer; his report.—All work contracted for by the navigation and canal commissioners, unless done under the supervision of the

government of the United States, or the proper department or officer thereof, shall be done under the supervision of the engineer; and, when the work is completed according to contract, the engineer shall make a detailed report of the same to the navigation and canal commissioners, showing whether the contract has been fully complied with, according to its terms, and if not in what particular it has not been so complied with. (Id. sec. 36.)

Art. 5997. Commissioners to inspect work; payment, how made.—The commissioners shall have the right, and it is hereby made their duty, during the progress of the work being done under contract, to inspect the same; and, upon the completion of any contract, they shall draw a warrant on the county treasurer for the amount of the contract price in favor of the contractor or his assignee, which warrant shall be paid out of the construction and maintenance fund of such district; provided, that, if the navigation and canal commissioners shall deem it advisable, they may contract for the work to be paid for in partial payments as the work progresses; but such partial payments shall not exceed in the aggregate eighty per cent of the total amount to be paid under the contract, the amount of work completed to be shown by a certificate of the engineer; and provided, further, that nothing in this article shall affect the provisions of this chapter providing for the carrying out and performing of the improvement or improvements by the government of the United States. (Id. sec. 37.)

Art. 5998. Commissioners' report of work to contain what.—The commissioners shall make an annual report of their acts and doings as such commissioners, and file the same with the clerk of the county court on or before the first day of January each year; which report shall show in detail the kind, character and amount of work done in the district, the cost of same, and the amount paid out on order, for what purpose paid, and other data necessary to show the condition of improvements made under the provisions of this chapter. (Id. sec. 38.)

Art. 5999. Commissioners may employ assistant engineers and legal counsel.—The commissioners are hereby authorized and empowered to employ such assistant engineers and other employés as may be necessary, paying such compensation as they may determine; and the said commissioners are authorized to employ counsel to represent such district in the preparation of any contract, or the conducting of any proceedings in or out of court, and to be the legal adviser of the navigation and canal commissioners on such terms and for such fees as may be agreed upon by them; and such commissioners shall have the authority to draw warrant or warrants in payment of such legal services, and for the salary of the engineer, his assistant, or any other employés, and for all expense incident and pertaining to the navigation district. (Id.)

Art. 6000. Unlawful for officers to be interested in contracts.—Neither the county judge, nor any county commissioner, nor member of the navigation board, nor the navigation and canal commissioners or engineer shall be directly or indirectly interested for themselves, or as agents for any one else, in the contract for the construction of any work to be performed by such navigation district. (Id. sec. 40.)

Art. 6001. Commission may sue and be sued.—All navigation districts established under this chapter may, by and through the navigation and canal commissioners, sue and be sued in all courts of this state in the name of such navigation district; and all courts of this state shall take judicial notice of the establishment of all such districts. (Id. sec. 41.)

TITLE 96A

NEGOTIABLE INSTRUMENTS ACT

See ante, arts. 579-593.

TITLE I. NEGOTIABLE INSTRUMENTS IN GENERAL

ARTICLE I. FORM AND INTERPRETATION

Art. 6001a—1. Instruments negotiable.—An instrument to be negotiable must conform to the following requirements:

1. It must be in writing and signed by the maker or drawer;

2. It must contain an unconditional promise or order to pay a sum certain in money;

3. Must be payable on demand, or at a fixed or determinable future time;

4. Must be payable to order or to bearer; and

5. Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty. (Acts 1919, ch. 123, sec. 1.)

Art. 6001a—2. Sum certain.—The sum payable is a sum certain with the meaning of this Act, although it is to be paid:

1. With interest; or

2. By stated instalments; or

3. By stated instalments, with a provision that upon default in payment of any instalment or of interest, the whole shall become due; or

4. With exchange, whether at a fixed rate or at the current rate; or

5. With costs of collection or an attorney's fee, in case payment shall not be made at maturity. (Id. sec. 2.)

Art. 6001a—3. Unconditional order or promise to pay.—An unqualified order or promise to pay is unconditional within the meaning of this act, though coupled with:

1. An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or

2. A statement of the transaction which gives rise to the instrument, But an order or promise to pay out of a particular fund is not unconditional. (Id. sec. 3.)

Art. 6001a—4. Payable at determinable future time.—An instrument is payable at a determinable future time, within the meaning of this act, which is expressed to be payable:

1. At a fixed period after date or sight; or

2. On or before a fixed or determinable future time specified therein; or

3. On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain.

An instrument payable upon a contingency

is not negotiable, and the happening of the event does not cure the defect. (Id. sec. 4.)

Art. 6001a—5. Provisions affecting negotiability.—An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which:

1. Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or
2. Authorizes a confession of judgment if the instrument be not paid at maturity; or
3. Waives the benefit of any law intended for the advantage or protection of the obligor; or
4. Gives the holder an election to require something to be done in lieu of payment of money.

But nothing in this section shall validate any provision or stipulation otherwise illegal. (Id. sec. 5.)

Art. 6001a—6. Provisions affecting validity or negotiability.—The validity and negotiable character of an instrument are not affected by the fact that;

1. It is not dated; or
2. Does not specify the value given, or that any value has been given therefor; or
3. Does not specify the place where it is drawn or the place where it is payable; or
4. Bears a seal; or
5. Designates a particular kind of current money in which payment is to be made.

But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument. (Id. sec. 6.)

Art. 6001a—7. Payable on demand.—An instrument is payable on demand;

1. Where it is expressed to be payable on demand, or at sight, or on presentation; or
2. In which no time for payment is expressed.

Where an instrument is issued, accepted, or indorsed when overdue, it is, as regards the person so issuing, accepting, or indorsing it, payable on demand. (Id. sec. 7.)

Art. 6001a—8. Payable to order—The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of;

1. A payee who is not maker, drawer, or drawee; or
2. The drawer or maker; or
3. The drawee; or
4. Two or more payees jointly; or
5. One or some of several payees; or
6. The holder of an office for the time being.

Where the instrument is payable to order the payee must be named or otherwise indicated therein with reasonable certainty. (Id. sec. 8.)

Art. 6001a—9. Payable to bearer.—The instrument is payable to bearer;

1. When it is expressed to be so payable; or
2. When it is payable to a person named therein or bearer; or
3. When it is payable to the order of a fictitious or non-existing person, and such fact was known to the person making it so payable; or
4. When the name of the payee does not purport to be the name of any person; or
5. When the only or last indorsement is an indorsement in blank. (Id. sec. 9.)

Art. 6001a—10. Sufficiency of form.—The instrument need not follow the language of this act, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof. (Id. sec. 10.)

Art. 6001a—11. Date of instrument.—Where the instrument or an acceptance or any indorsement thereon is dated, such date is deemed prima facie to be the true date of the making, drawing, acceptance, or indorsement as the case may be. (Id. sec. 11.)

Art. 6001a—12. Ante-dating or post-dating.—The instrument is not invalid for the reason only that it is ante-dated or post-dated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery. (Id. sec. 12.)

Art. 6001a—13. Undated instrument.—Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date. (Id. sec. 13.)

Art. 6001a—14. Blanks; filling in.—Where the instrument is wanting in any material particular, the person in possession thereof has a prima facia authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facia authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time. (Id. sec. 14.)

Art. 6001a—15. Incomplete instrument.—Where an incomplete instrument has not been delivered, it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery. (Id. sec. 15.)

Art. 6001a—16. Effect of delivery of instrument.—Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be

made either by or under the authority of the party making, drawing, accepting or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved. (Id. sec. 16.)

Art. 6001a—17. Construction of ambiguities or omissions.—Where the language of the instrument is ambiguous or there are omissions therein, the following rules of construction apply:

1. Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount;

2. Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof;

3. Where the instrument is not dated, it will be considered to be dated as of the time it was issued;

4. Where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail;

5. Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election;

6. Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser;

7. Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon. (Id. sec. 17.)

Art. 6001a—18. Persons not signing instrument.—No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name. (Id. sec. 18.)

Art. 6001a—19. Signature by agent.—The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency. (Id. sec. 19.)

Art. 6001a—20. Signature in representative capacity.—Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability. (Id. sec. 20.)

Art. 6001a—21. Signature by procuration.—A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority. (Id. sec. 21.)

Art. 6001a—22. Indorsement or assignment by infant or corporation.—The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon. (Id. sec. 22.)

Art. 6001a—23. Forged or unauthorized signature.—When a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party, against whom it is sought to enforce such right, is precluded from setting up the forgery or want of authority. (Id. sec. 23.)

ARTICLE II. CONSIDERATION

Art. 6001a—24. Valuable consideration.—Every negotiable instrument is deemed prima facia to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value. (Acts 1919, ch. 123, sec. 24.)

Art. 6001a—25. Presumption of consideration.—Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time. (Id. sec. 25.)

Art. 6001a—26. Holder for value.—Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time. (Id. sec. 26.)

Art. 6001a—27. Holder with lien deemed holder for value.—Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien. (Id. sec. 27.)

Art. 6001a—28. Absence or failure of consideration as defense.—Absence or failure of consideration is matter of defense as against any person not a holder in due course; and partial failure of consideration is a defence pro tanto, whether the failure is an ascertained and liquidated amount or otherwise. (Id. sec. 28.)

Art. 6001a—29. Accommodation party; liability to holder for value.—An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party. (Id. sec. 29.)

ARTICLE III. NEGOTIATION

Art. 6001a—30. When instrument is negotiated.—An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery. (Acts 1919, ch. 123, sec. 30.)

Art. 6001a—31. Sufficiency of indorsement.—The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement. (Id. sec. 31.)

Art. 6001a—32. Indorsement of entire instrument.—The indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue. (Id. sec. 32.)

Art. 6001a—33. Kinds of indorsement.—An indorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional. (Id. sec. 33.)

Art. 6001a—34. Special indorsement; indorsement in blank.—A special indorsement specifies the person to whom, or to whose order, the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery. (Id. sec. 34.)

Art. 6001a—35. Changing blank into special indorsement.—The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement. (Id. sec. 35.)

Art. 6001a—36. Restrictive indorsement.—An indorsement is restrictive, which either;

1. Prohibits the further negotiation of the instrument; or

2. Constitutes the indorsee the agent of the indorser; or

3. Vests the title in the indorsee in trust for or to the use of some other person.

But the mere absence of words implying power to negotiate does not make an indorsement restrictive. (Id. sec. 36.)

Art. 6001a—37. Same; rights of indorsee.—A restrictive indorsement confers upon the indorsee the right:

1. To receive payment of the instrument;

2. To bring any action thereon that the indorser could bring;

3. To transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so.

But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement. (Id. sec. 37.)

Art. 6001a—38. Qualified indorsement.—A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument. (Id. sec. 38.)

Art. 6001a—39. Conditional indorsement.—Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated, will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally. (Id. sec. 39.)

Art. 6001a—40. Negotiation of instrument payable to bearer indorsed specially.—Where an instrument, payable to bearer, is indorsed specially, it may nevertheless be further negotiated by delivery, but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement. (Id. sec. 40.)

Art. 6001a—41. Indorsement by several payees or indorsees.—Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others. (Id. sec. 41.)

Art. 6001a—42. Instrument drawn or indorsed to person in official capacity.—Where an instrument is drawn or indorsed to a person as "Cashier" or other fiscal officer of a bank or corporation, it is deemed prima facia to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer. (Id. sec. 42.)

Art. 6001a—43. Indorsement when name wrongly designated or misspelled.—Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he think fit, his proper signature. (Id. sec. 43.)

Art. 6001a—44. Indorsement in representative capacity.—Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability. (Id. sec. 44.)

Art. 6001a—45. Time of indorsement.—Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed prima facia to have been effected before the instrument was overdue. (Id. sec. 45.)

Art. 6001a—46. Place of indorsement.—Except where the contrary appears, every indorsement is presumed prima facia to have been made at the place where the instrument is dated. (Id. sec. 46.)

Art. 6001a—47. Continuation of negotiability.—An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise. (Id. sec. 47.)

Art. 6001a—48. Striking indorsements.—The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to

him, are thereby relieved from liability on the instrument. (Id. sec. 48.)

Art. 6001a—49. Transfer without indorsement.—Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferor had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferor. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made. (Id. sec. 49.)

Art. 6001a—50. Negotiation by prior party.—Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this Act, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable. (Id. sec. 50.)

ARTICLE IV. RIGHTS OF THE HOLDER

Art. 6001a—51. Suit by and payment to holder.—The holder of a negotiable instrument may sue thereon in his own name and payment to him in due course discharges the instrument. (Acts 1919, ch. 123, sec. 51.)

Art. 6001a—52. Holder in due course; who is.—A holder in due course is a holder who has taken the instrument under the following conditions:

1. That it is complete and regular upon its face;

2. That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact;

3. That he took it in good faith and for value;

4. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it. (Id. sec. 52.)

Art. 6001a—53. Same; who is not.—Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course. (Id. sec. 53.)

Art. 6001a—54. Same; notice of infirmity.—Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him. (Id. sec. 54.)

Art. 6001a—55. Defective title to instrument.—The title of a person who negotiates an instrument is defective within the meaning of this act when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud. (Id. sec. 55.)

Art. 6001a—56. Notice of infirmity or defect.—To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith. (Id. sec. 56.)

Art. 6001a—57. Rights of holder in due course.—A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon. (Id. sec. 57.)

Art. 6001a—58. Defenses against holder other than holder in due course.—In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter. (Id. sec. 58.)

Art. 6001a—59. Holder in due course; presumption and burden of proof.—Every holder is deemed prima facia to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as holder in due course. But the last-mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title. (Id. sec. 59.)

ARTICLE V. LIABILITIES OF PARTIES

Art. 6001a—60. Liability of maker.—The maker of a negotiable instrument by making it engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to endorse. (Acts 1919, ch. 123, sec. 60.)

Art. 6001a—61. Liability of drawer.—The drawer by drawing the instrument admits the existence of the payee and his then capacity to endorse; and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negativing or limiting his own liability to the holder. (Id. sec. 61.)

Art. 6001a—62. Liability of acceptor.—The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance; and admits;

1. The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and

2. The existence of the payee and his then capacity to endorse. (Id. sec. 62.)

Art. 6001a—63. Indorser; who is.—A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor, is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity. (Id. sec. 63.)

Art. 6001a—64. Liability of indorser in blank.—Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery he is liable as indorser, in accordance with the following rules:

1. If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties.

2. If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.

3. If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee. (Id. sec. 64.)

Art. 6001a—65. Warranties; instrument negotiated by delivery or qualified indorsement.—Every person negotiating an instrument by delivery or by a qualified indorsement, warrants:

1. That the instrument is genuine and in all respects what it purports to be:

2. That he has a good title to it;

3. That all prior parties had capacity to contract;

4. That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee.

The provisions of subdivision three of this section do not apply to persons negotiating public or corporation securities, other than bills and notes. (Id. sec. 65.)

Art. 6001a—66. Same; indorsement without qualification.—Every indorser who indorses without qualification, warrants to all subsequent holders in due course:

1. The matters and things mentioned in subdivision one, two and three of the next preceding section; and

2. That the instrument is at the time of his indorsement valid and subsisting.

And, in addition, he engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. (Id. sec. 66.)

Art. 6001a—67. Liability of indorser of instrument negotiable by delivery.—Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser. (Id. sec. 67.)

Art. 6001a—68. Order of liability of indorsers.—As respects one another indorsers are liable prima facia in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally. (Id. sec. 68.)

Art. 6001a—69. Liability of broker or agent.—Where a broker or other agent negotiates an instrument without indorsement he incurs all the liabilities prescribed by section sixty-five of this act, unless he discloses the name of his principal, and the fact that he is acting only as agent. (Id. sec. 69.)

ARTICLE VI. PRESENTMENT FOR PAYMENT

Art. 6001a—70. Presentment to charge person primarily liable.—Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers. (Acts 1919, ch. 123, sec. 70.)

Art. 6001a—71. Presentment of instrument not payable on demand.—Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof. (Id. sec. 71.)

Art. 6001a—72. Sufficiency of presentment.—Presentment for payment, to be sufficient, must be made:

1. By the holder, or by some person authorized to receive payment on his behalf;

2. At a reasonable hour on a business day;

3. At a proper place as herein defined;

4. To the person primarily liable on the instrument or if he is absent on inaccessible, to any person found at the place where the presentment is made. (Id. sec. 72.)

Art. 6001a—73. Place of presentment.—Presentment for payment is made at the proper place:

1. Where a place of payment is specified in the instrument and it is there presented:

2. Where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented;

3. Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment;

4. In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence. (Id. sec. 73.)

Art. 6001a—74. Exhibit of instrument; delivery on payment.—The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it. (Id. sec. 74.)

Art. 6001a—75. Presentment of instrument payable at bank.—Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient. (Id. sec. 75.)

Art. 6001a—76. Presentment where principal debtor is dead.—Where a person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative if such there be, and

if, with the exercise of reasonable diligence, he can be found. (Id. sec. 76.)

Art. 6001a—77. Presentment to partners.—Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them even though there has been a dissolution of the firm. (Id. sec. 77.)

Art. 6001a—78. Presentment to joint debtors.—Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all. (Id. sec. 78.)

Art. 6001a—79. Presentment to charge drawer.—Presentment for payment is not required in order to charge the drawer where he has no right to expect or require the drawee or acceptor will pay the instrument. (Id. sec. 79.)

Art. 6001a—80. Presentment to charge indorser.—Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation and he has no reason to expect that the instrument will be paid if presented. (Id. sec. 80.)

Art. 6001a—81. Excuse for delay in presentment.—Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence. (Id. sec. 81.)

Art. 6001a—82. Presentment for payment dispensed with.—Presentment for payment is dispensed with:

1. Where after the exercise of reasonable diligence presentment as required by this act cannot be made;

2. Where the drawee is a fictitious person;

3. By waiver of presentment, express or implied. (Id. sec. 82.)

Art. 6001a—83. Dishonor by nonpayment.—The instrument is dishonored by nonpayment when:

1. When it is duly presented for payment and payment is refused or cannot be obtained; or

2. Presentment is excused and the instrument is overdue and unpaid. (Id. sec. 83.)

Art. 6001a—84. Liability of parties secondarily liable on dishonor.—Subject to the provisions of this act, when the instrument is dishonored by non-payment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder. (Id. sec. 84.)

Art. 6001a—85. Time of maturity.—Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due (or becoming payable) on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday. (Id. sec. 85.)

Art. 6001a—86. Same; computation.—Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment. (Id. sec. 86.)

Art. 6001a—87. Instrument payable at bank.—Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon. (Id. sec. 87.)

Art. 6001a—88. Payment in due course.—Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective. (Id. sec. 88.)

ARTICLE VII. NOTICE OF DISHONOR

Art. 6001a—89. To whom given.—Except as herein otherwise provided, when a negotiable instrument has been dishonored by non-acceptance or non-payment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged. (Acts 1919, ch. 123, sec. 89.)

Art. 6001a—90. By whom given.—The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who upon taking it up would have a right to reimbursement from the party to whom the notice is given. (Id. sec. 90.)

Art. 6001a—91. Same; by agent.—Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not. (Id. sec. 91.)

Art. 6001a—92. Effect of notice given by or in behalf of holders.—Where notice is given by or on behalf of the holder, it enures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given. (Id. sec. 92.)

Art. 6001a—93. Effect of notice given by or on behalf of party entitled to give.—Where notice is given by or on behalf of a party entitled to give notice, it enures for the benefit of the holder and all parties subsequent to the party to whom notice is given. (Id. sec. 93.)

Art. 6001a—94. Notice of instrument dishonored in hands of agent.—Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice himself the same time for giving notice as if the agent had been an independent holder. (Id. sec. 94.)

Art. 6001a—95. Written notice; sufficiency.—A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact mislead thereby. (Id. sec. 95.)

Art. 6001a—96. Form of notice.—The notice may be in writing or merely oral and

may be given in any terms which sufficiently identify the instrument, and indicate, that it has been dishonored by non-acceptance or non-payment. It may in all cases be given by delivering it personally or through the mails. (Id. sec. 96.)

Art. 6001a—97. Notice to party or agent.—Notice of dishonor may be given either to the party himself or to his agent in that behalf. (Id. sec. 97.)

Art. 6001a—98. Notice where party is dead.—When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased. (Id. sec. 98.)

Art. 6001a—99. Notice to partners.—Where the parties to be notified are partners, notice to any one partner is notice to the firm even though there has been a dissolution. (Id. sec. 99.)

Art. 6001a—100. Notice to parties jointly liable.—Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others. (Id. sec. 100.)

Art. 6001a—101. Notice to bankrupt or assignor for creditors.—Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee. (Id. sec. 101.)

Art. 6001a—102. Time for giving notice.—Notice may be given as soon as the instrument is dishonored; and unless delay is excused as hereinafter provided, must be given within the time fixed by this act. (Id. sec. 102.)

Art. 6001a—103. Place of giving notice; parties residing in same place.—Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times:

1. If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following.

2. If given at his residence, it must be given before the usual hours of rest on the day following.

3. If sent by mail, it must be deposited in the post office in time to reach him in usual course on the day following. (Id. sec. 103.)

Art. 6001a—104. Same; parties residing in different places.—Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:

1. If sent by mail, it must be deposited in the postoffice in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter.

2. If given otherwise than through the postoffice, then within the time that notice would have been received in due course of mail, if it had been deposited in the postoffice within the time specified in the last subdivision. (Id. sec. 104.)

Art. 6001a—105. Sender deemed to have given due notice.—Where notice of dishonor is duly addressed and deposited in the postoffice, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails. (Id. sec. 105.)

Art. 6001a—106. Deposit of notice in post office.—Notice is deemed to have been deposited in the postoffice when deposited in any branch postoffice or in any letter box under the control of the postoffice department. (Id. sec. 106.)

Art. 6001a—107. Notice to antecedent parties; time for.—Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor. (Id. sec. 107.)

Art. 6001a—108. Place for sending notice.—Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows:

1. Either to the postoffice nearest to his place of residence, or to the postoffice where he is accustomed to receive his letters; or

2. If he live in one place, and have his place of business in another, notice may be sent to either place; or

3. If he is sojourning in another place, notice may be sent to the place where he is so sojourning.

But where the notice is actually received by the party within the time specified in this act, it will be sufficient, though not sent in accordance with the requirements of this section. (Id. sec. 108.)

Art. 6001a—109. Waiver of notice.—Notice of dishonor may be waived, either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be express or implied. (Id. sec. 109.)

Art. 6001a—110. Same; effect.—Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds him only. (Id. sec. 110.)

Art. 6001a—111. Waiver of protest.—A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument is deemed to be a waiver not only of a formal protest, but also of presentment and notice of dishonor. (Id. sec. 111.)

Art. 6001a—112. Notice of dishonor dispensed with.—Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it can not be given to or does not reach the parties sought to be charged. (Id. sec. 112.)

Art. 6001a—113. Delay in giving notice; excused, when.—Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to this default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence. (Id. sec. 113.)

Art. 6001a—114. Notice to drawer.—Notice of dishonor is not required to be given to the drawer in either of the following cases:

1. Where the drawer and drawee are the same person;

2. When the drawee is a fictitious person or person not having capacity to contract;

3. When the drawer is the person to whom the instrument is presented for payment;

4. Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument;

5. Where the drawer has countermanded payment. (Id. sec. 114.)

Art. 6001a—115. Notice to indorser.—Notice of dishonor is not required to be given to an indorser in either of the following cases:

1. Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument;

2. Where the indorser is the person to whom the instrument is presented for payment;

3. Where the instrument was made or accepted for his accommodation. (Id. sec. 115.)

Art. 6001a—116. Notice of dishonor by nonpayment of instrument not accepted.—Where due notice of dishonor by non-acceptance has been given notice of a subsequent dishonor by non-payment is not necessary, unless in the meantime the instrument has been accepted. (Id. sec. 116.)

Art. 6001a—117. Omission to give notice of dishonor by non-acceptance.—An omission to give notice of dishonor by non-acceptance does not prejudice the rights of a holder in due course subsequent to the omission. (Id. sec. 117.)

Art. 6001a—118. Protest; when necessary.—Where any negotiable instrument has been dishonored it may be protested for non-acceptance or non-payment, as the case may be; but protest is not required except in the case of foreign bills of exchange. (Id. sec. 118.)

ARTICLE VIII. DISCHARGE OF NEGOTIABLE INSTRUMENTS

Art. 6001a—119. What constitutes discharge.—A negotiable instrument is discharged:

1. By payment in due course by or on behalf of the principal debtor;

2. By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation;

3. By the intentional cancellation thereof by the holder;

4. By any other act which will discharge a simple contract for the payment of money;

5. When the principal debtor becomes the holder of the instrument at or after maturity in his own right. (Acts 1919, ch. 123, sec. 119.)

Art. 6001a—120. Discharge of person secondarily liable.—A person secondarily liable on the instrument is discharged:

1. By any act which discharges the instrument;

2. By the intentional cancellation of his signature by the holder;

3. By the discharge of a prior party;

4. By a valid tender of payment made by a prior party;

5. By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved;

6. By any agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved. (Id. sec. 120.)

Art. 6001a—121. Right of party secondarily liable paying instrument.—Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except:

1. Where it is payable to the order of a third person, and has been paid by the drawer; and

2. Where it was made or accepted for accommodation, and has been paid by the party accommodated. (Id. sec. 121.)

Art. 6001a—122. Renunciation of rights by holder.—The holder may expressly renounce his rights against any party to the instrument, before, at or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon. (Id. sec. 122.)

Art. 6001a—123. Unintentional cancellation.—A cancellation made unintentionally, or under mistake or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake without authority. (Id. sec. 123.)

Art. 6001a—124. Material alteration; effect.—Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized or assented to the alteration, and subsequent indorsers.

But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor. (Id. sec. 124.)

Art. 6001a—125. Same; what constitutes.—Any alteration which changes:

1. The date;

2. The sum payable, either for principal or interest;

3. The time or place of payment;

4. The number or the relations of the parties;

5. The medium of currency in which payment is to be made;

Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration. (Id. sec. 125.)

TITLE II. BILLS OF EXCHANGE

ARTICLE I. FORM AND INTERPRETATION

Art. 6001a—126. Bill of exchange defined.—A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person, to whom it is

addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer. (Acts 1919, ch. 123, sec. 126.)

Art. 6001a—127. Not an assignment of funds in hands of drawee.—A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same. (Id. sec. 127.)

Art. 6001a—128. Address to more than one drawee.—A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession. (Id. sec. 128.)

Art. 6001a—129. Inland and foreign bills.—An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this State. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill. (Id. sec. 129.)

Art. 6001a—130. Bill as promissory note.—Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note. (Id. sec. 130.)

Art. 6001a—131. Referee in case of need.—The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need, that is to say in case the bill is dishonored by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may see fit. (Id. sec. 131.)

ARTICLE II. ACCEPTANCE

Art. 6001a—132. How made.—The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money. (Acts 1919, ch. 123, sec. 132.)

Art. 6001a—133. Acceptance written on bill.—The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill and, if such request is refused, may treat the bill as dishonored. (Id. sec. 133.)

Art. 6001a—134. Acceptance on separate paper.—Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value. (Id. sec. 134.)

Art. 6001a—135. Promise to accept.—An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who upon the faith thereof, receives the bill for value. (Id. sec. 135.)

Art. 6001a—136. Time allowed drawee to accept.—The drawee is allowed twenty-four hours after presentment, in which to decide whether or not he will accept the bill; but the acceptance if given, dates as of the day of presentation. (Id. sec. 136.)

Art. 6001a—137. Drawee retaining or destroying bill.—Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder, he will be deemed to have accepted the same. (Id. sec. 137.)

Art. 6001a—138. Acceptance of incomplete bill.—A bill may be accepted before it has been signed by the drawee, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by non-payment. But when a bill payable after sight is dishonored by non-acceptance and the drawee subsequently accepts it, the holder in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment. (Id. sec. 138.)

Art. 6001a—139. Kinds of acceptances.—An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn. (Id. sec. 139.)

Art. 6001a—140. General acceptance.—An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere. (Id. sec. 140.)

Art. 6001a—141. Qualified acceptance.—An acceptance is qualified, which is;

1. Conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated;

2. Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;

3. Local, that is to say, an acceptance to pay only at a particular place;

4. Qualified as to time;

5. The acceptance of some one or more of the drawees, but not of all. (Id. sec. 141.)

Art. 6001a—142. Same; rights of parties as to.—The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by non-acceptance. Where a qualified acceptance is taken the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must, within a reasonable time, express his dissent to the holder, or he will be deemed to have assented thereto. (Id. sec. 142.)

ARTICLE III. PRESENTMENT FOR ACCEPTANCE

Art. 6001a—143. When necessary.—Presentment for acceptance must be made;

1. Where the bill is payable after sight, or in any other case, where presentment for acceptance is necessary in order to fix the maturity of the instrument; or

2. Where the bill expressly stipulates that it shall be presented for acceptance; or

3. Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable. (Acts 1919, ch. 123, sec. 143.)

Art. 6001a—144. Release of drawer and indorsers by failure to present.—Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fails to do so, the drawer and all indorsers are discharged. (Id. sec. 144.)

Art. 6001a—145. Manner of making presentment.—Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf, and;

1. Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only.

2. Where the drawee is dead, presentment may be made to his personal representative.

3. Where the drawee has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee. (Id. sec. 145.)

Art. 6001a—146. Days for making presentment.—A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections seventy-two and eighty-five of this act. When Saturday is not otherwise a holiday, presentment for acceptance may be made before twelve o'clock, noon, on that day. (Id. sec. 146.)

Art. 6001a—147. Excuse for delay in presentment.—Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers. (Id. sec. 147.)

Art. 6001a—148. Same.—Presentment for acceptance is excused and a bill may be treated as dishonored by non-acceptance, in either of the following cases;

1. Where the drawee is dead, or has absconded, or is a fictitious person or a person not having capacity to contract by bill.

2. Where, after the exercise of reasonable diligence, presentment cannot be made.

3. Where, although presentment has been irregular, acceptance has been refused on some other ground. (Id. sec. 148.)

Art. 6001a—149. Dishonor by non-acceptance.—A bill is dishonored by non-acceptance;

1. When it is duly presented for acceptance and such an acceptance as is prescribed by this act is refused or cannot be obtained; or

2. When presentment for acceptance is excused and the bill is not accepted. (Id. sec. 149.)

Art. 6001a—150. Duty of holder on non-acceptance.—Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by non-acceptance or he loses the right of recourse against the drawer and indorsers. (Id. sec. 150.)

Art. 6001a—151. Rights of holder on non-acceptance.—When a bill is dishonored by non-acceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder and no presentment for payment is necessary. (Id. sec. 151.)

ARTICLE IV. PROTEST

Art. 6001a—152. When protest is necessary.—Where a foreign bill appearing on its face to be such is dishonored by non-acceptance, it must be duly protested for non-acceptance, and where such a bill which has not previously been dishonored by non-acceptance is dishonored by non-payment, it must be duly protested for non-payment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary. (Acts 1919, ch. 123, sec. 152.)

Art. 6001a—153. Manner of making protest.—The protest must be annexed to the bill, or must contain a copy thereof and must be under the hand and seal of the notary making it, and must specify;

1. The time and place of presentment;

2. The fact that presentment was made and the manner thereof;

3. The cause or reason for protesting the bill;

4. The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found. (Id. sec. 153.)

Art. 6001a—154. By whom made.—Protest may be made by:

1. A notary public; or

2. By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses. (Id. sec. 154.)

Art. 6001a—155. When made.—When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting. (Id. sec. 155.)

Art. 6001a—156. Where made.—A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business, or residence of some person other than the drawee, has been dishonored by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary. (Id. sec. 156.)

Art. 6001a—157. Protest for non-acceptance and for non-payment.—A bill which has been protested for non-acceptance may be subsequently protested for non-payment. (Id. sec. 157.)

Art. 6001a—158. Protest before maturity.—Where the acceptor has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of cred-

itors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers. (Id. sec. 158.)

Art. 6001a—159. When dispensed with.—Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence. (Id. sec. 159.)

Art. 6001a—160. Protest on copy.—When a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof. (Id. sec. 160.)

ARTICLE V. ACCEPTANCE FOR HONOR

Art. 6001a—161. Acceptance supra protest for honor.—Where a bill of exchange has been protested for dishonor by non-acceptance or protested for better security, and is not overdue, any person not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon, or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for the part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party. (Acts 1919, ch. 123, sec. 161.)

Art. 6001a—162. Same; writing.—An acceptance for honor supra protest must be in writing, and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor. (Id. sec. 162.)

Art. 6001a—163. Same; for drawer.—Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer. (Id. sec. 163.)

Art. 6001a—164. Liability of acceptor for honor.—The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted. (Id. sec. 164.)

Art. 6001a—165. Same.—The acceptor for honor, by such acceptance engages that he will on due presentation pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee, and provided also, that it shall have been duly presented for payment and protested for non-payment and notice of dishonor given him. (Id. sec. 165.)

Art. 6001a—166. Maturity of bill payable after sight accepted for honor.—Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for non-acceptance and not from the date of the acceptance for honor. (Id. sec. 166.)

Art. 6001a—167. Protest for non-payment of bill accepted for honor or containing referee in case of need.—Where a dishonored bill has been accepted for honor supra protest or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honor or referee in case of need. (Id. sec. 167.)

Art. 6001a—168. Presentment for payment to acceptor for honor.—Presentment for payment to the acceptor for honor must be made as follows:

1. If it is to be presented in the place where the protest for non-payment was made, it must be presented not later than the day following its maturity.

2. If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section one hundred and four. (Id. sec. 168.)

Art. 6001a—169. Delay in presentment to acceptor for honor, or referee in case of need.—The provisions of section eighty-one apply where there is delay in making presentment to the acceptor for honor or referee in case of need. (Id. sec. 169.)

Art. 6001a—170. Dishonor of bill by acceptor for honor.—When the bill is dishonored by the acceptor for honor it must be protested for non-payment by him. (Id. sec. 170.)

ARTICLE VI. PAYMENT FOR HONOR

Art. 6001a—171. Who may make.—Where a bill has been protested for non-payment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn. (Acts 1919, ch. 123, sec. 171.)

Art. 6001a—172. How made.—The payment for honor supra protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor which may be appended to the protest or form an extension to it. (Id. sec. 172.)

Art. 6001a—173. Declaration before making.—The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays. (Id. sec. 173.)

Art. 6001a—174. Preference to parties offering to make.—Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference. (Id. sec. 174.)

Art. 6001a—175. Effect on subsequent parties.—Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter. (Id. sec. 175.)

Art. 6001a—176. Holder refusing to receive.—Where the holder of a bill refuses to receive payment supra protest, he loses his right of recourse against any party who would have been discharged by such payment. (Id. sec. 176.)

Art. 6001a—177. Rights of payer for honor.—The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor,

is entitled to receive both the bill itself and the protest. (Id. sec. 177.)

ARTICLE VII. BILLS IN A SET

Art. 6001a—178. Parts to constitute one bill.—Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitutes one bill. (Acts 1919, ch. 123, sec. 178.)

Art. 6001a—179. Rights of holders of different parts.—Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him. (Id. sec. 179.)

Art. 6001a—180. Liability of holder indorsing two or more parts to different persons.—Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills. (Id. sec. 180.)

Art. 6001a—181. Acceptance.—The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill. (Id. sec. 181.)

Art. 6001a—182. Payment by acceptor.—When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon. (Id. sec. 182.)

Art. 6001a—183. Discharge of one part.—Except as herein otherwise provided where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged. (Id. sec. 183.)

TITLE III. PROMISSORY NOTES AND CHECKS

ARTICLE I

Art. 6001a—184. Promissory note defined.—A negotiable promissory note within the meaning of this act is an unconditional promise in writing made by one person to another signed by the maker engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him. (Acts 1919, ch. 123, sec. 184.)

Art. 6001a—185. Check defined.—A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this act applicable to a bill of exchange payable on demand apply to a check. (Id. sec. 185.)

Art. 6001a—186. Time for presenting check for payment.—A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay. (Id. sec. 186.)

Art. 6001a—187. Certification of check.—Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance. (Id. sec. 187.)

Art. 6001a—188. Effect of acceptance or certification.—Where the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability thereon. (Id. sec. 188.)

Art. 6001a—189. Check as assignment.—A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder, unless and until it accepts or certifies the check. (Id. sec. 189.)

TITLE IV. GENERAL PROVISIONS

ARTICLE I

Art. 6001a—190. Citation of act.—This act may be cited as the Uniform Negotiable Instruments Act. (Acts 1919, ch. 123, sec. 190.)

Art. 6001a—191. Definitions.—In this Act, unless the context otherwise requires,—

"Acceptance" means an acceptance completed by delivery or notification.

"Action" includes counter-claim and set-off.

"Bank" includes any person or association of persons carrying on the business of banking, whether incorporated or not.

"Bearer" means the person in possession of a bill or note which is payable to bearer.

"Bill" means bill of exchange, and "note" means negotiable promissory note.

"Delivery" means transfer of possession, actual or constructive, from one person to another.

"Holder" means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

"Indorsement" means an indorsement completed by delivery.

"Instrument" means negotiable instrument.

"Issue" means the first delivery of the instrument, complete in form, to a person who takes it as a holder.

"Person" includes a body of persons, whether incorporated or not.

"Value" means valuable consideration.

"Written" includes printed, and "Writing" includes print. (Id. sec. 191.)

Art. 6001a—192. Same.—The person "primarily" liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are "secondarily" liable. (Id. sec. 192.)

Art. 6001a—193. Reasonable time or unreasonable time.—In determining what is a "reasonable time" or an "unreasonable time," regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case. (Id. sec. 193.)

Art. 6001a—194. Computation of time.—Where the day, or the last day, for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day. (Id. sec. 194.)

Art. 6001a—195. Retroactive effect of act.—The provisions of this act do not apply to negotiable instruments made and delivered

prior to the (taking effect) hereof. (Id. sec. 195.)

Art. 6001a—196. Law merchant to govern.—In any case not provided for in this act the rules of (law and equity including) the law merchant shall govern. (Id. sec. 196.)

Art. 6001a—197. Repeal.—All acts and parts of acts inconsistent with this act are hereby repealed. (Id. sec. 197.)

TITLE 97

NOTARIES PUBLIC

Art. 6002. (3503) Governor shall appoint; tenure; additional notaries; proviso.—There shall be appointed by the governor, by and with the advice and consent of the senate, a convenient number of notaries public for each organized county, and not to exceed six notaries public for each unorganized county in this state, who shall hold their office for the term of two years from the first day of June after appointment at a regular session of the legislature; provided, that the governor by and with the advice and consent of the senate may appoint additional notaries public at any special session of the legislature, who shall hold their office until the first day of June succeeding the next regular session of the legislature after their appointment. Provided that nothing herein be so construed as to exempt them from jury service. (Acts 1903, p. 158; Acts 1889, p. 89; Acts 1879, p. 89; Acts 1885, p. 1; Acts 1913, 1st C. S., p. 2, sec. 1.)

See Const. art. 4, sec. 26.

Art. 6003. (3504) Bond and oath.—Every person who may be appointed a notary public, before he enters on the duties of his office, shall execute a bond, with two or more good and sufficient sureties, to be approved by the clerk of the county court of his county, payable to the governor and his successors in office, in the sum of one thousand dollars, conditioned for the faithful performance of the duties of his office; and shall also take and subscribe the oath of office prescribed by the constitution, which shall be indorsed on said bond, with the certificate of the officer administering the same; said bond shall be recorded in the office of the clerk of the county court, and deposited in said office, and shall not be void on the first recovery, and may be sued on in the name of any party injured from time to time until the whole amount thereof has been recovered. (Acts 1881, p. 94.)

Art. 6004. (3505) To be removed, when.—Every notary public who shall be guilty of any willful neglect of duty or malfeasance in office may be removed from office in the manner provided by law. (Id. sec. 3.)

Art. 6005. (3506) Office to become vacant, when.—Whenever any notary public shall remove permanently from the county for which he was appointed, or an ex officio notary public from his precinct, his office shall thereupon be deemed vacant. (Id. sec. 4.)

Art. 6006. (3507) Seal, and what it shall contain.—Every notary public shall provide a seal of office, whereon shall be engraved in the center a star of five points, and the words, "Notary Public, County of ———, Texas," around the margin (the blank to be filled with the name of the county for which the officer is appointed), and he shall authenticate all his official acts therewith; and any notary public or other officer required by law to keep and use a seal, who shall use, in attesting any instrument any seal not such as is required by law to keep and use for that purpose, or shall fail or refuse to deliver to the county clerk of his county his seal, record books and all public papers pertaining to his office, or any of them, in case of his resignation or removal from the county, shall be punished as provided in the Penal Code. (Id. sec. 5.)

Wisegarver v. Yinger, 122 S. W. 925.

Art. 6007. (3508) Duty of county clerk when office becomes vacant.—Whenever the office of notary public shall be vacated by resignation, removal or death, it shall be the duty of the county clerk of the county where said notary resides to obtain and deposit in his office the seal, record books and all public papers belonging in the office of said notary; provided, that the seal of any notary vacating his office may be sold by the owner thereof to any qualified notary public in the county. (Id. sec. 6.)

Art. 6008. (3509) Their powers.—Notaries public may take acknowledgments or proof of all instruments of writing in the manner provided by law, to entitle them to registration, and give certificates of all such acknowledgments and proof under their hand and official seals; they may take the examination and acknowledgments of married women to all deeds and instruments of writing, conveying or charging their separate property, of their interest in the homestead, in the manner provided by law. (Id. sec. 7.)

See post, art. 6798.

Art. 6009. (3510) (3368) Duty on vacating office.—Whenever any notary public shall vacate his office in any manner, his record books and all public papers in his office shall be deposited with the clerk of the county court of his county.

Art. 6010. (3511) Shall have power to administer oaths, etc.—Every notary public shall have power to administer oaths, and give certificates thereof under his hand and official seal. He may take the proof or acknowledgments of all instruments of writing relating to commerce and navigation, and also letters of attorney and other instruments of writing, make declarations and protest, and certify under his hand and seal the truth of the matters or things done by virtue of his office. (Id. sec. 8.)

See ante arts. 10, 13; Sayles' Practice, p. 729.

Art. 6011. (3512) Shall keep a well-bound book.—Every notary public shall procure and keep a well-bound book, in which shall be entered the date of all instruments acknowledged before him, the date of such acknowledgments, the name of the grantor or maker, the place of his residence or alleged residence, whether personally known or introduced, and, if introduced, the name and residence or alleged residence of the party introducing him; if the instrument be proved by a witness, the residence of such witness, whether such witness is personally known to him or introduced; if introduced, the name and residence of the party introducing him; the name and residence of the

grantee; if land is conveyed or charged by such instrument, the name of the original grantee thereof shall be kept, and the county where the land is situated. The book herein required to be kept, and the statements herein required to be entered, shall be an original public record, and the same shall be open to inspection by any citizen at all reasonable times; and such notary public shall give a certified copy of any record in his office to any person applying therefor on payment of all fees thereon. (Id. sec. 9.)

Trice's Heirs v. McCaleb, 138 S. W. 792.

Art. 6012. (3513) May take depositions.—Notaries public shall have power to take the depositions of witnesses in the manner prescribed by law; to attest the oath of any person to a petition or answer in any suit, and the same when so attested shall be valid in all the courts of this state. (Id. sec. 10.)

See ante art. 3657; Sayles' Practice, pp. 373, 729.

Art. 6013. (3514) Copies of records.—Copies of all records, declarations, protests and other official acts of notaries public may be certified by the county clerk with whom they are deposited, and shall have the same authority as if certified by the notary by whom they were originally made. (Id. sec. 11.)

See ante art. 3697; Trice's Heirs v. McCaleb, 138 S. W. 792.

Art. 6014. (3515) Printed list to be furnished by secretary of state.—When notaries public have been appointed by the governor and shall have qualified, it shall be the duty of the secretary of state to furnish to the clerks of the county courts a printed list of all notaries public so appointed and qualified; and it shall be the duty of said clerks to preserve said list for public inspection and post a copy thereof on the court house door. (Id. sec. 12.)

Art. 6015. (3516) To qualify, when.—When a notary is appointed, the secretary of state shall forward the commission to the clerk of the county court of the county where the party resides; and the said clerk shall immediately notify said party to appear before him within ten days, pay for his commission, and qualify according to law; provided, that, if said party be absent from the county, or sick at the time of reception of said commission by the clerk, then he shall have ten days from his return to said county in which to appear and qualify. (Id. sec. 13.)

See ante art. 3837.

Art. 6016. (3517) Clerk shall notify secretary of state.—The clerk receiving the commission shall indorse thereon the day on which notice was given, and, if the party pay the state fee for commission and qualify according to law, the said clerk shall notify the secretary of state of his qualification, giving date of same, and remit the fee to said officer; but if the party fails to qualify and pay the fee within the limited time the appointment shall be void, and the clerk shall certify on the back of the commission that the party has failed to qualify, and return it to the secretary of state. (Id.)

See ante art. 3837.

TITLE 97 A

NOTICE

Art. 6016½. Publication in newspaper of notice required to be posted; exception.—That whenever by law notice is required to be given of any act or proceeding, whether public or private, or relating to a judicial, executive, or legislative matter, which notice is now authorized by law or by contract, to be made by posting notices in one or more public places, such notices shall hereafter be given by publication thereof, in a newspaper of general circulation, which has been continuously and regularly published for a period of not less than one year, in the county in which said act or proceeding is to occur; provided, that nothing in this act shall be construed to require the publication of any general election notice, public road notices nor probate notices, when the appraised value of the estate in which same is issued is less than one thousand dollars, ($1,000.00) and provided further, that the provisions of this Act shall not apply to sales made under a written contract wherein it is provided that notice of sale thereunder may be posted. (Acts 1917, ch. 179, sec. 1.)

Art. 6016½a. Duration of publication.—All notices published under the provisions of this Act shall be printed at least once each week, for the period of time now required for posting such notices. (Id. sec. 2.)

Art. 6016½b. Where no newspaper in county.—In the event no paper should be published in the county where such notice is required to be given, then such notice may be posted as now provided by law. (Id. sec. 3.)

Art. 6016½c. Publication fee.—The price to be paid for all publications required by this Act shall be not more than one dollar ($1.00) per square of one hundred (100) words for first insertion, and not more than fifty cents per one hundred (100) words for each subsequent insertion, said publication fee to be taxed as other costs in the case. (Id. sec. 4.)

TITLE 98

OFFICERS—REMOVAL OF

CHAPTER ONE

REMOVAL OF STATE AND CERTAIN DISTRICT OFFICERS

Art. 6017. (3518) Officers removable by impeachment; remedy cumulative.—The Governor, Lieutenant Governor, Secretary of State, Attorney General, State Treasurer, Commissioner of the General Land Office, Comptroller of Public Accounts, Commissioner of Agriculture, Commissioner of Insurance and Banking, Judge of the Supreme Court, of the Court of Criminal Appeals, of the Courts of Civil Appeals, of the District Courts, of the Criminal District courts of Galveston and Harris and of other counties which have criminal district courts, and all other state officers and heads of state departments or institutions of any kind, and all members, regents, trustees, commissioners having the control of management of any State Institution or enterprise, shall be removable from office or position by impeachment in the manner provided in the Constitution and in this Act, the remedy by impeachment as herein provided for being cumulative of all other remedies with respect to the impeachment or removal of public officers. (Const. art. 15, secs. 1, 2; Act Aug.

21, 1876, p. 226, sec. 26; Acts 1917, 3d C. S., ch. 34, sec. 1.)

Art. 6017a. Power of impeachment vested in House; exercise at regular session; special sessions, how called; compensation of members; quorum, powers, and procedure.—The power of impeachment shall be vested in the House of Representatives. If the House of Representatives shall be in session at a regular or called session of the Legislature when it is desired to present articles of impeachment, or when it is desired to make any investigation pertaining to a contemplated impeachment, it may proceed without further call or action at its pleasure and may continue to meet and proceed for such purposes until such time as the matters under consideration, pertaining to impeachments, may be disposed of by it. And if the House of Representatives shall be in session, at a regular or called session of the Legislature, at the time it desires to undertake, and does undertake, any investigation pertaining to an impeachment, or impeachments, and the legislative session shall expire by limitation, or it shall, in conjunction with the Senate, decide to adjourn in so far as legislative matters are concerned, before said investigation has been completed and before such impeachment matters have been finally disposed of by it, it may continue such investigation through committees, or by itself, and may continue in session for such purposes, or may adjourn the House to such time as it may desire for reconvention for the final disposition of such matters, and, in the meantime, it may continue such investigations through committees or agents. The members of such committees and the members of the House of Representatives and Senate, when the House or Senate shall be sitting for impeachment purposes, and when not in session for legislature purposes, shall receive the per diem fixed for members of the Legislature during legislative sessions, to be paid out of the appropriations made for the per diem pay of the members of the Legislature or out of the contingent funds of the respective Houses, and the agents of the House or Senate or of such committees shall be paid as may be provided in the resolutions providing therefor, out of said contingent funds.

If the House of Representatives be not in session when the cause for impeachment may arise or be discovered, or when it is desired to institute any investigation pertaining to a contemplated impeachment, the House may be convened for the purpose of impeachment in the following manner:

(a) By proclamation of the Governor; or

(b) By proclamation of the Speaker of the House, which proclamation shall be made only when petitioned in writing by not less than fifty (50) members of the House; or

(c) By proclamation in writing signed by a majority of the members of the House.

Such proclamation shall be published in at least three daily newspapers of general circulation, and a copy thereof shall be furnished in person or by registered mail to each member of the House who may be within the State and accessible, by the Speaker of the House, or under his direction, or, in case the same is issued under the authority of subparagraph "(c)" as above, by the members signing the same or some one or more of them designated by such signers for such purpose. And such proclamation shall in general terms, state the cause for which it is proposed to convene the House, and shall fix the time for the convention thereof. Two-thirds of the members of the House, upon such convention, shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent members. The House, when so convened, may proceed in the manner, and shall have all the powers, pertaining to impeachments and investigations with respect thereto given it by the Constitution and by the terms of this Act. The members of the House when so convened, shall receive the same mileage and per diem pay as is provided for members of the Legislature when in legislative session, and the members of the committees of the House, when so convened and serving upon such committees when the House itself is not in session, shall receive the said per diem pay, to be paid out of the appropriations then existing, or which thereafter may be made, for the per diem pay of members of the Legislature, and the agents of the House so convened or of such committees acting when the House itself is not in session shall receive such pay as may be provided for in the resolutions of such House out of the appropriations then existing, or thereafter to be made, to defray the contingent expenses of the House or to pay the mileage and per diem of members.

The House, at any time when considering impeachment matters or making investigations pertaining thereto, shall have the power itself, or through committees, to send for persons and papers and to compel the giving of testimony, and to punish for contempt, to the same extent as the district courts of the State. And any committee of the House, acting under the terms of this Act, shall have and exercise all of the powers which may be conferred upon it by the House, and at any time shall have all the powers conferred upon committees of either House of the Legislature by Chapter 3 of Title 82 R. S. 1911, whether the Legislature be in session for Legislative purposes or not, or by any other law pertaining to the subject matter. (Id. sec. 2.)

Art. 6017b. Trial by Senate; powers and procedure; sessions; convening Senate as impeachment court; compensation of members.—All officers, agents or employés against whom articles of impeachment may be preferred by the House of Representatives shall be tried by the Senate sitting as a court of impeachment in the manner provided by Article XV of the Constitution of Texas.

If the Senate be in session, at a regular or called session of the Legislature, when articles of impeachment are preferred against any officer, agent or employé by the House of Representatives, it shall receive such articles from the House of Representatives and as soon as practicable, organize as a court of impeachment and dispose of such matters. If the session in which such articles are preferred and presented shall, for legislative purposes, expire by limitation, or

by adjournment in so far as legislative purposes are concerned, before the matters presented by such articles shall have finally been disposed of by the Senate, the Senate shall continue in session, for such purpose, so long as may be necessary to dispose of such matters, or may adjourn to some day certain, when it shall reconvene for the purpose of disposing of such matters and thereupon such matters shall be considered and disposed of as expeditiously as possible.

If the Senate be not in session at a regular or called session of the Legislature when articles of impeachment may be preferred by the House of Representatives, the House of Representatives shall cause a certified copy of such articles of impeachment to be delivered, by personal agent or registered mail, to the Governor and each member of the Senate who may be within the State and accessible, and a copy thereof shall be delivered to the Lieutenant Governor and the President Pro Tempore of the Senate. Thereupon the Senate shall be convened for the purpose of considering and disposing of such articles of impeachment in the following manner:

(a) By proclamation of the Governor; or if the Governor shall fail to issue such proclamation within ten days after such articles of impeachment are preferred by the House of Representatives then, in that event,—

(b) By proclamation of the Lieutenant Governor; or if the Lieutenant Governor shall fail to issue such proclamation within fifteen days from the date upon which articles of impeachment were preferred by the House of Representatives, then, in that event,—

(c) By proclamation of the President Pro Tempore of the Senate; or, if the President Pro Tempore of the Senate shall fail to issue such proclamation within twenty days from the date upon which such articles of impeachment were preferred by the House of Representatives, then, in that event,—

(d) By proclamation in writing signed by a majority of the members of the Senate.

Such proclamation, in either case, shall be in writing, shall state in general terms the purpose for which the Senate is to be convened, shall fix the date for the convening thereof for such purposes, which shall not be later than 20 days from the issuance of the proclamation, and shall be filed in the office of the Secretary of State as a public record. Such proclamation, in either case, shall be published in at least three daily newspapers of general circulation, and a copy thereof shall be sent by registered mail to each member of the Senate by, or under the direction of, the author or authors thereof. Upon the day fixed for the convening of the Senate for such purposes it shall be the duty of each member of the Senate to be in attendance thereupon, and upon such date the Senate shall convene. Two-thirds of the members of the Senate, upon such convention, shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent members, and the Senate at such a session may compel the attendance of any absent member whether a quorum is present or not.

The Senate so convened shall continue in session until such matters are finally disposed of, or it may, from time to time, adjourn to a day certain when the consideration of such matters shall be resumed and disposed of.

The Senate, at any time, shall have and exercise all of the powers itself, or through committees or agents, which have been or may be conferred upon it by law as in other cases when it is in session. It shall have the power to send for persons and papers, records, books, etc., and to compel the giving of testimony, and to punish for contempt to the same extent as the district courts. And its committees shall have and exercise all of the powers conferred upon them by resolution and in addition shall have all of the powers conferred upon committees of either house of the Legislature, when in legislative session, by Chapter 3, Title 82, Revised Statutes of 1911, or any other law touching the subject matter.

Members of the Senate, when so convened, and the Lieutenant Governor, when acting, shall receive the same mileage and per diem as is provided for members of the Legislature; the same, together with the pay of all agents, appointees, employés and other expenses incident to such impeachment trial, shall be paid from such appropriations as shall have been or shall be made from the contingent expenses of the Legislature or for the mileage and per diem of members. (Id. sec. 3.)

Art. 6018. (3519) Judges of supreme, appellate and district courts, and commissioner of agriculture, etc., removed by address.—The judges of the supreme court, court of criminal appeals, courts of civil appeals, district courts, the judge of the criminal district court of Galveston and Harris counties and of Dallas county, and the commissioner of agriculture, and commissioner of insurance and banking, shall be removed from office by the governor on the address of two-thirds of each house of the legislature, for willful neglect of duty, incompetency, habitual drunkenness, oppression in office, breach of trust, or other reasonable cause, which shall not be sufficient ground for impeachment. (Const., art. 15, secs. 7, 8. Act Aug. 21, 1876, p. 226, sec. 26.)

Art. 6019. (3520) Cause for removal to be set out.—The cause for such removal shall be stated at length in such address, and entered on the journals of each house. (Id.)

Art. 6020. (3521) Notice to be given.—The officer so intended to be removed shall have notice of the cause assigned for his removal, and shall be admitted to a hearing in his own defense before any vote for such address shall be heard. (Id.)

Art. 6021. (3522) Vote, how taken.—In all such cases, the vote shall be taken by yeas and nays and entered on the journals of each house respectively. (Id.)

Art. 6022. (3523) District judges removed by supreme court.—Any judge of the district court who is incompetent to discharge the duties of his office, or who shall be guilty of partiality or oppression, or other official misconduct, or whose habits and con-

duct are such as to render him unfit to hold such office, or who shall negligently fail to perform his duties as judge, or who shall fail to execute in a reasonable measure the business of his court, may be removed by the supreme court. (Const., art. 15, sec. 6.)

Art. 6023. (3524) Preceding article shall apply to the criminal district judge.—The provisions of the preceding article shall also apply to the criminal district judge of the counties of Galveston and Harris and the criminal district judge of Dallas county. (R. S. 1879.)

Art. 6024. (3525) Jurisdiction of supreme court in such cases.—The supreme court shall have original jurisdiction to hear and determine the causes aforesaid when presented in writing, upon the oaths taken before some judge of a court of record of not less than ten lawyers practicing in the courts held by such judge, and licensed to practice in the courts of civil appeals. (Id.)

Art. 6025. (3526) Presentment shall be founded upon what.—The presentment provided for in the preceding article shall be founded either upon the knowledge of the person making it, or upon the written oaths, as to facts, of credible witnesses. (Id.)

Art. 6026. (3527) Supreme court may issue process, etc.—The supreme court may issue all needful process, and prescribe all needful rules to give effect to the four preceding articles, and such cases shall have precedence and be tried as soon as practicable. (Id.)

Art. 6027. (3528) State officers appointed by the governor, how removed.—All state officers appointed by the governor, or elected by the legislature, where the mode of their removal is not otherwise provided by law, may be removed by him for good and sufficient cause, to be spread on the records of his office, and to be reported by him to the next session of the legislature thereafter. (Id.)

CHAPTER TWO

REMOVAL OF COUNTY AND CERTAIN DISTRICT OFFICERS

Art. 6028. (3529) Certain convictions work a removal from office.—All convictions by a petit jury of any county officers for any felony, or for any misdemeanor involving official misconduct, shall work an immediate removal from office of the officer so convicted; and such judgment of conviction shall, in every instance, embody within it an order removing such officer. (Id.)

Art. 6029. (3530) Appeal supersedes order of removal.—When an appeal is taken from such judgment by the officer removed, such appeal shall have the effect of superseding such judgment, unless the court rendering such judgment should deem it to the public interest to suspend such officer from the office pending such appeal; and in that case the court shall proceed as in other cases of the suspension of officers from office as provided in this chapter. (Id.)

Art. 6030. (3531) Officers removable by the district judge.—All district attorneys, county judges, commissioners, and county attorneys, clerks of the district and county courts, and single clerks in counties where one clerk discharges the duties of district and county clerks, county treasurer, sheriff, county surveyor, assessor, collector, constable, cattle and hide inspector, justice of the peace, and all other county officers now or hereafter existing by authority either of the constitution or laws, may be removed from office by the judges of the district court for incompetency, official misconduct, habitual drunkenness, or drunkenness not amounting to habitual drunkenness, as hereafter defined in this chapter. (Const., art. 5, sec. 24; art. 15, sec. 7. R. S. 1879.)

Art. 6031. (3532) Causes to be set forth in writing.—In every case of removal from office for the causes named in the preceding article, the cause or causes thereof shall be set forth in writing, and the truth of said cause or causes be found by a jury. (Const., art. 5, sec. 24. R. S. 1879.)

Art. 6032. (3533) "Incompetency," what is.—By "incompetency," as used in this title, is meant gross ignorance of official duties, or gross carelessness in the discharge of them; or an officer may be found to be incompetent when, by reason of some serious physical or mental defect, not existing at the time of his election, he has become unfit or unable to discharge promptly and properly the duties of his office. (R. S. 1879.)

Art. 6033. (3534) "Official misconduct," what is.—By "official misconduct," as used in this title with reference to county officers, is meant any unlawful behavior in relation to the duties of his office, wilful in its character, of any officer intrusted in any manner with the administration of justice, or the execution of the laws; and under this head of official misconduct are included any wilful or corrupt failure, refusal or neglect of an officer to perform any duty enjoined on him by law. (R. S. 1879.)

Art. 6034. (3535) Two preceding articles apply to mayor and aldermen.—The two preceding articles shall apply also to mayors and aldermen, whose removal is hereafter provided for in this title. (R. S. 1879.)

Art. 6035. (3536) "Habitual drunkenness," what is.—By "habitual drunkenness," as used in this title in relation to county officers, is meant the frequent and customary use to excess of intoxicating drinks, resulting in that condition of the body and the mind produced by the excessive use of intoxicating liquors, spirituous, vinous or malt, confirmed by habit. (R. S. 1879.)

Art. 6036. (3537) Further defined.—In order to constitute habitual drunkenness under this title, it shall not be necessary to show that the officer is incapable of discharging the duties of his office, or of taking care of himself; but the proof of the fact of habitual drunkenness to the satisfaction of the judge and jury shall be sufficient cause of removal without reference to his capacity or incapacity to discharge the duties of his office. (Act Aug. 16, 1876, p. 135, sec. 3.)

Art. 6037. (3538) "Drunkenness not habitual" defined.—By "drunkenness not amounting to habitual drunkenness," as named in this chapter in connection with county officers, is meant the immoderate use of any spirituous, vinous or malt liquors to such a degree as to incapacitate the officer for the time being or permanently from the discharge of the duties of his office. (Act July 31, 1876, p. 76, secs. 1, 4.)

Art. 6038. (3539) Must be three times convicted.—No county officer shall be removed from office on the charge of drunkenness, as defined in the preceding article, until he shall have been three times convicted of such offense of drunkenness. (Act July 21, 1876, p. 76, sec. 4.)

Art. 6039. (3540) Three convictions sufficient ground for removal, etc.—The fact of a third conviction, as provided in the preceding article, shall be sufficient ground for his removal from office by the district judge, on the matter being brought before him in the manner provided in this chapter for bringing before him other causes of removal. (R. S. 1879.)

Art. 6040. (3541) Failure to give bond ground for removal.—All county officers who are required to give official bonds, who shall fail to execute their bonds within the time prescribed by law, or who, when required in accordance with law to give a new bond or additional bond or security, and shall fail to do so, may also be removed from office for such failure by the district judge, on the matter being brought before him in the manner hereinafter provided for bringing such matters before the court. (Id.)

Art. 6041. (3542) Proceedings, how commenced, and by whom.—The proceedings for the removal of said officers may be commenced, either in term time or vacation, by first filing a petition in the district court of the county where the officer resides, by a citizen of the state who has resided for six months in the said county where he proposes to file such petition, and who is not himself at the time under indictment in said county. (Id.)

Art. 6042. (3543) Requisites of the petition.—The petition shall be addressed to the district judge of the court in which it is filed, and shall set forth in plain and intelligible words the cause or causes alleged as the grounds of removal, giving in each instance, with as much certainty as the nature of the case will admit of, the time and place of the occurrence of the alleged acts; the petition shall, in every instance, be sworn to at or before the filing of the same by at least one of the parties filing the same, and the proceedings shall be conducted in the name of "The State of Texas," upon the relation of the person filing the same. (Id.)

Art. 6043. (3544) General issue alone submitted—Verdict.—In these cases, the judge shall not submit special issues to the jury, but shall, under a proper charge applicable to the facts of the case, instruct the jury to find from the evidence whether the cause or causes of removal set forth in the petition are true in point of fact or not; and, when there are more than one distinct cause of removal alleged, the jury shall by their verdict say which cause they find sustained by the evidence before them, and which are not sustained. (R. S. 1879.)

Art. 6044. (3545) Citation, how and when to issue.—After the filing of such petition, the person or persons so filing the same shall make a written application to the district judge for an order for a citation and a certified copy of the said petition to be served on the officer against whom the petition is filed, requiring him at a certain day named, which day shall be fixed by the judge, to appear and answer to the said petition; and until such order is granted and entered upon the minutes of the court (if application is made during term time) no action whatever shall be had thereon; and, if the judge shall refuse to issue the order so applied for, then the petition shall be dismissed at the cost of the relator, and no appeal or writ of error shall be allowed from such action of the judge. (R. S. 1879.)

Art. 6045. (3546) Application made in vacation.—If the application for said citation is made to the judge in vacation, he shall indorse his action, whatever it may be, on such petition, and shall order it spread on the minutes of the court at the next ensuing term. (R. S. 1879.)

Art. 6046. (3547) Citation shall issue.—Upon the order being granted, and, if granted during term time, also spread upon the minutes the clerk shall issue the citation, accompanied with a certified copy of the petition. (Id.)

Art. 6047. (3548) Time to answer.—In no case whatever shall the period fixed by the judge in his order, in which the officer is to answer, be less than five days from the date of such service, to be computed as time is computed in other civil suits. (Id.)

Art. 6048. (3549) How trial shall be conducted.—The trial and all the proceedings connected therewith shall be conducted as far as it is possible in accordance with the rules and practice of the court in other civil cases. (Id.)

Art. 6049. (3550) May be suspended from office, how.—At any time after the issuance of the order for the citation, as herein provided, the district judge may, if he sees fit, suspend temporarily from office the officer against whom the petition is filed, and appoint for the time being some other person to discharge the duties of the office; but in no case shall such suspension take place until after the person so appointed shall execute a bond in such sum as the judge may name, with at least two good and sufficient sureties, on such conditions as the judge may see fit to impose, to pay the person so suspended from office all damages and costs that he may sustain by reason of such suspension from office, in case it should appear that the cause or causes of removal are insufficient or untrue. (Id.)

Art. 6050. (3551) Appeal or writ of error will lie.—An appeal or writ of error to the court of civil appeals may be sued out by either party from the final judgment in these cases as in other civil cases. (Id.)

Art. 6051. (3552) Bond for costs, when.—If the party has not been temporarily suspended from office, no other bond, when an appeal is taken or writ of error sued out by him, shall be necessary than a bond for all the costs that have or may accrue in the district and courts of civil appeals. (Id.)

Art. 6052. (3553) Relator to give security for costs.—On the order for citation being granted, the clerk of the district court will be authorized to demand of the relator security for costs as in other cases. (Id.)

Art. 6053. (3554) Against district attorneys, where commenced.—Proceedings under this title may be commenced against any district attorney either in the county of his residence or the county where the alleged

cause of removal occurred, if in a county of his judicial district. (Id.)

Art. 6054. (3555) Criminal district attorney included in district attorney.—Under the name of "district attorney," as used in this chapter, is included the district attorney for the criminal district court of Galveston and Harris counties; and the judge of said criminal district court shall have the same power as to his removal and proceed in the same manner as the district judges of the state have in reference to all county officers. (Id.)

Art. 6055. (3556) Not to be removed for acts done prior to his election.—No officer shall be prosecuted or removed from office for any act he may have committed prior to his election to office. (Id.)

Art. 6056. (3557) Appeal or writ of error.—In these cases, an appeal may be taken or writ of error be made returnable to the court of civil appeals, and such cause shall have precedence of the ordinary business of the court and be decided with all convenient dispatch. (Amend. 1895, Sen. Jour. p. 480.)

Art. 6057. (3558) Mandate when to issue.—When so decided, unless the judgment be for some cause set aside or suspended, the mandate of the court shall issue within five days after the judgment of the court is rendered. (R. S. 1879.)

CHAPTER THREE

REMOVAL OF CERTAIN OTHER OFFICERS

Art. 6058. (3559) Notary public, how removed.—Any notary public who shall be guilty of any wilful neglect of duty or official misconduct may be indicted by the grand jury, and, on conviction, shall be removed from office. (Act June 24, 1876, p. 29, sec. 4.)

Art. 6059. (3560) Order of removal to be embodied in judgment.—The order for his removal shall in each instance be embodied in the judgment of the court.

Art. 6060. (3561) Public weigher, how removed.—Any public weigher who shall be guilty of official misconduct, or who is incompetent, shall be removed by the governor, who shall keep a record of such removal, and report the same with his reasons therefor to the next legislature. (Act March 17, 1875, p. 162, sec. 1.)

See Acts 1879, ch. 108, sec. 1.

Art. 6061. (3562) Clerk supreme court, how removed.—The clerk of the supreme court shall be subject to removal by said court for good cause entered of record on the minutes of said court. (Const., art. 5, sec. 4.)

Art. 6062. (3563) Clerks of courts of appeals, how removed.—The clerks of the court of criminal appeals, and courts of civil appeals, shall be subject to removal by their respective courts for good cause entered on the minutes of the court. (Const., art. 5, sec. 6. Amend. 1895, Sen. Jour. p. 480.)

Art. 6063. (3564) Clerk of district court, how removed.—The clerk of the district court may also be removed by information or by indictment of a grand jury and conviction by a petit jury. (Const., art. 5, sec. 9.)

Art. 6064. (3565) Order of removal to be embodied in judgment.—When so removed, the order for his removal shall be embodied in the judgment of conviction. (R. S. 1879.)

CHAPTER FOUR

REMOVAL OF MAYORS AND ALDERMEN

Art. 6065. (3566) Causes of removal.—The mayor and aldermen of any incorporated town or city may be removed from office for official misconduct, wilful violation of any of the ordinances of such town or city, habitual drunkenness, incompetency, or for such other cause as may be prescribed by the ordinances of such town or city. (Act March 6, 1875, p. 63, secs. 1, 2.)

Art. 6066. (3567) Complaint against an alderman and proceedings thereon.—When complaint in writing and under oath, charging any alderman with any act or omission which may be cause for his removal, shall be presented to the mayor, he shall file the same and cause the alderman so charged to be served with a copy of such complaint, and shall set a day for the trial of the case, and notify the alderman so charged and the other aldermen of such town or city to appear on such day. (Id. sec. 2.)

Art. 6067. (3568) Who shall try an alderman.—The mayor and aldermen of such town or city, except the aldermen against whom complaint is made, shall constitute a court to try and determine the case. (Id.)

Art. 6068. (3569) Proceedings against a mayor.—When any complaint, such as is prescribed in article 6066, is made against the mayor of any incorporated town or city it shall be presented to an alderman of such town or city, who shall file the same, and cause such mayor to be served with a copy thereof, and shall set a day for the trial of the case, and notify the mayor and other aldermen to appear on such day. (Id. sec. 3.)

Art. 6069. (3570) Who shall try a mayor.—A majority of the aldermen shall constitute a court to try and determine the complaint against the mayor, and they shall select one of their number to preside during such trial. (Id.)

Art. 6070. (3571) Rules which govern proceedings and trial.—The rules governing other proceedings and trials in the courts of justices of the peace, mayors and recorders shall govern in the cases provided for in this chapter.

Art. 6071. (3572) Judgment.—If two-thirds of the members of the court present, upon the trial of the case, find the defendant guilty of the charges contained in the complaint, and find that such charges are sufficient cause for removal from office, it shall be the duty of the presiding officer of the court to enter judgment, removing such mayor or alderman, as the case may be, from office, and declaring such office vacant; but, should the party charged be found not guilty, judgment shall be entered accordingly. (Id. sec. 5.)

Art. 6072. (3573) Officer removed ineligible for two years.—Any officer removed under the provisions of this chapter shall not be eligible to re-election to the same office for two years from the date of such removal. (Id.)

Art. 6073. (3574) This chapter does not apply, when.—The provisions of this

chapter shall not apply to any town or city, except such as are incorporated under the general laws of this state. (Id.)

CHAPTER FIVE

REMOVAL OF OFFICERS GUILTY OF NEPOTISM

Art. 6074. Officers guilty of nepotism; removal of.—In addition to any other penalty imposed by law, any person who shall violate any of the provisions of the law contained in the Penal Code relating to the offense known as nepotism, and the inhibited acts connected therewith, shall be removed from his office, clerkship, employment or duty, as therein mentioned. (Acts 1909, p. 85, sec. 6, par. 2.)

Art. 6075. Removals; proceedings.—Such removal from office shall be made in conformity to the provisions of the constitution of this state concerning removal from office in all cases to which they may be applicable. All other removals from office under the provisions of this law shall be by quo warranto proceedings. All removals from any such position, clerkship, employment or duty aforesaid shall be summarily made, forthwith, by the appointing power in the particular instance, whenever the judgment of conviction in a criminal prosecution in the particular case shall become final; provided, that, if such removal be not so made within thirty days after such judgment of conviction shall become final, the person holding such position, clerkship or employment, or performing such duty, may be removed therefrom as herein provided with reference to removal from office. (Id.)

Art. 6076. Suits by attorney general; venue.—All quo warranto proceedings mentioned shall be instituted by the attorney general in one of the district courts of Travis county, or in the district court of the county in which the defendant may reside; and concurrent jurisdiction in such suits is hereby conferred upon such courts. (Id.)

Art. 6077. Attorney general to be assisted by district or county attorney.—In such suits, the district attorney, or the county attorney of the county in which such suit may be filed, shall assist the attorney general whenever he shall so direct. (Id.)

TITLE 99

OFFICIAL BONDS

CHAPTER ONE

THE RECORD OF OFFICIAL BONDS AND THE RELIEF OF SURETIES THEREON

Art. 6078. (3575) (3434) Official bonds to be recorded.—All official bonds of county officers that are required by law to be approved by the commissioners' court, and which have been so approved, shall be recorded by the clerk of the county court in a book kept for that purpose.

See ante, arts. 1689, 1747.

Art. 6079. (3576) (3435) Sureties on, to be relieved.—Any surety on any official bond of any county officer may apply to the commissioners' court of the county to be relieved from his bond, and the clerk of the county court shall thereupon issue a notice to said officer, and a copy of the application, which shall be served upon said officer by the sheriff or any constable of the county. (Acts 1876, p. 132, sec. 1.)

Art. 6080. (3577) (3436) Officer shall cease to act, etc.—Upon the service of such notice, said officer so notified shall cease to exercise the functions of his office, except to preserve any records or property committed to his charge, and in case of sheriffs and constables, to keep prisoners, preserve the peace and execute warrants for the arrest of persons charged with offenses. (Id.)

Art. 6081. (3578) (3437) Must give new bond.—Said officer so notified shall give a new bond within twenty days from the time of receiving such notice, or his office shall become vacant. (Id.)

Art. 6082. (3579) (3438) Discharge of sureties.—If a new bond be given and approved, the former sureties shall be discharged from any liability for the misconduct of the principal after the approval of such new bond. (Id. sec. 2.)

CHAPTER TWO

OF OBTAINING NEW SURETIES ON OFFICIAL BONDS

Art. 6083. (3580) (3439) Commissioners' court may require new bond, etc.—In all cases where by law the commissioners' court is required to approve the bond of any of the officers of their several counties, it shall be their duty, whenever they shall become satisfied that said bonds from any cause are insufficient, to require new bonds or additional sureties to be given, as the case may require. (Acts 1876, p. 54, sec. 17.)

Art. 6084. (3581) (3440) Officer to be cited.—The said court shall cause the officer whose bond is complained of to be cited to appear at a term of their court not less than five days after service of said citation, and shall take such action thereon as they may deem best for the interest of the state and county. (Id.)

Art. 6085. (3582) (3441) No appeal allowed.—From the decision of the commissioners' court in reference to said official bond no appeal shall be allowed, and their decision shall be final and conclusive.

TITLE 100

PARDON ADVISERS—BOARD OF

CHAPTER ONE

POWERS AND DUTIES OF BOARD

Arts. 6086-6088. [Omitted.]

These articles are duplicated in the Code of Criminal Procedure as arts. 1057r-1057t. Accordingly they are omitted here.

CHAPTER TWO

PAROLES, SUSPENDED AND INDETERMINATE SENTENCES, ETC.

Arts. 6088a-6091j. [Omitted.]

These articles are duplicated in the Code of Criminal Procedure as arts. 865a, 1057a-1057n. Accordingly they are omitted here.

Arts. 6092, 6093. [Superseded.]

These articles were superseded by Acts 1911, p. 64, secs. 12 and 13. The last-named sections seem

to have been in turn superseded by Acts 1913, p. 262, sec. 2. The last-named act was amended by Acts 1913, S. S., p. 4, and the subject-matter of articles 6092, 6093, was omitted from the amendatory act.

Art. 6094. [Superseded.]

The subject-matter of this Article was carried into Acts 1911, p. 64, sec. 14, and into Acts 1913, p. 262, sec. 4, but it was omitted from Acts 1913, S. S., p. 4, which in terms amended Acts 1913, p. 262.

Arts. 6095-6095j. [Omitted.]

These articles are duplicated in the Code of Criminal Procedure as arts. 1057o-1057q, 865b-865i. Accordingly they are omitted here.

TITLE 101

PARTITION

CHAPTER ONE

PARTITION OF REAL ESTATE

Art. 6096. (3606) (3465) Joint owner or claimant may compel partition.—Any joint owner or claimant or any real estate or of any interest therein or of any mineral, coal, petroleum, or gas lands, whether held in fee or by lease or otherwise, may compel a partition thereof between the other joint owners or claimants thereof in the manner provided in the succeeding articles of this chapter. (R. S. 1879; Acts 1917, ch. 105, sec. 1.)

See Sayles' Practice, p. 934; Simkins' Equity (2d Ed.) p. 807 et seq.; Morris v. Morris, 99 S. W. 872; Wentworth v. Wentworth, 142 S. W. 141; Williamson v. McElroy, 155 S. W. 998.

Art. 6097. (3607) (3466) Petition for and what it shall state.—Such joint owner or claimant may file his petition in the district court of the county in which the real estate sought to be partitioned, or a portion thereof, is situated, which petition shall state:

1. The names and residence, if known, of each of the other joint owners, or joint claimants, of such real estate.

2. The share or interest which the plaintiff and the other joint owners or claimants, of said real estate own or claim so far as known to the plaintiff.

3. The real estate sought to be partitioned shall be described in such manner as that the same may be distinguished from any other real estate, and the estimated value thereof stated.

See ante art. 1830, sec. 13; Simkins' Equity (2d Ed.) p. 808; Sayles' Practice, pp. 117, 266, 954; Black v. Black, 69 S. W. 65; Gutheridge v. Gutheridge, 161 S. W. 892.

Art. 6098. (3608) (3467) Citation and service.—Upon the filing of a petition for partition, the clerk shall issue citation for each of the joint owners, or joint claimants, named therein, as in other cases, and such citations shall be served in the same manner and for the same length of time provided for the service of citation in other cases.

Art. 6099. (3609) Citation and service where defendant is unknown.—If the plaintiff, his agent or attorney, at the commencement of any suit, or during the progress thereof, for the partition of land, shall make affidavit that an undivided portion of the land described in the plaintiff's petition in said suit is owned by some person or persons unknown to affiant, the clerk of the court shall issue a citation to the proper officer, which shall contain a brief statement of the nature of the suit, and a description of the interest of the unknown owner or owners, commanding said officer to summon such unknown owner or owners by making publication of the citation in some newspaper in the county where the writ issued, if there be a newspaper published in said county, but if not, then in the nearest county where a newspaper is published, for four successive weeks previous to the return day of such process; when such notice is given, and no appearance is entered within the time prescribed for pleading, the court shall appoint an attorney to defend in behalf of such owner or owners, and proceed as in other causes where service is made by publication; and it shall be the special duty of the court in all such cases to see that its decree protects the rights of the unknown parties thereto; and the judge of the court shall fix the fee of the attorney so appointed, which shall be entered and collected as costs against said unknown owner or owners. (Acts 1879, p. 46.)

See Simkins' Equity (2d Ed.) p. 809; Sayles' Practice, pp. 320, 322, 324, 935, 936.

Art. 6100. (3610) (3468) Court shall determine, what.—Upon the hearing of the cause, the court shall determine:

1. The share or interest of each of the joint owners or claimants in the real estate sought to be divided.

2. All questions of law or equity affecting the title to such real estate, or any part thereof, which may arise.

See Sayles' Practice, p. 936; Kindlea v. Kosub, 110 S. W. 79; Miller v. Odom, 152 S. W. 1185; Barkley v. Stone, 195 S. W. 925.

Art. 6101. (3611) (3469) Decree of the court and appointment of commissioners.—The court shall determine before entering the decree of partition whether the property, or any part thereof, is susceptible of partition; and, if the court determines that the whole of such property, or any part thereof, is susceptible of partition, then the court for that part of such property held to be susceptible of partition shall enter a decree directing the partition of such real estate, describing the same, to be made in accordance with the respective shares or interests of each of the parties entitled thereto, specifying in such decree the share or interest of each party, and shall appoint three or more competent and disinterested persons as commissioners to make such partition in accordance with such decree and the law, a majority of which commissioners may act. (Acts 1905, p. 95.)

See Olschewske v. Summerville, 95 S. W. 1; Kindlea v. Kosub, 110 S. W. 79; Fagan v. Fagan, 120 S. W. 550; Gorman v. Campbell, 135 S. W. 177; Newman v. Newman, 160 S. W. 655; Russell v. Koennecke, 197 S. W. 1111.

Art. 6102. (3612) (3470) Writ of partition.—The clerk shall issue a writ of partition, directed to the sheriff or any constable of the county, commanding such sheriff or constable to notify each of the commissioners of their appointment as such, and shall accompany such writ with a certified copy of the decree of the court directing the partition.

Art. 6103. (3613) (3471) Service of writ of partition.—The writ of partition shall be served by reading the same to each of the persons named therein as commissioners, and by delivering to any one of them the accompanying certified copy of the decree of the court.

Art. 6104. (3614) (3472) Court may also appoint surveyor.—The court may also, should it be deemed necessary, appoint a surveyor to assist the commissioners in making the partition, in which case the writ of partition shall name such surveyor, and shall be served upon him in the same manner as upon a commissioner.

Art. 6105. (3615) (3473) Writ returnable, when, and return thereof.—A writ of partition, unless otherwise directed by the court, shall be made returnable to the first day of the next term of the court from whence the same issues; and the officer serving the same shall indorse thereon the time and manner of such service.

Art. 6106. (3616) (3474) Commissioners shall proceed to partition, etc.—The commissioners, or a majority of them, shall proceed to partition the real estate described in the decree of the court, in accordance with the directions contained in such decree and with the provisions of this chapter.

Art. 6107. (3617) (3475) May cause land to be surveyed.—Should the commissioners deem it necessary, they may cause to be surveyed the real estate to be partitioned into several tracts or parcels.

Art. 6108. (3618) (3476) Shall divide real estate, how.—The commissioners shall divide the real estate to be partitioned into as many shares as there are persons entitled thereto, as determined by the court, each share to contain one or more tracts or parcels, as the commissioners may think proper, having due regard in the division to the situation, quantity and advantages of each share, so that the shares may be equal in value, as nearly as may be, in proportion to the respective interests of the parties entitled.

Gorman v. Campbell, 135 S. W. 177; McShan v. Johnson, 151 S. W. 597; Simpson v. Alexander, 183 S. W. 852.

Art. 6109. (3619) (3477) Shall allot shares.—The commissioners shall then proceed by lot to allot and set apart to each of the parties entitled one of said shares, as determined by the decrees of the court.

See Moor v. Moor, 63 S. W. 347.

Art. 6110. (3620) (3478) Report of commissioners and what it shall contain.—When the commissioners have completed the partition, they shall report the same in writing and under oath to the court, which report shall show:

1. The real estate divided, describing the same.

2. The several tracts or parcels into which the same was divided by them, describing particularly each of such tracts or parcels.

3. The number of shares and the land which constitutes each share, and the estimated value of each share.

4. The allotment of each share.

5. The report shall be accompanied by such field-notes and maps as may be necessary to make the same intelligible.

Art. 6111. (3621) (3479) When property is incapable of division, same shall be sold, etc.—Should the court be of the opinion that a fair and equitable division of the real estate, or any part thereof, can not be made, it shall order a sale of so much of such real estate as is incapable of partition, which sale shall be for cash, or upon such other terms as the court may direct, and shall be made as under execution, or by private sale through a receiver, if the court so order, and the proceeds thereof shall be returned into court and be partitioned among the persons entitled thereto, according to their respective interests. (Acts 1905, p. 95.)

See Simkins' Equity (2d Ed.) p. 811 et seq.; Kindlea v. Kosub, 110 S. W. 79; Menard v. MacDonald, 115 S. W. 63; Gorman v. Campbell, 135 S. W. 177; Newman v. Newman, 160 S. W. 655; Stephenson v. Luttrell, 160 S. W. 666; Boese v. Parkhill, 202 S. W. 120.

Art. 6112. (3622) (3480) Objections may be filed to report, etc.—Either party to the suit may file objections to any report of the commissioners in partition, and in such case a trial of the issues thereon shall be had as in other cases; and, if the report be found to be erroneous in any material respect, or unequal and unjust, the same shall be rejected, and other commissioners shall be appointed by the court, and the same proceedings had as in the first instance.

Art. 6113. (3623) (3481) Partition not prejudicial to reversion, etc.—When a partition is made between a joint owner who holds an estate for a term of years or for life with others who hold equal or greater estates, such partition shall not be prejudicial to those entitled to the reversion or remainder of such estates.

Art. 6114. (3624) (3482) Each party shall hold in severalty, subject, etc.—When any partition is made, each party to whom a share has been allotted shall hold the same in severalty under the same conditions and covenants that it was held before such partition was made; and no warranty, lease or right whatsoever shall be impaired or affected by such partition.

See Simkins' Equity (2d Ed.) p. 813.

Art. 6115. (3625) (3483) Decree of court shall vest title.—The decree of the court confirming the report of the commissioners in partition, when a partition has been made shall vest the title in each party to whom a share has been allotted, to such share as against the other parties to such partition suit, their heirs, executors, administrators or assigns, as fully and effectually as the deed of such parties could vest the same, and shall have the same force and effect as a full warranty deed of conveyance from such other parties and each of them.

Ross v. Armstrong, 25 T. Sup., p. 355; post, art. 6835; Simkins' Equity (2d Ed.) p. 811; Dean v. Dean, 165 S. W. 90.

CHAPTER TWO

PARTITION OF PERSONAL PROPERTY

Art. 6116. (3626) (3484) Part owners may compel partition.—Part owners of personal property may be compelled to make partition between them in the manner provided in the succeeding articles of this chapter. (Act Dec. 24, 1851; P. D. 4711.)

See Belcher v. Cassidy Bros.' Livestock Com. Co., 62 S. W. 924.

Art. 6117. (3627) (3485) Suit shall be commenced, in what court.—Suit for partition shall be commenced in the court having jurisdiction of the value of such prop-

erty, in the same manner as other civil suits are commenced, and the several owners or claimants of such property shall be cited as in other cases. (Id.)

See ante, art. 1830, sec. 13; Milam v. Hill, 69 S. W. 448.

Art. 6118. (3628) (3486) Court shall ascertain, what.—The separate value of each article of such personal property, and the allotment in kind to which each owner is entitled, shall be ascertained by the court, with or without a jury. (Id.; P. D. 4712.)

Art. 6119. (3629) (3487) Decree of court executed, how.—When partition in kind of personal property is ordered by the judgment of the court, a writ shall be issued in accordance with such judgment, commanding the sheriff or constable of the county where the property may be to put the parties forthwith in possession of the property allotted to each respectively. (Id.; P. D. 4713.)

Art. 6120. (3630) (3488) Property shall be sold, when.—When personal property will not admit of a fair and equitable partition, the court shall ascertain the proportion to which each owner thereof is entitled, and shall order the property to be sold. (Id.; P. D. 4714.)

Art. 6121. (3631) (3489) How sold and partition of proceeds.—In the case provided for in the preceding article, execution shall be issued to the sheriff or any constable of the county where the property may be, describing such property and commanding such officer to sell the same as in other cases of execution, and pay over the proceeds of sale to the parties entitled thereto, in the proportion ascertained by the judgment of the court. (Id.; P. D. 4715.)

CHAPTER THREE

MISCELLANEOUS PROVISIONS

Art. 6122. (3632) (3490) Provisions of this title shall not affect, what.—The provisions of this title shall not affect the mode of proceeding prescribed by law for the partition of estates of decedents among the heirs and legatees, nor shall such provisions preclude partition in any other manner authorized by the rules of equity; which rules shall govern in proceedings under this title in all things not provided for in this title.

See Chapter 26, Title 52.

Art. 6123. (3633) (3491) Rules of pleading, practice and evidence.—The same rules of pleading, practice and evidence which govern in other civil causes shall govern in suits for partition, when not in conflict with any provisions of this title.

Art. 6124. (3634) (3492) Pay of commissioners.—The commissioners in partition and the surveyor, if any has been appointed, shall receive for their services three dollars each per day for each day they are engaged in making and returning such partition, and the same shall be taxed and collected as other costs in the case.

Art. 6125. (3635) (3493) Costs to be adjudged, how.—The court shall adjudge the costs in a partition suit to be paid by each party to whom a share has been allotted in proportion to the value of such share.

Wentworth v. Wentworth, 142 S. W. 141; Houston Oil Co. of Texas v. Gore, 159 S. W. 924.

TITLE 102

PARTNERSHIPS AND JOINT STOCK COMPANIES

CHAPTER ONE

PARTNERSHIPS—LIMITED

Art. 6126. (3583) (3442) Limited partnerships authorized.—Limited partnerships for the transaction of any mercantile, mechanical, manufacturing or other business, except banking or insurance, may be formed by two or more persons, upon the terms, with the rights and powers, and subject to the conditions and liabilities herein prescribed. (Acts 1846, p. 279, sec. 1; P. D. 4717 et seq.)

Art. 6127. (3584) (3443) General and special partners.—Such partnerships may consist of one or more persons, who shall be called the general partners, and who shall be jointly and severally responsible as general partners now are by law; and of one or more persons who shall contribute in actual cash payments a specific sum as capital to the common stock, who shall be called special partners, and who shall not be liable for the debts of the partnership beyond the fund so contributed by him or them to the capital. (Id. sec. 2.)

Art. 6128. (3585) (3444) General partners only to act.—The general partners only shall be authorized to transact business and sign for the partnership and to bind the same. (Id. sec. 3.)

Art. 6129. (3586) (3445) Such partnerships, how formed.—The persons desirous of forming such partnership shall make and severally sign a certificate, which shall contain:

1. The name or firm under which the partnership is to be conducted.
2. The general nature of the business intended to be transacted.
3. The names of all the general and special partners interested therein, distinguishing which are general and which are special partners, and their respective places of residence.
4. The amount of capital which each special partner shall have contributed to the common stock.
5. The period at which the partnership is to commence, and the period at which it is to terminate. (Id. sec. 4.)

Art. 6130. (3587) (3446) Certificate to be acknowledged.—The certificate shall be acknowledged by the several persons signing the same, before any officer authorized to take acknowledgments for record, and such acknowledgment shall be made and certified in the same manner as the acknowledgment of the conveyances of land. (Id. sec. 5.)

Art. 6131. (3588) (3447) And filed and recorded.—The certificate so acknowledged and certified shall be filed in the office of the clerk of the county court of the county in which the principal place of business of the partnership shall be situated, and shall also be recorded by him at large in a book to be kept for that purpose, open to public inspection. If the partnership shall have places of business situated in different counties, the certificate and acknowledgment thereof shall be filed and recorded in like

manner in the office of the clerk of the county court of every such county. (Id. sec. 6.)

Art. 6132. (3589) (3448) General partner to file affidavit.—At the time of filing the original certificate with the evidence of the acknowledgment thereof, as before directed, an affidavit of one or more of the general partners shall also be filed in the same office, stating that the sums specified in the certificate to have been contributed by each of the special partners, to the common stock, have been actually and in good faith paid in cash. (Id. sec. 7.)

Art. 6133. (3590) (3449) Prerequisites indispensable.—No such partnership shall be deemed to have been formed until a certificate shall have been made, acknowledged, filed and recorded, nor until an affidavit shall have been filed as above directed; and, if any false statement be made in such certificate or affidavit, all the persons interested in such partnership shall be liable for all the engagements thereof as general partners. (Id. sec. 8.)

Art. 6134. (3591) (3450) Terms to be published.—The partners shall publish the terms of the partnership when registered for at least six weeks immediately after such registry, in such newspapers as shall be designated by the clerk in whose office such registry shall be made; and if such publication be not made the partnership shall be deemed general. (Id. sec. 9.)

Art. 6135. (3592) (3451) Publisher's affidavit.—An affidavit of the publication of such notice by the publisher of the newspapers in which the same shall be published may be filed with the clerk directing the same, and shall be evidence of the facts therein contained. (Id. sec. 10.)

See Sayles' Practice, p. 483.

Art. 6136. (3593) (3452) Renewals to be with like formalities.—Every renewal or continuance of such partnership beyond the time originally fixed for its duration shall be certified, acknowledged and recorded, and an affidavit of a general partner be made and filed, and notice given in the manner herein required for its original formation; and every such partnership which shall be otherwise renewed or continued shall be deemed a general partnership. (Id. sec. 11.)

Art. 6137. (3594) (3453) Certain alterations a dissolution.—Every alteration which shall be made in the names of the partners, in the nature of the business, or in the capital or shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolution of the partnership; and every such partnership which shall in any manner be carried on after any such alteration shall have been made shall be deemed a general partnership, unless renewed as a special partnership according to the provisions of the last article. (Id. sec. 12.)

Art. 6138. (3595) (3454) Firm name.—The business of the partnership shall be conducted under a firm in which the names of the general partners only shall be inserted, without the addition of the word "company," or any other general term; and if the name of any special partner be used in such firm, with his privity, he shall be deemed a general partner. (Id. sec. 13.)

Art. 6139. (3596) (3455) Suits by and against.—Suits in relation to the business of the partnership may be brought and conducted by and against the general partners, in the same manner as if there were no special partners. (Id. sec. 14.)

See Sayles' Practice, p. 183.

Art. 6140. (3597) (3456) Capital of special partner not to be withdrawn.—No part of the sum which any special partner shall have contributed to the capital stock shall be withdrawn by him, or paid or transferred to him in the character of dividends, profits or otherwise, at any time during the continuance of the partnership; but any partner may annually receive lawful interest on the sum so contributed by him, if the payment of such interest shall not reduce the original amount of such capital; and if, after the payment of such interest, any profits shall remain to be divided he may also receive his portion of such profits. (Id. sec. 15.)

Art. 6141. (3598) (3457) If reduced, to be made good.—If it shall appear that by the payment of interest or profits to any special partner the original capital has been reduced, the partner receiving the same shall be bound to restore the amount necessary to make good his share of the capital, with interest. (Id. sec. 16.)

Art. 6142. (3599) (3458) Powers of special partner.—A special partner may from time to time examine into the state and progress of the partnership concerns, and may advise as to their management. (Id. sec. 17.)

Art. 6143. (3600) (3459) Partners to account, and liability for fraud.—The general partners shall be liable to account to each other, and to the special partners, for the management of the concern, both in law and equity, as other partners are by law; and every partner who shall be guilty of any fraud in the affairs of the partnership shall be liable, civilly, to the party injured to the extent of his damage. (Id. secs. 18, 19.)

See Harris Co. v. Stewart, 41 S. W. 650.

Art. 6144. (3601) (3460) Assignments by partnership void, when.—Every sale, assignment or transfer of any property or effects of the partnership made by such partnership when insolvent, or in contemplation of insolvency, or after, or in contemplation of insolvency of any partner, with the intent of giving a preference to any creditor of such partnership, or insolvent partner, over other creditors of such partnership, and every judgment confessed, lien created, or security given, by any such partnership under the like circumstances and with like intent, shall be void as against the creditors of such partnership. (Id. sec. 20.)

Art. 6145. (3602) (3461) Assignments in contemplation of insolvency.—Every such sale, assignment, or transfer of any of the property or effects of a general or special partner made by such general or special partner when insolvent, or in contemplation of insolvency, or after, or in contemplation of the insolvency of the partnership, with the intent of giving to any creditor of his own, or of the partnership, a preference over the creditors of the partnership, and every judgment confessed, lien created, or security given, by any such partner under like cir-

cumstances and with like intent, shall be void as against the creditors of the partnership. (Id. sec. 21.)

Art. 6146. (3603) (3462) Effect of concurrence by special partner.—Every special partner who shall violate any provision of the last two preceding articles, and who shall concur in or assent to any such violation of the partnership by any individual partner, shall be liable as a general partner. (Id. sec. 22.)

Art. 6147. (3604) (3463) Partnership creditors preferred.—In case of the insolvency or bankruptcy of the partnership, no special partner shall, under any circumstances, be allowed to claim as creditor until the claims of all other creditors of the partnership shall be satisfied. (Id. sec. 23.)

Art. 6148. (3605) (3464) Dissolution before the time agreed on.—No dissolution of such partnerships by the acts of the parties shall take place previous to the time specified in the certificate of its formation, or in the certificate of its renewal, until a notice of such dissolution shall have been filed and recorded and published once in each week for four weeks in a newspaper printed in each of the counties where the partnership may have a place of business, if there be such papers, and if there be no newspapers published in such county, then in a newspaper published in the nearest county where there is one. (Id. sec. 24.)

CHAPTER TWO

UNINCORPORATED JOINT STOCK COMPANIES—PERMITTING SUIT IN COMPANY NAME

Art. 6149. May sue or be sued in its company name.—Hereafter any unincorporated joint stock company or association, whether foreign or domestic, doing business in this state, may sue or be sued in any court of this state having jurisdiction of the subject matter in its company or distinguishing name; and it shall not be necessary to make the individual stockholders or members thereof parties to the suit. (Act 1907, p. 240, sec. 1.)

Art. 6150. Citation, upon whom served.—In suits against such companies or associations, service of citation may be had on the president, secretary, treasurer or general agent of such unincorporated companies. (Id. sec. 2.)

Art. 6151. Judgment against, conclusive against stockholders.—In suits by or against such unincorporated companies, whatever judgment shall be rendered shall be as conclusive on the individual stockholders and members thereof as if they were individually parties to such suits. (Id. sec. 3.)

Art. 6152. Effect of judgment where agent of company only is cited.—Where suit shall be brought against such company or association, and the only service had shall be upon the president, secretary, treasurer or general agent of such company or association, and judgment shall be rendered against the defendant company, such judgment shall be binding on the joint property of all the stockholders or members thereof, and may be enforced by execution against the joint property; but such judgment shall not be binding on the individual property of the stockholders or members, nor authorize execution against it. (Id. sec. 4.)

Art. 6153. Effect of judgment where individual stockholders are also cited.—In a suit against such company or association, in addition to service on the president, secretary, treasurer or general agent of such companies or associations, service of citation may also be had on any and all of the stockholders or members of such companies or associations; and, in the event judgment shall be against such unincorporated company or association, it shall be equally binding upon the individual property of the stockholders or members so served, and executions may issue against the property of the individual stockholders or members, as well as against the joint property; but executions shall not issue against the individual property of the stockholders or members until execution against the joint property has been returned without satisfaction. (Id. sec. 5.)

Art. 6154. This chapter cumulative; not to impair existing rights.—The provisions of this chapter shall not affect nor impair the right allowed unincorporated joint stock companies and associations to sue in the individual names of the stockholders or members, nor the right of any person to sue the individual stockholders or members; but the provisions of this chapter shall be construed as cumulative merely of other remedies now existing under the law. (Id. sec. 6.)

TITLE 103

PAWNBROKERS AND LOAN BROKERS

Art. 6155. (3636) Definition of "pawnbroker."—A "pawnbroker" is one who pursues the business of lending money upon interest and receiving upon deposit, as security for the payment of such loan and interest, any personal property. (R. S. 1879.)

Art. 6156. (3637) Pawnbroker shall give bond, and its requisites.—No person shall pursue the business of a pawnbroker without first having given bond, with at least two good and sufficient sureties, in the sum of one thousand dollars, payable to the state of Texas, and approved by and filed with the clerk of the county court of the county in which such person proposes to pursue said business, conditioned that such person will faithfully comply with each and every requirement of the law governing such business. (Act April 28, 1874, p. 153; P. D. 7168p.)

Art. 6157. (3638) Bond shall be recorded and new bond shall be given every 12 months.—The bond required by the preceding article shall be recorded and safely kept in the office of the clerk of the county court of the county in which such pawnbroker pursues such business, the recording fees thereof to be paid by such pawnbroker; and a new bond shall be given, filed and recorded in the same manner as the first one every twelve months during the continuance of such business. (Id.: P. D. 7168q.)

Art. 6158. (3639) Shall keep a register, and what the same shall show.—Each pawnbroker shall keep a well-bound book, in which he shall register all his transactions as a broker at the time the same occurs. Such register shall show:

1. The article of property received, giving an accurate description of the same.
2. From whom received.
3. The time and the amount for which the article is pawned.
4. The probable value of the article.
5. The rate of interest agreed upon.
6. The final disposition made of such property, and, if sold, to whom sold and the amount for which each article was sold. (Id.; P. D. 7168p.)

Art. 6159. (3640) Book shall be open for inspection, etc.—Such book shall be kept open for inspection and the broker shall give, to the party pledging, a ticket corresponding to the entry on the book of registry. (Id.)

Art. 6160. (3641) Property pawned shall be sold after notice, when.—If any article deposited with such broker as a pawn shall not be redeemed at or before the time agreed upon, the broker shall sell the same at public auction to the highest bidder for cash, at his usual place of business, after giving at least five days' notice of such sale. (Id.; P. D. 7168q.)

Art. 6161. (3642) How notice shall be given.—Such notice of sale shall be given by posting written or printed advertisements at not less than three public places in the county where such sale is to take place, one of which places shall be the court house of such county. (Id.; P. D. 7168q.)

Art. 6162. (3643) Advertisement shall state what, and copy shall be filed in office of county clerk.—The written advertisements of sale shall state the time and place of such sale, and shall contain a full description of the article or articles to be sold, and the name or names of the person or persons depositing the same; and a copy thereof shall be filed in the office of the clerk of the county court of the county where such sale takes place. (R. S. 1879.)

Art. 6163. (3644) Within what hours sales shall be made.—All sales made by a pawnbroker shall be made between the hours of ten o'clock a. m. and four o'clock p. m., and no sales shall be made upon Sunday or upon a legal holiday. (Id.)

Art. 6164. (3645) Report of sales to be made, and what the same shall show.—When a sale has been made, the pawnbroker shall, within five days thereafter, file with the clerk of the county court of the county where such sale was made, a report in writing and under oath, showing:
1. The time and place of such sale.
2. The notice given thereof.
3. A full description of the property sold and by whom deposited.
4. By whom purchased and the amount which each article was sold for.
5. The amount due the broker, principal, interest and expenses upon each article sold.
6. The amount of surplus of the proceeds of sale of each article, if any, after deducting the amount due the broker of principal, interest and expenses. (Id.)

Art. 6165. (3646) What expenses shall be allowed and deducted.—The expenses named in the preceding article shall be such expenses as have been agreed upon by the parties to the contract; or, if there be no agreement in regard thereto, then the reasonable expenses of the sale only, such as reasonable auctioneer's commissions, shall be allowed and deducted. (Id.)

Art. 6166. (3647) Owner or depositor entitled to surplus for thirty days after sale.—The owner or depositor of the property so sold shall be entitled upon demand to receive from such broker the surplus of the proceeds of such sale at any time within thirty days after such sale; and, if no demand therefor be made within thirty days after such sale, such surplus shall become the property of the county where such sale was made. (Id.)

Art. 6167. (3648) Surplus shall be paid to county treasurer, when.—Should there be any surplus of the proceeds of any sale made by a broker, he shall, at the expiration of thirty days from the day of such sale, pay such surplus to the county treasurer of the county where such sale was made, or he shall file with such county treasurer the receipt of the owner or depositor of the property sold, for such surplus, at the expiration of said thirty days. (Id.; P. D. 7168q.)

Art. 6168. (3649) Suit upon bond for surplus and damages.—Suit may be brought upon the bond of the pawnbroker by the county, or by any party entitled to the surplus of any sale made by him; and upon recovery judgment shall be rendered against such pawnbroker and the sureties upon his bond for the amount of such surplus, together with ten per cent per month on such amount for each month or fraction of a month that such surplus has been illegally withheld by such pawnbroker. (Id.; P. D. 7168r.)

Art. 6169. (3650) Party injured may sue upon bond.—Any person injured by the failure of a pawnbroker to comply faithfully with his contract, or with any requirement of law governing the business of pawnbrokerage, may sue upon the bond of such pawnbroker and recover such damages as he may prove himself entitled to, not to exceed the penalty of such bond. (R. S. 1879.)

Art. 6170. (3651) Injured parties may sue officer, when.—Any person injured by the failure, refusal or neglect of any officer whose duty it is to comply with any of the provisions of the law governing pawnbrokerage shall have a right of action against such officer so failing, refusing or neglecting, for the recovery of all damages resulting from such failure, refusal or neglect. (Id.; P. D. 7168s.)

Art. 6171. (3652) Common law shall govern, except, etc.—The rules of the common law pertaining to and governing the business of pawnbrokerage shall govern the civil liability of pawnbrokers, except in so far as the same may be contrary to or inconsistent with any statute. (R. S. 1879.)

Art. 6171a. "Loan broker" defined.—A "loan broker" is a person, firm or corporation who pursues the business of lending money upon interest and taking as security for the payment of such loan and interest an assignment of wages, or an assignment of wages with power of attorney to collect the same or other order for unpaid chattel mortgage or bill of sale upon household or kitchen furniture. (Acts 1915, ch. 28, sec. 1.)

Art. 6171b. Bond required.—No person, firm or corporation shall pursue the business of a loan broker without first having given bond with at least two good and sufficient

sureties or the guaranty of some solvent bonding company authorized to do business in this State, in the sum of five thousand ($5000) dollars, payable to the State of Texas, approved by and filed with the clerk of the County Court of the county in which such person, firm or corporation proposes to pursue said business, conditioned that such person, firm or corporation shall faithfully comply with each and every requirement of the law governing such business, and will pay to any person dealing with such loan broker any judgment that may be obtained against him. (Id. sec. 2.)

Art. 6171c. Registration of bond.—The bond required by the preceding article shall be recorded and safely kept in the office of the clerk of the County Court of the county in which such loan broker pursues such business, the recording fees thereof to be paid by such loan broker, and a new bond shall be given, filed and recorded in the same manner as the first one, every twelve months during the continuance of such business. (Id. sec. 3.)

Art. 6171d. Separate offices.—A bond shall be required and given by each loan broker for each and every separate office or place of business which he may conduct. (Id. sec. 4.)

Art. 6171e. Broker to keep register of loans.—Each loan broker shall keep a well-bound book in which he shall register all his transactions as a broker at the time same occurs; such registry shall show (1) the articles of property securing the loan, if the same be secured by chattel mortgage or bill of sale on household or kitchen furniture; (2) the assignment of wages, or the assignment of wages with power of attorney to collect the same, or other order for unpaid wages given as security, giving the name of the person receiving the money, and the person by whom such person is employed, or by whom it is expected that he will be employed, and in whose service it is expected that he shall earn the salary or wages; (3) the amount of money received by the borrower; (4) the amount to be received back by the loan broker, and the time in which he is to receive back such payment; (5) the rate of interest or discount agreed upon. (Id. sec. 5.)

Art. 6171f. Public inspection of register.—Such books shall be kept open for inspection, and that the broker shall give to the party borrowing, a ticket showing the amount of cash actually received, and showing the amount paid back by the borrower to the loan broker on each payment, such tickets to correspond with the entry on the book of the register. (Id. sec. 6.)

Art. 6171g. Loan broker to file power of attorney to receive service of process.—Each loan broker as defined in Section 1 of this Act [Art. 6171a] engaged in doing or desiring to do business in this State shall file with the County Clerk of the county in which he or it is engaged in doing such business or desires to do such business an irrevocable power of attorney duly executed, constituting and appointing the County Judge of the county in which he or it is engaged in doing business or in which he or it desires to do business, and to his successors in office, his or its duly authorized agent and attorney in fact, for the purpose of accepting service for him or it, or being served with citation in any suit brought against him or it in any court of this State by any person, firm, company or corporation, and consenting that the service of any civil process upon such County Judge as his or its attorney for such purpose, in any suit or proceeding, shall be taken and held to be valid, waiving all claim and right to object to such service or to any error by reason of such service and such appointment, agency and power of attorney, shall by its terms and recitals provide that it shall continue and remain in force and effect so long as such loan broker continues to do business in this State and so long as it shall have outstanding any claim of any character held by any citizen, firm, company or corporation of this State or by the State of Texas against him or it, and until all claims of every character, so held by any citizen, firm, company or corporation or by the State of Texas, shall have been settled. Said power of attorney shall be signed in person by any individual loan broker and by each member of any firm, partnership or association engaged in business as a loan broker, and if such loan broker is a corporation it shall be signed by the president or vice-president and by the secretary of such corporation, and shall be attested by the seal of such corporation. Each such power of attorney shall be acknowledged before some officer authorized by the laws of this State to take acknowledgments. (Id. sec. 7.)

Art. 6171h. Payment of judgments.—If any judgment upon any bond given by any loan broker shall remain unpaid for sixty days after final judgment and execution thereon, it shall be unlawful for such loan broker to continue to run such business, and the same shall be punished by fine of not less than $50.00 nor more than $250.00, and each and every day in which such loan broker conducts such business shall be a new and separate offense. Each and every person employed by and engaged in the conduct of such business shall be guilty of unlawfully conducting the same, if the same be conducted without a bond, or after the forfeiture of such bond as above described. (Id. sec. 8.)

Art. 6171i. Judgments collectable from bond.—Any judgment obtained by any person against a loan broker under these articles or under the laws of the State of Texas shall be collectable out of the bond herein provided for. (Id. sec. 9.)

For section 10 of this act see Penal Code, art. 999*lll*.

Art. 6171j. Consent of wife to security for loan.—Each assignment, mortgage, power of attorney to collect or other transfer of the salary or wages of a married man, and each bill of sale or chattel mortgage upon the household and kitchen furniture of a married man shall be void unless the same be made and given with the consent of the wife, and such consent shall be evidenced by the wife joining in the assignment, mortgage, power of attorney to collect or other transfer of salary or wages, and the signing of her name thereto and by her separate acknowledgment thereof, taken and certified to by a proper officer, substantially in the mode provided by law for the acknowledgment by the wife of a conveyance of the homestead. (Id. sec. 11.)

Art. 6171k. Annual tax.—Every loan broker shall pay an annual tax of one hun-

dred and fifty dollars to the State of Texas for each and every place of business. (Id. sec. 12.)

Art. 6171*l*. Compromises for usury void.—All compromises for usury or unlawful interest collected and received are contrary to public policy, and shall be void. (Id. sec. 13.)

TITLE 104

PENITENTIARIES AND CONVICTS

CHAPTER ONE

SYSTEM OF PRISON GOVERNMENT

See, also, Penal Code, arts. 1607-1617.

Art. 6172. Policy of prison system.—It shall be the policy of this state, in the operation of its prison system, to so manage and conduct the same that those convicted of violating the law and sentenced to a term in the penitentiary shall have humane treatment and shall be given opportunity, encouragement and training in the matter of reformation. (Acts 1910, 4 S. S., p. 143, sec. 1.)

Art. 6173. Prison system includes what.—The prison system of this state as referred to in this title, shall include the state penitentiary at Huntsville, the state penitentiary at Rusk, and such other penitentiaries as may hereafter be established, and all farms or camps where state prisoners are or may be kept or worked, together with all property of every character belonging thereto or connected therewith. (Id. sec. 2.)

Art. 6174. Prison labor not to be leased to private parties.—It is hereby declared the policy of this State to work all prisoners within the walls and upon the farms owned or leased by the State, and in no event shall the labor of a prisoner be sold to any contractor or lessee nor shall any prisoner be worked on any farm not owned or leased by the State or otherwise upon shares. (Acts 1910, 4 S. S., p. 143, sec. 3; Acts 1917, 1st C. S., ch. 32, sec. 1.)

Art. 6175. Board of prison commissioners; appointment; term.—To better carry out such policy, the management and control of the prison system of the state of Texas shall be vested in a board to be known as the board of prison commissioners, and for the purposes of this title shall be referred to as the prison commission. Said board of prison commissioners shall be composed of three men, to be appointed by the governor, with the advice and consent of the senate, whose term of office shall be two years from date of appointment, except those first appointed under this act, who shall hold their offices respectively for eight, sixteen and twenty-four months from the date of their appointment and qualification. In the appointment of said commissioners first to be appointed under this chapter, the governor shall designate the term each one shall hold under such appointment; provided, however, that in the event of a change in the constitution, extending the term of office of the prison commissioners, then the members of said board of prison commissioners then in office shall adjust their terms of office by lot or in conformance with the provisions of such constitutional amendment without the necessity of further legislative enactment. (Acts 1910, 4 S. S., p. 143, sec. 4.)

Art. 6176. Commissioners to give bond.—Each member of said commission shall, within ten days after his appointment, execute a bond payable to the governor of this state and his successors in office for the use of the state in the sum of fifty thousand dollars, and conditioned that he will faithfully execute the duties of his office, which said bond shall be executed with two or more good and sufficient sureties, or with some indemnity, fidelity or bonding companies authorized to do business in Texas; the form of which bond shall be prepared by the attorney general, and the sufficiency of the sureties thereon approved by, and the same shall be filed with, the secretary of state; which said bond shall not be void on the first recovery of part or of the whole of the penalty, but shall thereafter continue in force for the whole amount of the penalty thereof, and may be sued on from time to time, and shall be deemed to extend to the faithful performance of the duties of his trust, until his successor shall be duly qualified and shall have entered upon the duties of his office. And it shall be the duty of the attorney general, upon notice of default or failure to perform the duties as contemplated by law by any member of said prison commission, to bring suit in any court of competent jurisdiction in Travis county, Texas, for the forfeiture and collection of said bond; and, before entering upon the duties of his office, each member of said board shall take and subscribe the oath of office prescribed by the constitution of this state. (Id. sec. 5.)

Art. 6177. Salary.—Each member of the board of prison commissioners shall receive as compensation for his services the sum of three hundred dollars per month, to be paid at the end of each month; and in addition thereto he shall be allowed all reasonable and necessary traveling expenses actually incurred when traveling on business of the prison system, to be paid, together with said salary, out of the funds of the prison system, all such expense accounts to be itemized and sworn to in duplicate, and approved by the board of prison commissioners, or a majority of said board, one copy to be kept with the records of the board of prison commissioners, and one copy to be filed with the comptroller of public accounts. Each member of said board of prison commissioners shall reside at Huntsville, in Walker county, Texas, which is hereby designated as the headquarters of the prison system, and shall be permitted to occupy free of rent the residence houses belonging to the state at Huntsville. (Id. sec. 6.)

Art. 6178. Commissioners to devote whole time to office.—Each member of the prison commission shall devote his entire time to the discharge of the duties of said office, and shall not engage in any other occupation or business during his term of office, nor shall either of the members of said board be directly or indirectly connected with or interested in any contract, sale or purchase of any property or thing whatsoever which may be made during his term of office, and in which either the state or the prison system are interested. And any violation of any of the provisions of this article shall be sufficient ground for his removal from office. (Id. sec. 7.)

Art. 6179. Shall have exclusive management.—Said prison commission shall be vested with the exclusive management and control of the prison system of this state, and shall be held responsible for the proper care, treatment, feeding, clothing and management of the prisoners confined therein, and at all times for the faithful enforcement of the spirit, intent and purpose of the laws and rules governing said system; provided, that the prison commission shall be held responsible for maltreatment of prisoners, and, if permitted, it shall be grounds for removal from office. (Id. sec. 8.)

Art. 6180. Appointment of under-officers.—The said prison commission shall have the power, and it shall be their duty, to appoint all necessary officers, all physicians, chaplains, teachers, and all clerical help needed in conducting said prison system, including a secretary of the prison commission; and they shall require all appointees, who, in discharging their duties, are charged with handling any funds of the system or state, to execute bond in such amount as may be fixed by the prison commission, payable to the prison commission for the use and benefit of the state, to be conditioned for the faithful performance of their duties. (Id. sec. 9.)

Art. 6181. Chairman; quorum; records.—The prison commission shall select one of its members as chairman and a majority of said commission shall constitute a quorum for the transaction of business. The commission shall keep, or cause to be kept, in a well bound book a minute of all proceedings. (Acts 1910, 4 S. S., p. 143, sec. 10; Acts 1917, 1st C. S., ch. 32, sec. 1.)

Art. 6182. May discharge under-officers and employés.—The prison commission shall have the authority at all times to discharge any officer or any employé of the prison system for failure to comply with the rules, regulations or laws governing the prison system, or for any dereliction in duty, or whenever they may deem it to be for the best interests of the service. (Acts 1910, 4 S. S., p. 143, sec. 11.)

Art. 6183. May purchase instrumentalities for employment of convicts.—The Prison Commission shall have the power to purchase or cause to be purchased, with such funds as may be at their disposal, any machinery, tools or supplies needed for the benefit of said Prison System; and may establish such factories as, in their judgment, may be practicable and that may afford useful and proper employment to prisoners confined in the State Penitentiary, under such regulations, conditions and restrictions as may be deemed best for the welfare of the State and the prisoners, it being the purpose of this Act to clothe said board of Prison Commissions with all power and authority necessary for proper management of the Prison System of this State. (Acts 1910, 4 S. S., p. 143, sec. 12; Acts 1919, ch. 141, sec. 1.)

Art. 6184. Purchase of land, how made.—The Prison Commission shall not purchase any land for the prison system of the State of Texas unless and until the land to be so purchased and the maximum price to be paid therefor shall have been submitted to and received the approval of the Legislature of this State, and when any purchase of land is so approved, the said Prison Commission may pay such sum in cash as may be agreed upon between the vendor and the Prison Commission and for the unpaid purchase money to become due upon said land, they shall execute to the vendor notes payable in such sum and in such time as may be agreed upon between the parties, and the payment of which shall be secured by a deed of trust upon such land in the usual form, and containing such covenants as may be agreed upon between the parties and may pledge a sufficient amount of the net revenues of the property so purchased to pay the deferred instalments of purchase money thereon; and it shall be expressly provided in the conveyance to said land, the notes executed for the unpaid purchase money and the deed of trust, that the vendor relies alone upon the lien created by the deed of trust upon said land and the net revenue so pledged and that no personal liability against the Prison Commission or the State of Texas shall arise out of said transaction beyond said liens; and the purchase money paid originally, as well as the instalments paid upon deferred payments, may be paid out of any funds belonging to the said Prison System. The title to all lands purchased by the Prison Commission under the terms of this Act shall be examined, passed upon and approved as good and sufficient by the Attorney General, before such deed and conveyance shall be accepted by the Prison Commission, and all conveyances, notes and trust deeds, and other instruments executed under the provisions of this Act, shall be prepared, passed upon and approved by the Attorney General. The title to all lands so purchased shall vest in the Prison Commission, and their successors in office, as trustees, for the State. (Acts 1910, 4 S. S., p. 143, sec. 13: Acts 1919, ch. 141, sec. 2; Acts 1919, 2d C. S., ch. 63, sec. 1.)

Art. 6184a. Exercise of certain options.—The right and desire of the Prison Commission to purchase under and in accordance with, and, if necessary, by appropriate action or actions to specifically enforce the options contained in two certain leases from Bassett Blakely to the Prison Commission hereinafter referred to, having been submitted to, is hereby approved by the Legislature, and the said Prison Commission is hereby authorized and directed to exercise said options and to purchase the lands thereunder, and, if necessary, by such appropriate action or actions as they may be advised by the Attorney General, to enforce their rights under said options. Said lease contracts containing said options which relate to and embrace certain lands commonly known as Blue Ridge Farms Numbers One and Two therein described in Fort Bend and Harris Counties, Texas, are as follows:

The first of said contracts is dated first day of February, A. D. 1916, is signed "The Prison Commission of Texas by S. J. Bass, Chairman, "and Bassett Blakeley, Lessor," attested by "Oscar Wolfe, Secretary," and approved by "Jas. E. Ferguson, Governor of Texas." Said contract is likewise acknowledged by Bassett Blakeley before J. W. Lewis, Notary Public, Harris County, was filed for record with the County Clerk of Fort Bend County, February 26th, 1916, and re-

corded in the deed records of that county, Volume 71, pages 370 et seq.

The second of said contracts was executed on the 9th day of July, A. D. 1918, is signed by "Bassett Blakeley, Lessor," and by "Board of Prison Commissioners, R. L. Winfrey, W. R. Dulaney, W. G. Pryor," and was acknowledged by Bassett Blakeley on the 9th day of July, A. D. 1918, before J. H. Farbar, Notary Public in and for Harris County. (Id.)

Added to Acts 1919, ch. 141, sec. 2, as sec. 2a, by Acts 1919, 2d C. S., ch. 63, sec. 1. Said Acts 1919, 2d C. S., ch. 63, sec. 1, also added a section to be known as sec. 2b. This section is merely the usual section declaring an emergency.

Art. 6185. Lands to be bought sufficient for employment of prisoners.—The prison commission may buy annually so many acres of land as will, not later than January 1, 1914, or sooner if practicable, enable all prisoners hired out or employed on share or contract farms, and who are not otherwise employed by the state, to be employed directly on farms belonging to the prison system. (Acts 1910, 4 S. S., p. 143, sec. 14.)

Art. 6186. Modern buildings to be erected and equipped.—The prison commission is authorized, and it shall be its duty to cause to be constructed upon the land now belonging to the prison system, and upon such land as may be bought hereafter all necessary modern well ventilated prison buildings with proper bathing facilities and all necessary sanitary water closets and other sanitary arrangements within such buildings; also sanitary kitchens, dining rooms, hospitals, school rooms, and chapels, and other necessary conveniences for the benefit of the prisoners. (Acts 1910, 4 S. S., p. 143, sec. 15; Acts 1917, 1st C. S., ch. 32, sec. 1.)

Art. 6187. Form and factory products, movable and real property, how sold.—The Prison Commission shall have power to sell and dispose of all farm products and the products of all factories connected with the prison System, and all personal and movable property, at such prices and on such terms as may be deemed best by them, and they may with the approval of the Governor, lease any real estate or other fixed property and appurtenances belonging thereto upon such terms as to them seem best. The Prison Commission shall not have authority to sell any real estate, except as they are directed by the Governor and when directed by the Governor to sell any real estate, they shall have power to execute proper conveyance to the title thereto, such instruments of conveyance shall be prepared and approved by the Attorney General. The Prison Commission shall in the purchase or sale of any machinery or equipment for the Prison System exceeding in value the sum of $5000, advertised in the manner prescribed by the Prison Commission, for bids for such property in at least three daily papers in this State having a general circulation and shall give all such bids received to the public press at least thirty days before any such contract is let; provided, that no lands shall be sold for a less price than its fair market value. (Acts 1910, 4 S. S., p. 143, sec. 16; Acts 1919, ch. 141, sec. 3.)

Art. 6188. Prison funds.—On the first Monday of each month, the prison commission shall remit to the State Treasurer all moneys received by them as such, from whatever source during the preceding month and belonging to the system. The treasurer shall hold such fund as bailee for the prison commission, which fund shall be known as the prison commission account, and he shall give to the prison commission a deposit receipt for same, and shall pay out same on draft by the officer designated by Article 6192. The prison commission is authorized to draw upon the prison commission account with the State Treasurer such sum or sums of money and at such time or times as in their judgment may be necessary for the transaction of the business of the system; provided, they shall not draw for a sum that will give them in hand and in bank, subject to disbursement, a sum in excess of one hundred and seventy-five thousand ($175,000) dollars; and provided further, the account of the prison system with the state treasurer shall in no event be overdrawn, and in no event shall the state treasurer ever permit an overdraft against the prison commission account to be paid. On December 1st of each year the State Treasurer shall ascertain the interest earned by the fund belonging to the prison system from the state depositories and place said sum to the credit of the prison commission account and send deposit receipt to the prison commission. (Acts 1910, 4 S. S., p. 143, sec. 17; Acts 1917, 1st C. S., ch. 32, sec. 1.)

Art. 6189. Commission may make regulations.—The prison commission may at any time issue such orders and prescribe such rules and regulations for the government of the prison system of this state, not inconsistent with the law, as it may deem proper, or to provide such details not embraced herein, and for such contingencies as may at any time arise concerning the management of the prison system, or its proper and effective operation; and such rules and regulations shall be made with a view of carrying out the general principles on which the penal laws are founded, and for which the prison system is established, and shall be binding on all under-officers, employés, and all persons whomsoever in any way connected with the state prisons, or its management, or its prisoners within and without the walls. The prison commission shall have all laws, rules and regulations of the prison printed in pamphlet form for the information and guidance of all connected with the management of the prison system; and such parts of said rules as relate to the duties of subordinate officers and prisoners shall be printed in suitable form and posted in conspicuous places about the prison, or wherever prisoners may be confined, for the information of all concerned. All officers, employés and guards having supervision of prisoners shall be furnished with a copy of the law, rules and regulations governing the prison system, and shall give a receipt therefor; and the prison commission shall from time to time require examination of such officers, employés and guards as will ascertain their knowledge of such law, rules and regulations; and any such officer, employé or guard, who shall fail to familiarize himself with the law, rules and regulations of the prison system, shall be dismissed from the service. (Acts 1910, 4 S. S., p. 143, sec. 18.)

Art. 6190. Commissioners to visit camps and farms.—It shall be the duty of some member or members of the prison commission to spend at least one whole day each month, without notice, at each prison, camp or farm where prisoners are kept or worked, and to carefully inspect same with reference to the food, clothing and treatment of the prisoners, the general sanitary conditions existing at such prisons, camps or farms, reporting upon such conditions, the efforts at reformation, the general conduct of all officers and employés connected therewith, and punishment administered for the enforcement of prison discipline; provided, that the various prisons, camps and farms where prisoners are kept may be divided for the purpose of this inspection between two or more members of the prison commission, or such other person as may be designated by the prison commission. (Id. sec. 19.)

Art. 6191. Inventories.—The prison commission shall cause to be made annually, on January 1, a full and complete inventory of all lands, buildings, machinery, tools, live stock, and all other property of every description, belonging to the prison system, and shall cause to be set opposite each item the book value, and also the actual value of the same so as to afford an easy comparison with the previous annual statement. And the prison commission shall cause to be kept in the accounting department of the prison system a system of books, showing a separate account with each industry and farm and for the system as a whole, showing the losses, profits, and net earnings of each industry and farm connected with the system, and shall make a report of the same annually on January 1 to the governor; which report shall be published by the governor in a sufficient number of copies to give general publicity to such report; such report to include the rules and regulations in force for the management of said system, and the methods of dealing with the convicts thereof. (Id. sec. 21.)

Art. 6192. Prison accounts, how kept.—The member of the prison commission designated by the board to have supervision over the finances and financial transactions of the prison system shall keep, or cause to be kept, correct and accurate accounts of each and every financial transaction of the prison system, including all receipts and disbursements of every character. He shall receive and receipt for all money paid to the prison commission from every source whatsoever, and shall sign all vouchers or warrants authorizing the payment or disbursement of any sum or sums on account of the prison system; and no money shall be paid out on any account of the prison system, except upon a warrant or voucher signed by him. He shall keep full and correct accounts with each industry, department and farm, and with all firms, persons or corporations having financial transactions with the prison system. He shall have power to require all necessary reports from any department, officer or employé at stated intervals. All deposits of prison funds with banks shall be kept in the name of the officer in his official capacity, and all funds of the prison system shall be kept separate from private funds. Such accountants and clerical assistance as may be necessary to carry out the provisions of this article shall be provided by the prison commission, in order that a full, complete and correct account may be kept of all financial transactions of the prison system. In the absence of such officer, one of the other prison commissioners may sign such receipts, warrants or vouchers. (Id. sec. 22.)

Art. 6193. Auditor, appointment and duties.—On the taking effect of this act, and annually thereafter, there shall be appointed by the comptroller of public accounts, the attorney general and the state treasurer, a permanent auditor for the prison system, who shall hold his office for a term of one year, subject to discharge at any time, as hereinafter provided. It shall be the duty of such auditor to audit all accounts, vouchers, payrolls and all other business transactions of the prison system, and to check all property, material and supplies received and disposed of by or distributed within the prison system, and he shall make a full report thereof to the governor on the first day of January of each year. Such auditor shall be subject to discharge at any time by the comptroller of public accounts, attorney general, and state treasurer, or by a majority of said officers, for any incompetency, neglect, failure or refusal to discharge the duties of his office, or for any wrongful conduct that, in the judgment of the comptroller of public accounts, attorney general, and state treasurer, renders him unfitted for said office; and, in the case of the discharge or resignation of any auditor, another shall be appointed by said officers or a majority of said officers. During the term of his services, such accountant shall be paid monthly a salary of two hundred dollars per month and all actual and necessary traveling expenses, to be paid at the end of each month, out of any moneys belonging to the prison system, such traveling expenses to be evidenced by an itemized sworn statement by the auditor filed with the board. (Id. sec. 23.)

Art. 6194. Commissioners may take oaths and examine witnesses.—Each member of the board of prison commissioners in the discharge of his duties is authorized to administer oaths, to summon and examine witnesses, and take such other steps as he deems necessary to ascertain the truth of any matter about which he may have the right to inquire. (Id. sec. 24.)

Art. 6195. Commissioners, removal of.—If any member of the board of prison commissioners shall be guilty of malfeasance or nonfeasance in office, or shall become incapable or unfit to discharge his official duties, or shall wilfully fail, refuse or neglect to discharge the duties of his office, such member shall be subject to removal from office as provided by article 6027. (Id. sec. 28.)

Art. 6196. Salaries and qualifications of under-officers and employés.—The prison commission shall, except as provided in this Title, fix the salaries of all officers and employés of the prison system upon such a basis as the labor and ability of the officer or employé entitles him to, such salary to be paid monthly at the end of each month. They shall pay to those employed as guards of the convicts salaries of not less than Forty ($40.00) Dollars nor more than Sixty ($60.00) Dollars per month, and it shall be the duty of the prison commission to promulgate, ef-

fective not later than July 1, 1918, an equitable schedule of salaries between the said amounts, based upon the length of service of the guard in the employ of the prison commission, his efficiency and ability to perform in a capable manner the work devolving upon such employés of the prison system; and shall furnish such guards with board and lodging free. No person shall be employed as a guard to guard convicts who is not at least twenty-one years of age, of good moral character and who is not able to read and write and has not a fair knowledge of the English language; and the prison commission may provide such other qualifications as they may deem expedient; provided, that no person shall be employed as a guard who is in any way addicted to the use of alcoholic or intoxicating liquors; and the prison commission shall require all officers and employés connected with the prison system to familiarize themselves with and conform to the rules and regulations and laws governing the prison system of this State; provided, the prison commission shall require all officers and employés with the prison system of this State to take and subscribe to the oath of office prescribed by the Constitution. (Acts 1910, 4 S. S., p. 143, sec. 29; Acts 1917, 1st C. S., ch. 32, sec. 1; Acts 1918, 4th C. S., ch. 67, sec. 1.)

Art. 6197. Fraudulent conversion of prison property; penalty.—Any officer or employé of the prison system, who shall fraudulently convert to his own use and benefit any food, clothing, or other property belonging to or under control of the prison system, shall be guilty of theft, and, upon conviction, be punished as prescribed by law. (Acts 1910, 4 S. S., p. 143, sec. 55.)

Art. 6198. Dishonesty of officers or employés; penalty.—Any officer, agent or employé in any capacity connected with the prison system of this state, who shall be financially interested, either directly or indirectly, in any contract for the furnishing of supplies or property to the prison system, of the purchase of supplies or property for the prison system, or who shall be financially interested in any contract to which said prison system is a party, or who shall knowingly and fraudulently sell or dispose of any property belonging to said prison system below its reasonable market value, or who shall be financially interested in any other transaction connected with the prison system, shall be guilty of a felony, and, upon conviction thereof, shall be punished as provided by the Penal Code, and each transaction shall constitute a separate offense. (Id. sec. 56.)

Art. 6199. Unauthorized punishments; penalty.—Any sergeant, guard or other officer or employé of the prison system of this state, who shall inflict any punishment upon a prisoner not authorized by the rules of the prison system, shall be guilty of an assault, and, upon conviction thereof, shall be punished as prescribed by law; and it shall be the duty of the prison commission to make complaint before the proper officer of any county in which such assault was committed upon such prisoner. Provided, that, in all cases where any person is charged by complaint or indictment with an offense against a prisoner, prisoners and ex-prisoners shall be permitted to testify. (Id. sec. 57.)

Art. 6200. Seal of commission.—The prison commission shall provide a seal whereon shall be engraved in the center a star of five points and the words, "Board of Prison Commissioners of Texas," around the margin, which seal shall be used to attest all official acts. (Id. sec. 59.)

CHAPTER TWO

PRISON REGULATIONS AND DISCIPLINE

Art. 6201. Transportation of prisoners; examination and classification; furnishing with copy of rules.—It shall be the duty of the prison commission to make suitable and proper provisions for the safe and speedy transportation of prisoners from counties where sentenced to the prison at Huntsville, or to some other point in the prison system, as provided hereinafter, or by the sheriffs of the respective counties if such sheriffs are willing to perform such services as cheaply as said commission can have it done otherwise by reliable and competent parties under their direction. Transportation of State prisoners shall be on State account. Each prisoner who may, by direction of the prison commission, be taken direct to Huntsville from the place of conviction shall, upon arrival, be required to make a statement giving brief history of his life, showing where he has resided, the names and post office address of his near relatives, and such other facts as will tend to show his past habits and character. Inquiry shall be made by the prison physician, as may be directed by the commission, into the physical and mental condition of each such State prisoner so that the character of labor of which the prisoner is capable may be determined, and that in the event of infectious or contagious diseases, proper restriction may be imposed. The prison commission may in its discretion direct that such class of State prisoners as it is the policy of the prison system to employ in farm labor upon the State farms be sent direct from the place of conviction to such farm as they shall direct. In the event the prison commission shall direct a State prisoner sent direct to a State farm, such prisoner shall, upon arrival at the farm, be required to make the statement hereinbefore required of those sent to Huntsville, and the prison physician of such farm shall make the necessary examination of the physical and mental condition of such State prisoner and shall file such report with the prison commission. Each State prisoner shall be furnished with a copy of the prison rules and regulations providing for regulating conduct and labor of prisoners and officers connected with the system and such other information and encouragement as will enable him to conform to the rules. The prison commission shall verify by correspondence or otherwise, as far as practicable, the statements made by him and shall preserve the record and information so obtained, for future reference. (Acts 1910, 4 S. S., p. 143, sec. 20; Acts 1917, 1st C. S., ch. 32, sec. 1.)

Art. 6202. Prison uniforms.—Except for third class prisoners, within a reasonable time and not later than six months after January 20, 1911, the prison commission shall abolish striped or checked clothes for prisoners, except as a mode of punishment for the

violation of prison discipline, substituting therefor some suitable uniform. (Acts 1910, 4 S. S., p. 143, sec. 25.)

Art. 6203. Instruction and recreation of prisoners.—The prison commission shall, as soon as practicable, provide at each prison, farm and camp where prisoners are kept or worked, schools for instruction of prisoners in elementary branches of the English language and industrial education, and such other instruction as they may prescribe, and shall provide suitable recreation for the prisoners at reasonable hours, including music; and they shall employ such number of competent teachers to instruct the prisoners in the same, as in the judgment of the prison commission may seem necessary; and the prison commission shall make reasonable rules and regulations whereby the prisoners may attend such schools. The prison commission shall prescribe and furnish to the prisoners suitable books and other reading matter, and to this end may establish and operate among the prisoners a circulating library, and may adopt such other means of distributing among the prisoners good and wholesome literature as in the judgment of the prison commission will best enable the prisoners to avail themselves of the same; provided, that all teachers herein provided for shall, as far as practicable be taken from the convicts, and such teachers may be excused from further labors. The chaplain shall be ex officio librarian of the penitentiary, passing upon all library books, and direct such other work as may be prescribed for such library management. (Id. sec. 26.)

Art. 6204. Religious services.—The prison commission shall provide for religious services at prisons, farms, and camps where prisoners are kept or worked. They shall employ such chaplains as may be necessary to afford all prisoners an opportunity to attend at least two religious services each month, said chaplains to devote their entire time to religious and moral training and education of the prisoners under their care, teaching them the principles and practice of every Christian and moral duty; provided, that chaplains may also be teachers as provided for in this chapter. (Id. sec. 27.)

Art. 6205. Food.—The prison commission shall see that all state prisoners are fed good and wholesome food, properly prepared under wholesome, sanitary conditions, and in sufficient quantity and reasonable variety, and they shall hold all under-officers performing this work strictly to account for any failure to carry out this provision. That the food may be properly prepared, the prison commission shall provide for the training of prisoners as cooks. (Id. sec. 30.)

Art. 6206. Monthly reports to board shall contain what.—The prison commission shall require, at the end of each month, reports showing fully the condition and treatment of the prisoners, and the changes in prison population during the month, including itemized statements of all different items of food, clothing and utensils used and on hand in each of the units of the prison system, and such other matters as they may require. (Id. sec. 31.)

Art. 6207. Prison register to show what.—The prison commission shall keep a register of all prisoners belonging to the prison system, showing the number of each prisoner, giving the aliases, name, age, height, color of hair, color of eyes, complexion, marks on person, sex, nativity, residence, county where convicted, offense of which convicted, date of sentence, date of receipt, previous occupation and habits, if known, and may adopt such other means of identification as they may deem proper and necessary. They shall keep a record of the general conditions and conduct of each prisoner, noting all punishments, forfeitures, bad conduct, changes and incidents of importance that may occur during his confinement; and, to the end that complete records may be kept, they may require from all under-officers such monthly and other reports as they may deem proper. They shall issue discharges to such prisoners as are entitled thereto by expiration of sentence or otherwise. (Id. sec. 32.)

Art. 6208. Classification of prisoners; uniforms; punishments.—That persons confined in the state prisons of this state may have every opportunity and encouragement for moral reform, it shall be the duty of the prison commission, in addition to the requirements of this title, to provide every reasonable and practicable means for the encouragement of such reforms. To this end, the prison commission shall provide for the classification of all prisoners, separating them into the following classes: In the first class shall be included young men, first offenders, those appearing to be corrigible, or less vicious than others, and likely to observe the laws, and to maintain themselves by honest industry after their discharge. In the second class shall be included those appearing to be less corrigible, or more vicious, but content to work and reasonably obedient to prison discipline as not to seriously interfere with the productiveness of their labor, or with the labor or conduct of those with whom they may be employed. In the third class shall be included those appearing to be incorrigible or so insubordinate or so vicious in their nature as to seriously interfere with the labor and moral development of those with whom they must come in contact. The prison commission shall make rules and regulations for the promotion and reduction of the prisoners from one class to another, and shall transfer them from one class to another, from time to time, as they may seem to merit promotion or reduction. The prisoners in each of the classes hereinbefore named shall be kept in or upon different or separate prisons or farms. Any prisoner, upon entering the prison system, shall be assigned to one of its institutions according to his class, as hereinbefore provided, and shall be entered in said institution in a neutral grade which shall be known as grade No. 2, and in which he shall be furnished with a suitable uniform designated for that grade. The prison commission shall adopt rules for a higher grade which shall be known as grade No. 1, as a reward for obedience to prison discipline and good conduct, and shall provide a suitable uniform for this grade; and they shall provide for a lower grade as a punishment for misconduct and violation of prison discipline, which grade shall be known as No. 3, and in which the prisoner shall be clothed in stripes. The

uniforms for grades Nos. 1 and 2 shall not be stripes. The prison commission shall provide rules for promotion of prisoners from any grade to another for good conduct and obedience to prison discipline, and for demotion of prisoners for misconduct and violation of prison discipline. The prison commission shall provide specifically for the extension or denial of privileges for the various grades herein provided. In order that prison discipline may be enforced, the prison commission may adopt such modes of punishment as may be necessary, such punishment being always humane; and placing prisoners in stocks shall be prohibited. Whipping with not exceeding twenty lashes on the bare rump and thighs may be resorted to with prisoners of the third class, who can not be made to observe the rules by milder methods of punishment. The strap to be used must be of leather, not over two and one-half inches wide, and twenty-four inches long, attached to a wooden handle; no convict shall be whipped until same has been authorized by at least two members of the prison commission upon their written order; and such order so issued shall be executed only in the presence of a prison physician, and a sworn report shall be made by the officer executing such order to the penitentiary commission, who shall keep a record of all such reports in a well-bound book to be kept for that purpose, which shall be at all times open to public inspection; and such report so to be made by such officer executing the order of the penitentiary commission shall state the name of the convict whipped, the number of strokes administered, the size of the strap used, the time and place thereof, in whose presence same was done, and the cause thereof. It shall further be the duty of the penitentiary commission to make a semi-annual report of the whipping of convicts to the district judge of the county where such whippings occurred, who shall report [same to the grand jury, which is hereby authorized to make investigation] thereof, if they deem same advisable. The utmost care must be used by the officer executing the order of the commission not to break the skin of the prisoner whipped; and any person guilty of whipping a prisoner more lashes or other than as provided herein, or striking a prisoner, except in self-defense, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty-five dollars nor more than two hundred and fifty dollars, and imprisoned in the county jail not less than thirty days nor more than six months. White and negro prisoners shall not be worked together when it can be avoided, and shall be kept separate when not at work. (Id. sec. 33.)

Art. 6209. Female prisoners shall be kept separate.—All female prisoners shall be kept separate and apart from the male prisoners. Where practicable, the prison commission shall keep the female prisoners upon a separate farm, or at a separate prison, from the male prisoners, and shall provide reasonable rules and regulations for the government of the same. (Id. sec. 34.)

Art. 6210. Labor for female prisoners; physical condition.—The prison commission shall provide such labor for said female prisoners as in their judgment they can reasonably perform, but the prison physician for such female prisoners shall at any time have the authority to say whether the physical condition of said female prisoners is such that they can perform any physical labor; provided, that in the absence of the physician the matron shall pass upon the physical condition of said female prisoners. (Id. sec. 35.)

Art. 6211. Whites and negroes kept separate.—The prison commission shall keep the white female prisoners separate and apart from the negro female prisoners, and shall select and place over said female prisoners a matron or matrons, whose duty it shall be to give her personal attention to the welfare of such female prisoners. The matron or matrons so employed to look after the welfare of the female prisoners shall reside at the place where female prisoners are kept. (Id. sec. 36.)

Art. 6212. Only married men employed as guards for female prisoners.—At the place where female prisoners are kept, none but married men shall be employed as guards; and the house for such guards and their families shall be provided by the State, in which the families of the guards shall live. (Acts 1910, 4 S. S., p. 143, sec. 37; Acts 1917, 1st C. S., ch. 32, sec. 1.)

Art. 6213. Children of female prisoners.—If a female prisoner be received with an infant, or if any child be born in the penitentiary, the child shall be permitted to remain with its mother until three to six years of age, in the discretion of and as prescribed by the prison commission. (Acts 1910, 4 S. S., p. 143, sec. 38.)

Art. 6214. Credits to prisoners who work; forfeiture.—Every prisoner who shall do extra work or work over time shall be entitled to a credit for same and diminution of time, as hereinafter provided, as commutation time to be allowed to him in addition to the commutation time for good conduct now provided by law in Article 6217 of the Revised Civil Statutes of 1911; provided, such commutation time may be forfeited in whole or in part by the prison commission for mis-conduct or violation of the rules of the prison system. (Acts 1910, 4 S. S., p. 143, sec. 39; Acts 1917, 1st C. S., ch. 32, sec. 1.)

Art. 6215. Sunday labor.—No prisoner shall be worked on Sundays except in cases of emergency or extreme necessity; provided, the prison commission shall be authorized to work prisoners on Sunday at labor that is necessary to be performed, such as cooks, waiters, lot men, and men attending to stock, and men engaged in the necessary operation of machinery; provided, for each Sunday or each hour on Sunday a prisoner is so worked, he shall have deducted from his time two days for one day or two hours for one hour so worked by him as commutation time in addition to the commutation time now provided by law for good behavior. (Acts 1910, 4 S. S., p. 143, sec. 40; Acts 1917, 1st C. S., ch. 32, sec. 1.)

Art. 6216. Intent of law.—The various provisions of this title are designed to secure to the prisoners humane treatment, suitable moral instruction, to provide for their health, and to extend to them such comforts and privileges as may be consistent with their situation, and at the same time to require of them a due attention to their

various duties and a strict observance of the discipline, rules and regulations of the prison. (Acts 1910, 4 S. S., p. 143, sec. 41.)

Art. 6217. Reward for good conduct; relaxation of discipline; parole; commutation.—In order to encourage prison discipline, a distinction may be made in the treatment of prisoners so as to extend to all such as are orderly, industrious and obedient comforts and privileges according to their deserts. The rewards to be bestowed on prisoners for good conduct shall consist of such relaxation of strict prison rules and extension of social privileges as may not be inconsistent with proper discipline. Commutation of time for good conduct shall be granted by the prison commission, and the following deductions shall be made from the term or terms of sentences when no charge of misconduct has been sustained against a prisoner, viz.: Two days per month off the first year of sentence; three days per month off the second year of sentence; four days per month off the third year of sentence; five days per month off the fourth year of sentence; six days per month off the fifth year of sentence; seven days per month off the sixth year of sentence; eight days per month off the seventh year of sentence; nine days per month off the eighth year of sentence; ten days per month off the ninth year of sentence; fifteen days per month off the tenth year and all succeeding years of sentence. A prisoner under two or more cumulative sentences shall be allowed commutation as if they were all one sentence. For each sustained charge of misconduct in violation of any rule known to the prisoner, in any year of the term, the commutation allowed for one month of such year may be forfeited; for any sustained charge of escape, or attempt to escape, mutinous conduct, or other serious misconduct, all the commutation which shall have accrued in favor of the prisoner up to that day shall be forfeited, unless in case of escape the prisoner voluntarily returns without expense to the state, such forfeiture may be set aside by the prison commission. For extra meritorious conduct on the part of any prisoner, he shall be recommended to the favorable consideration of the governor for increased commutation or pardon; and, in the case of any prisoner who shall have escaped and been captured, part or all of his good time thereby forfeited may be restored by the prison commission, if in their judgment his subsequent conduct entitles him thereto. (Id. sec. 42.)

Art. 6218. Commutation of life or long term sentence.—Hereafter, life or long term prisoners who have actually served fifteen years and have no sustained charges of misconduct, and have a good prison record, and who shall be favorably recommended to the governor, may receive at the hands of the governor a reasonable commutation of sentence; and, if a life sentence is commuted to a term of years, then such convict shall have the benefit of the ordinary commutation, as if originally sentenced for a term of years, except the governor shall otherwise direct. (Id. sec. 43.)

Art. 6219. Clothing.—Suitable clothing of substantial material, uniform make and reasonable fit, and such footwear as will be substantial and comfortable, shall be furnished the prisoners; and no prisoner shall be allowed to wear other clothing than that furnished by the prison authorities, except in case of extra meritorious conduct only, the prison commission may allow the prisoners to wear citizen underwear. Sufficient food of wholesome quality and variety and wholesomely prepared shall be furnished to all, and such provisions shall be made for serving the food to prisoners as will tend to encourage and elevate them. It shall be the duty of every officer charged with the preparation and serving of food to the prisoners to post in the dining room each Monday morning for the coming week the bill of food for that week, and the rules promulgated by the prison commission shall prescribe the quality, kind and variety of food to be furnished. Prisoners shall not be allowed spirituous, vinous or malt liquors, except upon the prescription of the physician. (Id. sec. 44.)

Art. 6220. Restrictions on amount of labor required.—Prisoners shall be kept at work under such rules and regulations as may be prescribed by the prison commission. No greater amount of labor shall be required of any prisoner than his physical health and strength will reasonably permit, nor shall any prisoner be placed at such labor as the prison physician may pronounce him unable to perform. No prisoner upon his admission to prison, shall be assigned to any labor until having first been examined by the prison physician. Provided, that no prisoner shall be required to work more than nine hours per day, except that the commission shall be authorized to work the prisoners on the farms of the prison system in accordance with the following plan.

During the months of December, January, and February, nine hours; During the months of March, April, July, August and November, ten hours; during the months of May, June, September and October, eleven hours.

The commission is further authorized to work prisoners on the farms such time in addition to that stipulated above, as may be agreed on by convicts who are desirous of shortening their terms as hereinafter provided.

Provided, that for each hour a prisoner may work in excess of nine hours a day, an equal amount of time shall be deducted for the term of his sentence in addition to the commutation for good behavior now allowed by law; for each nine hours of over time he shall be entitled to one day off his sentence.

The hours of labor shall be computed from the time of arriving at the place of work, where the distance is not greater than one mile and a half from the prison building, till the time of stopping work exclusive of the intermission allowed for dinner which shall not be less than one hour. Provided, life term prisoners who are worked over or extra time, who, by reason of the nature of the sentence, can not earn commutation, shall have entered and shown on his record as a credit, the amount of over time worked, which shall be counted as time served on their sentences in addition to the actual time served, on the same rate as

prisoners having a term of years, which shall be reckoned in the consideration of their cases when applying for pardon or parole. Any officer or employé violating any provision of this Article shall be dismissed from the service. (Acts 1910, 4 S. S., p. 143, sec. 45; Acts 1917, 1st C. S., ch. 32, sec. 1.)

Art. 6221. Physical condition.—Prisoners who have been reported by the physician or other officer in charge as in a condition of health which requires their removal to some other place shall be accordingly removed. (Acts 1910, 4 S. S., p. 143, sec. 46.)

Art. 6222. Prisoners searched; disposition of money in their possession.—Prisoners when received into the penitentiary shall be carefully searched. If money be found on the person of the prisoner, or received by him at any time, it shall be taken in charge by the prison commission and placed to the prisoner's credit, and expended for the prisoner's benefit on his written order, and under such restrictions as may be prescribed by law or the rules. Any officer or employé having charge of a prisoner's money who misappropriates the same, or any part thereof, shall be deemed guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary for a term of not more than five years. (Id. sec. 47.)

Art. 6223. Death of prisoners; disposition of remains; record.—The prison commission shall make such rules and regulations as it may deem necessary and proper regarding reports of death of prisoners to relatives and friends, and with respect to the delivery of the bodies of prisoners to relatives and friends; provided the prison commission shall cause to be kept a record of the deaths of the prisoners and the disposition of the bodies. (Acts 1910, 4 S. S., p. 143, sec. 48; Acts 1917, 1st C. S., ch. 32, sec. 1.)

Art. 6224. Report of accidental death; penalty for failure; fees.—The prison commission or other persons in charge of prisoners, upon the death of any prisoner under their care and control, if he die suddenly or from accident or injury, shall at once notify the nearest justice of the peace of the county in which said prisoner dies of the death of said prisoner, and it shall be the duty of such justice of the peace, when notified of the death of such prisoner, to go in person and make a personal examination of the body of such prisoner, and said justice of the peace shall reduce to writing the evidence taken during such inquest, and shall furnish a copy of same to the district judge of the county in which said prisoner died; and the copy so furnished to said district judge shall be turned over by the district judge to the succeeding grand jury; and the said judge shall charge the grand jury if there should be any suspicion of wrong doing shown by the inquest papers to thoroughly investigate the cause of such death, provided that no inquest shall be required when the prisoner died from natural causes, and has been under the care of the prison physician. Any officer or employé of the prison system having charge of any prisoner at the time of the death by accident, injury or sudden death of such prisoner, who shall fail to immediately notify a justice of the peace of the death of such prisoner, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than one hundred ($100.00) dollars nor more than five hundred ($500.00) dollars, and by confinement in the county jail not less than sixty days, nor more than one year; provided, that the justice of the peace making such examination shall be paid a fee as is now provided by law for holding inquests, said fee to be on sworn account thereof approved and paid by the prison commission out of the penitentiary funds. (Acts 1910, 4 S. S., p. 143, sec. 49; Acts 1917, 1st C. S., ch. 32, sec. 1.)

Art. 6225. Medical attention.—The prison commission shall provide for competent medical attention for all prisoners, and shall establish rules whereby all physicians shall be required to keep a record of all cases of sickness, accident or injury which they treat. The physicians so employed shall be reputable practicing physicians of not less than two years of experience in practice. Each physician employed in the prison system shall, at the end of each month, file with the prison commission a report in writing, subscribed and sworn to by him; which report shall state the names, race and sex of each prisoner treated or examined by him during said month, the malady or disease with which each was afflicted, and, if any shall be suffering with wounds or injuries inflicted by accident or some individual, he shall state the nature and extent of said injuries, by whom and by what means inflicted, or how the same occurred, and all such other information concerning said matters, and the condition of each prisoner treated or examined by him during said months, as he may possess; provided, further, that for a failure to make such a report, or any false statement knowingly made by any such physician in any such reports, he shall be prosecuted for the offense of perjury or false swearing, as provided by law. (Acts 1910, 4 S. S., p. 143, sec. 50.)

Art. 6226. Dentists.—The prison commission shall also provide a competent dentist or dentists, whose duty it shall be to care for the teeth of the prisoners. Such dentist or dentists shall, at the direction of the prison commission, visit the various places where prisoners are kept or worked, at such intervals as may be prescribed. (Id. sec. 51.)

Art. 6227. Discharge of prisoner.—When a prisoner is discharged he shall be furnished with a written or printed discharge from the prison commission signed by the chairman of the board of prison commissioners with the seal of the commission affixed, giving prisoner's name, date of sentence, from what county sentenced, the amount of commutation received, if any; the trade he has learned, if any; his proficiency in same, and such other description as may be practicable. He shall be furnished with a suit of clothing of good quality and fit, two suits of underwear, one pair of shoes and a hat, one shirt, $5.00 in money in addition to any money which he may have to his credit with the prison commission, and redeemable and non-transferable railroad transportation to the place from which he was sentenced or to such place as he may desire, provided, that

the same be not a greater distance from the place where he is released than the place from which he was sentenced. (Acts 1910, 4 S. S., p. 143, sec. 52; Acts 1917, 1st C. S., ch. 32, sec. 1.)

Art. 6228. Visitors admitted, when.—The governor and all other members of the executive and judicial departments of the state, and members of the legislature, shall be admitted into the prisons, camps and other places where prisoners are kept or worked, at all proper hours, for the purpose of observing the conduct thereof, and may hold conversation with the convicts, apart from all prison officers. Other persons may visit the pentitentiary under such rules and regulations as may be established. (Acts 1910, 4 S. S., p. 143, sec. 53.)

Art. 6229. Reward for escaped convict.—The prison commission, with the governor's approval, may offer such reward for the apprehension of an escaped prisoner as may be fixed by the prison commission, and to be paid as directed by the prison commission. (Id. sec. 54.)

Art. 6230. Gambling forbidden; penalty.—No gambling shall be permitted at any prison, farm or camp where prisoners are kept or worked. Any officer or employé engaging in or knowingly permitting gambling at any such prison, farm or camp shall be immediately dismissed from the service. (Id. sec. 58.)

Art. 6231. Convicts employed on public or private works, when.—The prison commission, by and with the consent of the governor, shall have the power to work convicts on public works, when they can not employ them on the state farms or within the walls by reason of some unforeseen calamity, such as failure of crops, or the destruction of crops by wind or flood. When convicts are worked on public works owned by the state, or a subdivision of the state, the humane provisions of this chapter shall be strictly complied with. (Id. sec. 60.)

Art. 6231a. Prison commission may maintain suits; offsets and counter-claims.—The prison commission is hereby authorized, subject to the approval of the Governor of this State, to bring and maintain in any court of competent jurisdiction in this State, suits for the collection and enforcement of all demands and debts now owing or which may hereafter become owing to said prison commission, which suits may be maintained in the courts of competent jurisdiction of the county in which the residence of the prison commission is fixed by law. In such suits the defendant or defendants are hereby authorized to plead and urge by way of offset and counter-claim any valid and lawful claims and demands which such defendant or defendants may have against the prison commission. (Acts 1917, 1st C. S., ch. 32, sec. 1.)

CHAPTER THREE

WORKHOUSES AND COUNTY CONVICTS

Art. 6232. (3727) Commissioners' courts to establish workhouses, etc.—The commissioners' courts of the several counties may provide for the erection of a workhouse, and the establishment of a county farm in connection therewith, for the purpose of utilizing the labor of county convicts, in accordance with the provisions of the constitution. (Const., art. 16, sec. 3; Act Aug. 21, 1876, p. 9, sec. 229; Act to adopt and establish R. C. S., passed Feb. 21, 1879; R. S. 1879, 3585-3601.)

Art. 6233. (3728) "County convict" defined.—A "county convict," within the meaning of the preceding article, is any person who may have been convicted of a misdemeanor or petty offense, and whose punishment has been assessed at imprisonment in the county jail for any term; or who, under a like conviction, has been adjudged to pay a pecuniary fine, and is unable so to do. (Id. p. 230, sec. 16.)

Art. 6234. (3729) Certain convicts only to do manual labor.—When the punishment assessed in a conviction for misdemeanor is confinement in the county jail for a period less than one day, the convict shall not be required to labor, either in the workhouse or elsewhere; but, when such punishment is confinement in the county jail for a longer time than one day, the convict shall be required to do manual labor in accordance with the provisions of this chapter. (Act to adopt and establish R. C. S., passed Feb. 21, 1879.)

Art. 6235. (3730) Commissioners' court to control workhouses.—County workhouses and farms shall be under the control and management of the commissioners' court; and such courts are authorized to adopt such rules and regulations not inconsistent with the laws, as they may deem necessary for the successful management and operation of said institutions and for effectively utilizing the labor of county convicts. (Id. sec. 10.)

Art. 6236. (3731) Officers to obey their orders, etc.—The sheriff and all other peace officers shall obey the orders and regulations of the commissioners' court, made in pursuance of the preceding article, shall execute such process as may be directed by said court, and shall render all the aid possible in carrying out the provisions of this chapter, and the regulations made in pursuance thereof. (Id. sec. 13.)

Art. 6237. (3732) Overseers and guards, etc.—Such overseers and guards may be employed under the authority of the commissioners' court as may be necessary to prevent escapes and to enforce labor on the part of convicts, and they shall be paid out of the county treasury such compensation as said court may prescribe.

Art. 6238. (3733) To labor on public works, etc.—County convicts shall be put to labor upon the public roads, bridges, or other public works of the county, when their labor can not be utilized in the county workhouse or farm, and they shall be required to labor not less than eight nor more than ten hours each day, Sundays excepted. (Id. p. 228, sec. 1.)

Art. 6239. (3734) Where confined when off duty.—When not at labor, county convicts may be confined in the county jail or workhouse, as may be most convenient, or as the regulations of the commissioners' court may prescribe.

Art. 6240. (3735) Refractory convicts to be punished.—When a convict refuses to labor, or is otherwise refractory or insubordinate, he may be punished by solitary confinement on bread and water, or in such

other manner as the commissioners' court may direct.

Art. 6241. (3736) Female convicts.—Female convicts shall, under all circumstances, be kept separate and apart from male convicts; and they shall in no case be required to do manual labor, except in the workhouse, or when hired out as is hereinafter provided.

Art. 6242. (3737) Aged or disabled convicts not to work.—A convict who, from age, disease or other disability, physical or mental, is unable to do manual labor, shall not be required to work, but shall remain in jail until his term of imprisonment is ended, or until the fine and costs adjudged against him are discharged, at the rate of one dollar for each day of such confinement in jail.

Art. 6243. (3738) Inability, how determined.—The inability of the convict to do manual labor may be determined by the opinion of a competent physician appointed for that purpose by the county judge or commissioners' court, who shall be paid for such service such compensation as the commissioners' court may allow.

Art. 6244. (3739) How to be credited on fine, etc.—When a convict who has been committed to jail in default of payment of fine and costs is required to do manual labor, he shall be credited upon such fine and costs at the rate of fifty cents for each day he may labor, and upon satisfaction of such fine and costs in full at said rate he shall be discharged; provided, such work shall be performed on public streets or roads, or on county poor farms. No convict under this chapter shall ever be required to work or be hired for more than one year. (Acts 1889, p. 14.)

Art. 6245. (3740) Mechanic, etc., to have extra credit.—If a convict of the kind described in the preceding article be an artisan or mechanic, and be put to labor at his trade or calling in any workhouse, or on any public work, he may be credited upon the fine and costs against him with such extra compensation for his labor as the county judge may determine to be just and proper. (Id. sec. 2.)

Art. 6246. (3741) Convicts to be guarded, etc.—Convicts shall be so guarded while at work as to prevent escapes; and no convict shall be compelled to labor at any kind of work nor in any avocation that would endanger his life or health. (Acts 1876, p. 230, sec. 11.)

Art. 6247. (3742) Costs to be paid officers.—Whenever a convict, who has been committed to jail in default of payment of fine and costs adjudged against him, has satisfied such fine and costs in full by labor in the workhouse, on the county farm, on the public roads of the county, or upon any public works of the county, said county in which said conviction was had shall be liable to each officer and witness having costs in the case against said convict for only one-half of such costs; and the county judge of said county shall issue his warrant upon the county treasurer in favor of each officer and witness for one-half of all such legal costs as may have been taxed up against said convict, not to include commissions; and the same shall be paid out of the road and bridge fund of the county, or out of any other county funds not otherwise appropriated. (Id. p. 229, sec. 8; Amend. 1895, p. 179.)

Art. 6248. (3743) Convict may commute his labor.—A convict condemned to imprisonment in the county jail as the punishment, either in whole or in part, for his offense, may avoid manual labor in the workhouse or elsewhere by payment into the county treasury of one dollar for each day of the term of his imprisonment; and the receipt of the county treasurer to that effect shall be sufficient authority to the sheriff to detain such convict in jail without labor.

CHAPTER FOUR

HIRING COUNTY CONVICTS

Art. 6249. (3744) Convicts may be hired out.—Any person who may be convicted of a misdemeanor, or petty offense, and who shall be committed to jail in default of the payment of the fine and costs adjudged against him, may be worked upon the public roads, or upon the county farms, of the county in which such conviction is had, or be hired out to any individual, company or corporation within the county of conviction, to remain in said county; and the proceeds of said hiring, when collected, shall be applied, first, to the payment of the costs, and second, to the payment of the fine; and every convict shall be entitled to a credit of twenty-five cents on his fine and costs for each day he may serve under such hiring, including Sunday; and he shall be discharged at any time upon payment of the balance due on his fine and costs, or upon the expiration of his term of service, his term of service in no event to be greater than one day for each fifty cents of fine and costs; provided, that in no case shall the counties be responsible to the officers for their costs, and in no case shall such convicts be hired out for a longer period than one year for failure to pay a fine and costs; and on the expiration of said time, unless by his hire such fine and costs have been sooner paid off, said convicts shall be finally discharged. (Acts 1882, ch. 15; Acts 1887, p. 11; R. S. 1879, 3602-3609.)

Art. 6250. (3745) Either publicly or privately, generally or especially.—Such hiring may be either by private contract or at public auction, as may be deemed best for the interest of the county, or it may be by general contract for any specified term, embracing the labor of all county convicts of the class prescribed in the preceding article, at some fixed rate per day, week or month.

Art. 6251. (3746) Hirer shall give bond and its requisites.—Hirers of convicts shall execute bond payable to the county judge of the county, with two or more good and sufficient sureties, in the amount of hire agreed upon, conditioned as follows:

1. That the hirer will promptly and faithfully pay the amount of money mentioned in the bond when the same becomes due, and it shall be stated in the bond when the same becomes due.

2. That he will treat the convict humanely while in his employment.

3. That he will furnish the convict with a sufficient quantity of good and wholesome food, with comfortable clothing and medicine when sick.

4. That he will not require the convict to work at unreasonable hours, or for a longer

time during any one day than other laborers doing the same kind of labor are accustomed to work.

Such bond shall be approved by the county judge and filed in the office of the clerk of the county court. (Id. pp. 228–230, secs. 4, 12.)

Art. 6252. (3747) Liability of hirer when convict escapes.—If a convict, hired out, escapes from the hirer, such hirer shall nevertheless be liable for the full amount of the bond, unless such convict is rearrested and placed in the custody of the sheriff of the county in which he was convicted before such bond becomes due; in which case such hirer shall only be liable to pay for the time that such convict remained with him. (Id. p. 229, sec. 4.)

Art. 6253. (3748) Suit on bond.—Upon the breach of such bond, the county judge, or commissioner's court, shall cause such bond to be sued upon in any court having jurisdiction thereof; and the amount collected thereon, after deducting therefrom the collection fees and costs, shall be paid into the county treasury by the officer collecting the same, and constitute a part of the road and bridge fund of the county. (Id. sec. 5; Const., art. 16, sec. 24.)

Art. 6254. (3749) Convict shall receive full credit for labor.—All moneys arising from hiring out convicts shall be paid over to the county judge, and by him paid into the county treasury, and in every case the convict shall receive full credit for the amount of his labor, to be counted and entered in discharge of the fine and costs adjudged against him; and, whenever his earnings shall be sufficient to pay in full such fine and costs, he shall be discharged. (Id. sec. 6.)

Art. 6255. (3750) Record in relation to convicts shall be kept.—County judges shall cause a record of all proceedings in relation to the employment or hiring out of convicts to be kept in well-bound books to be provided for that purpose. Said record shall contain:

1. A descriptive list of all persons known as "county convicts."
2. How such convict has been or is employed.
3. The name of the party hiring a convict.
4. The time when and the price at which such convict has been employed or hired out.
5. The amount credited such convict for such employment or hire.
6. The amount of such hire collected.
7. The amount of fine and costs due by such convict.
8. Such other information as may be necessary and requisite under the rules adopted by the commissioners' court. (Act Aug. 21, 1876, p. 230, sec. 15.)

Art. 6256. (3751) Officer's costs, how paid.—Whenever the amount realized from the hire of a convict is sufficient to discharge in full the fine and costs adjudged against him, the county judge shall issue a warrant upon the county treasurer in favor of each officer, to whom costs may be due, for the amount of his costs, and the same shall be paid out of the road fund of the county, or out of any other funds in the county treasury not otherwise appropriated. (Id. sec. 8.)

TITLE 105
PENSIONS

CHAPTER ONE
VETERANS OF MEXICAN WAR

Art. 6257. (3752) To whom granted.—To every surviving indigent soldier, or indigent volunteer, who was in the actual military or naval service of Texas at the time of the siege of Bexar, in December, 1835, or at the time of the battle of San Jacinto, in April, 1836, or who actually participated in any battle in Texas in 1836, or who was in such actual military service for as much as six weeks between the commencement of the revolution at Gonzales in 1835, and the first day of January, 1837, and to every indigent surviving signer of the declaration of independence of Texas, and to every indigent surviving widow of any such soldier, volunteer or signer, who is and has always been unmarried since the death of such soldier, volunteer or signer, and so long as such widow may remain unmarried, there shall be and is hereby granted an annual pension of one hundred and fifty dollars as hereinafter provided. (Acts 1889, p. 43, sec. 1.)

Art. 6258. (3753) Application.—Each applicant for a pension under this law shall make application in writing for the same to the county judge of the county of his or her residence, and shall post a copy of such application on the court house door of the county for at least thirty days before the application is acted on by the county judge. Such application shall state the name, age and residence of the applicant, whether or not this applicant received any pension or veteran donation land certificate under any previous law, a list of the real and personal property owned by the applicant, and the present value of the same, and what property and the value thereof that such applicant has sold or conveyed within twelve months prior to the date of such application; and shall further state that the applicant is in indigent circumstances, and is dependent upon his or her labor or on the charity of others for a support; provided, that the word "indigent," within the meaning of this law, shall not allow the ownership of property to exceed one thousand dollars; and that the applicant has not transferred to others any property or values of any kind for the purpose of becoming a beneficiary under this law; and still further, that such applicant is and was for one year preceding the date of the passage of this law a bona fide resident citizen of this state. And in addition to the foregoing, each male applicant shall further state the time he rendered such service, and the command he served in; and each female applicant shall state the name of her deceased husband, the date of his death; that she is unmarried, and has so remained since the death of the husband for whose services she claims a pension; and shall further state, as accurately as she can, the time her said deceased husband rendered such service, and the command he served in. Should the applicant be a signer of such declaration of independence, or a widow of such signer, he or she shall state all that is hereinbefore required, except as to the military service, and in lieu of which it

shall state that the applicant was a signer of such declaration of independence, or is the widow of such signer, which application shall be subscribed and sworn to by the applicant, and the same shall be supported by affidavits of at least two credible witnesses who reside in the state, and shall show that the facts stated by the applicant is known and regarded in his or her neighborhood as a Texas veteran or signer of the declaration of independence, or the widow of a Texas veteran or signer of the declaration of independence. Any veteran whose application and proof heretofore made to the comptroller are in compliance with the requirements of this law shall be entitled to his or her pension on presenting such application and proof to the comptroller, without further proof being made; and, where such application and proof has been returned to the applicant by the comptroller, said applicant may refile the same as if made under this law; provided, that such application has not heretofore been declared fraudulent. (Id. sec. 2.)

Art. 6259. (3754) Proceedings to obtain.—Such application so signed and sworn to by the applicant and two credible witnesses shall be presented to the county judge, who shall in open court, at a regular term thereof, hear evidence as to the truth of the statements made in such application; and if he believe from the evidence that the applicant really performed the service for which the pension is claimed, or is a widow of a soldier or volunteer of the Texas revolution, or a signer of the declaration of Texas independence; that he or she is now, and was at the time of the passage of this law, and for ten years previous thereto, a bona fide resident of the state of Texas; that the applicant is in indigent circumstances, and is dependent on his or her labor or on the charity of others for a support, and has not at any time transferred any property for the purpose of becoming a beneficiary under this law; then he shall make his certificate under the seal of his office, attested by the county clerk, reciting the facts as shown by the evidence. Upon the hearing of such application, the state shall be represented by the county or district attorney; and it shall be the duty of such attorney to summon witnesses to testify in behalf of the state who know the pecuniary condition of the applicant, or any other facts affecting the rights of the applicant to obtain a pension, and to examine the assessor's rolls and the records of his county, and any other source of information which may seem to him advisable; and he shall prepare a statement of the testimony given by each witness, including the name of such witness, and also of the facts disclosed by investigating any other source of information, which statements shall be approved by the county judge. For his services in behalf of the state, the attorney shall be allowed a fee of ten dollars, to be paid as follows: He shall present his account for the same to the county judge, who shall approve it if he find it correct, shall date and sign the same officially, and shall cause it to be filed in the office of the county clerk. The said judge shall thereupon give the attorney a draft upon the county treasurer, and the same when presented to the treasurer shall be paid out of any moneys in his hands not otherwise legally appropriated in the same manner as jury certificates are paid; provided, that, if the applicant shall be proved not to be an indigent, and shall have his application defeated on that ground, then the attorney representing the state shall be entitled to an additional fee of ten dollars, to be taxed against the applicant as costs of suit. (Acts 1885, p. 94, sec. 3.)

Art. 6260. (3755) To be filed with comptroller.—Such application so prepared and certified to, together with the statements of the county judge and attorney hereinbefore provided for, shall be filed with the comptroller of public accounts, whose duty it shall be to examine critically such application and statements, and any other accessible evidence that may prove or disprove the right of the applicant to claim a pension, and may require further proof of the statements made in such application; and if in his opinion the applicant has not established his or her legal right to a pension, then he shall refuse such application and file reasons therefor in his office; provided, no pension shall be granted to any one under this title whose claim has been rejected by the veteran board of this state as fraudulent. (Acts 1885, p. 94, sec. 4.)

Art. 6261. (3756) Must be indigent.—No person shall be entitled to receive a pension under this title, unless it shall be made to appear to the comptroller, from the evidence, that said person is in indigent circumstances, and is dependent upon his labor or the charity of others for a support. (Id. sec. 5.)

Art. 6262. (3757) Shall commence, when.—The pension herein provided for shall begin at the date when the comptroller receives the application, and shall be paid quarterly in advance. The comptroller shall draw his warrant for the same on the treasurer, and, upon presentation, the treasurer shall pay the same out of any money in the treasury which may be appropriated for this purpose. (Id. sec. 6.)

Art. 6263. (3758) Proof to be made each quarter.—On or after the first of each quarter, the pensioner shall make his affidavit stating the county of his residence, and that he is the identical person to whom a pension has been granted under this law; which affidavit shall be supported by the affidavit of some other credible person to the same fact, and which affidavit may be made before any one authorized to administer oaths, which affidavit shall be filed with the comptroller, and, upon the filing of the same, the comptroller shall draw his warrant for the quarter found to be due. (Id. sec. 7.)

Art. 6264. (3759) Investigated by grand jury.—It shall be the duty of the district judges of this state to specially charge every session of the grand jury to investigate violations of this law. (Id. sec. 8.)

Art. 6265. (3760) Attorney's fee.—No person shall receive a greater fee than ten dollars to procure a pension for another, and any contract for a larger sum shall not be enforced by the courts. (Id. sec. 9.)

Art. 6266. (3761) Lists to be sent county judges for posting.—It shall be the duty of the comptroller, at least once in each

year, to forward to the county judge a printed list of the pensioners in their respective counties, which list shall be posted in a conspicuous place in the office of said judge. It shall also be the duty of the comptroller, on the application of a grand jury, to forward to it, through the district clerk of the county in which the grand jury is convened, copies of any or all original papers on file in his office connected with an application for a pension which said grand jury may desire to investigate; and such copies, with their correctness attested by the comptroller, shall have the same force and value in a court of law that the original papers would have had. (Id. sec. 10.)

CHAPTER TWO

CONFEDERATE SOLDIERS AND SAILORS

Art. 6267. Tax; fund for payment of pensions.—There shall be levied and collected in the same manner and at the same time that other taxes are levied and collected for the year 1913, and annually thereafter, an Ad Valorem tax of five cents on the one hundred dollars valuation thereof on all property owned in the State, on the first day of January of the year 1913, and of every year thereafter and on all property sent out of the State prior to the first day of January of any of said years, for the purpose of evading the payment of taxes thereon, and afterwards returned to the State, except so much thereof as may be exempted by the Constitution and laws of this State or of the United States which valuation shall be made in the manner prescribed by law for the assessment, levy and collection of other State and County taxes which said tax so levied and collected, shall be paid into the treasury of the State of Texas, in the same manner as other State taxes, and shall constitute a special fund for the payment of pensions for service in the Confederate army and navy, frontier organization, militia of the State of Texas and for the widows of said Confederate soldiers or sailors serving in said armies, navies or organizations or militia, in the manner and under the rules and regulations prescribed herein and prescribed in existing law not repealed hereby and as may be hereafter prescribed by law. Which said fund is hereby expressly appropriated by the Legislature of the State of Texas for the purpose herein stated. (Acts 1909, p. 231, § 1; Acts 1913, p. 282, sec. 1; Acts 1917, ch. 188, sec. 2.)

Art. 6267a. Pension, to whom granted.—Out of the fund to be created under the provisions of Section 1 hereof [Art. 6267], there shall be paid an annual pension of sixteen and two-thirds dollars per month, the same to be paid quarterly on the first days of September, December, March and June of each year to every disabled and indigent soldier who under special laws of the State of Texas during the war between the States served for a period of at least six months in organizations for the protection of the frontier against Indian raids and Mexican marauders, and to every indigent and disabled soldier of the militia of the State of Texas who was in active service for a period of at least six months during the war between the States, and to every widow of such soldier who is in indigent circumstances and who was married to such soldier prior to January 1, 1900, and has never re-married, and to every indigent and disabled Confederate soldier or sailor who served for a period of at least three months of active service in the armies or navies of the Confederate States of America during the war between the States and who has become a resident of the State of Texas prior to January 1, 1900, and who has been a bona fide resident of the State of Texas continually since January 1, 1900, and to every widow of such a Confederate soldier or sailor who is in indigent circumstances and who became a resident of the State of Texas prior to January 1, 1900, and has been a bona fide resident of said State continually since January 1, 1900, and who was married to such soldier or sailor prior to March 1, 1880, and the fact of re-marriage since the death of the soldier or sailor shall not bar his surviving widow from receiving a pension hereunder if she be now a widow and in indigent circumstances, if she shall have been the wife of such soldier or sailor at the time of his death and left by him as his widow; and providing that the word "widow" as used in this Act and in the existing law shall not apply to nor include women born since 1861, and provided that in the event the appropriation made by the State Legislature out of such special funds for any one year shall prove insufficient to pay in full said pension, there shall not thereby be created a deficiency outstanding as a valid claim against the State of Texas, and each pensioner shall receive, except as herein or in existing law otherwise provided for, his or her prorata according to the amount appropriated for that year. (Acts 1913, p. 282, sec. 2; Acts 1917, ch. 188, sec. 3; Acts 1919, ch. 86, sec. 1.)

Art. 6268. Application, how made.—Every person entitled to a pension under the foregoing sections of this Act [Arts. 6267, 6267a, 6272], shall make application in writing and under oath for the same, to the County Judge of his or her residence. Such application shall state the name, age and residence of the applicant and his or her occupation, if able to engage in one, his or her physical condition, and each and every fact necessary to qualify and entitle the applicant to a pension under the foregoing section of this Act [Art. 6272]; provided that persons now on the pension rolls of the State shall not be required to file a new application under this Act.

In the event the applicant is such a soldier or sailor as is prescribed in the foregoing section of this Act [Art. 6272], in said application he shall state the company and regiment in which he was enlisted in the Confederate army or the militia of Texas, or in the event he served in an organization for the protection of the frontier against Indian raids or Mexican marauders, and shall name and identify such organizations, or if he were an officer commissioned by the President of the Confederate States or by the Governor, or other competent authorities of the State of Texas, in said army, navy, militia or frontier organization, he shall state the date of his commission and his rank therein; and if he were detailed directly under the provisions of the conscript law for

duty in any of the armories or shops of the Confederate Government or for any other labor necessary for the maintenance of the army in the field, and if he served in the Confederate Navy, he shall state the time of service in each case. Each applicant shall also state in his application what property, effects and income he possesses and shall furnish the testimony of at least two credible witnesses who personally know that he enlisted in the service and performed the duties of a soldier or a sailor claimed by him; provided however, that if an applicant for a pension cannot secure the testimony of two witnesses, then he may furnish documents or evidence in connection with his service in the army or navy or militia, of such organization as may establish his claim for a pension. These proofs shall be made under oath and in writing before the County Judge of the county of the residence of the applicant, unless such applicant or the witnesses are not physically able to appear before the County Judge, or from other circumstances beyond the control of the applicant, cannot appear before the County Judge, then such evidence may be made before any officer authorized to administer oaths; provided that when the proof is made before any other officer than the County Judge the County Judge shall certify that the applicant and witnesses are of trustworthy character and entitled to credit and that the officer before whom the proof is made in duly qualified and authorized by law to administer oaths and take affidavits. The County Judge shall also certify to the citizenship of the applicant, who must have been a bona fide resident of the County in which he or she makes his or her application for a period of six months next before the date of said application and which fact shall be stated in the certificate of the County Judge. In every case the officer taking the proof shall administer the oath to each applicant and witness before they sign the affidavit. Provided further that if it be necessary for the applicant to go outside of the county and state for proof to establish such application, such proof may be submitted in the form of affidavits made in due form before some officer authorized to administer oaths and take the depositions of witnesses and accompanied by certificates from the County Judge of the County where made, that the witnesses are of trustworthy character and entitled to credit. In case the applicant be a widow of a soldier or sailor, who, if living would be entitled to a pension under the provisions of Section 3 of this Act [Art. 6267a], she shall make written application for such pension and therein state, under oath, that she is in fact the widow of such soldier or sailor as near as possible therein state the facts showing her to be entitled to receive a pension under the provisions of Section 3 of this Act [Art. 6267a], in the same manner as the applicant who is such a soldier or sailor must make such proof as herein stated, and thereupon such widow shall be entitled to receive such pension on the same terms as other pensioners. In the event such widow cannot make such proof, she may, by complying with the provisions of Article 6270, Revised Statutes, become entitled to receive a pension on the terms and conditions stated in said Article. (Acts 1909, p. 231, sec. 2; Acts 1913, p. 282, sec. 4; Acts 1917, ch. 188, sec. 5.)

Art. 6269. Widow not to be granted pension, unless, etc.—No widow shall be entitled to a pension should her husband, if living, be debarred by reason of his inability to comply with the requisites described in this chapter as to his service in the Confederate army or navy. (Acts 1909, p. 231, sec. 3.)

Art. 6270. Widow may make proof by affidavit, etc.—Any widow of a Confederate soldier or sailor, entitled to a pension under the provisions of this chapter, may make oath to the county judge in writing that she is in fact the widow of a Confederate soldier or sailor, that her said husband rendered valuable service to the Confederacy as such, that he did not desert, and was either killed or died, or was honorably discharged from the army; that she has made diligent search for all information as to the number of regiment and company in which her deceased husband served, and has been unable to learn same; which affidavit shall be filed with the county clerk; whereupon the county judge may proceed to take such other evidence as he may deem necessary; and, if in his judgment he finds that she is the widow of a Confederate soldier or sailor that all witnesses to the said fact are dead, or their whereabouts unknown to said widow and are unascertainable, he may upon his own motion, recommend to the pension commissioner the grant of a pension to the said widow; and, if the pension commissioner is satisfied that said widow is entitled to a pension under the provisions of this chapter he may grant same. (Id. sec. 3a.)

Art. 6271. Soldier to have served honorably; evidence, how taken.—Every Confederate soldier applying for a pension under this chapter shall have served honorably from the date of his enlistment until the close of the late civil war between the states, or until he was discharged or paroled in some military organization regularly mustered into the army or navy of the Confederate States until the surrender. It shall be the duty of the county judge to take down the evidence in writing of all witnesses examined by him, which shall be paid for by the applicant at the rate of five cents per hundred words; provided, that the applicant is authorized to have such evidence taken down by his attorney, or by such other person as he or she may employ under the contract of employment to secure his or her pension; and provided, that no greater fee than hereafter provided shall be charged by such attorney, or representative of such applicant; and the county judge shall certify to the written statement of the evidence when taken before him. The application, affidavit and certified statement of the evidence shall be forwarded to the commissioner of pensions of the state of Texas. (Id. sec. 4.)

Art. 6272. What constitutes indigency.—To constitute indigency within the meaning of this Act, neither the applicant nor his wife if the applicant be a married man, nor both together, nor the widow, if the applicant be a widow, shall own property, real or personal, exceeding in value One Thousand ($1,000.00) Dollars, exclusive of

the homestead, and if its value be not in excess of One Thousand ($1,000.00) Dollars, and exclusive of household goods and wearing apparel; and such applicant shall not be in the enjoyment of an income, annuity, the emoluments of an office or wages for his or her services in excess of Three Hundred ($300.00) Dollars per year, now in the receipt of aid or of a pension from any State of the United States, or from any other public source, not an inmate of the Confederate Home or other public institution at the expense of the State. Persons who are not indigent under the foregoing definition shall not be entitled to a pension under this Chapter. (Acts 1909, p. 231, sec. 6; Acts 1913, p. 282, sec. 3; Acts 1917, ch. 188, sec. 4.)

Art. 6273. Payments to be made when; affidavit; warrant.—The payment of such pension shall begin on the 1st day of March and September of each year, payable at the end of each quarter and on and after the first of each quarter. The pensioner shall make his or her affidavit, or shall, in case of old age, infirmities, or physical disabilities, preventing him or her from appearing before some officer authorized to administer oaths, make statement in writing as to his or her claim or rights, in the presence of two creditable witnesses who are in no wise related to the applicant, stating the County of his or her residence, post office address, and that he or she is the identical person to whom a pension has been granted under this law, and that the conditions which existed at the time of making his or her application and on which the pension was originally granted, still exist, which affidavit shall be supported by the affidavit of some other creditable person or persons to the same fact, and which affidavit may be made before any one authorized to administer oaths, which affidavit shall be filed with the Commissioner of Pensions for examination, and if approved by him the Comptroller of Public Accounts shall draw his warrant to the amount of such pension on the Treasurer, and upon presentation the Treasurer shall pay the same out of any money in the Treasury which may be appropriated to this purpose. (Acts 1909, p. 231, sec. 7; Acts 1915, ch. 103, sec. 1.)

Art. 6273a. Proof in case of disability of pensioner.—If the pensioner, on account of old age, infirmities or physical disability, shall make his or her statement in writing in the presence of two creditable witnesses, as provided in Section 1, of this Act [Art. 6273], it shall be sufficient for one of such witnesses, in whose presence the statement was made, to make affidavit stating that said statement was made and signed in his or her presence and that the statements contained therein are within the knowledge of affiant, true and correct, and when such affidavit has been made by such person and approved by the Comptroller of Public Accounts, he shall draw his warrant for the amount of such pension in the same manner as if the oath had been made by the pensioner and payment of same shall be made by the Treasurer, as provided in Section 1 of this Act. (Id. sec. 2.)

Art. 6274. Pensions denied to whom.—No application shall be allowed, nor shall any aid be given or pension paid in any case, to any soldier or sailor, or the widow of any soldier or sailor under the provisions of this chapter, where it shall appear that any such soldier or sailor deserted his command, or voluntarily abandoned his post of duty, or the said service during the said war, nor shall any application be allowed, nor any aid given, nor any pension paid, to any widow of any soldier or sailor who has been divorced from any such soldier or sailor, being her husband, nor to any widow who voluntarily abandoned and without cause any such soldier or sailor, being her husband, and continued to live separately from him up to the time of his death, nor to any such soldier or sailor who served as a substitute for another, nor to the widow of said substitute. (Acts 1909, p. 231, sec. 8.)

Art. 6275. Grand jury to be charged.—It shall be the duty of the district judges of this state to specially charge the grand jury at every session to investigate violations of this law. (Id. sec. 10.)

Art. 6276. Fees limited.—No person shall receive a greater fee than five dollars to secure a pension for another, and any contract for a larger sum shall be unlawful and shall not be enforced by the courts. (Id. sec. 11.)

Art. 6277. Fees of county judge.—A county judge shall be allowed a fee of two dollars for hearing an application and taking proof therein, said fee to be paid by the applicant, and before hearing of application is had thereon; provided, that all fees received by such county judge shall be reported as other fees of office and be otherwise controlled by the law as it now exists, regulating the fee of the county judges; and provided, further, that said fee of two dollars shall be the only fee allowed to the county judge for all the work performed by him in securing a pension. (Id. sec. 12.)

Art. 6278. Certain persons not entitled to.—No person shall, while an inmate of the Texas Confederate home, nor shall any person while confined in any of the asylums of this state, at the expense of the state, or confined in the state penitentiary to satisfy a judgment of conviction, receive a pension under this chapter; and any person having been granted a pension under the provisions of this chapter, and afterwards become an inmate of said home, asylum or penitentiary, shall, while such inmate, forfeit his pension, it being intended that no person shall at the same time receive benefits from both sources, and no pensioner who leaves this state for a period of over six months shall draw a pension while so absent. (Id. sec. 14.)

Art. 6279. Appropriation, how allotted to pensioners.—On the first day of September and on the first day of March of each year, the Commissioner of Pensions shall first allot to each blind, maimed, and totally disabled soldier or sailor or the blind and totally disabled widow of such soldier or sailor, the sum of Eight and one-third ($8⅓) Dollars per month for each year, and the remainder of said appropriation shall be equally proprated among the pensioners who are in indigent circumstances only, and whose claim to pensions have been established and filed with the Commissioner of Pensions, as provided by law; and the Comptroller shall issue his warrants for the amounts due said pensions in the manner provided by law, and all pension-

ers to be paid at the end of each quarter and all such pensions shall begin on the first day of the quarter next succeeding the filing and establishment of such application; provided, however, that the Commissioner of Pensions is authorized to fill, after the apportionment is made, any vacancies created by death or other causes, at any time between the first day of March and the first day of September each year. (Acts 1909, p. 231, sec. 15; Acts 1913, p. 282, sec. 5; Acts 1917, ch. 175, sec. 1; Acts 1917, ch. 188, sec. 6.)

Art. 6279a. Repeal.—That Article 6267 and 6268 and 6272 and 6279, Revised Statutes of 1911, and Chapter 141 of the Acts of the Thirty-third Legislature and all other laws and parts of laws in conflict herewith be and the same are hereby repealed, but this Act be cumulative of all existing laws not in conflict herewith. (Id. sec. 7.)

For section 8 of this act see Penal Code, art. 317a.

PERPETUATION OF EVIDENCE

Art. 6280. Certain persons may make statement under oath.—Any Confederate veteran, soldier, or sailor, who may be entitled to a pension under and by virtue of the pension laws of Texas, who may be desirous of establishing such right by the evidence of any person who may be cognizant of such facts as would prove and establish his such right, may cause such person or persons to go before the county judge, or any notary public, of the county of the residence of such person, and make a statement in writing of all facts within his knowledge concerning and relating to the service as a soldier or sailor in the army or navy of the Southern Confederacy during the civil war, such statement in writing when made to be duly subscribed and sworn to by the person making the same. (Acts 1909, p. 215, sec. 1.)

Art. 6281. Statement to be filed with secretary of state.—Any such statement as provided for in the preceding article, made and reduced to writing duly authenticated, shall be filed with the secretary of state, and by him recorded in a book to be kept for such purpose, a properly certified copy of which shall be admitted and used in evidence, at any future time, to prove and establish the right of the soldier or sailor in whose behalf, or at whose instance, the same may have been made to such pension as may be provided by law. (Id. sec. 2.)

Art. 6282. Widow may establish identity in same way.—The widow of any soldier or sailor who may be entitled to a pension as such, under the laws of this state, shall be entitled to establish her identity and right to such pension in the same way and manner as is herein provided for soldiers and sailors. (Id. sec. 3.)

COMMISSIONER OF PENSIONS

Art. 6283. Salary and general duties of.—There shall be a commissioner of pensions, whose term of office shall be two years, with a salary of two thousand dollars per annum, who shall be appointed by the governor. It shall be the duty of said commissioner of pensions to examine and pass on all pension claims under the existing law, to keep a correct record of all approved claims, with the name, disability, service, county and amount paid, to furnish the county judges with suitable blanks for use of claimants. The said commissioner of pensions shall, on the first day of September of each year, make to the governor a written report, showing the whole number of pensioners, the number of claims allowed for the past year and the amounts paid, together with such information pertaining to his office as the governor may ask. All records, books, claims or other matters connected with the office of said commissioner of pensions shall be kept open to inspection, and under the charge and direction of the governor, and all rulings made by said commissioner shall be subject to revision and change by the governor. This office shall continue for ten years only, unless continued by further legislation. The said commissioner of pensions shall not exercise the power of attorney to draw any pension. (Acts 1909, p. 231, sec. 5.)

Art. 6283a. Office of commissioner of pensions abolished; powers and duties transferred to comptroller of public accounts.—That the office of Commissioner of Pensions be, and the same is hereby abolished, and all of the powers and duties conferred upon the Commissioner of Pensions by any existing laws of this State be, and the same are hereby, conferred upon the Comptroller of Public Accounts. (Acts 1918, 4th C. S., ch. 89, sec. 1.)

Art. 6283b. Appropriation annulled.—All current appropriations made for the support of the State Pension Department for the years 1918 and 1919, are hereby annuled and repealed, except the salary of Chief Clerk of said Department, in the sum of $1,500.00, per annum, which said appropriation shall be available for the use of the Comptroller of Public Accounts in the administration of the Pension Laws of this State. (Id. sec. 2.)

Art. 6284. Shall strike certain persons from roll.—It shall be the duty of the commissioner of pensions, when it shall come to his knowledge that any person has been granted a pension through fraud or perjury, or that any one on the pension roll has, by reason of acquiring property or annuity, emolument or other income that would have prevented the granting of a pension had such conditions existed at the date of said application, to strike the name of such persons from the pension roll. (Acts 1909, p. 231, sec. 9.)

Art. 6285. Copies of certain instruments evidence before grand jury.—It shall be the duty of the commissioner of pensions, on the application of the grand jury, to forward to the district clerk of the county in which the grand jury is convened, copies of any and all original papers on file in his office connected with an application for a pension, which said grand jury may desire to investigate; and such copies, with their correctness attested by the commissioner of pensions, shall have the same force and value in law that the original papers could have had. (Id. sec. 13.)

CHAPTER THREE

MOTHERS' PENSIONS

Art. 6285¼. Petition to County Commissioners.—Any widow who is the mother of a child or children under the age of sixteen years and who is unable to support

them and to maintain her home, may present a petition for assistance to the Board of County Commissioners of the county wherein she resides. (Acts 1917, ch. 120, sec. 1.)

Art. 6285¼a. Requisites of petition.—Such petition shall be verified and shall set forth the following:

(a) Her name, the date of the death of her husband, the names of her children, and the dates and places of their birth and the time and place of her marriage.

(b) Her residence and the length of time that she has been a resident of the State, the length of time she has lived at said residence and the address or addresses of her place or places of abode for the previous five years, and the date, as near as possible when she moved in and when she left said place or places of residence.

(c) A statement of all the property belonging to her and to each of her children, which statement shall include any future or contingent interest which she or any of them may have.

(d) A statement of the efforts made by her to support her children.

(e) The name, relationships and addresses of all her and her husband's relatives, that may be known.

(f) The names, sex, and age of each of her children, giving date and place of birth of same. (Id. sec. 2.)

Art. 6285¼b. Service of petition and notice on county judge.—A copy of the petition provided for in section two hereof and a notice of the time and place when it will be presented to the Board of County Commissioners must be served on or mailed to the County Judge as chairman of the Board at least five days before the time the Board shall be requested in said petition to meet to consider the same. (Id. sec. 3.)

Art. 6285¼c. Hearing; subpœna of witnesses; reference to commissioner.—Upon the return of the petition and notice the Board of County Commissioners shall examine under oath all who desire to be heard; provided, however, that the Board may, in its discretion, issue subpœnas for the attendance of witnesses and adjourn the hearing from day to day; and provided, however, that the Board may refer said matter to a commissioner to be appointed by the Board to hear such witnesses. Said commissioner shall make a report to the Board setting forth the facts as proven before him. (Id. sec. 4.)

Art. 6285¼d. Award of pension; amount; duration of payment.—If, upon the completion of the examination provided for under section four hereof, the Board concludes that, unless relief is granted, the mother will be unable to properly support and educate her children, and that they may become a public charge, it may make an order directing that there shall be paid to the mother, monthly, out of the county funds, the following amounts, for the maintenance and support of the children under sixteen years old; not more than Twelve Dollars for one such child; eighteen dollars for two children; and four dollars per month additional for each additional child; and it is provided further that said allowance or relief shall be discontinued after said child or any of said children as mentioned in section one of this Act has reached the age of sixteen years. (Id. sec. 5.)

Art. 6285¼e. Supervision of expenditure; cancellation; protection of children.—It shall be the duty of the Board of County Commissioners to see that any widow receiving an allowance as provided under this Act is properly caring for her children, that they are sufficiently clothed and fed, and when it is found that she is not properly caring for her child or children, or that she is an improper guardian for such child or children, or when the Board shall find that she no longer needs such support as is afforded by said allowance, the Board shall thereupon revoke or cancel any order made pursuant to this Act, at any time with or without notice, and in lieu thereof make any order that in the judgment of the Board may protect the welfare of the child or children. (Id. sec. 6.)

Art. 6285¼f. May refuse allowance; action final.—Provided that the Commissioners' Court shall have the right to refuse any and all applications for allowance under this Act, and their action in so doing shall be final and not subject to review by any court. (Id. sec. 7.)

Art. 6285¼g. Residence in state and county.—Provided that no person shall be entitled to receive allowances under the terms of this Act until after they have been a bona fide resident of the State of Texas for five years and the County in which they make their application for at least two years. (Id. sec. 8.)

CHAPTER FOUR

MORTUARY PENSION WARRANTS

Art. 6285½. Mortuary warrant in lieu of warrant for quarter during which pensioner dies.—Whenever any pensioner who has been regularly placed upon the pension rolls under the provisions of law relating thereto, shall die and proof thereof shall be made to the Commissioner of Pensions within forty days from the date of such death, by the affidavit of the doctor who attended the pensioner during the last illness, or the undertaker who conducted the funeral, or made arrangements therefor, the Commissioner of Pensions shall have authority to approve and have issued by the Comptroller of Public Accounts a mortuary warrant for an amount not exceeding thirty ($30.00) dollars, payable out of the pension fund, in favor of the heirs or legal representatives of the deceased pensioner, or in favor of the person or persons owning the accounts (proof of the existence and justice of such accounts to be made to said Commissioner under oath and in such form as he may require) for the purpose of paying the funeral expenses of the deceased pensioner. In such cases where a warrant for the pension for the quarter during which the pensioner died has been issued, the same shall be returned to the Commissioner of Pensions, who shall mark the same "Cancelled," and file it with the Comptroller of Public Accounts before the mortuary warrant herein provided for shall issue. Where such warrant for the pension has not been issued, the same shall not be issued, but the mortuary warrant herein provided for shall take the place thereof. (Acts 1917, ch. 56, sec. 1.)

TITLE 106

PHARMACY

See, also, Penal Code, arts. 771, 772, 776.

Art. 6286. Governor to appoint board.—The governor shall, on or before September 1, after his inauguration, appoint five persons, licensed as pharmacists, who are actively engaged in the practice of pharmacy within this state at the time of their appointment, and shall have been so engaged for the past five years or more immediately preceding their appointment. The Texas state pharmaceutical association may recommend to the governor, on or before August 1, after his inauguration, a list of names of persons who are licensed pharmacists of this state, of twice the number to be appointed, and the appointments may be made by the governor from this list. The five persons so appointed shall constitute a board to be styled, "The Texas Board of Pharmacy," who shall hold their office for two years, and until their successors shall have been appointed and qualified; provided, however, that no person who is connected with any school or college of pharmacy in any way shall be appointed as a member of the Texas state board of pharmacy; and any member of the board may be removed by the governor for good cause shown him. Provided, further, that no two members of the board shall reside in the same county. In case of a vacancy from death or other cause, the governor shall appoint a successor to fill out the unexpired term, with qualifications as above set forth. (Acts 1907, p. 349, sec. 7.)

Art. 6287. Organization of board; secretary, his salary and bond; compensation of board.—The persons so appointed and constituting the Texas state board of pharmacy shall, within thirty days after their appointment, and annually thereafter, meet and organize by the election of a president, secretary and treasurer, who shall hold their office for the term of one year from the date of their election. The president and the treasurer shall be elected from the members of the board, and the secretary need not be a member of the board. The secretary shall receive such salary as may be prescribed by the board of pharmacy, and his necessary expense while engaged in the performance of his official duties. The board may adopt such by-laws and regulations as they shall deem necessary to carry into execution the provisions of this chapter, but which shall not be inconsistent with this chapter. The treasurer and secretary shall give bond in such sum as the board may determine, which at no time shall be for less amount than the sum handled by them annually. The expense of making such bonds shall be paid by the board. The secretary shall collect all money due the board from all sources, and shall pay the same over to the treasurer within ten days after the taking his receipt therefor. The bonds of the treasurer and secretary of the board shall be payable to the governor of the state of Texas, and shall be conditioned for the faithful performance of all duties imposed by law, or by order of the board of pharmacy. The board shall prescribe the pay of the members thereof, but at no time shall the amount exceed five dollars per day for each member, and this amount to be paid to them for such days during which they are actually engaged in the discharge of their official duties; and they are to receive such additional amounts as they may actually incur for expenses in the discharge of their duties for mileage, hotel bills, stamps and stationery; provided, no bill either for services of a member of such board or any expense of such member shall be paid until an itemized statement of such service and each item of expense has been made out and sworn to by such member of such board, before some officer authorized under the law to administer oaths, and such account shall have been filed with and approved by said board; provided, that the state shall never be liable for the salary and expense of any members of this board. (Id. sec. 8.)

Art. 6288. Oath.—The persons so appointed and constituting the Texas state board of pharmacy, before entering upon the duties of said office, shall take the oath prescribed by the constitution of the state of Texas for state officers, and shall file the same in the office of the secretary of state who shall thereupon issue to each of said members a certificate of appointment. (Id. sec. 9.)

Art. 6289. Duty of; shall make report of money, etc.—It shall be the duty of the board to examine all applications for registration of such persons as may be entitled to the same under the provisions of this chapter, and to make an annual report to the governor, a copy of which shall be furnished to the Texas state pharmaceutical association, upon the condition of pharmacy in Texas; which report shall embrace all the proceedings of the board, and give an itemized account of all money received and disbursed by said board; and said itemized account of money paid out by said board shall show to whom paid and specifically for what purpose it was paid, and also the names of all pharmacists duly registered under this chapter. And it shall be the further duty of the board to deliver all money on hand at the end of the term of each board, after all outstanding debts have been paid, over to their successors in office. (Id. sec. 10.)

Art. 6290. Shall hold meetings for examination, when.—The Texas state board of pharmacy shall hold meetings for the examination of applicants for registration, and for the transaction of such other business as may legally come before it, at least once in four months, and such additional meetings as may be necessary; provided, that said regular meetings shall be held on the third Tuesday of January, May and September of each year, in such cities or places as the said board may select, or such cities or places as shall be deemed most convenient for applicants. Due notice of such meetings shall be given by publication in such papers as may be selected by the board thirty days in advance of said meetings. Three members shall constitute a quorum for the transaction of any and all business. The president and secretary shall have the power to administer oaths in all matters pertaining to the examination and registration of pharmacist and assistant

pharmacist. The board shall keep a record of its proceedings and a register of all persons to whom certificates or license as pharmacist or assistant pharmacist and permits have been issued, and all renewals thereof; and the books and register of the board, or a copy of any part thereof certified by the secretary, shall be accepted as competent evidence in all the courts. (Id. sec. 11.)

Art. 6291. May issue temporary certificates.—Any member of the board of pharmacy may issue a temporary certificate upon satisfactory proof that the applicant is competent; said temporary certificate shall be null and void after the first meeting of the board of pharmacy next after the granting said temporary certificate; provided, that not more than one temporary certificate shall ever be granted to any one person. (Id. sec. 12.)

Art. 6292. Fees of board.—The Board of Pharmacy shall be entitled to charge and collect the following fees:

For the examination of an applicant for license as a pharmacist, Five Dollars; for the examination of an applicant for license as an assistant pharmacist, Two Dollars and Fifty Cents.

Every registered pharmacist and every registered assistant pharmacist in the meaning of this Article, who desires to continue in the pursuit of pharmacy in this State shall annually, after the expiration of the first year of registration and on or before the first day of January of each year, pay to the Secretary of the Board of Pharmacy a renewal fee to be fixed by the board which shall not exceed Three Dollars in return for which a renewal of registration shall be issued; providing further that the said Board of Pharmacy shall each year turn over to the State Pharmaceutical Association for the advancement of the science and arts of pharmacy out of the annual fees collected by it, such sum as it may deem advisable, not to exceed Two Dollars for each pharmacist and assistant pharmacist who shall have paid his renewal fee during such year, providing that those holding a certificate of pharmacy and not engaged in the active practice of pharmacy, shall be issued a renewal certificate upon payment of an annual fee of one dollar ($1.00). Said Association shall report annually to said board on the condition of pharmacy in the State. (Acts 1907, p. 349, sec. 13; Acts 1917, ch. 128, sec. 1; Acts 1919, 2d C. S., ch. 37, sec. 1.)

Art. 6293. Pharmacists to be licensed.—It shall be unlawful for any person not licensed as a pharmacist, within the meaning of this chapter, to conduct or manage any pharmacy, drug or chemical store, apothecary shop, or other place of business, for the retailing, compounding or dispensing of any drug, chemical or poison, or for the compounding of physician's prescriptions, or to keep exposed for sale at retail any drug, chemicals or poisons, except as hereinafter provided, or for any person not licensed as a pharmacist or assistant pharmacist, within the meaning of this chapter, to compound, dispense or sell at retail any drug, chemical, poison, or pharmaceutical preparation upon the prescription of a physician or otherwise or to compound physician's prescriptions, except as an aid to or under the supervision of a person licensed as a pharmacist under this chapter. And it shall be unlawful for any owner or manager of a pharmacy or drug store, or other place of business, to cause or permit any other than a person licensed as a pharmacist or assistant pharmacist to compound, dispense, or sell at retail any medicine or poison, except as an aid to or under the supervision of a person licensed as a pharmacist; provided, however, that nothing in this article shall be construed to prevent any person from engaging in the business herein described as proprietor and owner thereof, provided such proprietor or owner shall have employed in his business to conduct same some one qualified under this chapter, nor to interfere with any legally registered practitioner of medicine or dentistry in the compounding of his prescriptions, or to prevent him from supplying his patients such medicine as he may deem proper, nor with exclusively wholesale business of any dealer who shall be licensed as a pharmacist, or who shall keep in his employ at least one person who is licensed as a pharmacist, nor with the selling at retail of non-poisonous domestic remedies, nor with the sale of patent or proprietary preparations, when sold in unbroken packages, nor with the sale of poisonous substances which are sold exclusively for use in the arts, or for use as insecticides, when such substances are sold in unbroken packages bearing a label having plainly printed upon it the name of the contents, the word poison and the names of at least two readily obtainable antidotes. (Acts 1907, p. 349, sec. 1.)

Art. 6294. Certain persons entitled to be registered without examination.—All persons registered by district boards of pharmaceutical examiners prior to the nineteenth day of July, 1907, upon presenting proof of such registration in accordance with the law relating to the practice of pharmacy then in force, and the payment of one dollar, shall be entitled to a certificate of registration as a licensed pharmacist under the meaning of this chapter from the said board of pharmacy, without examination; provided, the application for such certificate shall have been made to the said board of pharmacy within ninety days after the first meeting of said board after its creation. Proprietors, and employés of such proprietors, who were on the nineteenth day of July, 1907, actively engaged in the preparation of physician's prescriptions and compounding and vending of medicines in towns of less than one thousand inhabitants in the state of Texas, and also proprietors, and employés of such proprietors, who may become so engaged in such towns during the five years next succeeding the date aforesaid, shall be exempt from examination; provided, he or she shall have registered as required by this chapter, and upon paying said board of pharmacy one dollar, shall receive a certificate of registration, which shall entitle such person to practice pharmacy in towns of one thousand inhabitants or under; and provided, further, that, should such persons have failed to apply for registration within ninety days from and after the first meeting of said board after its creation, said person shall be required to pay

the same fees as for original registration. Every person, except in the cases named, who desires to be licensed as a pharmacist, shall file with the secretary of the board of pharmacy an application upon blanks furnished by the board of pharmacy for that purpose, duly verified under oath, setting forth the name and age of the applicant, the place or places at which and the time spent in the study of the science and art of pharmacy, the experience in compounding physician's prescriptions which the applicant has had under the direction of a legally licensed pharmacist, and shall appear at a time and place designated by the board of pharmacy, and submit to an examination as to his or her qualifications for registration as a licensed pharmacist or assistant pharmacist; provided, however, if any applicant should fail to pass a satisfactory examination, he or she may at any subsequent meeting of the board of pharmacy, within six months, be permitted to be re-examined without cost. (Id. sec. 2.)

Art. 6295. Qualifications of applicants.—In order to be licensed as a pharmacist, within the meaning of this chapter, an applicant shall be not less than twenty-one years of age, and shall have been licensed as an assistant pharmacist for not less than two years prior to his application for license as a pharmacist, or he shall present to the board satisfactory evidence that he is a graduate of a reputable school or college of pharmacy, or that he has had four years practical experience in pharmacy under the instruction of a pharmacist; and he shall also pass a satisfactory examination by or under the direction of a board of pharmacy. In order to be licensed as an assistant pharmacist, within the meaning of this chapter, an applicant shall not be less than eighteen years of age, and shall have a sufficient preliminary general education, and shall have had not less than two years experience in pharmacy, and shall pass a satisfactory examination by or under the direction of the board of pharmacy; provided, however, that in the case of persons who have attended a reputable school or college of pharmacy, the actual time of attendance at school or college of pharmacy may be deducted from the time of experience required of pharmacist and assistant pharmacist, but in no case shall less than two years experience be required for registration as a licensed pharmacist. (Id. sec. 3.)

Art. 6296. Board to issue license, when.—If the applicant for license as a pharmacist or assistant pharmacist has complied with all the requirements of the two preceding articles, the board of pharmacy shall enroll his name upon the register of pharmacists or assistant pharmacists, and issue to him a license which shall entitle him to practice as pharmacist or assistant pharmacist for a period of two years from the date of said license. The board of pharmacy may refuse to grant a license to any person guilty of felony or gross immorality, or who is addicted to the use of alcoholic liquors or narcotic drugs to such an extent as to render him unfit to practice, and the board of pharmacy, after due notice, may revoke a license for like cause, or any license which has been procured by fraud. (Id. sec. 4.)

Art. 6297. Applicants legally registered in foreign countries to be granted license, when.—The board of pharmacy may issue license to practice as pharmacist or assistant pharmacist in this state, without examination, to such persons as have been legally registered or licensed as pharmacists or assistant pharmacists in other states, or foreign countries; provided, that the applicant for such license shall present satisfactory evidence of qualifications equal to those required from licentiates in this state, and that he was registered or licensed by examination in such other state, or foreign country, and that the standard of competency required in such other state, or foreign country, accords similar recognition to the licentiates of this state. Applicants for license under this article shall, with their application, forward to the secretary of the board of pharmacy the same fees as are required of other candidates for license. (Id. sec. 5.)

Art. 6298. License to be posted; renewals, etc.—Every certificate of license to practice as pharmacist or assistant pharmacist, and every license to any proprietor or employé to conduct a drug store in towns of not more than one thousand inhabitants as above provided and every renewal of such license shall be conspicuously exposed in the pharmacy or drug store or place of business of which the pharmacist or assistant pharmacist or other person to whom it is issued is the owner or manager, or in which he is employed. Every licensed pharmacist or assistant pharmacist who desires to continue in the practice of his profession shall, within thirty days next preceding the expiration of his license or permit, file with the board an application for the renewal thereof, which application shall be accompanied by the fee hereinafter prescribed. If the board shall find that the applicant has been legally licensed in this state and is entitled to renewal of license, or to a renewal of such permit, it shall issue to him a certificate attesting the fact. If any pharmacist or assistant pharmacist shall fail, for a period of sixty days after the expiration of his license, to make application to the board for its renewal, his name shall be erased from the register of licensed pharmacist or assistant pharmacist; and such person, in order to become registered as a licensed pharmacist or assistant pharmacist, shall be required to pay the same fee as in the case of original registration. The name of the responsible manager of every pharmacy, drug store, or apothecary shop, shall be conspicuously displayed outside of such place of business. (Id. sec. 6.)

TITLE 107

PILOTS

CHAPTER ONE

COMMISSIONERS OF PILOTS

Art. 6299. (3790) Governor to appoint.—The governor shall appoint, with the consent of the senate, for each port whose population and circumstances will warrant it, and also for Matagorda and Lavaca bays from Pass Cavallo to Indianola and Lavaca, a board of five persons of respectable standing, under the denomination of "commissioners of pilots" for such port and bays, three of whom shall be practical seamen and the other two merchants, who shall be commis-

sioned by the governor for the term of two years; and the governor shall, during the recess of the legislature, be authorized to suspend, until the next session of the same, any of said commissioners, and to fill, until the same period, any vacancies in the board caused by death, resignation or otherwise; provided, however, that no member of the board of commissioners shall be directly or indirectly pecuniarily interested in any pilot boat or branch pilot in the business of their trust. (Act April 17, 1846, p. 79, sec. 2; Act Feb. 9, 1861, p. 19; P. D. 4762, 4775.)

Art. 6300. (3791) Duties of commissioners.—Said board of commissioners shall be authorized, if they deem it advisable, to examine and decide on the qualifications of any branch or deputy pilot whom they find already appointed at the time of their organization; and it shall be their duty to examine each new applicant for the office of branch or deputy pilot, and to decide on his qualifications, recommending to the governor, where new appointments are proper, such as are meritorious; and it shall also be their duty to examine into any case of alleged or supposed misconduct or inefficiency in branch or deputy pilots; and they shall be authorized, after a due hearing of accusation, testimony and defense, to suspend such pilot if sufficient cause appear, and during such suspension he shall not be allowed to exercise the functions of his office; the governor shall, however, have power at his will and pleasure to remove any branch pilot, or to reinstate any one of the same who has been suspended by the commissioners. (Act April 17, 1846, p. 79, sec. 3; P. D. 4763.)

Art. 6301. (3792) Term of residence and probation for pilots.—The board of commissioners of pilots of each port shall require a certain term of residence in the state of Texas, not less than two years, to authorize any person to exercise the functions of branch pilot for their port or said bays; as also to establish a term of probation not exceeding one year, as a deputy pilot, before any person can exercise the functions of branch pilot. (Id. sec. 4; P. D. 4764.)

Art. 6302. (3793) Further powers and duties.—The board of commissioners of pilots shall have authority, within the limits provided in this title, to fix rates of pilotage, and to establish regulations respecting the stations whereat and the times wherein pilots shall be on duty, with provisions for leave of absence; as also respecting the class, condition, number and use of pilot boats, and such other minor regulations, compatible with the provisions of this title, as may be needed for the government of pilots and for the order and good effect of the proceedings of the board, of which proceedings a record shall be kept; provided, no regulation shall be adopted repugnant to the constitution. (Id. sec. 7; P. D. 4766.)

Art. 6303. (3794) Same subject.—The board of commissioners of pilots shall be authorized and required to hear and determine all disputes that may arise respecting pilots and pilotage; to award to pilots extra compensation for extra services to vessels in distress; as also compensation for injurious loss of time incurred by pilots in waiting on vessels or by being carried off to sea on vessels by default of the master or owner when such pilots might have been landed; provided, always, that no more than three dollars for each day shall be awarded for mere loss of time; and it shall be the duty of said board to superintend and generally attend to all matters appertaining to pilots and pilotage; but from any decision of said board an appeal may be taken to the court having cognizance of the case. (Id. sec. 7; P. D. 4767.)

Art. 6304. (3795) County judge to appoint committee, etc., to act in place of board.—At any port whose population and circumstances do not warrant the appointment of a board of commissioners of pilots in the manner before provided, the governor may authorize the county judge of the county to appoint a provisional committee of from three to five persons of good character and maritime experience, who shall be authorized under this chapter to establish the rates of pilotage and the rules for governing pilots; to examine the qualifications of pilots and applicants for the office; to investigate the case of any pilot charged with misconduct or inefficiency, and to suspend him if sufficient cause appear. (Id. sec. 13; P. D. 4773).

CHAPTER TWO

BRANCH PILOTS AND PILOTS FOR MOUTH OF BRAZOS RIVER AND MATAGORDA AND LAVACA BAYS

Art. 6305. (3796) Appointment, term and vacancies.—The governor is authorized and required to appoint at each of the ports such number of branch pilots as may from time to time be necessary, each of whom shall hold his office for the term of two years. In case of a vacancy in said office, the appointment shall be for the unexpired term. (Act April 17, 1846, p. 79, sec. 1; P. D. 4761.)

Art. 6306. (3797) Bond and oath.—Before entering upon the duties of his office, each branch pilot shall enter into bond, with two or more good and sufficient sureties, in the sum of five thousand dollars, payable to the governor and his successors in office, and conditioned for the faithful performance of the duties of his office. Such bond shall be approved by the board of commissioners of pilots for the port, or if there be no such board, by the county judge of the county in which the port is situated, and forwarded to the governor, to be by him deposited in the office of the secretary of state. Each pilot shall also take and subscribe the oath of office prescribed in the constitution, which shall be indorsed on said bond, and together with the bond shall be recorded in the office of the clerk of the county court of the county in which such port is situated before being forwarded to the governor; and certified copies of said bonds, under the hand and seal of the county clerk, may be used as evidence in all the courts with like effect as the originals. (Id. sec. 5; Act Feb. 9, 1861, p. 19, sec. 1; P. D. 4765, 4775.)

Art. 6307. (3798) May appoint deputies.—Each branch pilot may appoint, subject to examination and approval by the board of commissioners, two deputies, for whose acts the branch pilot so appointed shall be responsible; and any branch pilot who shall appoint a deputy without the approval of said board shall forfeit his own appointment; and the said board shall have author-

ity to restrict all deputy pilots from piloting over the bar vessels of over a certain draught of water. (Id. sec. 8; P. D. 4768.)

Art. 6308. (3799) Malfeasance and punishment.—Any branch or deputy pilot who shall be guilty of taking charge of a vessel in a state of inebriety shall, upon proof of the same, for the first offense be suspended for one month, and for the second offense be dismissed and be rendered incapable of again serving in either capacity; and if any branch or deputy pilot shall willfully or by neglect cause the wreck of a vessel, he shall be dismissed and be rendered incapable of again serving in either capacity, and shall be subject to such punishment as is prescribed by law. (Id. sec. 10; P. D. 4770.)

Art. 6309. (3800) Pilotage.—The rate of pilotage on any class of vessels shall not, in any port of this state, exceed four dollars for each foot of water which the vessel at the time of piloting draws, and whenever a vessel, except of the classes below excepted, shall decline the services of a pilot, offered outside the bar, and shall enter the port without the aid of one, she shall be liable to the first pilot, whose services she so declined, for the payment of half pilotage; and any vessel which, after being brought in by a pilot, shall go out without employing one, shall be liable to the payment of half pilotage to the pilot who brought her in, or, if she has come in without the aid of a pilot, though offered outside, she shall, on so going out, be liable for the payment of half pilotage to the pilot who had first offered his services before she came in, but if she has come in without the aid of a pilot, or the offer of one outside, she shall not, in case of going out without a pilot, be liable to half pilotage. At any port where vessels shall receive or discharge their cargoes at an anchorage outside of the bar, such vessel shall be liable to pilotage at the above rate to such anchorage, but shall not be liable for or compelled to pay pilotage from such anchorage to the open sea; and if any vessel bound from the open sea to such anchorage, while under way, shall decline the services of a pilot, and shall afterward receive or discharge any portion of her cargo at such anchorage, on the lighters or otherwise, she shall be liable for the payment of half pilotage, at the above rate to such anchorage to the first pilot whose services shall have been tendered to and declined by her, but not liable for any pilotage from such anchorage to the open sea; and when a pilot takes charge of a vessel twenty miles outside of the bar, and brings her to it, he shall be entitled to one-fourth pilotage for such off-shore service, in addition to what he is entitled to recover for bringing her in, but if such off-shore service be declined, no portion of said compensation shall be recovered. (Act Sept. 26, 1866, pp. 14, 15; P. D. 7201; Acts 1879, ch. 89, p. 99.)

Art. 6310. (3801) Exemptions from extra pilotage.—The following classes of vessels shall be free from any charge for pilotage, unless for actual service, to wit: All vessels of twenty tons and under, all vessels of whatsoever burthen owned in the state of Texas and registered and licensed in the district of Texas, when arriving from or departing to any port of the state of Texas; all vessels of seventy-five tons and under owned and licensed for the coasting trade in any part of the United States, when arriving from or departing to any port in the state of Texas; all vessels of seventy-five tons or under owned in the state of Texas and licensed for the coasting trade in the district of Texas, when arriving from or departing to any port in the United States. (Id. p. 15; P. D. 7201.)

Art. 6311. (3802) Consignee responsible for pilotage.—The consignee of any vessel shall be held responsible for the pilotage of said vessel. (Act April 17, 1846, p. 79, sec. 12; P. D. 4772.)

Art. 6312. (3803.) Unauthorized pilot to forfeit $50.—If any person not appointed a branch or deputy pilot shall pilot any ship or vessel out of or into any port when a branch or deputy pilot has offered such service, the person so piloting shall forfeit and pay to such branch or deputy pilot the sum of fifty dollars, to be recovered before any court having cognizance of the case. (Id. sec. 11; P. D. 4771.)

Art. 6313. (3804) Pilots for mouth of Brazos.—The governor shall also appoint a sufficient number of competent pilots for the mouth of the Brazos river, whose terms of office, mode of qualification and pilotage shall be the same as prescribed in the preceding articles for branch pilots; and they shall be entitled to all the privileges, and shall exercise all the powers, and discharge all the duties prescribed for branch pilots, and be subject to like penalties. (Act March 18, 1848, p. 144; P. D. 4776, 4782.)

Art. 6314. (3805) Bond, by whom approved.—The bonds of pilots for the mouth of the Brazos river shall be approved by the county judge of Brazoria county. (Id.)

Art. 6315. (3806) Pilots for Matagorda and Lavaca bays.—The governor shall also appoint not less than two nor more than four competent pilots for Matagorda and Lavaca bays, from Pass Cavallo to Indianola and Lavaca, who shall hold their offices for the same term as branch pilots, and whose mode of qualification, powers and privileges, in so far as the same are applicable, shall be the same; the bonds of such pilots shall be approved by the county judge of Calhoun county. (Act Feb. 9, 1861, p. 19; P. D. 4775.)

Art. 6316. (3807) To keep channels staked out.—It shall be the duty of pilots appointed under the preceding article to keep the channels of said bays properly staked and marked out, and in default thereof they shall be subject to removal or suspension. (Id.)

Art. 6317. (3808) Pilotage for said bays.—The rate of pilotage for said bays shall be two dollars and fifty cents, for each foot of water the vessel may draw at the time of piloting; and all vessels that may draw five feet or more shall be subject to pay any licensed pilot for said bays, whose services are tendered and declined, one-half the pilotage herein prescribed. (Id.)

Art. 6318. (3809) Rules for branch pilots applicable.—All the provisions of this chapter relating to branch pilots at ports, in so far as the same are applicable and not expressly qualified, shall apply to and govern pilots appointed for the mouth of the Brazos river and for Matagorda and Lavaca bays. (Id.)

Art. 6319. (3810) Penalty for unlicensed pilot.—If any person not a licensed pilot or deputy shall pilot any vessel into or out of the mouth of said river, or through the channel of said bays, up or down, he shall forfeit and pay to any pilot licensed or commissioned for the mouth of said river, or for said bays, full pilotage for such vessel, to be recovered by suit in any court of competent jurisdiction. (Id.)

TITLE 107A

POOL HALLS

Arts. 6319a-6319n. [Omitted.]

These articles, consisting of the local option pool hall act (Acts 1913, p. 136), have been declared unconstitutional by the Supreme Court in Ex parte Mitchell, 177 S. W. 953, and also by the Court of Criminal Appeals. Accordingly they are omitted from this compilation. Acts 1915, ch. 77, which provided for the refundment of proportionate amounts of license taxes paid by operators of pool halls under the general act permitting the operation of such halls, when, by reason of the adoption of the local option act, licensees were no longer permitted to operate their pool halls, is also omitted from this compilation, there no longer existing any conditions as to which the provision can operate.

TITLE 108

PRAIRIE DOGS AND OTHER WILD ANIMALS AND BIRDS—EXTERMINATION OF

Art. 6320. Organized counties to hold elections.—In all organized counties in Texas, upon the written petition of fifty freeholders of any such county, the commissioners' court of such county shall order an election to be held on some day named in the order, for the purpose of enabling the freeholders to determine whether or not the prairie dogs shall be exterminated in said county. (Acts 1903, p. 70, sec. 1.)

Art. 6321. Thirty days' notice of election.—Upon filing such petition, the commissioners' court, at its next regular term, shall order an election to be held in such county on a day to be designated in the order, not less than thirty days from the date of such order, the election to be held and conducted and the returns thereof made in accordance with the laws regulating general elections in so far as the same are applicable. (Id. sec. 2.)

Art. 6322. Order for election.—Immediately after the passage of an order for an election by the commissioners' court, the county judge shall issue an order for such election, giving thirty days' legal notice, said notice reciting the petition and the action of the commissioners' court, and naming the date for said election. (Id. sec. 3.)

Art. 6323. Election, where held; managers and their pay.—The election shall be held at the regular election boxes in said county by the regularly appointed managers of elections; and for holding said election, those holding the same shall be paid the legal fees as provided by law for such services. (Id. sec. 4.)

Art. 6324. Qualifications of electors.—No person shall vote at any election under the provisions of this title unless he be a freeholder in the county, and is also a qualified voter under the constitution and laws of this state. (Id. sec. 5.)

Art. 6325. Form of ballot, and returns.—The ballots to be voted in any such election shall either have written or printed on them, "For extermination of prairie dogs," or, "Against extermination of prairie dogs," and those holding the election shall make within ten days time legal returns showing number of votes cast for and against the same to the county judge of the county, who shall tabulate and count the vote in the presence of the commissioners' court and ascertain the result of said election. (Id. sec. 6.)

Art. 6326. Twelve months allowed to exterminate dogs.—If a majority of the votes cast at such election shall be, "For extermination of the prairie dogs," the county judge immediately after counting the votes shall issue his proclamation declaring the result of the election, which proclamation shall be posted at the court house door, and, after the expiration of twelve months from its issuance, it shall be unlawful for any land owner or lessee of land in said county to allow to run at large any prairie dog on any lands owned or leased by him, and it shall be his duty to kill the same within twelve months from issuance of proclamation by the county judge. (Id. sec. 7.)

Art. 6327. Who liable, and measure of damages for non-compliance.—After the issuance of proclamation by the county judge in any county, declaring that the election has been held and that the result was, "For extermination of prairie dogs," at the expiration of twelve months any land owner, or lessee owning land in said county who shall wilfully fail or refuse to kill the prairie dogs inhabiting his land shall be liable for damages to the owners of contiguous land who have complied with the law; and the measure of damages is hereby fixed at two dollars and fifty cents per month for each and every month that he permits the prairie dogs running on his land to run at large. Any land owner owning adjoining lands, who has in good faith complied with the law and removes the dogs from his lands, should his lands be invaded by prairie dogs from the adjoining land, he may bring a suit for damages against such land owner, the amount of damages being hereby fixed at two dollars and fifty cents per month, and such suits are to be filed in the courts having competent jurisdiction; provided, further, that any party desiring to bring suit must notify the party from whom he claims damages, in writing, ninety days prior to the filing of said suit, and no damages shall accrue until after the expiration of said ninety days; provided, however, that in all cases where lands infested with prairie dogs owned by nonresidents, and such land or lands are being used by some other person, or inclosed under the fence of another who is paying the owner thereof no compensation for the use thereof, then in all such cases the duty herein imposed as to the extermination of such prairie dogs shall devolve upon the person so using such land or lands or having the same inclosed under his fence. (Id. sec. 8.)

Art. 6328. Venue of suits.—The venue of all suits for damages under this title shall be in the county or precinct where the lands of the plaintiff are situated. (Id. sec. 8a.)

Art. 6328a. Prairie dogs declared a public nuisance; duty of landowners to exterminate.—That prairie dogs are hereby declared to be a public nuisance, and the own-

ers of lands in any county in this State upon which prairie dogs exist shall, within two years from the date this Act takes effect, kill, or cause to be killed, all dogs on land so owned by them. (Acts 1915, 1st C. S., ch. 11, sec. 1.)

Art. 6328b. Investigations by Commissioners' Court; notice to owners.—It is hereby made the duty of the county commissioners of any county in which prairie dogs exist, to investigate and determine whether owners of lands in their respective commissioners' precincts have complied with the provisions of Section 1 of this Act [Art. 6328a], and if any such land owners have failed or refused to destroy the prairie dogs on their land, it shall be the duty of said commissioner to immediately notify the sheriff of his county of such failure, and the name and postoffice address of such owner, or his agent, and said sheriff shall immediately mail, by registered mail, a notice to the said owner, or his agent, that if he shall fail, within thirty days from and after the date of mailing of notice by sheriff, to comply with the terms of Section 1 of this Act, that the sheriff shall proceed to destroy all prairie dogs on said land. (Id. sec. 2.)

Art. 6328c. Duty of sheriff to exterminate prairie dogs; audit of expense; lien on land; compensation of sheriff.—After the failure of any owner to comply with the provisions of Section 1 of this Act [Art. 6328a], and the terms of Section 2 hereof have been performed, and said owner has not, within the time provided for in Section 2 [Art. 6328b], destroyed said prairie dogs, it shall be the duty of said sheriff to immediately proceed to destroy the dogs on land of said owner, and to use the practical and economical methods in general use. And he shall report his action, together with an itemized bill of expenses, under oath, to the first term of the commissioners court of said county, which court shall examine said account, and if found correct and reasonable, shall allow and cause the same to be paid, and, by its order duly entered, assess said amount against said owner and enter same as a lien against his land. It being provided, however, that the commissioners court may compensate the sheriff in the sum of not exceeding five dollars ($5.00) per day for each and every day the sheriff shall have performed actual services in the matter of supervising the destruction of said prairie dogs. (Id. sec. 3.)

Art. 6328d. Enforcement of assessment.—If the owner of any land against which said costs and expenses have been assessed by the commissioners court shall fail to pay the same within thirty days after notice of such assessment, it shall be the duty of the county attorney of such county to bring suit in any court of competent jurisdiction to enforce the payment of such costs and expenses; and the county attorney shall, in each suit brought by him for said purpose, be allowed a reasonable fee, to be fixed by the court trying the cause, which fee shall be taxed as costs in the case, and upon the rendition of any judgment for such costs and expenses, execution and order of sale shall issue and be executed as in cases of other judgments. (Id. sec. 4.)

Art. 6328e. Purchase by counties of poisons and apparatus for destruction of prairie dogs, rats, coyotes, etc.; sale of same.—The Commissioners' Court of each and every county in the State of Texas shall have the power and authority to purchase the necessary poisons and all accessories required by the citizens of such counties for the purpose of destroying prairie dogs, rats, coyotes, wolves, wild cats, gophers, ground squirrels, English sparrows and ravens, and to pay for the same out of the general fund of the county, and the Commissioners' Courts in their discretion may furnish the poisons and accessories to citizens of the county, either at cost or free. When the Commissioners' Court shall elect to sell such poisons and accessories the funds derived from the sale thereof shall be turned into the treasury to the credit of the general fund. (Acts 1918, 4th C. S., ch. 62, sec. 1.)

Art. 6328f. Designation of day for setting out poison; notice of.—It shall be the duty of the Commissioners' Court to designate a certain day or days for putting out poison giving notice of same by posting up notices in public places, such as school houses, gins and mills or other public places, and also publishing the same in at least one county newspaper, if there be one, for three successive issues. Said notices shall be given at least twenty days prior to the first day of the time designated to put out the poison. Said notices shall state the time of putting out poison and that the poison can be secured from the Commissioners' Court and shall state the terms on which said poison can be procured. (Id. sec. 2.)

Art. 6328g. Formulas and instructions for preparation and use of poison.—It shall be the duty of the Commissioners of Agriculture to furnish the Commissioners' Court with formulas and instructions for preparing the poisons, and plans for using the same. (Id. sec. 3.)

Art. 6328h. Same subject.—The Commissioners of Agriculture shall, upon the request of any Commissioners' Court as soon as practicable after receiving such request, demonstrate and give instructions how to prepare the poison and when and how to apply same. (Id. sec. 4.)

Art. 6328i. Duty of landowners as to placing of poison.—It shall be the duty of every land holder whose premises are infected with any of the pests mentioned in this Act at the time specified in the notices to procure poison and apply the same, as set forth in the plans furnished by the Commissioner of Agriculture. (Id. sec. 5.)

For section 6 of this act see Penal Code, art. 649a.

Art. 6328j. Duties of lessees and tenants.—It shall be the duty of every lessee or tenant holding premises by contract to procure the poison and destroy all of the pests described in this Act and all expenses incurred by such tenant or lessee in thus destroying the pests shall be a charge against the owner of the land, and collectible as other valid debts. (Id. sec. 7.)

TITLE 109

PRINCIPAL AND SURETY

Art. 6329. (3811) (3660) Surety may require suit to be brought.—Any person bound as surety upon any contract for the payment of money or the performance of any act, when the right of action has accrued, may require, by notice in writing, the creditor or obligee forthwith to institute suit upon such contract. (Act Feb. 5, 1858; P. D. 4783.)

See Simkins' Equity (2d Ed.) p. 625; Sayles' Practice, p. 989; Leazar v. Menefee, 61 S. W. 438; Dallas, etc., Ass'n v. Thomas, 81 S. W. 1041; Williams v. Ogg, 94 S. W. 420; National Bank of Commerce v. Gilvin, 152 S. W. 652; Davidson v. McKinley, 152 S. W. 1142; McKaughan v. Baldwin, 153 S. W. 660; Central Bank & Trust Co. of Houston v. Hill, 160 S. W. 1099; Brooks v. Stevens, 178 S. W. 30; Naylor v. Anderson, 178 S. W. 620.

Art. 6330. (3812) (3661) Discharged by failure to sue, when.—If the creditor or obligee, not being under legal disability, shall fail to bring his suit to the first term of court thereafter, or to the second term, showing good cause why he did not bring it to the first term and prosecute the same to judgment and execution, the surety giving such notice shall be discharged from all liability thereon. (P. D. 4784.)

See Sayles' Practice, p. 989; Simkins' Equity (2d Ed.) p. 625; Williams v. Ogg, 94 S. W. 420; Central Bank & Trust Co. of Houston v. Hill, 160 S. W. 1099; Naylor v. Anderson, 178 S. W. 620.

Art. 6331. (3813) (3662) May have question of suretyship tried, when.—When any suit is brought against two or more defendants upon any contract, any one or more of the defendants being surety for the others, the surety may, upon a written statement of the matter being set out in his answer, cause the question of suretyship to be tried and determined upon the issue made for the parties defendant at the trial of the cause, or at any time before or after the trial, or at a subsequent term; but such proceedings shall not delay the suit of the plaintiff. (P. D. 4785.)

See Sayles' Practice, p, 990; Tarlton v. Orr, 90 S. W. 534; Hall v. Taylor, 95 S. W. 755; Blake v. Vesey, 143 S. W. 221; Polk v. Seale, 144 S. W. 329; Eubanks v. Sites, 146 S. W. 952; McNeese v. First Nat. Bank of Waco, 183 S. W. 1184.

Art. 6332. (3814) (3663) Execution, levied first on property of principal.—If the finding of such issue be in favor of the surety, the court shall make an order directing the sheriff to levy the execution first upon the property of the principal subject to execution, and situate in the county in which the judgment was rendered, before a levy shall be made upon the property of the surety, if so much property of the principal can be found as will in the opinion of the sheriff be sufficient to make the amount of the execution; otherwise the levy to be made on so much property of the principal as may be found, if any, and upon so much of the property of the surety as may be necessary to make the amount of the execution; and the clerk shall make a memorandum of such order on the execution. (P. D. 4786.)

See ante, art. 3732; Bank v. Robertson, 86 S. W. 643; Blake v. Vesey, 143 S. W. 221; Abney v. Citizens' Nat. Bank of Hillsboro, 152 S. W. 734; Clevenger v. Commercial Guaranty State Bank, 183 S. W. 65.

Art. 6333. (3815) (3664) Rights of surety who makes payment on a judgment.—When any person, being surety in any undertaking whatever, shall be compelled to pay any judgment, or any part thereof, or shall make any payment which is applied upon such judgment by reason of such suretyship, the said judgment shall not be discharged by such payment, but shall remain in force for the use of such surety, and shall be considered as assigned to such surety, together with all the rights of the creditor thereunder, to the extent of the payment thereon made by such surety, and interest thereon; and such surety shall be entitled to have execution thereon in the name of the creditor for the use of such surety against the principal debtor for the full amount of such payment and interest thereon and all costs, which execution shall be issued upon the application of such surety to the clerk, or court, as the case may be, and shall be levied, collected and returned as in other cases. (P. D. 4787.)

See Simkins' Equity (2d Ed.) p. 626; Sayles' Practice, p. 991; Slaughter v. Moore, 42 S. W. 372; Mills v. Terry, 54 S. W. 780; Kyle v. Richardson, 71 S. W. 399; Tarlton v. Orr, 90 S. W. 534; Blake v. Vesey, 143 S. W. 221; Polk v. Seale, 144 S. W. 329; Eubanks v. Sites, 146 S. W. 952; Abney v. Citizens' Nat. Bank of Hillsboro, 152 S. W. 734; McNeese v. First Nat. Bank of Waco, 183 S. W. 1184.

Art. 6334. (3816) (3665) One surety may have execution against a co-surety, when.—Should there be more than one surety and one or more of them has failed to pay his proportionate part of the judgment, execution may issue, as provided in the preceding article, against the principal for the use of the surety who has paid more than his proportionate part for the whole amount paid by him and interest thereon, and also against his co-sureties for their proportionate part of the excess so paid by him, and interest thereon. (P. D. 4788.)

See Simkins' Equity (2d Ed.) p. 626; Polk v. Seale, 144 S. W. 329.

Art. 6335. (3817) (3666) Sheriff, etc., has same rights as surety, when.—If a sheriff or other officer shall be compelled to pay any judgment, or any part thereof, by reason of any default of such officer, except for failing to pay over any money collected, or for wasting property levied on, such sheriff or other officer shall be entitled to have execution therefor against the principal defendant in such judgment as provided in the case of a surety. (P. D. 4787.)

See ante, art. 1843.

Art. 6336. (3818) (3667) Surety not to be sued alone, unless, etc.—No surety shall be sued, unless his principal is joined with him, or unless a judgment has previously been rendered against his principal, except in the cases provided for in article [1843].

See Shropshire v. Smith, 37 S. W. 470; Central Bank & Trust Co. of Houston v. Hill, 160 S. W. 1099; Slaughter v. Morton, 185 S. W. 905; Dodd v. W. T. Rawleigh Co., 203 S. W. 131.

Art. 6337. (3819) (3668) Who is surety within this title.—The remedy provided for sureties by this title extends to indorsers, guarantors, drawers of bills which have been accepted, and every other suretyship, whether created by express contract, or by the operation of law. (P. D. 4789.)

See Simkins' Equity (2d Ed.) p. 626; Sayles' Practice, p. 991; Kyle v. Richardson, 71 S. W. 399; Williams v. Ogg, 94 S. W. 420; Blake v. Vesey, 143 S. W. 221; Abney v. Citizens' Nat. Bank of Hillsboro, 152 S. W. 734; Slaughter v. Morton, 185 S. W. 905; Dodd v. W. T. Rawleigh Co., 203 S. W. 131.

TITLE 110

PRINTING—PUBLIC

Arts. 6338-6344. [Superseded by Acts 1919, 2d C. S., ch. 84, post, arts. 6370a-6370h, 6370i-6370m.]

Art. 6345. [Repealed by Acts 1915, ch. 126, sec. 2.]

Arts. 6346-6370. [Superseded by Acts 1919, 2d C. S., ch. 84, post, arts. 6370a-6370h, 6370i-6370m.]

Art. 6370a. Board of Public Printing; how constituted; quorum.—The Attorney General, the State Comptroller and the Secretary of State, shall constitute the Board of Public Printing for the State of Texas, and a majority thereof shall constitute a quorum for the transaction of business. (Act June 27, 1876, p. 31, secs. 1, 16; Acts 1919, 2d C. S., ch. 84, sec. 1.)

This Act supersedes arts. 6338-6344, 6346-6370 of the Revised Civil Statutes of 1911.

See post, art. 7150¼c.

Art. 6370aa. Same subject; organization; Secretary of Board and State Expert Printer; election; term of office.—Upon the taking effect of this Act, the members of said Board shall meet at the Capitol and organize by the election of one of their number as chairman, and shall elect a Secretary who shall be also the State Expert Printer, whose duties shall be hereafter defined, said Secretary and Expert Printer to hold his office at the pleasure of said Board of Public Printing. In February, 1921, and biennially thereafter, the said Board of Public Printing shall meet in the same manner for the election of a Chairman and Secretary and State Expert Printer. (Id. sec. 2.)

Art. 6370b. Secretary of Board and State Expert Printer; qualifications; general duties; office; salary; clerical help.—The Secretary of the Board of Public Printing, who shall also be the State Expert Printer, shall be a competent journeyman printer of not less than four years practical experience in the art of printing, who shall be a qualified compositor, either at hand composition or machine composition, or both, who shall be learned in the point system of type sizes, and who shall be competent to cast up the quantity of type set on the system of ems or points; who shall be qualified to determine the weight, value and quality of paper of all kinds and who shall be qualified to determine the quality of binding. He shall, as Secretary of said Board of Public Printing keep an accurate record of all proceedings of said Board of Public Printing, in a well bound book. He shall attend the meetings of said Board of Public printing and give expert advice on technical matters coming before said Board. He shall be furnished an office in the Capitol by the Superintendent of Public Buildings and Grounds, and such furniture and fixtures and filing cabinets as are necessary to the proper conduct of the duties of his office. He shall receive a salary of $2,400 per year, payable in monthly installments, on voucher approved by a majority of said Board of Public Printing. He shall have authority to employ such clerical help, including bookkeeper and stenographer, or either of them, as may be provided by the appropriation provided for said department. (Id. sec. 3.)

Art. 6370bb. Contracts for printing, binding, etc.; letting; advertisement for; rejection of bids.—Upon the expiration of the present contracts for printing, binding, stationery and supplies now existing, the Board of Public Printing shall contract with responsible persons, firms, corporations or associations of persons who shall be residents of the State of Texas, for a term of not exceeding two years, for supply to the state of all printing, binding, stationery and supplies of like character, for all departments, institutions and Board of Control, save and except for the Judicial Department, and such work as may be done at the various educational eleemosynary institutions in this State, said contracts to be let to the lowest and best responsible bidder, after public advertising of such proposed letting for a period of thirty days in at least six newspapers of general circulation in the State of Texas, which shall have the largest circulation in the county of its publication, no two such papers to be published in the same county, and the said Board of Public Printing shall have the authority to reject any and all bids, providing the reasons for such rejection shall be entered in full on the minutes of said Board, and be open to the inspection of the public at all times. And biennially thereafter said contracts shall be made in the same manner as hereinbefore provided. (Id. sec. 4.)

Art. 6370c. Same subject; rules and regulations.—The Board of Public Printing shall have the authority to establish rules and regulations in advertising for bids for printing and stationery and supplies, as herein provided for, in such manner as will best serve the State. Any bidder shall be allowed to bid on either, any or all of the items to be contracted for. (Id. sec. 5.)

Art. 6370cc. Same subject; classification of printing, etc.—The Board of Public Printing may, in its discretion group any class in advertising for bids and awarding contracts in such manner as shall give the State the most efficient service. (Id. sec. 5a.)

Art. 6370d. Same subject; letting contracts for classes.—The Board of Public Printing shall have the authority to determine to which bidder the several classes of work shall be awarded, being authorized to let the contract for the several classes of printing to separate bidders, and in calling for proposals it shall be specified that bids for stationery and office supplies shall be separate and distinct from the bids for printing. Any bidder shall be allowed to bid on either, any, or all of the classes to be contracted for. (Id. sec. 5b.)

Art. 6370dd. Printing of bills, resolutions, journals, committee reports, etc., of Legislature.—The current printing of the bills, resolutions, journals, committee reports, etc., of the Legislature, shall be done in the city of Austin, the unit price for such work to be in accordance with the contract then existing, and said printing contractor shall perform his duties under the exclusive jurisdiction of the Legislature or either house thereof, and the printing contractor shall be responsible to the Legislature or either House thereof, for the faithful performance and delivery of the work, and charges there-

for shall be audited by and paid by the Legislature or either House thereof. (Id. sec. 6.)

Art. 6370e. Proclamations, notices, etc., to be published in newspaper; rates for.—All proclamations of the Executive Department and all other notices required to be published by the State of Texas, or any department, institution or Board of Control, shall be published in the newspaper selected by the Secretary of State, if from the Executive Department, and in the newspaper selected by the department, or institution or Board of Control issuing such notice, provided that the same notice or proclamation shall not be published in more than one newspaper in the same county, and the rate for such official publication shall not exceed one cent per word for the first insertion and one-half cent per word for each subsequent insertion, all bills for publications to be accompanied by a certificate of the publisher under oath, certifying to the number of publications and the dates thereof, together with a clipping of said publication from an issue of his newspaper, said bills to be audited by the Board of Public Printing. (Id. sec. 7.)

Art. 6370ee. Quantity of reports, documents, etc., ordered to be published.—The Board of Public Printing shall order such quantity of all reports, documents, messages, journals and laws to be published as may be deemed necessary, not less than 600 nor more than 5000 of each report. (Id. sec. 8.)

Art. 6370f. Bonds of bidders.—The Board of Public Printing shall require that each bid be accompanied by a bond, in an amount to be fixed by the Board of Public Printing, conditioned that if awarded the contract said contractor will comply with all terms and conditions thereof, said bond to be with two or more good and sufficient sureties or a bond by a surety company authorized to do business in Texas. For any breach of contract, the Attorney General, when so instructed by the Board of Public Printing, shall file suit in the proper court as in such cases provided. (Id. sec. 9.)

Art. 6370ff. Officers not to be interested in contracts.—No member or officer of any department of the Government shall be in any way interested in any contract which shall be let under the provisions of this Act. (Id. sec. 10.)

Art. 6370g. Printing of journals of Senate and House of Representatives.—It shall be the duty of the Secretary of the Senate and of the Journal Clerk of the House of Representatives to deliver to the Contractor the journals of their respective Houses for the purpose of being printed, together with a comprehensive index to the same, to be printed at the end thereof, and it shall be the duty of the Contractor to carefully use the same, and return them without delay, uninjured, to such Secretary and Journal Clerk respectively when the printing thereof is completed. (Id. sec. 11.)

Art. 6370gg. Printing of laws and resolutions; copies for contractor.—It shall be the duty of the Secretary of State to deliver to such contractor, as soon as practicable after their passage or approval, copies of all laws and resolutions adopted by the Legislature, together with a comprehensive index to same. (Id. sec. 12.)

Art. 6370h. Same subject; Secretary of State to read and revise proofs.—It shall also be the duty of the Secretary of State to read and revise the proofs of such laws and resolutions, and to superintend the printing of the same, and to compare the same with the originals in his office, and to certify that the laws and resolutions as published are true copies of such originals, which certificates, together with a statement of the date on which the Legislature adjourned, which shall be appended to and printed at the end of each volume of such laws and resolutions. But the provisions requiring the Secretary of State to read and revise the proofs shall not dispense with the duty of the contractor to see that such proofs are properly read and corrected. The Secretary of State shall employ such additional help as shall enable him to expeditiously prepare the copy of the laws and immediately mail same as soon as delivered by the contractor. (Id. sec. 13.)

Art. 6370hh. Carbon copies of enrolled bills and resolutions for Secretary of State.—Whereas, It is necessary that copy of all enrolled bills in both the House and Senate be furnished to the State Printer by the Secretary of State and by such copy being made and so furnished by the Enrolling Clerks of both the House and Senate much time and expense will be saved the State; therefore, be it

Resolved by the Senate, the House of Representatives concurring, That the Enrolling Clerk of the Senate and the Enrolling Clerk of the House be directed and required to make carbon copies of all enrolled bills and resolutions that are sent to the Governor for his approval, and they shall furnish said copies to the Secretary of State at the same time the original enrolled bills and resolutions are transmitted to the Governor. (Acts 1919, 1st C. S., p. 8 [Concurrent Res.].)

Art. 6370i. Laws and journals, etc., printed; to be delivered to Secretary of State; exceptions.—The whole number of such laws and journals, reports of public officers and other public documents authorized to be printed shall be delivered to the Secretary of State, at his office, except such printing as may be ordered by the two Houses of the Legislature or either of them, for their use, which shall be delivered to such persons at such times as such Houses or either of them, may direct. (Acts 1919, 2d C. S., ch. 84. sec. 14.)

Art. 6370ii. Same subject; when to be delivered.—Delivery of the general and special laws shall begin within thirty days after the last copy shall have been furnished, and on the Journals within sixty days after the last copy has been furnished the contractor; provided that at least one-fourth of the copy shall have been delivered each week for three weeks prior to the delivery of the last copy; but it is expressly understood that the index shall not be considered as part of the regular copy and the limit as specified above shall apply to last copy furnished, not including index and history of bills and resolutions. The reports of public officers shall be delivered to the Governor by the respective officers making the same, in sufficient time to be delivered to the contractor one month before the meeting of the Legislature, and if so furnished

to said contractor shall be delivered to the Secretary of State not later than the first week of said session. (Id. sec. 15.)

Art. 6370j. Audit of accounts for printing, etc.; payment for.—All accounts for printing done or stationery furnished, under the provisions of this Act, except that for the Legislature when in session, shall be audited as follows: The account shall be verified by the affidavit of the contractor that said account is true and correct; that the amount of work charged for has actually been performed, or the actual amount of stationery or supplies delivered, and that the prices charged in said account are in accordance with the stipulations of the contract, and shall be accompanied with a sample of the work done or the stationery furnished. After which it shall be examined by the State Expert Printer and the Board of Public Printing, and if found correct, approved by said Board. Such claim, when thus examined and approved, shall be sufficient authority for the Comptroller to issue his warrant to be paid out of the appropriations for public printing or stationery. (Id. sec. 16.)

Art. 6370jj. Same subject.—All accounts for printing done or stationery used in either House of the Legislature shall, before being approved by the Legislature or the committee on public printing or either House, be presented to the State Expert Printer, for certificate from him that said printing or binding or stationery is charged for at the rate of the current contract, and which account, when approved by the committee on public printing of either House of the Legislature, shall authorize the Comptroller to draw his warrant to pay such account out of the contingent fund. (Id. sec. 17.)

Art. 6370k. Abrogation of contracts for printing and stationery.—The contracts for printing and stationery herein provided for may be abrogated by the Legislature when in session, or by the Printing Board with the consent of the Governor or Comptroller, when the Legislature is not in session, if the contractor should fail to perform the work, or furnish the supplies in accordance with law and with his contract, and as promptly as the exigencies of the public service demand. (Id. sec. 18.)

Art. 6370kk. Letting of new contracts.—Should the successful bidder fail to execute the bond with security as herein provided, or should the contract be abrogated, it shall be the duty of the Board of Public Printing to proceed to let a new contract as herein provided. Provided, however, that said Board of Public Printing may in its discretion, make such temporary arrangement to meet the emergency as is demanded by the public interest. (Id. sec. 19.)

Art. 6370*l*. Stationery for reporters of Supreme Court and Court of Criminal Appeals.—The reporters for the Supreme Court and Court of Criminal Appeals shall be furnished by the Board of Public Printing, with all stationery necessary for the performance of their duties. (Id. sec. 20.)

Art. 6370*ll*. Approval of contracts; repeal.—All contracts made under the provisions of this Act shall be subject to the approval of the Governor, the Secretary of State and the Comptroller, as required by Article XVI, Section 21, of the Constitution of this State. All laws and parts of laws in conflict herewith are hereby repealed. (Id. sec. 21.)

Art. 6370m. State Board of Control substituted for Board of Public Printing.—Upon the taking effect of the Act of the Regular Session of the Thirty-sixth Legislature creating the State Board of Control, with subsequent amendments thereto, the members of said State Board of Control shall be substituted for the members of the Board of Public Printing, as provided for in Section one of this Act. (Id. sec. 22.)

Art. 6370n. Reports of Supreme Court and Court of Criminal Appeals; award of contract, etc.—The Board of Public Printing of this State, or such other board or state agency as may be created by law in place of said Board of Public Printing, is hereby authorized and it is made its duty, from time to time, for the purpose of the publication of the reports of the decisions of the Supreme Court and Court of Criminal Appeals of the State of Texas, to cause to be printed and bound the said decisions of said courts, in the form, size and manner as now provided by law, and for this purpose to invite bids not confined to residents of this State, upon proposals advertised by said Board, or such other board or state agency, for such time and manner as may be fixed by said Board, or such other board or state agency, and to award the contract for such printing and binding to the lowest responsible bidder, and that said Board, or such other board or state agency, shall have the right to reject any and all bids. (Acts 1913, p. 59, sec. 1; Acts 1919, ch. 36, sec. 1.)

This article amends § 1 of Acts 1913, p. 59, c. 30.

Art. 6370*o*. Terms of contract; duty of clerks of courts.—Said Board, or such other board or state agency, is hereby given full power and discretion to fix all the conditions, provisions and details of such contract, concerning the printing, binding, publication and sale of such reports and to demand such security from the contractor as will secure the performance of such contract and the interest of the State of Texas; provided that such contract shall be for a term of six years duration at a time. Said contract may also provide for the printing and binding of delayed manuscripts of said reports; and said Board of Printing, or such other board or state agency, may also provide, from time to time, by separate contracts under similar conditions, for the reprint of said reports, or volumes thereof; and said Board, or such other board or state agency, may also, from time to time, provide by separate contracts, under similar conditions, for renewal contracts in the event of forfeiture or for other reasons; and to facilitate the prompt printing and binding of said reports in the future; the clerks of said courts shall provide the reporters of said courts with manifold copies of the opinions of said courts as the said courts rendering the same shall direct to be published, duly certified, together with a record of the cases as soon as said opinions become final. (Acts 1913, p. 59, sec. 2; Acts 1919, ch. 36, sec. 2.)

This article amends § 2 of Acts 1913, p. 59, c. 30.

Art. 6370p. Price of reports; number of volumes; plates; copyright.—The maximum price of such reports furnished by the contractor to the legal profession and the public of the State shall not exceed two dollars per volume, and the maximum price paid by the State for such volume shall not exceed four dollars per volume, and the number of volumes to be delivered to the State shall not exceed two hundred and fifty of each volume of said reports for the use of the State; and said contract shall also provide that the contractor shall keep on hand a sufficient number of volumes of said reports, or make such arrangements as to enable the legal profession and the public in this State to obtain from such contractor such reports at the price fixed in such contract. Said Board, or such other board or state agency, shall also determine whether electrotype or stereotype plates of said reports are to be made and to regulate the use thereof, but the ownership of such plates, together with the copyright of said reports, shall remain in the State of Texas. (Acts 1913, p. 59, sec. 3; Acts 1919, ch. 36, sec. 3.)

This article supersedes § 3 of Acts 1913, p. 59, c. 30.

Art. 6370q. Laws repealed.—That Article 1651, Chapter 13 of the Revised Civil Statutes of the State of Texas, A. D. 1911, and all other laws or parts of laws in conflict with this Act be, and the same are, hereby repealed. (Acts 1913, p. 59, sec. 4; Acts 1919, ch. 36, sec. 4.)

This article amends § 4 of Acts 1913, p. 59, c. 30.

TITLE 111

PROPERTY—STOLEN

Art. 6371. (5044) (4660) Treble value of stolen property recoverable, when.—If any person shall purchase, trade or barter for any personal property after nightfall, and the same shall afterward be proved to be stolen property, such persons so purchasing, trading or bartering for said property, shall be liable to the true owner thereof in three times the value of the same, to be recovered in any court having jurisdiction of the case. (Acts 1876, p. 26.)

Art. 6372. (5045) (4661) Criminal prosecution not affected by this title.—Nothing in this title shall be so construed as to relieve any person so offending from prosecution under the criminal laws.

TITLE 112

PROPERTY—STATE'S PERSONAL—PRESERVATION OF

Art. 6373. Persons in control of state property must make inventory.—It shall be the duty of every official or other person who has in his possession, or under his control, or for which he is in anywise responsible, any personal property belonging to the state of Texas, or in which it has an interest, to make out in triplicate a correct and full list and inventory of all such personal property which is or was in his possession when he assumed charge of such office or position, or had under his control, or for which he is in any way responsible, and which inventory shall contain the name of the article or articles of such personal property, the cost thereof, a fair and reasonable estimate of the present value thereof, a statement of the present condition of the same, how long said property has been in use, and the extent of the probable service, use and benefit that such property will be to the state in future; and, if sold during his term of office, or while in his possession, or under his control, he shall state the selling price thereof, and the disposition of the proceeds. (Acts 1899, p. 307, sec. 1.)

Art. 6374. How made and to whom rendered.—A copy of said list and inventory, duly sworn to, shall be by such person charged with keeping said property, or who has the same under his control, management, or who is responsible for the same, transmitted by registered letter to the secretary of state at Austin, Texas, whose duty it shall be to enter such list and inventory on a book to be kept by him for the purpose, under its appropriate heading; and said secretary of state is hereby authorized to purchase such book or books as shall be necessary to record all such lists and inventories so made to him, and he shall be responsible for the correct entry of all said articles in such book or books, and shall be responsible for the safe keeping of the original sworn report, from each of the persons named in this chapter, including the governor of this state, comptroller of public accounts, treasurer, attorney general, adjutant general, commissioner of insurance and banking, superintendent of public buildings and grounds, the commissioner of the general land office, chief justice of the supreme court, court of criminal appeals, and the several courts of civil appeals, and the clerks thereof, the managers of each and every asylum in the state of Texas, superintendents and assistant superintendents of the penitentiaries and reformatories, superintendents and managers of all state farms, superintendents and managers of the university and the several branches thereof, normal schools, all the officers and employés of either branch of the legislature having personal property belonging to the state in their possession, and each and every other person holding any personal property in trust for the state of Texas, or having the same under his control, or in his possession, or for which he is in any wise responsible, all of whom are included in this chapter and subject to its provisions. A duplicate of said list and inventory, so sent to the secretary of state, shall be forwarded to the comptroller of public account, who shall carefully preserve the same in his office; and it is made the duty of the person so making out the list to retain in his possession for his successor in office a true copy thereof, and whose duty it shall be to deliver same to such successor within three days after his qualification and assuming charge of such position, office or agency. (Id. sec. 2.)

Art. 6375. When made.—Upon qualification at the beginning of the terms of office of any of the persons named herein, after each succeeding general election, and within thirty days after taking charge of any personal property as herein named, it shall likewise be his duty to make said report as herein required of the officers now holding any of said positions, and to forward same to the officers herein named, who shall receive them and who shall continue to keep the registration of said reports, lists and inventories, as here-

in required of the secretary of state under the foregoing article hereof, and who shall, when said lists are received, make comparisons with former reports and note all articles of property not included in former lists, or which were included in former lists but are not in the list last filed, and shall designate all such articles which are either dropped from or added to those of former lists and inventories. (Id. sec. 3.)

Art. 6376. Persons in control of property responsible for same—Every person herein named or referred to, in charge of any public institution of Texas, or having under his control any personal property belonging to the state of Texas, is hereby made responsible for the same and the full value thereof; and all persons hereafter coming into any of the offices or positions herein enumerated shall at once become and shall remain responsible for the preservation and safe keeping of all personal property herein named or referred to, whether such persons be under official bonds or not; and all official bonds made by any of the persons herein named or referred to shall be intended as security to the state of Texas for the full value of all such personal property in any such institution or department, or otherwise belonging to the state over which such person is in control, or for which he is by this act made responsible. (Id. sec. 4.)

Art. 6377. Incoming and outgoing officers to check inventory.—Hereafter, when any of the officers named in this chapter, or who are hereby referred to and required to take charge of any of the properties of the state, shall take charge of same, they shall require of their predecessors in such positions, whose duty it is hereby made to furnish same, to make out for them a full list and inventory as above mentioned, of all properties in their possession, or under their control and management, or for which they are in any wise responsible, belonging to the state of Texas; and such outgoing and incoming officers shall together check up said list and inventory and ascertain that the same and each article in said list named is then on hand or duly accounted for. Said incoming officer shall give his receipt to his said predecessor in office for all of such property before he shall be entitled to possession of the same, and said receipt shall be by him delivered to said secretary of state for registration in his office, and a copy of the same shall be likewise delivered to the comptroller of public accounts for preservation in his office. (Id. sec. 5.)

Art. 6378. Penalty for non-compliance.—Should any of the officers, persons, or employés named in this chapter fail to make out said list and inventory, or fail to perform any of the duties herein required of him, he shall become immediately responsible to the state of Texas for the value of any and all articles of furniture, implements, goods, wares, merchandise, live stock and all other personal property which have come into his hands, or for which he may be responsible, and be subject to suit in the name of the state of Texas for the value of the same, and, should he fail to do or perform any of the acts and things required of him by this chapter, he shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished as provided in the Penal Code. The jurisdiction for all suits under this chapter shall be either in the county court of Travis county, or in the county where such officer shall reside at the time of the institution of said suit or prosecution, or where such property may be situated. (Id. sec. 6.)

Art. 6379. Law cumulative.—This chapter is not intended to repeal any law now in force for the preservation and protection of any state property, but is cumulative thereof, and all said laws are hereby kept in full force and effect where the same do not specifically conflict with this chapter. (Id. sec. 7.)

TITLE 112 A

PUBLIC ACCOUNTANTS

Art. 6379a. State board created.—There is hereby created a board to be known as the State Board of Public Accountancy, to be composed of five members, who shall be public accountants of good moral character and qualified citizens of the State of Texas, each of whom shall have had at least three years practical experience as a public accountant on his own account immediately preceding his appointment, during the last three years of which he shall have been so engaged in the State of Texas; the members of said board to be selected and appointed as hereinafter provided. (Acts 1915, ch. 122, sec. 1.)

Art. 6379b. Appointment of members of board; tenure and qualifications; certification of members; vacancies.—Within thirty days after this Act shall go into effect the Governor of the State of Texas shall appoint five persons qualified as provided in Section 1 of this Act [Art. 6379a], who shall constitute the State Board of Public Accountancy.

The members of the first State Board of Public Accountancy provided for herein shall be appointed for and shall serve for the term ending on the third Tuesday of January, 1917, or until their successors are appointed and qualified. On and after the third Tuesday in January, 1917, and regularly every two years thereafter, the Governor of the State of Texas shall appoint five members as successors on said board, and each and every member who may be appointed to succeed any member of the first State Board of Public Accountancy shall be a certified Public Accountant, holding a certificate as such under the provisions of this Act, and resident of Texas for at least three years preceding said appointment.

Five members of the First State Board of Public Accountancy provided for herein shall confer upon themselves the title "Certified Public Accountant," provided that each member of said board shall have filed an application for such certificate with four remaining members of said board, and, provided further, that said applicant shall meet the requirements as provided in Section 8 [Art. 6379k]. All vacancies in said board caused by death, resignation, removal from the State, or otherwise, shall be filled by appointment of the Governor, and each special appointment shall be from the roster of certified public accountants created under this Act, and said appointee shall continue only until the expiration of the regular term for which

the predecessor of such appointee would have held office. The revocation of the certificate of any member of this board shall terminate his membership thereon, and the Governor shall fill the vacancy so caused as herein above provided. (Id. sec. 2.)

Art. 6379c. Organization of board; rules and regulations; powers.—The members of said board shall, within thirty days after their appointment, qualify by taking the oath of office before a notary public or other officer empowered to administer oaths in the county in which each shall reside, and shall file same with the Secretary of State and receive their certificate of appointment as members of the "State Board of Public Accountancy." At the first meeting after each biennial appointment, the board shall elect from among its members a chairman and secretary-treasurer. The board may prescribe rules, regulations and by-laws in harmony with the provisions of this law and not inconsistent with the laws of the State of Texas for its own proceedings and government and for the examination of applicants for certificates as certified public accountants; which rule shall provide that when a division on any motion occurs, at least three affirmative votes shall be necessary to the final adoption thereof. It is further provided that three members of said board shall constitute a quorum for the transaction of the business of the board.

All rules, regulations and by-laws adopted by the said board shall be filed with the office of the Secretary of State. Said board, or any member thereof, shall have the power to administer oaths for all purposes required in the discharge of its duties, and said board shall adopt a seal to be affixed to all of its official documents. (Id. sec. 3.)

Art. 6379d. Meetings of board; examinations.—The board shall meet within sixty days after its appointment and at least once in each year for the purpose of examining applicants for certificates as provided herein, and may meet as many times during the year as may be in its discretion advisable. Notice of all meetings shall be given at least thirty days prior to the dates selected for same by publication three consecutive times in three daily newspapers published in the three most populous cities in the State, such notice giving the time and place of meeting and stating the purpose to be for the examination of applicants for certificates as certified public accountants; provided, that the board may hold any number of meetings, and at any time, without giving notice by publication of such meetings, if a meeting be called for any other purpose than the examination of applicants for certificates. It is further provided that any applicant who has successfully passed an examination before said board upon three of the subjects required may have a re-examination upon the unsuccessful subject under the supervision of said board. Examinations by the board shall be on the following subjects: "Theory of Accounts," "Practical Accounting," "Auditing," and "Commercial Law as Affecting Accountancy," and each applicant shall be required to make a general average of at least seventy-five per cent on all subjects and to each person passing such examination, if he has otherwise qualified, shall be issued by the State Board of Public Accountancy a certificate as a "Certified public accountant of the State of Texas," and the State Board of Public Accountancy shall have the power to revoke or recall any certificate issued under this Act as hereinafter provided. (Id. sec. 4.)

Art. 6379e. Records of board; transmission to Secretary of State.—The State Board of Public Accountancy shall preserve a record of its proceedings in a book kept for that purpose, showing the name, age, and duration of residence of each applicant, the time spent by the applicant in practice as a public accountant, or in employment in the office of the public accountant, and the year and school, if any, from which degrees were granted or in which the course of study was successfully completed by the applicant as required by law. Said register will show also whether applicants were rejected or licensed, and shall be prima facie evidence of all matters contained therein. The secretary of the board shall, on December 31 of each year, transmit an official copy of said register to the Secretary of State for permanent record, certified copy of which, under the hand and seal of the secretary of said board or Secretary of State, shall be admitted in evidence in any court or proceeding. (Id. sec. 5.)

Art. 6379f. Qualifications of applicants for certificates.—No person shall be permitted to take an examination unless he be twenty-one years of age, of good moral character, a qualified citizen of the United States, and unless he shall have had one year's study and practice in accountancy or accounting work. (Id. sec. 6.)

Art. 6379g. Certificate without examination.—The board may, in its discretion, waive the examination and issue a certificate to any person who has received and holds a valid and unrevoked certificate as a certified public accountant issued by or under the authority of any state or territory of the United States, the District of Columbia, or who holds the equivalent of such certificate by and under the expressed legal authority of any foreign nation, providing, however, that such certificate or degree shall, in the opinion of the board, have been issued under a standard fully equivalent to that of the requirements of said board, and issued by such state or territory as may extend the same privilege to certified public accountants holding certificates from this State; provided, further, that such applicant shall have qualified as provided in Section 6 [Art. 6379f]. (Id. sec. 7.)

Art. 6379h. Same.—The State Board of Public Accountancy shall, upon written application therefor, waive examination of any applicant, provided said applicant shall be qualified as provided by Section 6 hereof [Art. 6379f], and shall have been practicing on his own account as a public accountant, or on the behalf of another public accountant, as a senior public accountant for not less than three years, two years of which practice shall have been within the State of Texas immediately preceding said application; provided, further, that such application is filed prior to January 1, 1916. (Id. sec. 8.)

Art. 6379i. Examination fee; annual fee.—Each applicant for a certificate as certified public accountant shall, at the time of making application, pay to the treasurer of

said board a fee of twenty-five dollars, and no application shall be considered by said board until said fee of twenty-five dollars shall have been paid. In case of failure on the part of any applicant to pass a satisfactory examination, said applicant may have the privilege of appearing at any subsequent examination conducted by said board for re-examination, upon the payment of an additional fee of ten dollars.

The holder of each certificate issued hereunder shall pay an annual fee of $1.00 into the treasury of the State Board of Public Accountancy. The failure on the part of the holder of any certificate issued under this Act to pay this fee shall automatically cancel the privilege of using the title "Certified Public Accountant," but reinstatement may be had at any time within two years, or before the expiration of sixty days after the two years shall have elapsed, by the payment of the fee and application in such form as may be provided by the board and the payment further of a penalty of $2.50 for each year lapsed. (Id. sec. 9.)

Art. 6379j. Expenses of board; accounts; funds.—Each member of said board shall receive from the secretary-treasurer of the board out of the funds in the hands of the board, if there be sufficient thereof, all of his necessary railroad and hotel expenses for attending the meeting of said board; but otherwise shall serve without compensation. The secretary-treasurer shall be required to keep an account of all money received and disbursed, and shall render an annual statement to the Governor of the State, showing receipts and disbursements and the balance on hand. The balance shall remain in the treasury of the board, and all expenses in connection with the maintenance of the board shall be paid from same, and no provisions of this Act shall be a charge upon the common funds of the State of Texas. (Id. sec. 10.)

Art. 6379k. Revocation of certificate.—The State Board of Public Accountancy shall revoke and recall any certificate issued under this Act if the holder thereof: (1) shall be convicted of a felony; (2) shall be declared by any court to have committed any fraud; or (3) shall be declared by any court or commission to be insane or otherwise incompetent; or (4) shall be held by this board to be guilty of any act or default discreditable to the profession; provided, that written notice of the cause of such contemplated action and the date of the hearing thereof by this board shall have been served upon the holder of such certificate at least fifteen days prior to such hearing, or provided that such notice of such contemplated action and the date of the hearing thereof by this board shall have been mailed to the last known address of such holder of such certificate at least twenty days prior to such hearing; and at such hearing the Attorney General of this State, or any one of his assistants, or any district attorney designated by him, may sit with the board as legal counsellor and advisor, and to prepare for any legal action that may be determined upon by the State Board of Public Accountancy. (Id. sec. 11.)

Art. 6379l. Purpose and scope of law.—Nothing herein contained shall be construed to prevent any person from being employed as an accountant in this State in either public or private practice. The purpose of this law is to provide for the examination and the issuance of a certificate, or degree, granting the privilege of the use of the title "Certified Public Accountant," and the use of the initials "C. P. A.," as indicative of the holder's fitness to serve the public as a competent and properly qualified accountant in public practice, and to prevent those who have no such certificate or degree from using such title or initials; provided, however, the use of the initials "C. P. A.," or "C. A." to designate any business other than the practice of accountants or auditors is not prohibited by this Act. (Id. sec. 14.)

TITLE 113

PUBLIC BUILDINGS, GROUNDS AND PARKS

CHAPTER ONE

PUBLIC BUILDINGS AND GROUNDS

Art. 6380. (3820) Appointment and term of office of superintendent.—The governor shall appoint a suitable person as superintendent of public buildings and grounds, who shall hold his office for a term of two years. In case of a vacancy in said office the appointment shall be for the unexpired term. (Act April 29, 1874, p. 165; P. D. 7234f.)

Office of superintendent of public buildings and grounds abolished, see post, art. 7150¼f.

Art. 6381. (3821) Bond and oath.—Before entering upon the duties of his office, the superintendent of public buildings and grounds shall execute a bond in the sum of two thousand dollars, payable to the state, with two or more good and sufficient sureties, to be approved by the governor, and conditioned for the faithful discharge of the duties of said office. He shall also take and subscribe the oath of office prescribed by the constitution, which oath and bond shall be filed in the office of the secretary of state. (Id. sec. 2; P. D. 7234g.)

Art. 6382. (3822) Removal and liability on bond.—The superintendent of public buildings and grounds may be removed from office at any time by the governor for neglect of duty, incompetency, or other sufficient cause; and he and his sureties shall be liable on his official bond for all damages occasioned by the injury or loss of any public property under his care, or resulting from any neglect of duty on his part. (Id. sec. 4; P. D. 7234.)

Art. 6383. (3823) Superintendent to have charge of public buildings.—It shall be the duty of the superintendent to have and take charge and control of all public buildings, grounds and property of the state, which may not be used by the different officers of the state government, including the state cemetery, and to properly care for and protect the same from damage, intrusion or improper uses. (Acts 1884, p. 60.)

Art. 6384. (3824) Duties pertaining to state cemetery.—The superintendent shall also control, superintend and beautify the grounds of the state cemetery. He shall preserve such grounds and everything pertaining thereto from depredation and injury, and shall procure and erect at the head of each grave without a permanent monument

an obelisk of marble, on which shall be engraved the name of the deceased therein buried. (Act April 14, 1871, p. 35; P. D. 5885.)

Art. 6385. (3825) Shall file inventory of property.—Upon his qualification, the superintendent shall file in the office of the secretary of state a true and correct inventory of all public personal property committed to his custody, verified by his affidavit, and a like inventory for all additions to such property during his term of office; and on his retirement from office such property shall be delivered to his successor, who shall receipt for the same. (Act April 29, 1874, p. 165, sec. 2.)

Art. 6386. (3826) Different public rooms and buildings, under whose control.—The executive mansion, and grounds belonging to the same, and the executive offices in the state capitol, and the rooms therein occupied severally by the secretary of state, the comptroller, the treasurer, the attorney general, the adjutant general, the board of education, the commissioner of agriculture, and other officers shall be under the charge and control of each of said officers occupying or using the same; and the rooms on the third floor wherein are the supreme court library and the rooms used and occupied as the offices of the clerks of the supreme court, court of criminal appeals, and court of civil appeals, shall be under the control and in the charge of the clerks of said courts. (Acts 1884, p. 60.)

Art. 6387. (3827) Public property to be sold, when.—All property belonging to the state situated or being in the city of Austin, or to any department, board or office of the state, when the same shall become unfit for use or no longer needed, shall be turned over to the said superintendent, who shall sell the same at public auction, after advertising it for not less than five days; and the money arising therefrom, less the expense of advertising and selling, shall be deposited in the state treasury to the credit of the department, board or office from which it was obtained, to be expended by the said superintendent for improvements or repairs whenever needed by the said departments, boards or offices, or for the state cemetery. The said superintendent shall make his report in writing to the comptroller, stating articles received, articles sold, to whom and at what price, and also a report showing how said funds were expended. (Id.)

Art. 6388. (3828) Shall have charge of halls, rooms, etc., when.—Said superintendent, during the recess of the legislature, shall have the charge and control of the halls and committee rooms of said capitol, except as hereinbefore provided; and before the assembling of each session of the legislature he shall prepare the different rooms for the uses of the legislature. (Acts 1884, p. 60.)

Art. 6389. (3829) Not to be used for private purposes.—No room, apartment or office in said building shall at any time be used by any person as a bedroom or for any private purposes whatever; provided, that this article shall not apply to the rooms occupied by the judges of the supreme court and courts of civil and criminal appeals, on the third and fourth floors of the capitol. (Id.)

Art. 6390. (3830) Authority as a policeman.—The watchman employed about and around the capitol and other buildings and grounds shall have all the powers and authority of a policeman of the city of Austin; and whenever, for the purpose of properly executing the provisions of this law, under the approval of the governor, by the said superintendent, there may arise a conflict with any ordinances or authority granted or given under or by virtue of the charter of the city of Austin, then and in that event so much of the said charter as authorizes the granting of such ordinances or the giving of such authority, be and the same is hereby repealed in so far as they prevent the said superintendent from efficiently performing his duties hereunder. (Id.)

Art. 6391. (3831) Shall frequently inspect all state property.—It shall be the duty of the said superintendent to frequently inspect all the public buildings and property of the state at the capital, and at such other places as the governor may direct; to act as adviser to all state boards in the preparation of specifications and plans for improvements and repairs to public buildings or property of the state, and to superintend the construction of said work, where the same is not otherwise specially provided for by law. The said state boards and departments shall notify the said superintendent of improvements and repairs needed for their respective buildings and offices, and the same shall be made under his direction. He shall also be required to give his special attention to the effective maintenance of the state sewers and their connections, in use at the public buildings, and to keep the same in such sanitary condition at all times as to prevent the dissemination of disease therefrom, and to see that the gas and water pipes, with their connections and appliances, are maintained in working order, ready at any time for immediate use. He shall also be required to prepare and have in his office a copy of the plans of all public buildings and improvements thereto under his charge, showing the exact location of all water, gas and sewerage pipes, so that in case of needed repairs or inspection, their position can be determined without unnecessary expense. (Id.)

Art. 6392. (3832) To make reports.—It shall be the duty of said superintendent to make a report to the governor on the first day of December, biennially, showing the manner in which he has discharged his duties, the improvements and repairs that have been made under his superintendence, with an itemized account of his receipts and expenditures, and the condition of all property under his charge, including an estimate of needed improvements and repairs to same. (Id.)

Art. 6392a. Certain departments to occupy new departmental building.—The General Land Office, the Agricultural Department and such other departments and offices of the State Government as may be determined by the Governor shall occupy the new departmental building now being erected in the City of Austin at the corner

of Brazos and East Eleventh Streets. (Acts 1917, 3d C. S., ch. 9, sec. 1.)

Art. 6393. (3835) Sheriffs to have charge of court houses.—The sheriffs of the several counties shall have charge and control of the court houses of their respective counties, subject to such regulations as the commissioners' court may prescribe; and the official bonds of such sheriffs shall extend to and include the faithful performance of their duties under this article.

Art. 6393a. Daughters of the Republic and Texas Division of the Daughters of the Confederacy may use General Land Office building.—That as soon as the building located near the Capitol and known as the General Land Office Building, in Austin, Travis county, Texas, is vacated the same is hereby set aside for the uses and purposes of the Daughters of the Republic and the Texas Division of the Daughters of the Confederacy; and the said Daughters of the Republic and the Texas Division of the Daughters of the Confederacy be and the same are hereby authorized to take full charge of said building and use the same conjointly as they see proper; provided, however, that the Daughters of the Republic shall occupy the upper floor of said building and the Texas Division of the Daughters of the Confederacy shall occupy the lower floor of said building. (Acts 1917, ch. 208, sec. 1.)

Art. 6394. The Alamo.—The part of the old Alamo Mission property purchased by the state, adjoining the building known as the Alamo church, together with the Alamo church, are delivered to the care and custody of the Daughters of the Republic of Texas, to be maintained by them in good order and repair, without charge to the state, as a sacred memorial to the heroes who immolated themselves upon that hallowed ground, and, by the Daughters of the Republic of Texas, to be maintained or remodeled upon plans adopted by them, and approved by the governor of Texas; provided, that no changes or alterations shall be made in the Alamo church proper, as it now stands, except such as are absolutely necessary for its preservation; all of said property being subject to future legislation by the legislature of the state of Texas. (Acts 1905, p. 7, sec. 3.)

CHAPTER TWO

STATE INSPECTOR OF MASONRY, PUBLIC BUILDINGS AND WORKS

Art. 6394a. Office created; salary, expenses, etc.—That the office of state inspector of masonry, public buildings and works is hereby created, who shall be appointed by the governor, and shall hold his office for the term of two years, from the date of his appointment, and shall be paid an annual salary of $2000.00, one-twelfth (1-12) thereof to be paid at the end of each months' service, and his actual and necessary traveling expenses while in the performance of his duties under this Act; provided, however, that such expenses shall not exceed $1500.00 per annum, such expenses to be paid monthly at the end of each month, on itemized accounts signed and sworn to by the inspector of masonry, and filed with the comptroller of public accounts. (Acts 1911, p. 207, sec. 1.)

Superseded as to amount of salary of inspector by Acts 1917, 1st C. S., ch. 48, sec. 2, post, art. 7085b, fixing salary at $2,000.

Office of state inspector of Masonry, Public buildings and Works abolished, see post, art. 7150¼f.

Art. 6394b. Duties of inspector.—It shall be the duty of the said inspector of masonry to carefully examine and inspect the material and workmanship of all buildings, and other structures and additions thereto, that may be constructed by contract or otherwise for the state of Texas, out of brick or stone, or substitutes therefor, and to see that such buildings are constructed in accordance with the contract, the plans and specifications therefor, and such buildings, structures or additions shall be constructed under the supervision of the state inspector of masonry, and the work, workmanship and material thereof shall be subject to his approval. (Id. sec. 2.)

Art. 6394c. Powers and duties.—The state inspector of masonry, public buildings and works, is hereby authorized and it is made his duty to inspect all plans and specifications for public buildings and structures and additions thereto, that are to be constructed by contract or otherwise for the state of Texas, prior to the time such plans and specifications are adopted, and he may, with the consent of the governor, reject any and all such plans and specifications, and he shall aid the committee, board or person having such matters in charge in preparing such plans and specifications, as is intended and desired, and he shall have full and final superintendence on all buildings, structures, or additions thereto that may be constructed by contract or otherwise for the state of Texas, according to the term of contract. (Acts 1911, p. 207; Amended Acts 1913, p. 25, sec. 1 [2a].)

Art. 6394d. Assistants; salary and expenses, etc.—The state inspector of masonry, public buildings and works, shall with the consent of the governor, when the work in his department requires it, appoint such assistants as he may need, not to exceed two, who shall have the same qualifications as is provided by law for the state inspector of masonry, public buildings and works, and who shall during their period of service receive an annual salary of eighteen hundred ($1800) dollars per year payable in equal monthly installments, and also their actual and necessary traveling expenses while in the performance of their duties under this Act; provided, however, that such expenses do not exceed twelve hundred ($1200) dollars per annum, such expenses to be paid on itemized accounts, signed and sworn to by such assistants, and approved by the state inspector of masonry, public buildings and works, provided, however, that the state inspector may discontinue the service of any such assistants, at any time his service is no longer needed, such assistants, when so appointed, shall assist the state inspector of masonry, public buildings and works, in the performance of his duties under the direction of said officer. (Id. [2b].)

Art. 6394dd. Inspection of plans and specifications of proposed municipal buildings; superintendence of such buildings; proviso.—The State Inspector of Masonry, Public Buildings and Works is here-

by authorized and it is made his duty to inspect all plans and specifications for public buildings and structures and additions thereto that are to be constructed by contract or otherwise for and by the counties, cities, municipalities and other political subdivisions of the State of Texas, prior to the time such plans and specifications are adopted, and he shall aid such commissioners court, city commission, board of aldermen, city manager, school board, committee, board, person or persons, having in charge the preparation for the construction of any and all public buildings, structures and additions thereto that are to be constructed by contract or otherwise for such counties, cities, municipalities and other political subdivisions of the State of Texas, and he shall have full and final superintendence over all such buildings, structures or additions that may be constructed by contract or otherwise for such counties, cities, municipalities and other political subdivisions of the State of Texas, according to the terms of contract. Provided, that this Act shall not apply to any public buildings, structure or additions thereto, the contract price of which is less than twenty-five thousand dollars. (Acts 1915, ch. 148, sec. 1 [sec. 2c].)

Art. 6394ddd. Appointment of assistants for inspection of municipal buildings; salary and expenses; limitation of number.—The State Inspector of Masonry, Public Buildings and Works shall, when the work in his department requires it, appoint not more than three assistants, such assistants to be skilled and practical mechanics in the respective trades, which enter into the construction of such public buildings, structures and additions, and such assistants to have at least ten years' practical experience in their respective trade next prior to his appointment as assistant to the State Inspector of Masonry, Public Buildings and Works, and the salary of each of such assistants shall not exceed eighteen hundred ($1,800) dollars per year, payable in equal monthly installments, and their actual and necessary traveling expenses while in the performance of their duties under this Act; provided, that said Inspector of Masonry shall not employ more assistants than the fees collected under the provisions of this Act shall be sufficient to pay; provided, that in no event shall the number of assistants exceed three; such expenses to be paid on itemized accounts, signed and sworn to by such assistants, and approved by the State Inspector of Masonry, Public Buildings and Works; provided, however, that the State Inspector of Masonry, Public Buildings and Works shall discontinue the service of such assistant or assistants at any time his service is no longer needed. (Id. [sec. 2d].)

Art. 6394dddd. Inspection charge for municipal buildings.—There shall be set aside a sum equal to one (1) per cent of the contract price or estimated cost of each building, structure or addition thereto to be constructed for such county, city, municipal or other political subdivision of the State of Texas by the respective commissioners court, city commissioners, board of aldermen, city manager, committee, board, person or persons having such public building, structure or addition thereto, in charge, and said one (1) per cent of the contract price shall be forwarded immediately prior to the beginning of such work to the State Treasurer, to be held intact for the purpose of defraying the salaries, traveling and other necessary expenses as may be incurred by the State Inspector of Masonry, Public Buildings and Works, and his assistants, in the performance of their duties as required by this Act, and the State Treasurer shall pay out said moneys upon warrants issued through the Comptroller of Public Accounts for the State of Texas as now in vogue for other departments of the State. (Id. [sec. 2e].)

Art. 6394e. Qualifications of inspector.—No person shall be appointed to said office except a skilled mechanic, who has had at least ten years' practical experience next prior to his appointment, in brick and masonry work and the substitutes therefor. (Acts 1911, p. 207, sec. 3.)

CHAPTER THREE

CONTRACTORS' BONDS TO SECURE LABORERS AND MATERIALMEN

Art. 6394f. Contractors with state, municipalities, etc., to give bond; actions on bond, etc.—That any person or persons, firm or corporation entering into a formal contract with this state or its counties or school district or other subdivisions thereof or any municipality therein for the construction of any public building, or the prosecution and completion of any public work, shall be required, before commencing such work, to execute the usual penal bond, with good and sufficient sureties, with the additional obligation that such contractor or contractors shall promptly make payments to all persons supplying him or them with labor and materials in the prosecution of the work provided for in such contract; and any person, company, or corporation who has furnished labor or materials used in the construction or repair of any public building or public work, and payment for which has not been made, shall have the right to intervene and be made a party to any action instituted by the state or any municipality on the bond of the contractor, and to have their rights and claims adjudicated in such action and judgment rendered thereon, subject, however, to the priority of the claims and judgment of the state or municipality. If the full amount of the liability of the surety on said bond is insufficient to pay the full amount of said claims and demands, then, after paying the full amount due the state or municipality, the remainder shall be distributed pro rata among said interveners. The bond provided for may be made by a surety company authorized to do business in Texas. (Acts 1913, p. 185, sec. 1.)

Art. 6394g. Laborers and materialmen to have right of action, when.—If no suit should be brought by the state or municipality within six months from the completion and final settlement of said contract, then the person or persons supplying the contractor with labor and materials shall, upon application therefor, and furnishing affidavit to the state or municipality that labor or materials for the prosecution of such work has been supplied by him or them, and payment for which has not been made, be fur-

nished with a certified copy of said contract and bond, upon which he or they shall have a right of action for his or their use and benefit, against said contractor and his surety, and to prosecute the same to final judgment and execution. (Id. sec. 2.)

Art. 6394h. Action to be commenced, when; parties.—When suit is instituted by any of such creditors on the bond of the contractor, it shall not be commenced until after the complete performance of said contract and final settlement thereof, and shall be commenced within one year after the performance and final settlement of said contract, and not later; provided that if the contractor quits or abandons the contract before its consummation, suit may be instituted by any of such creditors on the bond of the contractor, and shall be commenced within one year after abandonment of said contract, and not later.

Where suit is so instituted by a creditor or by creditors, only one action shall be brought, and any creditor may file his claim in such action and be made party thereto within one year from the completion of the work under said contractor, and not later. (Id. sec. 3.)

Art. 6394i. Judgment; sureties may pay into court.—If the recovery on the bond should be inadequate to pay the amounts found due to all of said creditors, judgment shall be given to each creditor pro rata of the amount of the recovery; subject to the provisions in section 1 of this Act [Art. 6394f], giving to the state or municipality the right of priority in the proceeds of such judgment. The sureties on said bond may pay into court, for distribution among said claimants and creditors, the full amount of the sureties' liability, to-wit: the penalty named in the bond, less any amount which said surety may have had to pay to the state or municipality by reason of the execution of said bond, and upon so doing the surety will be relieved from further liability. (Id. sec. 4.)

Art. 6394j. Notice of lis pendens.—In all suits instituted under the provisions of this Act, notice of the pendency of such suits shall be made by publication in some newspaper of general circulation, published in the county or town where the contract is being performed for at least three successive weeks, the last publication to be at least one week before the trial of such case. (Id. sec. 5.)

CHAPTER FOUR

SAN JACINTO STATE PARK

Art. 6395. Establishing state park on battlefield.—The lands owned and acquired by the state, commonly called the San Jacinto battlefield, shall be known and styled, "The San Jacinto State Park," and, with the exceptions, reservations and limitations herein mentioned, the said San Jacinto state park shall be under the care and direction of the state superintendent of public buildings and grounds. Said superintendent and the commissioners shall jointly endeavor to improve, preserve and protect the lands and property within and connected with said San Jacinto state park. (Acts 1907, p. 104, sec. 9.)

Art. 6396. Commissioners.—The governor shall, every two years, appoint three resident citizens of the state, who shall be known as "San Jacinto State Park Commissioners," and whose duties shall be to advise with and assist the superintendent of public buildings and grounds in the improvement, care and preservation of the lands now owned and hereafter acquired by the state, known as the San Jacinto battlefield; provided, that one or more of said commissioners may, in the discretion of the governor be selected from the patriotic organization known as San Jacinto Chapter, Daughters of the Republic of Texas, or from any kindred organization; provided, further, that said commissioners shall serve without compensation. (Id. sec. 6.)

Art. 6397. Duties of commissioners.—It shall be the duty of said commissioners, acting with the advice and consent of the superintendent of public buildings and grounds, to cause to be erected upon a site by them selected a keeper's cottage and other necessary buildings; to arrange for or employ a keeper who shall reside upon the grounds and who shall be clothed with all the powers and authority of a peace officer of the county for the purposes of caring for and protecting the property of the state; to provide the necessary teams, implements and other utensils for the use of such keeper and other employés in the work of beautifying, improving and protecting said grounds; to cause to be erected, around, about and upon said grounds such fence and fences as shall, in the judgment of the commissioners and superintendent of public buildings and grounds, serve the best interests of the state in the care and protection of its property; to provide for and outline a plan, diagram and design of the work to be done from time to time, copies of which shall be kept in the office of the superintendent for reference, and to do any and all things necessary to be done, with the intent and purpose of beautifying, improving and protecting the state's interest therein. (Id. sec. 7.)

CHAPTER FIVE

GONZALES STATE PARK

Art. 6397a. Establishing state park.—That, whereas, it has been the policy of the state of Texas to acquire title to, beautify and preserve certain historic spots in the State of Texas where the most memorable events occurred which resulted in Texas independence; and, whereas, along this line the state has already acquired title to the Alamo property in San Antonio, the San Jacinto battle ground in Harris county, the site of the Fannin massacre in Goliad county, with a view of making state parks, beautifying and preserving them, and, by erecting monuments with suitable inscriptions thereon, perpetuating the memory of the characters who made them historic spots; and, whereas, one of the most notable of such places is the municipality of Gonzales, where the first armed resistance was made; where the first army assembled and which was organized for the capture of San Antonio; where the only company was organized and equipped for the relief of Col. Travis after the Alamo was invested; and where General Houston assembled and organized the army of Texas which eventually destroyed Santa Anna's army and brought about Texas independence; and whereas, in the original plan of the municipal town of Gonzales a

broad avenue 170 varas wide and three miles long runs east from the town of Gonzales to the limits of the four leagues of land originally granted to said municipality, along which avenue General Houston's army, after having been organized, retreated in the direction of San Jacinto, and which avenue, designated on the map of said municipality as East avenue, is now owned by the city of Gonzales, and contains about 150 acres of land, now unimproved; and, whereas the city of Gonzales, through its municipal officers, have offered to convey unto the state of Texas, without charge, said avenue beginning in the city limits where Tinsley's creek crosses said east avenue and extending eastward to the limits of said avenue, which is the eastern boundary line of said four league grant from the state of Coahuila and Texas to said municipality, reserving and excepting, however, a street 60 feet wide on each side of said avenue for public passage, provided the state of Texas will dedicate the same for a public state park and will agree to beautify and protect the same.

Therefore, Be it enacted by the Legislature of the State of Texas: That the State of Texas accepts title to said ground tendered by the City of Gonzales, and dedicates it as a public State park in commemoration of the historic events that have occurred at Gonzales, and agrees to beautify and protect the same; which said ground shall be under the care and direction of the State Superintendent of Public Buildings and Grounds. (Acts 1913, p. 242, sec. 1.)

Art. 6397b. Commissioners.—The governor shall, as soon as practicable after the taking effect of this Act, and every two years thereafter, appoint three resident citizens of the state, who shall be known as "Gonzales State Park Commissioners," and whose duties shall be to advise with and assist the superintendent of public buildings and grounds in the improvement, care and preservation of the said land; provided, that one or more of said commissioners may, in the discretion of the governor, be selected from the patriotic organization known as Gonzales Chapter, Daughters of the Republic of Texas, or from any kindred organization; provided, further, that said commissioner shall serve without compensation. (Id. sec. 2.)

Art. 6397c. Duties of commissioners.—It shall be the duty of said commissioner, acting with the advice and consent of the superintendent of public buildings and grounds, to cause to be erected upon a site by them selected, a keeper's cottage and other necessary buildings; to arrange for or employ a keeper who shall reside upon the grounds and who shall be clothed with all the powers and authority of a peace officer of the county for the purpose of caring for and protecting the property of the state; to provide the necessary teams, implements and other utensils for the use of such keeper and other employés in the work of beautifying, improving and protecting said grounds; to cause to be erected around, about and upon said grounds such fences as shall, in the judgment of the commissioners and superintendent of public buildings and grounds, serve the best interests of the state in the care and protection of its property; to provide for and outline a plan, diagram and design of the work to be done from time to time, copies of which shall be kept in the office of the superintendent for reference, and to do any and all things necessary to be done, with the intent and purpose of beautifying, improving and protecting the state's interest therein. (Id. sec. 3.)

Art. 6397d. Expenses.—Such reasonable and necessary personal expense as may be incurred by said three commissioners in the performance of their duties in this behalf, and in the employment of landscape gardeners, surveyors, forestors, mechanics, employés, materials, or upon contracts which may be or become necessary in carrying out the provisions of this Act, shall be presented in writing and under oath to the governor and, when approved by him as reasonable and correct, shall be audited as other claims and accounts for state purposes and shall be paid out of the appropriation herein made. (Id. sec. 4.)

Art. 6397e. Name; duties of state superintendent of buildings and grounds, etc.—The said land and grounds shall hereafter be known and styled "Gonzales State Park" and, with the exceptions, reservations, and limitations herein mentioned, the said Gonzales state park shall be under the care and direction of the state superintendent of buildings and grounds. Said superintendent and the commissioners shall jointly endeavor to improve, preserve and protect the lands and property within said Gonzales state park. (Id. sec. 5.)

Art. 6397f. Appropriation.—That, for the several purposes mentioned in this Act, the sum of seven thousand five hundred dollars ($7,500.00), or so much thereof as shall be necessary, is hereby apportioned [appropriated] out of any money in the state treasury not otherwise appropriated. (Id. sec. 6.)

CHAPTER SIX

FIRST CAPITOL SITE

Art. 6397g. Purchase of site; improvement; appropriation.—That not to exceed fifty acres of land upon and immediately surrounding the spot upon which was erected the monument by the school children of Washington County in 1900, commemorating the point where the first capitol of Texas stood, be purchased, to be held in perpetuity by the State of Texas. Said lands shall be purchased, beautified and improved under the supervision of the Governor of the State of Texas, the Superintendent of Public Buildings and Grounds and the Attorney General, and that the sum of ten thousand ($10,000) dollars, or so much thereof as may be necessary, be and the same is hereby appropriated for that purpose out of any funds in the State Treasury not otherwise appropriated, and the Comptroller of Public Accounts is hereby authorized and directed to issue warrants on accounts approved by the Governor; provided, no portion of this appropriation shall be available, and no voucher issue therefor, until the title to said land and deeds and conveyances therefor shall be examined by and be satisfactory to the Attorney General of this State. (Acts 1915, 1st C. S., ch. 3, sec. 1.)

TITLE 114

QUO WARRANTO

Art. 6398. (4343) Quo warranto, when.—In case any person shall usurp, intrude into or unlawfully hold or execute, or is now intruded into, or now unlawfully holds or executes any office or franchise, or any office or any corporation created by the authority of this state, or any public officer shall have done or suffered any act which by the provisions of law works a forfeiture of his office, or any association of numbers of persons shall act within this state as a corporation without being legally incorporated, or any incorporation does or omits any act which amounts to a surrender or a forfeiture of its rights and privileges as a corporation, or exercises power not conferred by law, or if any railroad company doing business in this state shall charge an extortionate rate for the transportation of any freight and passengers, or refuse to draw or carry the cars of any other railroad company over its line as required by the laws of this state, the attorney general, or district or county attorney of the proper county or district, either of his own accord, or at the instance of any individual relator, may present a petition to the district court of the proper county, or any judge thereof, in vacation, for leave to file an information in the nature of a quo warranto in the name of the state of Texas; and, if such court or judge shall be satisfied that there is probable ground for the proceeding, the court or judge may grant the petition and order the information to be filed and process to issue. (Acts 1879, S. S. p. 43.)

See Townes' Texas Pleading (2d Ed.) p. 576 et seq.; Sayles' Practice, pp. 274, 283, 992-3, 997; State v. I. & G. N. R'y, 35 S. W. 1067; Ex parte Lewis, 73 S. W. 811; Callaghan v. Tobin, 90 S. W. 328; Ex parte Keeling, 121 S. W. 605, 130 Am. St. Rep. 884; Oriental Oil Co. v. S., 135 S. W. 722; Cole v. S., 163 S. W. 353.

Art. 6399. (4344) Joinder of parties in one action, when.—When it appears to the court or judge that the several rights of divers parties to the same office or franchise may properly be determined on one information, the court or judge may give leave to join all such persons in the same information in order to try their respective rights to such office or franchise. (Id. sec. 2.)

See Sayles' Practice, pp. 221, 996.

Art. 6400. (4345) Citations to issue.—When the information is filed, as hereinbefore provided, the clerk shall issue citations in like form as in civil suits, commanding the defendant to appear at the return term of said court to answer the relator in an information in the nature of a quo warranto. If the information is filed in vacation, the citation shall be returnable on the first day of the next succeeding term; if in term time, it may be made returnable on any day of the same term, not less than five days after the date of the writ, as shall be directed by the court. (Id. sec. 3.)

Art. 6401. (4346) Proceedings as in civil cases.—Every person or corporation who shall be cited as hereinbefore provided shall be entitled to all the rights in the trial and investigation of the matters alleged against him, as in cases of trial of civil causes in this state; and, in cases of appeal to which either party shall be entitled, the said court shall give preference to such case and hear and determine the same at the earliest day practicable; and all such appeals shall be prosecuted to the term of the court in session, or the first term to be held, if not in session, after judgment has been rendered in the district court. (Id. sec. 4.)

See Sayles' Practice, pp. 996, 1113, 1139; Kendall v. S., 51 S. W. 1102; Cole v. S., 163 S. W. 353; Simpson v. Alexander, 183 S. W. 852.

Art. 6402. (4347) Judgment of court.—In case any person or corporation against whom any such proceeding is filed shall be adjudged guilty, as charged in the information, the court shall give judgment of ouster against such person or corporation from the office or franchise, and may fine such person or corporation for usurping, intruding into or unlawfully holding and executing such office or franchise, and shall also give judgment in favor of the relator for costs of the prosecution. (Id. sec. 5.)

See Sayles' Practice, p. 102.

Art. 6403. (4348) Remedy cumulative.—The remedy and mode of procedure hereby prescribed shall be construed to be cumulative of any now existing. (Id. sec. 6.)

Art. 6404. (4349) Venue of suit for state office.—Suits against persons illegally claiming or holding any state office or appointment, as contradistinguished to a county or district office, shall be brought in the district court of Travis county. (Id. sec. 7.)

See ante, art. 1830, secs. 21, 27; Sayles' Practice, pp. 249, 274.

TITLE 115

RAILROADS

CHAPTER ONE

INCORPORATION OF RAILROAD COMPANIES

Art. 6405. (4350) (4099) Not less than ten persons may form company.—Any number of persons, not less than ten, being subscribers to the stock of any contemplated railroad, may be formed into a corporation for the purpose of constructing, owning, maintaining and operating such railroad, by complying with the requirements of this chapter. (Acts 1876, p. 141, sec. 1.)

Art. 6406. Who may build railroads.—No corporation, except one chartered under the laws of the state of Texas, shall be authorized or permitted to construct, build, operate, acquire, own or maintain any railway within this state. (Acts 1903, p. 90.)

Art. 6407. (4351) (4100) Amount of stock which must be subscribed and paid.—No railroad corporation shall be formed until stock to the amount of one thousand dollars for every mile of said road so intended to be built shall be in good faith subscribed, and five per cent of the amount subscribed paid in to the directors of such proposed company. (Acts 1876, p. 141.)

Art. 6408. (4352) (4101) Articles of incorporation shall contain what.—The persons proposing to form a railroad corporation shall adopt and sign articles of incorporation, which shall contain:

1. The name of the proposed corporation.

2. The places from and to which it is intended to construct the proposed railroad, and the intermediate counties through which it is proposed to construct the same; provided, however, that local suburban railways may be constructed for any distance

less than ten miles from the corporate limits of any city or town, in addition to such mileage as they may have within the same; and in such case the general direction shall be given from the beginning point.

3. The place at which shall be established and maintained the principal business office of the proposed corporation.

4. The time of the commencement and the period of the continuation of the proposed corporation.

5. The amount of the capital stock of the corporation.

6. The names and places of residence of the several persons forming the association for incorporation.

7. The names of the members of the first board of directors, and in what officers or persons the government of the proposed corporation and the management of its affairs shall be vested.

8. The number and amount of shares in the capital stock of the proposed corporation. (Acts 1889, p. 17.)

Denison & S. Ry. v. Ry. Commission, 69 S. W. 62. Generally under this chapter, see International & G. N. Ry. Co. v. Anderson County, 174 S. W. 305.

Art. 6409. (4353) (4102) Articles shall be submitted to attorney general, etc.—The articles of incorporation, when so prepared, adopted and signed, shall be submitted to the attorney general of the state, whose duty it shall be to carefully examine the same; and, if he finds them to be in accordance with the provisions of this chapter and not in conflict with the laws of the United States or of this state, he shall attach thereto a certificate to that effect. (Acts 1876, p. 141, sec. 2.)

Art. 6410. (4354) (4103) Shall be filed in office of secretary of state.—When said articles have been examined and certified as provided in the preceding article, the same shall be filed in the office of the secretary of state, accompanied by an affidavit in writing, signed and sworn to by at least three of the directors named in such articles, before some officer of the state authorized by law to administer oaths, which affidavit shall state that the amount of one thousand dollars for every mile of such proposed road has been in good faith subscribed, and that five per cent of the amount subscribed has been actually paid to the directors named in such articles; and the secretary of state shall cause such articles, together with said affidavit, to be recorded in his office, and shall attach a certificate of the fact of such record to said articles and return the same to such corporation. (Id. sec. 3.)

Art. 6411. (4355) (4104) Existence of corporation begins when.—The existence of such corporation shall date from the filing of the articles of incorporation in the office of the secretary of state; and the certificate of the secretary of state, under the seal of the state, shall be evidence of such filing. (Id. sec. 5.)

Art. 6412. (4356) (4105) Corporators may proceed to act, when.—When the articles of incorporation have been filed and recorded as herein provided, the persons named as corporators therein shall thereupon become and be deemed a body corporate, and be authorized to proceed to carry into effect the objects set forth in such articles, in accordance with the provisions of this title. (Id. sec. 4.)

Art. 6413. (4357) (4106) Corporation shall not be for more than fifty years, etc.—No railroad corporation shall be formed to continue more than fifty years in the first instance, but such corporation may be renewed from time to time for periods not longer than fifty years, in the manner provided in the succeeding articles. (Id. p. 144, sec. 8.)

Art. 6414. (4358) (4107) Manner of renewing corporation.—The manner of renewing a railroad corporation which has expired by lapse of time shall be as follows:

1. By a resolution in writing adopted by a majority of three-fourths of the stockholders of the company at a regular meeting of the stockholders, which resolution shall specify the period of time for which the corporation is renewed.

2. Those desiring a renewal of the corporation shall purchase the stock of those opposed thereto at its current value.

3. The resolution, when adopted, shall be certified to by the president of the company; and he shall state in his certificate thereto that it was adopted by a majority vote of three-fourths of all the stockholders of said company at a regular meeting of such stockholders, and that the stockholders desiring such renewal have purchased the stock of those who oppose such renewal, and such certificate shall be attested by the secretary of the company under the seal of the company.

4. The said resolution and certificate shall then be filed and recorded in the office of the secretary of state, and the renewal of said corporation shall date from said filing. (Id.)

Art. 6415. (4359) Where authorized to be sold or conveyed under special law.—Whenever any line or lines of railway or railway properties within this state are by special law authorized to be sold and conveyed, the persons contemplating or engaging for the purchase thereof may be formed into a corporation for the purpose of acquiring, owning, maintaining and operating such line or lines of railway by complying, as far as is applicable, with the requirements of this chapter. In the formation of such corporation, the requirements of article 6407 and so much of article 6410 of the Revised Statutes as relates to the affidavit therein provided for may be dispensed with, and words applicable to the case of a purchase may be used and substituted when necessary or proper, in the articles of incorporation or elsewhere, for or in lieu of words applicable to the building or construction of a railway. And when such corporation has been formed it shall have the power to purchase, acquire, own, maintain and operate such line or lines of railway and properties pertaining thereto, and all rights, powers and privileges given by the laws of this state to railway companies, including the right to complete and extend such line or lines of railway, and to construct branch lines thereto; and any proposed extension or branch lines may be provided for and included in the original articles of incorporation, or the same may, by amendment thereto at any time thereafter, be projected and provided for by such company. (Acts 1891, p. 128.)

Art. 6416. (4360) Shall take property subject to liens, etc.—Every railroad com-

pany organized under the preceding article shall take the property so purchased subject to all incumbrances, judgments, claims, suits, claims for damages and for right of way against the old company and subject to all debts and claims for damages accruing against any receiver who may have been appointed for the old company to the same extent that such property would have been liable in the hands of the railroad company from which it was purchased; and such new company may be made a party to every suit pending against the company from which it purchased, or which may be pending against any receiver of such company, to enforce any right against such new company; and the new company may be sued to enforce any such rights, without joining the old company, or the receiver; and, in case any judgment has been rendered against the company from which the purchase is made, or against a receiver for such last named company, and for which the property is liable, execution may be issued on such judgment against such property in the possession of the new company without any suit therefor. When any corporation shall be formed under the provisions of article 6415, service of process may be had upon any agent of such corporation in any county where suit may be pending. Such service shall bind each and every railroad operated or owned under such charter, in the same manner as if it were one railroad. (Id. sec. 2.)

CHAPTER TWO

AMENDING OR CHANGING CHARTER

Art. 6417. (4361) (4108) Corporation may amend articles, etc.—Any railroad corporation may amend or change its articles or act of incorporation in the manner provided in the following articles of this chapter. (Acts 1876, p. 142, sec. 5.)

See City of Tyler v. Ry., 87 S. W. 238.

Art. 6418. (4362) (4109) How amendment, etc., shall be made.—Said amendment or change shall be made in the manner following:

1. It shall be in writing and signed by the president and board of directors of the corporation and attested by the secretary under the seal of the corporation.

2. It shall be submitted to the attorney general as in the case of original articles of incorporation and examined and certified by him in the same manner.

3. It shall then be filed and recorded in the office of the secretary of state.

4. In the case of a corporation created by a special act of the legislature, the said amendment or change, together with the original charter and such amendments and changes as have been made by special act of the legislature, shall be filed and recorded in the office of the secretary of state. (Id. sec. 5.)

See H. & T. C. Ry. v. Lone Star Salt Co., 48 S. W. 619.

Art. 6419. (4363) (4110) Shall take effect, when.—Such amendment or change shall be in force from the date of the filing of the same in the office of the secretary of state in accordance with the provisions of this chapter. (Id.)

Art. 6420. (4364) (4111) Shall not amend, when.—Where, by the special act or articles of incorporating any railroad company, any privileges, rights or benefits are conferred upon said corporation, such as it could not claim, exercise or receive under this title, or the general laws, then the said corporation shall not be permitted so to amend or change its charter or articles of incorporation as to relieve it from any of the requirements of such special act or acts conferring said privileges, rights or benefits. (Id.)

Art. 6421. (4365) May project, etc., a branch line by amendment.—Any railroad company may, by its original articles of incorporation, or by its amendments to its charter, project and provide for the locating, constructing, owning and operating of branch lines from any points on its main line, or from any points on its branch line, constructed or projected, to any other points making an angle of at least twenty-five degrees in the general course from the main line, if the branch commence from the same, or from the branch line, if it commence at a point on the same; provided, that the same may commence at the terminus of a branch line and continue in its general course; and may, by amendment to its charter, provide for the continuation in its general course of the main line; that any and all amendments of charters, acts or articles of incorporation approved by the attorney general of the state, or his lawful representative, by which any branch railroad or railroads has or have been constructed in accordance with the provisions of this article as herein provided are authorized, validated, sanctioned and confirmed to the same extent as though this article had always read as now amended. (Id. p. 143, sec. 7; amended Acts 1901, p. 258.)

Art. 6422. (4366) (4114) Branch line shall complete 10 miles first year, etc.—Any such corporation making such amendment to its charter, as is authorized by the preceding article, shall complete and put in good running order at least ten miles of its said branch line in said amendment proposed within one year from the filing of such amendment, and an additional extent of at least twenty miles each and every succeeding year until the entire extent of the projected branch line is completed. (Id.)

See post arts. 6730, 6731.

CHAPTER THREE

PUBLIC OFFICES AND BOOKS

Art. 6423. (4367) Shall keep offices in this state.—Every railroad company chartered by this state, or owning or operating any line of railway within this state, shall keep and maintain permanently its general offices within the state of Texas at the place named in its charter for the locating of its general offices; and, if no certain place is named in its charter where its general offices shall be located and maintained, then said railroad company shall keep and maintain its general offices at such place within this state where it shall have contracted or agreed, or shall hereafter contract or agree, to locate its general office for a valuable consideration; and, if said railroad company has not contracted or agreed for a valuable consideration to maintain its

general office at any certain place within this state, then such general offices shall be located and maintained at such place on its line in this state as said railroad companies may designate to be on its line of railway. And such railroads shall keep and maintain their machine shops and round houses, or either, at such place or places as they may have contracted to keep them for a valuable consideration received; and, if said general offices and shops and round houses, or either, are located on the line of a railroad in a county which has aided said railroad by an issue of bonds in consideration of such location being made, then said location shall not be changed; and this shall apply as well to a railroad that may have been consolidated with another as to those which have maintained their original organization. (Acts 1889, p. 130, sec. 1.)

See Const., art. 10, sec. 3; City of Tyler v. St. L. S. W. Ry., 87 S. W. 238; Id. 91 S. W. 1; Kansas City, M. & O. Ry. Co. of Texas v. City of Sweetwater, 131 S. W. 251; Kansas City, M. & O. Ry. Co. of Texas v. City of Sweetwater, 137 S. W. 1117; International & G. N. Ry. Co. v. Anderson County, 150 S. W. 239; International & G. N. Ry. Co. v. Anderson County, 156 S. W. 499; International & G. N. Ry. Co. v. Anderson County, 174 S. W. 305; Houston & T. C. R. Co. v. City of Ennis, 201 S. W. 256.

Art. 6424. (4368) What officers are to keep offices in this state.—It shall be the duty of said railroad company to keep and maintain at the place within this state where its said general offices are located the office of its president, or vice-president, also the office of its secretary, treasurer, local treasurer, auditor, general freight agent, traffic manager, general manager, general superintendent, general passenger and ticket agent, chief engineer, superintendent of motive power and machinery, master mechanic, master of transportation, fuel agent, general claim agent; and each and every one of its general offices shall be so kept and maintained, by whatsoever name it is known, and the persons who perform the duties of said general offices, by whatever name known, shall keep and maintain their offices at the place where the said general offices are required to be located and maintained; and the persons holding said general offices of a railroad shall reside at the place and keep and maintain their offices at the place where the general offices of said railroad are required by law to be kept and maintained; and, if the duties of any of the above named offices are performed by any person, but his position is called by a different name, it is hereby made the duty of the said railroad company to have and maintain said offices at the place where its general Texas offices are kept and maintained, as required by this chapter; provided that if the judgment of the court shall be to forfeit the charter, then it shall allow the railroad company six months from the date of the judgment within which to comply with the requirements of this chapter, and if said railroad company shall comply with the said time no forfeiture shall occur; but if the railroad company shall not comply then the judgment shall be final; the object and meaning of this statute being to require every railroad company owning or operating a line of railway within this state to keep and maintain its general offices within this state at such place as required herein; and the name of the general offices shall not be understood to allow the railroad company to have any of the offices usually known as general offices at any other place than the one it is required to keep its general offices at; and each and every railroad is hereby required to have and maintain its general offices at the place named herein; provided, further, that where the principal shops of any company are situated on its line in the state, at a place other than the place where its general offices are located, the superintendent of motive power and machinery, master mechanic, either or both, may have his office and residence at such place where such principal shops are located; and provided, further, that the railroad commission of Texas, where it is made to appear that any officer, other than the general officers of any company, can more conveniently perform his duties by residing at some place on the line in Texas other than the place where the general offices are situated, may, by an order entered on its record, authorize any such officer to so reside and keep his office at such place. (Acts 1889, p. 130, sec. 2; amended Acts 1899, p. 117.)

Art. 6425. (4369) Forfeiture for violation of, etc.—Each and every railroad company chartered by this state, or owning, operating or controlling any line of railroad within this state, which shall violate any of the provisions of this chapter shall forfeit the charter by which it operates its railroad in this state to the state of Texas; and it is hereby made the duty of the attorney general of this state, upon the application of any interested party, or on his own motion, to proceed at once against every railroad company owning, operating or controlling any line of railway within this state by quo warranto to forfeit the charter of the railroad company so offending, or violating any of the provisions of this law; [and every such railroad company] shall in addition to forfeiting the charter to that part of the railroad situated within this state be subject to a penalty of five thousand dollars for each and every day it violates any of the provisions of this chapter; said penalty to be recovered in the name of the state of Texas by a suit which shall be filed by the attorney general in any court in this state having jurisdiction; and on the trial the court shall, if it finds that the railroad company has violated any of the provisions of this chapter, render judgment in the name of the state of Texas at the rate of the sum of five thousand dollars for each and every day said court shall find that said railroad company violated any of the provisions of this chapter. And any money recovered from any railroad company under the provisions of this law shall be paid over into the state treasury and become a part of the available public free school fund. (Id. sec. 3.)

Art. 6426. Required to do repair work in Texas.—All railroad corporations operating in the state of Texas, and having their repair shops within the state, shall and are hereby required to repair, renovate, or rebuild in the state of Texas any and all defective or broken cars, coaches, locomotives or other equipment owned or leased by said corporations in the state of Texas, when such rolling stock is within the state of

Texas; provided, that such railway shall have, or be under obligation to have, proper facilities in the state to do such work; and provided, this and the two succeeding articles shall not be so construed as to require any railway corporation to violate the safety appliance law of the Congress of the United States; and provided, further, that no railway shall be required to haul such disabled equipment a greater distance for repairs at a point within the state of Texas than would be necessary to reach their repair shops in another state; and provided, further, that no such railway company shall haul, or be permitted to haul for purposes of repair, any disabled equipment by or past any shop owned or operated by any such company where said disabled equipment can be repaired, in order to reach some other repair shop at a greater distance for purposes of repairing said disabled equipment; provided, that the provisions of this and the two succeeding articles shall not apply to companies having less than sixty continuous miles of railroad in operation in this state. (Acts 1909, p. 73, sec. 1.)

Art. 6427. Rolling stock, etc., not to be removed for repair.—All such railroad corporations, having their repair shops within the state, shall be prohibited from sending or removing any of their cars, coaches, locomotives or other equipment out of the state of Texas to be repaired, renovated or rebuilt, when the same is in a defective or broken condition and within the state. (Id. sec. 2.)

Art. 6428. Not to apply in cases of strikes, fires, etc.—The provisions of the two preceding articles shall not apply in cases of strikes, fires, or other unforeseen casualties and emergencies. (Id. sec. 3.)

Art. 6429. (4370) What books shall contain; open to inspection, etc.—At the public or general offices of the said railroad companies, established as provided for in this chapter, the principal business of said corporation shall be conducted, and stock transferred and claims for damages settled and adjusted by duly authorized officers and agents of said corporations, and where there shall be kept for the inspection of stockholders of such corporation books, in which shall be recorded:

1. The amount of capital stock subscribed.
2. The names of the owners of the stock and the amounts owned by them respectively.
3. The amount of stock paid and by whom.
4. The transfer of stock with the date of the transfer.
5. The amount of its assets and liabilities.
6. The names and places of residence of each of its officers.

Provided, that railroad corporations shall be required to keep such office at some place on the line of its road in this state, as heretofore provided. (Acts 1885, p. 67.)

Art. 6430. (4371) President shall report, etc.—The president or superintendent of every railroad company doing business in this state shall report annually under oath to the comptroller or governor the true status of said railroad and such other matters and things as may be inquired about by said comptroller or governor. (Id. sec. 3; Const., art. 10, sec. 3.)

See post, art. 6636.

Art. 6431. (4372) Books to be kept where.—The books of such corporation kept at its public office shall at all reasonable business hours be open to the inspection of each stockholder, and to any officer or agent of the state whose duty it may be to inspect such books. (Id. sec. 4.)

Art. 6432. (4373) Legislature may examine.—The legislature may, by committee or otherwise, examine the books of any railroad corporation at such times and as often as may by said legislature be deemed necessary. (Id. sec. 5.)

Art. 6433. (4374) Penalty for failure, etc.—It shall be unlawful for any railroad or other corporation to fail or refuse to comply with any of the provisions of this chapter; and, if said railroad or other corporation shall fail or refuse to comply with any part thereof, it shall be liable to pay to the state of Texas the sum of one thousand dollars for each and every month that said railroad or other corporation shall fail or refuse to comply therewith, said sum to be recovered by the state in any court in this state of competent jurisdiction; provided, that an honest mistake in the entries in its books shall not subject a railroad company to the penalties of this article, if the office of said company shall be kept in this state, as herein provided. (Id. sec. 6.)

Art. 6434. (4375) Duties of attorney general.—It shall be the duty of the attorney general of this state to bring suit against said corporations, and prosecute them to judgment for any violation of the provisions of this chapter. (Id. sec. 7.)

Art. 6435. (4376) Change of location of general offices, etc., prohibited; application to receivers and purchasers.—No railroad corporation shall have the right in the future to change the location of its general offices, machine shops or round houses, save with the consent and approval of the Railroad Commission of Texas, and this shall apply also to receivers and to purchasers of the franchises and properties of railroad companies and to new corporations formed by such purchasers or their assigns, provided, however, that the Railroad Commission of Texas shall not consent to, or approve of, any removal or change of location, in conflict with the restrictions of Article 6423 of the Revised Civil Statutes of Texas of 1911; and, provided further, that no consent or approval of the Railroad Commission of Texas shall be required before the return of general offices, machine shops or round houses to previous locations when ordered or required under judgments in suits now pending in trial or appellate courts. (Act Feb. 7, 1854; P. D. 4888; Acts 1915, ch. 20, sec. 1.)

See City of Tyler v. St. L. S. W. Ry., 87 S. W. 238.

Art. 6436. (4377) (4119) Notice of establishment of public office, in first instance, shall be given.—Every railroad corporation shall also, as soon as it has in the first instance established its public office, give notice of such establishment by a like publication as required in the preceding article.

Art. 6437. (4378) (4120) Public office the domicile of the corporation.—The public office of a railroad corporation shall be considered the domicile of such corporation. (Acts 1876, p. 150, sec. 32.)

T. & P. Ry. v. Edmisson, 52 S. W. 635; Ry. v. McKnight, 89 S. W. 755.

CHAPTER FOUR

OFFICERS OF RAILROAD CORPORATIONS

Art. 6438. (4379) (4123) Board of directors.—Every railroad corporation shall have a board of directors of not less than seven nor more than nine persons. (Acts 1876, p. 144, sec. 11.)

Art. 6439. (4380) (4124) Qualifications of directors.—Each director shall be a stockholder in said corporation; and a majority of said directors shall be resident citizens of this state, and shall so remain resident citizens during their continuance as such directors. (Id. p. 145, sec. 14.)

Art. 6440. (4381) (4125) Directors shall be elected by stockholders.—The board of directors shall be elected by the stockholders of the corporation at their regular annual meeting in each year, in such manner as may be prescribed by the by-laws of such corporation, and by this title, and the directors shall hold their offices until their successors are elected. (Id. p. 144, sec. 11.)

Art. 6441. (4382) (4126) Majority of stock required to elect a director.—It shall require a majority in value of the stock of such corporation to elect any member of such board of directors. (Id. p. 145, sec. 14.)

Art. 6442. (4383) (4127) By-laws in regard to election of directors shall not be changed, except, etc.—The by-laws of the corporation shall prescribe the manner and time of electing directors, and the mode of filling a vacancy in the office of director; and such provisions in such by-laws shall not be changed, except at a regular annual meeting of the stockholders, and by a majority in value of the stockholders of such corporation. (Id. p. 144, sec. 11.)

Art. 6443. (4384) (4128) Manner of voting for directors.—In all elections for directors of such corporation, every stockholder shall have the right to vote in person or by proxy for the number of shares of stock owned by him for as many persons as there are directors to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors to be elected multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he may see fit; and such directors shall not be elected in any other manner. (Id. p. 149, sec. 29.)

Art. 6444. (4385) (4129) Failure to hold election for directors.—In case it shall happen at any time that an election of directors shall not be made on the day designated by the by-laws of the corporation for that purpose, the stockholders shall meet and hold an election for directors in such manner as shall be provided by the by-laws of the corporation. (Id. p. 145, sec. 14.)

Art. 6445. (4386) (4130) Corporate powers vested in directors.—All the corporate powers of every railroad corporation shall be vested in and be exercised by its legally constituted board of directors. (Id. p. 144, sec. 11.)

See Kansas City, M. & O. Ry. Co. of Texas v. City of Sweetwater, 137 S. W. 1117; Southern Kansas Ry. Co. of Texas v. Logue, 139 S. W. 11; Logue v. Southern Kansas Ry. Co. of Texas, 167 S. W. 805.

Art. 6446. (4387) (4131) President and other officers.—There shall be a president of the corporation, who shall be chosen from and by the board of directors, and such other subordinate officers as the corporation by its by-laws may designate, who may be elected or appointed, and shall perform such duties and be required to give such security for the faithful performance thereof as the corporation, by its by-laws, shall require. (Id. p. 145, sec. 15.)

See Kansas City, M. & O. Ry. Co. of Texas v. City of Sweetwater, 137 S. W. 1117; Logue v. Southern Kansas Ry. Co. of Texas, 167 S. W. 805.

Art. 6447. (4388) (4132) Majority of directors required to elect or appoint officers.—In all cases, it shall require a majority of the directors to elect or appoint any officer of the corporation. (Id.)

Art. 6448. (4389) (4133) Directors liable when false and fraudulent dividend is declared.—If the directors of any railroad company shall declare and pay any dividend when the company is insolvent, or any dividend the payment of which would render it insolvent, they shall be jointly and severally liable for all debts of the company then existing, and for all that shall be thereafter contracted so long as they shall respectively continue in office; provided, that, if any of the directors shall be absent at the time of making the dividend, or shall object thereto, and shall within thirty days thereafter, or after their return, if absent, file a certificate of their absence or objection in writing with the clerk of the company and with the clerk of the county in which the principal office of said company is located, they shall be exempt from said liability. (P. D. 4886.)

Art. 6449. (4390) (4134) All the officers liable when false representations are made.—If any certificate or report made, or public notice given, by the officers of any such company, in pursuance of the provisions of this title, shall be false in any material representation, all the officers who shall have signed the same shall be jointly and severally liable for all the debts of the company contracted while they are officers or stockholders thereof. (P. D. 4887.)

CHAPTER FIVE

BY-LAWS

Art. 6450. (4391) (4135) Power to enact by-laws.—Every railroad corporation shall have the power to make such by-laws as it may think proper for the government of such company, the same not being inconsistent with the charter of such company or the laws. (Acts 1857, p. 95; P. D. 4911.)

See ante, art. 6442.

Art. 6451. (4392) (4136) Each share entitled to vote, etc.—In the enactment of a by-law, the stockholders of the corporation shall be entitled to one vote for each share of stock held by them, and a stockholder may vote in person or by written proxy. (Id.)

Art. 6452. (4393) (4137) When and by what vote shall be enacted, etc.—No by-laws shall be enacted, altered, amended, added to, repealed or suspended, except at a regular annual meeting of the stockholders and by a majority vote of two-thirds in value of all the stock of the corporation. (Id.)

CHAPTER SIX

STOCK AND STOCKHOLDERS

Art. 6453. (4394) (4138) Railroad stock is personal estate and transferable.—The stock of a railroad corporation shall be deemed personal estate, and shall be transferable in the manner prescribed by the by-laws of the corporation; but no such transfer shall be valid until the same shall have been made on the stock and transfer books of the company; nor shall any share be transferable until all previous calls thereon have been paid. (Acts 1876, p. 145, sec. 17; p. 144, sec. 10.)

Art. 6454. (4395) (4139) Directors may require payment of stock, etc.—The directors of such corporation may require the subscribers to the capital stock of the corporation to pay the amount by them respectively subscribed, in such manner and in such installments as the directors may deem proper. (Id. p. 145, sec. 16.)

Art. 6455. (4396) (4140) Sale of stock when owner neglects to pay.—If any stockholder shall neglect to pay any installment as required by a resolution or order of the board of directors, the said board shall be authorized to advertise said stock for sale by publication once a week for thirty days in some newspaper published on the line of said road, if there be one, and, if not, in some newspaper published in the state having a general circulation in the state; which notice shall name the stock to be sold and the time and place of such sale; and all stock so sold shall be sold at the public office or place of business of such company, and between the hours of ten o'clock a. m. and four o'clock p. m., and to the highest bidder for cash, the proceeds of such sale to be credited to the delinquent stockholder. (Id.)

Art. 6456. (4397) (4141) Stockholders shall have access to books, etc., of corporation.—All stockholders shall at all reasonable hours have access to and may examine all books, records and papers of such corporation. (Id. sec. 13.)

Art. 6457. (4398) (4142) Funds of corporation shall be used only for legitimate purposes.—It shall not be lawful for any railroad corporation to use any of the funds thereof in the purchase of its own stock, or that of any other corporation, or to loan any of its funds to any director or other officer thereof, or to permit them, or any of them, to use the same for other than the legitimate purposes of the corporation. (Id. sec. 17.)

Art. 6458. (4399) (4143) Extent of stockholder's liability for debts of corporation.—Each stockholder of any railroad corporation shall be held individually liable to the creditors of such corporation to an amount not exceeding the amount unpaid on the stock held by him, for any and all debts and liabilities of such corporation until the whole amount of the capital stock of such corporation so held by him shall have been paid. (Id. p. 146, sec. 20.)

Art. 6459. (4400) (4144) Persons holding stock who are not liable.—No person holding stock in any railroad corporation as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as a stockholder of such corporation; but the estate or person owning such stock shall be considered as holding the same and liable as a stockholder accordingly. (Id. sec. 19.)

Art. 6460. (4401) (4145) Capital stock may be increased.—In case the capital stock of any railroad corporation shall be found insufficient for constructing and operating its road, such corporation may, with the concurrence of two-thirds in value of all its stock, increase its capital stock from time to time to any amount required for the purposes aforesaid. (Id. sec. 18.)

Art. 6461. (4402) (4146) Notice of meeting for such increase, etc.—Such increase shall be sanctioned by a vote in person or by written proxy of two-thirds in amount of all the stock of such corporation, at a meeting of such stockholders called by the directors of the corporation for such purpose, by giving notice in writing to each stockholder, to be served personally, or by depositing the same in a postoffice directed to the postoffice addresses of each of said stockholders severally, postage prepaid, at least sixty days prior to the day appointed for such meeting, and also by advertising the time, place and purpose of such meeting in some newspaper published in each county through or into which the said road shall run, or be intended to run, if any newspaper shall be published therein, at least sixty days next preceding the day appointed for such meeting. (Id.)

See G., B. & S. W. Ry. v. Fontaine, 57 S. W. 872.

Art. 6462. (4403) (4147) Notice shall state what.—Such notice shall state the time and place of the meeting, the object thereof, and the amount to which it is proposed to increase such capital stock. (Id.)

Art. 6463. (4404) (4148) Increase may be not exceeding amount named in notice.—At such meeting, the capital stock of the corporation may be so increased by a vote of two-thirds in amount of the capital stock of the corporation to an amount not exceeding the amount mentioned in the notice so given. (Id.)

Art. 6464. (4405) (4149) Order or resolution increasing shall be recorded.—Every order or resolution increasing the capital stock of any such corporation shall be recorded in the office of the secretary of state; and such increase shall not take effect until such order or resolution has been so recorded. (Id.)

Art. 6464a. Decrease of capital stock; prerequisites.—A railroad corporation may, in the same manner prescribed in this chapter for an increase of capital stock, decrease its capital stock in any amount which shall not reduce the same to less than one thousand ($1,000) dollars for every mile of its road as planned and described in its charter. But no such decrease shall prejudice the rights of any creditor of such corporation in any claim or cause of action such creditor may have

against the company or any stockholder or director thereof. If such decrease relates to or affects any part of the stock that has actually been subscribed or issued, then such decrease shall not become effective until full proof is made by affidavit of the directors to the Secretary of State of the financial condition of such corporation, giving therein all its assets and liabilities, with names and postoffice addresses of all creditors and amount due each; and where the proposed decrease affects any part of the subscribed or issued stock as aforesaid the Secretary of State may require as a condition precedent to the filing of such certificate of decrease that the debts of the corporation be paid or reduced. (Acts 1915, ch. 153, sec. 1.)

Art. 6465. (4406) (4150) President and directors shall furnish statement to stockholders at regular meeting.—At the regular annual meeting of the stockholders, it shall be the duty of the president and directors to exhibit a full, distinct and accurate statement of the affairs of the corporation to the stockholders. (Acts 1876, p. 145, sec. 13.)

Art. 6466. (4407) (4151) May be required to furnish statement at special meeting.—The stockholders may, at any special meeting of stockholders, require statements similar to the one required by the preceding article from the president and directors, and when so required it shall be the duty of such president and directors to furnish the same. (Id.)

Art. 6467. (4408) (4152) Stockholders may fix amount of loans and interest thereon.—At a regular annual meeting of stockholders, or at a special meeting called for the purpose, the stockholders may, by a majority in value of all the stock of such corporation, determine the amount of loans which may be negotiated by such company for the construction of its railway and its equipment, and fix the rate of interest which may be paid, and provide for the security of such loans. (Id.)

Art. 6468. (4409) (4153) Stockholders may remove officers and elect others.—The stockholders may, by a two-thirds vote in value of all the stock, at any regular or special meeting of stockholders, remove the president or any director or other officer of such corporation, and elect others instead of those so removed, in accordance with the by-laws of such corporation, and this title. (Id.)

Art. 6469. (4410) (4154) No stock shall be issued, except, etc.—No railroad corporation shall issue any stock or bonds, except for money, labor or property actually received and applied to the purpose for which such corporation was organized; nor shall it issue any shares of stock in said company, except at its par value and to actual subscribers who pay or become liable to pay the par value thereof. (Id. p. 148, sec. 25; P. D. 4921.)

Art. 6470. (4411) (4155) Fictitious dividends, etc., void.—All fictitious dividends and other fictitious increase of the capital stock or indebtedness of any such corporation shall be void. (Id.)

Art. 6471. (4412) (4156) Penalty for violation of two preceding articles.—Every officer or director of a railroad company, who shall violate or consent to the violation of either of the two preceding articles, shall become personally liable to the stockholders and creditors of such company for the full par value of such illegal stock, or for the full amount of such fictitious dividends, increase of stock, or indebtedness, as the case may be. (P. D. 4921.)

CHAPTER SEVEN

MEETINGS OF DIRECTORS AND STOCKHOLDERS

Art. 6472. (4413) (4157) Annual meeting of directors.—The directors of every railroad company shall hold one meeting annually at their office in this state, public notice of which shall be given at least thirty days before said meeting, said notice to be published in some daily newspaper printed and published in this state. (Const. art. 10, sec. 3; Acts 1885, p. 67.)

Art. 6473. (4414) (4158) Annual meeting of stockholders.—The stockholders of every railroad corporation shall hold at least one meeting annually at the public office or place of business of such corporation in this state; and it shall be the duty of the board of directors to cause public notice to be given of the time and place of such meeting for thirty days previously thereto, as provided in the preceding article. (Acts 1876, p. 144, sec. 12.)

Ry. v. Winder, 63 S. W. 1043.

Art. 6474. (4415) (4159) Directors and stockholders may meet at same time and place.—The annual meetings of the board of directors and of the stockholders provided for in the two preceding articles may be called to meet and may be held at the same time and place, in which case one notice shall answer the purpose of both meetings; provided, it be so stated in such notice.

Art. 6475. (4416) (4160) Quorum of directors and stockholders.—A majority of the directors of any railroad corporation shall constitute a quorum to transact business, and a majority in value of two-thirds of all the stock owned by such corporation shall constitute a quorum of stockholders to transact business. (Id. sec. 12.)

Art. 6476. (4417) (4161) Special meeting of stockholders.—A special meeting of stockholders may be called at any time during the interval between the regular annual meetings of such stockholders by the directors, or by stockholders owning not less than one-fourth of all the stock of such company. (Id.)

Art. 6477. (4418) (4162) Notice of special meeting.—When any special meeting of stockholders is called, notice of the time and place of such meeting shall be given for at least thirty days prior to the time fixed for such meeting, in the same manner as is required in the case of a regular annual meeting; and such notice shall specify the purpose or purposes for which the said special meeting is called; and no other business shall be transacted at such special meeting, except that specified in such notice. (Id.)

Ry. v. Winder, 63 S. W. 1042.

Art. 6478. (4419) (4163) If quorum of stockholders should not meet.—If at any meeting of stockholders a majority in value of the stockholders equal to two-thirds

of the stock of such corporation shall not be represented in person or by proxy, such meeting shall be adjourned from day to day, not exceeding three days without transaction of any business; and if within said three days two-thirds in value of such stock shall not be represented at such meeting, then the meeting shall be adjourned and another meeting called, and notice thereof given as hereinbefore provided. (Id. p. 145, sec. 14.)

Art. 6479. (4420) (4164) Proxy must be dated within what time.—Every proxy from a stockholder shall be dated within six months previous to the meeting of the stockholders at which it is proposed to vote by virtue thereof, and if not dated within such time shall not be voted. (P. D. 4908.)

Art. 6480. (4421) (4165) What stock shall not vote.—Stock issued within thirty days before any stockholders' meeting shall not entitle the holder to vote thereat, except at the first stockholders' meeting under their articles or act of incorporation for organization; nor shall any stock be voted upon, except in proportion to the amount paid thereon, or secured to be paid by good security in addition to the subscription and stock. (P. D. 4928.)

CHAPTER EIGHT

RIGHT OF WAY

Art. 6481. (4422) (4166) Right to construct, etc., road anywhere in the state.—Any railroad corporation shall have the right to construct and operate a railroad between any points within this state and to connect at the state line with railroads of other states. (Const. art. 10, sec. 1.)

See Ry. v. Bowman, 79 S. W. 295; Texas Channel & Dock Co. v. S., 135 S. W. 522; St. Louis Southwestern Ry. Co. of Texas v. Evans, 158 S. W. 1179; Philip A. Ryan Lumber Co. v. Ball, 197 S. W. 1037.

Generally under this chapter, see Ellis v. Houston & T. C. Ry. Co., 203 S. W. 172.

Art. 6482. (4423) (4167) Right of way over public lands.—Every such corporation shall have the right of way for its line of road through and over any lands belonging to this state, and to use any earth, timber, stone or other material upon any such land necessary to the construction and operation of its road through or over said land.

See Ry. v. Bowman, 79 S. W. 295; Rockport & P. A. R. Co. v. S., 135 S. W. 263; Texas Channel & Dock Co. v. S., 135 S. W. 522; Ft. Worth & D. C. Ry. Co. v. Southern Kansas Ry. Co. of Texas, 151 S. W. 850; Texarkana & Ft. S. Ry. Co. v. Bland, 205 S. W. 727.

Art. 6483. (4424) (4168) Lineal survey.—Every railroad corporation shall have the right to cause such examination and survey for its proposed railway to be made as may be necessary to the selection of the most advantageous route, and for such purpose may enter upon the lands or waters of any person or corporation, but subject to responsibility for all damage that may be occasioned thereby. (Acts 1876, p. 147, sec. 23.)

Rainey v. Ry., 89 S. W. 768; Id. 90 S. W. 1096; Byrd Irr. Co. v. Smythe, 146 S. W. 1064.

Art. 6484. (4425) (4169) May lay out road two hundred feet wide, etc.—Such corporation shall have the right to lay out its road not exceeding two hundred feet in width, and to construct the same; and for the purpose of cuttings and embankments to take as much more land as may be necessary for the proper construction and security of its railway, and to cut down any standing trees that may be in danger of falling upon or obstructing the railway, making compensation in the manner provided by law. (Id.)

Croley v. St. Louis, etc., Ry., 56 S. W. 615; Hengy v. Missouri, K. & T. R. Co. of Texas, 109 S. W. 402; Texas Channel & Dock Co. v. S., 135 S. W. 522; Ft. Worth & D. C. Ry. Co. v. Southern Kansas Ry. Co. of Texas, 151 S. W. 850; Right of Way Oil Co. v. Gladys City Oil, Gas & Mfg. Co., 157 S. W. 737, 51 L. R. A. (N. S.) 268; Texas & P. Ry. Co. v. Hughes, 192 S. W. 1091.

Art. 6485. (4426) (4170) Right to construct across streams of water, etc.—Such corporation shall have the right to construct its road across, along, or upon any stream of water, water course, street, highway, plank road, turnpike, or canal which the route of said railway shall intersect or touch; but such corporation shall restore the stream, water course, street, highway, plank road, turnpike, or canal thus intersected or touched to its former state, or to such state as not to unnecessarily impair its usefulness, and shall keep such crossing in repair.

See G. & W. Ry. v. City of Galveston, 39 S. W. 96; Texas Midland Ry. v. Johnson, 50 S. W. 1044; S. A. & A. P. Ry. v. Belt, 59 S. W. 607; Ry. v. Steele, 69 S. W. 171; Ry. v. Sandifer, 69 S. W. 462; Ry. v. Grayson Co., 73 S. W. 64; Ry. v. Butcher, 81 S. W. 819; Ry. v. Haddox, 81 S. W. 1036; Ry. v. Walker, 97 S. W. 1081; St. Louis Southwestern R. Co. of Texas v. Smith, 107 S. W. 638; Texas Cent. R. Co. v. Randall, 113 S. W. 180; Hall v. Houston & T. C. R. Co., 114 S. W. 891; Kansas City, M. & O. Ry. Co. of Texas v. City of Sweetwater, 137 S. W. 1117; St. Louis Southwestern Ry. Co. of Texas v. Evans, 158 S. W. 1179; Stephenson v. St. Louis Southwestern Ry. Co. of Texas, 164 S. W. 1125; Timpson & H. Ry. Co. v. Smith, 165 S. W. 86; Horton v. Texas Midland R. R., 171 S. W. 1023; International & G. N. Ry. Co. v. Williams, 175 S. W. 486; West v. Galveston, H. & S. A. Ry. Co., 196 S. W. 343.

Art. 6486. (4427) Opening through fences, etc.—All railway corporations in this state, which have or which may hereafter fence their right of way, may be required to make openings or crossings through their fence and over their roadbed along their right of way every one and one-half miles thereof; provided, that, if such fence shall divide any inclosure, that at least one opening shall be made in said fence within such inclosure. (Acts 1887, p. 39.)

Burgess v. M., K. & T. Ry., 41 S. W. 703; S. A. & A. P. Ry. v. Grier, 42 S. W. 1022; Id., 49 S. W. 128; S. A. & A. P. Ry. v. Robinson, 43 S. W. 76; Hemphill v. Ry., 46 S. W. 874; M., K. & T. Ry. of T. v. Chenault, 49 S. W. 1035; Id., 60 S. W. 56; M., K. & T. Ry. v. Hanacek, 55 S. W. 1117; I. & G. N. Ry. v. Richmond, 67 S. W. 1029; Owazarzak v. Ry., 71 S. W. 793; Bean v. Ry., 101 S. W. 874; Houston E. & W. T. Ry. Co. v. Lee, 135 S. W. 694; Bennett v. Gulf, C. & S. F. Ry. Co., 146 S. W. 353; International & G. N. Ry. Co. v. Williams, 175 S. W. 486; Penshorn v. International & G. N. Ry. Co., 186 S. W. 868.

Held unconstitutional as applied to certain companies. See Gulf, C. & S. F. Ry. Co. v. Rowland, 7 S. W. 718; Gulf, C. & S. F. Ry. Co. v. Ellis, 7 S. W. 722.

Art. 6487. (4428) Width of crossings.—Such crossings shall not be less than thirty feet in width, and shall be made and kept in such condition as to admit of the free and easy passage of horses, cattle, sheep, hogs and all other domesticated animals, wagons and other vehicles. (Id. sec. 2.)

See Burgess v. Ry., 41 S. W. 703; Houston E. & W. T. Ry. Co. v. Lee, 135 S. W. 694; Bennett v. Gulf, C. & S. F. Ry. Co., 146 S. W. 353.

Art. 6488. (4429) Where may be made.—Such crossings shall be made at such times and places as may be demanded by any

two or more citizens of the state who either live or own land within five miles of the place where such crossings may be demanded. (Id. sec. 3.)

See M., K. & T. Ry. of T. v. Chenault, 49 S. W. 1035; Houston E. & W. T. Ry. Co. v. Lee, 135 S. W. 694; Bennett v. Gulf, C. & S. F. Ry. Co., 146 S. W. 353.

Art. 6489. (4430) Demand to be in writing.—Such demand shall be made in writing, of the nearest local agent of such railway company to the place where such crossing or crossings are demanded, and shall state when and where such crossing is desired. (Id. sec. 4.)

See Houston E. & W. T. Ry. Co. v. Lee, 135 S. W. 694; Bennett v. Gulf, C. & S. F. Ry. Co., 146 S. W. 353.

Art. 6490. (4431) Thirty days' time for completion.—No railway company shall be required to complete such crossing as may be demanded under this chapter in a shorter time than thirty days from the day on which such demand is first made, nor shall they be required to make any crossings where they have already left such crossings in each one and one-half miles of their road, except inside of inclosures, as provided in article 6486. (Id. sec. 5.)

See Burgess v. M., K. & T. Ry., 41 S. W. 703; Bennett v. Gulf, C. & S. F. Ry. Co., 146 S. W. 353.

Art. 6491. (4432) Distance from place.—Any railway company, upon such demand, shall be deemed to have complied therewith upon making such crossings within four hundred yards of the place where they are demanded, within the time herein allowed. (Id. sec. 6.)

See Houston E. & W. T. Ry. Co. v. Lee, 135 S. W. 694; Bennett v. Gulf, C. & S. F. Ry. Co., 146 S. W. 353.

Art. 6492. (4433) Failure, etc.—Whenever any railway company shall fail or refuse to comply with the requirements of this chapter, after demand is made in accordance herewith, such railway company shall pay to the persons who made such demand each the sum of five hundred dollars for each and every month they shall so fail or refuse to comply with such demand, the same to be recovered by suit in any court of this state having jurisdiction of the amount. (Id. sec. 7.)

See M., K. & T. Ry. v. Chenault, 49 S. W. 1035; Houston E. & W. T. Ry. Co. v. Lee, 135 S. W. 694; Bennett v. Gulf, C. & S. F. Ry. Co., 146 S. W. 353.

Art. 6493. (4434) Intersections of roads and streets.—Nothing in this chapter shall be so construed as to affect the law requiring railroad companies to provide proper crossings at intersection of all roads and streets. (Id. sec. 8.)

See Houston E. & W. T. Ry. Co. v. Lee, 135 S. W. 694.

Art. 6494 (4435) Crossings of public roads.—It shall be the duty of every railroad company in this state to place and keep that portion of its roadbed and right of way over or across which any public county road may run, in proper condition for the use of the traveling public; and, in case of its failure to do so for thirty days after written notice given to the section boss of the section where such work or repairs are needed by the overseer of such public road, it shall be liable to a penalty of ten dollars for each and every week such railroad company may fail or neglect to comply with the requirements of this article, recoverable in any court having jurisdiction of the amount involved in a suit in the name of the county in which the cause of action accrued. (Acts 1885, p. 45.)

See G., C. & S. F. Ry. v. Milam Co., 38 S. W. 747; I. & G. N. Ry. v. Richmond, 67 S. W. 1029; St. Louis Southwestern R. Co. of Texas v. Smith, 107 S. W. 638; Stephenson v. St. Louis Southwestern Ry. Co. of Texas, 164 S. W. 1125; International & G. N. Ry. Co. v. Williams, 175 S. W. 486.

Art. 6495. (4436) (4171) Shall first construct necessary culverts, or sluices.—In no case shall any railroad company construct a roadbed without first constructing the necessary culverts or sluices, as the natural lay of the land requires, for the necessary drainage thereof. (Acts 1876, p. 147.)

See Robbins v. M., K. & T. Ry., 41 S. W. 62; M., K. & T. Ry. v. McGregor, 68 S. W. 711; Ry. v. Steele, 69 S. W. 171; Ry. v. Ryan, 72 S. W. 72; Ry. v. Beck, 80 S. W. 538; Ry. v. Whitaker, 82 S. W. 1051; Taylor v. Ry., 83 S. W. 738; Ry. v. Gurley, 83 S. W. 842; Ry. v. Boyce, 87 S. W. 395; G., C. & S. F. Ry. v. Harbison, 88 S. W. 452; Ry. v. Rollins, 89 S. W. 1099; Ry. v. Seliman, 89 S. W. 1101; Ry. v. Jenkins, 89 S. W. 1106; Ry. v. Pearce, 95 S. W. 1133; Ry. v. Walker, 97 S. W. 1061; Ry. v. Barr, 99 S. W. 437; Ry. v. Avey, 100 S. W. 963; Missouri, K. & T. Ry. Co. of Texas v. Macon, 115 S. W. 847; Ft. Worth & D. C. Ry. Co. v. Suter, 118 S. W. 215; Freeman v. Field, 135 S. W. 1073; Timpson & H. Ry. Co. v. Smith, 165 S. W. 86; Missouri, K. & T. Ry. Co. of Texas v. Evans, 183 S. W. 93; Galveston, H. & S. A. Ry. Co. v. Wurzbach, 189 S. W. 1006; Pence v. Galveston, H. & S. A. Ry. Co., 190 S. W. 538; Jefferson County Traction Co. v. Wilhelm, 194 S. W. 448; San Antonio & A. P. Ry. Co. v. Behne, 198 S. W. 680.

Art. 6496. (4437) (4172) Navigable waters shall not be obstructed.—Nothing in this chapter shall be so construed as to authorize the erection of any bridge, or any other obstruction across or over any stream or water navigable by steamboats or sail vessels at the place where any bridge, or other obstruction, may be proposed to be placed so as to prevent the navigation of such stream or water. (Id.)

See Gulf, C. & S. F. Ry. Co. v. Meadows, 120 S. W. 521.

Art. 6497. (4438) (4173) Streets, etc., of incorporated cities or towns shall not be taken without, etc.—Nothing in this chapter shall be so construed as to authorize the construction of any railroad upon or across any street, alley, square, or highway of any incorporated city or town without the assent of the corporation of said city or town. (Id.)

See G. & W. Ry. v. City of Galveston, 37 S. W. 27; Id., 39 S. W. 96; Laager v. City of San Antonio, 57 S. W. 61; Ry. v. Sandifer, 69 S. W. 462; Kansas City, M. & O. Ry. Co. of Texas v. City of Sweetwater, 137 S. W. 1117; Galveston & W. Ry. Co. v. City of Galveston, 155 S. W. 273; Id., 186 S. W. 368.

Art. 6498. (4439) (4174) In case of highways, plank roads, etc.—In case of the construction of any railway along highways, plank roads, turnpikes, or canals, such railroad corporation shall either first obtain the consent of the lawful authorities having control or jurisdiction of the same or condemn the same under the provisions of law. (Id.)

Art. 6499. (4440) (4175) Shall have the right to cross, intersect, etc., other railways.—Such corporation shall have the right to cross, intersect, join and unite its railway with any other railway before constructed at any point on its route and upon the grounds of such other railway corporation, with the necessary turnouts, sidings and switches, and other conveniences in

furtherance of the objects of its connection. (Id.)

See Sabine & E. T. Ry. Co. v. Gulf & I. Ry. Co., 46 S. W. 784; Ry. v. Jolley, 72 S. W. 871; I. & G. N. Ry. v. Ry. Commission, 86 S. W. 16.

Art. 6500. (4441) (4176) Intersected railways shall do what.—Every corporation whose railway is or shall be hereafter intersected by any new railway shall unite with the corporation owning such new railway in forming intersections and connections and grant to such new railway facilities therefor. (Id.)

See I. & G. N. Ry. v. Ry. Commission, 86 S. W. 16.

Art. 6501. (4442) (4177) When the two corporations can not agree.—If the corporations can not agree upon the amount of compensation for any such crossing, intersection or connection, or the points and manner of the same, their differences shall be adjusted in the manner provided by law. (Id.)

See Sabine, etc., Ry. v. G. & I. Ry., 46 S. W. 784.

Art. 6502. (4443) (4178) May enter upon adjacent land and take material, etc.—Any railroad corporation may enter upon and take from any land adjacent to its road earth, gravel, stone, or other materials, except fuel and wood, necessary for the construction of its railway, paying, if the owner of such land and the corporation can agree thereto, the value of such material taken and the amount of damage occasioned to any such land or appurtenances, and, if such owner and corporation can not agree, then the value of such material and the damage occasioned to such real estate may be ascertained, determined and paid in the manner provided in this chapter. (Id. sec. 22.)

Art. 6503. (4444) (4179) Value of same and damages shall first be paid.—The value of such material and the damage to such real estate shall in all cases be ascertained, determined and paid before such corporation can enter upon and take such material. (Id.)

Art. 6504. (4445) (4180) In case corporation and owner can not agree, etc.—If any railroad corporation shall at any time be unable to agree with the owner for the purchase of any real estate, or the material thereon, required for the purpose of its incorporation or the transaction of its business, for its depots, station buildings, machine and repair shops, for the construction of reservoirs for the water supply, or for the right-of-way, or for a new or additional right-of-way, for change, or relocation or road bed, to shorten the line, or any part thereof, or to reduce its grades, or any of them, or for double tracking its railroad or constructing and operating its tracks, which is hereby authorized and permitted or for any other lawful purpose connected with or necessary to the building, operating or running its road, such corporation may acquire such property in the manner provided in this Chapter; provided, that the limitation in width prescribed in Article 6484, Revised Statutes, 1911, shall not apply to real estate, or any interest therein, required for the purposes herein mentioned, other than right-of-way, and shall not apply to right-of-way when necessary for double tracking or constructing or adding additional railroad tracks, and that real estate, or any interest therein, to be acquired for such other purposes, or any of them, need not adjoin or abut on the right-of-way; provided, further, that no change of the line through any city or town, or which shall result in the abandonment of any station or depot, shall be made, except upon written order of the Railroad Commission of Texas, authorizing such change; and provided, further, that no railroad corporation shall have the right under this Act to condemn any land for the purposes mentioned in this Article situated more than two miles from the right-of-way of such railroad corporation; and provided, further, that nothing herein shall be construed to repeal or limit the provisions of Section 1, Chapter 93 of an Act passed at the Fourth Called Session of the Thirty-fifth Legislature, approved April 13, 1918. (Id. p. 146, sec. 21; amended Acts 1901, p. 46; Acts 1919, ch. 151, sec. 1.)

See Sabine, etc., Ry. v. G. & I. Ry., 46 S. W. 784; Rainey v. Ry., 80 S. W. 95; Ry. v. Anderson, 81 S. W. 781; Rainey v. Ry., 89 S. W. 768; Id., 90 S. W. 1096; Galveston & W. Ry. Co. v. City of Galveston, 155 S. W. 273; Southern Kansas Ry. Co. of Texas v. Vance, 155 S. W. 696; Ft. Worth & D. C. Ry. Co. v. Mapes, 156 S. W. 528; Right of Way Oil Co. v. Gladys City Oil, Gas & Mfg. Co., 157 S. W. 737, 51 L. R. A. (N. S.) 268; State v. St. Louis Southwestern Ry. Co. of Texas, 165 S. W. 491; Matagorda County Drainage Dist. No. 5 v. Borden, 195 S. W. 308; Jeff Bland Lumber & Building Co. v. Railroad Comm. of Texas, 203 S. W. 402.

Art. 6505. (4446) (4181) Shall not enter upon land, etc., except for a lineal survey.—No railroad company shall enter upon, except for a lineal survey, any real estate whatever, the same being private property, for the purpose of taking and condemning the same, or any material thereon, for any purpose whatever, until the said company shall agree with and pay the owner thereof all damages that may be caused to the lands and property of said owner by the condemnation of said real estate and property, and by the construction of such road. (P. D. 4922.)

Art. 6506. (4447) (4182) Statement to be filed with county judge.—If such company and said owner can not agree upon the damages, it shall be the duty of said company to state in writing the real estate and property sought to be condemned, the object for which the same is sought to be condemned, the name of the owner thereof and his residence, if known, and file the same with the county judge of the county in which such property, or a part thereof, is situated; provided, if the owner resides in either county in which a portion of the land is situated, the same shall be filed in the county of his residence. (Acts 1885, p. 54.)

See H. & T. C. Ry. v. Postal T. & C. Co., 45 S. W. 179; Sullivan v. Ry., 68 S. W. 745; Rainey v. Ry., 80 S. W. 95; Johnston v. Galveston Co., 85 S. W. 511; Kirby v. P. & G. Ry., 88 S. W. 281; Rabb v. La Feria Mut. Canal Co., 130 S. W. 916; Cotulla v. La Salle Water Storage Co., 153 S. W. 711; Right of Way Oil Co. v. Gladys City Oil, Gas & Mfg. Co., 157 S. W. 737, 51 L. R. A. (N. S.) 268.

Art. 6507. Regular judge disqualified; special judge appointed.—Where any petition or statement for condemnation is presented to a county judge, as provided in the preceding article, and such judge shall be disqualified to act by reason of any of the matters mentioned in article 1736, he shall indorse his certificate of such disqualification upon such petition, or statement for condemnation, and file the same with the coun-

ty clerk, who shall make a certified copy of such petition, or statement for condemnation, and of such indorsement thereon, and forward the same forthwith to the governor; whereupon the governor shall proceed to appoint some person learned in the law to act as special judge, who shall have and exercise all of the powers conferred upon the county judge by this chapter, and shall proceed to make the appointment of commissioners as provided by the succeeding article upon the said petition or statement for condemnation already filed, and in the event objections shall be filed by either party to the award of commissioners, the person so appointed by the governor shall preside at all trials of the cause in the county court until such time as the disqualification of the county judge may have ceased; provided, that any time before such disqualification is so certified to the governor, the parties by agreement may select such special judge. (Acts 1901, p. 20, sec. 1.)

Art. 6508. (4448) (4183) County judge shall appoint commissioners.—Upon the filing of such statement, the county judge shall forthwith, either in term time or in vacation, appoint three disinterested freeholders of said county as special commissioners to assess said damages, giving preference to those that may be agreed on between said corporation and said owner. (Acts 1860, p. 60.)

See Sayles' Practice, p. 116.

Art. 6509. (4449) (4184) Commissioners shall be sworn.—The said commissioners shall be sworn by the county judge, or by any officer authorized by law to administer oaths, to assess said damages fairly and impartially and in accordance with law. (Id.)

Art. 6510. (4450) (4185) Commissioners shall select a day and place of hearing.—Said commission shall, without delay, appoint a day and place for hearing said parties; and the day appointed shall be the earliest practicable day, and the place selected for such hearing shall be as near as practicable to the property in controversy, or at the county seat of the county in which the property is situated. (Id.)

Art. 6511. (4451) (4186) Shall issue written notice to parties.—The commissioners shall issue a notice in writing to each of the parties, notifying them of the time and place selected for the hearing. (Id.)

See G., C. & S. F. Ry. v. S. W. T. & T. Co., 45 S. W. 152.

Art. 6512. (4452) (4187) Manner of serving notice.—Said notice shall be served upon said parties at least five days before the day of hearing, exclusive of the day of service, and shall be served by delivering a copy of the same to the party, his agent or attorney, and may be served by any person competent to testify.

Art. 6513. (4453) (4188) Return of notice.—The person making such service shall return the original notice to said commissioners, or any one of them, on or before the day set for the hearing, with his return in writing thereon, stating how and when the same was served.

Art. 6514. (4454) (4189) When the property belongs to estate or to a minor, notice shall be served on whom.—When the property in controversy is the property of the estate of a deceased person, or of a minor, and such estate has a legal representative, or such minor has a guardian, the notice shall be served upon such legal representative, or guardian. (Id.)

Art. 6515. (4455) (4190) Property of non-resident, unknown owner, or one who secretes himself.—When the property in controversy belongs to a non-resident of this state, or to an unknown person, or to a person whose residence is unknown, or who secretes himself so that the process of law can not be served upon him, such notice may be served upon such owner by publication in the same manner as is provided for service of citation in article 1874 of the Revised Civil Statutes. (Acts of 1885, p. 54; Amend. 1895, Sen. Jour., No. 83, p. 482.)

Art. 6516. (4457) (4191) Proceedings of commissioners.—When service of notice has been perfected, the commissioners shall, at the time and place appointed, or at any other time and place to which said hearing has been adjourned, proceed to fully hear said parties; but, if upon the day set for the hearing, the service of notice has not been perfected the said hearing shall be postponed from time to time until such service has been perfected.

Art. 6517. (4458) (4192) Power of commissioners.—Said commissioners for the purpose mentioned in this chapter shall have power to compel the attendance of witnesses and the production of testimony, and to administer oaths and punish for contempt as fully as is provided by law for the district or county court.

Art. 6518. (4459) (4193) Rule of damages.—Said commissioners shall hear evidence as to the value of the property sought to be condemned, and as to the damages which will be sustained by the owner thereof by reason of such condemnation, and as to the benefits that will result to the remainder of such property belonging to such owner, if any, by the construction and operation of such railroad, and shall according to this rule assess the actual damage that will accrue to such owner by said condemnation.

See Gregory v. G. & I. Ry., 54 S. W. 617; City of San Antonio v. Sullivan, 57 S. W. 45; Concho, S. S. & L. V. Ry. Co. v. Sanders, 144 S. W. 693; Isenberg v. Gulf, T. & W. Ry. Co., 152 S. W. 233; St. Louis, B. & M. Ry. Co. v. Barnes, 162 S. W. 373; McAmis v. Gulf, C. & S. F. Ry. Co., 184 S. W. 331.

Art. 6519. (4460) (4194) Same subject.—When the whole of a person's real estate is condemned, the damages to which he shall be entitled shall be the market value thereof in the market in which the same is located.

See State v. Hutchinson, 133 S. W. 498; Isenberg v. Gulf, T. & W. Ry. Co., 152 S. W. 233; City of Ft. Worth v. Morgan, 168 S. W. 976.

Art. 6520. (4461) (4195) Same subject.—When only a portion of a person's real estate is condemned, the commissioners shall estimate the injuries sustained and the benefits received thereby by the owner as to the remaining portion of such real estate; whether such remaining portion is increased or diminished in value by such condemnation, and the extent of such increase or diminution, and shall assess the damages accordingly.

See City of San Antonio v. Sullivan, 57 S. W. 45; State v. Hutchinson, 133 S. W. 498; Isenberg v. Gulf, T. & W. Ry. Co., 152 S. W. 233.

Art. 6521. (4462) (4196) Injuries and benefits which shall not be estimat-

ed.—In estimating either the injuries or the benefits, as provided in the preceding article, those injuries or benefits which the owner of such real estate sustains or receives in common with the community generally, and which are not peculiar to him and connected with his ownership, use and enjoyment of the particular parcel of land, shall be altogether excluded from such estimate.

See H. & T. C. Ry. v. Postal Tel. & Cable Co., 45 S. W. 179; Quanah, A. & P. Ry. Co. v. Collett, 190 S. W. 1128.

Art. 6522. (4463) (4197) Assessment shall be in writing, dated, signed, etc.—When the said commissioners shall have assessed the damages, they shall reduce their decision to writing, stating therein the amount of damages due to the owner of such real estate, if any be found to be due, and shall date the same and sign it, and shall file the said assessment, together with all other papers connected with the case, with the county judge without delay.

Art. 6523. (4464) (4198) Other commissioners may be appointed, when.—Should the said commissioners, or either of them, from any cause be unable or fail to act as such, the county judge may at any time appoint another commissioner or commissioners to supply the place or places of those who are unable or who fail to act.

Art. 6524. (4465) (4199) Pay of commissioners.—Commissioners appointed under this chapter shall be entitled to receive for their services three dollars each for every day they may be engaged in the performance of their duties as such commissioners, and they may withhold their decision until their said fees are paid to them.

Art. 6525. (4466) (4200) Corporation shall pay expenses of serving notice.—The railroad company seeking to condemn property shall defray all expenses of serving notice upon the owner of such property, but shall be entitled to recover said expenses from such owner in case it shall be decided that said owner shall pay the costs of the proceeding.

Art. 6526. (4467) (4201) Commissioners shall make out cost bill, etc.—The commissioners may adjudge the costs against either party, and shall make out a statement in writing of all the costs which have accrued before them, and shall state therein against which party the said costs have been adjudged, and shall sign the same and deliver it, with the other papers of the cause, to the county judge.

Art. 6527. (4468) (4202) Either party, if dissatisfied with decision, may remove cause, etc.—If either party be dissatisfied with the decision of such commissioners, he may, within ten days after the same has been filed with the county judge, file his opposition thereto in writing, setting forth the particular cause or causes of his objection; and thereupon the adverse party shall be cited, and said cause shall be tried and determined as in other civil causes in said court. (P. D. 4922.)

See Sayles' Practice, p. 116; T. & N. O. Ry. v. Postal Tel. & Cable Co., 52 S. W. 108.

Art. 6528. (4469) (4203) Decision shall be made the judgment of the court, when.—If no objections are filed to such decision within the time prescribed in the preceding article, the county judge shall cause the said decision to be recorded in the minutes of his court, and shall make the same the judgment of said court, and may issue the necessary process to enforce the same.

Art. 6529. (4470) (4204) How costs awarded.—The costs of the proceedings before the commissioners and in the court shall be determined as follows, to wit: If the said commissioners shall award greater damages than the said company offered to pay before the proceedings commenced, or if objections are filed to the decision in the county court under the provisions of this chapter, and the judgment of the court is for a greater sum than the amount awarded by the commissioners, then the said company shall pay all costs; but if the amount awarded by said commissioners as damages, or if the judgment of the county court shall be for the same or less amount of damages than the amount offered by the company before proceedings were commenced, then the costs shall be paid by the owner of the property. (Id.)

Art. 6530. (4471) (4205) Damages must be paid before property is taken.—In no case shall such corporation be entitled to enter upon and take the property condemned, without first having paid whatever amount of damages and costs may have been awarded or adjudged against it by such commissioners, or deposited money to cover the same in the court wherein such condemnation proceedings are pending. But if the plaintiff in the condemnation proceedings should desire to enter upon and take possession of the property sought to be condemned, pending litigation, it may do so at any time after the award of the commissioners, upon the following conditions, to-wit:

First. It shall pay to the defendant the amount of damages awarded or adjudged against it by the commissioners, or deposit the same in money in court, subject to the order of the defendant, and also pay the costs awarded against it.

Second. In addition thereto, it shall deposit in said court a further sum of money equal to the amount of the damages awarded by the commissioners, and which shall be held, together with the award itself, should it be deposited in court instead of being paid, exclusively to secure all damages that may be awarded or adjudged against the plaintiff; and it shall also execute a bond with two or more good and solvent sureties, to be approved by the judge of the court in which such condemnation proceedings are pending, conditioned for the payment of any further costs that may be adjudged against it, either in the court below or upon appeal.

Third. Should it be determined on final decision of the case that the right to condemn the property in question does not exist, the plaintiff shall surrender possession thereof, if he has taken possession pending litigation, and the court shall so adjudge and order a writ of possession for the property in favor of the defendant, and the court may also inquire what damages, if any, have been suffered by the defendant by reason of the temporary possession of the plaintiff, and order the same paid out of the award or other money deposited; provided, that in any case where the award paid the defendant or appropriated by him exceeds the value of the property

as determined by the final judgment, the court shall adjudge the excess to be returned to the plaintiff.

If the cause should be appealed from the decision of the county court, the appeal shall be governed by the same law as in other cases; except the judgment of the county court shall not be suspended thereby. The rules hereinbefore laid down for governing railroad corporations shall likewise apply to all persons and corporations having the right of eminent domain. (Const., art. 1, sec. 17; amended Acts 1899, p. 105.)

See Crary v. Port Arthur Channel & Dock Co., 45 S. W. 842; Tex. Mid. Ry. v. S. W. T. & T. Co., 58 S. W. 152; M. K. & T. Ry. v. Chenault, 60 S. W. 55; G. C. & S. F. Ry. v. S. W. T. & T. Co., 61 S. W. 406; Davidson v. T. & N. O. Ry., 67 S. W. 1093; T. & N. O. Ry. v. Orange & N. W. Ry., 68 S. W. 801; Parks v. Ry., 78 S. W. 533; Hausman v. Ry., 82 S. W. 1052; Johnson v. O'Rouke & Co., 85 S. W. 501; Plowman v. Dallas Co., 88 S. W. 252; Baldwin v. City of San Antonio, 125 S. W. 596; Houston, B. & T. Ry. Co. v. Hornberger, 141 S. W. 311; Beaumont & G. N. R. R. v. Elliott, 148 S. W. 1125; Houston Belt & Terminal Ry. Co. v. Hornberger, 157 S. W. 744; Texas & P. Ry. Co. v. Hughes, 192 S. W. 1091; Jefferson County Traction Co. v. Wilhelm, 194 S. W. 448; Matagorda County Drainage Dist. No. 5 v. Borden, 195 S. W. 308.

Art. 6531. (4472) Practice in case specified.—When any railroad company is sued for any property occupied by it for railroad purposes, or for damages thereto, the court in which such suit is pending may determine all matters in dispute between the parties, including the condemnation of the property, upon petition or cross-bill asking such remedy by defendant, but the plea for condemnation shall be an admission of the plaintiff's title to such property. (Acts 1889, p. 18.)

See G. & W. Ry. v. Kinkhead, 60 S. W. 468; Ry. v. True, 80 S. W. 120; Rabb v. La Feria Mut. Canal Co., 130 S. W. 916; Vance v. Southern Kansas Ry. Co. of Texas, 173 S. W. 264; Pecos & N. T. R. Co. v. Malone, 190 S. W. 809; Quanah, A. & P. Ry. Co. v. Collett, 190 S. W. 1128; Matagorda County Drainage Dist. No. 5 v. Borden, 195 S. W. 308.

Art. 6532. (4473) (4206) The right of way, how construed.—The right of way secured or to be secured to any railway company in this state, in the manner provided by law, shall not be so construed as to include the fee simple estate in lands, either public or private, nor shall the same be lost by the forfeiture or expiration of the charter, but shall remain subject to an extension of the charter or the grant of a new charter over the same way without a new condemnation. (Acts 1861, p. 12.)

Art. 6533. (4474) (4207) Right of way reserved out of lands granted to railroad companies.—The right of way is hereby reserved to any railroad companies incorporated by the laws of this state, or that may hereafter be so incorporated, to the extent of one hundred feet on each side of said road, or roads that cross over, or extend through any lands granted, or that may be hereafter granted, to any railroad company by the legislature, with the right to take from the lands so granted such stone, timber and earth as such road may need in the construction of its line of road. (P. D. 7389a.)

Art. 6534. (4475) (4208) Right of way vested by judgment of the court.—Whenever the right of way has been acquired, as hereinbefore provided, the judgment of the court shall vest such right in the company so acquiring the same.

CHAPTER NINE

OTHER RIGHTS OF RAILROAD CORPORATIONS

Art. 6535. (4476) (4209) Shall have succession, etc.—All railroad corporations shall have succession, and in their corporate name may sue and be sued, plead and be impleaded. (Acts 1876, p. 142, sec. 4.)

Art. 6536. (4477) (4210) May have a seal.—Any such corporation may have and use a seal, which it may alter at pleasure. (Id.)

Art. 6537. (4478) (4211) Shall have the right to purchase and hold lands and other property.—Any railroad company shall have the right to purchase, hold and use all such real estate and other property as may be necessary for the construction and use of its railway and the stations and other accommodations necessary to accomplish the objects of its incorporation, and to convey the same when no longer required for the use of such railway. (Id. p. 143, secs. 6, 23.)

Art. 6538. (4479) (4212) Shall have the right to receive and hold grants, etc.—Such corporations shall have the right to take, hold and use such voluntary grants of real estate and other property as shall be made to it in aid of the construction and use of its railway, and to convey the same when no longer required for the uses of such railway, in any manner not incompatible with the terms of the original grant. (Id.)

Art. 6539. (4480) (4213, 4277) Shall alienate lands, except, etc.; forfeiture.—All lands acquired by railroad companies under the provisions of this chapter, or any general laws, shall be alienated by said companies, one-half in six years, and one-half in twelve years, from the issuance of patents to the same, and all lands so acquired by railroad companies, and not alienated as herein required, shall be forfeited to the state and become a part of the public domain and liable to location and survey as other unappropriated lands. All lands purchased by or donated to a railroad corporation, except such as are used for depot purposes, reservations for the establishment of machine shops, turnouts and switches, shall be alienated and disposed of by said company in the same manner and time as is required when lands have been received from the state. (Id.; Amend. 1895, Sen. Jour., No. 84, p. 482.)

Art. 6540. (4481) (4214) Preceding articles to apply to all companies.—The three preceding articles shall apply to such corporations as are prohibited by their acts of incorporation from purchasing or receiving donations of land, as well as to those corporations that are not so prohibited. (Id. p. 143, sec. 6.)

Art. 6541. (4482) (4215) Right to convey persons and property.—Such corporation shall have the right to receive and convey persons and property on its railway by the power and force of steam or by any mechanical power. (Id. p. 147, sec. 23.)

Art. 6542. (4483) (4216) Right to erect and maintain buildings, etc.—Such corporation shall have the right to erect and maintain all necessary and convenient buildings and stations, fixtures and machinery for the accommodation and use of passen-

gers, freights and business interests, or which may be necessary for the construction or operation of its railway; but no railway company shall have the power, either by its own employés or other persons, to construct any buildings along the line of their railroad to be occupied by their employés or others, except at their respective depot stations and section houses, and at such places only such buildings as may be necessary for the transaction of their legitimate business operations, and for shelter for their employés, nor shall they use, occupy or cultivate any part of the right of way over which their respective roads may pass, with the exception aforesaid, for any other purpose than the construction and keeping in repair their respective railways. (Id.)

See Ry. v. Mott, 81 S. W. 285; Ry. v. Anderson, 81 S. W. 781; Stephenson v. St. Louis Southwestern Ry. Co. of Texas, 181 S. W. 563.

Art. 6543. (4484) (4217) Right to regulate time, etc., of transportation.—Such corporation shall have the right to regulate the time and manner in which passengers and property shall be transported, and the compensation to be paid therefor, subject nevertheless to the provisions of this or any other law that may hereafter be enacted. (Id.)

See Ry. v. Currie, 76 S. W. 810.

Art. 6544. (4486) (4219) Right to borrow money, issue bonds, etc.—Such corporation shall have the right, from time to time, to borrow such sums of money as may be necessary for constructing, completing, improving or operating its railway, and to issue and dispose of its bonds for any amount so borrowed, and to mortgage its corporate property and franchise to secure the payment of any debt contracted by such corporation for the purposes aforesaid, subject, however, to other provisions of this title. (Id.)

See G. B. & S. W. Ry. v. Fontaine, 57 S. W. 872.

Art. 6545. (4487) (4220) Mortgage invalid, unless, etc.—No mortgage by such corporation shall be valid, unless authorized by a resolution adopted by a vote of two-thirds of all the stock of such company, after notice in a manner provided in this title for increasing the capital stock of such corporations. (Id.)

See G. B. & S. W. Ry. v. Fontaine, 57 S. W. 872.

Art. 6546. (4488) (4221) Resolution authorizing mortgage shall be recorded.—When any such resolution has been adopted in the manner provided in the preceding article, it shall be recorded in the office of the secretary of state, and no such resolution shall take effect until so recorded. (Id.)

Art. 6547. (4489) (4222) Directors may pay bonds with stock.—The directors shall be empowered, in pursuance of any such resolution, to confer on any holder of any bond for money so borrowed as aforesaid, the right to convert the principal of such bond into the stock of such corporation at any time not exceeding ten years after the date of such bond, under such regulations as may be provided in the by-laws of such corporation. (Id.)

Art. 6548. (4490) When terminus on coast is destroyed.—Any railway company in the state of Texas having a terminus on the coast, the said terminus being a county site, and the same having been destroyed by storms and cyclones, and when said county site has been removed back from the coast near the line of said railway, it shall be lawful for said railway company to remove and take up its track from its original terminus on the coast to a point opposite or near said new county site; provided, said railway company make its terminus at and build its road to said new county site. (Acts 1887, p. 6.)

Art. 6548a. Abandonment, change, or relocation of line; petition; order.—When any railroad in this state whether incorporated under State or Federal charter desires to abandon, change or relocate any portion of its line or railroad within this state adjacent to but not within any incorporated City of 50,000 or more inhabitants of this state according to the United States census, it shall present a petition therefor to the Railroad Commission of Texas showing that portion of its line sought to be changed, relocated or abandoned and the situation of the new or relocated line, with the reasons justifying the same; thereupon the Railroad Commission of Texas shall set aside said application for hearing and give public notice thereof of not less than ten days in the locality where such change is desired by publishing notice in a newspaper of general circulation published nearest thereto, setting out substantially what such contemplated change may be; and if after such hearing the Railroad Commission of Texas shall be of opinion that it is to the public interest to permit such change, relocation or abandonment of said line, it shall enter its order approving same and thereupon said railroad corporation or receivers of any railroad shall be empowered to make such change, relocation or abandonment; provided that nothing contained herein shall be construed to authorize the Railroad Commission of Texas to permit any railroad corporation or receivers of any railroad to abandon such substantial part of its line as shall amount to impairment of its charter contract or deprive any city or town of railroad facilities. Provided that the Railroad Commission of Texas shall not exercise the power herein granted unless and until said railroad corporation or receivers of any railroad shall have obtained the permission of the County Commissioners Court of the County for such change, relocation or abandonment, which permission shall be evidenced by the duly authenticated order of such court which shall accompany the petition of such railroad corporation or receivers of any railroad to the Railroad Commission of Texas. (Acts 1918, 4th C. S., ch. 27, sec. 1.)

Art. 6548b. Same subject.—When any Railroad Corporation or receivers of any railroad of the State desire to change, relocate or abandon any part of its line within any incorporated City containing 50,000 or more inhabitants according to the United States census, it shall present its petition therefor to the governing legislative authority of such city said petition to be also supported by the names of not less than five hundred resident citizens who shall be property owners in said city, showing the reasons therefor and the part of the line sought to be changed, relocated or abandoned, the new location, or arrangements proposed for opera-

tion; whereupon such governing legislative authority if of opinion that the same is for the public interest, shall enter its order permitting such change, relocation or abandonment of said line. That thereupon the said railroad corporation or Receivers of any railroad shall present its petition to the Railroad Commission of Texas praying for authority to make such change, relocation or abandonment, with a description of that portion of its lines; providing that no change shall be made that will seriously affect the charter obligations of any railroad company sought to be changed, relocated or abandoned, together with a description of the changed or relocated line, or arrangement for the new operation, which petition shall be accompanied by the order of the governing legislative authority of the City as aforesaid approving same; whereupon the Railroad Commission of Texas shall set down such application for public hearing upon not less than ten days notice, and if upon such hearing the Railroad Commission of Texas shall be of opinion that the public interest will be conserved by the granting of such petition, it shall enter its order to that effect and thereupon said railroad corporation or Receivers of any railroad shall have full power to make such change, relocation or abandonment of its line. Providing that no application to alter, change or re-locate railway tracks, as contemplated by this section, shall be acted upon by the governing Legislative authority of such city until 30 days after the petition of citizens provided for herein shall have been filed with said body, and publication thereof has been made for two consecutive weeks in a newspaper of general circulation within the limits of said city, prior to action had thereon. (Id. sec. 2.)

Art. 6548c. Same subject; power of eminent domain.—When any railroad corporation or Receivers of any railroad shall have been empowered under the provisions of this Act, to change, relocate or abandon its line of railroad in this State, it shall have full power to acquire by condemnation or otherwise all lands for rights of way, depot grounds, shops, roundhouses, water supply sites, sidings, switches, spurs or any other lawful purpose connected with or necessary to the building, operating or running of its road as changed, relocated or abandoned; provided, however, that all property so acquired is hereby declared to be for and is charged with public use so far as same may be necessary. (Id. sec. 3.)

Art. 6548d. Same subject; certain acts validated.—All changes, relocations and abandonments of parts of their lines by railroad corporations or Receivers of any railroad in or adjacent to any city having a population according to the United States census of 50,000 inhabitants or over, heretofore made with the permission of the Railroad Commission of Texas or authorized by its written order, are hereby validated and made legal as fully as if made under the provisions of this Act, and such permission or written order of the Railroad Commission of this State, given prior hereto, shall be full power and authority to a railroad corporation or Receivers of any railroad to make such change, relocation or abandonment of parts of its line; providing that this Act shall not affect any right or rights for damages that any person, firm or corporation may now have, may have had or may have in the future for damages caused by any such removal, change or abandonment. (Id. sec. 4.)

Section 5 repeals all inconsistent acts or parts of acts.

Art. 6548e. Same subject; hearing of application.—Whenever the governing authority of any City containing 50,000 inhabitants or more shall present to the Railroad Commission of this State its application for any change or relocation of any tracks of any railroad corporation or Receivers of any railroad in such way as to better serve the public interest, said Railroad Commission shall set down such application for a hearing after giving ten days notice to such railroad corporation or Receivers of any railroad, whose tracks are sought to be changed or relocated and after such a hearing may make its order directing such change or relocation if in the opinion of the Railroad Commission such change or relocation would be to the best interest of all parties concerned. Provided that no application to alter, change or relocate railway tracks, as contemplated by this section, shall be determined upon by the governing legislative authority of such city until 30 days after publication of the proposed change or relocation of said railway tracks shall have been made in the official newspaper of the said city. (Id. sec. 6.)

CHAPTER TEN

RESTRICTIONS UPON, DUTIES AND LIABILITIES OF RAILROAD CORPORATIONS

Art. 6549. (4491) (4223) Road shall pass through county seat when.—No railroad hereafter constructed in this state shall pass within a distance of three miles of any county seat without passing through the same and establishing and maintaining a depot therein, unless prevented by natural obstacles, such as streams, hills or mountains; provided, such town or its citizens shall grant the right of way through its limits and sufficient ground for ordinary depot purposes. (Const. art. 10, sec. 9.)

Art. 6550. (4492) (4224) Shall survey 25 miles of road, locate depot, etc.—Every railroad company organized under this title shall make an actual survey of its route or line for a distance of twenty-five miles on its projected route, and shall designate the depot grounds along said first twenty-five miles before the roadbed is begun; and no railroad company shall change its route or depot grounds after the same have been so designated. (Acts 1876, p. 142, sec. 5.)

See M. K. & T. Ry. v. Colburn, 38 S. W. 153; Ry. v. Martin, 86 S. W. 25; Ry. v. Shaw, 92 S. W. 30; State v. Sugarland Ry. Co., 163 S. W. 1047; Mosel v. San Antonio & A. P. Ry. Co., 177 S. W. 1048; San Antonio & A. P. Ry. Co. v. Mosel, 180 S. W. 1138; Pecos & N. T. Ry. Co. v. Railroad Commission of Texas, 193 S. W. 770.

Art. 6551. (4493) (4225) Subsequent survey of each twenty-five miles of road.—Every railroad company organized under this title shall, on the completion of the first twenty-five miles of its roadbed, make a survey of the next twenty-five miles, and of each subsequent twenty-five miles as the preceding twenty-five miles shall be com-

pleted, and every subsequent twenty-five miles shall be controlled by the provisions applicable to the first twenty-five miles of the road. (Id.)

See Ry. v. Shaw, 92 S. W. 30.

Art. 6552. (4494) (4226) Trains to be regular, and notice to be given.—Every such corporation shall start and run their cars for the transportation of passengers and property at regular times to be fixed by public notice, and shall furnish sufficient accommodation for the transportation of all such passengers and property, as shall, within a reasonable time previous thereto, offer or be offered for transportation at the place of starting and at junctions of other roads and at sidings and stopping places established for or receiving and discharging way passengers and freight, and shall take, transport and discharge such passengers and property at, from and to such places, on the due payment of the tolls, freight or fare legally authorized therefor. Failure on the part of railroad companies to comply with the requirements of this article shall be deemed an abuse of their rights and privileges and such abuse shall be at once corrected and regulated by the Railroad Commission. Provided further that no railroad corporation nor any manager or receiver of any railroad shall ever abandon operation of its trains over said railroad, or any part thereof, and in case any railroad corporation, manager or receiver has now or may hereafter abandon operation of its trains over its said railroad, or part thereof, the Railroad Commission of Texas shall at once issue its order directing said railroad corporation, manager or receiver to at once resume operation of its trains over said road, or part thereof, in accordance with the orders, rules, and regulations of the Railroad Commission.

Provided further that if any railroad corporation, manager or receiver shall attempt to abandon any railroad, or part thereof, by failing to operate its trains or to resume operation of its trains over its said road, or part thereof, if the operation of trains has been abandoned, the Railroad Commission shall report the same to the Attorney General of the State of Texas who shall at once file a suit in behalf of the State against said railroad corporation, manager or receiver in any District Court of any county through which said railroad may pass, or of Travis County, for the purpose of determining whether or not said railroad corporation, manager or receiver has failed or refused to carry out the purpose of this article and if it shall be determined by the court that said corporation, manager or receiver has so failed or refused, said court shall appoint a receiver for the purpose of operating said railroad and carrying out the purposes of this Article, and the said receiver shall have had no connection, directly or indirectly, with said railroad corporation, manager or receiver prior to the time of his appointment, but who shall be a good business man well qualified to perform the duties of said receiver.

Provided further that said receiver shall collect freight and passenger rates as prescribed by the Railroad Commission and shall do and perform any and all things necessary in the operation of said trains over said road and shall report to the said court at such times as may be prescribed by the decree of the court all of his acts as such receiver. (P. D. 4893; amended Acts 1903, 1 S. S. p. 21; Acts 1918, 4th C. S., ch. 88, sec. 1.)

See Davis v. T. & P. Ry., 44 S. W. 822; H. E. & W. T. Ry. v. Campbell, 45 S. W. 2; Ry. v. R. R. Com., 89 S. W. 961; Texas Cent. R. Co. v. Wheeler, 116 S. W. 83; Railroad Commission of Texas v. Chicago, R. I. & G. Ry. Co., 117 S. W. 794; Dorrance & Co. v. International & G. N. R. Co., 125 S. W. 561; Dorrance & Co. v. International & G. N. R. Co., 126 S. W. 694; Missouri, K. & T. Ry. Co. of Texas v. Stark Grain Co., 131 S. W. 410; Texas Cent. R. Co. v. Hannay-Frerichs & Co., 142 S. W. 1163; Rio Grande & E. P. Ry. Co. v. Railroad Commission of Texas, 175 S. W. 1116.

Art. 6552a. Effect of preceding section.—This Act shall be considered cumulative of all laws of the State of Texas now in force on this subject when not in conflict herewith, but when in conflict herewith, this Act shall control; provided further that the provisions of this Act shall not apply to railroads to which the right of eminent domain is not granted under the laws of this State. (Id. sec. 2.)

Art. 6553. Train dispatcher, to maintain, and duties of.—Every such railroad corporation operating trains in this state shall employ a competent train dispatcher whose duty it shall be to keep informed of the movement of all trains upon the lines of such railroad corporation. Said train dispatcher shall also keep all agents at stations having telegraph offices in or near them, informed of the movement of all passenger trains one hour prior to the time such passenger train or trains are due, according to the published schedule at such stations. And in the event any such passenger train is delayed for more than one hour, than the published schedule, then it shall be the duty of such train dispatcher to inform such local agents how late said train is and the last telegraph station passed. If such train dispatcher shall fail or refuse to furnish the information concerning the movement of trains to agents as herein required, then such dispatcher shall be deemed guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than fifty nor more than two hundred dollars for each offense. (Acts 1903, 1 S. S., p. 21; Acts 1913, p. 318, sec. 1.)

Art. 6554. (4496) (4227) Refusal to transport passenger or property.—In case of the refusal by such corporation or their agents so to take and transport any passenger or property, or to deliver the same, or either of them, at the regular appointed time, such corporation shall pay to the party aggrieved all damages which shall be sustained thereby, with costs of suit; and in case of the transportation of property shall in addition pay to such party special damages at the rate of five per cent per month upon the value of the same at the time of shipment, for the negligent detention thereof beyond the time reasonably necessary for its transportation; provided, that in all suits against such corporation under this law the burden of proof shall be on such corporations to show that the delay was not negligent. (Acts 1887, p. 116.)

See Davis v. T. & P. Ry., 44 S. W. 822; G. C. & S. F. Ry. v. Lone Star Salt Co., 63 S. W. 1025;

Ry. v. Rines & Co., 84 S. W. 1092; Red River T. & S. Ry. v. Easton & Knox, 88 S. W. 530; Dorrance & Co. v. International & G. N. R. Co., 125 S. W. 561; Dorrance & Co. v. International & G. N. R. Co., 126 S. W. 694; Texas Cent. R. Co. v. Hannay-Frerichs & Co., 130 S. W. 250; Missouri, K. & T. Ry. Co. of Texas v. Stark Grain Co., 131 S. W. 410; Texas Cent. R. Co. v. Hannay-Frerichs & Co., 142 S. W. 1163; Panhandle & S. F. Ry. Co. v. Talmage, 206 S. W. 862.

Art. 6555. (4502a) Double-decked cars for sheep, etc.—All railroad companies operating any railroad, or any part thereof, within the limits of this state, are required to provide cars with double decks for the shipment of sheep, goats, hogs and calves; the said cars must be in every way as large as those now in use upon the respective roads of this state; the distance between the floor and the second deck shall be the same as the distance between said second deck and the roof; the floor of said second deck shall be so constructed as to protect the animals beneath; and said cars must be furnished by the railroad company to any person who shall offer to ship at one time hogs, sheep, goats, or calves, in carload lots. (Acts 1887, p. 57, sec. 1; Sen. Jour. 1895, p. 483, No. 88.)

See Ft. Worth & R. G. Ry. Co. v. Starr, 141 S. W. 1084.

Art. 6556. (4502b) Rates of freight; penalty.—It shall not be lawful for any railroad company to charge more for shipping a double-decked carload of sheep, goats, hogs, or calves than is charged for shipping a carload of other cattle or horses the same distance, and in the same direction; and any railroad company that shall fail or refuse to furnish double-decked cars of the dimensions prescribed in the preceding article to any person who may wish to ship as much as a double-decked carload of sheep, hogs, goats, or calves, or shall charge more for shipping a double-decked carload of sheep, hogs, goats, or calves, than for shipping a carload of other cattle or horses for the same distance and in the same direction, shall be liable to pay to the owner or shipper of said sheep, hogs, goats, or calves, the sum of five hundred dollars as liquidated damages, to be recovered in any court of competent jurisdiction; provided, that if any railroad companies shall transport sheep, hogs, goats, and calves, on single-decked cars at one-half the price per carload charged for shipping horses, or other cattle, then the penalties prescribed in this article for failure to provide double-decked cars shall be inoperative. (Id. sec. 2.)

See Ft. Worth & R. G. Ry. Co. v. Starr, 141 S. W. 1084.

Art. 6557. Shall not collect more than specified in the bill of lading.—It shall be unlawful for any railroad company in this state, its officers, agents or employés, to charge and collect, or to endeavor to charge and collect, from the owner, agent or consignee of any freight, goods, wares and merchandise, of any kind or character whatsoever, a greater sum for transporting said freight, goods, wares and merchandise than is specified in the bill of lading. (Act 1899, p. 70, sec. 1.)

Art. 6558. Freight to be delivered on payment of charges.—Any railroad company, its officers, agents or employés, having possession of any goods, wares and merchandise, of any kind or character whatsoever, shall deliver the same to the owner, his agent or consignee, upon payment of the freight charges, as shown by the bill of lading. (Id. sec. 2.)

Art. 6559. Penalty for refusal to deliver freight.—Any railroad company, its officers, agents or employés that shall refuse to deliver to the owner, agent or consignee, any freight, goods, wares and merchandise, of any kind or character whatsoever, upon the payment, or tender of payment, of the freight charges due as shown by the bill of lading, the said railroad company shall be liable in damages to the owner of said freight, goods, wares and merchandise, to an amount equal to the amount of freight charges, for every day said freight, goods, wares and merchandise is held after payment, or tender of payment, of the charges due as shown by the bill of lading, to be recovered in any court of competent jurisdiction. (Id. sec. 3.)

Art. 6559a. Unlawful for railroad company to confiscate or convert freight.—It is hereby declared to be unlawful for any railway company, or receiver thereof, in this State to confiscate, or otherwise convert to its own use, any carload shipment or substantial portion of any such carload shipment of any article or commodity of freight traffic received by it, or them, for transportation and delivery, without the express consent of the owner or consignee thereof, and the acts of the agents, officers and employés of such carrier or receiver within the apparent scope of their duties or authority with respect to such conversion or confiscation shall be deemed to be the acts of such railway company, receiver or other carrier. The provisions of this Act shall not apply to conversion of freight where the same has been damaged or intermingled with other freight in wrecks, nor to refused or unclaimed freight, the delivery of which the railroad is unable to effect. (Acts 1917, ch. 174, sec. 1.)

Art. 6559b. Same; penalty.—In addition to all other remedies or penalties that may now be provided by law therefor, the violation of any of the provisions of Section 1 of this Act [Art. 6559a] shall subject the railway company, receiver or other common carrier, so offending to a penalty of not less than one hundred and twenty-five ($125.00) dollars nor more than five hundred ($500.00) dollars in favor of the State of Texas and a further penalty of twice the amount of the purchase price of the converted shipment in favor of the owner or consignee thereof. (Id. sec. 2.)

Art. 6559c. Same; cumulative remedies.—The terms, rights, and remedies provided by this Act are hereby declared to be cumulative of all other laws and the rights and remedies thereby provided upon the subject. (Id. sec. 3.)

Art. 6559d. Same; partial invalidity.—The terms of this Act are hereby declared to be separable and if for any reason any portion of the Act should be held to be invalid, the remainder thereof shall remain in full force and effect. It is further declared that this Act is intended to apply to all classes of freight traffic but that if it should be held that the same may not constitutionally apply to certain portion or portions of such traffic, then it shall remain in full

force and effect, nevertheless, and apply to all other such traffic. (Id. sec. 4.)

Art. 6560. (4503) (4228) Conductor, etc., shall wear badge.—Every conductor, baggage master, engineer, brakeman, or other servant of such railroad corporation employed in a passenger train, or at stations for passengers, shall wear upon his hat or cap a badge which shall indicate his office and the initial letters of the style of the corporation by which he is employed. (P. D. 4891.)

Art. 6561. (4504) (4229) Without badge shall not receive fare, etc.—No conductor or collector without such badge shall demand or be entitled to receive from any passenger any fare, toll, ticket, or exercise any of the powers of his office, and no other of the said officers or servants, without such badge, shall have any authority to meddle or interfere with the passengers, their baggage or property. (Id.)

Art. 6562. (4505) (4230) Baggage shall be checked, etc.—A check shall be affixed to every package or parcel of baggage when taken for transportation by the agent or servant of such corporation, and a duplicate thereof given to the passenger or person delivering the same on his behalf; and, if such check be refused on demand, the corporation shall pay to such passenger the sum of ten dollars, to be recovered in an action of debt; and, further, no fare or toll shall be collected or received from such passenger; and, if such passenger shall have paid his fare, the same shall be refunded by the conductor in charge of the train. (P. D. 4895.)

Art. 6563. (4506) (4231) Signs shall be erected at cross-roads, etc.—Such corporations shall erect at all points where its road shall cross any first or second class public road, at a sufficient elevation from such public road to admit of the free passage of vehicles of every kind, a sign with large and distinct letters placed thereon, to give notice of the proximity of the railroad and warn persons of the necessity of looking out for the cars; and any company neglecting or refusing to erect such signs shall be liable in damages for all injuries occurring to persons or property from such neglect or refusal. (P. D. 4890.)

Art. 6564. (4507) (4232) Bell and steam whistle; duty as to.—A bell of at least thirty pounds weight and a steam whistle shall be placed on each locomotive engine, and the whistle shall be blown and the bell rung at the distance of at least eighty rods from the place where the railroad shall cross any public road or street, and such bell shall be kept ringing until it shall have crossed such public road, or stopped; and each locomotive engine approaching a place where two lines of railway cross each other, shall, before reaching such railway crossing, be brought to a full stop; and any engineer having charge of such engine, and neglecting to comply with any of the provisions of this article, shall be punished for such neglect as provided in the Penal Code; and the corporation operating such railway shall be liable for all damages which shall be sustained by any person by reason of any such neglect; provided, however, that the full stop at such crossings may be discontinued when the railroads crossing each other shall put into full operation at such crossing an interlocking switch and signal apparatus and shall keep a flagman in attendance at such crossing. (Acts 1883, p. 28; Acts 1893, p. 87.)

See H. & T. C. Ry. v. O'Neal, 45 S. W. 921; Id., 47 S. W. 95; M. K. & T. Ry. v. Magee, 49 S. W. 156; Curtis v. Ry., 63 S. W. 149; G., C. & S. F. Ry. v. Morgan, 64 S. W. 688; Ry. v. Green, 69 S. W. 421; Id., 75 S. W. 552; Ry. v. Ives, 71 S. W. 772; Ry. v. Berry, 72 S. W. 423; Ry. v. Taff, 74 S. W. 89; Ry. v. Matthews, 79 S. W. 71; Ry. v. Hall, 80 S. W. 133; Mercher v. Ry., 85 S. W. 468; McKerley v. Ry., 85 S. W. 499; Ry. v. Kilman, 86 S. W. 1050; Ry. v. Vollrath, 89 S. W. 279; Texas & P. Ry. Co. v. Stoker, 103 S. W. 1183; El Paso & S. W. R. Co. v. Murtle, 108 S. W. 998; Ft. Worth & D. C. Ry. Co. v. Poteet, 115 S. W. 883; Texas Cent. R. Co. v. Horn, 115 S. W. 911; Texas & P. Ry. Co. v. Hemphill, 125 S. W. 340; Texas Cent. R. Co. v. Mallard, 127 S. W. 1117. Edwards v. St. Louis Southwestern Ry. Co. of Texas, 151 S. W. 289; Ft. Worth & D. C. Ry. Co. v. Hart, 178 S. W. 795; Ft. Worth & D. C. Ry. Co. v. Decatur Cotton Seed Oil Co., 179 S. W. 1104; Texarkana & Ft. S. Ry. Co. v. Rea, 180 S. W. 945; Sellers v. Galveston, H. & S. A. Ry. Co., 208 S. W. 397; International & G. N. Ry. Co. v. Isaacs, 208 S. W. 897.

Art. 6565. Duty to equip with electric headlights.—It shall be the duty of every railroad corporation or receiver or lessee thereof, operating any line of railroad in this state, to equip all locomotive engines used in the transportation of trains over said railroad with electric headlights of not less than fifteen hundred candle power, measured without the aid of a reflector, or other headlights of not less than fifteen hundred candle power, measured without the aid of a reflector; provided, that this article shall not apply to locomotive engines regularly used in the switching of cars or trains. (Acts 1907, p. 54, sec. 1.)

Art. 6566. Penalty for failure.—Any railroad company or the receiver or lessee thereof doing business in the state of Texas, which shall violate the provisions of the preceding article, shall be liable to the state of Texas for a penalty of not less than one hundred dollars nor more than one thousand dollars for each offense; and such penalties shall be recovered and suit brought in the name of the state of Texas, in a court of proper jurisdiction in Travis county, Texas, or in any county in or through which such line of railroad may run, by the attorney general, or by the county or district attorney in any county, in or through which such line of railroad may be operated; and such suits shall be subjected to the provisions of article 6673. (Id. sec. 2.)

Art. 6567. Shall keep lighted from sunset to sunrise, except, etc.—It shall be the duty of every railway corporation operating any line of railway in the state of Texas to place and maintain good and sufficient switch lights on all their main line switches connected with the main line, and to keep the same lighted from sunset until sunrise; provided, that this article shall not apply to railways which have all their locomotives equipped with electric headlights. (Acts 1905, p. 77, sec. 1.)

Art. 6568. Shall place derailing switches on sidings, when, etc.—It shall be the duty of every railway corporation operating any line of railway in the state of Texas to place and maintain good and

safe derailing switches on all of their sidings connecting with the main line of such railway, and upon which sidings cars are left standing; provided, that no derailing switches shall be required where the siding connects with main line on an up grade in the direction of the main line of one-half of one per cent or over; provided, further, that no derailing switches shall be required on inside tracks at terminal points where regular switching crews are employed. (Id. sec. 2.)

Art. 6568a. Derailing devices on repair tracks, etc., required.—It shall be unlawful for any person, firm, corporation or receiver operating any railroad, machine shop or other concern engaged in repairing or manufacturing cars within this state to use any tracks not equipped with derailing devices upon which to repair or manufacture cars; such derailing devices to be provided with private locks, to be kept locked at all times when tracks are in use; provided, that nothing in this Act shall be construed as prohibiting temporary repairs to cars on tracks other than where cars are regularly repaired or manufactured. (Acts 1913, p. 334, sec. 1.)

Section 2 is penal. See Pen. Code, art. 1531c.

Art. 6569. Penalty.—Any railway corporation which shall willfully violate any of the provisions of the two preceding articles shall be liable to the state of Texas for a penalty of not less than one hundred dollars nor more than one thousand dollars for each offense; and such penalty shall be recovered and suits therefor be brought by the attorney general, or under his direction, in the name of the state of Texas, in Travis county, or in any county through which such railway may run or be operated; and such suits shall be subject to the provisions of article 6673; provided, the provisions of article 6567 shall not apply on railroad lines or divisions on which no trains are regularly run or operated at night. (Acts 1905, p. 77, sec. 3.)

Art. 6570. (4508) (4233) Passenger trains, how formed.—In forming a passenger train, baggage or freight, or merchandise, or lumber cars shall not be placed in rear of passenger cars; and if they or any of them shall be so placed and any accident happen to life or limb, the officer or agent who so directed or knowingly suffered such arrangement and the conductor and engineer of the train shall each and all be held guilty of intentionally causing the injury, and be punished accordingly. (P. D. 4896.)

Art. 6571. (4517) (4234) Brakes and brakeman.—Every such company shall have a good and sufficient brake upon the hindmost car on all trains transporting passengers and merchandise, and also permanently stationed there a trusty and faithful brakeman, under a penalty of not exceeding one hundred dollars for each offense, to be recovered by suit in the name of the state. (P. D. 4907.)

See T. & P. Ry. v. Storey, 68 S. W. 534.

Art. 6571a. Air brakes; inspection.—It shall be unlawful for any person, corporation or receiver to operate or cause to be operated any train, on any line of railroad in this State, without first having the air brakes and air brake attachments inspected and tested before leaving the division terminals for such trains, by a competent inspector, who shall have had at least three years' experience as a car inspector or car repairer. Provided that this Act shall not apply to tram roads engaged in hauling logs to any saw mill. (Acts 1911, p. 106. sec. 1.)

Art. 6571b. Emergency.—The provisions of this Act shall not apply in case of emergency where such companies cannot obtain the employés mentioned in this Act who have the qualifications prescribed by the provisions thereof; then such companies may employ temporary inspectors. Provided, the provisions of this Act do not apply to railroads under forty miles in length. (Id. sec. 2.)

Art. 6571c. Penalty.—Any person, corporation or receiver violating any of the provisions of this Act shall be fined not less than fifty dollars ($50.00) nor more than one hundred dollars ($100.00), and each operation of any such train without such inspection first having been made, as provided herein, shall constitute a separate offense. (Id. sec. 3.)

Art. 6572. Passenger trains without full crew, unlawful to run.—It shall be unlawful for any railroad company, or receiver of any railroad company, doing business in the state of Texas, to run over its road, or part of its road, outside of the yard limits, any passenger train with less than a full passenger crew consisting of four persons, one engineer, one fireman, one conductor and one brakeman. (Acts 1909, p. 179, sec. 1.)

Held unconstitutional. See M., K. & T. Ry. Co. v. S., 113 S. W. 917.

Art. 6573. Freight, etc., trains, without full crew, unlawful to run.—It shall be unlawful for any railroad company, or receiver of any railroad company, doing business in the state of Texas, to run over its road, or part of its road, outside the yard limits, any freight train, gravel train or construction train with less than a full crew consisting of five persons, one engineer, one fireman, one conductor and two brakemen. (Id. sec. 2.)

Art. 6574. Light engine without full crew, unlawful to run.—It shall be unlawful for any railroad company, or receiver of any railroad company, doing business in the state of Texas, to run over its road, or part of its road, outside of the yard limits, any light engine without a full train crew consisting of three persons, one engineer, one fireman and one conductor; provided, that nothing in the two preceding articles shall be construed as applying in the case of disability of one or more of any train crew while out on the road between division terminals, or to switching crews in charge of yard engines, or which may be required to push trains out of yard limits. (Id. sec. 3.)

Art. 6575. Penalty and venue of suits.—Any railroad company, or any receiver of any railroad company, doing business in the state of Texas, which shall violate any of the provisions of the three preceding articles shall be liable to the state of Texas for a penalty of not less than one hundred dollars or more than one thousand dollars for each offense; and such penalty shall be recovered and suit brought in the name of the state of Texas in a court of proper jurisdiction in Travis county, Texas, or in any county in or through which such line of railroad may run,

by the attorney general, or under his direction, or by the county or district attorney in any county [in], or through which such line of railroad may be operated; and such suits shall be subject to the provisions of article 6673. (Id. sec. 4.)

Art. 6576. To what articles apply.—The provisions of the four preceding articles shall not apply to or include any railroad company, or receiver or manager thereof, of any line of railroad in this state, less than twenty miles in length. (Id. sec. 4a.)

Art. 6577. Certain kind of ash pans required.—It shall be unlawful for any common carrier, engaged in moving commerce in the state of Texas by railroad, to use in moving such commerce in said state any locomotive not equipped with an ash pan which can be dumped or emptied and cleaned without the necessity of any employé going under such locomotive. (Acts 1909, p. 67, sec. 1.)

Art. 6578. Penalty; evidence; venue of suits.—Any such common carrier using any locomotive in violation of the provisions of the preceding article shall be liable to the state of Texas for a penalty of not less than one hundred dollars and of not more than one thousand dollars for each offense; and such penalty shall be recovered, and suit brought in the name of the state of Texas, in any court of proper jurisdiction in Travis county, Texas, or in any county into or through which such carrier may be operating a line of railroad, by the attorney general, or under his direction, or by the county or district attorney in any such county. The rules of evidence in suits arising under this article shall be the same as in ordinary civil actions; and the same compensation shall be allowed to the attorney bringing such suit as is provided in article 6673 of the Revised Statutes of the state of Texas. (Id. sec. 2.)

Art. 6579. "Common carrier" defined.—The term, "common carrier," as used in the two preceding articles, shall include the receiver or receivers, or other persons or corporations charged with the duty of managing and operating the business of a common carrier. (Id. sec. 3.)

Art. 6580. Articles do not apply.—Nothing contained in the three preceding articles shall apply to any locomotive upon which, by reason of the use of oil, electricity or other such agency, an ash pan is not necessary. (Id. sec. 4.)

Art. 6581. Shall provide suitable places for employés to work.—Every person, corporation, or receiver, engaged in constructing or repairing railroad cars, trucks or other railroad equipment, shall erect and maintain a building or shed at every station or other point where as many as five men are regularly employed on such repair work, the building or shed to cover a sufficient portion of its track so as to provide that all men regularly employed in the construction and repair of cars, trucks, or other railroad equipment shall be sheltered from rain and protected from other inclement weather. The provisions of this article shall not apply at points where less than five men are regularly employed in the repair service, nor at division terminals, or other points where it is necessary to make light repairs only on cars, nor to cars loaded with time or perishable freight, nor to cars when trains are being held for the movement of said cars. (Acts 1910, p. 123, sec. 1.)

Art. 6582. Penalty.—Any person, corporation, or receiver who shall violate the provisions of the foregoing article shall be liable to the state of Texas for a penalty in any sum not less than fifty dollars nor more than one hundred dollars, and each ten days of such failure or refusal to so comply shall be considered a separate infraction authorizing the recovery of a separate penalty; provided, however, that all persons, corporations, or receivers, affected by the preceding article, shall have until June 1, 1911, within which to comply with the provisions thereof. (Id. sec. 2.)

Art. 6583. Suits; fees or attorneys.—Suit for recovery of penalties hereunder shall be brought by the attorney general of this state or by the county or district attorney of the county in which suit is brought, and the county or district attorney, as the case may be, shall receive a fee of ten per cent upon each penalty recovered and collected by him, and said fee shall be over and above the fee allowed him by law at this time, and over and above the fees allowed under the general fee bill in force in this state. (Id. sec. 2.)

Art. 6584. Employés limited to sixteen hours labor.—It shall be unlawful for any railroad company, or receiver of any railroad company, operating any line of railroad in whole or in part in this state, or any officer, or agent of such railroad company or receiver to require or permit any conductor, engineer, fireman or brakeman to be or remain on duty for a longer period than sixteen consecutive hours; and whenever any such conductor, engineer, fireman or brakeman shall have been continuously on duty for sixteen hours, he shall be relieved and shall not be required or permitted again to go on duty until he has had at least ten consecutive hours off duty; and no such conductor, engineer, fireman or brakeman who has been on duty sixteen hours in the aggregate in any twenty-four hour period shall be required or permitted to continue or again go on duty without having had at least eight consecutive hours off duty. (Acts 1909, p. 180, sec. 1.)

Art. 6585. Penalties, suits for, venue, etc.—Any railroad company, or receiver of any railroad, operating a line of railroad in whole or in part in this state, or any officer or agent of such railroad or receiver who shall violate any of the provisions of the preceding article shall be liable to a penalty of not to exceed five hundred dollars for each and every violation; and any such penalty shall be recovered and suit therefor shall be brought in the name of the state of Texas in any court having jurisdiction of the amount, in Travis county, or in any county into or through which said railroad may pass. Any suit or suits to recover a penalty or penalties for violating any of the provisions of the preceding article may be brought either by the attorney general, or under his direction, or by the county attorney or district attorney of any county or judicial district into or through which said railroad may pass, and such attorney bringing any such suit or suits shall be entitled to compensation of one-third of any penalty or penalties recovered therein. In all prosecutions under this and

the preceding article against any railroad company, or receiver of any railroad company, such company or receiver shall be deemed to have had knowledge of all acts of all of its officers and agents; provided, that the provisions of this and the preceding article shall not apply in any case of casualty or unavoidable accident, or the act of God; nor where the delay was the result of a cause not known to the carrier or its officer or agent in charge of any conductor, engineer, fireman or brakeman at the time such conductor, engineer, fireman or brakeman left a terminal, and which act could not have been foreseen; provided, further, that the provisions of this and the preceding article shall not apply to crews of wrecking or relief trains. (Id. sec. 2.)

Art. 6586. Railroad telegraph and telephone operators, eight hours a day work.—It shall be unlawful for any person, corporation or association, operating a railroad within this state, to permit any telegraph or telephone operator who spaces trains by the use of the telegraph or telephone under what is known and termed, "Block System," defined as follows: Reporting trains to another office or offices, or to a train dispatcher operating one or more trains under signals, and telegraph or telephone leverman who manipulate interlocking machines in railroad yards, or on main tracks out on the lines connecting side tracks or switches, or train dispatchers in its service whose duties substantially, as hereinbefore set forth pertain to the movement of cars, engines or trains on its railroad by the use of the telegraph or telephone, in dispatching or reporting trains, or receiving or transmitting train orders, as interpreted in this article, to be on duty for more than eight hours in any twenty-four consecutive hours; provided, that the provisions of this article shall not apply to railroad telegraph or telephone operators at stations where the services of only one operator is needed. (Acts 1907, p. 222, sec. 1.)

Art. 6587. Penalty, suit, and disposition of funds.—Any violation of the preceding article by any person, corporation or association, shall subject him or it to a penalty of one hundred dollars for each violation thereof, to be recovered by an action of debt in the name of the state of Texas for the use of the state; said action to be instituted in any court of the state having appropriate jurisdiction; and the penalty, when so recovered, shall be paid into the public school fund of the state of Texas. (Id. secs. 2, 4 and 5.)

Art. 6588. (4518) (4235) Shall carry U. S. mails, and compensation therefor.—Every such corporation shall, when applied to by the postmaster-general, convey the mail of the United States on its road or roads; and in case such corporation shall not agree as to the rate of transportation therefor, and as to the time, rate of speed, manner and condition of conveying the same, it shall be lawful for the governor to appoint three commissioners, who, or a majority of them, after fifteen days' notice in writing of the time and place of meeting, to the corporation, shall determine and fix the prices, terms and condition aforesaid; but such price shall not be less for conveying such mails in the regular passenger trains than the amount which such corporation would receive as freight on a like weight of merchandise transported in their merchandise trains, and a fair compensation for the postoffice car; and in case the postmaster-general shall require the mail to be carried at other hours, or at a higher speed than the passenger train be run at, the corporation shall furnish an extra train for the mail and be allowed an extra compensation for the expenses and wear and tear thereof, and for the services, to be fixed as aforesaid. (P. D. 4903.)

Art. 6589. (4519) (4236) Station depots shall be erected, etc.—Each and every railroad company is hereby required to erect at each and every depot, station or place established by such company for the reception and delivery of freight, suitable buildings or inclosures to protect produce, goods, wares and merchandise and freight of every description from damage by exposure to the weather, stock or otherwise; in default of which such railroad company shall be liable to the owner of such produce, goods, wares or merchandise for the amount of damages or loss sustained by reason of such improper exposure, together with all costs and expenses of recovering the same, including necessary attorney's fees. (P. D. 4923.)

See H. & T. C. Ry. v. Trammell, 68 S. W. 716; Ry. v. Martin, 86 S. W. 25; Ry. v. Shaw, 92 S. W. 30; Ry. v. Cage Cattle Co., 95 S. W. 705; Railroad Commission of Texas v. Chicago, R. I. & G. Ry. Co., 117 S. W. 794; San Antonio & A. P. Ry. Co. v. Broad-Davis Cattle Co., 140 S. W. 514; State v. Jasper & E. R. Co., 154 S. W. 331; St. Louis Southwestern Ry. Co. of Texas v. Smith Bros. Grain Co., 164 S. W. 409; Quanah, A. & P. Ry. Co. v. Moore, 189 S. W. 322; Quanah, A. & P. Ry. Co. v. Warren, 198 S. W. 814.

Art. 6590. (4520) (4237) No storage to be charged, except, etc.—Railroad companies shall in no case be allowed to charge storage upon freight received by them for delivery, unless the owner or consignee thereof neglect to remove it from the depot of the company within three days after notice of its reception; which notice may be given by posting the same on the depot door; and, after the expiration of such time, the company may remove and store said freight at the expense of the owner or consignee, and said freight shall be held liable for the freight and charges due thereon. (P. D. 4923.)

Art. 6591. (4521) (4238) Passenger depots opened, lighted, warmed, etc.; penalty for failure.—Every railroad company doing business in this state shall keep its depots or passenger houses in this state lighted and warmed, and open to the ingress and egress of all passengers who are entitled to go therein, for a time not less than one hour before the arrival and after the departure of all trains carrying passengers on such railroad; and every such railroad company, for each failure or refusal to comply with the provisions of this article, shall forfeit and pay to the state of Texas the sum of fifty dollars, which may be sued for and recovered in the name of the state in any court of competent jurisdiction, and shall be liable to the party injured for all damages by reason of such failure. (Acts 1891, p. 29; Sen. Jour. 1895, No. 89, p. 483.)

See G. C. & S. F. Ry. v. Barnett, 47 S. W. 1040; Ry. v. Pevey, 70 S. W. 778; Ry. v. Wallace, 74 S. W. 581; Ry. v. Martin, 86 S. W. 25; Ry. v. Lowe, 97 S. W. 1087; Texas Midland R. R. v. Griggs, 106

S. W. 411; Southern Kansas Ry. Co. of Texas v. Caylor, 135 S. W. 1087; Texas Cent. R. Co. v. Perry, 147 S. W. 305; Missouri, K. & T. Ry. Co. of Texas v. Cook, 166 S. W. 453; Galveston, H. & S. A. Ry. Co. v. Watts, 182 S. W. 412; Chicago, R. I. & G. Ry. Co. v. Faulkner, 194 S. W. 651.

Art. 6592. Water closets to be erected.—Each railroad and railway corporation operating a line of railway in the state of Texas for the transportation of passengers thereon are required to construct and maintain, and keep in a reasonably clean and sanitary condition, suitable and separate water closets or privies for both male and female persons at each passenger station on its line of railway, either within its passenger depot or in connection therewith, or within a reasonable and convenient distance therefrom at such station for the accommodation of its passengers who are received and discharged from its cars thereat, and of its patrons and employés who have business with such railroads and corporations at such station. (Acts 1909, p. 175, sec. 1; Acts 1905, p. 324, sec. 1.)

See M., K. & T. Ry. v. S., 97 S. W. 720; Id., 724; Id., 100 S. W. 766; State v. So. Kansas Ry. Co., 99 S. W. 167; State v. Jasper & E. R. Co., 154 S. W. 331; Beaumont, S. L. & W. Ry. Co. v. S., 173 S. W. 611; State v. Texas & P. Ry. Co., 173 S. W. 900; Ft. Worth & D. C. Ry. Co. v. S., 189 S. W. 131; Galveston, H. & S. A. Ry. Co. v. S., 194 S. W. 462; Beaumont, S. L. & W. Ry. Co. v. S., 194 S. W. 959.

Art. 6593. Separate closets, how constructed and maintained.—Said railroads and corporations are hereby required to keep said water closets and depot grounds adjacent thereto well lighted at such hours in the night time as its passengers and patrons at such stations may have occasion to be at the same, either for the purpose of taking passage on its trains, or waiting for the arrival thereof, or after leaving the same for at least thirty minutes before the schedule time for the arrival of its said train and after the arrival thereof at said station; provided, that said railroad or incorporation shall not be required by the provisions hereof to keep said closets lighted at such stations where the said railroad does not receive and discharge thereat in the night time passengers on and from its cars. (Id. sec. 2.)

Art. 6594. Penalties, and suits for.—Any railroad or railway corporation which fails, neglects or refuses to comply with the provisions of the two preceding articles shall forfeit and pay to the state of Texas the sum of fifty dollars for each week it so fails and neglects. The county attorney of the county in which such station is located, and in case there is no such county attorney, then the attorney for the district including said county, shall, upon credible information furnished him, institute suit or suits in the name of the state of Texas against such defaulting railroad or railway corporation for the recovery of said penalties; and, in case of said recovery, the said attorney shall be entitled to one-fourth the amount thereof as commission for his said services, and the remainder thereof shall be paid into the road and bridge fund of said county; provided, that the state of Texas shall in no event be liable for any costs in suit authorized by this law to enforce its provisions. (Id. sec. 3.)

Art. 6595. (4522) (4239) Switch cars shall be furnished.—When a company constructs a switch on its road for the accommodation of freighters, they shall be bound to furnish a sufficient number of cars for the transportation of freight therefrom when requested so to do, and in default shall be subject to the same penalties as in other cases of neglect of the like character. (P. D. 4934.)

See H. E. & W. T. Ry. v. Campbell, 45 S. W. 2; St. Louis Southwestern Ry. Co. of Texas v. Lee, 151 S. W. 331.

Art. 6596. (4523) (4240) Cattle-guards and stops at what places.—Each and every railroad company, whose railway passes through a field or inclosure, is hereby required to place a good and sufficient cattle-guard or stop at the points of entering such field or inclosure, and keep them in good repair. (P. D. 4925.)

See St. L. S. W. Ry. of Texas v. Blackwell, 40 S. W. 860; So. Kan. Ry. v. Isaacs, 49 S. W. 690; Ry. v. Wetz, 87 S. W. 373; St. Louis Southwestern Ry. Co. of Texas v. Lee, 151 S. W. 331; Stephenville N. & S. T. Ry. Co. v. Schrank, 175 S. W. 471; Missouri, K. & T. Ry. Co. of Texas v. Attaway, 180 S. W. 1151; International & G. N. Ry. Co. v. Vogel, 184 S. W. 229.

Art. 6597. (4524) (4241) Same subject.—In case an inclosure or field through which a railway passes shall be enlarged or extended, or the owner of the land over which a railway runs shall clear and open a field so as to embrace the track of a railway, such railroad company is hereby required to place good and sufficient cattle-guards or stops at the margins of such extended inclosures or fields, or such new fields and keep the same in repair.

Art. 6598. (4525) (4242) Character of cattle-guards and stops.—Such cattle-guards or stops shall in all cases be so constructed and kept in repair as to protect such fields and inclosures from the depredations of stock of every description.

Art. 6599. (4526) (4243) Owner may place and keep in repair cattle-guards and stops at cost of company, when.—Should any such company fail to construct and keep in repair such cattle-guards and stops, the owner of such inclosure or field may have such cattle-guards and stops placed at the proper places and kept in repair, and may recover the costs thereof from such railroad company, unless it be shown that the enlargement or extension, as above provided, was made capriciously and with intent to annoy and molest such company. (P. D. 4925.)

Art. 6600. (4527) (4244) Liability of company for neglect to place and keep in repair cattle-guards and stops.—Should any such company neglect to construct the proper cattle-guards and stops and keep the same in repair as required by law, such company shall be liable to the party injured by such neglect for all damages that may result from such neglect, to be recovered by suit in any court having jurisdiction. (Id.)

See Ch. R. I. & T. Ry. v. Yarbrough, 35 S. W. 422; Missouri, K. & T. Ry. Co. of Texas v. Attaway, 180 S. W. 1151; International & G. N. Ry. Co. v. Vogel, 184 S. W. 229.

Art. 6601. Johnson grass not permitted to go to seed on right of way.—It shall be unlawful for any railroad or railway company or corporation doing business in this state to permit any Johnson grass or Russian thistle to mature or go to seed upon any right of way owned, leased or controlled by

such railroad or railway company or corporation in this state. (Acts 1901, p. 283, sec. 1.)

See Ry. v. Terhune, 81 S. W. 74; Ry. v. Henderson and Tompkins, 86 S. W. 371; Ry. v. Burns, 87 S. W. 1144; Ry. v. Gentry, 95 S. W. 74; Doeppenschmidt v. Ry., 101 S. W. 1080; Vance v. Southern Kansas Ry. of Texas, 152 S. W. 743; International & G. N. R. Co. v. Boles, 161 S. W. 914; Missouri, K. & T. Ry. Co. of Texas v. Forrest, 179 S. W. 273; International & G. N. Ry. Co. v. Dawson, 193 S. W. 1145.

Art. 6602. Penalty and damages.—If it shall appear upon the suit of any person owning, leasing or controlling land contiguous to the right of way of any such railroad or railway company or corporation that said railroad or railway company or corporation has permitted any Johnson grass or Russian thistle to mature or go to seed upon their right of way, such person so suing shall recover from such railroad or railway company or corporation the sum of twenty-five dollars, and any such additional sum as he may have been damaged by reason of such railroad or railway company or corporation permitting Johnson grass or Russian thistle to mature or go to seed upon their right of way; provided, any owner of land, or any person controlling land, contiguous to the right of way of any such railroad or railway company, who permits any Johnson grass or Russian thistle to mature or go to seed upon said land, shall have no right to recover from such railroad or railway company as provided for in this article. (Id. sec. 2.)

See authorities cited under preceding article.

Art. 6603. (4528) (4245) Liability of companies for stock killed or injured.—Each and every railroad company shall be liable to the owner for the value of all stock killed or injured by the locomotives and cars of such railroad company in running over their respective railways, which may be recovered by suit before any court having competent jurisdiction of the amount. Such liability shall also exist in counties and subdivisions of counties which adopt the stock law prohibiting the running at large of horses, mules, jacks, jennets and cattle; provided, however, that in all cases, if the railroad company fence its road, it shall only be liable for injury resulting from a want of ordinary care. (Acts 1905, p. 226, sec. 20a; P. D. 4926.)

See G. C. & S. F. Ry. v. Blankenbeckler, 35 S. W. 331; G. C. & S. F. Ry. v. Cole, 35 S. W. 525; St. Louis, etc., Ry. v. Chambliss, 53 S. W. 343; St. Louis, etc., Ry. v. Terry, 54 S. W. 431; M. K. & T. Ry. v. Hanecek, 55 S. W. 1117; Id., 56 S. W. 938; G. H. & S. A. Ry. v. Reitz, 65 S. W. 1088; S. A. & A. P. Ry. v. Tamborello, 67 S. W. 926; Ry. v. Roberts, 69 S. W. 985; I. & G. N. Ry. v. Richmond, 69 S. W. 1029; Ry. v. Swan, 78 S. W. 920; Ry. v. Hudgens, 94 S. W. 378; Cole v. Ry., 94 S. W. 1128; Ry. v. Earl, 95 S. W. 1086; Ry. v. Tolbert, 90 S. W. 508; Ry. v. Scofield, 98 S. W. 435; Ry. v. Tolbert, 101 S. W. 206; Texas Cent. R. Co. v. Pruitt, 109 S. W. 925; Texas Cent. Ry. Co. v. Pruitt, 110 S. W. 966; Texas & P. Ry. Co. v. Webb, 114 S. W. 1171; Rio Grande & E. P. Ry. Co. v. Garcia, 117 S. W. 204; Houston E. & W. T. Ry. Co. v. Lee, 135 S. W. 694; International & G. N. R. Co. v. Merideth, 137 S. W. 922; St. Louis Southwestern Ry. Co. v. Bailey, 168 S. W. 406; Ft. Worth & R. G. Ry. Co. v. Brown, 173 S. W. 943; St. Louis, B. & M. Ry. Co. v. Dawson, 174 S. W. 850; International & G. N. Ry. Co. v. Williams, 175 S. W. 486; Ft. Worth & D. C. Ry. Co. v. Decatur Cotton Seed Oil Co., 179 S. W. 1104; Missouri, K. & T. Ry. Co. of Texas v. Lovell, 179 S. W. 1111; Missouri, K. & T. Ry. Co. of Texas v. Attaway, 180 S. W. 1151; Craig v. Ft. Worth & D. C. Ry. Co., 185 S. W. 944; Quanah, A. & P. Ry. Co. v. Price, 192 S. W. 805; Ft. Worth & D. C. Ry. Co. v. Decatur Cotton Seed Oil Co., 193 S. W. 392; Robbins v. Bell, 195 S. W. 865; Baker v. Schroeder, 198 S. W. 394.

Art. 6603a. Report of animals killed; evidence.—Whenever any animal is killed or found dead upon the roadbed or right of way of any railroad company in this State, the section foreman of the railroad where said animal is killed or found dead, shall take and make a description of such animal, stating its kind, the marks and brands, color, and apparent age, and any other description that may serve to identify said animal, which description must be taken and made before said animal is buried or otherwise disposed of, and shall transmit same to the County Clerk of the county in which said animal is found or killed, within ten days from the date of finding or killing, which description shall be by said County Clerk filed and kept of records in his office without exacting any fees from section foreman for filing same. A certified copy of said report so filed may be introduced in evidence in any case wherein the killing, death, or value of said animal is in question. (Acts 1915, ch. 73, sec. 1.)

Section 2 makes it a misdemeanor to violate the act. See Pen. Code, art. 1531h.

Art. 6604. (4529) Consolidation prevented.—It shall be unlawful for any railroad corporation, or other corporation, or the lessees, purchasers or managers of any railroad corporation, to consolidate the stocks, property, works or franchises of such corporation with or lease or purchase the stocks, property, works or franchises of any other railroad corporation owning or having under its control or management a competing or parallel line; nor shall any officer, agent, manager, lessee or purchaser of such railroad corporation act as or become an officer, agent, manager, lessee or purchaser of any other railroad corporation in leasing or purchasing any parallel or competing line. (Acts 1887, p. 137; P. C. arts. 419–422.)

Art. 6605. (4530) Corporation defined.—Railroad corporation, or other corporation, as used in the preceding article, is declared to mean any corporation, company, person or association of persons who own or control, manage or operate any line of railroad in this state. (Id. sec. 3.)

Art. 6606. (4531) (4247) Consolidation, etc.—No railroad company organized under the laws of this state shall consolidate, by private or judicial sale or otherwise, with any railroad company organized under the laws of any other state, or of the United States.

Art. 6607. (4532) (4248) Map and profile of road, etc., shall be recorded.—Every such corporation shall, within a reasonable time after their road shall be located, cause to be made:

1. A map and profile thereof, and of the land taken or obtained for the use thereof, and file the same in the office of the railroad commission. Every such map shall be drawn on a scale and on paper to be designated by the railroad commission and certified and signed by the president of the corporation.

2. A certificate specifying the line upon which it is proposed to construct the railroad and the grades and curves, certified and signed and filed as aforesaid.

3. Any railroad company failing or refusing to comply with the provisions of this

article shall forfeit to the state of Texas any sum not less than five hundred dollars nor more than one thousand dollars, to be recovered in any court of competent jurisdiction in any county through which such railway company may pass; and each day such railroad company fails or refuses to comply with the provisions of this law shall be considered a separate offense. (P. D. 4904; Acts 1893, p. 169.)

Art. 6608. (4535) (4251) To receive freights and passengers from connecting lines.—All railway companies doing business in this state shall be and they are hereby required to receive from all other railway companies with which they may connect at the state line of this state, or at any place within this state, or at any or all places where they may cross the line of any other railway doing business, or operating a line of railway, in this state, all freights and passengers coming to it from such connecting line and destined to points on its line, or to points beyond its line or any other line of railway with which said line may connect or cross, and shall transport the same over its said line to destination, if on its line, or to the next connecting or cross line in the direction of destination, if beyond its line, without delay or discrimination in favor of or against the line from which such freight or passengers are received, and upon the same terms and conditions with those made by such line for like or similar service against any other railway in or out of this state with which it does business; provided, however, that the words, "without delay or discrimination," as used herein, are hereby declared to mean that the freight received for transportation as herein required shall be shipped in the order in which it is received, giving preference in all cases to live stock and other perishable freight in the order received; and the charges for the business required by this article to be interchanged shall be no greater pro rata per cent per mile for freight, and no greater rate per mile for passengers and baggage, than is charged to any other line for transporting like freight and passengers and baggage, or that it accept for itself when transported wholly on its own line, no matter on what part of the line or in what direction the transporting is done. (Acts 1887, p. 110.)

See ante, arts. 731, 732; T. & P. Ry. v. Bingham, 47 S. W. 814; T. & N. O. Ry. v. G. & I. Ry., 54 S. W. 1031; G. & I. Ry. v. T. & N. O. Ry., 56 S. W. 328; Ft. W. & D. C. Ry. v. Masterson, 66 S. W. 833; Ry. v. Jolley, 72 S. W. 871; Ry. v. Hill & Morris, 80 S. W. 369; I. & G. N. Ry. v. Ry. Commission, 86 S. W. 16; Red River, etc., Ry. v. Eastin & Knox, 88 S. W. 530; Missouri, K. & T. Ry. Co. of Texas v. Thompson, 118 S. W. 618; Quanah, A. & P. Ry. Co. v. Moore, 189 S. W. 322; Ponder v. Crenwelge, 203 S. W. 1125.

Art. 6609. (4536) (4252) What are connecting lines.—Whenever any two or more railroads doing business in this state shall connect with each other by crossing each other's tracks or otherwise so as to form a continuous or connected line from one point in the state to another point in this state, such lines so crossing are hereby declared to be connecting lines; and when such connecting lines receive from any other railway or transportation line passengers or freight for transportation over the combined line at a rate or division agreed upon between themselves and such other railway or transportation line from which the business is received as aforesaid, then, in every such case, it shall be the duty of such connecting railways forming such through line, and of either or both of them, to receive from every other railway or transportation line with which they or either of them may connect by crossing of track or otherwise, all passengers or freight that may be destined to points on either of the lines making up such combined line, and transport the same to the point of destination, if on such combined lines, or either of them, or to the next connection or crossing in the direction of the destination of such freight or passengers, without delay or discrimination, and at no greater rate than is paid, and on the same conditions as is or shall be required by such combined line for like or similar services from any other railway or transportation line with which they or either of them shall interchange business. (Id.)

See authorities under preceding article.

Art. 6610. (4537) (4253) Terms for receiving, etc.—Every railroad, or person, or corporation operating a railway for the carriage of freight and passengers in this state shall receive freight, passengers and baggage for transportation to or into this state, or through any part thereof, from every other connecting railway, upon the same terms and conditions as to the division of charges for carrying or transporting the same upon a mileage, or any other basis, and upon terms and conditions as to bills of lading, way-bills, tickets, coupon tickets and baggage checks, that any such person, or corporation or transportation line may receive or contract to receive from any other person or corporation engaged in like business in this state; and, where railroads within this state receive goods for transportation into their warehouses or depots, they shall forward them in the order in which they are received, the first received to be the first forwarded, without giving the preference to one over another; and in case of failure to do so they shall be liable for all loss occurring while the goods remain, and for all damage occasioned or in any wise resulting from delay; provided, that the trip or voyage shall be considered as having commenced from the time of the signing of bill of lading, and as having ended upon the arrival of freight at point of destination, and written notices served upon the consignee that it is ready for delivery upon payment of freight and charges; provided, further, that should the consignee of the goods fail to receive them promptly after such notice is served the liability of the railroads thereafter shall be the same as that of warehousemen. (Acts 1883, p. 67, sec. 8.)

See ante, art. 713; Houston Printing Co. v. Moulden, 41 S. W. 381; Hill & Morris v. Ry., 75 S. W. 874; Ry. Commission v. St. L. S. W. Ry. of T., 80 S. W. 102; Ponder v. Crenwelge, 203 S. W. 1125.

Art. 6611. All water craft freight to be received on same terms.—All railway companies doing business in this state shall be and they are hereby required to receive from all steamships, steamboats and other water craft and vessels, at their usual places for receiving such freights at the several ports on the coast of Texas, and on the inland waterways in this state, all freights

and passengers coming to it from such steamships, steamboats and other water craft and vessels, and destined to points on its line, or to points beyond its line, or any other line of railway with which said line may connect or cross, and shall transport the same over its said line to destination, if on its line, or to the connecting or cross line in the direction of destination, if beyond its line, without delay or discrimination in favor of or against such steamship line, steamboat owner or company, or the owner of any other water craft or other vessels from whom such freight or passengers are received, and upon the same terms and conditions with those made by such railway company for like or similar service with any other person, steamship company, steamboat company or owners, or any other water craft or vessel, with which it does business at such points or stations as aforesaid. (Acts 1899, p. 101, sec. 1.)

Art. 6612. Penalty.—If any railway company doing business in this state shall fail or refuse to interchange business with any steamship line or company, or any steamboat line or company, or any other water craft or vessel on the same terms and conditions, or for the same compensation or pro rata that it interchanges business with any other steamship line or company, steamboat line or company, or any other water craft or vessel it shall be deemed guilty of discrimination within the meaning of this chapter; and every railroad company so offending shall, for every such offense, forfeit and pay to the state of Texas a penalty of not less than five hundred dollars nor more than five thousand dollars, to be collected in the manner and in the courts as prescribed for the collection of other penalties, in article 6673, and in addition thereto shall forfeit and pay to the corporation, person or persons aggrieved thereby, the sum of one thousand dollars as penal damages for each and every act of discrimination or violation of this law which may be recovered in a civil action in any court in this state having jurisdiction by law of the amount in controversy, in the name of the corporation, person or persons so suing; provided, that nothing in this article shall be so construed as to prevent the recovery of any other damages by an aggrieved person, firm or corporation accruing by reason of the violation of this article, or to relieve any railway company, or its officers, managers or agents, from prosecution under any penal law of this state. (Id. sec. 2.)

Art. 6613. Provisions of two preceding articles, how construed.—The two preceding articles shall not have the effect to relieve or waive any right of action by the state, or any other person, firm or corporation for any right, penalty or forfeiture which may have arisen, or may hereafter arise, under any law of this state; and all penalties accruing under the two preceding articles shall be cumulative of each other, and a suit for or recovery of one shall not be a bar to the recovery of any other penalty. (Id. sec. 3.)

Art. 6614. (4538) (4254) Declared to be trustees, etc.—Every railway which may interchange business with any other connecting railway under the provisions of this chapter, or otherwise, is hereby declared to be a trustee for such connecting railway to the extent of all sums of money received by it for the joint business interchanged between them, and which may properly belong to such other railway. Such sums of money shall be due and payable from one connecting line to the other once every ninety days; and each connecting railway shall have a lien upon the property and franchises of connecting railways to the extent of balances due each quarter, which lien shall be superior to all other liens upon said property and franchises, save and except laborers' liens, as already provided by law, and may be enforced in any of the courts of this state having jurisdiction by law of the subject matter and the parties. (Acts 1887, p. 110.)

See I. & G. N. Ry. v. Coolidge, 62 S. W. 1097.

Art. 6615. (4539) (4255) Penalty for refusing to receive from connecting lines.—If any railway company doing business in this state shall fail or refuse to interchange business with any other railway company, or shall fail or refuse to interchange business on the same terms or for the same pro rata that it interchanges business with any other railway company in this state, or shall fail or refuse to honor or receive the tickets, coupon tickets, way bills or baggage checks of any connecting railway upon the same terms and conditions that it receives or honors the tickets, coupon tickets, way bills or baggage checks of any other railway company, or shall violate in any manner any other provisions of this and the four preceding articles, such railway company so offending shall be deemed guilty of discrimination within the meaning of this title, and shall forfeit and pay to the person or corporation aggrieved thereby the sum of one thousand dollars as penal damages for each and every act of discrimination or violation of this law, which may be recovered in a civil action in any of the courts of this state having jurisdiction by law of such an amount, in the name of the person or corporation so suing; provided, nothing in this article shall be so construed as to prevent the recovery of any other damages by any aggrieved person, firm or corporation, occurring by reason of the violation of this or the four preceding articles, nor to relieve any railway company, or its officers, managers or agents, from prosecution for violation of any penal law of this state. (Acts 1887, p. 112.)

Art. 6616. (4540) Equal facilities to be furnished.—Every railroad company operating a railroad within this state shall furnish reasonable and equal facilities and accommodations, and upon reasonable and equal rates, to all corporations and persons engaged in the express business, for the transportation of themselves, agents, servants, merchandise and other property, and for the use of their cars, depots, buildings and grounds and for exchanges at points of junction with other roads. (Acts 1887, p. 113.)

Art. 6617. (4541) Damages for failure to comply, etc.—Any railroad company, which shall fail to comply with the provisions hereof, shall be liable to the aggrieved party, in an action on the case, for damages; and such railway company, in addition to liability to said action for damages, shall be

subject to a writ of mandamus, to be issued by any court of competent jurisdiction, to compel compliance with the provisions of the preceding article; and the said writ of mandamus shall issue at the instance of any party or corporation aggrieved by a violation hereof, and any violation of said writ shall be punishable as a contempt. (Id. sec. 2.)

Art. 6618. (4542) Passenger fare three cents per mile.—The passenger fare upon all railroads in this state shall be three cents per mile, with an allowance of baggage to each passenger not to exceed one hundred pounds in weight; provided, however, that, where the fare is paid to the conductor, the rate shall be four cents per mile, except from stations where no tickets are sold, and that the minimum charge in no case shall be less than twenty-five cents; and provided, further, that when the passenger fare does not end in five or naught, the nearest sum so ending shall be the fare; provided, further, that in no case shall children under ten years of age be charged a higher rate of fare than two cents per mile; provided, further, railroads shall be required to keep their ticket offices open half an hour prior to the departure of trains, and upon failure to do so they shall not charge more than three cents per mile. (Acts 1883, p. 70, sec. 9.)

See M., K. & T. Ry. v. Mills, 65 S. W. 74; Ry. v. Gist, 73 S. W. 857; Ry. v. Dyer, 95 S. W. 12.

CHAPTER ELEVEN

COLLECTION OF DEBTS FROM RAILROAD CORPORATIONS

Art. 6619. (4543) (4259) Property of company subject to execution.—The rolling stock and all other movable property belonging to any railroad company or corporation shall be considered personal property, and its real and personal property, or any part thereof, shall be liable to execution and sale in the same manner as the property of individuals, and no such property shall be exempt from execution and sale. (Const., art. 10, sec. 4.)

See Sayles' Practice, p. 1207; San Antonio & G. S. Ry. v. San Antonio & G. R. Ry., 76 S. W. 782.

Art. 6620. (4544) Notice required in reducing wages.—All persons in the employment of such railway company shall be entitled to receive thirty days' notice from said company before their wages can be reduced by such company; and, in all cases of reduction, the employé shall be entitled to receive from such company wages at his contract price for the full term of thirty days after such notice is given, to be recovered in any court of competent jurisdiction. (Acts 1887, p. 20.)

Art. 6621. (4545) Service of notice and how given.—The notice referred to in the preceding article is declared to mean thirty full days immediately prior to the day upon which such reduction is to take effect, and may be given by posting written or printed handbills, specifying the parties whose wages are to be reduced and the amount of such reduction, in at least three conspicuous places in or about each shop, section house, station, depot, train or other places where said employés are at work; provided, such employé shall, within fifteen days from the date of such notice, inform such railway company, by posting like notices as given by such railway company, whether he will or will not accept such reduction; and, if no such information is given such company by such employé, then such employé shall forfeit his right to such notice, and such reduction shall take effect from the date of such notice, instead of at the expiration of thirty days. (Id. sec. 2.)

Art. 6622. (4546) Penalty.—Any railway company violating or evading any of the provisions of the preceding article shall pay to each employé affected thereby one month's extra wages, to be recovered by such employé in any court of competent jurisdiction. (Id. sec. 3.)

Art. 6623. (4547) When wages to be paid discharged employé.—Whenever any railroad company shall discharge any employé, or whenever the time of service of any employé of a railroad company shall expire, or whenever any railroad company shall be due and owing any employé, such railroad company, upon such discharge, or upon the termination of the term of such service, or upon the maturity of said indebtedness, shall, within fifteen days after demand therefor upon the nearest station agent of said railroad company, pay to such employé the full amount due and owing him; and in case said railroad company fails or refuses to pay such employé, then it shall be liable and pay to such employé twenty per cent on the amount due him, as damages, in addition to the amount so due, in no case the damages to be less than five nor more than one hundred dollars. (Acts 1887, p. 72.)

See art. 5246—98.

Held unconstitutional. See San Antonio & A. P. Ry. Co. v. Wilson, 19 S. W. 910; Missouri, K. & T. Ry. Co. v. Braddy, 135 S. W. 1059.

Art. 6624. (4549) (4260) Road, etc., liable to be sold for debts.—In case of the sale of the property and franchises of a railroad company, whether by virtue of an execution, order of sale, deed of trust, or any other power, or by a receiver acting under judgments heretofore or to be hereafter rendered by any court of competent jurisdiction the purchaser or purchasers at such sale and associates, if any, shall acquire full title to such property and franchises, with full power to maintain and operate the railroad and other property incident to it, under the restrictions imposed by law; provided, however, that said purchaser or purchasers and associates, if any, shall not be deemed and taken to be the owners of the charter of the railroad company and corporators under the same, nor vested with the powers, rights, privileges and benefits of such charter ownership as if they were the original corporators of said company, unless the purchaser or purchasers and associates, if any, shall agree to take and hold said property and franchises, charged with and subject to the payment of all subsisting liabilities and claims for death and for personal injuries sustained in the operation of the railroad by the company, and by any receiver thereof, and for loss of and damage to property sustained in the operation of the railroad by the company and by any receiver thereof, and for the current expenses of such operation, including labor, supplies and repairs; provided, that all such subsisting claims and liabili-

ties shall have accrued within two years prior to the beginning of the receivership resulting in the sale of said property and franchises or within two years prior to the sale, if said property and franchises be sold otherwise than under receivership proceedings, unless suit was pending on such claims and liabilities when the receiver was appointed or when the sale was made, in which event claims and liabilities on which suits were so pending shall be protected hereby as though accruing within the two years; such agreement to be evidenced by an instrument in writing signed and acknowledged by said purchaser or purchasers and associates, if any, and filed in the office of the secretary of state of the state of Texas; and, provided, further, that such charter, together with the powers, rights, privileges and benefits thereof, shall pass to said purchaser or purchasers and associates, if any, subject to the terms, provisions, restrictions and limitations imposed and to be imposed by law; and provided, further, that the amount of stock and bonds which may be held against said property and franchises, after the sale thereof, as well as the manner of issuance of such stock and bonds shall be fixed, determined and regulated by the railroad commission of Texas at its discretion save that the total encumbrance secured by the lien on said property and franchises shall not exceed the amount allowed by article 6718 of the Revised Statutes of Texas. (Amended 4 S. S. 1910, p. 120; P. D. 4912.)

See Sayles' Practice, p. 344; Williams v. Tex. Mid. Ry., 55 S. W. 130; Texas Southern Ry. Co. v. Harle, 105 S. W. 1107; Freeman v. W. B. Walker & Sons, 175 S. W. 1133; International & G. N. Ry. Co. v. Edmundson, 185 S. W. 402.

Art. 6625. (4550) New corporation, in case of sale, may be formed, how.—In case of any sale heretofore or hereafter made of the property and franchises of a railroad company within this state the purchaser or purchasers thereof and associates, if any, shall be entitled to form a corporation under chapter one of this title, for the purpose of acquiring, owning, maintaining and operating the road so purchased, as if such road were the road intended to be constructed by the corporation; and, when such charter has been filed, the new corporation shall have the powers and privileges then conferred by the laws of this state upon chartered railroads, including the power to construct and extend; provided, that, notwithstanding such incorporation, the property and franchises so purchased shall be charged with and subject to the payment of all subsisting liabilities and claims for death and personal injuries sustained in the operation of the railroad by the sold-out company and by any receiver thereof, and for loss of and damage to property sustained in the operation of the railroad by the sold-out company and by any receiver thereof, and for the current expenses of such operation including labor, supplies and repairs; provided, that all such subsisting claims and liabilities shall have accrued within two years prior to the beginning of the receivership resulting in the sale of such property and franchises, or within two years prior to the sale, if said property and franchises be sold otherwise than under receivership proceedings, unless suit was pending on such claims and liabilities when the receiver was appointed, or when the sale was made; in which event claims and liabilities on which suits were so pending shall be protected hereby as though accruing within two years; and provided, that by such purchase and organization no right shall be acquired in conflict with the present constitution and laws, in any respect, nor shall the main track of any railroad once constructed and operated be abandoned or moved; and provided, further, that the amount of stock and bonds which may be issued by said new corporation, as well as the manner of their issuance, shall be fixed, determined and regulated by the railroad commission of Texas at its discretion, save that the total encumbrance secured by lien on said property and franchises shall not exceed the amount allowed by article 6718 of the Revised Statutes of Texas. This and the preceding articles shall not be construed to in any wise repeal or impair the provisions of chapter 16 of this title except in so far as the same may be changed thereby. (Acts 1889, p. 19; amended 4 S. S. 1910, p. 120.)

See Thayer v. Wathem, 44 S. W. 906; Williams v. Ry., 55 S. W. 130; G. & W. Ry. v. Kinkhead, 60 S. W. 468; Texas Southern Ry. Co. v. Harle, 105 S. W. 1107; International & G. N. Ry. Co. v. Anderson County, 150 S. W. 239; Hudgins v. International & G. N. Ry. Co., 162 S. W. 1016; State v. Sugarland Ry. Co., 163 S. W. 1047; International & G. N. Ry. Co. v. Anderson County, 174 S. W. 305; Freeman v. W. B. Walker & Sons, 175 S. W. 1133; Enid, O. & W. Ry. Co. v. State, 181 S. W. 498; International & G. N. Ry. Co. v. Edmundson, 185 S. W. 402; State v. Enid, O. & W. Ry. Co., 191 S. W. 560; International & G. N. Ry. Co. v. Concrete Inv. Co., 201 S. W. 718.

Art. 6626. (4551) Jurisdiction, etc.—No railway company availing itself of any of the privileges herein provided shall claim to be under the jurisdiction of the federal courts by reason thereof; and any railway company which may avail itself of the said privileges which shall claim to be subject to the jurisdiction of the federal courts in pursuance of this article shall ipso facto forfeit its reorganization and be remanded to the same condition as it was prior to said reorganization. (Id. p. 20, sec. 2.)

Art. 6627. (4552) (4261) Sale under deed of trust, when and where made.—Whenever a sale of the roadbed, track, franchise and chartered rights and privileges of any railroad company is made by virtue of any deed of trust or power the same shall be made at the time and place mentioned in the deed of trust or power and in accordance with the provisions of the same as to notice, and in other respects; and, if the same be not specified, such sale shall be made as hereinafter provided for sales under execution or order of sale. (P. D. 4913.)

Art. 6628. (4553) (4262) Judgment, execution, levy and sale.—Whenever judgment is rendered against any railroad company, execution shall issue thereon and be levied and collected as in other civil causes, except that when the roadbed, track, franchise and chartered powers and privileges of said railroad company is levied upon, the levy and sale must take place in the county where the principal office of such company is situated, and the entire roadbed, track, franchise and chartered powers and privileges of such company shall be levied upon and sold. The provisions of this article shall be observed so far as they are applicable in all

cases where, by any decree of a competent court, a sale of the roadbed, track, franchise and chartered powers and privileges of any railroad company is directed to be made. (P. D. 4914.)

See Weddington v. Carver, 100 S. W. 786; Sayles' Practice, p. 1208.

Art. 6629. (4554) (4263) Unpaid stock subscriptions of stockholders of sold-out company.—The sale of the roadbed, track, franchise and chartered rights, as hereinbefore provided, shall not be held to pass or convey to the purchaser any right or claim to recover from the former stockholders of said company any sums which may remain due upon their subscriptions of stock, but the said stockholders shall continue liable to pay the same in discharge and liquidation of the debts due by the sold-out company, as hereinafter provided. (P. D. 4915.)

Art. 6630. (4555) (4264) After sale old directors to be trustees.—Whenever a sale of the roadbed, track, franchise and chartered powers and privileges is made as hereinbefore provided (unless other persons shall be appointed by the legislature or by some court of competent authority), the directors or managers of the sold-out company at the time of the sale, by whatever name they may be known in law, shall be the trustees of the creditors and stockholders of the sold-out company, and shall have full powers to settle the affairs of the sold-out company, collect and pay the outstanding debts, and divide among the stockholders the money and other property that shall remain after the payment of the debts and other necessary expenses; and the persons so constituted trustees shall have authority to sue by the name of the trustees of such sold-out company, and may be sued as such, and shall be jointly and severally responsible to the creditors and stockholders of such company, to the extent of its property and effects that shall come to their hands. (P. D. 4916.)

See Aldridge v. Pardee, 60 S. W. 789; Allison v. Richardson, 171 S. W. 1021; Jones v. Abernathy, 174 S. W. 682; Jones v. Nix, 174 S. W. 685.

Art. 6631. (4556) (4265) Suits not to abate.—No suit pending for or against any railroad company at the time that the sale may be made of its roadbed, track, franchise and chartered privileges shall abate, but the same shall be continued in the name of the trustees of the sold-out company. (Id.)

See Sayles' Practice, p. 344; Steed v. S., 67 S. W. 328; Jones v. Abernathy, 174 S. W. 682; Jones v. Nix, 174 S. W. 685.

Art. 6632. (4557) (4266) This title not to apply to state loans, etc.—The provisions of this title shall not apply to any debt, execution, or deed of trust held by the state against any railroad company, because of any loan made by the state to any company under the provisions of the act to provide for the investment of the special school fund, or any other law which authorizes the loan of money to railroad companies; nor shall any creditor of any railroad company be allowed to make the state a party to any suit brought for the enforcement of any debt, mortgage or deed of trust or lien on any railroad, or permitted to require the state to foreclose any lien which it may have upon any road, but the lien of the state and its right to enforce the same shall continue as if this title had never been passed, and as if no sale had been made under the provisions of the same. (P. D. 4917.)

CHAPTER TWELVE
FORFEITURE OF CHARTER

Art. 6633. (4558) (4278) Forfeiture for failure to build and equip.—If any railroad corporation organized under this title shall not, within two years after its articles of association shall be filed and recorded as provided in this title, begin the construction of its road, and construct, equip and put in good running order at least ten miles of its proposed road, and, if any such railroad corporation, after the first two years, shall fail to construct, equip and put in good running order at least twenty additional miles of its road each and every succeeding year until the entire completion of its line, such corporation shall, in either of such cases, forfeit its corporate existence, and its powers shall cease as far as relates to that portion of said road then unfinished, and shall be incapable of resumption by any subsequent act of incorporation. The provisions of this article shall not apply to or in any manner affect railway companies incorporated for the construction and operation of urban, suburban and belt railroads for a distance of less than ten miles, as provided in clause two of article 6408, chapter one, of this title; provided, that all such companies shall, within twelve months from the date of their charter, complete a portion of their road and commence and continue the running of cars thereon. (Acts 1889, p. 17.)

Denison & S. Ry. v. St. L. S. W. Ry. of T., 72 S. W. 161; Enid, O. & W. Ry. Co. v. State, 181 S. W. 498.

Art. 6634. (4559) (4279) Same as to branch lines.—The preceding article shall apply as well to branch lines as to main lines of railroads. (Acts 1876, p. 143, sec. 7.)

Art. 6635. Relief of, for failure to comply with the law.—Any railway company holding a charter filed in the office of the secretary of state since the first day of January, 1900, of which by amendment to its articles of incorporation filed with the secretary of state of this state since the first day of January, 1900, has provided for the construction of one or more branch lines, and which has since the first day of January, 1906, constructed and put in operation fifty miles of railroad in this state, or thirty miles of railroad in the state of Louisiana, or which since the first day of January, 1906, shall have expended not less than twenty thousand dollars for right of way or terminal facilities within or immediately adjacent to any city in this state with a population of not less than forty thousand, as shown by the last Federal census; also any railway company which had been incorporated by articles of incorporation filed in the office of the secretary of state of this state since the first day of January, 1900, and which has since the first day of January, 1902, constructed and put in operation not less than nine miles of railroad within this state, and the length of whose line authorized by its charter does not exceed fifty miles, or which has since January 1, 1906, graded not less than fifty miles of road bed on its line in this state, or which has, in

good faith, acquired since January 1, 1907, its right of way for the entire length of its line, and the length of whose line authorized by its charter does not exceed forty miles, or any railroad company which since the first day of January, 1901, and during the first year of its incorporation, did construct and put in operation not less than twenty miles of railroad in this state, shall have two years from the eleventh day of June, 1909, in which to comply, as to its main line or its branch or branches projected by such articles of incorporation or amendments, with the provisions of articles 6422, 6633 and 6634, and each such railway company which shall have forfeited its right to construct, or its corporate existence, as to any part of its said main line, or is about to do so, or any of its said branches, or any part thereof, shall have, and such corporate existence and right to construct same is hereby restored and preserved to it, and it shall enjoy all of its corporate franchises, property rights and powers held or acquired by it previous to any cause of forfeiture on account of such failure; provided, that no such railway company shall claim or exercise any right or franchise not allowed, granted or permitted to other railway corporations under the laws now in force in this state, and every such railway company shall comply with the laws now in force in this state pertaining to railway corporations. (Acts 1909, p. 227, sec. 1.)

Art. 6635a. Extension of time to build and equip in certain cases; restoration of corporate existence, etc.—That the time in which any railway corporation chartered under the laws of the state of Texas since the first day of January, 1892, or the charter of which has been amended since that date, is required to begin the construction of its road, and construct, equip and put in good running order, as required in article 4558 [6633] of the Revised Statutes of the state of Texas of 1895, and the same hereby is, as to any unfinished portion of such road, extended two years from the taking effect of this Act; and any railway company having been chartered since January first, 1892, or the charter to which has been amended since said date, which shall have forfeited its corporate existence or any of its rights and powers, or is about to do so, by reason of the failure to comply with said article 4558 [6633] or any part of said article, shall have restored and preserved to it, its corporate existence, and it shall have and enjoy all of the corporate franchises, property rights and powers held or acquired by it previous to any causes or forfeiture as aforesaid; provided, that no railway company which shall be revived or the time extended by virtue of this Act, shall claim or exercise any franchise not allowed, granted or permitted to other railway corporations under the law now in force in this state. (Acts 1913, p. 116, sec. 1, superseding Acts 1911, p. 43, sec. 1.)

Art. 6635b. Extension of time to build branches; restoration of franchises, etc.—Any railway corporation chartered since the first day of January, A. D. 1892, and which by its original charter or by amendment thereto, filed since said first day of January, A. D. 1892, has further provided for the locating, constructing, maintaining, owning and operating of any extension or branch line or lines of railway, and which has failed or is about to fail to complete the same, or any part thereof, within the time required by law, shall, upon payment of all its franchise tax, be and is hereby restored to and granted all and singular the rights, privileges and franchises acquired by its original charter, or by such amendment to its articles of incorporation, as if the same was filed and recorded in the office of the secretary of state on the day of taking effect of this Act, and such corporation shall, upon payment of its franchise tax, be and is hereby authorized to project, complete, construct, own and operate any such extension and branch line or lines of railway under and as provided for in its charter or in any amendment to its articles of incorporation; provided, that such extension and branch line of railway shall be by such corporation completed and put in good running order at the rate of at least ten miles in one year from the taking effect of this act, and twenty additional miles for each and every year thereafter, until all of the branch line or lines of extension as provided for are completed. (Acts 1913, p. 116, sec. 2, superseding Acts 1911, p. 43, sec. 2.)

Art. 6635c. Extension of time to build and equip; corporate existence continued; proviso.—That the time in which any railway corporation chartered under the laws of the State of Texas since the first day of January, 1892, or the charter of which has been amended since that date, is required to begin construction of its road, and construct, equip and put the same in good running order as required by Article 6633 of the Revised Statutes of the State of Texas of 1911, be and the same hereby is, as to any unfinished portion of such road, extended two years from the taking effect of this Act; and any railroad company having been chartered since January 1, 1892, or the charter to which has been amended since said date, which shall have forfeited its corporate existence or any of its rights and powers, or is about to do so, by reason of the failure to comply with said Article 6633, or any part of said Article, shall have restored and preserved to it its corporate existence, and it shall have and enjoy all of the corporate franchises, property rights and powers held or acquired by it previous to any cause or forfeiture as aforesaid; provided that no railway company which shall be revived or the time extended by virtue of this Act shall claim or exercise any franchise not allowed, granted or permitted to other railway corporations under the law as now in force in this State. (Acts 1915, ch. 50, sec. 1.)

Art. 6635d. Extension of time to build branches; restoration of franchises, etc.—Any railway corporation chartered since the first day of January, A. D. 1892, and which by its original charter or by amendment thereto, filed since said first day of January, A. D. 1892, has further provided for the locating, constructing, maintaining, owning and operating of any extension or branch line or lines of railway, and which has failed or is about to fail to complete the same, or any part thereof, within the time required by law, shall, upon payment of all its franchise tax, be and is hereby

restored to and granted all and singular the rights, privileges and franchises acquired by its original charter, or by such amendments to its articles of incorporation, as if the same was filed and recorded in the office of the Secretary of State on the day of the taking effect of this Act, and such corporation shall, upon payment of its franchise tax, be and is hereby authorized to project, complete, construct, own and operate any such extension and branch line or lines of railway under and as provided for in its charter or in any amendment to its articles of incorporation; provided, that such extension and branch line of railway shall be by such corporation completed and put in good running order at the rate of at least ten miles in one year from the taking effect of this Act, and twenty additional miles for each and every year thereafter, until all the branch line or lines of extension as provided for are completed; provided, that the provisions of this Act shall not apply to any railroad company which has been chartered by the State of Texas for a period of ten years or more, and which has twenty miles or less of railroad to build in order to comply with its original charter, or any amendment thereto. (Id. sec. 2.)

Art. 6635e. Extension of time to build and equip in certain cases.—That the time in which any railway corporation chartered under the laws of the State of Texas since the first day of January 1892, or the charter of which has been amended, since that date, is required to begin construction of its road, and construct, equip and put the same in good running order as required by Article 6633 of the Revised Civil Statutes of the State of Texas of 1911, be and the same hereby is, as to any unfinished portion of such road extended two years from the taking effect of this Act; and any railroad company having been chartered since January 1, 1892, or the charter to which has been amended since said date, which shall have forfeited its corporate existence or any of its rights and powers, or is about to do so, by reason of the falure to comply with said Article 6633, or any part of said Article, shall have restored and preserved to its corporate existence, and it shall have and enjoy all of the corporate franchises, property rights and powers held or acquired by it previous to any cause or forfeiture as aforesaid; provided that no railway company which shall be revived or the time extended by virtue of this Act shall claim or exercise any franchise not allowed, granted or permitted to other railway corporations under the law as now in force in this State. (Acts 1917, 1st C. S., ch. 18, sec. 1.)

Art. 6635f. Extension of time to build branches, etc.—Any railway corporation chartered since the first day of January A. D. 1892, and which by its original charter or by amendment thereto, filed since said first day of January A. D. 1892, has further provided for the locating, constructing, maintaining, owning and operating of any extension or branch line or lines of railway, and which has failed or is about to fail to complete the same, or any part thereof, within the time required by law, shall, upon payment of all its franchise tax, be and is hereby restored to and granted all and singular the rights, privileges and franchises acquired by its original charter, or by such amendments to its articles of incorporation, as if the same was filed and recorded in the offices of the Secretary of State on the day of the taking effect of this Act, and such corporation shall, upon payment of its franchise tax, be and is hereby authorized to project, complete, construct, own and operate any such extension and branch line or lines of railway under and as provided for in its charter or in any amendment to its articles of incorporation; provided, that such extension and branch line of railway shall be by such corporation completed and put in good running order at the rate of at least ten miles in one year from the taking effect of this Act and twenty additional miles for each and every year thereafter until all the branch line or lines of extension as provided for are completed; provided that the provisions of this Act shall not apply to any railroad company which has been chartered by the State of Texas for a period of ten years or more, and which has twenty miles or less of railroad to build in order to comply with its original charter, or any amendment thereto. (Id. sec. 2.)

Art. 6636. (4560) (4280) Neglect to make annual report.—Any railroad corporation which shall neglect to make the annual report to the comptroller, or governor, required by this title, and which has been notified by the comptroller, or governor, of such failure, and shall still neglect to make such report, within three months after such notice, shall forfeit its charter. (P. D. 4902.)

See ante, art. 6430.

CHAPTER THIRTEEN

TICKET AGENTS — AUTHORITY AND DUTY

Art. 6637. (4560a) Authorized agents for the sale of tickets.—It shall be the duty of all railroad companies doing business in this state, or the receiver of any such railroad company, through their duly authorized officers, to provide each agent who may be authorized to sell tickets, or other evidences, entitling the holder to travel upon any such railroad, with a certificate setting forth the authority of such agent to make such sale. Such certificate shall be duly attested by the corporate seal of such railroad company, or the signature of the receiver, if any there be, of such railroad company, or by the signature of the officer whose name is signed upon the tickets or coupons which such agent may be authorized to sell. (Acts 1893, p. 97, sec. 1.)

See I. & G. N. Ry. v. Ing, 67 S. W. 722; Ry. v. Mahaffey, 81 S. W. 1047.

As to constitutionality see Jannin v. S., 51 S. W. 1126; T. & P. Ry. Co. v. Mahaffey, 81 S. W. 1049.

Art. 6638. (4560c) Duty of agent.—It shall be the duty of every agent who shall be authorized to sell tickets, or parts of tickets, or other evidence of the holder's right to travel over any railroad within this state, upon demand, to exhibit to any person desiring to purchase a ticket, or to any officer of the law who may request it, the certificate of his authority to sell, and to keep said certificate posted in a conspicuous place in his office for the information of travelers. (Amended Act 1903, p. 162.)

Art. 6639. Same.—It shall be also the duty of every such railroad agent at stations having telegraph communication with the train dispatcher of the railroad, to ascertain one hour before the schedule time of the arrival of passenger trains, if such train is on time, and if on time, to bulletin that fact on a board provided by the company and placed in some conspicuous place at the passenger station. And if the train is late, he shall bulletin how late, and the last telegraph station passed by such train. If later than one hour, said agent shall thereafter ascertain the latest news from such train dispatcher, or some other reliable source, every hour, and bulletin such information and the time of probable arrival of such train. If any such agent shall fail or refuse to perform the duties required of him by this article, he shall be deemed guilty of a misdemeanor, for each time he fails or refuses to perform the duties required of him by this article, and upon conviction shall be punished by a fine of not less than fifty nor more than one hundred dollars for each offense. (Id. sec. 4; Acts 1913, p. 350, sec. 1.)

CHAPTER FOURTEEN

LIABLE FOR INJURIES TO EMPLOYÉS

Art. 6640. Liable for injury to fellow-servant.—Every person, receiver, or corporation operating a railroad or street railway, the line of which shall be situated in whole or in part in this state, shall be liable for all damages sustained by any servant or employé thereof while engaged in the work of operating the cars, locomotives or trains of such person, receiver, or corporation, by reason of the negligence of any other servant or employé of such person, receiver or corporation, and the fact that such servants or employés were fellow-servants with each other shall not impair or destroy such liability. (Acts 1897, S. S. p. 14, sec. 1.)

Moore v. Jones, 39 S. W. 593; Patterson v. H. & T. C. Ry., 40 S. W. 442; Ry. v. Gibson, 54 S. W. 779; M. K. & T. Ry. v. Baker, 58 S. W. 964; Lawrence v. Tex. C. Ry., 61 S. W. 342; Perez v. S. A. & A. P. Ry., 67 S. W. 137; Ry. v. Webb, 72 S. W. 1044; Lakey v. Ry., 75 S. W. 566; Seery v. Ry., 77 S. W. 950; Ry. v. Keaveney, 80 S. W. 387; Ry. v. Corrigan, 81 S. W. 554; Ry. v. Stephens, 83 S. W. 235; Ry. v. Perry, 85 S. W. 63; Lodwick Lbr. Co. v. Taylor, 87 S. W. 358; Ry. v. Nelson, 87 S. W. 706; Ry. v. Hervey, 89 S. W. 1095; Mounce v. Lodwick Lbr. Co., 91 S. W. 240; Sherman v. Ry., 91 S. W. 561; Ry. v. McCraw, 95 S. W. 82; Walker v. Texas & N. O. R. Co., 112 S. W. 430; Texas & P. Ry. Co. v. Johnson, 118 S. W. 1117; Beaumont, S. L. & W. R. Co. v. Olmstead, 120 S. W. 596; Glover v. Houston Belt & Terminal Ry. Co., 163 S. W. 1063; Waterman Lumber Co. v. Shaw, 165 S. W. 127; Texas Bldg. Co. v. Reed, 169 S. W. 211; Houston, E. & W. T. Ry. Co. v. Samford, 181 S. W. 857; Ft. Worth Belt Ry. Co. v. Jones, 182 S. W. 1184.

Generally under this chapter see Texas & N. O. Ry. Co. v. Yerkes, 156 S. W. 579.

Art. 6641. Who are vice-principals.—All persons engaged in the service of any person, receiver, or corporation controlling or operating a railroad or street railway, the line of which shall be situated in whole or in part in this state who are intrusted by such person, receiver, or corporation with the authority of superintendence, control or command of the other servants or employés of such person, receiver, or corporation, or with the authority to direct any other employé in the performance of any duty of such employé, are vice-principals of such person, receiver, or corporation, and are not fellow-servants with their co-employés. (Id. sec. 2.)

See M. K. & T. Ry. v. Whitlock, 41 S. W. 407; T. & N. O. Ry. v. Echols, 41 S. W. 488; I. & G. N. Ry. v. Johnson, 55 S. W. 773; Ry. v. Hutchens, 80 S. W. 415; Ry. v. Dean, 89 S. W. 797; Sherman v. Ry., 91 S. W. 561; Texas & N. O. R. Co. v. Walton, 104 S. W. 415; Galveston, H. & N. R. Co. v. Cochran, 109 S. W. 261; Texas & N. O. R. Co. v. Barwick, 110 S. W. 953; Walker v. Texas & N. O. R. Co., 112 S. W. 430; St. Louis, S. F. & T. Ry. Co. v. Jenkins, 137 S. W. 711; Waterman Lumber Co. v. Shaw, 165 S. W. 127; St. Louis Southwestern Ry. Co. of Texas v. Freles, 166 S. W. 91; Texas Bldg. Co. v. Reed, 169 S. W. 211.

Art. 6642. "Fellow-servants" defined.—All persons who are engaged in the common service of such person, receiver, or corporation controlling or operating a railroad or street railway, and who while so employed are in the same grade of employment and are doing the same character of work or service, and are working together at the same time and place, and at the same piece of work and to a common purpose, are fellow-servants with each other. Employés who do not come within the provisions of this article shall not be considered fellow-servants. (Id. sec. 3.)

See Long v. Ry., 57 S. W. 802; Lakey v. Ry., 75 S. W. 566; Ry. v. Cloyd, 78 S. W. 43; Ry. v. Elmore, 79 S. W. 891; Ry. v. Still, 88 S. W. 257; Ry. v. Mohrmann, 93 S. W. 1090; Ry. v. Still, 101 S. W. 442; Walker v. Texas & N. O. R. Co., 112 S. W. 430.

Art. 6643. Contract limiting liability void.—No contract made between the employer and employé based upon the contingency of death or injury of the employé and limiting the liability of the employer under the preceding articles of this chapter, or fixing damages to be recovered, shall be valid or binding. (Id. sec. 4.)

Art. 6644. Contributory negligence a defense, except, etc.—Nothing in the preceding articles of this chapter shall be held to impair or diminish the defense of contributory negligence when the injury of the servant or employé is caused proximately by his own contributory negligence, except as otherwise provided in this chapter. (Id. sec. 5.)

Art. 6645. When assumed risk not available as defense.—In any suit against a person, corporation, or receiver, operating a railroad or street railway, for damages for the death or personal injury of an employé or servant, caused by the wrong or negligence of such person, corporation, or receiver, that the plea of assumed risk of the deceased or injured employé where the ground of the plea is knowledge or means of knowledge of the defect and danger which caused the injury or death, shall not be available in the following cases:

First. Where such employé had an opportunity before being injured or killed to inform the employer or a superior entrusted by the employer with the authority to remedy or cause to be remedied the defect, and does notify, or cause to be notified, the employer, or superior thereof, within a reasonable time; provided, it shall not be necessary to give such information where the employer, or such superior thereof, already knows of the defect.

Second. Where a person of ordinary care would have continued in the service with the knowledge of the defect and danger, and in such case it shall not be necessary that the servant or employé give notice of the defect

as provided in subdivision one of this article. (Acts 1905, p. 386, sec. 1.)

El Paso & S. W. Ry. v. Foth, 100 S. W. 171; Marshall & E. T. Ry. Co. v. Blackburn, 155 S. W. 625; Pope v. St. Louis Southwestern Ry. Co. of Texas, 155 S. W. 1175; Galveston, H. & H. R. Co. v. Hodnett, 163 S. W. 13; Gulf, C. & S. F. Ry. Co. v. Riordan, 166 S. W. 133; Pecos & N. T. Ry. Co. v. Collins, 173 S. W. 250; Consolidated Kansas City Smelting & Refining Co. v. Schulte, 176 S. W. 94; Missouri, K. & T. Ry. Co. of Texas v. Pace, 184 S. W. 1051; Chicago, R. I. & G. Ry. Co. v. De Bord, 192 S. W. 767; Marshall & E. T. Ry. Co. v. Riden, 194 S. W. 1163; Swann v. Texas & P. Ry. Co., 200 S. W. 1131; Stephenville, N. & S. T. Ry. Co. v. Shelton, 208 S. W. 915.

Art. 6646. No assumed risk where safety appliance not provided.—Any employé of any common carrier engaged in any intrastate commerce, as provided in articles 6640 and 6641 of this title, who may be injured or killed shall not be held to have assumed the risk of his employment, or to have been guilty of contributory negligence, if the violation of such carrier of any of the provisions of said articles contributed to the injury or death of such employé. (Acts 1909, p. 64, sec. 7.)

Art. 6647. Double-header trains; no assumed risk by employés.—Employés of railway companies employed by said companies in the operation of trains within this state, propelled by two or more engines, shall not be held to assume the risk, if any there be, incident to their employment; provided, they be injured while engaged in operation of such trains; and provided, further, that such injury was occasioned by reason of the operation of two or more engines on such train instead of one. (Acts 1900, S. S. p. 15, sec. 3a.)

Art. 6648. Liable for injury or death of employé.—Every corporation, receiver, or other person, operating any railroad in this state, shall be liable in damages to any person suffering injury while he is employed by such carrier operating such railroad, or in case of the death of such employé, to his or her personal representative for the benefit of the surviving widow and children, or husband and children, and mother and father of the deceased, and, if none, then of the next kin dependent upon such employé for such injury or death resulting in whole or in part from the negligence of any of the officers, agents or employés of such carrier; or by reason of any defect or insufficiency due to its negligence, in its cars, engines, appliances, machinery, track, road bed, works, boats, wharves, or other equipment; provided, the amount recovered shall not be liable for the debts of deceased and shall be divided among the persons entitled to the benefit of the action or such of them as shall be alive, in such shares as the jury, or court trying the case without a jury, shall deem proper; and provided, in case of the death of such employé, the action may be brought without administration by all the parties entitled thereto, or by any one or more of them for the benefit of all, and, if all parties be not before the court, the action may proceed for the benefit of such of said parties as are before the court. (Acts 1909, 1 S. S. p. 279, sec. 1.)

Art. 6649. Contributory negligence, rule as to.—In all actions hereafter brought against any such common carrier or railroad under or by virtue of any of the provisions of the foregoing article and the three succeeding articles to recover damages for personal injuries to an employé, or where such injuries have resulted in his death, the fact that the employé may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employé; provided, that no such employé who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violations by such common carrier of any statute enacted for the safety of employés contributed to the injury or death of such employé. (Id. sec. 2.)

Art. 6650. Assumed risk, rule as to.—Any action brought against any common carrier under or by virtue of any of the provisions of the two preceding articles to recover damages for injuries to or the death of any of its employés, such employé shall not be held to have assumed the risks of his employment in any case where the violation of such common carrier of any statute enacted for the safety of employés contributed to the injury or death of such employé. (Id. sec. 3.)

Art. 6651. Contract changing liability void.—Any contract, rule, regulation or device whatsoever, the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by the three preceding articles shall to that extent be void; provided, that, in any action brought against any such common carrier under or by virtue of said articles, such common carrier may set off therein any sum it has contributed or paid to any insurance, relief benefit or indemnity that may have been paid to the injured employé, or the person entitled thereto, on account of the injury or death for which said action was brought. (Id. sec. 4.)

Art. 6652. Articles of this chapter construed.—Nothing in the provisions of the four preceding articles shall be held to limit the duty or liability of common carriers, or to impair the rights of employés, under other articles of this chapter, or under the provisions of the Revised Civil Statutes, but, in case of conflict, these articles shall prevail; and nothing in said articles shall affect the prosecution of any pending proceeding or right of action under any of the laws of this state. (Id. secs. 5 and 6.)

CHAPTER FIFTEEN

RAILROAD COMMISSION OF TEXAS

Art. 6653. (4561) Railroad commission created, etc.—A railroad commission is hereby created, to be composed of three persons to be appointed by the governor, as follows: If the legislature be in session, the governor shall, by and with the advice of the senate, appoint said commissioners, but, if the legislature be not in session, the governor shall make such appointments; and each commissioner so appointed shall hold his office until the second Monday after the inauguration of the next succeeding governor, and until his successor is appointed and qualified. Each succeeding governor shall, on the second Monday after his inauguration, or as soon thereafter as practicable, appoint said commissioners, who shall each hold

his office until the second Monday after the inauguration of the next succeeding governor, and until his successor is appointed and qualified.

1. **Qualifications of commissioners.**—The persons so appointed shall be resident citizens of this state, and qualified voters under the constitution and laws, and not less than twenty-five years of age. No person shall be appointed as such commissioner who is directly or indirectly interested in any railroad in this state, or out of it, or in any stock, bond, mortgage, security, or in the earnings of any such road; and if such commissioner shall voluntarily become so interested his office shall become vacant; and, if any railroad commissioner shall become so interested otherwise than voluntarily, he shall within a reasonable time divest himself of such interest; failing to do this, his office shall become vacant.

2. **Shall hold no other office, etc.**—No commissioner hereunder shall hold any other office under the government of the United States, or of this state, or of any other state government; and shall not, while such commissioner, engage in any occupation or business inconsistent with his duties as such commissioner.

3. **Vacancies.**—The governor shall fill all vacancies in the office of commissioner by appointment; and the person so appointed shall fill out the unexpired term of his predecessor.

4. **Oaths, etc.**—Before entering upon the duties of his office, each of said commissioners shall take and subscribe to the oath of office prescribed in the constitution, and shall, in addition thereto, swear that he is not directly or indirectly interested in any railroad, nor in the bonds, stock, mortgages, securities, contracts or earnings of any railroad, and that he will to the best of his ability faithfully and justly execute and enforce the provisions of this chapter, and all laws of this state concerning railroads, which oath shall be filed with the secretary of state.

5. **Salary.**—Each of said commissioners shall receive an annual salary of four thousand dollars, payable in the same manner that salaries of other state officers are paid.

6. **Sessions; may appoint clerks, etc.; their salaries.**—The commissioners appointed shall meet at Austin and organize and elect one of their number chairman of said commission. A majority of said commissioners shall constitute a quorum to transact business. Said commission may appoint a secretary at a salary of not more than two thousand dollars per annum, and may appoint not more than two clerks at a salary of not more than fifteen hundred dollars per annum each, and such other persons as experts as may be necessary to perform any duty that may be required of them by this chapter. The secretary shall keep full and correct minutes of all the transactions and proceedings of said commission, and perform such duties as may be required by the commission. The commission shall have power to make all needful rules for their government and for their proceedings. They shall be known collectively as, "Railroad Commission of Texas," and shall have a seal, a star of five points, with the words, "Railroad Commission of Texas," engraved thereon. They shall be furnished with an office in the capitol at Austin, and with necessary furniture, stationery, supplies, and all necessary expenses, to be paid for on the order of the governor.

7. **Expenses.**—The commissioners, secretary and clerks shall be entitled to receive from the state their actual necessary traveling expenses, which shall include the cost only of transportation while traveling on the business of the commission, to be paid out on the order of the governor upon an itemized statement thereof, sworn to by the party who incurred the expense, and approved by the commission.

8. **May hold sessions at any place, etc.**—Said commissioners may hold sessions at any place in this state when deemed necessary to facilitate the discharge of their duties. (Acts 1891, p. 55, secs. 1, 2.)

Art. 6654. (4562) Powers and duties.—The power and authority is hereby vested in the railroad commission of Texas, and it is hereby made its duty, to adopt all necessary rates, charges and regulations to govern and regulate railroad freight and passenger tariffs, the power to correct abuses and prevent unjust discrimination and extortion in rates of freight and passenger tariffs on the different railroads in this state, and to enforce the same by having the penalties inflicted as by this chapter prescribed through proper courts having jurisdiction.

1. **To classify freights.**—The said commission shall have power, and it shall be its duty to fairly and justly classify and subdivide all freight and property of whatsoever character that may be transported over the railroads of this state into such general and special classes or subdivisions as may be found necessary and expedient.

2. **To fix reasonable rates.**—The commission shall have power, and it shall be its duty, to fix to each class or subdivision of freight a reasonable rate for each railroad subject to this chapter for the transportation of each of said classes and subdivisions.

3. **Classifications to be uniform.**—The classifications herein provided for shall apply to and be the same for all railroads subject to the provisions of this chapter.

4. **May fix different rates.**—The said commission may fix different rates for different railroads and for different lines under the same management, or for different parts of the same lines if found necessary to do justice, and may make rates for express companies different from the rates fixed for railroads.

5. **Rates for connecting lines.**—The said commission shall have power, and it shall be its duty, to fix and establish for all or any connecting lines of railroad in this state reasonable joint rates of freight charges for the various classes of freight and cars that may pass over two or more lines of such railroads.

6. **Commission to fix when there is disagreement.**—If any two or more connecting railroads shall fail to agree upon a fair and just division of the charges arising from the transportation of freights, passengers or cars over their lines, the commission shall fix the

pro rata part of such charges to be received by each of said connecting lines.

7. **Old rates to exist until changed by the commission.**—Until the commission shall make the classifications and schedules of rates as herein provided for, and afterwards if they deem it advisable, they may make partial or special classifications for all or any of the railroads subject hereto, and fix the rates to be charged by such roads therefor; and such classifications and rates shall be put into effect in the manner provided for general classifications and schedules of rates.

8. **May alter, abolish, etc.**—The commission shall have power, and it shall be its duty, from time to time, to alter, change, amend or abolish any classification or rate established by it when deemed necessary; and such amended, altered or new classifications or rates shall be put into effect in the same manner as the originals.

9. **May adopt rules and regulations.**—The commission may adopt and enforce such rules, regulations and modes of procedure as it may deem proper to hear and determine complaints that may be made against the classifications or the rates, the rules, regulations and determinations of the commission.

10. **Empty cars.**—The commission shall make reasonable and just rates of charges for each railroad subject hereto for the use or transportation of loaded or empty cars on its road; and may establish for each railroad or for all railroads alike, reasonable rates for the storing and handling of freight and for the use of cars not unloaded after forty-eight hours' notice to the consignee, not to include Sundays.

11. **May fix rates for all services.**—The commission shall make and establish reasonable rates for the transportation of passengers over each or all of the railroads subject hereto, which rates shall not exceed the rates fixed by law. The commission shall have power to prescribe reasonable rates, tolls or charges for all other services performed by any railroad subject hereto.

12. **Railways to maintain depots, etc.**—It shall be the duty of each and every railway subject to this chapter to provide and maintain adequate, comfortable and clean depots and depot buildings at its several stations for the accommodation of passengers; and said depot buildings shall be kept well lighted and warmed for the comfort and accommodation of the traveling public; and all such roads shall keep and maintain adequate and suitable freight depots and buildings for the receiving, handling, storing and delivering of all freights handled by such roads; provided, that this shall not be construed as repealing any existing laws on the subject. (Id. sec. 3.)

See Ry. Commission v. H. & T. C. Ry., 38 S. W. 750; Ry. v. Ry. Commission, 89 S. W. 961; Railroad Commission of Texas v. Chicago, R. I. & G. Ry. Co., 117 S. W. 794; Gulf, C. & S. F. Ry. Co. v. S., 120 S. W. 1028; Galveston Chamber of Commerce v. Railroad Commission of Texas, 137 S. W. 737; Railroad Commission of Texas v. Galveston Chamber of Commerce, 145 S. W. 573; Rio Grande & E. P. Ry. Co. v. Railroad Commission of Texas, 175 S. W. 1116.

Art. 6655. (4563) Notice to be given when rates fixed.—Before any rates shall be established under this chapter, the commission shall give the railroad company to be affected thereby ten days' notice of the time and place when and where the rates shall be fixed; and said railroad company shall be entitled to be heard at such time and place, to the end that justice may be done; and it shall have process to enforce the attendance of its witnesses. All process herein provided for shall be served as in civil cases.

1. **May fix rules for all investigations.**—The commission shall have power to adopt rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings of railroad companies and other parties before it, in the establishment of rates, orders, charges and other acts required of it under this law; provided, no person desiring to be present at any such investigation by said commission shall be denied admission.

2. **May administer oaths, etc.**—The chairman and each of the commissioners, for the purposes mentioned in this chapter, shall have power to administer all oaths, certify to all official acts, and to compel the attendance of witnesses, and the production of papers, waybills, books, accounts, documents and testimony, and to punish for contempt as fully as is provided by law for the district or county court. (Id. sec. 4.)

See post, art. 6660.

Art. 6656. (4564) Rates to be held conclusive until, etc.—In all actions between private parties and railway companies brought under this law, the rates, charges, orders, rules, regulations and classifications prescribed by said commission before the institution of such action shall be held conclusive, and deemed and accepted to be reasonable, fair and just, and in such respects shall not be controverted therein until finally found otherwise in a direct action brought for that purpose in the manner prescribed by articles 6657 and 6658 of this chapter. (Id. sec. 5.)

See Ry. Commission v. Weld, 66 S. W. 1095; Houston & T. C. R. Co. v. Young, 137 S. W. 380; Western Lumber Co. v. Chicago, R. I. & G. Ry. Co., 180 S. W. 644.

Art. 6657. (4565) When railway dissatisfied, may file petition, etc.—If any railroad company or other party at interest be dissatisfied with the decision of any rate, classification, rule, charge, order, act or regulation adopted by the commission, such dissatisfied company or party may file a petition setting forth the particular cause or causes of objection to such decision, act, rate, rule, charge, classification, or order, or to either or all of them, in a court of competent jurisdiction in Travis county, Texas, against said commission as defendant. Said action shall have precedence over all other causes on the docket of a different nature, and shall be tried and determined as other civil causes in said court. Either party to said action may appeal to the appellate court having jurisdiction of said cause; and said appeal shall be at once returnable to said appellate court at either of its terms; and said action so appealed shall have precedence in said appellate court of all causes of a different character therein pending; provided, that, if the court be in session at the

time such right of action accrues, the suit may be filed during such term and stand ready for trial after ten days' notice. (Id. sec. 6.)

See Ry. Commission v. H. & T. C. Ry., 38 S. W. 750; Ry. Commission v. Weld, 66 S. W. 122; Ry. Commission v. Weld & Neville, 73 S. W. 529; Gulf, C. & S. F. Ry. Co. v. Railroad Commission of Texas, 113 S. W. 741; Gulf, C. & S. F. R. Co. v. Railroad Commission of Texas, 116 S. W. 795; Texas & N. O. R. Co. v. Sabine Tram Co., 121 S. W. 256; Galveston Chamber of Commerce v. Railroad Commission of Texas, 137 S. W. 737; Railroad Commission of Texas v. Galveston Chamber of Commerce, 145 S. W. 573; State v. St. Louis Southwestern Ry. Co. of Texas, 165 S. W. 491.

Art. 6658. (4566) Burden of proof.—In all trials under the foregoing article, the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that the rates, regulations, orders, classifications, acts or charges complained of are unreasonable and unjust to it or them. (Id. sec. 7.)

See Ry. Commission v. H. & T. C. Ry., 38 S. W. 750; Ry. Commission v. Weld & Neville, 73 S. W. 529; Gulf, C. & S. F. Ry. Co. v. Railroad Commission of Texas, 113 S. W. 741; Gulf, C. & S. F. R. Co. v. Railroad Commission of Texas, 116 S. W. 795; Texas & N. O. R. Co. v. Sabine Tram Co., 121 S. W. 256; Railroad Commission of Texas v. Galveston Chamber of Commerce, 145 S. W. 573; State v. St. Louis Southwestern Ry. Co. of Texas, 165 S. W. 491; Pecos & N. T. Ry. Co. v. Railroad Commission of Texas, 193 S. W. 770.

Art. 6659. (4567) Railroads to be furnished with schedule of rates fixed.—The said commission shall, as soon as the classifications and schedules of rates herein provided for are prepared by them, furnish each railroad subject to the provisions of this chapter with a complete schedule in suitable form, showing the classification of freight made by them and the rates fixed by said commission to be charged by such road for the transportation of each class of freight, and shall cause a certified copy of such classification and schedule of rates to be delivered to each of said railroads at its principal office in this state, if it has such office in this state, and, if not, then to any agent of said company in this state; which said schedule, rules and regulations shall take effect at the date which may be fixed by said commission, not less than twenty days. Each of said railroad companies shall cause said schedule to be printed in type of a size not less than pica, and shall have the same posted up in a conspicuous place at each of its depots, so as to be inspected by the public. Said commission may at any time abolish, alter, or in any manner amend, the said schedules, or abolish or amend any such regulations; and in that event certified copies of the schedules, rules or regulations, showing the changes therein, shall be delivered to each road as herein specified. In all cases where the rates shall not have been fixed by the commission, no changes shall be made, except after ten days' notice to and consent of the commission. (Id. sec. 8.)

See post, art. 6660.

Art. 6660. Emergency freight rates.—In addition to the powers conferred on the railroad commission of Texas by articles 6655 and 6659, said commission shall have the power, when deemed by it necessary, to prevent interstate rate wars and injury to the business or interests of the people or railroads of the state, or in case of any other emergency, to be judged of by the commission, it shall be its duty to temporarily alter, amend or suspend any existing freight rates, tariffs, schedules, orders and circulars on any railroad or part of railroad in this state, and to fix freight rates where none exist. (Acts 1899, p. 311, sec. 1; Acts 1897, p. 51, sec. 1.)

Art. 6661. To what roads apply.—Said emergency rates, so made by the commission, shall apply on any one or more of all the railroads in this state, or part of railroads, as may be directed by the commission. (Acts 1897, p. 51, sec. 2.)

Art. 6662. Rates take effect, when, and how long continued.—Said rates, so made, shall take effect at such time and remain in force for such length of time as may be prescribed by the commission. (Id. sec. 3.)

Art. 6663. Temporary freight and passenger tariffs, power to make.—In addition to all other powers conferred by law upon the railroad commission of Texas, said commission shall have the power to make temporary freight and passenger tariffs, to take immediate effect or at such times as shall be fixed by said commission, whenever an emergency arises, the sufficiency of which shall be judged of by said commission, in order that justice may be done or injury prevented any person, place or locality; and said commission shall have the power at once to suspend temporarily any existing freight or passenger tariff, and to establish freight and passenger tariffs, rules and regulations for temporary use, to have immediate effect where none exists. (Acts 1907, p. 220, sec. 1.)

Art. 6664. (4568) Complainants may apply to commission. Proceedings thereunder.—Any person, firm, corporation, or association, or any mercantile, agricultural, or manufacturing association, or any body politic, or municipal organization, complaining of anything done or omitted to be done by any railroad subject hereto, in violation of any law of this state, or the provisions of this chapter, for which penalty is provided, may apply to said commission in such manner and under such rules as the commission may prescribe; whereupon, if there shall appear to the commission to be any reasonable grounds for investigating such complaint, it shall give at least five days' notice to such railroad of such charge and complaint, and call upon said road to answer the same at a time and place to be specified by the commission. The commission shall investigate and determine such complaint under such rules and modes of procedure as it may adopt. If the commission finds that there has been a violation, it shall determine if the same was wilful; if it finds that such violation was not wilful, it may call upon said road to satisfy the damage done to the complainant thereby, stating the amount of such damage, and to pay the cost of such investigation; and if the said railroad shall do so within the time specified by the commission there shall be no prosecution by the state; but if said railroad shall not pay said damage and cost within the time specified by said commission, or if the commission finds such violation to be wilful, it shall institute proceedings to recover the penalty for such violation and the cost of such investigation. All such complaints

shall be made in the name of the state of Texas upon the relation of such complainant. All evidence taken before said commission in the investigation of any such complaint, when reduced to writing and signed and sworn to by the witness, may be used by either party, the state, complainant, or the railroad company, in any proceeding against such railroad involving the same subject matter; provided, further, that the commissioners may require the testimony so taken before them to be reduced to writing when they may deem it necessary, or when requested to do so by either party to such proceedings; and a certified copy, under the hand and seal of said commission, shall be admissible in evidence upon the trial of any cause or proceeding growing out of the same transaction against such railroad, involving the same subject matter and between the same parties. The provisions of this article shall not abridge nor affect the rights of any person to sue for any penalty that may be due him under the provisions of this chapter, or any other law of this state. (Acts 1891, p. 55, sec. 9.)

Texas & N. O. R. Co. v. Sabine Tram Co., 121 S. W. 256.

Art. 6665. (4569) May inspect books, etc.—The commissioners, or either of them, or such persons as they employ therefor, shall have the right, at such times as they may deem necessary, to inspect the books and papers of any railroad company and to examine under oath any officer, agent or employé of such railroad in relation to the business and affairs of the same. If any railroad shall refuse to permit the commissioners, or either of them, or any person authorized thereto, to examine its books and papers, such railroad company shall, for each offense, pay to the state of Texas not less than one hundred and twenty-five dollars nor more than five hundred dollars for each day it shall so fail or refuse; provided, that any persons other than one of said commissioners who shall make any such demands shall produce his authority, under the hand and seal of said commission, to make such inspection. (Id. sec. 10.)

Art. 6666. (4570) To ascertain cost of railway, etc.—The commission shall ascertain as early as practicable the amount of money expended in construction and equipment per mile of every railway in Texas, the amount of money expended to procure the right of way, and the amount of money it would require to reconstruct the roadbed, track, depots and transportation, and to replace all the physical properties belonging to the railroad. It shall also ascertain the outstanding bonds, debentures and indebtedness, and the amount respectively thereof, when issued, and rate of interest, when due, for what purpose issued, how used, to whom issued, to whom sold, and the price in cash, property or labor, if any, received therefor, what became of the proceeds, by whom the indebtedness is held, the amount purporting to be due thereon, the floating indebtedness of the company, to whom due and his address, the credits due on it, the property on hand belonging to the railroad company, and the judicial or other sales of said road, its property or franchises, and the amounts purporting to have been paid and in what manner paid therefor. The commission shall also ascertain the amounts paid for salaries to the officers of the railroad and the wages paid its employés. For the purpose in this article named, the commission may employ sworn experts to inspect and assist them when needed, and from time to time, as the information required by this article is obtained, it shall communicate the same to the attorney general by report, and file a duplicate thereof with the comptroller for public use; and said information shall be printed from time to time in the annual report of the commission. (Id. sec. 11.)

Art. 6667. (4571) Blanks for information to be prepared.—The said commission shall cause to be prepared suitable blanks with questions calculated to elicit all information concerning railroads, and as often as it may be necessary furnish said blanks to each railroad company. Any railroad company receiving from the commission any such blanks shall cause said blanks to be properly filled out so as to answer fully and correctly each question therein propounded, and in case they are unable to answer any question, they shall give a satisfactory reason for their failure; and the said answers, duly sworn to by the proper officer of said company, shall be returned to said commission at its office in the city of Austin within thirty days from the receipt thereof.

1. **Penalty for failure to fill out blanks. Commission to adopt system of bookkeeping.**—If any officer or employé of a railroad company shall fail or refuse to fill out and return any blanks as above required, or fail or refuse to answer any questions therein propounded, or give a falsé answer to any such questions, where the fact inquired of is within his knowledge, or shall evade the answer to any such questions, such person shall be guilty of a misdemeanor and shall, on conviction thereof, be fined for each day he shall fail to perform such duty after the expiration of the time aforesaid a penalty of five hundred dollars, and the commission shall cause a prosecution therefor in the proper court; and a penalty of a like amount will be recovered from the company when it appears that such persons acted in obedience to its direction, permission or request in his failure, evasion or refusal. Said commission shall have the power to prescribe a system of bookkeeping to be observed by all the railroads subject hereto, under the penalties prescribed in this article.

2. **Annual reports.**—The said commission shall make and submit to the governor annual reports containing a full and complete account of the transactions of their office, together with the information gathered by such commission as herein required, and such other facts, suggestions and recommendations as may be by them deemed necessary, which report shall be published as the reports of the heads of departments.

3. **Duty as to through freights.**—The said commission shall have power, and it is hereby made its duty, to investigate all through freight rates on railroads in Texas; and when the same are, in the opinion of the commission, excessive or levied or laid in violation of the interstate commerce law, or the rules and regulations of the interstate commerce commission, the officials of the railroads are to be notified of the facts and

requested to reduce them or make the proper corrections, as the case may be. When the rates are not changed or the proper corrections are not made according to the request of the commission, the latter is instructed to notify the interstate commerce commission and to apply to it for relief. (Id. sec. 12.)

State v. Gulf, C. & S. F. Ry. Co., 118 S. W. 736; Chicago, R. I. & G. Ry. Co. v. Risley Bros. & Co., 119 S. W. 897; Railroad Commission of Texas v. Texas & P. Ry. Co., 140 S. W. 829; Texas & P. Ry. Co. v. Railroad Commission of Texas, 150 S. W. 878.

Art. 6668. (4572) Power to issue subpœnas. Pay of witnesses. Proceedings to compel attendance of witnesses.—The said commission, in making any examination or investigation provided in this chapter, shall have power to issue subpœnas for the attendance of witnesses by such rules as they may prescribe. Each witness who shall appear before the commission by order of the commission, at a place outside of the county of his residence, shall receive for his attendance one dollar per day and three cents per mile traveled by the nearest practicable route, in going to and returning from the place of meeting of said commission, which shall be ordered paid by the comptroller of public accounts upon the presentation of proper vouchers, sworn to by such witness, and approved by the chairman of the commission; provided, that no witness shall be entitled to any witness fees or mileage who is directly or indirectly interested in any railroad in this state or out of it, or who is in any wise interested in any stock, bond, mortgage, security or earnings of any such road, or who shall be the agent or employé of such road, or an officer thereof, when summoned at the instance of such railroad; and no witness furnished with free transportation shall receive pay for the distance he may have traveled on such free transportation. In case any witness shall fail or refuse to obey such subpœnas, said commission may issue an attachment for said witness, directed to any sheriff or any constable of the state of Texas, and compel him to attend before the commission and give his testimony upon such matter as shall be lawfully required by them. If a witness, after being duly summoned, shall fail or refuse to attend or to answer any question propounded to him, and which he would be required to answer if in court, the commission shall have the power to fine and imprison such witness for contempt, in the same manner that a judge of the district court might do under similar circumstances. The claim that any such testimony may tend to criminate the person giving it shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding; provided, the commission shall in all cases have the right in its discretion to issue proper process and take depositions instead of compelling personal attendance of witnesses. The sheriff or constable executing any process issued under the provisions of this article or under any other provisions of this chapter shall receive such compensation as may be allowed by the commission, not to exceed fees as now prescribed by law for similar services. (Id. sec. 13.)

Art. 6669. (4573) Penalty for extorting.—If any railroad company, subject to this chapter, or its agent or officer, shall hereafter charge, collect, demand or receive from any persons, company, firm or corporation a greater rate, charge or compensation than that fixed and established by the railroad commission for the transportation of freight, passengers or cars, or for the use of any car on the line of its railroad, or any line operated by it, or for receiving, forwarding, handling, or storing any such freight or cars, or for any other service performed or to be performed by it, such railroad company and its said agent and officer shall be deemed guilty of extortion, and shall forfeit and pay to the state of Texas a sum not less than one hundred dollars nor more than five thousand dollars. (Id. sec. 14.)

See Ry. v. Rutherford, 96 S. W. 73; Texas & N. O. R. Co. v. Sabine Tram Co., 121 S. W. 256.

Art. 6670. (4574) "Unjust discrimination" defined.—If any railroad subject hereto, directly or indirectly, or by any special rate, rebate, drawback or other device, shall charge, demand, collect or receive from any person, firm or corporation a greater or less compensation for any service rendered or to be rendered by it than it charges, demands, collects or receives from any other person, firm or corporation for doing a like and contemporaneous service, such railroad shall be deemed guilty of unjust discrimination, which is hereby prohibited.

1. **Same.**—It shall also be an unjust discrimination for any such railroad to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation or locality, or to subject any particular description of traffic to any undue or unreasonable prejudice, delay or disadvantage in any respect whatsoever.

2. **Same.**—Every railroad company which shall fail or refuse, under such regulations as may be prescribed by the commission, to receive and transport without delay or discrimination the passengers, tonnage and cars, loaded or empty, of any connecting line of railroad, and every railroad which shall, under such regulations as may be prescribed by the commission, fail or refuse to transport and deliver without delay or discrimination any passengers, tonnage or cars, loaded or empty, destined to any point on or over the line of any connecting line of railroad, shall be deemed guilty of unjust discrimination; provided, perishable freights of all kinds and live stock shall have precedence of shipment.

3. **Same.**—It shall also be an unjust discrimination for any railroad subject hereto to charge or receive any greater compensation in the aggregate for the transportation of like kind of property or passengers for the shorter than for a longer distance over the same line; provided, that upon application to the commission any railroad may in special cases, to prevent manifest injury, be authorized by the commission to charge less for longer than for shorter distances for the transporting persons and property, and the commission shall from time to time prescribe the extent to which such designated railroad may be relieved from the operations of this provision; provided, that no manifest injustice shall be imposed upon any citizen at intermediate points; provided further, that

nothing herein shall be so construed as to prevent the commission from making what are known as "group rates" on any line or lines of railroad in this state.

4. **Penalty for unjust discrimination.**—Any railroad company violating any provision of this article shall be deemed guilty of unjust discrimination, and shall for each offense pay to the state of Texas a penalty of not less than five hundred dollars nor more than five thousand dollars.

5. **Law does not apply, when.**—Nothing herein shall prevent the carriage, storage or handling of freight free or at reduced rates, or to prevent railroads from giving free transportation or reduced transportation, under such circumstances and to such persons as may be allowed or permitted by the law of this state. (Id. sec. 15.)

See Ry. Commission v. H. & T. C. Ry., 38 S. W. 750; G. W. T. & P. Ry. v. Barry, 45 S. W. 814; G. C. & S. F. Ry. v. Lone Star Salt Co., 48 S. W. 619; Id., 63 S. W. 1025; State v. S. A. & A. P. Ry., 73 S. W. 572; I. & G. N. Ry. v. Ry. Commission, 86 S. W. 16; Ry. v. Stribling, 86 S. W. 374; Id., 89 S. W. 963; Railroad Commission of Texas v. Galveston Chamber of Commerce, 115 S. W. 94; Missouri, K. & T. Ry. Co. of Texas v. Thompson, 118 S. W. 618; Gulf, C. & S. F. Ry. Co. v. State, 120 S. W. 1028; Thompson v. Missouri, K. & T. Ry. Co. of Texas, 126 S. W. 257; Thompson v. Missouri, K. & T. Ry. Co. of Texas, 128 S. W. 109; Port Arthur Rice Milling Co. v. Gulf & I. Ry. Co. of Texas, 128 S. W. 923; Texas Cent. R. Co. v. Hannay-Frerichs & Co., 130 S. W. 250; Galveston Chamber of Commerce v. Railroad Commission of Texas, 137 S. W. 737; Texas Cent. R. Co. v. Hannay-Frerichs & Co., 142 S. W. 1163; Missouri, K. & T. Ry. Co. of Texas v. Seeger, 175 S. W. 713; Rio Grande & E. P. Ry. Co. v. Railroad Commission of Texas, 175 S. W. 1116; Quanah, A. & P. Ry. Co. v. R. D. Jones Lumber Co., 178 S. W. 858; Consumers' Lignite Co. v. Houston & T. C. R. Co., 179 S. W. 306; Quanah, A. & P. Ry. Co. v. Warren, 184 S. W. 232; Quanah, A. & P. Ry. Co. v. Moore, 189 S. W. 322; Ft. Worth & D. C. Ry. Co. v. Frazier, 191 S. W. 808; Ft. Worth & D. C. Ry. Co. v. Wells, 191 S. W. 815; State v. St. Louis S. W. Ry. Co. of Texas, 197 S. W. 1006.

Art. 6671. (4575) Damages; penalty; venue in cases of discrimination.—In case any railroad subject to this chapter shall do, cause to be done, or permit to be done any matter, act or thing in this chapter prohibited or declared to be unlawful, or shall omit to do any act, matter or thing herein required to be done by it, such railroad shall be liable to the person or persons, firm or corporation injured thereby for the damages sustained in consequence of such violation; and in case said railroad company shall be guilty of extortion or discrimination as by this chapter defined, then, in addition to such damages, such railroad shall pay to the person, firm or corporation injured thereby a penalty of not less than one hundred and twenty-five dollars nor more than five hundred dollars, to be recovered in any court of competent jurisdiction in any county into or through which such railroad may run; provided, that such road may plead and prove as a defense to the action for said penalty that such overcharge was unintentionally and innocently made through a mistake of fact; provided, that any such recovery as herein provided shall in no manner affect a recovery by the state of a penalty provided for such violation. (Id. sec. 17.)

See Sayles' Practice, pp. 249, 275; Ry. v. Barry, 45 S. W. 814; G. C. & S. F. Ry. v. Lone Star Salt Co., 48 S. W. 619; Id., 63 S. W. 1025; Fielder v. Timpson & N. W. Ry. Co. v. Sanford & Morris, 103 S. W. 633; Ry. v. Rutherford, 96 S. W. 73; S. W. 432; Gulf, C. & S. F. Ry. Co. v. State, 120 S. W. 1028; Texas & N. O. R. Co. v. Sabine Tram Co., 121 S. W. 256; Thompson v. Missouri, K. & T. Ry. Co. of Texas, 126 S. W. 257; Texas Cent. R. Co. v. Hannay-Frerichs & Co., 130 S. W. 250; Galveston, H. & S. A. Ry. Co. v. J. H. Nations Meat & Supply Co., 136 S. W. 833; Texas Cent. R. Co. v. Hannay-Frerichs & Co., 142 S. W. 1163; San Antonio & A. P. Ry. Co. v. Bracht, 163 S. W. 376; Rio Grande & E. P. Ry. Co. v. Railroad Commission of Texas, 175 S. W. 1116; Quanah, A. & P. Ry. Co. v. R. D. Jones Lumber Co., 178 S. W. 858; Quanah, A. & P. Ry. Co. v. Warren, 184 S. W. 232; Quanah, A. & P. Ry. Co. v. Moore, 189 S. W. 322; Ft. Worth & D. C. Ry. Co. v. Frazier, 191 S. W. 808; Ft. Worth & D. C. Ry. Co. v. Wells, 191 S. W. 815; Quanah, A. & P. Ry. Co. v. Warren, 198 S. W. 814.

Art. 6672. (4576) Penalty not otherwise provided.—If any railway company doing business in this state shall hereafter violate any other provision of this chapter, or shall do any other act herein prohibited, or shall fail or refuse to perform any other duty enjoined upon it for which a penalty has not been provided by law, or shall fail, neglect or refuse to obey any lawful requirement, order, judgment or decree made by the railroad commission of Texas, for every such act of violation it shall pay to the state of Texas a penalty of not more than five thousand dollars. (Id. sec. 18; Acts 1901, p. 265.)

Art. 6673. (4577) Venue of suits for recovery of penalty.—All of the penalties herein provided, except as provided in article 6671, shall be recovered and suits thereon shall be brought in the name of the state of Texas in the proper court having jurisdiction thereof in Travis county, or in any county to or through which such railroad may run, by the attorney general, or under his direction; and the attorney bringing such suit shall receive a fee of fifty dollars for each penalty recovered and collected by him, and ten per cent of the amount collected, to be paid by the state. In all suits arising under this chapter, the rules of evidence shall be the same as in ordinary civil actions, except as otherwise herein provided. All fines and penalties recovered by the state under this chapter shall be paid into the treasury of the state; provided, however, suits brought under the acts of 1907, chapter 42, page 93, set out in the Penal Code in title 18, chapter 16, for the recovery of penalties, may be brought in any court in this state having jurisdiction of the subject matter in any county: (1) where an act violative of the provisions hereof is committed; (2) where such company or receiver has an agent or representative; (3) where the principal office of such company is situated, or such receiver or receivers, or either, reside; and one-half of all moneys collected under the provisions of said act, less the commission and expenses allowed by law, shall be paid into the state treasury and constitute a part of the general revenue of the state, and the remainder thereof shall be paid into the treasury of the county where such suit or suits may be maintained and constitute a part of the jury fund of such county; and be it further provided, that, it is hereby made the duty of the railroad commission of Texas, the attorney general, and the district and county attorneys of this state, under the direction of the attorney general, to see that the provisions of said act are enforced and obeyed, and penalties due the state are recovered and collected; and said commission shall report to

the attorney general all violations within their knowledge, with the facts in their possession, and request him to institute, or have instituted, the proper proceedings for the recovery of any penalty that may be due the state. Any provision or provisions of said act which exempt or except any person, corporation or class of persons from the operation and effects of the same, or which authorize any such persons, corporations or class of persons to give, grant, issue, receive or accept free transportation or transportation at any rate other than is granted to any and all persons of this state, shall be held unconstitutional or invalid, such holding as to any such provision or provisions shall not invalidate any other portion of said act. (Acts 1891, p. 55, sec. 19.)

See Moore v. Bell, 66 S. W. 45; Ry. v. Stribling, 86 S. W. 374.

Art. 6674. (4578) Certified copies of commission rates to be evidence. Effect given to classifications, when.—Upon application of any persons, the commission shall furnish certified copies of any classification, rates, rules, regulations, or orders; and such certified copies, or printed copies published by authority of the commission, shall be admissible in evidence in any suit and sufficient to establish the fact that any charge, rate, rule, order, or classification therein contained and which may be in issue in the trial, is the official act of the commission. A substantial compliance with the requirements of this chapter shall be sufficient to give effect to all the classifications, rates, charges, rules, regulations, requirements and orders made and established by the commission, and none of them shall be declared inoperative for any omission of a technical matter in the performance of such act. (Id. sec. 20.)

See Sayles' Practice, p. 483; Quanah A. & P. Ry. Co. v. Drummond, 147 S. W. 728.

Art. 6675. (4579) All violations of duty to be reported to attorney general.—It is hereby made the duty of such railroad commission to see that the provisions of this chapter and all laws of this state concerning railroads are enforced and obeyed, and that violations thereof are promptly prosecuted, and penalties due the state therefor recovered and collected. And said commission shall report all such violations, with the facts in their possession, to the attorney general, or other officer charged with the enforcement of the laws, and request him to institute the proper proceedings; and all suits between the state and any railroad shall have precedence in all courts over all other suits pending therein.

1. **Duty to investigate all charges and see that the law is enforced.**—It shall be the duty of the commission to investigate all complaints against railroad companies subject hereto, and to enforce all laws of this state in reference to railroads. But any two connecting railroads may enter into a contract whereby any part or all of the passengers, freight or cars, empty or loaded, hauled or transported by one and destined to points on or beyond the line of the other, shall be delivered to, received and transported by the other; which contract, however, shall be submitted to the railroad commission for examination and approval, and when so approved shall be binding; but, if the said contract be not approved by the commission, the same shall be void; provided, that any connecting line delivering freight to the owner or consignee of such freight may be sued by the owner thereof in the county where the freight is delivered for any damage that may be done to such freight in its transportation. (Id. sec. 21.)

See Ry. Commission v. H. & T. C. Ry., 38 S. W. 750; Moore v. Bell, 66 S. W. 45; Railroad Commission of Texas v. Chicago, R. I. & G. Ry. Co., 117 S. W. 794; Mosel v. San Antonio & A. P. Ry. Co., 177 S. W. 1048.

Art. 6676. (4580) "Road," "railroad," "railroad companies," etc., defined. Law applies only to railroads in this state. One train a day to be run.—The terms, "road," "railroad," "railroad companies," and, "railroad corporations," as used herein, shall be taken to mean and embrace all corporations, companies, individuals and associations of individuals, their lessees or receivers, appointed by any court whatsoever, that may now or hereafter own, operate, manage or control any railroad, or part of a railroad, in this state, and all such corporations, companies and associations of individuals, their lessees or receivers, as shall do the business of common carriers on any railroad in this state.

1. The provisions of this chapter shall be construed to apply to and affect only the transportation of passengers, freight and cars between points within this state; and this chapter shall not apply to street railways nor suburban or belt lines of railways in or near cities and towns.

2. It shall be the duty of the commissioners to see that, upon every railroad and branch of same carrying passengers for hire in this state, shall be run at least one train a day, Sundays excepted, upon which passengers shall be hauled, and the commission shall have no power to relax this provision, and shall further regulate passenger train service by requiring all passenger trains carrying passengers for hire to stop for a time sufficient to receive and let off passengers at such stations as may be designated by the commissioners; provided, that four trains each way, carrying passengers for hire, if so many are run daily, Sundays excepted, be required to stop as aforesaid at all county seat stations. (Id. sec. 22; Acts 1903, p. 183.)

See Denison & S. Ry. v. Ry. Commission, 69 S. W. 62; State v. Trinity & B. V. Ry. Co., 120 S. W. 1123; Galveston & W. Ry. Co. v. Galveston Electric Co., 123 S. W. 1140; Gulf, C. & S. F. Ry. Co. v. S., 169 S. W. 385; Id., 181 S. W. 685.

Art. 6677. (4581) Law cumulative.—Any of the provisions of this chapter which may be inconsistent or in conflict with the act of 1907, chapter 42, page 93, relating to free passes and free transportation of goods, etc., incorporated in and made a part of the Penal Code of the state of Texas, shall be void and inoperative, but to that extent only. And the provisions of the foregoing articles of this chapter shall not have the effect to release or waive any right of action by the state, or any person, for any right, penalty or forfeiture which may have arisen or may hereafter arise under any law of this state; and all penalties accruing under this chapter shall be cumulative of each other, and a suit for or recovery of

one shall not be a bar to the recovery of any other penalty. (Acts 1891, p. 55, sec. 23.)

See G. C. & S. F. Ry. v. Lone Star Salt Co., 63 S. W. 1025; Texas & N. O. R. Co. v. Sabine Tram Co., 121 S. W. 256; Texas Cent. R. Co. v. Hannay-Frerichs & Co., 142 S. W. 1163; Ft. Worth & D. C. Ry. Co. v. Frazier, 191 S. W. 808.

AUTHORITY AND DUTIES OF COMMISSION OVER OTHER SUBJECTS

Art. 6677a. Power over public wharves, etc., elevators, warehouses, etc., and suburban, belt and terminal railroads; rates, charges and regulations, etc.—Power and authority are hereby conferred upon the railroad commission of Texas over all public wharves, docks and piers and all elevators, warehouses, sheds, tracks and other property used in connection therewith in the state of Texas, and over all suburban, belt and terminal railroads in said state, and over all persons, associations and corporations, private or municipal, owning or operating any such railroad, wharf, dock, pier, elevator, warehouse, shed, track, or other property, and it is hereby made the duty of the said railroad commission to fix and adopt all necessary rates, charges and regulations, to govern and regulate said persons, associations and corporations, and to correct abuses and prevent unjust discriminations in the rates, charges and tolls of said persons, associations and corporations, and to fix divisions of rates, charges and regulations between same and railroads and all other common carriers, under the control of the railroad commission where a division is proper, and to correct and prevent any and all other abuses in the conduct of their business. (Acts 1911, p. 157, sec. 1.)

Art. 6677b. Penalty for extortion.—If any person, association or corporation subject to the provisions of this Act, shall demand or receive a greater compensation for any service rendered or to be rendered than that fixed and established by the said railroad commission then, and in every such case, such person, association or corporation shall be deemed guilty of extortion and shall forfeit and pay to the state of Texas, a sum not to exceed five hundred dollars for each offense; provided, that if it shall appear that such violation was not willful, said person, association or corporation shall have ten days to refund such overcharges or damages, in which case the penalty shall not be incurred, and the said commission shall have authority and it shall be its duty to sue for and recover the same in the same manner as may be prescribed by law for like suits against railroad companies. (Id. sec. 2.)

Art. 6677c. Penalty for discrimination.—If any person, association or corporation subject to the provisions of this Act shall by any special rate, rebate, drawback or other device, or in any manner directly or indirectly charge, demand, collect or receive from any other person, association or corporation a greater or less compensation for any service rendered, or to be rendered, by it than it charges, demands, collects or receives from any other person, association or corporation for doing a like and contemporaneous service, or if any such person, association or corporation shall make or give any undue or unreasonable preference or advantage to any other person, association or corporation, or to any locality, or shall subject any particular description of traffic to any undue or unreasonable prejudice, delay or disadvantage, then and in any such case the person, association or corporation thus offending shall forfeit and pay to the state of Texas a sum not to exceed five hundred dollars ($500.00) for each and every offense. (Id. sec. 3.)

Art. 6677d. Rules and regulations for issuance of stocks or bonds.—Said Railroad Commission shall have the same power to make and prescribe rules and regulations for the government and control of all such persons, associations and corporations as is or may be conferred upon said commission for the regulation of railroad companies, and such persons, associations and corporations shall issue no stock or bonds, except such as are authorized by the Railroad Commission under the provisions of the railroad stock and bond law of this State. And such persons, associations, and corporations are hereby expressly authorized to create indebtedness and to issue stocks and bonds to the same extent and amount that railroad corporations are permitted to do under the provisions of the Railroad Stock and Bond Law of Texas, and the Railroad Commission of Texas shall have and exercise the same power, jurisdiction and authority over and with respect to such creation of indebtedness and issuance of stocks and bonds by such persons, associations and corporations, that said commission has and exercises over the creation of indebtedness and the issuance of stocks and bonds by railroad corporations under the laws of said State. (Acts 1911, p. 157, sec. 4; Acts 1915, 1st C. S., ch. 24, sec. 1.)

Art. 6677e. Powers of commission; reports; suits; laws applicable.—The said railroad commission shall have the authority, and it shall be its duty, to call upon such persons, associations and corporations for reports, and to investigate their books in the same manner as is or may be prescribed by law for the regulation of railroad companies; and said commission shall have power and authority to institute suits and sue out such writs and process as may be applicable and authorized for the regulation of railroad companies. All laws made and prescribed for the government and control of railroad companies, and the valuation of their properties, in so far as they are applicable, shall be of equal force and effect against all such persons, associations and corporations. (Acts 1911, p. 157, sec. 5.)

Art. 6677f. Objections to decisions, etc.; actions and appeals.—If any such person, association or corporation or other party at interest, be dissatisfied with any decision, rate, charge, toll, rule, order, act or regulation adopted by the commission, such dissatisfied person, association, corporation or party may file a petition setting forth the particular cause or causes of objection to such decision, rate, charge, toll, rule, order, act or regulation, or to either or all of them, in a court of competent jurisdiction in Travis county, Texas, against such commission as defendant, said action shall have precedence over all other causes on the docket of a different nature, and shall be tried and determined as other civil causes in said court, either paty [party] to

said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court, at either of its terms, and said action so appealed shall have precedence in said appellate court of all causes of a different character therein pending; provided, that if the court be in session at the time of such right of action accruing, the suit may be filed during such term and stand ready for trial after ten days' notice. (Id. sec. 6.)

Art. 6678. (4497) Railroad to furnish cars when demanded.—When any person, firm or corporation desiring to ship any freight of any kind shall make application in writing to any superintendent, agent or other person in charge of transportation, to any railway company, receiver or trustee operating a line of railway at the point the cars are desired upon which to ship any freight, it shall be the duty of such railway company, receiver, trustee, or other person in charge thereof, to supply the number of cars so required, at the point indicated in the application, within a reasonable time thereafter, not to exceed six days from the receipt of such application, and shall supply such cars to the persons so applying therefor, in the order in which such applications are made, without giving preference to any person; provided, if the application be for twelve cars or less, the same shall be furnished in three days; and provided, further, that, if the application be for fifty cars or more, the railway company may have ten full days in which to supply the cars. (Acts 1887, p. 133; Acts 1899, p. 67; Acts 1913, 1st C. S., p. 23, sec. 1.)

See Washington v. Texarkana & Ft. S. Ry. Co., 54 S. W. 1092; Ry. v. Barron, 77 S. W. 643; Ry. v. Smith & White, 79 S. W. 614; Ry. v. Mayes, 83 S. W. 53; T. & P. Ry. v. Allen, 98 S. W. 450; T. & P. Ry. v. Loving, 98 S. W. 451; Allen v. T. & P. Ry., 101 S. W. 792; Griffith v. Texas & N. O. R. Co., 116 S. W. 648; Texas & P. Ry. Co. v. Taylor, 118 S. W. 1097; Texas & P. Ry. Co. v. Andrews, Reynolds & Co., 118 S. W. 1101; Texas & P. Ry. Co. v. Smith, 118 S. W. 1118; Chicago, R. I. & G. Ry. Co. v. Risley Bros. & Co., 119 S. W. 897; Texas & P. Ry. Co. v. Andrews, Reynolds & Co., 126 S. W. 562; Texas & P. Ry. Co. v. Taylor, 126 S. W. 1117.

Art. 6679. (4498) Application shall state what.—Said application for cars shall state the number of cars desired, the place at which they are desired, and the time they are desired; provided, that the place designated shall be at some station or switch on the railroad. (Acts 1887, p. 133, sec. 2.)

See Ry. v. Mayes, 83 S. W. 53; Ry. v. Hughes, 91 S. W. 567; Griffith v. Texas & N. O. R. Co., 116 S. W. 648; Texas & P. Ry. Co. v. Taylor, 118 S. W. 1097; Texas & P. Ry. Co. v. Andrews, Reynolds & Co., 118 S. W. 1101; Texas & P. Ry. Co. v. Andrews, Reynolds & Co., 126 S. W. 562; Missouri, K. & T. Ry. Co. of Texas v. Harrell Gin Co., 187 S. W. 376.

Art. 6680. (4499) Penalty for failure to furnish.—When cars are applied for under the provisions of this chapter, if they are not furnished, the railway company so failing to furnish them shall forfeit to the party or parties so applying for them the sum of twenty-five dollars per day for each car failed to be furnished, to be recovered in any court of competent jurisdiction, and all actual damages that such applicant may sustain. (Id. sec. 3.)

See Ry. v. Hughes, 91 S. W. 567; Griffith v. Texas & N. O. R. Co., 116 S. W. 648; Texas & P. Ry. Co. v. Taylor, 118 S. W. 1097; Texas & P. Ry. Co. v. Andrews, Reynolds & Co., 118 S. W. 1101; Texas & P. Ry. Co. v. Andrews, Reynolds & Co., 126 S. W. 562; Texas & P. Ry. Co. v. Taylor, 126 S. W. 1117; Missouri, K. & T. Ry. Co. of Texas v. Harrell Gin Co., 187 S. W. 376.

Art. 6681. (4500) Applicant shall make deposit.—Such applicant shall deposit with such agent, superintendent or other person one-fourth of the amount of freight charges for the use of such cars. And such applicant shall, within forty-eight hours after such car or cars have been delivered and placed as hereinbefore provided, fully load the same; and upon failure to do so, he shall forfeit and pay to the company the sum of twenty-five dollars for each car not used; provided, that where applications are made on several days, all of which are filed upon the same day, the applicant shall have forty-eight hours to load the car or cars furnished on the first application, and the next forty-eight hours to load the car or cars furnished on the next application, and so on; and the penalty prescribed shall not accrue as to any car or lot of cars applied for any one day, until the period within which they may be loaded has expired. And if the said applicant shall not use such cars so ordered by him, and shall so notify the said company or its agent, he shall forfeit and pay to the said railroad company, in addition to the penalty herein prescribed, the actual damages that such company may sustain by the said failure of the applicant to use said cars. (Acts 1887, p. 133, sec. 4; Acts 1899, p. 67; Acts 1913, 1st C. S., p. 23, sec. 2.)

See Ry. v. Mayes, 83 S. W. 53; see also authorities cited under art. 6678; Griffith v. Texas & N. O. R. Co., 116 S. W. 648; Texas & P. Ry. Co. v. Taylor, 118 S. W. 1097; Texas & P. Ry. Co. v. Andrews, Reynolds & Co., 118 S. W. 1101; Texas & P. Ry. Co. v. Smith, 118 S. W. 1118; Texas & P. Ry. Co. v. Andrews, Reynolds & Co., 126 S. W. 562; Gulf, C. & S. F. Ry. Co. v. Louis Werner Stave Co., 131 S. W. 658.

Art. 6682. (4501) To deliver loaded cars in reasonable time.—When cars have been supplied and loaded, it shall be the duty of the railway company to deliver the same to the party or parties to whom they are consigned within a reasonable time; and the party or parties to whom the cars are consigned shall unload the same within forty-eight hours after delivery and notice, or forfeit and pay to the company the sum of twenty-five dollars per day for each car not so unloaded. (Acts 1887, p. 133, sec. 5; Acts 1913, 1st C. S., p. 23, sec. 3.)

Griffith v. Texas & N. O. R. Co., 116 S. W. 648; Texas & P. Ry. Co. v. Taylor, 118 S. W. 1097; Texas & P. Ry. Co. v. Andrews, Reynolds & Co., 118 S. W. 1101.

Art. 6683. (4502) Necessary for applicant to show what.—It shall be necessary for the party or parties bringing suit against any railroad company under the provisions of this law to show by evidence that such cars would have been loaded within the time specified by this Act; provided that the provisions of this law shall not apply in cases of strikes or other public calamity. (Acts 1887, p. 133, sec. 6; Acts 1913, 1st C. S., p. 23, sec. 4.)

Griffith v. Texas & N. O. R. Co., 116 S. W. 648; Texas & P. Ry. Co. v. Taylor, 118 S. W. 1097; Texas & P. Ry. Co. v. Andrews, Reynolds & Co., 118 S. W. 1101; Texas & P. Ry. Co. v. Smith, 118 S. W. 1118; Chicago, R. I. & G. Ry. Co. v. Risley Bros. & Co., 119 S. W. 897; Texas & P. Ry. Co. v. Andrews, Reynolds & Co., 126 S. W. 562; Texas & P. Ry. Co. v. Taylor, 126 S. W. 1117.

Art. 6683a. Not to affect demurrage regulations.—Provided that the provisions of this Act shall not be held to forfeit or annul the demurrage regulations provided by the railroad commission of Texas, and all penalties accruing to the carrier hereunder shall be cumulative of and additional to all demurrage charges prescribed by said commission. (Id. sec. 5.)

Art. 6684. Duty to furnish cars, etc.—It is hereby declared to be the duty of every railroad company incorporated under the laws of the state of Texas and doing business in this state, under limitations and regulations prescribed by the railroad commission of Texas, to equip and provide sufficient motive power and rolling stock to handle all passenger and freight traffic expeditiously and without delay. (Acts 1907, p. 297, sec. 1.)

Art. 6685. Commission to require and authorize mortgage, etc.—The railroad commission shall have authority, and it is hereby made its duty, to see that each and every railroad corporation chartered under the laws of this state, holding itself out as a public highway and common carrier, shall provide and equip itself with sufficient motive power and rolling stock, or other equipment necessary, to handle all passenger and freight traffic expeditiously and without delay. The railroad commission of Texas shall be vested with full power to require of such common carriers the purchase of such rolling stock and motive power as will properly equip such common carrier and facilitate the movement of all traffic, passenger and freight, and that will supply the transportation accommodations which such common carrier offers to perform as an inducement to the public to travel or ship via the lines of such railroad company, or common carrier. The railroad commission is also authorized and empowered to approve liens or mortgages that may be given by such railroad companies and common carriers to secure the purchase or lease price of any equipment or motive power which may be deemed by the railroad commission necessary for the proper discharge of its duty as a common carrier. If in the judgment and discretion of the commission any railroad company in this state, which now has an excessive issue of bonds and stocks outstanding, has not sufficient passenger and freight equipment and motive power to handle the passenger and freight business of such common carrier and railroad company, it shall be the duty of said railroad commission of Texas, after not less than five days' notice and hearing, to issue an order requiring the purchase of such rolling stock as in the judgment and discretion of the commission may be deemed necessary for the prompt, expeditious and comfortable transportation of freight and passengers over the line of such railroad company and common carrier; and in such case, the railroad commission of Texas is authorized to approve contracts or liens for the purpose of securing the purchase or lease price of such rolling stock, motive power and equipment. (Id. sec. 2.)

Art. 6686. Penalty for failure to comply.—Any railroad company or common carrier failing to comply with the provisions of the two preceding articles, or to obey the orders of the railroad commission, made in pursuance of the provisions hereof, shall be deemed guilty of an abuse of their rights and privileges, and, upon conviction, shall be subject to a fine of one hundred dollars for a violation or failure to comply with any order that may be issued by the railroad commission as is provided said commission may do by article 6685, and each day that such railroad company or common carrier neglects, fails or refuses to comply with such orders shall constitute a separate offense. (Id. sec. 3.)

Art. 6687. Shall furnish freight facilities, interchange cars, etc.—It is hereby declared to be the duty of every railroad company operating a line of railroad within this state, to provide sufficient tracks, switches, sidings, yards, depots and other facilities for receiving and delivering freight, motive power, cars and all other needful facilities and appliances, to enable it with reasonable dispatch to perform all of its duties as to all traffic which with ordinary foresight and diligence could be anticipated, as a common carrier; and to furnish all necessary and suitable cars and vehicles of transportation for all freight offered or tendered, or to be offered or tendered, to it for shipment within a reasonable time after demand therefor made by any shipper of such freight; and to supply within a reasonable time, at its station or stations, spurs, sidings, switches, or other places, at which it receives freight for transportation, and from which such shipper gives notice to such railway company that he desires to ship such freight, at the time designated by the shipper, where it is within reasonable time, sufficient suitable cars in which to load the same; and as to all services to be performed within the limits of this state, as to such freight and cars to transport same within a reasonable time to destination, when destined to a point upon the line of such railway receiving such freight, and, if destined to a point beyond the line of such railroad, then to transport and deliver within a reasonable time such freight in such loaded car or cars to the connecting carrier forming any part of the route over which such shipment is made, or to be made, for the purpose of transportation by such connecting carrier on to the destination of such freight, or for delivery by it to the connecting line or lines forming any part of the route over which same is to be transported to its ultimate destination; and it shall likewise be the duty of each connecting line of railroad engaged in such transportation, as to all such service to be performed, as to all such freight and cars in which the same is carried within this state, to receive and transport within a reasonable time such loaded car or cars offered or tendered to it, if in suitable condition for movement, and deliver the same at the destination thereof, if destined to a point upon its line of railroad, and, if destined to a point beyond its line of railroad, then to its connecting carrier forming any part of the route over which such car or cars are to be transported, subject to the same duties and obligations as if such freight had originated upon such line of railroad; provided, that where such freight forms less than a carload, or where it may be necessary to unload the same because of any accident or injury there-

to, or to the car in which the same is being transported, or where such freight is unloaded at the request of the shipper en route, or where, by reason of any accidental or unavoidable cause, or in order to comply with any law or regulation provided by law, such freight is unloaded, or it is reasonably necessary to do so, or where it is for any other reason necessary to unload such freight in order to forward, or before it can be forwarded, in any such cases where suitable cars may be supplied. Provided, that as to freight carried wholly within this state, the railroad commission of Texas shall have the power, and authority is hereby vested in it, to make all needful rules and regulations for unloading cars at junction points, or otherwise forwarding cars, furnishing cars for forwarding or reloading and the exchange of cars and forwarding of such freight in the same or other cars. Provided, also, that whenever by reason of any accidental or unavoidable cause which can not be reasonably provided against by the use of reasonable foresight or diligence, such railroad company fails to so furnish cars and shall use reasonable diligence to do so promptly after the happening of such accidental or unavoidable cause, it shall not, on account of such failure, be liable to the penalties of attorney's fees, or as otherwise herein prescribed. But nothing in this article shall in any wise affect the right or remedy of any shipper or other person as same may exist at common law or under any statute to recover on account of the failure, delay, refusal to furnish cars for transportation of any freight, or other failure to perform any other legal duty, nor to in any wise exempt any such railroad company from any of the provisions of the statutes of this state, or other duties imposed by law. (Acts 1907, p. 343, sec. 1.)

Art. 6688. To interchange cars at junction points.—For the purpose of facilitating the movement, preservation and exchange of freight, it shall be the duty of every railroad company in this state, whose line of railroad connects with the line of any other railroad company in this state, to exchange at such connecting or junction points, the loaded and empty cars used in or for the transportation of freight carried upon such lines of railroad forming any part of the route over which said freight is carried or to be carried; and it shall be the duty of any such railroad companies forming any part of the through or joint route over which any freight is carried or to be carried, or having or participating in the joint rates on which such freight is carried or to be carried, on demand of any such connecting line, delivering to it any such loaded car or cars of freight at junction points within this state, to furnish to such delivery line within a reasonable time after such loaded cars are so received, at such junction point in this state, as many cars suitable for the carriage or transportation of similar freight as may be so delivered to it loaded, by such connecting line; and, upon the demand of the owner thereof, or the railroad company entitled thereto, or to the use thereof, it shall be the duty of every such railroad company so receiving the cars of another to return the same at the place where they were received, or at such place as may be by said railroads agreed upon, within a reasonable time after demand therefor; and as to cars exchanged in transporting freight wholly in this state within the time and according to the rules and regulations prescribed by the railroad commission of Texas. (Id. sec. 2.)

Art. 6689. Commission to make rules and regulations.—The railroad commission of Texas is hereby authorized and empowered, as to all freight carried wholly within this state and the cars used therefor, to make and establish all needful rules and regulations, general and special, which may be different according to the circumstances and conditions to different railroads and localities and for different kind and classes of freight and cars, providing for the time, place and manner of demanding cars for or giving notice of shipment of such freight and the time, place, manner and order in which the same shall be furnished to shippers for the purpose of shipping freight between points in this state; and to prescribe rules and regulations for the furnishing, exchanging and interchanging of cars, loaded and empty, by railroad companies as between each other; the time, place, terms and conditions upon which such cars shall be furnished and such interchange shall be made, and in the absence of an agreement of such railroad companies, the reasonable compensation to be paid by each railroad company for the use, loss, injury or destruction of the cars of another railroad company in the transportation of such freight; the time within which, and the manner by which railroad companies shall give notice or make demand upon each other for cars to be furnished by one railroad company in exchange for loaded cars, or to have its cars returned, the reasonable free time to be allowed the shippers for the loading of such car or cars without incurring liability for demurrage, the free time which shall be allowed to the shipper or consignee in which to unload such freight without incurring any liability for demurrage; a schedule of reasonable demurrage charges reciprocal or otherwise, for the use of cars, irrespective of damages or penalties herein provided, which may be different for different railroads and different traffic and localities, to be paid by shippers for the detention or use of cars either in loading or unloading, or by the railroads for failing in a reasonable time to furnish cars, or to make delivery of loaded cars, subject to the penalties and damages herein provided, and the rules and regulations with respect thereto. Said commission, whenever it may deem same necessary in order to secure the prompt transportation of freight and preservation of the property, shall be authorized to prescribe the minimum speed at which freight shall be moved when being transported between points within this state, including the time for transfer and delivery as between connecting railroads. It shall be the duty of every such railway company to conform to all of the rules and regulations and orders of the commission made in accordance with the two preceding and the three succeeding articles; and the failure of any such railroad company to observe the rules and regulations of the commission, or to comply with the provisions of this law, as to freight carried whol-

ly within this state, shall be deemed an abuse subject to correction by the railroad commission of Texas, and shall subject such railroad company to the penalties hereinafter provided. (Id. sec. 3.)

Art. 6690. Liable for damages, when.—Every railroad company which, in violation of any of the provisions of this law, shall fail to furnish any car or cars for the shipment of any freight within a reasonable time, or in case of the shipment of freight between points when within this state, then within the time prescribed by the railroad commission of Texas, in the event it shall prescribe the time by rules or regulations as provided for herein, and, if it shall fail to do so then within a reasonable time, or shall fail to receive and forward any loaded car or cars or to exchange cars as provided for herein, shall be liable to the shipper or other person injured or damaged thereby for all such injury and damages as may result to such shipper, and all special damages of which such railroad company had notice at the time of the shipment, or which shall occur after written notice thereof, and shall be liable in addition thereto for an amount equal to a reasonable attorney's fee in case suit is brought for the recovery of such damage; and in case of the failure or refusal to so furnish within a reasonable time any car or cars for the shipment of live stock, green fruit, vegetables or other perishable freight, such railroad company for such failure to furnish such car or cars within a reasonable time shall be liable to the shipper for the damage caused thereby, and a reasonable attorney's fee in case suit is brought to recover the same. Every railroad company which shall fail to furnish cars or to exchange as required by the provisions of this law, or by the rules and regulations of the railroad commission as provided for herein, shall be liable to the railroad company injured thereby for all such damage as may result to it, and in addition thereto an amount equal to a reasonable attorney's fee in case of suit brought for the recovery of any damage. Every railroad company using cars of another railroad company, or which have been delivered to it by such railroad company, shall be liable to the party entitled thereto to pay for the reasonable use and hire thereof, and for injury or damage thereto, or destruction thereof, while in its possession or under its control, for the amount of such injury; and, in case of cars in the shipment of freight between points wholly within this state, the amount for the use or hire thereof may be prescribed by the railroad commission of Texas, except where the owners of such cars and such railway companies agree upon such compensation, in which case, the amount so fixed shall govern. And, where any such railroad company, or owner of any such car or cars, shall be dissatisfied with the amount fixed by the commission for such use, hire, loss or destruction, or damage to such car, or where the railroad company liable therefor shall fail to pay for the same, the railroad commission, or person entitled thereto, or which is liable for the use, hire, loss, injury or destruction of such cars, shall be entitled to establish the reasonable value thereof in a suit brought in any court of this state having jurisdiction of the parties and of the amount in controversy; and such court shall render such judgment as to it shall seem just and reasonable; provided, that no railroad company shall be compelled to furnish its own cars to any other railroad company which is involved, except upon reasonable security furnished to it to protect it from loss of or damages to or destruction of such cars and compensation for the use thereof, and in no event shall any railroad company be required to furnish any cars to any connecting line, except to exchange for other cars reasonably suitable for the transportation of freight. (Id. sec. 4.)

Art. 6691. Other penalty; "shipper" defined.—Every railroad company which shall wilfully, by its own gross negligence, or by the gross negligence of its agents having charge and management of the matter of furnishing cars, fail or refuse to furnish or exchange cars as herein provided for, or to transport or deliver the same within the time prescribed by the commission, as to freight carried between points wholly within this state, or if not so prescribed then within a reasonable time, shall, in addition to the other liabilities herein provided for, forfeit to the state of Texas, for each of such violations, not less than one dollar nor more than one hundred dollars for each offense; and each day of such failure or neglect as to each car which it, by such wilful or gross negligence, shall fail or refuse to furnish or exchange shall be treated as a separate offense; such penalties to be recovered at the suit of the attorney general of the state of Texas in the court having jurisdiction of the amount, at Austin in Travis county. (Id. sec. 5.)

Art. 6691a. "Shipper" defined.—By the term, "shipper," as herein used, is meant any person, firm, or corporation tendering freight for shipment, and any consignor or consignee of any bill of lading, or other person, firm or corporation having the right of a consignor or consignee. (Id. sec. 5.)

Art. 6692. "Reasonable time" defined.—It shall be deemed prima facie a reasonable time within which to order cars that any shipper shall give written notice thereof to the station agent at the place of shipment, or in his absence, to the nearest station agent of the railroad company to which such application is made, three days before such shipment of five cars or less, and five days for less than ten or more than five cars, and eight days for ten cars or more, and it shall be the duty of the railroad companies to furnish their station agents with printed blanks upon which shippers may make application for their cars; provided, that nothing in this and the five preceding articles shall be construed to exempt any railroad company from the obligation to furnish cars for shipment without such written notice, but it shall only be subject to the penalties of this law for failure to furnish cars to shippers where notice thereof shall be given in writing, or in case of shipment of freight wholly between points in this state, then in accordance with the rules and regulations of the railroad commission of Texas. (Id. sec. 6.)

Art. 6693. Duty to provide suitable freight and passenger depots.—It shall be the duty of all railroad companies in this

state to provide and maintain adequate, comfortable and clean depots and depot buildings at their several stations for the accommodation of passengers, and to keep said depot buildings well lighted and warmed for the comfort and accommodation of the traveling public; provided, further, that said railroad companies shall keep and maintain separate apartments in such depot buildings for the use of white passengers and negro passengers, and to keep and maintain adequate and suitable freight depots and buildings for the receiving, handling, storing and delivering of all freights handled by such roads. (Acts 1909, 2 S. S. p. 401, sec. 1.)

Art. 6694. Commission to require compliance.—Power is hereby conferred upon the railroad commission of Texas to require compliance by railroad companies with the provisions of the preceding article under such regulations as said commission may deem reasonable and all railroad companies shall be subject to the penalties described by law for failure to comply with such requirements. (Id. sec. 2.)

Art. 6695. Commission may order construction of union depots.—Where two or more railroad companies reach the same city or town in this state, it shall be the duty of the railroad commission of Texas to ascertain whether it is practicable and feasible for such railroad companies to use a joint or union passenger depot; and, if the railroad commission finds upon investigation that it is practicable for such railroad companies to join in the construction and use of a passenger depot, then it shall give notice to said railroad companies, and, after investigation and public hearing, may require the construction and maintenance of such union passenger depot by the railroad companies entering any such city or town; provided, that it shall appear to the railroad commission that the construction and maintenance of such joint or union passenger depot are just and reasonable to the railroad companies involved, and demanded by the public interest. The railroad commission may specify the requirements of such union depot as to kind and character; and said railroad commission may apportion the cost of constructing and maintaining the same to each railroad company in cases where the interested railroad companies can not themselves agree. (Acts 1909, 2 S. S. p. 399, sec. 1.)

Art. 6696. Penalty for failure.—Failure upon the part of any railroad company to observe and obey the orders of the railroad commission, issued in compliance with the preceding article, shall subject such railroad company to the fines and penalties prescribed by law for failure to obey the lawful requirements, orders, judgments and decrees made by the railroad commission of Texas. (Id. sec. 2.)

Art. 6697. Right to lease another road.—Any railroad not exceeding thirty miles in length, connecting at or near the state line with any other railroad, may be leased by the company owning such other railroad, on such terms and for such time, not exceeding ten years, as may be approved by the railroad commission of Texas; provided, that said commission may refuse to approve the same for any cause which it may deem sufficient; and provided, further, that at any time before or after the expiration of such lease, the same may be renewed or another lease executed, subject to the provisions and limitations of this chapter; and provided, further, that the provisions of this chapter shall not apply to railroads whose total mileage in this state may exceed thirty miles, although a portion thereof so connecting at the state line may not exceed thirty miles in this state. (Acts 1899, p. 73, sec. 1.)

Art. 6698. Lessor company subject to jurisdiction of commission.—During the term of such lease, the lessor company shall remain subject to the jurisdiction of the said railroad commission of Texas, and, notwithstanding such lease, shall be liable for any and all things occurring on or in connection with such road to the same extent as it would be if such lease had not been made, it being the intent hereof that the lease shall not operate to exempt the lessor company from any liability that would otherwise exist against it; but this article shall not be so construed as to release the lessee company from any liability. (Id. sec. 2.)

Art. 6699. Exception as to general office, etc.—Any company whose road may be leased under the provisions of the two preceding articles is hereby exempted from the laws of this state requiring general offices to be maintained and the general officers to reside in this state, except in so far as it may be required by section 3, article 10, of the constitution of the state of Texas, and except in so far as may be required by the order or orders of said railroad commission. (Id. sec. 3.)

Art. 6700. Process served upon whom.—In any suit against the lessor company, for the purpose of service of process, the officers and agents of the lessee company shall be the officers and agents of the lessor company. (Id. sec. 4.)

Art. 6701. Railroad crossings under control of commission.—Where it should become necessary for the track of one railroad company to cross the track of another railroad company, it shall be the duty of the railroad commission of the state of Texas to ascertain and define by its decree the mode of such crossings which will occasion the least probable injury upon the rights of the company owning the road which is intended to be crossed; and, if it should appear to the said commission that it is reasonable and practicable to avoid a grade crossing, said commission shall by its order prevent the same. (Acts 1901, p. 255, sec. 1.)

Art. 6702. Interlocking, etc., switches to be used.—In any case where the tracks of two or more railways cross each other at a common grade in this state, it shall be the duty of such railroad company to protect such crossings by interlocking or other safety devices and regulations to be designated by the railroad commission of Texas, to prevent trains colliding at such crossings. (Id. sec. 2.)

Art. 6703. Expenses of grade crossing to be paid by whom.—In case any railway company shall hereafter seek to cross, at grades with its track or tracks, the track or tracks of another railroad, the railroad seeking to cross at grade shall be compelled to

interlock, or protect such crossings by safety devices to be designated by the railroad commission, and to pay all costs of appliances together with the expense of putting them in; provided, that this law shall not apply to crossings of side tracks. (Id. sec. 3.)

Art. 6704. Trains may pass crossings without stopping, when.—Whenever interlocking or other safety devices are constructed and maintained in good order to the satisfaction of the railroad commission in compliance with the two preceding articles, then and in that case it shall be lawful for the engines and trains of such railroad or railroads to pass over such crossings without stopping. (Id. sec. 4.)

Art. 6705. Penalty, etc.—Any company, corporation, receiver or person operating any railroad who shall refuse or neglect to comply with any order made by the said railroad commission in pursuance of the terms of the four preceding articles shall forfeit and pay to the state of Texas a penal sum of five hundred dollars per week for each week of such refusal and neglect; which said sum may be recovered in suit or suits to be brought by the attorney general of the state of Texas in the name of the state of Texas, upon duly verified information of such refusal and neglect, by any such railway company being lodged with said attorney general by the said railroad commission. (Id. sec. 5.)

Art. 6706. Double-header trains, use prohibited, except when.—Where an unreasonable degree of hazard results to its employés, it is hereby declared to be an abuse of its franchise and privileges for any railroad company, or receiver, operating a line of railroad in this state to run or operate more than one working locomotive at the same time in propelling or moving any one train of cars, except in moving trains up steep grades, or where a locomotive propelling the train becomes temporarily disabled after leaving the terminal; and it shall be the duty of the railroad commission to investigate such abuses and see that the same are corrected, regulated, or prohibited as hereinafter provided. (Acts 1900, S. S. p. 15, sec. 1.)

Art. 6707. Use to be regulated by commission.—After such investigation, should the railroad commission decide to regulate or forbid the practice of using more than one working locomotive in the operation of any train at the same time on any railroad, or part of railroad, within this state, then it shall be their duty to make and record an order fully setting forth their decision and clearly designating the railroad, or part of railroad, on which such practice is forbidden or regulated, and how regulated. Notice of said order shall be served upon said railroad affected by it. Said notice shall contain in full a copy of said order, and shall be directed to the sheriff or any constable of the county where the general offices of such railroad are located; and a copy of the same shall be delivered by the officer executing the same to the president, or the vice-president, or the general manager, or the general superintendent, or any general officer of said railroad in this state residing in said county; and said officer executing said writ shall make his return on the original, and deliver the same with his return forthwith to the commission. (Id. sec. 2.)

Art. 6708. Penalty and venue of suits.—It shall be the duty of such railroad to obey said order; and any railroad corporation, or receiver, who shall at any time after such notice shall have been served for ten days violate the order of the commission, shall be liable to the state of Texas for a penalty of not less than five hundred dollars nor more than five thousand dollars for each offense; and such penalty shall be recovered, and suits therefor shall be brought in the name of the state of Texas in the proper court having jurisdiction thereof in Travis county, Texas, or in any county into or through which such railroad may run, by the attorney general, or under his direction; and such suit shall be subject to the provisions of article 6673. (Id. sec. 3.)

Art. 6708a. Maintenance of roadbed and tracks; powers of commission.—The Railroad Commission of Texas shall have authority and it is hereby made its duty to see that each and every railroad corporation owning or operating a line of railroad in this State shall maintain its roadbed and track in such condition as to enable it to perform all of its duties as a common carrier with reasonable safety to persons and property carried by it and its employés and with reasonable dispatch.

The Railroad Commission of Texas shall be vested with full power to require of any such railroad company to purchase or secure for installation in its roadbed or track all such ties, rails, ballast and other materials and equipment as may, in the judgment of the Railroad Commission of Texas, be necessary for the proper maintenance of such track and roadbed so as to enable such railroad corporation to adequately perform its duties to the public and to transport freight and passengers with safety thereunto and without delay.

The Railroad Commission of Texas is hereby empowered to require any such railroad company to acquire and install in the whole of such track or roadbed or any portion thereof that may be designated by the Railroad Commission of Texas, such ties, rails, ballast and other materials as may, in the judgment of the Railroad Commission, be adequate and sufficient to place such track or roadbed in safe condition. (Acts 1915, ch. 129, sec. 1.)

Art. 6708b. Same; penalty for failure to comply with orders of Commission.—When the Railroad Commission of Texas shall have made any such order as authorized by Section 1 of this Act [Art. 6708a], it shall be the duty of any such railroad company or receiver subject thereto, to promptly comply with the terms thereof, and for failure or refusal to do so, such company or receiver shall become liable to the State of Texas, "as in other cases of failure to comply with orders of the Railroad Commission as provided by law." In addition to such penalties, any court of competent jurisdiction shall have the power to, and it shall be its duty to, issue writs of mandamus and mandatory injunctions and other proper writs to compel the compliance with such orders. (Id. sec. 2.)

Art. 6708c. Same; issuance of bonds.—In any case where the Railroad Commission

of Texas shall make an order in accordance with the preceding sections of this bill for the improvement of the line of railway of any railroad corporation, then and in such event the Railroad Commission of Texas, at the time of making such order, may, and it is hereby authorized, in its discretion, to make an order permitting said railroad corporation to issue bonds sufficient to raise the money necessary to make such improvements; to authorize such railroad corporation to secure the same by proper mortgage upon its property, and to designate such bonds and mortgage as "Improvement Bonds and Mortgages"; provided, the entire amount of bonds of said railroad company, including the new bonds, shall not exceed the assets of said company, and the said Railroad Commission is hereby vested with power and authority to make such orders.

It is also the duty of said Railroad Commission of Texas to see that the funds arising from the sale of such bonds shall be applied to the making of such improvement as it ordered said railroad corporation to make, and it is hereby vested with power and authority to regulate the same in the proper manner, and any sale of any such "Improvement Bonds and Mortgages" at less than par value thereof must, in order to be valid, be approved by the Railroad Commission. Provided, that the provisions of this Act shall not be considered as a repeal or modification in any manner of the present stock and bond law of the State governing the issuance of stocks and bonds by railroads. (Id. sec. 2[3].)

Art. 6709. Equipments to be used; commission to supervise.—It shall be unlawful for any common carrier engaged in intrastate commerce by railroad within the state of Texas to use on its lines in moving intrastate traffic within said state any locomotive engine not equipped with a power driving wheel brake and appliances for operating the train brake system, or to run any train in such traffic that has not a sufficient number of cars in it so equipped with power or train brakes that the engineer on the locomotive drawing such train can control its speed without requiring brakemen to use the common hand brake for that purpose, or to run any train in such traffic that has not all of the power or train brakes in it used and operated by such engineer, or to run any train in such traffic that has not at least seventy-five per centum of the cars in it equipped with power or train brakes; and for the purpose of fully carrying into effect the objects of this and the five succeeding articles, the railroad commission of Texas may, from time to time, after full hearing by public order, increase the minimum percentage of cars in any train which shall be equipped with power or train brakes; and after such minimum percentage has been so increased it shall be unlawful for any common carrier to run any train in such traffic which does not comply with such increased minimum percentage. (Acts 1909, p. 64, sec. 1.)

Art. 6710. Improved couplers to be used.—It shall be unlawful for any common carrier, engaged in commerce as aforesaid, to haul or permit to be hauled or used on its line of railroad within the state of Texas, any locomotive, tender, car or similar vehicle employed in moving intrastate traffic within the said state which is not equipped with couplers, coupling automatically by impact, and which can be coupled and uncoupled without the necessity of men going between the ends of locomotives, tenders, cars and similar vehicles. (Id. sec. 2.)

Art. 6711. Drawbar of engine, length of.—It shall be unlawful for any common carrier, engaged in commerce as aforesaid, to use in moving intrastate traffic within said state any locomotive, tender, car or similar vehicle, any drawbar of which, when measured perpendicularly from the level of the tops of the track rails upon which such locomotive, tender, car or similar vehicle is standing to the center of such drawbar, is more than thirty-four and one-half inches in height, or less than thirty-one and one-half inches in height. (Id. sec. 3.)

Art. 6712. May refuse rolling stock not properly equipped.—When any person, firm, company, corporation or receiver engaged in commerce as aforesaid, shall have equipped a sufficient number of its locomotives, tenders, cars and similar vehicles so as to comply with the provisions of article 6709, it may lawfully refuse to receive from connecting lines of road or shippers any locomotives, tenders, cars, or similar vehicles not equipped sufficiently, in accordance with article 6709, with such power or train brakes as will work and readily interchange with the brakes in use on its own locomotives, tenders, cars, and similar vehicles, as required by this law. (Id. sec. 4.)

Art. 6713. Rolling stock to be provided with grab irons, etc.—It shall be unlawful for any common carrier, engaged in commerce as aforesaid, to use in moving intrastate traffic within said state any locomotive, tender, cars, or similar vehicle which is not provided with sufficient and secure grab irons, hand holds and foot stirrups. (Id. sec. 5.)

Art. 6714. Penalty, how recovered.—Every such common carrier, whether a copartnership, a corporation, a receiver, or an individual or association of individuals, violating any of the provisions of the five preceding articles shall be liable to the state of Texas for a penalty of not less than two hundred nor more than one thousand dollars for each offense; and such penalty shall be recovered and suit brought in the name of the state of Texas, in any court of proper jurisdiction in the county of Travis, or in any other county in said state into or through which such line of railroad may run, by the attorney general, or under his direction, or by the county or district attorney in the county in which the suit is brought; and the attorney bringing such suit shall receive a fee of fifty dollars for each penalty recovered and collected by him, and ten per cent of the amount collected, to be paid by the state; and the fees and compensation so allowed shall be over and above the fees allowed such attorney under other provisions of law. (Id. sec. 6.)

Art. 6715. To build sidings, etc., when.—All railroads in Texas shall be required to build sidings and spur tracks sufficient to handle the business tendered such railroads, when ordered to do so by the railroad com-

mission, as hereinafter provided. (Acts 1903, p. 93, sec. 1.)

See Ry. Commission v. St. L. S. W. Ry. Co., 80 S. W. 102; Id., 1141; Crosbyton-Southplains R. Co. v. Railroad Commission of Texas, 169 S. W. 1038.

Art. 6716. Commission to enforce compliance.—Power is conferred on the railroad commission of Texas to require compliance by railroad companies with the provisions of the preceding article, under such regulations as said commission may deem reasonable; and all railroad companies shall be subject to the penalties prescribed by law for failure to comply with the requirements of the railroad commission as provided herein. (Id. sec. 2.)

Art. 6716a. Duty to provide switch connections with private spur tracks.—Any railroad company or receiver thereof upon application of any shipper tendering traffic for transportation, shall construct, maintain and operate upon reasonable terms, a switch connection with any such private sidetrack or spur track which has been or shall hereafter be constructed by any such shipper, to connect with its railroad where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against such shipper. (Acts 1915, ch. 35, sec. 1.)

Art. 6716b. Application to and order of Railroad Commission.—If any railroad company or receiver thereof shall fail to install and operate any such switch connection as aforesaid, on application therefor by any shipper, such shipper may make application to the Railroad Commission of Texas, and said commission shall be authorized and empowered to enter such orders as may be necessary governing the construction, maintenance and operation of said switch connection with said private sidetrack or spur track, where such connection is reasonably practicable, and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same. (Id. sec. 2.)

Art. 6716c. Railroad Commission to fix rates, prevent discrimination, and make regulations for use of switches.—The Railroad Commission of Texas shall fix just and reasonable rates to be charged by railroad companies or receivers thereof for traffic moved and handled over such private sidetracks or spur tracks extending to private industries, and it shall be the duty of the Railroad Commission to adopt such rates, rules, and regulations as will prevent any discrimination in the operation of such tracks or the handling of such traffic. Whenever any railway company or receiver thereof shall operate any private sidetrack or spur track without charge, the Railroad Commission of Texas shall have power and authority to compel the operation without charge of and private sidetrack or spur track similarly situated. (Id. sec. 3.)

Art. 6716d. Railroad Commission empowered to regulate private sidetracks or spur tracks.—The Railroad Commission of Texas shall prescribe reasonable rates, rules and regulations for the operation of all private sidetracks or spur tracks as may already have been or may hereafter be constructed either by the railroad companies themselves or by individuals or corporate interests, or jointly by such railroads and individuals or corporations, when such private sidetracks or spur tracks are operated by railroad companies or the receivers thereof; and shall have power and authority to order and compel the operation of said private sidetracks or spur tracks whenever the railway company or receiver thereof is operating other private sidetracks or spur tracks similarly situated, and to prevent discrimination therein. (Id. sec. 4.)

Art. 6716e. Sidetracks or spurs to be constructed for all persons similarly situated.—Whenever any railroad company or receiver thereof shall hereafter construct or maintain or contribute to the construction or maintenance of any private sidetrack or spur track to any private industry, the Railroad Commission shall have power to order such railway company or receiver to construct or maintain or contribute to the construction or maintenance of a sidetrack or spur track to any private industry similarly situated, on the same terms and conditions. (Id. sec. 5.)

Art. 6716f. Failure to comply with orders of Commission as to sidetracks, etc.—Failure upon the part of any railroad company or receiver thereof to observe and obey the orders of the Railway Commission issued in compliance with this Act, shall subject such railroad company to the fines and penalties prescribed by law for failure to obey the lawful requirements, orders, judgments and decrees of the Railroad Commission. (Id. sec. 6.)

Art. 6716g. Action for damages.—Any person injured by a violation of the terms of this Act shall have the right to bring suit for his actual damages and for enforcement of his rights under this Act. (Id. sec. 7.)

Art. 6716h. Provision cumulative.—This Act shall be cumulative of all other acts governing railroads or receivers thereof. (Id. sec. 8.)

Art. 6716i. Arrangement of tracks and depot buildings.—The authority is hereby conferred upon the Railroad Commission of Texas to inquire into the proposed or existing arrangement of railroad tracks, and depot buildings, at railroad stations in this State to determine whether or not proposed or existing arrangements of such tracks, switches and depot buildings is or may be dangerous to the public and to determine whether or not the public interest demands or may demand a re-arrangement or relocation of such tracks, switches and depot buildings to be made, and to determine whether or not such rearrangement or relocation can be made upon terms and conditions reasonable and just to the person, firm, corporation or receiver owning or operating such tracks, switches and depot buildings, and the Railroad Commission may if the aforesaid question can, under the facts, be resolved affirmatively, thereupon give notice to such persons, firm, corporation or receiver, and after public hearing and investigation, may require the person, firm, corporation or receiver, owning or operating such tracks, switches and depot buildings at such points to ar-

range, or re-arrange, or relocate the same in accordance with the specifications made by the Railroad Commission. Provided however, that no such arrangement, re-arrangement, or relocation, shall be authorized, or required within the limits of any incorporated city or town without the express consent of the governing body of such city or town. (Acts 1918, 4th C. S., ch. 93, sec. 1.)

CHAPTER SIXTEEN

ISSUANCE OF STOCKS AND BONDS REGULATED

Art. 6717. (4584a) Regulation of issue of stocks, bonds, etc., by railroads vested in state.—Among other things, the power and authority of issuing or executing bonds, or other evidences of debt, and all kinds of stock and shares thereof, and the execution of all liens and mortgages by railroad corporations in this state are special privileges and franchises, the right of supervision, regulation, restriction, and control of which has always been, is now, and shall continue to be vested in the state government, to be exercised according to the provisions of this and other laws. (Acts 1893, p. 57.)

Art. 6718. (4584b) Issue of incumbrance above value of the road prohibited; except, etc.—Hereafter no bonds or other indebtedness shall be increased or issued or executed by any authority whatsoever, and secured by lien or mortgage on any railroad, or part of railroad, or the franchises or property appurtenant or belonging thereto, over or above the reasonable value of said railroad property; provided, that in case of emergency, on conclusive proof shown by the company to the railroad commission that public interests or the preservation of the property demand it, the said commission may permit said bonds, together with the stock in the aggregate, to be executed to an amount not more than fifty per cent over the value of said property. (Id. sec. 2.)

Art. 6719. (4584c) Railroad commission to ascertain and report railroad values; proceeding incident thereto.—It shall be the duty of the railroad commission to ascertain, and in writing report to the secretary of state, the value of each railroad in this state, including all its franchises, appurtenances and property. After it shall have prepared said report of value, the commission shall give the company interested ten days notice in writing, by registered letter to the president, treasurer or receiver of said railroad, to the effect that said report is ready to be made, and that if it have any objections thereto it must file them, in writing, within forty days after said service, or the same will be so deposited with the secretary of state as correct. Should the company, or its duly authorized representative, file with said commission any objections to said report of value, the commission shall duly investigate and pass on the same. On investigation, if the commission conclude that its report of value is too low or too high, then it shall make the necessary correction before filing it. Should no objections be filed within the time permitted, or being filed and on examination found without merit, the commission shall forthwith file its said report in the office of the secretary of state, where it shall remain as a public record, as a limitation for the issuance of indebtedness under the limitations prescribed in article 6718. To promote public interests and protect private rights, the commission, after due notice under the rule herein prescribed, may correct its report of value of any railroad at any time it may deem proper. (Id. sec. 3.)

Art. 6720. (4584d) Effect of judicial or other sale of railroad.—Every judicial or other sale of any railroad in this state hereafter made, which shall have the effect to discharge the property so sold from liability in the hands of purchasers for claims for damages, unsecured debts, or junior mortgages against such railroad company so sold out, shall have the effect to annul and cancel all claims of every stockholder therein to any share in the stock of such railroad; and it shall not be lawful for said purchasers, or for any railroad company organized hereafter to operate said railroad, to issue any stock in lieu of the old stock or to allow any compensation therefor in any manner whatever, nor shall all or any part of the debt to satisfy which such sale is made be continued or held as a claim or lien on said property. (Id. sec. 4.)

See Davis v. S. A. & G. S. Ry., 51 S. W. 324.
Generally under this chapter, see Davis v. Watertown Nat. Bank, 178 S. W. 593.

Art. 6721. (4584e) Purchasers complying with law may issue bonds, etc.—The purchasers of said property who procure it clear of incumbrance, or any company organized by their consent to operate said railroad under and in pursuance of the laws of this state, may issue stock and bonds in the proportion that they may deem advisable, subject to the rules, restrictions and limitations prescribed in the three preceding articles. (Id. sec. 5.)

See Thayer v. Wathen, 44 S. W. 907.

Art. 6722. (4584f) Authority to issue bonds before completion of roads must be obtained, etc.—Should any company or corporation authorized to construct, own or operate a railroad in this state desire to issue bonds or other indebtedness, to be secured by lien or other mortgage on its franchises and property, in advance of the completion of the said railroad, it shall make application to and first procure the consent of the railroad commission thereto. In said application, it shall exhibit to the commission its contract with the construction company, if it have any, the profile of its completed road or part of road, the evidence of its right of way, depot grounds, terminal facilities, the extent and value of work done or in process of completion, the amount of property received, the amount of stock subscribed and the amount paid in, and all other necessary facts showing the value of the franchises and property proposed as security for said contemplated debts. If, on investigation, the commission is satisfied that the company is acting in good faith, and that its contract with the construction company is reasonable and fair to the public, then it shall authorize the execution of said indebtedness and lien to the extent necessary for the demands of the work, at no time to be more than fifty per cent over the value of the whole property and franchises. In executing said bonds, the company shall comply

with article 6723, and have them registered, as required in article 6724. (Id. sec. 6.)

See Denison & S. Ry. v. Ry. Commission, 69 S. W. 62.

Art. 6723. (4584g) Prescribing how certificates of stock shall issue.—Each railroad company now existing, or that shall hereafter be organized, or that shall be reorganized under the laws of this state, or which shall increase its stock under the laws of this state, shall issue certificates to the subscribers to its said stock under the following regulations: A majority of the board of directors shall meet in person in the state of Texas, at the principal office of such company, and shall cause to be made a list of the subscribers to such stock, showing the number of shares subscribed by each, the amount of stock represented by each share and the amount actually paid, labor done or property received on each share of stock, and shall cause to be affixed to each name on said list a number, beginning with number one, or the next highest number of any certificate previously issued. The president of the board, or presiding officer of the meeting at which the issuing of such certificates of stock is authorized, shall make a certificate to said statement to the effect that the same is correct, and that the amount of money paid, labor done and property received as stated is correct, and shall sign the same in person. Such statement shall thereupon be entered at large upon the minutes, and, after having the seal of the company affixed thereto, shall be attested by the secretary of the company, and deposited with the railroad commission, and by it filed and preserved in the office. The secretary of the company shall then be authorized to make out and deliver to each stockholder in said list a certificate corresponding with said statement in number, name, number of shares, amount of stock represented by each share, and the amount of money or its equivalent paid upon each share; which certificate shall be signed by the president of the said railroad company, attested by the secretary, with the seal of said company affixed. No railroad company shall hereafter increase its stock, unless all existing shares of stock shall have been paid in full, or all unpaid shares of such stock have been sold out as forfeited under the law. When the certificates to be issued are for increase of stock, the statement herein required to be made by the board of directors shall state that all existing shares of stock have been paid in full, or that all shares not paid in full have been sold out or forfeited under the law. In no event shall the stock exceed the value of the railway property, and the correct aggregate amount of stock so issued by each railway company shall be certified to and registered in the office of the secretary of state by or at the instance of the railroad commission. (Id. sec. 7.)

See Davis v. S. A. & G. S. Ry., 44 S. W. 1012; Id., 51 S. W. 324.

Art. 6724. (4584h) Prerequisites to the issue by railroad companies of bonds, etc.—Whenever any railroad company in this state shall hereafter desire to make, issue, and sell any bonds, or evidences of debt, which are to become a lien on its property, it shall comply with the laws of this state regulating the same, and in addition thereto shall have said bonds prepared, signed by the president of the company, and attested by the secretary, with the seal of the company attached thereto. Each bond shall be numbered, beginning with number one, or the next highest number of any preceding bond issued by it, and continue consecutively until all are numbered. The bonds shall be dated, made payable at a time not exceeding thirty years from date, and shall bear interest not exceeding six per cent per annum. The said bonds, when thus prepared, shall be presented to the railroad commission of this state, with a statement in writing, signed and sworn to by the president of said company, showing the amount of the stock of said company, and the amount of outstanding bonds, if any, of said company. If said bonds are such as are permitted under this law, and the railroad commission shall be so satisfied, it shall approve said bonds, and shall issue to the secretary of state a direction to register said bonds, specifying the numbers, dates, and amounts thereof. And said commission shall keep in its office a correct record of the bonds so approved by it, giving the name of the company, the numbers, dates of execution and maturity of the bonds, the amount and rate of interest of each, and the date of approval; provided, that this provision shall not apply to receivers' certificates where the amount does not exceed one hundred thousand dollars. (Id. sec. 8.)

See G. B. & S. W. Ry. v. Fontaine, 57 S. W. 872; St. Louis Union Trust Co. v. Texas Southern Ry. Co., 126 S. W. 296.

Art. 6725. (4584i) Duty of secretary of state.—When any such bonds shall be presented to the secretary of state with the direction aforesaid to register, he shall register said bonds by entering a description thereof in a book to be kept for that purpose, which shall show the date, number, amount, when due, the rate of interest on each bond, and also the date when the same is registered. The secretary of state shall indorse on each bond, under the seal of his office and his official signature, together with the date thereof, as follows: "This bond is registered under the direction of the railroad commission of Texas." No bond, or other evidence of debt, hereafter issued by or under the authority of any person, firm, corporation, court, or railroad company, whereby a lien is created on its franchise or property situated in this state, shall be valid or have any force until the same has been registered as required herein. (Id. sec. 9.)

See State v. Hardy, 55 S. W. 322.

Art. 6726. (4584j) Forfeiture of charter.—If any railroad company owning or operating a railroad in this state shall hereafter issue or consent to or cause to be issued any bonds or other evidences of debt to be or become a lien on its railroad property so owned or operated, or shall issue any stock not in accordance with the provisions of this chapter, such action shall work a forfeiture of the charter of said company; and it shall be the duty of the attorney general to institute proceedings in a court of competent jurisdiction to forfeit the same. (Id. sec. 10.)

Art. 6727. (4584k) Certificates, bonds, etc., void.—Every certificate of stock

in any railroad company, and every bond and other evidence of debt operating as a lien upon the property of such railroad company, which shall be made, issued or sold without a compliance with this chapter, shall be void. (Id. sec. 11.)

See Davis v. S. A. & G. S. Ry., 44 S. W. 1012; Jones v. Abernathy, 174 S. W. 682; Lumpkin v. Brown, 206 S. W. 217.

Art. 6728. (4584*l*) Penalties hereunder; venue.—Each and every railroad director, president, secretary, or other official, who shall knowingly make any false statement upon which to secure the registration of any bond or other evidence of debt as aforesaid, or who shall by false statement knowingly made procure of the railroad commission direction to the secretary of state to register the same, and which shall be by the secretary of state registered, or shall with knowledge of such fraud negotiate, or cause to be negotiated, any such bond or other security issued in violation of this chapter, shall be punished as provided in the Penal Code, and shall likewise be liable to any creditor of such company for the full amount of damages sustained by such wrongful conduct. Venue in such cases shall be in either of the district courts held in Travis county, or in the county where the principal office of the railway company whose property is sought to be so incumbered or affected is located. (Id. sec. 12.)

Art. 6729. (4584m) State not liable, etc.—Nothing in this law, and no act done or performed under or in connection with it, shall be held or construed to bind or make the state of Texas liable to pay or guarantee, in any manner whatsoever, any obligation, debt, or claim executed or assumed under or by virtue of its provisions. (Id. sec. 13.)

Art. 6730. Amendment of charter; construction of branch lines; issuance of bonds.—Any corporation incorporated for the purpose of constructing, owning, maintaining and operating a railroad under the laws of this state, and which on April 15, 1901, owned a line of railway already constructed, which has outstanding stocks and also outstanding bonds secured by a mortgage lien upon its property, or by any other character of lien, may amend its charter in accordance with chapter 1 of this title, and in accordance with the constitution and laws of this state, and may provide by such amendment for the making of any extension or extensions, or branch line or lines, that it may desire to construct, and may issue stocks and bonds, or bonds, in an amount equal to the reasonable value of such extension or extensions, or such branch line or lines, and such terminal properties as it may acquire, the same to be issued in accordance with the provisions of this chapter; and the railroad commission of the state of Texas is hereby empowered to authorize the execution and issuance of such stocks and bonds, or bonds, and, in determining the right to issue such stock and bonds, said commission shall not consider the amount of outstanding stock or indebtedness, or bonds previously issued and secured by lien upon the property of such corporation theretofore constructed; provided, that any existing mortgages or liens upon the property of such corporation constructed or owned prior to the time of making such amendment of its charter and to the construction of such extension or extensions, or branch line or lines, or to the acquiring of such terminal properties, shall not attach to or become a lien upon the extension or extensions, branch line or lines, or terminal properties constructed or acquired under such amended charter. This article shall not be so construed as to in any wise repeal or impair any other of the provisions of this chapter, or of the existing laws of this state, except in so far as the same may be changed by the provisions of this article. (Acts 1901, p. 257, secs. 1 and 2.)

Art. 6731. Suburban railroad stocks and bonds valid, when.—In all cases in which the railroad commission of the state of Texas may decide that any corporation created under chapter 1 of this title for the purpose of operating a local suburban railway not exceeding ten miles from the corporate limits of any city or town, in addition to such mileage as it may have within the same, is not for any reason subject to the control of said railroad commission in reference to the issuance of stock and bonds, or either, under the act of the legislature of this state entitled, "An Act to define franchises, to make public the value of railroads, to make effective section 6, article 12, of the constitution of the state of Texas; to declare the effect of judicial and other sale of railroads; to limit the amount of stocks and bonds and other indebtedness that may be issued by railroad companies, and to regulate the manner of issuing, registering and securing the same; to prescribe penalties for violating the provisions of this act, and to prescribe the duties of the railroad commission and the attorney general in relation thereto," being chapter 50 of the acts of the legislature of Texas of 1893, and this chapter. Said corporation, after such decision of said railroad commission, shall have the right to issue its said stock and bonds, or either, and also to increase its stock and bonds, or either, without the control of said railroad commission, and without complying with the acts aforesaid in reference thereto; and said stock and bonds, when so issued, shall in all respects be as valid and binding as they would be if there were no such acts. (Acts 1903, p. 29, sec. 1.)

Art. 6732. Stocks and bonds may issue for double tracks.—Any railroad company chartered under the laws of this state, whenever the railroad commission shall find it advisable to authorize it to do so, may construct, own and operate an additional line of road upon its right of way, together with all necessary sidings, switches and turnouts, and may issue stock and bonds, or bonds, in an amount equal to the reasonable cost of such improvements, the same to be issued in accordance with the provisions of this chapter; and the railroad commission of the state of Texas is empowered to authorize the execution and issuance of such stock and bonds, or bonds; and, in determining the right to issue such stock and bonds, or bonds, the said commission shall not consider the amount of outstanding stock, indebtedness or bonds previously issued and secured by lien upon the proper-

ty of such corporation theretofore constructed. (Acts 1903, p. 131, sec. 1.)

CHAPTER SEVENTEEN

INTERURBAN RAILROAD COMPANIES

Art. 6733. Right of eminent domain.—All corporations chartered for the purpose of constructing, acquiring, maintaining and operating lines of electric railway between any cities and towns in the state of Texas, for the transportation of freight or passengers, or both, shall have the right of eminent domain, as fully to all intents and purposes as is now conferred by law upon steam railroad corporations, and shall have the right and power to enter upon, condemn and appropriate the lands, rights of way, easements and property of any person or corporation whomsoever for the purpose of acquiring rights of way upon which to construct and operate their lines of railways and sites for depots and power plants; provided, that no cemetery grounds, nor any part thereof, shall be so taken or condemned. (Acts 1907, p. 23, sec. 1.)

Art. 6734. Width of right of way, survey, etc.—Such corporation shall have the right and power to lay out rights of way for their railways not to exceed two hundred feet in width, and to construct their railways and appurtenances thereon, and, for the purpose of cuttings and embankments, to take as much more land as may be necessary for the proper construction and security of their said railways, and to cut down any standing trees, or remove any other structure that may be in danger of falling upon or obstructing such railway, compensation being made therefor in accordance with law. And to the accomplishment of these ends, such corporation shall have the right to cause such examination and survey of their proposed railways to be made as may be necessary to the selection of the most advantageous route, and for such purposes may enter upon the lands or waters of any person or corporation subject to responsibility for all damages that may be occasioned thereby. (Id. sec. 2.)

Art. 6735. May construct across streams, streets, etc.—Such corporations shall have the right and power to construct their railways along, across and over any stream of water, water course, bay, navigable water, arm of the sea, street, highway, steam railway, plank road, turnpike or canal which the route of such railway shall touch, and shall have the right to erect and operate bridges, trams, trestles, or causeways over, along or across any such stream, water course, navigable water, bay, arm of the sea, street, highway, plank road, turnpike, or canal; provided, however, that any such bridge or other structure shall be so erected as not unnecessarily or unreasonably to prevent the navigation of any such stream, water course, bay, arm of the sea, or navigable water; and provided, further, that nothing herein contained shall authorize the construction of any such railway upon or across any street, alley, square, or property of any incorporated city or town, without the assent of said corporation of said city or town, and that in case of the construction of any electric railway along and upon highways, plank roads, turnpikes or canals, such interurban electric railway company shall first obtain the consent of the lawful authorities having the jurisdiction of the same. (Id. sec. 3.)

Art. 6736. Same powers of eminent domain as steam railroads.—All rights and powers of eminent domain and condemnation of property in this title hereinbefore set out and conferred upon steam railway companies of this state and the manner of exercise thereof are hereby conferred upon interurban railway companies mentioned in this chapter. (Id. sec. 4.)

Art. 6737. May condemn easement over other electric railway tracks, etc.—The right of condemnation herein given to interurban electric railway companies shall include the power and authority to condemn, for their use and benefit, easements and rights of way to operate interurban cars along and upon the track or tracks of any electric street railway company owning, controlling or operating such track or tracks upon any public street or alley in any town or city of this state for the purpose hereinafter mentioned, subject to the consent, authority and control of the city council of such town or city. (Id. sec. 5.)

Art. 6738. Proceedings to condemn easement.—Any such interurban electric railway company, seeking to avail itself of the benefits of this chapter shall have the right to condemn an easement along and upon the track or tracks of any electric street railway company for the purposes only of securing an entrance into and an outlet from a town or city upon a route to be designated by the city council or other city authorities in control of the streets and alleys of such city. And in any proceeding to condemn an easement or right of way for the purposes above mentioned, the court, or the jury trying the case, shall define and fix the terms and conditions upon which such easement or right of way shall be used; provided, the court rendering such judgment shall be authorized upon a subsequent application or applications by either of the parties to the original proceedings, or any one claiming through or under them, to review and reform the terms and conditions of such grant and the provisions of such judgment, and the hearing upon such application shall be in the nature of a retrial of said cause with respect to the terms and conditions upon which said easement shall be used; but the court shall not have power upon any such rehearing to declare such easement forfeited or to impair the exercise thereof; provided, that no application for a rehearing shall be made until two years after the final judgment on the last preceding application. (Id. sec. 5.)

Art. 6739. "Interurban railway company" defined.—An interurban electric railway company, within the meaning of this chapter, is a corporation chartered under the laws of this state for the purpose of conducting and operating an electric railway between two cities or between two incorporated towns, or between one city and one incorporated town in this state; and the rights secured under this chapter by any interurban company shall be inoperative and void if the road to be constructed under the charter of said company is not fully con-

structed from a city or incorporated town to some other city or incorporated town within twelve months from the date of the final judgment awarding to said company said easements and right of way. Any interurban company availing itself of the privileges conferred by this chapter is hereby prohibited from receiving for transportation at any point on that portion of the track or tracks so condemned, without the consent of the company over whose track or tracks the easement is condemned, any freight or passengers destined to a point or points between the termini of the track or tracks so condemned; and a wilful violation by the company of this provision of this article shall operate to forfeit such easements or rights of way. If this article shall be held by the courts of this state invalid for any reason, such invalidity shall not affect any other article or portion of this chapter. (Id. sec. 5.)

Art. 6740. Chartered rights include sale of electric lights and power.—Such interurban electric railway companies shall also have the right and authority to produce, supply and sell electric light and power to the public and to municipalities. (Id. sec. 6.)

Art. 6741. Provisions of this chapter cumulative.—The provisions of this chapter shall be held and construed to be cumulative of all general laws of this state on the subject of interurban electric railways when not in conflict herewith; but nothing contained in this chapter shall be construed to have the effect to confer the power of eminent domain, or any of the powers herein conferred, except those conferred in the preceding article, upon any interurban railroad or interurban railroad company, or upon any person, firm, association, corporation, or to add to the powers already possessed by any such railroad, or railroad company, person, firm, association or corporation, so as to enable or authorize it to condemn any land or ground occupied by any portion of its line or track, already constructed March 5, 1907, or to condemn any land or ground for the purpose of changing the location of any track or line already constructed at said date; provided, that nothing contained in this article shall be construed to take from any interurban railroad company, person, firm, association or corporation, any power of eminent domain already possessed by it. (Id. sec. 7.)

Art. 6741a. Power to acquire, lease, or purchase other roads, consent of local authorities.—That any corporation now or hereafter organized under the laws of the State of Texas, authorized to construct, acquire and operate electric or other interurban lines of railway in this State, commonly known as interurban railways, shall have the power to acquire, lease or purchase the physical properties, rights and franchise of any other interurban railway corporation having and possessing like power, or shall have power to acquire, lease or purchase physical properties, rights and franchise of any suburban or street railway corporation, the lines of whose railway are to be operated in connection with the lines of the interurban railway, and the right and power to sell or dispose of the physical properties, rights and franchise by such corporation or person owning the same, to such corporation, acquiring, leasing or purchasing same hereunder, is hereby given. Such acquisition or purchase may be made upon such terms as may be agreed upon by the respective boards of directors and authorized or approved by a majority of the stockholders of such corporations, respectively. Provided further, that corporations owning and operating said street car railways before making sale of its properties hereunder, shall obtain the consent of the city council, board of commissioners or other governing power, as the case may be, of the city where such street car line may be located; and, in cities and towns operating under any charter which provides for the right of qualified voters to vote on the granting or amending of franchise to street railways or interurban railways, this right shall still exist. (Acts 1915, 1st C. S., ch. 14, sec. 1.)

Art. 6741b. Trackage or lease contracts; parallel or competing lines.—Any corporation authorized to construct, acquire and operate electric or other interurban lines of railway in this State, commonly known as interurban railways, shall also have the power to make and enter into trackage or lease contract with any corporation owning and operating street railways, so as to procure continuous passage into or through such city or town; provided, the city council, board of commissioners, or other governing board, shall consent thereto; and, in such case, the owner of such street railways is also authorized to enter into such trackage or lease contract; provided, that no such corporation shall ever be permitted to acquire, own, control or operate any parallel or competing interurban line. (Id. sec. 2.)

Art. 6741c. Parallel and competing lines.—No corporation named in this Act shall be permitted to own, acquire or operate any parallel or competing line. (Id. sec. 3.)

Art. 6741d. Not to violate anti-trust laws.—No corporation mentioned herein shall be permitted to purchase, lease, acquire, own or control, directly or indirectly, the shares or certificates of stock or bonds, franchise or other rights or the physical properties or any part thereof, of any other corporation, if such purchase, lease, acquisition, ownership or control, will violate in any manner any of the provisions of Chapter 1, Title 130, of the Revised Civil Statutes of 1911, of the State of Texas, commonly known as the law against trusts, monopolies and conspiracies against trade. (Id. sec. 4.)

CHAPTER EIGHTEEN

STREET RAILROADS

Art. 6742. Half fare for children in cities of forty thousand and more inhabitants.—All persons or corporations, owning or operating street railways in or upon the public streets of any town or city in this state of not less than forty thousand inhabitants, are required to carry children of the age of twelve years or less at and for one-half the charge or fare regularly collected by such person or corporation for the transportation of adult persons; provided, that this article shall not apply to street cars carrying children or students to and from schools,

colleges, or other institutions of learning, situated at a distance of one mile or more beyond the limits of the incorporated city or town from which said cars run. (Acts 1903, p. 182, sec. 1.)

See San Antonio Traction Co. v. Altgelt, 81 S. W. 106.

Art. 6743. Reduced tickets, how used and sold, etc.—All such persons or corporations, owning or operating street railways, shall sell or provide for the sale of tickets in lots of twenty, each good for one trip over the line or lines owned or operated by such person or corporation, at and for one-half the regular fare or charge collected for the transportation of adult persons, to students not more than seventeen years of age in actual attendance upon any academic, public or private school, of grades not higher than the grades of the public high schools of this state, situated within or adjacent to the town or city in which such street railway is located. Such tickets are required to be sold only upon the presentation by the student desiring to purchase the same of the written certificate of the principal of the school upon which he is in attendance, showing that he is not more than seventeen years of age, is in regular attendance upon such school, and is within the grades hereinbefore provided. Such tickets are not required to be sold to such students, and shall not be used, except during the months of the year when such schools are in actual session, and such students shall be transported at half fare only upon the presentation of such tickets. (Id. sec. 2.)

Art. 6744. Free fare for children under five years.—All such persons or corporations are required to transport children of the age of five years or less, when attended by a passenger of above said age, free of charge. (Id. sec. 3.)

Art. 6745. Transfers regulated.—All such persons or corporations are required to accord to all passengers referred to in the foregoing articles of this chapter the same rights as to the use of transfers issued by their own or other lines as are or may be accorded to passengers paying full fare. (Id. sec. 4.)

CHAPTER EIGHTEEN A

STATE RAILROAD

Arts. 6745a-6745f. [Superseded by Acts 1917, ch. 180, post, arts. 6745g–6745o.]

Art. 6745g. Control of road conferred on Prison Commission; sale, lease, mortgage or extension of road.—That the Prison Commission be and they are hereby authorized, together with the consent and approval of the Governor, to exercise full and plenary control of said State Railroad, and that they be given full authority to sell said railroad to another railroad corporation now in existence or hereafter to be formed, and to receive in payment therefor for the benefit and use of the State, cash or stocks of said railroad corporation or the bonds of said railroad corporation or both, or to charter the State railroad into a separate corporation and said railroad corporation shall have power to issue bonds, debentures and mortgages to secure same and drawing any rate of interest which to said Prison Commission shall seem best, and to give generally and specially to said Prison Commission, acting with and by the consent and approval of the Governor, authority to sell, lease or extend said railroad, and to do any and all things in the disposition, sale, lease, mortgage, extension or otherwise which an individual might do if he owned said Texas State Railroad; provided, especially, that the credit of the State shall not be given impliedly or expressly, and all persons dealing with the Prison Commission and the Governor with reference to the management or disposition of said railroad be and are hereby put on notice that the credit of the State is not bound morally or expressly. Provided that in no event shall said railroad be sold unless a cash payment be made at the time of such sale, equal to the face value and accrued interest of bonds owned by the school funds of Texas against said State railroad, and provided further, that the proceeds derived from such sale shall be applied to the payment of the bonds so held by the school fund of Texas. (Acts 1917, ch. 180, sec. 1.)

Art. 6745h. Extension of road; operation; telephone and telegraph line.—Should an extension of the road be deemed by the Prison Commission and the Governor advisable it shall be their duty to extend, build and construct said railroad to Waco, Texas, or to Dallas, Texas, or to Shreveport, Louisiana, or to Alexandria, Louisiana, or to any two of said places or any other commercial center within reasonable distance, as said Prison Commission may determine by and with the consent and approval of the Governor, after taking into the most careful consideration the advantages offered by the section to be traversed by the proposed line of extension, the needs of such section for new or additional railroad facilities, the probable development that may be the result in such section of the said extension, the inducements that may be offered by the cities, towns and villages and the country through or near which such extended line of railroad might run, and the probable returns in freight and passenger traffic to the road, having a view to the present and the future. And the Prison Commission is hereby authorized to maintain, equip and operate said State railroad, and any and all such extensions thereof, to purchase therefor such equipment, rolling stock, engines and other equipment as said Prison Commission may deem necessary or expedient. Said Prison Commission shall also be and they are hereby authorized to build, construct, maintain, operate in connection with and along said State railroad over the right of way thereof an electric telephone or telegraph line. (Id. sec. 2.)

Art. 6745i. Eminent domain.—Whenever it shall be or become necessary to take, occupy, or use any land or material for the purpose of constructing, building, draining or maintaining the said extension or extensions of said railroad, or for the purpose of draining or maintaining any portion of said State railroad, including any and all extensions thereof, or for the purpose of constructing and maintaining turnouts, sidings and switches therefor, or for the purpose of erecting and maintaining depots thereon, or for the purpose of forming and maintaining any connection with any other railroad or

railroads, said Prison Commission shall have full power and authority to enter upon, take, occupy and use such land, first paying therefor, however, the value and price thereof, if the owner thereof and said Prison Commission can agree on the value of the land so taken and the amount of damages, if any, to be paid by said commission; but if such owner of such land and said Prison Commission cannot agree thereon, said commission may proceed to condemn any and all such land in the same manner, so far as applicable, that a railroad corporation, under the laws now existing, or to be hereafter passed, may condemn the land for right of way, and in so far as such proceedings may be applicable, the same proceedings may be had, and as to each party the same rights shall exist as would exist if such proceedings in condemnation were by or on behalf of a railroad corporation, except that in no case shall said Prison Commission or the State of Texas be required to give bond. (Id. sec. 3.)

Art. 6745j. Condemnation proceedings; duties and compensation of county attorney.—Any and all proceedings in condemnation provided for by this Act shall be instituted and prosecuted in the name of the State of Texas, for the use of said Prison Commission and their successors in office, and any and all judgments and decrees or condemnation in such proceedings, and any and all deeds for any and all such lands which may be acquired by said commission for any of the purposes mentioned in this Act shall run accordingly.

Any and all such condemnation proceedings shall be instituted and prosecuted by the county attorney of the county in which such land or material may be situated, and as compensation for such services such county attorney shall be entitled to receive and shall be paid by said commission, out of current revenues, reasonable fees not exceeding in any instance more than ten per cent of the price which said commission shall pay for such condemned land or material. (Id. sec. 4.)

Art. 6745k. Mortgage of road; disposition of proceeds; credit of state not pledged; accounting between railroad and prison.—In order to obtain and secure repayment of the necessary money with which to carry into effect the provisions of this Act, said Prison Commission shall be, and they are hereby authorized to have printed and execute, as herein provided, mortgage in such form and such amount or amounts as said Prison Commission may determine, bearing interest from date, at the rate not exceeding six per cent per annum, payable as said Prison Commission may determine and as indicated upon the coupons thereof, which shall be attached to such bonds, said bonds maturing twenty years from the date of their issuance, with an option of redemption after ten years. Each and all of said bonds may be secured by a mortgage lien upon said line of railroad and all extensions thereof authorized by this Act, and embracing its entire right of way, franchise, depot buildings, and grounds, equipment, rolling stock, engines and cars.

The form of such bonds and coupons shall be approved by the Attorney General and all such bonds and coupons shall be signed by the chairman and secretary of the Prison Commission, and such bonds shall be countersigned by the Governor; provided especially that the credit of the state shall not be given impliedly or expressly, and all persons dealing with the Prison Commission or the Governor on any matter pertaining to the management or disposition of said railroad are hereby put on notice that the credit of the state is not bound morally or expressly. All expenses connected with the expenses connected with the extension, equipment and operation of said railroad and telegraph and telephone lines shall be paid only from proceeds of sale of such bonds or debentures from donations made to such railroad and from net income from operation thereof. No part of any other money belonging to the state or the Prison Commission shall be expended in connection with such construction, extension, equipment or operation nor with the purchase of right of way, depot grounds and buildings or other appurtenance of such railroad. If any convicts are worked thereon, the same sums shall be paid to the Prison Commission for their labor as is paid for their labor by counties working convicts on the public roads. The Prison Commission shall pay into the treasury of such railroad for freight carried over said road for it the same sums as are charged other persons for like service. All moneys belonging to such railroad shall be kept separate from moneys of the Prison Commission and separate account thereof shall be kept. (Id. sec. 5.)

Art. 6745*l*. Donations.—The Prison Commission are hereby authorized to accept donations and gifts, either in money or lands, or other necessaries to be used in the extension of said road. (Id. sec. 6.)

Art. 6745m. Convict labor may be employed in construction work.—The Prison Commission are hereby authorized to employ the state convicts in the construction of extension of said railroad and to enter said convicts into the service of any corporation that may have in hand the building of said railroad, said convicts, however, to be worked under the direct supervision and control of the Prison Commission, but in no event shall such convicts be employed or used in the operation of handling of any train or car upon said railroad which may be used or operated thereupon in transportation for hire either passenger or freight. (Id. sec. 7.)

Art. 6745n. Repeal.—All laws and parts of laws in conflict herewith are hereby repealed. (Id. sec. 8.)

Art. 6745*o*. Powers of Railroad Commission.—The Railroad Commission of Texas shall have the same jurisdiction and power over the traffic carried on and over said railroad and with respect to divisions of traffic charges between said railroad and connecting lines of railroad as said Commission has, or may hereafter have by law, in the matter of compelling lines of railway corporations in this state, and it shall be and is hereby made the duty of the Prison Commission of this state to obey and enforce all rules, regulations, rates and divisions relating to such traffic charges as are made and fixed by the Railroad Commission of Texas. (Id. sec. 9.)

CHAPTER NINETEEN
GENERAL PROVISIONS

Art. 6746. Separate coaches for white and negro passengers.—Every railway company, street car company, and interurban railway company, lessee, manager, or receiver thereof, doing business in this state as a common carrier of passengers for hire, shall provide separate coaches or compartments, as hereinafter provided, for the accommodation of white and negro passengers, which separate coaches or compartments shall be equal in all points of comfort and convenience. (Acts 1907, p. 58; Acts 1891, p. 44.)

See Henderson v. G. H. & S. A. Ry., 38 S. W. 1136; Williams v. I. & G. N. Ry., 67 S. W. 1085; Segal v. Ry., 80 S. W. 233; State v. Galveston, H. & S. A. Ry. Co., 184 S. W. 227.

Generally under this chapter, see Gulf, C. & S. F. Ry. Co. v. Sharman, 158 S. W. 1045; Texas & P. Ry. Co. v. Baker, 184 S. W. 664.

Art. 6747. "Negro" defined.—The term "negro," used herein, includes every person of African descent as defined by the statutes of this state. (Acts 1907, p. 58, sec. 2.)

Art. 6748. Separate coaches, how defined and marked.—Each compartment of a railroad coach, divided by good and substantial wooden partitions with a door therein, shall be deemed a separate coach within the meaning of this chapter; and each separate coach shall bear in some conspicuous place appropriate words in plain letters indicating the race for which it is set apart; and each compartment of the street car or interurban car, divided by board or marker placed in a conspicuous place, bearing appropriate words in plain letters indicating the race for which it is set apart, shall be sufficient as a separate compartment within the meaning of this chapter. (Id. sec. 3.)

Art. 6749. Penalty.—Any railway company, street car company, or interurban railroad company, lessee, manager or receiver thereof, which shall fail to provide its cars bearing passengers with separate coaches or compartments, as above provided for, shall be liable for each and every failure to a penalty not less than one hundred nor more than one thousand dollars, to be recovered by suit in the name of the state in any court of competent jurisdiction; and each trip run with such train or street car or interurban car without such separate coach or compartment shall be deemed a separate offense. (Id. sec. 4.)

Art. 6750. Exceptions and limitations as to provisions.—The provisions of this chapter shall not be so construed as to prohibit nurses from traveling in any coach or compartment with their employer, or employés upon the train or cars in the discharge of their duty, nor shall it be construed to apply to such freight trains as carry passengers in cabooses; provided, that nothing herein contained shall be construed to prevent railroad companies in this state from hauling sleeping cars, dining or café cars, or chair cars, attached to their trains, to be used exclusively by either white or negro passengers, separately but not jointly. (Id. sec. 6.)

Art. 6751. Law to be posted conspicuously.—Every railroad company carrying passengers in this state shall keep this law posted in a conspicuous place in each passenger depot and each passenger coach provided in this law. (Id. sec. 7.)

Art. 6752. Does not apply to excursions.—The provisions of this law shall not apply to any excursion train or street car or interurban car as such for the benefit of either race. (Id. sec. 8.)

Art. 6753. Conductors to exclude passengers from wrong car.—Conductors of passenger trains, street cars, or interurban lines, provided with separate coaches, shall have the authority to refuse any passenger admittance to any coach or compartment in which they are not entitled to ride under the provisions of this law; and the conductor in charge of the train or street car, or interurban car, shall have authority, and it shall be his duty, to remove from a coach or street car, or interurban car, any passenger not entitled to ride therein under the provisions of this chapter, and upon his refusal to do so knowingly shall be punished as provided in the Penal Code of this state. (Id. sec. 9.)

See Williams v. I. & G. N. Ry., 67 S. W. 1085; Baker v. Texas & P. Ry. Co., 158 S. W. 263; State v. Galveston, H. & S. A. Ry. Co., 184 S. W. 227.

TITLE 116
RANGERS—STATE

Art. 6754. Organization.—The ranger force authorized to be organized by the Governor is for the purpose of protecting the frontier against marauding or thieving parties, and for the suppression of lawlessness and crime throughout the State, and to aid in the enforcement of the laws of the State. (Acts 1901, p. 41, sec. 1; Acts 1919, ch. 144, sec. 1.)

Art. 6755. Companies.—The ranger force shall consist of not to exceed one headquarters company and four companies of mounted men, except in cases of emergency, when the Governor shall have authority to increase the force to meet extraordinary conditions.

The headquarters company shall consist of one captain, who shall be designated the senior captain of the force, one sergeant, and not to exceed four privates.

Each separate mounted company shall consist of not to exceed one captain, one sergeant and fifteen privates. The captains and the quartermaster shall be appointed by the Governor and shall be removed at his pleasure; unless so removed by the Governor they shall serve for two years and until their successors are appointed and qualified.

The enlisted men and non-commissioned officers of each company shall be appointed by the Governor, acting by and through the Adjutant General, who shall pass upon the qualifications of such men, and so far as practicable shall make such appointment upon the recommendation of the captain, under whom such men are to serve. The enlisted men and non-commissioned officers shall serve for two years; unless sooner removed by the Governor or the Adjutant General for cause. (Acts 1901, p. 41, sec. 2; Acts 1919, ch. 144, sec. 1.)

Art. 6756. Compensation.—The pay of officers and men shall be as follows: Captains $150.00 each per month; sergeants $100.00 each per month and privates $90.00 each per month, except as herein otherwise provided. The payment shall be made month-

ly at such times and in such manner as the Adjutant General of the State may prescribe.

The officers and enlisted men on the ranger force shall receive in addition to their regular salary an increase of five per cent after the first two years of continuous service and five per cent for each additional year not to exceed in all twenty per cent of their salary as above provided. For the violation or breach of such rules and regulations for the governing of the ranger force as may be prescribed by the Adjutant General and approved by the Governor, officers and enlisted men shall forfeit their right to participate in the increase or longevity pay, or any portion thereof provided for herein. (Acts 1901, p. 41, sec. 3; Acts 1917, 1st C. S., ch. 36, sec. 3; Acts 1919, ch. 144, sec. 1.)

Art. 6757. Quartermaster.—The Governor shall appoint a quartermaster for the ranger force, who shall discharge the duties of a quartermaster, commissary and paymaster, and shall have the rank and pay of a captain. (Acts 1901, p. 41, sec. 4; Acts 1919, ch. 144, sec. 1.)

Art. 6758. Under command of Governor.—This force shall always be under the command of the Governor; to be operated under his direction in such manner, in such detachments, and in such localities as the Governor may direct, acting by and through the Adjutant General. (Acts 1901, p. 41, sec. 5; Acts 1919, ch. 144, sec. 1.)

Art. 6759. Term of service.—The Governor is authorized to keep this force, or so much thereof as he may deem necessary in the field as long as in his judgment there may be necessity for such a force; and men who may be enlisted in such service shall do so for such term not to exceed two years subject to disbandment in whole or in part at any time and reassemblage or reorganization of the whole force, or such portion thereof as may be deemed necessary by order of the Governor. (Acts 1901, p. 41, sec. 6; Acts 1919, ch. 144, sec. 1.)

Art. 6760. Quartermaster to purchase supplies.—The quartermaster when directed by the Adjutant General shall purchase all supplies for the ranger force, and shall make a certificate on the voucher of the party or parties from whom the supplies are purchased to the fact that the account is correct and just, and the articles purchased were at the lowest market prices. (Acts 1901, p. 41, sec. 7; Acts 1919, ch. 144, sec. 1.)

Art. 6761. Members to furnish equipment, etc.—Each officer, non-commissioned officer and private of said force shall furnish himself with a suitable horse, horse equipment, clothing, etc.; provided, that if his horse is killed in action it shall be paid for by the State at a fair market value at the time when killed. (Acts 1901, p. 41, sec. 8; Acts 1919, ch. 144, sec. 1.)

Art. 6762. Arms and equipment.—The State shall furnish each member of said force with one improved carbine and pistol at cost, the price of which shall be deducted from the first money due such officer or man, and shall furnish said force with rations of subsistence, camp equipage and ammunition for the officers and men, and also forage for horses. (Acts 1901, p. 41, sec. 9; Acts 1919, ch. 144, sec. 1.)

Art. 6763. Subsistence and quarters.—In addition to the pay allowed to each officer and man of this force, they shall be allowed not to exceed $30.00 per month for subsistence when at their station, and when on duty outside of his district each member of said force shall be allowed his actual necessary expenses for subsistence and quarters, to be paid on a sworn account showing the actual amount expended, not to exceed $3.00 per day. In addition thereto each member shall be allowed his actual railroad expenses when traveling under orders.

Provided further, that when any company of said force furnishes motor transportation without expense to the State, they shall be allowed $50.00 per month per company for repairs and upkeep for said motor vehicle. (Acts 1901, p. 41, sec. 10; Acts 1919, ch. 144, sec. 1.)

Art. 6764. Clothed with powers of peace officers.—The officers, non-commissioned officers and privates of this force shall be clothed with all the powers of peace officers, and shall aid the regular civil authorities in the execution of the laws. They shall have authority to make arrests, and to execute process in criminal cases, and in such cases they shall be governed by law regulating and defining the powers and duties of sheriffs when in discharge of similar duties; except that they shall have the power and shall be authorized to make arrests and to execute all process in criminal cases in any county in the State. They shall, before entering on the discharge of these duties, take an oath before some authority legally authorized to administer the same, that each of them will faithfully perform his duties in accordance with law. In order to arrest and bring to justice men who have banded together for the purpose of committing robbery, or other felonies, and to prevent the execution of the laws, the officers, non-commissioned officers and privates of said force may accept the services of such citizens as shall volunteer to aid them; but while so engaged such citizens shall not receive pay from the State for such services. (Acts 1901, p. 41, sec. 11; Acts 1919, ch. 144, sec. 1.)

Art. 6765. Arrests.—When said force, or any member or members thereof, shall arrest any person charged with the commission of a criminal offense, they shall forthwith convey said person to the county where he or they stand charged with the commission of an offense, and shall deliver him or them to the proper officer, taking his receipt therefor, and all necessary expenses thus incurred will be paid by the State. (Acts 1901, p. 41, sec. 12; Acts 1919, ch. 144, sec. 1.)

Art. 6766. Regulations.—The Governor and Adjutant General shall cause to be made such regulations for the government and control of the organization herein provided for, for the enlistment and employment of non-commissioned officers and privates as they may deem necessary, to the end that the force so provided for shall be as effective as possible; provided that when any complaint is made to the Adjutant General charging any ranger with misconduct or violation of the law, the Adjutant General will have the right to institute proceedings

before any magistrate in the county where the offense is alleged to have been committed. Upon application of the Adjutant General said magistrate shall issue process for witnesses to appear and testify under oath, which testimony shall be reduced to writing by a stenographer and transmitted by the court to the Adjutant General, who shall take such action as the facts warrant. The cost of such proceedings including fee of $3.00 of the magistrate and fifteen cents for each one hundred words of testimony so taken and transcribed shall be paid by the Comptroller of Public Accounts upon approval by the Adjutant General out of funds appropriated for enforcement of law.

Provided further, that it shall be the duty of any citizen who knows of any such misconduct or violation of the law on the part of any member of the ranger force to at once notify the Adjutant General in writing of misconduct, and it shall be the duty of the Adjutant General to at once conduct such examination and to take such action thereon as the facts make necessary, and he shall without delay submit all of such evidence and his actions thereon to the Governor for his approval or disapproval. (Acts 1901, p. 41, sec. 13; Acts 1919, ch. 144, sec. 1.)

Art. 6766a. Qualifications of members.—All officers and men selected under this Act shall be men of good moral character, shall furnish satisfactory evidence thereof, sober, of sound judgment and shall conform to such qualifications as the Governor shall prescribe for appointment, and all applications for appointment to the ranger force shall be made to the Governor, who shall pass upon the qualifications of each applicant for a position on such force. Provided, however, that no person shall be appointed to the ranger force who is not a citizen of the United States and of Texas, and preference shall always be given to discharged soldiers holding certificates of honorable discharge from the United States Army. (Acts 1919, ch. 144, sec. 1.)

RANGER HOME GUARD

Art. 6766aa. Governor authorized to organize force.—That the Governor be and he is hereby authorized to organize a force to be known as the Ranger Home Guard for the purpose of protecting the frontier against marauding and thieving parties, and other lawlessness or any invasion by any foreign foe or alien enemy. (Acts 1917, 1st C. S., ch. 36, sec. 1.)

Art. 6766b. Of what force shall consist; appointment and removal of officers; period of service.—The Ranger Home Guard of this State shall consist of not to exceed one thousand men, to be selected and appointed by the Governor, or under his direction, and all officers of said force necessary for the commandering, equipping and regulating of said force shall be appointed by the Governor; and any officer or member of said force shall be removed at the pleasure of the Governor and shall serve for a period of three years, unless sooner removed by the Governor. (Id. sec. 2.)

Art. 6766c. Equipment; funeral expenses; members furnishing their own equipment.—The State shall furnish each member of said force with one carbine and pistol at cost, the price of which shall be deducted from the first money due such officer per man, and shall furnish said force with rations of subsistence, medicines and medical attendance, camp equippage and a munition for the officers and men, and also forage for the horses. The State shall pay funeral expenses of members of the Ranger Home Guard dying in the service, and it is further provided that any person who may desire to join said force and who shall be appointed by the Governor and who shall stipulate that they are serving without pay, except as herein provided, may furnish his own carbine and pistol and shall be permitted to furnish his own horse or other means of transportation which may be acceptable to the captain of any company in which he desire to enlist. (Id. sec. 4.)

Art. 6766d. Rations and forage.—The amount of rations and forage shall be that now or hereafter prescribed in the United States army regulations to be furnished by the State of Texas, provided that when it is impracticable to furnish rations in kind they may be commuted at not to exceed the rate of two dollars per man per day for such period. (Id. sec. 5.)

Art. 6766e. Act how construed.—It is hereby agreed and understood that this is a separate and distinct act passed at this time to cover a period of such time as the Governor of this State may deem necessary not to exceed three years from the taking effect of this Act, and that it is cumulative of an act passed by the Twenty-seventh Legislature providing for the organization of the Ranger Home Guard, and does not in any wise repeal said act passed by the Twenty-seventh Legislature except as to Section 3 of said Act relative to pay, rations and forage of officers and privates of the present Ranger Home Guard, and in that resuect it is amandatory of said section providing for the payment of the salaries, rations and forage of said officers, and all officers and privates of the present Ranger Home Guard are hereby from and after the taking effect of this Act placed on the same salaries, rations and forage as provided for in this Act, and in other respect this Act is cumulative of the present law governing the Ranger Home Guard in this State. (Id. sec. 6.)

TITLE 117
RECORDS

CHAPTER ONE
TRANSCRIBING OLD RECORDS

Art. 6767. (4585) (4281) Old records to be transcribed, when and how.—It shall be the duty of the county commissioners' court of any county, when the records or indexes of such county have become or may become defaced, worn, or in any condition endangering their preservation in a safe and legible form, to procure a good and well-bound book or books, as the case may be, and require the county clerk to transcribe, or have transcribed by a sworn deputy, the records contained in such book or books, in a plain, legible hand and with some standard ink of a permanent black color. (Acts 1876, p. 84, sec. 1.)

Art. 6768. (4586) (4282) Shall conform to the original record and be com-

pared.—The book or books so transcribed shall conform in all respects to the original record as indexed; and the designation of such transcribed book or books, whether by letter or number, shall not be changed from the original and they shall be carefully compared with the original record by said clerk or sworn deputy so transcribing the same, assisted by some other sworn deputy. (Id. secs. 1, 2.)

Art. 6769. (4587) (4283) Correctness to be certified to, and effect of same.—When said record or records shall have been found to be truly and correctly transcribed, the county clerk, with the sworn deputies so transcribing and verifying the same, shall certify officially, at the conclusion of the record, with the impress of the seal of said court affixed on the same page to the correctness of the same, reciting the number of pages contained in said book, from one to the highest number; after which said transcribed record or records shall have all the force and effect in judicial proceedings in the courts of the state as the original records. (Id. sec. 2.)

Art. 6770. (4588) (4284) Original books to be preserved.—The original book or books transcribed according to the provisions of this chapter shall be carefully kept and preserved by such clerk, as other archives of his office. (Id.)

Art. 6771. (4589) (4285) To what records this chapter shall apply.—The provisions of this chapter shall apply to all records belonging to the district court, county court and commissioners' court, including all records used for registration, except the records of the surveyor's office; but the clerk of the district court shall perform all the duties herein required of the county clerk so far as the same appertains to the records of the said district clerk's office; and the records so transcribed by the district clerk shall have the same force and effect as the original records.

Art. 6772. (4590) Commissioners' court to have records transcribed, when.—It shall be the duty of the county commissioners' court of any county in this state which may have been created, either in whole or in part from the territory of any other county or counties in this state, or to which may have been added since its creation the territory of any other county or counties in this state, to secure a well-bound book or books, as the case may be, and require the county clerk to transcribe, or have transcribed, from the record of said other county or counties by a sworn deputy, all the deeds, mortgages, conveyances, incumbrances and muniments of title affecting or in any wise relating to all lands and real property which are or may be embraced in the territory so acquired from another county or counties, and which deeds, mortgages, conveyances, incumbrances and muniments of title appear of record in said county or counties from which said territory may have been taken as having been there recorded prior to the transfer of territory as aforesaid; and, when the acquired territory may have been from more than one county, then the clerk shall provide a separate record book for each county, which said book or books shall be indexed and arranged as is now required for record books in case of deeds and mortgages. (Acts 1879, p. 105.)

Art. 6773. (4591) How to be transcribed.—Said records shall be transcribed in a plain, legible hand, and with some standard ink of a permanent black color, and when so transcribed shall be carefully compared with the original record by the said clerk or sworn deputy so transcribing the same, assisted by some other sworn deputy. (Id. sec. 2.)

Art. 6774. (4592) To have effect of judicial proceedings, when.—When said record or records shall have been found to be truly and correctly transcribed, the county clerk, with the sworn deputies so transcribing and verifying the same, shall certify under their official oath of office at the conclusion of the record with the impress of the seal of said court affixed on the same page the correctness of the same, after which said transcribed record or records shall have all the force and effect in judicial proceedings in the courts of this state as the original records. (Id. sec. 3.)

See ante, arts. 3703, 3704.

Art. 6775. (4593) Compensation for making transcript; how paid.—The County Clerk or person making such transcript shall be entitled to a reasonable compensation for transcribing, comparing and verifying said records of not to exceed fifteen (15c) cents for each one hundred words, the amount of such compensation to be fixed by the Commissioners' Court in the order authorizing and empowering the Clerk to transcribe, compare and verify such records; said compensation to be paid out of the county treasury upon warrant issued under the orders of the Commissioners' Court of the newly created county. (Acts 1879, p. 105, sec. 4; Acts 1917, ch. 50, sec. 1.)

Art. 6776. (4593a) Translations may be authorized by commissioners' court.—The county commissioners of any county of this state are authorized and empowered to contract with the clerk of the county courts of their respective counties to cause to be translated into the English language, by themselves or their deputies, the archives and records of their offices, or any part thereof, now in the Spanish language, in their official custody, relating to titles to land, and copy said translations in a well-bound book or books; provided, that they shall not contract to pay more than fifteen cents per hundred words for both the translation and recording. (Acts 1893, p. 168.)

Art. 6777. (4593b) Effect of such translations, etc.—When said archives and records, now in Spanish, are translated and recorded as hereinbefore provided, said records in English shall have the same force and effect as if the archives and instruments were originally made and recorded in the English language, and certified copies may be used as evidence and otherwise, for like purposes and with like effect as the originals are and certified copies of records of the originals can now be used; and said record books hereinbefore provided for shall be and are hereby made permanent archives and records of the county clerk's office of the counties when so translated and recorded. (Id.)

CHAPTER TWO

SUPPLYING LOST RECORDS, ETC.

Art. 6778. (4594) (4286) Lost records may be supplied by proof, etc.—All deeds, bonds, bills of sale, mortgages, deeds of trust, powers of attorney and conveyances of any and every description which are required or permitted by law to be acknowledged or recorded, and which have been so acknowledged or recorded, and any and every judgment of a court of record in this state, and which record and minutes of court containing such judgment have been or may hereafter be lost, destroyed or carried away, may be supplied by parol proof of the contents thereof; which proof shall be taken in the manner hereinafter provided. (Acts 1876, p. 45, sec. 1.)

See ante arts. 2157-2163; Sayles' Practice, p. 720.

Art. 6779. (4595) (4287) Proceedings to establish lost records, etc.—Any person having any interest in any such deed, instrument in writing, or any judgment, order or decree in the district court, the record or entry of which has been or may hereafter be lost, destroyed, or carried away, may, in addition to any mode now provided by law for establishing the existence of such record and the contents thereof, file with the clerk of the district court of the county where such loss or destruction took place, his written application setting forth the facts entitling him to the relief sought; whereupon such clerk shall issue a citation to the grantor in such deed, or to the party or parties interested in such instrument of writing, or to the party or parties who were interested adversely to the applicant at the time of the rendition of any such judgment, or who may be now interested, or the heirs and legal representatives of such parties, to appear at a term of the district court to be designated in said citation, and contest the right of the applicant to have any such deed, instrument in writing, or judgment substituted and recorded; and service shall be as now provided for process in other cases. (Id. sec. 2.)

See ante arts. 2157-2163; Cook v. Robertson, 46 S. W. 867.

Art. 6780. (4596) (4288) Judgment, etc.—On hearing said application, if the court shall be satisfied from the evidence of the existence of such deed, instrument in writing, record, judgment, order or decree, and of the loss, destruction or carrying away of the same, as alleged by the applicant, and the contents thereof, an order shall be entered on the minutes of the district court to that effect, which order shall contain a description of the lost deed, instrument in writing, judgment or record, and the contents thereof, and a certified copy of such order may be recorded in the records of the proper county. (Id.)

Art. 6781. (4597) (4289) Proceedings in the county court.—Whenever any judgment, order or decree duly entered in the county court of any county has been or may hereafter be lost, destroyed or carried away, any person interested therein may file his written application with the clerk of the county court to which the original record belonged, setting forth the facts entitling him to the relief sought, when the same proceedings shall be had and the court shall enter a like judgment as provided in the two preceding articles, so far as applicable.

Wall v. Lubbock, 118 S. W. 886.

Art. 6782. (4598) (4290) Effect of judgment, etc.—Whenever such judgment, order or decree rendered in the district or county court shall be duly entered, it shall stand in the place of and have the same force and effect as the original of said lost deed, instrument in writing, judgment or record; and when duly recorded may be used in evidence in any of the courts of this state with like effect as the original thereof. (Id.)

Art. 6783. (4599) (4291) Certified copies may be recorded.—All certified copies from the records of such county, the record of which has been or may hereafter be lost, destroyed or carried away, and all certified copies from the records of the county or counties from which said county was created, may be recorded in such county; provided, the loss of the original shall first be established. (Acts 1876, p. 45. sec. 3.)

Art. 6784. (4600) (4292) Original deeds, etc., recorded again, when.—When any of the original papers mentioned in the first article of this chapter may have been saved or preserved from loss, the record of said originals having been lost, destroyed or carried away, the same may be recorded again, and this last registration shall have force and effect from the filing for original registration; provided, said originals are recorded within four years next after such loss, destruction or removal of the records; and certified copies from any record authorized by the provisions of this title to be made may be received in evidence in any of the courts of this state in the same manner and with like effect as certified copies of the original record. (Id. sec. 4; Acts 1879, ch. 35, p. 35.)

Lanier v. Davis, 60 S. W. 1018; Greer v. Willis, 81 S. W. 1185; Wall v. Lubbock, 118 S. W. 886.

Art. 6785. (4601) (4293) Judgments shall have force of originals.—Judgments, orders and decrees, when substituted as hereinbefore provided, shall carry all the rights thereunder in every respect as the originals, especially preserving the liens from the date of the originals, and giving the parties the right to issue executions under the substituted judgments as under the originals. (Id.)

See Sayles' Practice, p. 720.

TITLE 118

REGISTRATION

CHAPTER ONE

RECORDERS AND THEIR DUTIES

As to Chattel Mortgages, see Title "Liens," Chapter Seven.

Art. 6786. (4602) (4294) County clerks shall be recorders.—The county clerks of the several counties shall be the recorders for their respective counties; they shall provide and keep in their offices well-bound books in which they shall record in a fair and legible hand all instruments of writing authorized or required to be recorded in the recorder's office of their respective counties, in the manner hereinafter provided. (Acts May 12, 1846, sec. 1; P. D. 5001.)

Art. 6787. (4603) (4295) What shall be his seal.—The seal of the county court shall be the seal of the recorder, and shall be used for the authentication of all his official acts. (Id. sec. 2; P. D. 5002.)

See ante art. 1762.

Art. 6788. (4604) (4296) Shall provide books, etc.—Each recorder shall provide suitable books and presses for his office, and keep regular and faithful accounts of the expenses thereof, and such accounts shall be audited by the commissioners' court and paid out of the county treasury. (Id. sec. 3; P. D. 5003.)

Art. 6789. (4605) (4297) Shall keep a memorandum and give receipts, etc.—When any instrument of writing authorized by law to be recorded shall be deposited in the recorder's office for record, if the same shall be acknowledged or proved in the manner prescribed by law for record, the recorder shall enter in a book to be provided for that purpose, in alphabetical order, the names of the parties and date and nature thereof, and the time of delivery for record; and shall give to the person depositing the same, if required, a receipt specifying the particulars thereof. (Id. sec. 12; P. D. 5012.)

William Carlisle & Co. v. King, 133 S. W. 241; Billingsley v. Houston Oil Co. of Texas, 182 S. W. 373; American Exch. Nat. Bank of Dallas v. Colonial Trust Co., 186 S. W. 361.

Art. 6790. (4606) (4298) Shall record without delay in the order presented.—Each recorder shall, without delay, record every instrument of writing authorized to be recorded by him, which is deposited with him for record, with the acknowledgments, proofs, affidavits and certificates written or printed on the same, and all other papers referred to and thereto annexed, in the order and as of the time when the same shall have been deposited for record, by entering them word for word and letter for letter, and noting at the foot of such record all interlineations, erasures and words visibly written on erasures, and noting at the foot of the record the hour and the day of the month and year when the instrument so recorded was deposited in his office for record. (Id. sec. 13; P. D. 5013.)

Art. 6791. (4607) (4299) Record shall take effect from date of deposit.—Every such instrument of writing shall be considered as recorded from the time it was deposited for record; and the recorder shall certify under his hand and seal of office to every such instrument of writing so recorded, the hour, day, month and year when he recorded it, and the book and page or pages in which it is recorded; and when recorded deliver the same to the party entitled thereto or to his order. (Id. sec. 14; P. D. 5014.)

William Carlisle & Co. v. King, 122 S. W. 581; William Carlisle & Co. v. King, 133 S. W. 241; William Carlisle & Co. v. King, 133 S. W. 864; Billingsley v. Houston Oil Co. of Texas, 182 S. W. 373; American Exch. Nat. Bank of Dallas v. Colonial Trust Co., 186 S. W. 361.

Art. 6792. (4608) (4300) Shall keep alphabetical indexes.—Each recorder shall make and enter in a well-bound book an index, in alphabetical order, to all books of records wherein deeds, mortgages or other instruments of writing concerning lands and tenements are recorded, distinguishing the books and pages in which every such deed or writing is recorded. (Id. sec. 15; P. D. 5015.)

Art. 6793. (4609) (4301) What they shall contain.—It shall be a cross-index and shall contain the names of the several grantors and grantees in alphabetical order; and, in case the deed be made by a sheriff, the name of the sheriff and defendant in execution; and, if by executors, administrators or guardians, their names and the names of their testators, intestates or wards; and, if by attorney, the name of such attorney and his constituents, and, if by a commissioner, the name of such commissioner and the person whose estate is conveyed. (Id. sec. 16; P. D. 5016.)

See ante arts. 5615, 5616.

Art. 6794. (4610) (4302) Same subject.—Each recorder shall, in like manner, make and keep in his office a full and perfect alphabetical index to all books of record in his office, wherein all instruments of writing in relation to goods and chattels, or movable property of any description, marriage contracts and powers of attorney, and all other instruments of writing authorized or required to be recorded in his office are recorded; and a like index of all the books of record wherein official bonds are recorded, the names of the officers appointed, and of the obligors in any bond recorded, and a reference to the book and page where the same are recorded. (Id. sec. 17; P. D. 5017.)

Art. 6795. (4611) (4303) Shall give attested copies, when.—It shall be the duty of the recorder to give attested copies whenever demanded of all papers recorded in his office; and the recorder shall receive for all such copies, and all other writings required of him by virtue of his office, such fees as may be provided by law. (Act Dec. 20, 1836, sec. 36; P. D. 4979.)

See ante art. 3694.

Art. 6796. (4612) (4304) Mortgages, etc., to be recorded in separate book.—All deeds of trust, mortgages, judgments which are required to be recorded in order to create a judgment lien, or other instruments of writing intended to create a lien, shall be recorded in a book or books separate from those in which deeds or other conveyances are recorded.

See ante arts. 5610, 5614, 5615.

CHAPTER TWO

ACKNOWLEDGMENT AND PROOF OF DEEDS, ETC., FOR RECORD

As to registration of foreign wills, see Title "Wills."

Art. 6797. (4613) (4305) Before whom acknowledgments may be made in this state.—The acknowledgment or proof of an instrument of writing for record may be made within this state before either:

1. A clerk of the district court.
2. A judge or clerk of the county court.
3. A notary public. (Acts May 6, 1871, sec. 1; P. D. 7418.)

See ante art. 6008; Speer's Marital Rights, p. 263; Haile v. Haile, 93 S. W. 435.

Art. 6798. (4614) (4306) Without this state and within the United States.—The acknowledgment or proof of an instrument of writing for record may be made

without this state, but within the United States or their territories, before either:

1. A clerk of some court of record having a seal.

2. A commissioner of deeds duly appointed under the laws of this state.

3. A notary public. (Id. sec. 1; P. D. 7419.)

Art. 6799. (4615) (4307) Without the United States.—The acknowledgment or proof of an instrument of writing for record may be made without the United States before either:

1. A minister, commissioner or charge d'affaires of the United States, resident and accredited in the country where the proof or acknowledgment is made.

2. A consul-general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul or consular agent of the United States, resident in the country where the proof or acknowledgment is made.

3. A notary public. (Id.)

Art. 6800. (4616) (4308) Acknowledgment, how made.—The acknowledgment of an instrument of writing for the purpose of being recorded shall be by the grantor or person who executed the same appearing before some officer authorized to take such acknowledgment, and stating that he had executed the same for the consideration and purposes therein stated; and the officer taking such acknowledgment shall make a certificate thereof, sign and seal the same with his seal of office. (Act May 12, 1846, sec. 7; P. D. 5007.)

See post, art. 6803; Hughes v. Wright, etc., 97 S. W. 525.

Art. 6801. (4617) (4309) Party must be known or proven.—No acknowledgment of any instrument of writing shall be taken, unless the officer taking it knows or has satisfactory evidence on the oath or affirmation of a credible witness, which shall be noted in his certificate, that the person making such acknowledgment is the individual who executed and is described in the instrument. (Id. sec. 10; P. D. 5010.)

See Lindley v. Lindley, 49 S. W. 573; Zimpleman v. Stamps, 51 S. W. 341; Brittain v. Monsur, 195 S. W. 911.

Art. 6802. (4618) (4310) Acknowledgment of married woman, when and how taken.—No acknowledgment of a married woman to any conveyance or other instrument purporting to be executed by her shall be taken, unless she has had the same shown to her, and then and there fully explained by the officer taking the acknowledgment, on an examination privily and apart from her husband; nor shall he certify to the same, unless she thereupon acknowledges to such officer that the same is her act and deed, that she has willingly signed the same, and that she wishes not to retract it. (Act April 30, 1846, sec. 1; P. D. 1003.)

See ante art. 1114; Breneman v. Mayer, 58 S. W. 725; Interstate B. & L. Ass'n v. Goforth, 59 S. W. 871; Silcock v. Baker, 61 S. W. 939; Tippett v. Brooks, 67 S. W. 512; Blume v. White, 111 S. W. 1066; Ward v. Baker, 135 S. W. 620; W. D. Cleveland & Sons v. Smith, 156 S. W. 247; Vanderwolk v. Mathael, 167 S. W. 304; Clark v. Tulley, 200 S. W. 605.

Art. 6803. (4619) (4311) Certificate of officer.—Any officer taking the acknowledgment of a deed, or other instrument of writing, must place thereon his official certificate, signed by him and given under his seal of office, substantially in form as hereinafter prescribed.

See ante art. 6800; Hughes v. Wright, etc., 97 S. W. 525; Clark v. Tulley, 200 S. W. 605.

Art. 6804. (4620) (4312) Form of certificate of acknowledgment.—The form of an ordinary certificate of acknowledgment must be substantially as follows:

"The State of ———,

"County of ———

"Before me ——— [here insert the name and character of the officer] on this day personally appeared ———, known to me (or proved to me on the oath of ———) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

[Seal] "Given under my hand and seal of office this ——— day of ———, A. D. ———. ———."

See Breneman v. Mayer, 58 S. W. 725; Hughes v. Wright, etc., 97 S. W. 525.

Art. 6805. (4621) (4313) Form of acknowledgment by a married woman.—The certificate of acknowledgment of a married woman must be substantially in the following form:

"The State of ———,

"County of ———.

"Before me, ——— [here insert the name and character of the officer] on this day personally appeared ———, wife of ———, known to me (or proved to me on the oath of ———) to be the person whose name is subscribed to the foregoing instrument, and having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said ———, acknowledged such instrument to be her act and deed, and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

[Seal] "Given under my hand and seal of office this ——— day of ———, A. D. ———. ———."

(P. D. 1003.)

See Speer's Marital Rights, p. 243 et seq.; Johnson v. S., 51 S. W. 382; Tiemann v. Cobb, 80 S. W. 250; Haile v. Haile, 93 S. W. 435.

Art. 6806. (4622) (4314) Proof of instrument by witness.—The proof of any instrument of writing for the purpose of being recorded shall be by one or more of the subscribing witnesses personally appearing before some officer authorized to take such proof, and stating on oath that he or they saw the grantor or person who executed such instrument subscribe the same, or that the grantor or person who executed such instrument of writing acknowledged in his or their presence that he had executed the same for the purposes and consideration therein stated, and that he or they had signed the same as witnesses at the request of the grantor or person who executed such instrument; and the officer taking such proof shall make a certificate thereof, sign and seal the same with his official seal. (Act May 12, 1846, sec. 8; P. D. 5008.)

See Wanza v. Trapp, 87 S. W. 877.

Art. 6807. (4623) (4315) Witness must be personally known to officer.—The proof by a subscribing witness must be by some one personally known to the officer taking the proof to be the person whose name is subscribed to the instrument as a

witness, or must be proved to be such by the oath of a credible witness, which fact shall be noted in the certificate. (Id. sec. 10; P. D. 5010.)

Art. 6808. (4624) (4316) Form of certificate or proof by witness.—The certificate of the officer, where the execution of the instrument is proved by a witness, must be substantially in the following form:

"The State of ———,

"County of ———.

"Before me, ——— [here insert the name and character of the officer], on this day personally appeared ———, known to me (or proved to me on the oath of ———), to be the person whose name is subscribed as a witness to the foregoing instrument of writing, and after being duly sworn by me stated on oath that he saw ———, the grantor or person who executed the foregoing instrument, subscribe the same (or that the grantor or person who executed such instrument of writing acknowledged in his presence that he had executed the same for the purposes and consideration therein expressed), and that he had signed the same as a witness at the request of the grantor [or person who executed the same].

[Seal] "Given under my hand and seal of office this ——— day of ———, A. D. ———. ———."

Art. 6809. (4625) (4317) Handwriting may be proved, when.—The execution of an instrument may be established for record by proof of the handwriting of the grantor and of at least one of the subscribing witnesses in the following cases:

1. When the grantor and all the subscribing witnesses are dead.
2. When the grantor and all the subscribing witnesses are nonresidents of this state.
3. When the place of their residence is unknown to the party desiring the proof, and can not be ascertained.
4. When the subscribing witnesses have been convicted of felony, or have become of unsound mind, or have otherwise become incompetent to testify.
5. When all the subscribing witnesses to an instrument are dead or are non-residents of this state, or when their residence is unknown, or when they are incompetent to testify, and the grantor in such instrument refuses to acknowledge the execution of the same for record.

Art. 6810. (4626) (4318) Evidence must prove what.—The evidence taken under the preceding article must satisfactorily prove to the officer the following facts:

1. The existence of one or more of the conditions mentioned therein; and,
2. That the witness testifying knew the person whose name purports to be subscribed to the instrument as a party, and is well acquainted with his signature, and that it is genuine; and,
3. That the witness testifying personally knew the person who subscribed the instrument as a witness, and is well acquainted with his signature, and that it is genuine; and,
4. The place of residence of the witness testifying.

Art. 6811. (4627) (4319) Proof, how made when grantor made his mark.—When the grantor or person who executed the instrument signed the same by making his mark, and when also any one or more of the conditions mentioned in article 6809 exists, the execution of any such instrument may be established by proof of the handwriting of two subscribing witnesses and of the place of residence of such witnesses testifying. (Act March 6, 1863, sec. 1; P. D. 5009.)

Art. 6812. (4628) (4320) Proofs, how made and certified.—The proof mentioned in the three preceding articles must be made by the deposition or affidavit of two or more disinterested persons in writing; and the officer taking such proof shall make a certificate thereof, and sign and seal the same with his official seal; which proofs and certificate shall be attached to such instrument. (Id. P. D. 5009.)

Art. 6813. (4629) (4321) Officers are authorized to administer oath, etc.—Officers authorized to take the proof of instruments of writing under the provisions of this chapter are also authorized in such proceedings—

1. To administer oaths or affirmations.
2. To employ and swear interpreters.
3. To issue subpœnas.
4. To punish for contempt as hereinafter provided.

Art. 6814. (4630) (4322) Subpœna shall issue when.—Upon the sworn application of any person interested in the proof of any instrument required or permitted by law to be recorded, stating that any witness to the instrument refuses to appear and testify touching the execution thereof, and that such instrument can not be proved without his evidence, any officer authorized to take the proof of said instrument shall issue a subpœna requiring such witness to appear and testify before such officer touching the execution of such instrument. (Act Feb. 9, 1860, sec. 1; P. D. 5020.)

Art. 6815. (4631) (4323) May compel attendance and answers of witness.—When such witness shall fail to appear in obedience to such subpœna, said officer shall have the same power to enforce his attendance and to compel his answers on oath touching the execution of such instrument as a judge of the district court has to compel the attendance and answers of witnesses; provided, that an attachment shall in no case issue without the same compensation is made or tendered to each witness as is allowed to witnesses in other cases; and provided, further, that no witness shall be required to go beyond the limits of the county of his residence, unless he shall, for the time being, be found in the county where the execution of such instrument is sought to be proved for registration.

Art. 6816. (4632) (4324) Statement of acknowledgment, etc., to be recorded.—All officers authorized or permitted by law to take the acknowledgment or proof of any deed, bond, mortgage, bill of sale, or any other written instrument required or permitted by law to be placed on record shall procure a well-bound book, in which they shall enter and record a short statement of each acknowledgment or proof taken by them, which statement shall be by them signed offi-

cially. (Acts 1874, p. 155, sec. 1; P. D. 7418b.)

Art. 6817. (4633) (4325) What the statement for record shall contain.—Such statement shall recite the true date on which such acknowledgment or proof was taken, the name of the grantor and grantee of such instrument, its date, if proved by a subscribing witness, the name of the witness, the known or alleged residence of the witness and whether personally known or unknown to the officer; if personally unknown, this fact shall be stated, and by whom such person was introduced to such officer, if by any one, and the known or alleged residence of such person. (Id. sec. 1.)

Art. 6818. (4634) (4326) Statement shall further recite.—Such statement shall also recite, if the instrument is acknowledged by the grantor, his then place of residence, if known to the officer; if unknown, his alleged residence, and whether such grantor is personally known to the officer; if personally unknown, by whom such grantor was introduced, if by any one, and his place of residence. If land is conveyed or charged by the instrument, the name of the original grantee shall be mentioned, and the county where the same is situated. (Id. sec. 1.)

Art. 6819. (4635) (4327) The book to be a public record.—The book herein required to be procured and kept, and the statements herein required to be recorded in the same shall be an original public record, and shall be delivered to his successor, and the same shall be open to the inspection and examination of any citizen at all reasonable times. (Id.)

Art. 6820. (4636) (4328) Action for damages will lie by person injured.—Any person injured by the failure, refusal or neglect of any officer whose duty it is to comply with any of the provisions of this chapter shall have a right of action against such officer so failing, refusing or neglecting, before any court of competent jurisdiction, for the recovery of all damages resulting from such neglect, failure or refusal. (Id.)

CHAPTER THREE

INSTRUMENTS AUTHORIZED TO BE RECORDED, AND THE EFFECT OF RECORDING

Art. 6821. (4637) (4329) Patents and grants may be recorded without proof.—Letters patent from the state of Texas, or any grant from the government, executed and authenticated pursuant to existing law, may be recorded without further acknowledgment or proof.

Art. 6822. (4638) (4330) Copies of archives recorded.—Copies of all deeds, transfers, or any other written evidence of title to land, which have been filed in the general land office, in accordance with law, or copies when the originals remain in the public archives, and were executed in conformity with the laws existing at their dates, duly certified by the officers having lawful custody thereof, shall be admitted to record in the county where such land lies. (Act Jan. 19, 1839, sec. 2; P. D. 4984.)

Art. 6823. (4639) (4331) What may be recorded.—The following instruments of writing, which shall have been acknowledged or proved according to law, are authorized to be recorded, viz.: All deeds, mortgages, conveyances, deeds of trust, bonds for title, covenants, defeasances or other instruments of writing concerning any lands or tenements, or goods and chattels, or movable property of any description. (Act May 12, 1846, sec. 4; P. D. 5004.)

See Sayles' Practice, p. 1237; Hale v. Holton, 36 S. W. 288; Hughes v. Wright, etc., 97 S. W. 525; Magee v. Paul, 159 S. W. 325; Holloman v. Oxford, 168 S. W. 437; Price v. Traders' Nat. Bank, 195 S. W. 934; J. M. Frost & Sons v. Cramer, 199 S. W. 833.

Art. 6824. (4640) (4332) All sales, etc., to be void as to creditors and purchasers, unless registered.—All bargains, sales and other conveyances whatever, of any land, tenements and hereditaments, whether they may be made for passing any estate of freehold of inheritance or for a term of years; and deeds of settlement upon marriage, whether land, money or other personal thing; and all deeds of trust and mortgages shall be void as to all creditors and subsequent purchasers for valuable consideration without notice, unless they shall be acknowledged or proved and filed with the clerk, to be recorded as required by law; but the same as between the parties and their heirs, and as to all subsequent purchasers, with notice thereof or without valuable consideration, shall nevertheless be valid and binding. (Acts 1840, p. 69, sec. 4; P. D. 4988.)

See ante, arts. 4618, 4620; Simkins' Equity (2d Ed.) p. 603; Speer's Marital Rights, p. 58; Caldwell v. Bryan's Ex'r, 49 S. W. 240; White v. McGregor, 50 S. W. 564; Barnett v. Squyres, 52 S. W. 612; La Pice v. Caddenhead, 53 S. W. 66; Branch v. Weiss, 57 S. W. 901; Rogers v. Houston, 60 S. W. 445; Rowan v. Rainey, 63 S. W. 1031; Long v. Fields, 71 S. W. 775; Bell Hdw. Co. v. Riddle, 72 S. W. 613; Garner v. Boyle, 79 S. W. 1066; Greer v. Willis, 81 S. W. 1185; Woody v. Streng. 100 S. W. 801; Lodwick Lbr. Co. v. Robertson, 102 S. W. 141; Haines v. West, 105 S. W. 1118, 130 Am. St. Rep. 839; Beavers v. Baker, 124 S. W. 450; Jackson v. Berliner, 127 S. W. 1160; Cetti v. Wilson, 168 S. W. 996; Gossett v. Vaughan, 173 S. W. 932; Hooker v. Eakin, 176 S. W. 80; Whitaker v. Hill, 179 S. W. 539; Phelps v. Pecos Valley Southern Ry. Co., 182 S. W. 1156; American Exch. Nat. Bank of Dallas v. Colonial Trust Co., 196 S. W. 361; Hirt v. Werneburg, 191 S. W. 711; Diltz v. Dodson, 207 S. W. 356.

Art. 6825. (2322) (2265) Located lands have priority over unrecorded titled lands, when.—Titles to land which may have been deposited in the general land office subsequently to the time when the land embraced by such titles had been located or surveyed, by virtue of valid land warrants or certificates, shall not be received as evidence of superior title to the land against any such location or survey, unless such elder title had been duly recorded in the office of the county clerk of the county where the land may have been situated prior to the location and survey, or unless the party having such location or survey made had actual notice of the existence of such elder title before he made such location or survey. (Acts 1866, p. 32; P. D. 5825.)

See Sayles' Practice, p. 481.

Art. 6826. (4640a) English language to be used.—No deed, conveyance or other instrument, whether relating to real or personal property, if in any other than the English language, shall be admitted to record; provided, that all such instruments executed prior to the twenty-second day of

August, 1897, may be filed and recorded if accompanied by a correct translation thereof, the accuracy of which is sworn to before some officer authorized to administer oaths. Such translations shall be recorded with the original, and if correct shall operate as constructive notice from and after the date of its filing, if the original be authenticated in the manner required by law. (Acts 1897, p. 11.)

See Kabelmacher v. Kabelmacher, 51 S. W. 353; Voight v. G. W. T. & P. R'y, 59 S. W. 578; Id. 60 S. W. 658; McLennan Co. v. Graves, 62 S. W. 122; M. K. & T. R'y v. Scarborough, 68 S. W. 196.

Art. 6827. (4641) (4333) Deeds, etc., to be recorded in county where land is situated.—All deeds, conveyances, mortgages, deeds of trust, or other written contracts relating to real estate, which are authorized to be recorded, shall be recorded in the county where such real estate, or a part thereof, is situated; provided, that all such instruments, when relating to real estate situated in an unorganized county, shall be recorded in the county to which such unorganized county is attached for judicial purposes, in a well-bound book, or books, to be kept for that purpose, separately from the records of the county to which it is attached and from other unorganized counties; and it shall be the duty of the clerk or other officer having the custody of such books, when such unorganized county shall be organized, or has been detached therefrom and attached to another county for judicial purposes, to deliver such book, or books, without charge, to the proper officer of such newly organized county, or of the county to which it is attached for judicial purposes, when demanded by him; and, where such records have been heretofore kept in separate books, they shall also be delivered in like manner as above, and in each case the same shall become archives of the county to which it is so delivered. Where such records have not heretofore been kept separately, upon the organization or attachment of such unorganized county to another organized county, a certified transcript from the records of such instruments so recorded shall be obtained by such new clerk or officer; and when so made the same shall in like manner become archives of such newly organized county, or county to which such unorganized county may be attached, as the case may be. (Acts 1887, p. 94.)

See Speer's Marital Rights, p. 58; Simkins' Equity (2d Ed.) p. 605; Turner v. Cochran, 63 S. W. 152; Stark v. Harris, 106 S. W. 887; First Nat. Bank of Portales, N. M. v. McElroy, 112 S. W. 801; Whitaker v. Hill, 179 S. W. 539.

Art. 6828. (4642) (4334) Deed, etc., valid, against subsequent creditors from, etc.—Every conveyance, covenant, agreement, deed, deed of trust or mortgage in this chapter mentioned, or certified copies of any such original conveyance, covenant, agreement, deed, deed of trust or mortgage copied from the deed or mortgage records of any county in the state where the same has been regularly recorded, although the land mentioned may not have been situated in the county where such instrument was recorded, and which shall have been acknowledged, proved or certified according to law, may be recorded in the county where the land lies; and when delivered to the clerk of the proper court to be recorded shall take effect and be valid as to all subsequent purchasers for a valuable consideration without notice, and as to all creditors from the time when such instrument shall have been so acknowledged, proved or certified and delivered to such clerk to be recorded, and from that time only; provided, however, that all certified copies filed and recorded under the provisions of this article shall take effect and be in force from the time such certified copy was filed for record; and provided, further, that nothing in this shall be construed to make valid any instrument which was at the time of its execution from any cause invalid. (Acts 1895, p. 157; P. D. 4994.)

See Barnett v. Squyres, 52 S. W. 612; Moody v. Ogden, 72 S. W. 253; Logan's Heirs v. Logan, 72 S. W. 416; Punchard v. Masterson, 101 S. W. 204; William Carlisle & Co. v. King, 122 S. W. 581; Whitaker v. Hill, 179 S. W. 539; American Exch. Nat. Bank of Dallas v. Colonial Trust Co., 186 S. W. 361; Gulf Pipe Line Co. v. Lasater, 193 S. W. 773; Sikes v. First State Bank of Decatur, 197 S. W. 227; Quarles v. Hardin, 197 S. W. 1112.

Art. 6829. (4643) (4335) Marriage contract, when valid.—No covenant or agreement made in consideration of marriage shall be good against a purchaser for a valuable consideration, or any creditor not having notice thereof, unless such covenant or agreement shall be duly acknowledged or proven and recorded in manner and form as provided by law for deeds and other conveyances. (Acts of 1887, p. 94, sec. 2; P. D. 4987.)

See Speer's Marital Rights, p. 58; Shields v. Aultman, Miller & Co., 50 S. W. 219; Gilley v. Troop, 146 S. W. 954.

Art. 6830. (4644) (4336) Recorder shall record, etc.—Each recorder shall also record in books to be provided for that purpose all marriage contracts and powers of attorney, and all official bonds required to be recorded in his office, and all other instruments of writing authorized or required to be recorded in his office, which shall be proved or acknowledged according to law and delivered to him for record. (Acts 1846, p. 236, sec. 5; P. D. 5005.)

Art. 6831. (4645) (4337) Copies from land office to be recorded.—Each recorder shall record all copies of titles recorded in the general land office presented for record; provided, such copies are attested with the seal of the general land office. (Id. sec. 6; P. D. 5006.)

Art. 6832. (4646) (4338) Judgments to be recorded when.—Each recorder shall also record all judgments and abstracts of judgments rendered by any court of this state presented to him for record; provided, such judgments or abstracts of judgments are attested under the hand and seal of the clerk of the court where such judgment was obtained. (Id.; P. D. 5006.)

See ante art. 5614.

Art. 6833. (4647) Transfers of judgment to be recorded, etc.—The sale of a judgment, or any part thereof, of any court of record within this state, or the sale of any cause of action, or interest therein, after suit has been filed thereon, shall be evidenced by a written transfer; which, when acknowledged in the manner and form required by law for the acknowledgment of deeds, may be filed with the papers of such suit, and when thus filed by the clerk it shall be his duty to make a minute of said transfer on

the margin of the minute book of the court where such judgment of said court is recorded; or, if judgment be not rendered when said transfer is filed, the clerk shall make a minute of such transfer on the court trial docket where the suit is entered, giving briefly the substance thereof; for which services he shall be entitled to a fee of twenty-five cents, to be paid by the party applying therefor; and this article shall apply to any and all judgments, suits, claims and causes of action, whether assignable in law and equity or not. When said transfer is duly acknowledged, filed and noted as aforesaid, the same shall be full notice and valid and binding upon all persons subsequently dealing with reference to said cause of action or judgment, whether they have actual knowledge of such transfer or not. (Acts 1889, p. 103.)

See Sayles' Practice, p. 1191; Smith v. T. & P. R'y, 39 S. W. 969; T. & P. R'y v. Vaughan, 40 S. W. 1065; Mason v. House, 49 S. W. 911; G. C. & S. F. R'y v. Miller, 53 S. W. 709; Roberts v. Powell, 54 S. W. 643; R'y v. Ginther, 72 S. W. 166; R'y v. Eldridge, 80 S. W. 556; McLaury v. Watelsky, 87 S. W. 1045; R'y v. Parks, 90 S. W. 343; Standifer v. Bond Hdw. Co., 94 S. W. 144; San Antonio & A. P. Ry. Co. v. Sehorn, 127 S. W. 246; Marschall v. Smith, 132 S. W. 812; Trinity County Lumber Co. v. Holt, 144 S. W. 1029; Davidson v. Lee, 162 S. W. 414; Browne v. King, 196 S. W. 884.

Art. 6834. (4648) Judgment in justice courts, how recorded.—Whenever land is sold under execution or order for sale issuing out of a justice court in this state, upon the application of any party interested in said land, it shall be the duty of the justice of the peace having the custody of the execution and judgment upon which said execution issued to make from said records a complete transcript of said judgment and the execution issued thereon and levied on land, together with the levy and return of the officer executing the same thereon indorsed, and to certify to the correctness thereof officially; then said transcript shall be admitted to record in the county where the land is situated in the same manner in which deeds are recorded and with like effect; which said transcript, or certified copy thereof, under the hand and seal of the county clerk of the county where said transcript has been recorded, shall be admitted in evidence in all the courts of this state in like manner and with like effect that the original judgment and execution with indorsements thereon would have if offered. (Acts of 1889, p. 133.)

Art. 6835. (4649) Partition to be recorded.—Every partition of any tract of land or lot, made under any order or decree of any court, and every judgment or decree by which the title of any tract of land or lot is recovered shall be duly recorded in the clerk's office of the county court in which such tract of land or lot or part thereof may lie; and until so recorded, such partition, judgment or decree shall not be received in evidence in support of any right claimed by virtue thereof. (Acts 1860, p. 75, sec. 4; P. D. 5023.)

See Simkins' Equity (2d Ed.) p. 812; Campbell v. Antis, 51 S. W. 343; Haines v. West, 105 S. W. 1118, 130 Am. St. Rep. 839; Kimbell v. Powell, 121 S. W. 541; Rule v. Richards, 149 S. W. 1073.

Art. 6836. (4650) (4340) Decree may be abbreviated.—It shall not be necessary in the cases mentioned in the preceding article to record the proceedings or the decree rendered in such cases in full; but a brief statement by the clerk of the court in which the same is made, under his hand and seal, setting forth the case in which the partition or decree was made, and the date thereof, and the names of the parties in the suit for partition, and the particular land or lot lying in the county in which the record is made and the name of the party to whom the same is decreed, shall be deemed and held to be a sufficient record of such partition, judgment or decree. (Id.)

Art. 6837. Suit for land; notice to be filed.—During the pendency of any suit or action, legal or equitable, involving the title to real estate, or seeking to establish any legal or equitable estate, interest or right, present or future, vested or contingent, therein, or to enforce any lien, charge or encumbrance against the same, any party plaintiff, as also any party defendant seeking affirmative relief therein, may file with the county clerk of each county where such real estate, or any part thereof, is situated a notice of the pendency of such suit, to be signed by the party filing the same, or his agent or attorney, setting forth the number and style of the cause, the court in which pending, the names of the party thereto, the kind of suit and a description of the land affected. (Acts 1905, p. 316, sec. 1.)

Art. 6838. Record of, how made.—The county clerk shall record such notice of pendency in a well-bound book, to be styled, "Lis Pendens Record," and at the same time index the same, both direct and reverse, under the names of each and all parties to the suit. For such performance of duty, the clerk shall be allowed a fee of fifteen cents per hundred words recorded, not to be less than fifty cents. (Id. sec. 2.)

Art. 6839. Transfers without notice, valid.—The pendency of such suit or action shall not prevent effective transfers or encumbrances to a third party for a valuable consideration and without other notice, actual or constructive, by a party to the suit of any such real estate as against a subsequent decree for the adverse party, unless such notice shall have been properly filed under the name of the party attempting to transfer or encumber in the county or counties in which said land is situated. (Id. sec. 3.)

Art. 6840. Effect of notice.—Such notice of pendency shall not be deemed constructive notice, but merely a memorandum that shall refer all intending purchasers and encumbrancers to an examination of the court records and pleadings to determine whether there is in fact a lis pendens concerning the real estate in question, and it shall be effective for such purpose from the time of its filing. (Id. sec. 4.)

Art. 6841. (4651) (4341) Titles to chattels, where recorded.—Every deed, mortgage, or other writing, respecting the title of personal property hereafter executed, which by law ought to be recorded, shall be recorded in the clerk's office of the county court of that county in which the property shall remain; and if afterwards the person claiming title under such deed, mortgage, or other writing, shall permit any other person in whose possession such property may be to remove with the same, or any part thereof, out of the county in which the same shall

be recorded, and shall not, within four months after such removal, cause the same to be recorded in the county to which such property shall be removed, such deed, mortgage, or other writing, for so long as it shall not be recorded in such last mentioned county, and for so much of the property aforesaid as shall have been removed, shall be void as to all creditors and purchasers thereof for valuable consideration without notice; provided, that written contracts for the conditional sale, lease or hire of railroad rolling stock and equipments by which the purchase money is therein agreed to be paid at any time or times after the date of such contract, with a reservation of title or lien in the vendor, lessor or bailor, until the same has been fully paid, shall be recorded in the office of the secretary of state in a book of records to be kept by him for that purpose; and on payment in full of the purchase money and the performance of the terms and conditions stipulated in any such contract a declaration in writing to that effect may be made by the vendor, lessor or bailor, or his or its assignee, which declaration may be made on the margin of the record of the contract, duly attested, or it may be made by a separate instrument to be acknowledged by the lessor, vendor, or bailor, or his or its assignee, and recorded as aforesaid; and for such services the secretary of state shall be entitled to a fee of five dollars for recording each of said contracts, and each of said declarations, and a fee of one dollar for entering such declaration on the margin of the record. (Acts 1897, p. 209; Acts Feb. 5, 1840, sec. 12; P. D. 4993.)

See Simkins' Equity, (2d Ed.) p. 465; Oxsheer v. Watt, 44 S. W. 67; Spikes v. Brown, 49 S. W. 725; Biggerstaff v. McGill, 175 S. W. 711.

Art. 6842. (4652) (4342) Record of any grant, etc., when notice.—The record of any grant, deed or instrument of writing authorized or required to be recorded, which shall have been duly proven up or acknowledged for record and duly recorded in the proper county, shall be taken and held as notice to all persons of the existence of such grant, deed or instrument.

McGregor v. White, 39 S. W. 1024; Donnan v. Adams, 71 S. W. 580; San Augustine Co. v. Madden, 87 S. W. 1056; Wren v. Scales, 119 S. W. 879; Delay v. Truitt, 182 S. W. 732; Sikes v. First State Bank of Decatur, 197 S. W. 227; Quarles v. Hardin, 197 S. W. 1112.

CHAPTER FOUR

REGISTRATION OF SEPARATE PROPERTY OF MARRIED WOMEN

Art. 6843. (4653) (4343) Marriage contract to be recorded.—When the wife by a marriage contract may reserve to herself any property or rights to property, whether such rights be in esse or expectancy, for such reservation to be valid as to the subsequent purchasers or creditors of her husband, the said contract must be acknowledged by her husband or proved by at least one witness, and recorded in the clerk's office of the county court of the county in which said married parties may reside. (Acts 1840, p. 3, sec. 8; P. D. 4635.)

See ante art. 4620; Sayles' Practice, p. 1206.

Art. 6844. (4654) (4344) Property of married women to be registered.—All property, real and personal, which may be owned or claimed at the time of marriage by any woman, or which she may acquire after marriage by gift, devise or descent, shall be registered as herein directed. (Acts 1846, p. 153, sec. 1; P. D. 4995.)

See ante art. 4621; Speer's Marital Rights, p. 431.

Art. 6845. (4655) May present and prove schedule for record.—Each woman now married, or who may be hereafter married, may present to any officer authorized by law to take acknowledgments or proof of instruments for record, a schedule particularly describing all the property, real and personal, which she now owns and possesses, or which she may own and possess at the time of her marriage, and make her statement under oath before such officer that the property described in the schedule is her separate property; and upon such statement being made, such officer shall annex to the schedule a certificate of the fact under his hand and seal of office; which certificate shall be sufficient evidence for the recorder of any county to record the same. (Id. sec. 2; P. D. 4996.)

See Speer's Marital Rights, p. 431; Walker v. Farmers' & Merchants' State Bank of Winters, 146 S. W. 312.

Art. 6846. (4656) (4346) Property acquired after marriage.—Each married woman upon coming into possession of any property, real or personal, to which she had claim at the time of her marriage, or which she may afterward acquire by gift, devise or descent, shall have the same recorded in the same manner as prescribed in the foregoing article. (Id. sec. 3; P. D. 4997.)

See Speer's Marital Rights, p. 431.

Art. 6847. (4657) In what county registration must be made.—The registration of the wife's separate property herein provided for, if real estate, shall be made in the county or counties in which the same, or a part thereof, is situated; if personal property, in the county or counties where the same remains; and in case such personal property be removed out of the county, the registration must also be made in the county to which the property is removed within four months after such removal. (Id. sec. 4; P. D. 4998.)

See Speer's Marital Rights, p. 431.

Art. 6848. (4659) (4349) Conclusive as to subsequent creditors, etc.—The registration of any schedule of a wife's separate property, made in accordance with the provisions of this chapter, shall be conclusive as against all subsequent creditors of and purchasers from her husband. (Id. sec. 6; P. D. 5000.)

See Speer's Marital Rights, p. 432; Walker v. Farmers' & Merchants' State Bank of Winters, 146 S. W. 312.

CHAPTER FIVE

GENERAL PROVISIONS

Art. 6849. (4660) (4350) Penalty for failing to record, etc.—If any recorder to whom any instrument of writing authorized to be recorded by him, and proved or acknowledged according to law, which shall be delivered for record, shall neglect or refuse to make an entry thereof, or give receipt therefor, as required by law, or shall neglect or refuse to record such instrument of writing within a reasonable time after receiving the same, or shall record any instrument of writing affecting the same property, or any part thereof, before another first deposited in his office and entitled to be recorded, or shall

record any such instrument incorrectly, or shall neglect or refuse to provide and keep in his office such indexes as required by law, he shall forfeit and pay any sum not exceeding five hundred dollars, to be recovered on motion in the district court, one-half to the use of the county, and the other half to the use of the person who shall sue for the same, such clerk having three days' notice of such motion, and shall also be liable to the party for all damages he may have sustained thereby, to be recovered by suit on the official bond of such recorder, given by him as the clerk of the county court, against such clerk and his sureties. (Acts 1846, p. 236, sec. 18; P. D. 5018.)

William Carlisle & Co. v. King, 133 S. W. 241.

Art. 6850. (4661) (4351) Conveyances heretofore made to be governed by the then existing laws.—The legality of the execution, acknowledgment, proof, form or record of any conveyance or other instrument heretofore made, executed, acknowledged, proved or recorded, shall not be affected by anything contained in this title, but shall depend for its validity and legality upon the laws in force when the act was performed.

Art. 6851. (4662) (4352) Recording, and as evidence, to be governed by the then existing laws.—All conveyances of real property heretofore made and acknowledged or proved, according to the laws in force at the time of such making and acknowledgment or proof, shall have the same force as evidence, and may be recorded in the same manner and with the like effect as conveyances executed and acknowledged in pursuance of this title.

See Downs v. Peterson, 99 S. W. 751; Frugia v. Trueheart, 106 S. W. 736.

Art. 6852. (4663) (4353) Party may have action to correct error where certificate is imperfect.—When the acknowledgment or proof of the execution of any instrument in writing may be properly made, but defectively certified, any party interested may have an action in the district court to obtain a judgment correcting the certificate.

See Speer's Marital Rights, p. 261; Downs v. Peterson, 99 S. W. 751; Veeder v. Gilmer, 129 S. W. 595.

Art. 6853. (4664) (4354) May obtain judgment of proof of any instrument.—Any person interested under any instrument in writing entitled to be proved for record may institute an action in the district court against the proper parties to obtain a judgment proving such instrument.

Veeder v. Gilmer, 129 S. W. 595.

Art. 6854. (4665) (4355) Effect of judgment in such action.—A certified copy of the judgment in a proceeding instituted under either of the two preceding articles, showing the proof of the instrument, and attached thereto, shall entitle such instrument to record, with like effect as if acknowledged.

Veeder v. Gilmer, 129 S. W. 595.

Art. 6855. (4666) (4356) Record of certain titles confirmed.—Any grant, deed, or other instrument of writing, for the conveyance of real estate or personal property, or both, or for the settlement thereof in marriage, or separate property, or conveyance of the same in mortgage, or trust to uses, or on conditions, as well as any and every other deed or instrument required or permitted by law to be registered, and which shall have been prior to the ninth day of February, 1860, registered or recorded, shall be held to have been lawfully registered, with the full effect and consequences of existing laws; provided, the same shall have been acknowledged by the grantor or grantors before any chief justice, or associate justice, or clerk of the county court, or notary public in any county within the late republic or the now state of Texas, or judge of the department of Brazos, or any primary judge, or judge of the first instance in 1835 or 1836, or proven before any such officer by one or more of the subscribing witnesses thereto, and certified by such officer, whether such acknowledgment or proof shall have been made before any such officer of the county where such instrument should have been recorded or not. (Act Feb. 9, 1860, sec. 2; P. D. 5021.)

Art. 6856. (4667) (4357) Shall be evidence, when.—All such instruments which shall have been acknowledged or proven before any officer named in the preceding article, and which shall have been afterward recorded in the proper county, or certified copies thereof, shall be evidence in the courts, as full and sufficient as if such acknowledgment had been taken or proof made in accordance with existing laws; but this article and the article preceding shall not be construed so as to affect or bind, in any manner, any person or party with constructive notice of the existence of any deed or other instrument of writing as a recorded deed or instrument, except after the ninth day of February, 1860, and in the future. (Id. sec. 3; P. D. 5022.)

Art. 6857. (4668) (4358) Old registration operative after creating new county.—Where an instrument in writing has been duly registered in the proper county, and any property conveyed or incumbered by such instrument shall fall within another county subsequently created, the prior registration shall not be deemed to be thereby invalidated or in any manner affected, but shall still continue to be equivalent to an actual notice of its contents to all persons whomsoever; and it shall be the duty of the county court of the new county (and at the expense thereof) to cause a transcript of the record of all such instruments to be made and duly certified and deposited in the recorder's office of said new county, for public inspection, and indexes of the same to be made.

Williamson v. Work, 77 S. W. 266.

Art. 6858. (4669) Attachments to be recorded, when.—Whenever an attachment is levied upon real estate, the officer levying the writ shall immediately file with the county clerk of the county or counties in which the real estate so levied upon is situated, a copy of the writ, together with a copy of so much of his return as relates to the land in said county. Said clerk shall enter in a book, to be kept for that purpose, the names of the plaintiffs and defendants in attachment, the amount of the debt and the return of the officer in full. Should the writ of attachment be quashed or otherwise vacated, the court in which the attachment suit is pending shall cause a certified copy of said order to be sent to the county clerk of the county or counties in which the real es-

tate levied upon is situated. Said clerk shall, upon the receipt of the same, enter in the book aforesaid the names of the plaintiffs and defendants and record the order of the court in full. If the real estate levied upon is situated in any county other than the one in which the suit is pending, then, in case of failure to make the record aforesaid, the attachment lien shall not be valid against subsequent purchasers for value and without notice and subsequent lienholders in good faith. The county clerk of every county in this state shall keep a well-bound book for the record of the matters aforesaid, and shall keep a direct and reverse index thereto in which shall be entered the names of all the plaintiffs and defendants in the various attachments recorded by him; and the order of the court aforesaid shall be indexed in the same manner; and certified copies of such records shall be admissible in lieu of the original writ and entries. Clerks of the county court shall receive the same fees for recording the matter herein provided for as they are now allowed by law for recording deeds, to be paid by the plaintiff, and said fees to be taxed as a part of the costs in the case in which the attachment is issued and paid and collected as other costs. Sheriffs shall receive a fee of one dollar for making the copy and return herein provided for, to be taxed and collected as other costs in the suit. (Acts 1889, p. 80.)

See Sayles' Practice, pp. 696, 697, 812; Woldert v. Nedderhut Packing and Provision Co., 46 S. W. 378; Davis v. Farwell Co., 49 S. W. 656; Farmers' Nat. Bank v. Collis, 197 S. W. 782.

TITLE 119

ROADS, BRIDGES AND FERRIES

CHAPTER ONE

ESTABLISHMENT OF PUBLIC ROADS

Art. 6859. (4670) What roads are declared to be public.—All public roads and highways that have heretofore been laid out and established agreeably to law, except such as have been discontinued, are hereby declared to be public roads. (Act July 29, 1876, p. 64, sec. 6.)

Art. 6860. (4671) Commissioners' courts to open, etc.—The commissioners' courts of the several counties shall have full powers and it shall be their duty to order the laying out and opening of public roads when necessary, and to discontinue or alter any road whenever it shall be deemed expedient as hereinafter prescribed. (Acts 1889, p. 21.)

Art. 6861. (4672) Shall not be changed, except, etc.—No public roads shall be altered or changed, except for the purpose of shortening the distance from the point of beginning to the point of destination, unless the court upon a full investigation of the proposed change finds that the public interest will be better served by making the change; that said change shall be by unanimous consent of all the commissioners elected. (Id.)

Art. 6862. (4673) Roads in towns and cities where no incorporation.—In all cities and incorporated towns in the state of Texas in which from any cause there is not a de facto municipal government in the active discharge of their official duties, the commissioners' court of the county in which such city or incorporated town is situated shall assume and have control of the streets and alleys thereof, and shall have the same worked under the law and regulations for the working of public roads; and such streets and alleys for the purposes of this article shall be held and denominated public roads; provided, that all residents of any city or town, having no de facto city government, not otherwise exempt from road duty, shall be liable to road service as in other cases. (Acts 1885, p. 25.)

Art. 6863. (4674) First class roads from county seat to county seat, etc.—The commissioners' courts of the several counties shall see that at least one first class road of the width prescribed by law is laid out and opened from the county seats of their respective counties on the most direct and practicable route to the lines of their county in the direction of the county seats of each adjacent county, where no part of another county intervenes between the county seats of such counties; or, if a border county, to meet the nearest road to the border; and, if any adjacent county is not organized, then in the direction of the center of such county. And the commissioners' court of a county to which one or more unorganized counties are attached for judicial purposes shall lay out and open at least two first class roads sixty feet in width through the extent of each such unorganized county to intersect at right angles as nearly as may be at the center of the county, and to meet at the county lines similar roads of the adjacent counties. In counties now having public roads substantially complying with the preceding requirement as to course, the court shall be required only to give such roads the width of sixty feet and clear them of obstructions; such roads, however, shall not be laid out across orchards, yards, lots or graveyards, or within one hundred feet of a residence, without the consent of the owner; provided, that this law shall not apply to counties where there already exists a sufficiency of public roads. (Acts 1884, p. 63, sec. 1.)

Art. 6864. (4675) Jury of view to be appointed.—It shall be the duty of each commissioners' court on their own motion to appoint a jury of view to lay out the roads required in the preceding article, and to mark and define them, and to report in writing such marks and any prominent natural objects that may aid in defining the route selected. And upon the report of the jury of view such roads shall be declared public highways of the first class; and the court shall order the overseer to open the same, and where the country is open prairie to plow a furrow on each side of the road and establish monuments at convenient intervals. (Id. sec. 2.)

Art. 6865. (4676) Damages, how assessed.—If damages are claimed by any owner of land so appropriated for public highways, or by any person where inclosed premises are crossed, a jury to assess such damages shall be appointed as now provided in article 6877 of the Revised Statutes. (Id. sec. 3.)

Art. 6866. (4677) When damages are excessive, etc.—If the damages assessed be excessive, the court may appoint another jury to assess them; and upon the second report, if the damages are deemed excessive, the court may change the road so as to avoid the property so greatly damaged; provided, such change will not divert the road more than one-quarter of a mile from a direct line; provided, further, that in all cases where the owner or owners of lands over which such roads shall pass shall have the right of appeal to the district court where the same shall be tried (by first giving a bond in a sufficient amount to cover all costs); and, if a greater amount of damages is there obtained, the county shall pay the excess and the costs, but if no greater damages are obtained the party taking the appeal shall pay all costs; provided, that such appeal shall in no case delay or prevent the immediate opening of such road after the damages assessed as above have been tendered. (Id. sec. 4.)

Art. 6867. (4678) Owners of inclosed lands shall have nine months, etc.—Persons through whose inclosed premises such roads are laid out shall have nine months to remove and adapt their fences to the road. Where the county is unorganized, the owners of fences shall not be required to remove them until such county shall become organized, and not then until fifty residents of such county shall petition the commissioners' court for the removal of such fences; provided, that at all times the owners of such fences shall have at the crossing of such road convenient gates not less than twelve feet wide. (Id. sec. 5.)

Art. 6868. (4679) Compensation of jurors.—The juries of view and the juries to assess damages shall, for the organized counties, be allowed such compensation as is now provided by law; and, for the unorganized counties, the sum of two dollars per day for the actual time employed, and five cents per mile for the actual distance traveled to mark and lay out the road or to assess the damages, which amounts, on sworn accounts, shall be paid out of the respective county funds, and any person summoned as a viewer as provided in this chapter who shall fail or refuse to perform the service required of him by law as such viewer shall be fined for contempt by the commissioners' court for every such failure not less than five dollars nor more than ten dollars, to be collected as other fines are collected; provided, that all reasonable excuses shall be heard. (Id. sec. 6.)

Art. 6869. (4680) In unorganized counties, etc.—Where there are no persons in the unorganized counties to act or willing to serve on the jury of view or jury to assess damages, the court shall designate citizens of their own county to perform the service. (Id. sec. 7.)

Art. 6870. (4681) Such roads to be changed, when.—Nothing in the preceding article shall be construed to prohibit the opening of other roads as is now provided by law. Roads laid out under the provisions of article 6863 shall not be changed, except for the purpose of securing a better and more direct route, and then only after an actual view by a majority of the commissioners' court of that portion of the road sought to be changed. (Id. sec. 8.)

Art. 6871. (4682) To classify all public roads.—It shall be the duty of the commissioners' courts to classify all public roads in their counties into first, second and third class roads, and to act as supervisors of roads in their respective precincts, as hereinafter provided, and commissioners' courts may, on their own motion, where it is deemed necessary, open new roads or straighten existing ones. (Acts 1884, p. 20.)

Art. 6872. (4683) First class roads.—First class roads shall be clear of all obstructions, and not less than forty feet nor more than sixty feet wide; all stumps over six inches in diameter to be cut down to six inches of the surface and rounded off, all stumps six inches and under to be cut smooth with the ground, and all causeways made at least sixteen feet wide. (Id. sec. 2.)

Art. 6873. (4684) Second class roads.—Second class roads shall be clear of all obstructions and not less than thirty feet wide; stumps six inches and over in diameter to be cut down to six inches of the surface and rounded off; and all stumps less than six inches in diameter to be cut smooth with the ground; all causeways to be made at least sixteen feet wide. (Id. sec. 3.)

Art. 6874. (4685) Third class roads.—Third class roads shall be clear of all obstructions, and not less than twenty feet wide; stumps six inches and over in diameter to be cut down to six inches of the surface and rounded off; all stumps less than six inches in diameter to be cut smooth with the ground, and all causeways made at least twelve feet wide. (Id. sec. 4.)

Art. 6875. (4686) Application for new road, etc., shall not be granted until notice has been given, etc.—The commissioners' court shall in no instance grant an order on an application for any new road, or to discontinue an original one, unless the persons making application therefor, or some one of them, shall have given at least twenty days' notice by written advertisement of their intended application, posted up at the court house door of the county and at two other public places in the vicinity of the route of the proposed new road, or the road proposed to be discontinued. (Id. sec. 6.)

Art. 6876. (4687) Application, how made.—All applications for a new road, and all applications to discontinue an existing one, shall be by petition to the commissioners' court, signed by at least eight freeholders in the precinct or precincts in which such road is desired to be made or discontinued, specifying in such petition the beginning and termination of such road proposed to be opened or discontinued; provided, that where one or more persons live within an inclosure either or all of them may petition the commissioners' court for a third class road or neighborhood road to their nearest trading points, mills, gins, school and church houses and county seats, and the courts shall open such roads, as hereinafter provided in the opening of third class roads; and provided, further, that no part of a public road shall be discontinued unless a new road connecting that part of such road not discontinued shall first be opened; and provided, further, that no part of a first or second class road shall

be reduced to a road of a lower class. (Acts 1884, p. 20.)

Art. 6877. (4688) How laid out.—All roads hereafter ordered to be made shall be laid out by a jury of freeholders of the county to be appointed by the commissioners' court. Said jury shall consist of five persons, a majority of whom may proceed, with or without the county surveyor, as ordered by the commissioners' court, to lay out, survey and describe such road to the greatest advantage to the public, and so that the same can be traced with certainty; and the field-notes of such survey or description of the road shall be included in the report of the jury; and, if adopted, shall be recorded in the minutes of the commissioners' court. (Id.)

Art. 6878. (4689) Oath of jury.—The jurors provided for in the preceding article shall, before proceeding to act as such, take the following oath before some officer authorized to administer oaths, to-wit:

"I, ———, do solemnly swear that I will lay out the road now directed to be laid out by the order to us directed from the commissioners' court, according to law, without favor or affection, malice or hatred, to the best of my skill and knowledge. So help me God." (Id.)

Art. 6879. (4690) Duty of jury to perform the work and report.—It shall be the duty of such jurors, when qualified as provided in the preceding article, to proceed to lay out and mark the road in accordance with the order of the court and the law, and to report their proceedings in writing to the next regular term of the commissioners' court. (Id.)

Art. 6880. (4691) Notice to owner.—The jury of freeholders provided for in article 6877 shall issue a notice in writing to the land owners through whose lands such proposed road may run, or to his agent or attorney, of the time when they will proceed to lay out such road, or when they will assess the damages incidental to the opening of the same, which notice shall be served upon such owner, his agent or attorney, at least five days before the day therein named. If such owner is a non-resident of the county the notice may be given by publication in a newspaper published in the county, as notices are required to be given to non-resident defendants as to actions in the district or county court, and the road may be established after four weeks' publication, the cost of publishing to be paid as directed by judgment of the court. (Acts 1884, p. 21.)

Art. 6881. (4692) Statement by owner of damages.—The owner of any such land may, at the time stated in such notice, or previously thereto, present to the jury a statement in writing of the damages claimed by him, if any, incidental to the opening of such road, and thereupon the jury shall proceed to assess the damages, returning their assessment and the claimant's statement with their report, to the commissioners' court. (Id.)

Art. 6882. (4693) If report approved, damages to be paid, etc.—If the commissioners' court shall approve of the report and order such road to be opened, they shall consider the assessment and damages by the jury and the claimant's statement thereof, and allow to such owner just damages and adequate compensation for the land taken, and when paid or secured by deposit with the county treasurer to the credit of such owner they may proceed to have such road opened. If the owner of the land is not satisfied with the assessment by the commissioners' court he may appeal therefrom as in cases of appeal from judgment of justice's court, but such appeal shall not prevent the road from being opened, but shall be only to fix the amount of damages. If no claim of damages is filed with such jury after notice as provided in the preceding article the same shall be considered as waived.

Art. 6883. (4694) Court may order opening of road, but damages assessed must be first paid, etc.—If, in the judgment of the commissioners' court, from the report of the commissioners named in the two preceding articles, the road should be deemed of sufficient importance, the court may order the survey or opening of the same; but the court shall first order the payment of the damages assessed, if any, by the commissioners of view to be made to the owner of the land out of the county treasury, and the county treasurer shall have paid the same or secured its payment by a special deposit of the amount in his office, subject to the order of such owner, and shall notify such owner by mail or otherwise of such deposit. (Acts 1876, p. 64.)

Art. 6884. (4695) Road shall be established, etc., if no objection be made.—If no objection be filed, upon the report of a jury appointed upon an application to open a new road, the court shall proceed to establish and classify such road and order the opening out of the same, and shall appoint an overseer and apportion hands for the same, as in other cases. (Id. sec. 13.)

Art. 6885. (4696) May change roads, when.—The commissioners' court may alter or change the course of any public road, in accordance with article 6861 of this chapter, after notice and upon application in the same manner as provided in this chapter for the discontinuance of a road, except that the application need not be signed by more than one freeholder of the precinct in which such alteration or change is proposed to be made.

Art. 6886. (4697) Duty of clerk when jury of view is appointed.—When juries of view are appointed, it shall be the duty of the clerk of the court to make out copies of the order appointing them in duplicate, and to deliver such copies to the sheriff of the county within ten days after such order of appointment was made, indorsing on such copies the date of such order. (Id. sec. 14.)

Art. 6887. (4698) Service of order of appointment on juror.—The sheriff receiving such copies shall serve the same upon the jurors by delivering to each of them in person a copy of the order of appointment provided for in the preceding article, or by leaving one of said copies at the usual place of abode of such juror. Service shall be made within twenty days after the sheriff receives said copies, and he shall make his return to the clerk on the duplicate copies, stating the date and manner of service, or if service has not been made, stating the cause of his failure to make the same. (Id.)

Art. 6888. (4699) Defaulting juror shall be punished, how.—Any juror of view, summoned as such, who shall fail or refuse to perform the service required of him by law as such juror, shall forfeit and

pay for every such failure the sum of ten dollars, to be recovered by judgment on motion of the district or county attorney, in the name of the county, in any court of competent jurisdiction of the county in which such defaulter may reside. (Id.)

Art. 6889. (4700) Roads on lines.—For the further and better providing for public roads, any lines between different persons or owners of land, any section line, or any direct line through an inclosure containing twelve hundred and eighty acres of land or more, may, upon the conditions provided for in the following articles of this chapter, be declared public highways, and left open and free from all obstructions for fifteen feet on either side of said lines, but the marked trees and other objects used to designate said lines, and the corners of surveys, shall not be removed or defaced. (Acts 1884, p. 22.)

Art. 6890. (4701) Ten freeholders may make an application for.—Whenever ten freeholders may desire the boundary lines between different persons or owners of land to be declared a public highway, in order to give them a nearer, better or more practicable road to their church, county seat, mill, timber or water, they may apply to the commissioners' court for an order establishing such road. (Acts 1876, p. 65.)

Art. 6891. (4702) Requisites of application.—The application provided for in the preceding article shall be in writing, and shall be signed and sworn to by the applicants. It shall designate the lines sought to be opened and the names and residences of the persons or owners to be affected by such proposed road, and shall state the facts which show a necessity for such road. (Id.)

Art. 6892. (4703) Clerk shall issue notice.—Upon the filing of such application the clerk shall issue a notice reciting the substance thereof directed to the sheriff or any constable of the county commanding him to summon the owners of the land, naming them, whose lines are proposed to be left open, to appear at the next regular term of the commissioners' court and show cause why said lines should not be declared public highways. (Id.)

Art. 6893. (4704) Service of notice and return of same.—The notice provided for in the preceding article shall be served in the manner and for the length of time provided for the service of citations in civil actions in justices' courts, and shall be returned in like manner as such citation.

Art. 6894. (4705) May open lines, when.—At a regular term of the court, after due service of notice as provided in the preceding article, the commissioners' court may, in its discretion, should it deem the road of sufficient public importance, issue an order declaring the lines designated in the application to be public highways, and direct the same to be opened by the owners thereof and left open for a space of fifteen feet on each side of said line. (Acts 1884, p. 24.)

Art. 6895. (4706) Notice of the order of the court shall be served upon the owners of the land.—When an order as provided in the preceding article is made, the clerk shall, without delay, issue a notice reciting said order or its substance, directed to the sheriff or any constable of the county, commanding him to serve the owners of such lines named in such notice with a true copy thereof, and the officer to whom said notice is delivered shall, without delay, serve the same as therein directed and return the same to the clerk, indorsing thereon the manner and date of such service. (Id.)

Art. 6896. (4707) Such roads not required to be controlled by the public.—The commissioners' court shall not be required to keep any such road as is mentioned in the last seven articles worked by the road hands as in the case of other public roads. (Id.)

Art. 6897. (4708) Costs, etc.—All costs attending the proceedings provided for in relation to opening of neighborhood roads shall be paid by the county if the application be granted. (Acts 1884, p. 24.)

Art. 6898. (4709) Neighborhood road may be discontinued, how.—The commissioners' court may discontinue any neighborhood road which has been established as a public highway in the same manner provided in this chapter for discontinuing other public roads.

Art. 6899. (4710) Right to erect gates.—The owners of the land whose lines have been or may be declared public highways, and also any person through whose land a third class road may run, shall have the right to erect a gate or gates across said road or roads when necessary, said gate or gates to be not less than ten feet wide and free of obstructions at the top; provided, that when the right of way for any third class road or neighborhood road has been granted to the county without cost the owner of such land shall have the right to put a gate across such road or roads, but where such right of way has been condemned and paid for according to existing law the county commissioners' court shall have the right to prevent any obstruction of such a road by a gate. (Acts 1884, p. 24.)

Art. 6900. (4711) Damages, how assessed.—The amount of damages to be allowed to the owners of said lands for opening the line of a neighborhood road, as provided in this chapter, shall be assessed as provided for in the case of first, second and third class roads in this chapter. (Id.)

Art. 6901. (4712) Commissioners as supervisors.—The county commissioners of the several counties are hereby constituted supervisors of public roads in their respective counties, and each commissioner shall supervise the public roads within his commissioner's precinct once each month, and shall receive as compensation therefor three dollars per day for the time actually employed in the discharge of his duties, to be paid out of the road and bridge fund of the county; provided, that no commissioner shall receive pay for more than ten days in any one month. He shall also make a report to each regular term of the commissioners' court held in his county during the year, said report to be made under oath, and to state:

1. The condition of all roads and parts of roads in his precinct.
2. The condition of all culverts and bridges.
3. The amount of money remaining in

the hands of overseers subject to be expended upon the roads within his precinct.

4. The number of mile posts and finger boards defaced and torn down.

5. What, if any, new roads of any kind should be opened in his precinct, and what, if any, bridges, culverts or other improvements are necessary to place the roads in his precinct in good condition and the probable cost of such improvements; also, the name of every overseer who has failed to work on the road, or in any way neglected to perform his duty.

Said report shall be spread upon the minutes of the court, to be considered in improving public roads and determining the amount of taxes levied therefor. (Acts 1884, p. 24; Acts 1913, p. 255, sec. 1, amending Art. 6901, Rev. St. 1911.)

Art. 6901a. Salaries of county commissioners.—Provided that in all counties containing a population of 100,000 and over, the County Commissioners of the several counties shall each receive a salary of $2400.00 per annum, payable in equal monthly installments, and this salary shall be in lieu of all other fees and per diem of all kinds now allowed by law; provided that in all counties containing a population of less than 29,000 the County Commissioners of the several counties shall each receive Four ($4.00) Dollars per day for each day served as Commissioner and when acting as ex-officio road supervisors of their precincts they shall each receive Four ($4.00) Dollars for each day actually served in supervising the construction or repair of the public roads in their respective precincts; provided that each Commissioner shall in no event receive more than One Thousand ($1,000.00) Dollars in any one year for such service. (Acts 1918, 4th C. S., ch. 29, sec. 1; Acts 1919, ch. 98, sec. 1.)

Added by Acts 1918, 4th C. S., ch 29, sec. 1.

Art. 6901b. Same subject.—Provided that in all counties containing a population of 50,000 and not more than 100,000 population the county commissioners of the several counties shall each receive a salary of $1800 per annum, payable in equal monthly installments, and this salary shall be in lieu of all other fees and per diem now allowed by law. (Acts 1918, 4th C. S., ch. 29, sec. 1.)

Added by Acts 1918, 4th C. S., ch. 29, sec. 1.

Art. 6901c. Same subject.—Provided that in all counties containing a population of 40,000 and not more than 50,000 population the county commissioners of the several counties shall each receive a salary of $1500 per annum, payable in equal monthly installments, and this salary shall be in lieu of all other fees and per diem of all kinds now allowed by law. (Id.)

Added by Acts 1918, 4th C. S., ch. 29, sec. 1.

Art. 6901d. Same subject.—Provided that in all counties containing a population of not less than 29,000 and not more than 40,000 population the County Commissioners of the several counties shall each receive a salary of $1,200.00 per annum, payable in equal monthly installments, and this salary shall be in lieu of all other fees and per diem of all kinds now allowed by law. (Acts 1918, 4th C. S., ch. 29, sec. 1; Acts 1919, ch. 98, sec. 1.)

Added by Acts 1918, 4th C. S., ch. 29, sec. 1.

Art. 6901e. United States census to govern determination of population.—The last United States census shall govern as to population in determining the compensations herein provided. (Acts 1918, 4th C. S., ch. 29, sec. 2.)

Added by Acts 1918, 4th C. S., ch. 29, sec. 2.

Art. 6901ee. Payment of salaries validated.—It is hereby provided that where any commissioners' court operating under any road law heretofore passed by the Legislature has paid to any member of the county commissioners' court as salary or compensation the amount or amounts prescribed in such road law the act of such commissioners' court in so paying any such salary or compensation is hereby validated and all things approved. (Id. sec. 3.)

Art. 6901f. Suit to recover money paid as salaries; defense.—In any suit that may be brought to recover any moneys heretofore paid to county commissioners, in accordance with the terms and provisions of any special act regulating their salary, the reasonable value of their services as such commissioners may be shown in defense of such suit, and no recovery shall be had unless the amount theretofore paid to said commissioners. under said special act, shall be in excess of the reasonable value of their services rendered in said capacity and only to the extent of such excess. (Id. sec. 3a.)

Art. 6901g. Same subject; when and how brought.—No suit shall be brought to recover from any county commissioner any salary heretofore paid to him under and by virtue of any special act of the Legislature regulating his salary, unless such suit is first authorized by the county judge of the county in which said commissioner served at the time he received such salary; and, provided, further, that no such suit shall be filed in any court unless the same is filed prior to the first day of January, 1919. (Id. sec. 3b.)

Art. 6901h. Partial invalidity of act.—If any part of this act be declared unconstitutional by the courts of this State, then it is provided that any other section of this Act shall not be in anywise affected thereby, and it is declared that the Legislature would have passed this Act insofar as the other sections are concerned irrespective of any section that may be declared unconstitutional. (Id. sec. 4.)

Art. 6902. (4713) Not to be discontinued, unless.—No entire road of the first or second class shall hereafter be discontinued except upon vacation by orders of the commissioners' court or non-use for a period of three years. (Acts 1884, p. 24.)

Art. 6903. (4714) Reports, etc.—The report made by the supervisors of public roads to the commissioners' court, as provided for in article 6901, shall be submitted, together with all contracts made by said court since its last report for any work on any road, to the grand jury, at the first term of the district court hereafter. (Id.)

Art. 6904. (4715) Across public lands, etc.—No public road shall be opened across lands owned and used or for actual use by the state, educational, eleemosynary, or other public state institutions for public purposes and not subject to sale under the

general laws of the state, without the consent of the trustees of said institution and the approval of the governor of the state; and the roads heretofore opened across such lands may be closed by the authorities in charge of any such lands whenever they deem it necessary to protect the interests of the state, upon repayment to the county where the land is situated, with eight per cent interest, the amount actually paid out by said county for the condemnation of said lands as shown by the records of the commissioners' court.

CHAPTER ONE A
STATE HIGHWAY DEPARTMENT

Art. 6904½. Department created.—There is hereby created a department of the public service of the State, to be known as the State Highway Department, the administrative control of which shall be vested in the members of the State Highway Commission and the State Highway Engineer hereinafter provided for in this Act. The said Department shall be furnished with adequate office room at the State Capitol, which office shall be the repository of all records of the department. (Acts 1917, ch. 190, sec. 1.)

Art. 6904½a. Appointment and tenure of members of commission; vacancies.—The Governor shall, within sixty days after this Act becomes effective, by and with the advice and consent of the Senate, appoint three citizens of the State as a Board of Highway Commissioners, hereinafter referred to as the State Highway Commission or the Commission. The term of office of the members of the Commission shall be for a period of two years, except that the members of the commission first appointed shall serve until February 15, 1919, or until their successors shall have been appointed and have qualified. All vacancies in the membership of the Commission shall be filled in the same manner as is prescribed for the original appointment. (Id. sec. 2.)

Art. 6904½b. Chairman; duties; compensations; quorum; meetings; reports; quarterly statements.—The Governor, in making the appointment of Highway Commissioners, shall designate one as Chairman of the Commission. The duties of the members of the Commission shall be such as the administration of the provisions of this Act require; attendance upon all regular meetings of the Commission as provided in this Act, and such special meetings as the rules that may be adopted by the Commission for its guidance may provide, or that may be called by the chairman of the Commission. The Commission shall formulate plans and policies for the location, construction and maintenance, in co-operation with the counties of the State, or under the direct supervision and control of the State Highway Department, of a comprehensive system of State Highways and public roads, and shall perform such other duties as may be conferred upon them by law. The members of the Commission shall be allowed actual and necessary expenses incurred in the performance of the duties of their said offices, and shall each receive a per diem of ten ($10.00) dollars for each day actually devoted to the work of the Department, the aggregate of such per diem, in no case to exceed the sum of one thousand ($1,000.00) dollars for each member in any one calendar year; such expense and per diem to be paid from the funds provided for by this Act. Two members of the Commission shall constitute a quorum necessary to the transaction of business. Regular meetings of the Commission shall be held once each month at the State Capitol. Biennially, a report of the work of the Commission shall be submitted to the Governor and the Legislature, together with the recommendations of the Commission and the recommendations of the State Highway Engineer. Provided, that a quarterly statement shall be prepared and filed in the records of the Department, and a copy transmitted to the Governor, which shall contain an itemized statement of all monies received and from what source, together with an itemized statement of all monies paid out and for what purpose; and provided further that these reports shall be treated as public documents and open to public inspection. (Id. sec. 3.)

Art. 6904½c. Oath and bond of members of commission.—Each member of the State Highway Commission shall file his oath of office with the Secretary of State and execute a bond payable to the State of Texas, to be approved by the Governor, conditioned upon the faithful discharge of duty in office, in the sum of five thousand ($5,000.00) dollars each, the premium for which bonds shall be paid out of the funds in this Act provided for. (Id. sec. 4.)

Art. 6904½d. State Highway Engineer; salary and expenses; bond; duties; reports.—As soon as practicable after their qualification for office the State Highway Commission shall elect a State Highway Engineer who shall be a competent civil engineer and graduate of some first class school of civil engineering, experienced and skilled in highway construction and maintenance, and who shall receive an adequate salary in the discretion of the Commission, and shall be allowed actual traveling and other expenses while absent from the State Capitol in the performance of duty under the direction of the Commission; and who shall hold his position until removed by the Commission. Before entering upon his duties, the State Highway Engineer shall execute a bond payable to the State of Texas in such sum as in the judgment of the Commission may be necessary, conditioned upon the faithful performance of his duties, such bond to be approved by the Commission and filed with the Secretary of State. The Highway Engineer shall act with the Highway Commission in an advisory capacity, without vote, and he shall submit reports to the Commission quarterly, annually and biennially, setting forth in detail the progress of public roads construction, and a statement detailing the expenditures therefor, under the direction of the Department as provided in this Act. (Id. sec. 5.)

Art. 6904½e. Rules and regulations; records.—The State Highway Commission shall establish and make public proclamation of all rules and regulations for the conduct of the work of the Department as may be deemed necessary, not inconsistent

with the provisions of this Act; and the Department shall maintain a record of all proceedings and official orders and keep on file copies of all road plans, specifications and estimates, prepared by the Department or under its direction. (Id. sec. 6.)

Art. 6904½f. Statistics as to roads; investigations; advice and information to local officials.—The State Highway Department shall collect information and compile statistics relative to the mileage, character and condition of the public roads in the different counties of the State, and the cost of construction of the different classes of roads in the various counties. It shall investigate and determine the methods of road construction best adapated to the different sections of the State, and shall establish standards for the construction and maintenance of highways, bridges and ferries, giving due regard to all natural, conditions, and to the character and adaptability of road building material in the different counties. The Department may, at all reasonable times, be consulted by county and city officials for any information or assistance it can render with reference to the highways within such counties or cities, and it shall be the duty of the State Highway Department to supply such information when called for by city or county officials; and it may call upon all such officials for any information necessary to the performance of its duties under this Act. Upon request of the Commissioners' Court of any county, the State Highway Department shall consider and advise concerning general plans and specifications for all road construction to be undertaken from the proceeds of the sale of bonds or other legal obligations issued by a county, or by any sub-division or defined district of any county; and it shall be the duty of the Commissioners' Court, county road superintendent, or official acting under the authority of the commissioners' court, to obtain all the available information and advice from the office of the State Highway Department relative to road construction and maintenance suitable to the county, political sub-division or defined district in which such roads are to be constructed before any of the proceeds from such bond issues are expended by, or under the direction of the commissioners' court. (Id. sec. 7.)

Art. 6904½g. Rules for determination of fitness of road engineers.—The State Highway Department shall adopt such rules as are found necessary to determine the fitness of engineers making application for highway construction work and upon the formal application of any county or organized road district thereof, or of any municipality, the Commission may recommend for appointment a competent civil engineer, and graduate of some first class school of civil engineering, skilled in the knowledge of highway construction and maintenance. (Id. sec. 8.)

Art. 6904½h. State Highway Engineer to make and keep state road map.—The State Highway Engineer shall, as soon as practicable after qualification for duty, cause to be made and kept in form convenient for examination in the office of the Department, a complete road map of the State as represented in the road construction of the various counties, and such map shall be regularly revised as construction proceeds in the different counties. (Id. sec. 9.)

Art. 6904½i. County road maps; data as to road material; preparation of county map by state engineer; connection of roads of adjoining counties.—The commissioners' court of each county in the State, within twelve months after this Act becomes effective, shall have prepared county road maps in duplicate, showing the approximate location of all public roads within the county. Such county maps shall further show the location at the county lines of commecting roads, of all adjoining counties, or in the absence of such connecting roads, the commissioners' court shall submit a statement setting forth the public importance of such connecting roads in such adjoining county or counties. The commissioners' court of each such county also shall designate such of the roads in the said county as would, in the judgment of the court, represent part of an adequate system of State highways to the various market and business centers of the State, and connect such principal traffic centers. One of the said county maps shall be filed in the office of the county clerk of each county, and the other map, duly certified by the commissioners' court, shall be filed with the State Highway Department. The county commissioners' court shall, at the time of filing such county map, furnish the State Highway Department, a statement of the location in such county, estimated extent and availability of all material deemed suitable for the building of roads. Should the commissioners' court of any county for any reason fail to provide such maps and information to the State Highway Department within the time specified, the State Highway Engineer shall have such maps and information of such county prepared under his supervision, and the committee shall be empowered to deduct the expenses thereof from the first allotment of funds to such county to accrue from registration fees of motor vehicles under the provisions of this Act. Should the public roads of any two adjoining counties representing a necessary part of the system of State highways, as designated by the State Highway Department in accordance with the provisions of this Act, fail to connect; the State Highway Engineer shall make or cause to be made, an investigation in the respective counties and report to the Commission, which shall notify the commissioners' court of such county or counties of what is necessary to complete the connection of such State highways, and if such county or counties shall fail to make or complete such connections on roads, which constitute a part of the system of State highways within six months after notice has been given by the State Highway Department, the commission shall be empowered to direct the State Highway Engineer to complete such connection, and the commission shall be empowered to deduct the expense thereof from the allotment of funds to such county or counties to accrue from registration fees of motor vehicles and motorcycles as hereinafter provided for in Section 23 of this Act [Art. 7012½g]; the expense of maintenance thereafter to de-

volve upon such county or counties. (Id. sec. 10.)

Art. 6904½j. Plan for system of state roads; construction of such roads.—The State Highway Engineer shall prepare, under the direction and with the approval of the commission, a comprehensive plan providing a system of State highways, and it shall be the duty of the commission to advance the construction of such State highways in co-operation with the counties of the State, or under the direction, supervision and control of the State Highway Department, as the necessary funds for construction may be available. A copy of such plans of State highways shall be furnished by the Department to each county commissioners' court in the State, to be displayed in the office in which the road records of the county are kept. (Id. sec. 11.)

Art. 6904½k. Allotment of state aid; amount; maintenance of roads constructed.—Whenever the Commissioners' Court of any county shall desire, and is prepared, to construct one or more miles of public roads constituting a part of the system of State Highways as designated by the Department, such court may make application for an allotment of State aid from the State Highway fund, and if such application is accompanied by plans, profiles and estimates prepared in accordance with the requirements of the State Highway Engineer, the Commission shall file such application in the order in which it is received; and when such roads shall be constructed according to specifications and under the supervision of the Highway Engineer, the commission shall make an allotment of aid from any moneys available in the State Highway fund, not to exceed one-fourth of the cost of construction; provided, that the aggregate sum contributed by the State to aid in building roads in any one county during any one year shall not be in excess of the whole cost of ten average miles of such road.

Provided, if any State Highway shall pass through any unorganized county or other territory in which the assessed valuations do not permit of the raising of the necessary funds to assure construction of the part of such State Highway, the Commission shall be authorized to construct such part of the State Highway, from any moneys in the State Highway funds available for such purposes.

In counties in which the assessed valuation of property, in the judgment of the Commission, does not warrant the construction of sections of the system of State Highways necessary to provide the State with trunk roads, or to connect market centers of the State as provided in this Act, the Commission may, in its discretion, increase such allotment of State aid not to exceed one-half of the cost of construction not more than ten miles of such part of the system of State Highways in each of such counties in one year. All parts of the system of State Highways that may be constructed with State aid, as provided in this Section, shall be maintained at the expense of the county in which such part of the highway is located, in accordance with plans approved by the State Highway Department, and failure to maintain such sections of State Highway shall forfeit any further State aid until such maintenance work shall have been done. (Acts 1917, ch. 190, sec. 12; Acts 1918, 4th C. S., ch. 71, sec. 1.)

Art. 6904½l. Laboratories of Agricultural and Mechanical College and University of Texas available to commission; purchase of materials and payment for labor.—The laboratories maintained at the Agricultural and Mechanical College of Texas and at the University of Texas shall be at the disposal and direction of the State Highway Engineer for the purpose of testing and analyzing road and bridge material, and it shall be the duty of those in charge of said laboratories to co-operate with and assist the State Highway Engineer, to the end that the best interests of the State, may be advanced in this connection. The commission shall purchase all necessary supplies and materials required in the administration of this Act, and shall have authority to employ all clerical and other assistance necessary to carry out the provisions of this Act, and it shall pay such labor the reasonable and customary price per day, month or year for the class of work performed. (Acts 1917, ch. 190, sec. 13.)

Art. 6904½m. Convict labor.—The labor of State prisoners may be utilized in construction or maintenance work on any road designated by the State Highway Department as forming a part of the system of State highways, upon such terms as may be agreed upon by the State Highway Commission and the State Prison Commission and approved by the Governor of Texas. (Id. sec. 14.)

Art. 6904½n. Expenditure of moneys contributed by United States government.—Any funds for public road construction in the State of Texas appropriated by the United States Government, shall be expended by and under the supervision of the State Highway Department only upon a part of the system of State Highways. (Id. sec. 15.)

For secs. 16-27 of this act, see post, arts. 7012½-7012½i.

Art. 6904½o. Assent to Act of Congress relating to aid in construction of rural post roads.—That the assent of the State is hereby expressed to the provisions of an Act of the Sixty-fourth Congress of the United States, approved July 11, 1916, being "An Act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes." (Acts 1917, ch. 54, sec. 1.)

Art. 6904½p. Same; duties of State Highway Commission.—The State Highway Commission of Texas is authorized to co-operate with the United States Government, through the Federal Department of Agriculture, and to enter into all necessary agreements with the United States Government relating to the construction and maintenance of rural post roads covering each of the five years for which Federal funds are appropriated in the said Act of Congress, and to submit such plans for construction and maintenance as may be required in carrying out the provisions of the said Act of Congress in its application to this State; and all Federal funds appropriated to this State under the said Act of Congress shall be expended upon the highways comprising a system of State

highways, as may be determined by the State Highway Commission. (Id. sec. 2.)

CHAPTER TWO

APPOINTMENT OF OVERSEERS

Art. 6905. (4716) County shall be laid off into road precincts.—The commissioners' courts of the several counties shall lay off their respective counties into convenient road precincts, and shall number each precinct; and in the order establishing the same shall specify as definitely as practicable the boundaries thereof. (Act July 29, 1876, p. 63, sec. 5.)

Art. 6906. (4717) Overseers to be appointed, when.—An overseer shall be appointed and hands apportioned by said court for each road precinct at the time of establishing the same; and at the first regular term of court in each year the said court shall appoint an overseer for each road precinct in the county, and shall at the same time designate all the hands liable to work on public roads, and apportion them to the several overseers; provided, that hands shall as nearly as practicable be apportioned to work on the road precinct nearest to their place of abode; and provided further, that the supervisor of public roads shall at any time apportion any hands in his precinct who from any cause may not have been apportioned as otherwise provided in this chapter. (Acts 1884, p. 25.)

Art. 6907. (4718) Appointment of overseers, etc., may be made at any time.—If from any cause the said court should fail to perform the duties required of it by the preceding article at its first regular term in each year, it shall be competent and legal for said court to perform said duties at any subsequent term, whether the same be a regular or called term. (Acts 1876, p. 63.)

Art. 6908. (4719) Vacancy in overseership, how filled.—In case of the death, removal or other inability to act, of any road overseer, it shall be the duty of the county judge, immediately upon information of the fact, to appoint an overseer to fill such vacancy, who shall be notified on his appointment as in other cases. (Id.)

Art. 6909. (4720) Duty of clerk to make out copies of order of appointment, etc.—It shall be the duty of the clerk of said court to make out copies of all orders appointing overseers of roads in duplicate, and deliver the same to the sheriff of the county within ten days after any such order shall have been made, indorsing on such copies the date of the orders of appointment. (Id. sec. 14.)

Art. 6910. (4721) Order of appointment of overseer shall show what.—All orders appointing overseers shall embrace the designation of hands liable to work under such overseer, as far as known, and shall specify the boundaries of such overseer's road precinct as laid off by the court. (Id.)

Art. 6911. (4722) Service of order and return.—The sheriff shall, within twenty days after the reception of the copies of any order appointing an overseer, deliver to or leave at the usual place of abode of such overseer one of such copies, and shall return duplicate of such copy to the clerk of the county court, indorsing thereon the date and manner of service, and if not served the cause of his failure to serve the same. (Id.)

Art. 6912. (4723) Term of service of overseer.—The term of service of a road overseer shall be from the time of the service of the order of appointment until the first regular term of the commissioners' court in the succeeding year. (Id. sec. 5.)

Art. 6913. (4724) Persons not compelled to serve as overseers, when.—No person shall be compelled to serve as an overseer who is lawfully exempt from road duty, nor shall any one be compelled to serve as overseer more than one year in every three successive years. (Id. sec. 23.)

Art. 6914. (4725) Overseer not liable shall notify clerk of non-acceptance.—It shall be the duty of every person appointed overseer of a road who is lawfully exempt from road duty to notify the clerk of the county court of his non-acceptance within ten days after his being notified of his appointment. (Id.)

Art. 6915. (4726) County judge shall thereupon appoint another.—If any person appointed overseer of a road who is lawfully exempt from road duty shall notify the clerk of his non-acceptance as provided in the preceding article, the clerk shall forthwith report the same to the county judge, who shall immediately appoint another overseer for said road precinct. (Id.)

Art. 6916. (4727) Unless overseer give notice of non-acceptance shall be considered as accepting.—Should any person appointed overseer, and who is lawfully exempted from road duty, fail to notify the clerk of his non-acceptance within ten days after being notified of his appointment, it shall be considered an acceptance of the appointment, and he shall not be permitted thereafter to plead his exemption from road duty as a defense against any neglect or failure to perform any of the duties of such overseer. (Id.)

Art. 6917. (4728) Clerk shall insert what on copies of appointment.—It shall be the duty of the clerk to insert on the copies of all orders of appointments of overseers issued by him the duties required of overseers in regard to their non-acceptance of such appointment. (Id.)

Art. 6918. (4729) Clerk shall post list of overseers, etc.—The clerks of the county courts of the several counties shall post up in their respective court houses, on the first day of each term of the district court held in his county, a list of the names and the road precincts of all the overseers of roads in the county. (Id. sec. 29.)

CHAPTER THREE

PERSONS LIABLE TO WORK ON ROADS, AND THEIR RIGHTS AND DUTIES

Art. 6919. (4730) Who liable to road duty.—All male persons between the ages of eighteen and forty-five years shall be liable, and it is hereby made their duty, to work on, repair and clean out the public roads, under provisions and regulations of this title, except ministers of the gospel in the active discharge of their ministerial duties, invalids, members of the Texas national

guard organized under provisions of the title "Militia," and the members of all volunteer fire companies in the active discharge of their duties as firemen, who shall be exempt. (Acts 1885, p. 43.)

Art. 6920. (4730a.) Age limitation of workers on public roads, etc.—No person in this state under the age of twenty-one years, or over the age of forty-five years, shall be required to work upon the public roads of this state or upon the streets and alleys of any city or town of this state. (Acts 1895, p. 160.)

Art. 6921. (4731) Fifteen days' residence fixes liability to work on road.—No person shall be compelled to work on a road who has not been residing in the county in which he is summoned to work for the space of fifteen days immediately preceding such summons. (Acts 1876, p. 65.)

Art. 6922. (4732) Substitute may be furnished.—Any person liable to road duty, and who has been summoned to do such duty, shall have the privilege to furnish an able-bodied substitute to work in his place, which substitute shall be accepted by the overseer if he is capable of performing a reasonable amount of work; otherwise, he shall not be accepted. (Id.)

Art. 6923. (4733) Payment of money will exempt.—Every person liable to work on roads, by paying to his road overseer at any time before the day appointed to work on his road, the sum of one dollar for each day that he is summoned to work, shall be exempt from working for each day paid for, and also exempt from any penalties for failure to work for the time for which he has so paid. (Id. sec. 26.)

Art. 6924. (4734) Hand shall take working tool with him.—Each person summoned to work on a road shall take with him an ax, hoe, pick, spade or such tool as may be desired and directed by the overseer, or if he have no such tool as he is desired and directed by the overseer to take with him, he shall take such other suitable tool as he may have. (Id. sec. 17.)

Art. 6925. (4735) Duty of hand, etc.—It shall be the duty of each road hand to perform his duties as such in accordance with the directions of his overseer, and a day's work, within the meaning of this law, shall be eight hours' efficient service, when said service is voluntarily performed. (Acts 1889, p. 21.)

Art. 6926. (4736) Five days' work only.—No person shall be compelled to work on any public road or roads more than five days in each year. (Acts 1883, p. 22.)

CHAPTER FOUR

POWERS AND DUTIES OF OVERSEERS

Art. 6927. (4737) Roads shall be worked twice each year.—Every overseer shall cause the roads through his precinct to be worked twice in each year. (Act July 29, 1876, p. 68, sec. 16.)

Art. 6928. (4738) Power to call out hands.—Overseers of roads shall have the power to call out all persons liable to work upon public roads at any time such overseer may deem it necessary, or when ordered by the commissioners' court or other competent authority, and such hands may be called out in detail, or the whole force at any one time, as may be deemed best, or as they may be directed, for the better improvement of the public roads. (Acts 1889, p. 21.)

Art. 6929. (4739) Hands not designated shall be summoned.—In case any person liable to work on roads shall not have been designated and apportioned by the commissioners' court, the overseer of the road nearest to which such person lives shall summon such person to work on such road the same as if such person had been designated and apportioned to such overseer. (Id. sec. 5.)

Art. 6930. (4740) Mode of summoning hands.—It shall be the duty of the overseer to give three days' previous notice, by summons in person or in writing, to each person within his road precinct liable to road duty in said precinct, of the time and place when and where such person is required to appear to work on the road, and the number of days such person will be required to work. (Id. sec. 17.)

Art. 6931. (4741) Summons in writing may be served how.—If the summons be in writing it may be served by leaving the same at the usual place of abode of the person summoned, with some person residing at such place who is not less than ten years of age, or if no person ten years of age or over can be found at such place of abode, the overseer may serve the same by posting it on the door of such place of abode.

Art. 6932. (4742) Overseer may appoint some one to summon hands.—The overseer shall have the power to appoint some one to summon the hands to work on the road, and such person shall be exempt from working on the roads as many days as he was actually engaged in summoning the hands. (Id.)

Art. 6933. (4743) To file complaints, where, etc.—It shall be the duty of the overseer, within ten days after he has had his road worked, to file with the county attorney of his county, or the justice of the peace of his precinct, a complaint in writing and under oath against each person who has been summoned to work and who has failed to work and failed to furnish a substitute, and has failed to pay one dollar for each day he has so failed to work or furnish a substitute, and also against each person so summoned who has refused to do a reasonable amount of work on the road or who has refused to perform the reasonable directions of the overseer. (Acts 1884, p. 26, sec. 3.)

Art. 6934. (4744) Timber for causeways and bridges.—When to the overseers it may appear expedient to make causeways and build bridges, or to gravel any public road, the timber, gravel, earth, stone or other necessary material most convenient therefor may be used, but in such case the owner of such timber, or gravel, earth, stone or other necessary material shall be paid out of the county treasury a fair compensation for the same, to be determined by the commissioners' court upon the application of such owner. (Acts 1876, p. 68; amended Acts 1897, p. 84.)

Art. 6935. (4745) Construction of causeways; ditches may be cut on land of adjacent owners, when.—The earth neces-

sary to construct a causeway shall be taken from both sides, so as to make a drain on each side of such causeway. Whenever it is necessary to drain the water from any public road, the overseer shall cut a ditch for that purpose, having due regard to the natural water flow, and with as little injury as possible to the adjacent land owner; provided, that in such cases the commissioners' court shall cause the damages to such premises to be assessed and paid out of the general revenues of the county, and in case of disagreement between the commissioners' court and such owner, the same may be settled by suit as in other cases. (Id.; Acts 1884, p. 27.)

Art. 6936. (4746) Overseer may exchange labor for wagons, etc.—When it may be necessary to use a wagon for any purpose in working a road, or a plow or scraper, the overseer of such road is authorized to exchange the labor of any hand or hands bound to work on such road, for the use of a wagon or wagons, plows or scrapers, and the necessary teams to operate the same, at reasonable rates, to be employed as aforesaid. (Acts 1876, p. 68.)

Art. 6937. (4747) Road shall be measured and mile posts set up.—It shall be the duty of all overseers of roads to measure such parts of roads as are in their respective precincts in continuation, and set up posts of good lasting timber or stone at the end of each mile leading from the court house or some other noted place, and to mark on said posts in legible and enduring figures the distance in miles to said court house or other noted place. (Id. sec. 22.)

Art. 6938. Index boards shall be placed, where.—It shall be the duty of overseers to place conspicuously and permanently at the forks of all public roads in their respective precincts, and at all roads crossing or leading away from such public roads, and at all places where public roads cross thereon, stating the most noted place to which each of said roads leads, and at county lines giving the names of the counties; and the commissioners' courts of the State are to furnish the funds necessary to provide such index boards. Any overseer refusing or failing to comply with the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum of not less than ten ($10.00) Dollars, nor more than twenty-five ($25.00) Dollars. (Acts 1876, p. 68; Acts 1919, 2d C. S., ch. 21, sec. 1.)

Art. 6939. (4749) Mile posts and index boards to be replaced when removed.—When a mile post or index board shall be removed or defaced by any means whatever, the overseer shall cause the same to be replaced immediately by another, marked as the original one. (Acts 1876, p. 68.)

Art. 6940. (4750) Overseer may exchange labor for index boards and mile posts.—The overseer is authorized to exchange the labor of any hand or hands bound to work on his road, for the making of index boards or mile posts, or either. (Id. sec. 21.)

Art. 6941. (4751) Overseer shall apply money how.—Overseers of roads shall apply all money coming into their hands as such overseers to the improvement of their roads in an impartial manner, by repairing or building bridges, hiring hands or teams to work on the road, or in such other manner as he may deem best. (Id. sec. 27.)

Art. 6942. (4752) Overseer shall report to commissioners' court, when, etc.—It shall be the duty of each overseer to report in writing and under oath to the commissioners' court of his county, at the first regular term thereof in each year, giving the number of the hands and their names in his precinct liable to work on the roads; the number of days he has caused his road to be worked; the condition of such road; the amount of the funds received by him for his road; from whom received, and for what purpose, and to whom and for what purpose said funds have been paid out, and the amount of such funds, if any, that remain in his hands; and he shall at the same time pay over to said court any such funds which may remain in his hands. (Id. sec. 28.)

Art. 6943. (4753) Compensation, etc., of overseers.—Overseers shall retain out of money that may come to their hands as such overseers ten per cent thereof as compensation for their services, and during their term of service they shall be exempt from serving upon juries. (Id. sec. 31.)

Art. 6944. (4754) Money shall be expended under order of court, etc.—All moneys appropriated by law, or by order of the commissioners' court, for working public roads or building bridges, shall be expended under the order of the commissioners' court, except when otherwise herein provided, and said court shall from time to time make the necessary orders for utilizing such money and for utilizing convict labor for such purposes. (Const., art. 16, sec. 24.)

Art. 6945. (4755) Overseers to dismiss hands, when.—Overseers shall dismiss from the road any hand or hands, whether working for themselves or as substitutes for others, who shall fail to do good and efficient work, or who shall hinder other hands from doing their work properly, or dismiss any hand who may be intoxicated, or who shall refuse to obey any reasonable order of the overseers; and the overseer shall proceed against such hand or hands so dismissed in the same manner as if they had refused to obey the summons to work upon the road. (Acts 1889, p. 22.)

CHAPTER FIVE

ROAD COMMISSIONERS

Art. 6946. (4756) Commissioners' court may employ four road commissioners.—Each county commissioners' court of this state may employ not exceeding four road commissioners for their respective counties, who shall be resident citizens of the district for which they are employed, and when more than one is employed, the district that each road commissioner is to control shall be defined and fixed by the court; such road commissioners when employed shall receive such compensation as may be agreed upon by the court, not to exceed two dollars per day for the time actually engaged. Each road commissioner when employed, before he enters upon his duties, shall execute a bond, payable to the county judge of the county and his successors in office, in the sum of one thousand dollars, with one or more good and sufficient sureties, to be approved

by the county judge, and conditioned for a faithful performance of his duties. (Acts 1889, p. 134.)

Art. 6947. (4757) Powers and duties.—A road commissioner when employed shall have control over all overseers, hands, tools, machinery and teams to be used upon the roads in his district; and shall have the power to require overseers to order out his hands in any number he may designate for the purpose of opening, working or repairing the roads or building or repairing bridges or culverts of his district; and it shall be the duty of such road commissioner to see that all the roads and bridges of his district are kept in good repair, and he shall, under the direction and control of the commissioners' court, inaugurate a system of grading and draining public roads in his district, and see that such system is carried out by the overseers and hands under his control, and shall obey all orders of the commissioners' court; and he shall be responsible for the safe keeping and liable for the loss or destruction of all machinery, tools or teams placed under his control, unless such loss is without his fault, and when he shall be discharged he shall deliver them to the person designated by the court. (Id. sec. 2.)

Art. 6948. (4758) Expenditure of money by, etc.—He shall expend such money as may be placed in his hands by the commissioners' court under its direction in the most economical and advantageous manner on the public roads, bridges and culverts of his district; and all his acts shall be subject to the control, supervision, orders and approval of the commissioners' court; he shall work the convicts and such other labor as may be furnished him by the commissioners' court; and when the road commissioner shall have funds in his hands to expend for labor on the roads, and when it shall be necessary for any overseer or overseers in his district to work more than five days during any one year upon the public roads, he may employ such overseers to continue their duties as such for such a length of time as may be necessary, and pay them for their services not more than one dollar and fifty cents per day for the time actually employed after the five days; provided, that hands shall not be required to work when there shall be on hand, after building and repairing bridges, a sufficient road fund to provide for the necessary work on the roads; and said road commissioner shall report to the commissioners' court at each regular term under oath, showing an itemized account of all money he has received to be expended on roads and bridges and what disposition he has made of the money, and showing the condition of all roads, bridges and culverts in his district, and such other facts as the court may desire information upon, and shall make such other reports and at such time as the court may desire. (Id. secs. 3 and 4.)

Art. 6949. (4759) Commissioners' court to see to expenditure of road fund.—The commissioners' court shall see that the road and bridge fund of their county is judiciously and equitably expended on the roads and bridges of their county, and, as nearly as the condition and necessity of the roads will permit, it shall be expended in each county commissioners' precinct in proportion to the amount collected in such precinct; and in expending money in building permanent roads the money shall first be used only on first or second class roads, and on those which shall have the right of way furnished free of cost to make as straight a road as is practicable to obtain and having the greatest bonus offered by the citizens of money, labor or other property. (Id. sec. 6.)

Art. 6950. (4760) May make rules and regulations for working roads.—The commissioners' courts are authorized to make all reasonable and necessary rules and orders for the working and repairing of public roads, and to utilize the labor to be used and money expended thereon, not in conflict with the laws of this state, and enforce such rules and orders; and they are further authorized to purchase or hire all necessary road machinery, tools or teams, and hire such labor as may be needed in addition to the labor now required of citizens to build or repair the roads. (Id. sec. 7.)

Art. 6951. (4761) May accept donations of money, etc.—Commissioners' courts or road commissioners may accept donations of money, lands, labor of men, teams or tools, or any other kind of property or material to aid in building roads in their counties, and may authorize any person to make a drain along any public road for the purpose of draining his land, and require the person draining his land to do such work under the direction of the road commissioner. (Id. sec. 8.)

Art. 6952. (4762) Law cumulative.—This chapter shall not be construed to repeal any existing law, but it is cumulative and in aid of existing law; provided, that when road commissioners are employed the county commissioners are not required to supervise the roads as required by article 6901 of the Revised Statutes; provided, nothing in this law shall be construed so as to require more than five days' service in one year of any citizen. (Id. sec. 9.)

CHAPTER SIX

ROAD SUPERINTENDENTS

Art. 6953. (4763) Commissioners' court may employ superintendent for county.—The commissioners' court of any county in this state may appoint one road superintendent for such county, or one superintendent in each commissioners' precinct, and such courts are authorized by an order made at any regular term thereof to determine whether there shall be one road superintendent for the county or one for each of the commissioner's precincts therein. Such order shall be entered on the minutes of such court, and shall not be void for want of form, but a substantial compliance with the provisions of this chapter shall be sufficient; provided, no county shall be under the operation of this law whose commissioners' court does not appoint a road superintendent or superintendents as herein provided. (Acts 1891, p. 149, sec. 1.)

Art. 6954. (4764) May determine number to be appointed.—In case such commissioners' court shall determine that there shall be one road superintendent, as provided in the preceding article, such court shall appoint a competent road superintend-

ent for such county, and in case it is determined that there shall be four superintendents, then such court shall appoint a competent person as road superintendent for each commissioner's precinct in such county. (Id. sec. 2.)

Art. 6955. (4765) Oath and bond of superintendent.—Each road superintendent, whether county or precinct, shall within twenty days after his appointment take and subscribe the oath required by the constitution, and enter into bond payable to the county judge and his successors in office, with good and sufficient sureties, to be approved by the county judge, in such sum as may be fixed by the commissioners' court, conditioned that he will faithfully do and perform all the duties required of him by law or the commissioners' court and that he will pay out and disburse the funds subject to his control as the law provides, or the commissioners' court may direct, which bond shall be filed and recorded as other official bonds and shall not be void for the first recovery, but may be sued on from time to time until the full amount is exhausted. (Id. sec. 3.)

Art. 6956. (4766) Qualifications.—Every road superintendent shall be a qualified voter in the county or precinct, as the case may be, for which he is appointed, and shall hold his office for two years or until his successor is appointed and qualified, but in all cases where the condition of the roads does not demand the continued services of the superintendent, his salary may in the discretion of the commissioners' court be suspended. The commissioners' court may for good cause remove any road superintendent, and in case of vacancy from any cause may appoint a successor, who shall hold his office for the unexpired term. (Id. sec. 4.)

Art. 6957. (4767) Salary.—Each road superintendent shall receive such salary as may be fixed by the commissioners' court, to be paid on the order of said court at stated intervals, but the salary of the county superintendent, in counties of less than fifteen thousand inhabitants, shall never exceed one thousand dollars per annum, and in counties of more than fifteen thousand inhabitants, it shall not exceed twelve hundred dollars per annum. The salary of precinct superintendents in counties of less than fifteen thousand inhabitants shall not exceed three hundred dollars per annum and in counties of over fifteen thousand inhabitants it shall never exceed four hundred dollars per annum. (Id. sec. 5.)

Art. 6958. (4768) Shall have supervision, etc., over roads subject to commissioners' court.—The road superintendent, subject to the orders and directions of the commissioners' court, shall have the general supervision over all the public roads and highways of his county or precinct, as the case may be, and shall superintend the laying out of new roads, the making and changing of roads therein, the building of bridges therein (except where otherwise contracted), the working of the roads therein and all repairs to be made on the same, and over all county convicts worked on such roads, but this shall not prevent the commissioners' court from employing a person to watch and manage such convicts and direct the work to be done by them. Said road superintendent shall take charge of all tools, machinery, implements and teams placed under his control by the commissioners' court, and execute his receipt therefor, which shall be filed with the county clerk, and he shall be responsible for the safe keeping of all such machinery, tools, implements and teams, and the proper expenditure and paying out of all money belonging to the road fund that may come into his hands, and shall be liable for the loss, injury or destruction of any such tools, teams, implements or machinery, unless such loss occurred without his fault, and for the wrongful or improper expenditure of any such money, and upon the expiration of his term of office, or in case of his resignation or removal, he shall deliver all such money and property to his successor or such other person as the commissioners' court may direct. (Id. sec. 6.)

Art. 6959. (4769) Roads and bridges to be kept in repair; his duty, etc.—It shall be the duty of each road superintendent to see that all of the roads and bridges in his county or precinct, as the case may be, are kept in good repair, and he shall, under the direction of the commissioners' court, inaugurate and carry out a system of working, grading and draining the public roads in his county or precinct, and shall see that every person subject to road duty in his county or precinct performs the work to which he is liable under the law. He shall act as supervisor of the roads in his county or precinct, as the case may be, and perform all the duties of supervisor that now devolve on the county commissioners under the existing laws in counties not adopting this law, and he shall do and perform such other service as may be required of him by the commissioners' court. (Id. sec. 7.)

Art. 6960. (4770) County shall be divided into precincts or districts.—Each road superintendent in counties where the commissioners' court so directs, as soon as practicable, shall divide his county or precinct, as the case may be, into road districts of convenient size, to be approved by the commissioners' court, and define the boundaries thereof and designate the same by number, which boundaries shall be recorded in the road minutes of the commissioners' court; and he shall ascertain the names of all persons subject to road duty in each district and keep a record thereof and report the same to the commissioners' court. (Id. sec. 8.)

Art. 6961. (4771) Shall call out all persons liable to work, etc.—Every road superintendent shall have power, and it shall be his duty, to call out all persons liable to work on the public roads at any time and in such numbers as he may deem necessary to work the roads in their respective districts, and he shall utilize all such labor to the best advantage in connection with other labor on the roads. The call shall be summons served in the manner and for the length of time prescribed by the law regulating the calling out of hands by overseers, but no person shall be compelled to work outside of his road district. The road superintendent may appoint any person subject to road duty in any district to summon the hands to work the roads therein, and such person shall be exempt from road service as many days as

he was actually engaged in summoning the hands, and in case of emergency he may appoint a deputy to supervise any particular work. He may also contract with any person subject to road duty for the use of teams, and permit such person to discharge his road duty by the use of such double team, but he shall never allow more than two dollars a day for any team, nor more than three dollars for any hand and double team. (Id. sec. 9.)

Art. 6962. (4772) Shall make reports.—Each road superintendent shall make a report, under oath, to the commissioners' court at each regular term thereof, showing an itemized account of all money belonging to the road fund he has received, from whom received, and what disposition he has made of the same, the condition of all roads and bridges in this county or precinct, as the case may be, and such other matters as the court may desire information upon, and shall make such other report at such times as such court may require. (Id. sec. 10.)

Art. 6963. (4773) Commissioners' court may hire or purchase all machinery, etc., for working roads.—The commissioners' court of any such county is authorized to purchase or hire all necessary road machinery, tools, implements, teams and labor required to grade, drain or repair the roads of such county, and said court is authorized and empowered to make all reasonable and necessary rules, orders and regulations not in conflict with law for laying out, working and otherwise improving the public roads, and to utilize the labor and money expended thereon, and to enforce the same. But no change in any road shall be made that lengthens the same without it is to the benefit of the traveling public or for the protection of private property, and then only upon the unanimous consent of the commissioners' court. (Id. sec. 11.)

Art. 6964. (4774) May employ sufficient force, etc.—Each road superintendent shall employ sufficient force to enable him to do the necessary work in his county or precinct, as the case may be, having due regard for the condition of the county road and bridge fund and the quality and durability of the work to be done, and shall buy or hire such tools, teams, implements and machinery as the commissioners' court may direct, and he shall work such roads in such manner as the commissioner may direct, and such work shall at all times be subject to the general supervision of the commissioners' court. (Id. sec. 12.)

Art. 6965. (4775) Shall make the best contracts, etc.—Each road superintendent shall make the best contract possible for all labor, tools, implements or machinery that he is authorized to hire or purchase, and in payment therefor he shall issue to the person entitled thereto his certificate, showing the amount due and the purpose for which it was given, and upon approval by the commissioners' court a warrant shall issue therefor to the holder thereof on the county treasurer, to be paid by him out of the proper fund as other warrants. All such certificates shall be dated, numbered and signed by the road superintendent, and he and his sureties on his official bond shall be liable for all loss or damages caused by the wrongful issue of any such certificate or any extravagance in the amount thereof. (Id. sec. 13.)

Art. 6966. (4776) May improve roads and bridges by contract.—The commissioners' court of any such county may, when deemed best, construct, grade, gravel or otherwise improve any road or bridge by contract. In such case said court or the county judge may advertise, in such manner as said court may determine, for bids to do such work and the contract shall be awarded to the lowest responsible bidder, who shall enter into bond with good and sufficient sureties for the faithful compliance with such contract, but said court shall have the right to reject any and all bids. At the time of making any such contract the said court shall direct the county treasurer to pass the amount of money stipulated in such contract to a particular fund for that purpose, and the treasurer shall keep a separate account of such fund; and the same shall not be used for any other purpose, and can only be paid out on the order of said court. (Id. sec. 14.)

Art. 6967. (4777) May require county convicts to work on roads.—The commissioners' court may require all county convicts not otherwise employed to labor upon the public roads under such regulations as may be most expedient. Each county convict worked on the public roads in satisfaction of any fine and costs shall receive a credit thereon of fifty cents for each day he may labor. And the commissioners' court may order that the county pay to the officers of court as much as one-half of the costs due them and adjudged against such convict, and upon such order such payment shall be made. But no such costs nor any part thereof shall ever be paid until such convict has worked out the entire amount of such fine and costs as provided by law, and then only upon a certificate from such county or precinct superintendent to the effect that such costs have been so worked out. The commissioners' court may grant a reasonable commutation of time for which a convict would be compelled to work to pay his fine and costs, or for which he is committed, as a reward for faithful services and good behavior, and such court shall make proper rules and regulations under which such commutations may be granted. (Id. sec. 15.)

Art. 6968. (4778) May accept donations, etc.—The commissioners' court may accept donations of money, land, teams, tools or labor, or any other kind of property or material, to aid in building or keeping up roads in the county, and said court or any road superintendent, by and with the concurrence of the commissioners, may authorize any person to make a drain along any public road, the same to be done under the direction of the road superintendent, or such other person as said court may direct. (Id. sec. 16.)

Art. 6969. (4779) May retain old system of working roads.—The commissioners' court of any county may retain the system of working hands under road overseers as provided by general laws, and place such overseers under control of a county or pre-

cinct superintendent, under such lawful regulations as said court may prescribe, or may work with overseers without any superintendent, as may be deemed best. (Id. sec. 17.)

Art. 6970. (4780) May, in counties levying special tax, exempt persons from working roads.—The commissioners' court of any county in any county in which a special tax for the maintenance of the public roads is levied and collected, as provided for in section 9 of article 8 of the constitution, shall not be compelled to require persons subject to road duty to work on the roads, as prescribed in existing general laws, but in such counties the roads shall be worked wholly by taxation, or by taxation in connection with road service, as such court may deem best. In any such county such court may reduce the number of days that persons liable to road duty may be required to work on the roads, but can never increase the number above five days in any one year. (Id. sec. 18.)

Art. 6971. (4781) Superintendent to keep accounts.—Each road superintendent shall keep an accurate account of all moneys received by him on account of the road or bridge fund, and pay the same over to the county treasurer within ten days after its collection, taking his receipt for the same. (Id. sec. 19.)

Art. 6972. (4782) Parties misplacing bridge shall be liable, etc.—Any person who shall knowingly or wilfully destroy, injure or misplace any bridge, culvert, drain, sewer, ditch, signboard, mile post or tile, or anything of like character, placed upon any road for the benefit of the same, shall be liable to the county and any person injured for all damages caused thereby. (Id. sec. 22.)

Art. 6973. (4783) Delinquent poll tax payers to be subject to three days' road duty.—The county superintendent or the precinct superintendent, as the case may be, shall obtain from the tax collector of their counties as soon after the first day of January of each year as practicable, and before the first day of May thereafter, a full list of the delinquent poll tax payers of such county for the previous year, and the persons so appearing on said list and who are such delinquent poll tax payers shall be subject to road duty for the period of three days during such year, and they shall be summoned, as in other cases, to work the roads in the road district or precinct in which such person may reside; and the performance of the road service provided for in this article shall not exonerate the persons from any other road duty to which the persons performing the same may be subject, but this shall be taken as cumulative. The persons required to do road duty under the provisions of this article shall be subject to prosecution as provided in this chapter or other law of this state, and subject to the same liabilities and punishments provided for in other cases for failing to appear or do good work, when summoned so to do, as provided for by this chapter or other law of this state, and all such laws shall apply to parties required to work under the provisions of this article. And when they are convicted for so failing to work the roads, shall satisfy the fine and costs as in other misdemeanor convictions. But any person summoned to work on the road under the provisions of this article may satisfy such summons and be relieved from such duty by paying to the county road or precinct superintendent, as the case may be, three dollars; one-third of which sum shall go to the free school fund, and the balance to the road and bridge fund. (Id. sec. 23.)

Art. 6974. (4784) "Roads," "work" and "working" defined.—The term, "road," as used in this chapter, includes roadbed, ditches, drains, bridges, culverts, and every part of such road, and the terms, "work" and "working" include the opening and laying out of new roads, widening, constructing, draining, repairing, and everything else that may be done in and about any road. (Id. sec. 24.)

Art. 6975. (4785) Law cumulative.—This law shall be cumulative of all other general laws on the subject of roads and bridges not in conflict herewith, and where not otherwise provided herein such general laws shall apply; but in case of conflict with other general laws the provisions of this chapter shall govern. (Id. sec. 25.)

Art. 6976. Counties exempt.—The counties of Grayson, Travis, Houston, Dallas, Limestone, Fayette, Galveston, Cherokee, Wood, Rains, Harrison, Shelby, San Augustine, Sabine, Newton, Jasper, Tyler, Morris, Victoria, Refugio, Aransas, Calhoun, Jackson, De Witt, Hopkins, Comal, Upshur, Blanco, Camp, Gillespie, Lavaca, Parker, Panola, Milam, Lamar, Hill, Smith, Gregg, McLennan, Harris, Washington, Titus, Cass, Franklin, Delta, Angelina, Nacogdoches, Bowie, Montgomery, Trinity, Red River, Henderson, Van Zandt, Tarrant and Jack counties are exempted from the provisions of this chapter; provided, that the county commissioners court of Dallas and Collin counties may accept and adopt the provisions of this Act in lieu of the special acts for Dallas, Collin, Grayson and other counties, if in their judgment its provisions are better suited to Dallas and Collin counties than the said special laws. (Acts 1911, p. 234, sec. 1.)

CHAPTER SEVEN

ROAD LAW FOR COUNTIES HAVING FORTY THOUSAND INHABITANTS OR OVER

Art. 6977. Members of commissioners' courts to be ex officio road commissioners; their duties; bond.—In all counties of this state, as shown by the United States official national census of 1900 to contain as many as forty thousand inhabitants, the members of the commissioners' court shall be ex officio road commissioners of their respective precincts; and under the direction of the commissioners' court shall have charge of the teams, tools and machinery belonging to the county and placed in their hands by said court; and it shall be their duty, under such rules and regulations as the commissioners' court may prescribe, to superintend the laying out of new roads, the making or changing of roads and the building of bridges. Each of the county commissioners shall, before entering upon the duties of road com-

missioner, execute a bond of one thousand dollars, with two or more good and sufficient sureties, payable to the county judge, and his successors in office and to be approved by the county judge for the use and benefit of the road and bridge fund, conditioned that he will perform all the duties required of him by law, or by the commissioners' court, and that he will account for all money or other property belonging to the county that may come into his possession. (Acts 1901, p. 277, sec. 1.)

Art. 6978. Their powers.—The commissioners' court shall have full power and authority, and it shall be their duty, to adopt such system for working, laying out, draining and repairing the public roads as they may deem best, and from time to time, said court may change their plan or system of working. The commissioners' court shall have the power to purchase such teams, tools and machinery as may be necessary for the working of public roads. Said court shall have the power to construct, grade, or otherwise improve any road or bridge by contract. In such cases, said court or county judge may advertise in such manner as said court may determine for bids to do the work; and the contract shall be awarded to the lowest responsible bidder, who shall enter into a bond, payable to the county judge and his successors in office, for the use and benefit of the road and bridge fund, with two or more good and sufficient sureties, to be approved by the commissioners' court, and in such sum as said court may determine, for the faithful performance of the terms of said contract, but said court shall have the right to reject any or all bids. At the time of making any such contract the court shall direct the county treasurer to pass the amount of said contract to a particular fund for that purpose; and the treasurer shall keep a separate account of said fund, and the same shall not be used for any other purpose, and can only be paid out on the order of said court; and the said court shall have authority to employ any hands and teams on the public roads under such regulations and for such prices as they may deem best. (Id. sec. 2.)

Art. 6979. May work convicts.—The commissioners' court shall require all male county convicts, not otherwise employed, to labor on the public roads, under such regulations as they may prescribe, and each convict so worked shall receive a credit of fifty cents on his fine first, and then on the costs, for each day he may labor. The commissioners' court shall at each term allow the officers and witnesses such amount of their costs as have been satisfied in full by labor of such convicts, for the arrest and conviction of said convicts as it may deem best, not to exceed one-half of such costs; which amount shall be paid to the officers and witnesses out of the road and bridge fund on the warrant of the county judge; provided, that this shall not be so construed as to relieve any convict from the payment of all costs for which he may be liable under the laws of this state. The commissioners' court may grant a reasonable commutation of time for which a convict is committed as a reward for faithful service and good behavior; provided, that such commutation shall in no case exceed one-tenth of the whole time. The commissioners' court may provide the necessary houses, prisons, clothing, bedding, food, medicine, medical attention and superintendents and guards for the safe and humane keeping of the convicts. The commissioners' court may provide such reasonable regulations and punishment as may be necessary to require such convicts to perform good work, and to provide a reward not to exceed ten dollars, to be paid out of the road and bridge fund, for the recapture and delivery of any escaped convict, to be paid to any person other than the guard or person in charge of such convict at the time of his escape. (Id. sec. 3.)

Art. 6980. Shall have control of overseers.—Each road commissioner shall have control of all road overseers in his precinct, and shall deliver to each of them such teams, tools and machinery necessary in working the roads in the precinct of said overseer, so far as he has been supplied therewith by the commissioners' court, taking a receipt therefor, specifying each item and giving its value, which receipt shall be a full answer for the liability of the road commissioner, and shall fix the liability of the road overseer; and the road commissioner or road overseer, who shall have been intrusted with any teams, tools or machinery belonging to the county, shall be liable for all damages that may occur to the same while in his possession caused by his negligence or want of due care of same. It shall be the duty of the road overseer, when he has finished work on his road, to return to said road commissioner all teams, tools and machinery received from him and take up the receipt given therefor. (Id. sec. 4.)

Art. 6981. Shall direct work.—It shall be the duty of each county commissioner, when acting as road commissioner, to inform himself of the condition of the public roads in his precinct, and shall determine what character of work shall be done on said roads, and shall direct the manner of grading, draining or otherwise improving the same, which directions shall be followed and obeyed by all road overseers of his precinct. (Id. sec. 5.)

Art. 6982. May cause road hands to be called out, when; credit allowed for use of teams; penalty for non-compliance with instructions.—The road commissioner may require each road overseer in his precinct to call out the hands in such numbers as may be sufficient to perform the work, but no road hand shall be required to work exceeding five days in any one year, unless the term of service as now provided by law shall be extended beyond that time; and provided, that all road hands in a particular road precinct shall as far as practicable be worked a uniform time. Each road overseer shall have full control of all road hands in his precinct, and shall see that each hand, when called out, shall perform a good day's work; and, if any hand when so called out shall fail or refuse to do a good day's work, or to work in the manner the overseer may direct, he shall be liable to the same penalty as if he had failed to appear in obedience to the summons. And the road overseer may, when he deems expedient or when so directed to do by the road commissioner

of said commissioner's precinct, and at the time of notifying any hand to work upon the road, also summon such hand as may be the owner of a team suitable for road work, to bring such team with him to be used in working upon the public roads during such time as the hand may be notified to work upon the public roads; and, after such notice given, if such hand shall fail or refuse to bring his team with him as notified to do, he shall be liable to the same penalty as if he had failed to appear in obedience to the summons; provided, that any hand for so doing shall be credited with and allowed two and one-half days upon his time for which he is liable for road duty for each day he may work in connection with and while furnishing such team, and one and one-half days for his team without such hand. (Id. sec. 6.)

Art. 6983. Persons exempted from road duty, how.—A person liable for road duty, who shall, on or before the first day of February of any year, pay to the county treasurer the sum of three dollars, shall be exempt from road duty for such year, beginning on the first day of February. The county treasurer shall receive and receipt for all money so paid him and place the same to the credit of the road and bridge fund, and he shall keep a separate account for each precinct from which it is received. The county treasurer shall, on the third day of February, or as soon thereafter as practicable, furnish to each road commissioner a list of all persons in their respective precincts that have paid said sums, as provided in this article. (Id. sec. 7.)

Art. 6984. May take material for road work; compensation; condemnation proceedings.—When to the commissioners' court it may appear expedient to build, repair or maintain any public road in their county, the timber, earth, stone, gravel, or other necessary material, most convenient therefor may be used; but in such case the owner thereof shall be paid out of the road and bridge fund of such county a fair compensation for the same as may be agreed upon by the owner thereof, or his agent, and the commissioners' court; provided, however, that should said owner, or his agent, and the said commissioners' court fail to agree upon the compensation to be paid therefor, then the county, upon the order of said court, shall proceed to condemn the same in the same manner that a railroad company can condemn lands for right of way; and the same proceedings shall be had as would exist if the proceedings were by a railroad company, except as hereinafter provided. (Id. sec. 8.)

Art. 6985. County not to give bond; compensation of commissioners appointed to condemn.—The county shall not be required, in proceedings to determine the compensation to be paid for material to build, repair or maintain public roads, in any case to give bond for costs, and the commissioners appointed to condemn such property necessary as aforesaid shall receive for their services two dollars for each and every day that they may be necessarily engaged in the performance of their duties as such commissioners, to be paid out of the road and bridge fund on the order of the commissioners' court, and the compensation awarded by said commissioners for the necessary material shall be paid to the owner or deposited with the county treasurer to the credit of such owner, and when so paid or deposited the county shall have the right to enter upon and use said material. If the owner of such material, or said county, is not satisfied with the compensation awarded said owner, he or said county may appeal therefrom as in cases of appeal in proceedings by railroad companies to condemn right of way. (Id. sec. 9.

Art. 6986. Penalty for failure to comply with road duty.—If any person liable to work upon the public roads, after being legally summoned, shall fail or refuse to attend, either in person or by able and competent substitute, or fail or refuse to furnish his team or tools at the time and place designated by the person summoning him, or to pay to such road overseer the sum of one dollar for each day he may have been notified to work on the public roads, or to pay to such overseer the sum of one dollar and fifty cents for each day he may have been notified to furnish his team for road work, or having attended shall fail or refuse to perform good service, or any other duty required of him by law, or the person under whom he may work, or if any one shall fail to comply with any duty required of him as provided by law he shall be deemed guilty of a misdemeanor and, upon conviction thereof, punished as provided in the Penal Code. (Id. sec. 10.)

Art. 6987. Compensation of commissioners.—Each county commissioner, as compensation for his services as ex officio road commissioner of his precinct, shall be entitled to such sum as may be prescribed by the commissioners' court of his county, not to exceed four dollars per day for the service actually performed; provided, that he shall not receive more than fifty dollars per month; which amount shall be paid monthly out of the road and bridge fund, when the account shall have been allowed by the commissioners' court; and said court shall not approve said account unless the road commissioner presenting it shall sign an oath that the account is just, true and unpaid, and specifying the number of days' work actually performed by him, nor shall he be entitled to any other or further compensation for supervising public roads, except what is allowed by this act. (Id. sec. 11.)

Art. 6988. This chapter cumulative.—The provisions of this chapter shall be held and construed to be cumulative of all general laws of this state on the subject of roads when not in conflict therewith, but in case of such conflict this chapter to control; and provided, this chapter shall not be in operation in any county of this state, unless the commissioners' court thereof in their judgment may deem it advisable, and then only by an order of the commissioners' court when all the members are present, made at some regular term thereof, accepting the provisions of this chapter. Such order shall be entered on the minutes of said court, and shall not be void for want of form, but a substantial compliance with the provisions thereof shall be sufficient. (Id. sec. 12.)

Art. 6989. Certain counties excepted—The provisions of this chapter shall no

apply to the counties of Fannin, Lamar, Grayson, Collin, Hunt, Dallas and Bell. (Id. sec. 13.)

CHAPTER EIGHT

DRAINAGE OF PUBLIC ROADS

Art. 6990. What roads are public; commissioners to cause drains to be constructed.—For the purpose of this chapter, all public roads and highways that have been heretofore, or that may hereafter be, laid out and established agreeable to law, and all roads and highways that have been opened to and used by the public for a period of ten years prior to March 25, 1897, and which have not been discontinued or closed to the use of the public agreeably to law, are hereby declared to be public roads.

The commissioners' court of any county in this state, at any regular session thereof, may, in the manner hereinafter provided, and the said court shall have power to cause to be constructed and maintained, as hereinafter provided, ditches, drains and watercourses on and within the exterior lines of all public roads situated within any of the said counties, sufficient in capacity to carry off and into the natural waterways of the county, all surface water reasonably adjacent and liable to collect in said ditch, drain, or watercourse from natural causes, or by means of the construction of private lateral ditches as hereinafter provided for, and shall also have power to construct, in connection with such drain or watercourse any side, lateral, spur or branch ditch or watercourse necessary to the accomplishment of the purposes of this act; provided, however, that no ditch, drain or watercourse shall be constructed along any public road without there being constructed, at the same time, a ditch, drain, or watercourse as an outlet to a natural waterway, sufficient in capacity to carry off all water that may collect therein; provided, further, that the word, "ditch," in this chapter hereafter shall be construed to embrace any ditch, drain, or watercourse that may be constructed under the provisions of this act. (Acts 1897, p. 66, secs. 1 and 2.)

Art. 6991. Shall not change natural course of stream.—No road overseer, or any court, shall, on petition or otherwise, have the power to change the natural course of any branch, creek or water stream, but such volume of water shall always enter and cross said road at its natural crossing; and overseers shall always, in draining their roads, provide a culvert sufficiently broad and tall to permit said stream to flow at high tide, from its intersection with said road, across its natural outflow at the opposite natural channel. (Id. sec. 21.)

Art. 6992. Petition.—Before the commissioners' court of such county shall have the power to order the construction or establishment of any ditch, drain, or watercourse, provided for in this chapter, there shall be filed with the county clerk of the county court of said county a petition signed by at least one hundred taxpayers and voters of said county, which petition shall set forth the necessity and availability for such drainage system, and the number of miles of public roads within such county, as accurately as the same may be known, and as near as practicable, the width and depth required for the ditches to be constructed along the first class roads of the county. Said petition shall, also, separately state the name and location of each of the natural waterways of such county crossed by each of the first-class public roads of the said county, and the distance of said natural waterways, one from the other, along said road; said petition shall also state the names and residences, if known, of the owners of the lands adjacent to each of said first class public roads, and within one mile thereof, and, if unknown, the same shall be stated therein. (Id. sec. 3.)

Art. 6993. Notices.—Upon the filing of said petition with the clerk of the county court, he shall issue five notices in writing, containing a brief statement of the contents of said petition, commanding all persons interested to appear at the next regular term of the commissioners' court of such county and contest the same. One of said notices shall be posted at the court house door of such county, and one each at four other public places in such county, no two of which shall be in the same town or city, for twenty days prior to the first day of the next regular term of the commissioners' court after the issuance thereof. Said notices shall be posted by the sheriff of the county, who shall make due returns to the clerk of the county court of such notices, on or before the said first day of the term; and for such services the sheriff shall receive a fee of three dollars, and the clerk shall receive a fee of one dollar and fifty cents. (Id. sec. 4.)

Art. 6994. Protests, hearing.—At the next regular term after the filing of the petition and issuance of notices, the commissioners' court shall hear and determine the same in connection with all protests, remonstrances or objections thereto; and, if they find that the adoption of the drainage system provided for herein is necessary, advisable, or for the public benefit, or for the best interest of the county, the said court shall so order, and the order shall be entered at length upon the minutes of the court, and become a part of the record thereof, and the same shall recite the time, character, and manner of service of notice; and, if it appears therefrom that notice has been given as provided for herein, the said order shall be final, and thereafter no question shall be raised as to the power of the court to hear and determine said application. (Id. sec. 5.)

Art. 6995. Surveyor employed.—At the same or any succeeding term of the commissioners' court after the entry of the order adopting the drainage system provided for herein, the commissioners' court shall employ a competent surveyor, who shall be an engineer, to run a line of levels along the public roads of the county, and to measure the same from the beginning to the terminus of said road, and to measure the distance of each waterway crossed by said roads from the beginning point, together with the frontage of each tract of land abutting on said road, and also the distance from said road of any adjacent natural waterway, with line of levels thereto; provided, that the said survey and the drainage system herein provided for shall be first applied to the first class roads of such county, and thereafter to roads of the second and third class; and provided, further, that nothing herein shall be con-

strued to prohibit the said court from constructing one or more ditches at the same time, as the financial condition of the county will permit. (Id. sec. 6.)

Art. 6996. Survey made; report.—The surveyor shall, as soon as practicable after his employment, proceed to make an accurate survey and system of levels as provided for in the preceding article, and shall cause stakes or monuments to be placed along said line at intervals of one hundred feet, together with such intermediate stakes as may be necessary, numbered progressively, and shall establish permanent bench marks along said lines at intervals of one mile or less, as may be necessary, and shall establish, by stake or monument of a different character and appearance from all other stakes or monuments, the highest point upon said road between each of the natural waterways crossed by the road; said surveyor shall also measure and establish, by suitable marks, the frontage of each tract of land abutting on said road; and, if there be a natural waterway adjacent to the line of said road and ditch and the same is necessary to be utilized as an outlet for the water at any point on said ditch, the surveyor shall measure the distance to same, and run the line of levels thereto, at the nearest practicable point on said road and ditch. He shall prepare a map showing the location of said ditch or ditches, together with the position of stakes or monuments with numbers corresponding with those on the ground, and the position of bench marks, with their elevations referred to an assumed or previously determined datum. Said map shall also show the lines and boundaries of adjacent land, and the courses and distances of any adjacent watercourse, together with a profile of the line of the ditch, which shall show the assumed datum and the grade line of the bottom of the same, and the elevation of each stake, monument, or other important feature along the line, such as top of banks, and bottom of all ditches or watercourses, and surface of water, top of rail, and bottom of tie, foot of embankment, bottom of borrow pits of all railroads. And said map, or the explanation accompanying the same, shall, in tabular form, give the depth of cut, width at bottom and width at top, at the source, outlet, and at each one hundred feet stake or monument to said ditch, drain or watercourse. Said map, or the explanation accompanying the same, shall show the total number of cubic yards of earth to be excavated and removed from said ditch between each natural waterway into which the water is to be conveyed, and an estimate of the cost of each portion of the said ditch or ditches lying between natural waterways crossed by said road, together with an estimate of total cost of the whole work. The surveyor shall, as soon as the survey is completed, prepare and file, together with his report and map as herein provided for, specifications in detail for the execution of the same; and, whenever in the opinion of the surveyor it may be advantageous to run said ditch underground through drainage tiles, he shall so state in said report, map and specifications, together with the statement of the locality of said underground ditch, and length thereof, and the dimensions or character of tiling or other material required therefor. The survey, report, map, explanation and estimate herein provided for shall be made and filed with the county clerk of the county by the surveyor as soon after his employment as may be practicable, having in view an accurate and complete report upon the physical conditions to be met in the construction of said ditch or ditches. (Id. sec. 7.)

Art. 6997. Jury of viewers, duties; report.—At any regular or called session of the commissioners' court after the filing of the report, map, explanation, specifications and estimate of the surveyor, provided for in the preceding article, the court shall appoint a jury of five freeholders of the county not interested directly in the construction of the proposed work as a land owner adjacent to or abutting on said ditch or ditches, and not of kin to any of the parties so directly interested therein, who shall constitute a jury of viewers who shall meet at a time and place to be specified by the said court in the order appointing them; and it shall be the duty of the county clerk thereupon to issue to the said viewers a certified copy of the petition and order of the court, together with the original report, map, explanation, specifications and estimate of the surveyor; and, if said jury of viewers shall fail or refuse from any cause to perform the duties required under such appointment, or if their report, from any cause should not be adopted, the court may, at any succeeding term, appoint another jury of viewers, whose appointment and duties shall be the same as required in the first instance. The jury of viewers shall proceed at the time and place specified in the order of the court appointing them, after having given notice to each abutting land owner, and owner of land within one mile of said ditch, as hereinafter provided, and after viewing the line of the proposed ditch, and after hearing all protests, claims and remonstrances offered, they shall take the several partial estimates, and the estimate of the total cost of the work as made by the surveyor as a basis, and they shall set apart and apportion to each parcel of land abutting on said road and ditch, or within one mile of the same, and to each person, firm or corporation owning the same, the proportionate share chargeable to such tract of the one-half of the total cost of the said ditch, drain and watercourse, taking into consideration the relative amount of benefit derived by said land from the construction, thereof; and they shall assess the amount of damages or compensation due to each land owner through whose land any spur, branch, or lateral ditch, is or may be constructed under the order of appointment, which sum shall be paid by the county before the opening of such ditch is begun; provided, that said jury of viewers shall have lines run parallel to the line of said ditch at a distance of one mile upon either side of the same; and no lands lying outside of said lines shall be assessed with any portion of the cost of such ditch and drain, but all lands and tracts of land lying within said lines may be assessed their proportionate share of said one-half of the total cost, taking into consideration the amount or value of benefits derived by said lands, or tracts of land, from the construction of such ditch. The jury of view shall make a report to the com-

missioners' court, under oath, as soon as practicable after their meeting, signed by at least three of said jury, and duly verified under oath, and shall return with their report a description, as accurate and complete as may be, of each tract or parcel of land assessed by them, together with the number of acres and the name of the owner or owners thereof, and the amount by them assessed against each tract, and the owner thereof. The jury of viewers shall also return with their report the map, profile, explanation and estimates of the surveyor, together with a copy of the specifications; and the same shall be filed with the clerk, and shall become a public record and be preserved as such, and the court shall act upon said report at the next regular or called term, and approve or reject the same; provided, that the court may appoint separate juries of view for each road and ditch to be constructed, if deemed desirable or of advantage to the public. (Id. sec. 8.)

Art. 6998. Oath of viewers.—The said jury of viewers, before proceeding to act as such, shall take the following oath before an officer authorized to administer the same, to wit: "I do solemnly swear that I am not directly interested in the construction of the proposed ditch, either as the owner or otherwise, of adjacent land lying within one mile thereof, and that I am not of kin to any person who is so interested. I further swear that I have no bias or prejudice towards any person directly interested in said ditch, and that I will assess the amount of expense due on and by all adjacent lands lying within one mile of said ditch, according to law, without fear, favor, hatred or hope of reward, to the best of my knowledge and ability. So help me God." (Id. sec. 9.)

Art. 6999. Assessment of abutting owners.—The said jury of view, as provided for in this chapter, shall issue a notice in writing to the land owner of each abutting tract along said ditch, and to each land owner, any part of whose land lies within one mile of the line of said ditch, or to his or their agent or attorney, of the time and place when they will assess the one-half of the expense incidental to the construction of the ditch or ditches specified in the order of appointment; which notice shall be served upon such owner, his agent or attorney, at least five days before the day named therein; said notice may be served by any person competent to testify; and a duplicate of said notice, together with the returns of said service, shall be returned and filed with the report of the jury of viewers. If such owner is a non-resident of the county, and has no resident agent or attorney therein, the notice shall be given by publication in a newspaper published in the county, as notices are required to be given to non-resident defendants in actions in the district courts; and said notice shall be complete after four weeks publication thereof prior to the date named for the meeting of the jury of view; and at any time thereafter the jury of viewers may proceed to assess the proportionate part of such expense against said non-resident land owner, and the land owned by him subject thereto. The cost of such publication shall be paid by the county, on an order of the commissioners' court. (Id. sec. 10.)

Art. 7000. Action of commissioners court on protests final.—Any person who may be affected by such ditch, drain, or water course, or any citizen of the county, shall have the right to appear before the commissioners' court on the hearing of the petition for the establishment of the drainage system, and shall have the right to be heard upon their protest, remonstrances and objections thereto; but the action of the court thereon shall be final; and, in case the court shall refuse to adopt the drainage system provided for herein, no application therefor shall be filed or heard by said court for one year thereafter. (Id. sec. 11.)

Art. 7001. Objections and claims submitted in writing to viewers; failure to submit same a waiver of claim.—Any person whose land may be affected by such ditch, drain or water course shall have the right to appear before said viewers and freely express their opinions on all matters pertaining to the assessment of expense against them; and the owner of any such lands may at the time stated in such notice, or previously thereto, present to the jury a statement in writing of any objections to, or dissatisfaction therewith, and any claim for damages which he may have sustained by reason of the making of said ditch or drain; and a failure to make such objection or claim for damages or compensation in writing as herein specified shall be deemed a waiver of all claim or right thereto, all of which said claim or objection shall be returned to the commissioners' court in connection with the report of the viewers; provided, that any adjacent land owner shall have the right to appear before and be heard by the commissioners' court on his protest or remonstrance or claim against the action of the jury of viewers. (Id. sec. 12.)

Art. 7002. Appeals.—Any person, firm, or corporation, aggrieved by the assessment of expense for construction of any ditch or ditches by the jury of view, or any person, firm, or corporation, aggrieved by the assessment of damages or compensation allowed by the jury for land taken or applied to the construction of any lateral spur, or branch ditch, may appeal from the final order of the commissioners' court approving the report of said jury to any court within the county having jurisdiction of the amount of such assessment, by giving notice of appeal in open court and having the same entered as a part of the judgment of the court, and by filing, within ten days thereafter, a transcript of the proceedings had in the commissioners' court, with the justice or clerk of the court to which appeal is taken, together with an appeal bond with at least two good sureties, to be approved by such clerk or justice, in double the amount of the probable costs to accrue, conditioned that the appellant will prosecute his appeal to effect, and pay all costs that may be adjudged against him in said court; and, if the appeal is taken from an assessment of expense levied by the jury of viewers against the appellant, the said appeal shall be heard upon the following issue, to-wit: Whether the assessments made against the appellant for the construction of such ditch are in proportion to the benefits to be derived therefrom. And if the appeal is taken from an assessment of com-

pensation made by the jury of viewers in favor of appellant for land taken and applied to the construction of such ditch, or any portion of the same, the said appeal shall be heard upon the following issue, to-wit: Whether the assessment of compensation made by the jury is adequate to the injury occasioned and to the value of the land. (Id. sec. 13.)

Art. 7003. Trial on appeal.—In the trial of all cases so appealed from the order of the commissioners' court, the burden of proof shall rest upon the appellant; and the court or jury trying the cause shall state the correct amount of expense chargeable to appellant, or the correct amount of compensation due to appellant, as found by them, and the same shall be entered as the judgment of the court thereon, and from such judgment no further appeal shall be allowed to either party; and, if the verdict of the jury shall find the appellant chargeable with a less amount of expense, or that the appellant is entitled to a greater amount of compensation as damages than was found by the jury of viewers, the costs shall be adjudged against the county; otherwise the same shall be adjudged against the appellant. Within five days after the entry of such judgment, the clerk or justice shall issue and return to the commissioners' court a certified copy of such judgment, to be filed with the papers pertaining to such ditch, and the same shall be entered by the commissioners' court as the judgment of said court, and thereafter the appellant shall be holden for, or claim, as the case may be, the amount specified in said judgment. (Id. sec. 14.)

Art. 7004. Appropriation; construction.—The commissioners' court of such county may, at the next term thereof, after the filing of the report of the jury of viewers and the entry of the order approving the same, if the report be approved, make an order setting aside such portion of the road and bridge fund, and such portion of the special road and bridge fund, if any, as may be necessary for the construction of the ditch or ditches described in the report of the jury of viewers, and shall also enter an order to the overseer or overseers of the road adjoining said ditch or ditches, or to the supervisor of the road, or to the road commissioner, commanding him to construct such ditch or ditches in accordance with the specifications of the surveyor, which shall be turned over to him for his information, and that the earth taken therefrom shall be used in making a raised road adjoining said ditch or ditches; and the court shall further order that all the road hands apportioned to said road, and that any teams, tools or materials, belonging to the county, and necessary to the execution of such work, be apportioned to said overseer, supervisor, or commissioner, for the completion thereof; and shall authorize such overseer, supervisor, or commissioner, to employ such additional labor and teams, and to purchase tools and implements as may be necessary, to be paid for out of the road and bridge fund set aside therefor, on the order of the commissioners' court, and the said order shall further show the amount of compensation to be allowed to the said overseer, supervisor, or road commissioner for his services. (Id. sec. 15.)

Art. 7005. Special overseer employed when; duties, powers and compensation—The commissioners' court may employ some suitable and competent person, other than the overseer, road commissioner or supervisor, if to the best interest of the county, and such person shall have the same powers, duties, and responsibilities as provided for overseers, road commissioners, and supervisors in the preceding article, and the court shall enter an order showing the amount of compensation to be paid him for his services. (Id. sec. 16.)

Art. 7006. List of assessments; certificates to issue.—At the same or at any succeeding term after the entry of the order for the construction of the ditches and road way, as provided in article 7004 of this chapter, the commissioners' court shall make and enter upon the minutes of the court a list showing the names of the owners, amounts due, the tract of land, original grantees number of acres covered by each assessment of expense, as made and reported by the jury of viewers, and as approved by the court; and the county clerk shall issue a certificate against each person on said list showing the amount of such assessment, and for what ditch or road the same was issued and the tract of land on which said amount was assessed; which certificate shall be signed by the county judge in open court, and attested under the hand and seal of the said county clerk, which fact shall be noted upon the minutes of said court. (Id. sec. 17.)

Art. 7007. County treasurer to collect on certificates.—The county judge shall deliver the certificate to the county treasurer, taking his receipt therefor, which shall be filed with the papers and archives concerning such ditch; and the county treasurer shall collect the sums due on such certificates, and deposit the amount so collected to the credit of the road and bridge fund. (Id. sec. 18.)

Art. 7008. Enforcement by suit.—In case any person against whom any such certificate may be issued shall fail or refuse to pay the same to the county treasurer on demand therefor, such treasurer shall turn same over to the county attorney, who shall at once file suit thereon, and have the lien on said land, herein provided for, foreclosed, or for a personal judgment, as may be lawful. (Id. sec. 19.)

Art. 7009. Operates a lien.—All assessments, sums, and charges by the said viewers, or order of court, assessed against any lands or land and the owner or owners thereof, shall be a lien thereon, unless prohibited by the constitution of this state, and the same shall be collected in the manner provided in the preceding article; and any damages for compensation awarded by said jury of viewers to any land owner, on the order of the court, shall be paid out of the county treasury on the order of said court, from the fund set aside for the construction of such ditch or ditches. (Id. sec. 20.)

Art. 7010. Compensation of viewers and surveyor.—The said jury of viewers shall each receive the sum of three dollars

per day as compensation for their services for each day so actually engaged; and said surveyor and engineer shall receive as compensation such sum as may be allowed by the commissioners' court. (Id. sec. 21.)

Art. 7011. Lateral ditches.—Any owner of lands or tracts of land abutting on said road or ditch, or the owner of any tract of land lying wholly or partially within one mile of such road or ditch, may construct lateral drainage ditches and connect the same with such main ditch or ditches as shall be constructed under the provisions of this chapter, provided the same be done at his own cost. (Id. sec. 22.)

Art. 7012. This chapter cumulative.—The provisions of this chapter shall be cumulative to all other provisions of law, and shall not be held to repeal any existing law upon the subject of drainage. (Id. sec. 23.)

CHAPTER EIGHT A

MOTOR AND OTHER VEHICLES

See post, Penal Code, Arts. 820a-820z.

Art. 7012½. Registration of motor vehicles; application; fees; definition of terms; rules; license for two or more counties.—(a) In order to provide funds to effectuate the provisions of this Act, on and after the first day of July 1919, and on and after January 1, 1920, and annually thereafter on and after the first day of January, every owner of a motor vehicle or motorcycle in this State shall file in the office of the county tax collector of the county in which he resides or in which the vehicle he owns is being operated, on a blank provided by the State Highway Department, an application for the registration of each motor vehicle or motorcycle owned or controlled by him.

(b) Each application shall be accompanied by the requisite fee for the number of unexpired quarters of the calendar year, which fee for the registration of a motorcycle for a full calendar year shall be $3.00, and for the registration of a motor vehicle, except those hereinafter designated as "Commercial Motor Vehicles" and "Interurban Motor Vehicles," shall be 35 cents per horse-power as determined by the standard gauging power employed by the Association of Licensed Automobile Manufacturers, but no motor vehicle shall be registered for a full year for a less sum than seven ($7.50) dollars and fifty cents. The term motorcycle shall include only those motor driven vehicles with less than four wheels and with the driver sitting astride.

(c) A commercial motor vehicle, under the provisions of this Act, is a motor vehicle with a net carrying capacity of more than one ton that is used in carrying freight, for its owner or for others, whether for hire or not, or a motor vehicle of net carrying capacity of more than one ton that is used in carrying passengers for hire.

(d) An interurban commercial motor vehicle under the provisions of this Act is a motor vehicle of net carrying capacity of more than one ton that is used regularly in carrying passengers or freight for hire between cities, towns and villages in this State.

(e) For each commercial motor vehicle the annual license fee shall be based upon the net carrying capacity as follows:

Net Carrying Capacity in pounds	Annual License Fee.
2001 to 4000	$16.00
4001 to 6000	32.00
6001 to 8000	48.00
8001 to 10,000	80.00

(f) For each interurban commercial motor vehicle the annual license fee shall be based upon the net carrying capacity in pounds as follows:

2001 to 4000	$ 32.00
4001 to 6000	64.00
6001 to 8000	96.00
8001 to 10,000	160.00

(g) For a net carrying capacity greater than 10,000 pounds, a license fee shall be charged for each commercial vehicle and interurban commercial vehicle at the additional rate of $100 for each 1000 pounds increase in the net carrying capacity or fraction thereof; and no vehicle with a body wider than seven feet or of a total gross weight, when loaded with a capacity load of more than 5000 pounds per wheel or 500 pounds per inch width of tire, shall be licensed or be operated on the public highways, and no commercial vehicle or interurban commercial vehicle or trailer operated hereunder shall ever carry more than 10 per cent in excess tonnage over and above its registered carrying capacity. Any person or persons driving or operating or permitting to be driven or operated any vehicle whose gross weight exceeds the maximum weights prescribed herein shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding two hundred ($200) dollars. The maximum weights prescribed herein for commercial vehicles and interurban commercial vehicles shall apply also to trailers.

(h) Anything to the contrary, notwithstanding, upon application in writing to the State Highway Department, said department in its discretion may issue a special permit to the owner or operator of any vehicle allowing heavier or wider loads than named herein, to be moved or carried over and on the public highways and bridges. They may also issue such special permit to increase the permissible width per inch of width of tire. Such permits shall be in writing and they may limit the time and use of operation over the said highways and bridges which may be traversed and may contain such special conditions and provisions and require such undertaking or other security as the said department shall deem to be necessary to protect the public highways and bridges from injury, or provide indemnity from any injury resulting from such operation. All such special permits shall be carried in the vehicle to which they refer and upon demand shall be open to inspection of any peace officer or any officer or employé charged with care or protection of public highways.

(i) The owner, operator, driver or mover of any vehicle, object or contrivance over a public highway or bridge shall be, jointly and severally responsible for all damages which said highway or bridge may sustain as the result of driving, operating or moving such vehicle and the amount of such damages may be recovered in an action of law by the authorities in control of such highway or bridge.

(j) Applications for the registration of in-

terurban commercial motor vehicles shall state whether the vehicle is for operation in one or more counties, naming them; and, if more than one, distribution of one-half of the license fee paid for the registration of the vehicle shall be made by the county tax collector to whom the fee is paid among the counties in which such motor vehicle is operated on a mileage basis. (Acts 1917, ch. 190, sec. 16; Acts 1918, 4th C. S., ch. 71, sec. 2; Acts 1919, ch. 113, sec. 1.)

Art. 7012½a. Further registration and license of commercial and interurban commercial motor vehicles having certain carrying capacity.—All commercial and interurban commercial motor vehicles registered and licensed under existing laws and this Act, relating to the State Highway Department having a greater carrying capacity per wheel than five hundred pounds, as defined by said laws, shall, before said motor vehicles are allowed to operate over the highways and roads of this State, be further registered and licensed as follows:

The owner, or owners of said motor vehicle, or vehicles, shall make application to the county tax collector of the county where said owner resides, or has his or its principal office or place of business, accompanied by the registration certificate, or certified copy thereof, showing said motor vehicle to be registered under existing laws as defined by Section 1 hereof, and which application must show the carrying capacity in tons of said motor vehicle, for the further license to operate said motor vehicle, which application shall be sworn to and as far as practicable shall state the general route or routes and the estimated mileage thereof, in each county or counties, over which it is proposed to operate said motor vehicle and stating if a trailer may be attached to said motor vehicle and giving the carrying capacity of such trailers; but such mileage shall not include the streets of any incorporated town or city. (Said application shall also be accompanied by a bond executed by one or more good and solvent sureties or surety company authorized to do business in this State, payable to and to be approved by the county tax collector, conditioned that the owner of said motor vehicle will promptly pay, when due, the license fee in the amount and in the manner as is hereinafter provided for.) Upon receipt of said application and bond, when same is approved, the county tax collector shall issue a license in proper form prepared by the Highway Department to the owner of said motor vehicle to operate same over and along the route or routes stated in the application; and said license shall at all times be displayed in a prominent place on the motor vehicle so licensed.

(b) The owner of each commercial and interurban commercial motor vehicle registered hereunder shall keep in a separate book or books kept for that purpose, an accurate account of the number of miles traveled by said motor vehicle and trailer attached thereto, if any, and if said motor vehicle is operated in more than one county, an accurate account shall be kept of the miles traveled in each county. Said books shall at all times be open for the inspection of the county tax collector, or the duly authorized agent of said tax collector, or the counties where said motor vehicle is licensed to operate and said tax collector, or the authorized agent of either, shall have the right at any and all times to make an inspection of said books.

(c) On January 1st, April 1st, July 1st and October 1st of each year after this Act takes effect, the owner or owners of each motor vehicle licensed as herein provided shall make a statement duly sworn to by himself, or if the owner is a corporation, then by an executive officer of said corporation, directed to the tax collector of the county where said owner has his principal office or place of business, which statement shall clearly show the number of miles traversed by said motor vehicle and trailer attached thereto, if any, and if said motor vehicle has operated in more than one county, said statement shall clearly show the number of miles traveled in each county. Said statement shall be accompanied by a sufficient sum of money in lawful money of the United States, as a reasonable license fee for the extra burden placed on said highways and roads by the operation over them of the character of motor vehicle licensed hereunder as follows:

Net Carrying Capacity in Pounds.	Licensed Fee Per Mile Traveled.
2001 to 3999	½ cent
4000 to 5999	1 cent
6000 to 7999	2 cents
8000 to 9999	3 cents
10000 to 11999	4 cents

Immediately upon receipt of the licensed fee provided for in this section the county tax collector receiving same shall turn that county's portion over to the county treasurer to be placed to the credit of the general county road and bridge fund; and any portion belonging to another county, said tax collector receiving same shall immediately send such portion to the treasurer of such other county to be placed to the credit of the general county road and bridge fund of such county, the distribution of such fund to be in proportion to the number of miles traveled in each county. (Acts 1919, ch. 113, sec. 2.)

Added as sec. 16a by Acts 1919, ch. 113, sec. 2.

Art. 7012½aa. Entry in register; certificate; carrying certificate on vehicle; seal; not to apply to motor vehicles owned by state, municipality, etc.—Upon the receipt of an application for registration of a motor vehicle or motorcycle, accompanied by the proper fee, as hereinbefore provided for, the State Highway Department shall cause such motor vehicle or motorcycle to be registered in a registration book or card index kept for the purpose, and without additional charge shall cause to be furnished the owner of each motor vehicle or motorcycle so registered, a certificate of registration, which certificate shall be in the form of a card, which may be carried in the pocket, and which certificate shall contain the descriptive number so assigned to the owner of each motor vehicle or motorcycle so registered, stating the name and address of the owner, and a brief description of such motor vehicle or motorcycle, together with the name of the manufacturer and the horsepower motor-power, and such certificate shall at all times be carried upon such motor vehicle or motorcycle and subject to examination on demand of the proper officer; and the department, without additional charge, shall also cause to be issued to the owner of such motor vehicle or

motorcycle, a distinguishing seal of aluminum or other suitable material, of such size and form as the commission shall determine, having stamped thereon the words "Registered Motor Vehicle, Texas," with the year of issue inserted therein, which seal shall be of a distinctly different color for each calendar year, and shall be conspicuously displayed on the radiator of such motor vehicle, or on the front of such motorcycle, and there shall be at all times a marked contrast between the color of the letters and figures and the background of the seal; provided, however, the same combination of colors may be repeated after five years. Provided, further, that road rollers and other road building equipment owned and operated by municipalities, counties or subdivisions of counties, street sprinklers, fire engines or apparatus, patrol wagons, ambulances owned by municipalities or counties, motor vehicles owned and operated under the direction and exclusively in the official service of the United States Government, State of Texas, or any county or city thereof, shall not be required to pay the fees herein stipulated for motor vehicles, but application shall be made for and a registration number secured for such motor vehicles, and each year application for the distinguishing seal provided by the department for that year, shall be made. (Acts 1917, ch. 190, sec. 17.)

See ante, arts. 6904½-6904½u, and post, Penal Code, art. 820aaa. See also, post, art. 7012½tt.

Art. 7012½b. Registration number to be attached to motor vehicles; display of seal.—On and after July 1, 1917, every motor vehicle except motorcycles, shall at all times, while being used or operated upon the public highways of this State, have displayed in a conspicuous place and manner, both upon the front and rear of such motor vehicle, a plate or marker bearing the registration number assigned such motor vehicle by the State Highway Department, and each operator of a motorcycle shall in like manner have displayed upon his machine, one plate marker bearing the registration number of such motorcycle; and the State Highway Commission shall furnish such number plates without charge for the first registration, and plates that may have to be replaced, shall be at the expense of the owner of such motor vehicle or motorcycle. Such motor vehicles and motorcycles shall at all times display the distinguishing seal to be provided by the Department for each year, and the said number plates and the seal shall conform to such requirements as may be prescribed by the Department. (Id. sec. 18.)

Section 24 of this act makes it an offense to operate a motor vehicle on the public highways without a registration number and seal. See post, Penal Code, art. 820a.

Art. 7012½c. Time for registration; duration; apportionment of fee.—On and after January 1, 1918, registrations for motorcycles and motor vehicles under this Act shall begin with the 1st day of January of each year and end with the 31st day of December; and all applications for registration of motorcycles or motor vehicles filed on and after January 1st and before March 31st of any year shall be required to pay the annual fee; all applications filed on or after April 1st and before June 30th of any year shall be required to pay three-fourths the annual fee; all applications filed on or after July 1st and before September 30th of any year shall be required to pay one-half the annual fee; and all applications for registration filed on or after October 1st and before December 31st of any year, shall be required to pay one-fourth the annual fee. (Acts 1917, c. 190, sec. 19; Acts 1918, 4th C. S., ch. 71, sec. 3.)

Art. 7012½d. Transfer of certificate.—When any person, other than a dealer, sells a vehicle embraced in this Act, he shall endorse upon his certificate of registration, a written transfer of the same and the purchaser of such motor vehicle shall send the State Highway Department a notification of such transfer with the names and address in full of such purchaser, together with the transfer fee of one ($1.00) dollar, and the Department shall enter upon its books, the fact of such transfer and the name and address of the purchaser, who shall be regarded as the owner thereof and amenable to the provisions of this Act. (Acts 1917, ch. 190, sec. 20.)

Art. 7012½e. Manufacturers and dealers; fees.—Any manufacturer of, or dealer in, motor vehicles in this State may, in lieu of registering each machine he may wish to show or demonstrate on the public highways, apply for registration and secure a general distinguishing number, which may be attached to any motor vehicle or motorcycle he sends temporarily upon the road. The annual fee for such dealers' registration of a general distinguishing number shall be fifteen ($15.00) dollars, and additional number desired by any dealer, not exceeding five, will be assigned and registered for a fee of five ($5.00) dollars each. All the other provisions of this Act shall apply in case of dealers' registration. (Id. sec. 21.)

Art. 7012½f. Motor vehicles owned by non-residents; authority to Chairman of Commission to accept service of process; to procure seal after 30 days.—Motor vehicles owned by citizens of other States temporarily in this State, will be exempt from the provisions of this Act for a period of ninety days, if they show the State Highway Department that they have complied with similar laws of some other State, or of a municipality of another State, providing adequate identification of such motor vehicle or motorcycle. Provided, however, that if such citizen of another State, shall remain in Texas longer than thirty days, he shall execute authority to the Chairman of the State Highway Commission to accept service in his behalf in any action that may be brought against him in the courts of this State, because of the use in this State of such motor vehicle or motorcycle. Provided, further, that if such citizen of another State, shall remain in Texas longer than thirty days, he shall be required, and it shall be his duty, to apply for and to receive from the State Highway Commission, a seal bearing such identification as the Commission may require, for which seal a fee of one ($1.00) dollar will be required. (Id. sec. 22.)

Art. 7012½g. State highway fund; disbursement; distribution among counties; how expended by counties.—All funds coming into the hands of the Highway Commission, derived from the registra-

tion fees hereinbefore provided for, or from other sources, as collected, shall be deposited with the State Treasurer to the credit of a special fund designated as "The State Highway Fund," and shall be paid only on warrants issued by the State Comptroller upon vouchers drawn by the Chairman of the Commission and approved by one other member of the Commission, such vouchers to be accompanied by itemized sworn statements of the expenditures, except when such vouchers are for the regular salaries of the employés of the Commission. The said State Highway fund shall be expended by the State Highway Commission for furtherance of public road construction and the establishment of a system of State highways, as contemplated and set forth in this Act; provided, that semi-annually, on the first days of September and March respectively, beginning with September 1, 1917, one-half of the gross collections of registration fees from all motor vehicles and motorcycles, received from the several counties of the State by the State Highway Department, as provided in this Act, shall be remitted to the county treasurer in the counties from which such collections were respectively made; and provided further, that such allotment of registration fees to the counties, shall constitute a special fund to be expended by or under the direction of the commissioners' courts of the respective counties in the maintenance of the public roads of such counties in accordance with plans approved by the State Highway Department. (Id. sec. 23.)

For section 24 of this act, see Penal Code, art. 820a.

Art. 7012½h. Municipal registration abolished; exception of vehicles for hire. —The certificate of refistration and numbering for purposes of identification, and the fees hereinbefore provided for, shall be in lieu of all other similar registrations heretofore required by any county, municipality, or other political sub-division of the State, and no such registration fees of other like burdens, shall be required of any owner of any motor vehicle or motorcycle by any county, municipality or other sub-division of the State. But this provision shall not affect the right of incorporated cities and towns to license and regulate the use of motor vehicles for hire in such corporation; provided the nothing in this Act shall anywise authorize or empoyer any county or incorporated city or town in this State to levy and collect any occupation tax or license fees on motorcycles, automobiles or motor. (Id. sec. 25.)

See Penal Code, arts. 819, 820.

Art. 7012½i. Repeal; partial invalidity.—All laws and parts of laws in conflict with the provisions of this Act are hereby repealed; and if any Section, sub-division or clause of this Act, shall be held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. (Id. sec. 27.)

Art. 7012½j. Register and index of motor vehicles; public inspection; mailing lists to counties.—Upon the receipt, by the Highway Department, of an application for registration of a motor vehicle, accompanied by the fee required by law to entitle such motor vehicle to registration, the Department shall file such application and shall numerically register such motor vehicle with the name, residence, and business address of the owner, together with the facts stated in such application, in a book to be kept for that purpose, under the distinctive number assigned to such motor vehicle by the said Department, which book shall be kept open to the inspection of the public during reasonable office hours.

The Department shall, on or before the 1st day of February of each year, make out and mail to the clerk of each County Court in this State, the Sheriff of each County, and to the Chief of Police of every incorporated City in the State, a full and accurate list, made up in numerical order, of all motor vehicles so registered, stating the distinctive numbers so assigned to them, the name, residence and business of the owner, manufacturer or dealer, as the case may be, the engine number and make of car, and at the expiration of every thirty (30) days thereafter, a similar list of all the additional registrations or changes in registration; such list to be kept on file by said County Clerks, Sheriffs and Chiefs of Police, in a conspicuous place in their respective offices, and to be open to the inspection of the public during reasonable office hours. (Acts 1917, ch. 207, sec. 1; Acts 1919, ch. 161, sec. 1.)

See ante, art. 7012½aa. For criminal provisions of this act see Penal Code, arts. 820aa-820z, 826a, 1022a, 1259aa, 1259bb, 1259cc, 1621a.

Art. 7012½k. Seals and number plates. —The Department shall furnish without charge with transportation prepaid, to every person whose motor vehicle is registered as required by law, one seal of such size, color, description, shape and material as may be adopted by the said department for any year, and bearing such insignia, words or figures thereon as may be determined by the said department, which shall be attached and conspicuously displayed at all times upon the front end of such motor vehicle, other than a motorcycle, and said seal to be placed conspicuously on the rear of each motorcycle.

The department shall furnish free of cost, with each first seal a number plate, but if same shall be destroyed or lost it shall be replaced at the expense of the owner by another substantially sufficient to meet the requirements of this law. (Acts 1917, ch. 207, sec. 2.)

Art. 7012½l. Unsafe vehicles; revocation of registration.—If the said department shall determine at any time that a motor vehicle is unsafe or improperly equipped, or otherwise unfit to be operated upon the public highways, it may refuse to register such vehicle, and said department may for a like reason revoke any registration already required. (Id. sec. 3.)

Art. 7012½m. Delinquency in payment of fee; penalty; lien; foreclosure.—The registration fee required to be paid upon a motor vehicle shall become delinquent in case of any such vehicle forthwith upon the operation of the vehicle upon the public highways without the registration fee required by law first having been paid to the Department, accompanied by the application for registration provided by said Department.

It is hereby provided, in addition to any and all other penalties, that if at the ex-

piration of thirty (30) days after any registration fee becomes delinquent such fee has not been paid and registration applied for, a penalty shall be added to the amount of such fee in an amount equal to twenty-five per cent of the fee required, and such fee, together with the amount of said penalty, shall be a lien upon the motor vehicle upon which said registration is delinquent, and the department shall have power, and it is hereby made its duty to collect the said registration fee, together with the penalty by foreclosure upon and by sale of such motor vehicle. The sale herein authorized shall be conducted and carried out by the Department in the same manner as is provided by law for the sale of personal property by the county tax collector for collection of taxes due on personal property. (Id. sec. 6.)

Art. 7012½n. License to chauffeur; application; badge; record; report to county clerks, etc.—An application for a license to operate a motor vehicle as a chauffeur, (and by "chauffeur" is meant any person whose business or occupation is that he operates a motor vehicle for compensation, wages or hire), shall be made by mail or otherwise to the Department upon blanks prepared for such purpose, and shall be accompanied by an annual fee of $3.00, provided that the first fee payable under this act shall be $2.00 for the period of time expiring December 31, 1917, and said fee shall be payable on July 1, 1917, and thereafter on the first of January of each year there shall be paid by each chauffeur to the Department a fee of $3.00, accompanied by the application, as herein provided for; provided, that any person wishing to engage in the business of a chauffeur at any time after January 1, 1918, shall pay $3.00 when making his application which shall pay his license fee till the 31st of December following the date of such application. The application for license to be issued to a chauffeur shall be in conformity with the requirements prescribed by the Department, and shall be sworn to by the applicant, and shall also, after being sworn to, be endorsed and vouched for by two reputable citizens of the place where the said applicant lives or resides at the time of making such application, setting forth that they have known or been acquainted with the applicant for a period of not less than sixty days prior thereto, and that the said applicant is trustworthy, sober and competent to operate motor vehicles upon the highways of this State. Upon the receipt of such application, and provided the Department is satisfied that the applicant is a proper party to whom a chauffeur's license should be issued, and is over eighteen years of age, they shall issue to him a distinguishing number or mark, and shall also issue to him a license certificate in such form as the Department may determine.

At the time of issuing said certificate to the chauffeur the Department shall also mail or deliver to him, free of charge, a metal badge to be at all times prominently displayed on his clothing when engaged in the operation of motor vehicles on the public highways or in prosecuting his said business.

Upon the receipt of such applications to be licensed as a chauffeur the Department shall record the same in the office in a book kept for that purpose in the manner designated for recording the registrations of the owners of motor vehicles, and when the Department has issued license certificate and assigned to him a badge number, such applicants' names shall be noted in said records; and the names of the licensed chauffeurs shall be furnished to the county clerks and chiefs of police of the cities of this State in the same manner as is provided with respect to the owners of motor vehicles. (Id. sec. 25.)

Art. 7012½o. Revocation of chauffeur's license for drunkenness.—Provided that if it shall be made to appear to the satisfaction of the Department that any chauffeur shall have driven or operated a motor vehicle within this State while under the influence of intoxicating liquor during the period of such license, the Department shall thereupon immediately cancel the license of said chauffeur and shall not renew the same until after the expiration of six months from and after the date of such cancellation. (Id. sec. 26.)

Art. 7012½p. Badge of chauffeur good only during term of license; loss of badge.—The badge issued to the chauffeur by the Department shall be valid only during the term of the license of the chauffeur to whom it is issued. Upon filing in the office of the Department an affidavit to the effect that the original badge is lost, stolen or destroyed, and upon the payment of the fee of one ($1.00) dollar, a duplicate badge will be furnished. (Id. sec. 27.)

Art. 7012½q. Record of license of chauffeurs.—Upon the receipt of an application for a chauffeur's license the Department shall thereupon file the same and register the application in a book or on index card which shall be kept in the same manner subject to public inspection as the books or index cards for the registration of motor vehicles. (Id. sec. 28.)

Art. 7012½r. Definition of terms.—Wherever the word "Department" is used in this Act, is meant the Highway Department of this State. "Motor Vehicle" wherever used in this Act shall include all vehicles propelled otherwise than by muscular power, except such vehicles that run upon rails or tracks. "Automobile" as used includes all motor vehicles excepting motorcycles. "Motorcycle" as used in this Act shall include all motorcycles designed to travel on not more than three wheels in contact with the ground. (Id. sec. 41.)

Art. 7012½s. Partial invalidity.—If any section, sub-section or clause of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of any of the remaining portions of this Act. (Id. sec. 42.)

Art. 7012½t. Printed pamphlet of laws to be furnished to motor vehicle owners.—The Highway Department of this State shall, as soon as practicable after the passage of this Act, cause to be printed in pamphlet form one hundred and fifty thousand copies of this Act, including therein all the other laws of this State regulating the use of public highways in this State by motor vehicles and other vehicles, together with all the laws fixing penalties regarding the

same, which shall be distributed on demand without charge. When such supply is exhausted the Department shall cause such additional copies thereof to be printed from time to time as may be found necessary. The Department shall mail a copy of such pamphlet to each motor vehicle owner and chauffeur at the time it mails out to him this certificate of registration or license provided for in this Act. (Id. sec. 43.)

Art. 7012½tt. Applications for registration and license or transfer thereof to be filed with county tax collector; forms. —All applicants for registration and license or transfer thereof of motor vehicle or motorcycle, manufacturers or dealers therein, and chauffeurs now filed with the State Highway Department under the existing law shall after the taking effect of this Act be filed with the Collector of Taxes for the County of the residence of the applicant; such application to be made upon forms prescribed by the State Highway Department, a supply of which shall be furnished each Collector of Taxes at the expense of said Department. (Acts 1918, 4th C. S., ch. 73, sec. 1.)

Art. 7012½u. License fee to be paid to county tax collector; receipt for; proportionate part of fee.—Upon the filing of an application the applicant shall pay to the Tax Collector the amount of the license fee required by law for which amount the Tax Collector shall issue a receipt showing the name of the holder, the make of his car, the model and the number of the engine of same, which receipt shall be a protection to the holder against prosecution under any provision of the Highway Law regulating the registration of motor vehicles until the receipt by him of number plates and seals as is required by the Statutes of this State, which receipts shall be issued in triplicate, one to be delivered to the licensee, one forwarded to the State Highway Department by the Tax Collector, and one retained by him. The receipt herein provided for shall be furnished at the expense of the State Highway Department to the several collectors of Taxes, and shall be numbered consecutively for each County. It is provided, however, that upon the filing of an application for registration during any quarter of the year the registration fee to be paid thereof shall be such a proportion of the annual fee as the remaining quarters of the year added to the quarter in which the application was filed shall bear to the entire year. (Id. sec. 2.)

Art. 7012½v. County tax collector to transmit one-half of fees to State Highway Department; disposition of remainder.—It shall be the duty of the tax collector to transmit on Monday of each week to the State Highway Department at Austin one-half of the gross registration chauffeur or transfer fees collected during the preceding week. The remaining one-half shall be deposited by the tax collector, in the county depository of the county, to the credit of a special highway fund, to be expended under the provisions of law relating thereto. Provided, that all license fees collected on commercial and interurban commercial motor vehicles on a mileage basis shall be the property of the respective counties and be distributed as herein provided and be paid to the county treasurers of such counties by the officer collecting the same. (Acts 1918, 4th C. S., c. 73, sec. 3; Acts 1919, ch. 113, sec. 4.)

Art. 7012½vv. Repeal.—This Act shall not be construed to repeal any existing laws of this State relating to highways, except when in direct conflict therewith, and shall be cumulative of all such laws now in force. (Id. sec. 5.)

Art. 7012½vvv. Partial invalidity of act.—In event any section or provisions of this bill should for any reason be held unconstitutional by the courts of this State, the same shall not affect any other section or provision of the bill, and the Legislature does hereby declare that it would have enacted each and all of the provisions of this bill without reference to any other section or provision. (Id. sec. 6.)

Art. 7012½w. Assignment of registration numbers; plates and seals.—With the remittance provided for in Section 3 hereof [Art. 7012½v], the Tax Collector shall forward to the State Highway Department the copies of receipts issued under Section 2 hereof [Art. 7012½u], and upon the receipt of such receipts the State Highway Department shall assign registration numbers to the persons whose name appear thereon, and shall at once forward, charges prepaid, to the Tax Collector, the required number plates and seals corresponding thereto, which shall be delivered by the Tax Collector without expense to him or the County, to those entitled thereto, upon application thereof by such owners; provided that on or before January of each year the Secretary of the State Highway Department shall forward to each Collector of Taxes in this State, carrying charges prepaid, a number of seals corresponding to the number of motor vehicle, and motorcycle registrations in their respective Counties for the previous year, which seals shall be delivered by the Collector of Taxes to the registrants, upon the payment of the license fee for the ensuing year. The number of seals so sent out shall be charged to the respective Collectors of Taxes in a book kept for that purpose by the State Highway Department and upon receipt of notification by the Collector of Taxes, together with a remittance provided for in this Act, such Collector shall be credited with the seals so distributed. The Collector of Taxes shall keep a record of all transfers, and report same weekly to the State Highway Department. (Acts 1918, 4th C. S., ch. 73, sec. 4.)

Art. 7012½x. Funds for maintenance of State Highway Department.—All funds coming into the hands of the State Highway Department from registration fees, and all other sources, are hereby appropriated for the two fiscal years beginning September 1, 1919, ending August 31, 1921, for the purpose of carrying out all provisions of the Act creating the State Highway Department regulating the operation of motor vehicles under Chapter 190, General Laws of the Regular Session of the Thirty-fifth Legislature and all amendments thereto. (Acts 1918, 4th C. S., ch. 73, sec. 5; Acts 1919, 2d C. S., ch. 49, sec. 1; Acts 1919, 2d C. S., ch. 50, sec. 1.)

Art. 7012½y. Compensation to county tax collectors for services.—As compensation for their services under this act, tax collectors shall receive two per cent of all amounts collected by them, but in no event shall any tax collector receive any sum exceeding the amount fixed as a maximum of their fees under Chapter 4, Title 58, of the Revised Civil Statutes of 1911, as amended by Acts 33rd. Legislature, page 246. (Acts 1918, 4th C. S., ch. 73, sec. 6; Acts 1919, ch. 61, sec. 1.)

Art. 7012½z. Acts repealed.—This Act shall not be construed to repeal any existing laws of this State relating to Highways, except where in direct conflict therewith, and shall be cumulative of all such laws. (Acts 1918, 4th C. S., ch. 73, sec. 7.)

Art. 7012¾. Special deputy sheriffs to enforce traffic laws; number; employment.—To insure the adequate enforcement of the Traffic Laws of this State, and especially the Laws regulating the use of motor vehicles and motor cycles on the public highways, contained in the Acts of the 35th Legislature, creating the Highway Commission, and also the Acts regulating the use of the public highways by motor vehicles and all other Laws amendatory thereof or supplementary thereto, now or hereafter enacted, the right is hereby conferred on the Commissioners' Court of each County to employ one or more Special Deputy Sheriffs for that purpose, who shall be, whenever practicable, motor cycle riders, and shall be assigned to work under the directions of the Sheriff of the County. (Acts 1919, ch. 127, sec. 1.)

Art. 7012¾a. Same subject; duties.—The special work of said officers shall be the efficient enforcement of the Traffic and Highway Laws of this State, and prompt arrest and prosecution of all offenders of any of said Laws, and to that end they shall diligently patrol the public highways and keep a vigilant look-out for all violators of said Law. (Id. sec. 2.)

Art. 7012¾b. Same subject; number; length of service; dismissal.—The number of said officers and the length of their service shall be determined by the Commissioners' Court, acting in conjunction with the Sheriff of the County; and they shall be required to give bond and take oath of office as other Deputies. They may be dismissed from service on request of the Sheriff, whenever approved by the Commissioners' Court, or by the Commissioners' Court, upon their own initiative, whenever their services are no longer needed, or have not been satisfactory. Provided that no County shall be authorized to employ more than two regular deputies under this Act nor more than two additional deputies for special emergency, to aid said regular deputies in their work. (Id. sec. 3.)

Art. 7012¾c. Same subject; compensation.—The compensation of said deputies shall be fixed by the Commissioners' Court prior to their selection, and in addition thereto said Commissioners' Court shall be authorized to provide, at the expense of the County, necessary equipment for said officers to enable them to discharge their duties. The pay of said deputies shall not be included in the settlements of the Sheriff in accounting for the fees of office, but shall be independent thereof. (Id. sec. 4.)

Art. 7012¾d. Same subject; fund from which compensation shall be paid.—The Commissioners' Court of each County in this State shall be authorized to use so much of the County's portion of the registration fees on motor vehicles, derived from the operation of the Law creating the Highway Commission, as may be necessary for that purpose, provided that the said expenditure shall not exceed five (5%) per cent of said funds in any one year in counties whose funds from said registration fees amounts to Thirty-Thousand ($30,000.00) Dollars or over, and not to exceed seven and one-half (7½) per cent of such fund in counties receiving a lesser amount from said sources. (Id. sec. 5.)

Art. 7012¾e. Same subject; to be known as Traffic Officers; co-operation with city, etc., police departments; arrests; complaints; fines.—The said Special Deputies shall be known as the County Traffic Officers, and shall, at all times, co-operate with the police department of each city or town within the county, in the enforcement of said traffic laws in said city or town as well as in the other portions of the county. When arrests are made by said officers for offenses committed within the corporate limits of any city or town, complaints shall be filed before the City Court, or other proper Tribunal in said city or town, having jurisdiction over such offenses, and the fines arising therefrom shall be retained by such city or town for the maintenance of their streets, and to aid in the enforcement of the Traffic Laws, or other Laws regulating the use of the public highway. The fines in all other cases, collected from the violators of said Highway or Traffic Laws, to go into the County Treasury, and may, in the discretion of the Commissioners' Court, be used in helping defray the expenses of maintaining said Traffic Officers. (Id. sec. 6.)

Art. 7012¾f. Same subject; repeal.—All laws in conflict herewith are hereby repealed. (Id. sec. 6a.)

CHAPTER NINE

BRIDGES

Art. 7013. (4791) Overseer shall have bridges built, when, etc.—Overseers of roads shall cause bridges to be erected across all such water courses and other places as may appear to them necessary and expedient; and should there be a water course or other place that requires a bridge, dividing any two road precincts, the overseer of each of such precincts, together with their hands, shall meet at the same time and place to construct such bridge, and the overseer chosen by a majority of the hands present shall superintend the building of such bridge until finished. (Act July 29, 1876, p. 67, sec. 20.)

Art. 7014. (4792) Commissioners' court, power to have bridges built, etc.—The commissioners' court shall have full power and authority to cause all necessary bridges to be built and kept in repair in their respective counties, and to make appropriations of money of the county therefor, when necessary. (Act July 22, 1876, p. 51, sec. 4.)

Art. 7015. (4793) May contract for building of toll bridges.—The commission-

ers' courts through whose county large creeks or water courses shall pass, over which it may be too burdensome for the overseers, with the hands apportioned to them to work on roads, to build bridges, may contract with a proper person or persons to build a toll bridge, for which the court shall lay the toll to be levied on all persons, cattle, horses, carriages, etc., passing over the same, to be granted to the undertaker for such a number of years as the said court may think proper, not to exceed ten years; and the builder or builders and their successors shall keep the bridge in constant repair during the term of the contract, and in default thereof shall forfeit all right and claim to the toll of such bridges. (Act Dec. 20, 1836; P. D. 5244.)

Art. 7016. (4794) Shall take security from contractor to keep bridges in repair, etc.—The commissioners' court, before granting a license to any person to build a toll bridge, shall take bond in the sum of one thousand dollars, with good and sufficient sureties, conditioned that the undertaker or undertakers shall build and keep in constant repair the bridges so contemplated for the term of years agreed upon between the undertaker or undertakers and the court; and, if any person or persons shall sustain damages in consequence of the owner or keeper of any toll bridge not having complied with the conditions of his bond, the person or persons so damaged may bring an action of debt against the owner or keeper of such toll bridge, on his or their bond, in the county in which such license was granted, and recover judgment for the damages so sustained. (Id.; P. D. 5245.)

Art. 7017. (4795) When streams form dividing line of counties expense of bridge to be joint, etc.—Whenever any stream is the division line between counties, or when two or more counties are jointly interested in bridges, it shall be lawful for the counties so divided or interested to jointly erect bridges over said dividing stream, upon such equitable terms as the commissioners' court of each county interested may agree upon. (Act Nov. 28, 1871, p. 42; P. D. 5883.)

Art. 7018. (4796) Tolls assessed to pay bonds, etc.—Whenever any county bonds have been or may hereafter be issued for the purpose of building bridges, it shall be lawful for the commissioners' courts of the county or counties interested to assess and collect tolls on said bridges sufficient to pay the interest on bonds so issued; and, if thought proper, sufficient to pay the interest and create a sinking fund with which to pay the principal at maturity, all of which shall be done under such rules and regulations as the commissioners' courts of the counties interested may prescribe. (Id.; P. D. 5884.)

Art. 7019. Coast counties may buy and lease causeways and bridges.—The commissioners' court of any county bordering on the Gulf of Mexico that has within its limits an island that is separated from the mainland by a bay or arm of the sea, that is over one mile in width, shall have the right and authority to purchase a roadway upon and along any causeway and bridge that may be constructed across any such bay or arm of the sea, and to operate and maintain the same as a public highway; and said commissioners' court shall also have the right and authority to lease for a period not to exceed thirty years, a roadway upon and along any such causeway and bridge for a public highway, and to make such terms and conditions, and to pay such amounts of money as may be agreed upon with the company owning or operating such causeway and bridge. (Acts 1905, p. 424, sec. 1.)

Art. 7020. Funds available for the purpose.—For the purpose of paying for the purchase or lease of a roadway, as provided for in the preceding article, the commissioners' court shall have the right to levy and collect such taxes as are now or may hereafter be authorized by law, and also to appropriate out of county revenue funds, levied and collected for county revenue purposes, such additional amounts as may be necessary, from time to time, to pay the obligations that may be incurred under the provisions of this chapter. (Id. sec. 2.)

CHAPTER NINE A

CAUSEWAYS ACROSS ARMS OF GULF OF MEXICO

Art. 7020a. Authority to purchase, build, operate, etc.—Any person, corporation or association of persons is hereby authorized to purchase, build, construct, own, maintain, and operate a combination bridge, dam, dike, causeway and roadway across any arm of the gulf of Mexico, or inlet thereof, or any of the salt water bays, wholly within the limits of the state of Texas, for the purpose of providing a causeway, roadway or highway for vehicles, teams, pedestrians, railroads, and for every character of inland transportation. (Acts 1913, p. 331, sec. 1.)

Art. 7020b. Authority to lease right of way to cities and towns and railroad corporations.—That any person, corporation or association of persons, that may hereafter purchase, build or construct any combination bridge, dam, dike, causeway or roadway, under the provisions of this Act, shall have the right and are hereby authorized to lease right of way over said causeway, or on or over said causeway and highway to cities and towns for public utilities owned and operated by said cities and towns, and also to corporations for the construction by such corporation or corporations of a railroad track or tracks over which steam and electric trains and cars may be operated for the transportation of freight and passengers; such right not to be granted in such way as to obstruct or interfere with the use of such causeway, roadway or highway for pedestrians teams and vehicles, or to permit a monopoly. The said grant or lease of such rights of way to railroad corporations to be for such time and on such terms and conditions as may be prescribed by the railroad commission of Texas. (Id. sec. 2.)

Art. 7020c. Lessee corporation may contract; may issue bonds, etc.—Any corporation or corporations contracting as provided in section 2 of this Act [Art. 7020b] with owner or owners of said roadway, causeway or highway for the right of way over any part of said structure shall have

the right to make and enter into any contract or contracts with said owner or owners subject to the approval of the railroad commission of Texas for the payment to the said owner or owners of all sums of money due thereunder, and to this end for this purpose shall have the right to issue and sell its or their bonds to the extent of the amount of such corporation or corporations obligations to the said owner or owners; provided that no such bond or bonds shall be issued by any railroad company or other corporation without first obtaining the permission, order and approval of the railroad commission of Texas. (Id. sec. 3.)

Art. 7020d. Statement of location to be filed.—Every person, corporation or association of persons who has begun the construction or may hereafter construct any bridge, dam, dike, causeway, roadway or highway as herein provided, in, over and across any arm of the gulf of Mexico or inlet thereof, or any of the salt water bays, wholly within the limits of the state of Texas, shall within ninety days after this Act goes into effect, or within ninety days after commencement of such construction, file and cause to be recorded in the office of the county clerk of the county where the bridge, dam, dike, causeway or roadway, or the greater part thereof may be situated, or to which said county may be attached for judicial purposes, in a well bound book to be kept by said clerk for that purpose, a sworn statement in writing showing the location of said proposed dam, dike, bridge, causeway or roadway, the name of the same, the size of the same, the name of said stream or bay or arm of the gulf or inlet thereof or salt water bay over which said bridge, dam, dike causeway or roadway is to be built, the time when the work was commenced and the name of the owner or owners thereof, together with a map showing the location of said dam, dike, bridge, causeway or roadway. (Id. sec. 4.)

Art. 7020e. Claimant's right to relate back to time of filing statement, etc.—By compliance with the provisions of the preceding section the claimant's right to build and construct said dam, dike, causeway and roadway will relate back to the time of filing said statement and map, as provided in the preceding section, and the first in time shall be the first in right; provided, that any location of bridges, ferries or causeways heretofore made shall not be prejudiced by the passage of this Act; and provided, further, that the filing of said statement and map shall be considered as taking "formal action." (Id. sec. 5.)

Art. 7020f. Purchase or condemnation of approaches.—The person, corporation or association of persons, filing the statement and map as provided in this Act, may acquire by purchase or condemnation in accordance with the method now prescribed by law for condemnation by railroads all necessary approaches to said dam, dike, causeway or roadway that he or it deems necessary. (Id. sec. 6.)

Art. 7020g. Land under water, etc., granted.—The land under water to be occupied by such causeway bridge structure and approaches thereto is hereby granted absolutely to the person corporation or association of persons filing said statement and map and building said causeway or roadway, (and five hundred feet more on each side of such structure is also granted with the right only to dredge therefrom or beyond same for material for causeways if required in construction and maintenance). (Id. sec. 7.)

Art. 7020h. Use of tracks by railroad, how charged for.—The use of such tracks on such causeway structure by any railroad shall never be charged for by the railroad company or companies except as a part of the mileage of the road at statutory rates, and be otherwise according to the general laws of the state of Texas. (Id. sec. 8.)

Art. 7020i. Corporations may be formed; powers; tolls and charges.—Corporations may be formed and chartered under the provisions of this Act, and of the general corporation laws of the state of Texas, for the purpose of purchasing, constructing, owning, maintaining and operating bridges, dams, dikes, causeways, roadways and highways, with appurtenances thereto, over any arm of the gulf of Mexico or inlet thereof or any of the salt water bays, wholly within the limits of the state of Texas, to be used as highways for railroads, vehicles, teams, pedestrians and for all other means of inland transportation. All such corporations shall have full power and authority to make contracts with other persons or corporations conveying to said other persons or corporations the right of easement of user of any portion of any bridge, roadway or causeway constructed in, over and across any arm of the gulf of Mexico, or inlet thereof, or any of the salt water bays wholly within the limits of the state of Texas, and shall have full power and authority to charge, demand and receive reasonable and just tolls and charges for the use of said portions of said bridge, causeway or roadway, but all said roadways or causeways or bridges so constructed shall remain open for trains, vehicles, teams, pedestrians, railroads and for all other means of inland transportation of freight and passengers, and the tolls and charges for the use of same shall be equal, just and uniform to all persons, corporations, cities and towns as herein provided without discrimination as to the amount charged, or delay in handling same. (Id. sec. 9.)

Art. 7020j. Powers of railroad commission.—Any corporation organized under the provisions of this Act shall be subject to the regulation and control of the railroad commission as to all the powers and provisions of this Act. (Id. sec. 9a.)

Art. 7020k. Federal regulations.—That nothing in this Act shall be construed to be in conflict with or contrary to federal regulations. (Id. sec. 10.)

CHAPTER TEN

FERRIES

Art. 7021. (4797) Who are entitled to license to keep.—Every person owning the land fronting upon any water course, navigable stream, lake or bay, shall be entitled to the privilege of keeping a public ferry over or across such water course, stream,

lake or bay; if he owns the lands on both sides or banks, he shall be entitled to the sole and exclusive right of ferriage at such place; if he owns the lands on one side only, he shall have the privilege of a public ferry from his own shore, with the privilege of landing his boat and passengers on the opposite shore, with the consent of the owner of the land on said shore; if such consent can not be obtained, he may apply to the commissioners' court for the establishment of a public road from said opposite shore; and said court shall act on such applications as in other cases. (Act Jan. 23, 1850; P. D. 3841.)

Art. 7022. (4798) Shall not be for hire without license.—No person shall keep any ferry over or across any water course, navigable stream, lake or bay, so as to charge any compensation for crossing the same, without first procuring a license from the commissioners' court of the county in which such ferry is situated. (Id.; P. D. 3842.)

Art. 7023. (4799) Where stream is part of state boundary.—When a water course, navigable stream, lake or bay makes a part of the boundary line of this state, if any tax or charge shall be assessed or collected by any such adjoining state for the privilege of a ferry landing on the shore or bank of such state from this state, then the same tax or charge may be assessed and collected by the commissioners' court for the like privilege of landing on the bank or shore of this state. (Id.; P. D. 3842.)

Art. 7024. (4800) License, how obtained.—Any person wishing to establish a ferry across any water course, navigable stream, lake or bay in this state, shall apply to the commissioners' court of the county in which such ferry site may be; and, on the applicant showing that he is the lawful owner of such land as the ferry is sought to be established on, and also satisfying the court that the public convenience will be promoted thereby, such court shall grant such license. (Id.; P. D. 3844.)

Art. 7025. (4801) Rates of ferriage shall be established, etc.—When a commissioners' court shall establish a ferry, they shall state in their record the rates of toll or ferriage which may be demanded for ferrying passengers, carriages, wagons, carts, beasts and such other property as is usually transported by ferries; and the said courts may, at their first term in each year, and shall at any other term, upon the petition of twenty respectable citizens of the county, revise, and, if deemed expedient, change the rates of toll or ferriage at all ferries that have been or may be established in their county. (Act Jan. 5, 1854; P. D. 3845.)

Art. 7026. (4802) Change of rates.—All changes of the rates of ferriage shall be entered of record and notice thereof furnished by the county clerks to the owners of ferries affected by such change; provided, no change of rate shall take effect until the expiration of thirty days from the day on which said change may be made. (Id.)

Art. 7027. (4803) When owner refuses to keep ferry at the established rates.—Where any owner of a ferry shall refuse to keep up the same at the rates allowed by the commissioners' court, said court may issue a license to any one who will do so; but in all such cases the party receiving such license shall be bound to take the ferry-boat in use at said ferry, if desired by the owner, at such valuation as two respectable citizens of the vicinity, one to be chosen by each party, shall place upon it. (Id.)

Art. 7028. (4804) License and bond to be renewed annually.—The owners of all ferries shall annually obtain a renewal of their license, and shall annually enter into bond, payable to the county judge of their county, in such sum as the commissioners' court shall direct, not less than one thousand dollars, with two or more good and sufficient sureties, to be approved by such county judge, conditioned that the owner of such ferry will at all times keep good and sufficient boats for the use of such ferry, and will also keep the banks on each side of the ferry in good repair and so graded and leveled that the rise shall not exceed one foot in every seven feet from the water's edge to the top of the bank, and that said ferry shall be well attended at all times, and that he will comply with all the requisitions of the law relating to or governing ferries, which bond shall be filed and recorded in the office of the clerk of the county court. (Act Jan. 23, 1850; P. D. 3846, 3847.)

Art. 7029. (4805) License not to issue until, etc.—Upon producing the receipt of the county treasurer for the payment of the tax assessed by the commissioners' court for the privilege of such ferry, and executing the bond required by the preceding article, such commissioners' court shall grant a license to such applicant for the term of one year from the date of such license; and no license for any ferry that has been or may hereafter be established shall be granted until such payment shall be made and bond executed. (Id.; P. D. 3848.)

Art. 7030. (4806) Rates of, to be delivered to person obtaining license.—In all cases where any person shall obtain a license for a ferry, the clerk of the court shall make out and deliver to such person a copy of the rates of toll or ferriage established by the court for such ferry, which shall be under his hand and official seal. (Id.; P. D. 3849.)

Art. 7031. (4807) Rates of, to be posted at the ferry.—Every owner of a ferry licensed shall keep a list of the rates of toll or ferriage established for his ferry posted up, either at the ferry or ferry house, for the inspection of all persons. If any such owner shall fail or neglect to do so, he shall forfeit and pay the sum of four dollars for every such neglect, which may be recovered before any justice of the peace of the county on the complaint of any person, one-half of said amount to go to the county and the other half to the prosecutor; and every week that he shall so fail or neglect shall be deemed a separate offense, for which he shall be liable as aforesaid. (Id.; P. D. 3850.)

Art. 7032. (4808) Where ferryman delays or refuses, etc., to cross person.—If any person licensed to keep a ferry shall, on being tendered his lawful fees, refuse or neglect, without any reasonable cause, to cross any person, his horse or other property usually transported by such ferry, every such ferryman shall, for every delay of

thirty minutes, forfeit and pay to the person injured the sum of two dollars, to be recovered by action before any justice of the peace for the county in which the ferry is situated, with costs of suit; and the oath of the party shall be received in evidence of the fact. (Id.; P. D. 3851.)

Art. 7033. (4809) Duties of ferryman.—Every licensed ferryman shall at all times keep good and sufficient boats for the use of such ferry, and shall keep the banks on each side of the ferry in good repair, and so graded and leveled that the rise shall not exceed one foot in every seven feet from the water's edge to the top of the bank; and shall give ready and due attendance on all passengers, horses, wagons and other property. (Id.; P. D. 3852.)

Art. 7034. (4810) Where ferryman charges more than, etc.—If any licensed ferryman shall charge and receive from any person a higher rate of toll or ferriage than has been established for his ferry by the commissioners' court, he shall forfeit and pay to such person five dollars for every such offense, to be recovered by action before any justice of the peace of the county in which the ferry is established, with costs of suit; and the oath of the complainant shall be received in evidence. (Id.; P. D. 3853.)

Art. 7035. (4811) Penalty for keeping, etc., without license.—If any person shall keep any ferry over any water course, navigable stream, lake or bay, for which he shall charge any person any money or other valuable thing, without complying with the provisions of this chapter in relation to paying the tax, obtaining license and entering into bond, he shall forfeit and pay to every other person having a licensed ferry on the same water course, stream, lake or bay in the same county five dollars for every person so ferried, and the same sum for every wagon or other article so transported which may be subject to a separate charge, to be sued for and recovered before any justice of the peace of the county, with costs of prosecution; and shall, moreover, forfeit and pay a like sum in like manner to the county, which may be sued for and recovered in like manner by the county treasurer. (Id.; P. D. 3854.)

Art. 7036. (4812) Proceedings against sureties of ferryman.—In all cases where a recovery shall be had against the ferryman for violation of this law, if after judgment execution shall be returned that no estate of such ferryman can be found whereon to levy and make the money demanded in such execution, the justice to whom such execution is so returned shall cite the sureties of such ferryman to appear and show cause why judgment should not be rendered against them for the amount of the execution that is not satisfied, and unless such cause is shown judgment shall be so entered and execution shall issue therefor. (Id.; P. D. 3855.)

Art. 7037. (4813) Suit on bond.—Any person injured by breach of the bond of any ferryman shall have the right to sue thereon in his own name; and no such bond shall be void on the first recovery, but may be sued on from time to time until the whole penalty is recovered. (Id.; P. D. 3856.)

Art. 7038. (4814) Temporary license.—Any person wishing to establish a public ferry between the regular terms of the commissioners' court may obtain a temporary license for such ferry from the county judge, which shall authorize him to keep such ferry until the next regular term of the commissioners' court for the county, and to charge and receive for such time such rates of toll or ferriage as are charged at other ferries on the same water course, stream, lake or bay. (Id.; P. D. 3857.)

Art. 7039. (4815) License tax.—The commissioners' courts of the several counties shall have power to assess and collect an annual tax for the privilege of each and every ferry in their county, which tax shall not exceed one hundred dollars per annum. (Id.; P. D. 3858.)

Art. 7040. (4816) Where stream is part of county boundary.—If any water course, navigable stream, lake or bay shall form a portion of the boundary of any county, so that one bank shall be in one county and the other in a different county, at the place where it is proposed to establish a ferry, or where a ferry has been established, the application for a license shall be made to the commissioners' court of the county wherein the applicant resides or has his ferry house, and upon the granting of such license by the said court, the person or persons so licensed shall have the right to own and operate a ferry upon the same terms and conditions and with the same rights and privileges as are provided by this chapter for the owners or keepers of ferries operated exclusively in one county, and no county tax shall be assessed and collected upon a ferry by any other commissioners' court than the one granting the license therefor. (Id.; P. D. 3859.)

Art. 7041. (4817) Charges on cattle, etc., swimming stream.—The commissioners' court shall not authorize a charge of more than one cent per head on cattle or horses swimming rivers at licensed ferries, including the use of pens and boats necessary for the control of such stock. (Act Jan. 9, 1862; P. D. 3862.)

CHAPTER ELEVEN
SPECIAL ROAD TAX

Art. 7042. Election for road tax, how ordered; defined districts.—The commissioners' court of any county shall, upon presentation to it at any regular session of a petition signed by two hundred qualified voters of said county, or a petition of fifty qualified voters of any political subdivision, or defined district, now or hereafter to be described or defined in a county; said petitioners being property tax payers of said county or said political subdivision or defined district, to order an election to determine whether there shall be levied upon the property within said county or political subdivision or defined district, now or hereafter to be described or defined, of said county, by said commissioners court, a road tax, not to exceed fifteen cents on the one hundred ($100.00) dollars worth of property, under the provisions of the amendment of 1889 to the constitution of the state of Texas, adopted in 1890, order said election as hereinafter provided. It shall not be necessary to give any notice of

such petition before the court can act on the same, but the court may act thereon without notice, and may make an order for such election, fixing the amount to be levied, not to exceed fifteen cents on the one hundred dollars, the election to take place at any time thereafter, not less than twenty nor more than ninety days from the date of making the order therefor. Upon petition signed by a majority of the qualified tax paying voters of any portion of any county or of any political subdivision of any county, to the county commissioners court, requesting that such portion of said county, or political subdivision shall be created as a defined district, the said county commissioners court shall declare such territory a defined district and spread the order for same upon the minutes of said court; provided the petition aforesaid shall define by metes and bounds the territory desired to be incorporated in such defined district. (Acts 1891, p. 51, sec. 1; Acts 1913, p. 30, sec. 1, amending Art. 7042, Rev. St. 1911.)

Art. 7043. Same.—It shall not be necessary to give any formal notice of such election, except the county judge shall issue his election proclamation; and the fact that such election is to be held shall be published in the newspapers of the county or political subdivision or defined district, now or hereafter to be described or defined as fully as practicable, and tickets for the election shall be printed by the county and sent to each voting precinct by the county judge before the election opens, and as long before such time as practicable. The expenses of the election shall be paid for by the county. If an election be ordered within ninety days of a general election, it shall be held on the day of the general election, and as elections on other questions are held, but otherwise the commissioners court shall order a special election to determine whether said tax shall be levied, which shall be conducted as other elections and as the officers conduct the same shall be appointed as in other cases. (Acts 1891, p. 51, sec. 2; Acts 1913, p. 30, sec. 1, amending Art. 7043, Rev. St. 1911.)

Art. 7044. Who are qualified to vote; manner of voting.—Only qualified voters who pay a property tax in the county or political subdivision or defined district, now or hereafter to be described or defined shall be permitted to vote at each election. The tickets printed and to be voted shall have written or printed on them the words: For the Tax, and Against the Tax, and those who favor the tax shall vote the ticket For the Tax, and those who oppose the tax shall vote the ticket Against the Tax. (Acts 1891, p. 51, sec. 3; Acts 1913, p. 30, sec. 1, amending Art. 7044, Rev. St. 1911.)

Art. 7045. Duty of commissioners' court upon obtaining result of election.—If at any such election the majority of the qualified voters voting thereat shall vote for such tax, it shall not be necessary to make further proclamation of that fact than to count the votes, as in other cases, and officially announce the result, and the commissioners' court shall thereby be authorized and required to levy a road tax in the same manner that other taxes are levied, in the amount specified in said order for such election, never to exceed fifteen cents on the one hundred dollars worth of property. Such levy shall be made at the same time other county taxes are levied, if such election is held in time therefor, but otherwise it may be made at any time before the rolls are made out. If, at the election, the proposition for said tax shall carry, no petition for its repeal shall be granted in less than two years. But if it fail to carry, another petition may be granted in one year, but not sooner; and the order granting the second or any subsequent petition may fix a greater or less rate of levy, not to exceed fifteen cents on the one hundred dollars worth of property, and if no greater rate is levied for any one year the commissioners' court may lower the rate for the next year without a petition therefor. An election to repeal the levy may be ordered and held as in other cases, but there must be satisfactory proof presented to said commissioners' court that there is great dissatisfaction with such tax and that it is probable that a majority of the citizens of the county or political subdivision or defined district, now or hereafter to be described or defined, who are authorized to vote for said tax would vote for the repeal of the law, and unless such proof be made the petition to repeal shall not be granted. (Acts 1891, p. 51, sec. 4; Acts 1913, p. 30, sec. 1, amending Art. 7045, Rev. St. 1911.)

Art. 7046. No bonds to issue.—No bonds shall ever be issued under the provisions of this chapter. (Acts 1891, p. 51, sec. 5; Acts 1913, p. 30, sec. 1, amending Art. 7046, Rev. St. 1911.)

TITLE 119A

RURAL CREDIT UNIONS

Art. 7046a. Rural credit union defined; capital stock; entrance fees.—In this Act the words "rural credit union" shall mean a co-operative association formed for the purpose of promoting thrift among its members, and to enable them, when in need, to obtain for productive purposes moderate loans of money for short periods and at reasonable rates of interest. The capital stock of rural credit unions organized under the provisions of this Act shall be divided into shares of twenty-five dollars. Entrance fees of rural credit unions may be fixed by the board of directors at such an amount as may be prescribed by the by-laws. (Acts 1913, p. 162, sec. 1.)

Art. 7046b. Powers of union.—A rural credit union may receive the savings of its members in payment for shares; may lend to its members at reasonable rates of interest not to exceed six per cent. per annum, or invest as hereinafter provided the funds so accumulated and may undertake such other activities relating to the purposes of the association as its by-laws may authorize. (Id. sec. 2.)

Art. 7046c. May incorporate, how; powers of state banking board; powers and duties of state banking commissioner; penalties.—Ten or more citizens of this state may associate themselves together, by articles of agreement, and form a rural credit union, and upon the approval of the state banking board may become a corporation upon complying with such provisions of the Act regulating state banks as may be applicable to the transaction of the business herein au-

thorized to be done. The state banking board may permit the formation of such corporation when it is satisfied that the proposed field of operation is favorable to the success of a rural credit union, and that the standing of the proposed members is such as to give assurance that its affairs will be administered in accordance with the spirit of this Act, and it shall be the duty of the commissioner of banking to issue a charter to said rural credit union to do business in conformity with the provisions of this Act. The state bank commissioner, or his deputy, shall have authority to examine the accounts, books and papers of rural credit unions herein authorized to be organized. Any rural credit union violating the provisions of this Act shall be subject to the forfeiture of its charter, and any officer or member misapplying or embezzling funds belonging to such rural credit union, shall be subject to prosecution and punishment as already provided for violating the provisions of the state banking laws. (Id. sec. 3.)

Art. 7046d. Who may transact business as rural credit union.—No person, partnership, association or corporation, except corporation formed under the provisions of this Act, shall hereafter transact business under any name or title which contains the three words "rural credit union," except those expressly authorized herein to be formed. (Id. sec. 4.)

Art. 7046e. Powers and duties of state bank commissioner.—The state bank commission shall require such rural credit unions to keep such books as he may deem necessary for the proper conduct of their business; may make examination and report of the transaction of such rural credit unions' business and institute necessary proceedings for the prosecution of any officer or director misapplying the rural credit unions' funds. The rural credit unions shall be subject to the general supervision of the state bank commissioner. (Id. sec. 5.)

Art. 7046f. By-laws.—The by-laws of the rural credit unions shall prescribe—

(a) The name of the corporation.

(b) The purpose for which it is formed.

(c) The conditions of residence or occupation which qualify persons for membership.

(d) The par value of the shares of capital stock.

(e) The conditions on which shares may be paid in, transferred and withdrawn.

(f) The conditions on which deposits may be received and withdrawn.

(g) The method of receipting for money paid on account of shares or deposited.

(h) The number of directors and number of members of the credit committee.

(i) The duties of the several officers.

(j) The fines, if any, which may be charged for failure to meet obligations of the association punctually.

(k) The date of the annual meeting of members.

(l) The manner in which members shall be notified of meetings.

(m) The number of members which will constitute a quorum at meetings.

(n) Such other regulations as may seem necessary. (Id. sec. 6.)

Art. 7046g. By-laws to be approved, etc.—No such credit union shall receive deposits or payments on account of shares, or make any loans until its by-laws have been approved in writing by the state bank commissioner, nor shall any amendments to its by-laws become operative until they have been so approved. (Id. sec. 7.)

Art. 7046h. Fiscal year; meetings; who may vote, etc.—The fiscal year of every such association shall end at the close of business on the 31st day of December. The annual meeting of the association shall be held at such time and place as the by-laws prescribe. Special meetings may be held by order of the directors or of the supervisory committee, and the clerk shall give notice of such special meetings upon request, in writing, of ten members. Notice of all meetings of the association shall be given in the manner prescribed by the by-laws. No person shall be entitled to vote who has not been a member for more than three months but this restriction shall not apply during the first twelve months of the existence of the association, nor shall any member vote by proxy or have more than one vote. At the annual meeting, the members shall upon recommendation of the board of directors, declare dividends and fix the amount of the entrance fee. At any meeting the members may decide upon any question of interest to the association, and upon appeal of two members may reverse decisions of the credit committee or board of directors; and, by a three-fourths vote of those present, provided the notice of the meeting shall have specified the question to be considered may amend the by-laws. (Id. sec. 8.)

Art. 7046i. Directors; credit and supervisory committees.—At the annual meeting the members shall elect a board of directors of not less than five members from which a credit committee of not less than three members may be selected. A supervisory committee of three members shall also be elected.

No member of the board of directors shall be a member of the supervisory committee, nor shall one person be a member of more than one of said committees, and all members thereof, as well as all officers whom they may elect shall be sworn, and shall hold their several offices until others are elected and qualified in their stead; and a record of every such qualification shall be filed and preserved with the records of the association. (Id. sec. 9.)

Art. 7046j. Executive officers; powers and duties of directors.—At their first meeting the board of directors shall elect from their number a president, a vice-president, a clerk and a treasurer who shall be the executive officers of the association. The board of directors shall have the general management of the affairs, funds and records of the association, and shall meet as often as may be necessary.

It shall be their special duty—

(a) To act upon all applications for membership.

(b) To act upon the expulsion of members.

(c) To fix the amount of surety bond which shall be required of each officer having custody of the funds.

(d) To determine the rate of interest on loans.

(e) To fill vacancies in the board of direc-

tors or in the credit committee of the association until the election and qualification of officers to fill said vacancies.

(f) To make recommendations to meetings of the members relative to the amount of entrance fee; the maximum number of shares which may be held by, and the maximum amount which may be lent to, any one member; the dividend to be declared; amendments to the by-laws and any other matters which in their opinion, the members should decide. (Id. sec. 10.)

Art. 7046k. Loans; powers and duties of credit committee.—The credit committee shall approve every loan or advance made by the association. Every application for a loan shall be made in writing and shall state the purpose for which the loan is desired, and the security offered. No loan shall be made unless the credit committee is satisfied that it promises to benefit the borrower, nor unless it has received the unanimous approval of those members of said committee who were present when it was considered, nor if any member of said committee shall disapprove thereof; but applicant for a loan may appeal from the decisions of the credit committee to the board of directors. (Id. sec. 11.)

Art. 7046*l*. Powers and duties of supervisory committee.—The supervisory committee shall inspect the securities, cash and accounts of the association and supervise the acts of its board of directors, credit committee and officers. At any time the supervisory committee, by a unanimous vote, may suspend the credit committee or any officer elected by the board of directors, and by a majority vote may call a meeting of the shareholders to consider any violation of this act or of the by-laws, or any practice of the association which, in the opinion of said committee, is unsafe or unauthorized. Within seven days after the suspension of the credit committee the supervisory committee shall cause notice to be given of a special meeting of the members to take such action relative to such suspension as may seem necessary. The supervisory committee shall fill vacancies in their own number until the next annual meeting. (Id. sec. 12.)

Art. 7046m. Capital stock.—The capital of the association shall be unlimited in amount. Shares of capital stock may be subscribed for and paid in in such manner as the by-laws shall prescribe. (Id. sec. 13.)

Art. 7046n. Shares and deposits of minor or in trust.—Shares may be issued and deposits received in the name of a minor and such shares and deposits may, in the discretion of the directors, be withdrawn by such minor or by his parent or guardian, and in either case payments made on such withdrawals shall be valid. If shares are held or deposits made in trust the name and residence of the beneficiary shall be disclosed and the account shall be kept in the name of such holder as trustee for such person. If no other notice of the existence and terms of such trust has been given in writing to the association, such shares or deposits may, upon the death of the trustee, be withdrawn by the person for whom the amount of such shares was paid in or for whom such deposit was made, or by his legal representative. (Id. sec. 14.)

Art. 7046o. Funds, how lent and deposited.—The capital, deposits and surplus funds of the association shall be either lent to the members for such purposes and upon such security and terms as the credit committee shall approve, or deposited to the credit of the association in savings banks or trust companies incorporated under the laws of this state, as in national or state banks located therein, such depositories to be approved by the commissioner of banking. (Id. sec. 15.)

Art. 7046p. Loans may be repaid, when; fines for failure to pay.—A borrower may repay the whole or any part of his loan on any day on which the office of the association is open for the transaction of business for failure to pay the interest or any installment required by the terms of the loan, the borrower may be fined if the by-laws so prescribe. (Id. sec. 16.)

Art. 7046q. No compensation to directors or committeemen; loans, to whom and for what purposes and amounts.—No member of the board of directors or of the credit or supervisory committee shall receive any compensation for his services as a member of said board or committees, nor shall any member of the credit or supervisory committee, either directly or indirectly, borrow from or become surety for any loan or advance made by the association, except upon the approval of two-thirds of the members of the association. No loan shall be granted except for productive purposes or urgent needs, nor for a longer period than eight months; nor shall any loan be renewed for a sum as large as the original amount. Loans to any one member shall not exceed $200.00. (Id. sec. 17.)

Art. 7046r. Expulsion of members.—The board of directors may expel from the association any member who has not carried out his engagements with the association, or has been convicted of a criminal offense, or neglects or refuses to comply with the provisions of this Act or of the by-laws of the association, or who habitually neglects to pay his debts, or shall become insolvent or bankrupt, or shall have deceived the association with regard to the use of borrowed money; but no member shall be expelled until he has been informed in writing of the charges against him, and an opportunity has been given to him, after reasonable notice to be heard thereon. (Id. sec. 18.)

Art. 7046s. Repayments to members withdrawn or expelled, etc.—The amounts paid in on shares or deposited by members who have withdrawn or have been expelled shall be paid to them, but in the order of withdrawal or expulsion, and only as funds therefor become available and after deducting any amounts dew [due] by said members to the association; but such expulsion shall not operate to relieve a member from any remaining liability to the association. (Id. sec. 19.)

Art. 7046t. Duty of supervisory committee before dividend.—Immediately before a meeting of the directors called to recommend the declaration of a dividend, the supervisory committee shall make a thorough audit of the receipts, disbursements, income, assets and liabilities of the association for the fiscal year, and shall make a full report thereon to the directors, said report shall be read at the annual meeting and shall be filed and preserved with the records of the association. (Id. sec. 20.)

Art. 7046u. Dividends, how declared and paid.—At the annual meeting a dividend may be declared from income which has been actually collected during the fiscal year next preceding, or during the months which have elapsed since the association began business, and which remains after the deduction of all expenses, losses, and the amount required to be set apart as a guaranty fund. Such dividend shall be paid on all fully paid shares outstanding at the close of the fiscal year, but shares which become fully paid during the year shall be entitled only to a proportional part of said dividend, calculated from the first day of the month following such payment in full. Dividends due to a member shall be paid to him in cash or credited to the account of partly paid shares for which he has subscribed. (Id. sec. 21.)

Art. 7046v. Guaranty fund.—Immediately before the payment of each dividend, there shall be set apart as a guaranty fund twenty per cent. of the net income which has accumulated during the fiscal year. Said fund and the investments thereof belong to the association and shall be held to meet contingencies or losses in its business. All entrance fees shall be added at once to the guaranty fund. But upon recommendation of the board of directors the members at an annual meeting may increase, and whenever said fund equals or exceeds the amount of capital stock actually paid in, may decrease the proportion of profits which is required by this section to be set apart as a guaranty fund. (Id. sec. 22.)

Art. 7046w. Dissolution.—At any meeting specially called to consider the subject the members upon the unanimous recommendation of the board of directors may vote to dissolve the association, provided at least two-thirds of the members are present at such meeting, and provided not more than ten members, either in person or by written notice, object thereto.

A committee of three shall thereupon be elected to liquidate the assets of the association, and each share of the capital stock, according to the amount paid in thereon, shall be entitled to its proportion of the proceeds after all debts of the association have been paid. (Id. sec. 23.)

Art. 7046x. Annual report to bank commissioner.—Within twenty days after the last business day of December in each year, ever [every] such association shall make to the bank commissioner a report in such form as he may prescribe signed by the president, treasurer and a majority of the supervisory committee who shall certify and make oath that the report is correct according to their best knowledge and belief.

Any such association which neglects to make the said report within the time herein prescribed shall forfeit to the state five dollars for each day during which such neglect continues. (Id. sec. 24.)

TITLE 120
SALARIES

CHAPTER ONE
EXECUTIVE OFFICERS

Art. 7047. (4818) Governor.—The governor shall at stated times receive as compensation for his services an annual salary of four thousand dollars, and no more, and shall have the use and occupation of the governor's mansion, fixtures and furniture. (Const., art. 4, sec. 5.)

Art. 7048. (4821) Secretary of state.—The secretary of state shall receive for his services an annual salary of two thousand dollars, and no more. (Id. sec. 21.)

Art. 7048a. (4822) Attorney General.—The attorney general shall receive an annual salary of two thousand dollars, and no more, besides such fees as may be prescribed by law, not to exceed two thousand dollars annually. (Const., art. 5, sec. 22.)

Art. 7049. (4820) Comptroller, treasurer and commissioner of general land office.—The comptroller of public accounts, treasurer of the state, and the commissioner of the general land office shall each receive for their services an annual salary of two thousand and five hundred dollars, and no more. (Id. sec. 23.)

Art. 7050. (4827). [Superseded by Acts 1917, 1st C. S., ch. 48, sec. 2, post, art. 7085b, fixing the salary of the superintendent at $4,000.]

Art. 7051. Commissioner of agriculture.—The commissioner of agriculture shall receive an annual salary of twenty-five hundred dollars, and necessary expenses, not to exceed six hundred dollars. He shall file with the governor, on or before the first day of November of each year, an itemized sworn statement of such expenses during the fiscal year preceding, which statement shall be transmitted by the governor to the legislature. (Acts 1909, p. 127, sec. 6.)

Salary of Commissioner of Agriculture, see post, art. 7085b.

Art. 7052. [Superseded by Acts 1917, 1st C. S., ch. 48, sec. 2, post, art. 7085b.]

Art. 7053. (4829) Railroad commissioners.—The railroad commissioners shall each receive an annual salary of four thousand dollars. (Acts 1891, p. 55.)

Art. 7054. (4834) Adjutant General.—From and after the 1st day of April 1918 the Adjutant General of the State of Texas shall receive an annual salary of Three Thousand Six Hundred Dollars ($3,600.00) and each year thereafter he shall receive an annual salary of Three Thousand Six Hundred Dollars ($3,600.00). (Act June 24, 1870; P. D. 7148; Acts 1918, 4th C. S., ch. 37, sec. 1.)

CHAPTER TWO
LEGISLATIVE OFFICERS

Art. 7055. (4819) Lieutenant governor.—The lieutenant governor shall, while he acts as president of the senate, receive for his services the same compensation and mileage which shall be allowed to members of the senate, and no more; and during the time he administers the government, as governor, the same compensation which the governor would have received had he been employed in the duties of his office, and no more.

Art. 7056. Senators and representatives, mileage and per diem.—Members of the legislature shall receive as compensation for their services and attendance upon any regular or called session of the legislature, five dollars per day for the first sixty days of each session, and after that, the sum of two dollars per day for the remainder of the session. Members of the legislature shall receive as mileage for attendance upon any

regular or called session of the legislature five dollars for every twenty-five miles in going to and returning from the seat of government, to be computed by the nearest and most direct route of travel by land, regardless of railways or water routes; and the comptroller of public accounts shall prepare and preserve a table of distances to each county seat, now or hereafter to be established, and by such table the mileage of each member of the legislature shall be computed and paid, the calculation to be based in each instance upon the distance to the county seat of the county in which such member resides; provided, that no member shall be entitled to mileage for any extra session of the legislature that may be called within one day after the adjournment of any regular or called session. (Const., art. 3, sec. 24; Acts 1907, p. 10.)

CHAPTER THREE

JUDICIAL OFFICERS

Art. 7057. Justices of supreme court, judges of commission of appeals, judges of court of criminal appeals, judges of courts of civil appeals, judges of district courts.—From and after the passage of this Act, Judges of the Supreme Court, judges of the Commission of Appeals, and the judges of the Court of Criminal Appeals of this State shall each be paid an annual salary of Sixty Five Hundred dollars, payable in equal monthly instalments; that the judges of the several Courts of Civil Appeals of this State shall each be paid an annual salary of Five Thousand Dollars, payable in equal monthly instalments; and that the Judges of the District Courts of this State shall each be paid an annual salary of Four Thousand Dollars, payable in equal monthly instalments. (Acts 1913, p. 329, sec. 1, superseding Acts 7057, 7058, Rev. St. 1911; Acts 1919, ch. 32, sec. 1.)

Section 2 of Acts 1919, ch. 32, repeals all conflicting laws.

Art. 7058. [Superseded.]

See art. 7057.

Art. 7059. [Superseded.]

See art. 7057.

Art. 7059a. Traveling expenses of district judges, district attorneys, and judge of criminal district court of Harris and Galveston counties.—All district judges within this state, all district attorneys of the state of Texas, and the judge of the criminal district court of Harris and Galveston counties, when engaged in the discharge of their official duties in any county in this state other than the county of their residence, shall, in addition to the compensation now provided by law for their services, be allowed their actual and necessary expenses while engaged in the discharge of such duties, not to exceed the sum of two ($2.00) dollars per day for hotel bills, and not to exceed three cents per mile when traveling by railroad, and not to exceed fifteen cents per mile when traveling by private conveyance, in going to and returning from the place where such duties are discharged, traveling by the nearest practicable route, such sum to be paid by the state upon the sworn account of the district judge and district attorney, respectively, entitled thereto, showing the actual and necessary traveling expenses, and other actual and necessary expenses incurred in the discharge of their official duties in compliance with the provisions of this Act; provided, there shall never be paid to any such judge or district attorney more than the sum of two hundred ($200.00) dollars in any one year under the provisions of this Act; provided, further, that the account for such services above provided for shall be recorded in the minutes book of the district court of the county in which such district judge or district attorney shall reside. (Acts 1911, p. 38, sec. 1.)

Art. 7060. (4843) Assistant attorney general.—The assistant attorney general shall receive an annual salary of two thousand dollars, and also for mileage and traveling expenses one thousand dollars per annum, and no more. (Act March 13, 1879, p. 90, sec. 3; Act Aug. 23, 1876, p. 285, sec. 3.)

Art. 7061. (4841) Special judges commissioned by the governor.—Special judges, commissioned by the governor, in obedience to section 11, article 5, of the constitution, shall receive the same pay as district judges for every day they may be necessarily occupied in going to and returning from the place where they may be required to hold court, as well as the time they are actually engaged in holding court. (Act July 12, 1876, p. 45, sec. 1.)

Art. 7062. (4842) Special judge elected by attorneys.—A special judge elected by the practicing lawyers, or agreed upon by the parties as provided by law, shall receive the same pay as the district judge for every day that he may be occupied in performing the duties of judge. (Act Aug. 15, 1878, p. 140, sec. 4.)

Art. 7063. (4855) Salary of special judge, how ascertained.—The amount of salary due any special judge shall be ascertained by dividing the salary allowed a district judge by three hundred and sixty-five, and then multiplying the quotient by the number of days actually served by such special judge. (Act July 12, 1876, p. 45, sec. 2.)

Art. 7064. (4856) How special judge commissioned by the governor shall obtain pay.—A special judge commissioned by the governor, in order to obtain his salary, shall present to the comptroller an account therefor, showing the number of days that such special judge was necessarily occupied in going to and returning from the place or places where such special judge presided under said appointment, which account shall be verified by the affidavit of such special judge, and certified to be correct by the judge of the district, or by the clerk of the court in which the services were performed, and shall be accompanied by evidence that he was duly commissioned as such special judge by the governor. (Id. sec. 3.)

Art. 7065. (4857) Special judge elected, etc., how he may obtain his pay.—A special judge elected by practicing lawyers, or agreed upon by the parties, as provided by law, shall be paid for his services out of the state treasury on the certificate of the clerk of the court in which such services were rendered, to the comptroller, of the record of such election or appointment and services, accompanied by the account of such special judge, verified by his affidavit, showing the number of days actually served by him as such special judge. (Act Aug. 15, 1876, p. 140, sec. 4.)

CHAPTER FOUR

MISCELLANEOUS OFFICERS

Art. 7066. (4824) Salaries of superintendents of certain asylums.—The superintendents of the blind institute, the deaf and dumb institute, the epileptic colony, the state lunatic asylum, the southwestern insane asylum, and the north Texas hospital for the insane, shall each receive an annual salary of two thousand dollars; provided, they shall each receive provisions not to exceed in value five hundred dollars a year, and fuel, lights, water and housing for himself and family.

Art. 7067. Same.—The Superintendent of the Deaf, Dumb and Blind Institute for Colored Youths shall receive an annual salary of $1,800.00 per year, providing that he or she shall receive provisions not exceeding in value $500.00 per year, and fuel, lights, water, laundry and housing for himself or herself and immediate family. (Acts 1919, 2d C. S., ch. 24, sec. 4.)

Art. 7068. [Superseded by Acts 1917, 1st C. S., ch. 48, sec. 2, post, art. 7085b, fixing the salary of the purchasing agent at $3,000.]

Art. 7069. [Superseded by Acts 1917, 1st C. S., ch. 48, sec. 2, post, art. 7085b and Acts 1919, 2d C. S., ch. 24, sec. 3, post, art. 7085h.]

Art. 7070. Superintendent home for lepers.—The superintendent of the home for lepers shall receive an annual salary of three thousand dollars. (Acts 1909, p. 344, sec. 5.)

Art. 7071. Superintendent juvenile institution.—The superintendent of the state institution for the training of juveniles shall receive a salary of one thousand eight hundred dollars per annum, with provisions not to exceed in value five hundred dollars per year, and fuel, lights, water and housing for himself and family. (Acts 1909, p. 103.)

See post, art. 7085h.

Art. 7072. Prison commissioners.—Each member of the board of prison commissioners shall receive as compensation for his services the sum of three hundred dollars per month, to be paid at the end of each month; and, in addition thereto, he shall be allowed all reasonable and necessary traveling expenses actually incurred when traveling on business of the prison system; said salary and expenses to be paid out of the funds of the prison system. Each prison commissioner shall be permitted to occupy, free of rent, one of the residence houses belonging to the state at Huntsville.

Art. 7073. Prison auditor.—The auditor of the prison system shall receive a salary of two hundred dollars per month, to be paid at the end of each month, together with all actual and necessary traveling expenses; said salary and expenses to be paid out of the funds belonging to the prison system.

Art. 7074. (4830) [Superseded by Acts 1917, 1st C. S., ch. 48, sec. 2, post, art. 7085b, fixing the salary of the revenue agent at $2,100. Also repealed by Acts 1918, 4th C. S., ch. 94, § 1. See post, art. 7368a.]

Art. 7075. (4833) Superintendent of public buildings.—From and after the passage of this Act the salary of the Superintendent of Public Buildings and Grounds of the State of Texas shall be, and same is hereby fixed at the sum of twenty four hundred dollars per annum. (Acts 1889, p. 22; Acts 1918, 4th C. S., ch. 74, sec. 1.)

Art. 7076. Commissioner of pensions.—The commissioner of pensions shall receive a salary of two thousand dollars per annum. (Acts 1909, p. 23, sec. 5.)

Art. 7077. [Superseded by art. 7085b, fixing salary of commissioner of labor at $2,400.]

Art. 7078. State health officer.—The state health officer and ex officio president of the state board of health shall receive a salary of two thousand five hundred dollars per annum. (Acts 1909, p. 340, sec. 2.)

See post, art. 7085b.

Art. 7079. [Superseded by Acts 1917, 1st. C. S., ch. 48, sec. 2, post, art. 7085b, fixing the salary of the "Pure Food and Dairy Commissioner" at $3,000.]

Art. 7080. State mining inspector.—The state mining inspector shall receive a salary of two thousand dollars per annum, and necessary traveling expenses not to exceed one thousand dollars per annum. (Acts 1909, p. 163, sec. 21.)

See post, art. 7085b.

Art. 7081. [Superseded by Acts 1917, 1st C. S., ch. 48, sec. 2, post, art. 7085b, fixing the salary of the librarian at $2,000.]

Art. 7082. [Superseded by Acts 1917, 1st C. S., ch. 48, sec. 2, post, art. 7085b, fixing the salary of the two members of the board of pardon advisers at $2,500.]

Art. 7083. Game, fish and oyster commissioner.—The game, fish and oyster commissioner shall receive, in addition to his regular salary of one thousand eight hundred dollars per annum, the additional sum of seven hundred dollars per annum, and necessary expenses incurred in the discharge of his duties, the same to be paid under such limitations and out of such funds as is provided by law. (Acts 1899, p. 312, art. 2517; Acts 1907, p. 254, sec. 6.)

See post, art. 7085b.

Art. 7084. [Superseded by Acts 1917, 1st C. S., ch. 48, sec. 2, post, art. 7085b, fixing the salary of the tax commissioner at $2,500.]

Art. 7085. State insurance board.—Each member of the state insurance board, except the commissioner of insurance and banking, shall receive as compensation an annual salary of two thousand five hundred dollars. The commissioner of insurance and banking shall receive an annual salary of five hundred dollars as compensation for his services as a member of said board. (Acts 1910, 3 S. S., p. 125.)

See post, art. 7085b.

Art. 7085a. Salaries of certain officers, assistants, deputies and employés.—That from and after the passage of this Act the following named officers, assistants, deputies, clerks and employés in the employ of the State Government of the State of Texas, shall receive for their services as such officers, assistants, deputies, clerks and employés, the following annual salaries which are hereby fixed and established at the respective amounts herein set out. (Acts 1917, 1st C. S., ch. 48, sec. 1.)

Art. 7085b. Enumeration.—The Adjutant General shall receive an annual salary of three thousand dollars.

The assistant Adjutant General and Chief Clerk shall receive an annual salary of Two Thousand Dollars.

The Quartermaster shall receive an annual salary of Two Thousand Dollars.

The Commissioner of Agriculture shall receive an annual salary of Thirty Six Hundred Dollars.

The Chief of the department of plant, pathology of said department of Agriculture shall receive an annual salary of Twenty One Hundred Dollars.

The Chief Clerk in the Department of Agriculture shall receive an annual salary of Two Thousand Dollars.

The Chief Inspector of Nurseries in said department of Agriculture shall receive an annual salary of Two Thousand Dollars.

The two members of the Board of Pardon Advisors shall receive an annual salary of Twenty Five Hundred Dollars.

The State Superintendent of Public Instruction shall receive an annual salary of Four Thousand Dollars.

The State Revenue Agent shall receive an annual salary of Twenty One Hundred Dollars.

The Chairman of the Industrial Accident Board shall receive an annual salary of Four Thousand Dollars.

Each of the other two members of the Industrial Accident Board shall receive an annual salary of Three Thousand Dollars.

The Superintendent of the Tuberculosis Sanitorium at Carlsbad, shall receive an annual salary of Twenty Five Hundred dollars.

The Secretary of the Industrial Accident Board shall receive an annual salary of Twenty-five hundred dollars.

The State Tax Commissioner shall receive an annual salary of Twenty-five hundred dollars.

The State Purchasing Agent shall receive an annual salary of three thousand dollars.

The Chief Clerk in the office of State Purchasing Agent shall receive an annual salary of two thousand dollars.

The State Librarian shall receive an annual salary of two thousand dollars.

The inspector of Masonry, Public Buildings and Grounds shall receive an annual salary of two thousand dollars.

The State Inspector of Mines shall receive an annual salary of two thousand dollars.

The Game, Fish and Oyster Commissioner shall receive an annual salary of twenty-five hundred dollars.

The Chief Deputy in the office of the Game, Fish and Oyster Commissioner shall receive an annual salary of two thousand dollars.

The Commissioner of Pensions shall receive an annual salary of two thousand dollars.

The Superintendent of Buildings and grounds shall receive an annual salary of one thousand and five hundred dollars, and shall receive in addition thereto, as long as he shall be required to look after the State's property outside of Austin, the sum of two hundred and fifty dollars annually.

The Superintendent of the State Orphans' Home shall receive an annual salary of two thousand dollars together with provisions for himself and family not to exceed five hundred dollars per annum, with fuel, lights, laundry, water and housing.

The President of the State Board of Health shall receive an annual salary of three thousand dollars.

The Assistant Health Officer shall receive an annual salary of twenty four hundred dollars.

The Registrar of Vital Statistics shall receive an annual salary twenty four hundred dollars.

The Chemist and Bacteriologist in the Health Department shall receive an annual salary of twenty one hundred dollars.

The Commissioner of Labor shall receive an annual salary of twenty four hundred dollars.

The Inspectors in the Bureau of Labor Statistics shall receive an annual salary of eighteen hundred dollars.

The Chairman of the Live Stock and Sanitary Commission shall receive an annual salary of twenty five hundred dollars.

Each of the other two members of the Live Stock and Sanitary Commission shall receive an annual salary of one thousand two hundred and fifty dollars.

The Pure Food and Dairy Commissioner shall receive an annual salary of three thousand dollars.

The Chemist in the Pure Food and Dairy Department shall receive an annual salary of twenty four hundred dollars each.

The Inspectors in the Pure Food and Dairy Department shall each receive an annual salary of fifteen hundred dollars.

The Manager of the Warehouse and Marketing Department shall receive an annual salary of three thousand and six hundred dollars.

The Chief Clerk in the Ware House and Marketing Department shall receive an annual salary of two thousand dollars.

The State Expert Printer and Secretary of the State Printing Board shall receive an annual salary of Two Thousand Dollars.

The Commissioner of Insurance and Banking shall receive an annual salary of Four Thousand and he shall also receive, as long as he shall exercise the functions fixed by statute, the sum of one thousand ($1,000.00) dollars, salary as Ex-Officio Superintendent of Banking, and a like sum of Five Hundred dollars annually as Chairman of the State Fire Insurance Commission.

The store keepers and accountants of the various eleemosynary institutions shall receive an annual salary to be fixed in the General Appropriation bills from year to year, not to exceed Twelve Hundred ($1,200.00) dollars. (Id. sec. 2.)

As to salary of Adjutant General see, ante, art. 7054. As to salary of Superintendent of Public Buildings and Grounds, see ante, art. 7075. As to salary of Secretary of State Printing Board and State Expert Printer, see, ante, art. 6370b. As to office of State Revenue Agent, see post, arts. 7368a, 7368b.

Art. 7085c. Those not enumerated to receive compensation fixed by appropriation bills.—Other assistants, deputies, clerks, and employés in the various departments of the State Government, other than those specifically provided for herein, shall receive such compensation as shall be fixed and provided for in the General Appropriation Bills for the support of the State Government by the Legislature of the State. (Id. sec. 3.)

Art. 7085d. Traveling and other expenses to be fixed by appropriation acts.—The traveling and other necessary expenses incurred by the various officers, assistants, deputies, clerks and other employés in the various departments of the State Government, in the active discharge of their duties, shall be such as are specifically fixed and appropriated for by the Legislature in the General Appropriation Bills providing for the expenses of the State Government from year to year. (Id. sec. 4.)

Art. 7085e. Repeal.—The terms hereof fixing and establishing the salaries and allowances of expenses and the other provisions of this Act shall be superior to those in any other Act or Statute of the State conflicting herewith and as to the specific provisions of this Act, such conflicting sections, provisions and terms of other and prior Acts and Statutes are hereby repealed. (Id. sec. 5.)

Art. 7085f. Salaries of certain officers, etc.—From and after September 1, 1919, the following named officers, superintendents and employés in the employ of the State Government of the State of Texas, shall receive for their service as such officers, superintendents and employés, the following annual salaries, which are hereby fixed and established at the respective amounts herein set out. (Acts 1919, 2d C. S., ch. 24, sec. 1.)

Art. 7085g. Enumeration.—Superintendents of the Blind Institute, the Deaf and Dumb Institute, the Epileptic Colony, State Lunatic Asylum, Southwestern Insane Asylum, North Texas Hospital for the Insane, Northwest Texas Insane Asylum, Hospital for Negro Insane, Colony for the Feeble Minded, State Institution for the Training of Juveniles and the Head Physician of the State Pasteur Institute shall receive an annual salary of $2,500.00 per year; provided that each shall receive provisions not to exceed $500.00 per year, and fuel and lights, water, laundry and housing for himself and immediate family. (Id. sec. 2.)

Art. 7085h. Same subject.—The Superintendents of the Confederate Home, The Confederate Woman's Home and Superintendent Girls Training School shall each receive an annual salary of $2,000.00 per year, providing that each shall receive provisions not exceeding in value $500.00 per year, and fuel, lights, water, laundry and housing for himself or herself and immediate family. (Id. sec. 3.)

Art. 7085i. Repeal.—The terms hereof fixing and establishing the salaries and allowances of expenses and the other provisions of this Act shall be superior to those in any other Act or Statute of the State conflicting herewith and as to the specific provision of this Act such conflicting sections, provisions and terms of other and prior Acts and Statutes are hereby repealed. (Id. sec. 5.)

CHAPTER FIVE

GENERAL PROVISIONS

Art. 7086. (4853) Salaries shall not be changed during term of office.—The salaries of officers shall not be increased nor diminished during the term of office of the officers entitled thereto.

Art. 7087. (4854) Salaries payable monthly.—Officers entitled to salaries may demand monthly payment of the same; and upon filing with the comptroller of public accounts proper vouchers, the comptroller shall issue his warrant upon the treasurer for the amount of salary due to the officer applying therefor; and the treasurer shall pay such warrant out of the fund appropriated for the payment of the same.

Art. 7088. (4858) Required to produce evidence of qualifications to comptroller, when.—The comptroller of public accounts, the state treasurer, county commissioners' courts, county treasurers, and any and all other officers of this state, or of any municipal division thereof, whether herein enumerated or not, who are authorized or required by law to audit, or pay, or order to be paid, claims due from the state, or any county or municipal division thereof, to any person or persons, as a salary, or as fees, compensation, perquisites or emoluments for official services rendered by such person, as an officer thereof, shall, upon the demand of any citizen of this state, before auditing, paying, or ordering to be paid, any such claims as aforesaid, require such person presenting such claim to produce the certificate of his election or appointment to such office directed by the laws of this state to be issued to such officer; or, if his claim be founded upon the judgment or decree of a court of this state, authorized by the laws of this state to hear and determine the claims of persons to office, then a copy of the record of such judgment or decree certified under the hand and seal of the legal custodian of such record to be a true copy thereof. (Acts 1881, p. 7, sec. 1.)

Art. 7089. (4859) Salary to be paid only, when.—It shall not be lawful for any officer or court of this state, or of any municipal division thereof, to allow, audit, pay or order to be paid, the claim of any person for salary, compensation, fees, perquisites, emoluments, or services, as an officer of the state, or of any municipal division thereof, except to such person as has been duly elected such officer by the qualified voters of this state, and whose election has been ascertained and certified or declared in the manner required by the laws of this state, or who has been appointed such officer by the lawful appointing power under the constitution and laws of this state, or who has been adjudged entitled thereto by a state court of competent jurisdiction of this state, and has qualified as such officer in accordance with the requirements of the laws of this state. (Id. sec. 2.)

Art. 7090. (4860) Who entitled to compensation.—No person shall be held by the laws of this state entitled to pay for services as an officer thereof, or of any county, or municipal division thereof, or to exercise any of the powers of jurisdiction of an officer thereof, unless he shall have been elected, appointed or adjudged entitled thereto, as specified in article 7089; and the official acts of any person claiming a right to exercise such power or jurisdiction, contrary to the provisions of this law, are and shall be held to be null and void. (Id. sec. 3.)

Art. 7091. Enumeration in this title not to affect provisions found elsewhere.—The enumeration of various officers and their salaries in this title shall not operate to repeal or affect provisions of law found else-

where in the statutes, or any appropriation bills permitting or authorizing the existence, or prescribing the compensation of other officers.

TITLE 121

SEALS AND SCROLLS

Art. 7092. (4862) Private seals and scrolls dispensed with.—No private seal or scroll shall be necessary to the validity of any contract, bond or conveyance, whether respecting real or personal property, or any other instrument of writing, whether official, judicial or private, except such as are made by corporations, nor shall the addition or omission of a seal or scroll in any way affect the force and effect of the same. (Acts April 28, 1873; Feb. 2, 1858; P. D. 5087.)

See Sayles' Practice, pp. 788, 1077; Townes' Texas Pleading (2d Ed.) p. 494; Simkins' Contracts and Sales (3d Ed.) p. 32; Sanger v. Warren, 44 S. W. 477; William Cameron & Co. v. Trueheart, 165 S. W. 58.

Art. 7093. (4863) Unsealed instruments held to import consideration, etc.—Every contract in writing hereafter made shall be held to import a consideration in the same manner and as fully as sealed instruments have heretofore done.

Harris v. Cato, 26 Tex. p. 338; Warren v. Gentry, 50 S. W. 1025; Royal Neighbors of America v. Heard, 185 S. W. 882; Panhandle & S. F. Ry. Co. v. Fitts, 188 S. W. 528; Atchison, T. & S. F. Ry. Co. v. Smyth, 189 S. W. 70.

TITLE 122

SEQUESTRATION

Art. 7094. (4864) In what cases to be issued.—Judges and clerks of the district and county courts, and justices of the peace, shall, at the commencement or during the progress of any civil suit, before final judgment, have power to issue writs of sequestration, returnable to their respective courts, in the following cases:

1. When a married woman sues for divorce, and makes oath that she fears her husband will waste her separate property, or their common property, or the fruits or revenue produced by either, or that he will sell or otherwise dispose of the same so as to defraud her of her just rights, or remove the same out of the limits of the county during the pendency of the suit.

2. When a person sues for the title or possession of any personal property of any description, and makes oath that he fears the defendant or person in possession thereof will injure, ill-treat, waste or destroy such property, or remove the same out of the limits of the county during the pendency of the suit.

3. When a person sues for the foreclosure of a mortgage or the enforcement of a lien upon personal property of any description, and makes oath that he fears the defendant or person in possession thereof will injure, ill-treat, waste or destroy such property, or remove the same out of the county during the pendency of the suit.

4. When any person sues for the title or possession of real property, and makes oath that he fears the defendant, or person in possession thereof will make use of his possession to injure such property, or waste or convert to his own use the fruits or revenue produced by the same.

5. When any person sues for the title or possession of any property from which he has been ejected by force or violence, and makes oath of such fact.

6. When any person sues for the foreclosure of a mortgage or the enforcement of a lien on real estate, and makes oath that he fears the defendant or person in possession thereof will make use of such possession to injure such property, or waste or convert to his own use the timber, rents, fruits or revenue thereof.

7. When any person sues to try the title to any real property, or to remove cloud upon the title to any such real property, or to foreclose a lien upon any such real property, or for a partition of real property, and makes oath that the defendant, or either of them in the event there be more than one defendant, is a non-resident of this state. (Acts 1887, p. 30.)

See Sayles' Practice, pp. 856, 857, 956; Colony Co. v. Schuler, 79 S. W. 371; Watt v. Parlin & Orendorff Co., 98 S. W. 428; Frazier v. Coleman, 111 S. W. 662; Mitchell v. Burnett, 122 S. W. 937; Halff Co. v. Waugh, 183 S. W. 839; Schuster v. Crawford, 199 S. W. 327; White v. Texas Motorcar & Supply Co, 203 S. W. 441.

Generally under this title, see Nunn v. Raby, 158 S. W. 187.

Art. 7095. (4865) Affidavit, and what it shall state.—No sequestration shall issue in any cause until the party applying therefor shall file an affiavit in writing stating:

1. That he is the owner of the property sued for, or some interest therein, specifying such interest, and is entitled to the possession thereof; or,

2. If the suit be to foreclose a mortgage or enforce a lien upon the property, the fact of the existence of such mortgage or lien, and that the same is just and unsatisfied, and the amount of the same still unsatisfied, and the date when due.

3. The property to be sequestered shall be described with such certainty that it may be identified and distinguished from property of a like kind, giving the value of each article of the property and the county in which the same is situated.

4. It shall set forth one or more of the causes named in the preceding article entitling him to the writ. (Acts 1866, p. 120; P. D. 5095a.)

See Sayles' Practice, p. 853; McSpadden v. La Force, 39 S. W. 163; Clopton v. Goodbar, 55 S. W. 972; Butts v. Lucia, 153 S. W. 686; Joseph W. Moon Buggy Co. v. Moore-Hustead Co., 196 S. W. 328; White v. Texas Motorcar & Supply Co., 203 S. W. 441.

Art. 7096. (4866) Petition must be filed, when.—If the suit be in the district or county court, no writ of sequestration shall issue, unless a petition shall have been first filed therein, as in other suits in said courts. (Id. p. 122, sec. 4.)

See Sayles' Practice, p. 859.

Art. 7097. (4867) Bond for the writ.—Nor shall a writ of sequestration issue in any case until the party applying therefor has filed with the judge, clerk or justice of the peace to whom he applies, a bond payable to the defendant for a sum of money not less than double the value of the property to be sequestered, as stated in his affidavit, with two or more good and sufficient sureties, to be approved by such judge, clerk, or justice of the peace, as the case may be, conditioned that the plaintiff or person suing out such writ will pay to the defendant all such dam-

ages as may be awarded against him, and all costs in case it shall be decided that such sequestration was wrongfully issued. (Acts March 15, 1848; P. D. 5096–7.)

Art. 7098. (4868) Writ may issue when claim is not due, when, etc.—When any person has a mortgage or lien upon personal property of any description, and makes affidavit and gives bond as required in the two preceding articles, the writ of sequestration may issue, although the right of action upon such mortgage or lien has not accrued; and the same proceeding shall be had thereon as in other cases of sequestration, except that no final judgment shall be rendered against the defendant until the right of action on such mortgage or lien shall have accrued. (Id.; P. D. 5098.)

See Sayles' Practice, p. 860.

Art. 7099. (4869) Writ and its requisites.—The writ of sequestration may be directed to the sheriff or any constable of any county wherein the property is alleged to be situated, which allegation may be made either in the original or in a supplemental affidavit. It shall command the sheriff or any constable to take into his possession the property, describing the same as it is described in the affidavit, if to be found in the county, and keep the same subject to the future order of the judge, court or justice of the peace who issued the writ, unless the same is replevied according to law. (Acts Nov. 9, 1866; Id. p. 124, sec. 4.)

See Sayles' Practice, pp. 858, 861-2; Witherspoon v. S., 61 S. W. 396.

Art. 7100. (4870) Duty of officer while he retains custody of property.—The officer executing a writ of sequestration, while he retains custody of the property sequestered, shall take care of and manage the same in a prudent manner, and if he confides the same to the custody of other persons he shall be responsible for their acts in regard thereto, and shall be responsible to the party injured for any neglect or mismanagement by himself, or by those to whom he has confided the custody or management of the property. (Acts 1866, p. 121, sec. 3; P. D. 5101, 5106.)

See Sayles' Practice, p. 861.

Art. 7101. (4871) Compensation of officer.—The officer retaining custody of property by virtue of a writ of sequestration shall be entitled to receive a just compensation and all reasonable charges therefor, to be determined by the judge or justice from whose court the writ issued, to be taxed in the bill of costs against the party cast in the suit, and collected in the same manner as the other costs in the case. (Id.)

See Jackson v. Jernigan, 77 S. W. 271; Rudolph v. Snyder, 106 S. W. 763; Coleman Nat. Bank v. Futch, 146 S. W. 957.

Art. 7102. (4872) Officer expending money may retain property until, etc.—If the officer be compelled to expend any sum of money in the security, management or care of the property, he may retain possession of said property until said money be refunded by the party offering to replevy said property, his agent or attorney. (Id.)

See Jackson v. Jernigan, 77 S. W. 271.

Art. 7103. (4873) Defendant may replevy by giving bond.—When property has been sequestered, the defendant shall have the right to retain possession of the same by delivering to the officer executing the writ his bond, payable to the plaintiff, with two or more good and sufficient sureties, to be approved by such officer, for an amount of money not less than double the value of the property to be replevied. (Act Feb. 8, 1860; P. D. 5100.)

See Sayles' Practice, p. 862; De Berrera v. Frost, 77 S. W. 637; Texas Fidelity & Bonding Co. v. Cagle, 135 S. W. 689; Lane v. Kempner, 184 S. W. 1090.

Art. 7104. (4874) Bond in case of personal property.—If the property to be replevied, as provided in the preceding article, be personal property, the condition of the bond shall be that the defendant will not remove the same out of the county, or that he will not waste, ill-treat, injure, destroy or sell or dispose of the same, according to the plaintiff's affidavit, and that he will have such property, with the value of the fruits, hire or revenue thereof, forthcoming to abide the decision of the court, or that he will pay the value thereof, and of the fruits, hire or revenue of the same in case he shall be condemned so to do. (Id.)

See Sayles' Practice, p. 863; Crawford v. Plow Co., 77 S. W. 280; Wood v. Fuller, 78 S. W. 236; Norvell, etc., Hdw. Co. v. Hall, etc., Mach. Wks., 91 S. W. 1092; Broussard v. Hines, 101 S. W. 855; Crenshaw v. Staples, 173 S. W. 1184.

Art. 7105. (4875) In case of real estate.—If the property be real estate, the condition of such bond shall be that the defendant will not injure the property, and that he will pay the value of the rents of the same in case he shall be condemned so to do. (Id.)

See Henderson v. Brown, 41 S. W. 406; Zimmerman v. Pearson, 51 S. W. 523; Fidelity, etc., Co. v. Land, etc, Co., 90 S. W. 197.

Art. 7106. (4876) Return of bond and judgment thereon.—The bond provided for in the three preceding articles shall be returned with the writ to the court from whence the writ issued, and in case the suit is decided against the defendant final judgment shall be entered against all the obligors in such bond, jointly and severally, for the value of the property replevied, and the value of the fruits, hire, revenue or rent thereof, as the case may be. (Id.)

See Cabell v. Floyd, 50 S. W. 478; Luedde v. Hooper, 66 S. W. 55; Wood v. Fuller, 78 S. W. 236; Martin v. Berry Bros., 87 S. W. 712; Pipkin v. Tinch, 97 S. W. 1077; Wandelohr v. Grayson County Nat. Bank, 106 S. W. 413; Texas Fidelity & Bonding Co. v. Cagle, 135 S. W. 689; Brunson v. Dawson State Bank, 175 S. W. 438; Herrera v. Marquez, 182 S. W. 1143; Gonzales v. Flores, 200 S. W. 851.

Art. 7107. (4877) Defendant may discharge judgment by return of property, etc.—The defendant shall have the right, at any time within ten days after the rendition of the judgment provided for in the preceding article, to deliver to the sheriff or constable of the court in which such judgment is rendered, the property, or any portion thereof, which he has bound himself to have forthcoming to abide the decision of the court, and the sheriff or constable to whom such possession is tendered shall receive such property, if the same has not been injured or damaged since the replevy, and receipt to the defendant therefor, and shall immediately deliver such property to the plaintiff; and the defendant in such judgment shall, upon filing with the papers in the cause the receipt of the sheriff or constable, be credited by the clerk or justice of the peace upon such judgment with the value of the property so returned.

See Sayles' Practice, p. 864; Childs v. Wilkinson, 40 S. W. 749; Crawford v. Plow Co., 77 S. W. 280; Lewter v. Lindley, 81 S. W. 776; Martin v.

Berry Bros., 87 S. W. 712; Pipkin v. Tinch, 97 S. W. 1077; Bateman v. Hipp, 111 S. W. 971; Owens v. Vander Stucken, 133 S. W. 491; Reasonover v. Riley Bros., 150 S. W. 220; Bishop v. Japhet, 171 S. W. 499; Ingram v. Brown & McFarland, 173 S. W. 524; Herrera v. Marquez, 182 S. W. 1143; Morgan v. Coleman, 204 S. W. 670.

Art. 7108. (4878) When the property has been injured, etc.—If the property tendered back by the defendant has been injured or damaged while in his possession under such bond, the sheriff or constable to whom the same is tendered shall not receive the same, unless the defendant at the same time tenders the reasonable amount of such injury or damage, to be judged of by such sheriff or constable.

See Childs v. Wilkerson, 4 S. W. 749; Texas Fidelity & Bonding Co. v. Cagle, 135 S. W. 689; Coward v. Sutfin, 185 S. W. 378.

Art. 7109. (4879) Execution shall issue, when.—If the property be not returned and received, as provided in the two preceding articles, execution shall issue upon said judgment for the amount due thereon, as in other cases.

Art. 7110. (4880) Plaintiff may replevy, when, and his bond.—When the defendant fails to replevy the property within ten days after the levy of the writ, if such defendant, his agent or attorney, is present in the county, or within twenty days if absent from the county at the time of such levy, the officer having the property in possession shall deliver the same to the plaintiff upon his giving bond payable to the defendant in a sum of money not less than double the value of such property, with two or more good and sufficient sureties to be approved by such officer, conditioned for the forthcoming of such property, together with the fruits, hire, revenue and rent of the same, to abide the decision of the court. (Acts 1866, p. 122, sec. 3; P. D. 5101a.)

See Sayles' Practice, p. 865; Taylor v. Flynt, 67 S. W. 347; Hudgins v. Hammers, 178 S. W. 986.

Art. 7111. (4881) Bond shall be returned, and the proceedings thereon if forfeited.—The bond provided for in the preceding article shall be returned with the writ, and, in case the suit is decided against the plaintiff, final judgment shall be entered against all the obligors in such bond jointly and severally, for the value of the property replevied, and for the value of the fruits, hire, revenue or rent thereof, as the case may be, and the same rules which govern the discharge or enforcement of a judgment against the obligors in the defendant's replevy bond, as hereinbefore provided, shall be applicable to and govern in case of a judgment against the obligors in the plaintiff's replevy bond.

Art. 7112. (4882) Defendant not required to account for hire, etc., when.—In suits for the enforcement of a mortgage or lien upon property, the defendant, should he replevy the property, shall not be required to account for the fruits, hire, revenue or rent of the same, but this exemption shall not apply to the plaintiff in case he shall replevy the property. (P. D. 5100.)

See Sayles' Practice, pp. 863, 865; Rogers v. So. Pine Lbr. Co., 51 S. W. 26; De Berrera v. Frost, 77 S. W. 637; Fawcett v. Mayfield, 183 S. W. 111.

Art. 7113. (4883) Property likely to waste, etc., may be sold, when.—If after the expiration of ten days from the levy of a writ of sequestration the defendant has failed to replevy the same, if the plaintiff or defendant shall make affidavit in writing that the property levied upon, or any portion thereof, is likely to be wasted or destroyed, or greatly depreciated in value, by keeping, and if the officer having possession of such property shall certify to the truth of such affidavit, it shall be the duty of the judge or justice of the peace to whose court the writ is returnable, upon the presentation of such affidavit and certificate, either in term time or in vacation, to order the sale of said property, or so much thereof as is likely to be so wasted, destroyed or depreciated in value by keeping, but either party may replevy the property at any time before such sale. (Id.; P. D. 5099a.)

See Sayles' Practice, p. 866.

Art. 7114. (4884) Order of sale in such case.—The judge or justice granting the order provided for in the preceding article shall issue an order directed to the officer having such property in possession, commanding such officer to sell such property in the same manner as under execution. (Id.)

Art. 7115. (4885) Return of order of sale.—The officer making such sale shall, within five days thereafter, return the order of sale to the court from whence the same issued with his proceedings thereon, and shall, at the time of making such return, pay over to the clerk or justice of the peace the proceeds of such sale. (Id.)

Art. 7116. (4886) Where debt is not due, property may be sold, when, etc.—If the suit in which the sequestration issued be for a debt or demand not yet due, and the property sequestered be likely to be wasted, destroyed or greatly depreciated in value by keeping, the judge or justice of the peace shall, under the regulations hereinbefore provided, order the same to be sold, giving credit on such sale until such debt or demand shall become due. (Acts March 15, 1884; P. D. 5098.)

Art. 7117. (4887) Purchaser shall give bond, etc.—In the case of a sale, as provided for in the preceding article, the purchaser of the property shall execute his bond, with two or more good and sufficient sureties, to be approved by the officer making the sale, and payable to such officer, in a sum not less than double the amount of the purchase money, conditioned that such purchaser shall pay such purchase money at the expiration of the time given. (Id.)

Art. 7118. (4888) Bond shall be returned and judgment, etc., thereon, when.—The bond provided for in the preceding article shall be returned by the officer taking the same to the clerk or justice of the peace from whose court the order of sale issued, with such order, and shall be filed among the papers in the cause; and, in case the purchaser does not pay the purchase money at the expiration of the time given, judgment shall be rendered against all the obligors in such bond for the amount of such purchase money, interest thereon and all costs incurred in the enforcement and collection of the same; and execution shall issue thereon in the name of the plaintiff in the suit, as in other cases, and the money when collected shall be paid to the clerk or justice of the peace to abide the final decision of the cause. (Id.)

TITLE 123

SHERIFFS AND CONSTABLES

CHAPTER ONE

OF SHERIFFS

ELECTION AND QUALIFICATION

Art. 7119. (4890) Election and term of office.—There shall be elected by the qualified voters of each county one sheriff, who shall hold his office for two years, and until his successor shall be elected and qualified. (Const., art. 5, sec. 23; Act May 12, 1846, p. 265, sec. 1; P. D. 5108.)

Art. 7120. (4891) Vacancies, how filled.—Should a vacancy occur in the office of sheriff, the commissioners' court of the county shall fill such vacancy by appointment; and the person appointed, after qualifying in the manner prescribed by law for persons elected to said office, shall discharge the duties of sheriff for the unexpired term and until the election and qualification of his successor. (Id.)

Art. 7121. (4892) Oath and bond.—Every person elected to the office of sheriff shall, before entering upon the duties of his office, give a bond with two or more good and sufficient sureties, to be approved by the commissioners' court of his county, for such sum as may be directed by such court, not less than five nor more than thirty thousand dollars, payable to the governor and his successors in office, conditioned that he will account for and pay over to the persons authorized by law to receive the same all fines, forfeitures and penalties that he may collect for the use of the state or any county, and that he will well and truly execute and due return make of all process and precepts to him lawfully directed, and pay over all sums of money collected by him by virtue of any such process or precept to the persons to whom the same are due, or their lawful attorney, and that he will faithfully perform all such duties as may be required of him by law, and shall also take and subscribe the oath of office prescribed by the constitution, which shall be indorsed on said bond, together with the certificate of the officer administering the same, which bond and oath shall be recorded in the office of the clerk of the county court and deposited in said office. Said bond shall not be void on the first recovery, but may be sued on from time to time in the name of any person injured until the whole amount thereof is recovered. (Act May 12, 1846, p. 265, sec. 2; P. D. 5109.)

Art. 7122. (4893) May act without a commission.—When any person elected or appointed sheriff, in accordance with the preceding article, shall have given bond and taken the oath of office he may enter at once upon the discharge of his duties, and his acts shall be as valid in law before receiving his commission from the governor as afterward. (Act Dec. 20, 1836, p. 179, sec. 2; P. D. 5102.)

Art. 7123. (4894) Neglect to qualify.—When any person elected sheriff shall neglect, refuse or fail from any cause whatever to give bond and take the oath of office within twenty days after notice of his election, the office shall be deemed vacant; and the county commissioners' court shall proceed to appoint a sheriff to fill the vacancy, who shall hold his office for the unexpired term. (Acts 1885, p. 89.)

Art. 7124. (4895) Failure to give new bond when required.—Whenever any of the sureties of a sheriff shall die, remove permanently from the state, become insolvent, or be released from liability in accordance with law, or whenever the commissioners' court shall deem the sheriff's bond insufficient, said court shall cite said sheriff to appear at a time to be named in such citation, not less than ten nor more than 30 days after issuing such citation, and give a new bond with good and sufficient security; and, if such sheriff shall neglect or refuse to appear and give such bond on or before the designated time he shall cease to exercise the functions of his office, and shall be removed from office by the judge of the district court in the mode prescribed by law for the removal of county officers. (Acts 1836, p. 178; P. D. 5110.)

POWERS, DUTIES AND LIABILITIES

Art. 7125. (4896) May appoint deputies, etc.—Sheriffs shall have the power, by writing, to appoint one or more deputies for their respective counties, to continue in office during the pleasure of the sheriff, who shall have power and authority to perform all the acts and duties of their principals; and every person so appointed shall, before he enters upon the duties of his office, take and subscribe to the oath of office prescribed by the constitution, which shall be indorsed on his appointment, together with the certificate of the officer administering the same; and such appointment and oath shall be recorded in the office of the county clerk and deposited in said office; provided, that the number of deputies appointed by the sheriff of any one county shall be limited to not exceeding three in the justice precinct in which is located the county site of such county; and a list of these appointments shall be posted up in a conspicuous place in the clerk's office so that all can see them; provided, further, that no person shall be appointed a deputy sheriff who stands convicted for a felony; and an indictment for a felony of any deputy sheriff appointed shall operate a revocation of his appointment as such deputy sheriff; provided, that any sheriff may appoint one deputy in addition to the above enumerated for each justice precinct in addition to the precinct where the county site is situated; and all sheriffs having more deputies than are provided for in this law shall make the number of his deputies conform to the provisions of the same. (Acts 1889, p. 23.)

Art. 7125a. During state of war Commissioners' Court may authorize employment of additional deputies.—That whenever a state of war exists between the United States and other nation, and the sheriff of any county in Texas may make written application, to the commissioners court of such county, representing that the gross fees of his office are insufficient, to compensate him in the maximum amount allowed him by law and to provide proper compensation to such number of deputies as are deemed by him adequate for the preservation of peace and the protection of persons or property and

service and enforcement of process, civil and criminal, in said county, then the commissioners court of such county shall have final jurisdiction to be exercised either at a regular or special term of said court, to pass upon and determine the merits of such application, and to grant or refuse same in whole or in part, provided that any action taken or order made by the commissioners court under this Act must be by unanimous vote of said Court. (Acts 1917, 1st C. S., ch. 25, sec. 1.)

Art. 7125b. Same; application of sheriff; qualifications of deputies.—The said application of said sheriff shall be under oath, and shall state his estimate of the probable gross revenues of his office for the ensuing year, judged by past years, and shall name each present deputy of said sheriff and state the compensation paid each. It shall also state the number of additional deputies desired to be confirmed by the commissioners court and the compensation desired, in each instance of each deputy, to be allowed by the court to supplement or fully pay the salary of each deputy indicated; and shall further state that in the judgment of applicant each deputy, named or requested in said application, is a necessary aid to applicant in the faithful discharge of the duties of his office and the preservation of peace in such county, provided that no person shall be appointed a deputy sheriff, under the provisions of this Act, who is not a bona fide citizen of the United States of America and the State of Texas. (Id., sec. 2.)

Art. 7125c. Same; hearing and determination; modification of order; number of deputies.—The commissioners court, in determining such application, shall hear evidence thereon, and shall have final jurisdiction to decide all matters presented by said application, and to determine how many of the deputies indicated in said application are necessary, and to provide in each instance where deemed necessary by the court, a sum to be paid each deputy appointed under this Act, monthly, by the county, over and above all fees and allowances of said sheriff's office, and the court, in approving deputies and providing for their compensation, shall not be limited to the stipulated number of deputies permitted to a sheriff by laws in force prior to the passage of this Act. The order of the court made in said premises may be revoked or modified at any subsequent term, regular or special, of said court, after notice given said sheriff, and said order shall automatically cease, whenever the period of said war ceases, provided that the number of deputies appointed under this Act shall never exceed one for each 3000 of the population of said county, and provided further, that the number of deputies appointed under this Act shall not exceed 25 in any county in this State. (Id. sec. 3.)

Art. 7126. (4897) Responsible for their acts.—Sheriffs shall be responsible for the official acts of their deputies, and they shall have power to require from their deputies bond and security; and they shall have the same remedies against their deputies and sureties as any person can have against a sheriff and his sureties. (Acts 1846, p. 265; P. D. 5113.)

Art. 7127. (4898) May employ guards.—Whenever in any county it may become necessary to employ guards for the safe keeping of prisoners and the security of jails, the sheriff may, with the approval of the commissioners' court, or in case of emergency, with the approval of the county judge, employ such number of guards as may be necessary; and his account therefor, duly itemized and sworn to, shall be allowed by said commissioners' court and paid out of the county treasury. (Id.)

Art. 7128. (4899) Shall receive prisoners from constables, etc.—It shall be the duty of sheriffs to receive from constables and other officers all persons who shall be apprehended by such constables or other officers for offenses against the state, and them safely keep, subject to the order of the proper court. (Act Dec. 20, 1836, p. 179, sec. 14; P. D. 5104.)

Art. 7129. (4900) To attend upon courts.—Each sheriff shall attend upon all district, county and commissioners' courts for his county; and, in counties where the supreme court and court of appeals shall hold their sessions, the sheriffs of such counties shall attend upon such court. (Act May 12, 1846, p. 265, sec. 13; P. D. 51.)

Art. 7130. (4901) Shall execute all legal process.—Each sheriff shall execute all process and precepts directed to him by legal authority, and make return thereof to the proper court, on or before the day to which the same is returnable; and any sheriff who shall fail so to do, or who shall make a false return on any process or precept shall, for every such offense, be liable to be fined by the court to which such process is returnable, as for a contempt, not exceeding one hundred dollars, at the discretion of the court; which fine shall go to the county treasury; and such sheriff shall also be liable to the party injured for all damages he may sustain. (Id. sec. 8; P. D. 5115.)

Art. 7131. (4902) And all legislative process.—Sheriffs are required also to execute all subpœnas and other process issued by the speaker of the house of representatives, or the president of the senate, or chairman of a committee of either house of the legislature, to them directed, under like pains and penalties as are incurred by failure to execute process issued by a court; and for such services they shall receive the fees prescribed by law for similar services in the courts, to be paid on the certificate of the authority issuing such process. (Act March 28, 1873, p. 19; P. D. 7102a et seq.)

Art. 7132. (4903) To discharge all duties imposed by law.—Sheriffs shall also do and perform all such duties as may be imposed upon them by the Penal Code and Code of Criminal Procedure, or other laws.

Art. 7133. (4904) List of fugitives to be sent to adjutant general.—It shall be the duty of each sheriff in this state, upon the close of any regular term of the district court in his county, or within thirty days thereafter, to make out and forward by mail to the adjutant general of this state a certified list of all persons who, after indictment for a felony, have fled from said county. Such lists shall contain the full name of each of such fugitives, with a description giving his age, height, weight, color and occupation, the complexion of skin and the color of eyes and hair and any peculiarities in person,

speech, manner or gait that may serve to identify such fugitive, so far as the sheriff may be able to give them, and shall state the offense with which such person is charged. The adjutant general shall prescribe, have printed and forward to the sheriffs of the several counties the necessary blanks upon which are to be made the lists herein required. (Acts 1887, p. 44, sec. 1; Amend. 1895, Sen. Jour. No. 97, p. 484.)

Art. 7134. (4905) Shall indorse all process.—Every sheriff and deputy sheriff or constable shall indorse on all process and precepts coming to their hands the day and hour on which they received them, the manner in which they executed them, and state at what time and place the process was served, as well as the distance actually traveled in serving such process, and shall sign their returns officially. (Act May 12, 1846, p. 265, sec. 14; P. D. 5121; Amend. Acts 1903, p. 81.)

Art. 7135. (4906) May summon posse comitatus.—Whenever a sheriff or any of his deputies shall meet with resistance in the execution of any legal process, they shall call to their aid the power of the county; and any person who shall neglect or refuse to aid and assist any sheriff or deputy in the execution of any legal process when summoned so to do shall be deemed guilty of a contempt of court, and shall be fined in a sum not exceeding ten dollars, to be recovered on motion of such sheriff or his deputy, and proof of such neglect or refusal before the court from which such process issued, three days' notice of such motion being given to the party accused, and in addition thereto may be punished criminally as prescribed in the Penal Code. (Id. sec. 10; P. D. 5117.)

Art. 7136. (4907) Unfinished business.—When any sheriff shall from any cause vacate his office, all unfinished business whatsoever in his hands shall be transferred to his successor, and be completed by him in the same manner as if commenced by himself. (Act May 12, 1846, p. 265, sec. 15; P. D. 5122.)

Art. 7136a. Enforcement of United States explosives act; failure; punishment.—It is hereby made the duty of all the sheriffs and constables, their deputies, policemen, city marshals and all other peace officers of the State, to fully co-operate with and assist the officers of the United States whose duty it is to enforce the provisions of an Act of Congress approved October 6, 1917, entitled "An Act to prohibit the manufacture, distribution, storage, use and possession, in time of war, of explosives, providing regulations for the safe manufacture, distribution, storage, use and possession of the same, and for other purposes"; and it is also made the duty of said officers to promptly report any fact or circumstance coming to his knowledge in any way showing or indicating a violation of any of the provisions of said act of Congress, to the United States esplosive inspector or other proper officers of the United States, charged with the duty of enforcing the provisions of said Act of Congress, and the willful failure or refusal of any such officer to discharge and perform the duties imposed by this Act shall constitute a misdemeanor involving official misconduct and on conviction he shall be punished by fine of not less than one hundred dollars nor more than one thousand dollars, and by removal from office, and it shall be the duty of the judge or court rendering said judgment of conviction to embody suitable provisions removing said offender from office. (Acts 1918, 4th C. S., ch. 70, sec. 1.)

For section 2 of this act see Code Cr. Proc. art. 632b.

CHAPTER TWO
OF CONSTABLES

1. ELECTION, QUALIFICATION, ETC.

Art. 7137. (4908) Term of office.—There shall be elected at each general election by the qualified voters of each justice's precinct a constable for such precinct, who shall hold his office for the term of two years, and until his successor is elected and qualified; provided, that, when in any such justice's precinct there may be a city of eight thousand or more inhabitants, such constable may appoint no more than two deputies, who shall qualify as required of deputy sheriffs. (Acts 1885, p. 17; Amend. Acts 1897, p. 194.)

Art. 7138. Only one deputy.—Be it further provided, that, in cities and towns of twenty-five hundred or more inhabitants, said constable may appoint no more than one deputy, who shall qualify in such manner as is required by law. (Id.)

Art. 7139. (4909) Appointed, how, in unorganized counties.—The commissioners' courts of the several counties to which unorganized counties are attached for judicial purposes shall have power to appoint a constable for each of the unorganized counties attached to said counties for judicial purposes, in accordance with the provisions of the law now in force authorizing such appointment in organized counties. (Acts 1879, p. 89.)

Art. 7140. (4910) Vacancies, how filled.—Vacancies in the office of constable shall be filled by the commissioners' court until the next succeeding general election.

Art. 7141. (4911) Bond and oath.—Every person who may be elected to the office of constable shall, before entering upon the duties of the office, give a bond with two or more good and sufficient sureties, to be approved by the commissioners' court of his county, for such sum as may be directed by said court, not less than five nor more than fifteen hundred dollars, payable to the governor and his successors in office, conditioned for the faithful performance of all the duties required of him by law; and shall also take and subscribe the oath of office prescribed by the constitution, which shall be indorsed on said bond, together with the certificate of the officer administering the same; which bond and oath shall be recorded in the office of the clerk of the county court, and deposited in said office; said bond shall not be void on the first recovery, but may be sued on from time to time in the name of the party injured until the whole amount thereof is recovered. (Act May 12, 1874, p. 251, sec. 2; P. D. 981.)

Art. 7142. (4912) May act without commission.—Whenever any person is elected or appointed to the office of constable and

has given bond and taken the oath prescribed in the preceding article, he may enter at once upon the duties of the office, and his acts shall be as valid in law as if he had been duly commissioned.

Art. 7143. (4913) Neglect to qualify.—Whenever any person elected constable shall neglect or refuse to give bond and take the oath of office as required in the preceding articles within twenty days after notice of his election, the office shall be deemed vacant; and the commissioners' court of the county shall fill the same as in other cases of vacancy. (Act May 12, 1846, p. 251, sec. 4; P. D. 983.)

Art. 7144. (4914) Failure to give new bond.—Whenever any of the sureties of a constable shall die, remove permanently from the state or become insolvent, or are released from liability in accordance with law, or whenever the commissioners' court shall deem the bond of any constable to be insufficient, said court shall cite said constable to appear at a time to be named in such citation, not less than ten nor more than thirty days after issuing such citation, and give a new bond, with good and sufficient security; and, if such constable shall neglect or refuse to appear and give such bond at the designated time, he shall cease to exercise the functions of his office, and shall be removed from office by the judge of the district court in the mode prescribed by law for the removal of county officers. (Id. sec. 3; P. D. 982.)

2. POWERS, DUTIES AND LIABILITIES

Art. 7145. (4915) Duties in general.—Each constable shall execute and return according to law all process, warrants and precepts to him directed and delivered by any lawful officer, and shall attend upon all justices' courts held in his precinct, and shall perform all such other duties as may be required of him by law. (Id. sec. 8; P. D. 987.)

Art. 7146. (4916) May summon posse comitatus.—When any constable shall meet with resistance in the execution of any lawful process, or in the arrest of offenders, he may call to his aid any citizen of the county who may be convenient; and any person who shall fail or refuse to obey such call may be fined as for a contempt by any justice of the peace, in a sum not exceeding ten dollars, on motion of such constable, three days' notice thereof having been given to the party accused, and may also be punished criminally as prescribed in the Penal Code. (Id. sec. 7; P. D. 986.)

Art. 7147. (4917) Failure to execute or return process.—If any constable shall fail or refuse to execute and return, according to law, any process, warrant, or precept to him lawfully directed and delivered, he shall be fined for a contempt, on motion of the party injured, before the court from which such process, warrant or precept issued, in any sum not less than ten dollars nor more than one hundred, with costs; which fine shall be for the benefit of the party injured; and said constable shall have ten days' notice of such motion. (Id. sec. 11; P. D. 990.)

Art. 7148. (4918) Failure to pay over collections.—If any constable shall receive from any person any bonds, bills, notes or accounts for collection, and shall give his receipt therefor, in his official capacity, and shall fail to pay to such person, on demand, any amount he may have collected on the same, such constable and his sureties shall be responsible on his official bond for all such amounts as he may have collected on such bonds, bills, notes or accounts not paid over. (Id. sec. 12; P. D. 991.)

Art. 7149. (4919) May execute process, where.—Every constable may execute any process, civil or criminal, throughout his county and elsewhere, as may be provided for in the Code of Criminal Procedure, or other law. (Id. sec. 14; P. D. 993.)

Art. 7150. (4920) Unfinished business.—Whenever any constable shall vacate his office, all unfinished business remaining in his hands shall be transferred to his successor, and be completed by him in the same manner as if commenced by himself. (Id. sec. 13; P. D. 992.)

TITLE 123 A

STEVEDORES

Art. 7150a. Contracting stevedore and stevedore defined.—A contracting stevedore, within the meaning of this Act, is any person, firm, association of persons, or corporation that contracts with any ship, agent, owners, masters, managers or captains of vessels, or with any other person or corporation, for the purpose of loading or unloading, or of having loaded or unloaded any vessel, ship or water craft; a stevedore within the meaning of this Act is any laborer who performs any of the actual labor in loading and unloading any ship, vessel or water craft whatsoever while in the service or employ of a contracting stevedore as above mentioned. (Acts 1913, p. 153, sec. 1.)

Art. 7150b. License and bond; penalty.—It shall hereafter be unlawful for any contracting stevedore to engage in the business or pursue the occupation of loading and unloading or having loaded or unloaded by the employment of labor therefor any ship, vessel or water craft in this state without first obtaining the license and executing the bond as hereinafter provided, and any such person who pursues said occupation without first qualifying as provided by this Act shall be guilty of a misdemeanor, and on conviction shall be fined in any sum not less than one hundred nor more than five hundred dollars for each day he shall pursue such occupation or business without thus qualifying and any member of a firm or association or any manager of a corporation who come within the meaning of a contracting stevedore who shall thus offend shall be amendable [amenable] to prosecution hereunder. (Id. sec. 2.)

Art. 7150c. Bond.—Each contracting stevedore as contemplated by this Act is hereby required to make bond in the sum of five thousand dollars, entered into with two or more good and sufficient sureties, who are residents of this state, or with any good and sufficient surety bonding Co. authorized to transact business in this state, payable to the county judge of the county in which such stevedore pursues his occupation and to his

successor in office, as trustee for all persons who may become entitled to the benefits of this Act, said bond to be conditioned that said contracting stevedore will promptly on Saturday of each week pay each laborer his wages for labor performed in loading and unloading any such ship, vessel or water craft according to the scale of wages agreed upon, and that all agreements entered into with said laborers and each of them in respect to the loading and unloading of said water craft, as above mentioned, will be faithfully and truly performed, which bond shall be approved by the county clerk of the county in which said contracting stevedore is pursuing said business or occupation and by him shall be filed and recorded. (Id. sec. 3.)

Art. 7150d. Bond and license in each county, etc.; suits on bond.—The bond and license hereinafter provided for shall be made in each county in which said contracting stevedore pursues said occupation, in which county suits may be maintained upon such bond by any person to whom wages are due and unpaid for such labor as is hereinbefore mentioned; provided, that the same shall not become free upon the first recovery, but may be sued upon until the full amount thereof is exhausted, or suits sufficient to exhaust the bond or [are] pending, and when so exhausted said contracting stevedore shall make and file a new bond in amount and conditioned as provided for the first, and his failure so to do shall render him amendable [amenable] to prosecution as if no bond had ever been given in the first instance. (Id. sec. 4.)

Art. 7150e. License, how granted.—Said contracting stevedore shall, before beginning business as before stated, file his application in writing for a license to pursue the occupation of a contracting stevedore for the county mentioned, and on approval of the bond hereinbefore provided for by the county clerk and payment of a license fee of five dollars the clerk shall grant to him a license to pursue said occupation upon such form as the county commissioners court may designate, the said license fee to be paid into the general fund of the county. (Id. sec. 5.)

Art. 7150f. New bonds and licenses; time within which to qualify.—Said contracting stevedore shall be and he is hereby required to execute a new bond and to obtain the issuance of a new license at the expiration of each year from the former, every two years from the issuance of the former license, and all contracting stevedores who may be engaged in the occupation herein defined at any port, sub-port or other place where ships, vessels or water crafts are loaded or unloaded, at the time this law becomes effective, shall have thirty days from and after the going into effect of this law to qualify thereunder by executing the bond and obtaining the license as required herein. (Id. sec. 6.)

TITLE 123 AA

STATE BOARD OF CONTROL

Art. 7150¼. Department created; members of board; seal; oaths and bonds of members of board.—There is hereby created a department of the State government to be known as the State Board of Control, which shall consist of three citizens of the State, to be appointed by the Governor, by and with the advice of the Senate. Said Board of Control shall have a seal, similar to that of the Secretary of State, except the same shall have, on the margin thereof, the words: "Office of the State Board of Control."

The members of this board shall be public officers, shall be required to take the oath of office, and each shall give bond in the sum of fifty thousand dollars, payable to the Governor of the State and his successors in office, for the use and benefit of the State of Texas, conditioned for the faithful performance of their duties, as defined in this act, and to be given in form drawn and prescribed by the Attorney General: the bond to be approved by the Governor and filed in the office of the Secretary of State. (Acts 1919, ch. 167, sec. 1.)

Art. 7150¼a. Terms of office and salaries of members of board.—The term of office of each member of the Board of Control shall be six years, except the members of the first board appointed hereunder, whose term shall be two, four and six years, respectively, and they shall decide by lots among themselves who is to have the two-year term, and the four-year term and who the six-year term; but after the expiration of the term of office of any member of the first board appointed hereunder, his successor shall hold for a term of six years; provided, that any member of said board may at any time be dismissed by the Governor for good cause, the reasons for such dismissal to be specified and filed with the Secretary of State.

The salaries of the members of the board shall be five thousand dollars per annum, payable monthly as other State officers are paid. (Id. sec. 2.)

Art. 7150¼b. General duties of board; divisions enumerated.—The general duties of the Board of Control will be to administer the laws relating to the various departments, boards, institutions and public officers of the government hereinafter named, and to perform the additional duties and exercise the additional functions provided for in this act.

In order to facilitate the performance of their duties, the board will be authorized to combine under it the following subdivisions or divisions of its work, to-wit:

(a) Division of Public Printing.
(b) Division of Purchasing.
(c) Division of Auditing.
(d) Division of Design, Construction and Maintenance.
(e) Division of Estimates and Appropriations.
(f) Division of Eleemosynary Institutions.
(g) And such other divisions of its work as the board may find necessary in the administration of the department here created. (Id. sec. 3.)

Art. 7150¼c. Board of Public Printing and State Expert Printer abolished.—The Board of Public Printing, provided for in Revised Statutes, Article 6338, and the State Expert Printer, provided for in Article 6341, Revised Statutes, are hereby abolished and all laws relating to the public printing, contained in Title 110, Revised Civil Statutes of this State (1911) are hereby placed under the administration of the State Board of Control, and all the authority there conferred

upon the Board of Public Printing of the State and State Expert Printer, in so far as not in conflict with this act, is hereby conferred upon the State Board of Control.

The board, in its administration, of this division of its labors, shall, when it employs a chief in its Division of Public Printing, employ, for such position, an expert printer, who has had not less than five years' experience in a commercial printing office. (Id. sec. 4.)

See ante, arts. 6370a-6370q.

Art. 7150¼d. Office of state purchasing agent abolished.—The office of State Purchasing Agent is hereby abolished and all the laws relating to such office and conferring authority upon him, including Chapters 1 and 2 of Title 125, Revised Civil Statutes of this State (1911), are hereby made to apply to the State Board of Control, and the same shall be carried out and executed by the State Board of Control, in the same manner as they were formerly executed and carried out by the State Purchasing Agent.

In the administration of this division of its work, the State Board of Control shall have authority to appoint a chief in its Division of Purchasing; provided, however, that the person selected for such position shall have had not less than five years' experience immediately preceding his appointment as a purchaser for a department store or wholesale establishment of recognized standard and successful experience, and no other person shall be eligible for such position, or be paid by the accounting officers of the State, in the event he should be placed in such position.

In addition to the duties now provided by statute for the State Purchasing Agent, which duties are made the duties of the board created by this act; it shall also be the duty of said board to purchase all the supplies used by all the departments of the State government and all the Normal Schools of the State, University of Texas, and the Agricultural and Mechanical College of Texas, and all other State schools heretofore or hereafter created, such purchase of supplies to include furniture and fixtures and to include all things except perishable goods, technical instruments and books.

These supplies shall be purchased by competitive bids, in the same manner as supplies are purchased by the Purchasing Agent for other institutions under the present statutes.

It is further provided, however, that in the purchase of supplies, furniture and fixtures, herein provided for and in the making of all purchases provided for by existing laws, which existing law is to be administered by the department created, the bidder therefor shall be required to file with their respective bids an affidavit, that neither the affiant, nor the firm, corporation, partnership or institution represented by him or her or any one for him, it or them, has within the past twelve months, violated any of the laws of this State relating to trusts or monopolies, which affidavit shall be prepared in form by the Attorney General, and shall embrace the various elements of the statutes of this State, forbidding trusts and monopolies; and, in addition, such affidavits shall show that neither the affiant nor his firm, corporation or partnership represented by him and making the bid has communicated, directly or indirectly, the bid made by such person, firm, corporation or partnership so bidding, to any competitor bidding on said contract or engaged in the same line of business.

Any person making a false statement in any such affidavit shall be deemed guilty of a felony and shall be punished as now prescribed for that offense; provided, however, that in addition to any other county having venue of such offense Travis county shall also have venue of the same, and such person, regardless of where the offense was committed, may be indicted by the grand jury of Travis county and be tried in Travis county. The bids for the sales of goods and the affidavits accompanying same as specified in this Section shall be filed by the said board, and shall be preserved for a period of twelve months thereafter as a record of said Board. (Id. sec. 5.)

See post, arts. 7235-7348.

Art. 7150¼e. Division of auditing; chief auditor.—The board shall be authorized to place a chief auditor in charge of its division of auditing, and to employ such other auditors, bookkeepers and clerical help as may be necessary in the operation of said division or in carrying out the auditing duties conferred on the Board of Control.

For the performance of the duties imposed upon the board by this section of the act, it shall be and is hereby authorized to employ auditors, book-keepers, and clerical help as hereinafter provided within the limits of the appropriations that may be made for the work of said board, which shall in no case be exceeded; provided, however, that the Board of Control shall prepare and furnish to the next biennial session of the Legislature, an itemized budget for use by the Legislature in making appropriations for said Board, and that thereafter no employé shall be employed for which an appropriation has not been made by the Legislature. (Id. sec. 6.)

Art. 7150¼f. Office of Superintendent of Public Buildings and Grounds and office of State Inspector of Masonry, Public Buildings and Works abolished; Division of Design, Construction, and Maintenance.—The office of Superintendent of Public Buildings and Grounds, and the office of State Inspector of Masonry, Public Buildings and Works, are hereby abolished, and the authority conferred upon the Superintendent of Public Buildings and Grounds by the provisions of Chapter 1, Title 113, Revised Civil Statutes (1911), and all the authority conferred by law upon the State Inspector of Masonry, Public Buildings and Works, is hereby conferred upon the State Board of Control, and the laws heretofore administered through the offices hereby abolished shall be administered by the State Board of Control; Provided said Board of Control shall not have the authority to locate any public buildings in the State.

In the administration of said laws and the performance of the other duties herein assigned, the board shall have authority to select a chief of its Division of Design, Construction and Maintenance; the chief of such division when so selected, shall be an architect of not less than five years' experience, immediately preceding his selection, in the actual design, superintendency and construction of buildings. There may also be employed an expert of masonry, plumbing

electrical construction, landscape gardening and such other experts as may be necessary, but all to be under the control of the board, acting through its chief of this division, who must be an architect as herein provided.

In addition to the duties conferred upon the Board of Control by the laws heretofore referred to, and by this act, it shall be the duty of the board, through the chief of its Division of Design, Construction and Maintenance, to design all public buildings erected at the expense of the State, where designing is not otherwise provided for by law or by the appropriation bill; but in no instance shall plans be adopted or designs be adopted by the head of any department, board, institution, school or prison system of the State unless such design and plans have been approved by the Board of Control acting as herein provided.

It shall be the duty of the Board of Control, acting through this division of its branch, to design for each of the institutions, schools of the State or prison system, appropriate parks where needed, which design shall be carried out by the head of such department, institution, school or prison system, unless otherwise provided by law.

It shall be the duty of the Board of Control, through this division to furnish any school, institution, department of the State and the prison system, at any time, an expert to design and superintend any construction for landscape gardening provided for.

It is further provided that all State parks now under control or in the custody of the Superintendent of Public Buildings and Grounds, shall be under the control and custody of the State Board of Control and all laws relating to the same shall be executed and administered by the State Board of Control just as they have been executed and administered by the Superintendent of Public Buildings and Grounds. (Id. sec. 7.)

See ante, arts. 6380-6394e.

Art. 7150¼g. Chief of division of design, construction, and maintenance, heads of departments, etc., to submit itemized accounts of expenses and estimates of required appropriations.—The Board of Control shall be authorized to select a division chief or head of this division of its work.

It shall be the duty of the head of each department, school, institution and of the prison system and of the head of any of the divisions or departments of government for which appropriations are made by the Legislature, to submit to the State Board of Control, not later than the fifteenth day of September of each year preceding the regular biennial session of the Legislature, an itemized account of all items of expenses for the preceding two years, and an estimate of the appropriations required by his department, school or institution, or by the prison system for the regular biennial appropriation made by the Legislature, which estimate shall be submitted itemized in such manner as may be practicable and as required by the Board of Control.

Upon the receipt of these estimates from the heads of the various departments and institutions and schools of the State it shall be the duty of the board to investigate and consider the same, and to give hearings to those submitting the same, and to obtain information from every available source, including the reports of its auditors and examiners, and after such hearings it shall be the duty of the Board of Control to make up an appropriation budget for the Legislature, which said budget shall be printed not later than December first of the year immediately preceding the meeting of the regular biennial session of the Legislature, at the expense of the Board of Control, and a copy thereof shall be mailed to each person who will be a member of the next session of the Legislature, to the Governor and to the heads of each department, institution, schools of the State, and to the prison commission; there shall also be delivered to the Speaker of the House and to the President of the Senate a sufficient number of copies for the use of all the members of the House and Senate during the session of the Legislature.

In addition the board shall cause to be printed such extra copies for public distribution as they may deem necessary to be sent by it to any person who calls or writes for same. In this connection it shall be the duty of the board to mail a copy to each county judge in the State and to each incorporated bank, whether State or National, to be kept by the officers named and the banks named for public inspection. (Id. sec. 8.)

Art. 7150¼h. Boards of managers of certain institutions abolished.—The board of managers for each and all of the asylums of this State, including the Blind Asylum, Lunatic Asylums, the Deaf and Dumb Asylum, State Orphan's Home, the Asylum for the Deaf, Dumb and Blind for Colored Youths, the State Colony for Feeble Minded, the board of trustees or managers for the Confederate Home, the State Epileptic Colony, the Confederate Woman's Home, the Home for Lepers, and the Anti-tuberculosis Colony, and governing boards, trustees, or managers of the State Juvenile Training School and the Girls' Training School are each and all, whether especially named herein or not, abolished by this act, and all laws and statutes providing for the creation of such boards and their appointment are repealed.

And all statutes regulating and governing the Lunatic Asylum of this State, the Blind Asylum, the Deaf and Dumb Asylum, the Orphans Home, the Deaf and Dumb and Blind Asylum for Colored Youths, the State Colony for Feeble Minded, Confederate Home, the Epileptic Colony, Confederate Woman's Home, the Home for Lepers, and the State Tuberculosis Sanatorium, the State Juvenile Training School, and the Girls' Training School, are made applicable to the Board of Control hereby created, and the administration of all of said statutes relating to said institutions, including Title 10, Revised Civil Statutes of the State, (1911), including Chapter 163, Acts of the Regular Session of the Thirty-third Legislature, Chapter 36, General Laws, passed by the Regular Session of the Thirty-second Legislature; Chapter 77, General Laws, passed by the Regular Session of the Thirty-second Legislature, and Chapter 64, General Laws, passed by the Legislature, Session of the Thirty-third Legislature, and all other laws relating to the institutions named, whether

here enumerated or not, are hereby made to relate to and govern the Board of Control hereby created, and the administration or each and all of said statutes, and the institutions and departments to which they relate, is hereby placed under the Board of Control created by this act; and the Board of Control hereby created shall exercise all the powers and authority heretofore conferred by law to the boards of managers and trustees of the various institutions and departments named under this section. (Id. sec. 9.)

Art. 7150¼i. Chief of division of eleemosynary institutions.—The Board of Control shall have authority to employ a chief in the Division of Eleemosynary Institutions, but the person so selected shall be an acting practicing physician and surgeon who shall have been actively engaged in the practice of his profession for not less than ten years immediately preceding his appointment to such position, and in addition to the experience required; such physician shall be one of generally recognized eminence in his profession. (Id. sec. 10.)

Art. 7150¼j. Creation of other divisions.—The Board of Control may, from time to time, create such other divisions of its work as may be necessary, and to appoint chiefs of such divisions, but no person shall be appointed chief of any division of work who has not had at least five years' actual experience immediately preceding his appointment in the work or a profession similar to that to which he is assigned by the Board of Control. (Id. sec. 11.)

Art. 7150¼k. Qualifications to appointment to offices by board.—Wherever in this act certain qualifications are prescribed for an office, or any employment or appointment of the board and certain years of experience are required, the existence of such years of experience and such qualifications as a fact shall be a pre-requisite to such officer, appointee or employé being assigned to occupy this position, and be paid his compensation by the accounting officers of the State and the State Treasurer; and the selection of such person and the judgment of his qualifications by the Board of Control shall not alone determine the question but that is left to be determined as in fact, like any other fact may be determined, and may be contested by any taxpayer, in the district court of Travis county by an injunction suit against the Board of Control, against the Comptroller or against the Treasurer; and the Comptroller may refuse to issue warrants to any person he finds to be disqualified in this act, and the Treasurer may refuse to pay such warrants; provided, however, that the party claiming the right to the issuance of such warrants and the payment therefor may bring a mandamus suit against such officer in the Supreme Court as in other cases. (Id. sec. 12.)

Art. 7150¼l. Chairman of board; quorum; minutes; secretary; office; traveling expenses.—The Board of Control shall immediately elect one of its own number chairman; a quorum of the board shall be necessary in the transaction of business and two members shall always be necessary for the consideration of any question; they shall keep minutes of their proceedings, duly recorded in a book provided for that purpose. They shall have authority to employ a secretary and such other clerical help, stenographers, clerks, auditors, and bookkeepers as may be necessary in the administration of their department as herein provided within the limits of the appropriations that may be made for the work of said board, which shall in no case be exceeded.

The board shall occupy appropriate rooms in the Capitol or in the new Land Office, selected by them for their offices. They shall have authority to purchase such furniture, fixtures and stationery as may be necessary in the administration of their office. In addition to the salaries and compensation herein provided for they shall be entitled to their traveling expenses when absent from the city of Austin on official business. (Id. sec. 13.)

Art. 7150¼m. Mandamus; suits.—Mandamus suits may be brought against the board in the Supreme Court of the State, as against other public officers, but no suit shall be brought against the board of any other character except in the district court of Travis county, Texas, and no temporary injunction shall ever issue against the board, except upon notice and hearing. (Id. sec. 14.)

Art. 7150¼n. Appropriations.—All appropriations heretofore made for the various departments herein consolidated and placed under the State Board of Control, shall be available for expenditure hereunder in such manner as the State Board of Control may find necessary to effectuate the purpose of this act. (Id. sec. 15.)

Art. 7150¼o. Partial invalidity of act.—Should any section of this act be declared unconstitutional said decision shall not in any way affect the other sections and provisions of this law. (Id. sec. 15a.)

Art. 7150¼p. Time of taking effect of act.—The operation and taking effect of this Act is hereby deferred until the first day of January, A. D., 1920, and this act shall take effect and be in force from and after said first day of January, A. D., 1920. (Acts 1919, ch. 167, sec. 16; Acts 1919, 1st C. S., ch. 4, sec. 1.)

TITLE 123 B

STATE COUNCIL OF DEFENSE

Art. 7150½. Council created; membership; appointment; qualifications.—There is hereby created a State Council of Defense, composed of not exceeding forty members, who shall be selected and appointed by the Governor of Texas. The members of the Council shall include those engaged in agriculture, banking, labor, manufacturing, transportation, stock-raising, and other vocations and callings. (Acts 1917, 1st C. S., ch. 8, sec. 1.)

Art. 7150½a. Tenure of members; vacancies.—The members shall hold their membership in such Council during the period of the war in which the Nation is now engaged, and all vacancies shall be filled by the Governor of Texas. (Id. sec. 2.)

Art. 7150½b. Duties.—The duties of the Council herein created are to assist the National Council of Defense in all matters requested by said Council, or by the President of the United States or under his authority, and to that end the Council herein created is

authorized to call upon the various civic, educational, and commercial activities of this State to assist in organizing the economic, industrial, military and moral forces of Texas to be used in the defense of our common country. (Id. sec. 3.)

Art. 7150½c. Employment of clerks, etc.; expenses.—The Council herein created shall have the right to employ such assistance and clerical force as may be necessary to carry on its work, but no member of the Council shall ever be paid any salary or per diem for his services but may be paid for reasonable and necessary traveling expenses while engaged in performing his duties, except that the Secretary and Assistant Secretaries of such Council may be members thereof and may be paid such salaries for such services as such Council may determine. (Acts 1917, 1st C. S., ch. 8, sec. 1; Acts 1918, 4th C. S., ch. 48, sec. 1.)

Art. 7150½d. Expenses, how paid.—All bills and expenses incurred for salaries of assistants, or clerical hire and traveling expenses, or other necessary expenses, shall be approved by the Chairman of the Council of Defense and by the Governor of Texas before any voucher is issued for the payment of the same. (Acts 1917, 1st C. S., ch. 8, sec. 5.)

Art. 7150½e. Appropriation.—There is hereby appropriated, out of any funds in the State Treasury not otherwise appropriated, for the payment of clerical hire, assistants, traveling expenses and other necessary expenses incurred by said Council of Defense, for the fiscal year ending August 31st, 1917, the sum of Ten Thousand ($10,000.00) dollars, or so much thereof as may be necessary, and for the fiscal year ending August 31st, 1918, the sum of Fifteen Thousand ($15,000.00) Dollars, or so much thereof as may be necessary. (Id. sec. 6.)

TITLE 123 C

STATE TREE

Art. 7150¾. State tree.—That the Pecan Tree be, and the same is hereby named and constituted the State Tree of Texas. (Acts 1919, ch. 97, sec. 1.)

TITLE 124

STOCK LAWS

CHAPTER ONE

OF MARKS AND BRANDS

Art. 7151. (4921) Owners of stock to have mark and brand.—Every person who has cattle, hogs, sheep or goats shall have an ear mark and brand differing from the ear mark and brand of his neighbors, which ear mark and brand shall be recorded by the clerk of the county court where such cattle, hogs, sheep or goats shall be; and no person shall use more than one brand, but may record his brand in as many counties as he may think necessary. (Act March 20, 1848, p. 156, sec. 1; P. D. 4655.)

Art. 7152. (4922) County brands.—The several counties in this state shall have a brand for horses and cattle, said brand to be known and designated as the "county brand." The county brand of each county in the state shall be as follows:

Anderson	A. A.	Frio	F. O.
Andrews	A. N.	Galveston	G. A.
Angelina	A. L.	Gaines	G. I.
Aransas	A. R.	Garza	G. R.
Archer	A. H.	Gillespie	G. L.
Armstrong	A. M.	Goliad	G. D.
Atascosa	A. T.	Gonzales	G. O.
Austin	A. U.	Gray	G. Y.
Bandera	B. A.	Grayson	G. N.
Bastrop	B. S.	Greer	G.
Bailey	B. I.	Gregg	G. G.
Baylor	B. R.	Grimes	G. M.
Bee	B. E.	Guadalupe	G. E.
Bell	B. L.	Hale	H.
Bexar	B. X.	Hall	H. A.
Blanco	B. N.	Hamilton	H. I.
Borden	B. D.	Hansford	H. F.
Bosque	B.	Hardeman	H. N.
Bowie	B. O.	Hardin	H. D.
Brazoria	B. D.	Harris	H. S.
Brazos	B. Z.	Harrison	H. X.
Briscoe	B. H.	Hartley	H. T.
Brown	B. W.	Haskell	H. 6.
Burleson	B. U.	Hays	H. Y.
Burnet	B. T.	Hemphill	H. M.
Caldwell	C. A.	Henderson	H. E.
Calhoun	C. H.	Hidalgo	H. G.
Callahan	C. L.	Hill	H. L.
Cameron	C. M.	Hockley	H. K.
Camp	C. P.	Hood	H. O.
Carson	C. R.	Hopkins	H. P.
Cass	C. S.	Howard	H. R.
Castro	C. T.	Houston	H. 4.
Chambers	C. B.	Hunt	H. U.
Cherokee	C. K.	Hutchinson	H. H.
Childress	C. D.	Jack	J.
Clay	C. Y.	Jackson	J. A.
Cochran	C. C.	Jasper	J. P.
Coleman	C. E.	Jefferson	J. E.
Collin	C. I.	Johnson	J. H.
Collingsworth	C. W.	Jones	J. O.
Colorado	C. N.	Karnes	K.
Comal	C. O.	Kaufman	K. A.
Comanche	C. J.	Kendall	K. E.
Concho	C. V.	Kent	K. T.
Cooke	C. U.	Kerr	K. R.
Coryell	C. X.	Kimble	K. I.
Cottle	C. 2.	King	K. N.
Crockett	C. 3.	Kinney	K. O.
Crosby	C. 4.	Knox	K. X.
Dallas	D. A.	Lamar	L. A.
Dallam	D. L.	Lamb	L. M.
Dawson	D. N.	Lampasas	L. P.
Deaf Smith	D. S.	La Salle	L. S.
Delta	D. T.	Lavaca	L. C.
Denton	D. O.	Lee	L. E.
De Witt	D. E.	Leon	L. 4.
Dickens	D. I.	Liberty	L. I.
Dimmit	D. M.	Limestone	L. T.
Donley	D. N.	Lipscomb	L. B.
Duval	D. D.	Live Oak	L. O.
Eastland	E. A.	Llano	L.
Edwards	E. D.	Lubbock	L. K.
Ellis	E. L.	Lynn	L. N.
El Paso	E. P.	Madison	M. 1.
Encinal	E. N.	Marion	M. 2.
Erath	E. R.	Martin	M. 4.
Falls	F. A.	Mason	M. N.
Fannin	F. N.	Matagorda	M. R.
Fayette	F. E.	Maverick	M. K.
Fisher	F. I.	McCulloch	M. C.
Floyd	F. L.	McLennan	M. L.
Fort Bend	F. B.	McMullen	M.
Franklin	F. K.	Medina	M. A.
Freestone	F. R.	Menard	M. D.

Milam	M. I.	Shackelford	S. D.
Mitchell	M. H.	Shelby	S. H.
Montague	M. E.	Sherman	S. N.
Montgomery	M. M.	Smith	S. T.
Moore	M. O.	Somervell	S. O.
Morris	M. S.	Starr	S. R.
Motley	M. T.	Stephens	S. E.
Nacogdoches	N. S.	Stonewall	S. L.
Navarro	N. A.	Swisher	S. I.
Newton	N.	Tarrant	T. A.
Nolan	N. O.	Taylor	T.
Nueces	N. E.	Terry	T. E.
Ochiltree	O. H.	Throckmorton	T. H.
Oldham	O. O.	Titus	T. I.
Orange	O.	Tom Green	T. G.
Palo Pinto	P. P.	Travis	T. S.
Panola	P. A.	Trinity	T. R.
Parmer	P. R.	Tyler	T. L.
Parker	P. K.	Upshur	U. P.
Pecos	P.	Uvalde	U.
Polk	P. K.	Van Zandt	V.
Potter	P. O.	Victoria	V. I.
Presidio	P. R.	Walker	W. K.
Rains	R.	Waller	W.
Randall	R. A.	Washington	W. N.
Red River	R. R.	Webb	W. E.
Refugio	R. E.	Wharton	W. T.
Roberts	R. S.	Wheeler	W. H.
Robertson	R. O.	Wichita	W. A.
Rockwall	R. L.	Wilbarger	W. R.
Runnels	R. N.	Williamson	W. I.
Rusk	R. K.	Wilson	W. L.
Sabine	S. B.	Wise	W. S.
San Augustine	S. A.	Wood	W. O.
San Jacinto	S. J.	Yoakum	Y.
San Patricio	S. P.	Young	Y. O.
San Saba	S. S.	Zapata	X.
Scurry	S.	Zavala	X. X.

(Acts 1883, p. 76.)

Art. 7153. (4923) Owner may put county brand on his stock.—The owners of all horses and cattle, in addition to their private brand, may place said county brand on all horses and cattle owned by them, and shall be placed upon the neck of all animals so branded. (Id. sec. 3.)

Art. 7154. (4924) When stock removed from county may be counterbranded.—Whenever any horses or cattle branded with the county brand are removed to another county, the owners of such stock may counterbrand with said county brand, and a bar under said county brand shall be used and known as the "county brand," and when so counterbranded the brand of the county in which said stock may be newly located may be placed on said stock. (Id. sec. 4.)

Art. 7155. (4925) Secretary of state to furnish lists of brands.—It shall be the duty of the secretary of state to furnish a printed list of the county brands to the county clerks of this state, who shall securely post the same in their office. (Id. sec. 7.)

Art. 7156. (4926) Brands of minors.—Minors owning cattle or hogs, separate from that of the father or guardian, may have a brand and mark, which shall be recorded; the father or guardian shall be responsible for the proper use of such mark and brand of any such minor. (Acts 1848, p. 156; P. D. 4660.)

Art. 7157. (4927) When stock to be branded.—Cattle shall be marked when the ear mark or branded with the brand of the owner on or before they are twelve months old; hogs, sheep and goats shall be marked with the ear mark of the owner on or before they are six months old. (Id. sec. 2; P. D. 4656.)

Art. 7158. (4928) Disputes, how settled.—If any dispute shall arise about any ear mark or brand, it shall be decided by reference to the book of marks and brands kept by the clerk of the county court, and the ear mark and brand of the oldest date shall have the preference. (Id. sec. 3; P. D. 4657.)

Art. 7159. (4929) Marks and brands to be recorded.—It shall be the duty of the clerks of the county courts in their respective counties to keep a well-bound book, in which they shall record the marks or brands of each individual who may apply to them for that purpose, noting in every instance the date on which the brand or mark is recorded; which record shall be subject to the examination of every citizen of the county at all reasonable office hours, free of charge for such examination. (Id. sec. 4; P. D. 4658.)

Art. 7160. (4930) Unrecorded brands no evidence; proviso.—No brands, except such as are recorded by the officers named in this chapter, shall be recognized in law as any evidence of the ownership of the cattle, horses or mules, upon which the same may be used; provided, that this shall not apply in criminal cases. (Acts 1848, p. 156, sec. 5; P. D. 4659; Acts 1913, p. 129, sec. 1, amending Art. 7160, Rev. St. 1911.)

CHAPTER TWO

PROTECTION OF LIVE STOCK

Art. 7161. (4931) County judge to order inspection when glanders, etc., exist.—If at any time it shall come to the knowledge of any county judge of any county in this state, by affidavit of any credible citizen of his county, stating that affiant has reason to believe and does believe that glanders or farcy exists among any horses, mules, jacks or jennets in said county, naming owner or owners of such animal or animals so infected, if known, if unknown, so stating, it shall be the duty of such county judge, upon the filing of said affidavit, to immediately appoint three disinterested and intelligent citizens of said county, whose duty it shall be to carefully and minutely examine said animal or animals so reported to be diseased with glanders or farcy; said three citizens, before entering upon the duties required of them by this chapter, shall take an oath before some officer legally qualified to administer oaths that they will discharge their duties as prescribed by this chapter in a fair and impartial manner. (Acts 1892, S. S., p. 11, sec. 1.)

Art. 7162. (4932) Report of county judge; duty of inspector.—If, after carefully and minutely examining the animal or animals so reported to be affected with glanders or farcy, said three citizens shall be of the opinion that the animal or animals so examined by them are diseased with glanders or farcy, they shall condemn the same; and it shall be their duty to appraise such animal or animals at their just and full value at the time of such examination and condemnation, and shall forthwith report their action in writing to the county judge, giving in said

report the number of animals condemned, if any, the owner or owners of same if known, and if unknown so stating it, with the appraised value of same. But if the said citizens have any reasonable doubt as to the diseased animals being affected with glanders or farcy, before condemning as above provided for, they shall require the owner or owners to have said diseased animals separated from contact with all other animals subject to contagion, for a reasonable time; and, when they are fully satisfied that the disease is glanders or farcy, then they shall proceed to condemn and destroy said animals as provided for in this article. (Id. sec. 2.)

Art. 7163. (4933) Condemned animals killed.—The county judge, upon the receipt of the report named in the preceding article, shall issue his order to the sheriff or any constable of his county, commanding him to seize said diseased animal or animals and take same to some secluded place and kill them and bury or burn the carcass. (Id. sec. 3.)

Art. 7164. (4934) Payment for animals killed; fee, etc.—After said animal or animals are killed, as provided in the preceding article, the party owning such animal or animals so killed may present his claim to the commissioners' court of the county where said animal or animals were killed, for the value of such animal or animals at the time the same were killed (if such animal or animals had any value); and the amount of such claim, or so much thereof as may be allowed by said court, shall be paid out of the general revenue of the county, as other claims against such county. The sheriff or constable killing, burying or burning said animal or animals shall be paid by the county such sum as the commissioners' court thereof may determine the service worth. (Id. sec. 4; amended Acts 1899, p. 303.)

Art. 7165. (4935) Law cumulative.—This law is cumulative of all other laws now in force for the prevention of glanders and farcy. (Acts 1892, S. S., p. 11, sec. 6.)

Art. 7166. (4936) Bounties for killing certain animals; exhaustion of appropriation.—That hereafter when any person shall kill in this State any wolf, wild cat or jack rabbit, he shall be paid the sum of $2.00 for each wolf, and $1.00 for each wild cat, and 5 cents for each jack rabbit so killed; provided, that the State shall not be liable for any claim arising under the provisions of this bill after the appropriation herein provided shall have been exhausted. (Acts 1903, p. 113, sec. 1; Acts 1911, p. 44, sec. 1; Acts 1915, ch. 47, sec. 1.)

Art. 7167. (4937) Scalps and affidavit, etc., to be presented to commissioners' court.—The scalps of said animals so killed shall be presented by the person or persons having killed said animals in person to the commissioners court of the county in which said animal or animals were killed, accompanied by a written affidavit before the county judge of said county, or any other officer authorized to administer oaths, stating where and when he killed said animal, and the kind of each; that affiant in person and no other killed said animal or animals. (Acts 1903, p. 113, sec. 2; Acts 1911, p. 44, sec. 2; Acts 1915, ch. 47, sec. 2.)

Art. 7168. (4938) Scalp defined; powers and duties of court, etc.—Such scalp shall consist of the scalp and both ears, so that the court may sufficiently identify the class of animals so killed; the court may in all cases, when it is not satisfied as to the sufficiency of the evidence before it, under this Act, reject any and all claims; the commissioners court shall immediately take and pass upon said scalp and burn the same, but in no case shall any commissioners court in this State be authorized under this Act to issue warrant for bounty on any scalp when presented with either ear of same disfigured in the least, cut, slit or any defect whatever, except such cut, slit or defect that may have been caused in shooting, trapping or killing the animal. Both ears must be absolutely whole, and such commissioners court shall issue certificate signed by at least three members of said court, and attested by the signatures of the clerk of said court, and under the seal of said court, showing the kind of animals killed and the number of each, and the name of the party who killed same, and the amount due such party. The clerk of the county court shall issue a warrant on the county treasurer for the amount specified, and payable to the party named in such certificate. (Acts 1903, p. 113, sec. 3; Acts 1911, p. 44, sec. 3; Acts 1915, ch. 47, sec. 3.)

Art. 7168a. Court to make statement; duties of comptroller and county treasurer.—It shall be the duty of the commissioners court of the several counties of this State at each regular session of each year, to make an itemized statement showing the several amounts paid, to whom, and when paid, by order of said court under the provisions of this Act; said statement shall be entered upon the minutes of said court, and a certified copy of each statement shall be entered upon the minutes of said court, and a certified copy of such statement shall be transmitted by the clerk of said court to the Comptroller of the State. Upon receipt of said certified copy by the Comptroller, it shall be his duty to draw his warrant upon the State Treasurer for one-half of the aggregate amount paid out by such county, under the provisions of this Act, as shown by said certified copy of statement, payable to the treasurer of said county, which said amount, when received by said county treasurer, shall be by him credited to the fund of the third class of said county. (Acts 1911, p. 44, sec. 4; Acts 1915, ch. 47, sec. 4.)

Art. 7168b. Laws repealed; trespass not permitted.—All laws and parts of laws in conflict herewith are hereby repealed; provided, that nothing herein contained shall permit any person to enter on the posted lands or premises of another for the purpose of hunting or trapping, or otherwise catching or trapping wild animals for their scalps without having first obtained the consent of the owner. (Acts 1911, p. 44, sec. 5; Acts 1915, ch. 47, sec. 5.)

Art. 7168c. Appropriation.—And the sum of one hundred thousand ($100,000.00) dollars is hereby appropriated out of any money in the State Treasury, not otherwise appropriated, for the payment of the above named bounties. (Acts 1911, p. 44, sec. 6; Acts 1915, ch. 47, sec. 6.)

Art. 7169. [Superseded.]

See arts. 7166-7168c.

Art. 7169a. Eradication of wolves, coyotes, bobcats, and mountain lions; ap-

propriation.—For the purpose of eradicating wolves, coyotes, Bobcats and Mountain Lions, there is hereby appropriated out of any money in the treasury not otherwise appropriated, the sum of twenty-five thousand ($25,000.00) dollars for each of the fiscal years nineteen hundred and nineteen and nineteen hundred and twenty. (Acts 1919, ch. 107, sec. 1.)

Art. 7169b. Same subject; expenditure of appropriation.—The appropriation made by Section 1 of this Act [Art. 7169a] shall be expended by the Live Stock Sanitary Board of the State of Texas, said sums to be expended in co-operation with the Bureau of Biological Survey of the United States Department of Agriculture, but no part of said appropriation shall be paid for bounties. (Id. sec. 2.)

Art. 7169c. Same subject; cooperation with United States biological survey.—It shall be the duty of the Live Stock Sanitary Board to enter into definite co-operative agreements with the said Bureau of Biological Survey, prescribing the manner, terms and conditions of such co-operation and the amounts which the State and Federal Government will respectively contribute thereto. (Id. sec. 3.)

Art. 7169d. Same subject; county appropriations.—The Commissioners Court of any county within this State is empowered and authorized to appropriate money from the general fund available in the treasury of such county to assist in prosecuting within such county the predatory animal eradication work contemplated by this Act in co-operation with the State and Federal authorities. (Id. sec. 4.)

Art. 7169e. Same subject; entry upon lands, etc.—Any person or persons working under the direction of the Bureau of Biological Survey U. S. Department of Agriculture or working under the direction of the Live Stock Sanitary Board of the State of Texas or under the direction of the Commissioners court within any county within this State shall be authorized to enter upon public and private lands within this State for the purpose of carrying out the work of extermination of injurious predatory animals hereby named in this Act, provided that no person appointed by the Commissioner's Court shall have any authority to enter upon the public or private lands within this State in any county other than in the county where he shall have received his appointment. (Id. sec. 5.)

Art. 7169f. Same subject; sale of skins.—The Live Stock Sanitary Commission of Texas or its authorized representatives are hereby authorized to sell at the best prevailing market prices hides of all predatory animals that may be killed under the authority of Chapter 107 of the Acts of the Regular Session of the 36th Legislature [Arts. 7169a–7169e]. (Acts 1919, 2d C. S., ch. 41, sec. 1.)

Art. 7169g. Same subject; proceeds of sale of hides.—All sums of money received by any representatives of the Live Stock Sanitary Commission for the sale of such hides as provided for in Section 1 hereof [Art. 7169f], shall be remitted at once to the Live Stock Sanitary Commission by said representative. (Id. sec. 2.)

Art. 7169h. Same subject; funds; expenditure of.—All moneys received by the State Treasurer from the Live Stock Sanitary Commission as provided for by this Act shall be credited by the State Treasurer to the credit of the Live Stock Sanitary Commission of Texas, and set apart to be used by the Live Stock Sanitary Commission in the further eradication of predatory animals as provided for in Chapter 107 of the Act of the Regular Session of the 36th Legislature [Arts. 7169a–7169e], and such funds shall be drawn from the State Treasury by the Live Stock Sanitary Commission for said purposes at any time after such funds are deposited and it may be drawn by the Live Stock Sanitary Commission in any amount or amounts for said purposes not to exceed the amount on deposit. Such fund is in addition to any appropriation made or that may be made by the Legislature for eradicating predatory animals. (Id. sec. 3.)

CHAPTER THREE

OF THE SALE, SLAUGHTER AND SHIPMENT OF ANIMALS

Art. 7170. (4940) Bill of sale to be always taken.—Upon the sale, alienation or transfer of any horse, mare, mule, gelding, colt, jack, jennet, cow, calf, ox, or beef steer by any person in this state, the actual delivery of such animals shall be accompanied by a written transfer from the vendor, or party selling, to the purchaser, giving the number, marks and brands of each animal sold and delivered. (Act Nov. 13, 1866, p. 223, sec. 1; P. D. 7445.)

Art. 7171. (4941) Possession prima facie illegal, without.—Upon the trial of the right of property of any animal, such as is mentioned in the preceding article, in any court of this state, the possession of such animal without the written transfer therein specified shall be deemed prima facie illegal. (Id.)

Art. 7172. (4942) Stock animals sold by mark and brand, etc.—Persons may dispose of stock animals of the kind mentioned in article 7170, as they run in the range, by the sale and delivery of the brands and marks; but in every such sale the purchaser, in order to acquire title thereto, shall have his conveyance or bill of sale of such stock recorded in the county clerk's office, in a book to be kept by him for that purpose; and such sale or transfer shall be noted on the record of original marks and brands in the name of the vendee or purchaser. (Id.)

Art. 7173. (4943) Butchers to report to commissioners' court.—Every person in this state engaged in the slaughter and sale of animals for market shall make a regular report, under oath, to the county commissioners' court of the county, giving the number, color, age, marks and brands of every animal slaughtered, which report shall be made to each regular meeting of the court, and be filed with and kept on file by the county clerk for the inspection of any one interested. Each report shall be accompanied by the bill of sale or written conveyance to the butcher for every animal that he has purchased for slaughter, and, if any of the animals slaughtered have been raised by himself, it shall be so stated in the report. Said

butcher's report so made to the commissioners' court may be destroyed within the discretion of the county clerk after a period of five years. (Id. p. 224, sec. 3; P. D. 6557; amended Acts 1907, p. 239.)

Art. 7174. Butchers to register with county clerk.—Before engaging in the business of slaughter and sale of animals for market, every person, firm, or corporation desiring to so engage, must first register his name, or their names, with the county clerk, indicating their purpose to engage in such business; and upon failure to so first register their names they may be punished as provided for in the Penal Code for this offense; provided, nothing in this law shall be construed to apply to slaughter houses in this state slaughtering as many as three hundred cattle per day. (Acts 1907, p. 239.)

Art. 7175. (4944) Bill of sale and description to be recorded before driving.—Any person who shall purchase animals of any class named in article 7170, for the purpose of driving to market out of the county where purchased, or out of the state, shall, before moving the animals out of the county where purchased, deposit with the clerk of the county court, for record, a bill of sale and correct list of the number, marks, brands and kind of animals, signed and acknowledged by the vendor or vendors, which, together with the postoffice or place of abode of the vendee, shall be recorded in the book kept by the clerk for that purpose, and with his certificate of record, under seal attached, shall be returned to the purchaser upon payment of the recording fees. (Id. pp. 223, 224, sec. 2; P. D. 6556.)

Art. 7176. (4945) Owners to file sworn descriptive lists.—Persons intending to drive stock raised by themselves to market out of the county where raised, or out of the state, shall, before driving, deposit with the clerk of the county court for record a correct list of such animals, with a particular description of their marks and brands, verified by their own affidavit; which list the county clerk shall record and certify, as in other cases of registration, and return to the owner. (Id. p. 224, sec. 2.)

Art. 7177. (4946) Register of cattle shipped or slaughtered to be kept.—The commanders or agents of all vessels, and the agents of all railroads on which cattle are exported from the state, and the proprietors or agents of all establishments for the slaughter of cattle within the state, shall keep a register of all cattle shipped or slaughtered, with the marks, brands and general description of such animals, and the names of the persons shipping or selling the same, the dates of their shipments or purchase, and the county from which they were driven. (Act Sept. 5, 1850, p. 27, sec. 1; P. D. 460.)

Art. 7178. (4947) County clerk to make a copy.—Such register shall be deposited with the clerk of the county court of the county where the cattle were shipped or slaughtered on the first day of each month; and such clerk shall at once copy the same in a well-bound book to be kept for that purpose, and return the original to the party depositing it. The record kept by the county clerk shall be open at all times to public inspection without charge. (Id. sec. 2; P. D. 461.)

Art. 7179. (4948) Butchers' bond, etc.—Every person, before he shall set up and carry on the trade of a butcher or slaughterer of cattle in the state of Texas, shall file a bond, to be approved by the county judge of the county in which he desires to carry on the business, in a sum of not less than five hundred dollars nor more than five thousand dollars, payable to the state of Texas, conditioned that he shall keep a true and faithful record, in a book kept for that purpose, of all cattle purchased or slaughtered by him, with a description of the animal, including marks, brands, age, weight, and from whom purchased, and the date thereof; that he will have the hide and ears of such animal inspected by the inspector or some magistrate of the county within five days after it is slaughtered; and that he will not purchase any cattle that has been slaughtered by another, unless the hide and ears of such slaughtered animal accompanies said animal offered for sale; and that he will not purchase any animal that has been slaughtered by another when the ear marks or brands on the hide accompanying such animal when offered for sale have been changed, mutilated or destroyed. (Acts 1889, p. 84.)

Art. 7180. (4949) Shall keep a record, etc.—Every person who shall carry on the business of butcher or slaughterer of cattle shall keep a true and faithful record, in a book kept for that purpose, of all cattle purchased or slaughtered by him, together with a description of each animal, including mark, brand, age, weight and from whom purchased and the date thereof, and shall have the hide and ears of such animal or animals inspected by the inspector or some magistrate of the county within five days after such animal is slaughtered. (Id. sec. 3.)

Art. 7181. (4950) Shall be open to inspection.—The record provided for in the preceding article shall be open to inspection of all persons. (Id. sec. 5.)

Art. 7182. (4951) May be sued upon bond.—Any butcher or slaughterer of cattle who shall violate any of the conditions of the bond referred to in article 7179 may be sued upon his bond at the instance of the county or district attorney of the county where such bond is given, and all sums recovered by suits upon said bonds shall be paid into the county treasury and become a part of the available school fund of such county. (Id. sec. 7.)

Art. 7183. (4952) Inspector to keep a record, etc.—It shall be the duty of the inspector or magistrate who inspects such hides as are mentioned in this chapter to keep a record of the marks, brands, color and a general description of such hide, and for whom inspected, with the date of such inspection, and return the same to the clerk of the county court within ten days after such inspection, and shall be entitled to receive the sum of twenty-five cents for each hide so inspected, to be paid by the party having the hide inspected. (Id. sec. 8.)

Art. 7184. (4953) Exempted counties.—The provisions of the five preceding articles shall in nowise apply to the following counties: Anderson, Angelina, Austin, Bandera, Bastrop, Bell, Bexar, Blanco, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Chambers, Cherokee, Clay, Collin, Colo-

rado, Comal, Comanche, Dallas, Delta, Denton, De Witt, Ellis, Falls, Fannin, Fayette, Franklin, Freestone, Galveston, Gillespie, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Hardin, Harris, Harrison, Hays, Henderson, Hill Hopkins, Houston, Hunt, Jasper, Johnson, Karnes, Kaufman, Kendall, Kerr, Kimball, Lamar, Lavaca, Lee, Leon, Liberty, Limestone, Llano, Madison, Marion, Mason, McLennan, Milam, Montgomery, Morris, Nacogdoches, Navarro, Newton, Palo Pinto, Panola, Polk, Rains, Robertson, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Sutton, Tarrant, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Walker, Waller, Washington, Williamson, Wood. (Acts 1909, p. 74; Acts 1915, 1st C. S., ch. 17, sec. 2; Acts 1917, ch. 150, sec. 2.)

CHAPTER FOUR
OF ESTRAYS

Art. 7185. (4954) Who may take up stray animal, etc.—Hereafter when any stray horse, mare, gelding, filly, colt, mule, jack, jennet or work ox shall be found on the plantation or land of any citizen or his lessee for one year or more, such citizen or lessee may forthwith advertise the same (describing the animal's color and specifying the marks and brands, if any, also, giving the age and flesh marks of every kind) at three public places in the county in which such citizen resides, one of which notices shall be at the court house door, for at least twenty days, and shall also deliver to the clerk of the county court a copy of said notice which shall be by him securely posted up in his office; after the expiration of which time, if no owner apply, it shall be the duty of the taker-up of said animal or animals to appear before some justice of the peace in said county and estray the same. (Act Oct. 26, 1866, p. 54; P. D. 6810.)

Art. 7186. (4955) Oath, appraisement and bond.—Any citizen, entitled to estray any animal, as provided in the preceding article, shall make oath that the animal which he proposes to estray was taken upon his plantation, or on his lands adjoining the same; that the marks and brands thereof have not been altered or disfigured since the same was taken up; that notice has been given as the law requires, and that no owner has been found; which affidavit shall be sworn to and subscribed by the person estraying, and attested by the justice and filed; whereupon the said justice shall cause to appear before him, by summons or otherwise, two disinterested householders of his county, who are in no way related to the person estraying, commanding them, after being sworn, to value and appraise the same and certify the valuation, together with a particular description of the animal, including stature, marks, brands, color and age, under oath, which shall be attested by said justice, who shall thereupon require of the taker-up a bond, with two or more good and sufficient sureties, in double the value of such animal or animals, payable to the county judge of the county and his successors in office, conditioned that the taker-up shall comply with the provisions of this chapter, which bond, affidavit and appraisement shall be transmitted by such justice to the clerk of the county court within twenty days thereafter, for which said justice shall receive the same fees that are allowed for similar services by law. (Act Oct. 26, 1866; P. D. 6811.)

Art. 7187. (4956) Ownership, how proven, etc.—At any time within twelve months, and before the sale of any estrays, it shall be lawful for the owner of any estray animal enumerated in the first article of this chapter to prove his property by the affidavit of any respectable witness, which shall specify a particular description of the animal claimed, including the kind, marks, brands, stature, color and age of the same, which certificate may be sworn to and subscribed before any officer authorized by law to administer oaths in the county where such animal may have been estrayed, which certificate shall be delivered to the taker-up and by him filed in the office of the county clerk of such county, and on the delivery of such certificate and the payment of all costs incurred in posting such estray or estrays, to the taker-up, such owner shall be entitled to demand and receive the animal. (Id.; P. D. 6812.)

Art. 7188. (4957) Proof of respectability, when required.—When the respectability of the witness named in the preceding article is not known to the officer administering the oath, the party claiming the estray shall produce satisfactory evidence of the respectability of such witness, certified to by a notary public, county clerk or county judge of the county in which such witness resides. (Id.)

Art. 7189. (4958) When taker-up not entitled to compensation.—If the owner of any animal which has been estrayed in accordance with the provisions of this chapter be a resident citizen of the county in which such animal has been estrayed, and shall have had his mark and brand recorded in said county, and the animal so estrayed shall be in the mark and brand of the owner at the time it was taken up, then and in that case the taker-up shall not be entitled to receive any compensation for expense incurred in estraying said animal. (Id.)

Art. 7190. (4959) Estray not to be used until, etc.—Any animal taken up as an estray according to the provisions of the preceding articles shall not be used for any purpose whatsoever until the party taking up such animal shall have given bond as required by article 7186. (Id.; P. D. 6810.)

Art. 7191. (4960) When county commissioner to return estray's.—If any estray of any kind shall be found running at large and not estrayed, and the owner of the same be unknown, it shall be the duty of the county commissioners, or any of them, to return the same, with a full description thereof, to the county clerk of their respective counties, who shall advertise the same in the manner specified in this chapter, and if such animal shall not be proven away by the owner within the time allowed by law the commissioner returning the same, or his successor in office, shall proceed to sell such animal and report the sale thereof to the clerk of the county court, and after paying the clerk's fee and retaining twenty per cent. of the proceeds of such sale, he shall pay the remaining sum into the county treasury. (Id.; P. D. 6813.)

Art. 7192. (4961) County clerk to record papers.—It shall be the duty of the clerk of the county court to record the papers transmitted to him, as provided in article

4571 [7186] in a separate book, to be kept by him for that purpose, for which he shall be entitled to demand and receive the same fees that are allowed by law for similar services, to be paid in all cases by the taker-up. (Id.; P. D. 6814.)

Art. 7193. (4962) Two or more animals to be in one entry.—When two or more animals are taken up at the same time by the same person, they shall be included in the same entry, and no more fees (including fees for posting and advertising hereinafter mentioned) shall be charged than is allowed by law for one such animal. (Id.)

Art. 7194. (4963) Clerk to advertise, etc.—The clerk of the county court shall cause a statement of the appraisement and a description of the animals so estrayed to be advertised at least three times in some newspaper published in the county where such animal was estrayed, if there be one; and if there be no newspaper published in the county, then the clerk shall cause the same to be advertised in the newspaper nearest to the county, and also by posting up notices at three public places in the county, one of which shall be at the court house door thereof; and the printer of such notice shall furnish the said clerk with a copy of the paper containing said notice, and it shall be the duty of the said clerk to file and preserve the same in his office for the inspection of all persons who may be interested; and for such publication the printer shall be entitled to receive from the party estraying the same the sum of two dollars, to be collected by the county clerk and paid to the order of the printer. (Id.)

Art. 7195. (4964) Property in estrays, etc., sales, etc.—The property of every stray horse, mare, gelding, filly, colt, mule, jack, jennet or work ox taken up as aforesaid and not proven away within twelve months after such appraisement shall be deemed vested in the county wherein such estray or estrays may have been posted, and the taker-up shall immediately thereafter proceed to sell the same for cash to the highest bidder at the court house door of the county, after giving notice of the same as required in the case of sheriffs' sales; and within ten days after such sale, he shall, after deducting the expenses incurred in estraying said animals, pay into the county treasury seventy-five per cent of the proceeds of the same, and retain the other twenty-five per cent for his own use and benefit. (Id.; P. D. 6815.)

Art. 7196. (4965) Return of sale.—Whenever a sale of an estray shall be made according to the provisions of the preceding article, the taker-up shall make a return of such sale, duly sworn to by him, to the clerk of the county court of the county in which the sale was made, who shall file the same in his office. (Id.)

Art. 7197. (4966) Sales made on first Monday.—All sales of estrays, horses, mares, fillies, geldings, colts, mules, jacks, jennets or work oxen shall be made on the first Monday in the month, and between the hours of one and three o'clock p. m. of said day. (Id.)

Art. 7198. (4967) Hogs, sheep, etc., how estrayed, etc.—Any citizen taking up any stray hogs, sheep, goats or cattle, other than work oxen, shall proceed in the same manner as is required in the case of horses, etc., except advertising in a newspaper; and any person estraying the same, at the expiration of six months from the day of appraisement, shall proceed to give notice as in the case of sheriffs' or constables' sales, and sell such estrays where they were taken up; provided, there be not less than three adult bidders in attendance at said sale, beside the family of the taker-up. (Id.; P. D. 6816.)

Art. 7199. (4968) Not to be estrayed until after four months.—No animal enumerated in article 7198, except work oxen, shall be subject to be estrayed, unless the same shall have been known to the taker-up as being an estray for at least four months previous to the time of estraying the same. (Id.; amended Acts 1899, p. 234.)

Art. 7200. (4969) Names of bidders to be given.—In making the returns of sales under this title, when the sale has been made at the residence of the taker-up or other place than at the court house door of the county, the taker-up shall, in all cases, give the names of at least three of the bidders who were present at said sale, who were not members of his family. (Acts 1866, p. 54; P. D. 6817.)

Art. 7201. (4970) Taker-up liable for damages, when.—If any person estraying an animal enumerated in this chapter shall send or take away the same out of the county in which the same was taken up and estrayed, or sell or otherwise dispose of the same, he and his sureties shall be liable upon their bond in an action for damages in favor of the party injured. (Id.; P. D. 6818.)

Art. 7202. (4971) Taker-up may use, when.—The taker-up of an estray may use the same in moderation, after having executed bond as provided in article 7186, but should he abuse or injure the same he and his sureties shall be liable upon his bond in damages for such abuse or injury, and may be sued therefor by the owner for his own use, or by the county judge for the use of the county.

Art. 7203. (4972) Death, etc., of estray to be reported.—Whenever an estray animal shall be found dead, or shall escape, the taker-up shall, without delay, make report thereof, in writing, to the clerk of the county court, under oath; which report shall be recorded by said clerk in a book to be kept by him for that purpose; and any person who shall make a false report shall be liable on his bond, together with his sureties, for the value of the animal or animals estrayed; and shall also be liable to be indicted and punished as for perjury. (Id.; P. D. 6819; P. C. 188.)

Art. 7204. (4973) Proceeds of sale, how disposed of.—All moneys arising from the sales of estrays, under the provisions of this chapter, shall be paid to the county treasurer, and shall be by him applied exclusively to the jury fund of the county. (Id.; P. D. 6820.)

Art. 7205. (4974) If taker-up refuse to deliver, liable for damages.—If any person having in charge an estray shall refuse to deliver the same to the owner thereof, on his complying with the requisitions of this chapter, such owner shall be entitled to his action therefor with damages. (Id.; P. D. 6821.)

Art. 7206. (4975) Owner may reclaim money in twelve months.—At any time within twelve months after the sale of any estray made under the provisions of this chapter, the owner of such estray may apply to the county treasurer of the county in which such estray has been sold, and upon proof of such ownership shall be entitled to receive from said treasurer the amount deposited on account of such sale, after paying such costs as may be necessary to establish his right thereto. (Id.; P. D. 6822.)

Art. 7207. (4976) County clerk to send notice of estray, etc.—Whenever any person shall estray any animal on which any county brand may be found, it shall be the duty of the county clerk of the county in which said estray may be to immediately send a notice containing a full description of said animal, together with the marks and brands, to the county clerk of the county to which the county brand may belong; and it shall be the duty of the county clerk of said county brand to record said notice in a book kept for that purpose, and post the same on the court house door; and it shall further be his duty to ascertain from his record of brands to whom said animal may belong, and to notify said owner by letter or otherwise; and for such services he shall be entitled to a fee of one dollar from said owner; and the county clerk furnishing the notice shall be entitled to a fee of one dollar from said owner. (Acts 1883, p. 76, sec. 5.)

Art. 7208. (4977) Liability for failure.—Any county clerk who shall fail to send a notice as required in article 7207 of this chapter, the county clerk so failing shall become liable to the original owner of said estray in an amount equal to the value of said estray. (Id. sec. 6.)

CHAPTER FIVE

OF THE MODE OF PREVENTING HOGS AND CERTAIN OTHER ANIMALS FROM RUNNING AT LARGE IN COUNTIES AND SUBDIVISIONS

Art. 7209. (4978) Commissioners' court to order election.—Upon the written petition of fifty freeholders of any county, or upon the petition of twenty freeholders of any subdivision of a county, the commissioners' court of such county shall order an election to be held in said county or subdivision, on some day named in the order, for the purpose of enabling the freeholders of such county or subdivision to determine whether hogs, sheep or goats shall be permitted to run at large in such county or subdivision. (Const., art. 16, sec. 22; Act Aug. 15, 1876, p. 150, sec. 1; amended Acts 1909, p. 164.)

Art. 7210. (4979) Election may be ordered in subdivisions, when.—Whenever there is territory between two subdivisions of a county which have adopted the stock law, and in such intervening territory there is less than fifty freeholders, an election shall be ordered on the petition of a majority of the freeholders residing in such intervening territory, and the election shall be held as provided by law in other cases relating to the adoption of the stock law. (Acts 1881, p. 110.)

Art. 7211. (4980) Requisites of petition.—Such petition shall set forth clearly the class or classes of animals enumerated in the preceding articles which the petitioners desire shall not run at large in such county or subdivision, as the case may be; and, if the petition be from the freeholders of a subdivision of any county, such subdivision shall be particularly described and the boundaries thereof designated. (Acts 1876, p. 150.)

Art. 7212. (4981) Election, how ordered and conducted.—Upon the filing of such petition, the commissioners' court, at its next regular term thereafter, shall pass an order directing an election to be held throughout the county, or the particular subdivision thereof, as the case may be, on a day to be designated in the order, not less than thirty days from the date of such order; which election shall be held and conducted and the returns thereof made in accordance with the laws regulating general elections, in so far as the same are applicable. (Id.)

Art. 7213. (4982) Notice, how given.—Immediately after the passage of an order for an election by the commissioners' court, the county judge shall issue an order for such election and cause public notice thereof to be given for at least thirty days before the day of election, by publication of the order therefor in some newspaper published in the county, if there be one; if no newspaper be published in the county, then by posting copies of such order at the court house door, and at some public place in each justice's precinct, if the election be ordered for the whole county, or at three public places in the subdivision, if the election be ordered for a subdivision. (Id.)

Art. 7214. (4983) Requisites of the order.—The order of the county judge shall specify:

1. The petition and the action of the commissioners' court.
2. The class of animals it is proposed shall not run at large.
3. The territorial limits to be affected.
4. The day of election.
5. The places at which polls are to be opened. (Id.)

Art. 7215. (4984) Voting places.—If the election is ordered for the whole county, the same shall be held at the usual voting places in the several election precincts; but, if the election is ordered for any particular subdivision, the county judge shall designate the particular places in such subdivision at which the polls shall be opened. (Id. sec. 3.)

Art. 7216. (4985) Managers to be appointed, when.—If the election be for a division of the county, the county judge shall, at the time he issues the order for such election, appoint proper persons as managers of said election, all of whom shall be freeholders of the county and qualified voters; and such managers may appoint their own clerks. (Id. pp. 150, 151, sec. 4.)

Art. 7217. (4986) Freeholders only to vote.—No person shall vote at any election under the provisions of this chapter, unless he be a freeholder and is also a qualified voter under the constitution and laws. (Const., art. 16, sec. 23; Id. p. 150, sec. 2.)

Art. 7218. (4987) Manner of voting.—All votes at any election in pursuance of this chapter shall be by ballot; and voters desiring to prevent the animal designated in the order from running at large shall place upon their ballots the words, "For the stock law," and those in favor of allowing such animals to run at large shall place upon their ballots the words, "Against the stock law." (Id. sec. 3.)

Art. 7219. (4988) Returns of election.—On or before the tenth day after any election under the provisions of this chapter, the persons holding such election shall make due return of all the votes cast at their respective voting places for and against said proposition to the county judge of the county, who shall tabulate and count said returns and ascertain the result of said election. (Id. p. 151, sec. 4.)

Art. 7220. (4989) Returns, how opened.—The returns shall be opened, tabulated and counted by the Commissioners' Court of the County in the same manner as provided for all general elections in the State of Texas. (Acts 1876, p. 150, sec. 4; Acts 1919, 2d C. S., ch. 59, sec. 1.)

Art. 7221. (4990) Proclamation of the result, and its effect.—If a majority of the votes cast at such election shall be, "For the stock law," the county judge shall immediately issue his proclamation declaring the result; which proclamation shall be posted at the court house door, and after the expiration of thirty days from its issuance it shall be unlawful to permit to run at large within the limits designated any animal of the class mentioned in said proclamation. (Acts 1876, p. 150, sec. 4.)

Art. 7222. (4991) Stock may be impounded, when.—If any stock forbidden to run at large shall enter the inclosed lands, or shall, without being herded, roam about the residence, lots or cultivated land of any person other than the owner of such stock, without his consent, in any county or subdivision in which the provisions of this chapter have become operative in the manner provided in the preceding articles, the owner, lessee or person in lawful possession of such lands may impound said stock and detain the same until his fees and all damages occasioned by said stock are paid to him. (Acts 1887, p. 56.)

Art. 7223. (4992) Not to be impounded, when.—No animals shall be impounded, unless they have entered upon the inclosed lands or be found roaming about the residence, lots or cultivated land of another; and whenever any stock is impounded notice thereof shall at once be given to the owner, if known, and such owner shall be entitled to their possession upon payment of fees and damages. (Id.)

Art. 7224. (4993) Fees and damages.—Any owner, lessee, or person in lawful possession of enclosed lands shall be entitled to the following fees for impounding stock, to-wit: Ten cents per day per head for hogs, ten cents per day per head for goats, and five cents per head per day for sheep. The damages done by such stock, if any, and the fees due to the taker-up of stock, if any, may be assessed by any three disinterested freeholders of the subdivision in which said stock is taken up, who shall upon the application of the taker-up of the stock be appointed by the justice of the peace of the precinct in which such subdivision is situated. Where said justice shall fail or refuse to make appointment, or where the stock law has been adopted by an entire county, said freeholders shall be appointed by the county judge of the county. Said freeholders, after being duly sworn to discharge with impartiality the duties devolving upon them by said appointment, shall proceed after hearing the evidence to determine whether or not any trespass prohibited by the provisions of this chapter has been committed, and to ascertain the damages, if any, occasioned thereby, and the fees due to the taker-up of the stock by reason of said trespass, and shall make an assessment of damages and fees, in writing, and signed by said freeholders, or two of them, and verified by the affidavit of said freeholders, to the effect that said assessment is just and that they have no bias in favor of or prejudice against any party interested therein, and shall file said assessment with the justice of the peace, which shall be final; provided, that the owner of the stock, if known, shall have five days' notice of the time and place of the meeting of said freeholders, and if the owner is unknown then a written notice thereof shall be posted in two public places in said subdivision, and one at the door of the court house of the county; and provided, further, that nothing in this chapter shall be construed to deprive the taker-up of the stock to enforce by suit in a court of competent jurisdiction any claim he may have for such fees and damages, and to subject the stock so taken for the payment of the same under the provisions of this chapter. (Amend. 1895, p. 84.)

Art. 7225. (4994) Stock may be sold, when.—After the filing of the assessment, as provided for in the preceding article, the constable of the precinct shall sell such stock at public auction for cash, after having given notice of such sale as in constables' sales of personal property, and apply the proceeds of such sale, after deducting the expenses thereof, to the satisfaction of said fees and damages, and shall pay the balance, if any remains, to the owner of such stock. The justices and constables shall receive for their services the same compensation as is allowed for like services in civil cases. (Id.)

Art. 7226. (4995) May be sold, when and how.—If no owner can be found of stock so impounded, the taker-up may make affidavit before a justice of the peace of the county, describing the stock impounded by him, and that the owner is unknown to affiant, which affidavit shall be forthwith delivered to the county clerk by such justice, to be kept in his office for inspection. After the filing of such assessment, the constable of the precinct shall sell such stock as in case where the owner is known; and, if anything remains after satisfying the expenses of said sale and the fees and damages due to the taker-up, he shall report the same under oath to the clerk of the county court, and pay the same over to the county treasurer, to be received and disbursed by him as in case of sales of estrays; or the taker-up may at his option, after the expiration of five days, es-

tray such stock, according to the laws regulating estrays in this state. (Id.)

Art. 7227. (4996) Lawful fence.—After the adoption of the stock law in any county or subdivision, any fence within such county or subdivision shall be deemed a lawful fence if it be sufficient to keep out the classes of stock not affected by the provisions of this chapter; and no person within such county or subdivision shall be required to fence against stock not permitted to run at large. (Acts 1876, p. 150, sec. 5.)

Art. 7228. (4997) Subsequent elections in case of defeat.—Whenever an election is held under the provisions of this chapter for any county or subdivision, and the proposition for a stock and fence law, as herein provided, is defeated, no other election for such purpose shall be held within that locality for the space of twelve months thereafter. But the defeat of the proposition for a county shall not prevent another election from being held immediately thereafter for any subdivision of such county; nor shall a defeat of the proposition for any subdivision prevent an election from being held immediately thereafter for the entire county. (Id. sec. 5.)

Art. 7229. (4998) May be impounded when fence law in force; lawful fence.—Should any stock not permitted to run at large enter any enclosure of any owner or lessee of land, entitled to the benefit of this chapter, without his or their consent, it shall be lawful for the owner or lessee of said enclosure to impound said stock; and it shall be the duty of the owner or lessee of said land to give notice immediately to the owner of said stock of their impounding and detention; and the owner of said stock shall be entitled to the possession of his or her stock on payment of expenses incurred in impounding and keeping said stock; provided, that in such county or subdivision said owners or lessees shall not be required to fence against the stock not permitted to run at large; and any fence in said county or subdivision which is sufficient to keep out ordinary stock permitted to run at large under this chapter shall be deemed a lawful fence. Three barbed wires with posts not more than thirty feet apart, and one or more stays between them, or pickets four feet high and not more than six inches apart, shall constitute a lawful fence. If boards or rails are used, then three boards to be not less than five inches wide and one inch thick, or four rails shall constitute a lawful fence; provided, that all fencing built under the provisions of this chapter shall be four feet high. (Acts 1879, p. 66, sec. 6; amended Acts 1901, p. 290.)

Art. 7230. (4999) Stock not to be injured, etc.—If any person whose fence is insufficient under this law shall, with guns, dogs or otherwise, maim, wound or kill any cattle or any horse, mule, jack, or jennet, or procure the same to be done, such person or persons so offending shall give full satisfaction to the party injured for all damages by such person or persons sustained, to be recovered as in other suits for damages; provided, that this article shall not be so construed as to authorize any person in any event to maim, kill or wound any horse, mule, jack, jennet or cattle belonging to another. When a trespass has been committed by any cattle or horses on the cleared or cultivated land of any person who has complied with the provisions of this chapter, in the erection of a lawful fence, it shall be lawful for such person to complain thereof to the justice of the peace of the precinct in which such trespass shall have been committed; and such justice is hereby authorized and required to cause two disinterested and impartial freeholders to be summoned, who shall on oath view and examine whether such complaint be sufficient or not, and what damages he has sustained by said trespass, and certify the same in writing; and, if it shall so appear that said fence be sufficient, then the owner of such cattle or horses shall make just satisfaction for the trespass to the party injured, to be recovered before any tribunal having proper jurisdiction. In case of a second trespass by the same cattle or horses, the owner or lessee of the premises upon which the trespass is committed may, if he deem it necessary for the protection and preservation of his premises or growing crops thereon, cause said stock to be penned and turned over to the sheriff or constable, and held responsible to the person damaged for all damages caused by said stock and all costs thereof. It shall be lawful for the owner or lessee of such inclosures as are contemplated in this chapter to charge the following rates for impounding such stock as referred to in this chapter, to-wit, twenty-five cents per day per head. (Id. sec. 9.)

Art. 7231. (5000) Lawful fence may be determined by election.—Nothing in this chapter shall prevent the freeholders of any county, or subdivision of a county, where the stock law prevails from deciding by a majority vote whether or not three barbed wires without a board or plank shall constitute a lawful fence in such county or subdivision of same; the election for such purpose to be conducted in the same manner and under the same rules and regulations as elections provided for in the act authorizing the passage of stock and fence laws, approved August 15, 1876.

Art. 7232. (5001a) No election until lapse of two years.—After the adoption of the stock law in any county or subdivision, no election under the preceding articles shall be held within the same prescribed limits in less than two years after an election under this title has been held therein; but at the expiration of that time the commissioners' court of each county in the state, whenever petitioned to do so by a majority of the freeholders, who are qualified voters under the constitution and laws of a county which has formerly adopted the stock law, or by a majority of the freeholders, who are qualified voters under the constitution and laws of the subdivision of a county which has formerly adopted the stock law, shall order another election to be held by the freeholders, who are qualified voters under the constitution and laws of such county, or subdivision, to determine whether hogs, sheep and goats shall be permitted to run at large in such county, or subdivision, which election shall be ordered, held, notice thereof given, the votes returned and counted in all respects as provided by this title for a first election. (Acts 1899, p. 80.)

Art. 7233. (5001b) Proclamation to be issued.—If, in a county or subdivision which has formerly adopted the stock law, a majority of the legal votes cast at such election shall be "Against the stock law," the county judge shall immediately issue his proclamation declaring the result; which proclamation shall be posted at the court house door, and after the expiration of one hundred and eighty days from its issuance it shall be lawful to permit to run at large, within the limits designated, any animal of the class mentioned in said proclamation; if a majority of the legal votes cast at such election shall be "For the stock law," he shall so state in his proclamation, and the operation of the law shall be in no way affected by such election. (Id.)

Art. 7234. (5001c) In cases where there are less than fifty freeholders; less than twenty; where no freeholders.—Whenever there is territory between two subdivisions of a county which have adopted a stock law, or when there is territory adjoining a subdivision which has adopted a stock law, and in such territory there are less than fifty freeholders, an election shall be ordered on a petition of a majority of the freeholders residing in such territory; and the election shall be held as provided by law in other cases relating to the adoption of the stock law. And, if there be less than twenty freeholders in such intervening or adjoining territory, then on the petition of a majority of the owners of the land to the Commissioners Court, the said Commissioners Court shall issue an order extending the stock law to said territory and the same shall be included in the territory of such adjoining subdivision, and, in cases where there are no freeholders on such intervening or adjoining territory, then, on the petition of the owner, or owners, of the land to the Commissioners Court, the said Commissioners Court shall issue an order extending the stock law to said territory, and the same shall be included in the territory of such adjoining subdivision; and any person or persons who own lands adjoining any other lands which have been added to territory in which a stock law prevails, shall have the same right, and, on petition of the owner or owners of such lands to the Commissioners Court, the said Commissioners Court shall issue an order extending the stock law to said territory, and the same shall be included in the territory of such adjoining subdivision. (Acts 1899, p. 80; Acts 1907, p. 150; Acts 1915, ch. 133, sec. 1.)

Art. 7234a. Elections validated.—All elections held in any county in this State for the purpose of determining whether or not hogs, sheep or goats shall be permitted to run at large in such county or subdivision as provided in Chapter 5 of the Revised Civil Statutes of Texas, wherein the petition was filed, orders of the election made by the Commissioners' Court, notice thereof given, such election held and a majority of the freeholders voting at such election, voted in favor of same, and such election may have been invalidated by the failure of some ministerial officer to perform the duties required of him, be, and the same is hereby in all things validated, and shall be, by all of the courts of this State, held to be valid elections, just the same as if the officers charged with duty of opening, tabulating and counting the votes should have complied with the law, as provided in said Chapter 5 of the Revised Civil Statutes of Texas. (Acts 1919, 2d C. S., ch. 59, sec. 2.)

Art. 7234b. Limited free range for hogs in county or subdivision thereof; petition for election; number of signatures to.—Upon the written petition of fifty (50) freeholders of any county, or upon the petition of twenty (20) freeholders of any subdivision of any county, which county or subdivision has heretofore adopted, or may hereafter adopt, the hog law under the provisions of Chapter 5, Title 124, of the Revised Civil Statutes of Texas [Arts. 7209–7234], the commissioners' court of such county shall order an election to be held in said county or subdivision on some day named in the order, for the purpose of enabling the freeholders of such county or subdivision to determine whether hogs shall have a free range in said county or subdivision from the fifteenth day of November to the fifteenth day of February, of each year. (Acts 1919, ch. 92, sec. 1.)

Art. 7234c. Same subject; number of petitioners in certain cases.—Whenever there is territory between two subdivisions of a county which have adopted the hog law, and in such intervening territory there is less than fifty (50) freeholders, an election shall be ordered on the petition of a majority of the freeholders residing in such intervening territory, and the election shall be held for the purpose named herein and under the terms of this Act. (Id. sec. 2.)

Art. 7234d. Same subject; description of subdivision in petition.—If the petition be from the freeholders of a subdivision of any county, such subdivision shall be particularly described and the boundaries thereof designated in the same manner as when originally established. (Id. sec. 3.)

Art. 7234e. Same subject; order for, date, and conduct of election.—Upon the filing of such petition, the commissioners' court, at a regular or special meeting thereof, shall pass an order directing an election to be held throughout the county or the particular subdivision thereof, as the case may be, on a day to be designated in the order, not less than thirty days from the date of such order; which election shall be held and conducted and the returns thereof made in accordance with the laws regulating general elections, in so far as the same are applicable. (Id. sec. 4.)

Art. 7234f. Same subject; order for election by county judge; notice of election.—Immediately after the passage of an order for an election by the commissioners' court, the county judge shall issue an order for such election and cause public notices thereof to be given for at least thirty days before the day of election, by publication of the order therefor in some newspaper published in the county, if there be one; if no newspaper be published in the county then by posting copies of such order at the court house door, and at some public place in each justice's precinct, if such election be ordered for the whole county, or at three public places in the subdivision, if the election be ordered for a subdivision. (Id. sec. 5.)

Art. 7234g. Same subject; contents of order of county judge.—The order of the county judge shall specify:

1. The petition and the action of the commissioners' court.
2. The class of animals it is proposed shall have the limited period of free range.
3. The time in which said animals are to have the limited period of free range.
4. The territorial limits to be affected.
5. The day of election.
6. The places at which polls are to be opened. (Id. sec. 6.)

Art. 7234h. Same subject; plans for holding election.—If the election is ordered for the whole county, the same shall be held at the usual voting places in the several election precincts; but, if the election is ordered for any particular subdivision the county judge shall designate the particular places in such subdivision at which the polls shall be opened. (Id. sec. 7.)

Art. 7234i. Same subject; managers of election.—If the election be for a subdivision of the county, the county judge shall, at the time he issues the order for such election, appoint proper persons as managers of said election, all of whom shall be freeholders of the county and qualified voters; and such managers may appoint their own clerks. (Id. sec. 8.)

Art. 7234j. Same subject; voters.—No person shall vote at an election under the provisions of this Act, unless he be a freeholder and is also a qualified voter under the constitution and laws of Texas. (Id. sec. 9.)

Art. 7234k. Same subject; ballots.—All votes at an election held under the provisions of this Act, shall be by ballot; and voters desiring to permit hogs to have a limited period of free range in hog law counties or districts as designated in the order, shall place upon their ballots the words, "For the limited period of free range for hogs," and those against limited period of free range for hogs shall place upon their ballots the words, "Against the limited period of free range for hogs." (Id. sec. 10.)

Art. 7234l. Same subject; returns of election.—On or before the 10th day after any election under the provisions of this Act, the persons holding such election shall make due return of all votes cast at their respective voting places for and against said proposition to the county judge of the county, who shall tabulate and count said returns and ascertain the result of said election. (Id. sec. 11.)

Art. 7234m. Same subject; counting returns.—The returns shall be opened, tabulated and counted by the county judge in the presence of the county clerk and at least one justice of the peace of the county, or two respectable freeholders of the county. (Id. sec. 12.)

Art. 7234n. Same subject; declaration of result of election.—If a majority of the votes cast at such election shall be "For the limited period of free range for hogs," the county judge shall immediately issue his proclamation declaring the result; which proclamation shall be posted at the court house door, and after the expiration of ten days from its issuance, it shall be lawful to permit hogs to run at large within the limits designated for the period of time between the fifteenth day of November of each year and the fifteenth day of the following February of each year, both days inclusive. (Id. sec. 13.)

Art. 7234o. Same subject; second election.—Whenever an election is held under the provisions of this Act for any county or subdivision, no other election for such purpose shall be held within such county or subdivision for the space of two years, but the defeat of the proposition for a county shall not prevent another election from being held immediately thereafter for any subdivision of such county; nor shall the defeat of the proposition for any subdivision prevent an election from being held immediately thereafter, for the entire county. (Id. sec. 14.)

Art. 7234p. Same subject; declaration of result of second election.—If, in a county or subdivision which has formerly adopted the limited period of free range for hogs, as provided for under the terms of this Act, a majority of the legal votes cast at such election shall be "Against the limited period of free range for hogs," the county judge shall immediately issue his proclamation declaring the result; which proclamation shall be posted at the court house door, and after the expiration of ten days from its issuance, it shall be unlawful to permit hogs to run at large within the limits designated; if a majority of the legal votes cast at such election shall be, "For the limited period of free range for hogs," he shall so state in his proclamation, and the operation of the law shall be in no way affected by such election. (Id. sec. 15.)

Art. 7234q. Same subject; election for adoption of stock law and free range proposition held at same time.—When an election is called for any county or subdivision thereof for the purpose of voting upon the question of the adoption of the stock law or any part thereof, under provisions of Chapter 5, Title 124, of the Revised Civil Statutes of Texas [Arts. 7209–7234], if such county or subdivision has not already in operation the stock law or any part thereof, under the provisions of said Chapter and Title, it shall be lawful to submit at the same time and at the same election the question of the limited period of free range for hogs, as provided for in this Act, but said proposition must be submitted and voted upon as a separate proposition, and the votes cast, therein, and the returns thereof, and the judge's proclamation thereon, must be separate and distinct from that of the stock law proposition voted on at such election. (Id. sec. 16.)

CHAPTER SIX

OF THE MODE OF PREVENTING HORSES AND CERTAIN OTHER ANIMALS RUNNING AT LARGE IN PARTICULAR COUNTIES NAMED

Art. 7235. Election to put law in operation.—Upon the written petition of one hundred free-holders of any of the following counties: Anderson, Archer, Armstrong, Atascosa, Austin, Bastrop, Baylor, Bandera, Bee, Bell, Bexar, Blanco, Borden, Bosque, Brazos, Brewster, Brown, Burnett, Burleson, Chambers, Caldwell, Calhoun, Callahan, Cameron, Camp, Cass, Castro, Clay, Chero-

kee, Childress, Collingsworth, Coleman, Collin, Colorado, Cooke, Comanche, Concho, Crockett, Coryell, Cottle, Crosby, Cochran, Crane, Dallas, Dallam, Dawson, Deaf Smith, Delta, Denton, De Witt, Dickens, Dimmit, Donley, Eastland, Ector, Edwards, Ellis, Erath, El Paso, Falls, Fannin, Fayette, Floyd, Ford, Franklin, Fisher, Freestone, Gaines, Gregg, Guadalupe, Garza, Glasscock, Gillespie, Gonzales, Grimes, Grayson, Gray, Hale, Hamilton, Hansford, Harrison, Hays, Haskell, Hall, Hardeman, Hartley, Henderson, Hidalgo, Hill, Hood, Hopkins, Howard, Houston, Hockley, Hunt, Jackson, Jack, Jones, Jefferson, Johnson, Kaufman, Kimble, Knox, Kerr, Kendall, Kleberg, Lamar, Lampasas, Lavaca, Lamb, Lee, Limestone, Liberty, Lynn, Lipscomb, Llano, Lubbock, Madison, Mason, McLennan, Matagorda, McCullough, Menard, Moore, Martin, Maverick, Medina, Midland, Milam, Mills, Mitchell, Montague, Morris, Navarro, Nacogdoches, Nolan, Nueces, Ochiltree, Palo Pinto, Parker, Pecos, Presidio, Rains, Randall, Red River, Reeves, Real, Robertson, Rockwall, Rusk, Runnels, San Patricio, San Saba, Scurry, Sherman, Smith, Somerville, Sterling, Starr, Sutton, Swisher, Tarrant, Tom Green, Taylor, Terrell, Throckmorton, Titus, Travis, Upshur, Victoria, Val Verde, Van Zandt, Washington, Williamson, Wilson, Wise, Ward, Wharton, Wood, Wheeler, Winkler, Wichita, Wilbarger, and Young, or upon the petition of fifty freeholders of any such sub-division of a county as may be described in the petition, and defined by the Commissioners' Court of any of the above named counties; the Commissioners' Court of said county shall order an election to be held in such county, or such subdivision of a county as may be described in the petition, and defined by the Commissioners' Court on the day named in the order, for the purpose of enabling the free-holders of such county, or such sub-division of a county, as may be described in the petition, and defined by the Commissioners' Court to determine whether horses, mules, jacks, jennets, and cattle, shall be permitted to run at large, in such county or such sub-division of a county as may be described in the petition and defined by the Commissioners' Court; provided that where there is an application for an election to include an entire county there shall not be less than 12 free-holders from each justice precinct of said county, as signers to the petition for such election.

And provided further, that the provisions of this Section shall not apply to Archer County as a whole, but shall apply only to such subdivision thereof as may be designated in the manner herein provided; and provided further, that the provisions of this Section shall not apply to Wharton County as a whole, but shall apply only to such subdivisions thereof as may be designated in the manner herein provided; provided, however, that the provisions of this Act shall not apply to Jefferson County as a whole, but shall apply only to such sub-divisions thereof as may be designated in the manner herein provided; provided further, that the provisions of this Act shall not apply to Nueces County as a whole, but shall apply only to such subdivisions thereof as may be designated in the manner herein provided; provided further, that the provisions of this Act shall not apply to Lipscomb County as a whole, but shall apply only to such sub-divisions thereof, as may be designated in the manner herein provided. (Acts 1899, ch. 128; Acts 1901, ch. 24; Acts 1903, ch. 71; Acts 1905, chs. 23, 94; Acts 1907, chs. 11, 28, 57; Acts 1909, p. 121, sec. 1; Acts 1911, p. 172, sec. 1; Acts 1913, p. 131, sec. 1; Acts 1915, ch. 26, sec. 1; Acts 1915, ch. 99, sec. 1; Acts 1917, ch. 131, sec. 1; Acts 1917, 3d C. S., ch. 10, sec. 1; Acts 1918, 4th C. S., ch. 13, sec. 1; Acts 1919, ch. 35, sec. 1; Acts 1919, ch. 105, sec. 1.)

Title of Acts 33d Leg. ch. 72, held unconstitutional as to Matagorda County. See Ward Cattle & Pasture Co. v. Carpenter, 200 S. W. 521.

Art. 7235a. Election in Harris county.—Upon the written petition of twenty (20) freeholders of any subdivision of Harris county as may be described in the petition and defined by the commissioners' court of Harris county, the commissioners' court of said county shall order an election to be held in such subdivision of said county as may be described in the petition and defined by the commissioners' court on the day named in the order, for the purpose of enabling the freeholders of such subdivision of Harris county as may be described in the petition and defined by the commissioners' court, to determine whether horses, mules, jacks, jennets and cattle shall be permitted to run at large in such subdivision of Harris county, as may be described in the petition and defined by the commissioners' court. (Acts 1913, p. 157, sec. 1; Acts 1919, Sp. L. ch. 46, sec. 1.)

Art. 7235b. Provisions applicable.—Upon the filing of such petition, the order of the commissioners' court thereon, the holding of such election, the return thereof, and all other action in respect thereto shall be as prescribed in the general law, title 124, chapter 5, of the Revised Statutes of Texas of 1911. (Acts 1913, p. 157, sec. 2; Acts 1919, Sp. L. ch. 46, sec. 2.)

Art. 7236. Election to repeal law.—Upon the written petition of two hundred freeholders of any of the above named counties, or upon the written petition of fifty freeholders of any subdivision of the above named counties, if the law be in force in that subdivision only, the commissioners' court shall be authorized and required to order an election on the date therein named to determine whether or not said law be repealed; provided, that such petition be not filed within less than two years from the date this law goes into effect; and provided, further, that such petition be signed by at least twenty-four freeholders from each justice precinct in such county. But if this law becomes operative over any of the above named counties, as prescribed, it can in no case be repealed by any subdivision, except by a two-thirds majority of the votes cast by the freeholders of such counties, at an election held in accordance with the provisions of this chapter. (Acts 1909, p. 121, sec. 2.)

Art. 7237. Intervening territory; election in.—Whenever there is territory between two subdivisions of a county which have adopted the stock law, and in such intervening territory there are less than fifty freeholders, an election shall be ordered on the petition of a majority of the freeholders residing in such intervening territory; and the election shall be held as provided by law in other cases relating to the adoption of the stock law. (Acts 1899, p. 220, sec. 2.)

Art. 7238. Petition shall state what.—Such petition shall set forth clearly the class or classes of animals enumerated in the first article of this chapter, which the petitioners desire shall not run at large in such county, or subdivision, as the case may be; and, if the petition be from the freeholders of a subdivision of any county, such subdivision shall be particularly described and the boundaries thereof designated. (Id. sec. 3.)

Art. 7239. Order for election by commissioners' court.—Upon the filing of such petition, the commissioners' court at the next regular term thereafter shall pass an order directing an election to be held throughout the county, or the particular subdivision thereof, as the case may be, on a day to be designated in the order, not less than thirty days from the date of such order; which election shall be held and conducted and the returns thereof made in accordance with the laws regulating general elections, in so far as the same are applicable. (Id. sec. 4.)

Art. 7240. County judge to issue order and notice.—Immediately after the passage of an order for an election by the commissioners' court, the county judge shall issue an order for such election and cause public notices thereof to be given for at least thirty days before the day of election, by publication of the order therefor in some newspaper published in the county, if there be one, if no newspaper be published in the county, then by posting copies of such order at the court house door and at some public place in each justice's precinct, if the election be ordered for the whole county, or at three public places in the subdivision, if the election be ordered for a subdivision. (Id. sec. 5.)

Art. 7241. Recitals in order.—The order of the county judge shall specify:

1. The petition and the action of the commissioners' court.
2. The class of animals it is proposed shall not run at large.
3. The territorial limits to be affected.
4. The day of election.
5. The places at which polls are to be opened. (Id. sec. 6.)

Art. 7242. Election places.—If the election is ordered for the whole county, the same shall be held at the usual voting places in the several election precincts; but, if the election is ordered for any particular subdivision, the county judge shall designate the particular places in such subdivision at which the polls shall be opened. (Id. sec. 7.)

Art. 7243. Officers of election.—If the election be for a subdivision of the county, the county judge shall, at the time he issues the order for such election, appoint proper persons as managers of said election, all of whom shall be freeholders of the county and qualified voters; and such managers may appoint their own clerks. (Id. sec. 8.)

Art. 7244. Qualifications of electors.—No person shall vote at any election under the provisions of this chapter, unless he be a freeholder and is a qualified voter under the constitution and laws. (Id. sec. 9.)

Art. 7245. Election by ballot, form of.—All votes at any election, in pursuance of this chapter, shall be by ballot, and voters desiring to prevent the animals designated in the order from running at large shall place upon their ballots the words, "For the Stock Law," and those in favor of allowing such animals to run at large shall place upon their ballots the words, "Against the Stock Law." (Id. sec. 10.)

Art. 7246. Election returns.—On or before the tenth day after any election under the provisions of this chapter, the persons holding such election shall make due return on all votes cast at their respective voting places for and against said proposition to the county judge of the county, who shall tabulate and count said returns and ascertain the results of said election. (Id. sec. 11.)

Art. 7247. Same, effect of.—The returns shall be opened, tabulated and counted by the county judge in the presence of the county clerk and at least one justice of the peace of the county, or by [of] two respectable freeholders of the county, and an order showing the result shall be duly recorded in the minutes of the commissioners' court in the said county. And the order showing the result of said election thus determined, certified and recorded, shall be held to be prima facie evidence that all the provisions of law have been complied with in presenting the petition, the action of the court thereon ordering the election, the giving of notice and holding said election, and in counting and returning the votes and declaring the result thereof, and, if said election be then declared to be in favor of the stock law, then after thirty days from said date, it shall be prima facie evidence that the proclamation required by law has been made and published as required by law. (Acts 1907, p. 123, sec. 12.)

Art. 7248. Proclamation and time law goes into effect.—If a majority of the votes cast at such election shall be "For the Stock Law," the county judge shall immediately issue his proclamation declaring the result, which proclamation shall be posted at the court house door, and, after the expiration of thirty days from its issuance, it shall be unlawful to permit to run at large, within the limits designated, any animal of the class mentioned in said proclamation. (Acts 1899, p. 220, sec. 13.)

Art. 7248a. Duty of sheriff or constable to seize and impound stock running at large; impounding fees.—It shall be the duty of any sheriff or constable of any county, or subdivision thereof, within this State, where the provisions of this chapter are or may hereafter become operative, to seize any stock which may become known to him to be running at large on any outside premises where the provisions of the stock law are in force, and impound the same in some place provided for that purpose, and immediately notify the owner thereof, if such owner is known to such officer, who may redeem the same on the payment of an impounding fee of $1 per head, and an additional fee of 25 cents per day per head for each day such stock is so kept. (Acts 1915, ch. 92, sec. 1.)

Art. 7249. Impounding stock.—If any stock forbidden to run at large shall enter the enclosed lands, or shall, without being herded, roam about the residence, lots or cultivated lands of any person other than the owner of such stock without his consent, in any county or subdivision in which the provisions of this chapter have become operative in the manner provided in the preceding article, the owner, lessee or person in

lawful possession of such lands may impound such stock and detain the same until his fees and all damages occasioned by said stock are paid to him. (Acts 1899, p. 220, sec. 14.)

Art. 7250. Animals impounded when; notice; payment of fees and damages.—No animals shall be impounded except as provided in Article 7248a unless they have entered upon enclosed lands or be found roaming about the residence, lots or cultivated land of another, and, whenever any stock is impounded, notice thereof shall be given to the owner, if known, and such owner shall be entitled to their possession upon payment of fees and damages. (Acts 1899, p. 220, sec. 15; Acts 1915, ch. 92, sec. 1.)

Art. 7251. Fees for impounding.—Any owner, lessee or person in lawful possession of enclosed lands shall be entitled to the following fees for impounding stock, to-wit: Twenty-five cents per day per head for horses and mules, fifteen cents per day per head for cattle, and ten cents per day per head for jacks and jennets. The damages done by such stock, if any, and the fees due to the taker-up of stock, if any, may be assessed by any three disinterested freeholders of the subdivision in which said stock is taken up, who shall, upon the application of the taker-up of the stock, be appointed by the justice of the peace of the precinct in which such subdivision is situated. When such justice shall fail or refuse to make appointments, or when the stock law has been adopted by an entire county, said freeholders shall be appointed by the county judge of the county. Said freeholders, after being duly sworn to discharge with impartiality the duties devolving upon them by said appointment, shall proceed after hearing the evidence to determine whether or not any trespass prohibited by the provisions of this chapter has been committed, and to ascertain the damages, if any, occasioned thereby, and the fees due the taker-up of the stock by reason of said trespass, and shall make an assessment of damages and fees in writing and signed by said freeholders, or two of them, and verified by the affidavit of said freeholders to the effect that said assessment is just, and that they have no bias in favor of or prejudice against any party interested therein, and shall file said assessment with the justice of the peace, which shall be final; provided, that the owner of the stock, if known, shall have five days notice of the time and place of the meeting of said freeholders, and if the owner is unknown, then a written notice thereof shall be posted in two public places in said subdivision, and one at the door of the court house of the county; and provided, further, that nothing in this chapter shall be construed to deprive the taker-up of the stock to enforce, by suit in a court of competent jurisdiction, any claim he may have for such fees and damages, and to subject the stock so taken up for the payment of the same under the provisions of this chapter. (Acts 1899, p. 220, sec. 16.)

Art. 7252. Sale of impounded stock; fees.—After the filing of the assessment, as provided for in the preceding article, the constable of the precinct shall sell such stock at public auction for cash, after having given notice of such sale, as in constables' sales of personal property, and apply the proceeds of such sale, after deducting the expenses thereof, to the satisfaction of said fees and damages, and shall pay the balance, if any remains, to the owner of such stock. The justices and constables shall receive for their services the same compensation as is allowed for like service in civil cases. (Id. sec. 17.)

Art. 7252a. Sale on failure to redeem stock impounded; fees.—When any stock shall have been impounded as provided in Article 7248a, and after five days' notice has been given to the owner of such stock, such officer shall sell such stock at public auction for cash, after having given notice of such sale, as in constables' sales of personal property, and apply the proceeds of such sale, after deducting the expenses thereof, to the satisfaction of said fees and damages, and shall pay the balance, if any remains, to the owner of such stock. The justices and constables shall receive for their services the same compensation as is allowed for like service in civil cases. (Acts 1915, ch. 92, sec. 1.)

Art. 7253. Unknown owners; sale; proceeds, how disposed of.—If no owner can be found of stock so impounded, such officer or other person taking up any such stock shall make affidavit before a justice of the peace of the county, describing the stock impounded by him, and that the owner is unknown to affiant; which affidavit shall be forthwith delivered to the county clerk by such justice to be kept in his office for inspection. After the filing of such affidavit, the constable of the precinct shall sell such stock as in case when the owner is known; and if anything remains after satisfying the expenses of said sale and the fees and damages due to the taker-up, he shall report the same under oath to the clerk of the county court and pay the same over to the county treasurer to be received by him and placed to the credit of the road and bridge fund of the county. (Acts 1899, p. 220, sec. 18; Acts 1915, ch. 92, sec. 1.)

Art. 7254. Lawful fence, what constitutes.—After the adoption of the stock law in any county or subdivision, any fence within such county or subdivision shall be deemed a lawful fence if it be sufficient to keep out the classes of stock not affected by the provisions of this chapter. (Acts 1899, p. 220, sec. 19.)

Art. 7255. Second election when proposition is defeated.—Whenever an election is held under the provisions of this chapter for any county or subdivision, and the proposition of a stock law as herein provided is defeated, no other election for such purpose shall be held within that locality for the space of twelve months thereafter; but the defeat of the proposition for a county shall not prevent another election from being held immediately thereafter for any subdivision of such county, nor shall a defeat of the proposition for any subdivision prevent an election from being held immediately thereafter for the entire county. (Id. sec. 20.)

CHAPTER SEVEN

REGULATIONS FOR THE PROTECTION OF STOCK RAISERS IN CERTAIN LOCALITIES

See, also, Penal Code, Title 17, c. 16.

Art. 7256. (5002) Inspector to be elected.—Each organized county, not expressly excepted herein, shall constitute an inspection district for the inspection of hides and animals; and at each general election an officer to be styled, "Inspector of hides and animals," shall be elected by the qualified voters of such county in the same manner as other county officers are elected. (Const., art. 16, sec. 23; Act Aug. 23, 1876, p. 265, sec. 1.)

Art. 7257. (5003) Governor may appoint in unorganized county.—The governor is authorized to appoint a hide inspector for each unorganized county in this state. (Acts 1879, p. 89.)

Art. 7258. (5004) Term of office.—Inspectors of hides and animals shall hold their offices for the term of two years and until the election and qualification of their successors in office. (Act Aug. 23, 1876, p. 295, sec. 2.)

Art. 7259. (5005) Vacancies, how filled.—In case of a vacancy in such office, the commissioners' court shall fill the same by appointment for the unexpired term; and until such vacancy is filled by such appointment the sheriff of the county shall discharge the duties of the office. (Act Aug. 19, 1876, p. 217, sec. 1.)

Art. 7260. (5006) Bond and oath.—Every person elected to the office of inspector of hides and animals, before entering on the duties of his office, shall enter into a bond, with two or more good and sufficient sureties, to be approved by the county commissioners' court of the county constituting his district, which bond shall be in a sum to be fixed by said court, not less than one thousand dollars, nor more than ten thousand dollars, payable to the county judge, conditioned that he shall well and truly perform the duties of his office, in accordance with the provisions of this chapter; and he shall also take and subscribe the oath of office prescribed by the constitution, which shall be indorsed on or attached to said bond, together with the certificate of the officer administering the same, which bond and oath shall be deposited and recorded in the office of the clerk of the county court of the county. The bond herein provided for shall not be void for want of form or on the first recovery, but may be sued on from time to time, in the name of any person injured by a breach thereof, until the whole penalty shall have been recovered. (Id. sec. 3.)

Art. 7261. (5007) Appointees also to give bond.—Persons appointed to fill vacancies in the office of inspector shall give bond and take the oath in like manner as prescribed in the preceding article, and shall not enter upon the duties of the office until such bond is given and approved and such oath is taken; but a sheriff acting temporarily as inspector, pending a vacancy in such office, shall not be required to give additional bond, but his official bond as sheriff shall extend to and include the faithful and proper performance of his duties as inspector ad interim. (Act Aug. 19, 1876, p. 217, sec. 1.)

Art. 7262. (5008) Seal of office.—The county commissioners' court of each county shall furnish to the inspector for such county a seal of office, having upon it the words, "Inspector of Hides and Animals, ——— county, Texas" [the blank to be filled with the name of the county], and each inspector and his deputy shall certify their official acts with the impress of such seal. Upon his retirement from office, the inspector shall deliver such seal, together with the books, papers and records of his office, to his successor. (Act Aug. 23, 1876, p. 296, sec. 6.)

Art. 7263. (5009) Deputies may be appointed.—Every inspector shall have power to appoint as many deputies as shall be necessary to perform the duties imposed on them by this chapter; and such deputies shall have the same power and authority to perform the duties of their office as their principal; and the inspectors shall require bond and security of their deputies for the faithful performance of their duties; and the said deputies shall, before entering upon their duties, take and subscribe the oath prescribed by the constitution, which, together with the certificate of the officer administering the same, shall be indorsed upon the bonds. (Id. p. 295, sec. 4.)

Art. 7264. (5010) Appointment to be recorded.—The appointment of each deputy shall be in writing, with the seal of the inspector thereon, and shall, with their bonds and oath of office, be recorded by the clerk of the county court of the county constituting their district; and the inspectors shall be responsible to any persons injured thereby for the official acts of each of their deputies, and they shall have the same remedies against their deputies and their sureties as any person can have against the inspectors and their sureties. (Id. pp. 295, 296, sec. 5.)

Art. 7265. (5011) Meaning of terms.—Whenever in this chapter the word "inspector" is used, it shall be taken and deemed to be "the inspector of hides and animals," the words "deputy inspector" shall be taken to mean the "deputy inspector of hides and animals," and the words "county," "district" or "inspection district" shall be held to include each organized county in this state not herein excepted, together with any unorganized county that may be attached for judicial purposes to any such county. (Id. p. 301, sec. 27.)

Art. 7266. (5012) May authenticate instruments.—Every inspector shall have authority to authenticate bills of sale of animals, and give certificates of acknowledgment of the same under his hand and seal. (Id. p. 302, sec. 30.)

Art. 7267. (5013) Inspections and record thereof.—It shall be the duty of the inspector, in person or by deputy, to faithfully examine and inspect all hides or animals known or reported to him as sold, or as leaving or going out of the county for sale or shipment, and all animals driven or sold in his district for slaughter, packeries or butcheries; and the inspector shall keep a record, in a well-bound book, in which he shall record a correct statement of the number, ages, marks and brands of all animals inspected by him, and the number, mark and brand of all hides inspected by him, and whether the same are dry or green, and the name or names of the vendor or vendors and

of the purchaser or purchasers thereof. (Id. p. 296, sec. 7.)

Art. 7268. (5014) Monthly returns to county clerk.—He shall return a certified copy of all entries made in such record during each month to the clerk of the county court of the county on the last day of each month, which report shall be filed among the records of the county court. The book of records herein provided for shall at all times be open for the inspection of any person interested therein. (Id.)

Art. 7269. (5015) Exemptions from inspection.—The provisions of this chapter shall not be so construed as to include sheep, goats, swine, or hides of either, nor to involve the re-inspection of salted hides in packeries or other slaughter houses taken from animals previously inspected and returned, as provided in the preceding articles. (Id.)

Art. 7270. (5016) Shall not certify unbranded animals, etc.—No inspector shall grant any certificate of inspection of any unbranded hides or animals, or of hides or animals upon which the marks and brands can not be ascertained, and he shall prevent the same from being taken or shipped out of the county, unless they are identified by proof or by a bill of sale signed by the owner of such hides or animal, and acknowledged before some officer authorized to authenticate instruments for record in this state. (Id. sec. 8.)

Art. 7271. (5017) May seize certain animals, etc.—Every inspector shall have power to and may seize and sequestrate all unmarked or unbranded calves or yearlings, and all calves or yearlings freshly marked or branded, and on which the fresh marks or brands are unhealed, which are about to be slaughtered, or driven or shipped out of the county, unless such animals are accompanied by the mothers thereof, or are identified by the presentation of a bill of sale from the person proved to be the owner thereof, signed by him or his legally authorized agent, and acknowledged before some officer authorized to authenticate instruments for record in this state. (Id. sec. 9.)

Art. 7272. (5018) Also unbranded hides and animals.—Every inspector shall have power to and may seize and sequestrate all unbranded animals or hides, and animals and hides upon which the mark or brand can not be ascertained, which are about to be taken or shipped out of the county, or which animals are to be slaughtered, unless such animals or hides are identified as provided in the preceding article. (Id. sec. 10.)

Art. 7273. (5019) Procedure in cases of seizure.—When the inspector has seized any hides or animals, as provided for in the two preceding articles, he shall report the fact to some judge of the district or county court, or justice of the peace, according as the value of the property seized may come within the jurisdiction of either of said courts; and it shall be the duty of said judge or justice to issue or cause to be issued a citation addressed, "To all whom it may concern," setting forth a seizure of said property, with a description of the same, commanding them to appear at a day named in said citation to show cause why the said property should not be forfeited to the county wherein the same was seized and sold for the benefit of said county; said citation shall be directed to the sheriff or any constable of said county, who shall cause certified copies of the same to be posted in three public places in said county for a period of ten days before the day mentioned in said citation. Upon the proof of the posting of said citation, as herein required, it shall be the duty of the judge or justice of the peace issuing said citation to proceed to condemn the property mentioned in said citation, unless satisfactory proof should be made of the ownership of said property, or other sufficient cause be shown why the same should not be condemned; and in case of condemnation he shall order the same to be sold by the inspector at public auction to the highest bidder. The inspector shall be entitled to retain one-fourth of the net proceeds of such sale, after deducting therefrom all expenses connected therewith, and he shall immediately pay the remaining three-fourths thereof into the county treasury; and all sums so paid in shall be placed to the credit of the general fund of such county. (Id. p. 304, sec. 44.)

Art. 7274. (5020) Bill of sale to be taken.—Every person who shall buy or drive any animal or animals for sale or shipment out of any county, or who shall buy or drive any animal or animals for slaughter, shall, at the time of purchasing and before driving the same, procure a bill of sale from the owner or owners thereof, or from his or their legally authorized agent; which bill of sale shall be in writing, properly signed and acknowledged before some officer authorized to authenticate instruments for record in this state. Such bill of sale shall distinctly enumerate the number, kind and age of animals sold, together with all the marks and brands discernable on said animals; and said animals shall, before leaving the county in which they have been gathered, be inspected by the inspector of such county or his deputy. (Id. p. 297, sec. 11.)

Art. 7275. (5021) Also in sale of hides.—Every person who shall purchase any hides of cattle shall, at the time of purchasing the same, obtain from the owner thereof, or from his legally authorized agent, a bill of sale in writing, certified to by the inspector, or by any officer authorized to take acknowledgments, which bill of sale shall recite in full the marks and brands of each hide, the weight thereof, and whether the same is dry or green. (Id. sec. 12.)

Art. 7276. (5022) Certificate of inspection to be given.—Whenever an inspector shall have inspected any animal or animals, as herein provided, he shall, on the presentation of a bill of sale or power of attorney from the owner or owners of such animal or animals, or his or their agent, duly authorized in writing, which bill of sale, power of attorney or authority shall be in writing, duly signed and acknowledged by the person executing the same before some officer authorized to authenticate instruments for record in this state, and on payment to said inspector of his legal fees, deliver to the purchaser of the animals mentioned in such bill of sale or power of attorney, or his agent, a certificate setting forth that he has carefully examined and inspected such ani-

mal or animals, and that said purchaser has in all respects complied with the provisions of this chapter, which certificate shall not be complete until the same and bill of sale herein provided for shall be recorded in the office of the clerk of the county court of the county, and be certified to by said clerk under his hand and seal. Such certificate shall be then delivered to the purchaser or purchasers, and shall protect him or them from the payment of inspection fees in any other district for the animals therein described, except from the county from which the same may be exported. (Id. sec. 13.)

Art. 7277. (5023) Same subject.—Any person or persons driving cattle in his or their own mark and brand shall be entitled to the certificate of inspection provided for in the preceding article, on payment of fees to the inspector, and on presentation to the inspector of the certificate of the clerk of the county court of the county where such mark and brand is recorded, to the effect that the mark and brand named therein is duly recorded in his office as the mark and brand of the person so driving such cattle. (Id. sec. 14; Amend. 1895, Sen. Jour., No. 101a, p. 484.)

Art. 7278. (5023a) Road brand.—Any person or persons who shall drive any cattle to market beyond the limits of this state shall, before removing such cattle from the county where the same are gathered, place upon each and every animal so to be driven a large and plain road brand, composed of any device he may choose, which brand shall be branded on the left side of the back behind the shoulder; and every person or persons using or causing to be used any road brand shall place the same on record as in the case of other brands, in the county from which the animals are to be driven, and before their removal from such county. (Acts 1876, p. 295; Sen. Jour. 1895, p. 484.)

Art. 7279. (5023b) Exportation of cattle to Mexico.—Any person intending to drive or ship any animals to the Republic of Mexico may ship the same from any point on the coast of Texas, or may drive or ship them across the Rio Grande river at any point where a custom house of the United States is located, and shall not drive or ship such animals across the Rio Grande at any other point or points; and he shall cause all such animals to be inspected by the inspector of the district in which the point of shipment or place at which they are to be driven across said river is situated; such inspection shall be made before shipment from the state or passage across said river of said animals. (Id.)

Art. 7280. (5023c) Herds in transit may be inspected.—Whenever a drove of cattle may be passing through any county, it shall be the duty of the inspector, if called upon to do so by any person, to stop and inspect said drove without any unnecessary detention of the same; and he shall exercise the same powers and perform the same duties in the inspection of such cattle as are prescribed in articles 7267, 7271 and 7272. (Id.)

Art. 7281. (5023d) Fees, how paid.—If any cattle be found in said drove not included in the certificate of the inspector of the county in which the drove may have been gathered, the fees of the inspector shall be paid out of the proceeds of the sale of said cattle, but if no cattle shall be found in said drove except those covered by the inspector's certificate, then the inspector's fee shall be paid by the person at whose instance and request said drove was inspected. (Id.; Sen. Jour. 1895, p. 485.)

Art. 7282. (5023e) Hides imported from Mexico; inspector not liable for damage to hides not put in proper condition for inspection; owner to pay expenses of treatment; sale.—The hides of all cattle imported into this state from Mexico shall be inspected by the inspector of hides and animals of any county or district into which the same may be introduced or imported; and, should the importer of said hides fail or refuse to place such hides in a position where the same may be inspected by said inspector, or if said hides are found by said inspector to be folded or booked in such a manner as that the same may not be inspected without injury to said hides, then it shall be the duty of said inspector to take possession of such hides and have the same treated in such a manner as will enable him to unfold the same without injury thereto, provided however, that such inspector shall not be held liable for any damage which may accrue to such hides by reason of the treatment thereof for the purpose of enabling him to inspect the same and such treatment as may be necessary to enable the inspector to unfold and inspect such hides shall be wholly at the risk of the importer or person in whose possession such hides may be found, and in addition to the inspection fees allowed such inspector for the inspection of said hides, there shall be paid by the importer or the person in whose possession said hides may be found after importation, all expenses incurrer by said inspector in the treatment of said hides, for the purpose of enabling him to inspect the same as provided in this Article, such expenses to include drayage and freight charges and all expenses for handling and treatment of said hides, and if the importer or the person in whose possession said hides may be found after importation, shall fail or refuse to pay said expenses for reatment, or if he shall fail or refuse to pay the inspection fees as required by law, the inspector is hereby authorized to retain possession of said hides and sell a sufficient number thereof, after public notice of three days, to the highest and best bidder, to pay said inspection fees and all necessary expenses in connection therewith. (Acts 1876, p. 295; Sen. Jour. 1895, p. 485; Acts 1917, ch. 127, sec. 1.)

Art. 7283. (5023f) Horses, mules and cattle.—Horses and mules and cattle imported from Mexico into this State shall be inspected in accordance with the provisions of Article 7267, and with like authority to retain and sell as provided in Article 7282 for a failure to pay the inspection fees. (Acts 1876, p. 295; Sen. Jour. 1895, p. 485; Acts 1917, ch. 127, sec. 1.)

Art. 7284. (5023g) Suspicious hides and animals to be seized.—Should an inspector of hides and animals find among hides or animals imported from Mexico any hides or animals which, from the brand or from other evidence, he has reason to believe have been stolen from the lawful owner, it shall be his duty to separate said hides or animals from the others undergoing in-

spection and take possession of the same, and to notify any person he believes to be interested therein to come forward and institute suit for the recovery of the same. (Acts 1876, p. 295; Sen. Jour. 1895, p. 485; Acts 1917, ch. 127, sec. 1.)

Art. 7285. (5023h) Procedure upon seizure.—Should no person appear to claim hides or animals, the inspector shall within twenty-four hours, make oath before the District Judge, the County Judge, or any justice of the peace of the county, according to the value of the property involved, that he has reason to believe that said hides or animals have been stolen; whereupon said judge or justice of the peace shall issue a citation, directing the importer or party claiming the same to appear before him at his office within a time specified, not to exceed twenty-four hours, to show causes why said property should not be condemned. (Acts 1917, ch. 127, sec. 1.)

Art. 7286. (5024) Importer to recover on proof.—Should said importer or claimant make proof that he is the lawful owner of said hides or animals by showing a bill of sale from the owner of same, or his legally authorized agent, and by showing complete chain or transfer of title from the original owner of the brand to himself, or his firm, as the case may be, such judge or justice of the peace shall direct that the same be delivered to said importer or claimant upon his paying the inspection fees. (Acts 1876, p. 295; Sen. Jour. 1895, p. 485; Acts 1917, ch. 127, sec. 1.)

Art. 7287. (5025) Hides or animals to be sold if not proven away.—Should the importer or claimant of said hides or animals fail to establish his claim as the lawful owner of the same, or to any number of said hides or animals so seized, it shall be the duty of the District Judge, county judge or justice of the peace to direct that said property be sold at public auction by the inspector of hides and animals or his deputy, after a notice of ten days, published in a news paper, should there be one published in said county, or if no news paper be published in the county, then by notice in writing, posted at the court house and two or more other places in said county, and the said hides shall be sold to the highest and best bidder. (Acts 1876, p. 295; Sen. Jour. 1895, p. 485; Acts 1917, ch. 127, sec. 1.)

Art. 7288. (5026) Fees of inspector in such cases.—The inspector of hides and animals shall retain twenty-five per cent of the purchase money, after having deducted and paid all necessary expenses incurred by reason of said sale, and he shall deposit the remainder of said purchase money with the county treasurer, and take his receipt therefor; and said county treasurer shall place one-half of said sum of money to the credit of the school fund and the other half to the credit of the jury fund of said county. (Acts 1876, p. 295.)

Art. 7289. (5027) Property to be delivered to true owner, etc.—Should any person appear either by himself, his agent, or attorney, and claim any hides or animals imported from Mexico at any time before the same shall have been sold as above directed, and should said claim be established before such judge or justice of the peace of said county, such property shall be delivered to the claimant, and all costs accruing therein shall be paid by the importer, provided, that at any time before proceedings shall have been commenced as above directed, the importer may be permitted to pay the lawful owner, his agent or attorney, for any hides or animals imported by him from Mexico and presented in any county of this state for inspection, and upon such payment, and the fees for inspection, such hides or animals shall be released. (Acts 1876, p. 295. Sen. Jour. 1895, p. 485; Acts 1917, ch. 127, sec. 1.)

Art. 7290. (5028) Revised list of marks and brands.—The clerk of the county court in each county shall transcribe the list of all recorded marks and brands in his county and revise the same. Such revised list shall be written in a well-bound book, kept for that purpose only, and shall be arranged as follows, viz.: All brands of the letter class shall be placed in alphabetical order, following which shall be the numeral, character and device brands in the order of the date of their registration. Opposite each brand shall be stated the marks corresponding to said brand, the name of the owner of the brand, his place of residence; if the same be sold, the name of the person to whom sold, and his residence; the date of registration of brands and marks, particulars relating thereto. Before each brand shall be placed its number, commencing at one for the first brand on the revised list; and the name of the owner of each brand shall be indexed, reference being had in such index to the list number of the brand or brands of such owner; and all new brands and marks placed on record shall be immediately recorded and indexed in said book, which shall at all times be open to the inspection of all persons; provided, that the provisions of this article shall apply only to counties in which the work of transcribing the records has not already been done in accordance with law. (Acts 1876, p. 300, sec. 23.)

Art. 7291. (5029) Same brand, etc., not to be recorded twice, etc.—In all cases where application for registration of any mark or brand shall be made, the clerk of the county court shall receive and record the same, unless an examination of the recorded list of marks and brands shows that a similar mark and brand is already upon record in such county, in which event he shall refuse to register or give any certificate for the same; provided, that if such applicant shall have previously had such mark and brand recorded in some other county, and shall have a certificate from the clerk of the county in which said brand had been recorded, stating that said brand and mark had been recorded in said county at some time anterior to the time of the registration of the similar mark and brand in the county in which the applicant may desire to have his brand recorded, then said brand and mark shall be recorded; and the clerk shall, on the record, make a minute setting forth said facts. (Id. sec. 24.)

Art. 7292. (5030) In the county where cattle range.—All marks and brands of cattle shall be recorded in the county or counties in which they usually range; provided,

that when cattle are gathered near the county line the bills of sale of the same shall be recorded in both counties; and, when any stock of cattle is sold, the fact shall be noted on the record opposite or near the record of its mark and brand, giving the name of the vendor and vendee and date of sale, and this shall be done as often as there is a sale. It is made the duty of the inspector to procure certified copies of the marks and brands of this county for himself and his deputies, and, monthly, to have added thereto the marks and brands that may be recorded. (Id. p. 301, sec. 28.)

Art. 7293. (5031) Only one mark and brand to be used.—No person owning and claiming stock shall, in originally marking and branding animals, make use of more than one mark and brand; provided, that any person may own and possess animals in many marks and brands, the same having been by him acquired by purchase; and bills of sale in writing, properly acknowledged, from the previous owner or owners of his or their legally constituted agent, shall be sufficient evidence of such purchase, but the increase of such animals, or of any animal counterbranded by such person from other stocks of cattle owned by him, shall be branded or counterbranded by one and the same brand; and when marked by such person shall be marked in one and the same mark. (Id. p. 300, sec. 22.)

Art. 7294. (5032) Counterbranding.—In all cases where the counterbranding of any cattle shall be deemed necessary or expedient, the person so counterbranding shall counterbrand the existing brand of the animal by which the owner thereof is then known, or by which it is then claimed and owned, by branding below the said brand its facsimile, that is, similar letters, characters or numbers, as the case may be; and he shall also place on said animals the brand of the then owner thereof; but no person shall change or alter the ear marks of any animal, but in counterbranding shall leave the ears bearing the same mark or marks as before counterbranding. (Id. sec. 21.)

Art. 7295. (5033) Authority to gather, etc.—Any person having marks and brands recorded in the office of the clerk of the county court may file with the inspector a list of his recorded marks and brands, certified by the clerk under his seal, to which certified list shall be attached the names of any person or persons whom the owner of said stock may wish to authorize to gather, drive or otherwise handle his stock; and the filing of said list with the inspector shall be deemed sufficient authority to the person or persons named in such list to gather, drive or otherwise handle any animals of the marks and brands therein described. (Id. p. 209, sec. 20.)

Art. 7296. (5034) Inspections to be personal.—In making inspections, the inspector shall not trust to the statement or representations of any persons, but he shall in person carefully inspect and examine each animal or hide separately so as to identify the marks and brands, and in case of animals, the ages and sexes. (Id. p. 301, sec. 29.)

Art. 7297. (5035) Certificate of inspection.—He shall also carefully examine the bills of sale and lists of brands and marks for the cattle inspected by him; and, if satisfied that the person claiming the cattle inspected has correct bills of sale or chain of transfer in writing from the recorded owner, or is the owner himself in whole or part of the mark and brand of each animal in his drove or herd which should be inspected, and that he has none other in said herd or under his control to be carried with it, he will then, and not until then, make out a certificate, which he shall first enter in his record, under his hand and seal, containing the number of cattle in each mark and brand, with their respective ages and sexes, thus inspected, and that they appear to be the property of the person for whom they were inspected, naming him or her, as appears by bills of sale from the recorded owner of the marks and brands on the cattle inspected by him, or the owner of the brand and mark himself or herself, and that he has none other in his herd or under his control that should be inspected; and that he intends to drive or ship them, naming the place in the state, for sale or slaughter; or, if out of the state, he shall then name the place on the border of the state through which it is proposed to drive or ship such stock. (Id.)

Art. 7298. (5036) Inspection before exportation.—Whenever any person shall be about to drive or ship any stock out of the state, if the inspector shall believe, or is informed by any credible person, that said person has other stock in his herd than those covered by his original certificate of inspection, or by subsequent purchase duly attested by proper bill of sale, the inspector at said point of shipment, or border county where said person leaves the state, shall be authorized to inspect said stock in the same manner as in the original inspection; and, if any stock is found in said herd other than those covered by his original certificate of inspection, or by subsequent purchase duly and properly authenticated by bill of sale, the fees of said inspection shall be paid as provided in Article 7281 of this chapter, provided, that the said inspector shall in no case be authorized to receive or demand more than three cents per head for each head of cattle inspected; but if not, then said fees shall be paid by the person at whose instance said inspection was made; and, if said inspection is made by the inspector, at his own instance, and no stock is found in said herd, except those properly accounted for under the provisions of this article, then said inspector shall receive no fees for said inspection. (Acts 1879, S. S., ch. 22.)

Art. 7299. (5037) Certificate, where filed.—One of these certificates the inspector shall immediately remit by mail, postage paid, to the first inspector, and the party owning the cattle shall deposit the other with him in two months from the date of the original inspection, both to be kept by him in his office. (Id.)

Art. 7300. (5038) Seizure of cattle not inspected originally.—But if the inspector at the point of destination shall find upon inspection that the owner of the herd or person in charge has in his herd other cattle besides those inspected originally in the county from which said herd was driven, he shall seize said cattle and take them into possession, and thereupon the same proceed-

ings shall be had as are prescribed in article 7271. (Id.)

Art. 7301. (5039) Writ of sequestration if necessary.—If the person in charge of any such cattle shall refuse to deliver the same into the possession of the inspector, such inspector may apply for and obtain a writ of sequestration from any justice of the peace, county judge or district judge, according as the value of such cattle may come within the jurisdiction of either. Such writ may be obtained upon the affidavit of the inspector, stating that he believes such cattle have been unlawfully acquired, and shall issue without bond, and be forthwith executed by the sheriff or any constable of the county; and thereupon the proceedings referred to in the preceding article shall be had before the officer issuing the writ, either in term time or in vacation. (Id.)

Art. 7302. (5040) Proceeds paid into county treasury subject to claims.—The net proceeds of the sale of cattle condemned under the two preceding articles, save one-fourth of such proceeds retained by the inspector for his compensation, shall be paid into the county treasury, subject to the claim of the true owner of such cattle; and if no claim be set up and established thereto within one year from the date of its deposit, such proceeds shall pass into the general fund of the county, and all claims thereto shall thereafter be barred. (Id.)

Art. 7303. (5041) Description, etc., of cattle also filed.—At the time such proceeds are originally deposited in the county treasury the inspector shall accompany such deposit with a certified statement, under his hand and seal, of the number of cattle sold, the mark and brand of each animal, the amount for which each sold. (Id.)

Art. 7304. (5042) Change of destination.—If the owner of the inspected herd should desire to sell, slaughter or ship the cattle, or any of them, at any other place than the destination named in the original certificate of inspection, he may do so by first having his herd inspected at the point of destination therein named and a new certificate of inspection issued to him at that point, naming the new point of destination or shipment; and upon his arrival at such new point of destination like proceedings shall be had in the way of inspection, comparison and return of the certificates of inspection as are prescribed for the original point of destination. (Id.)

Art. 7305. (5043) Counties exempted.—The Counties of Anderson, Angelina, Aransas, Archer, Armstrong, Atascosa, Austin, Bandera, Bastorp, Baylor, Bee, Bell, Bexar, Borden, Bowie, Bosque, Brazoria, Brazos, Brewster, Briscoe, Brown, Burleson, Burnet, Caldwell, Callahan, Calhoun, Cameron, Camp, Carson, Cass, Chambers, Cherokee, Childress, Clay, Cochran, Coke, Collin, Collingsworth, Colorado, Comal, Comanche, Cooke, Coryell, Cottle, Crockett, Crosby, Dallam, Delta, Denton, DeWitt, Dickens, Donley, Duval, Eastland, Ellis, El Paso, Erath, Falls, Fannin, Fayette, Floyd, Foard, Fort Bend, Franklin, Freestone, Frio, Galveston, Gillespie, Goliad, Gonzales, Gray, Grayson, Gregg, Grimes, Guadalupe, Hall, Hamilton, Hardeman, Hardin, Harris, Harrison, Hartley, Hays, Hemphill, Henderson, Hidalgo, Hill, Hockley, Hood, Hopkins, Houston, Hunt, Irion, Jackson, Jack, Jasper, Jeff Davis, Jefferson, Johnson, Karnes, Kaufman, Kendall, Knox, Kinney, Lamar, Lamb, Lampasas, Lavaca, Leon, Liberty, Limestone, Lipscomb, Live Oak, Llano, Loving, Lubbock, Lynn, Madison, Marion, Mason, Medina, Maverick, McLennan, Midland, Milam, Mills, Mitchell, Montague, Montgomery, Morris, Motley, Nacogdoches, Navarro, Newton, Orange, Palo Pinto, Panola, Parker, Pecos, Polk, Presidio, Rains, Reagan, Red River, Refugio, Robertson, Rockwall, Rusk, Reeves, Sabine, San Augustine, San Jacinto, San Patricio, Schleicher, Shelby, Smith, Shackleford, Somervell, Starr, Scurry, Stephens, Sterling, Tarrant, Terrell, Terry, Throckmorton, Titus, Tom Green, Trinity, Tyler, Uvalde, Upshur, Upton, Val Verde, Van Zandt, Victoria, Walker, Ward, Washington, Webb, Wharton, Wheeler, Williamson, Wilson, Wise, Winkler and Young are hereby exempted from the provisions of this chapter and from all laws, regulating the inspection of hides and animals. (Acts 1893, ch. 107; Acts 1895, ch. 43; Acts 1909, pp. 30, 113; Acts 1913, p. 85, sec. 1; Acts 1917, ch. 114, sec. 1; Acts 1917, 1st C. S., ch. 23, sec. 1; Acts 1919, 2d C. S., ch. 10, sec. 1.)

Art. 7305a. Other counties exempted.—That the counties of Stonewall, Kent, Scurry and Fisher be, and the same are hereby exempt from the provisions and operations of articles 7256 to 7305 inclusive of chapter 7, title 124, of the Revised Civil Statutes of 1911 relative to the inspection of hides and animals. (Acts 1913, p. 87, sec. 1.)

Art. 7305b. Inspectors for certain counties.—That the Governor of Texas shall immediately appoint an inspector of hides and animals for each of the following counties, to wit: the counties of El Paso, Cameron, Hidalgo, Lamb, and Starr each of whom shall hold his office for a term of two years and until the election and qualification of his successor. That said counties of El Paso, Cameron, Lamb, Hidalgo and Starr shall be subject to all of the provisions of Articles 7256 to 7304, inclusive, Revised Civil Statutes of Texas, 1911 except that the inspector shall be elected in each of said counties at the first general election held after appointment herein authorized. (Acts 1915, ch. 13, sec. 1.)

Art. 7305c. Inspectors for certain counties.—That the Governor of Texas shall immediately appoint an inspector of hides and animals for each of the following counties, to wit: The counties of Bee, Duval, Live Oak, Maverick and Val Verde, each of whom shall hold his office for a term of two years and until the election and qualification of his successor. All animal and hide inspectors appointed by the Governor shall be entitled to receive for their services the sum of three cents for each animal and hide personally inspected. That said counties of Bee, Duval, Live Oak, Maverick and Val Verde shall be subject to all of the provisions of Articles 7256 to 7304, inclusive, Revised Civil Statutes of Texas, 1911, except that the inspector shall be elected in each of said counties at the first general election held after the appointment herein authorized. (Acts 1915, ch. 57, sec. 1.)

Art. 7305d. Other counties exempted.—That the counties of Oldham and Potter be

and the same are hereby exempt from the provisions and operations of Articles 7256 to 7305, inclusive, of Chapter 7, Title 124, Revised Civil Statutes of 1911, relative to the inspection of hides and animals. (Acts 1915, ch. 142, sec. 1.)

Art. 7305e. Appointment of inspector for Nueces County; election.—That the Governor of Texas shall immediately appoint an inspector of hides and animals for Nueces County, Texas, who shall hold his office for a term of two years and until the election and qualification of his successor. That Nueces County shall be subject to all the provisions of Article 7256 to 7304, both inclusive, Revised Civil Statutes of Texas, 1911, except that the inspector of Nueces County, Texas, shall be elected at the first general election held after the appointment herein authorized. (Acts 1917, ch. 51, sec. 1.)

For secs. 1a, 1c of this act, see Penal Code, arts. 1415b, 1415c.

Art. 7305f. Same; fee to be collected by inspector and paid into county treasury.—Said inspector shall collect the sum of ten cents for each hide and animal personally inspected by him or his deputies and in addition thereto shall collect the fees authorized to be collected under the provisions of Articles 7256 to 7304, both inclusive, Revised Civil Statutes of Texas of 1911. Said proceeds authorized to be collected by this Act by said inspector and by virtue of said Articles 7256 to 7304, both inclusive, Revised Civil Statutes of 1911, which fees by said last named articles are authorized to be collected and retained by said inspector shall be paid into the county treasury and pass into the general fund of said county, and the county commissioners' court is hereby authorized to fix the salary of said inspector, provided the same be fixed at an amount not in excess of one hundred ($100.00) dollars per month. (Id. sec. 1b.)

Art. 7305g. Other counties exempted.—That the county of Uvalde be and the same is hereby exempted from the provisions and operations of Articles 7256 to 7304 inclusive, of Chapter 7, Title 124 of the Revised Civil Statutes of 1911, and all Acts amendatory thereto, relative to the inspection of hides and animals. (Acts 1919, 2d C. S., ch. 11, sec. 1.)

Section 2 repeals all conflicting laws.

LOCAL OPTION AS TO HIDE AND ANIMAL INSPECTION

Art. 7306. Commissioners' court to order election, when.—Whenever twenty-five of the qualified voters of each justice precinct in any county, or a majority thereof, shall petition the commissioners' court for an election to determine whether such county shall have a hide and animal inspector, said court shall, either at general or special term, order such election to be held after thirty days notice having been given by posting such notice in each of such justice precincts and by publishing same in some newspaper published in said county, if there be one so published. It shall be the duty of the clerk of said court to prepare said notices and the sheriff to put up same and make return of such posting and file with said clerk, showing time and place of such posting. (Acts 1909, p. 127, sec. 1.)

Art. 7307. Result to be declared, etc.—The commissioners' court at the time of ordering said election shall appoint two persons to act as judges, designating one of such as presiding judge, and two persons to act as clerks, who shall hold said election, count the votes and foot up same, showing the number of votes for and against the issue; the result shall be prepared in duplicate and sealed up, one copy for the commissioners' court and the other to be retained by the presiding judge; and the presiding judge shall deliver or cause to be delivered one copy of the result of said election to the clerk of the county court for said commissioners' court within five days after said election. Within five days after such delivery of such returns to said clerk, the commissioners' court shall count the votes and declare the results and enter the same on the election record. The county shall pay the expenses of holding such election. (Id. sec. 2.)

Art. 7308. Ballots.—The election shall be held under the law as now provided for holding local and general elections, and all qualified voters shall be entitled to vote, and each ballot shall have written or printed on same, "For Inspector," or, "Against Inspector." (Id. sec. 3.)

Art. 7309. In case election is carried.—If at such election a majority of the votes cast be "For Inspector," then the persons holding such offices shall retain same to the next general election until his successor is elected and inducted into office as now provided by law; but, in counties having no inspector, the commissioners' court shall appoint one to serve until the next general election, who shall give bond and take the oath of office as now provided by law. (Id. sec. 4.)

Art. 7310. Fees of inspector.—Such inspector as herein provided for shall be entitled to such fees for his services as are now provided by law; provided, that no inspector herein provided for shall be entitled to any fee, unless he shall make a personal inspection of each animal or hide to be inspected as provided by law. (Id. sec. 5.)

Art. 7311. Election not to be held oftener than two years.—No election shall be held oftener than every two years under this law. (Id. sec. 6.)

CHAPTER EIGHT

LIVE STOCK SANITARY COMMISSION

Art. 7312. (5043a) Commission created; oath, bond and term of office.—There shall be appointed by the governor, and with the consent of the senate, a live stock sanitary commission of the state of Texas, composed of three members. Before entering upon the duties of their office, said commissioners shall take and subscribe to the usual oath of office and file the same with the secretary of state; and they shall also, before entering upon the performance of their duties, execute a bond, to be approved by the state comptroller, in the sum of ten thousand dollars each, conditioned that they will faithfully perform the duties of their office, which said bond they shall file with the secretary of state. The term of office of said

commissioners shall be for a period of two years next from the day of their qualification, and until their successors shall have been appointed and qualified. (Acts 1893, p. 70.)

Art. 7313. (5043b) Qualifications of commissioners.—The commissioners, whose appointment is provided for in the preceding article, shall each be practical live stock raisers in the state of Texas, and shall have been actively engaged in said business for at least five years next preceding the date of their appointment, and shall be bona fide residents of and stock raisers in the particular section of the state from which they may be appointed. One of said commissioners shall be appointed from the west, one from the south, and one from the eastern portion of said state. (Id.)

Art. 7314. (5043c) Duties of Live Stock Sanitary Commission; quarantine; transportation of animals to and from quarantined districts; rules and regulations; state veterinarians; entry upon private premises.—It shall be the duty of the Commission provided in Article 7312, Revised Civil Statutes, to protect the domestic animals of the State from all malignant, contagious or infectious diseases of a communicable character whether said diseases exist in Texas or elsewhere; and for the purpose it is hereby authorized and empowered to establish, maintain and enforce such protective measures and quarantine lines and sanitary rules and regulations as it may deem necessary, when it shall determine upon proper inspection that such diseases exist. It shall also be the duty of said Commission to cooperate with the Live Stock Sanitary Commission and officers of other States, and with the United States Secretary of Agriculture, in establishing such interstate quarantine lines, rules and regulations as shall best protect the live stock industry of this State against the fever-carrying tick (Magararopic Annulatus) which produces the splenetic fever and other malignant, contagious, infectious or communicable diseases of live stock. It shall be the duty of said Live Stock Sanitary Commission to quarantine any district, county or part of county, or premises within this State when it shall determine upon proper inspection the fact that cattle, sheep or other live stock in such district, county, part of county or premises are affected with any malignant, contagious, infectious or communicable disease, or with the agency or transmission of such diseases, and to give written or printed notice of such quarantine to the proper officers of railroad and express companies doing business in or through such quarantine district, county, or part of a county, within this State, and to publish notice of the establishment of such quarantine in such newspaper in the quarantine district, county, or part of county as the Live Stock Sanitary Commission may select, or give notice in such other ways as it deems necessary and adequate for the purpose of establishing and maintaining a quarantine service. And no railroad or express company shall receive for transportation, or transport, from any quarantined district, county, or part of county in this State, into any other district, county, or part of a county, within this State, any cattle, sheep or other live stock except as hereinafter provided; nor shall any person, company, or corporation deliver for transportation to any railroad or express company any cattle, sheep or other live stock for or from a quarantined area except as hereinafter provided; nor shall any person, company or corporation drive on foot or cause to be driven on foot or transport in private conveyance, or cause to be transported in private conveyance, or drive or permit to drive from a quarantined district, county, or part of county or premises of this State, any cattle, sheep, or other live stock except as hereinafter provided. It shall be the duty of the Live Stock Sanitary Commission of Texas to make and promulgate rules and regulations which shall permit and govern the inspection, disinfection, certification, treatment, handling, and method and manner of delivery and shipment of cattle and other live stock from or into a quarantined district, county, or part of a county, or premises, into any other district, county, or part of a county or premises in this State. And said Commission shall make and promulgate rules and regulations which shall permit and govern the movement and shipment of cattle and other live stock from or into a quarantined district, county or part of county, or premises into any other district, county, part of county or premises in this State where such cattle or other live stock are to be immediately slaughtered, and furnish prompt inspection when demanded by the owner or person in charge of such cattle or other live stock so intended to be moved or shipped for immediate slaughter, and it is hereby so authorized, and directed; and the Live Stock Sanitary Commission of Texas shall give notice of such rules and regulations by proclamation issued by the Governor of Texas. The said Live Stock Sanitary Commission of Texas is hereby empowered with the authority to employ a State Veterinarian and Assistant State Veterinarians in times of emergency, and inspectors or other persons, as it may deem necessary to the performance of the duties imposed upon said Commission. The Live Stock Sanitary Commission, the State Veterinarian, Assistant State Veterinarians and inspectors acting under authority or direction of the Commission are hereby empowered and it is made their duty at their discretion to enter upon premises of any person or persons, company or corporation within this State, for the purpose of inspecting, quarantining or disinfecting premises or live stock thereon. (Acts 1893, p. 70; Acts 1913, p. 353, sec. 1; Acts 1915, ch. 111, sec. 1; Acts 1917, ch. 60, sec. 1.)

While Acts 1913, p. 353, in sec. 9 expressly repeals art. 7322, without any other repealing clause, its subject-matter covers the subject-matter of this article (Rev. St. 1911), and hence supersedes such article.

Art. 7314a. [Repealed by Acts 1917, ch. 60, sec. 23, post, art. 7314q.]

Art. 7314b. Control of sale of veterinary biological products; eradication of fever-carrying tick and other contagious diseases; special quarantine districts; quarantine of pastures, etc.; prescribing methods of dipping.—It is further provided that the Live Stock Sanitary Commission shall have the power to control the sale and distribution of all veterinary biological prod-

ucts within this State, and it is hereby made its duty, as far as possible, to destroy and eradicate the fever-carrying tick which produces splenetic fever; also to eradicate and eliminate the scabies, sheep scab, hog cholera, glanders and other malignant, infectious, contagious or communicable diseases of live stock. For this purpose it is empowered and directed to establish special quarantine districts where such diseases or infection of such diseases are known to exist; and notice of the establishment of such special quarantine districts shall be given as provided for in Article 7314, Revised Civil Statutes, and in Section 1 of this Act. The Live Stock Sanitary Commission shall have the power to quarantine premises or pastures located in said special quarantine districts, and the domestic live stock thereon situated in such quarantine districts, or elsewhere, when to their knowledge such pasture or premises, or the live stock located thereon are infected with, or have been exposed to a malignant, contagious, infectious or communicable disease, or the infection thereof; and no live stock shall be moved to or from such special quarantine district; nor from or to any pastures or premises located in such special quarantine district, in a manner, method, or condition other than those prescribed by the Live Stock Sanitary Commission. It shall be the duty of the Live Stock Sanitary Commission to prescribe methods for dipping live stock or otherwise treating or disinfecting such premises and the live stock thereon, as in their opinion are necessary and adequate for the eradication of the disease or the infection of the disease for which they are quarantined. (Acts 1913, p. 353, sec. 3; Acts 1917, ch. 60, sec. 2; Acts 1917, 1st C. S., ch. 12, sec. 1.)

Art. 7314c. [Repealed by Acts 1917, ch. 60, sec. 23, post, art. 7314q.]

Art. 7314d. Duties of commissioners' court and county judge.—It shall be the duty of the county commissioners courts to co-operate with and assist the Live Stock Sanitary Commission in protecting the live stock of their respective counties from all malignant, contagious, infectious or communicable diseases, whether such diseases exist within or outside the county, and otherwise protect the live stock interests of their counties. It shall be the duty of said commissioners courts to co-operate with the Live Stock Sanitary Commission and the officers working under the authority or direction of said commission in the suppression and eradication of fever carrying ticks, and all malignant, contagious, infectious or communicable diseases of live stock; provided when it becomes necessary to disinfect any premises, county or sub-division of the county infected with fever carrying ticks, anthrax, hog cholera, glanders, foot and mouth diseases, bovine tuberculosis or contagious abortion, under order of the Live Stock Sanitary Commission, the County Judge of the county where the said premises are located, shall have such disinfecting done at the expense of the county, and according to the rules and regulations of the Live Stock Sanitary Commission, and the said commissioners courts are hereby authorized and empowered and directed to appropriate moneys out of the general fund of their counties for the purpose of constructing or leasing necessary public dipping vats within their counties, and for the purchase of dipping material, and for the constructing of any other facilities and for the purchasing of any other materials for the hire of labor necessary to destroy the diseases and the carriers herein mentioned. Provided that for permanent improvements funds may be expended out of the county permanent fund. (Acts 1913, p. 353, sec. 5; Acts 1917, ch. 60, sec. 3; Acts 1919, ch. 44, sec. 1.)

Art. 7314d(1). Time of counties in designated zones not changed.—Provided the provisions of this Act shall in no wise change the time of those counties under the designation of Zones No. 1, No. 2 and No. 3 to comply with the provisions of this Act as amended, but the same shall remain in effect. (Acts 1919, ch. 44, sec. 1.)

Art. 7314dd. Duty of commission to make investigations and quarantine animals; duty of state veterinarian.—It shall be the duty of the Live Stock Sanitary Commission, whenever they have reason to believe, or shall receive notice that any malignant, contagious, infectious or communicable disease or the infection thereof exists among any domestic animals in this State, to immediately investigate, and if such disease is found to exist, or if they have reason to believe such disease exists, to immediately quarantine such animals and the premises upon which they are located. Provided, further, that if glanders or anthrax is found, the State Veterinarian, or Assistant State Veterinarians, shall make a thorough investigation and shall notify the county judge of the county wherein such animals are located of the number and description of the animals so affected. (Acts 1917, ch. 60, sec. 4.)

Art. 7314ddd. Appraisal of diseased animals; killing.—It shall be the duty of the county judge of any county in this State whenever any horse, mule or asses within their counties are found infested with glanders or anthrax and have been quarantined by order of the Live Stock Sanitary Commission, to appoint three disinterested parties, who shall act as appraisers and fix the value of said animals at their actual value at the time of such appraisement, and make a sworn, written report of said appraisement to the county judge, whereupon the commissioners court shall pass upon such written report and pay to the owner of the animals their appraised value. The county judge on receipt of the report of the appraisers, as provided for in this section, shall issue an order to the sheriff, deputy sheriff, or any constable of the said county commanding him to seize said diseased animal or animals and take same to some secluded place, and kill them and burn the carcass or carcasses, and said appraisers and officers shall be paid for their services as provided for in Article 7320, Revised Civil Statutes. (Id. sec. 5.)

Art. 7314e. Election in counties on question of tick eradication; quarantine.—It shall be the duty of the commissioners courts of any county within the State of Texas, whenever they deem it expedient, or when petitioned to do so by seventy-five resident land-owners to order an election called for the purpose of determining whether the county shall take up and prosecute the work of tick eradication in said county. Said election shall be ordered and held not less than

sixty days after the filing of the petition. At said election the ballots shall have printed upon them "For Tick Eradication in ——— ——— County" and "Against Tick Eradication in ——— County." The officers of said election shall hold said election and make return thereof as provided by law in case of other elections as nearly as may be. Said returns shall be made returnable to the county judge of the county. The commissioners court shall meet and canvass said returns as soon as practicable after such election, and if they find that a majority of all the votes cast were in favor of tick eradication under the direction of the Live Stock Sanitary Commission, they shall so certify and cause publication of same to be made in a newspaper published in said county, which publication shall be certified to by the county judge of said county, and said certificate shall be filed with the county clerk of said county, which said certificate shall be admissible as evidence in any of the courts of this State. The county judge shall immediately so notify the Live Stock Sanitary Commission, and upon receipt of such notice from the county judge of the county so holding the election, the Live Stock Sanitary Commission shall cause to be issued a supplemental proclamation signed by the Governor of Texas, proclaiming a quarantine around said county, and the citizens of said county in co-operation with and under the direction of the Live Stock Sanitary Commission shall begin work of tick eradication within thirty days of the issuance of the said supplemental proclamation. Should the commissioners court find that a majority of the votes cast were against tick eradication, then the county judge shall so notify the Live Stock Sanitary Commission. (Acts 1913, p. 353, sec. 8; Acts 1917, ch. 60, sec. 7.)

Art. 7314f. Zones or districts for tick eradication.—The following zones or districts for the eradication of the Texas fever-carrying tick causing splentic or tick fever, are hereby established:

Zone No. 1. The Northern District, comprising the counties of Armstrong, Archer, Andrews, Anderson, Briscoe, Bailey, Baylor, Bowie, Borden, Brown, Brewster, Burnet, Bell, Bosque, Carson, Collingsworth, Castro, Childress, Cottle, Cochran, Crosby, Clay, Cooke, Collin, Comanche, Callahan, Coleman, Concho, Coke, Crockett, Crane, Culberson, Cass, Camp, Coryell, Cherokee, Dallam, Deaf Smith, Donley, Dickens, Delta, Denton, Dallas, Dawson, Erath, Eastland, Ellis, Ector, El Paso, Foard, Floyd, Fannin, Franklin, Fisher, Falls, Freestone, Gray, Grayson, Garza, Gaines, Gregg, Glasscock, Hartley, Henderson, Hansford, Hemphill, Hutchinson, Hall, Hardeman, Hale, Hockley, Hopkins, Hunt, Haskell, Harrison, Hood, Howard, Hamilton, Hill, Irion, Jack, Jones, Jeff Davis, Johnson, King, Knox, Kent, Kaufman, Lipscomb, Lamb, Lubbock, Lamar, Lynn, Loving, Llano, Lampasas, Limestone, Leon, Moore, Motley, Montague, Morris, McCulloch, Mitchell, Martin, Midland, Marion, Mills, Milam, McLennan, Nolan, Navarro, Oldham, Ochiltree, Parmer, Potter, Palo Pinto, Parker, Pecos, Presidio, Panola, Roberts, Randall, Red River, Rockwall, Runnels, Reagan, Reeves, Rains, Rusk, Robertson, Sherman, Swisher, Stonewall, Scurry, Shackelford, Stephens, Smith, Somervell, Sutton, Schleicher, Sterling, San Saba, Shelby, Titus, Throckmorton, Terry, Taylor, Tarrant, Tom Green, Terrell, Upshur, Upton, Van Zandt, Wheeler, Wood, Wichita, Wilbarger, Wise, Ward, Winkler, Young, Yoakum, Val Verde, provided that in Zone number one as above established in this bill, that all counties that have heretofore by majority vote, voted to eradicate ticks, in said counties, that on and after April 1st, 1917, the Live Stock Sanitary Commission of Texas, shall have the power to compel any owner of cattle, horses, mules, asses or any other animal on which ticks may be, to dip said live stock under the rules and regulations of said Live Stock Sanitary Commission as provided in this Act, and that all elections held prior to the taking effect of this Act whereby any county in this State has by a majority vote, voted to eradicate ticks, is hereby in all things declared to be a valid election and is in all things ratified.

Zone No. 2. Comprising the counties of Angelina, Blanco, Bandera, Caldwell, Comal, Edwards, Guadalupe, Gillespie, Houston, Hays, Jasper, Kendall, Kimble, Kerr, Madison, Mason, Menard, Montgomery, Medina, Newton, Nacogdoches, Polk, Real, Sabine, San Jacinto, San Augustine, Travis, Tyler, Trinity, Uvalde, Kinney, Walker, Williamson, Jefferson, Liberty, and Orange.

Zone No. 3, or Southern Zone, comprising the counties of Austin, Atascosa, Aransas, Brazos, Bee, Brazoria, Bexar, Cameron, Burleson, Calhoun, Chambers, Colorado, Dimmit, Duval, DeWitt, Frio, Fayette, Fort Bend, Goliad, Galveston, Hidalgo, Harris, Hardin, Jim Hogg, Jackson, Brooks, Jim Wells, Kleberg, Karnes, La Salle, Lavaca, Lee, Live Oak, Maverick, McMullen, Matagorda, Nueces, Refugio, Starr, San Patricio, Victoria, Webb, Willacy, Wilson, Wharton, Zavala, Zapata, Washington, Waller, Grimes, Gonzales, Bastrop. (Id. sec. 8.)

Art. 7314ff. Same subject.—That Chapter 60 of the General Laws of the State of Texas, passed at the Regular Session of the Thirty-Fifth Legislature of the State of Texas, being an Act supplementing the Act creating the Live Stock Sanitary Commission for the State of Texas, and which is known as the Eradication of the Cattle Ticks law, be so amended as that hereafter Val Verde County, in the State of Texas, shall be placed in Zone No. 2, as defined in said Act, instead of in Zone 1, as heretofore. (Acts 1917, 2d C. S., ch. 4, sec. 1.)

Art. 7314fff. Same subject.—That Chapter 60 of the General Laws of the State of Texas, passed at the Regular Session of the Thirty-fifth Legislature of the State of Texas, being an Act supplementing the Act creating the Live Stock Sanitary Commission for the State of Texas, and which is known as the eradication of the Cattle Ticks Law, be so amended as that hereafter Uvalde County and Medina County, in the State of Texas, shall be placed in Zone No. 3, as defined in said Act, instead of Zone No. 2 as heretofore. (Acts 1919, 2d C. S., ch. 27, sec. 1.)

Art. 7314g. Proclamations respecting quarantine in tick zones.—Provided further, that immediately after March 1, 1919, the Live Stock Sanitary Commission shall make and certify to the Governor of Texas a list of the names of the counties in Zone No.

1 that have not been freed from ticks and released from quarantine by the Live Stock Sanitary Commission; whereupon the Governor shall issue his proclamation proclaiming a quarantine in and around such counties, and thereafter all of such counties shall take up the work of tick eradication, and shall be subject to all of the provisions of this Act whether or not they shall have held an election as provided in Section 7 of this Act [Art. 7314e]. Provided further, that immediately after January 1, 1920, the Live Stock Sanitary Commission shall make and certify to the Governor a list of the names of the counties in Zone No. 2 that have not been freed from ticks and released from quarantine by the Live Stock Sanitary Commission; whereupon the Governor shall issue his proclamation proclaiming a quarantine in and around such counties, and thereafter all of such counties shall take up the work of tick eradication, and shall be subject to all of the provisions of this Act whether or not they shall have held an election as provided in Section 7 of this Act. Provided further, that immediately after January 1, 1922, the Live Stock Sanitary Commission shall make and certify to the Governor of Texas a list of the names of the counties in Zone No. 3, that have not been freed from ticks and released from quarantine by the Live Stock Sanitary Commission; whereupon the Governor shall issue his proclamation proclaiming a quarantine in and around such counties, and thereafter all of such counties shall take up the work of tick eradication, and shall be subject to all of the provisions of this Act whether or not they shall have held an election as provided in Section 7 of this Act. Provided, further, that certified copies of any proclamations by the Governor of Texas, issued under the authority of this Act, shall be admissible as evidence in the trial of any cases arising in prosecutions or other suits under this Act. (Acts 1917, ch. 60, sec. 9.)

Art. 7314h. Same; movement of animals in quarantined districts.—Upon the issuance of the supplemental proclamation as provided in Sections 7 [Art. 7314e] or 9 [Art. 7314g], every premise in said quarantine counties, parts of counties or districts shall at once become quarantined, and no cattle, horses, mules or asses shall be removed from any premises where located when the quarantine is proclaimed by the Governor, except in accordance with the rules and regulations of the Live Stock Sanitary Commission, or upon a written permit of an authorized inspector of the Live Stock Sanitary Commission of Texas, provided said Commission shall make an promulgate such rules and regulations as will permit the movement of work and saddle stock in any such quarantined county, part of county or district. (Acts 1917, ch. 60, sec. 10; Acts 1917, 1st C. S., ch. 12, sec. 1.)

See Penal Code, art. 1284j.

Art. 7314i. Inspectors in counties voting to eradicate ticks.—The Commissioners' court of any county within this State which said county has been quarantined under the provisions of Section 7 [Art. 7314e] or 9 [Art. 7314g] of this Act, shall notify the Live Stock Sanitary Commission of Texas, of the number of inspectors needed to conduct the work of tick eradication in their respective counties; whereupon the Live Stock Sanitary Commission shall appoint the number of inspectors designated, which inspectors shall be residents of the said county and shall work under the direction and orders of the Live Stock Sanitary Commission, and shall be subject to discharge by the said Commission, and shall be paid a salary out of the county treasury of that county, which compensation shall be fixed by the commissioners' court. (Acts 1917, ch. 60, sec. 12; Acts 1917, 1st C. S., ch. 12, sec. 1.)

Art. 7314j. Quarantine of sheep on account of scabies.—Wherever any district, county or part of a county shall be quarantined by order of the Live Stock Sanitary Commission on account of scabies or scab in sheep, every individual premise within such quarantined area shall be quarantined separately, and no sheep shall be shipped, driven, drifted or permitted to be shipped, driven or drifted off any premises where located when such quarantine is declared, without a written permit from an authorized inspector of the Live Stock Sanitary Commission of Texas. (Acts 1917, ch. 60, sec. 13.)

Art. 7314k. Inspectors for districts quarantined for sheep scabies.—The commissioners court of any county within the State of Texas, any part of which has been quarantined on account of scabies or scab in sheep, shall notify the Live Stock Sanitary Commission of Texas of the number of inspectors needed to conduct the work of sheep scab eradication in their respective counties, whereupon the Live Stock Sanitary Commission shall appoint the number of inspectors designated, which said inspectors shall be residents of the said county and shall work under the directions and orders of the Live Stock Sanitary Commission, and shall be subject to discharge by the said commission, and shall be paid a salary out of the county treasury, which compensation shall be fixed by the commissioners' court. (Id. sec. 14.)

Art. 7314l. Publication or notice of quarantine order.—Whenever the Live Stock Sanitary Commission shall have determined the fact that cattle, sheep or other live stock are infected with or have been exposed to any malignant, contagious or infectious disease, they shall designate the district, county, part of county, or premises necessary to be quarantined and notice of such quarantine shall be issued by the said commission or chairman thereof, as herein provided. Publication of such quarantine notice may be made in any newspaper within such area, or if no newspaper is published within such area, then the nearest newspaper thereto, or in the discretion of the Live Stock Sanitary Commission a written notice sent to the persons, firm or corporation owning or caring for such quarantined domestic animal or animals shall be deemed sufficient notice of such quarantine. (Acts 1917, ch. 60. sec. 17; Acts 1917, 1st C. S., ch. 12, sec. 1.)

Art. 7314m. Same; filing copy of notice with county clerk; evidence.—Whenever any quarantine is declared by the Live Stock Sanitary Commission and printed or written notice thereof is given to the persons, firm or corporation owning, caring for, or in charge of such quarantined domestic animal or animals or premises, the person serving such written notice shall file a duplicate copy

of such notice with the county clerk of the county wherein said quarantine is declared, which duplicate copy shall be admissible as evidence in lieu of the original quarantine notice in any of the courts of this State. (Acts 1917, ch. 60, sec. 18.)

Art. 7314n. Seizure of animals being moved in quarantine district; dipping or treating; compensation of sheriff; lien.—If any person, firm or corporation owning, controlling or caring for any domestic animal or animals within this State shall ship, drive, drift or permit to be shipped, driven or drifted any such domestic animal or animals out of any quarantined territory quarantined under the authority of this Act, the Live Stock Sanitary Commission shall have the power to call upon the sheriff, deputy sheriff, or any constable of the county in which such live stock may be found, and it shall be the duty of said sheriff, deputy sheriff or any constable of the county in which such live stock may be found, to seize said domestic animal or animals and return them to the premises from which they have been so moved, or to hold said domestic animal or animals in his custody, subject to such instructions as he may receive from the Live Stock Sanitary Commission of Texas. If any person firm or corporation owning, controlling or caring for any domestic animal or animals located in any territory quarantined by the provisions of this Act, or by order of the Live Stock Sanitary Commission of Texas, shall fail or refuse to dip or treat such domestic animal or animals in such manner, and at such time as directed by the Live Stock Sanitary Commission, then the Live Stock Sanitary Commission, or the chairman thereof, or any inspector acting under the authority of said commission or chairman thereof, shall have the power to call upon the sheriff, deputy sheriff or any constable of the county in which such live stock are found, and it shall be the duty of said sheriff, deputy sheriff or constable, together with the said inspector, to seize and dip or otherwise treat such domestic animal or animals in a manner and at such times as the Sanitary Commission shall direct. The sheriff, deputy sheriff or constable performing such service as above set out shall receive such compensation as is provided in Article 7320, Revised Civil Statutes, and similar compensation shall be paid for any person he may have to assist him in performing such services, and the said fees, with all costs of dipping and treating of the said live stock, shall constitute a lien against such animal or animals and shall be collected by civil suit. (Acts 1917, ch. 60, sec. 19; Acts 1917, 1st C. S., ch. 12, sec. 1.)

Art. 7314o. County veterinarian.—The Commissioners' court by a majority of the commissioners in each organized county, may appoint a competent person for the office of county veterinarian, who shall hold office for two years, and until his successor shall be appointed and qualify, unless sooner removed for cause. Said veterinarian shall take and subscribe to the constitutional oath of office, and shall file a copy of such oaths of office and a copy of his appointment with the Live Stock Sanitary Commission; and until such copies are so filed, said officer shall not be deemed legally qualified. Compensation of said veterinarian shall be fixed by the commissioners' court; provided, that no compensation or salary shall be allowed except for services actually rendered; said officer shall be a graduate veterinarian and shall work under the direction of the Live Stock Sanitary Commission and shall investigate and report all malignant, infectious or contagious diseases of live stock within his county to the Live Stock Sanitary Commission, and it shall be his duty to burn to ashes the carcass of any animal that may be found upon any property of the county where the ownership of such animal or animals is unknown. (Acts 1917, ch. 60, sec. 20.)

Art. 7314p. Composition of dip and mode of dipping.—The dip to be used in the treatment of sheep scab under official supervision in this State is the lime and sulphur dip, made in the proportion of eight (8) pounds of unslaked lime or eleven (11) pounds of commercial hydrated lime (not air-slaked lime) and twenty-four (24) pounds of flowers of sulphur to one hundred (100) gallons of water. The dipping bath must at all times be maintained at a strength of not less than one and one-half (1½) per cent of sulphid sulphur, or any other dip officially approved by both the Live Stock Sanitary Commission of Texas and the United States Bureau of Animal Industry. The dip to be used in the treatment of cattle for ticks shall be the arsenical dip approved by the United States Bureau of Animal Industry, or any other dip officially approved by both of said bureau and the Live Stock Sanitary Commission of Texas. (Id. sec. 21.)

Art. 7314q. Construction of act; repeal.—This Act shall be liberally construed and if any section thereof be declared invalid, the remaining parts of the law shall not be affected thereby, and it is the intent of the Legislature to preserve all, any and every portion of said Act if possible.

This Act does not repeal any law in force for the protection of domestic animals, but is cumulative thereto.

Chapter 169 of the General Laws of 1913, as passed by the Thirty-third Legislature at its Regular Session, Articles 1266, 1269, 1271, 1272, 1273, 1274, 1275, 1276, 1277, and 1278 of the Revised Criminal Statutes of 1911, are hereby expressly repealed, and all other laws and parts of laws in conflict herewith are hereby repealed. (Id. sec. 23.)

Art. 7314r. Validation of elections.—That all elections held in any county of this State for the purpose of determining whether such county should take up the work of tick eradication in said county under the provisions of Section 8, Chapter 169, Acts of the Regular Session of the 33rd Legislature, wherein the petition was filed, orders of election made by the Commissioners Court and notice thereof given prior to the taking effect of Committee Substitute Senate Bill No. 108, enacted by the 35th Legislature and approved by the Governor on March 6, 1917, which bill took effect immediately upon the approval and the election so ordered was held at a date subsequent to the taking effect of said Committee Substitute Senate Bill No. 108, are hereby in all things validated and shall be by all the courts of this State

held to be valid elections just as tho the same had been ordered and held prior to the taking effect of said Committee Substitute Senate Bill No. 108. (Acts 1917, 1st C. S., ch. 4, sec. 1.)

Art. 7314s. Powers of Live Stock Sanitary Commission not abridged.—This Act shall not be construed to in any wise alter, affect, abrogate or in any wise abridge the rights, powers, and duties of the Live Stock Sanitary Commission of the State of Texas under such Committee Substitute Senate Bill No. 108. (Id. sec. 2.)

Art. 7315. (5043d) When the governor shall proclaim quarantine.—When the commission shall have determined the quarantine lines and other regulations necessary to prevent the spread among domestic animals of Texas of any malignant, contagious, or infectious disease found to exist among the live stock of this state, or elsewhere, and given their orders as hereinbefore provided, prescribing quarantine and other regulations, they shall notify the governor of the state of Texas, who shall issue his proclamation, proclaiming the boundary of such quarantine around such diseased stock, and the orders, rules, and regulations prescribed by the commission; and such commission shall give such notice as may to them seem best to make the quarantine established by them effective. (Acts 1893, p. 70.)

Art. 7316. (5043e) Commission to purchase supplies, etc.—The commission provided for in this chapter shall have power to purchase such supplies and material as may be necessary to carry into full effect all orders by them given, as hereinbefore provided; which said supplies and material and wages, and expenses of the veterinarian hereinafter provided for, shall be paid out of the moneys hereinafter appropriated, on the warrant of the comptroller, issued to said commissioners, upon their filing with the comptroller an itemized account thereof, properly verified by affidavit; provided, that no material or supplies may be purchased by the commissioners, except such as may be necessary to carry into effect the quarantine and other regulations prescribed by them. And such commissioners shall have the power to employ a competent veterinarian to assist them in the investigation of the diseases amongst the live stock of this state, whenever they may deem the services of one necessary; provided, that the compensation of such veterinarian shall not exceed the sum of ten dollars per day and actual expenses while so employed; and provided, further, that the expenditures for the compensation of veterinarians shall not exceed nine hundred dollars in any one year. (Id.)

Art. 7317. (5043f) Railways to keep clean transporting cars.—It shall be the duty of the railway corporations doing business in the state to cleanse and disinfect the cars used by them in transporting live stock in or through this state, at such times and places as the commissioners may designate, whenever, in the opinion of the commissioners, any such order may be necessary to prevent the spread of infectious or contagious disease; and such corporations violating the provisions of this article shall be liable to a penalty of five hundred dollars for each offense, to be recovered in a civil action, to be prosecuted under the direction of the attorney general in the name of the state of Texas. (Id.)

Art. 7318. (5043g) Knowledge or suspicion of infection to be reported.—It shall be the duty of any owner or person in charge of any domestic animal or animals, who discovers, suspects or has reason to believe that any of his domestic animals, or domestic animals in his charge, are affected with any contagious or infectious disease, to immediately report such fact, belief or suspicion to the commission and to the sheriff and county clerk of the county in which said domestic animals are found.

Art. 7319. (5043h) Compensation of commissioners.—The commissioners appointed by the governor, as hereinbefore provided, shall receive five dollars per day for the time by them necessarily employed in the discharge of the duties required by this chapter; and said commissioners, hereinbefore provided for, shall receive in addition thereto the actual and necessary traveling expenses incurred by them and paid in the discharge of the duties required of them by the provisions of this chapter; which said per diem and expenses shall be drawn from the treasury on the warrant of the comptroller, to be issued to said commissioners on their filing with the comptroller an itemized account thereof, properly verified by affidavit.

See ante, art. 7085b.

Art. 7320. (5043i) Sheriffs and constables subject to orders of commissioners.—The live stock sanitary commission shall have power to call upon any sheriff, deputy sheriff, or constable to execute their orders, and such officers shall obey the orders of said commissioners; and the officer or officers performing these duties shall each be entitled to two dollars and fifty cents per day for himself and horse, which payment shall be made upon a sworn account, approved by said commissioners; provided, said expenses under this article shall not exceed in any event five hundred dollars per annum. (Id.)

Art. 7321. (5043j) Appropriation for purposes of this chapter.—The sum of twenty thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of the general revenue fund not otherwise appropriated, for the purpose of carrying into effect the provisions of this chapter; provided, that the exhaustion of the appropriation herein made shall terminate the liability of the state for the two years next following, and absolve it from any future claims of any and all persons who may have claims, real or pretended, under the provisions of this chapter. (Id.)

Art. 7322. [Repealed. Acts 1913, p. 353, sec. 9.]

See note under art. 7314.

Art. 7323. (5043*l*) Concurrence of two commissioners, etc.—No quarantine line shall be established at any time, nor regulations made in relation thereto, unless two of the live stock sanitary commissioners agree thereto.

Art. 7324. (5043m) Cumulative law.—This chapter does not repeal any law in force for the protection of domestic animals, but is cumulative thereto.

CHAPTER NINE

VETERINARY MEDICINE AND SURGERY

Art. 7324a. Practitioners must comply with act.—No person shall practice veterinary medicine or veterinary surgery in any of their branches, including veterinary, dentistry within this State, unless and until such persons shall have complied with the provisions of this Act. (Acts 1919, 2d C. S., ch. 58, sec. 1.)

This act supersedes Acts 1911, p. 132, ch. 76. Section 24 of this act, post, art. 7234u, repeals said Acts 1911, p. 132, ch. 76.

Art. 7324b. State board of veterinary medical examiners.—There shall be a board known as the "State Board of Veterinary Medical Examiners," said board to consist of 7 qualified veterinarians who shall have resided and practiced veterinary medicine and surgery under a diploma from a legal reputable College of veterinary medicine for more than five years prior to their appointment. Said Board shall be appointed by the Governor within ninety days after his inauguration from a list of eligible practitioners of veterinary medicine furnished the Governor by the Secretary of the State Veterinary Medical Association, and term of office of its members shall be two years, or until their successors shall be appointed and qualified. No member of the Board shall be a stockholder or a member of the faculty or a member of a board of trustees of any veterinary college. Vacancies occurring in the board shall be filled by the governor for the unexpired term. (Id. sec. 2.)

Art. 7324c. Same subject; oaths of office; organization; meetings; quorum; rules and regulations.—The members of said board shall qualify by taking the oath of office before any officer empowered to administer oaths in the county in which each shall respectively live. At the first meeting of said board after each bi-annual appointment, the board shall elect a president, vice president and secretary-treasurer four members shall constitute a quorum. Regular meetings shall be held at least twice each year at such time and places as shall be deemed most convenient for applicants for examination. Due notice of such meetings shall be given by publication in such papers as may be selected by the board. The board may prescribe rules, regulations and by-laws in harmony with the provisions of this Chapter, for its own government and proceedings for the examination of applicants for the practice of veterinary medicine and veterinary surgery. Said board or any member thereof shall have power to administer oaths for all purposes required in the discharge of its duties, and to adopt a seal to be affixed to all official documents. Special meetings of said board may be held upon a call of four members of said board. (Id. sec. 3.)

Art. 7324d. Same subject; records to be kept.—The board of Examiners shall preserve a record of its proceedings in a book kept for that purpose, showing the name, age and place and duration of residence of each applicant, the time spent in study in medical schools, and the year and school from which degrees were granted, or in case where the applicant qualifies as having been engaged in the practice of veterinary medicine in Texas, prior to 1911, same shall show age, name and place and duration of residence and the number of years engaged in the practice of veterinary medicine in Texas. Said record shall show whether applicants were rejected on examination or licensed and shall be prima facie evidence of all matters contained therein. The secretary of the board shall transmit an official copy of said register to the Secretary of State for permanent record, certified copy of which with hand and seal of the Secretary of said board or of the Secretary of said board or of the Secretary of State be admitted in evidence in all courts. (Id. sec. 4.)

Art. 7324e. Practice of veterinary medicine without registration of authority to practice.—It shall be unlawful for anyone to practice veterinary medicine in any of its branches upon animals within the limits of this State, who has not registered in the district clerk's office of the county in which he resided, his authority for so practicing, as herein prescribed together with his age, post office address, place of birth and name of school of veterinary medicine from which he graduated. Provided that nothing in this Act shall prohibit any person, who has heretofore registered as a veterinary surgeon in the county of his residence according to the provisions of Chapter 76 of the Acts of the regular session of the Thirty-second Legislature who had previous to the year 1911 practiced veterinary medicine or veterinary surgery as his principal occupation for five years in the State of Texas prior to the year 1911, from practicing in the county of his residence only by securing a license from the State Board of Veterinary Medical Examiners by filing satisfactory evidence of his former compliance with the requirements of said Act, chapter 76, Acts of the regular session of the Thirty-second Legislature, together with an affidavit that he has practiced veterinary medicine or or veterinary surgery continuously for five years prior to 1911, in which affidavit he shall state the place where he has practiced veterinary medicine or veterinary surgery for five consecutive years immediately prior to 1911, together with his place of residence during said period. Upon the face of such license shall be printed the words, non-graduate. Provided further that after the passage of this Act, it shall be unlawful for any person to register under the five year practicing clause of this section, but the object of this provision is to permit persons who have heretofore lawfully registered to continue practicing under the five year clause. That in case if the oaths herein provided for are willfully false, it shall subject the person making same to conviction and punishment for false swearing. The fact of such oath shall be endorsed upon the certificate or license as the case may be, but if such person shall remove from such county of residence, he shall comply with all the requirements of this Act before he shall be allowed to practice. (Id. sec. 5.)

Art. 7324f. Veterinary medical register; duties of district clerks.—It is hereby made the duty of the district clerk of each county in this State to keep a book of suitable size to be known as the "Veterinary Medical Register" of such county and record

therein the name and record of each veterinary practitioner who presents a certificate from the state board of veterinary examiners. The clerk shall receive the sum of one dollar from each person so registered, which shall be his full compensation for all duties required under this Act. When any person registered in said book shall die, remove from the county or have his license revoked, it shall be the duty of said clerk to make note of the facts thereof at the bottom of the page containing the record of such person as closing the record. On the first of January of each year said clerk shall on request of the board, certify to the office of said board of veterinary medical examiners a correct list of the veterinarians then registered in the county, together with such other information as said board may require. A copy from said register pertaining to any person, certified by said clerk under the seal of said court, also a certificate issued by said officer certifying that any person named therein has or has not registered in said office as required by this Act shall be admitted as evidence in all trial courts. (Id. sec. 6.)

Art. 7324g. Reciprocal arrangements with other States.—The board of veterinary medical examiners may at its discretion arrange for reciprocity in license with the authorities of other states and territories having requirements equal to those established by this law. License may be granted applicants for license under such reciprocity upon payment of twenty dollars. (Id. sec. 7.)

Art. 7324h. Applications for examination; qualifications of applicants; fee.—All applicants to practice veterinary medicine in this State, not otherwise licensed under the provisions of this Act, must successfully pass an examination before the board of veterinary medical examiners. Applicants to be eligible for examination must present satisfactory evidence to the board that they are more than twenty-one years of age, of good moral character, and graduates of bona fide reputable veterinary medical schools, and a bona fide veterinary medical school shall be one whose requirements for a degree and whose equipment is such as is at present required for recognition by the Bureau of Animal Industry of the United States Department of Agriculture, or the American Veterinary Medical Association. Application for examination must be made in writing under affidavits to the secretary of the board, accompanied by the sum of fifteen (15) dollars. Such applicants shall be given due notice of the date and place of examination. In case any applicant because of failure to pass examination be refused a license, such person may be permitted to take a second examination without additional fee. (Id. sec. 8.)

Art. 7324i. Fees of applicants for examination; disposition of.—The fund realized from the aforesaid fees shall be applied first to the payment of the necessary expenses of the board; any remaining funds shall be applied by order of the board to compensating members of the board at ten dollars per day provided that it shall be unlawful for the board or any member thereof in any manner or for any purpose to charge or obligate the state for the payment of any money and the members of said board shall look alone to the revenue derived from the operation of this Act for his compensation and for the expenses of conducting said board. (Id. sec. 9.)

Art. 7324j. Examinations; scope and conduct of.—All examinations shall be conducted in writing in such manner as shall be entirely fair and impartial. The applicants to be known by numbers without names or other methods of identification on examination papers by which members of the board may be able to identify such papers until after the applicants have been granted licenses or rejected. Examinations shall be conducted on the scientific branches of veterinary medicine only, and shall include veterinary anatomy, veterinary pathology, chemistry, veterinary obstetrics, veterinary materia medica, veterinary sanitary science, veterinary practice, and veterinary jurisprudence, and veterinary physiology and bacteriology. Upon satisfactory examination under the rules of the board, applicants shall be granted license to practice veterinary medicine. All questions and answers with grades attached shall be preserved for one year and any person rejected shall be entitled to examine his said answers and the grades attached shall be preserved for one year and any person rejected shall be entitled to examine his said answers and the grades attached thereto. All applicants examined at the same time shall be given identical questions in each of the above branches. All certificates shall be attested by the seal of the board and signed by a majority of said board. (Id. sec. 10.)

Art. 7324k. Exceptions from operation of act.—Nothing in this law shall be so construed as to apply to commission or contract veterinarians in the employ of the United States or the Bureau of Animal Industry of the United States Department of Agriculture in the performance of their duties as such, but such shall not engage in private practice, nor to legally qualified veterinarians of other states called in consultation but who do not open offices. Nothing in this law shall be construed as to prohibit the sale by licensed druggists of remedies which they recommend for the cure of diseases of animals. (Id. sec. 11.)

Art. 7324*l*. Revocation of right to practice.—The right to practice veterinary medicine in this State may be revoked by any court of competent jurisdiction upon proof of the violation of the law in any regard thereto or for any cause for which the state board of veterinary medical examiners is authorized by law to refuse to admit to its examinations as hereinafter provided; and it shall be the duty of the several districts and county attorneys of this State to file and prosecute appropriate proceedings in the name of the State for violations thereof on request of any member of the said board. (Id. sec. 12.)

Art. 7324m. Refusal to admit to examinations or to issue certificates; grounds for.—The state board of veterinary medical examiners may refuse to admit to its examinations or to issue the certificate provided for by this act for any of the following causes:

The presentation to the board of any li-

cense certificate or diploma which was illegally or fraudulently obtained, or when fraud or deception has been practiced in passing the examination.

Conviction of crime of the grade of felony, or one which involves moral turpitude.

Other grossly unprofessional or dishonorable conduct of a character likely to deceive or defraud the public; or for habits of intemperance or drugs addiction calculated to endanger the lives of patients; provided that any applicant who may be refused admittance to examination before said board shall have his right of action to have such issue tried in the district court in the county in which some member of the board shall reside. (Id. sec. 13.)

Art. 7324n. What constitutes practice of veterinary medicine.—Any person shall be deemed as practicing veterinary medicine or veterinary surgery or dentistry who professes publicly to be a veterinary physician, surgeon or dentist, or who appends to his name any initials or title implying qualifications to practice veterinary medicine or who shall treat, operate or prescribe for any physical ailment or deformity of any domestic animal for which he shall receive compensation, either direct or indirect, or any county demonstration or farm demonstration agent while in the employment of any county, state or federal government on a salary for treating or attempting to treat any animal for any disease, ailment or deformity. Nothing in this Act shall apply to persons not so employed gratuitously treating animals. It is further provided that the operations known as "Dehorning," "Castrating," or spraying shall not be construed as the practice of veterinary medicine or surgery nor the vaccination of cattle for blackleg as the practice of veterinary medicine. (Id. sec. 14.)

Art. 7324o. Applications by veterinarians previously licensed, etc.; fee; license.—Every person desiring to practice veterinary medicine or veterinary surgery within this state, whether under a license issued by a board upon examination, or by qualifying before the board of examiners as having practiced for more than five years prior to the year 1911 as provided for herein, as well as those who have been previously examined by the board of veterinary medical examiners under the Act of 1911, and who desire to continue in the practice of the profession of veterinary medicine shall within sixty days after the passage of this Act file with the Secretary of the board an application for renewal thereof, which application shall be accompanied by the fee hereinafter prescribed. If the board shall find that the applicant has been legally licensed or registered in this state, they shall issue to him a certificate attesting the fact. On or before the 1st day of March each year, each practicing veterinary physician in the state shall file with the secretary of the board of veterinary examiners his application for renewal of his license to practice. Said application shall be made on forms to be furnished by the board on which shall appear the name, age, and residence of the applicant, and whether practicing under a license issued by the board after examination or whether under the provisions of Chapter 76, Acts of 1911, as to practice of veterinary medicine for five years prior to 1911. All such applications shall be accompanied by a fee of one dollar. In case any person practicing veterinary medicine or veterinary surgery shall fail for a period of sixty days after the expiration of his license to make application to the board for its renewal, his name shall be erased from the register of licensed veterinarians, and before such person may again practice veterinary medicine he shall be required to take the examination before the board, unless, however, such person has been prevented from applying for renewal for good cause, of which the board shall be the judge of the sufficiency thereof. All license issued under the provisions of this Act shall expire on the 1st day of March of each year, and may be renewed by complying with the provisions of this Act. (Id. sec. 15.)

Art. 7324p. Definitions.—The terms veterinarians, veterinary medicine, veterinary surgery, veterinary physician and veterinary dentist as used in this Act shall be construed as synonymous. (Id. sec. 16.)

For sections 17 and 18 of this act, see post, Penal Code, arts. 799h, 799i.

Art. 7324q. Continuance in office of members of old board.—It is further provided that the members of the State Board of Veterinary Medical Examiners, appointed and acting under authority of Chapter 76, of the Acts of the regular session of the Thirty-second Legislature. shall continue in office, without re-appointment, after the passage of this Act, with full power and authority to exercise all the powers and duties of said office prescribed in this Act, until the appointment and qualification of members of said Board under authority of this Act. (Id. sec. 19.)

Art. 7324r. Veterinarians with certificates of permanent license.—Nothing in this Act shall be construed as requiring veterinarians or veterinary surgeons who have successfully passed examination on the subjects prescribed in Article 7324e, revised Civil Statutes of 1914 and who have been granted certificate of permanent license by said Board of Veterinary Medical Examiners, to again submit themselves to examination. But such certificate of permanent license is valid to all intents and purposes, subject to all the provisions of this Act. (Id. sec. 20.)

Art. 7324s. Display and record of license.—Any person receiving a certificate of license from the Board of Veterinary Medical Examiners shall forthwith have it recorded in the office of the District Clerk of the County in which he makes his residence, and shall display it in his regular place of business. The date of recording shall be recorded thereon, and until the license is recorded the holder shall not exercise any of its rights or privileges therein conferred; and in case said license is not recorded within ninety days from its date of issuance, it shall become invalid. The District Clerk shall be paid his fee for recording such certificate by holder thereof. (Id. sec. 21.)

Art. 7324t. Practicing in several counties without successive recording of license.—Any veterinarian or veterinary surgeon who has successfully passed examination on the subjects prescribed in Article

7324e of the Revised Civil Statutes of 1914 or in section 10 of this Act [7324j], and who have been granted license by said Board to practice veterinary medicine, veterinary surgery or veterinary dentistry in this State, and has recorded his license as provided for in this Act, may go from one county to another county in this State on professional business and may practice veterinary medicine, veterinary surgery or veterinary dentistry in any county in this State to which he may go, without recording or registering said license in any county to which he may go or in which he may practice. Provided that any veterinarian or veterinary surgeon who has successfully passed the said examination and recorded his license as provided for in this Act, and who removes his residence from the county in which his license is recorded, shall again record his license in the county to which he removes his residence, in the same manner as the same was recorded in the County from which he removed his residence. Such veterinarian or veterinary surgeon shall have no authority to practice in any county to which he removes his residence until he has recorded said license as herein provided. (Id. sec. 22.)

For section 23 of this act, see Penal Code, art. 799j.

Art. 7324u. Repeal.—All laws and parts of laws heretofore passed by the Legislature governing the practice of veterinary medicine, veterinary surgery or veterinary dentistry are hereby expressly repealed, and especially Chapter 76, Acts of the regular session of the Thirty-second Legislature. (Id. sec. 24.)

Art. 7324v. Partial invalidity of act.—In case any article or part hereof is held unconstitutional, the same shall not affect the other sections or parts hereof. (Id. sec. 25.)

CHAPTER TEN

COOPERATION WITH UNITED STATES BUREAU OF ANIMAL INDUSTRY

Art. 7324¼. Cooperation with United States Bureau of Animal Industry for eradication of tuberculosis; payment for animals killed.—It shall be the duty of the Live Stock Sanitary Commission to co-operate with the Bureau of Animal Industry, United States Department of Agriculture, for the eradication of tuberculosis among cattle within the State of Texas, and the said Live Stock Sanitary Commission is hereby authorized to pay to the owner or owners of cattle reacting to Tuberculin Test administered by veterinarians employed by the Live Stock Sanitary Commission or by the United States Bureau of Animal Industry as hereinafter provided. The owner shall sell as directed by the Live Stock Sanitary Commission such reactors for immediate slaughter at any public slaughtering establishment where Federal post mortem inspection is maintained. After such sale the Live Stock Sanitary Commission is authorized to pay such owners out of such funds as may be appropriated by the Legislature for that purpose an amount not to exceed one-third of the difference between the appraised value of such reactors and the amount received by the owner as salvage in the sale of such reactors. In no case shall any payment be made for more than $25.00 for any grade animal or more than $50.00 for any pure bred animal, nor shall any payment be made under the provisions of this Act unless and until the owner of such reactors has complied with the regulations and orders of the Live Stock Sanitary Commission; nor shall any amount be paid in the indemnification of such reactors in excess of the amount paid by the United States Bureau of Animal Industry on the same reactors. (Acts 1919, ch. 148, sec. 1.)

Art. 7324¼a. Value of cattle reacting to tuberculin test.—The value of cattle that have reacted to the Tuberculin Test shall be determined in the following manner; The Live Stock Sanitary Commission or the Chairman thereof or other representative of the Live Stock Sanitary Commission authorized to act for such Commission shall select one appraiser, who together with an appraiser appointed by representative of the United States Bureau of Animal Industry shall go to the premises on which such reactors are located and appraise the value of such reactors. In case they are unable to agree a third appraiser agreed to by them and the owner of such reactors shall be designated. In case of such inability on the part of the first two appraisers to agree on the value of such reactors necessitating a third appraiser as hereinbefore provided for the value of such reactors shall be determined by the agreement of two of such appraisers as to such value. The appraisers hereinbefore provided shall render to the Live Stock Sanitary Commission immediately after such appraisement a written report as to the agreed value of such reactors. (Id. sec. 2.)

CHAPTER ELEVEN

SALE OF QUARANTINE PROPERTY

Art. 7324½. Commission to sell to United States state property used for quarantine purposes.—A commission composed of the Governor of the State of Texas, the Attorney General of Texas and the State Health Officer of this State, is hereby created for the purpose of negotiating the sale and delivery to the United States Government of all State property owned and used by the State of Texas for quarantine purposes along the Gulf of Mexico and on the Mexican border of the Rio Grande River, upon such terms as are most advantageous to the State of Texas. (Acts 1919, ch. 34, sec. 1.)

Art. 7324½a. Same subject; powers.—Said Commission is hereby vested with power and given complete authority to sell to the proper authorities of the United States all property owned by the State of Texas, and actually used in quarantine service of the State, including lands, quarantine stations, wharves, boats, residence houses and all appurtenances, equipment and apparatus necessary for the proper exercise of the quarantine service or used in such service. (Id. sec. 2.)

Art. 7324½b. Same subject; negotiation of sale; deeds.—The said commission shall, as soon as this Act becomes effective, proceed to negotiate terms of sale and delivery of said property to the proper authorities of the United States, and when said terms and conditions of sale have been agreed upon by the commission and the representatives of the United States Government, the Governor of the State of Texas is hereby authorized to

execute deeds and convey said quarantine property to the proper authorities of the United States Government, upon the receipt of the amount of money agreed upon, or upon proper guarantee that the said amount of money will be paid to the State of Texas within a given time. (Id. sec. 3.)

Art. 7324½c. Same subject; substitute members.—In case of the inability of any member of this commission to act at the proper time in the negotiation and sale of this property he is hereby authorized and empowered to appoint a representative to act in his place, and all expenses incurred by any member, or members, of this commission or their representatives shall be paid out of the expense fund of their respective departments. (Id. sec. 4.)

Art. 7324½d. Surrender of property on completion of sale.—Upon the execution and delivery of the deed conveying any of said quarantine properties to the United States, the officers and employés of the State, in charge of such property and employed by the state in the quarantine service, in which such property is used, shall surrender such property to the proper representatives of the United States, and the positions and employment of such officers and employés under the State shall thereupon terminate. (Id. sec. 5.)

Art. 7324½e. Disposition of receipts from sale.—All money paid for said properties shall be paid into the State Treasury immediately upon receipt and shall be credited to the General Revenue, and at the time such money is paid into the State Treasury the commission shall file in the office of the Comptroller of Public Accounts a statement showing the amount of money so paid and for what the same was received, and upon the complete performance of the duties imposed upon the Commission by this Act, the commission shall file in the office of the Comptroller a full statement of all sales made and of all amounts received in payment for the property sold. (Id. sec. 6.)

TITLE 125

SUPPLIES FOR PUBLIC INSTITUTIONS

CHAPTER ONE

STATE PURCHASING AGENT FOR ELEEMOSYNARY INSTITUTIONS

Art. 7325. State Purchasing Agent; appointment; salary; personal interest in contracts; accounting as agent; rebates, etc.—The State Purchasing Agent shall be appointed by the Governor, by and with the advice and consent of the Senate, every two years, and shall hold his office for a term of two years from the date of his qualification, and until his successor is appointed and qualified. Said Purchasing Agent shall receive an annual salary of three thousand ($3,000.00) dollars, which shall not be increased or diminished during his term of office, and he shall not receive, directly or indirectly, any extra compensation in the way of commissions or otherwise. Said agent shall not be interested in, or in any manner connected with, any contract or bid for furnishing supplies or articles of any kind to any of said institutions or to any other department or institution of the State, or with any person, firm or corporation who is interested in or in any manner connected with any kind of contract with the state or any of its institutions and departments, nor shall he collect or be paid his salary, or any part thereof, while he is in any manner or degree indebted to the state or in arrears in his accounts and reports as such agent. Neither shall said agent accept or receive from any person, firm or corporation to whom any contract may be awarded, directly or indirectly, by rebate, gift or otherwise, any money or other thing of value whatever, nor shall he receive any promise, obligation or contract for future reward or compensation from any such party. (Acts 1899, p. 138, sec. 1; Acts 1915, ch. 126, sec. 1.)

Acts 1915, ch. 126, sec. 2 repeals arts. 7339-7348.

Office of state purchasing agent abolished. See ante, art. 7150¼d.

Art. 7326. Oath; bond; forbidden to be concerned in sale of merchandise, etc., to state.—Upon being appointed and confirmed as aforesaid, said agent shall take the constitutional oath of office, and enter into a bond, with two or more good and sufficient sureties, payable to the state of Texas, in the sum of fifty thousand dollars, to be approved by the governor of the state, and conditioned for the faithful performance of his duties, and that he will correctly and honestly pass upon and award all bids and contracts for supplies, and will fully and accurately account to and pay over to the state, or to the persons authorized to receive the same, all moneys, merchandise and articles of value that shall come into and pass through his hands as such agent, or for which he may be responsible; and also conditioned that he will honestly, faithfully and accurately disburse and account for all moneys controlled or handled by him in the performance of his duties. It is unlawful and within the conditions of said bond for said agent to sell or be in any manner concerned in the sale of any merchandise, supplies or other articles to any of the institutions herein named, or to any other department or institution of the state. It shall also be within the conditions of said bond and the same shall provide that said purchasing agent shall not accept or receive directly or indirectly, by rebate, commissions or in any other manner whatever any money or other thing of value from any person, firm or corporation to whom said agent may award any contract, directly or indirectly. The said bond shall be filed in the office of the comptroller, and recoveries may be had on the same until exhausted. (Acts 1899, p. 138, sec. 2.)

Art. 7327. Storekeepers and accountants; superintendent to act in smaller institutions; salary; bond; certain offices abolished; duties.—There shall be appointed by the superintendents, with the advice and consent of the board of managers of said institution, storekeepers and accountants, one for each of said institutions, who shall hold their office for two years from date of qualification, or until their successors shall have qualified, unless sooner removed by the board of managers, at the suggestion of the superintendent or upon complaint of the purchasing Agent, for inefficiency, in-

competency, neglect of duty or other adequate cause affecting their faithful and satisfactory performance of duty; provided, that where the magnitude of an institution is not sufficient to employ a storekeeper and accountant, that the superintendent shall perform that service. Said storekeeper or accountant shall receive a compensation of not to exceed the sum of nine hundred ($900.00) dollars per annum, to be charged and paid as a part of the current expenses of said institution; and they shall not be entitled to charge, collect or receive any other compensation or commutation or commission, unless it be their own individual board and lodging, when they are required to reside within the institutions to which they are attached. Each of said storekeepers or accountants shall, before entering upon the performance of his duties, make and file with the Comptroller of Public Accounts a bond in the sum of ten thousand ($10,000.00) dollars, payable to the State of Texas, to be approved by the Governor and filed with the Comptroller, which bond shall be conditioned for the full, faithful, accurate and honest performance of his duties; and it shall not be lawful for said storekeepers or accountants to sell or to in any way be concerned in the sale of any merchandise, supplies or other articles to any of the institutions herein named, or to have any interest in any bid or contract therewith, or with any other institution or department of the state government. The office or position of steward, quartermaster or other similar position heretofore existing in any and all eleemosynary institutions are abolished, and said storekeepers or accountants shall hereafter perform all of the duties, except as may be inconsistent with the provisions of this chapter heretofore imposed upon such abolished officers or employés as well as such other duties as may be required of them by the management of said institutions. They shall also keep the Purchasing Agent constantly advised as to the amount and character of supplies on hand and the amount and character required in order to keep the institutions constantly provided for, and they shall make report on or before the tenth day of each month to the State Purchasing Agent, showing the total amount of appropriation, the total amount expended and the balance unexpended on the first of each month. They shall also furnish any other information respecting such matters as may be desired by the said Purchasing Agent. If at any time any institution accumulates an amount of supplies on hand in excess of its needs, and another institution is in need of any such supplies, the Purchasing Agent shall present such facts to a board composed of the Governor, Comptroller and Purchasing Agent, with the recommendation that such institution in need of such supplies shall be furnished from such excess of supplies, and if approved by the board, shall forthwith transfer any of such from the institution having such excess to such institution in need of such supplies, and the debit and credit shall be made on the basis that such supplies could be purchased in the open market at the time of the transfer, if such is less than the cost under the general contract for such supplies for the fiscal year, otherwise the debit and credit shall be made on the basis of the general contract price for that year, and all controversies as to such shall be determined by a board composed of the Governor, Comptroller and Purchasing Agent; provided, that any educational institution may dispense with the position of storekeeper, provided for in this Act, and select or appoint some person at such institution whose duty it shall be to receive such supplies purchased, and such person shall make the reports to the Purchasing Agent, as is required of the storekeeper in this article. (Acts 1899, p. 138, sec. 3; Acts 1915, ch. 126, sec. 1.)

Art. 7328. Manner of contracting for supplies.—When and where supplies are to be paid for by the state of Texas out of appropriations and authorized by the Legislature of Texas, it shall be the duty of the Purchasing Agent aforesaid to contract for all supplies, merchandise and articles of every description needed for the maintenance and operation of said institution, except those supplies designated by the board composed of the Governor, Comptroller and Purchasing Agent as perishable, and supplies of a special character, as books for libraries and supplies for laboratories and laboratory work and instruction, and any special supplies for instruction, demonstration and research for educational institutions, to be designated as "Special supplies for educational institutions," basing his contract or contracts upon estimates to be furnished him by the superintendents and approved by the boards of said institutions, respectively, by the first day of April of each year for an entire year, and all such contracts shall be made after full notice of advertisement of not less than four weeks in at least four of the leading papers of the state, to be selected by the said agent within the limits of appropriations made by the Legislature for such purposes, regard being had to the appropriations for each institution. Such advertisement shall call for sealed bids or proposals to furnish the aggregate of the desired articles and supplies as estimated for by such institutions, naming the articles, supplies and quantities and character required; and all such bids or proposals shall, when required by the Purchasing Agent, be accompanied by samples or designs furnished by the bidder, and shall be for the entire period of one year; such supplies, articles and merchandise to be delivered at such times, in such quantities and to such institutions as said Purchasing Agent may from time to time designate; and should the supplies, or any portion thereof, as contracted for, be not sufficient for the year for which the contract or contracts shall be made, then the contractor or contractors shall be required to furnish such additional supplies at the prices named for similar articles under the contract or contracts; provided that should said Purchasing Agent at any time discover that he could purchase the same supplies for less money than for any one year, and by buying the same for a less length of time than one year, he shall have the authority to make such purchases for a shorter length of time, but not less than three months. It being the purpose of this chapter to authorize

and require said Purchasing Agent to make such contracts upon such terms as will secure the best and cheapest rates for the state in the purchase of supplies and articles of necessity for said institutions, and to that end he shall reserve the right to reject any and all bids or to accept any bid in part or to reject it in whole; and if none of the bids or proposals are deemed advantageous and satisfactory, he may buy in the open market until a proper and satisfactory bid is offered. The period for which such bids or proposals are invited shall be clearly stated in said advertisement, as well as the terms and conditions contemplated by the provisions of this chapter; when the same article is estimated for by two or more institutions, but of different brands or grades shall be purchased, so as to produce uniformity in use by all institutions; provided, that other things being equal supplies offered by bidders who have an established local business shall have preference, provided, that furniture or equipment for educational institutions shall be of such kind and character as specially adapted or designed for such institutions. (Acts 1899, p. 138, sec. 4; Acts 1915, ch. 126, sec. 1.)

Art. 7329. Bids, submission of.—Any and all bids or proposals under this chapter shall be accompanied by a good and sufficient bond or a certified check, in such sum as the said purchasing agent may require, the same to be stated in the advertisements aforesaid; and the said agent may, if he deems it advisable, advertise for the various articles and supplies needed separately or together, and may accept the bid or bids for the same to be furnished separately or all by one bidder, as may be most advantageous to the state, and when purchases are made by the state purchasing agent, preference shall be given to state or home products, all things being equal. (Acts 1899, p. 138, sec. 5.)

Art. 7330. Bids, opening and acceptance of.—All bids shall be opened on the date and at the place specified in the advertisement for the same, and such opening and inspection of the bids shall be made by the purchasing agent in the presence of the governor and comptroller of public accounts and of the superintendent and board of managers, if they desire to be present. The supplies and articles furnished under all bids and contracts shall be such as are called for by requisitions of the superintendents of the several institutions named, and equal to and of the same quality as the sample furnished purchasing agent; and all supplies furnished by contract as provided herein shall be equal to the sample which is required by article 7328 to accompany the bid. And when the supplies delivered under contract do not come up to the sample, the superintendent shall refuse to accept the same. The estimates furnished said purchasing agent as aforesaid, upon which he makes his advertisements and contracts, shall, as near as practicable, state the quantity and quality of the articles and supplies needed, and when possible, the brand of the same, and copies of such estimates shall be filed with the comptroller and be open to public inspection. (Id. sec. 6.)

Art. 7331. Invoices, payment of.—Invoices of all supplies of whatever kind shall be furnished in triplicate by the contractor or seller at the time of each delivery of said supplies, two of which shall be transmitted to the storekeeper of the institution to which supplies are sent, and one by the same mail to the purchasing agent. As soon as the supplies shall have been received and examined by the storekeeper of the institution to which the same shall have been shipped, and if he shall find them to correspond in every particular with the invoices transmitted him and the samples by which the supplies were sold, he shall transmit to the purchasing agent one of said invoices with a certificate thereon that the supplies received correspond in every particular with the invoice and the sample by which the supplies were sold; and if the purchasing agent shall, upon further examination, find such invoice to be correct, he shall transmit it with his approval to the comptroller; and when such invoice so approved by the storekeeper of the institution to which the supplies named therein have been furnished, and by the purchasing agent, shall have been further approved by the comptroller, he shall draw his warrant for the amount due on the invoice, or upon so much thereof as has been allowed, upon the state treasury, and it shall be charged against the institution so furnished. And the contractor or seller, to the invoice to be transmitted by him to the storekeeper, thence to the purchasing agent, and thence to the comptroller, shall append an affidavit made and subscribed to by him before any officer having a seal and authorized to administer oaths, that the invoice is correct, and that it corresponds in every particular to the supplies furnished and shipped. (Id. sec. 7.)

Art. 7332. Successful bidder must give bond.—When any bid shall have been accepted, the purchasing agent shall require of the successful bidder a bond payable unto the state, with good and sufficient sureties, in the sum not less than one-third of the amount of the bid, to be approved by the comptroller, conditioned that he will fully, faithfully and accurately execute the terms of the contract into which he has entered, said bond to be filed in the office of the comptroller, and recoveries may be had on such bond until exhausted. (Id. sec. 8.)

Art. 7333. Emergency purchases.—In case of emergency and where articles are deemed in need and necessary by any such institution, and are of such character as to be impracticable to be included in the annual contract, the superintendent of any such institution shall make a requisition for same to the Purchasing Agent, who, if in his judgment he considers the articles or supplies to be needed or necessary, shall forthwith purchase same in the open market, but if he does not approve the requisition he shall forthwith forward the same to the board of managers or board of control of the institution, who shall forthwith investigate the need of the articles or supplies requested, and if satisfied that the requisition is proper, shall thereupon recommend the same to the Purchasing Agent, who shall then forthwith honor the requisition and make the required purchases in the open market; provided, that furniture or equipment for educational institutions shall be of the particular kind and make as requisitioned for by such institutions when approved by the board composed of the

Governor, Comptroller and Purchasing Agent. Provided, that in all bids taken by the Purchasing Agent or under his direction preference shall be given to the dealers in the cities or towns in the county in which the said institution is located, conditioned that the articles to be purchased shall be the equal in price and quality to the articles if purchased elsewhere. (Acts 1899, p. 138, sec. 9; Acts 1915, ch. 126, sec. 1.)

Art. 7334. Purchases must accord with appropriations.—All purchases by contract or otherwise, as herein authorized, shall be in accordance with such appropriations as have been made by the legislature for the support of the several institutions respectively. (Acts 1899, p. 138, sec. 10.)

Art. 7335. Purchase of perishables and special supplies.—The Governor, Comptroller and Purchasing Agent shall frame and transmit to each institution a system of rules and regulations for the purchase of such supplies as have been designated by them as perishable and as special supplies for educational institutions, and to which conformity by all the institutions is hereby required. (Acts 1899, p. 138, sec. 11; Acts 1915, ch. 126, sec. 1.)

Art. 7336. Purchasing agent's chief clerk; salary; duties; bond and oath; assistant clerk; annual report by Purchasing Agent.—The Purchasing Agent shall have authority to appoint one chief clerk in his office, whose salary shall not be more than fifteen hundred ($1,500.00) dollars per annum, which chief clerk shall be authorized, in the absence or inability of the Purchasing Agent, to approve accounts for supplies heretofore purchased and contracted for, and shall be responsible for supplies under his care, and shall take the constitutional oath of office and before entering upon the performance of his duties shall make and file with the Comptroller of Public Accounts a bond in the sum of ten thousand ($10,000.00) dollars, payable to the State of Texas, to be approved by the Governor, conditioned for the full, faithful, accurate and honest performance of his duties as required by law, and one assistant clerk, who shall be a competent stenographer, at a salary not to exceed twelve hundred ($1,200) dollars per annum, and one porter not to exceed four hundred and eighty ($480) dollars per annum. The Purchasing Agent shall make an annual report to the Governor at the end of each fiscal year, covering all his acts and doings, and such report shall be laid before the Legislature at its next session thereafter. (Acts 1899, p. 138, sec. 12; Acts 1915, ch. 126, sec. 1.)

Art. 7337. Institutions contemplated by chapter; approval of certain contracts.—The institutions herein contemplated are those for the care of the insane, deaf and dumb, the blind, the orphans, the Confederate Home and all other State institutions, educational or eleemosynary, now established or that may hereafter be established anywhere in Texas, excepting the penitentiary system and its management, and also excepting the Senate and House of Representatives and all departments in the State Capitol, including General Land Office, and as to such Senate, House of Representatives, departments and General Land Office the present law or custom now in force shall continue; provided, that all contracts designated in Article 16, Section 21, of the Constitution of the State shall be approved by a board consisting of the Governor, Secretary of State and Comptroller. (Acts 1899, p. 138, sec. 13; Acts 1915, ch. 126, sec. 1.)

Art. 7338. Payment only on affidavit.—No account for goods, wares or merchandise purchased by any officers to whom this chapter refers shall be paid, unless sworn to as required by article 3712, which affidavit shall further state that no commission or other compensation has been or will be paid as a consideration for such purchase, and that affiant knows such facts. (Acts 1899, p. 138, sec. 15.)

CHAPTER TWO

OF THE MODE OF SUPPLYING FUEL TO THE EXECUTIVE AND OTHER DEPARTMENTS

Arts. 7339-7348. [Repealed by Acts 1915, ch. 126, sec. 2, p. 198.]

TITLE 126

TAXATION

CHAPTER ONE

OF THE LEVY OF TAXES AND PAYMENT OF OCCUPATION TAXES

Art. 7349. Board constituted.—The governor, comptroller of public accounts, and treasurer of this state, are constituted a board to calculate the ad valorem tax to be levied and collected each year for state and public free school purposes. (Acts 1907, p. 464, sec. 1.)

Art. 7350. Tax assessor to make certificate to comptroller.—It shall be the duty of the tax assessor of each county in this state to make to the comptroller of public accounts, on or before the fifteenth day of July of each year a statement, showing as nearly as can be ascertained from his inventories or assessments, the total amount of property in each county subject to taxation; provided, that the tax for state and public free school purposes shall not be calculated and carried out upon said rolls. (Id. Amended Acts 1909, p. 371, sec. 2.)

Art. 7351. Method of ascertaining tax rate.—Within five days after the comptroller of public accounts has received such certified statements from every assessor within this state, said board shall meet for the purpose of calculating the ad valorem rate for taxes to be collected for the state and public free school purposes. In calculating said rates, the board shall calculate the same by the following rules and upon the following basis: They shall find, by adding together all the property subject to taxation in all the counties as shown by the certified statements returned by the assessors, the total valuation of all property within this state subject to ad valorem taxes. They shall find, by adding together the sums appropriated by the legislature, which will or which may become due by the state during the following fiscal year, the total sum which will or which may become due by the state, during the following fiscal year. They shall find, by adding all sums paid into the state treasury as taxes for state purposes from all sources other

than as ad valorem taxes during the first half of the current calendar year and the latter half of the last preceding calendar year, the total sum paid into the state treasury from said sources during said time. They shall find, by subtracting from the total sum which will or which may become due by the state during the next succeeding fiscal year the total sum which was paid into the state treasury as taxes for state purposes during the first half of the current calendar year and the latter half of the last preceding calendar year, the total sum for state purposes which must be collected by ad valorem taxes. They shall add to such remainder twenty per cent of said remainder. They shall divide the total sum for state purposes which must be collected by ad valorem taxes added to twenty per cent of such total sum by the quotient of the total valuation of all property within this state divided by one hundred. The quotient shall be the number of cents on the one hundred dollars valuation to be collected for the current year for state purposes; provided, that said quotient shall not be run to more than three decimals; and provided, that the rate for state purposes shall never exceed the rate fixed by law on the one hundred dollars valuation of property. In calculating the rate to be collected for public free school purposes, the said board shall take into consideration the number of children in the state within the scholastic age to be determined from the most recent official school census; and shall fix a rate that will yield and produce for such fiscal year four dollars per capita for all the children within the scholastic age, as shown by said scholastic census; provided, the rate so fixed for any year shall never exceed the rate fixed by law. (Acts 1907, p. 464, sec. 3.)

Art. 7352. Comptroller to certify rate to tax assessor.—It shall be the duty of the comptroller of public accounts to certify to the assessor of taxes of each county in this state, through registered letter, the rate of taxes for state purposes and for public free school purposes for the current year, and shall also publish immediately such rate for thirty days in some newspaper published in the state and having a general circulation therein; and as soon as such tax assessor has received notice of such rate he shall calculate the taxes due the state for state purposes, and also the taxes due for public free school purposes, on all taxable property within his county, as set out in article 7351, and shall carry the same out upon the copies of the tax rolls of the county to be delivered to the tax collector and to the clerk of the county court and to be returned to the comptroller of public accounts, as provided by law. After he has so completed the said copies of the tax rolls, he shall return to the comptroller of public accounts a copy of same. (Id. sec. 4.)

Art. 7353. Commissioners' court to calculate the county rate, when.—The commissioners' courts of the several counties of this state, all the members thereof being present, at either a regular or special session, may at any time after the tax assessors of their respective counties have forwarded to the comptroller of public accounts the certificate required in article 7350 and prior to the time when the tax collector of such county shall have begun to make out his receipts, calculate the rate and adjust the taxes levied in their respective counties for general purposes to the taxable values shown by the assessment rolls. (Id. sec. 5.)

Art. 7354. (5048) Poll tax.—There shall be levied and collected from every male person between the ages of twenty-one and sixty years, resident within this state, on the first day of January of each year (Indians not taxed, and persons insane, blind, deaf and dumb or those who have lost one hand or foot, excepted) an annual poll tax of one dollar and fifty cents, one dollar for the benefit of free schools, and fifty cents for general revenue purposes; provided, that no county shall levy more than twenty-five cents poll tax for county purposes. (Acts 1882, p. 18.)

Art. 7355. (5049) Occupation taxes.—There shall be levied on and collected from every person, firm, company or association of persons pursuing any of the occupations named in the following numbered subdivisions of this article, an annual occupation tax, which shall be paid annually in advance, except where herein otherwise provided, on every such occupation or separate establishment, as follows: (Acts 1897, 1 S. S., p. 49.)

Section 1. Itinerant merchants.—From every merchant who may remove from place to place and offer for sale "bankrupt stocks" of goods, or advertising "fire sales," or "water and fire damaged stocks for sale," for a limited period of time, there shall be collected one hundred dollars per month for the first month, or less than a month, for each and every place where such business is located; and for each additional month that such sales are continued, at any given place, said merchant shall pay an additional sum of twenty dollars; provided, that where they remain for six months in one place, in addition to the one hundred dollars charged for the first month, they shall pay an additional sum of ten dollars per month; and provided, further, that, if they remain in one place for the period of twelve months, they shall be required to pay, in addition to the one hundred dollars for the first month, the sum fixed in the preceding paragraph, according to class and amount of goods sold in one year. (Id.)

Sec. 2. Traveling vendors of patent medicines.—Traveling vendors of patent medicines. From every traveling person selling patent or other medicines, fifty ($50.) dollars, and no traveling person shall so sell until said tax is so paid, provided this tax shall not apply to commercial travelers, drummers, or salesmen making sales, or soliciting trade for merchants engaged in the sale of drugs or medicines by wholesale. (Acts 1897, 1 S. S., p. 49; Acts 1917, ch. 132, sec. 1.)

Sec. 3. Auctioneers.—From every auctioneer, an annual tax of ten dollars. (Acts 1897, 1 S. S., p. 49.)

Sec. 4. Ship brokers and agents.—From every person, firm or association of persons following the occupation of ship brokers or ship agents, an annual tax of ten dollars. (Id.)

Sec. 5. Persons selling on commission.—From every person, firm or association of

persons selling on commission, ten dollars. (Id.)

Sec. 6. Itinerant physicians, etc.—From every itinerant physician, surgeon, oculist or medical or other specialist of any kind, traveling from place to place in the practice of his profession, except dentists practicing from place to place in the county of their residence, an annual tax of fifty dollars. (Id.)

Sec. 7. Shooting gallery.—From every person or firm keeping a shooting gallery at which a fee is paid or demanded, an annual tax of thirty dollars in each county. (Id.)

Sec. 8. Billiard and pool tables.—From every billiard or pool table, or any thing of the kind used for profit, twenty dollars; and any such table used in connection with any drinking saloon or other place of business where intoxicating liquors, cigars or other things of value are sold or given away, or upon which any money or other thing of value is paid, shall be regarded as used for profit. (Id.)

Sec. 9. Nine and ten pin alleys.—From every nine or ten pin or other alley used or operated for profits by whatever name called, constructed or operated upon the principle of a bowling alley upon which pins, pegs, balls, rings, hoops or other devices are used, without regard to the number of pegs, pins, hoops, rings or balls used and without regard to the number of tracks or alleys in the same building or place, or whether the balls or other devices are rolled or used by hand or otherwise, one hundred dollars. Any alley used in connection with any drug store, or place where intoxicating liquors or tobacco in any form are sold or given away, or upon which money or other things of value are paid or charged for the privilege of playing shall be regarded as used and operated for profit. (Acts 1897, 1 S. S., p. 49; Acts 1917, ch. 173.)

Sec. 10. Hobby horses, etc.—From all persons keeping or using for profit any hobby horse, flying-jenny, or device of that character, with or without name, fifteen dollars for each county wherein the same are kept or used. (Acts 1897, 1 S. S., p. 49.)

Sec. 11. Foot peddlers.—From every foot peddler, five dollars in each county in which he peddles; from every peddler with one horse or one pair of oxen, the sum of seven dollars and fifty cents in the county in which he peddles; from every peddler with two horses or two pair oxen, ten dollars in each county in which said occupation is pursued; from every peddler with sail or other boat in streams along coasts or bays of this state, ten dollars in each county in which said occupation is pursued; provided, that nothing herein contained shall be so construed as to include traveling vendors of literature or traveling vendors of poultry, vegetables, fruits or other country produce exclusively, and fruit trees exclusively. (Id.)

Sec. 12. Clock peddlers.—From every person or firm who peddles out clocks, agricultural implements, cooking stoves or ranges, wagons, buggies, carriages, surreys and other similar vehicles, washing machines and churns, an annual tax of two hundred and fifty dollars, to be paid in each county in which said occupation is pursued; provided, that a merchant shall not be required to pay this special tax for selling the articles named in this chapter when sold in his place of business. (Id.)

Sec. 13. Theaters.—From every theater or dramatic representation for which pay for admission is demanded or received in towns or cities of fifteen hundred inhabitants or less, one dollar; in towns and cities of fifteen hundred and not over three thousand, two dollars; in towns and cities of over three thousand and not less than five thousand, three dollars; in towns and cities over five thousand and not over ten thousand, four dollars, and in towns and cities of over ten thousand inhabitants, five dollars per day for every day they may perform; provided, that theatrical or dramatic representations given by performers for instruction only, or entirely for charitable purposes, shall not be herein included; provided, however, that this tax shall not be collected where the performances are exhibited in regularly recognized opera houses or theaters; but in lieu of said tax the managers of said opera houses or theaters shall pay an annual occupation tax of twenty-five dollars. (Id.)

Sec. 14. Circus.—From every circus or wild west show wherein, among other acts, broncho-busting, rough-riding, equestrian or acrobatic feats are performed or exhibited for which pay for admission is demanded or received, for each day or part thereof on which performances or exhibitions are given, where an admission fee of 75 cents or over is charged, $225; for each day or part thereof on which performances or exhibitions are given where an admission fee of any sum from 50 cents to 75 cents is charged, $200; for each day or part thereof on which performances or exhibitions are given where an admission fee of 50 cents or less is charged, $150; provided, that the amount of fee charged for reserved seats shall be considered as a part of such admission fee; provided that where there is a combination of circus and menageries, wild west and menagerie or circus or wild west and other exhibitions, the highest tax fixed by this act for any division or department of the combination shall be collected; provided, further, that every show or exhibition which advertises itself as a circus, wild west show or menagerie or a combination of any of them, shall be held and construed to be such for the purposes of the levy and collection of occupation taxes provided for herein. (Acts 1911, p. 142, sec. 1.)

Sec. 15. Menagerie, etc., museum, etc.; carnivals.—From every menagerie, wax works, side shows or exhibition, whether connected with a circus or not, where a separate fee for admission is demanded or received, ten dollars for every performance or exhibition, in which fees for admission are received; provided, that from any museum, menagerie or zoological exhibition, or a combination thereof, operated and maintained in any city or town and open for admission all day continuously, in which a charge for admission is demanded or received, an annual tax of fifty dollars. Provided, that where any carnival, or carnivals, shows, amusements or entertainments are held under the auspices, direction or control of any chamber of commerce of any city or other similar organization, for not longer during any one

year of a period or periods aggregating thirty days, it shall not be necessary for such carnivals, shows or entertainments to pay any tax to the State, city or county during the operation of said show by said chamber of commerce or other similar organization, but there shall be assessed against said chamber of commerce a State tax of one hundred dollars. (Acts 1897, 1 S. S., p. 49; Acts 1915, ch. 135, sec. 1.)

Sec. 16. Acrobatic performances.—From every exhibition where acrobatic feats are performed and an admission fee charged for profit, not connected with the circus or theater, ten dollars for each performance. (Acts 1897, 1 S. S., p. 49.)

Sec. 17. Sleight of hand performances.—From every sleight of hand performance or exhibition of legerdemain, not connected with a theater or circus, twenty-five dollars. (Id.)

Sec. 18. Wax-works, etc.; benevolent associations exempt.—From every menagerie, wax-works or exhibition of any kind where a separate fee for admission is demanded or received, ten dollars for every day on which fees for such admission are received; provided, that exhibitions by associations organized for promotion of art, science, charity or benevolence, shall be exempt from taxation; and provided, further, that persons who form a museum composed entirely of the products of Texas shall have the right to exhibit the same for a fee without paying any occupation tax. (Id.)

Sec. 19. Concerts, etc.; exemptions.—From every concert where a fee for admission is demanded or received, two dollars; provided, that entertainments when given by the citizens for charitable purposes, or for the support or aid of literary or cemetery associations are exempt. (Id.)

Sec. 20. Insurance adjusters and general agents.—From each and every person acting as general adjuster of losses, or agents of fire and marine insurance companies, who may transact any business as such in this state, an annual occupation tax of fifty dollars. By "general agent," as used in this law, is meant any person or firm, representative of any insurance company in this state, or who may exercise a general supervision over the business of such insurance company in this state, or over the local agency thereof in this state, or any subdivision thereof. (Id.)

Sec. 21. Lightning rod agents.—From every person, firm or association of persons, dealing in lightning rods, an annual tax of thirty-six dollars to the state and eighteen dollars as county tax to the county in which such business is carried on; and upon every person canvassing for the sale of lightning rods, an annual tax of one hundred dollars to the state and fifty dollars as county tax, in each county in which such canvassing is done. (Id.)

Sec. 22. Cotton brokers and commission merchants.—From every person, firm or association of persons following the occupation of cotton broker, cotton factor, or commission merchant, in a city of ten thousand inhabitants or over, thirty-five dollars; and in all cities and towns of less than ten thousand inhabitants, an annual tax of eighteen dollars; provided, that a merchant who pays an occupation tax under this law shall not be considered as a cotton broker. A "commission merchant," in the meaning of this article, is every person, firm or association of persons, receiving country produce, horses, cattle, sheep, hogs, grain, corn, hay, lumber, shingles, wood, coal, goods, wares and merchandise, or anything else for sale, to be accounted for to the owner when sold, and charging a commission therefor. (Id.)

Sec. 23. Pawnbrokers.—From every pawnbroker, an annual tax of one hundred and fifty dollars. (Id.)

Sec. 24. Sewing machine dealers.—From every person, firm, agency, or association of persons dealing in sewing machines, an annual tax of fifteen dollars to the state and seven dollars as a county tax in every county where such business may be carried on; provided, that a merchant who pays an occupation tax, as required by this article, shall not be required to pay this special tax to sell sewing machines when sold in his place of business. (Id.)

Sec. 25. Gas companies.—From each gas company, manufacturing gas in towns and cities of ten thousand or more inhabitants, thirty-five dollars; in a city or town of less than ten thousand inhabitants, twenty dollars. (Id.)

Sec. 26. Electric light companies.—From each electric light company operating an electric light plant in a town or city of ten thousand inhabitants or more, thirty-five dollars; in a city or town of less than ten thousand inhabitants, twenty dollars. (Id.)

Sec. 27. Waterworks companies.—From each waterworks company operating a waterworks plant in a town or city of ten thousand inhabitants or more, thirty-five dollars; in a city or town of less than ten thousand inhabitants, twenty dollars. (Id.)

Sec. 28. Money lenders.—From every person, firm, or association of persons loaning money as agent or agents for any corporation, firm or association, either in this state or out of it, an annual occupation tax of one hundred and fifty dollars for the state, for the principal office, and a county tax of fifteen dollars from each agent for each county in which he may do business, and no additional occupation tax shall be levied by any county, city or town in this state. (Id.)

Sec. 29. Credit associations.—From each person, party, partnership or corporation engaged in the business of inquiring into and reporting upon the credit or standing of persons engaged in business in this state, or acting as agent or business manager in this state for any such person, party, partnership, joint stock association, or corporation, three hundred dollars; and provided, further, that no county, city or town shall levy or collect any occupation tax upon or from any such person, party, partnership, joint stock association, or corporation. The payment of this tax, evidenced by the receipt of the comptroller of public accounts, shall exempt the company or party paying the same from the payment of this tax in any other county; and payment of such tax

shall not be required of any sub-agent or correspondent of the party or company carrying on such business in this state. (Id.)

Sec. 30. Skating rinks.—From each and every owner or keeper of any skating rink used for profit, twenty-five dollars. (Id.)

Sec. 31. Ball parks.—From every manager of a base ball park in a city or town containing five thousand or more inhabitants, where an admission fee is charged, twenty-five dollars. (Id.)

Sec. 32. Ice dealers.—From each person or corporation, who are wholesale dealers, selling imported or home-made ice to the trade to be sold again, in cities and towns of twenty thousand inhabitants, or more, fifty dollars; in cities and towns of less than twenty thousand inhabitants, or more than ten thousand inhabitants, thirty dollars; in cities and towns of less than ten thousand inhabitants, and more than five thousand inhabitants, twenty dollars; in cities and towns of less than five thousand inhabitants, ten dollars. (Id.)

Sec. 33. Race tracks.—From every owner or manager of every race track, one mile or more in length, used for profit, one hundred dollars; from each owner or manager of every race track, one-half mile or less in length, fifty dollars per annum; provided, this shall not apply to race tracks owned by private individuals and used only for training purposes, or in connection with agricultural fairs and expositions. (Id.)

Sec. 34. Street car companies.—From every street car company in this state, two dollars per mile on each mile of track owned by said company or corporation. (Id.)

Sec. 35. Phonographs, etc.—From each owner or manager of every phonographic, electric battery, graphophone or other like machines or instruments, where a fee is charged, an annual tax of twenty-five dollars; provided, that when an electric battery is used by a regularly authorized physician on a patient no tax shall be charged. (Id.)

Sec. 36. Moving picture shows.—From each owner or keeper of every kinetoscope, cinetograph or similar machine or instrument used for profit, which shows the life-like motions of persons or animals, an annual occupation tax of twenty-five dollars. (Id.)

Sec. 37. Panorama or view shows.—From each owner, manager or keeper of every panorama or view show, used for profit, exhibiting in a wagon, room, tent or elsewhere, an annual occupation tax of ten dollars and a county occupation tax of two dollars per annum. A panorama or view show, in the meaning of this act, is a show exhibiting pictures, statuary or other works of art which are to be viewed through stereoscopic or magnifying lenses. (Id.)

Sec. 38. Medicine shows, etc.—From each owner, manager or keeper of every show or company of persons giving exhibitions of music, songs, recitations, sleight of hand, gymnastic, dancing or other kinds of performances in a tent, house or elsewhere, which said exhibitions are used for profit by sale of medicines, electric belts or other articles of value, whether charge is made only for seats or not, an annual occupation tax of fifty dollars and a county occupation tax of two dollars and fifty cents for every such performance or exhibition; provided, this tax shall not be assessed when these performances are given inside the grounds of any state or county fair during the time that said state or county fair is giving its annual exhibition. (Id.)

Sec. 39. Brokers.—From every person, firm or association of persons selling on commission, if in a city of more than ten thousand inhabitants, fifty dollars; if in a city or town of less than ten thousand inhabitants, twenty-five dollars. This article is intended to cover every person, firm or association of persons selling on samples only, and who do not carry any stock or merchandise or anything else on hand; provided, that this tax shall not apply to commercial travelers or salesmen making sales or soliciting trade from merchants. (Id.)

Sec. 40. Cigarette dealers.—From all dealers in cigarettes in this state, the sum of ten dollars per annum, a cigarette being within the meaning of this act the same as defined by the laws of the United States government; provided, that this tax shall be in addition to the occupation tax levied on merchants, and any other tax levied under the law; and provided, further, that each dealer shall be required to procure an annual license from the county clerk of the county where he proposes to sell cigarettes, which shall be granted for no shorter or longer period than one year; and provided, further, that the license shall describe the house and locality where the dealer proposes to sell cigarettes. (Id.)

Art. 7356. Tax on dealers in cannon crackers, etc.—There shall be levied upon every person, firm or corporation engaged in the occupation of selling cannon crackers, or toy pistols used for shooting or exploding cartridges, within this state, an annual tax of five hundred dollars, and counties and incorporated cities or towns in which such business shall be located shall have the power to levy a tax of one-half the above amount as now provided by law in addition to the above tax, and such person, firm or corporation so selling such cannon crackers shall be required to pay an additional tax in the above amount and take out an additional license for each separate establishment or place in which such cannon crackers shall be sold. By the term, "cannon cracker," is meant any fire cracker or other combustible package more than two inches in length, and more than one inch in circumference commonly sold and exploded for purposes of amusement. Nothing in this article shall be so construed as to prohibit the sale of or to place a tax on the sale of cartridges, combustible packages or explosives commonly used for fire arms or artillery, mining, excavating earth or stone, scientific purposes or for any public or private work. (Acts 1909, p. 174.)

Art. 7357. (5050) County ad valorem, etc.—The commissioners' courts of the several counties of this state shall have the power to levy, for county revenue purposes, a tax of one-fourth of one per cent, and, for roads and bridges, fifteen cents on the one hundred dollars valuation of all property subject to a state tax by the provisions of this title; and, for the payment of debts incurred prior to September, 1883, and for the erection of public buildings and other perma-

nent improvements, they shall have power to levy a tax not to exceed twenty-five cents on the one hundred dollars valuation in any one year; and, for the improvement of public roads, a tax not to exceed fifteen cents on the one hundred dollars valuation under the restrictions provided in chapter seven of title ninety-seven, and shall have power to levy a special tax for the further maintenance of public free schools, and the erection within each school district of school buildings therein in counties not exempt from the district school system; provided, that two-thirds of the qualified property taxpaying voters of the district, voting at an election to be held for that purpose, shall vote such tax not to exceed in any one year twenty cents on the one hundred dollars valuation of the property subject to taxation in such district, and shall have the right to levy one-half of the occupation tax levied by the state upon all occupations not herein otherwise specially exempted; provided, any one wishing to pursue any of the vocations named in this chapter, upon which a county occupation tax may be levied, may do so by paying the same quarterly; and provided, further, the receipt of the proper officer under seal shall be prima facie evidence of the payment of such taxes as are herein named; and provided, further, the provisions of this law shall not be deemed to affect the provisions of any law specially authorizing any commissioners' court to levy a different rate of tax; and provided, further, no person shall be allowed license for selling intoxicating or spirituous liquors, or for keeping any nine or ten pin alley, or billiard, bagatelle, pigeon-hole, jenny-lind, devil-among-the-tailors table, or anything of the kind used for profit, for a period of less than twelve months; and provided, further, the mayor and board of aldermen of any incorporated town or city shall in no case levy a greater tax on any occupation than that authorized by this chapter to be levied by the county commissioners' court; and be it further provided, that in all cases where any dealer in merchandise, wares or goods of any kind, subject to ad valorem or occupation taxes, or both, under the provisions of this law, who shall after the rendition of said merchandise. wares or goods for taxation, or after becoming liable for any occupation tax, become bankrupt or make assignment of said merchandise, wares or goods, then the collector of taxes shall at once present to the receiver or assignee of said dealer for payment of the amount due for said taxes by said dealer; and in case of failure of said receiver or assignee to at once pay the amount of said taxes, the said collector shall levy upon, seize and sell from the said merchandise, wares or goods, enough to satisfy the amount of said taxes; and said taxes until paid shall constitute a prior lien on said merchandise, goods and wares in default of said taxes. (Acts 1885, p. 105; Acts 1891, p. 51.)

Art. 7358. (5051) Taxes payable in what.—The taxes herein levied by this chapter are hereby made payable in the currency or coin of the United States; provided, that persons holding scrip issued to themselves for services rendered the county may pay their county ad valorem taxes in such scrip. (Acts 1897, 1 S. S., p. 38.)

Art. 7359. (5052) Collector to keep books, etc.—The collector of taxes shall keep a book of such size and character as may be necessary, in which shall be entered quarterly, at the following dates, to-wit, January 1, April 1, July 1 and October 1, or within ten days thereafter, in which to require the returns to be made under the provisions of this chapter, the several amounts as shown by such returns for which and upon which any person, firm or association of persons is or may be liable to a tax upon occupations under article 7355; and within fifteen days from the time of receiving and making up the several amounts and the sums due upon such amounts as occupation tax, the collector shall forward to the comptroller of public accounts a transcript or duplicate of the return and the amount as shown by his record, this transcript and record from which it is taken to show the amount of such quarterly returns and the tax due thereon from every person, firm or association of persons liable to such tax; provided, that nothing contained in this article is intended to affect the liability, which, in the absence of this statute, would be incurred under any special enactment of this state. (Acts 1879, p. 143.)

Art. 7360. (5053) Tax collector to be furnished books, etc.—The comptroller of public accounts shall be authorized and required to furnish tax collectors the necessary books and blanks required to be used by such collectors under the provisions of this chapter. (Id. sec. 7.)

Art. 7361. (5054) Tax to be paid before occupation begins.—The payment of the specific tax herein provided for shall be required by the collector of taxes to be made before any person, firm or association of persons shall be allowed to engage in any occupation requiring a license under the provisions of this law, this payment to be made for a period not less than three months. All arrearages of taxes that may be due by reason of any such business having been carried on shall be a lien upon all the stock and fixtures owned or used in or making a part of any business or vocation liable to such tax under the provisions of this chapter, and which lien shall authorize the collector to sell, after due notice, so much stock or other personal property of any person, firm or association of persons owing taxes under the provisions of this chapter, as will satisfy such claim, together with the cost of such proceeding. (Id. sec. 9.)

Art. 7362. (5055) Occupation tax receipts furnished collectors.—The comptroller shall cause occupation tax receipts for each occupation to be printed, with his signature, for all occupations payable to the collectors, annual receipts for those that are paid annually, and quarterly receipts for all that can be paid quarterly; such receipts shall state the name of the occupation and the amount of the tax, and have blanks for the year, month and name of licensee, and also have a blank space for signature of the collector; these receipts shall each have a stub attached, stating briefly the substance of the attached receipt, and shall be bound in books; and he shall forward to each collector a proper number of said receipts, and charge him with the amount represented therein, and cause him to account therefor.

The collector, whenever collecting any occupation tax, shall fill the blanks in the receipt and stub by writing thereon the time for which he collects and the name of the licensee, and shall sign the receipt and stub officially; and no person shall pursue any occupation, unless he has a receipt, signed as herein provided, by the comptroller and collector; and every person, firm or corporation keeping an office or having a local place of business shall keep posted up in a conspicuous place his or their said licenses. (Id. sec. 9.)

Art. 7363. Account of occupation tax receipts by collectors.—When the comptroller furnishes collectors with blank occupation tax receipts, he shall furnish the commissioners' courts with the numbers and value of the receipts furnished to their respective collectors; and such courts shall charge their respective collectors with the number and such proportion of the value of the receipts so furnished as shall apply to the county tax, when such collectors shall make their settlements with the comptroller. The comptroller shall furnish the commissioners' court with the numbers and value of the receipts returned, and with the amount of the occupation taxes collected by their respective collectors. (Acts 1897, 1 S. S., p. 49, sec. 2.)

Art. 7364. (5056) License, transfer of.—Any person, firm, corporation or association of persons, who shall be the legal owners or holders of any unexpired occupation license issued in accordance with the laws of this state, shall be and are hereby authorized to transfer the same on the books of the officer by whom the same was issued. (Acts 1885, p. 27, sec. 1.)

Art. 7365. (5057) Purchaser of unexpired license may pursue occupation, when, etc.—The assignee or purchaser of such unexpired occupation license shall be authorized to pursue such occupation under such unexpired license for and during the unexpired term thereof; provided, that such assignee or purchaser shall, before following such occupation, comply in all other respects with all the requirements of the law provided for in original applications for such licenses; and provided, further, that nothing in this law shall be so construed as to authorize two or more persons, firms, corporations or associations of persons to follow the same occupation under one license at the same time; and provided, further, that whenever any person, firm, corporation or association of persons following an occupation shall be closed out by legal process, the occupation license shall be deemed an asset of said person, firm, corporation or association of persons, and sold as other property belonging to said person, firm, corporation or association; and the purchaser thereof shall have the right to pursue the occupation named in said license, or transfer it to any other person; provided, such occupation license shall under no circumstances be transferred more than one time. (Id. sec. 2.)

REVENUE AGENT

Arts. 7366-7368. [Repealed by Acts 1918, 4th C. S., ch. 94, sec. 1.]

Art. 7368a. Laws repealed.—Any and all laws heretofore enacted by the Legislature of the State of Texas, appropriating moneys for the support and maintenance of the State Revenue Agent's office, be and the same are hereby repealed. (Acts 1918, 4th C. S., ch. 94, sec. 2.)

Section 1 of this act repeals arts. 7074, 7366, 7367, 7368, and 7392. Section 3 provides that the act shall become effective Jan. 15, 1919.

Art. 7368b. Comptroller of Public Accounts to perform duties, etc., of State Revenue Agent.—From and after January 15, 1919, the Comptroller of Public Accounts of the State of Texas be, and he is hereby authorized and empowered to perform the duties and functions of office heretofore performed by the State Revenue Agent, and all records of the office, books, furniture, etc., shall be transferred by the State Revenue Agent to the office of the Comptroller of Public Accounts of the State of Texas when the provisions of this Act become effective, for safe keeping. (Id. sec. 4.)

CHAPTER TWO

TAXES BASED UPON GROSS RECEIPTS

Art. 7369. Express companies.—Each and every individual, company, corporation or association doing an express business, by railroad or water, in this state, shall, on or before the first day of March of each year, make a report to the comptroller of public accounts under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the amount of gross receipts from charges and freights within this state paid to or collected by such individual, company, corporation or association on account of money, goods, merchandise or other character of freight carried within this state during the twelve months next preceding. Said individuals, companies, corporations or associations, at the time of making said report, shall pay to the treasurer of the state of Texas an occupation tax for the year beginning on said date equal to two and one-half per cent of said gross receipts as shown by said report. (Acts 1907, p. 479, sec. 1.)

Art. 7370. Telegraph companies.—Each and every individual, company, corporation or association owning, operating, controlling or managing any telegraph lines in this state, or owning, operating, controlling or managing what is known as wireless telegraph stations, for the transmission of messages, or aerograms and charging for the transmission of such messages or aerograms, shall make quarterly, on the first days of January, April, July and October of each year, a report to the comptroller of public accounts under oath of the individual, or of the president, treasurer or superintendent of such companies, corporation or association, showing the gross amount received from all business within this state during the preceding quarter, in the payment of telegraphic or aerograms charges, including the amount received on full rate messages and aerograms and half rate messages and aerograms, and from the lease or use of any wires or equipment within the state during said quarter. Said individuals, companies, corporations and associations, at the time of making said report, shall pay to the treasurer of the state of Texas an occupation tax for the quarter beginning on said date equal to two and three-fourths per cent

of said gross receipts as shown by said report. (Id. sec. 2.)

Art. 7371. Gas, electric lights, power or waterworks.—Each and every individual, company, corporation or association, owning, operating or managing or controlling any gas, electric light, electric power or waterworks or water and light plant. within this state and charging for gas, electric lights, electric power or water, shall make quarterly, on the first days of January, April, July and October of each year, a report to the comptroller of public accounts under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the gross amount received from the business done within this state in the payment of charges for gas, electric lights, electric power and water for the quarter next preceding. Said individual, company, corporation or association, at the time of making said report for any town or city of ten thousand inhabitants and less than twenty-five thousand inhabitants, shall pay to the treasurer of the state of Texas an occupation tax for the quarter beginning on said date equal to one-fourth of one per cent of said gross receipts, as shown by said report; and, for any town or city of twenty-five thousand inhabitants or more, the said individual, company, corporation or association, at the time of making said report, shall pay to the treasurer of the state of Texas an occupation tax for the quarter beginning on said date an amount equal to one-half of one per cent of said gross receipts as shown by said report; provided, that nothing herein shall apply to any gas, electric light, electric power or waterworks or water and light plant within this state owned by any city or town. (Id. sec. 3.)

Art. 7372. Collecting or commercial agency.—Each and every individual, company, corporation or association, owning, operating, managing or controlling any collecting agency, commercial agency, or commercial reporting credit agency within this state, and charging for collections made, or business done, or reports made, shall make quarterly, on the first days of January, April, July and October of each year, a report to the comptroller of public accounts under oath of the individual or of the president, treasurer, or superintendent of such company, corporation or association, showing from business done within this state the gross amount received in the payment of charges for collections made and business done and reports made during the quarter next preceding. Such individuals, companies, corporations or associations at the time of making said report shall pay to the treasurer of the state of Texas an occupation tax for the quarter beginning on said date equal to one-half of one per cent of said gross receipts as shown by said report. (Id. sec. 4.)

Art. 7373. Car companies.—Each and every individual, company, corporation or association, residing without the state of Texas, or incorporated under the laws of any other state or territory, or nation, and owning stock cars, refrigerator and fruit cars of any kind, tank cars of any kind, coal cars of any kind, furniture cars or common box cars and flat cars, and leasing, renting or charging mileage for the use of such cars within the state of Texas, shall make quarterly, on the first days of January, April, July and October of each year, and report to the comptroller of public accounts under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the amount of gross receipts from such rentals, or mileage, or from other sources of revenue received from business done within this state, during the quarter next preceding. Said individuals, companies and corporations, and associations, at the time of making said report, shall pay to the treasurer of the state of Texas an occupation tax for the quarter beginning on said date equal to three per cent of said gross receipts as shown by said report. (Id. sec. 5.)

Art. 7374. Pipe line companies.—Each and every individual, company, corporation or association whether incorporated under the laws of this state, or of any other state or territory, or of the United States, or of any foreign nation, which owns, manages, operates, leases or rents any pipe line or pipe lines within this state, whether such pipe line or pipe lines be used for transmission of oil, natural or artificial gas, whether such oil or gas be for illuminating or fuel purposes, or for steam, for heat or power, or for any other purpose, and whether such pipe line or pipe lines be used for the transmission of articles by pneumatic or other power, shall, on or before the first days of January, April, July and October of each year, pay to the state of Texas an occupation tax equal to two per cent of its gross receipts, if such pipe line or pipe lines lie wholly within this state; and, if such pipe line or pipe lines lie partly within and partly without the state, such individuals, companies, corporations and associations shall pay a tax equal to two per cent of such proportion of its gross receipts, as the length of such line or lines within the state bears to the whole length of such line or lines; provided, that if satisfactory evidence is submitted to the comptroller of public accounts at any time prior to the date fixed by this article for the payment of the tax herein imposed, that any other proportion more fairly represents the proportion which the gross receipts of any pipe line or pipe lines for any quarter within this state bears to its total gross receipts, it shall be his duty to collect for such quarter from every such pipe line or pipe lines a tax equal to such other proportion of two per cent of its total gross receipts. For the purpose of determining the amount of such tax, the individual or the president, treasurer or superintendent of such company, association or corporation, shall quarterly, on the dates aforesaid, make a report to the comptroller of public accounts, under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the gross receipts of such pipe line or pipe lines from every source whatsoever for the quarter next preceding, and shall immediately pay to the state treasurer an occupation tax for the quarter beginning on said date, calculated on the gross receipts so reported. (Id. sec. 6.)

Art. 7375. Sleeping, palace or dining car companies.—Every sleeping car company, palace car company, or dining car company doing business in this state, and each individual, company, corporation or association leasing or renting, owning, controlling or managing any palace cars, dining cars, or sleeping cars within this state for the use of the public, for which any fare is charged, shall, on the first days of January, April, July and October of each year, report to the comptroller of public accounts, under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the amount of gross receipts earned from any and all sources whatever within this state, except from receipts derived from buffet service, during the quarter next preceding. Said individuals, companies, corporations and associations, at the time of making said report, shall pay to the treasurer of the state of Texas an occupation tax for the quarter beginning on said date equal to five per cent of said gross receipts as shown by said report. The tax herein provided for shall be in lieu of all other taxes now levied upon sleeping car, palace car or dining car companies, except the tax of twenty-five cents on the one hundred dollars of the capital stock of such car companies as provided by law. (Id. sec. 7.)

Art. 7376. Insurance companies.—Every insurance company transacting the business of fire, marine, marine inland, accident, credit, title, live stock, fidelity, guaranty, surety, casualty, or any other kind or character of insurance business other than the business of life insurance, within this state, and other than fraternal benefit associations, at the time of filing its annual statement, shall report to the commissioner of insurance and banking the gross amount of premiums received in the state upon property, and from persons residing in this state during the preceding year, and each of such companies shall pay an annual tax upon such gross premium receipts as follows: Shall pay a tax of two and six-tenths per cent, provided, that any company doing two or more kinds of insurance business herein referred to, shall pay the tax herein levied upon its gross premiums received from each of said kinds of business; and the gross premium receipts where referred to in this Act are understood to be the premium receipts reported to the commissioner of insurance and banking by the insurance companies upon the sworn statement of two principal officers of such companies, less return premiums paid policy holders, and the premiums paid for reinsurance in companies authorized to do business in this state. Upon receipt by him of sworn statements, showing the gross premium receipts by such companies, the commissioner shall certify to the state treasurer the amount of taxes due [by] each company, which tax shall be paid to the state treasurer for the use of the state on or before the first of March following, and the receipt of the treasurer shall be evidence of the payment of such taxes. No such insurance company shall receive a permit to do business in this state until such taxes are paid. If any such insurance company shall have as much as one-fourth of its entire assets, as shown by said sworn statement, invested in any or all of the following securities: Real estate in the state of Texas, bonds of this state or of any county, incorporated city or town of this state, or other property in this state in which by law such companies may invest their funds, then the annual tax of any such companies shall be one per cent. of its said gross premium receipts; and if any such company shall invest as aforesaid as much as one-half of its assets, then the annual tax of such company shall be one-half of one per cent. of its gross premium receipts, as above defined; and provided, further, that no occupation tax shall be levied on insurance companies herein subjected to a gross premium receipt tax by any county, city or town. Provided, also, that all mutual fraternal benevolent associations, now or hereafter doing business in this state under the lodge system and on the assessment plan, whether organized under the laws of this state or a foreign state or country, are exempt from the provisions of this section.

The taxes aforesaid shall constitute all taxes and license fees collectible under the laws of this state against any such insurance companies, and no other occupation or other taxes shall be levied on or collected from any insurance company by any county, city or town, but this Act shall not be construed to prohibit the levy and collection of state, county and municipal taxes upon the real and personal property of such companies. Provided, that purely co-operative or mutual fire insurance companies carried on by the members thereof solely for the protection of their own property, and not for profit, shall be exempt from the provisions of this bill. Provided, that in addition to the tax above prescribed, each company doing the business herein referred to and affected by the provisions of the Act of the Fourth Called Session of the Thirty-first Legislature, approved September 6, 1910, and published as chapter 8, General Laws of said session, shall pay its pro rata share of the charge or cost of maintaining the state insurance board as provided by section 28 of said Act, approved September 6, 1910, and published as chapter 8 of the General Laws of the Fourth Called Session of the Thirty-first Legislature; and provided, further, that portion of section 28 of the state insurance board law which reads as follows: "Provided that the collections from insurance companies provided for in this section shall not be made for any year during which any such company shall be liable under the laws of this state to the payment of an occupation tax at a rate of two and one-half per cent or more of the gross premiums received, less deductions for reinsurance and return premiums on cancelled policies," be and the same is hereby repealed. (Acts 1911, p. 216, sec. 1.)

Art. 7377. Wholesale dealer in oils; "wholesale dealer" defined.—Each and every individual, company, corporation or association created by the laws of this state, or any other state or nation, which shall engage in his own name, or in the name of others, or in the name of its representatives, or agents in this state in the business of wholesale dealers in coal oil, naphtha, benzine or any other mineral oils refined from petroleum, shall make quarterly, on the first days of January, April, July and October of each year, a report to the comptroller of public accounts, under oath of the individual or of the president, treasurer or superintendent of such

company, corporation or association, showing the gross amount collected and uncollected from any and all sales made within this state of any of said articles during the quarter next preceding. Said individuals, companies, corporations, and associations, at the time of making said report, shall pay to the treasurer of the state of Texas an occupation tax for the quarter beginning on said date equal to two per cent of said gross receipts and amount uncollected from said sales as shown by said report. A wholesale dealer, within the meaning of this article, is any individual, company, firm, partnership, corporation or association who buys any of the articles hereinbefore mentioned, either in his own name or in the name of others, or in the name of their representative or agent, and sells same either in his name, or in the name of others, or in the name of their representatives or agents, to any person, firm, corporation or association to be sold again. (Acts 1907, p. 479, sec. 9.)

Art. 7378. Interurban and electric railway companies.—Each and every individual, company, corporation or association, owning, operating or controlling any interurban, trolley, traction or electric street railway in this state and charging for transportation on said railway, shall make quarterly, on the first days of January, April, July and October of each year, a report to the comptroller of public accounts, under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the amount of gross receipts from said charges for transportation on said railway paid to or uncollected by said individuals, company, corporation or association for the quarter next preceding. Said individual, company, corporation or association, at the time of making said report, if in or if connecting any town or city of less than twenty thousand inhabitants, shall pay to the treasurer of the state as an occupation tax for the quarter beginning on said date equal to one-half of one per cent of said gross receipts as shown by said report; if in a city of more than twenty thousand inhabitants, said individual, company or corporation or association, at the time of making said report, shall pay to the treasurer of the state of Texas an occupation tax for the quarter beginning on said date equal to three-fourths of one per cent. of said gross receipts as shown by said report; provided, that in ascertaining the population of any city or town, the same shall be ascertained by the last United States census; and provided, further, that where any interurban railroad shall connect any town having a population of more than twenty thousand with another of a less population, that it shall be liable for the taxes measured by the population of the largest town; provided, further, that the provisions of this chapter shall not apply to any street railway or traction company wholly within any town of less than ten thousand inhabitants. (Id. sec. 10.)

Art. 7379. [Omitted.]

This article, imposing a tax upon the gross receipts of wholesale dealers in or distributors of intoxicating liquors, is omitted from this compilation as having been rendered inoperative by the amendment of art. 16, § 20, of the State Constitution, and by Acts 1919, 2d C. S., ch. 78, post, Penal Code, arts. 588¼-588¼tt, and by the Prohibition Amendment to the Constitution of the United States, and by the Volstead Act.

Art. 7380. Dealers in pistols.—Each and every individual, company, corporation or association created by the laws of this state or any other state, who shall engage in his own name or in the name of others, or in the names of its representatives or agents in this state, in the business of a wholesale or retail dealer of pistols, shall make quarterly, on the first days of January, April, July and October of each year, a report to the comptroller of public accounts, under oath of the individual or of the president, treasurer or superintendent of said company, corporation or association, showing the gross amount collected and uncollected from any and all sales made within this state of all such firearms during the quarter next preceding. Such individuals, companies, corporations and associations, at the time of making said report, shall pay to the treasurer of the state of Texas an occupation tax for the quarter beginning on said date equal to fifty per cent of said gross receipts from sales of all firearms as shown by said report. (Acts 1907, p. 479, sec. 12.)

Art. 7381. Text or law book publishers.—Each and every individual, company, corporation or association, whether incorporated under the laws of this state, or of any other state or nation, engaged in publishing, printing, or selling text books used in the schools of this state, or law books of any character, or owning, controlling or managing any such business, as text books or law book purchasers, within the state or out of it, and having state agencies within this state for the purpose of selling any book or books to be used in any of the schools of this state, or any law books, shall make quarterly, on the first days of January, April, July and October of each year, a report to the comptroller of public accounts, under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, or of the person owning, controlling or managing any such business, showing the gross amount received from such business done within this state from any and all sources during the quarter next preceding. Said individuals, companies, corporations and associations, at the time of making said report, shall pay to the treasurer of the state of Texas an occupation tax for the quarter beginning on said date equal to one per cent of said gross receipts, as shown by said report. (Id. sec. 13.)

Art. 7382. Telephone companies.—Each and every individual, company, corporation or association owning, operating, managing or controlling any telephone line or lines or any telephones within this state, and charging for the use of the same, shall make quarterly, on the first days of January, April, July and October of each year, a report to the comptroller of public accounts, under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the gross amount received from all business within this state during the preceding quarter, in the payment of charges for the use of its line or lines, telephone and telephones, and from the lease or use of any wires or equipment within this state during said

quarter. Said individuals, companies, corporations and associations, at the time of making said report, shall pay to the treasurer of the state of Texas an occupation tax, for the quarter beginning on said date, equal to one and one-half per cent of said gross receipts, as shown by said report. (Id. sec. 14.)

Art. 7383. Oil well companies.—Each and every individual, company, corporation or association, whether incorporated under the laws of this or any other State or territory or of the United States, or any foreign country which owns, controls, manages or leases any oil well within this State shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller of Public Accounts, under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association showing the total amount of oil produced during the quarter next preceding and the average market value thereof during said quarter. Said individuals, companies, corporations and associations at the time of making said report shall pay to the Treasurer of the State of Texas an occupation tax for the quarter beginning on said date, equal to one and one-half (1½%) per cent of the total amount of oil produced in this State by said individuals, companies, corporations or associations respectively, during the quarter next preceding at the average market value thereof, as shown by said report. (Acts 1907, p. 479, sec. 15; Acts 1919, ch. 77, sec. 1.)

Art. 7383a. Same subject; records.—Each and every individual, company, corporation, or association, mentioned in Article 7383, as above set forth, shall cause to be made, and to be kept and preserved, a full and complete record of all oil produced during the time so engaged in its production and said record shall be open to the inspection of all tax officers of this State. (Acts 1919, ch. 77, sec. 1.)

Art. 7384. Terminal companies.—Each and every individual, company, corporation or association, whether incorporated under the laws of this or any other state, or territory, or of the United States, or any foreign country, which owns, controls, manages or leases any terminal companies, or any railroad doing a terminal business within this state, shall make quarterly, on the first days of January, April, July and October of each year, a report to the comptroller of public accounts, under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the total amount of its gross receipts from all sources whatever within this state during the quarter next preceding, and the average market value thereof during said quarter. Said individuals, companies, corporations and associations, at the time of making said report, shall pay to the treasurer of the state of Texas an occupation tax for the quarter beginning on said date equal to one per cent of the total amount of its gross receipts from all sources whatever, as shown by said report. (Acts 1907, p. 479, sec. 16.)

Art. 7385. Tax to be paid when business is begun after beginning of quarter.—If any individual, company, corporation, firm or association, in this chapter mentioned, shall begin and engage in any business for which there is an occupation tax herein imposed, on or after the beginning day of the quarter for which said tax is imposed, then, and in all such cases, the amount of such tax for said beginning quarter shall be and is hereby fixed at the sum of fifty dollars, payable to the treasurer of the state of Texas in advance, but for the next succeeding quarter, and all other succeeding quarters, the tax shall be determined by reports to the comptroller of public accounts of the business for the preceding quarter, or part thereof, as herein otherwise in this chapter provided; and reports and payments of such tax shall be made subject to all other provisions of this chapter. (Id. sec. 17.)

Art. 7386. Penalty for failure to report.—Any person, company, corporation or association, or any receiver or receivers, failing to make report for thirty days from the date when said report is required by this chapter to be made, shall forfeit and pay to the state of Texas a penalty of not exceeding one thousand dollars. (Id. sec. 18.)

Art. 7387. Penalty for failure to pay tax.—Any person, company, corporation or association, or any receiver or receivers, failing to pay any tax for thirty days from the date when said tax is required by this chapter to be paid, shall forfeit and pay to the state of Texas a penalty of ten per cent upon the amount of such tax. (Id. sec. 19.)

Art. 7388. Penalties to be recovered by attorney general.—The penalties provided for by this chapter shall be recovered by the attorney general in a suit brought by him in the name of the state of Texas; and venue and jurisdiction of such suit is hereby conferred upon the courts of Travis county, Texas. (Id. sec. 20.)

Art. 7389. Permit not granted until tax is paid.—No individual, company, corporation or association, failing to pay all taxes imposed by this chapter, shall receive a permit to do business in this state, or continue to do business in the state, until the tax hereby imposed is paid. The receipt of the treasurer of the state of Texas shall be evidence of the payment of such tax. (Id. sec. 21.)

Art. 7390. Tax in addition to all other taxes.—Except as herein stated, all taxes levied by this chapter shall be in addition to all other taxes now levied by law; provided, that nothing herein shall be construed as authorizing any county or city to levy an occupation tax on the occupations and business taxed by this chapter. (Id. sec. 22.)

Art. 7391. Comptroller may require additional reports.—If for any reason the comptroller of public accounts is not satisfied with any report from any such person, company, corporation, co-partnership or association, he may require additional or supplemental reports containing information and data upon such matters as he may need or deem necessary to ascertain the true and correct amount of all taxes due by any such person, firm, or corporation. Every statement or report required by this chapter shall have affixed thereto the affidavit of the president, vice-president, secretary or treasurer of the person, corporation, co-partnership or association, or one of the persons or members of the partnership making the same, to the effect that the statement is true. The comp-

troller shall prepare blanks to be used in making the reports required by this chapter. (Id. sec. 23.)

Art. 7392. [Repealed by Acts 1918, 4th C. S., ch. 94, sec. 1.]

Art. 7392a. Persons, etc., subject to gross receipts tax required to have permit to transact business; issue of permit.—Every person, company, firm, partnership, corporation, or unincorporated company or association, engaged in any business within this State, upon which the laws of this State require the payment of a tax on gross receipts, shall after this Act become effective be required to have a permit to transact such business, to be issued by the Secretary of State, which permit shall be and remain posted, subject to the view of the public at the principal office of such person or concern to whom the same is issued. The permit shall be issued in such form as may be prescribed by the Attorney General, shall show the name of the person or concern to whom issued, the business to be transacted, and that the holder thereof has complied with this Act. (Acts 1918, 4th C. S., ch. 84, sec. 1.)

Art. 7392b. Permits to transact business; issue; duration of.—Permits to transact business shall be issued by the Secretary of State upon applications made upon forms prescribed by the Secretary of State, which applications shall show, to the satisfaction of the Secretary of State, the facts required to be shown in the permit; and shall show that the applicant has paid the gross receipts taxes prescribed by law, or that if the applicant is the vendee of a going business that his vendor has paid all his gross receipts taxes due, or to become due; such taxes are to be shown to be paid for the current quarter, or such other period of time as said taxes may be paid. The Secretary of State shall make such investigation as necessary to determine that such taxes have been paid and shall then issue a permit to transact business, authorizing the party to whom issued to transact business until the 31st day of December of the current year, after which date new permits for each year must be obtained, as in the first instance; provided, however, that those now engaged in business shall have sixty days after this Act becomes effective to obtain permits hereunder, but all those beginning business after this Act becomes effective must obtain a permit before transacting business. When a permit has been issued as herein provided, it shall be the duty of the Secretary of State to immediately certify such fact to the Comptroller of Public Accounts. (Id. sec. 2.)

Art. 7392c. Suspension of permit on non-payment of tax.—Within Thirty days after gross receipts taxes may become due by anyone transacting, or authorized to transact, business hereunder, if such tax remains unpaid, the Comptroller shall certify such fact to the Secretary of State, whose duty it shall be to notify the delinquent tax payers that his name has been certified to the Secretary of State as a delinquent and that unless the tax is paid to the Comptroller within ten days from the date of such notice the permit to transact business of the delinquent will be suspended by the Secretary of State. The notice herein provided for shall be given by the Secretary of State, mailing to the delinquent at his last known address a printed or written notice, and the mailing of such notice by the Secretary of State shall be a sufficient compliance of this Act. If the tax, with accrued penalties, is not paid within fifteen days after the mailing of the notice the Secretary of State shall note on his records that the permit to transact business of the delinquent has been suspended, giving the date upon which such action was taken by the Secretary of State. The Secretary of State shall then immediately certify such suspension to the Comptroller and to the Attorney General. After the permit to transact business has been suspended it shall be unlawful for the delinquent to continue to transact business, and it shall be the duty of the Secretary of State to cause to be published in some daily or weekly paper, published in the county of the delinquent's place of business, or if there is no newspaper published in such county, then in some daily newspaper of Statewide circulation, notice that the delinquent's permit to transact business has been suspended. (Id. sec. 3.)

Art. 7392d. Effect of act.—This Act shall be cumulative of all other laws on the subject, except where in direct conflict therewith, in which instances this Act shall govern. (Id. sec. 5.)

CHAPTER THREE

FRANCHISE TAX

Art. 7393. Tax to be paid by domestic corporations.—Except as herein provided, each and every private domestic corporation heretofore chartered, or that may hereafter be chartered, under the laws of this State, shall on or before the first day of May of each year, pay in advance to the Secretary of State a franchise tax for the year following which shall be computed as follows, viz: fifty cents on each one thousand dollars, or fractional part thereof, of the authorized capital stock of such corporation, unless the total amount of capital stock of such corporation actually paid in, plus its surplus and undivided profits, shall exceed its authorized capital stock; and in that event the franchise tax of such corporation for the year following shall be fifty cents on each one thousand dollars of capital stock of such corporation actually paid in, plus its surplus and undivided profits; provided, that such franchise tax shall not in any case be less than ten dollars; provided, that, where the authorized capital exceeds one million dollars, such franchise tax shall be fifty cents for each one thousand dollars up to and including one million dollars, and for each additional one thousand dollars in excess of one million dollars, it shall be twenty-five cents; and provided further, that where a domestic corporation does business outside the State, that the franchise tax of such corporation shall be computed upon that proportion of the authorized capital stock, plus the surplus and undivided profits, if any, of such corporation, as the total gross receipts of such corporation from its business done in Texas, bears to the total gross receipts of the corporation from all sources. (Acts 1907, p. 503, sec. 1; Acts 1919, ch. 60, sec. 1.)

Art. 7394. Tax to be paid by foreign corporations.—Except as herein provided, each and every foreign corporation authorized, or that may hereafter be authorized, to do business in this State, shall, on or before the first day of May of each year pay in advance to the Secretary of State a franchise tax for the year following which shall be computed as follows: the authorized capital stock, surplus and undivided profits, if any, of such corporation, the total gross receipts of such corporation from all its business and the total gross receipts from all of its business done in Texas for the calendar year immediately preceding shall be ascertained by the Secretary of State from sworn reports of the officers of such corporation or by such other method as may satisfy the Secretary of State and the capital stock of such corporation upon which the franchise tax herein provided is based shall be that proportion of the authorized capital stock, plus the surplus and undivided profits, if any, of such corporation, as the gross receipts from the Texas business of such corporation done within the State of Texas bears to the total gross receipts of such corporation from its entire business and the capital stock assignable to the Texas business and upon which the fees hereinafter provided shall be calculated and based being thus ascertained, the franchise tax which is hereby provided shall be computed as follows: one dollar on each one thousand dollars or fractional part thereof up to and including one hundred thousand dollars; fifty cents on each one thousand dollars or fractional part thereof in excess of one hundred thousand dollars up to and including one million dollars and twenty-five cents on each one thousand dollars or fractional part thereof in excess of one million dollars; provided that the minimum franchise tax to be paid by any foreign corporation shall be twenty five dollars; provided, however, that where such corporation has a surplus or undivided profits the same shall be added to the entire capital stock of such corporation and shall be taken and computed as a part thereof in determining the amount of such entire capital stock; provided that where a foreign corporation applying for a permit has theretofore done no business in Texas the franchise tax herein provided shall not be payable until the end of one year from the date of such permit at which time the franchise tax shall be computed upon that proportion of the authorized capital stock, plus the surplus and undivided profits, if any, of such corporation ascertained as above required as the gross receipts from its Texas business bears to the gross receipts of the corporation from its entire business done for the same period; and the second payment of such franchise tax shall be made for the period intervening between the date of such first payment and the first day of May following, the proportion of authorized capital stock, plus the surplus and undivided profits, if any, of such corporation, upon which the same shall be computed to be the same proportion that the gross receipts from the Texas business for such period bears to the gross receipts of the corporation from its entire business for the same period, and that thereafter such franchise tax shall be payable annually on the first day of May for the year succeeding computed upon that portion of the authorized capital stock, plus the surplus and undivided profits, if any, of such corporation which the gross receipts from the Texas business of such corporation bears to its entire gross receipts for the calendar year preceding as hereinabove provided. (Acts 1907, p. 503, sec. 2; Acts 1917, ch. 84, sec. 1; Acts 1919, ch. 42, sec. 1.)

Section 2 of Acts 1919, ch. 42, repeals all conflicting laws.

Art. 7395. Only part of tax to be paid, when.—Whenever a private domestic corporation is chartered in this state, and whenever a foreign corporation is authorized to do business in this state, and such corporation shall be required to pay in advance to the secretary of state, as its franchise tax from that time down to and including the thirtieth day of April next following, only such proportionate part of its annual franchise tax, as hereinabove prescribed, as the period of time between the date of filing of its articles of incorporation or the issuance of its permit to do business, as the case may be, and on the first day of May next following, bears to a calendar year. (Acts 1907, p. 503, sec. 3.)

Art. 7396. Certain affidavits may be required.—For the purpose of determining the amount of the first franchise tax payment required by this chapter of any domestic corporation which may be hereafter chartered, or of any foreign corporation which may hereafter apply for a permit to do business within this state, and also for the purpose of determining the correctness of any report which is provided for in this chapter, the secretary of state may, whenever he may deem it necessary or proper to protect the interests of the state, require any one or more of the officers of such corporations to make and file in the office of the secretary of state an affidavit or affidavits in writing, which shall be subscribed by such officer, and by him sworn to before some officer who is by law duly authorized to administer oaths, and verified by his seal of office, setting forth fully the facts concerning the amount of the surplus and undivided profits, respectively, if any, of such domestic or foreign corporation; and until the secretary of state shall be fully satisfied as to the amount of such surplus and undivided profits, respectively, if any, he shall not file the articles of incorporation of such proposed domestic corporation, or issue such permit, or accept such franchise tax. (Id. sec. 4.)

Art. 7397. Reports to be filed, etc.—For the purpose of ascertaining and determining the amount of any annual franchise tax prescribed by this chapter, excepting only the first tax to be paid by any domestic corporation which may hereafter be chartered, or of any foreign corporation which may hereafter be authorized to do business in this state, the president, vice-president, general manager, secretary, treasurer and superintendent of each and every domestic or foreign corporation embraced within the provisions of this chapter, shall annually and between the first and tenth days of March, and also whenever called upon by the secretary of state to do so, report to the secretary of state, in writing, and under oath, as

required by the preceding article, the total amounts of the capital stock issued and outstanding, and the surplus and undivided profits, respectively, if any, of such corporation on the first day of March next preceding; and the secretary of state may ascertain such facts from other sources; and, if the true aggregate of such amounts shall exceed the authorized capital stock of such corporation as disclosed by its then current original or amended articles of incorporation, the amount of its annual franchise tax for the year beginning the first day of May next thereafter shall be thereon collected and paid; otherwise, its annual franchise tax shall be calculated and paid upon the amount of its authorized capital stock as shown by its aforesaid original or amended articles of incorporation. The making and filing by any one of such officers of such corporation of the record required by this article shall relieve the other officers of such corporation from the duty of making any report required by this article, except such report or reports as may be required by the secretary of state. (Id. sec. 5.)

Art. 7397a. Reports to be filed; basis of tax.—Except as herein provided, all corporations that are now required by law to pay an annual franchise tax, shall, between the first day of January and the fifteenth day of March of each and every year, be required to make a report to the Secretary of State, on blanks furnished by him, showing the condition of such corporation on the 31st day of December preceding; which report shall give the authorized capital stock of the corporation, the capital stock actually paid in, the surplus and undivided profits of the corporation, if any, the name and addresses of all the officers and directors of the corporation, the amount of mortgages, bonded or other indebtedness of such corporation, and the amount of the last annual, semi-annual or quarterly dividend; provided, that domestic corporations having a permit or permits to do business outside the State, shall include in such report the gross receipts of such corporation from all sources and the gross receipts of the corporation from its business done in Texas, for the calendar year preceding; provided, that foreign corporations shall include in such report, the total gross receipts of the corporation from all sources and the gross receipts of the corporation in Texas for the calendar year preceding; and provided, further that where a foreign corporation has not theretofore done business in the State of Texas and is granted a permit to do business in Texas, it shall file its first report to the secretary of State at the end of one year from the date of such permit. (Acts 1913, p. 327, sec. 1; Acts 1919, ch. 46, sec. 2.)

Art. 7397b. Penalty for failure to make report.—Any corporation which shall fail or refuse to make the report as provided in Section Two hereof [Art. 7397a] shall be assessed a penalty of teh per cent of the amount of franchise tax due by such corporation, payable to the Secretary of State, together with its franchise tax. (Acts 1913, p. 327, sec. 2; Acts 1919, ch. 46, sec. 3.)

Art. 7397c. Reports privileged, etc.—The reports required by this Act shall be deemed to be privileged and not for the inspection of the general public, but any party or parties who are interested in the subject matter of any report may, upon valid request in writing made to the Secretary of State, secure a copy of same. (Acts 1913, p. 327, sec. 3; Acts 1919, ch. 46, sec. 4.)

Art. 7397d. May be made by what officers; how executed, etc.—The following officers of each and every corporation shall be deemed competent to make the report required by this Act; the president, vice-president, secretary, treasurer or general manager, and all reports provided for in this act shall be signed officially and sworn to before some officer authorized by law to administer oaths. (Acts 1913, p. 327, sec. 4; Acts 1919, ch. 46, sec. 5.)

Art. 7397e. Repeal.—All laws and parts of laws in conflict with this Act are hereby repealed, but where this Act is not in conflict with any existing law, it shall be held to be amendatory thereof. (Acts 1913, p. 327, sec. 5; Acts 1919, ch. 46, sec. 6.)

Art. 7398. Supplemental tax to be paid when capital increased.—In the event of increase in the authorized capital stock of any domestic or foreign corporation, it shall also pay in advance a supplemental franchise tax thereon for the remainder of the year down to and including the thirtieth day of April next thereafter, the amount of which shall be determined as is provided in article 7395 in case of the first franchise tax payment to be made under this chapter by a domestic corporation which may be hereafter authorized to do business within this state. (Acts 1907, p. 503, sec. 6.)

Art. 7399. Failure to pay tax; charter forfeited, when; penalty.—Any corporation, either domestic or foreign, which shall fail to pay any franchise tax provided for in this chapter when the same shall become due and payable under the provisions of this chapter, shall thereupon become liable to a penalty of twenty-five per cent of the amount of such franchise tax due by such corporation; and, if the amount of such tax and penalty be not paid in full on or before the first day of July thereafter, such corporation shall for such default forfeit its right to do business in this state; which forfeiture shall be consummated without judicial ascertainment by the secretary of state entering upon the margin of the record kept in his office relating to such corporation, the words, "right to do business forfeited," and the date of such forfeiture; and any corporation whose right to do business shall be thus forfeited shall be denied the right to sue or defend in any other courts of this state, except in a suit to forfeit the charter of such corporation; and, in any suit against such corporation on a cause of action arising before such forfeiture, no affirmative relief shall be granted to such corporation, unless its right to do business in this state shall be revived as provided by this chapter. And each and every director and officer of any corporation whose right to do business within this state shall be so forfeited shall, as to any and all debts of such corporation which may be created or incurred, with his knowledge, approval and consent, within this state, after such forfeiture by any such directors or officers, and before the revival of the right of such corporation to do business, be deemed and held liable thereon in the same manner and to the same extent

as if such directors and officers of such corporation were partners. (Id. sec. 8.)

Art. 7400. Notice of forfeiture.—The secretary of state shall, during the month of May of each year, notify each domestic and foreign corporation which may be or become subject to a franchise tax under any law of this state, which has failed to pay such franchise tax on or before the first day of May, that unless such overdue tax together with said penalty thereon shall be paid on or before the first day of July next following, the right of such corporation to do business in this state will be forfeited without judicial ascertainment. Such notice may be either written or printed and shall be verified by the seal of the office of the secretary of state, and shall be addressed to such corporation and mailed to the postoffice named in its articles of incorporation as its principal place of business, or to any other known place of business of such corporation; and a record of the date of mailing such notice shall be kept by the secretary of state. Such notice and said record thereof shall constitute legal and sufficient notice thereof for all the purposes of this chapter. Any corporation whose right to do business may have been forfeited, as provided in this chapter, shall be relieved from such forfeiture by paying the secretary of state any time within six months after such forfeiture the full amount of the franchise tax and penalty due by it, together with an additional amount of five per cent of such tax for each month, or fractional part of a month, which shall elapse after such forfeiture; provided, that such amount shall in no case be less than five dollars. When such tax and all such penalties shall be fully paid to the secretary of state, he shall revive and reinstate the right of the corporation to do business within this state by cancelling the words, "right to do business forfeited," upon his record and endorsing thereon the word, "revived," and the date of such revival. If any domestic corporation whose right to do business within this state shall hereafter be forfeited under the provisions of this chapter, shall fail to pay the secretary of state, on or before the first day of January next following the revival, amounts necessary to entitle it to have its right to do business revived under the provisions of this chapter, such failure shall constitute sufficient grounds for the forfeiture, by judgment of any court of competent jurisdiction, of the charter of such domestic corporation. (Id. sec. 9.)

Art. 7400a. Cancellation of forfeiture in certain cases; forfeiture by judgment, when, etc.—Every private corporation heretofore chartered under the laws of this state, whose charter or right to do business, and every foreign corporation whose right to do business within this state has heretofore been forfeited as provided by law, solely and only because of its failure to pay, within the time provided by law any franchise tax or taxes and penalty or penalties prescribed by law for failure to pay such tax or taxes when due, shall be permitted and authorized to pay to the secretary of the state on or before the first day of September, A. D., 1913, the aggregate amount of its franchise tax or taxes and the penalty or penalties thereon as provided by law, calculated for the entire period of time beginning with the day upon which the first unpaid franchise tax payment became due and ending with the day of such payment; and upon such payment being made to the secretary of state, he shall cancel such previous forfeiture of the right of such corporation to do business within this state and shall endorse upon the margin of the record kept in his office relating to such corporation the word "Revived," and the date of such revival. Failure of any such domestic corporation to pay such aggregate amount on or before the first day of September, A. D., 1913, shall constitute sufficient grounds for the forfeiture by a judgment of any court of competent jurisdiction of the charter of such domestic corporations; provided; that none of the provisions of this section shall apply to any corporation whose right to do business within this state, or whose charter may have been legally forfeited for any other reason than that of failure to pay such franchise tax or taxes and such penalty or penalties.

Provided that this Act shall not in any manner affect any litigation by or against any corporation which cause of action or defense to any cause of action originated since the forfeiture of the charter or cancellation or permit and prior to the time of taking advantage of this Act. (Acts 1907 [1st Ex. Sess.] ch. 23, sec. 10. Amended Acts 1911, p. 91, sec. 1. Acts 1913, p. 334, sec. 1.)

Art. 7401. Foreign corporations may withdraw.—Should any foreign corporation which may have or hereafter obtain a permit to do business within this state desire at any time to withdraw from doing business in this state, it may surrender such permit to the secretary of state, who shall thereupon mark or stamp such permit, "surrendered," dating and signing same officially, and shall endorse upon the record of such permit in his office the word, "surrendered," and the date thereof; and thereafter such corporation may, by complying with the provisions of this chapter, secure a new permit to do business in this state without having made any further payment of franchise tax under such old permit. (Acts 1907, p. 503, sec. 11.)

Art. 7402. No business to be done after forfeiture; penalty.—In any and all cases in which the charter, or right to do business, of any private domestic corporation, heretofore or hereafter chartered under the laws of this state, or the permit of any foreign corporation, or its right to do business within this state, shall have been or shall hereafter be forfeited, it shall be unlawful for any person or persons who were or shall be stockholders, or officers, of such corporation at the time of such forfeiture to do business within this state, in or under the corporate name of such corporation, or to use signs or advertisements of such corporation or similar to the signs or advertisements which were used by such corporation before such forfeiture; and each and every person who may violate any of the provisions of this article shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished as provided in the Penal Code; provided, the inhibition and penalties prescribed by this article shall not apply where the right of such corporation to do business within this state has been revived in the manner provided by

law and is at the time in good standing. (Id. sec. 12.)

Art. 7403. Certain corporations not required to pay tax, when.—The franchise tax imposed by this chapter shall not apply to any insurance company, surety, guaranty or fidelity company, or any transportation company, or any sleeping, palace car and dining car company which now is required to pay an annual tax measured by their gross receipts, or to corporations having no capital stock and organized for the exclusive purpose of promoting the public interest of any city or town, or to corporations organized for the purpose of religious worship, or for providing places of burial not for private profit, or corporations organized for the purpose of holding agricultural fairs and encouraging agricultural pursuits, or for strictly educational purposes, or for purely public charity. (Id. sec. 13.)

Art. 7404. Attorney general to bring suit, when.—The attorney general shall be authorized, and it shall be his duty, to bring suit therefor against any and all such corporations which may be or become subject to or liable for any and all franchise tax or taxes or penalties under this or any former law; and, in case there may now be or shall hereafter exist valid grounds for the forfeiture of the charter of any domestic private corporation, or failure to pay any franchise tax or franchise taxes or penalty or penalties to which it may have become or shall hereafter be or become subject or liable under this or former law, it shall be his duty to bring suit for a forfeiture of such charter; and, for the purpose of enforcing the provisions of this chapter by civil suits, venue is hereby conferred upon the courts of Travis county concurrently with the courts of the county in which the principal office of such corporation may be located as shown by its articles or amended articles of incorporation. Such courts shall also have authority to restrain and enjoin a violation of any and all of the provisions of this chapter. In any and all cases in which any court having jurisdiction thereof shall make and enter judgment forfeiting the charter of any such corporation the court may appoint a receiver thereof and may administer such receivership under the laws regulating receiverships. (Id. sec. 14.)

Art. 7405. Forfeiture of charter by court; duty of clerk.—Upon the rendition by the district court of any judgment or forfeiture under the provisions of this chapter, the clerk of that court shall forthwith mail to the secretary of state a certified copy of such judgment; and, upon receipt thereof, he shall endorse upon the record of such charter in his office the words, "judgment of forfeiture," and the date of such judgment. In event of an appeal from such judgment by writ of error or otherwise, the clerk of the court from which such appeal is taken shall forthwith certify to the secretary of state the fact that such appeal has been perfected, and he shall endorse upon the record of such charter in his office the word, "appealed," and the date upon which such appeal was perfected. When final disposition of such appeal shall be made, the clerk of the court making such disposition thereof shall forthwith certify such disposition and the date thereof to the secretary of state, who shall briefly note same upon the record of such charter in his office and the date of such final disposition. (Id. sec. 15.)

Art. 7406. Payment of tax by corporations in process of liquidation.—In case a corporation is actually in process of liquidation, such corporation shall only be required to pay a franchise tax calculated upon the difference between the amount of stock actually issued and the amount of liquidating dividends actually paid upon such stock; provided, that the president and secretary of such corporation shall make affidavit as to the total amount of capital stock issued and as to the amount of liquidating dividends actually paid and that such corporation is in an actual bona fide state of liquidation. (Id. sec. 15a.)

CHAPTER FOUR

STATE INTANGIBLE TAX BOARD

Art. 7407. State tax board, of whom composed; tax commissioner, appointment of.—There is hereby created a state tax board, which shall be composed of the comptroller of public accounts, the secretary of state and a third member, to be known as tax commissioner of the state of Texas. Except as herein otherwise provided, such tax commissioner shall be appointed by the governor in accordance with and subject to the provisions of section 12 of article 4 of the constitution of Texas, and shall hold his office for two years and until his successor shall be appointed and qualified, and shall receive an annual salary of two thousand five hundred dollars, in equal installments payable at the end of each month. A majority of said board shall constitute a quorum to do business. A record of the proceedings of said board shall be kept at the state capitol, and shall be open to the inspection of the public. (Acts 1909, p. 469.)

See ante, art. 7084.

Art. 7408. Bond of tax commissioner.—Before the tax commissioner shall enter upon or proceed with the discharge of his official duties, he shall execute a bond payable to the state of Texas, at Austin, in Travis county, Texas, in the sum of ten thousand dollars, with two or more good and sufficient sureties, to be approved by the governor, conditioned for the faithful discharge of his official duties as such tax commissioner, and shall take and subscribe the oath of office prescribed by the constitution of this state, which bond and oath shall be filed in the office of the secretary of state. (Id. sec. 2.)

Art. 7409. Secretary.—The state [tax] board may employ for not more than four months in each year a secretary, who shall be an expert stenographer, and who shall receive for his services as secretary and stenographer a salary of one hundred dollars per month. (Id. sec. 3.)

Art. 7410. Duties of board.—It shall be the duty of said tax board—

(a) To make such rules and regulations as said board shall deem proper with respect to its own meetings and procedure, and to effectually carry out the purposes for which said board is constituted.

(b) To examine all books, papers and accounts and to interrogate under oath, or otherwise, any and all persons whom said

board, or any member thereof, may desire to examine for the purpose of obtaining or acquiring any and all information that may in any manner aid in securing a compliance with any tax law or revenue law of this state by any and all persons, companies, corporations or associations liable to taxation or to pay any license fee under any law of this state, which is now in force, or which may hereafter be enacted.

(c) To make diligent investigation and inquiry concerning the revenue laws and systems of other states and countries, so far as the same are made known by published reports, or statistics, or can be ascertained by correspondence with officers thereof; and, with the aid of information thus or otherwise obtained, together with experience and observation of the operation of the laws of this state, to recommend to the legislature at each regular session thereof, such amendments, changes or modifications of the laws of this state, and such additional laws as may to said board, or any member thereof, seem necessary or proper to remedy injustice or irregularity in taxation, and to facilitate the assessment of taxes and collection of public revenues.

(d) To report to the legislature, at each regular session thereof, the whole amount of state revenues collected in this state for all purposes, and the sources thereof, the amount of such revenues which may be lost to the state through failure to make collection and the cause of such losses, a summary of the proceedings of said board since the date of its last report, and such other matters concerning the public revenues as said board, or any member thereof, may deem to be of public interest. (Id. sec. 4.)

Art. 7411. Same.—Said tax board, or any member thereof, or the state revenue agent under the direction of said board or of the governor of Texas, shall, at least once in each year, visit such counties of the state as said board, or the said governor, may direct, for the purpose of investigating into and aiding in the enforcement of all revenue laws of this state, and especially those concerning the rendition, assessment and collection of taxes. (Id. sec. 5.)

Art. 7412. Powers of board.—Each member of said state tax board shall have power to administer oaths and to subpœna and examine witnesses, and to issue subpœnas duces tecum, and shall have access to and power to order the production before such board, or any member thereof, of any and all books, documents and papers which may be in the possession or under the control of any person, company, corporation or receiver, assignee, trustee in bankruptcy, or bailee, whenever such board, or any member thereof, may consider same necessary or proper in the prosecution of any injury [inquiry] under or in the execution of any provision of this chapter; and all such process shall be served under the provisions of law governing the service of process in civil cases, in so far as applicable. (Id. sec. 6.)

Art. 7413. Failure to obey subpœna; penalty.—Any person who shall disobey any such subpœna, or subpœna duces tecum, issued by any member of said board, or any such order of said board, or who shall fail or refuse to attend as by such subpœna directed, or to testify when so required to do so by any member of said board, under the provisions of this chapter, shall be deemed guilty of contempt, and may be punished therefor by said board under the provisions of laws applicable to the district courts in such cases. (Id. sec. 7.)

Art. 7414. Tax on intangible assets; law applies to whom.—Each and every incorporated railroad company, ferry company, bridge company, turn-pike or toll company, doing business wholly or in part within the state of Texas, whether incorporated under the laws of this state, or of any other state, territory, or foreign country, and every other individual, company, corporation or association doing business of the same character in this state, in addition to the ad valorem taxes on intangible properties which are or may be imposed upon them, respectively, by law, shall pay an annual tax to the state, beginning with the first day of January of each year, on their intangible assets and property, and local taxes thereon to the counties in which its business is carried on; which additional tax shall be assessed and levied upon such intangible assets and property in the manner provided in this chapter. The county or counties in which such taxes are to be paid, and the manner of the apportionment of the same, shall be determined in accordance with the provisions of this chapter. (Id. sec. 8.)

Art. 7415. Same.—Between the second day of January and the first day of March of each year, every individual, company, corporation and association embraced within the provisions of the next preceding article of this chapter, or coming within its scope and intent, shall make out and deliver into the possession of said tax commissioner a statement containing the information required of it by this chapter, which statement shall be duly verified by the affidavit of the individual, or one of the officers of the company, corporation or association in whose behalf it is made, or by the receiver, assignee, or trustee in bankruptcy thereof. (Id. sec. 9.)

Art. 7416. Statement to contain what.—Each such statement shall show the following items and particulars as the same stood on the first day of January next preceding, to-wit:

(a) The name of the individual, company, corporation, or association making such statement, and the character of its business.

(b) If incorporated, the authority by which it was incorporated and the purposes of its incorporation as expressed in its original or amended articles of incorporation or articles of association.

(c) The locality of its principal office and the amount and kind of business done by it in this state and the total gross receipts derived from its business within this state, including a due proportion of its interstate business, if it has done any business of that character.

(d) Its total authorized capital stock and the number of shares thereof which have been issued and are outstanding, and the par face value of each such share, and the amount of the capital actually employed in the aforesaid business within the state.

(e) The market value of said shares of stock, or, if they have no market value, the actual value thereof.

(f) The assessed value and also the true

value of all the tangible property owned by such individual, company, corporation or association in each county in this state and the total assessed value and also the true value thereof.

(g) The assessed value and also the true value of the tangible property of such individual, company, corporation or association, outside of this state, and not specifically used in the business of such individual, company, corporation or association, same to be given by states, and the total assessed value and also the true value of the same.

(h) A statement of each and every existing lien, mortgage or other charge upon the whole, or any part, of the property of such individual, company, corporation or association, and of the property thereby charged or encumbered, and of the amount of unpaid debt secured by each such mortgage, lien or charge, and of the interest charged thereon, and to what extent such interest has been paid, and of the true and fair market value of every such debt.

(i) A statement of the gross receipts and net income and earnings for the next preceding twelve months, including therein all interest on investments and all rents, fruits, revenues and receipts from every source whatsoever, and a statement of the income used for repairs, and of the amounts used for betterments, and the amount used for extensions within that period of time.

(j) Every such railroad company shall also show in each statement made by it:

1. The total length of all lines of said company, whether within or without this state.

2. The total length of such lines as are within the state.

3. The length of its lines in each of the counties in this state into which its lines extend. (Id. sec. 10.)

Art. 7417. Date of receipt to be endorsed on statement; board may demand additional statements.—The tax commissioner shall receive all tax statements rendered to him under the provisions of this chapter, and shall endorse upon each the date of receipt thereof, signing such endorsement officially. Said state tax board shall examine all such statements as soon as may be practicable; and, if said board shall deem any of them insufficient, or shall believe other or further information necessary or proper, said board shall at once demand of such individual, company or corporation, or association, such additional statements and such further information as it may think proper. (Id. sec. 11.)

Art. 7418. Statements placed before board, when.—On the first Monday after the first day of March of each year, or as soon thereafter as may be practicable, said tax commissioner shall place before said state tax board all such statements, facts and information as may have come into its possession or knowledge under the provisions of this chapter. (Id. sec. 12.)

Art. 7419. Duties and powers of board in passing upon statement.—Said state tax board shall thereupon carefully examine and consider the said statements, facts and information; and, if they deem it advisable to do so, shall hear evidence, and shall require such individual, company, corporation or association to make such additional reports, if any, as such board may deem proper, and shall otherwise secure further additional information so far as may be in their power, to show the true value of the properties aforesaid, and the true value of that portion of every such property which is situated within the state and within the respective counties thereof, sufficient to enable said board to make the preliminary estimate herein provided for; and, for that purpose as well as for the purpose of carrying into effect any and all the provisions of this chapter, said board, and each member thereof, may require and compel, as provided in this chapter, any and all such individuals, companies, corporations and associations, and the officers and agents thereof, and such receivers, trustees in bankruptcy, assignees and bailees, to appear before such board at a time or times to be designated by said board, with any and all such books, papers, documents and information as said board may require, and to submit themselves to examination by said board. Upon consideration of such statements and information and such additional evidence, books, papers, documents and information, if any, said state tax board shall make in accordance with the provisions of this chapter, a preliminary estimate, valuation and apportionment of the true value of the intangible property within this state, of each of said individuals, companies, corporations, or associations, and shall, on or before the thirty-first day of May of each year, by registered mail, notify each and every such individual, company, corporation, or association, receiver or assignee, trustee in bankruptcy, or other person holding such property for the benefit of creditors, of such preliminary estimate, valuation and apportionment, and the amounts thereof; and all such individuals, companies, corporations, associations, receivers, assignees, trustees and other persons shall have fifteen days from the time of mailing such notice by registered mail to appear before such state tax board, at Austin, in Travis county, Texas, on a date to be fixed in such notice, and request of such board a change or changes in such valuation and apportionment, or either, or a cancellation of such valuation and apportionment; and said individuals, companies, corporations, associations, receivers, assignees, trustees and other persons may appear before such board, in person or by attorney, or in person and by attorney, and introduce evidence. Said board may, upon its own motion, or upon the written request of any interested party, and each member of said board may summon, swear and examine witnesses under the same rules which govern the summoning, swearing and examination of witnesses in the district courts of this state; and such board shall have the same jurisdiction, authority and power, under the same penalties, to require the production and to secure the examination of any and all books, documents and papers of such individuals, companies, corporations and associations, receivers, assignees, trustees and other persons as is now or may hereafter be conferred by the laws of this state upon the railroad commission of Texas. Upon or after such hearing, said board may change such valuation and apportionment, or either,

or cancel such valuation and apportionment, as said board may deem just and proper in the premises. (Id. sec. 13.)

Art. 7420. Same.—In so far as the other evidence and information adduced before said state tax board does not make it appear to the members of said board to be improper or unjust to do so, said board shall, in fixing the true value of the entire property of such individual, company, corporation or association embraced within the provisions of this chapter, take as a basis therefor the aggregate market or true value of all its shares of stock, adding thereto the aggregate market or true value of all indebtedness secured by any mortgage, lien or other charge upon its property or assets, and the sum so produced shall be deemed and treated as the true value of said entire property. And where the individual, company, corporation or association does business and has property, both within this state and outside of it, in ascertaining the true value of its property within this state, said tax board shall next ascertain from said statements, reports and evidence, if any, or otherwise, the true value, in the locality where the same is situated, of each such several pieces of real estate situated outside of this state, and of its other properties, if any, outside thereof, and not specifically used in the business of said individual, company, corporation or association, and the aggregate of said value shall be deducted from the gross value of the property as above ascertained; and the result of said deduction and the sum or value thereby obtained shall be deemed and treated as the true value of all property of such individual, company, corporation or association in actual use in its business. Said tax board shall then fix the true value of the property of such individual, company, corporation or association within this state, using as a basis and being guided so far as it shall not believe it unjust to do so, by the proportion which it finds to exist between the total lines or total receipts within this state and outside of it, and lines controlled or operated, or the receipts obtained, entirely within this state, so that there shall be apportioned to this state, as the true value of the property within its borders of each individual, company, corporation and association doing business within and outside of its limits, such proportion of the true value of all the property of such individual, company, corporation or association which is specifically used in its business, as is borne by its total lines or total receipts within this state when compared with the total lines or total receipts both inside and outside of the state of Texas. From the entire value of the property within this state, when ascertained as directed by this chapter, said state tax board shall deduct the true value of all the tangible property of such individual, company, corporation or association within this state, as so ascertained by said state tax board, and the residue and remainder of value shall be by said state tax board fixed, determined and declared as the true value of the intangible properties owned and held by such individual, company, corporation or association within this state. Said state tax board shall apportion the sum of the said total taxable values within this state to the counties in which such individual, company, corporation or association does business, in proportion to the amount of business done in and the receipts derived from each such county, except that, in case of a railroad company, the apportionment to each county shall be in proportion to the line or lines of such individual, company, corporation or association therein. In apportioning the value of the aforesaid properties, said state tax board shall have the right and it shall be its duty to make use of and consider all evidence which may be put before it and all material facts at its command; and, if it shall believe that some method of calculation other than that specifically prescribed in this chapter is necessary in order to produce just and lawful results, said board shall follow that method of calculation which it believes best calculated, under all circumstances, to bring about a just, fair, equitable and lawful valuation and apportionment of such property. (Id. sec. 14.)

Art. 7421. Unincorporated companies and individuals; capital, how ascertained.—Whenever any person, or association of persons, not being a corporation, nor having a capital stock, shall engage in this state in any character of business embraced within the provisions of article 7414, then the capital and property, or the certificate or other evidences of the rights or interests of such person or association of persons engaged in such business, shall be deemed and treated as the capital stock of such person, or association of persons, for the purpose of taxation, and for all other purposes, under this chapter, and shall be estimated and valued; and the intangible property of such person or association of persons, when ascertained, shall be apportioned, distributed, assessed and taxed under the provisions of this chapter, in like manner as if such person or association of persons were a corporation; and each such person and association of persons shall, annually, within the time and in the manner provided in this chapter, make the statements and reports and furnish and supply the information required by this act of the aforesaid companies, corporations and associations, and shall be subject in like manner as the aforesaid companies, corporations and associations to all the terms and provisions of this chapter, including penalties. (Id. sec. 15.)

Art. 7422. Board to certify amount of intangible assets to assessors.—Thereafter, and not later than the twentieth day of June of each year, said state tax board shall make, in accordance with the provisions and requirements of this chapter, a final valuation and apportionment of the intangible assets aforesaid, of each and every such individual, company, corporation and association, and shall, as soon after such twentieth day of June as practicable, certify to the tax assessor of each county in this state to which any portion of such intangible assets of any such individual, company, corporation or association is found by said board to be apportionable for taxation and so apportioned, the amount thereof, as fixed, determined and declared by said board, and thereunto apportioned by said board, together with the name and place of residence or place of

business of the owner or owners of the property embraced in such valuation and apportionment; provided, that such final valuation and apportionment of such intangible assets, properly apportionable and apportioned by such state tax board to any unorganized county shall be by said board so certified to the tax collector of the county to which such unorganized county is attached for judicial purposes. It shall be the duty of the tax assessor of such county, upon receiving such certificate or certificates of said state tax board, to place, set down and list, upon forms prescribed by the comptroller of public accounts for such purpose, upon the tax rolls of his county, and of each unorganized county which is attached to his county for judicial purposes, as the case may be, any and all such intangible assets, at the value so fixed, determined, declared and certified by said state tax board. Such county tax assessor shall extend and prorate upon said rolls the state and county taxes upon all such intangible assets in the same manner as taxes upon other property are extended and prorated. Said assessment, valuation and apportionment of such intangible assets so fixed, determined, declared and certified by such state tax board shall not be subject to review, modification or change by the tax assessor of such county, nor by the board of equalization of such county; and the state and county taxes thereon shall be collected by the tax collector of such county and accounted for by him in the same manner and under the same penalties as taxes upon other property. All state and county ad valorem taxes upon all intangible property in this state belonging to any individual, company, corporation or association embraced by this chapter, shall be assessed under its provisions and not otherwise; but ad valorem taxes upon all other property of any and all such individuals, companies, corporations and associations shall be assessed as is now or as may hereafter be provided by law. (Id. sec. 16.)

Art. 7423. Failure of tax assessor to comply; penalty.—Any county tax assessor who shall violate or in any respect fail to comply with any of the provisions of this chapter, and any member of any board of equalization and any county tax assessor who shall modify or change, or vote to modify or change, in any manner whatsoever the finding, valuation or apportionment of any of said intangible assets as so fixed, determined, declared and certified by said state tax board, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished as provided in the Penal Code. (Id. sec. 17.)

Art. 7424. Failure to make statement, etc.; penalty.—Every individual, company, corporation and association, embraced within the provisions of this chapter, which shall fail to make any return, statement and report provided for by this chapter, within fifteen days after the day on which it is required by this chapter to be made, or to make any additional report or statement, or to furnish any additional information which may be required by said state tax board, or any member thereof, under the provisions of this chapter, within fifteen days after the mailing of a registered notice or demand therefor in writing, signed by any member of said board and addressed to such individual, company or corporation or association, at its proper post-office address or principal place of business, shall forfeit and pay to the state of Texas not more than five thousand dollars, which amount may be recovered by suit which may be brought therefor in behalf of the state by the attorney general; and venue of such suits is hereby fixed within the county of Travis, in said state; and the courts of said county are hereby vested with jurisdiction of said causes. (Id. sec. 18.)

Art. 7425. Receivers and trustees in bankruptcy to make reports, etc.—If the property of any such individual, company, corporation or association shall be in the hands of any receiver, assignee, trustee in bankruptcy, or other person holding under any court, or for the benefit of any creditor or creditors, then the statements, reports, information, books and papers aforesaid shall be furnished by such receiver, assignee, trustee or other person, by some officer or agent acting under him, in the same manner and to the same extent as is hereinbefore provided in cases where an individual, company or association is in possession; and as to such receiver, assignee, trustee in bankruptcy or other person, officer or agent, all of the provisions of this chapter, in so far as they are applicable, shall apply and govern. (Id. sec. 19.)

Art. 7426. Persons complying with this chapter relieved of other taxes.—Whenever any individual, company, corporation or association, embraced within article 7414, shall pay in full, and within the year for which same may be assessed, all its state and county taxes for that year upon all its intangible properties as determined, fixed and assessed under the provisions of this chapter, such individual, company, corporation or association shall thereby be relieved from liability for and from payment of any and all occupation taxes measured by gross receipts for or accruing during that year under any law of this state; but no such individual, company, corporation or association shall be entitled to any such exemption, except for the year for which it shall, before same shall become delinquent, pay all its aforesaid intangible state and county taxes for that year. (Id. sec. 21.)

CHAPTER FIVE

TAX ON LIQUOR DEALERS

Arts. 7427-7466. [Omitted.]

These articles, imposing a tax on liquor dealers, are omitted from this compilation as having been rendered inoperative by the amendment of art. 16, § 20, of the State Constitution, and by Acts 1919, 2d C. S., ch. 78, post, Penal Code, arts. 588¼-588¼tt, and by the Prohibition amendment to the Constitution of the United States, and by the Volstead Act.

CHAPTER SIX

TAX ON SALE OF INTOXICATING LIQUORS IN LOCAL OPTION TERRITORY

Arts. 7467-7475a. [Omitted.]

These articles, imposing a tax on the sale of intoxicating liquors in local option territory, are omitted from this compilation as having been rep-

dered inoperative by the amendment of art. 16, § 20, of the State Constitution, and by Acts 1919, 2d C. S., ch. 78, post, Penal Code, arts. 588¼-588¼tt, and by the Prohibition amendment to the Constitution of the United States, and by the Volstead act.

CHAPTER SEVEN

TAX ON DEALERS IN NON-INTOXICATING MALT LIQUORS

Art. 7476. Amount of tax.—There is hereby levied upon all firms, persons, associations of persons and corporations, selling non-intoxicating malt liquors, an annual state tax of two thousand dollars. Counties, incorporated cities and towns where such sales are made may each levy an annual tax of not exceeding one thousand dollars upon all such persons, firms or corporations; provided, that this article shall not prevent the sale of such proprietary remedies as "malt extract," "malt medicine" and "malt and iron" manufactured and used exclusively as medicine and not as a beverage, when sold upon the prescription of a regular practicing physician; provided, further, that not more than one sale shall be made upon any one prescription. (Acts 1909, p. 51, sec. 1.)

Art. 7477. Application for license to state what; must be paid in advance.—Each person and each firm and each corporation and each association of persons desiring to engage in the business mentioned in the preceding article, before engaging in same, shall file with the county clerk of the county in which the business is proposed to be pursued an application in writing for a license to engage therein and shall state the place or house in which said business is to be pursued, and, if within the corporate limits of any incorporated city or town, that fact shall be so stated; and any such person or firm or corporation or association of persons shall pay to the tax collector of the county the entire amount of annual tax levied by the state and the entire amount of the annual tax upon such business as may be levied by the commissioners' court of said county, and, if the business is to be pursued in an incorporated city or town, shall pay to the collector of taxes of such city or town the tax that may be levied on such business by said city or town; and all such taxes shall be paid in advance; and no license shall be issued by the county clerk until the person, or firm, or corporation, or association of persons, applying therefor shall exhibit receipts showing the payment of all taxes levied and authorized by this chapter; and the county clerk shall be entitled to charge a fee of twenty-five cents for the issuance of such license; and it shall be unlawful to carry on business under said license in more than one place at the same time, or in any place other than that named in said application for said license, unless the party carrying on said business shall first file with the county clerk of the county in which said business is carried on a written statement showing such change of place of business. (Acts 1909, p. 51; amended 2 S. S., p. 397.)

Art. 7478. County clerk required to report licenses.—The county clerk is hereby required to make report of all licenses issued by authority of this chapter, as in other cases. (Acts 1909, p. 51, sec. 3.)

CHAPTER EIGHT

TAX ON PERSONS SOLICITING ORDERS OR OPERATING COLD STORAGE FOR INTOXICATING OR NON-INTOXICATING BEVERAGES IN LOCAL OPTION DISTRICTS

Art. 7479. Amount of tax for soliciting orders.—In all counties, justice precincts, towns, cities or other subdivisions of a county, where the qualified voters thereof have by a majority vote determined that the sale of intoxicating liquors shall be prohibited therein, there is hereby levied upon all firms, persons, associations of persons and corporations that pursue the business of selling, or offering for sale, any intoxicating liquors by soliciting or taking orders therefor in any quantities whatsoever, in any such county, justice precinct, town, city, or other subdivision of a county, an annual state tax of four thousand dollars; and each county and also each incorporated city or town may levy an annual tax not exceeding two thousand dollars in any such county or incorporated city or town where such business is pursued. (Acts 1909, p. 53, sec. 1.)

Art. 7480. Amount of tax for keeping cold storage.—In all counties, justice precincts, towns, cities or other subdivisions of a county, where the qualified voters thereof have by a majority vote determined that the sale of intoxicating liquors shall be prohibited therein, there is hereby levied upon all firms, persons, associations of persons and corporations that pursue the business of keeping, maintaining or operating what is commonly known as a "cold storage," or any place by whatever name known or whether named or not, where intoxicating or non-intoxicating liquors or beverages are kept on deposit for others, or where any such liquors are kept for others under any kind or character of bailment, an annual tax of two thousand dollars. Counties, incorporated cities and towns, where such business is located, may each levy an annual tax of not exceeding one thousand dollars upon each such place so kept, run, maintained or operated. (Id. sec. 2.)

Art. 7481. Application for license.—Each person and each firm and each corporation and each association of persons desiring to engage in the business mentioned in articles 7479 and 7480 of this chapter in said local option territory, before engaging in same shall file with the county clerk of the county in which the business is to be pursued an application in writing for a license to engage therein, and shall state the county, or portion of the county, in which the business is to be pursued; and, if within the corporate limits of any incorporated city or town, that fact shall be so stated; and any such person or firm or corporation or association of persons shall pay to the tax collector of the county the entire amount of annual tax levied for the state, and the entire amount of the annual tax upon such business as may be levied by the commissioners' court of said county, and, if the business is to be pursued in an incorporated city or town, shall pay to the collector of taxes of such city or town the tax that may be levied on such business by said city or town; and all such taxes shall be paid in advance; and no license shall be issued by the county clerk

until the person or firm or corporation or association of persons applying therefor shall exhibit receipts showing the payment of all taxes levied and authorized by this chapter, and the county clerk shall be entitled to charge a fee of twenty-five cents for the issuance of such license. (Id. sec. 3.)

Art. 7482. County clerk to report licenses issued.—The county clerk shall be and is hereby required to make report of all licenses issued by authority of this chapter as in other cases. (Id. sec. 4.)

CHAPTER NINE

OCCUPATION TAX ON HANDLING LIQUORS C. O. D.

Arts. 7483-7486. [Omitted.]

These articles, imposing an occupation tax on the handling of intoxicating liquors C. O. D., are omitted from this compilation as having been rendered inoperative by the amendment of art. 16, § 20, of the State Constitution, and by Acts 1919, 2d C. S., ch. 78, post, Penal Code, arts. 588¼-588¾tt, and by the Prohibition amendment to the Constitution of the United States, and by the Volstead act.

CHAPTER TEN

INHERITANCE TAX

Art. 7487. Property subject to the tax.—All property within the jurisdiction of this state, real or personal, corporeal or incorporeal, and any interest therein, whether belonging to inhabitants of this state or not, which shall pass absolutely or in trust by will, or by the laws of descent of this or any other state, or by deed, grant, sale or gift made or intended to take effect in possession or enjoyment after the death of the grantor or donor, shall upon passing to or for the use of any person except the father, mother, husband, wife or direct lineal descendants of the testator, intestate, grantor or donor, or any public corporation or charitable, educational or religious organization within this state when such bequest, gift or devise is to be used for charitable, educational or religious purposes within this state, be subject to a tax for the benefit of the state, as follows:

1. If passing to or for the use of a lineal ascendant or a brother or sister, or a lineal descendant of a brother or sister, the tax shall be two per cent on any value in excess of two thousand dollars, and not exceeding ten thousand dollars; two and one-half per cent of any value in excess of ten thousand dollars, and not exceeding twenty-five thousand dollars; three per cent on any value in excess of twenty-five thousand dollars, and not exceeding fifty thousand dollars; three and one-half per cent on any value in excess of fifty thousand dollars, and not exceeding one hundred thousand dollars; four per cent on any value in excess of one hundred thousand dollars, and not exceeding five hundred thousand dollars; and five per cent on any value in excess of five hundred thousand dollars.

2. If passing to or for the use of an uncle or aunt, or a lineal descendant of an uncle or aunt of the decedent, the tax shall be three per cent on any value in excess of one thousand dollars, and not exceeding ten thousand dollars; four per cent on any value in excess of ten thousand dollars, and not exceeding twenty-five thousand dollars; five per cent on any value in excess of twenty-five thousand dollars, and not exceeding fifty thousand dollars; six per cent on any value in excess of fifty thousand dollars, and not exceeding one hundred thousand dollars; seven per cent on any value in excess of one hundred thousand dollars, and not exceeding five hundred thousand dollars, and eight per cent on any value in excess of five hundred thousand dollars.

3. If passing to or for the use of any other person, natural or artificial, the tax shall be four per cent of any value in excess of five hundred dollars, and not exceeding ten thousand dollars; five and one-half per cent on any value in excess of ten thousand dollars, and not exceeding twenty-five thousand dollars; seven per cent on any value in excess of twenty-five thousand dollars, and not exceeding fifty thousand dollars; eight and one-half per cent on any value in excess of fifty thousand dollars, and not exceeding one hundred thousand dollars; ten per cent on any value in excess of one hundred thousand dollars, and not exceeding five hundred thousand dollars, and twelve per cent on any value in excess of five hundred thousand dollars. (Acts 1907, p. 496, sec. 1.)

Art. 7488. Property passing in two or more estates.—If the property passing as aforesaid shall be divided into two or more estates, as an estate for years or for life and a remainder, the tax shall be levied on each estate or interest separately according to the value of the same at the death of the decedent. The value of estates for years, estates for life, remainders and annuities shall be determined by the "Actuaries' Combined Experience Tables," at four per cent compound interest.

Art. 7489. Property bequeathed to executor or trustee in lieu of commission, taxed when.—If a testator bequeaths or devises to his executor or trustee property in lieu of the latter's commission, the value of such property in excess of reasonable compensation, as determined by the county judge on his own motion, or on the application of any officer on behalf of the state, shall be subject to taxation under this chapter.

Art. 7490. Inventory; filing; penalty.—Every executor, administrator, or trustee of the estate of a decedent, leaving property subject to taxation under this chapter, or other person coming into possession of any portion of such estate, whether such property passes by will or by the laws of descent and distribution, or otherwise, shall within three months after coming into possession of any of such property, make a report in duplicate, one of which shall be filed with the Comptroller and one with the county clerk of the county court of the county wherein such decedent resided at the time of his death, or wherein the principal part of such estate is located, giving the date of death of such decedent, the approximate value of his estate, if known, of the persons entitled to receive such estate; and within one year after coming into possession of any portion of such estate, such person or persons shall, if some other person has not previously done so, file with the Comptroller and with the said county clerk, said report to be preserved as a permanent record of said office pertaining to such estate, a complete inventory showing the condition of said estate, and pay the taxes owing on said estate as

provided in this chapter; and in case the tax is not paid within the time herein prescribed a penalty of 2 per cent a month for the first ten months and two per cent a month thereafter until such tax is paid, shall be added to such tax and collected as fixed penalty for the failure to promptly pay such tax; provided that a lien shall exist on all property belonging to said estate to secure the payment of such tax, penalties, and costs, and all persons acquiring any portion of said estate shall be charged with notice of the existence of any unpaid tax, penalties, and costs, which lien may be enforced in any suit brought for the collection of such tax, and penalties, and the county attorneys and the district attorneys of this state are authorized at any time after the expiration of the time above mentioned to institute suit in behalf of the State in any court of competent jurisdiction for the recovery of such tax and the penalties owing thereon under this chapter and he shall receive as compensation therefor 10 per cent on the amount of the taxes payable hereunder, not to exceed in any one case the sum of $200.00, which fee shall be added, and collected from said estate, in addition to the taxes and penalties herein provided for, which compensation shall be in addition to all other fees and compensation provided by law; provided that the aggregate of fees received under this chapter shall not exceed in any one year the sum of $2,000.00 and any fees earned in addition to said sum shall be considered a portion of the tax and penalties collected, and be distributed in the same manner. (Acts 1907, p. 496, sec. 1; Acts 1919, ch. 164, sec. 1.)

See post, art. 7497.

Art. 7491. Appointment of person to sue for and collect tax; compensation; reports.—It shall be the duty of the county attorney of each county of this State to carefully investigate and keep informed concerning estates subject to the payment of taxes under this chapter and if the notice required by the preceding article is not given within three months from the death of any person leaving an estate subject to the payment of taxes under this chapter, such county attorney shall report the condition of said estate to the county judge of the county in which said decedent resided at the time of his death, or where the principal part of his estate was located, and if such report is not made as required in the preceding article within six months from the death of such person, it shall be the duty of the county judge to appoint an administrator of said estate. For his services in making the investigation and making the report herein required, the county attorney shall receive a commission of eight per cent of the taxes payable under this chapter, not to exceed in any one estate the sum of $60.00, and the county judge shall receive a commission of two per cent of the taxes collected under this chapter, not to exceed in any one estate the sum of $15.00, which fees shall be cumulative of all other fees and compensation provided by law. Such compensation shall be paid by the Collector of taxes on the certificate of the county judge out of the taxes paid to him on property belonging to such estate. In case a report is filed by more than one county attorney, then the fee herein provided shall be allowed only to the county attorney who first filed said report. (Acts 1907, p. 496; Acts 1917, ch. 166, sec. 1; Acts 1919, ch. 164, sec. 1.)

See post, art. 7497.

Art. 7492. Appraisers appointed; notice to be given, etc.—Said tax shall be assessed upon the actual or market value of the property. The judge of the county court having jurisdiction of the estate of the decedent shall, as often as and whenever occasion may require, appoint two competent disinterested persons as appraisers to fix the value of property subject to said tax. The appraisers, being first sworn, shall forthwith give notice to all persons known to have a claim or interest in the property to be appraised, including the executor, administrator or trustee, and the collector of taxes of the county, of the time and place when they will appraise the same. At such time and place they shall appraise such property at its actual or market value at the time of the death of the decedent, and shall thereupon make report thereof in writing to said county judge, who shall file such report. Each appraiser shall be paid, on the certificate of the county judge, two dollars for each day employed in such appraisal, together with his actual necessary expenses incurred therein, which payments shall be made by the collector of taxes out of any moneys in his hands received under this chapter; provided, however, that upon the agreement of the parties interested to dispense with the appointment of appraisers, the county judge shall himself appraise the property and make and file a report thereof. If the same decedent shall leave property subject to this tax to more than one person, a separate appraisal and report shall be made for the property of each person.

Art. 7493. County judge to regulate tax.—Immediately upon the filing of the report of the appraisement, the county judge shall calculate and determine the amount of tax due on such property under this chapter, and shall in writing certify such amount to the collector of taxes, to the executor, administrator or trustee, and to the person to whom or for whose use the property passes. Said tax shall be a lien upon such property from the death of the decedent until paid, and shall bear interest from such death until paid, unless payment shall be made within six months after such death, in which case no interest shall be charged.

Art. 7494. Property withheld until tax paid.—If such property be in the form of money, the executor, administrator or trustee shall deduct the amount of the tax therefrom before paying it to the party entitled thereto; if it be not in the form of money, he shall withhold the property until the payment by such party of the amount of tax; in any case the executor, administrator or trustee shall be liable for the amount of the tax and shall have the right, in case of neglect or refusal after due notice of the party entitled to the property to pay such amount, to sell, at public sale, after due notice to such party, the property, or so much thereof as may be necessary. Out of the sum realized on such sale, the executor, admin-

istrator or trustee shall deduct the amount of the tax and the expenses of the sale, and shall pay the balance to the party entitled thereto.

Art. 7495. Tax charged on real estate, when.—Whenever any legacy subject to said tax shall be charged upon or payable out of real estate, the heir or devisee, before paying the legacy, shall deduct the amount of the tax therefrom, and pay the amount so deducted to the executor, administrator or trustee; the amount of the tax shall remain a charge on such real estate until paid, and the payment thereof shall be enforced by the executor or trustee in the same manner as the payment of the legacy itself could be enforced.

Art. 7496. Tax paid, when.—All taxes received under this act by any executor, administrator or trustee, shall be paid by him within thirty days thereafter to the collector of taxes of the county whose county court has jurisdiction of the estate of the decedent. Upon such payment, the collector shall make duplicate receipts thereof; he shall deliver one to the party making payment, the other he shall send to the comptroller of public accounts, who shall charge the collector with the amount thereof, and shall countersign and affix his seal of office to such receipt and transmit same to the party making payment.

Art. 7497. False reports; penalty.—If any person charged with the duty of filing a report under this chapter, shall knowingly make a false report, he shall be liable for a penalty of not exceeding one thousand dollars, which shall be collected by any county attorney or district attorney in the name of the State, by suit in any court of competent jurisdiction, twenty per cent of which penalty shall be retained by said officer as attorneys fees and the remainder shall be distributed as the taxes collected under this chapter are distributed. (Acts 1907, p. 496; Acts 1919, ch. 164, sec. 1.)

Acts 1919, ch. 164, sec. 1, expressly amends arts. 7490, 7491, and this article. The subject-matter of this amendment is entirely foreign to that of the amended article, which read as follows: "In case such tax shall not be paid to the collector of taxes within six months after the county judge has notified the amount thereof as hereinbefore provided, the collector shall commence an action to recover the amount of such tax against the executor, administrator or trustee, and the party to whom or for whose use the property has passed; provided, that the county judge may by certificate to the collector extend such time of payment whenever the circumstances of the case require."

Art. 7498. Collector pays to state treasurer.—The collector of taxes of each county shall, on or before the fifteenth day of each month, pay to the state treasurer all taxes received by him under this law before the first day of that month, deducting therefrom all lawful disbursements made by him under this act, and also his compensation at the rate of one per cent of all taxes collected under this act.

Art. 7499. Tax deposited to credit of general fund.—The moneys received by the state treasurer under this chapter shall be deposited in the state treasury to the credit of the fund now there existing and known as the general revenue fund.

Art. 7500. Tax refunded when.—Whenever any debts shall be proven against the estate of a decedent after the distribution of property on which the tax has been paid, and a refund is made by the distributee, a due proportion of the tax so paid shall be repaid to him by the executor, administrator or trustee, if still in his hands, or by the collector of taxes, if it has been paid to him. The collector shall pay such sums upon the order of the county judge out of any money in his possession under this law; and the comptroller of public accounts shall credit the collector with all sums so paid out by him.

Art. 7501. Final account not allowed until tax is paid.—No final account of an executor, administrator or trustee shall be allowed by the county judge, unless such account shows and said judge finds that all taxes imposed under this law on any property or interest passing through his hands as such have been paid; and the receipt of the collector of taxes for such taxes shall be the proper voucher for such payment.

Art. 7502. Appointment of administrator dispensed with.—If for any reason administration of the estate of a decedent, leaving property subject to taxation under this law, shall not be necessary in this state, except in order to carry out the provisions of this chapter, it shall be in the discretion of the county judge, upon the filing of a satisfactory inventory of the taxable property by the trustee or owner, to dispense with the appointment of an administrator. Upon the filing of such inventory, the appraisement and other proceedings required by this chapter shall be had as in other cases.

CHAPTER ELEVEN

OF THE PROPERTY SUBJECT TO TAXATION AND THE MODE OF RENDERING THE SAME

Art. 7503. (5061) All property to be taxed.—All property, real, personal or mixed, except such as may be hereinafter expressly exempted is subject to taxation, and the same shall be rendered and listed as herein prescribed. (Act Aug. 21, 1876, p. 275, sec. 1.)

Art. 7504. (5062) Real property includes what.—Real property, for the purpose of taxation, shall be construed to include the land itself, whether laid out in town lots or otherwise, and all the buildings, structures and improvements, or other fixtures of whatsoever kind thereon, and all the rights and privileges belonging or in any wise appertaining thereto, and all mines, minerals, quarries and fossils in and under the same. (Id. sec. 2.)

Art. 7505. (5063) Personal property includes what.—Personal property shall, for the purposes of taxation, be construed to include all goods, chattels and effects, and all moneys, credits, bonds and other evidences of debt owned by citizens of the state, whether the same be in or out of the state; all ships, boats and vessels belonging to inhabitants of this state, if registered in this state, whether at home or abroad, and all capital invested therein; all moneys at interest, either within or without this state, due the person, to be taxed over and above what he pays interest for, and all other debts due

such person over and above their indebtedness; all public stock and securities; all stock in turnpikes, railroads, canals and other corporations (except national banks) out of the state, owned by inhabitants of this state; all personal estate of moneyed corporations, whether the owners thereof reside in or out of this state, and the income of any annuity, unless the capital of such annuity be taxed within the state; all shares in any bank organized or that may be organized under the law of the United States; all improvements made by persons upon lands held by them, the title to which is still vested in the state of Texas, or in any railroad company, or which have been exempted from taxation for the benefit of any railroad company, or any other corporations, or any other corporation whose property is not subject to the same mode and rule of taxation as other property. (Acts 1879, ch. 40, p. 39, sec. 3.)

Art. 7506. (5064) Definition of terms.—The term, "money," or, "moneys," whereever used in this title shall, besides money or moneys, include every deposit which any person owning the same or holding in trust and residing in this state, is entitled to withdraw in money on demand.

"Credits."—The term, "credits," wherever used in this title, shall be held to mean and include every claim and demand for money or other valuable thing, and every annuity or sum of money receivable at stated periods, due or to become due, and all claims and demands secured by deed or mortgage, due or to become due.

"Tract or lot."—The term, "tract or lot," and, "piece or parcel," of real property, and piece and parcel of land, wherever used in this title, shall each be held to mean any quantity of land in possession of, owned by or recorded as the property of the same claimant, person, company or corporation.

"Singular and plural."—Every word importing the single number only may extend to and embrace the plural, and every word importing the plural number may be applied and limited to the singular number; and every word implying the masculine gender only may be extended and applied to females as well as males.

"Oath."—Wherever the word, "oath," is used it shall be held to mean oath or affirmation; and the word, "swear," may be held to mean affirm.

"Town or district."—The words, "town or district," wherever used shall be held to mean village, city, ward or precinct, as the case may be.

"Value."—The term, "true and full value," wherever used shall be held to mean the fair market value, in cash, at the place where the property to which the term is applied shall be at the time of assessment, being the price which could be obtained therefor at private sale, and not at forced or auction sale.

"Person."—The term, "person," shall be construed to include firm, company or corporation. (Acts 1876, p. 275, sec. 4.)

Art. 7507. (5065) Exemption from taxation.—The following property shall be exempt from taxation, to-wit:

1. Schools and churches.—Public school houses and houses used exclusively for public worship, the books and furniture therein and the grounds attached to such buildings necessary for the proper occupancy, use and enjoyment of the same, and not leased or otherwise used with a view to profit. All public colleges, public academies, all buildings connected with the same, and all the lands immediately connected with public institutions of learning, and all endowment funds of institutions of learning and religion not used with a view to profit, and when the same are invested in bonds or mortgages, or in land or other property which has been, or shall hereafter be, bought in by such institutions under foreclosure sales made to satisfy or protect such bonds or mortgages; provided, that such exemption of such land and property shall continue only for two years after the purchase of the same at such sale by such institutions and no longer; and all buildings used exclusively and owned by persons or associations of persons for school purposes. This provision shall not extend to leasehold estate of real property held under authority of any college or university of learning. (Acts 1907, p. 302.)

1a. Young Men's and Young Women's Christian Associations.—That, Young Men's Christian Association Buildings, and Young Women's Christian Association Buildings, used exclusively for the purpose of furthering religious work, and acting under the approval and co-operation of the state and international Young Men's Christian Association committees and the Young Women's Christian Association committees, the books and furniture contained in such buildings, and the grounds attached thereto necessary for the proper occupancy of such buildings, use and enjoyment of the same, and not leased or otherwise used with a view to profit other than for the purpose of maintaining the buildings and association, and all endowment funds of the above mentioned religious institutions, not used with a view to profit, but for the purpose of maintaining the association and buildings in doing religious work, shall be exempt from taxation. (Acts 1913, p. 153, sec. 1.)

1b. Buffalo and catalo.—That all buffalo and all catalo now in captivity in the State of Texas, by whomsoever owned, where such animals are kept and used for experimental purposes in crossing same with cattle for the purpose of producing a better strain of beef animals, or where such animals are kept in parks to preserve the species, and not for profit, but for the pleasure of their owners and the general public, they shall be exempt from taxation. (Acts 1917, ch. 172, sec. 1.)

2. Cemeteries.—All lands used exclusively for graveyards or grounds for burying the dead, except such as are held by any person, company or corporation with a view to profit, or for the purpose of speculating in the sale thereof. (Acts 1907, p. 302.)

3. Public property.—All property, whether real or personal, belonging exclusively to this state or any political subdivision thereof, or the United States, except that in each county in this state, where the state of Texas has heretofore or may hereafter acquire and own land for the purpose of establishing thereon state farms and employing thereon convict labor on state account, it shall be the duty of the penitentiary board or board of penitentiary commissioners, or other officers of the penitentiary having the man-

aging of same, to render said land for taxes to the tax assessor of said county; and the taxes on same shall be assessed and collected in the manner required by law for the assessment and collection of other taxes; provided, that said taxes shall be assessed and collected for county purposes only; and said county taxes shall be paid annually out of the revenue derived from such state farms respectively, by the officer or officers having the management thereof, and same shall be charged to the expense account of operating such farm; and no debt shall be created against the general revenue of the state in case of the failure to pay said taxes out of the revenues of any such farm; and provided, further, that in arriving at the amount to be paid in taxes to the counties the value of the land only shall be considered and not the value of the buildings and other improvements owned by the state and situated on said land. (Acts 1907, p. 302; Acts 1910, S. S., p. 122.)

4. County buildings.—All buildings belonging to counties for holding courts, for jails, or for county officers, with the land belonging to and on which such buildings are erected. (Acts 1907, p. 302.)

5. Poor-houses.—All lands, houses and other buildings belonging to any county, precinct or town, used exclusively for the support or accommodation of the poor. (Id.)

6. Public charities.—All buildings belonging to institutions of purely public charity, together with the lands belonging to and occupied by such institutions not leased or otherwise used with a view to profits, unless such rents and profits and all moneys and credits are appropriated by such institutions solely to sustain such institutions and for the benefit of the sick and disabled members and their families and the burial of the same, or for the maintenance of persons when unable to provide for themselves, whether such persons are members of such institutions or not. An institution of purely public charity under this act is one which dispenses its aid to its members and others in sickness or distress, or at death, without regard to poverty or riches of the recipient, also when the funds, property and assets of such institutions are placed and bound by its laws to relieve, aid and administer in any way to the relief of its members when in want, sickness and distress, and provides homes for its helpless and dependent members and to educate and maintain the orphans of its deceased members or other persons. (Id.)

7. Fire engines.—All fire engines and other implements owned by towns and cities used for the extinguishment of fires, with the buildings used exclusively for the safekeeping thereof. (Id.)

8. Market houses, etc.—All market houses, public squares, or other public grounds, town or precinct houses or halls used exclusively for public purposes, and all works, machinery or fixtures belonging to any town used for conveying water to such town. (Id.)

9. Public libraries.—All public libraries and personal property belonging to the same. (Id.)

10. Furniture.—All household and kitchen furniture not exceeding at their true and full value two hundred and fifty dollars to each family, in which may be included one sewing machine. (Id.)

11. Pensions.—All annual pensions granted by the state, or United States. (Id.)

Art. 7508. (5066) When property to be rendered.—All property shall be listed for taxation between January 1 and April 30 of each year, when required by the assessor, with reference to the quantity held or owned on the first day of January in the year for which the property is required to be listed or rendered. Any property purchased or acquired on the first day of January shall be listed by or for the person purchasing or acquiring it. If any property has, by reason of any special law, contract or fact, been exempt or has been claimed to be exempted from taxation for any period or limit of time, and such period of exemption shall expire between January 1 and December 31 of any year, said property shall be assessed and listed for taxes as other property; but the taxes assessed against said property shall be for only the pro rata of taxes for the portion of such year remaining. (Acts 1909, p. 373.)

Art. 7509. (5067) How to be rendered.—All property shall be listed or rendered in the manner following:

1. By the owner.—Every person of full age and sound mind, being a resident of this state, shall list all of his real estate, moneys, credits, bonds or stock of joint stock or other companies (when the property of such company is not assessed in this state), moneys loaned or invested, annuities, franchises, royalties, and all other property.

2. As agent.—He shall also list all lands or other real estate, all moneys and other personal property invested, loaned or otherwise controlled by him as agent or attorney, or on account of any other person, company or corporation whatsoever, and all moneys deposited subject to his order, check, or drafts and credits due from or owing by any person, body corporate or politic.

3. Minor.—The property of a minor child shall be listed by his guardian, or by the person having such property in charge.

4. Wife.—The property of a wife, by her husband, if of sound mind; if not, by herself.

5. Idiot.—The property of an idiot or lunatic, by the person having charge of such property.

6. Cestui que trust.—The property of a person for whose benefit it is held in trust by the trustee of the estate; of a deceased person, by the executor or administrator.

7. Receivers.—The property of corporations whose assets are in the hands of receivers, by such receivers.

8. Corporations.—The property of a body politic or corporate, by the president or proper agent or officer thereof.

9. Copartnership.—The property of a firm or company, by a partner or agent thereof.

10. Manufactories.—The property of manufacturers and others in the hands of an agent, by such agent, in the name of his principal, as real, personal and merchandise.

11. Nurseries.—The stock of nurseries, growing and otherwise, in the hands of nurserymen shall be listed and assessed as merchandise. (Id. sec. 7.)

Art. 7510. (5068) Where to be rendered.—All property, real and personal, except

such as is required to be listed and assessed otherwise, shall be listed and assessed in the county where it is situated; and all personal property, subject to taxation and temporarily removed from the state or county, shall be listed and assessed in the county of the residence of the owner thereof, or in the county where the principal office of such owner is situated. (Acts 1897, p. 203.)

Art. 7510a. Securities, etc., when taxed.—All securities, of every kind and character, and all moneys, required or permitted by law to be deposited by any person, firm residing in this State, or corporation organized under the laws of Texas, with the treasurer of the State of Texas, or other State officer or Department, shall be taxed in the County in which the person owning same resides, or where such firm has its place of business, or at the domicile of such corporation, and at no other place. (Acts 1918, 4th C. S., ch. 40, sec. 1.)

Art. 7511. (5069) To be rendered in but one county.—Lands lying on county boundaries, which have not been accurately and legally surveyed, determined or fixed, shall not be assessed or taxed in more than one county. (Acts 1879, p. 153; Amend. 1895, No. 104, Sen. Jour., p. 485.)

Art. 7512. (5070) Live stock, when and how rendered.—All persons, companies and corporations owning pastures in this state which lie on county boundaries shall be required to list for assessment all live stock of every kind owned by them in said pastures in the several counties in which such pastures are situated, listing in each county such portion of said stock as the land in such county is of the whole pasture. All persons, companies and corporations owning any kind of live stock in pasture not their own shall list said live stock in the several counties in which such pastures are situated in the same manner; and in both cases the tax upon such live stock shall be paid to the tax collectors of the several counties in which such live stock is listed and assessed. (Acts 1889, p. 29.)

Art. 7513. (5071) Taxes not to be paid twice, etc.—Any lands which may have been assessed in any county according to the abstract of land titles, and the taxes paid thereon according to law, shall not be afterwards subject to the payment of taxes for the same period in a different county, although a subsequent survey and determination of the county boundaries may show said lands to be in a different county from that in which they were originally assessed; and any sales of such lands for alleged delinquency shall be illegal and void. (Acts 1879, p. 153, sec. 2.)

Art. 7514. (5072) Vessels, where listed.—All persons, companies and corporations in this state owning steamboats, sailing vessels, wharf boats and other water crafts shall be required to list the same for assessment and taxation in the county in which the same may be enrolled, registered or licensed, or kept when not enrolled, registered or licensed. (Acts 1876, p. 277.)

Art. 7515. (5073) Railroads, telegraphs, etc.—All railroad, telegraph, plank road and turnpike companies shall list all of their real and personal property, giving the number of miles of roadbed and line in the county where such roadbed and line is situated, at the full and true value, except when such company may own personal property or real estate in an unorganized county or district, then they shall list such property to the comptroller. (Id. sec. 11.)

Art. 7516. (5074) Listing for others.—Persons required to list property on behalf of others shall list it in the same manner in which they are required to list their own, but they shall list it separately from their own, specifying in each case the name of the person, estate, company or corporation to whom it belongs. (Id. p. 278, sec. 12.)

Art. 7517. (5075) Shall list under oath.—Each person required by law to list property shall make and sign a statement, verified by his oath, as required by law, of all property, both real and personal, in his possession, or under his control, and which he is required to list for taxation, either as owner or holder thereof, or as guardian, parent, husband, trustee, executor, administrator, receiver, accounting officer, partner, agent or factor. (Id. sec. 13.)

Art. 7518. (5076) The statement and its requisites.—Such statement shall truly and distinctly set forth:

1. The name of the owner, and a description sufficient for the identification of any real estate belonging to such owner.
2. The number of acres.
3. The value of the land.
4. The number of the lot or lots.
5. The number of the block.
6. The value of town lots.
7. The name of the city or town.
8. The number of miles of railroad in the county.
9. The value of railroads and appurtenances.
10. Number of miles of telegraph in the county.
11. Value of telegraph and appurtenances in the county.
12. Number and amount of land certificates and value thereof.
13. Number of horses and mules and the value thereof.
14. Number of cattle and the value thereof.
15. Number of jacks and jennets and value thereof.
16. Number of sheep and value thereof.
17. Number of goats and value thereof.
18. Number of hogs and dogs and value thereof.
19. Number of carriages, buggies, wagons, automobiles, bicycles, motor cycles, or other vehicles of whatsoever kind and the value of each one thereof.
20. Number of sewing machines, and knitting machines and value thereof.
21. Number of clocks and watches and value thereof.
22. Number of organs, melodeons, piano fortes, and all other musical instruments of whatsoever kind and value thereof.
23. The value of household and kitchen furniture over and above the amount of two hundred and fifty dollars.
24. Office furniture and the value thereof.
25. The value of gold and silver plate.
26. The value of diamonds and jewelry.
27. Every annuity or royalty, the description and value thereof.
28. Number of steamboats, sailing vessels, wharf boats, barges or other water craft, and the value thereof.

29. The value of goods, wares and merchandise of every description which such person is required to list as a merchant (in hand on the first day of January of each year.)

30. Value of materials and manufactured articles which such person is required to list as a manufacturer.

31. Value of manufacturers' tools, implements and machinery other than boilers and engines, which shall be listed as such.

32. Number of steam engines, including boilers, and the value thereof.

33. Amount of moneys of bank, banker, broker or stock jobber.

34. Amount of credits of bank, banker, broker or stock jobber.

35. Money on hand or on deposit, in or out of the state, with banks, trust companies, corporations, firms or individuals, and subject to order, check or draft, including certificates of deposit.

36. Amount of credits other than of bank, banker, broker or stock jobber.

37. Amount and value of bonds and stocks other than United States bonds.

38. Amount and value of shares of capital stock companies and associations not incorporated by the laws of this state.

39. Value of all property of companies and corporations other than property hereinbefore enumerated.

40. Value of stock and furniture of saloons, hotels and eating houses.

41. Value of every billiard, pigeon hole, bagatelle or other similar tables, together with the number thereof.

42. Every franchise, the description and value thereof.

43. Value of all other property not enumerated above. (Acts 1876, p. 278; amended Acts 1905, p. 357.)

Art. 7519. (5077) Certain credits and stocks not to be listed.—No person shall be required to list or render a greater portion of his credits than he believes will be received or can be collected, or to include in his statement as a part of his personal property which is required to be listed any share or portion of the capital stock or property of any company or corporation which is required to list or return its capital and property for taxation. (Id. sec. 14.)

Art. 7520. (5078) Rendition of real estate.—Persons listing or rendering real estate shall make a statement, duly signed and under oath, which shall truly and distinctly set forth:

1. The name of the owner, abstract number, number of survey, the number of the certificate, the name of the original grantee, the number of acres, and the true and full value thereof.

2. The number of the lot and block and the true and full value thereof, together with the name of the town or city.

3. When the name of the original grantee, or abstract number, or number of certificate, or number of survey is unknown, say "unknown," and give such description so that land or lot can be identified and the true and full value thereof can be determined. (Id. p. 279, sec. 15.)

Art. 7521. (5079) Assessment of personal property by rendition by banker, broker, etc.—Every bank, whether of issue or deposit, banker, broker, dealer in exchange, or stock jobber, shall at the time fixed by this chapter for listing personal property, make out and furnish the assessor of taxes a sworn statement showing:

1. If a national bank, the president or some other officer of such bank shall furnish to the assessor of the county in which such bank is located a list of the names of all the shareholders of the stock, together with the number and amount of the shares of each stockholder of stock in said bank; and the shareholders of the stock in national banks shall render to the tax assessor of the county in which said bank is located the number of their shares and the true and full value thereof. All shares of stocks in national banks not rendered to the assessor of taxes in the county where such bank is located within the time prescribed by law for listing property for taxes shall be assessed by the assessor against the owner or owners thereof as unrendered property is assessed; but the tax roll shall show the name of the owner or owners thereof as per statement furnished by the president or other officers of said bank.

2. National banks shall render all other bonds and stocks of every kind, except United States bonds, and all shares of capital stocks or joint stock or stocks of other companies or corporations held as an investment or in any way representing assets, together with all other personal property belonging or pertaining to said bank, except such personal property as is specially exempted from taxation by the laws of the United States.

3. National banks shall be required to render all of their real estate as other real estate is rendered; and all the personal property of said national banks herein taxed shall be valued as other personal property is valued.

4. All other banks, bankers, brokers or dealers in exchange, or stock jobbers shall render their list in the following manner:

(1) The amount of money on hand or in transit or in the hands of other banks, bankers, brokers or others subject to draft, whether the same be in or out of the state.

(2) The amount of bills receivable, discounted or purchased and other credits due or to become due, including accounts receivable, interest accrued but not due, and interest due and unpaid.

(3) From the aggregate amount of the items named in the first and second of the last two subdivisions shall be deducted the amount of money on deposit.

(4) The amount of bonds and stocks of every kind, except United States bonds, and all shares of capital stocks or joint stocks of other companies or corporations held as an investment or in any way representing assets.

(5) All other property belonging or appertaining to said bank or business, including both personal property and real estate, shall be listed as other personal property and real estate. (Acts 1895, p. 37.)

Art. 7522. (5080) Assessment of real estate by banks.—Every banking corporation, state or national, doing business in this state shall, in the city or town in which it is located, render its real estate to the assessor of taxes at the time and in the manner required of individuals. At the time of making such rendition the president or some

other officer of said bank shall file with said assessor a sworn statement showing the number and amount of the shares of said bank, the name and residence of each shareholder, and the number and amount of shares owned by him. Every shareholder of said bank shall, in the city or town where said bank is located, render at their actual value to the assessor of taxes all shares owned by him in such bank; and in case of his failure so to do, the assessor shall assess such unrendered shares as other unrendered property. Each share in such bank shall be taxed only for the difference between its actual cash value and the proportionate amount per share at which its real estate is assessed. The taxes due upon the shares of banking corporations shall be a lien thereon, and no banking corporation shall pay any dividend to any shareholder who is in default in the payment of taxes due on his shares; nor shall any banking corporation permit the transfer upon its books of any share, the owner of which is in default in the payment of his taxes upon the same. Nothing herein shall be so construed as to tax national or state banks, or the shareholders thereof, at a greater rate than is assessed against other moneyed capital in the hands of individuals. (Acts 1885, p. 106.)

Art. 7523. (5081) No deductions in certain cases.—No person, company or corporation shall be entitled to any deduction on account of any bond, note or obligation of any kind given to any mutual insurance company, nor on account of any unpaid subscription to any religious, literary, scientific or charitable institution or society, nor on account of any subscription to or installment payable on the capital stock of any company, whether incorporated or unincorporated. (Acts 1876, p. 280, sec. 17.)

Art. 7524. (5082) Assessment by railroads.—It shall be the duty of every railroad corporation in this state to deliver a sworn statement, on or before the thirtieth day of April of each year, to the assessor of each county and incorporated city or town, into or through which any part of their road may run or in which they own or are in possession of real estate, a classified list of all real estate owned by or in possession of said company in said county, town or city, specifying:

1. The whole number of acres of land, lot or lots, exclusive of their right of way and depot grounds, owned, possessed or appropriated for their use, with a valuation affixed to the same.

2. The whole length of the railroad and the value thereof per mile, which valuation shall include right of way, roadbed, superstructure, depots and grounds upon which said depots are situated, and all shops and fixtures of every kind used in operating said road.

3. All personal property of whatsoever kind or character, except the rolling stock belonging to the company or in their possession in each respective county, listing and describing the said personal property in the same manner as is now required of citizens of this state. (Acts 1909, p. 373.)

Art. 7525. (5083) Railroads to return sworn statements, when, etc.—It shall be the duty of every railroad corporation in this state to deliver a sworn statement, on or before the first day of April in each year, to the assessor of the county in which its principal office is situated, setting forth the true and full value of the rolling stock of said railroad, together with the names of all the counties through which it runs, and the number of miles of roadbed in each of said counties; and said statement shall be submitted to the board of equalization of the county in which its principal office is situated for review, as is provided by article 7564 of this Code, and the other laws of this state, in respect to boards of equalization, on the first Monday in June in each year, or as soon thereafter as practicable; and such board shall certify such final valuation when made without delay to the comptroller of public accounts, who shall proceed at once to apportion the amount of such valuation among the said counties in proportion to the distance such roads shall run through any such county, and shall certify such apportionment to the assessors of such counties, and the same shall constitute part of the tax assets of such counties; and the assessor of each of said counties shall list and enter the same upon the rolls for taxation as other personal property situated in said county. And said railroad corporation shall also report in a separate sworn statement all rolling stock operated by it, under rental, hire, lease or other form of contract, which it does not render for taxation, giving the true and full value of such rolling stock and the amount paid or promised to be paid for rental, hire, lease or use under other form of contract, together with the name of person, firm, corporation or association owning such rolling stock, and together with the postoffice address of such person or firm, or if it be a corporation or association, then the city, county and state of its principal office; and if from said statement it appear that said rolling stock belongs to any person residing in the state of Texas, or to any firm doing business in the state of Texas, or to any corporation or association organized under the laws of the state of Texas, then said statement shall be certified by the tax assessor to whom it is made to the tax assessor of the county in which such person lives, or such firm does business, or such corporation or association has its principal office; and said statement shall be, by the tax assessor to whom it is certified, submitted to the board of equalization of the county for review, and the same shall be equalized by the board of equalization of such county, and certified to the comptroller, and apportioned by the comptroller in the same manner as other rolling stock is certified and apportioned under the preceding provisions of this article; and, if it appears from said statement that the person, firm, corporation or association owning such rolling stock is a non-resident of the state of Texas, then said statement shall be submitted to the board of equalization of the county in which the principal office of the railroad company using the same under rental, hire, lease or other form of contract is situated, which statement shall be reviewed by said board of equalization, and said property assessed against the owner, and certified to the comptroller, and the valuation apportioned against said owner by the comptroller in the same manner as rolling stock belonging to the railroad corpora-

tion furnishing the list. (Acts 1885, p. 30; amended Acts 1907, p. 192.)

Art. 7526. (5084) Assessments and collections of corporate property.—All property of private corporations, except in cases where some other provision is made by law, shall be assessed in the name of the corporation; and in collecting the taxes on the same all the personal property of such corporation shall be liable to be seized whenever the same may be found in the county, and sold in the same manner as the property of individuals may be sold for taxes. All statements and lists made by corporations that are required to be sworn to shall be verified by the affidavit and signature of the secretary of said corporation, and, if they have no secretary, the officer who discharges the duties of secretary of said corporation. (Acts 1876, p. 280, secs. 20, 21.)

Art. 7527. (5085) Assessments in owner's name.—All real property subject to taxation shall be assessed to the owners thereof in the manner herein provided; but no assessment of real property shall be considered illegal by reason of the same not being listed or assessed in the name of the owner or owners thereof. (Id. sec. 21.)

Art. 7528. (5086) Lien for taxes.—All taxes upon real property shall be a lien upon such property until the same shall have been paid. And should the assessor fail to assess any real estate for any one or more years, the lien shall be good for every year that he should fail to assess for; and he may, in listing property for taxes any year thereafter, assess all the back taxes due thereon, according to the provisions of this title. (Id. sec. 22.)

Art. 7529. (5087) Leasehold interests in public lands.—Property held under a lease for a term of three years or more, or held under a contract for the purchase thereof, belonging to this state, or that is exempt by law from taxation in the hands of the owner thereof, shall be considered for all the purposes of taxation, as the property of the person so holding the same, except as otherwise specially provided by law. Timber held by persons or corporations, heretofore or hereafter purchased from the state under the various laws for that purpose, shall likewise be subject to assessment for taxes, and the value thereof for taxation shall be ascertained as the value of other property is ascertained. And, should the owner of such timber fail or refuse to pay the taxes assessed against it, the same shall be sold for the taxes thereon, as provided in this title for the sale of personal property for taxes, provided the same can be found by the collector; but, if the timber can not be found, then the collector shall collect the taxes due as the taxes on other personal property are collected; provided, further, that the commissioner of the general land office shall furnish by the first of January each year to the various commissioners' courts and the tax assessors of the state of Texas a full and complete list of all timber sold by the state belonging to the school funds, giving the number of acres, price and to whom sold, in the respective counties where the timber so sold is situated. In case of the sale of such timber for taxes as herein provided, the purchaser shall take and hold the same under the same terms and conditions as the original purchaser thereof from the state. (Acts 1905, p. 72.)

Art. 7530. (5088) Valuation of property for taxation.—Each separate parcel of real property shall be valued at its true and full value in money, excluding the value of crops growing or ungathered thereon.

In determining the true and full value of real and personal property, the assessor shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation, nor shall he adopt as a criterion of value the price for which such property would sell at auction or a forced sale, or in the aggregate with all the property in his county; but he shall value each tract or lot by itself, and at such sum and price as he believes the same to be fairly worth in money at the time such assessment is made.

In valuing any real property on which there is a coal or other mine, or stone or other quarry, or springs possessing medicinal properties, the same shall be valued at such a price as such property, including a mine or quarry or spring, would probably sell at a fair voluntary sale for cash.

Taxable leasehold estates shall be valued at such a price as they would bring at a fair voluntary sale for cash.

Personal property of every description shall be valued at its true and full value in money.

Money, whether in possession or on deposit, or in the hands of any member of the family, or any other person whatsoever, shall be entered in the statement at the full amount thereof.

Every credit for a sum certain, payable either in money or property, of any kind, shall be valued at the full value of the same so payable. If for a specified article or for a specified number or quantity of property of any kind, it shall be valued at the current price of such property at the place where payable. Annuities or moneys payable at stated periods shall be valued at the price that the person listing the same believes them to be worth in money. (Id. sec. 24.)

Art. 7531. (5088a) United States paper money taxable.—Circulating notes of national banking associations and United States legal tender notes and other notes and certificates of the United States, payable on demand and circulating or intended to circulate as currency, and gold, silver and other coin, shall be hereafter subject to taxation as money on hand or on deposit, under the laws of this state. (Acts 1895, p. 49.)

Art. 7532. (5088b) Assessed as money on hand.—The assessor of taxes shall assess the same in the same manner as money on hand or on deposit or other personal property, as provided for in the general assessment laws of this state. (Id.)

CHAPTER TWELVE

OF THE ASSESSMENT OF TAXES—ELECTION AND QUALIFICATION OF THE ASSESSOR

Art. 7533. (5089) Election and term of assessor.—There shall be elected by the qualified electors of each county within this state, at the same time and under the same law regulating the election of state and county officers, an assessor of taxes, who shall hold his office for two years, and until his successor is elected and qualified. (Const., art. 8, sec. 14; Act Aug. 21, 1876, p. 265, sec. 1.)

Art. 7534. (5090) Vacancies, how filled.—In case of a vacancy in the office of assessor of taxes, the same shall be filled by the county commissioners' court for the unexpired term only, and until the election and qualification of an assessor at the succeeding general election; and the person appointed to fill such vacancy shall qualify in the same manner as is prescribed by law for assessors of taxes, and shall have all the rights and perform all the duties required by law of the assessor elected.

Art. 7535. (5091) Oath and bond.—Every assessor of taxes, within twenty days after he shall have received notice of his election or appointment, and before entering upon the duties of his office, shall execute a bond, payable to the governor and his successors in office, in a sum which shall be equal to one-fourth the amount of the state tax of the county, as shown by the last preceding assessment, but not to exceed ten thousand dollars, with at least three good and sufficient sureties, to be approved by the commissioners' court of his county, conditioned that he will faithfully discharge all the duties of said office; and shall take and subscribe the oath prescribed by the constitution, which oath, together with said bond, shall be recorded in the office of the clerk of the county court of said county, and be forwarded by the county judge of the county to the comptroller, to be deposited in his office. (Id. p. 266, sec. 2.)

Art. 7536. (5092) Purview of the bond.—Said bond shall be deemed to extend to the faithful performance of the duties of his office as assessor of taxes for and during the full term for which he was elected or appointed, and shall not become void upon the first recovery, but suit may be maintained thereon until the whole amount thereof be recovered. (Id.)

Art. 7537. (5093) New bond.—Assessors of taxes may be required to furnish a new bond and additional security whenever, in the opinion of the commissioners' court, it may be advisable; and, should any assessor of taxes fail to give a new bond and additional security when required, he shall be suspended from the further discharge of his duties by the commissioners' court of his county, and be removed from office in the mode prescribed by law for the removal of county officers. (Id.)

Art. 7538. (5094) Bond for county taxes.—The assessor of taxes shall give a like bond with like conditions to the county judges of their respective counties and their successors in office, in a sum not less than one-fourth of the amount of the county tax of the county, as shown by the last preceding assessment, but not to exceed five thousand dollars, with at least three good and sufficient sureties, to be approved by the commissioners' court of his county; which bond shall be recorded and deposited in the county clerk's office of the county. A new bond and additional security may be required, and the assessor of taxes may be removed from office for a failure to furnish a new bond or additional security in the manner prescribed by law. (Id. sec. 3.)

Art. 7539. (5095) May appoint deputies.—Each assessor of taxes may appoint one or more deputies to assist him in the assessment of taxes, and may require such bond and security from the person so appointed as he deems necessary for his indemnity; and the assessor of taxes shall in all cases be liable and accountable for the proceedings and misconduct of his deputies. (Id. p. 267, sec. 7.)

Art. 7540. (5096) Authority of deputies.—The deputies appointed in accordance with the provisions of the preceding article shall do and perform all the duties imposed and required by law of assessors of taxes; and all acts of such deputies done in conformity with law shall be as binding and valid as if done by the assessor of taxes in person. (Id. sec. 8.)

Art. 7541. (5097) May administer oaths.—Assessors of taxes are hereby authorized and empowered to administer all oaths necessary to obtain a full, complete and correct assessment of all taxable property situated in their respective counties. (Id. p. 266, sec. 4.)

Art. 7542. (5098) The oath.—The assessor of taxes shall also require each person rendering a list of taxable property to him for taxation, under the assessment laws, to subscribe to the following oath or affirmation, which shall be written or printed at the bottom of each inventory, to-wit: "I, ——— ———, (filling the blank with the name of the person subscribing) do solemnly swear (or affirm) that the above inventory rendered by me contains a full, true and complete list of all taxable property owned or held by me in my own name (or for others, as the case may be, naming the person or firm for whom he rendered the list) in this county, subject to taxation in this county, and personal property not in this county subject to taxation in this county by the laws of this state, on the first day of January, A. D. 19— (filling the blank with the year), and that I have true answers made to all questions propounded to me touching the same. So help me God." (Id. p. 267, sec. 5; amended Acts 1897, p. 204.)

Art. 7543. (5099) Where and how the oath may be made.—The owner or agent who is required under the laws of this state to render any property for taxation may render the same in the county where the same is situated by listing the same and making oath thereto, as required in this title, before any officer authorized to administer oaths in this state, or any officer out of this state that is authorized by law to take acknowledgments of instruments for record in this state, and may forward the same to the assessor of the

county by mail or otherwise, and the assessor shall enter the said property on his tax rolls. If the assessor is satisfied with the valuation as rendered in said list, he shall so enter the same; if he is not satisfied with the valuation, he shall refer the same to the board of equalization of the county for their action, and shall immediately notify, by mail or otherwise, the person from whom he received said list that he has referred said valuation to the board of equalization. (Acts 1876, p. 267, sec. 5.)

Art. 7544. (5100) Penalty for failure to attest oath, etc.—The assessor of taxes, for every failure or neglect to administer the oath or affirmation prescribed in article 5098 to each person rendering a list of taxable property to him, unless the person refuses to qualify, shall forfeit fifty dollars, to be deducted out of his commissions upon full and satisfactory information furnished the county judge; and for each and every failure or neglect to attest the oath subscribed to as provided in said article, shall forfeit the sum of fifty dollars upon satisfactory information furnished the county judge. The forfeitures imposed by this article shall be deducted from the assessor's commissions on the assessment for county taxes. (Id. sec. 6.)

Art. 7545. (5101) Fraud upon the public revenue.—Any evasion by means of artifice or temporary or fictitious sale, exchange or pretended transfer upon any bank books, of gold and silver coin, bank notes or other notes or bonds subject to taxation under the laws of this state for United States nontaxable treasury notes or any notes or bonds not so subject to taxation, and any such pretended sale, exchange or transfer not made in good faith, and by actual exchange and delivery of the funds so sold, exchanged or transferred and made only by entry on bank books, or by any express or implied understanding not to immediately make a bona fide and permanent sale, shall be deemed prima facie to be a fraud upon the public revenue of this state. (Acts 1891, p. 39, sec. 1.)

Art. 7546. (5102) Taxpayer to make oath.—All assessors of taxes in this state shall require all taxpayers when assessed by them to make oath as to any such sale, exchange or transfer made by them on the first day of January or within sixty days before said first day of January of any year for which any such assessment is made, as to the good faith and bona fide business transaction of any such sale, exchange or transfer, as above set forth, if any such should have been made by them; and, if it should be disclosed that any such pretended sale, exchange or transfer has been made for the purpose of evading taxation, then and in that event the assessor shall list and render against such person the coin, bank notes or other notes or bonds subject to taxation under the laws of this state; provided, that if any person shall make a false affidavit as to any of the foregoing facts he shall be deemed guilty of perjury and be punished as is now provided by law. (Id. sec. 3.)

Art. 7547. (5103) When assessments to be made.—Assessors of taxes shall, between the first day of January and the thirtieth day of April of each year, proceed to take a list of taxable property, real and personal, in his county and assess the value thereof in the manner following, to-wit: By calling upon the person, or by calling at the office, place of business or the residence of the person and listing the property required by law in his name, and requiring such person to make a statement under oath as prescribed by article 7542, of such property in the form hereinafter prescribed. (Acts 1876, p. 265, sec. 9; amended Acts 1909, p. 373.)

Art. 7548. (5104) Irregular assessments valid.—Should any property be listed or assessed for taxation after the thirtieth day of April of any year, or should the assessor of taxes or his deputy fail to administer the requisite oath or attest the same in the mode prescribed by law, or should the party rendering property for taxation fail to subscribe to the list, yet the assessment shall, nevertheless, be as valid and binding to all intents and purposes as if made in strict pursuance of law. (Id.)

Art. 7549. (5105) If taxpayer is absent, etc.—If any person, who is required by this title to list property, shall be sick or absent when the assessor calls for a list of his property, the assessor shall leave at the office, or usual place of residence or business of such person, a written or printed notice requiring such person to meet him and render a list of his property at such time and place as the assessor of taxes may designate in said notice. The assessor of taxes shall carefully note in a book the date of leaving such notice. (Id. p. 268, sec. 10.)

Art. 7550. (5106) Or refuses to list.—In every case where any person whose duty it is to list any property for taxation has refused or neglected to list the same when called on for that purpose by the assessor of taxes, or has refused to subscribe to the oath in regard to the truth of his statement of property, or any part thereof, when required by the assessor of taxes, the assessor shall note in a book the name of such person who refused to list or to swear; and in every case where any person required to list property for taxation has been absent or unable from sickness to list the same, the assessor of taxes shall note in a book such fact together with the name of such person. (Id. sec. 11.)

Art. 7551. (5107) Duty of assessor in such cases.—In all cases of failure to obtain a statement of real and personal property from any cause, it shall be the duty of the assessor of taxes to ascertain the amount and value of such property and assess the same as he believes to be the true and full value thereof; and such assessment shall be as valid and binding as if such property had been rendered by the proper owner thereof. (Id. sec. 12.)

Art. 7552. (5108) Commissioner of general land office to furnish abstracts to assessors.—The commissioner of the general land office shall furnish to each assessor of taxes in this state a correct abstract of all the surveys of land and number of acres therein in their respective counties; and on the first day of January of each year said commissioner of the general land office shall

furnish said assessors an additional list of all new valid surveys in his county during the year; provided, that, in case the records of the land office do not show the quantity of acres in a survey, the surveyor of the district shall furnish said assessor a certified statement of the number of acres therein. (Acts 1879, p. 24.)

Art. 7553. (5109) Books to be furnished assessors; how to be filled by assessors.—The commissioners' courts of each county in this state shall procure and furnish the assessor of said county three well-bound books of not less than six hundred and forty pages each, and an index book for same, and such other stationery as may be necessary; said books to be of the best material and make, and shall have printed headings as per following form: (Id. sec. 2.)

Abstract No.....Assessor's Abstract for .....Co. .....

PATENT							CERTIFICATE					Rendered for Taxation							
No.	Vol.	To Whom Issued	Date			Acres	No.	Class	Character	To Whom Issued		Year	By Whom Rendered	Acres	Value	Year	By Whom Rendered	Acres	Value
			Month	Day	Year														

Art. 7554. (5110) How to be filled by assessor.—The blanks to be filled by the assessor with the abstract number, name of party to whom the certificate was issued, the number, class and character of the certificate, the name of the party to whom the patent issued, number of volume of patent, the month, day and year it was issued, and the number of acres each survey contains; which whole survey shall stand as a debit against the assessor. (Id. sec. 2.)

Art. 7555. (5111) Blocks and lots in cities.—Each assessor shall be required to make an abstract of all the blocks or subdivisions of each of the cities or towns or villages of his county, in a book or books of at least four hundred and eighty pages each, to be furnished him by the commissioners' court of his county for that purpose, with an index book to the same, which said book or books shall have a blank space for a diagram or plot of each block or subdivision, giving the number of the lots as per form following:

Block No..... Assessor's Abstract of City Lots in.....County, City of .....

Year	Owner's Name	No. Lot	Value	$	Year	Owner's Name	No. Lot	Value

And the said assessor shall draw a plot of each block in the blank space left for that purpose, giving the number of each lot. And the whole of said block or subdivision shall be a debit against the assessor. (Id. sec. 3.)

Art. 7556. (5112) Duties of assessor as to same.—Each assessor in this state, when he shall have made the assessment of his county for each year, shall, on the first day of June of each year, or as soon thereafter as practicable, carry from each person's assessment the number of acres and its value on each survey of lands, lots or blocks to that particular survey, lot or block found on the abstract books provided in articles 5110, 5111 and 5119 [7554, 7555 and 7563]; and that all the parts of each survey or block placed on said abstract books shall be a credit to the assessor on that particular survey. And said assessor shall deduct the total number of acres rendered on each survey or block from the total number of acres of the whole survey or block as is shown by said abstract; and, if any part is left unrendered, then he

shall assess the same to the owner or owners thereof, if known, and, if unknown, then to "unknown owners," and the value thereof shall be affixed by him, sanctioned by the board of equalization; provided, that the owner or owners of any survey and grant of land may show by a survey, to be made by the county surveyor of the county, that the survey and grant in which they are interested does not contain the full complement of acres, showing how many acres are in fact embraced within the calls of the particular survey and grant. (Id. sec. 4.)

Art. 7557. (5113) To be kept in office.—The assessor's abstracts shall be kept in his office at the county seat of his county, as records of his office, and shall be at all times subject to the inspection of the public. The index book shall show the original grantee, the number of acres, the abstract number, and the volume and page in which each survey is placed. (Id. sec. 5.)

Art. 7558. (5114) Lands not on abstract to be placed there.—Should there be any survey of lands, lots or blocks not on the abstract book or books which are by law subject to taxation, the assessor shall enter such lands, lots or blocks on the assessment list as though the same appeared on said abstract books. (Id. sec. 6.)

Art. 7559. (5115) Certificate from board of equalization.—Each assessor of taxes shall procure from the board of equalization of his county a certificate that all the surveys and parts of surveys of lands in his county, and all the lots and blocks of the cities and towns of his county, are rendered for taxation; which certificate shall be forwarded to the comptroller of this state before he shall issue to said assessor a draft on the tax collector of his county. And the same rule shall apply to the commissioners' court before they issue drafts on the county treasurer for his pay for assessing the county taxes. (Id. sec. 7.)

Art. 7560. (5116) Substitute to be employed if assessor fails.—The board of equalization or the county commissioners' court shall, if the assessor fails to perform the duties required by this chapter within a reasonable time, employ some other competent person to have the requirements of this law carried out, and the compensation therefor shall be deducted from the assessor's pay for that year. (Id. sec. 8.)

Art. 7561. (5117) Unorganized counties.—The comptroller of this state shall be required to have this law carried out in the unorganized counties of this state, where lands are located. (Id. sec. 9.)

Art. 7562. (5118) Manner and form of assessing.—The manner and form for assessing property for taxation shall be substantially as follows, to wit:

1. The name of the owner.
2. Abstract number.
3. From whom and how acquired.
4. The name of the original grantee.
5. The number of acres.
6. The value of the land.
7. The number of the lot or lots.
8. The number of the block.
9. The value of town lots.
10. The name of the city or town.
11. Number of miles of railroad in the county.
12. The value of railroads and appurtenances, including the proportionate amount of rolling stock to the county after the assessment of such rolling stock and its apportionment among the several counties by the comptroller as hereinafter provided.
13. Number of miles of telegraph in the county.
14. Value of telegraph and appurtenances in the county.
15. Number and amount of land certificates, and value thereof.
16. Number of horses and mules and value thereof.
17. Number of cattle and value thereof.
18. Number of jacks and jennets, and value thereof.
19. Number of sheep and value thereof.
20. Number of goats and value thereof.
21. Number of hogs and value thereof.
22. Number of carriages, bicycles or tricycles, buggies or wagons of whatsoever kind and value thereof.
23. Number of sewing machines and knitting machines and the value thereof.
24. Number of clocks and watches and the value thereof.
25. Number of organs, melodeons, piano fortes, and all other musical instruments of whatsoever kind and value thereof.
26. The value of household and kitchen furniture over and above the amount of two hundred and fifty dollars.
27. Office furniture and the value thereof.
28. The value of gold and silver plate.
29. The value of diamonds and jewelry.
30. Every annuity or royalty, the description and value thereof.
31. Number of steamboats, sailing vessels, wharves, boats, barges, or other water craft, and the value thereof.
32. The value of goods and merchandise of every description which such person is required to list as a merchant in hand on the first day of January of each year.
33. The value of material and manufactured articles which such person is required to list as a manufacturer.
34. The value of manufactures, tools, implements and machinery other than boilers and engines, which shall be listed as such.
35. Number of steam engines and boilers and value thereof.
36. The amount of moneys of bank, banker, broker, stock jobber or any other person.
37. The amount of solvent credits of bank, banker, broker, stock jobber or any other person.
38. The amount and value of bonds and stocks other than United States bonds.
39. The amount and value of shares of capital stock companies and associations not incorporated by the laws of this state.
40. The value of property of companies and corporations other than property hereinbefore enumerated.
41. The value of stock and furniture of saloons, hotels and eating houses.
42. The value of every billiard, pigeon hole, bagatelle, and other similar table, together with the number thereof.
43. Every franchise, the description and value thereof.
44. The value of all other property not enumerated as above. (Acts 1895, p. 38.)

Art. 7563. (5119) Assessment of property not rendered.—If the assessor of taxes discovers any real property in his county subject to taxation which has not been listed to him, he shall list and assess such property in the manner following, to-wit:

1. The name of the owner; if unknown, say "unknown."
2. Abstract number and number of certificate.
3. Number of the survey.
4. Name of the original grantee.
5. Number of acres.
6. The true and full value thereof.
7. The number of lot or lots.
8. The number of the block.
9. The true and full value thereof.
10. The name of the city or town, and give such other description of the lot or lots or parcels of land as may be necessary to better describe the same; and such assessment shall be as valid as if rendered by the owner thereof. (Acts 1876, p. 269, sec. 14.)

Art. 7564. (5120) Boards of equalization.—The commissioners' courts of the several counties of this state shall convene and sit as boards of equalization on the second Monday in May of each year, or as soon thereafter as practicable before the first day of June, to receive all the assessment lists or books of the assessors of their counties for inspection, correction or equalization and approval.

1. They shall cause the assessor to bring before them at such meeting all said assessment lists, books, etc., for inspection, and see that every person has rendered his property at a fair market value, and shall have power to send for persons, books and papers, swear and qualify persons, to ascertain the value of such property, and to lower or raise the value on the same.
2. They shall have power to correct errors in assessments.
3. They shall equalize improved lands in three classes, first-class to embrace the better quality of land and improvements, the second class to embrace the second quality of lands and improvements, and the third-class to embrace lands of but small or inferior improvements. The unimproved lands shall embrace first, second and third class, and all other property made as nearly uniform as possible.
4. After they have inspected and equalized as nearly as possible, they shall approve said lists or books and return same to the assessors for making up the general rolls, when said board shall meet again and approve the same, if same be found correct.
5. Whenever said board shall find it their duty to raise the assessment of any person's property, it shall be their duty to order the county clerk to give the person written notice who rendered the same, that they desire to raise the value of the same. It shall be their duty to cause the county clerk to give ten days written notice before their meeting by publication in some newspaper, but, if none is published in the county, then by posting a written or printed notice in each justice's precinct, one of which must be at the court house door.
6. The assessors of taxes shall furnish to the board of equalization, on the first Monday in May of each year, or as soon thereafter as practicable, a certified list of names of all persons who either refuse to swear or to qualify or to have signed the oath or affirmation as required by law, together with the assessment of said person's property made by him through other information; and the board of equalization shall examine, equalize and correct assessments so made by the assessor, and when so revised, equalized and corrected, the same shall be approved. (Acts 1879, p. 44; amend. 1895, Sen. Jour. No. 108, p. 486; amended Acts 1909, p. 373.)

Art. 7565. (5120a) Assessment of real property for previous years.—If the assessor of taxes shall discover in his county any real property which has not been assessed or rendered for taxation for any year since 1870, he shall list and assess the same for each and every year for which it has not been assessed, in the manner prescribed in the preceding article; and such assessment shall be as valid and binding as though it had been rendered by the owner thereof; but no such real property shall be assessed by the assessor, unless he has ascertained by the certificate of the comptroller of public accounts the fact that the records of his office do not show that the property has been rendered or assessed for the year in which he assesses it. (Acts 1876, p. 265, sec. 15; Id. 1895, Sen. Jour. p. 486.)

Art. 7566. (5121) Assessment of back taxes on personal property.—If the assessor of taxes shall discover in his county any property, or, outside of his county but belonging to a resident of the county, and personal property which has not been assessed or rendered for taxation every year for two years past, he shall list and assess the same for each and every year thus omitted which it has belonged to said resident, in the manner prescribed for assessing other property; and such assessment shall be as valid and binding as though it had been rendered by the owner thereof. (Acts 1887, p. 127.)

Art. 7567. (5121a) Unlisted property; supplemental roll.—Collectors of taxes of counties, cities and towns, when any taxpayer applies to them for the purpose of ascertaining the amount of his taxes, and the collector finds that his name or his property does not appear on the tax roll, shall, and it is hereby made their duty to, assess said taxpayer then and there, collect the taxes and enter the same upon a supplemental tax roll to be made by him. He shall make out, on forms to be furnished by the comptroller, three copies of such supplemental roll, one copy to be delivered to the comptroller of public accounts, one to be delivered to the county clerk, and one to be filed in the collector's office. Said supplemental tax roll shall be made out and delivered to the county commissioners' court with all other papers pertaining to the final settlement of said tax collector, and the same shall be examined and approved by the county commissioners' court, in like manner as upon the tax roll of the tax assessor. The collectors of taxes are hereby authorized and empowered to administer all oaths necessary to obtain a full and correct assessment of all taxable property assessed by them under this act. The oath shall be the same as is administered by tax assessors under existing law. The collector of taxes shall receive the

following compensation for his services on all assessments made by him under this act, to-wit: For assessing the state and county taxes, four cents for each one hundred dollars of property so assessed, and for assessing the poll tax, five cents for each poll; which fee shall be paid in the same way as the tax assessor's fee in article 5133 [7583]. (Acts 1895, p. 103.)

Art. 7568. (5122) Assessor to follow instructions.—The assessors of taxes, in the execution of their duties, shall use the forms and follow the instructions which shall from time to time be prescribed by the comptroller of public accounts, and furnished to them by the county judge in pursuance of law. (Acts 1876, p. 265.)

Art. 7569. (5123) Equalization of assessments.—Hereafter when any person, firm or corporation renders his, their or its property in this state for taxation to any tax assessor, and makes oath as to the kind, character, quality and quantity of such property, and the said officer accepting said rendition from such person, firm or corporation of such property is satisfied that it is correctly and properly valued according to the reasonable cash market value of such property on the market at the time of its rendition, he shall list the same accordingly; but, if the assessor is satisfied that the value is below the reasonable cash market value of such property, he shall at once place on said rendition opposite each piece of property so rendered an amount equal to the reasonable cash market value of such property at the time of its rendition, and, if such property shall be found to have no market value by such officer, then at such sum as said officer shall deem the real or intrinsic value of the property; and, if the person listing such property or the owner thereof is not satisfied with the value placed on the property by the assessor he shall so notify the assessor, and if desiring so to do may make oath before the assessor that the valuation so fixed by said officer on said property is excessive; then it shall be the duty of such officer to furnish such rendition, together with his valuation thereon and the oath of such person, firm or officer of any corporation, if any such oath has been made, to the commissioners' court of the county in which said rendition was made, which court shall hear evidence and determine the true value of such property as is hereinafter provided; and in this connection it is provided that such officer or court shall take into consideration what said property could have been sold for any time within six months next before the rendition of said property. (Id. p. 270, sec. 17; amended Acts 1907, p. 459.)

Art. 7570. (5124) Boards may equalize without complaint.—The boards of equalization shall have power, and it is made their official duty to supervise the assessment of their respective counties and, if satisfied that the valuation of any property is not in accordance with the laws of the state, to increase or diminish the same and to affix a proper valuation thereto, as provided for in article 7569 of this chapter; and, when any assessor in this state shall have furnished said court with the rendition as provided for in article 7569 of this chapter, it shall be the duty of such court to call before it such persons as in its judgment may know the market value or true value of such property, as the case may be, by proper process, who shall testify under oath the character, quality and quantity of such property, as well as the value thereof. Said court, after hearing the evidence, shall fix the value of such property in accordance with the evidence so introduced and as provided for in article 7569 of this chapter; and their action in such case or cases shall be final. (Id.)

Art. 7571. (5124a) Penalty for neglect of duty by assessor.—If any tax assessor in this state shall fail, refuse or neglect to place upon any rendition as provided for in article 7569 of this chapter, the true value or market value in accordance with the method of fixing such value as provided for herein, or shall fail, refuse or neglect to return to the commissioners' court such rendition, together with the oath of the owner or person listing such property for taxes when such oath has been made, as provided for in this chapter, or, if the assessor accepts the rendition from any person rendering property for taxation without reading to such person the oath and having it signed and sworn to as provided by law, such failure, refusal or neglect shall be deemed malfeasance on the part of such officer, and shall be cause for his removal from office. (Acts 1907, p. 459.)

Art. 7572. (5124b) Oath of assessor.—Every tax assessor and deputy tax assessor in this state, in addition to the oath prescribed by the constitution of this state, shall, before entering upon the duties of his office, take and subscribe to the following oath: "I, ———, tax assessor (or deputy tax assessor, as the case may be) in and for ——— county, Texas, do solemnly swear that I will personally view and inspect all the real estate and improvements thereon subject to taxation lying in said county that may be rendered to me for taxation by any corporation or individual, or by their agent or representative, as fully as may be practicable, and that I will, as fully as is practicable, view and inspect all other taxable property in said county rendered to me as aforesaid; that I will to the best of my ability make a true estimate of the cash value, the market value of such property, if such property has a market value, and if it has no market value, then the real value of all such property, both real and personal, on the first day of January next preceding; and that I will make up and attach to each assessment sheet made up and sworn to by the said property owners, their agents or representatives, a true assessment and valuation of said property, together with a memoranda of all facts which I may learn bearing upon the value of said taxable property, and that I will make all possible inquiry relative to the true value of such property; and that I will attach said memoranda and statement of facts that I may ascertain as aforesaid to the said assessment sheets of the respective property owners. That I have read and understand the several provisions of the constitution and laws of this state relative to the valuation of taxable property, and that I will faithfully do and perform every duty required of me as tax assessor (or deputy tax assessor), by the constitution and laws of this state. So help me God." This oath shall be admin-

istered by the county clerk and shall be in duplicate; the original shall be by the clerk filed and recorded in the records of the county, and the duplicate shall be retained by the assessor, or the deputy, as the case may be. (Id.)

Art. 7573. (5124c) Oath of board.—When a commissioners' court in this state convenes as a board of equalization, before considering the subject of equalization of property values for the purposes of taxation, each member of the court, including the county judge, shall take and subscribe to the following oath: "I, ———, a member of the board of equalization of ——— county, for the year A. D. ———, hereby solemnly swear that, in the performance of my duties as a member of such board for said year, I will not vote to allow any taxable property to stand assessed on the tax rolls of said county for said year at any sum which I believe to be less than its true market value, or, if it has no market value, then its real value; that I will faithfully endeavor and as a member of said board will move to have each item of taxable property which I believe to be assessed for said year at less than its true market value, or real value, raised on the tax rolls to what I believe to be its true cash market value, if it has a market value, if not, then to its real value; and that I will faithfully endeavor to have the assessed valuation of all property subject to taxation within said county stand upon the tax rolls of said county for said year at its true cash market value, or, if it has no market value, then its real value. I further solemnly swear that I have read and understand the provisions contained in the constitution and laws of this state relative to the valuation of taxable property, and that I will faithfully perform all the duties required of me under the constitution and laws of this state. So help me God." Said oath shall be filed and recorded in the commissioners' court record as a part of the proceedings of that term of court. (Id.)

Art. 7574. (5124d) Neglect of duty cause for removal from office; attorney general to file suit.—If, in passing upon the value of any property by a commissioners' court sitting as a board of equalization in this state, the court shall fix a value upon any property for the purpose of taxation and a minority of said court do not concur in the judgment of the court, the clerk shall record in the minutes of the court the names of the members, including the county judge, who do not concur in fixing such values (if the county judge shall cast the deciding vote in such matter); and, if any tax assessor or members of any commissioners' court in this state shall knowingly fail or refuse to fix the value of property rendered for taxes in compliance with this chapter, and all other laws of this state, such failure, neglect or refusal shall constitute malfeasance in office on the part of such assessor or member or members of said court, and such failure, neglect or refusal shall be cause for his or their removal from office. Whenever the fact is brought to the knowledge of the attorney general of this state that any tax assessor, deputy tax assessor, county judge, or member of the commissioners' court, has failed, refused or neglected to comply with the provisions of this chapter, he shall at once file suit for the removal from office of such officer or officers thus offending. Such proceedings for the removal of such officer or officers herein provided for shall be brought in the district court of the county of such officer's residence; and such suit shall be brought by the attorney general of the state or under his direction. (Id. art. 5124e; R. S. 1895.)

Art. 7575. (5125) Assessor to furnish list of delinquents.—The assessor of taxes shall furnish the board of equalization on the first Monday in June of each year, or as soon thereafter as practicable, a certified list of names of all persons who either refused to swear or to qualify, or to sign the oath or affirmation, as prescribed in this title; also a list of the names of those persons who refused to render a list of taxable property as required by this title. And should any person so failing or refusing to take the oath prescribed, or to render a list of their property, or to subscribe to the oath, as required by the provisions of this title, fail to give satisfactory reasons for such failure or refusal to the board of equalization within one month from the date of the filing of said list by the assessor, as required by this article, the board of equalization shall return a list of all persons who have failed to give satisfactory reasons for such failure or refusal to render, qualify or subscribe to the oath or affirmation, as the case may be, to the assessor of taxes, who shall present the said list to the grand jury of his county next impaneled after the board of equalization has furnished him with the list above required. (Acts 1876, p. 270, sec. 18.)

Art. 7576. (5126) And submit lists to board of equalization.—The assessor of taxes shall submit all the lists of property rendered to him prior to the first Monday in June to the board of equalization of his county on the first Monday in June, or as soon thereafter as practicable, for their inspection, approval, correction or equalization; and, after the board of equalization shall have returned the corrected and approved lists of taxable property, the assessor of taxes shall proceed to assess all the unrendered property of his county as provided for in this title, and shall proceed to make out and prepare his rolls or books of all the real and personal property listed to him, in the form and manner prescribed by the comptroller of the state. (Id. sec. 20.)

Art. 7577. (5127) Shall make out rolls in triplicate.—As soon as the board of equalization shall have examined, corrected and approved the assessor's list, the assessor of taxes shall prepare and make out a roll or book, as may be required by the comptroller, from the list so corrected and approved, and three exact copies of the same, the original to be furnished to the collector of taxes, the second to the comptroller of public accounts, and the third to be filed in the county clerk's office for the inspection of the public. He shall also prepare a roll or book, and two exact copies thereof, to be distributed, the first to the collector of taxes, the second to the comptroller, the third to be filed in the county clerk's office, of all the real and personal property which has not been listed to him. (Id. sec. 19.)

Art. 7578. (5128) Also rolls of unrendered property.—The assessor of taxes shall, after his list of unrendered real and

personal property shall have been examined, corrected and approved by the board of equalization as provided by law, prepare and make out his rolls or books of all unrendered real and personal property listed by him in the manner and form prescribed by the comptroller of the state. (Id. p. 271, sec. 21.)

Art. 7579. (5129) And add up columns.—The assessor of taxes shall add up and note the aggregate of each column on his roll or book, and he shall also make in each book or roll, under proper headings, a tabular statement showing the footings of the several columns upon each page, and he shall add up and set down under the respective headings the total of the several columns. (Id. sec. 22.)

Art. 7580. (5130) Return and oath.—The assessor of taxes shall, on or before the first day of August of each year for which the assessment is made, return his rolls or assessment books of the taxable property rendered to him or listed by him for that year, after they have been made in accordance with the provisions of this title, to the county board of equalization, verified by his affidavit, substantially on the following form:

The State of Texas, }
——— County. }

I, ———, assessor of ——— county, do solemnly swear that the rolls (or books) to which this is attached contain a correct and full list of the real and personal property subject to taxation in ——— (fill the blank with the name of the county) county, so far as I have been able to ascertain the same; that I have sworn every person listing property to me in the county, or caused the same to be done in manner and form as provided by law, and that the assessed value set down in the proper column opposite the several kinds and descriptions of property is the true and correct valuation thereof as ascertained by law, and the footings of the several columns in said books and the tabular statement returned is correct, as I verily believe. (Id. sec. 23; Amend. Acts 1897, p. 204.)

Art. 7581. (5131) All lists, etc., filed in county clerk's office.—The assessor of taxes shall at the same time deliver to the board of equalization all the lists, statements of all property which shall have been made out or received by him, and arranged in alphabetical order, together with the roll withdrawn to aid him in the past assessment. The lists and statements shall be filed in the county clerk's office, and remain there for the inspection of the public. (Acts 1870, p. 271, sec. 24.)

Art. 7582. (5132) Rolls, how distributed.—After the board of equalization shall have examined the rolls or assessment books and made all corrections, if any be necessary, the assessor shall send one copy of each to the comptroller of public accounts, one copy of each to the collector of his county, and he shall file the other copies in the county clerk's office until the next assessment, when the assessor shall have the right to withdraw them and use as provided in this title. (Id. sec. 25.)

Art. 7583. Compensation.—Each assessor of taxes shall receive the following compensation for his services, which shall be estimated upon the total values of the property assessed, as follows: For assessing the state and county tax, on all sums for the first two million dollars or less, five cents for each one hundred dollars of property assessed; and on all sums in excess of two million dollars and less than five million dollars, two and one-fourth cents on each one hundred dollars; and on all sums in excess of five million dollars, one and seven-tenths cents on each one hundred dollars; one-half of the above fees shall be paid by the state and one-half by the county; and for assessing the poll tax, five cents for each poll, which shall be paid by the state. The commissioners' court may allow to the assessor of taxes such sums of money, to be paid monthly from the county treasury, as may be necessary to pay for clerical work, taking assessments and making out the tax rolls of the county, such sums so allowed to be deducted from the amount allowed to the assessor as compensation upon the completion of said tax rolls; provided, the amount allowed the assessor by the commissioners' court shall not exceed the compensation that may be due by the county to him for assessing. (Acts 1883, p. 33; amended Acts 1897, 1 S. S., p. 8, sec. 8.)

Art. 7584. (5134) How paid by state.—The comptroller, on receipt of the rolls, shall give the assessor an order on the collector of his county for the amount due him by the state for assessing the state taxes, to be paid out of the first money collected for that year. (Id. sec. 27.)

Art. 7585. (5135) By the county.—The commissioners' court shall issue an order on the county treasurer of their county, to the assessor, for the amount due him for assessing the county tax of their county, to be paid out of the first money received from the collector on the rolls of that year. (Id. sec. 28.)

Art. 7586. (5136) Penalties for neglect of duty.—Should any assessor of taxes fail or neglect to make out and return his rolls or books to the commissioners' court in the time and manner provided for in this chapter, it shall be competent for the commissioners' court to deduct from his compensation such amount as they may deem proper and right for such neglect or failure; and, should his rolls or books, when presented for approval to the commissioners' court, prove to be imperfect or erroneous, the court shall have the same corrected or perfected, either by the assessor or some other person than the assessor of taxes. Such person so employed by the commissioners' court shall be entitled to such part of the commissions to which such assessor is entitled as the court may allow; and said court shall so certify to the comptroller, who shall pay such person in the same manner as the assessor of taxes is paid; and the amount so paid shall be deducted by the comptroller from the commissions of the assessor of taxes, whose duty it was to have performed such work. (Id. sec. 29. See Acts 1879, ch. 47.)

Art. 7587. (5137) Lands of non-residents in unorganized counties, etc.—Lands lying in and owned by non-residents of unorganized counties, and lands lying in the territory not laid off into counties, shall be assessed by the comptroller of public accounts in accordance with such regulations as he may adopt and establish for that purpose. (Const. art. 8, sec. 12.)

Art. 7587a. Cancellation of subdivisions; applications for.—Any person, firm, association or corporation owning lands in

this State, which lands have been subdivided into lots and blocks or small subdivisions, may make application to the Commissioners' Court of the County wherein any such lands are located, for permission to cancel all or any portion of such subdivision or subdivisions, so as to throw the said lands back into acreage tracts as it existed before such subdivisions were made. (Acts 1919, ch. 103, sec. 1.)

Art. 7587b. Same subject; order for; filing and recording.—When such application is made by the owner or owners, of such land, and it is shown that a cancellation of such subdivisions, or portion thereof, will not interfere with the established rights of any purchaser, or purchasers, owning any portion of such subdivisions, or if it be shown that said person or persons agreed to such cancellation, said Commissioners' Court shall enter an order, which order cancelling said subdivision shall be spread upon the minutes of such Court, authorizing such owner, or owners, of such lands, to, by written instrument describing such subdivisions, or portions thereof, so cancelled as designated by said Commissioners' Court, and when such cancellation is filed and recorded in the Deed Records of such County, the Tax Assessor of such County shall assess such property as though it had never been sub-divided. (Id. sec. 2.)

Art. 7587c. Same subject; notice; publication.—When such application is filed with the Commissioners' Court, said Court shall cause notice to be given of such application by publishing such application in some newspaper, published in the English Language, in such County for at least three weeks prior to action thereon by said Commissioners' Court, action shall be taken on such petition or petitions at a regular term of said Commissioners' Court. Such notice, in addition to the publication of the application hereinabove provided for, shall command any person, or persons, interested in such lands, to appear at the time specified in such notice, to protest if desired against such action. (Id. sec. 3.)

Art. 7587d. Same subject; delinquent taxes.—Provided further if said lands are delinquent for taxes for any preceding year, or years, and such application is granted as hereinbefore provided, the owner, or owners, of said land, shall be permitted to pay such delinquent taxes upon an acreage basis, the same as if said lands had not been subdivided, and for the purpose of assessing lands for such preceding years the County Assessor of Taxes shall back assess such lands upon an acreage basis. (Id. sec. 4.)

Art. 7587e. Same subject; land excepted.—Provided this Act shall not apply to any lands or lots included in an incorporated city or town. (Id. sec. 5.)

PROPERTY IN UNORGANIZED COUNTIES

Art. 7588. (5138) Lands in unorganized counties.—All lands and other property situated in the unorganized counties of this state, owned by residents of such unorganized counties, shall be assessed by the assessor of the organized county to which such unorganized county is attached for judicial purposes, and the taxes collected by the collector of such organized county; and the same remedies for the enforcement of the assessment and collection of such taxes shall apply as the law directs for the assessment and collection of the taxes on property situated in organized counties of this state. (Acts 1879, p. 141.)

Art. 7589. (5139) Duties of comptroller in relation thereto.—The comptroller of the state is authorized, empowered and required to assess and collect the state and county taxes on all lands in this state which are situated in unorganized counties thereof and owned by non-residents thereof, in the manner hereinafter provided. (Id. sec. 2; amended Acts 1897, p. 43.)

Art. 7590. (5140) Same.—The comptroller may at any time prior to the return of the assessment rolls to his office of the organized county to which such unorganized county or counties are attached for judicial purposes, receive the assessment of and collect the taxes on any lands situated in such unorganized county or counties which are owned by non-residents thereof. (Id. sec. 3.)

Art. 7591. (5141) Same.—As soon as the tax rolls of the organized county to which unorganized counties are attached for judicial purposes shall have been received by the comptroller, he shall, by comparing the lands rendered to the assessor of the organized county by the residents of such unorganized county or counties with those previously rendered to him by non-residents, make out a list of all unrendered lands situated in such unorganized county, and place such value upon the lands thus found to be unrendered as he, as a sworn officer, may deem just and fair; provided, nothing in this law shall be so construed as to prevent the comptroller from receiving the assessment and taxes due at any time prior to the completion of the unrendered list of such unorganized county. (Id. sec. 4.)

Art. 7592. (5142) Same.—After the completion of the unrendered list provided for in this chapter, the owner or owners must pay according to the value and assessment made thereon by the comptroller. (Id. sec. 5.)

Art. 7593. (5143) May appeal from comptroller's assessment.—Assessment of lands rendered to the comptroller under the provisions of this chapter shall be made by the party rendering the same under oath as to their value; but if the comptroller thinks the valuation too low he shall object, and, if the comptroller and the party rendering the land can not agree, then the comptroller shall assess the same at such value as he as a sworn officer may think it is worth; and, if the party rendering feels that the assessment is too high, he may appeal to the board of equalization, which for such purposes shall consist of the governor, attorney general and the secretary of state, and their decision shall be final. (Id. sec. 6.)

Art. 7594. (5144) May levy upon and sell, when.—Three months after the completion of the unrendered list of each unorganized county respectively, the comptroller shall proceed to levy upon and advertise all lands in such counties upon which the taxes are due and unpaid, giving notice of the amount due upon each separate tract of land, and giving such description of the land upon which taxes are due and unpaid as he may

be in possession of; such notice to be given by publication in some weekly newspaper published in the state for four consecutive weeks; said notice to state that on a certain day therein named the comptroller will proceed to sell the land therein described, or so much thereof as may be necessary, to pay the state and county taxes due, and the cost of advertising the same. (Id. sec. 7.)

Art. 7595. (5145) Sale.—The sale shall commence on the day named in said notice, and may continue from day to day (Sundays and legal holidays excepted) until completed; such sale shall be had in front of the comptroller's office, in the city of Austin, between the hours of eight o'clock a. m. and four o'clock p. m. of each day. (Id. sec. 8.)

Art. 7596. (5146) May be bought by state, when.—Should there be no purchaser of said lands, then the comptroller shall bid the same in to the state for the taxes due thereon and the costs of sale, and make a deed to the state to the same, including in one deed all lands bid in for the state or any one else. (Id. sec. 9.)

Art. 7597. (5147) Redemption.—Should the lands bid in by the comptroller for the state not be redeemed by the owner thereof or his agent within two years, by the party redeeming the same paying double the amount for which the said land was sold, then the said lands thus sold and unredeemed shall become vacant and revert to and become a part of the public free school fund, to be sold and disposed of as other lands belonging to the public free school fund are to be sold and disposed of by law. (Id. sec. 10.)

Art. 7598. (5148) Tax deed.—The comptroller shall give to the purchaser of any lands, the sale of which is provided for in this chapter, a deed to the same, giving in such deed such description of the land as may be necessary to identify the same, or such description as he may be in possession of. (Id. sec. 11.)

Art. 7599. (5149) List of purchasers to be kept in office.—The comptroller shall keep a list of the purchaser or purchasers of all such lands in his office, showing the name and post office of the purchaser or purchasers, together with the amount and description of the land sold and the amount for which it was sold, and the date of sale. (Id. sec. 12.)

Art. 7600. (5150) Deed shall vest good title, when.—The deed given to the purchaser or purchasers by the comptroller under the provisions of this chapter shall vest a good and sufficient fee simple title in the purchaser or purchasers, subject to be impeached only for actual fraud; provided, the former owner or owners thereof do not redeem the same within two years from the date of the deed, either by paying to the purchaser or purchasers double the amount for which said land was sold, or by making a tender of the same to him or his agent, or by depositing with the comptroller before the expiration of the two years double the amount for which such land was sold, to be paid by the comptroller, when called upon, to the purchaser or purchasers thereof. (Id. sec. 13.)

Art. 7601. (5151) County taxes to be paid, where.—All county taxes collected under the provisions of article 5147 [7597] shall be paid into the county treasury of the organized county to which the unorganized county is attached for judicial purposes. (Id. sec. 14.)

Art. 7602. (5152) Comptroller to keep taxes of unorganized counties until.—All county taxes, other than taxes to pay pro rata of indebtedness to parent county, due unorganized counties, collected by the comptroller, shall be kept by him to the credit of such unorganized county until the total sum to the credit of the county shall reach the sum of five thousand dollars. Then he shall, upon the demand of the treasurer of the former unorganized county, when the same shall have organized, pay said sum, or whatever amount is held to the credit of said county, over to said treasurer. And all county taxes collected by the comptroller after the amount to the credit of such unorganized county shall reach the amount of five thousand dollars shall be paid into the county treasury of the organized county to which the unorganized county is attached for judicial purposes. (Id. sec. 15; amended Acts 1897, p. 43.)

Art. 7603. (5152a) Same.—Where the amount to the credit of any unorganized county now exceeds five thousand dollars the comptroller shall keep said sum to be paid to the treasurer of such unorganized county when the same shall organize; and all county taxes, other than taxes collected to pay pro rata of indebtedness to parent county, hereafter collected by the comptroller in such counties, shall be paid into the county treasury of the organized county to which such county is attached for judicial purposes. (Acts 1897, p. 43.)

Art. 7604. (5153) Special deposit to be made by comptroller.—All money received by the comptroller on deposit for the redemption of land sold and bought by individuals shall be by him deposited in the state treasury as a special deposit, subject to the order of the party to whom the conditional deed to such land was given. So also shall all county taxes collected by the comptroller under the provisions of this law be deposited in the state treasury as a special fund, subject to the order of the comptroller, to be paid to the county treasurers as provided in this chapter. (Id. sec. 16.)

CHAPTER THIRTEEN

OF THE COLLECTION OF TAXES; ELECTION AND QUALIFICATION OF THE COLLECTOR

Art. 7605. (5154) Election and term of collector.—In each county having ten thousand inhabitants, to be determined by the last preceding census of the United States, there shall be elected by the qualified voters, at the same time and under the same law regulating the election of state and county officers, a collector of taxes, who shall hold his office for two years and until his successor is elected and qualified. (Const., art. 8, sec. 16; Act Aug. 21, 1876, p. 259, sec. 1.)

Art. 7606. (5155) Vacancies, how filled.—Should the office of collector of taxes from any cause become vacant before the expiration of said term, it shall be the duty

of the commissioners' court in the county in which such vacancy shall occur, to appoint a collector of taxes, who shall be qualified in the same manner and subject to like bonds as the collector of taxes elected; and the collector of taxes so appointed shall hold his office for and during the unexpired term of his predecessor and until his successor shall have been qualified; and the collector of taxes so appointed shall have all the rights and perform all the duties required by law of the collector of taxes elected. (Id.)

Art. 7607. (5156) Sheriff a collector, when.—In each county having less than ten thousand inhabitants, the sheriff of such county shall be the collector of taxes, and shall have and exercise all the rights, powers and privileges, be subject to all the requirements and restrictions, and perform all the duties imposed by law upon collectors; and he shall also give the same bonds required of a collector of taxes elected. (Const., art. 8, sec. 16; Id. sec. 2.)

Art. 7608. (5157) Bond for state taxes; oath.—Every collector of taxes, within twenty days after he shall have received notice of his election or appointment, and before entering upon the duties of his office, shall give bond based upon unincumbered real estate of the sureties, subject to execution, payable to the Governor and his successors in office, in a sum which shall be equal to forty (40) per cent of the whole amount of the State tax of the county as shown by the last preceding assessment, providing said bond shall not exceed one hundred thousand ($100,000.00) dollars, with at least three good and sufficient sureties, to be approved by the commissioners court of his county, which shall be further subject to the approval of the Comptroller, and shall take and subscribe the oath prescribed by the Constitution, which, together with said bonds, shall be recorded in the office of the clerk of the county court of said county, and be forwarded by the county judge of the county to the Comptroller, to be deposited in his office. Said bond shall be conditioned for the faithful performance of the duties of his office as collector of taxes for and during the full term for which he was elected or appointed, and shall not become void upon first recovery, but suit may be maintained thereon until the whole amount thereof be recovered. (Act Aug. 21, 1876, p. 259, sec. 3; Acts 1915, ch. 124, sec. 1; Acts 1917, ch. 146, sec. 1.)

Art. 7609. (5158) New bond.—The collector of taxes may be required to furnish a new bond or additional security whenever, in the opinion of the commissioners' court or comptroller of public accounts, it may be advisable. Should any collector of taxes fail to give a new bond and additional security, when required, he shall be suspended from office by the commissioners' court of his county, and immediately thereafter be removed from office in the mode prescribed by law. (Act Aug. 21, 1876, p. 259, sec. 3.)

Art. 7610. (5159) Bond for county taxes; additional bond or security; expense of surety bond; determination of reasonableness of premium.—Collectors of taxes shall give a like bond, with like conditions, to the county judge of their respective counties and their successors in office in a sum not less than forty (40) per cent of the whole amount of the county tax, as shown by the last preceding assessment, providing said whole amount shall not exceed one hundred thousand ($100,000.00) dollars, with at least three good and sufficient sureties, to be approved by the commissioners court of his county, which bond shall be recorded and deposited in the office of the clerk of the county court. A new bond and additional security may be required, and, for a failure to give such new bond or additional security, the collector of taxes may be removed from office in the manner prescribed by law. In the event the bonds required under the terms of this article and also under article 7608 or either thereof, and executed by a satisfactory surety company or companies or by any private party or parties as surety or sureties thereon in counties with a total taxable valuation of thirty million ($30,000,000) dollars or more, the county of which the principal in said bonds is tax collector shall pay a reasonable amount as premium on said bond or bonds which amount shall be paid out of the general revenue of the county upon presentation of the bill therefor to the commissioners' court of the county properly authenticated as required by law in other claims against the county, and should there by any controversy as to the reasonableness of the amount claimed, as such premium, such controversy may be determined by any court of competent jurisdiction. (Act Aug. 21, 1876, p. 260, sec. 4; Acts 1915, ch. 124, sec. 1; Acts 1917, ch. 146, sec. 1.)

Art. 7610a. New bonds may be given by existing officers.—Provided further that as soon as this Act shall take effect, or at any time thereafter, tax collectors shall be allowed to make new bonds under the provisions hereof, such bonds to be in lieu of the bonds given by them under the law existing at the time such bonds were given. (Id. sec. 2.)

Art. 7610b. County depositories shall pay money deposited directly to treasurer on check of collector; exception.—Provided that except as to compensation due such tax collector as shown by his approved reports, tax money deposited in county depositories shall be paid by such depositories only to treasurers entitled to receive the same, on checks drawn by such tax collector, in favor of such treasurer. (Id. sec. 3a.)

Art. 7611. (5160) All bonds to be first approved.—No collector of taxes shall enter upon the discharge of the duties of the office until all the bonds required of him by law for the collection of any taxes, state, county or special, shall have been given and approved.

Art. 7612. (5161) May appoint deputies.—Each collector of taxes may appoint one or more deputies to assist him in the collection of taxes, and may take such bond and security from the person so appointed as he deems necessary for his indemnity; and the collectors, in all cases, shall be liable and accountable for his proceedings and misconduct in office. (Act Aug. 21, 1876, p. 260, sec. 9.)

Art. 7613. (5162) Rolls to be a warrant.—When the collector of taxes of any county shall have received the assessment rolls or books of the county, he shall receipt

to the commissioners' court for the same; and said rolls or books shall be full and sufficient authority for the county collector of taxes to receive and collect the taxes therein levied. (Id. sec. 5.)

Art. 7614. (5163) Collector for all taxes.—The collector of taxes shall be the receiver and collector of all taxes assessed upon the tax list in his county, whether assessed for the state or county, school, poorhouse or other purpose; and he shall proceed to collect the same according to law, and place the same when collected to the proper fund, and pay the same over to the proper authorities, as hereinafter provided. (Id. sec. 6.)

Art. 7615. (5164) Collections, when to begin.—The collector of taxes of each county shall begin the collection of taxes annually on the first day of October, or so soon thereafter as he may be able to obtain the proper assessment rolls, books or data upon which to proceed with the business; and he shall post up notices—not less than three—at public places in each voting or magistrate's precinct in his county, at least twenty days previous to the day said taxpayers are required to meet him for the purpose of paying their taxes, stating in said notice the times and places the same are required to be paid; and it shall be the duty of said collector, or his deputy, to attend at such times and places for the purposes aforesaid, and shall remain at each place at least two days; and, if the collector shall, from any cause, fail to meet the taxpayers at the time and place specified in the first notice, he shall, in like manner, give a second notice. (Id. sec. 7.)

Art. 7616. (5165) Shall keep office at county seat.—The collector of taxes shall keep his office at the county seat of his county; and it shall be the duty of every person who has failed to attend and to pay his taxes at the times and places in his precinct named by the collector, as provided in the preceding article, to call at the office of the collector and pay the same before the last day of December of the same year for which the assessment is made. (Acts 1887, p. 127.)

Art. 7617. (5166) Tax receipt and its requisites.—The collector of taxes or his deputy, whenever any tax is paid, shall give to the person paying the same a receipt therefor, specifying the amount of state ad valorem tax, amount of state poll tax, the amount of county ad valorem tax, the amount of county poll tax, and the year or years for which such tax was levied; said receipt shall also show the number of acres of land in each separate tract, number, abstract and name of original grantee; the said receipt shall have a duplicate stub showing the name of the person, the date, the amount of each separate tax and the date of payment. The collector of taxes shall provide himself with a seal, on which shall be inscribed a star with five points, surrounded by the words, "Collector of taxes, ——— County" [the blank to be filled with the name of the county], and shall impress said seal to each receipt given by him for taxes collected on real estate; and said receipt having the seal attached shall be admissible to record in the county in which the property is situated in same manner as deeds duly authenticated, and when so recorded shall be full and complete notice to all persons of the payment of said tax. (Acts 1876, p. 261, sec. 10.)

Art. 7617a. Recording of tax receipts.—Every receipt for the payment of taxes on property, real, personal or mixed, hereafter paid, as well as those heretofore paid, collected by state, county or municipal officers, may be recorded in the office of the County Clerk of the county where the property is situated. (Acts 1915, ch. 85, sec. 1.)

Art. 7617b. Duties of County Clerk; certified copies as evidence.—On presentation of a tax receipt to the County Clerk it shall be his duty to immediately file the same in the same manner of filing a deed to land; and he shall enter and record such receipt at length and in full in a record book or books kept by him for the purpose of recording tax receipts, which said records shall be called "Tax Receipt Record," and shall have the name and number written or printed thereon, and such record shall be evidence to all the world of the payment of such tax, and certified copies thereof may be used in evidence on issues involving the same under like rules admitting certified copies of deeds in evidence. (Id. sec. 2.)

Art. 7617c. Fee; return of original to owner.—A fee of twenty-five cents shall be paid to the clerk for filing, recording and certifying to each tax receipt, and when recorded such receipt shall be returned to the party filing the same or the owner. (Id. sec. 3.)

Art. 7617d. Record books to be furnished.—The Commissioners Court of each county shall provide and furnish to the County Clerk of such county tax receipt record books which may be made in form as books for recording deeds or in form with printed blanks conforming to the form of the tax receipts as provided under authority of the state for tax collectors, or in any form suitable to the purposes of this Act, in the discretion of said Commissioners Court, with the name "Tax Receipt Record" endorsed on the same, with successive numbers on each separate volume, and properly index said record alphabetically in the name of the holder of the tax receipt. (Id. sec. 4.)

Art. 7618. (5167) Monthly reports as to state taxes; requisites of; duties of county clerk; payment of money to State Treasurer; annual settlements; allowance of delinquent and insolvent list; forms, etc.; duties of Comptroller.—1. At the end of each month the collector of taxes shall, on forms to be furnished by the Comptroller of Public Accounts, make an itemized report under oath to the Comptroller, showing each and every item of ad valorem, poll and occupation taxes collected by him during said month, accompanied by a summarized statement showing full disposition of all state taxes collected. Provided, however, that said itemized reports for the months of December and January of each year may not be made for twenty-five (25) days after the end of such months if same can not be completed by the end of such respective months.

2. He shall present such report, together with the tax receipt stubs, to the County Clerk, who shall, within two days, compare said report with said stubs, and if same

agree in every particular as regards names, dates and amounts, he (the clerk) shall certify to its correctness, for which examination and certificate he shall be paid by the Commissioners Court twenty-five cents for each certificate and twenty-five cents for each two hundred taxpayers on said report.

3. The Collector of Taxes shall then immediately forward his reports so certified to the Comptroller, and shall pay over to the State Treasurer all moneys collected by him for the state during said month, excepting such amounts as he is allowed by law to pay in his county, reserving only his commissions on the total amount collected, and to enable him to do so, he may, at his own risk, send the same to the State Treasurer at the least cost to the state, on which he shall be allowed credit by the Comptroller upon filing receipts showing actual amount of exchange paid; provided, that the State Treasurer shall accept no payment other than money orders, or direct cash payments, which may be made through express companies, banks, or any other source. The State Treasurer, whenever he may receive a remittance from a Collector of Taxes, shall promptly pay the money so remitted to the State Treasury, on the deposit warrant of the Comptroller, and the money, when so deposited, shall be a credit to the said Collector of Taxes.

4. The Collector of Taxes shall pay over to the State Treasurer all balances in his hands belonging to the state, and finally adjust and settle his account with the Comptroller on or before the first day of May of each year, and to enable him to do so, the Commissioners Court shall convene on or before the third Monday in April for the purpose of examining and approving his final settlement papers.

5. The allowance of a delinquent and insolvent list to the collector, in accordance with Article 7621, shall not absolve any taxpayer or property thereon from the payment of taxes, but it shall be the duty of the collector to use all necessary diligence to collect the amounts due thereon, after it is allowed by the Commissioners Court; and he shall issue special tax receipts therefor, to be furnished by the Comptroller, which blank receipts shall be numbered and charged to the collector, who shall account for same at his next annual settlement, in the same manner as occupation tax receipts. He shall also make itemized monthly reports of such collections, using special blanks for that purpose.

6. To enforce the prompt and speedy collection and remittance of taxes, and to provide for the proper accounting of same, the Comptroller shall prescribe and furnish the forms to be used by Collectors of Taxes, and the mode and manner of keeping and stating their accounts, and shall adopt such regulations as he may deem necessary in regard thereto. It shall be his imperative duty to enforce a strict observance of all the provisions of these articles.

7. It shall be the duty of the Comptroller to notify the District Attorney of the District, or the County Attorney of the county in which the collector resides, and the sureties on the bond of the collector, of any failure to comply with any of the provisions of this article. (Acts 1893, p. 90; Acts 1915, ch. 124, sec. 1.)

Art. 7619. (5168) Duties of clerk and collector.—1. The collector of taxes shall at the end of each month make like reports to the commissioners' court of all the collections made for the county, conforming as far as applicable and in like manner to the requirements as to the collection and report of taxes collected for the state. The county clerk shall likewise, within two days after the presentation of said report by the collector, examine said report and stubs, and certify to their correctness as regards names, dates and amounts; for which examination and certificate he shall be paid by the collector of taxes fifty cents each month, which amount shall be allowed to the collector by the commissioners' court.

2. The clerk shall file said report intended for the commissioners' court, together with the tax receipt stubs, in his office for the next regular meeting of the commissioners' court.

3. The collector of taxes shall immediately pay over to the county treasurer all taxes collected for the county during said month, after reserving his commissions for collecting the same, and take receipts therefor, and file with the county clerk.

4. At the next regular meeting of the commissioners' court, the collector of taxes shall appear before said court and make a summarized statement, showing the disposition of all moneys, both of the state and county, collected by him during the previous three months. Said statement must show that all taxes due the state have been promptly remitted to the state treasury at the end of each month, and all taxes due the county have been paid over promptly to the county treasurer, and shall file proper vouchers and receipts showing same.

5. The commissioners' court shall examine such statement and vouchers, together with the itemized report and tax receipt stubs filed each month, and shall compare the same with the tax rolls and tax receipt stubs. If found correct in every particular, and if the collector of taxes has properly accounted for all taxes collected, as provided above, the commissioners' court shall enter an order approving said report, and the order approving same shall be recorded in the minutes, as other proceedings of said court.

6. The collector of taxes shall finally adjust and settle his account with the commissioners' court for the county taxes collected, at the same time and in the same manner as is provided in the foregoing article in his settlement with the state. (Acts 1893, p. 90.)

Art. 7620. (5169) Report not to be approved, unless.—If any collector of taxes shall have failed at the end of each month, or within three days thereof, to promptly remit to the state treasurer the amount due by him to the state, or pay over to the county treasurer the amount due by him to the county, the commissioners' court, at the next regular meeting, shall ascertain the facts; and, if the collector of taxes fails or refuses to pay or remit the same and file proper vouchers therefor, as provided in the foregoing article, the commissioners' court shall not approve his reports and accounts, but shall ascertain the amounts due by him, both to the state and county, and enter an order requiring him to pay the same to the proper treasurers, as is provided in articles 7658 and

7659 of the Revised Statutes, and notify such collector, as is provided for in article ——— [article 7660], under penalty for failure to do so, in section 4 of said article [as provided for in the Penal Code]. Whenever the collector of taxes shall fail or refuse to remit to the state treasurer the amounts due the state, when requested, the comptroller shall notify him under articles [7658], 7659, 7660 and 7661, and for such failure be subject to the penalties provided in the Penal Code. (Acts 1893, p. 90.)

Art. 7621. (5170) List of delinquents and insolvents to be made out.—The collector of taxes shall make out on forms, to be furnished for that purpose by the comptroller of public accounts, between April 1 and 15 of each year, list of delinquent or insolvent taxpayers, the caption of which shall be, the "list of delinquent or insolvent taxpayers." In this list he shall give the name of the person, firm, company, or corporation from whom the taxes are due, in separate columns; and he shall post one copy of these delinquent or insolvent lists at the court house door of the county, and one list at the court house door, or where court is usually held, in each justice precinct in his county; and the collector of taxes, upon the certificate of the commissioners' court that the persons appearing on the insolvent or delinquent lists have no property out of which to make the taxes assessed against them, or that they have moved out of the county, and that no property can be found in the county belonging to such persons, out of which to make the taxes due, shall be entitled to a credit on final settlement of his accounts for the amounts due by the persons, firms, companies, or corporations certified to by the commissioners' court, as above provided for. (Id.)

Art. 7622. (5171) Collector to endeavor to collect delinquent list.—The allowance of an insolvent list to the collector in accordance with the provisions of the preceding article shall not absolve any taxpayer or property thereon from the payment of taxes; but it shall be the duty of the collector to use all necessary diligence to collect the amounts due on the insolvent list after it is allowed, and report and pay over to the proper officers all amounts collected on the same. (Id. p. 262, sec. 13.)

Art. 7623. (5172) Non-residents.—Non-residents of counties, owing state or county taxes, are hereby authorized to pay the same to the comptroller of public accounts; provided, that all taxes due by said non-residents shall be paid at the comptroller's office on or before the first day of January next after the assessment of such taxes; provided, further, that the collectors of taxes shall be entitled to the commissions on all moneys paid by non-residents to the comptroller of public accounts, due their counties respectively. (Acts 1879, p. 41.)

Art. 7624. (5173) Forced collections to begin, when.—If any person shall fail or refuse to pay the taxes imposed upon him or his property by law, until the first day of January next succeeding the return of the assessment roll of the county to the comptroller, the collector of taxes shall, by virtue of his tax roll, seize and levy upon and sell so much personal property belonging to such person as may be sufficient to pay his taxes, together with all costs accruing thereon; provided, there shall be no levy on property when the owner thereof has the right to pay at the comptroller's office, until a list of the persons who have paid their taxes at said office has been furnished the collector of taxes by the comptroller. The comptroller shall forward said list of paid taxes on or before the first day of February of each year; and the tax collector shall, immediately on receipt of said list from the comptroller, levy on and sell the property of such non-residents as have not paid their taxes, in accordance with the law regulating the sale of property for taxes. (Acts 1887, p. 127.)

Art. 7625. (5174) Personal property may be pointed out.—If any person shall point out to the collector of taxes sufficient personal property belonging to him to pay all taxes assessed against him before the first day of January of any year, the collector shall immediately levy upon and sell such property so pointed out, in accordance with the laws regulating tax sales of a similar class of property. (Id.)

Art. 7626. (5175) When property about to be removed from county.—If it comes to the knowledge of the collector that any personal property assessed for taxes on the rolls is about to be removed from the county, and the owner of such property has not other property in the county sufficient to satisfy all assessments against him, the collector shall immediately levy upon a sufficiency of such property to satisfy such taxes and all costs, and the same sell in accordance with the law regulating sales of personal property for taxes, unless the owner of such property shall give bond, with sufficient security, payable to and to be approved by the collector, and conditioned for the payment of the taxes due on such property, on or before the first day of January next succeeding. (Id.)

Art. 7627. (5175a) Tax lien superior to assignment, attachment, inheritance or devise, except.—In all cases where a taxpayer makes an assignment of his property for the payment of his debts, or where his property is levied upon by creditors, by writs of attachment or otherwise, or where the estate of a decedent is or becomes insolvent, and the taxes assessed against such person or party, or against any of his estate remains unpaid in part or in whole, the amount of such unpaid taxes shall be a first lien upon all such property; provided, that, when taxes are due by an estate of a deceased person, the lien herein provided for shall be subject to the allowances to widows and minors, funeral expenses, and expenses of last sickness; and such unpaid taxes shall be paid by the assignee, when said property has been assigned by the sheriff out of the proceeds of sale in case such property has been seized under attachment or other writ, and by the administrator or other legal representative of decedents; and, if said taxes shall not be paid, all said property may be levied on by the tax collector and sold for such taxes in whomsoever's hands it may be found. (Report Joint Committee, 1895, No. 111, Sen. Jour., p. 486.)

Art. 7628. Execution on property in other counties than that where tax is

due.—Whenever it shall appear to the collector of taxes in any county in this state that any person who is delinquent in the payment of his or her taxes has no property in his county out of which said amount of taxes can be collected, it shall be the duty of such collector to make out from the assessment list a true and complete list or schedule of the taxes due by said delinquent, which shall be certified to under the official seal and signature of said collector, and to forward the same to the collector of taxes of any county or counties where he shall have reason to believe said delinquent has property of any description, and, if said property is in any of the unorganized counties of this state, then to the collector of the county to which said unorganized county is attached for judicial purposes; and, when received by said collector, he shall at once proceed to the collection of said tax by seizure and sale, in the same manner as if said taxes were originally assessed and due in his said county, and shall report to the collector from whom said list was received the taxes so collected by him. (Acts 1905, p. 317.)

Art. 7629. Tax collector not allowed credit for delinquents, when.—No tax collector in this state shall be allowed credit for lists of delinquent or insolvent taxpayers, as provided by article 7621 of the Revised Statutes of this state, until he makes oath in writing that he has exhausted all resources to collect said delinquent taxes under this chapter and under articles 7624, 7625, 7626 and 7627. (Id.)

Art. 7630. (5176) All property liable for taxes.—All real and personal property held or owned by any person in this state shall be liable for all state and county taxes due by the owner thereof, including taxes on real estate, personal property and poll tax; and the collector of taxes shall levy on any personal or real property to be found in his county to satisfy all delinquent taxes, any law to the contrary notwithstanding. (Acts 1879, p. 46.)

Art. 7631. (5177) Sales of property, how made.—In making sales of personal property for taxes, the collector shall give notice of the time and place of sale, together with a brief description of the property levied on and to be sold, for at least ten days previous to the day of sale, by advertisements in writing to be posted at the court house door, and at two other public places in the county; and such sale shall take place at the court house door of the county in which the assessment is made, by public auction. (Acts 1876, p. 259, sec. 15.)

Art. 7632. (5178) If property is insufficient.—If personal property levied upon prove insufficient to satisfy the taxes and penalties due and costs accrued thereon, the collector shall levy upon and sell so much other personal taxable property belonging to the person as will be sufficient to satisfy such taxes, penalties and costs in the same manner as an original levy and sale; and, in all cases of sales for taxes, if there be an excess remaining in the hands of the collector, after satisfying all taxes, penalties and costs, the same shall be paid over to the original owner by the collector, or deposited in the hands of the county treasurer subject to the order of such owner. (Id.)

Art. 7633. (5179) Sales of real property, when made.—If the delinquent is not possessed of a sufficiency of personal property in the county, subject to seizure and sale, to satisfy all taxes due by him, the collector of taxes shall seize so much of the real estate of such delinquent, situated in the county, as will be sufficient to satisfy such taxes and all costs, and the same sell in accordance with the provisions of the succeeding article. (Id. sec. 16.)

Art. 7634. (5180) Advertisements of real property for sale, etc.—In making sales of real property for taxes, the collector shall advertise the same for sale in some newspaper published in the county where the land is to be sold, for three successive weeks, if there be one; and the publisher of such newspaper shall receive as compensation not exceeding twenty-five cents for each tract or parcel of land so advertised, to be taxed as other costs of sale against such land; provided, the cost of advertising in a newspaper shall be deducted from the fees allowed the collector for advertising; and provided, that the comptroller shall allow the collector twenty-five cents per tract for each tract of land bid off by the state; and, if there be no newspaper published in the county, or, there being a newspaper published in the county, and the publisher thereof refuses to publish the advertisement at the price herein fixed then advertisement shall be made by posting the same for thirty days previous to the day of sale, at the court house door and three other public places in the county where the land or lots are situated, giving in said advertisement such description as is given to the same on the tax rolls in his hands, stating the name of the owner, if known, and if unknown say "unknown," together with time, place and terms of sale; said sale to be for cash, to the highest bidder, at public outcry, at the court house door, and between legal hours, on the first Tuesday of the month. (Acts 1881, p. 15.)

Art. 7635. (5181) List to be posted.—Prior to the sale of any real property for taxes in any county in this state, the collector of taxes shall advertise the same by posting a list of the names of the delinquents for thirty days as follows: One copy at the court house door of the county, and a copy at two other public places in the county where the lands or lots are situated. (Acts 1879, S. S., p. 46.)

Art. 7636. (5182) May be continued from day to day.—As far as may be practicable, all the lands and town lots levied upon for taxes shall be advertised in one notice and be sold on the same day; and such sales may be continued from day to day until concluded; but at the close of each day's sale the collector of taxes shall make proclamation of such continuance on the following day. No sale shall be considered complete until the payment of the purchase money; and, if the same is not paid before the completion of the tax sales, the collector shall resell the property, and continue such sale until the same is complete. (Acts 1876, p. 289.)

Art. 7637. (5183) Homesteads liable only for their own taxes.—No real estate set apart, used or designated as a homestead

shall be sold for taxes other than the taxes due on such homestead. (Id.)

Art. 7638. (5184) Sales of land, how made.—The collector of taxes, in making sales for taxes due upon real estate, shall sell at auction, at the time and place appointed, so much of said real estate as may be necessary to pay the taxes and penalties due and all costs accruing thereon, and shall offer said real estate to the bidder who will pay the taxes and penalties due, and costs of sale and execution of deed, for the least amount of said real estate, who shall be deemed the highest bidder. Should a less amount of said real estate than the whole tract or parcel of said real estate levied upon be sold for the taxes and penalties due and all costs of sale and execution and deed, the collector shall, in making his deed to the purchaser, begin at some corner of said tract or parcel of land or town lot and designate the same in a square as near as practicable. (Id. p. 263, sec. 17.)

Art. 7639. (5185) The tax deed and its requisites.—The collector of taxes shall execute and deliver to the purchaser, upon the payment of the amount for which the estate was sold, and costs and penalties, a deed for the real estate sold, which deed shall vest a good and perfect title to said land in the purchaser, if not redeemed in two years, as hereinafter provided; which deed shall state the cause of sale, the amount sold, the price for which the real estate was sold, the name of the person, firm, company or corporation on whom the demand for the taxes was made, provided, the name is known, and if unknown say "unknown," the same description of the land as is given in the tax rolls, and such other description as may be practicable for better identification; and when real estate has been sold he shall convey, subject to the right of redemption provided for in Article 7641, all the right and interest which the former owner had therein at the time when the assessment was made. (Const. art. 8, sec. 13; Id. sec. 18.)

Art. 7640. (5186) Sales to be reported to commissioners' court.—When the collector of taxes shall have made sale of any real estate under this chapter, it shall be his duty to make immediate return of said sale to the commissioners' court, stating in said return the land sold, the name of the owner, if known, and if unknown, state the fact, the time of sale, the amount for which said sale was made, together with the name of the purchaser, which return shall be entered of record on the minute books of said court. (Id.)

Art. 7641. (5187) Redemption of land sold for taxes.—The owner of real estate sold for the payment of taxes, or his heirs or assigns or legal representatives, may, within two years from the date of sale, redeem the estate sold by paying or tendering to the purchaser, his heirs or legal representative, double the amount of money paid for the land. (Id. sec. 19.)

Art. 7642. Redemption within two years, when.—That the owner or any one having an interest in lands or lots heretofore sold to the state, or any city or town, under decree of court in any suit or suits brought for the collection of the taxes thereon, or by the collector of taxes, or otherwise, shall have the right at any time within two years after the taking effect of this Act, to redeem the same upon the payment of the amount of taxes for which sale was made, together with all costs, penalties and interest now required by law, and also the payment of all taxes, interest, penalties and costs on or against said lands or lots at the time of said redemption. And where lands or lots shall hereafter be sold to the state, or to any city or town for taxes under decree of court in any suit or suits brought for collection of taxes thereon, or by a collector of taxes, or otherwise, the owner having an interest in such lands or lots shall have the right at any time within two years from the date of sale to redeem the same after such sale upon payment of the amount of taxes for which sale was made, together with all costs and penalties required by law, and also the payment of all the taxes, interest, penalties and costs on or against said lands or lots at the time of redemption. (Acts 1909, p. 400, sec. 1; Acts 1913, S. S., p. 25, sec. 1, amending Art. 7642, Rev. St. 1911.)

Art. 7642a. Extension of time for redemption.—That the owner or any one having an interest in land or lots heretofore sold to the State, or any city or town, under the decrees of court, in any suit or suits brought for the collection of the taxes thereon, or by the collector of taxes, or otherwise, shall have the right at any time within two years after the taking effect of this Act to redeem the same upon the payment of the amount of taxes for which sale was made, together with all costs, penalties and interest now required by law, and also the payment of all taxes, interest, penalties and costs on or against said lands or lots at the time of said redemption. And where lands or lots shall hereafter be sold to the state or to any city or town for taxes under decree of court in any suit or suits brought for collection of taxes thereon, or by a collector of taxes, or otherwise, the owner having an interest in such lands or lots shall have the right at any time within two years from date of sale to redeem the same after such sale upon payment of the amount of taxes for which sale was made, together with all costs and penalties required by law, and also the payment of all taxes, interest, penalties and costs on or against said lands or lots at the time of redemption. (Acts 1915, 1st. C. S., ch. 30, sec. 1.)

Art. 7643. (5188) Redemption from private purchasers.—Any person having the right to redeem any land sold at tax sale may do so by payment, within the time prescribed by law, to the collector of taxes of the county in which the said land was sold, of the amount which the law requires to be paid; provided, that the owner of said land, or his agent, shall first have made affidavit before some officer authorized by law to administer oaths, that he has made diligent search in the county where said land is situated for the purchaser thereof at the tax sale, and has failed to find him, or that the purchaser at such tax sale is not a resident of the county in which the land is situated, or that he and the purchaser can not agree on the amount of redemption money. In such cases only shall the owner or agent be authorized to redeem the same by the pay-

ment to the collector of taxes. (Acts 1879, S. S., p. 29.)

Art. 7644. (5189) Receipt of collector, notice when.—It shall be the duty of any collector of taxes, to whom payment is made under the provisions of this chapter, to give a receipt therefor, signed by him officially, in the presence of two witnesses; which said receipt, when duly recorded, shall be notice to all persons that the land therein described has been redeemed; and the collector of taxes shall, on demand, pay over to the purchaser at said tax sale the money thus received by him. (Id. sec. 2.)

Art. 7645. (5190) Relief, when.—Any person whose land has been rendered for taxation, whether the same was rendered in the name of the original grantee or not, and has also been placed upon the unrendered rolls for the same year, shall be entitled to relief upon complying with the requirements hereinafter indicated. (Acts 1881, p. 107.)

Art. 7646. (5191) Same.—If any such lands shall have been sold for the taxes charged upon the unrendered rolls, and bought by the state, the owner thereof, his agent or attorney, shall present to the tax collector of the county in which the land is situated a sworn statement to the effect that the same land has been rendered for taxation, and placed upon the regular assessment rolls for the year mentioned. Said affidavit shall contain an accurate description of the land, and be accompanied with the certificate of the assessor that the same is true and correct; and the tax collector shall thereupon present such person with a written statement, officially signed, that said tax has been canceled, and make a note of the same upon the unrendered rolls; provided, the provisions of this article shall apply to such lands at any time after the collector shall receive the rolls until the same shall have gone into the hands of a private purchaser; and if the owner shall have paid the taxes charged upon the unrendered rolls at any time previous he shall be entitled to the warrant of the comptroller for the amount so paid, in the same manner as is provided in article 7647 of this chapter, in cases of redemption from individual purchasers; provided further, that the tax collector shall make no charge whatever for the duties herein mentioned. (Acts 1881, p. 107, sec. 2.)

Art. 7647. (5192) Certificate of redemption from collector.—When the owner of such lands shall have redeemed the same from a private purchaser, it shall be the duty of the tax collector to furnish him a certificate to that effect; and, upon presentment of said certificate to the comptroller, the comptroller shall issue to him a warrant upon the treasury of the state for the amount of such tax. This warrant shall be receivable for all taxes to the state. For issuing the certificate provided for in this article, the tax collector shall be allowed the sum of fifty cents, to be paid by the applicant. (Id. sec. 3.)

Art. 7648. (5193) Lands to be bid in for state, when.—Should the collector of taxes fail to make sale of any real estate for want of a purchaser, he shall bid the same off for the state for the taxes and penalties due and all costs accruing thereon, and execute a deed to the state; and one deed shall include all tracts of land bid off to the state at such tax sale, and make due return thereof, under such forms and directions as the comptroller may furnish and direct; and, after sale and purchase by the state of any real estate, it shall not be lawful for said collector to levy upon or advertise or sell the same for any remaining or accrued taxes due thereon until the same shall have been redeemed by the owner or is sold by the state. Said collector shall, on final settlement of his accounts with the commissioners' court and the comptroller of public accounts, be entitled to a credit for the amount of taxes due the state and county, respectively, for which the land and lots were bid off to the state. (Acts 1879, S. S., p. 36, sec. 1.)

Art. 7649. (5194) May redeem, how.—The owner, or his agent, of any lands that may have been conveyed to the state under the provisions of the foregoing article, desiring to redeem the same, may do so by depositing with the collector of the county in which the lands were sold double the amount of the purchase money and all accrued taxes thereon, within two years from the date of the deed to the state; and it shall be the duty of such collector to execute a receipt to such owner, or agents, giving therein the amount of money received, and a description of the land so as to identify the same, and sign and seal the same officially; and, upon presentation of such receipt to the comptroller of public accounts, he shall execute to the owner a relinquishment under his signature and seal of office, which may be admitted to record in like manner with other conveyances of land. (Id. sec. 2.)

Art. 7650. (5195) If not redeemed.—In case said land shall not have been redeemed as provided in article 7648 [7649], then the same may be sold as provided by article 7648. (Id. sec. 3.)

Art. 7651. (5196) May redeem by paying costs, etc.—The owner of real estate which has been bought in by the state for taxes, his heirs or assigns, may redeem the same at any time prior to the sale thereof, by the payment to the collector of the county in which such real estate is situated, or to the comptroller, if in an unorganized county, of the amount designated by the comptroller as due thereon with costs of advertisement; and provided, further, that if it shall at any time appear to the satisfaction of the comptroller that any land has been sold to the state for taxes which have been paid, or that the sale has not been made in accordance with the law authorizing the sale of land for taxes, he shall, upon the payment of the amount that may be due thereon, cancel such sale; and in all cases he shall deliver to the owner of the land, or his agent, a certificate under seal of his department, setting forth the fact that such land has been redeemed, or that such sale has been canceled; which certificate shall release the interest of the state, and the same may be recorded in the proper county as other conveyances of real estate are recorded. (Id. sec. 7.)

Art. 7652. (5197) Commissioners' court to sit as a board of inquiry, when.—The commissioners' courts of the several

counties in this state shall, at the regular terms of said courts, sit as a court of inquiry in cases where land has been erroneously rendered for taxes; and any land owner whose land has been or may be sold to the state for taxes may appear before said court in person or by proxy and show to the satisfaction of a majority of said court that the taxes for which his or her lands have been sold have been paid, although the same was rendered in an incorrect abstract number or survey or original grantee; thereupon said commissioners' court shall issue to the said land owner a certificate setting forth fully said facts, which certificate shall be signed officially by the county judge of said county; and, upon the presentation of said certificate to the comptroller of public accounts, he shall execute and deliver to said land owner a valid deed relinquishing all the right, title and interest the state may have acquired in and to said land by reason of such tax sale. (Acts 1889, p. 31.)

Art. 7653. (5202) Collector to file complaint, when.—It shall be the duty of the tax collector to make an affidavit before any justice of the peace against any person, firm or association of persons engaged in or pursuing any occupation on which, under the laws of this state, a tax is imposed, who fails or refuses to pay the same. (Acts 1887, p. 127.)

Art. 7654. Compensation.—There shall be paid for the collection of taxes, as compensation for the services of the collector, beginning with the first day of September of each year, five per cent on the first ten thousand dollars collected for the state, and four per cent on the next ten thousand dollars collected for the state, and one per cent on all collected over that sum; for collecting the county taxes, five per cent on the first five thousand dollars of such taxes collected, and four per cent on the next five thousand dollars collected, and one and one-fourth per cent on all such taxes collected over that sum; and, in counties owing subsidies to railroads, the collectors shall receive only one per cent for collecting such railroad tax; and, in cases where property is levied upon and sold for taxes, he shall receive the same compensation as allowed by law to sheriffs or constables upon making a levy and sale in similar cases, but in no case to include commissions on such sales. (Acts 1883, p. 101, sec. 1; amended Acts 1897, 1 S. S., p. 8, sec. 9.)

Art. 7655. (5207) For occupation tax.—And on all occupations and license taxes collected, five per cent. (Acts 1883, p. 101, sec. 2.)

Art. 7656. (5208) Compensation for one levy only, etc.—In making levies upon different tracts of land belonging to the same individual, corporation or company, the collector shall be entitled to charge for only one levy; and in all cases of advertisement of lands for tax sales he shall be entitled to charge for any one tract the exact proportion of the amount paid for the whole advertisement which said tract bears to all other tracts advertised, and no more. And, for any greater charge under this article, the collector shall be deemed guilty of extortion and be punished as provided in the Penal Code.

Art. 7657. (5209) Taxes upon lands of non-residents in unorganized counties.—The taxes upon lands lying in and owned by non-residents of unorganized counties, and upon lands situated in the territory not laid off into counties, shall be paid and collected at the office of the comptroller of public accounts, under such regulations as he may adopt for that purpose. (Const., art. 8, sec. 12.)

Art. 7658. (5210) Payment of moneys.—All tax collectors and other officers or appointees authorized to receive public moneys shall account for all moneys in their hands belonging to the state, and pay the same over to the state treasurer whenever and as often as they may be directed so to do by the comptroller of public accounts; provided, that tax collectors shall have thirty days from the date of such direction within which to comply with the same. (Acts 1879, S. S., p. 5.)

Art. 7659. (5211) Same.—All tax collectors and other officers or appointees authorized to receive public moneys shall account for all moneys in their hands belonging to their respective counties, cities or towns, and pay the same over to the respective county treasurers or city treasurers, whenever and as often as they may be directed so to do by the respective county judges, or county commissioners' courts, or mayor or board of aldermen; provided, that tax collectors shall have ten days from the date of such direction within which to comply with the same. (Id. sec. 2.)

Art. 7660. (5212) Notification to pay, etc.—The notification and direction provided for in the two preceding articles may be verbal, written, or by telegram; and, if written or by telegram, proof of the deposit in the postoffice or telegraph office of such notification and direction, with postage or charges duly prepaid and correctly addressed, shall be prima facie evidence of the fact of such notification and direction having been given, and of the time when the same was given. (Id. sec. 3.)

Art. 7661. (5212a) Duty of district and county attorneys to sue for taxes on personal property.—Hereafter it shall be the duty of the district or county attorney of the respective counties of this state, by order of the commissioners' court, to institute suit in the name of the state for the recovery of all money due the state and county as taxes due and unpaid on unrendered personal property; and, in all suits where judgments are obtained under this act, the person owning the property on which there are taxes due the state and county shall be liable for all costs; provided, such suits may be brought for all taxes so due and unpaid for which such delinquent taxpayer may be in arrears for and since the year 1886; and provided, further, the state and county shall be exempt from liability for any costs growing out of such action; provided, all suits brought under this article for the recovery of taxes due on personal property shall be brought against the person or persons who owned the property at the time such property should have been listed or assessed for taxation; provided, that no suit shall be brought until after demand is made by the collector for taxes due; and provided, further, that no suit shall be brought for an amount less

than twenty-five dollars. (Report Joint Committee, Sen. Jour., 1895, p. 486, No. 113.)

Art. 7662. (5212b) Limitation not available to delinquent taxpayer.—No delinquent taxpayer shall have the right to plead in any court or in any manner rely upon any statute of limitation by way of defense against the payment of any taxes due from him or her either to the state or any county, city or state [town]. (Acts 1895, S. S.)

CHAPTER FOURTEEN

OF THE ASSESSMENT AND COLLECTION OF BACK TAXES ON UNRENDERED LANDS

Art. 7663. (5213) Back taxes on unrendered lands.—In all cases where lands or real estate have not been assessed for taxation for any year since the year one thousand eight hundred and seventy, the same shall be assessed and the taxes thereon collected in the mode prescribed in this chapter. (Act Aug. 19, 1876, p. 214, sec. 1.)

Art. 7664. (5214) Comptroller to prepare list each year.—On the first day of July of each year, the comptroller of public accounts shall cause to be prepared a list of all unrendered lands in each county subject to taxation and not assessed, in which shall be specified the name of the original grantee, the abstract number, the number of acres, the year for which such lands were unrendered, and the rate of state and county taxes for such year. (Id. sec. 2.)

Art. 7665. (5215) And forward same to boards of equalization.—Upon completion of such lists, the comptroller shall forward the same to the board of equalization of the respective counties, with the verification that the said list is a true and correct statement of all the unrendered land and real estate in ——— county for the year ——, as shown by the records of his office. (Id.)

Art. 7666. (5216) The board to value such lands.—Upon receipt of such list or lists by the board of equalization of such county, it shall be their duty to value each and every tract of land or parcel of real estate so mentioned and described in the said lists at their true and full value, as near as can be ascertained, for the year it was omitted to have been rendered. (Id. sec. 3.)

Art. 7667. (5217) And cause three rolls to be made.—When the board of equalization shall have completed the valuation, they shall cause to be made out three separate rolls, in such manner as may be prescribed by the comptroller; they shall place one in the hands of the collector of taxes, forward one to the comptroller of the state, and file one in the office of the county clerk for the inspection of the public. (Id. sec. 4.)

Art. 7668. (5218) Collector to give notice.—Upon receipt of the rolls by the collector of taxes, he shall advertise in some weekly newspaper published in his county, and, if no paper is published in his county, by posting printed circulars in not less than eight public places in his county, for four consecutive weeks, that the rolls for the collection of taxes on unrendered land and real estate have been placed in his hands, and that unless the taxes are paid within sixty days after the date of said notice he will proceed to collect the same as provided by law for the collection of delinquent taxes. (Id. p. 215, sec. 5.)

Art. 7669. (5219) And enforce collections after sixty days.—After the expiration of said sixty days, if the taxes on any such lands are not paid, the collector of taxes shall proceed to enforce the collection of said taxes in the mode provided in the preceding chapter for the enforced collection of delinquent taxes; and he shall be entitled to the same fees and penalties as are allowed him for the collection of other delinquent taxes. (Id. sec. 6.)

Art. 7670. (5220) Comptroller to make out list of lands sold to state, etc.—It shall be the duty of the comptroller of public accounts, on or before the first day of each year, to make out and forward to the collector of taxes in each county of the state a full and complete list of all real estate situated in said county that has been previously, at tax sales, bid off to the state for taxes assessed in the county where the land is situated, since the thirty-first day of December, 1876, the owners of which have failed to redeem the same within two years from the date of said sale by payment or tender of payment, to the proper officer of double the amount of taxes and costs for which said real estate was bid off to the state, together with all subsequent taxes that have become due on the same from the date of sale to the last date on which the same could have been redeemed. (Acts 1879, p. 79, sec. 1.)

Art. 7671. (5221) Sale, when and how made.—It shall be the duty of each collector of taxes, within ninety days after receipt of said list, to call to his aid the county surveyor of his county, and, near as may be, ascertain if any lands contained in said list do not in fact exist in said county, or are embraced in other surveys conflicting therewith, and upon which the taxes have been paid; and, after deducting the same from said list, he shall proceed to sell each tract of land therein described, whether belonging to residents or non-residents, for the payment of such sums of money as may be designated on said list as due thereon, together with all costs that may accrue in advertising and selling the same as herein provided. (Id. sec. 2.)

Art. 7672. (5222) Advertisement of sale and redemption by owner.—The collector of taxes shall, prior to the sale of any real estate that has been previously bid off to the state at tax sales, the owners of which have failed to redeem the same, advertise the real estate to be sold in some newspaper published in the county for six successive weeks, if there be such newspaper published therein, otherwise he shall post advertisements of said sale at the court house door and at one public place in each justice's precinct of his county for at least six weeks, giving in said advertisement, whether published or posted, such description of the lands to be sold as shall be given on the comptroller's list, and stating the time, place and terms of sale, which shall be between legal hours on the first Tuesday of some specified month at the court house door at public outcry, to the highest bidder for cash; provided, that no real estate shall in any case be sold for less than the amount designated by the comptroller as due thereon, together with all costs of advertisements and sale; and pro-

vided, further, that no sales shall be made under the provisions of this chapter until six months after the same goes into effect; and provided, further, that the former owner of any such real estate, his heirs or assigns, may redeem the same at any time prior to the sale thereof, by the payment to the collector of the county in which such real estate is situated, or to the comptroller, if in an unorganized county, of the amount designated by the comptroller as due thereon, with costs of advertisement; and provided, further, that, if it shall at any time appear to the satisfaction of the comptroller that any land has been sold to the state for taxes which have been paid, or that the sale has not been made in accordance with the law authorizing the sale of land for taxes, he shall, upon the payment of the amount that may be due thereon, cancel such sale; and in all cases he shall deliver to the owner of the land, or his agent, a certificate under seal of his department, setting forth the fact that such land has been redeemed, or that such sale has been canceled, which certificate shall release the interest of the state, and the same may be recorded in the proper county as other conveyances of real estate are recorded. (Acts 1884, S. S., p. 31; Id. sec. 3.)

Art. 7673. (5223) Land sold, how.—At the time and place appointed for said sale, the collector of taxes shall offer for sale each separate parcel of the real estate advertised, and shall sell the same to the bidder who will offer the largest amount of money therefor. (Acts 1879, p. 79, sec. 4.)

Art. 7674. (5224) Sale may be continued, etc.—If the sale of the real estate advertised as provided herein shall not be completed on the day it is commenced, said sale may be continued for ten consecutive days, from day to day, by announcement of the tax collector to that effect; and the said collector may, if there be on any day a less number than three bidders present, adjourn said sale to the first Tuesday in the following month. (Id. sec. 5.)

Art. 7675. (5225) Deed executed, when and how.—When a sale has been made of any real estate as herein provided, the collector of taxes, upon payment of the amount bid for the same, shall make, execute and deliver to the purchaser a deed for such real estate, specifying in said deed the cause and date of sale, the number of acres sold, if the same can be ascertained, the name of the person, firm, corporation or company in whose name the land was assessed, and all such descriptive information as may be necessary to identify the property conveyed; provided, that the purchaser may, after payment, as described in this article, ask a delay of sixty days within which to have said real estate surveyed by the county surveyor, said survey to be made at the expense of the purchaser, and, upon a certificate from the collector directed to the surveyor that the person named in the certificate has purchased and paid for the same, not to exceed one dollar for each survey, to be paid for out of the sale of such survey. (Id. sec. 6.)

Art. 7676. (5226) Same.—When a survey has been made, as provided in the preceding article, and a copy of the field-notes, certified to as true and correct by the county surveyor, filed with the collector of taxes, the said collector shall thereupon make, execute and deliver to the purchaser a deed to said real estate, which deed shall, in addition to the requisite hereinbefore named, contain the field-notes certified by the county surveyor. (Id. sec. 7.)

Art. 7677. (5227) Effect of deed, etc.—Deeds made, executed and delivered by collectors of taxes under the authority of this chapter shall be held to vest a good and perfect title to the real estate therein described in the purchaser, and may be impeached only by frauds; provided, that the former owner shall have two years from the date of said deed to redeem the same by paying to the purchaser double the amount paid for said land by the purchaser at such sale, together with all subsequent taxes paid by the purchaser, with eight per cent interest on the amount of such subsequent taxes. (Id. sec. 8.)

Art. 7678. (5228) Report of sales.—Within thirty days after sales made under the provisions of this chapter, the collector of taxes shall make a report to the commissioners' court of his county, and also to the comptroller of public accounts, giving in said reports such description of the real estate sold as is given in the comptroller's list, and stating the amounts due the state, county and collector respectively, and the amount for which said land was sold, and the name of the party to whom each tract was sold. (Id. sec. 9.)

Art. 7679. (5229) Proceeds of sale paid to whom.—Collectors of taxes shall, within sixty days after payments for real estate sold under the provisions of this chapter, after deducting from the proceeds of sale all costs due to them or their predecessors in said office, pay into the county treasury of the county in which said real estate is situated the amount of taxes shown by the comptroller's list to be due to said county, and the balance of said proceeds shall be paid by him into the treasury of the state within the said sixty days, in such manner as may be directed by the comptroller of public accounts. (Id. sec. 10.)

Art. 7680. (5230) Collections applied, how.—Taxes collected by state or county, by sales made under the provisions of this chapter, shall be placed to the credit of the different funds for which originally assessed under the direction respectively of the comptroller of public accounts and the commissioners' court of the county in which the sale is made; the balance of the proceeds, after satisfying all taxes, penalties and costs accrued, shall, under the direction of the comptroller, be placed in the treasury of the state as a special tax sale fund, and be subject to be reclaimed by the owner or owners of the land on proof as required in case of escheated estates. (Acts 1884, p. 31.)

Art. 7681. (5231) Costs deducted by collector, etc.—The collector of taxes shall be entitled to deduct and retain out of the proceeds of sale of each separate parcel of real estate sold, as hereinbefore provided:

1. Such amount as may be designated in the comptroller's list as costs due thereon to the collector.

2. If the advertisement of sale is published in a newspaper, such a proportion of the actual amount paid for advertising as the number of acres in such separate parcel sold bears to the whole number of acres adver-

tised; or, if the advertisements are posted, the sum of one dollar.

3. Two dollars for every deed made, executed and delivered under the provisions of this chapter. (Acts 1879, p. 79, sec. 12.)

Art. 7682. (5232) Unsold land reported to comptroller.—If, after the expiration of ninety days after the receipt by the collector of taxes of the comptroller's list, any real estate described in said list shall remain unsold, it shall be the duty of the said collector to make separate reports of such fact to the commissioners' court of his county and the comptroller of public accounts respectively; and the said parcels of real estate shall be embraced in the next list furnished by the comptroller of public accounts to the collector of taxes. (Id. sec. 13.)

CHAPTER FIFTEEN
DELINQUENT TAXES

Art. 7683. All land and improvements subject to taxation.—For the purpose of taxation, real property shall include all lands within the state, and all buildings and fixtures thereon and appertaining thereto, except such as are expressly exempted by law. (Acts 1895, p. 50. Amended Acts 1897, p. 132.)

Art. 7684. Delinquent taxes a lien on land.—All lands or lots which have been returned delinquent or reported sold to the state, or to any city or town, for taxes due thereon since the first day of January, A. D. 1885, or which may hereafter be returned delinquent or reported sold to the state, or to any city or town, shall be subject to the provisions of this act; and said taxes shall remain a lien upon the said land, although the owner be unknown, or though it be listed in the name of a person not the actual owner; and though the ownership be changed, the land may be sold under the judgment of the court for all taxes, interest, penalty and costs shown to be due by such assessment for any preceding year. (Id. sec. 2.)

Art. 7685. Lands delinquent to be listed by tax collector.—It shall be the duty of the commissioners' court of each county in this state immediately upon the taking effect of this chapter to cause to be prepared by the tax collector, at the expense of the county (the compensation for making out the delinquent tax record to be fixed by the commissioners' court), a list of all lands, lots or parts of lots sold to the state for taxes since the first day of January, 1885, and which have not been redeemed, in their respective counties and unorganized counties attached thereto, and to have such lists recorded in books to be called the "Delinquent Tax Record," showing when the lands or lots were reported delinquent or sold to the state for taxes, also the name of the owner at the time of such sale or delinquency, if known, the number of acres, the amount of taxes due when first sold, and the amount of all taxes assessed against the owner thereof and returned delinquent for each year as shown by the records of the tax collector's office; and, in making up the list or lists contemplated by this chapter, corrections and omissions in the description of any real estate embraced in such list or lists shall be made, so that, when the corrections are made and the omissions supplied, the description will be such as is given in the abstracts of all the titled and patented lands in the state of Texas, or, as required in section 12 of this act [article 7694 of this chapter], such as may be furnished by the commissioner of the general land office, and it shall be required, in bulk assessments, to apportion to each tract or lot of land separately, its pro rata share of the entire tax, penalty and cost. The list for each county, when certified to by the county judge, and assessment rolls and books on file in the tax collector's office, shall be prima facie evidence that all the requirements of the law have been complied with by the officers charged with any duty thereunder, as to the regularity of listing, assessing, levying of all the taxes therein mentioned, and reporting as delinquent or sold to the state any real estate whatsoever, and that the amount alleged against said real estate is a true and correct charge; and, in cases in which the description of the property in said list or assessment rolls or books is not sufficient to properly identify the same, and of which property there is a sufficient description in the inventories in the assessor's office, then said inventories shall be admissible as evidence of the description of said property. This delinquent tax record for each county shall be delivered to and preserved by the county clerk in his office; and the commissioners' court shall cause a duplicate of same to be sent to the comptroller; provided, that, where the records are incomplete in any county, it shall be the duty of the comptroller to furnish such county with a certified copy of the delinquent list for any year or years. (Id. sec. 3.)

Art. 7686. Delinquent tax lists to be recorded by county clerks.—On receipt of such delinquent tax record containing a complete list of the lands or lots that have been reported delinquent or sold to the state for taxes for any year or number of years since January 1, 1885, and containing also the data and information mentioned in article 7685 of this chapter, it shall be the duty of the county clerk of each of the counties of this state, respectively, to certify the same to the commissioners' court for examination and correction, and shall thereafter cause the same to be recorded in a book, which book shall be labeled the "Delinquent Tax Record of ——— County." The delinquent tax record shall be arranged numerically as to abstract numbers, and shall be accompanied by an index showing the names of delinquents in alphabetical order. (Id. sec. 4.)

Art. 7687. Delinquent tax list to be published.—Upon the completion of said delinquent tax record by any county in this state, it shall be the duty of the commissioners' court to cause the same to be published in some newspaper published in the county, for three consecutive weeks; but, if no newspaper is published in the county, such list may be published in a newspaper outside of the county, to be designated by the commissioners' court, by contract duly entered into, and a publisher's fee of twenty-five cents shall be taxed against such tract or parcel of land so advertised; which fee, when collected, shall be paid into the county treasury; and the commissioners' court of said county shall not allow for said publication a greater amount than twenty-five cents for

each tract of land so advertised; and said publication, and any other publications in a newspaper provided for in this act, may be proved by the affidavit of the printer of the newspaper in which the publication was made, his foreman, or principal clerk, annexed to a copy of the publication, specifying the times when and the paper in which the publication was made; provided, that all corrections made in said record, under this article, be noted in the minutes of the commissioners' court, and shall be certified by the county clerk to the comptroller, who shall note the same upon his delinquent tax record; provided, that in the event such delinquent tax record be not published correctly in accordance with the copy furnished such newspaper, then no compensation shall be allowed for such publication. (Id. sec. 5.)

Art. 7687a. Notice to owners of delinquency; contents; duplicates for district or county attorneys; receipts for payment.—During the months of April and May each year, or as soon thereafter as practicable, the collector of taxes in each county of this State shall mail to the address of each record owner of any lands or lots situated in the county a notice showing the amount of taxes delinquent or past due and unpaid against all such lands and lots as shown by the delinquent tax record of the county on file in the office of the tax collector, a duplicate of which shall also have been filed in the office of the Comptroller of Public Accounts of the State of Texas and approved by such officer. Such notice shall also contain a brief description of the lands and lots appearing delinquent and the various sums or amounts due against such lands and lots for each year, they appear to be delinquent according to such records, and it shall also recite that unless the owner or owners of such lots or lands described therein shall pay to the tax collector the amount of taxes, interest, penalties and costs set forth in such notice within 90 days from the date of notice, then, and in that event, the county or district attorney will institute suits for the collection of such moneys and for the foreclosure of the Constitutional Lien existing against such lands and lots. And it shall also be the duty of the tax collector in every county of this State, as soon after mailing such notice as practicable, to furnish to the county or district attorney duplicates of all such notices mailed to the tax payers in accordance with the provisions of this Act, and also, lists of lands and lots located in the county appearing on the delinquent tax records in the name of "unknown" or "unknown owners" or in the name of persons whose correct address or place of residence in or out of the county said collector is unable, by the use of due diligence, to discover, or ascertain, against which taxes are delinquent, past due, and unpaid, and such lists or statements shall show the amount of state and county taxes delinquent, past due, and unpaid, against each such tract or lot of land for each year they appear to be delinquent according to the delinquent tax records of the county and shall likewise contain a brief description of all such lands and lots. And it shall be the further duty of the tax collector to furnish on demand of any person or persons, firm or corporation like statements with reference to any particular lot or tract of land for whatever purpose desired, which shall be in all instances certified by him with the seal of his office attached. Whenever any person or persons, firm or corporation shall pay to the tax collector all of the taxes, interest, penalties and costs shown by the delinquent tax records of the county to be due and unpaid against any tract, lot, or parcel of land for all the years for which said taxes may be shown to be due and unpaid, prior to the institution of suit for the collection thereof, it shall be the duty of the tax collector to issue to such person or persons, firm or corporation, a receipt covering such payment as is now required by law. (Acts 1915, ch. 147, sec. 1; Acts 1919, 2d C. S., ch. 64, sec. 1.)

Art. 7687b. Notices, how made up; supplemental tax lists; examination of other records to determine delinquency; publication; assessor to enter addresses on tax rolls.—In making up the notices or statements provided for in Section 1 of this Act [Art. 7687a], it shall be the duty of the tax collectors of the various counties in the State to rely upon the delinquent tax records compiled, or to be compiled, under the provisions of Article 7685 and Article 7707 of the Revised Civil Statutes of the State of Texas for 1911, which have been approved by the commissioners court of such counties and a duplicate of which has been filed in the office of the Comptroller of Public Accounts of the State of Texas, and which has or shall hereafter be approved by such State officer; and it shall be the duty of the tax collector, whenever there shall be as many as two years of back taxes that have not been included in such delinquent tax records to prepare or cause to be prepared a supplement to such records which shall be prepared in duplicate, one copy to be filed in the office of the county clerk and one copy thereof to be furnished to the Comptroller of Public Accounts subject to his approval; and whenever said supplement shall have been approved by the commissioners court and by the State Comptroller, then the tax collector shall rely thereon for the data covering delinquent taxes for said years in making out the notices or statements provided for in Section 1 of this Act [Art. 7687a]; provided, said tax collector in making up said delinquent tax record and supplement, shall examine the records of the district court and the county clerk's office of his county and no tract of land shall be shown delinquent on said delinquent tax record for any year where the records of the district court or the county clerk's office show that the taxes for said year have been paid. It shall not be necessary to publish said delinquent tax records and supplements thereto if the delinquent list for each year has been advertised as required by Article 7692 of the Revised Civil Statutes of 1911. To enable the tax collector to comply with the provisions of Section 1 of this Act [Art. 7687a], it shall be the duty of the tax assessors of the various counties of the State to hereafter enter the postoffice address of each and every tax payer after his name on the tax rolls, and the Comptroller shall hereafter provide a column for the entry of such address on the sheets furnished the assessors for making up the tax rolls. (Acts 1915, ch. 147, sec. 2.)

Art. 7688. Suits to foreclose tax liens on delinquent lands.—Twenty days after the publication of such notice, or as soon thereafter as practicable, the commissioners' court, or the county judge acting for said court, shall file a list of all lands so advertised for taxes due for any year or number of years, the tax on which remains unpaid, with the county clerk of the county in which such lands are located, or if unorganized, then with the county clerk of the county to which said unorganized county may be attached for judicial purposes, and are to be sold under the provisions of this act, for all the taxes, interest, penalty, and costs, and shall cause suit to be filed in the name of the state of Texas, in the district court of said county, or if unorganized, then in the district court of the county to which said unorganized county is attached for judicial purposes, stating therein, by apt reference to lists or schedules annexed thereto, a description of all lands or lots in such county upon which taxes and penalty have remained unpaid for any year or number of years since the first day of January, 1885, and the total amount of such taxes, with interest computed thereon to the time fixed for the sale thereof at the rate of six per cent per annum, and shall pray for judgment for the payment of the several amounts so specified therein, and in default thereof, that such lands be sold to satisfy said judgment for all taxes, interest, penalty and costs, and for such other relief to which the state may be entitled under the law and facts. All suits to enforce the collection of taxes, as provided in this chapter, shall take precedence and have priority over all other suits pending in the district court. The petition in such suits shall be signed by the attorney bringing the suit, and shall be verified by the affidavit of said attorney, or the county judge, to the effect that the averments contained in said petition are true to the best knowledge and belief of affiant; and the pleadings of the defendant, except those of law, shall be verified by like affidavit of the defendant, his agent or attorney. The county collector, county clerk and county assessor shall furnish all affidavits, certified copies of the records of their respective offices, and such other evidence as may be in their possession by virtue of such office, as may be applied for by the county attorney. (Acts 1895, p. 50, sec. 6.)

Acts 1917, 3d C. S., c. 31, provides that no suit shall be brought for the collection of taxes levied for the year 1917 and which may become delinquent until after Jan. 31, 1919.

Art. 7688a. Duty of county or district attorney to institute suit; fees; compensation of tax collector.—As soon as practicable after the expiration of ninety days from the date of notice mailed to the delinquent owner by the Tax Collector under the provisions of this Act, the County Attorney or District Attorney, if there be no County Attorney, shall file or institute suit, as otherwise provided by law, for the collection of all delinquent taxes due at the time of filing such suit against any lands or lots situated in the county, together with interest, penalties and costs then due, as otherwise provided by law; provided, that for the work of filing such suits, the County or District Attorney shall receive a fee of Four ($4.00) Dollars for the first tract of land included in each suit and One ($1.00) Dollar for each additional tract included therein; and, provided, where improved town lots are sued upon or included in a suit with other lands or unimproved town lots in the same town only one such additional fee shall be added for each twenty lots or any number less than twenty, and it shall be the duty of said County or District Attorney in bringing such suits to include in the same suit all lands and unimproved town lots owned by any one owner; and, provided, further, that in counties containing over fifty thousand inhabitants such fee shall be Two ($2.00) Dollars for the first tract and Fifty (.50) cents for each additional tract, and that the same provisions with regard to the joining of different tracts owned by the same owner in one suit shall apply to such counties.

The Tax Collector shall, in addition to the compensation and costs now allowed by law, be entitled for the making up the delinquent record or supplements thereto, where necessary under this Act, the sum of Five (.05c) cents for each and every line of yearly delinquencies entered on said delinquent record or supplement, the same not to exceed Twenty-five (25c) in any one case, such compensation to be paid out of the General fund of the county upon a completion or approval of said record or supplement. The Tax Collector shall also receive a commission of five per cent on the amount of delinquent taxes collected in addition to the commissions now allowed by law, but all such fees or commissions of the said Tax Collector, District Attorney or County Attorney under this Act shall be accounted for as fees of office under provisions of the Maximum Fee Bill as provided in Chapter 4, Title 58, of the Revised Civil Statutes of Texas, 1911, as amended by Chapters 121 and 142, Acts of the Regular Session of the Thirty-third Legislature. (Acts 1915, ch. 147, sec. 3; Acts 1919, 2d C. S., ch. 64, sec. 2.)

Art. 7688b. Suits against unknown owners.—In respect to lands and lots appearing on lists furnished by the tax collector to the County or District Attorney in accordance with the provisions of this Act, as lands and lots located in the county which appear on the delinquent tax record in the name of "unknown" or "unknown owner," or in the name of persons whose correct address or place of residence in or out of the county said collector has been unable, by due diligence to discover or ascertain, it shall be the duty of the county attorney or in counties having no County Attorney, of the District Attorney, immediately after the lists of such lands have been furnished him by the collector, to proceed to collect all taxes, penalty, interest and costs then due against the same in the manner prescribed in Chapter 15 of Title 126 of the Revised Statutes of 1911. (Id. sec. 3.)

Added to Acts 1915, ch. 147, as sec. 3a.

Art. 7689. Proceedings in suits to foreclose tax lien.—The proper persons shall be made parties defendant in such suits, and shall be served with process and other proceedings had therein as provided by law for suits of like character in the district courts of this state; and, in case of foreclosure, an order of sale shall issue,

and the land sold thereunder as in other cases of foreclosure; but, if the defendant or his attorney shall, at any time before the sale, file with the sheriff or other officer in whose hands any such order of sale shall be placed a written request that the property described therein shall be divided and sold in less tracts than the whole, together with a description of such subdivisions, then such officer shall sell the lands in said subdivisions as the defendant may request, and in such case shall only sell as many subdivisions, as near as may be, to satisfy the judgment, interest, penalties and costs; and, after the payment of the taxes, interest, penalties and costs adjudged against it, the remainder of the purchase price, if any, shall be paid by the sheriff to the clerk of the court out of which said execution or other final process issued, to be retained by him subject to the order of the court for the period of two years, after which time the court may order the same to be paid to the state treasurer, who shall hold same in trust to be paid to the owner against whom said taxes were assessed; provided, any one claiming the same shall make proof of his claim to the satisfaction of the state treasurer, within ten years after the sale of said lands or lots, after which the same shall be governed by the law regulating escheats; provided, that no suit shall be brought to enforce such lien upon any land that a sufficient description to identify the same can not first be had; and provided, further, that, if there shall be no bidder for such land, that the county attorney shall bid said property off to the state for the amount of all taxes, penalties, interest and costs adjudged against said property; and, in the absence of the county attorney, the sheriff is authorized to bid to the state, when there are no bidders, and it shall be the duty of the district clerk to immediately make report of such sale in duplicate, one to the comptroller of public accounts, and one to the commissioners' court, on blanks to be prescribed and furnished by the comptroller. And, in all such cases where the property is bid off to the state, it shall be the duty of the sheriff to make and execute deeds to the state, using forms to be prescribed and furnished by the comptroller, showing in each case, the amount of taxes, interest, penalty and costs for which sold, and the clerk's fee for recording deeds as hereinafter provided. He shall cause such deeds to be recorded in the records of deeds, by the county clerk of his county, and when so recorded shall forward the same to the comptroller; and the county clerk shall be entitled to a fee of one dollar for recording each such deed to the state, to be taxed as other costs. And, when lands thus sold to the state shall be redeemed, it shall be the duty of the collector of taxes, when any such redemption is made, to make the proper distribution of the moneys received by him in such redemption, paying to each officer the amount of costs found to be due, and to the state and county the taxes, interest and penalties due each respectively. (Acts 1895, p. 50, sec. 7.)

Art. 7690. Sheriff to execute deeds.—In all cases in which lands have been sold, or may be sold, for default in the payment of taxes, it shall be lawful for the sheriff selling the same, or any of his successors in office, to make a deed or deeds to the purchaser or to any other person to whom the purchaser may direct the deed to be made, and any such deed shall be held in any court of law or equity in this state to vest a good and perfect title in the purchaser thereof, subject to be impeached only for actual fraud. (Id. sec. 8.)

Art. 7691. Attorneys to represent state; fees, etc.—The county attorney, or district attorney in counties where there is no county attorney, shall represent the state and county in all suits against delinquent taxpayers that are provided for in this act, and all sums collected shall be paid immediately to the county collector. In no case shall the compensation for said county attorney be greater than three dollars for the first tract in one suit, and one dollar for each additional tract, if more than one tract is embraced in same suit to recover taxes, interest, penalty and costs; provided, that those county attorneys, who may have heretofore or may hereafter institute said suits, shall be entitled to an equal division with their successors in office of the fees allowed herein on all suits instituted by them, where the judgment has not been obtained prior to the vacation of their office. The collector of taxes, for preparing the delinquent list and separating the property previously sold to the state from that reported to be sold as delinquent for the preceding year, and certifying the same to the commissioners' court shall be entitled to a fee of one dollar for each correct assessment of the land to be sold, said fee to be taxed as costs against the delinquent. The sheriff shall be entitled to a fee of one dollar for selling and making deed thereto to each purchaser of land that he sells under judgment for taxes, which fee shall be taxed as costs of suit; and the district clerk shall be entitled to a fee of one dollar and fifty cents in each case, to be taxed as costs of suit. And the county clerk for making out and recording the data of each delinquent assessment, and for certifying the same to the commissioners' court for correction, and for noting the same in the minutes of the commissioners' court, and for certifying the same, with corrections, to the comptroller, and noting the same on his delinquent tax record, shall receive the sum of one dollar, to be taxed as costs against the land in each suit; provided, that in no case shall the state or county be liable for such fees, but in each case they shall be taxed as costs against the land to be sold under judgment for taxes and paid out of the proceeds of sale of same after the taxes, penalty and interest due thereon to the state are paid; provided, that where two or more unimproved city or town lots belonging to the same person and situated in the same city or town shall all be included in the same suit and costs, except those of advertising, which shall be twenty-five cents for every ten lots, or any number less than ten, taxed against them collectively just as if they were one tract or lot; and provided, further, that, where suits have been brought by the state against delinquents to recover tax due by them to the state and county, the said delinquent may pay the amount of the tax, interest, penalties and all accrued costs to the county collector during the pend-

ency of such suit; and the county attorney shall receive as compensation therefor two dollars for the first tract and one dollar for each additional tract embraced in said suit; and the district clerk shall receive only one dollar, and the sheriff only one dollar in each case; but these fees shall be in lieu of the fees provided for such officers where suits are brought as hereinbefore provided. (Id. sec. 9.)

Art. 7692. Assessor to list unpaid taxes annually, etc.—If any person shall fail or refuse to pay the taxes imposed upon him or his property by law until the thirty-first day of January next succeeding the return of the assessment rolls of the county to the comptroller, a penalty of ten per cent on the entire amount of such taxes shall accrue; which penalty, when collected, shall be paid proportionately to the state and county; and the collector of taxes shall, by virtue of his tax rolls, seize and levy upon and sell so much personal property belonging to such person as may be sufficient to pay his taxes, together with the penalty above provided, interest and all costs accruing thereon. If no personal property be found for seizure and sale, as above provided, the collector shall, on the thirty-first day of March of each year for which the state and county taxes, for the preceding year only, remain unpaid, make up a list of the lands and lots on which the taxes for such preceding year are delinquent, charging against the same all taxes and penalties assessed against the owner thereof. Said list shall be made in triplicate and shall be presented to the commissioners' court for examination and correction of any errors that may appear; and, when so examined and corrected by the commissioners' court, such lists in triplicate shall be approved by said court, and one copy thereof shall be filed with the county clerk, and one copy retained and preserved by the collector, and one copy forwarded to the comptroller with his annual settlement reports. When such list of lands and lots, delinquent for the preceding year only, is corrected, as provided for in this article, then such list shall be immediately advertised, as provided for in section 5 of this act [article 7687 of this chapter], and, after such advertisement, suit shall be instituted against delinquents for all taxes and penalties due, in the district court as above provided; and such list, as furnished by the tax collector, and corrected by the commissioners' court, and the assessment rolls or books on file in the collector's office, or either said list or assessment rolls or books, shall be prima facie evidence that all the requirements of the law have been complied with by the officers or courts charged with any duty thereunder as to the regularity of listing, assessing, levying all taxes therein mentioned, and reporting as delinquent any real estate whatsoever, and that the amount alleged against said real estate is a true and correct charge; and, in cases in which the description of the real estate in said list or assessment rolls or books is not sufficient to identify the same, and of which property there is a sufficient description in the inventories of the assessor's office, then said inventories shall be admissible as evidence of the description of said property. In the counties where the delinquent tax record for former years has not been furnished, as provided for in article 7685, the collector of taxes shall also at the same time, make in triplicate a list of all lands and lots that have been previously sold to the state for taxes of former years, which have not been redeemed and on which the taxes are delinquent for the preceding year, and shall present the same to the commissioners' court for examination and correction of any error that may appear; and, when so examined and corrected by the commissioners' court, such lists, in triplicate, shall be approved by said court, and one copy thereof shall be filed with the county clerk, one retained and preserved by the collector, and one copy forwarded to the comptroller with his annual settlement reports. (Id. sec. 10.)

Art. 7693. Law available to incorporated cities and towns.—Any incorporated city or town or school district shall have the right to enforce the collection of delinquent taxes due it under the provisions of this chapter. (Id. sec. 11.)

Art. 7694. Exemptions from this chapter.—Real estate which may have been rendered for taxes and paid under erroneous description given in assessment rolls, or lands that may have been doubly assessed and taxes paid on one assessment, or lands which may have been assessed and taxes paid thereon in a county other than the one in which they are located, or lands which may have been sold to the state and upon which taxes have been paid and through error not credited in the assessment rolls, shall not be deemed subject to the provisions of this chapter. When called upon, the commissioner of the general land office shall furnish the county judge of any county compiling its own delinquent tax record, officially, with such information as may be necessary to enable him to determine the validity or locality of such surveys and grants as have not been shown by the printed abstracts of the land office. (Id. sec. 12.)

Art. 7695. Delinquent owners may redeem before sale.—Any delinquent taxpayer whose lands have been returned delinquent or reported sold to the state for taxes due thereon, or any one having an interest therein, may redeem the same at any time before his lands are sold under the provisions of this chapter, by paying to the collector the taxes due thereon since January first, 1885, with interest at the rate of six per cent per annum and all costs and the penalty of ten per cent, as provided for in article 7692 of this chapter; provided, such penalty has accrued under the provisions and since the passage and taking effect of this chapter. (Id. sec. 13.)

Art. 7696. May redeem in two years by paying double.—Where lands are sold under the provisions of this chapter, the owner, or any one having an interest therein, shall have the right to redeem said land, or his interest therein, within two years from the date of said sale upon the payment of double the amount paid for the land. (Id. sec. 14.)

Art. 7697. May redeem, when and how.—The owner or any one having an interest in land or lots heretofore sold to the State, or any city or town, under the decrees of court, in any suit or suits brought for the collection of the taxes thereon, or by the collector of taxes, or otherwise, shall have

the right at any time within two years after the taking effect of this Act to redeem the same upon the payment of the amount of taxes for which sale was made, together with all costs, penalties and interest now required by law, and also the payment of all taxes, interest, penalties and costs on or against said lands or lots at the time of said redemption. And where lands or lots shall hereafter be sold to the State or to any city or town for taxes under decree of court in any suit or suits brought for collection of taxes thereon or by a collector of taxes, or otherwise, the owner having an interest in such lands or lots shall have the right at any time within two years from date of sale to redeem the same after such sale upon payment of the amount of taxes for which sale was made, together with all costs and penalties required by law, and also the payment of all taxes, interest, penalties and costs on or against said lands or lots at the time of redemption. (Acts 1909, 2 S. S., p. 400; Acts 1918, 4th C. S., ch. 69, sec. 1.)

Art. 7698. Proceedings against delinquents, unknown or non-resident.—Wherever the owner or owners of any lands or lots returned delinquent or reported sold to the state, or that may hereafter be reported sold or returned delinquent for the taxes due thereon for any year or number of years, are non-residents of the state, or the name of the owner or owners of said land or lots be unknown, then, upon affidavit setting out that the owner or owners are non-residents, or that the owner or owners are unknown to the attorney for the state, and after inquiry can not be ascertained, said parties shall be cited and made parties defendant by notice in the name of the state and county, directed to all persons owning or having or claiming any interest in the following described land delinquent to the state of Texas and county of ———, for taxes, to-wit: (here set out description of the land as contained on the assessment roll and such further description obtainable in the petition), which said land is delinquent for taxes for the following amounts, $——— for state taxes, and $——— for county taxes, and you are hereby notified that suit has been brought by the state for the collection of said taxes, and you are commanded to appear and defend such suit at the —— term of the district court of ——— county, and state of Texas, and show cause why judgment shall not be rendered condemning said land (or lot), and ordering sale and foreclosure thereof for said taxes and costs of suit, which notice shall be signed by the clerk and shall be published in some newspaper published in said county one time a week for three consecutive weeks. If there is no newspaper published in the county, then notice may be given by publication in a paper in an adjoining county. A maximum fee of two and one-half cents per line (seven words to count a line) for each insertion may be attached for publishing the citation as above provided for. If the publication of such citation can not be had for the compensation provided for in this article, then publication of the citation herein provided may be made by posting a copy at three different places in the county, one of which shall be at the court house door. It shall be lawful in all cases to set forth in the petition the name of all parties interested as far as ascertained, and make them parties, and also to join and make defendants all persons having or claiming any legal or equitable interest in the land described in the petition; and such suit, after such publication, shall be proceeded with as in other cases; and, whether any party or parties make defense or not on the trial of said case, the state and county shall be entitled to prove the amount of taxes due, and shall have a decree for the sale of said land or lot as in those cases where defendant owners have been personally served and defend suit; and a sale of said land or lot shall be had and be as binding as where defendants were personally served with process. In all suits for taxes due, the defendant shall be entitled to credits he can show due him for any year or number of years for which he may be able to produce receipts; but the state shall have judgment and foreclosure of tax lien for any year or years sued for where the defendant can not offer receipt or other positive proof showing the payment of the claim for the taxes. (Acts 1897, p. 132, sec. 15.)

Art. 7699. Similar proceedings by city or town.—In any incorporated city or town, in which any lots or blocks of land situated within the corporate limits of said city or town have been returned delinquent or reported sold to said city or town for the taxes due thereon, the city council may prepare lists of delinquents in the same manner as is provided for in article 7685, and; when such lists shall be certified to as correct by the mayor of said city or town, the city council may direct the city attorney to file suit in the district court of the county in which said city or town is situated, for the recovery of the taxes due on said property, together with penalty, interest and costs of suit; which suits may be brought in the same manner as is provided in article 7687 of this chapter, for the bringing of suits by the county attorney. (Id. sec. 16.)

Art. 7700. Lands to be platted and numbered.—In counties in which the subdivisions of surveys are not regularly numbered, and in cities or towns in which the blocks or subdivisions are not numbered, or are so irregularly numbered as to make it difficult or impossible for the assessor to list the same, the commissioners' court of such counties may have all the blocks and subdivisions of surveys platted and numbered so as to identify each lot or tract, and furnish the assessor with maps showing such numbering; and an assessment of any property by such numbering on said maps shall be sufficient description thereof for all purposes; and such maps, or a certified copy of same or any part thereof, shall be admissible as evidence in all courts; provided, that the cost of making said survey and plats shall be defrayed by the county in which said property is situated, and of which the said commissioners' court ordered the said surveys and plat made; provided, that the cost of any map of a town or city shall be paid by such town or city when ordered by the town or city. (Id. sec. 17.)

Art. 7700a. Settlement of officer not to be accepted until compliance with this chapter.—No county or district officer charged with any duty under Title 126, Chapter 15, of the Civil Statutes, 1911, can make settlement with the commissioners court of his county or the Comptroller of this State until he shall have performed the duties required of him under said Title 126, Chapter 15, of the Civil Statutes of 1911. (Acts 1915, ch. 147, sec. 4.)

Art. 7700b. Release of soldiers, etc., from penalties and costs for non-payment of taxes or assessments.—By the authority of Section 10, Article 8, and Section 3, Article 1, of the Constitution of the State of Texas, and in conformity with an act passed by the Congress of the United States March 8, 1918, the Legislature of this State by a vote of both Houses, duly entered and recorded on the respective journals thereof, does hereby release to each said soldier, sailor or marine, all penalties and costs of every nature incurred by him and taxed against him by reason of non-payment of any taxes or assessments, whether general or special, falling due during his period of military service in respect to any of his real property, personal property, or mixed property, of any kind whatever that may have accrued or been charged against them for non-payment of his principal tax during any period of time so engaged in the military service of the United States as a soldier, sailor or marine. (Acts 1919, 2d C. S., ch. 69, sec. 1.)

Art. 7700c. Same subject; credits to collectors; affidavits.—The Comptroller of the State of Texas in making annual settlements with county tax collectors of this State shall credit the account of said collectors with all such penalties and costs in respect to any real property, personal property or mixed property so owned by said soldiers, sailors and marines during his period of military service upon presentation to him by the collector of the affidavit of said soldier, sailor or marine so owning such property:

(1) The date and place of such person in the military service of the United States;

(2) A general description of the real, personal or mixed property owned by such soldier on which said penalties or costs may have accrued;

(3) The amount of taxes or assessments against said property which fell due during the period of his service, and the amount of penalties and costs accrued by reason of non-payment of such taxes or assessments; and

(4) The date and place of his discharge from the military service of the United States, and the unit in which he was serving at the time of his discharge. (Id. sec. 2.)

Art. 7700d. Same subject.—Upon the presentation to the comptroller of public accounts of this State by any county tax collector of this State of the affidavit of any such soldier, sailor or marine, as provided for in Section 2 of this Act [Art. 7700c], the comptroller of public accounts shall be hereby authorized, and it is made the duty of said comptroller of public accounts, to credit the account of the tax collector of any county of this State with all penalties and costs that may have accrued against said soldier, sailor or marine, by reason of his services as such; the said comptroller of public accounts shall also credit the account of the tax collector with the poll tax assessed against such soldier, sailor or marine for the years 1917, 1918 and 1919, as provided for by Senate Bill No. 1, Acts of the Thirty-sixth Legislature, First Called Session, approved May 9, 1919. (Id. sec. 3.)

Art. 7700e. Same subject.—Upon the presentation by the county tax collector of any affidavit by any such soldier, sailor or marine, as provided in Section 2 of this Act [Art. 7700c], it shall be the duty of the commissioners court or courts of this State to credit the account of such tax collector with all penalties and costs that may have accrued against any such soldier, sailor or marine, as provided for in Section 2 of this Act. (Id. sec. 4.)

Art. 7700f. Same subject; custody of affidavits.—All such affidavits presented to the comptroller of public accounts, as a part of the tax collector's report and presented to the commissioners courts of this State as a part of the credit claimed by reason of such affidavits on the accounts of such tax collector in the performance of his official duty, shall be kept on file in the office of the comptroller, or the office of the county clerk if made to the commissioners court, for a period of four years. (Id. sec. 5.)

CHAPTER SIXTEEN

EVIDENCE OF TITLE TO REDEEM LAND

Art. 7701. Evidence of title to redeem land.—In all cases where lands in this state have been or may be sold for taxes, and the owner of the land, at the time of such sale, shall desire to redeem the same, under the provisions of the constitution of this state, or of laws enacted on that subject, it shall be sufficient to entitle such owner to redeem from the purchaser or purchasers thereof for him to have had a paper title to such land, or to have been in possession of such land in person or by tenant, at the time of the institution of the suit under which the sale was made, or when such sale was made; and the existence of such facts and conditions shall be sufficient prima facie evidence of ownership to entitle the party so claiming ownership to the right to redeem such land; and he shall not be required to deraign title from the sovereignty, nor shall any hiatus or defect in his chain of title defeat the offered redemption. Nothing herein contained shall be held to limit the right of one offering to redeem to prove ownership otherwise than herein provided, nor prevent any one having the superior title from redeeming such land within two years from the date of the tax sale by paying to the person who had previously redeemed such lands all amounts paid by him with legal interest. (Acts 1905, p. 118.)

CHAPTER SEVENTEEN

ASSESSMENT AND COLLECTION OF TAXES IN CERTAIN CASES

Art. 7702. Property omitted from tax rolls, etc., list of.—Whenever the commissioners' court of any county in this state shall discover, through notice from the tax collector or otherwise that any real property has been omitted from the tax rolls for any

year or years since 1884, or shall find that any previous assessments on any real property for the years mentioned are invalid, or have been declared invalid for any reason by any district court in a suit to enforce the collection of taxes on said properties, they may, at any meeting of the court, order a list of such properties to be made in triplicate and fix a compensation therefor; the said list to show a complete description of such properties, and for what years such properties were omitted from the tax rolls, or for what years the assessments are found to be invalid, and should be canceled and re-assessed, or have been declared invalid, and thereby canceled by any district court in a suit to enforce the collection of taxes; provided, that no re-assessment of any property shall be held against any innocent purchaser of the same, if the tax records of any county fail to show any assessment (for any year so re-assessed) by which said property can be identified and that the taxes are unpaid. The above exception, with the same limitation, shall also apply as to all past judgments of district courts canceling invalid assessments. (Acts 1905, p. 318, sec. 1.)

Art. 7703. Property listed to be assessed, how.—When said list has been made up in the manner prescribed in article 7701 [7702] the commissioners' court may, at any meeting, order a cancellation of such properties in said list that are shown to have been previously assessed, but which assessments are found to be invalid and have not been canceled by any former order of the commissioners' court, or by decree of any district court; and shall then refer such list of properties to be assessed or re-assessed to the tax assessor, who shall proceed at once to make an assessment of all said properties, from the data given by said list (the certificate of the state comptroller as to assessments or re-assessments made by the tax assessor shall not be necessary as required under article 7675, Revised Statutes, but he shall furnish all blank forms needed, that uniformity may be had in all counties), and when completed shall submit the same to the commissioners' court, who shall pass upon the valuations fixed by him; and, when approved as to the values, shall cause the taxes to be computed and extended at the tax rate in effect for each separate year mentioned in said list; and, in addition thereto, shall cause to be added a penalty equal in amount to what would be six per cent interest to the date of making said list from the date such properties would have been delinquent had same been properly rendered by the owner thereof at the time and for the years stated in said list; provided, that the certificate of any tax collector of this state, given during his term of office, that all taxes have been paid to the date of such certificate on any certain piece of property, which is fully described in such certificate, or if the tax rolls of any county fail to show any assessments against such property sufficient to identify it, and that the same was unpaid at the dates such rolls may have been examined to ascertain the condition of any property as to taxes unpaid, this shall be a bar to any re-assessment of such property under this act for any years prior to the date of such certificate, or such examinations; provided, that the property referred to, when re-assessed, shall be held by an innocent purchaser, who has relied upon the correctness of such certificate, or the tax rolls heretofore referred to. (Id. sec. 2.)

Art. 7704. List to operate a lien on property.—The said list, when complete in all respects, as directed in the preceding articles, and filed with the tax collector, shall constitute a valid lien against all the properties mentioned in said list for the full amount of taxes, penalties, officers' costs, advertising and six per cent interest from the date of said list to the date of the payment of the full sum due on each separate piece of property. A copy of said list and all cancellation orders shall be furnished to the state comptroller, and a copy filed with the county clerk. (Id. sec. 3.)

Art. 7705. To be advertised.—The commissioners' court shall proceed to have such list of properties advertised in the manner provided in article 7687; after which, suit may be filed in the same manner as provided by law for the enforced collection of delinquent taxes. (Id. sec. 4.)

Art. 7706. Assessments reduced, when.—In all cases of delinquent taxes of unrendered and unknown property, where there appears to be an assessment of the same at a valuation excessive and unreasonable, the commissioners' court of any county shall be authorized to correct or reduce such values on the request of the tax collector with a full statement of the facts in each case; which statement and the action had thereon and the name of each commissioner voting for or against the reduction in valuation asked for shall be entered upon the minutes of the court; and a certified copy of the action had thereon shall be furnished to the comptroller of the state, and, when the values are so corrected or reduced, payment of taxes shall be accepted in accordance with such reduction, to which shall be added interest, penalty, advertising and costs, as provided by law. (Id. sec. 5.)

Art. 7707. [Repealed by Acts 1915, ch. 147, sec. 5.]

Art. 7708. Bulk assessments validated, when.—In all suits to enforce the collection of delinquent taxes, where the assessment of any property for any year is invalid by reason of the failure of the assessor to comply with the provisions of law for the description of any lot, block or tract of land, or to give a separate value on each lot, block or tract of land, known as "bulk assessments," or to enter upon the lists (similar to that used for the listing of rendered property, to be signed by the owner) all items of property assessed to unknown owners, all such assessments are hereby validated and given the same force and effect as if the descriptions, the separate valuations, and the listing were in all respects strictly in compliance with law; provided, as to description, that the descriptions given are sufficient to identify the property, as to separate values, that the valuations and the taxes shown upon the tax rolls (in what are called "bulk assessments") can be fairly prorated to each separate lot, block or tract of land; and, as to listing, that the valuation given on the tax rolls upon properties assessed as unknown are found to have been entered upon the assessor's block book as the original assess-

ment, instead of listing as in rendered assessments, and then entering upon the tax rolls. (Id. sec. 7.)

Art. 7709. Delinquent tax record to be published.—The various counties of this state which have not heretofore made and published a delinquent tax record, under the provisions of chapter 103, acts of the regular session of the twenty-fifth legislature, are hereby authorized and it shall be their duty to make and publish the same to date hereof, and, when so done, it shall have the same force and effect as if made and published under that act; and any county which has heretofore made a delinquent tax record for any number of years is hereby authorized and empowered to re-compile the same to date hereof, and may compile each year thereafter under the provisions of said act. (Id. sec. 8.)

Art. 7710. Property listed by comptroller, when.—Whenever it shall appear to the comptroller of public accounts of the state, from an inspection of the tax rolls of any county of the state, or otherwise, that any lands in such county subject to taxation have not been assessed for taxation for any year since and including the year 1900, it shall be his duty and he is hereby required to make a list of such lands and send the same to the tax collector of such county by registered letter, properly addressed, accompanying such list with instructions to such tax assessor to assess such lands for taxes for the years for which they have not been assessed as shown by said list. (Acts 1905, p. 321, sec. 1.)

Art. 7711. List to be posted.—Upon receipt of such list, the tax assessor shall immediately post a copy of such notice and list at the court house door of his county, noting upon such copy the date of such posting; and the owners of the lands embraced in such list shall have the right, at any time within twenty days of such posting, to render the same to the tax assessor for the taxes for the years for which they have not been assessed for taxes, or for any of such years as shown by such notice, in the same manner as is provided for the rendition of other property for taxes under the provisions of the general laws for that purpose. (Id. sec. 2.)

Art. 7712. Lands not rendered to be assessed, how.—Should any of the said lands remain unrendered by the owners or owner thereof, under the provisions of article 7711, for any of the years for which the same have not been assessed according to said notice and lists, for twenty days after the date of the posting of such notice, it shall be the duty of the tax assessor, and he is hereby required, immediately upon the expiration of such time, to assess for taxes at their true value such lands so remaining unrendered and unassessed for each of the years since and including the year 1900, and including the year such lists are made up by the comptroller, listing the same in the name of unknown owners, and charging up to said lands the taxes, state and county, for which they are liable for each of such years, valuing such lands at their true and full value as provided in article 7530, Revised Civil Statutes. If any of said lands are lands purchased from the state as belonging to the school fund, the university, or any of the asylums of the state, and held under such contract of purchase upon which a part of the purchase money is still due, such lands being unpatented, no deduction shall be made in the value of said lands for, or on account of, such unpaid purchase money, but they shall be valued at their full and true value as though paid out and patented. (Id. sec. 3.)

Art. 7713. Duty of commissioners' court.—The tax assessor shall make up lists showing such assessments, and deliver the same to the county judge, who shall at once, unless a regular session is held within ten days thereafter, call a meeting of the commissioners' court in special session, as a board of equalization, for the purpose of passing upon said assessment lists in the manner provided in case of regular assessments, in so far as the provisions of the statute with regard thereto are applicable. It shall be the duty of the commissioners' court without delay to act upon said supplemental assessment lists, as to the value of the property embraced, and, when said values have been equalized as required by law, to approve the same, and to approve the rolls made up by the tax assessor in accordance therewith; provided, that the commissioners' court shall have no authority to alter said assessment lists, or in any way interfere with such assessments, except as to the values of property embraced therein, in equalizing the same as provided by law, and to strike therefrom any lands that have been already assessed for taxes at their true market value for the years for which they are assessed on said supplemental rolls and such taxes paid. (Id. sec. 4.)

Art. 7714. Supplemental tax rolls to be prepared.—After such supplemental assessment lists, as are herein provided for, have been passed upon by the board of equalization as herein provided, supplemental tax rolls shall be prepared by the tax assessor and approved by the commissioners' court as is required by law in case of the regular assessment for taxes; and thereafter the taxes due according to such supplemental rolls shall be collected as in case of other taxes, and, if not paid, such proceedings shall be had for their collection as in case of other taxes. (Id. sec. 5.)

Art. 7715. Fees of assessor.—For making the supplemental assessments provided herein, the tax assessor shall be entitled to the same fees to be paid in the same manner as is provided by law in case of regular assessments. This chapter is cumulative of all other laws upon the same subject. (Id. sec. 7.)

CHAPTER EIGHTEEN

OF MUNICIPAL TAXES TO PAY SUBSIDIES IN AID OF RAILROADS AND OTHER INTERNAL IMPROVEMENTS

Art. 7716. (5233) Such taxes, how applied.—All taxes levied, assessed and collected for the purpose of paying the interest and principal of bonds heretofore issued by cities or towns to aid in the construction of railroads and other works of internal improvement, shall be applied solely to the objects

for which they were levied, under the direction of the comptroller, as follows: First, to the payment of expenses of assessing and collecting the same; second, to the payment of the annual interest of such bonds, and not less than two per cent of the principal; and, if there be any excess on hand after making the above payments for the current year, it shall be used in the purchase and cancellation of said bonds. (Act Aug. 18, 1876, p. 174, sec. 1.)

Art. 7717. (5234) To be collected by city officers.—All such taxes shall be assessed and collected by the same officers whose duty it is to assess and collect the other municipal taxes, who shall receive the same rates of commission allowed for assessing and collecting the ad valorem tax of such city. The same remedies shall be used to enforce the assessment, collection and paying over such taxes as are or may hereafter be provided by law to inforce the assessment, collection and paying over of other municipal taxes. (Id. sec. 2.)

Art. 7718. (5235) Bond of the officer.—The officer whose duty it is to collect the aforesaid taxes shall give bond, with two or more sufficient sureties, to be approved by the mayor and board of aldermen of such city, in a sum fifty per cent greater than the estimated annual amount of said taxes; which bond shall be payable to the state, and shall be conditioned for the faithful assessing, collecting and paying over of said tax into the state treasury, as provided by law; and said assessor shall be amenable and subject to all laws enacted to secure the honest and faithful performance of the duties of collectors of taxes. (Id. sec. 3.)

Art. 7719. (5236) Taxes may be paid in what.—It shall be lawful for the collector to receive in payment of the taxes herein specified current money or the matured coupons of the bonds for the payment of which such tax may have been levied. (Id. sec. 4.)

Art. 7720. (5237) To be paid over every month.—The collector of taxes levied under the provisions of this chapter shall pay over to the state treasurer, at the beginning of each and every month, all moneys or coupons he may have collected during the preceding month, deducting his legal commissions on the amount so paid, and shall make a report of his collections to the mayor and city council at its first regular meeting in each month. (Id. sec. 5.)

Art. 7721. (5238) If insufficient, additional levy to be made.—If it shall be ascertained, at any time, that the tax which has been levied for the payment of the city bonds issued under the provisions of law is insufficient to pay the annual interest and two per cent annually of the principal of such bonds, besides the expenses of assessing, collecting and paying over such tax, it shall be the duty of the comptroller to inform the mayor of said city of the fact; and it shall be the duty of the city council, and they shall, upon such information, levy such additional tax, and cause the same to be collected, as will be sufficient to make such payments; which levy shall be continued in force until the whole amount of principal and interest of said bonds shall have been fully paid. (Id. sec. 6.)

CHAPTER EIGHTEEN A

IMPROVEMENT DISTRICT TAXES TO PAY CERTAIN CERTIFICATES OF INDEBTEDNESS

Art. 7721¼. Tax to pay certificates of indebtedness issued for repair of levies.—Any improvement district created prior to the year 1915 for drainage or levee purposes, which has heretofore issued, through its commissioners, in the performance of the duty enjoined upon them by law to keep the levees in their districts repaired, its certificates of indebtedness in payment for necessary repairs of any levee of such districts damaged or destroyed in part by overflow or flood occurring during the year 1915, may pay such certificates by taxation, when the levy and collection of a tax for such purpose shall have been authorized by an election which may be held in such district, as hereinafter provided for. (Acts 1919, ch. 153, sec. 1.)

Art. 7721¼a. Same subject; election; order for.—The County Commissioners' Court of any county in which any such district is situated, when petitioned to do so by a majority of the property tax paying voters of any such district, shall order an election to be held in such district for the purpose of determining whether or not a tax shall be levied, assessed and collected for the purpose of paying such certificates, and the existing law applicable to such improvement district, as to the calling of an election, notice thereof, the appointment of election officers, the qualification of voters therein, the time, place and manner of holding elections, and the making and acting upon returns thereof, for determining whether or not the bonds of the district shall be issued, shall control and be complied with, with only such difference as shall be necessary to make such law applicable to the subject. (Id. sec. 2.)

Art. 7721¼b. Same subject; levy, assessment and collection of tax.—If the result of such an election shall be in favor of the levy, assessment and collection of a tax with which to pay such certificates, then the tax shall be annually levied, assessed and collected by the same agencies, and in the same way as in the case of any tax authorized with which to pay a bond issue, and then the same shall be applied in payment of such certificates as the proceeds of a bond issue of such district would be applied under existing laws upon any valid debt of such districts. (Id. sec. 3.)

Art. 7721¼c. Same subject; priority of outstanding bonds.—All proceedings hereunder shall be subject to the priority and preference in all respects of the outstanding bonds of the district. (Id. sec. 4.)

Art. 7721¼d. Same subject; when election may not be called.—If at the time of the presentation of any petition for an election authorized hereunder, it should appear to the County Commissioners' Court, from an examination of the records pertaining thereto, that the amount of the certificates sought to be paid by taxation, added to the amount of the unpaid bonds outstanding against such district, exceed in amount the aggregate amount of bonds which such district could then legally issue, then no election shall be called. (Id. sec. 5.)

CHAPTER NINETEEN

NEW COUNTIES

Art. 7722. (5239) When new counties are created, etc.—Where any county now or hereafter created out of a part of any one or more organized counties, or when any unorganized county may be organized by the election and qualification of its officers, it shall be the duty of the person in charge of the assessor's roll in the county or counties from which such new county or any part of it, has been taken, or to which such unorganized county has been attached for judicial purposes, to allow such person as the commissioners' court of the newly organized county may appoint for that purpose access to the rolls for the purpose of making the transcripts hereinafter provided for. (Acts 1885, p. 107, sec. 1.)

Art. 7723. (5240) Transcripts of unpaid assessments.—It shall be the duty of the person so appointed to make from such assessor's rolls two transcripts of the unpaid assessments, both on person and property, in that portion of the county included within the limits of the new county, or, as the case may be, in the limits of the former unorganized county. (Id. sec. 2.)

Art. 7724. (5241) To be verified.—The collector of the county from which such territory has been taken, or to which such unorganized county has been attached, shall examine and verify the transcripts herein provided for and attest their correctness over his official signature. For such service he shall receive twenty dollars from the county for which the transcript has been made, to be paid on the order of its commissioners' court. He shall also have the commissioners' court of his county to approve the transcript rolls, and shall deliver one of them to the collector of the new county; the other he shall forward to the comptroller; and, when received by the comptroller, it shall authorize him to give the proper credit to the collector of the old county and to charge the same to the collector of the new county. (Id. sec. 3.)

Art. 7725. (5242) Compensation of collector.—The collector of such new county shall receive the same compensation, and shall have the same authority to collect and enforce the collection of the taxes found to be due by such transcripts as is enjoyed by the collectors of the other counties in this state. (Id. sec. 4.)

Art. 7726. (5243) Compensation for transcribing rolls.—The person selected by the commissioners' court of the new county to make such transcripts shall receive for his services such compensation as he may agree on with such commissioners' court. (Id. sec. 5.)

TITLE 127

TIMBER

Art. 7727. (5244) Log brands.—Any person engaged in floating or rafting timber upon the waters of any river or creek of this state shall have a log brand with which to brand every log or stick that he may float or haul and put into the waters for sale or market, the same to be distinctly branded. (Acts 1879, p. 81, sec. 1.)

Art. 7728. (5245) To be recorded.—He shall have said brand recorded in every county in which he cuts any of said timber, and in the county where he proposes to sell or market said timber, by the county clerk, in a book to be kept by said clerk for that purpose, for which said clerk shall receive a fee the same as is by law allowed for recording stock brands. (Id. sec. 2.)

Art. 7729. (5246) Written report to be filed with county clerk.—Any persons who float any logs or timber in this state shall, on the first day of April, first day of July, first day of September, and on the first day of January of each year, or within fifteen days of said dates, make a written report under oath showing the number of logs cut or floated during the next preceding three months, the survey or surveys of land from which they were cut or carried, and the number cut from each, and a description of the brand placed thereon, and shall file the same with the county clerk of the county in which the timber was cut; and such clerk shall record the same in a book kept for that purpose, and index it, and receive therefor the sum of fifty cents from the party presenting the same; provided, that this law shall not apply to pickets, posts, rails or firewood. (Id. sec. 3.)

Art. 7730. (5247) Evidence of ownership, how proved.—A certificate under the hand of the county clerk, containing a description of a log brand and the name of the owner thereof, with a transfer on the back of it signed and acknowledged by such owner, or proved as other instruments for record, shall be prima facie evidence that the person to whom the transfer is made owns the logs described thereon. (Id. sec. 4.)

TITLE 127 A

TORTS—SITUS OF SUITS FOR

Art. 7730½. Suits for death or personal injury by wrongful act committed outside the state.—That whenever the death or personal injury of a cititzen of this State or of the United States, or of any foreign country having equal treaty rights with the United States on behalf of its citizens, has been or may be caused by the wrongful act, neglect or default of another in any such foreign state or country for which a right to maintain an action and recover damages thereof is given by the statute or law of such foreign state or country, such right of action may be enforced in the courts of this State within the time prescribed for the commencement of such actions by the statute of this State, and the law of the forum shall control in the prosecution and maintenance of such action in the courts of this State in all matters pertaining to the procedure. (Acts 1917, ch. 156, sec. 1.)

TITLE 128

TRESPASS TO TRY TITLE

CHAPTER ONE

THE PLEADINGS AND PRACTICE

Art. 7731. (5248) (4784) Method of trying titles to land, etc.—All fictitious proceedings in the action of ejectment are abolished, and the method of trying titles to lands, tenements or other real property shall be by action of trespass to try title. (Act Feb. 5, 1840, sec. 1; P. D. 5292.)

See Sayles' Practice, pp. 1016, 1021; Townes' Texas Pleading (2d Ed.) pp. 595-637.

Art. 7732. (5249) (4785) Rules in other cases observed how far.—The trial shall be conducted according to the rules of pleading, practice and evidence in other cases in the district court, and conformably to the principles of trial by ejectment, except as herein otherwise expressly provided. (Id. sec. 2; P. D. 5293.)

See Sayles' Practice, pp. 1016, 1021.

Art. 7733. (5250) (4786) The petition shall state what.—The petition shall state:

1. The real names of the plaintiff and defendant and their residence, if known.

2. It shall describe the premises by metes and bounds, or with sufficient certainty to identify the same, so that from such description possession thereof may be delivered, and shall also state the county or counties in which the same are situated.

3. The interest which the plaintiff claims in the premises, whether it be a fee simple or other estate; and, if he claims an undivided interest, he shall state the same and the amount thereof.

4. That he was in possession of the premises or entitled to such possession.

5. That the defendant afterward unlawfully entered upon and dispossessed him of such premises, stating the date, and withholds from him the possession thereof.

6. If rents and profits or damages are claimed, such facts as show the plaintiff to be entitled thereto and the amount thereof.

7. It shall conclude with a prayer for the relief sought. (Id. sec. 1; P. D. 5292.)

See Sayles' Practice, pp. 1023, 1026; Townes' Texas Pleading (2d Ed.) p. 605 et seq.; Miller v. Knowles, 44 S. W. 927; Stevens v. Stoner, 54 S. W. 934; Benavides v. Molino, 60 S. W. 260; Cates v. Alston's Heirs, 61 S. W. 979; Arthur v. Ridge, 89 S. W. 15; Bull v. Bearden, 159 S. W. 1177; Windsor v. Freeman, 204 S. W. 780; Spikes-Nash Co. v. Manning, 204 S. W. 374.

Art. 7734. (5251) (4787) Indorsement on petition.—The plaintiff shall indorse on his petition that the action is brought as well to try the title as for damages. (Id. sec. 2; P. D. 5293.)

See Sayles' Practice, p. 1027; Townes' Texas Pleading (2d Ed.) p. 616.

Art. 7735. (5252) (4788) Warrantor, etc., may be made a party.—When a party is sued for lands, the real owner or warrantor may make himself, or may be made, a party defendant in the suit, and shall be entitled to make such defense as if he had been the original defendant in the action.

See Sayles' Practice, p. 1025; Townes' Texas Pleading (2d Ed.) p. 597.

Art. 7736. (5253) (4789) Landlord may become defendant.—When such action shall be commenced against a tenant in possession, the landlord may enter himself as the defendant, or he may be made a party on motion of such tenant; and he shall be entitled to make the same defense as if the suit had been originally commenced against him. (Id. sec. 5; P. D. 5296.)

See Sayles' Practice, p. 1024.

Art. 7737. (5254) (4790) The possessor shall be defendant.—The defendant in the action shall be the person in possession, if the premises are occupied, or some person claiming title thereto in case they are unoccupied.

Art. 7738. (5255) May join as defendants, whom.—The plaintiff may join as a defendant with the person in possession, any other person who, as landlord, remainderman, reversioner or otherwise, may claim title to the premises, or any part thereof, adversely to the plaintiff.

See Sayles' Practice, p. 1024; Townes' Texas Pleading (2d Ed.) p. 598.

Art. 7739. (5256) May file plea of "not guilty" only.—The defendant in such action may file only the plea of "not guilty," which shall state in substance that he is not guilty of the injury complained of in the petition filed by the plaintiff against him, except that if he claims an allowance for improvements he shall state the facts entitling him to the same as provided in the succeeding chapter. (Act Feb. 2, 1844; Id. sec. 5; P. D. 5307.)

See Sayles' Practice, p. 1029; Townes' Texas Pleading (2d Ed.) p. 617 et seq.; Miller v. Knowles, 44 S. W. 927.

Art. 7740. (5257) What proof may be made under such plea.—Under such plea of "not guilty," the defendant may give in evidence any lawful defense to the action, except the defense of limitation, which shall be specially pleaded. (Id.)

See Sayles' Practice, p. 1030; Townes' Texas Pleading (2d Ed.) p. 617 et seq.; Herndon v. Burnett, 50 S. W. 581; Stevens v. Stoner, 54 S. W. 934; North v. Coughran, 108 S. W. 165; Keenon v. Burkhardt, 162 S. W. 483; First State Bank of Blackwell v. Knox, 173 S. W. 894; Birge-Forbes Co. v. Wolcott, 176 S. W. 605.

Art. 7741. (5258) Answer taken as admitting possession.—Such plea or any other answer to the merits shall be an admission by the defendant, for the purpose of that action, that he was in possession of the premises sued for, or that he claimed title thereto at the time of commencing the action, unless he states distinctly in his answer the extent of his possession or claim, in which case it shall be an admission to such extent only. (Act Feb. 5, 1840, sec. 6; P. D. 5297.)

See Sayles' Practice, p. 1029; Townes' Texas Pleading (2d Ed.) p. 619; Miller v. Knowles, 44 S. W. 927; Dunn v. Land, 193 S. W. 698.

Art. 7742. (5259) What is sufficient title, etc.—All certificates for head-right, land scrip, bounty warrant, or any other evidence of right to land recognized by the laws of this state which have been located and surveyed, shall be deemed and held as sufficient title to authorize the maintenance of the action of trespass to try title. (Act Feb. 5, 1841, sec. 23; P. D. 5303.)

See Sayles' Practice, p. 1033; Fall v. Nation, 43 S. W. 46; Carnes v. Carnes, 64 S. W. 877; Colony Co. v. Schuler, 79 S. W. 371; Stubblefield v. Hanson, 94 S. W. 406; Spearman v. Mims, 207 S. W. 573.

Art. 7743. (5260) Either party may demand abstract of title.—After answer

filed, either party may, by notice in writing, duly served on the opposite party, or his attorney of record, not less than ten days before the trial of the cause, demand an abstract in writing of the claim or title to the premises in question upon which he relies.

See Sayles' Practice, p. 1032; Hayes v. Groesbeck, 69 S. W. 237; Bolden v. Hughes, 107 S. W. 91; Coler v. Alexander, 128 S. W. 664; Wolf v. Wilhelm, 146 S. W. 216; Hays v. Hinkle, 193 S. W. 153; Mortimer v. Jackson, 206 S. W. 510.

Art. 7744. (5261) Abstract must be filed in twenty days, etc.—Such abstract of title shall be filed with the papers of the cause within twenty days after the service of the notice, or within such further time as the court on good cause shown may grant; and, in default thereof, no evidence of the claim or title of such opposite party shall be given on trial.

Bolden v. Hughes, 107 S. W. 91; Coler v. Alexander, 128 S. W. 664.

Art. 7745. (5262) Abstract shall state what.—The abstract mentioned in the two preceding articles shall state:

1. The nature of each document or written instrument intended to be used as evidence, and its date; or,

2. If a contract or conveyance, its date, the parties thereto and the date of the proof or acknowledgment, and before what officer the same was made; and,

3. Where recorded, stating the book and page of the record.

4. If not recorded in the county when the trial is had, copies of such instrument, with the names of the subscribing witnesses, shall be included.

If such unrecorded instrument be lost or destroyed, it shall be sufficient to state the nature of such instrument and its loss or destruction.

See Hayes v. Groesbeck, 69 S. W. 237; Coler v. Alexander, 128 S. W. 664; Hays v. Hinkle, 193 S. W. 153.

Art. 7746. (5263) Amended abstract.—The court may allow either party to file an amended abstract of titles, under the same rules which authorize the amendment of pleadings so far as they are applicable; but in all cases the documentary evidence of title shall, at the trial, be confined to the matters contained in the abstract of titles.

Skov v. Coffin, 137 S. W. 450; Hays v. Hinkle, 193 S. W. 153.

Art. 7747. (5264) Surveyor appointed, etc.—The presiding judge of the court may, either in term time or in vacation, at his own discretion, or on motion of either party to the action, appoint a surveyor, who shall survey the premises in controversy pursuant to the order of the court, and report his action under oath to such court; and, if said report be not rejected for good cause shown, the same shall be admitted as evidence on the trial. (Act Feb. 5, 1840, sec. 3; P. D. 5294.)

See Wardlow v. Harmon, 45 S. W. 828; Harris Co. Irr. Co. v. Hornberger, 94 S. W. 145; Beaumont Irrigating Co. v. De Laune, 173 S. W. 514.

Art. 7748. (5265) Survey unnecessary when.—Where there is no dispute as to the lines or boundaries of the land in controversy, or where the defendant admits that he is in possession of the lands or tenements included in the plaintiff's claim or title, an order of survey shall be unnecessary. (Id. sec. 6; P. D. 5308.)

Art. 7749. (5266) Common source of title, proof of.—It shall not be necessary for the plaintiff to deraign title beyond a common source, and proof of a common source may be made by the plaintiff by certified copies of the deeds showing a chain of title to the defendant emanating from and under such common source; but before any such certified copies shall be read in evidence they shall be filed with the papers of the suit three days before the trial, and the adverse party served with notice of such filing as in other cases; provided, that such certified copies shall not be evidence of title in the defendant, unless offered in evidence by him; and the plaintiff shall not be precluded from making an legal objection to such certified copies, or the originals thereof, when introduced by the defendant. (Acts 1871, p. 3, sec. 1; P. D. 6829.)

See Sayles' Practice, pp. 1040, 1042; Townes' Texas Pleading (2d Ed.) p. 599; Greenwood v. Fontaine, 34 S. W. 826; Story v. Birdwell, 45 S. W. 847; Smith v. Davis, 47 S. W. 101; Long v. Shelton, 126 S. W. 40; Woodward v. Ross, 153 S. W. 158.

Art. 7750. (5267) Judgment by default.—If the defendant, who has been personally served with citation according to law, fails to appear and answer by himself or attorney within the time prescribed by law for other actions in the district court, the proper judgment by default may be entered against him and in favor of the plaintiff for the title to the premises, or the possession thereof, or for both, accordng to the petition, and for all costs, without any proof of title by the plaintiff.

See Sayles' Practice, p. 1028; Clements v. Clements, 46 S. W. 61; Wandelohr v. Bank, 102 S. W. 746; Atkinson v. Shelton, 160 S. W. 316; Hodges v. Moore, 186 S. W. 415.

Art. 7751. (5268) Proof ex parte, when made.—If the defendant has been cited only by publication, and fails to appear and answer by himself, or by attorney of his own selection, or if any defendant, having answered, fails to appear by himself or attorney when the case is called for trial on its merits, the plaintiff shall make such proof as will entitle him prima facie to recover, whereupon the proper judgment shall be entered.

See Sayles' Practice, p. 1029.

Art. 7752. (5269) When defendant claims part only.—Where the defendant claims part of the premises only, the answer shall be equivalent to a disclaimer of the balance.

See Sayles' Practice, pp. 1027, 1029; Stipe v. Shirley, 76 S. W. 307; Kennedy Pasture Co. v. S., 196 S. W. 287; Hankins v. Dilley, 206 S. W. 549.

Art. 7753. (5270) When plaintiff proves part.—Where the defendant claims the whole premises, and the plaintiff shows himself entitled to recover part, the plaintiff shall recover such part and costs.

See Brown v. Humphrey, 95 S. W. 23; Sayles' Practice, p. 1029; Holloway v. Hall, 136 S. W. 488; Zarate v. Villareal, 155 S. W. 328.

Art. 7754. (5271) May recover a part, etc., when.—When there are two or more plaintiffs or defendants, any one or more of the plaintiffs may recover against one or more of the defendants the premises, or any part thereof, or any interest therein, or

damages, according to the rights of the parties.

See Sayles' Practice, p. 1046; Anderson v. Anderson, 67 S. W. 404; Zarate v. Villareal, 155 S. W. 328.

Art. 7755. (5272) The judgment, etc.—Upon the finding of the jury, or of the court where the case is tried by the court, in favor of the plaintiff for the whole or any part of the premises in controversy, the judgment shall be that the plaintiff recover of the defendant the title or possession, or both, as the case may be, of such premises, describing them, and where he recovers the possession, that he have his writ of possession.

See Sayles' Practice, pp. 593, 1046.

Art. 7756. (5273) Damages, etc., when recovered.—Where it is alleged and proved that one of the parties is in possession of the premises, the court or jury, if they find for the adverse party, shall assess the damages for the use and occupation of the premises, and, if special injury to the property be alleged and proved, the damages for such injury shall also be assessed, and the proper judgment shall be entered therefor, on which execution may issue; but damages shall not be assessed under this article for use and occupation, or for injuries done over two years prior to the commencement of the suit. (Acts 1871, p. 3, sec. 1.)

See Bryson & Hartgrove v. Boyce, 92 S. W. 820; Sayles' Practice, p. 1046; Reeder v. Eidson, 120 S. W. 949; Smith v. Cook, 142 S. W. 26.

Art. 7757. (5274) Considered with claim for improvements, when.—When the defendant or person in possession has claimed an allowance for improvements in accordance with the provisions of the succeeding chapter, the claim for use and occupation and damages mentioned in the preceding article shall be considered and acted on in connection with such claim by the defendant or person in possession.

See Sayles' Practice, p. 1045.

Art. 7758. (5275) Final judgment conclusive.—Any final judgment rendered in any action for the recovery of real estate shall be conclusive as to the title or right of possession established in such action upon the party against whom it is recovered, and upon all persons claiming from, through or under such party, by title arising after the commencement of such action.

See Sayles' Practice, p. 1046; Moore v. Snowball, 81 S. W. 5; Shaw v. Thompson Bros. Lumber Co., 177 S. W. 574; Dunn v. Land, 193 S. W. 698.

Art. 7759. (5276) Former laws shall govern, when.—Nothing under this title shall be so construed as to alter, impair or take away the rights of parties, as arising under the laws in force before the introduction of the common law, but the same shall be decided by the principles of the law, or laws, under which the same accrued, or by which the same were regulated or in any manner affected. (Acts 1871, p. 3, sec. 6; P. D. 5297.)

CHAPTER TWO

CLAIM FOR IMPROVEMENTS

Art. 7760. (5277) Suggestion of improvements in good faith.—The defendant in any action of trespass to try title may allege in his pleadings that he and those under whom he claims have had adverse possession in good faith of the premises in controversy for at least one year next before the commencement of such suit, and that he and those under whom he claims have made permanent and valuable improvements on the lands sued for during the time they have had such possession, stating the improvements and their value respectively, and stating also the grounds of such claim. (Act Feb. 5, 1840; P. D. 5300.)

See Townes' Texas Pleading (2d Ed.) p. 595 et seq.; Sayles' Practice, p. 1047; Rowan v. Rainey, 63 S. W. 1031; Overton v. Meggs, 105 S. W. 208; Kaack v. Stanton, 112 S. W. 702; Talley v. Lamar County, 137 S. W. 1125; Smith v. Cook, 142 S. W. 26; Smith v. Adoue & Lobit, 154 S. W. 258; Corbett v. Allman, 189 S. W. 91.

Art. 7761. (5278) Issue as to.—Where the defendant has filed his claim for an allowance for improvements in accordance with the preceding article, if the court or jury find that he is not the rightful owner of the premises sued for, but that he and those under whom he claims have made permanent and valuable improvements thereon, being possessors thereof in good faith, the court or jury shall at the same time estimate from the testimony—

1. The value at the time of trial of such improvements as were so made before the filing of the suit not exceeding the amount to which the value of the premises is actually increased thereby.

2. The value of the use and occupation of the premises during the time the defendant was in possession thereof (exclusive of the improvements thereon made by himself or those under whom he claims), and also, if authorized by the pleadings, the damages for waste or other injury to the premises committed by him, not computing such annual value for a longer time than two years before suit, nor damages for waste or injury done before said two years.

3. The value of the premises recovered without the improvements made as aforesaid. (Id.)

See Sayles' Practice, p. 1048; Cahill v. Benson, 46 S. W. 889; Morris v. Wells, 66 S. W. 248; Haney v. Gartin, 113 S. W. 166; Reeder v. Eidson, 120 S. W. 949; West Lumber Co. v. Chessher, 146 S. W. 976.

Art. 7762. (5279) Rents and profits to be offset against.—If the sum estimated for the improvements exceeds the damages estimated against the defendant and the value of the use and occupation as aforesaid, there shall then be estimated against him, if authorized by the testimony, the value of the use and occupation and the damages for injury done by him or those under whom he claims, for any time before the said two years, so far as may be necessary to balance the claim for improvements, but no further; and he shall not be liable for the excess, if any, beyond the value of the improvements.

See Sayles' Practice, p. 1049; Cahill v. Benson, 46 S. W. 889; Caldwell v. Bryan's Ex'r, 49 S. W. 240; Reeder v. Eidson, 120 S. W. 949; West Lumber Co. v. Chessher, 146 S. W. 976.

Art. 7763. (5280) Judgment for excess, etc.—If it shall appear from the finding of the court or jury, under the two preceding articles, that the estimated value of the use and occupation and damages exceed the estimated value of the improvements, judgment shall be entered for the plaintiff for the excess and costs in addition to a judgment for

the premises; but, should the estimated value of the improvements exceed the estimated value of the use and occupation and damages, judgment shall be entered for the defendant for the excess.

See Sayles' Practice, p. 1049; West Lumber Co. v. Chessher, 146 S. W. 976; Crump v. Sanders, 173 S. W. 559; Decker v. Rucker, 202 S. W. 1001.

Art. 7764. (5281) Writ of possession not to issue, unless, etc.—In any action of trespass to try title, when the lands or tenements have been adjudged to the plaintiff, and the estimated value of the improvements in excess of the value of the use and occupation and damages has been adjudged to the defendant, no writ of possession shall be issued for the term of one year after the date of the judgment, unless the plaintiff shall pay to the clerk of the court for the defendant the amount of such judgment in favor of the defendant, with the interest thereon. (Act Feb. 5, 1840, sec. 9; P. D. 5301.)

See Sayles' Practice, p. 1050; Talley v. Lamar County, 137 S. W. 1125; West Lumber Co. v. Chessher, 146 S. W. 976; Fain v. McCain, 199 S. W. 889; Decker v. Rucker, 202 S. W. 1001.

Art. 7765. (5282) On failure of plaintiff, defendant may pay, etc., and keep premises.—If the plaintiff shall neglect for the term of one year to pay over the amount of said judgment in favor of the defendant, with the interest thereon, as directed in the preceding article, and the defendant shall, within six months after the expiration of said year, pay to the clerk of the court for the plaintiff the value of the lands or tenements without regard to the improvements, as estimated by the court or jury, then the plaintiff shall be forever barred of his writ of possession, and from ever having or maintaining any action whatever against the defendant, his heirs or assigns, for the lands or tenements recovered by such suit.

West Lumber Co. v. Chessher, 146 S. W. 976; Fain v. McCain, 199 S. W. 889; Decker v. Rucker, 202 S. W. 1001.

Art. 7766. (5283) Defendant failing to pay, etc., within six months, writ may issue, etc.—If the defendant, or his legal representatives, shall not, within six months aforesaid, pay over to the clerk for the plaintiff the estimated value of the lands or tenements, as directed in the preceding article, then the plaintiff may sue out his writ of possession as in ordinary cases.

West Lumber Co. v. Chessher, 146 S. W. 976; Decker v. Rucker, 202 S. W. 1001.

Art. 7767. (5284) Judgment.—The judgment or decree of the court shall recite the estimated value of the premises without the improvements, and shall also include the conditions, stipulations and directions contained in the three preceding articles, so far as they may be applicable to the case before the court.

West Lumber Co. v. Chessher, 146 S. W. 976; Decker v. Rucker, 202 S. W. 1001.

Art. 7768. (5285) Duty of clerk on receiving payment, etc.—Whenever payment shall be made to the clerk of the court by the plaintiff or defendant, as provided in the preceding articles, it shall be the duty of such clerk to enter a memorandum of such payment, with the date thereof, on the page of the record on which the judgment was entered; and he shall, on demand, pay over the money to the party entitled, taking his receipt therefor, dated and signed on the page of the record aforesaid.

TITLE 129

TRIAL OF RIGHT OF PROPERTY

Art. 7769. (5286) (4822) Claimant must make affidavit.—Whenever any sheriff or other lawful officer shall levy a writ of execution, sequestration, attachment or other like writ upon any personal property, and such property, or any part thereof, shall be claimed by any person who is not a party to such writ, such person or his agent or attorney may make oath in writing, before any officer authorized to administer oaths, that such claim is made in good faith, and present such oath in writing to the officer who made such levy. (Acts 1846, p. 140, sec. 1; P. D. 5310.)

See Sayles' Practice, pp. 802, 807, 870, 872; Townes' Texas Pleading (2d Ed.) p. 587 et seq.; Lackey v. Campbell, 54 S. W. 46.

Generally under this title, see Josey v. Masters, 179 S. W. 1134; Harris v. Wise, 191 S. W. 588.

Art. 7770. (5287) (4823) Bond.—He shall also execute and deliver to the officer who made such levy his bond, with two or more good and sufficient sureties, to be approved by such officer, payable to the plaintiff in such writ, for an amount equal to double the value of the property so claimed to be assessed by such officer; provided, however, that, when more than one writ has been levied, said bond may be made payable to all the plaintiffs in the several writs levied. Said bond shall inure to the benefit of all the plaintiffs in the several writs according to their respective priorities in time of levy. Upon the approval of such bond and delivery of the property to the claimant, the same shall be deemed in custodia legis, and shall not be taken out of his possession by any other like writ or writs; but said writs may be levied on the same by giving notice to the claimant; and in such cases the claimant's bond shall also inure to the benefit of the several plaintiffs in such writs according to their respective priorities. (Acts 1887, p. 104.)

See Sayles' Practice, pp. 800, 807, 872; Phillips v. Davis, 49 S. W. 144; Texas Banking & Investment Co. v. T. S. Reed Grocery Co., 137 S. W. 162.

Art. 7771. (5288) (4824) Condition of bond.—The bond shall be conditioned that the party making such claim, in case he fails to establish his right to such property, shall return the same to the officer making the levy, or his successor, in as good condition as he received it, and shall also pay the reasonable value of the use, hire, increase and fruits thereof from the date of said bond, or, in case he fails so to return said property and pay for the use of the same, he shall pay the plaintiff the value of said property, with legal interest thereon from the date of the bond, and shall also pay all damages and costs that may be awarded against him.

See Sayles' Practice, p. 873; Willis v. Chowning, 40 S. W. 395; Parlin & Orendorff Co. v. Coffey, 61 S. W. 512.

Art. 7772. (5289) (4825) Property to be delivered to claimant.—It shall be the duty of the officer receiving such oath and bond to deliver the property so claimed to the person so claiming it. (Id.)

See Sayles' Practice, p. 878.

Art. 7773. (5290) (4826) Return of oath and bond.—Whenever any person shall claim property and shall make the oath and give the bond, as provided for in this chapter, if the writ under which said levy was made was issued by any justice of the peace or court of the county where such levy was made, the sheriff or other officer receiving such oath and bond shall indorse on the writ that such claim has been made and oath and bond given, stating by whom, and shall also indorse on such bond the value of the property as assessed by himself, and shall forthwith return such bond and oath to the proper justice or court having jurisdiction to try such claim, as hereinafter provided. (Id. sec. 2; P. D. 5311.)

See Sayles' Practice, p. 878.

Art. 7774. (5291) (4827) Form of bond.—The form of such bond shall be substantially as follows:

"Whereas, by virtue of a writ of ——— [here describe the writ] issued out of the ——— court (or by ———, justice of the peace for precinct No. ——, ——— county) in favor of ——— [here insert name of plaintiff] versus ——— [here insert name of defendant], and tested on the ——— day of ——, A. D. 19——, ——— [here insert name and title of officer seizing], has seized and taken the following described personal property, viz.: ——— [here describe the property], the value of which property has been assessed by said officer at ——— dollars. And, whereas, ——— [here insert name of claimant] has claimed said property and presented to said officer his oath in writing that such claim is made in good faith; now therefore we ——— [here insert name of claimant], as principal, and ——— and ——— as sureties, acknowledge ourselves bound to pay to the said ——— [insert name of plaintiff] the sum of ——— dollars, being double the value of said property, conditioned that the said ——— [here insert name of claimant], in case he fails to establish his right to said property, will return the same to the said ——— [insert the name of the officer] or his successor in as good condition as he received it, and shall also pay the reasonable value of the use, hire, increase or fruits of the same from the date of this bond and costs, or in case he fails to return said property and pay for the use, hire, increase or fruits thereof, that he will pay the plaintiff the value of the same with legal interest thereon from date, and shall also pay all damages and costs that may be awarded against him.

"Witness our hands this the ——— day of ——, A. D. 19——.

"———

"———

"Approved: ——— sheriff (or constable) of ——— county."

Art. 7775. (5292) (4828) Form immaterial.—Any other form of bond which shall be a substantial compliance with the requirements of article 5291 [7774] shall be a sufficient bond.

Art. 7776. (5293) (4829) Return of oath, bond and copy of writ when levy made in county other than that where writ issued.—Whenever any person shall claim property and shall make the oath and give the bond as provided for herein, if the writ under which such levy was made was issued by any justice of the peace or court of another county than that in which such levy was made, then the officer receiving such oath and bond shall indorse on such bond the value of the property as assessed by himself, and shall forthwith return such bond and oath, with a copy of the writ, to the justice or court of the county in which such levy was made having jurisdiction according to the value of the property as assessed by said officer.

See Sayles' Practice, p. 878; Cullers v. Gray, 57 S. W. 305; Josey v. Masters, 179 S. W. 1134.

Art. 7777. (5294) (4830) Return of original writ.—The sheriff or other officer taking such bond shall also indorse on the original writ that such claim has been made and oath and bond given, stating by whom, the names of the sureties and to what justice or court the bond has been returned; and he shall forthwith return such original writ to the justice or court from which it is issued.

See Sayles' Practice, p. 878.

Art. 7778. (5295) (4831) Jurisdiction.—Cases arising under this chapter shall be tried as follows:

1. Where the assessed value of the property does not exceed two hundred dollars, the writ shall be returned to a justice of the peace, as before provided.

2. Where the value assessed is more than two hundred dollars and does not exceed five hundred dollars, the writ shall be returned to the proper county court.

3. When the assessed value is more than five hundred dollars, the writ shall be returned to the proper district court. (Const., art. 5, secs. 8, 16, 19.)

See Sayles' Practice, p. 874; Cullers v. Gray, 57 S. W. 305; Josey v. Masters, 179 S. W. 1134; Fuller, Hanna & Co. v. Rogers, 184 S. W. 322; Dawedoff v. Hooper, 190 S. W. 522.

Art. 7779. (5296) (4832) Cause, how docketed.—Whenever any oath and bond for the trial of the right of property shall be returned, as provided for in this chapter, it shall be the duty of the clerk of the court, or of such justice of the peace, to docket the same in the name of the plaintiff in the writ as the plaintiff, and the claimant of the property as defendant. (Acts 1848, p. 140, sec. 3; P. D. 5312.)

See Townes' Texas Pleading (2d Ed.) p. 588.

Art. 7780. (5297) (4833) Issue to be made up, etc.—At the first term of the court thereafter, if both parties appear, the court or justice shall direct an issue to be made up in writing between the parties and tried as in other cases. (Id.)

See Sayles' Practice, p. 880; Chappell v. Ferrell, 54 S. W. 1072.

Art. 7781. (5298) (4834) Requisites of issue.—Said issue shall consist of a brief statement of the authority and right by which the plaintiff seeks to subject the property levied on to his execution, and of the nature of the claim of the defendant thereto.

See Townes' Texas Pleading (2d Ed.) p. 588.

Art. 7782. (5299) (4835) Judgment by default against defendant, when.—If the plaintiff appears and the defendant fails to appear or neglects or refuses to join issue under the direction of the court or justice, within the time prescribed for pleading, the

plaintiff shall have judgment by default, as in other cases. (Id.)

See Sayles' Practice, p. 879; Townes' Texas Pleading (2d Ed.) p. 588; Muenster v. Tremont Nat. Bk., 49 S. W. 362; Scott v. De Witt, 93 S. W. 215.

Art. 7783. (5300) (4836) Judgment of non-suit against plaintiff, when.—If the plaintiff does not appear at the said first term, the case shall be continued to the next term, when, if he appears, the like proceedings may be had as at the said first term; but, if he does not then appear on or before the appearance day of said term, he shall be non-suited. (Id.)

See Sayles' Practice, p. 879; Townes' Texas Pleading (2d Ed.) p. 594; Stevens v. Perrin, 47 S. W. 802; Chappell v. Ferrell, 54 S. W. 1072.

Art. 7784. (5301) (4837) Proceedings, how conducted.—The proceedings and practice on the trial shall be as nearly as practicable the same as in other cases before such court or justice.

See Sayles' Practice, p. 887.

Art. 7785. (5302) (4838) Burden of proof on plaintiff, when.—In all cases arising under this title, if the property was taken from the possession of the claimant, the burden of proof shall be on the plaintiff. (Id.)

See Sayles' Practice, pp. 871, 881.

Art. 7786. (5303) (4839) Burden of proof on defendant, when.—If it was taken from the possession of the defendant in such writ, or any other person than the claimant, the burden of proof shall be on the claimant. (Id.)

See Sayles' Practice, p. 881; Cullers v. Gray, 57 S. W. 305; Horn v. Price, 200 S. W. 590.

Art. 7787. (5304) (4840) Damages.—In all trials of the right of property under the provisions of this title, if the claimant shall fail to establish his right to the property, the court or justice trying the same shall give judgment against all the obligors in the claimant's bond for ten per cent damages on the value of the property. (P. D. 5314.)

See Sayles' Practice, p. 884; Muenster v. Tremont Nat. Bk., 46 S. W. 278.

Art. 7788. (5305) (4841) Where value of property exceeds judgment.—When such value is greater than the amount claimed under the writ, by virtue of which such property was levied upon, the damages shall be on the amount claimed under said writ. (Id.)

Art. 7789. (5306) (4842) Copy of writ evidence, when.—In all trials of the right of property, under the provisions of this title, in any county other than that in which the writ issued under which the levy was made, the copy of the writ herein required to be returned by the officer making the levy shall be received in evidence in like manner as the original could be. (P. D. 5315.)

Art. 7790. (5307) (4843) Judgment upon failure to establish title, etc.—In all cases where any claimant of property, under the provisions of this title, shall fail to establish his right thereto, judgment shall be rendered against him and his sureties for the value of the property, with legal interest thereon from the date of such bond. Such judgment shall be rendered in favor of the plaintiff in the writ, or of the several plaintiffs, if more than one, and shall fix the amount of each plaintiff's claim. (Acts 1887, p. 104.)

See Sayles' Practice, p. 884; Muenster v. Tremont Nat. Bk., 46 S. W. 277; Id., 49 S. W. 362; Davis v. Jones, 75 S. W. 63; Moore v. Rabb, 159 S. W. 85.

Art. 7791. (5308) Execution shall issue.—In case such judgment should not be satisfied by a return of the property as provided in article 5310 (7793) then execution shall issue thereon in the name of the plaintiff for the amount of his claim, or of all the plaintiffs for the sum of their several claims, provided the amount of such judgment exceed such claim or sum; and in such cases the excess of such judgment shall inure to the benefit of any person who shall show superior right or title to the property claimed as against the claimant; but, if such judgment be for a less amount than the sum of the several plaintiffs' claims, then the respective rights and priorities of the several plaintiffs shall be fixed and adjusted in the judgment. (Id.)

Art. 7792. (5309) (4844) Execution not to issue within ten days.—On such judgment, no execution shall issue for ten days.

Art. 7793. (5310) (4845) Return of property by claimant within ten days.—If, within ten days from the rendition of said judgment, the claimant shall return such property in as good condition as he received it, and pay for the use of the same, together with the damages and costs, such delivery and payment shall operate as a satisfaction of such judgment.

See Sayles' Practice, pp. 884-6; Willis v. Chowning, 40 S. W. 395; Id., 46 S. W. 45; Muenster v. Tremont Nat. Bank, 46 S. W. 278; Cox v. Janes, 141 S. W. 326; Moore v. Rabb, 159 S. W. 85; Kilgore v. Savage, 164 S. W. 1081.

Art. 7794. (5311) (4846) Claim operates a release of damages.—A claim made to property, under the provisions of this chapter, shall operate as a release of all damages by the claimant against the officer who levied upon said property. (P. D. 5317.)

See Sayles' Practice, p. 871; City Nat. Bk. of Gatesville v. Colgin, 51 S. W. 856; Davis v. Jones, 75 S. W. 63; Terry v. Webb, 96 S. W. 70.

Art. 7795. (5312) (4847) Levy may be made on other property.—Proceedings for the trial of the right of property, under the provisions of this title, shall in no case prevent the plaintiff in the writ from having a levy made upon any other property of the defendant. (P. D. 5318.)

TITLE 130

TRUSTS—CONSPIRACIES AGAINST TRADE

CHAPTER ONE

DEFINITIONS, FORFEITURES AND OTHER PROVISIONS

Art. 7796. "Trusts" defined.—A "trust" is a combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or either two or more of them for either, any or all of the following purposes:

1. To create, or which may tend to create, or carry out restrictions in trade or commerce or aids to commerce or in the preparation of any product for market or transportation, or to create or carry out re-

strictions in the free pursuit of any business authorized or permitted by the laws of this state.

2. To fix, maintain, increase or reduce the price of merchandise, produce or commodities, or the cost of insurance, or of the preparation of any product for market or transportation.

3. To prevent or lessen competition in the manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or the business of insurance, or to prevent or lessen competition in aids to commerce, or in the preparation of any product for market or transportation.

4. To fix or maintain any standard or figure whereby the price of any article or commodity of merchandise, produce or commerce, or the cost of transportation, or insurance, or the preparation of any product for market or transportation, shall be in any manner affected, controlled or established.

5. To make, enter into, maintain, execute or carry out any contract, obligation or agreement by which the parties thereto bind, or have bound, themselves not to sell, dispose of, transport or to prepare for market or transportation any article or commodity, or to make any contract of insurance at a price below a common standard or figure, or by which they shall agree in any manner to keep the price of such article or commodity or charge for transportation or insurance, or the cost of the preparation of any product for market or transportation, at a fixed or graded figure, or by which they shall in any manner affect or maintain the price of any commodity or article or the cost of transportation or insurance, or the cost of the preparation of any product for market or transportation between them or themselves and others, to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity, or business of transportation or insurance, or the preparation of any product for market or transportation, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or purchase of any article or commodity, or charge for transportation or insurance or charge for the preparation of any product for market or transportation whereby its price or such charge might be in any manner affected.

6. To regulate, fix or limit the output of any article or commodity which may be manufactured, mined, produced or sold, or the amount of insurance which may be undertaken, or the amount of work that may be done in the preparation of any product for market or transportation.

7. To abstain from engaging in or continuing business, or from the purchase or sale of merchandise, produce or commodities partially or entirely within the state of Texas, or any portion thereof. (Acts 1903, p. 119, sec. 1.)

Art. 7797. "Monopoly" defined.—A monopoly is a combination or consolidation of two or more corporations when effected in either of the following methods:

1. When the direction of the affairs of two or more corporations is in any manner brought under the same management or control for the purpose of producing, or where such common management or control tends to create a trust as defined in the first article of this chapter.

2. Where any corporation acquires the shares or certificates of stock or bonds, franchise or other rights, or the physical properties, or any part thereof, of any other corporation or corporations, for the purpose of preventing or lessening, or where the effect of such acquisition tends to affect or lessen competition, whether such acquisition is accomplished directly or through the instrumentality of trustees or otherwise. (Id. sec. 2.)

Art. 7798. Conspiracies against trade, what constitutes.—Either or any of the following acts shall constitute a conspiracy in restraint of trade:

1. Where any two or more persons, firms, corporations or associations of persons, who are engaged in buying or selling any article of merchandise, produce or any commodity, enter into an agreement or understanding to refuse to buy from or sell to any other person, firm, corporation or association of persons, any article of merchandise, produce or commodity.

2. Where any two or more persons, firms, corporations or association of persons shall agree to boycott or threaten to refuse to buy from or sell to any person, firm, corporation or association of persons for buying from or selling to any other person, firm, corporation or association of persons. (Id. sec. 3.)

Art. 7799. Acts and things mentioned declared illegal.—Any and all trusts, monopolies and conspiracies in restraint of trade, as herein defined, are prohibited and declared to be illegal. (Id. sec. 4.)

Art. 7800. Charters forfeited.—Any corporation holding a charter under the laws of the state of Texas which shall violate any of the provisions of this chapter shall thereby forfeit its charter and franchise, and its corporate existence shall cease and determine. (Id. sec. 5.)

Art. 7801. Attorney general to institute quo warranto proceedings.—For a violation of any of the provisions of this chapter, or any anti-trust laws of this state, by any corporation, it shall be the duty of the attorney general, upon his motion and without leave or order of any judge or court, to institute suit or quo warranto proceedings in Travis county, or at the county seat of any county in the state which the attorney general may select, for the forfeiture of its charter rights and franchises, and the dissolution of its corporate existence; and for such purposes, venue is hereby given to each district court in the state of Texas. (Id. sec. 6; amended Acts 1909, p. 281.)

Art. 7802. Successors to defaulting corporations prohibited from doing business.—When a corporation organized under the laws of this state shall have been convicted of a violation of any of the provisions of this chapter, and its charter and franchise has been forfeited, as provided in article 7800, no other corporation to which the defaulting corporation may have transferred its properties and business, or which has assumed the payment of its obligations, shall be permitted to incorporate or do business in Texas. (Acts 1903, p. 119, sec. 7.)

Art. 7803. Foreign corporations prohibited from doing business.—Every foreign corporation violating any of the provisions of this chapter is hereby denied the right and is prohibited from doing any business within this state; and it shall be the duty of the attorney general to enforce this provision by injunction or other proceedings in the district court of Travis county, in the name of the state of Texas. (Id. sec. 8.)

Art. 7804. Quo warranto proceedings.—The provisions of title 114, to prescribe the remedy and regulate the proceedings by quo warranto, etc., shall, except in so far as they conflict herewith, govern and control the proceedings when instituted to forfeit any charter under this title. (Id. sec. 9.)

Art. 7805. Successor to convicted foreign corporations may continue business; permit; modification of judgment; retention of jurisdiction for enforcement of act.—When any foreign corporation has been convicted of a violation of any of the provisions of this chapter and its right to do business in this State has been forfeited, as provided in Article 7803, then, before any other corporation to which the defaulting corporation may have transferred its properties and business, or which has assumed the payment of its obligations, shall be permitted to incorporate or do business in Texas, such other corporation shall be required to go into the court where the original judgment was entered and show that it is independently owned and is independently operated, and has no connection with any person, firm or corporation engaged in violating the laws against trusts or monopolies, and is not itself so engaged. Provided further, that at the time of the organization of such other corporation, at the time of making application for the permit to do business in Texas, at the time of receiving such permit, and at all other times thereafter, the ownership of a majority of its stock shall actually and in good faith, be held by other and different persons than those who owned a majority of the stock in the convicted corporation at the time of such conviction and at the time of the doing of the acts and things for which it was convicted, or at each or either of such times; whereupon, and after a hearing had after the notice to the Attorney General herein provided, the court may modify or reform such judgment so as to permit such other corporation to incorporate, or secure a permit, and do business in Texas, and such modified or reformed judgment shall be by the clerk of said court certified to the Secretary of State, who shall issue such permit.

Provided, that notice of filing of such proceeding and the taking of evidence shall be served upon the Attorney General of the State, whose duty it shall be to represent the State in such proceeding; and provided, further, that the court may require the production of all books and records and may appoint a commission to take testimony, either within or without the state; and provided, further, that the expense of the entire proceeding shall be borne in all events by such corporation; and it is further provided that the court, after modifying or reforming the judgment, as provided herein, shall retain jurisdiction of the case and at any time thereafter shall, upon showing that the said corporation which has taken over such properties or business, or its assigns or successors, is violating the laws against trusts or monopolies, or has connection with any person, firm or corporation engaged in violation of the laws against trusts or monopolies, the court shall set aside any order or judgment entered, and in which event all proceedings based thereon, including all transfers of any and all properties, shall be nullified, and it shall be the duty of the Attorney General, for good cause, to enter proceedings to set aside and nullify the modified judgment of the court and its proceedings, as herein provided; and provided further that if the court shall, after the hearing provided for, refuse to modify or reform such judgment, no permit shall be issued by the Secretary of State to the corporation to whom the properties or business of the convicted corporation have been transferred or to the corporation which has assumed the payment of the obligations of the convicted corporation. (Acts 1903, p. 119, sec. 10; Acts 1917, ch. 37, sec. 1.)

Art. 7806. Penalties; venue; fees of attorney general.—Each and every firm, person, corporation or association of persons, who shall in any manner violate the provisions of this chapter, shall, for each and every day that such violation shall be committed or continued, forfeit and pay a sum of not less than fifty nor more than fifteen hundred dollars, which may be recovered in the name of the state of Texas in the district court of any county in the state of Texas, and venue is hereby given to such district courts; provided, that when any such suit shall have been filed in any county and jurisdiction thereof acquired, it shall not be transferred to any other county, except upon change of venue allowed by the court; and it shall be the duty of the attorney general, or the district or county attorney under the direction of the attorney general, to prosecute for the recovery of the same; and the fees of the district or county attorney for representing the state in all anti-trust proceedings, or for the collection of penalties for the violation of the anti-trust laws of this state, shall be ten per cent of the amount collected up to and including the sum of fifty thousand dollars, and five per cent on all sums in excess of the first fifty thousand dollars, to be retained by him when collected; and all such fees which he may collect shall be over and above the fees allowed under the general fee bill; provided, that the provisions of this chapter as to the fees allowed the prosecuting attorney shall not apply to any case in which judgment has heretofore been rendered in any court, nor to any moneys to be hereafter collected upon any such judgment heretofore rendered in any court, whether such judgment or judgments are pending upon appeal or otherwise; and provided, further, that the district or county attorney who joins in the institution or prosecution of any suit for the recovery of penalties for a violation of any of the anti-trust laws of this state, who shall, previous to the collection of such penalties, cease to hold office, he shall be entitled to an equal division with his successor of the fee collected in said cause; and in case of the employment of special counsel

by any such district or county attorney, the contract so made shall be binding upon such prosecuting officer making such contract and thereafter retiring from office; provided, further, that in case any suit is compromised before any final judgment in the trial court is had, then the fees herein provided for shall be reduced one-half. (Acts 1903, p. 119, sec. 11; amended Acts 1909, p. 281.)

Art. 7807. All agreements in violation of, void.—Any contract or agreement in violation of the provisions of this chapter shall be absolutely void and not enforcible either in law or equity. (Acts 1903, p. 119, sec. 12.)

Art. 7808. Actions under this chapter to have precedence.—All actions authorized and brought under this chapter shall have precedence, on motion of the prosecuting attorney or the attorney general, of all other business, civil and criminal, except criminal cases where the defendants are in jail. (Id. sec. 16.)

Art. 7809. Recovery against one does not bar recovery against others.—Recovery against any person or persons for any violation of the provisions of this chapter shall not bar recovery against any other person or persons for the same offense. (Acts 1907, p. 456, sec. 20.)

CHAPTER TWO

EVIDENCE IN TRUST CASES

Art. 7810. Evidence preliminary to prosecutions, how secured.—Upon the application of the attorney general, or of any of his assistants, or of any district or county attorney, acting under the direction of the attorney general, made to any county judge, or any justice of the peace, in this state, stating that he has reason to believe that a witness, who is to be found in the county in which such county judge or justice of the peace is an officer, knows of a violation of any of the provisions of the preceding chapter, it shall be the duty of the county judge, or of the justice of the peace, as the case may be, before whom such application is made, to have summoned and to have examined such witness in relation to violations of any of the provisions of said chapter, said witness to be summoned as provided for in criminal cases. The said witness shall be duly sworn; and the county judge, or justice of the peace, as the case may be, shall cause the statements of the witness to be reduced to writing and signed and sworn to before him, such sworn statement shall be delivered to the attorney general, his assistants, or the district or county attorney, upon whose application the witness was summoned. Should the witness summoned as aforesaid fail to appear, or to make statements of the facts within his knowledge, under oath, or to sign the same after it has been reduced to writing, he shall be guilty of contempt of court, and may be fined not exceeding one hundred dollars, and may be attached and imprisoned in the county jail until he shall make a full statement of all the facts within his knowledge with reference to the matter inquired about. Any person who shall testify before any county judge, or justice of the peace, as provided for in this article, or who shall testify as a witness for the state in the course of any statutory proceeding to secure testimony for the enforcement of the provisions of the preceding chapter, or in the course of any judicial proceeding to enforce the provisions of said chapter shall not be subject to indictment or prosecution for any transaction, matter or thing concerning which he shall so give evidence, documentary or otherwise. (Acts 1907, p. 221, sec. 15.)

Art. 7811. Witnesses examined; books and papers produced.—Whenever any suit shall be instituted, or is pending in any court of competent jurisdiction in this state by the attorney general, or by any district or county attorney acting under his direction, against any corporation or corporations, individual or individuals, or association of individuals, or joint stock associations, or co-partnerships under any law of this state, against trusts, monopolies or conspiracies in restraint of trade, or under any laws of this state regulating or controlling corporations, domestic or foreign, the attorney general, district or county attorney, as the case may be, may, in addition to the means now provided by law, examine and procure the testimony or evidence of witnesses and have books, papers and documents produced as evidence, in the manner herein provided. (Acts 1907, p. 16, sec. 1.)

Art. 7812. Evidence, how taken.—Whenever any action is commenced or is pending, as contemplated in the preceding article of this chapter, by the attorney general, or by any district or county attorney acting under his direction, and said officer representing the state, either upon the trial of the case, or in preparation for the trial thereof, desires to take the testimony of any officer, director, agent or employé of any foreign or domestic corporation or joint stock association proceeded against, or in case of any co-partnership, any member thereof, or in case of any individual or individuals, either of them, and the person or persons whose testimony is desired, resides either within or without the state of Texas, the said officer shall file in said court where the action is brought, either in term time or in vacation, or with any special commissioner, who may be appointed by the court to take testimony, as provided for in this act, a statement in writing setting forth the name or names and residence of the person or persons whose testimony he desires to take, and in a general way shall designate any books, papers or documents he desires produced, and the time when and place where, either within or without this state, he desires such person to appear and testify, or to produce books, papers and documents, if any are desired; and thereupon the judge of said court, or the commissioner, as the case may be, before whom said testimony is being or shall be taken, shall immediately issue a notice in writing, directed to the attorney or attorneys of record in said cause, or the agent, officer, or employé of any corporation or joint stock association, or directed to the attorney or attorneys of record of any co-partnership, individual or individuals, or to any member of such co-partnership, or to any individual or individuals, who are defendant or defendants in said action, notifying said attorney or attorneys of record, or officer, agent or employé, aforesaid, or member or members of any co-partnership, or individu-

al, as herein provided, that the testimony of the person or persons named in said notice is desired, and requiring said attorney or attorneys of record, or such officer, agent or employé aforesaid, or member of such co-partnership, or any individual to whom said notice is delivered, or upon whom the same is served, to notify and have said witness or witnesses, whose testimony or evidence it is desired to take, at the place named in said notice, at the time fixed therein, before the court or special commissioner named, then and there to testify, and then and there to have and produce such books, papers and documents as are called for, and for any of the purposes herein provided; provided, that, if the taking of such evidence be not concluded on the day and date specified in said notice, the court or the commissioner, as the case may be, may continue the taking of same from day to day, or adjourn from day to day, at the same place, until the taking of such evidence has been concluded. (Id. sec. 2.)

Art. 7813. Judgment by default on failure to produce books, papers, etc.— Whenever any officer, director, agent or employé of any foreign or domestic corporation, or joint stock association, authorized to do business in this state, or any member of any co-partnership, or any individual, against whom suit has been filed, or is pending, as provided for in this chapter, or the attorney or attorneys of record of any such corporation, joint stock association, co-partnership, or individual, shall be notified in accordance with the provisions of this chapter that any of the books, papers or documents belonging to such corporation, joint stock association, co-partnership, or individual, are wanted before the court, or special commissioner, as provided in this chapter, it shall be the duty of such defendant corporation, joint stock association, co-partnership, or individual, as the case may be, to produce and present, or cause to be produced and presented, as required in said notice, all such books, papers and documents belonging to any such defendant, or under such defendant's control, as may be specified in said notice, in court or before said special commissioner, at the time and place so specified; and, in the event of the failure or refusal of any such corporation, joint stock association, co-partnership or individual, to comply with any of the provisions of this article, it shall be the duty of the court, upon the motion of the officer representing the state, to strike out all the pleadings, answers, motions, reply or demurrer theretofore or thereafter filed in such case by such defendant corporation, joint stock association, co-partnership, or individual, as the case may be, and render judgment by default against any such defendant. (Id. sec. 3.)

Art. 7814. Notice to attorneys on failure to produce documents; judgment by default, when.— Whenever any attorney or attorneys of record, or any agent, officer, or employé of any corporation or joint stock association, proceeded against as herein provided, shall be notified that any officer, director, agent or employé of any such corporation or joint stock association is wanted before said court, or any special commissioner, as provided herein, to give his testimony or to produce any such books, papers or documents of said corporation or joint stock association, as the case may be, or if any attorney or attorneys of record of any co-partnership or individual shall be notified that any member or members of said co-partnership or any individual, who are defendants in any such action, are desired as witnesses, or to produce books, papers or documents before any court, or before any special commissioner appointed to take testimony in said proceeding, as herein provided, it shall be the duty of such attorney or attorneys of record, or any such officer, director, agent or employé to immediately notify any such person of the time and place where he shall attend and give his testimony, or produce any such books, papers or documents, if any are desired; and, if the person or persons whose testimony is desired as herein provided, shall fail to appear, or appearing shall refuse to testify, or shall fail to produce whatever books, papers or documents he or they may be ordered to produce, as before provided, then it shall be the duty of the court, upon motion of the attorney general, district or county attorney, as the case may be, on proof of such refusal, failure or dereliction, to strike out the answer, motion, reply, demurrer or other pleading theretofore or thereafter filed in such action, by said delinquent defendant, who has himself, or being a corporation or joint stock association, whose officer, agent, director or employé, as herein provided, has refused or failed to attend and testify, or to produce all books, papers or documents demanded, which were in the custody or subject to the control of such witness or witnesses, or corporation or joint stock association; and said court shall, in the event of any such refusal or failure, proceed to render judgment by default against any such defendant; provided, however, that if any such defendant shall file a sworn denial in writing, in said court, setting forth that such failure or refusal did not arise by reason of any fault or procurement of defendant, the court shall hear evidence upon that issue; and if the defendant shows to the satisfaction of the court that any witness who failed to attend did not do so at the instance or procurement of said defendant, or that the books, papers or documents demanded were not in its possession or control and could not be produced, and that such defendant had complied with all the provisions of this chapter, within such defendant's power to perform, then in that event the answer, motion, reply, demurrer, or other pleadings shall not be stricken out or judgment by default taken because of the failure of the witness to attend, who could not be so procured, or because of the failure to produce the books, papers or documents not in the possession or under the control of such defendant; but the court shall have the power to enter such further orders in respect to the matter in controversy as it may deem necessary for the proper administration of justice; provided, further, that, in any proceeding had before a special commissioner as herein provided, the certificate of the special commissioner showing the failure or refusal of any such witness or witnesses to appear and testify, or to produce any books, papers or documents desired, shall be sufficient prima facie evidence of such failure, refusal or dereliction on the part of any such defendant, when same is

filed in court. Any witness attending any proceeding herein provided for in compliance with any notice or subpœna issued by authority of this act shall receive as compensation one dollar per day for each day of his attendance, and four cents per mile traveled, computed upon the shortest practicable route; any claim for fees and mileage shall be filed with the court, or special commissioner, and sworn to by said witness, and shall be taxed up as costs, and collected as other costs in civil cases. (Id. sec. 4.)

Art. 7815. Special commission to take testimony; powers of; compensation.—The court, or presiding judge thereof, in which any proceeding as herein provided is pending, in term time or in vacation, upon application therefor made by the attorney general, or district or county attorney acting under his direction, shall appoint some well qualified disinterested person as special commissioner to take testimony in any such case, at any point either within or without the state, as designated in such application, or where requested by either party to said cause of action, upon the issues joined in said cause. Such special commissioner shall have full power and authority to issue notices provided for in article 7812 of this chapter, and to issue subpœnas for witnesses, compelling the attendance of such witnesses, the production of books, papers or documents, to issue attachments, to punish for contempt to the same extent as provided by law for said court, to administer oaths to witnesses, to have all witnesses examined orally, which testimony shall be reduced to writing and may be taken down by a competent stenographer and transcribed, and shall be signed and sworn to by said witness. The person appointed as special commissioner in any case shall qualify by taking oath prescribed by the constitution of this state for officers, and shall, with all convenient speed, certify and return the testimony taken by him to the court appointing him; and said commissioner shall note all objections to testimony, and shall not exclude any testimony; and all questions as to the materiality or admissibility of same shall be reserved for the court trying the case; and such testimony so taken may be read in evidence upon the trial of the suit in which same was taken, subject to any legal objections which might be made to same. The compensation of such commissioner shall be his actual expenses in traveling and such fees as are allowed a notary public in taking depositions, to be taxed up as costs and collected in the same manner as now provided by law for district clerks in civil cases. (Id. sec. 5.)

Art. 7816. Ten days' notice to require witnesses to appear.—When any notice is issued and served, as provided for in this chapter, ten full days exclusive of the day of service shall elapse before any witness so requested shall be compelled to appear and testify, or produce any books, papers or documents called for; and, if the taking of testimony shall not be concluded on the date named in said notice, the witness or witnesses shall remain in attendance from day to day until same is completed or said witness is finally discharged by the court, or commissioner, as the case may be; service of said notice and the return thereon may be made by any sheriff or constable of this state, or by any disinterested person competent to make oath of the fact, and shall be made by said person executing the same by delivering to the person or persons, attorney or attorneys to be served, a true copy of such notice, and return of such service shall be indorsed on or attached to the original notice; it shall state when the same was served and the manner of service, and upon whom served, and shall be signed; and, if served by any person other than an officer, shall be sworn to by the party making the service before some officer authorized by law to take affidavits; and such affidavit shall be certified under the hand and official seal of such officer. (Id. sec. 6.)

Art. 7817. Witnesses testifying not subject to prosecution.—Any witness for the state, who shall testify or produce any books, papers or documents in any proceeding or examination under the provisions of this chapter, shall not be subject to indictment or prosecution for any transaction, matter or thing, concerning which he truthfully testifies or produces evidence, documentary or otherwise. (Id. sec. 7.)

Art. 7818. Provisions of this chapter cumulative.—The provisions of this chapter shall be cumulative of all laws of this state, and shall not be construed as repealing any other law relating to the taking of testimony or evidence; but shall be construed as providing an additional means of securing evidence for the enforcement of the laws, as herein provided. (Id. sec. 8.)

TITLE 131

WAREHOUSES AND WAREHOUSEMEN

Art. 7819. Who and what are public warehousemen and warehouses.—All persons, firms, companies or corporations who shall receive cotton, wheat, rye, oats, rice, or any kind of produce, wares, merchandise, or any description of personal property in store for hire, shall be deemed and taken to be public warehousemen.

A warehouse, within the meaning of this Act, shall be a house, building, or room in which the above mentioned commodities are stored and are protected from damage thereto by the action of the elements. (Acts 1901, p. 251, sec. 1; Acts 1913, S. S. p. 93, sec. 2, amending Art. 7819, Rev. St. 1911; Acts 1919, 2d C. S., ch. 54, sec. 1.)

Art. 7820. Certificate and bond of public warehousemen.—The owner, proprietor, lessee or manager of any public warehouse, whether an individual, firm or corporation, before transacting any business in such public warehouse shall procure from the county clerk of the county in which the warehouse or warehouses are situated, a certificate that he is transacting business as a public warehouseman under the laws of the state of Texas, which certificate shall be issued by said clerk upon a written application, setting forth the location and name of such warehouse or warehouses, and the name of each person, individual, or a member of the firm, interested as owner or principal in the management of the same, or, if the warehouse is

owned or managed by a corporation, the names of the president, secretary and treasurer of such corporation shall be stated, which application shall be received and filed by such clerk and preserved in his office, and the said certificate shall give authority to carry on and conduct the business of a public warehouse within the meaning of this Act, and shall be revokable only by the district court of the county in which the warehouse or warehouses are situated, upon a proceeding before the court, on complaint by written petition of any person, setting forth the particular violation of the law, and upon process, procedure and proof, as in other civil cases. The person receiving a certificate, as herein provided for, shall file with the county clerk granting same, a bond payable to the state of Texas, with good and sufficient surety, to be approved by said clerk, in the penal sum of five thousand dollars, conditioned for the faithful performance of his duty as a public warehouseman,—which said bond shall be filed and preserved in the office of such clerk. (Acts 1901, p. 251, sec. 2; Acts 1913, S. S., p. 93, sec. 3, amending Art. 7820, Rev. St. 1911.)

Art. 7821. Form and record of warehouse receipts; duplicates, when issued.—On application of the owner or depositor of the property stored in a public warehouse, the warehouseman shall issue, over his own signature, or that of his duly authorized agent, a public warehouse receipt therefor, to the order of the person entitled thereto; which receipt shall purport to be issued by a public warehouse, shall bear date of the day of its issue, and shall state upon its face the name of the warehouse and its location, the description, quantity, number and marks of the property stored, where such receipt is for cotton it shall state the class and weight, and the date on which it was originally received in warehouse, and that it is deliverable upon the return of the receipt, properly indorsed by the person to whose order it was issued, and on payment of all charges for storage, and insurance, which charges shall be stated on the face of the receipt. All such receipts shall be numbered consecutively, in the order of their issue; and when such receipt is for cotton, the receipt shall state whether the cotton therein described is exposed to the weather or is under shelter; and a correct record of such receipts shall be kept in a well-bound book, which shall be, at all reasonable hours, open to examination by any interested person; and no two receipts bearing the same number shall be issued from the same warehouse during the same year, nor shall any duplicate receipts be issued, except in the case of a lost or destroyed receipt, in which case the new receipts shall bear the same date and number as the original, and shall be plainly marked on its face, "duplicate" and provided, that no such duplicate receipt shall be issued by the public warehouseman until adequate security acceptable to the warehouseman be deposited with or to the order of said warehouseman, to protect the party or parties who may finally hold the original receipt in good faith and for a valuable consideration. (Acts 1901, p. 251, sec. 3; Acts 1913, S. S., p. 93, sec. 4, amending Art. 7821, Rev. St. 1911.)

Art. 7821a. Control by commissioner of insurance and banking; powers and duties.—The supervision of public warehouses shall be under the control of the commissioner of insurance and banking, whose duty it shall be to prescribe all forms of receipts, certificates, and records of whatsoever description necessary in the conduct of the business of public warehouses; and in providing forms for handling those products which are of general commercial character, the said commissioner shall prescribe forms answering to all usual requirements of negotiable receipts of certificates. The commissioner of insurance and banking is hereby empowered and directed to make not less than one examination each year of all such public warehouses, the necessary expense of such examination or examinations to be paid by the warehouse. (Acts 1913, S. S., p. 93, sec. 5.)

The duties imposed by this and the following article on the Commissioner of Insurance and Banking are transferred to the Board of Supervisors of Warehouses by Acts 1914, 2d C. S., ch. 5 [post, arts. 7827a, 7827u].

Art. 7821b. Commissioner to provide uniform warehouse receipt for cotton; contents.—The commissioner of insurance and banking shall provide a uniform public warehouse receipt for cotton which shall be used by all public warehouses coming under the provisions of this Act, which said receipt shall conform in all respects to the provisions herein set out. In addition to the other provisions such receipt shall have a blank form on the back thereof, to be filled in and signed by the owner of the cotton showing whether or not such cotton is free from encumbrance or liens of any kind. (Id. sec. 6.)

Art. 7821c. Liens to be stated in receipt; not in non-negotiable receipt; stamp.—If there is any encumbrance or liens of any kind on said cotton at the time of its storage the nature and amount of same shall be clearly set out and it is hereby made the duty of the public warehouseman or his authorized agent issuing the receipt, to have said blank filled in and signed by the owner of the cotton before issuing a negotiable receipt against same; provided, however, such statement need not be made if a non-negotiable receipt is desired, but in such cases the public warehouseman issuing said receipt shall write or stamp across the face thereof the words "not negotiable." (Id. sec. 7.)

Art. 7821d. Change of non-negotiable for negotiable receipt; how made.—If a person holding a non-negotiable receipt for cotton as is herein provided for, shall desire to obtain a negotiable receipt in lieu thereof, he shall return said non-negotiable receipt to the public warehouse issuing same and thereupon shall comply in every respect with the provisions of this chapter relating to negotiable receipts, and upon compliance therewith a negotiable receipt shall be issued to him in lieu of said non-negotiable receipt, and said non-negotiable receipt thereupon shall be cancelled, and the word "cancelled" plainly marked in ink across the face thereof. (Id. sec. 8.)

Art. 7822. No receipts without actual storage of goods.—No public warehouse receipt shall be issued except upon the actual previous delivery of the goods in the public warehouse or on the premises, and under the control of the public warehouseman by whom it purports to be issued; and the name of

the warehouse shall invariably be specified in such receipt. (Acts 1901, p. 251, sec. 4; Acts 1913, S. S., p. 93, sec. 10, amending Art. 7822, Rev. St. 1911.)

Art. 7823. Must deliver property immediately upon production of receipt.—On the presentation and return to the warehouseman of any public warehouse receipt issued by him and properly indorsed, and the tender of all proper warehouse charges upon the property represented by it, such property shall be delivered immediately to the holder of such receipt; but no public warehouseman who shall issue a receipt for goods shall, under any circumstances or upon any order or guarantee whatsoever, deliver the property for which receipts have been issued, until the said receipt shall have been surrendered and cancelled, except in case of lost receipts, as provided for in section 4 [Art. 7821]; and, in default of the strict compliance with the provisions of this article, he shall be held liable to the legal holder of the receipt for the full value of the property therein described, as it appeared on the day of the default, and shall, furthermore, be liable to the special penalty herein provided. Upon delivery of the goods from the warehouse, upon any receipt, such receipt shall be plainly marked in ink across its face with the words "cancelled," with the name of the person cancelling the same, and shall thereafter be void, and shall not again be put in circulation. (Acts 1901, p. 251, sec. 5; Acts 1913, S. S., p. 93, sec. 11, amending Art. 7823, Rev. St. 1911.)

Art. 7824. Limitations of liability in receipts prohibited.—No public warehouseman shall insert in the public warehouse receipt issued by him any language limiting or modifying his liabilities or responsibilities as imposed by the laws of this state, excepting, "not accountable for leakage or depreciation," or words of like import and meaning. (Acts 1901, p. 251, sec. 6; Acts 1913, S. S., p. 93, sec. 12, amending Art. 7824, Rev. St. 1911.)

Art. 7825. Force and effect of warehouse receipts; negotiable, etc.—The receipt issued against property stored in public warehouses, as herein provided for shall be negotiable and transferable by endorsement in blank or by special endorsement, and delivery in the same manner and to the same extent as bills of exchange and promissory notes now are, without other formality; and the transferee or holder of such public warehouse receipt shall be considered and held as the actual and exclusive owner, to all intents and purposes, of the property therein described, subject only to the lien and privilege of the public warehouseman for storage and other warehouse charges; provided, however, that all such public warehouse receipts as shall have the words "not negotiable" plainly written or stamped on the face thereof, shall be exempt from the provisions of this article; and provided, further, that no public warehouseman shall issue warehouse receipts against his own property in his own warehouse; but, upon sale of such property in good faith may issue to the purchaser his public warehouse receipt in form and manner as herein provided, which issue and delivery of the receipt shall be deemed to complete the sale, and shall constitute the purchaser full owner, as aforesaid, of the property therein described. Nothing in this last clause shall be construed to exempt the issuer of said receipt for his own goods in his own public warehouse, from complying with and being subject in all respects, to all other articles of this chapter. (Acts 1901, p. 251, sec. 7; Acts 1913, S. S., p. 93, sec. 13, amending Art. 7825, Rev. St. 1911.)

Art. 7826. Liability for damages.—Any, every and all persons, aggrieved by the violations aforesaid, shall have the right to maintain an action against the person or persons, corporation or corporations, so violating any of the provisions of this law, for the recovery of damages which he or they may have sustained by reason of such violation aforesaid, before any court of competent jurisdiction, whether such person or persons so violating shall have been convicted of criminal offense under this law or not. (Acts 1901, p. 251, sec. 8; Acts 1913, S. S., p. 93. sec. 15, amending Art. 7826, Rev. St. 1911.)

Art. 7827. [Repealed by Acts 1919, 2d C. S., ch. 54, sec. 2.]

WAREHOUSES AND MARKETING

Art. 7827a. Purpose of act.—The purpose of this Act is to develop a systematic plan for marketing farm and ranch products. To effect this purpose, the State will encourage the organization of marketing warehouse corporations with policies intended to aid producers of such farm and ranch products in securing the highest market prices for their products. (Acts 1914, 2d C. S., ch. 5, sec. 1; Acts 1917, 1st C. S., ch. 41, sec. 1.)

Art. 7827aa. Commissioner of Markets and Warehouses; board created; appointment of commissioner; salary; oath and bond; removal.—The office of Commissioner of Markets and Warehouses is hereby created, and the Governor, the Commissioner of Agriculture, and the Commissioner of Insurance and Banking shall constitute a board, which is hereby authorized to appoint a Commissioner of Markets and Warehouses to fill that office and discharge its duties; and shall have such other authority as is conferred on said Board by this Act. The appointment shall be with the advice and consent of the Senate. The commissioner so appointed shall hold office for two years, and he shall receive thirty-six hundred ($3,600.00) dollars per annum as compensation for his services. Said commissioner shall take the oath of office and give a bond, payable to the Governor, in the amount of ten thousand ($10,000.00) dollars, for the faithful performance of his duties. Said commissioner may be removed by the board at any time, for cause. The word "Commissioner", wherever used in this bill, shall mean the Commissioner of Markets and Warehouses of the State of Texas. (Acts 1914, 2d C. S., ch. 5, sec. 1; Acts 1917, 1st C. S., ch. 41, sec. 2.)

Art. 7827b. Employment of clerk and employés; expenses; expenditures; office space.—Said commissioner shall have authority to employ, with the consent of the said board, a Chief Clerk, and such other help as may be necessary in carrying out the provisions of this Act, at such salaries as may be fixed by the Commissioner, with the consent of the board, except as otherwise

herein provided; and such employés, and the Commissioner, in addition thereto, shall, when traveling on official business, receive actual necessary expenses. All expenditures, including all expenses of administering this Department, shall be paid by a warrant, drawn by the Comptroller on the State Treasurer, on accounts approved by the Commissioner, or on his authority. The Commissioner shall be furnished sufficient room and office space, in the Capitol or other public building to be selected by the Governor, to meet the requirements of the Department. (Acts 1914, 2d C. S., ch. 5, sec. 2; Acts 1917, 1st C. S., ch. 41, sec. 3.)

Art. 7827bb. Seal; power to administer oaths; examination of corporations. —The Commissioner shall use a seal with five points, and with the words "Commissioner of Markets and Warehouses of Texas" engraved thereon. The commissioner and such paesons as may be appointed by him shall have authority to administer oaths for the purpose of this Act, and such persons may, upon their warrants, at any time examine into the affairs of any gin or corporation licensed under this Act. Such examinations shall be under the direction and at the instance of the Commissioner. (Acts 1914, 2d C. S., ch. 5, sec. 3; Acts 1917, 1st C. S., ch. 41, sec. 4.)

Art. 7827c. Public gins charged with public use; license; bond; suits on bond; venue; new bond; conditions of bond.— All gins operated in this State, whether by individuals, partnerships, joint stock companies, or corporations, ginning cotton for commercial purposes, shall be known as ginners; and shall be charged with the public use; and shall be required to obtain a license as a licensed ginner, from the Commissioner, which license shall be renewed each year, upon the payment of an annual fee of one dollar ($1.00). Applications for such license shall be made to the Commissioner of Warehouses, stating the location and amount of capital of the gin, by whom owned, by whom conducted, and the postoffice address of the owner and operator. Such application shall be accompanied by a bond in the form prescribed by the Board. Such bond may be that of a bonding and indemnity company authorized to do business in Texas, or may be a personal surety bond; and in the event of a personal surety bond, such bond shall be renewed once each year; provided, in no event shall a bond of less than two hundred and fifty dollars ($250.00), nor more than one thousand ($1,000) dollars, be required of any one ginner for each gin he may own. Said bond shall be payable to the State of Texas, for the use and benefit of all who may have a cause of action against the maker thereof under the terms and provisions of this Act; and suit may be brought thereon against the maker thereof in any court of competent jurisdiction in the name of the aggrieved party, without the necessity of binding the State in the suit; but venue of the suit, shall be subject to the general venue statutes of the State. Said bond shall not be void on first recovery but repeated suits may be brought on one bond until the amount of same has been exhausted; and when the bond has become impaired by reason of any judgment thereon, the maker thereof shall be required to give a new bond, or make good the impairment; otherwise, the Board shall cancel his license as a public ginner. The conditions and obligations in the bond shall be that the cotton ginned by the gin designated in the bond, and in its application for license, has been carefully ginned, and that no foreign matter or substance has been placed in the cotton, nor has any water or anything that would increase the weight thereof been placed therein during the process of ginning, or thereafter, while the cotton was in possession of the gin; and that the gin will separate the dirt from the seed; and that any sample of cotton taken from the bale during the process of ginning, as provided in this Act, is a fair and true sample of the cotton in the bale. (Acts 1914, 2d C. S., ch. 5, sec. 4; Acts 1917, 1st C. S., ch. 41, sec. 5.)

Art. 7827cc. Sample from cotton bales ginned; certificate.—Each licensed ginner, under this Act. shall take from each bale of cotton ginned by him one fair, true, and correct sample of cotton, unless requested in writing, by the owner of the cotton, not to do so. When a sample of cotton is taken, such sample shall weigh not less than four, nor more than six, ounces; and the ginner shall wrap the same tightly in a sample wrapper, to secure a reasonable degree of compactness. Such sample shall be taken in three draws, as nearly as practicable, representing the parts of a bale. With each sample of cotton there shall be placed a certificate, under the signature of the ginner, that same is a fair and true sample, as far as said ginner may be able to determine, and that the ginner guarantees no fraud was practiced in taking such sample; and that it was taken from the bale in such manner as to secure a correct sample of the cotton in the bale. Whether or not a sample of the bale of cotton so ginned shall be requested and taken by the ginner as provided herein, the ginner shall, nevertheless, place with each bale of cotton ginned by him a certificate guaranteeing under his bond that during the process of ginning, or thereafter, while the cotton was in the possession of the ginner, no water or foreign substance of any nature had been placed in such cotton, with intent to defraud. Such certificate shall bear the name and address of the person for whom the cotton was ginned, the number of the bale on the books of the ginner, and the weight of the bale at the gin. Provided, that any ginner who takes a sample from a bale of cotton, under the provisions of this Act, may at his option, take and file a like sample from such bale of cotton, for his own protection under this bond. (Acts 1914, 2d C. S., ch. 5, sec. 5; Acts 1917, 1st C. S., ch. 41, sec. 6.)

Art. 7827d. Wrapping of cotton ginned; marking.—Each bale of cotton ginned by a licensed and bonded ginner in this State shall be so wrapped that the bale will be completely covered when compressed; provided that the ends of the bale shall be closed and well sewed; and, provided further, that the quality of the bagging shall at all times be such that marking thereon will, under ordinary conditions, remain intact and visible. Each and every licensed and bonded ginner shall mark each bale of cotton ginned by him with a metal tag or marker or some indestructible material on which shall be stamped in distinct letters the following

"B——— and "B. G. ———," together with the name of the gin or ginner and his post office address. The manner of marking for identification may at any time be regulated by the Commissioner. The first blank above indicated shall be filled in by the ginner by placing the same number, numerically, as that of the bale, as shown on the books of the gin ginning the same; and the letter "B" shall stand for "bale." The second blank shall be filled in by the ginner, by inserting the number of the gin license assigned to it by the Commissioner; and the letters "B. G," when so used, shall stand for "Bonded Gin." All laws and parts of laws heretofore enacted, providing for the marking of branded cotton in the bale, are hereby repealed. (Acts 1914, 2d C. S., ch. 5, sec. 6; Acts 1917, 1st C. S., ch. 41, sec. 7; Acts 1919, ch. 116, sec. 1.)

Art. 7827dd. Commissioner shall enforce the provisions of this act.—The Commissioner shall have power and authority, and it shall be his special duty, to enforce the different provisions of this law relating to ginners, and to regulate and control such cotton gins in all matters relating to the performances of their duties as such. (Acts 1917, 1st C. S., ch. 41, sec. 8.)

Art. 7827e. Reviewing board; chairman; meetings; judicial supervision.—All matters relating to the issuance of a ginner's license, as in this Act provided, and all rules and regulations pertaining to gins, ginning, and ginners, as authorized and required by any provision or section of this Act, shall be subject to review for affirmation, modification, or rejection, by a board hereby created, which board shall be composed of the Commissioner of Agriculture, Commissioner of Insurance and Banking, and the Commissioner of Markets and Warehouses. The last named Commissioner shall be the Chairman of said board, and shall have the power, and it shall be his duty, to convene said board at all reasonable and necessary times to hear and decide all questions properly coming before it for review and decision. All rules, regulations and acts of the Commissioner of Markets and Warehouses, or of said board, pertaining to gins, ginners, and ginning, shall be subject to review by any court of competent jurisdiction in this state. (Id. sec. 9.)

Art. 7827ee. Standards of weights and measures; classification of products; duplicate of standards shall be kept at warehouses.—The standards of weights and measures of this State shall be the standards of weights and measures used under the terms and provisions of this Act. It shall be the duty of the Commissioner to establish standards of classifications of cotton, corn, and other farm and ranch products, of whatever kind and character, which may be subject to classification, and originals of such standards so established shall be maintained, subject to public inspection, in the office of the Commissioner, at all reasonable times; and duplicates of such standards, as well as the standards of weights and measures, shall be furnished by the Commissioner to all persons who may apply therefor, upon the payment of the necessary cost thereof. It shall be the duty of each public warehouse company to keep a duplicate of said standards, as well as the standards of weights and measures, at its warehouse, subject to inspection and comparison of grades and classification, by persons storing products therein; provided, that the standards of classification shall always be the standards established by the Government of the United States, or by this State. (Acts 1914, 2d C. S., ch. 5, sec. 7; Acts 1917, 1st C. S., ch. 41, sec. 10.)

Art. 7827f. Public weighers subject to supervision of Commissioner; appeals to Commissioner; inspection of scales; provisos.—All public weighers in the State of Texas, as provided for in Title 132, Revised Civil Statutes of the State of Texas, 1911, shall be under the supervision of the Commissioner, and all weights made by them shall be subject to his approval. In all cases where any discrepancy arises in the matter of weights and measures of cotton and other farm products, made between public weighers in different sections of this State, or between public and private weighers, the difference shall be subject to review by the Commissioner; and any party, or parties, who may be dissatisfied with the weights or measures of any public or private weigher, may appeal to the Commissioner, and have such cotton or other farm products reweighed or re-measured, for the purpose of ascertaining and deciding the correct weight and measure thereof. The scales of all public and private weighers weighing cotton and other products shall at all reasonable times be subject to inspection by the Commissioner, or his duly authorized representative, as herein provided; provided, further, that submission to and compliance with the section shall be an absolute prerequisite to the right to institute and maintain any action concerning the subject matter hereof, in any of the courts of this State. Provided, the authority herein conferred upon the Commissioner, to review the weights, shall not be construed as in any manner affecting the manner of selecting public weighers, or of fixing the charge to the public, of such public weighers. (Id. sec. 11.)

Art. 7827ff. Application for charter as public warehouseman.—Any number of persons, not less than ten, at least sixty per cent of whom shall be engaged in agriculture, horticulture, or stock-raising as a business, and not less than three-fourths of whom shall be resident citizens of Texas, may apply to the Commissioner for a charter to permit them to organize and operate as a co-operative association, under the provisions of this Act, Provided, that in cities of a population of forty thousand (40,000) or over, the above provisions shall not apply. The application for such a charter shall contain:

1. The name of the corporation.
2. The place where its principal office and place of business is to be located.
3. The purpose for which the corporation is formed.
4. The term for which it is to exist.
5. The number of its directors, which shall not be less than three, nor more than twenty-five, and the names and residences of those selected for the first year.
6. The amount of the capital stock.
7. The application shall be accompanied by the affidavit of three of such applicants,

showing that not less than fifty per cent of the capital stock is actually paid in, which capital stock shall be, in no instance, less than five hundred ($500.00) dollars, divided into shares of five ($5.00) dollars each; and if the same has been paid in otherwise than in cash, then a detailed statement as to the kind, character, and value of the property in which paid shall be made a part of the affidavit. (Acts 1914, 2d C. S., ch. 5, sec. 9; Acts 1917, 1st C. S., ch. 41, sec. 12.)

Art. 7827g. Issuance of charter; bond; suits on bond; new bond; liquidation on failure to give bond.—When such an application for a charter is filed with the Commissioner, and approved by him, the Secretary of State shall, upon notice of such filing and approval, and the payment of the following fees: Five ($5.00) dollars for five thousand ($5,000.00) dollars, or less; ten ($10.00) dollars for ten thousand ($10,000.00) dollars, or more than five thousand ($5,000.00) dollars; and twenty-five ($25.00) dollars for all over that amount, issue a charter to the applicants; and thereupon the Commissioner shall record said charter, and furnish the corporation a certified copy thereof; and he shall issue to the corporation a certificate of authority showing that it has complied with the laws of the State of Texas, and is authorized to do business until the last day of April, of the succeeding year; provided, however, that before said charter is delivered to the corporation, and before said certificate is furnished, the corporation shall execute, by its proper officers, a bond, payable to the State of Texas, the amount of such bond to be determined by the Commissioner. The amount of any such bond may be changed from time to time, in accordance with the volume of business done or to be done by the corporation; and such bond shall be approved by the Commissioner, before it is filed. The condition of such bond shall be to obligate the corporation to observe all provisions of this law, and the rules of the Commissioner, in so far as its business is regulated and controlled by them; and it shall guarantee that the corporation will exercise ordinary care in the storage, preservation, and handling of all farm, ranch, and orchard products intrusted to it for storage or sale, or both; and shall also be for the purpose of guaranteeing the classification, weights, grades, and measures made by the corporation, or under its authority, as approximately correct. The bond herein provided for shall indemnify any person who may be damaged by any statement made by the corporation, or under its authority, in any certificate it may issue for such product stored with it. Such bond may be sued upon by any person sustaining damage by reason of any breach of its condition, growing out of any default or dereliction of duty by said corporation, or any person authorized to act for it. If any such bond shall become impaired from any cause, the Commissioner may require the maker to furnish a new and sufficient bond, by written notice, and if such impairment is not made good within thirty days after notice, the Commissioner shall have authority to proceed to close the doors of the corporation, liquidate its affairs, and discharge its debts, as is provided for in this Act. In the event the Commissioner shall take charge of such corporation, he is empowered to collect, by suit, or otherwise, the full amount of the bond, or so much thereof as is necessary, which, taken with the other assets of the corporation, may be found sufficient to discharge its obligations. (Acts 1914, 2d C. S., ch. 5, sec. 10; Acts 1917, 1st C. S., ch. 41, sec. 13.)

Art. 7827gg. Board of directors; meetings; right of members to vote.—The property and business of corporations chartered hereunder shall be controlled and managed by a Board of Directors of not less than three, nor more than twenty-five in number, who shall be members of the corporation, and bona fide citizens of Texas, and no member of the Board of Directors, of one such corporation shall be a member of a Board of Directors of any other such corporation. The directors shall be elected annually, at a general meeting of the directors of such corporation, which meeting shall be held at such time and place as may be prescribed by the by-laws of the corporation. The notice of such meeting shall be mailed to each member at least two weeks before the date set for the same. Each member of the corporation, at all general and special meetings of the same, shall have one vote, and no more. (Acts 1914, 2d C. S., ch. 5, sec. 12; Acts 1917, 1st C. S., ch. 41, sec. 14.)

Art. 7827h. Examination of corporation; insolvency; financial statements.—Every bonded warehouse corporation chartered under the laws of this State shall be subject to the supervision and control of the Commissioner, and he shall make, or cause to be made, an examination of the affairs and dealings of each such corporation, at its expense, at least once each year, and at such other times as the Commissioner may deem necessary. If, upon examination, any such corporation is found to be insolvent, or has exceeded its powers, or its business is being conducted in an unsafe manner, or it has failed to comply with any provisions or requirements of this Act within a reasonable time, not to exceed, in any event, thirty days, the Commissioner shall report the condition of the corporation to the Attorney General, who may bring such action as the necessities of the case and law may require. The Commissioner shall, also, not less than twice each year, and more frequently if deemed necessary, require each such corporation to file in his office a statement of its affairs, showing the condition of its reserve fund, its assets and liabilities, and such other information as he may deem advisable. Such statement shall be made upon the oath of one of the managing officers of the corporation, and shall be attested by at least a majority of its directors, which report shall be upon forms prescribed by the Commissioner. (Acts 1914, 2d C. S., ch. 5, sec. 13; Acts 1917, 1st C. S., ch. 41, sec. 15.)

Art. 7827hh. Expense of examination; payment.—The expense of each and every regular and special examination of corporations chartered under this Act shall be paid by the corporation examined, in such an amount as the Commissioner shall certify to be just and reasonable; provided, such expense shall be paid in proportion to the capital stock of the various corporations, as follows: Those with a capital stock of less than twenty-five hundred ($2500.00) dollars, shall not pay more than five ($5.00) dollars;

those with a capital stock of two thousand five hundred ($2,500.00) dollars, and not exceeding ten thousand ($10,000.00) dollars, shall be not exceeding ten ($10.00) dollars; those with a capital stock of twenty-five thousand ($25,000.00) dollars, and not less than ten thousand ($10,000.00) dollars, shall pay not exceeding twenty ($20.00) dollars; those with a capital stock of one million ($1,000,000.00) dollars, or more, shall pay not exceeding two hundred ($200.00) dollars, for each examination. All sums of money collected as examination fees shall be paid by the Commissioner, directly into the State Treasury, to the credit of the general revenue fund. (Acts 1914, 2d C. S., ch. 5, sec. 14; Acts 1917, 1st C. S., ch. 41, sec. 16.)

Art. 7827i. Examiners; competency and qualifications; not to be appointed as receiver; bond; number and compensation.—Every warehouse examiner appointed by the Commissioner shall be a cotton grader and classer, and a competent bookkeeper. Before entering upon the discharge of his duties as such, each warehouse examiner shall make oath before some clerk of a court of record, using a seal, and file same with the Commissioner, that he will make fair and impartial examinations, and that he will not accept as pay any presents or emoluments, directly or indirectly, for any service that he may perform in the line of his duty, other than the compensation fixed and given to him by law; and that he will not reveal the conditions of any corporation or public warehouse examined by him, or give out any information secured in the course of any examination, to anyone except the Commissioner, and except when required to do so in the enforcement of the law in some court of this State. No such examiner shall be appointed who is, at the time, an officer or stockholder in any warehouse company or corporation, or who owns any interest in any warehouse; or in any firm or corporation engaged in the purchase or sale of farm, ranch, or orchard products, on commission, or otherwise. No such examiner shall be appointed receiver of any State bonded or public warehouse company whose papers and affairs he shall have examined. Each such examiner shall enter into a bond, payable to the State of Texas, in the sum of five thousand ($5,000.00) dollars, to be approved by the Commissioner, conditioned that he will faithfully perform his duties as such examiner. The Commissioner shall, from time to time, appoint such number of State warehouse examiners as he may deem necessary to make examination of public warehouses, and corporations chartered under this Act, which number shall at no time exceed one examiner for each fifty corporations and public warehouses subject to examinations under this Act, and the laws of this State. As full compensation for the performance of the duties of examiner, each person so appointed shall be entitled to receive a salary of not exceeding two thousand ($2,000.00) dollars per annum, and all reasonable and necessary expenses, including hotel bills. An itemized and sworn account of such expenses shall be presented to, and approved by, the Commissioner. (Acts 1914, 2d C. S., ch. 5, sec. 15; Acts 1917, 1st C. S., ch. 41, sec. 17.)

Art. 7827ii. Impairment of capital stock or other wrongful practices; proceedings by Attorney General; insolvency; receiver; special agent; placing corporations under charge of Commissioner; notice; attachment.—Whenever, after an examination, the Commissioner shall have reason to believe that the capital stock of any corporation, subject to the provisions of this Act, is impaired, he shall, by written notice, require the corporation to make good the impairment. Whenever it shall appear to the Commissioner, from any examination made by an examiner, that such corporation is conducting its business in unsafe, and unauthorized manner, he shall, by an order under his hand and seal, direct the discontinuance of such illegal, unsafe, and unauthorized practice, and shall require a strict compliance with the requirements of the law. If wrong entries are made in the books of a corporation, or if wrong or unlawful uses of its funds have been made, the Commissioner shall require that such entries be corrected and such sums as were unlawfully paid out shall be restored to the corporation by the person or persons responsible for the wrongful use thereof. Whenever any corporation shall refuse or neglect to make any such report as is hereinbefore required, or to comply with any such order as aforesaid; or whenever it shall appear to the Commissioner that it is unsafe or inexpedient for any such corporation to continue to transact business, by reason of neglect or mismanagement, or that any officer or director has abused his trust, or has been guilty of misconduct, or of malversation of his official position, injurious to the institution, or that it has suffered a serious loss by fire, repudiation, or otherwise, the Commissioner shall communicate the facts to the Attorney General, who shall institute such proceedings as the nature of the case may require. The court, or judge, in term time or vacation, before whom such proceedings may be instituted, shall have power to grant such orders in its or his discretion as may be necessary to grant such relief as the evidence and the situation of the parties may require. If, from any examination made by the examiner, it shall be discovered that any corporation organized under this Act is insolvent, or that its continuance in business will seriously jeopardize the interest of its stockholders or its creditors, it shall be the duty of the Commissioner to immediately close such corporation, and to take charge of all of its property and effects. Upon taking charge of any such corporation, the Commissioner shall, as soon as practicable, ascertain by a thorough examination into its affairs, its actual financial condition; and whenever the Commissioner shall become satisfied that such corporation cannot resume business or liquidate its indebtedness to the safety of its shareholders and its creditors, he shall report the fact of its insolvency to the Attorney General. Upon receipt of such notice and information, the Attorney General shall institute proper proceedings, in the proper court, for the purpose of having a receiver appointed to take charge of such corporation, and to wind up its affairs and business for the benefit of its creditors and members; and it is made the duty of the court, and judge thereof, in term time or vacation, after notice and hearing, if it appear neces-

sary, to appoint a receiver to take possession of the property and effects of said corporation, for the purpose of winding up the business thereof. Also, the Commissioner may appoint a special agent to take charge of the affairs of any such insolvent corporation, until a receiver is appointed. The special agent so appointed shall qualify, give bond, and receive compensation, the same as regularly appointed warehouse examiners; such compensation to be paid by the corporation, out of its assets, when allowed by the court as costs, in the case of the appointment of a receiver; provided, that in no case shall any corporation continue in charge of such special agent for a longer period than sixty days. Any corporation chartered hereunder may place its affairs and effects under the control of the Commissioner, on notice to him, and by posting a notice on its front door as follows: "This institution is in the hands of the Commissioner of Marketing and Warehouses of the State of Texas." The posting of this notice, or a similar notice, by the Commissioner, or under his direction, that he has taken possession of any corporation, shall be sufficient to place the property and assets of the corporation, of whatever nature, in possession of the said Commissioner, and shall operate as a bar to any and all attachment proceedings. (Acts 1914, 2d C. S., ch. 5, sec. 16; Acts 1917, 1st C. S., ch. 41, sec. 18.)

Art. 7827j. Refusal to submit to inspection or examination or other violation of law; insolvency proceedings.—If any corporation subject to the provisions of this Act shall refuse to submit its books, and papers, and correspondence, for inspection, to the Commissioner, or any of his authorized examiners; or, if any officer or director of any such corporation shall refuse to be examined on oath touching the business and property of the corporation; or, if it shall be found to have violated its charter, or any law of the State binding upon it, the Commissioner shall report the facts to the Attorney General, who shall institute such proceedings against such corporation as is authorized to be instituted against insolvent corporations. (Acts 1914, 2d C. S., ch. 5, sec. 17; Acts 1917, 1st C. S., ch. 41, sec. 19.)

Art. 7827jj. Corporate officers; removal; transfer or pledge of property held by corporation.—The directors of any corporation chartered hereunder may appoint, or remove any officer or other employé at pleasure. No officer or employé shall have power to endorse, sell, pledge, or hypothecate any bond, note or other obligation received by such corporation, or any property deposited with it as warehousemen, until such power and authority shall have been given such officer or employé of the Board of Directors, in a meeting of the Board, regularly called and held, a written record of which proceedings shall have first been made upon the minutes of the corporation; and all such acts of any officer or employé, endorsing, selling, pledging, or hypothecating any such pledge or property, shall, without the authority of the Board of Directors, as herein provided, be null and void. (Acts 1914, 2d C. S., ch. 5, sec. 18; Acts 1917, 1st C. S., ch. 41, sec. 20.)

Art. 7827k. Erection, purchase, or lease of warehouses, etc.; certification of employés in charge.—Corporations chartered hereunder shall have the right to erect, purchase or lease, and to operate warehouses, buildings, elevators, gins, storage tanks, silos, and such other places of storage and security as may be necessary for the storage, grading, weighing, and classification of cotton, and all farm products, and for the purpose of preparing such products for the market. Before any such corporation shall be permitted to open its doors for business, and in order for it to continue to transact business, the employé, or officer, in active management, shall obtain a certificate from the Commissioner, certifying that he is qualified and authorized to perform the duties of said corporation. In order to receive such certificate, such person must present satisfactory evidence to the Commissioner that he is competent to discharge the duties of such position. Upon receiving satisfactory evidence of qualification, and upon the payment of a filing fee of one ($1) dollar, the Commissioner may issue to any applicant therefor a certificate showing that such applicant is qualified; provided, however, that the life of any such certificate shall not exceed two years, at the expiration of which time the applicant must obtain a new certificate. (Acts 1914, 2d C. S., ch. 5, sec. 19; Acts 1917, 1st C. S., ch. 41, sec. 21.)

Art. 7827kk. Regulation of charges; powers of commissioner as to issuance of permits; buildings; insurance.—All charges for storage in warehouses operating under the provisions of this Act, in this State, shall be subject to limitation and regulation by the Commissioner to the extent of fixing a minimum charge therefor. The charges so fixed need not be the same at all places or at all times, but the Commissioner may take into consideration the local conditions, and the volume of business of each warehouse. In fixing charges for gin-compressed cotton, consideration shall be given to the size of the bale. The Commissioner shall have power to deny a permit to do business under this Act, and to revoke a permit when in his judgment there are sufficient warehouse facilities at the point where a new corporation may desire to do business. The Commissioner shall have power to prohibit the storage of cotton or other inflammable commodities in an unsafe building, or require a storage house to be remodeled within certain specified dates, so as not to unduly hamper the conduct of the business and the convenience of the public. The Commissioner shall require fire insurance by blanket policies or individual policies, in some solvent insurance company chartered under the laws of the State of Texas, or having a permit to do business in the State, to be carried by all public warehouses and all warehouse corporations operating under this Act, and to require such other means and methods of protection from fire and weather, or depreciation of warehouse property, as the Commissioner may deem necessary in each case. No fire, fire and marine, marine or inland insurance company, doing business in this State shall expose itself to any one risk, either upon buildings of any character, or their contents, except when insuring cotton in bales, and grain, in an amount exceeding ten per

cent of the aggregate of the paid up capital stock, and surplus, unless the excess shall be reinsured by such company, in some other solvent insurance company legally authorized to do business in this State. (Acts 1914, 2d C. S., ch. 5, sec. 20; Acts 1917, 1st C. S., ch. 41, sec. 22.)

Art. 7827*l*. Dividends; reserve.—Every corporation organized hereunder may divide its profits among its members, in proportion to the amount of business transacted for each said member, after having paid dividends to each member, on the amount which each of said members has paid into the capital stock of the company, subject, however to the following provisions: Twenty per cent of the net profit on each year's business shall annually be paid into the reserve fund, hereinafter provided for, until the reserve fund shall equal twice the amount placed in the capital stock at the time the corporation was chartered; the balance of the net profits shall be divided in accordance with the by-laws of the corporation; provided, that the subscribers to the capital stock shall first be entitled to a ten per cent dividend, or such less amount as may be stated in the by-laws for each year, before the remainder thereof is divided among the members in proportion to the amount of business transacted for each member. (Acts 1914, 2d C. S., ch. 5, sec. 21; Acts 1917, 1st C. S., ch. 41, sec. 23.)

Art. 7827*ll*. Powers as warehousemen; other powers; loaning money; priority; investment of capital, etc.; restrictions.—Corporations chartered hereunder shall have the right to act and do, and perform, generally, all things which may be done and performed by warehousemen. Such corporations shall also have the right to sell in the market all products of the farm, ranch, or orchard, on a commission basis, or such other basis as may be agreed upon by them with their customers. Corporations chartered hereunder shall have the right to purchase, or construct, or lease, all such warehouses, landings, and buildings, as may be necessary for their business. They shall have the right to employ such other instrumentalities and agencies as may be necessary for the storage, preservation, and marketing of farm, ranch, and orchard products, to the best advantage of the members and customers; provided, that at least sixty per cent of the shareholders, engaged in such business, shall be engaged in farming, horticulture, or stockraising as a business. Corporations chartered hereunder shall have the right to loan money upon products placed in their warehouses; provided, that the amount loaned thereon shall not exceed seventy-five per cent of market value of the property so placed with them. Corporations chartered hereunder shall have the right to loan money upon chattel mortgages, to their members only, for the purpose of enabling them to make and mature their crops, but such chattel mortgages shall always be upon property of at least double the value of money loaned thereon. Corporations chartered hereunder shall have the authority to loan money on crop mortgages, but such crop mortgages must always be the first mortgage thereon, exclusive of the landlord's lien, and shall always be secured by an acreage, which, under the ordinary general conditions, would produce double the amount loaned thereon. Corporations chartered hereunder may invest their capital stock and surplus in a home office building. They may also invest such capital stock, surplus, and undivided profits, in United States bonds, Texas State bonds, county, city, district, and municipal bonds, and road bonds in the State of Texas; provided, such bonds are issued by authority of the law, and interest upon them have never been defaulted. Such corporations shall never have the right to receive deposits, nor discount commercial paper generally, but may make such character of loans and investments as are herein provided for; provided, however, such corporations shall never be permitted to loan money upon chattel mortgages, crop mortgages, or personal security, except to their members, and then only to enable them to make, mature, and gather their crops, or market their farm, ranch or orchard products. (Acts 1914, 2d C. S., ch. 5, sec. 21; Acts 1917, 1st C. S., ch. 41, sec. 24.)

Art. 7827m. Contracting debts and issuing bonds; sinking fund; sinking fund bonds.—Corporations chartered hereunder shall have authority to contract debts, as have other business corporations, and in addition thereto, may issue special bonds, to be known as "sinking fund bonds", as follows: They may invest all, or any part, of their capital stock in such securities as are herein designed for the payment or investment of their capital, which, when approved by the Commissioner, shall be deposited in the State Treasury. The interest on such investments shall be annually paid into the State Treasury, and be placed to the credit of the sinking fund for the liquidation of bonds of such corporations, and the interest shall be invested from time to time by the Commissioner in similar securities, which in turn shall be deposited in the State Treasury. Such securities, when so deposited in the State Treasury, shall remain there as the sinking fund out of which the principal sum of the bond hereinafter provided for shall be paid, and said securities shall not be used for any other purpose than to liquidate the bonds herein provided for, unless, and until, such sinking fund bonds have been paid; in which event, the securities herein provided for shall be returned to the corporation owning same, and shall become a part of the general assets of the corporation. After the investment in the securities herein provided for shall have been made, the Commissioner shall grant authority to the corporation to issue bonds in double the amount of such original capital stock, to bear not greater than six per cent interest, and to run for a period not exceeding thirty years. When said bonds shall have been issued and signed by the proper officers of the corporation, they shall be registered by the Commissioner. Said bonds shall show on their face that the principal thereon is secured by the securities herein required to be deposited in the State Treasury, and shall have plainly written, printed, lithographed, or engraved, on their face the words, "Sinking Fund Bonds of ——— State Bonded Warehouse," with the postoffice address of the corporation, the blank space to be filled in with the name of the corporation. Said bonds shall show on their face, also, that the inter-

est contracted to be paid thereon is secured to them by the general assets of the corporation. After said bonds have been issued as herein provided for, and registered by the Commissioner, they shall be returned to the proper officer of the corporation issuing them, and may then be by such corporation placed on the market and sold; but they shall never be sold at less than ninety per cent of their face value. (Acts 1914, 2d C. S., ch. 5, sec. 22; Acts 1917, 1st C. S., ch. 41, sec. 25.)

Art. 7827mm. Crop statistics; appropriations.—The Commissioner shall collect, from every source available, information concerning stocks on hand and the probable yield of farm and ranch products, and disseminate the same; and he shall establish agencies for the sale of farm, orchard, and ranch products, wherever it may be deemed advisable, in which event he is empowered to prescribe all regulations for the conduct of such agencies as may be found necessary; and the amount of five thousand ($5,000) dollars or as much thereof as may be necessary, is hereby appropriated out of any available fund in the State Treasury, not otherwise appropriated, to carry out the provisions and purposes of this section, for the unexpired term of this fiscal year. (Acts 1914, 2d C. S., ch. 5, sec. 23; Acts 1917, 1st C. S., ch. 41, sec. 26.)

Art. 7827n. General corporation laws; charter fees; Commissioner to promulgate rules.—Every corporation organized under this Act shall be amenable to and subject to all the laws of this State governing corporations generally; provided, no charter fees shall exceed twenty-five ($25) dollars. Warehouses operating under this Act shall be conducted under rules fixed by the Commissioner, in order to effectively carry out the provisions of this Act; and it shall be the duty of the Commissioner, as soon as may be, after this Act takes effect, to promulgate rules and regulations by which the provisions of this Act may be effectively carried out. (Acts 1914, 2d C. S., ch. 5, sec. 24; Acts 1917, 1st C. S., ch. 41, sec. 27.)

Art. 7827nn. Warehouse receipts; form; damages.—The form of warehouse receipts shall be prescribed by the Commissioner, and must be uniform, and in accord with an Act known as the "Federal Warehouse Uniform Receipt Act," and every receipt must embody within its written or printed terms:

(a) The location of the warehouse where the goods are stored.

(b) The date of issuance of the receipt.

(c) The consecutive number of the receipt.

(d) A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order.

(e) The rate of storage charges.

(f) The description of the goods or the package containing them.

(g) The signature of the warehouseman, which may be made by his authorized agent.

(h) If the receipt is issued for goods of which the warehouseman is owner, either solely, or jointly, or in common with others, the fact of such ownership; and

(i) A Statement of the amount of advances made, and of liabilities incurred, for which the warehouseman claims a lien. If the precise amount of such advance is made, or if such liabilities incurred is, at the time of the issuance of the receipt, unknown to the warehouseman or his agent who issues it, a statement of the fact that advances have been made, or liabilities incurred, and the purpose thereof, is sufficient.

(j) It shall also state that the corporation guarantees under its bond the rate, class and grades, within approximate limits of the products for which the receipt may be given, at the time of the issuance of such receipts, and at the elevation of the places where such warehouse is located.

(k) Said receipt shall also show the elevation, above sea level, of the warehouse.

A warehouseman, in addition to this common-law liability, shall be liable to any person damaged thereby for all damages caused by the omission from negotiable receipts of any of the terms herein required. (Acts 1914, 2d C. S., ch. 5, sec. 25; Acts 1917, 1st C. S., ch. 41, sec. 28.)

Uniform Warehouse Receipts Act, see post, arts. 7827½-7827½zzz.

Art. 7827o. Negotiability of receipts; numbering and recording; duplicates; indorsements as to incumbrances, title, etc.; change of form of receipt; delivery of goods.—A receipt in which it is stated that the goods received will be delivered to the depositor, or to any other specified person, is a non-negotiable receipt. A non-negotiable receipt shall have plainly placed upon its face, by the warehouseman issuing it, "non-negotiable". A receipt in which it is stated that the goods received will be delivered to the bearer, is a negotiable receipt. All receipts shall be numbered consecutively, in the order of their issuance, and a record of such receipt shall be kept at the office of the company. No two receipts bearing the same number shall be issued from the same warehouse during the same year, nor shall any duplicate receipt be issued, except in case of a lost or destroyed receipt, in which case a new receipt shall be issued, which shall bear the same date and number as the original, and shall be plainly marked on its face "duplicate." In addition to the other provisions, each receipt shall have a blank form on the back thereof, to be filled in and signed by the owner of the cotton or other products for which it is issued, showing whether a pre-existing and unsatisfied lien of any kind exists against it. If there be a landlord's lien, or such unsatisfied lien, or incumbrance, or lien of any kind, on said cotton, or other products, at the time of its storage, the amount of same shall be clearly set out; and it is made the duty of the manager issuing the receipt to have said blank filled in and signed by the owner of the cotton, or other product before issuing a negotiable receipt for the same; provided, however, such statement may not be made if a non-negotiable receipt is desired. When cotton grown on rented or leased premises is tendered for storage is a State warehouse, in addition to the foregoing instruments, all receipts issued therefor shall be issued jointly, in the name of the owner and the landlord, showing their respective interests in such cotton, unless the tenant or person storing the same presents authority from the landlord, or from the tenant, as the case may be requesting the issuance of a receipt in the name of the one or the other, which request shall be in writing,

and filed with the manager of the warehouse. If the person holding a non-negotiable receipt shall desire to obtain a negotiable receipt in lieu thereof, he shall return the non-negotiable receipt to the warehouse issuing the same, and thereupon shall comply in every respect with the provisions of this Act, relating to negotiable receipts, and upon compliance with which a negotiable receipt shall be issued to him in lieu of the non-negotiable receipt. When the non-negotiable receipt is surrendered or cancelled, the word "cancelled" shall be plainly marked or stamped in ink, across the face thereof. No warehouse receipt shall be issued except on the actual previous delivery of the goods in the warehouse, or on the premises under the control of the manager thereof. (Acts 1914, 2d C. S., ch. 5, sec. 26; Acts 1917, 1st C. S., ch. 41, sec. 29.)

Art. 7827*oo*. Delivery of goods on surrender of receipt.—Upon the presentation and return to the warehouse of any warehouse receipt issued by its manager, and properly endorsed, and the tender of all proper warehouse charges upon the property presented by it, such property shall be delivered immediately to the holder of such receipt; but the manager of such warehouse shall not under any circumstances, or upon any order or guarantee, deliver the property upon which said receipts were issued until such receipts have been delivered and cancelled, except in case of lost receipts. Any such receipt, when returned and cancelled, shall be kept by the manager, in his office, until ordered destroyed by the directors, for one year from date of cancellation. Upon delivery of the goods in a warehouse, upon any receipt, such receipt shall be plainly marked, or stamped in ink, across its face, with the word "cancelled," together with the name of the manager cancelling the same; and shall thereafter be void, and shall not again be put into circulation. (Acts 1914, 2d C. S., ch. 5, sec. 27; Acts 1917, 1st C. S., ch. 41, sec. 30.)

Art. 7827p. Transfer of receipts.—A negotiable receipt issued against goods or products stored in a warehouse under this Act, shall be negotiable and transferable by endorsement in blank, or by special endorsement and delivery in the same manner and to the same extent as bills of exchange and promissory notes now are, without any other formality; and the transferee or holder, of such warehouse receipt shall be considered and held as actual and exclusive owner, to all intents and purposes, of the property herein described, subject only to lien and privileges of the warehouse for storage, insurance, and other warehouse charges; provided, however, that all such warehouse receipts shall have the word "non-negotiable" plainly marked or stamped on the face thereof, shall be exempted from the provisions of this section. (Acts 1914, 2d C. S., ch. 5, sec. 28; Acts 1917, 1st C. S., ch. 41, sec. 31.)

Art. 7827pp. Commissioner to prescribe forms of receipts, etc.; uniformity.—It shall be the duty of the Commissioner to prescribe all the forms of receipts, certificates, and records, of whatsoever description necessary in the conduct of warehouses under this Act; but all such receipts, certificates and forms, shall be drawn in accordance with the terms of this Act. All warehouse receipts shall be of uniform character, in the same class as prescribed by the Commissioner. (Acts 1914, 2d C. S., ch. 5, sec. 29; Acts 1917, 1st C. S., ch. 41, sec. 32.)

Art. 7827q. Rights and liabilities as warehousemen; lien.—The liability of a corporation chartered and operating under this Act, for warehouse purposes, shall be that of a public warehouseman, and it shall have the same rights as a public warehouseman, including a lien for storage, insurance, and other warehouse charges, as well as for charges for any service performed by it; and the corporation shall also have a lien for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, coopering, and other charges and expenses in relation to such goods; and also, all reasonable charges and expenses for notice and advertisement of sale of goods, where sale has been made in satisfaction of the warehouseman's lien. (Acts 1914, 2d C. S., ch. 5, sec. 30; Acts 1917, 1st C. S., ch. 41, sec. 33.)

Art. 7827qq. Enforcement of liens.—A warehouseman's lien for a claim which has become due may be satisfied as follows: The warehouseman shall give written notice to the person on whose account the goods are held, and to any other person known by the warehouseman to claim and interest in the goods. Such notice shall be given by delivery, in person or by registered letter, addressed to the last known place of business, or at the abode of the person to be notified. The notice shall contain:

(a) An itemized statement of the warehouseman's claim, showing the sum due at the time of the notice, and the date or dates when it became due.

(b) A brief description of the goods against which the lien exists.

(c) A demand that the amount of the claim, as stated in the notice, and of such further claim as shall accrue, shall be paid on or before a day mentioned, not less than ten days from the delivery of the notice, if it is personally delivered, or from time to time, when the notice should reach its destination, according to the due course of post, if the notice be sent by mail; and

(d) A statement that unless the claim is paid within the time specified, the goods will be delivered for sale, and sold by auction, at a specified time and place.

In accordance with the terms of a notice so given, a sale of the goods by auction may be had to satisfy any valid claim of the warehouseman for which he has a lien on the goods. The sale shall be had in the place where the lien is acquired, or, if such place is manifestly unsuitable for the purpose, at the nearest suitable place after the time for the payment of the claim specified in the notice to the depositor has elapsed, an advertisement of the sale shall be published in a newspaper in the place where such sale shall be held, describing the goods to be sold, and stating the name of the owner or person on whose account the goods are held, and the time and place of the sale. Such publication shall be for not less than two weeks prior to the date of the sale, and no publication fee shall be charged in excess of the rate now allowed by statute for the publication of legal notices. The sale shall not be held less

than fifteen days from the time of the first publication. If there is no newspaper published in such place, the advertisement shall be posted at least ten days before such sale, at four different places in the community, and one such notice shall be placed at the courthouse of the county in which the warehouse is located. From the proceeds of such sale the warehouseman shall satisfy his lien, including the reasonable charges of notice, advertisement and sale; the balance, if any, of such proceeds shall be held in the warehouse and delivered on demand, to the person to whom he would have been bound to deliver, or justified in delivering the goods. At any time before the goods are sold any person claiming a right of property or possession in them may pay the warehouseman the amount necessary to justify his lien, and to pay the reasonable expenses and liabilities incurred in serving notice and advertising and preparing for the sale up to the time of such payment. The warehouseman shall deliver the goods to the person making such payment, if he is a person entitled, under the provisions of this Act to their possession, on payment of the charges thereon. Otherwise the warehouseman shall retain possession of the goods according to the terms of the original contract of deposit. If any such goods are so delivered to any such person, and the warehouseman desires it, he may require a bond of indemnity as protection from claims of other persons. (Acts 1914, 2d C. S., ch. 5, sec. 31; Acts 1917, 1st C. S., ch. 41, sec. 34.)

Art. 7827r. Board of examiners of cotton classers; meetings.—The Commissioner shall appoint three citizens of the State who have not less than five years' experience as graders and classers of cotton, and who are otherwise qualified, who shall constitute a Board of Examiners, whose duty it shall be to examine applicants for license as Public Cotton Classers. Said Board shall assemble at such times and places as they may be called together by the Commissioner for the purpose of examining applicants for license as Public Cotton Classers. (Id. sec. 35.)

Art. 7827rr. License of cotton classers; examination; fee; compensation of board of examiners; classers shall keep record and issue certificates; federal standards.—Applicants for license as Public Cotton Classers shall apply to said Board, through the Commissioner, in such form as may be designated by him, and shall furnish evidence of their good moral character, and of the experience they have had in the grading and classing of cotton. At a meeting of the Board, said applicants shall be examined touching their qualifications as cotton classers, and shall show such a degree of proficiency as may be required by the Board to entitle them to be appointed as Public Cotton Classers. Those successful in the examination prescribed by the Board shall be issued a license as "Public Cotton Classers," which license shall be signed by the Board, and attested by the signature and seal of the Commissioner of Markets and Warehouses. The Commissioner and the Board shall fix the amount of the examination fee to be paid by the applicants, which amount shall be retained by the Board as their compensation, regardless of the success of the applicant in his examination; and the Board shall receive no compensation from the State. All public Cotton Classers shall have the right, at any place within the State of Texas, to engage in the business of public cotton classers authorized to class cotton generally, and to charge for their services. Hereafter, no person shall be permitted to engage in the business as a public cotton classer, classing cotton for the public generally, without holding a license as a public cotton classer. * * * Each public cotton classer shall keep a complete record of cotton classed, and for whom classed, in a well bound book, and shall issue a certificate to each person showing the class of cotton classed by him. He shall also keep on hand a set of the United States Standard of Cotton Grades, and his books, records and cotton standards shall be open to inspection at all reasonable hours. (Id. sec. 36.)

See Penal Code, art. 977f.

Art. 7827s. Cotton classers to give bond.—Before a license shall issue to any person, he shall file a bond with the Commissioner, in the sum of one thousand ($1,000) dollars, which bond shall be so conditioned as to bind its maker and his sureties to guarantee as proximately correct his work in classing and grading cotton, and the approximate correctness of each statement in every certificate of class and grade he may issue or cause to be issued. It shall also bind the maker and his sureties to fully and promptly indemnify any person who may sustain financial loss by reason of any false class or grade he may make, or by reason of any untrue or misleading certificate issued by him, or under his authority, with intent to defraud. (Id. sec. 37.)

Art. 7827ss. Certificate of classer as evidence; additional boards of examiners of classers of other products.—A certificate of classification of cotton issued by any person under authority of this Act shall be accepted in all the courts of this State as prima facie evidence of the facts stated therein. The Commissioner may appoint other Boards of Examiners to examine applicants who may desire to become classers of other farm, ranch, or orchard products, and all such boards and public classers shall be governed by this Act, insofar as it will apply. (Id. sec. 38.)

For sections 39-41 of this Act see Penal Code, arts. 977g, 977h.

Art. 7827t. Sureties on bonds; form of bond; suit; venue; new bond.—Each kind of a bond required by any provisions of this Act may be made with private persons on bonding companies as sureties. All such bonds shall be filed with the Commissioner and approved by him. All such bonds shall be payable to the State of Texas for the use and benefit of any person who may be damaged by a breach of its conditions, but it shall not be necessary to join the State in any suit on any such bonds. The venue of suits on all such bonds as are provided herein shall be that of the general venue statutes of this State. Should any such bond become impaired, by suit, or otherwise, the Commissioner may, by a written notice to the maker, require such impairments to be made good. If any such impairment is not made good to the satisfaction of the Commissioner, within a reasonable time after notice, which

time shall in no event exceed thirty days, the license under which the maker of such impaired bond has been acting shall then and thereafter stand revoked and canceled. (Id. sec. 42.)

For sections 43-48 of this Act see Penal Code, arts. 936a, 977j-977n.

Art. 7827tt. All warehouses placed under control of Commissioner; existing corporations may amend their charters.—All warehouses now or hereafter operating under an Act passed by the Thirty-third Legislature of Texas, and known as the "Public Warehouse Act," are hereby placed under the management and control of the Commissioner, and all chartered warehouses for the storage of farm, ranch or orchard products, not incorporated under this Act, may, by a majority vote of its stockholders, upon application to the Secretary of State, upon payment of a fee of ten ($10) dollars, amend their charter so as to come under this Act. Such warehouses shall maks such bonds as the Commissioner may require, and each such warehouses shall issue such receipts as are authorized by the Commissioner. (Acts 1914, 2d C. S., ch. 5, sec. 42; Acts 1917, 1st C. S., ch. 41, sec. 49.)

Art. 7827u. Landlord's lien shall continue unless negotiable receipt is given.—The landlord's lien on cotton or other farm products, shall continue so long as the same are on storage in any warehouse, whether the same be a warehouse operated under this Act, or a private warehouse, provided a negotiable receipt has not been issued therefor. (Acts 1914, 2d C. S., ch. 5, sec. 42; Acts 1917, 1st C. S., ch. 41, sec. 50.)

Art. 7827uu. Partial invalidity of act.—Should any part of this Act be held unconstitutional the remainder of the Act shall be and remain in full force and effect. (Acts 1914, 2d C. S., ch. 5, sec. 45; Acts 1917, 1st C. S., ch. 41, sec. 51.)

Art. 7827v. Repeal.—All laws and parts of laws in conflict herewith are hereby repealed, except an Act passed at the First Called Session of the Thirty-fourth Legislature, providing for the maintenance of the Warehouse and Marketing Department, which Act shall remain in full fore and effect, so far as the said Department is affecter thereby. (Id. sec. 52.)

DEPOSIT OF COTTON AND GRAIN IN BONDED WAREHOUSES

Art. 7827vv. Right of producers to deposit cotton and grain; certificate of deposit.—That each and every person, partnership or joint stock association hereafter engaged in agricultural farming shall have the right to deposit his, her or their cotton or grain by weight or in bushels of the standard weight of the United States in any bonded warehouse or elevators under the supervision and control of the Board of Supervisors of Warehouses under the laws of the State of Texas, which said cotton and grain, upon the deposit thereof in said bonded warehouse, shall be properly classed or classified by the keeper of said bonded warehouse and a certificate containing the weight, numbers of bales or packages of grain, and the classification thereof shall be written in said certificates, which said certificates shall be printed or lithographed by and under the supervision and direction of the Commissioner of Insurance and Banking of the State of Texas, and blanks thereof furnished to the keepers of said bonded warehouse to be furnished by him under his official signature to the depositors of cotton and grain of any kind in said bonded warehouse. (Acts 1915, ch. 145, sec. 1.)

Art. 7827vvv. Pledge of certificates with state banks; negotiable notes; lien.—And be it further enacted, that blank promissory notes of the face value of one, two, three, five, ten and twenty dollars each, made payable to bearer, shall be prepared in due form, properly lithographed, and be furnished by the Commissioner of Insurance and Banking to banks chartered under the laws of the State of Texas for the use of the depositors of said cotton and grain aforesaid, whereby the said depositors shall have the right to take their said certificates of their said cotton or grain to the said State bank or banks chartered by the State of Texas and deposit said certificates with said bank or banks, and they shall furnish said depositor with blank promissory notes of the face value aforesaid, or so much thereof as shall be equal to two-thirds of the value of each bale of cotton according to its classification, or to each parcel of grain, according to its classification in said certificates, which said promissory notes, when signed up by the depositors of said certificates, shall become negotiable paper as other promissory notes, and shall be a lien upon said cotton to the extent of their face value, for the purpose of aiding and securing their redemption by said bank as hereinafter provided. (Id. sec. 2.)

Art. 7827w. Interest on notes.—And be it further enacted, that said promissory notes shall bear interest from date at the rate of four per cent per annum until redeemed by the maker thereof or by the State bank as hereinafter provided. (Id. sec. 3.)

Art. 7827ww. Maturity of notes.—And be it further enacted, that said promissory notes provided for in this act shall become due in six months after the date thereof. (Id. sec. 4.)

Art. 7827x. Depreciation of cotton or grain; sale.—And be it further enacted, that should said cotton or grain so stored in a bonded warehouse or elevator as herein provided depreciate in value during the period of six months from the issuance of said promissory notes based on the deposit of said cotton and grain aforesaid, the makers of said promissory notes or the bank where issued shall have the right to sell said cotton, and it shall be their duty to sell said cotton or grain for the purpose of discharging said promissory notes and interest and the storage and insurance against said cotton during said period of time. (Id. sec. 5.)

Art. 7827xx. State banks to hold notes until put into circulation.—And be it further enacted, that the State banks chartered under the laws of this State shall receive said promissory notes, lithographed and designed by and under the direction of the Commissioner of Insurance and Banking of the State of Texas, and from him, and shall hold the same subject to be called for and used and put in circulation as commercial paper by the owners of cotton and grain certificates deposited with said bank. (Id. sec. 6.)

For section 7 of this Act, see Penal Code, art. 977c.

Art. 7827y. Agreements as to compensation of bank.—And be it further enacted, that the owners of said cotton and grain certificates shall have the right under this Act by private contract to arrange and have any State bank or banks aiding and assisting in the execution and putting in circulation said promissory notes as commercial paper and keeping a record of said certificates deposited with said bank, and the said notes issued aforesaid, such compensation as may be agreed to by the depositors of said certificates and the makers of said notes. (Id. sec. 8.)

For section 9 of this Act, see Penal Code, art. 977e.

Art. 7827yy. Additional security for notes; sale of cotton or grain by bank.—And be it further enacted, that should said cotton or grain depreciate in value from its full value as agreed upon when said promissory notes as a lien thereon is made, issued and put in circulation by the holder of said cotton or grain certificate so as to depreciate the value of said promissory notes, shall have the privilege of putting up in said bank or banks holding said cotton or grain certificate or certificates such further margin as will be equal to the fixed value of the cotton or grain at the time when said promissory notes are signed by the owner of said certificate for said cotton or grain and put in circulation, and should the maker of said notes fail or refuse to put up said margin as herein provided for and said cotton or grain shall depreciate to within five dollars of the two-thirds value fixed at the time of the issuance of said notes, then and in that event the bank shall have the power to sell said cotton or grain in open market and retain sufficient moneys out of the sale thereof on deposit to pay off and discharge said notes when presented, which shall not be later than six months from their date, and apply the remainder to the payment of whatever storage and insurance and interest accruing against said cotton or grain, and the excess thereof shall be deposited to the credit of the maker of said notes. (Id. sec. 10.)

Art. 7827z. Sale of cotton or grain for redemption of notes.—And be it further enacted, that any maker of said promissory notes put in circulation as commercial paper as provided by this Act shall have the right at any time within six months to sell said cotton or grain in open market or shall direct the bank to sell the same in open market for the purpose of redeeming said promissory notes issued and put in circulation on the face of said cotton or grain certificate, and the moneys arising from said sale shall be deposited in the maker's name in said bank for the purpose of redeeming said notes, interest, insurance and storage at the end of six months, the date of their maturity, or before. (Id. sec. 11.)

Art. 7827zz. Indication of bank on notes.—And be it further enacted, that there shall be printed on the lefthand margin of each of said notes the name of the State bank and the place of its activity for the purpose of indicating the bank at which said notes are to be redeemed. (Id. sec. 12.)

Art. 7827zzz. Statement on back of notes.—And be it further enacted, that on the back of each of said series of promissory notes, the issuance of which is provided for in this Act, shall have printed thereon the following words: "This is one of a series of notes issued against and secured by two-thirds of the value of one bale of cotton, or so many bushels of grain," and said promissory notes shall be first lithographed and issued to carry out the provisions of this Act as for cotton or grain, and to carry out the purposes of this Act such blank promissory notes shall be provided by the Commissioner of Insurance and Banking to cover either cotton or a grain transaction. (Id., sec. 13.)

UNIFORM WAREHOUSE RECEIPTS ACT

PART I. THE ISSUE OF WAREHOUSE RECEIPTS

Art. 7827½. Who may issue receipts.—Warehouse receipts may be issued by any warehouseman. (Acts 1919, ch. 126, sec. 1.)

Art. 7827½a. Form and contents.—Warehouse receipts need not be in any particular form, but every such receipt must embody within its written or printed terms:

(a) The location of the warehouse where the goods are stored.

(b) The date of issue of the receipt.

(c) The consecutive number of the receipt.

(d) A statement whether the goods received will be delivered to a specified person, or to a specified person or his order.

(e) The rate of storage charges.

(f) A description of the goods or of the packages containing them.

(g) The signature of the warehouseman, which may be made by his authorized agent.

(h) If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership, and

(i) A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien. If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

A warehouseman shall be liable to any person injured thereby, for all damage caused by the omission from a negotiable receipt of any of the terms herein required.

(j) When a negotiable receipt is issued under the terms of this Act for cotton or other agricultural products stored in any warehouse operating under the terms of this Act, it shall, in addition to the other conditions mentioned herein, state the weight, grade, and condition of the same and shall state plainly whether such agricultural products are insured or not. (Id. sec. 2.)

Art. 7827½aa. Insertion of other terms and conditions.—A warehouseman may insert in a receipt, issued by him, any other terms and conditions, provided that such terms and conditions shall not—

(a) Be contrary to the provisions of this Act.

(b) In any wise impair his obligation to exercise that degree of care in the safe-keeping of the goods entrusted to him, which a reasonably careful man would exercise in regard to similar goods of his own. (Id. sec. 3.)

Art. 7827½b. Non-negotiable receipt.—A receipt in which it is stated that the goods received will be delivered to the depos-

itor, or to any other specified person, is a non-negotiable receipt. (Id. sec. 4.)

Art. 7827½bb. Negotiable receipt.—A receipt in which it is stated that the goods received will be delivered to the order of any person named in such receipt is a negotiable receipt.

No provision shall be inserted in a negotiable receipt that it is non-negotiable. Such provision, if inserted shall be void. (Id. sec. 5.)

Art. 7827½c. Duplicate receipts; marking.—When more than one negotiable receipt is issued for the same goods, the word "duplicate" shall be plainly placed upon the face of every such receipt, except the one first issued. A warehouseman shall be liable for all damages caused by his failure so to do to any one who purchased the subsequent receipt for value supposing it to be an original, even though the purchase be after the delivery of the goods by the warehouseman to the holder of the original receipt. (Id. sec. 6.)

Art. 7827½cc. Non-negotiable receipts; marking.—A non-negotiable receipt shall have plainly placed upon its face by the warehouseman issuing it, "non-negotiable," or "not negotiable." In case of the warehouseman's failure so to do, a holder of the receipt who purchased it for value supposing it to be negotiable, may, at his option, treat such receipt as imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable.

This action shall not apply, however, to letters, memoranda, or written acknowledgments of an informal character. (Id. sec. 7.)

PART II. OBLIGATIONS AND RIGHTS OF WAREHOUSEMEN UPON THEIR RECEIPTS

Art. 7827½d. Delivery of goods to holder of receipt or depositor thereof.—A warehouseman, in the absence of some lawful excuse provided by this Act, is bound to deliver the goods upon a demand made either by the holder of a receipt for the goods or by the depositor, if such demand is accompanied with—

(a) An offer to satisfy the warehouseman's lien.

(b) An offer to surrender the receipt if negotiable, with such indorsements as would be necessary for the negotiation of the receipt, and

(c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is required by the warehouseman.

In case the warehouseman refuses or fails to deliver the goods in compliance with a demand by the holder or depositor so accompanied, the burden shall be upon the warehouseman to establish the existence of a lawful excuse for such refusal. (Acts 1919, ch. 126, sec. 8.)

Art. 7827½dd. Justification of warehouseman in delivering.—A warehouseman is justified in delivering the goods, subject to the provisions of the three following sections, to one who is—

(a) The person lawfully entitled to the possession of the goods, or his agent.

(b) A person who is either himself entitled to delivery by the terms of a non-negotiable receipt issued for the goods, or who has written authority from the person so entitled either endorsed upon the receipt or written upon another paper, or

(c) A person in possession of a negotiable receipt by the terms of which the goods are deliverable to him or order or to bearer, or which has been endorsed to him or in blank by the person to whom delivery was promised by the terms of the receipt or by his mediate or immediate indorsee. (Id. sec. 9.)

Art. 7827½e. Liability for misdelivery.—Where a warehouseman delivers the goods to one who is not in fact lawfully entitled to the possession of them, the warehouseman shall be liable as for conversion to all having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of the preceding section and though he delivered the goods as authorized by said subdivisions he shall be so liable, if prior to such delivery he had either—

(a) Been requested, by or on behalf of the person lawfully entitled to a right of property or possession in the goods, not to make such delivery, or

(b) Had information that the delivery about to be made was to one not lawfully entitled to the possession of the goods. (Id. sec. 10.)

Art. 7827½ee. Cancellation of receipt upon delivery of goods.—Except as provided in Section 36 [Art. 7827½r], where a warehouseman delivers goods for which he has issued a negotiable receipt, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the receipt, he shall be liable to any one who purchases for value in good faith such receipt, for failure to deliver the goods to him, whether such purchaser acquired title to the receipt before or after the delivery of the goods by the warehouseman. (Id. sec. 11.)

Art. 7827½f. Cancellation of receipt upon delivery of part of goods.—Except as provided in Section 36 [art. 7827½r], where a warehouseman delivers part of the goods for which he had issued a negotiable receipt and fails either to take up and cancel such receipt, or to place plainly upon it a statement of what goods or packages have been delivered he shall be liable, to any one who purchases for value in good faith such receipt, for failure to deliver all the goods specified in the receipt whether such purchaser acquired title to the receipt before or after the delivery of any portion of the goods by the warehouseman. (Id. sec. 12.)

Art. 7827½ff. Altered receipts.—The alteration of a receipt shall not excuse the warehouseman who issued it from any liability if such alteration was

(a) Immaterial

(b) Authorized, or

(c) Made without fraudulent intent

If the alteration was authorized, the warehouseman shall be liable according to the terms of the receipt as altered. If the alteration was unauthorized, but made without fraudulent intent, the warehouseman shall be liable according to the terms of the receipt, as they were before alteration.

Material and fraudulent alteration of a receipt shall not excuse the warehouseman who issued it from liability to deliver, according to the terms of the receipt as originally issued, the goods for which it was issued, but

shall excuse him from any other liability to the person who made the alteration and to any person who took with notice of the alteration. Any purchaser of the receipt for value without notice of the alteration shall acquire the same rights against the warehouseman which such purchaser would have acquired if the receipt had not been altered at the time of the purchase. (Id. sec. 13.)

Art. 7827½g. Lost or destroyed receipts.—Where a negotiable receipt has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient securities to be approved by the court to protect the warehouseman from any liability or expense, which he or any person injured by such delivery may incur by reason of the original receipt remaining outstanding. The Court may also in its discretion order the payment of the warehouseman's reasonable costs.

The delivery of the goods under an order of the Court as provided in this section, shall not relieve the warehouseman from liability to a person to whom the negotiable receipt has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods. (Id. sec. 14.)

Art. 7827½gg. Effect of duplicate receipts.—A receipt upon the face of which the word "duplicate" is plainly placed is a representation and warranty by the warehouseman that such receipt is an accurate copy of an original receipt properly issued and uncancelled at the date of the issue of the duplicate, but shall impose upon him no other liability. (Id. sec. 15.)

Art. 7827½h. No title to goods in warehouseman.—No title or right to the possession of the goods, on the part of the warehouseman, unless such title or right is derived directly or indirectly from a transfer made by the depositor at the time of or subsequent to the deposit for storage, or from the warehouseman's lien, shall excuse the warehouseman from liability for refusing to deliver the goods according to the terms of the receipt. (Id. sec. 16.)

Art. 7827½hh. Interpleader of claimants of goods.—If more than one person claims the title or possession of the goods, the warehouseman, may, either as a defense to an action brought against him for non-delivery of the goods, or as an original suit, whichever is appropriate, require all known claimants to interplead. (Id. sec. 17.)

Art. 7827½i. Determination of claims to goods.—If some one other than the depositor or person claiming under him has a claim to the title or possession of the goods, and the warehouseman has information of such claim, the warehouseman shall be excused from liability for refusing to deliver the goods, either to the depositor or person claiming under him or to the adverse claimant, until the warehouseman has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead. (Id. sec. 18.)

Art. 7827½ii. Adverse title, when not a defense.—Except as provided in the two preceeding sections and in sections 9 [art. 7827½dd] and 36 [art. 7827½r], no right or title of a third person shall be a defense to an action brought by the depositor or person claiming under him against the warehouseman for failure to deliver the goods according to the terms of the receipt. (Id. sec. 19.)

Art. 7827½j. Liability for non-existence or misdescription of goods.—A Warehouseman shall be liable to the holder of a receipt for damages caused by the non-existence of the goods or by the failure of the goods to correspond with the description thereof in the receipt at the time of its issue. If, however, the goods are described in a receipt merely by a statement of marks or labels upon them, or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind, or that the packages containing the goods are said to contain goods of a certain kind, or by words of like purport, such statements, if true, shall not make liable the warehouseman issuing the receipt, although the goods are not of the kind which the marks or labels upon them indicate, or of the kind they were said to be by the depositor. (Id. sec. 20.)

Art. 7827½jj. Liability for loss of or injury to goods.—A warehouseman shall be liable for any loss or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful owner of similar goods would exercise, but he shall not be liable, in the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care. (Id. sec. 21.)

Art. 7827½k. Goods to be kept separate.—Except as provided in the following section, a warehouseman shall keep the goods so far separate from goods of other depositors, and from other goods of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and redelivery of the goods deposited. (Id. sec. 22.)

Art. 7827½kk. Mingling fungible goods.—If authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods of the same kind and grade. In such case the various depositors of the mingled goods shall own the entire mass in common and each depositor shall be entitled to such portion thereof as the amount deposited by him bears to the whole. (Id. sec. 23.)

Art. 7827½l. Same subject; delivery to owners.—The warehouseman shall be severally liable to each depositor for the care and re-delivery of his share of such mass to the same extent and under the same circumstances as if the goods had been kept separate. (Id. sec. 24.)

Art. 7827½ll. Attachment, etc., of goods.—If goods are delivered to a warehouseman by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they can not thereafter, while in the possession of the warehouseman, be attached by garnishment or otherwise, or be levied upon under an execution, unless the receipt be first surrendered to the warehouseman, or its negotiation enjoined. The warehouseman shall in no case be compelled to deliver up the actual possession of the goods

until the receipt is surrendered to him or impounded by the court. (Id. sec. 25.)

Art. 7827½m. Remedies of creditors of depositors.—A creditor whose debtor is the owner of a negotiable receipt shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such receipt or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which can not readily be attached or levied upon by ordinary legal process. (Id. sec. 26.)

Art. 7827½mm. Lien of warehouseman.—Subject to the provisions of Section 30, a warehouseman shall have a lien on goods deposited or on the proceeds thereof in his hands, for all lawful charged for storage and preservation of the goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing coopering and other charges and expenses in relation to such goods; also for all reasonable charges and expenses for notice, and advertisements of sale, and for said of goods where default has been made in satisfying the warehouseman's lien. (Id. sec. 27.)

Art. 7827½n. Enforcement of lien.—Subject to the provisions of Section 30 a warehouseman's lien may be enforced—

(a) Against all goods, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted, and

(b) Against all goods belonging to others which have been deposited at any time by the person who is liable as debtor for the claims in regard to which the lien is asserted if such person has been so entrusted with the possession of the goods that a pledge of the same by him at the time of the deposit to one who took the goods in good faith for value would have been valid. (Id. sec. 28.)

Art. 7827½nn. Loss of lien.—A warehouseman loses his lien upon goods—

(a) By surrendering possession thereof, or

(b) By refusing to deliver the goods when a demand is made with which he is bound to comply under the provisions of this act. (Id. sec. 29.)

Art. 7827½o. Statement of claim of lien in receipt.—If a negotiable receipt is issued for goods, the warehouseman shall have no lien thereon, except for charges for storage of those goods subsequent to the date of the receipt, unless the receipt expressly enumerates other charges for which a lien is claimed. In such case there shall be a lien for the charges enumerated so far as they are within the terms of Section 27 [art. 7827½mm], although the amount of the charges so enumerated is not stated in the receipt. (Id. sec. 30.)

Art. 7827½oo. Retention of goods until satisfaction of lien.—A warehouseman having a lien valid against the person demanding the goods may refuse to deliver the goods to him until the lien is satisfied. (Id. sec. 31.)

Art. 7827½p. Other remedies of warehouseman.—Whether a warehouseman has or has not a lien upon the goods, he is entitled to all remedies allowed by law to a creditor against his debtor, for the collection from the depositor of all charges and advances which the depositor has expressly or impliedly contracted with the warehouseman to pay. (Id. sec. 32.)

Art. 7827½pp. Sale to satisfy lien.—A warehouseman's lien for a claim which has become due may be satisfied as follows:

The warehouseman shall give a written notice to the person on whose account the goods are held, and to any other person known by the warehouseman to claim an interest in the goods. Such notice shall be given by delivery in person or by registered letter addressed to the last known place of business or abode of the person to be notified. The notice shall contain—

(a) An itemized statement of the warehouseman's claim, showing the sum due at the time of the notice and the date or dates when it became due,

(b) A brief description of the goods against which the lien exists.

(c) A demand that the amount of the claim as stated in the notice, and of such further claims as shall accrue, shall be paid on or before a day mentioned, not less than ten days from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination, according to the due course of post, if the notice is sent by mail, and

(d) A statement that unless the claim is paid within the time specified the goods will be advertised for sale and sold by auction at a specified time and place.

In accordance with the terms of a notice so given, a sale of the goods by auction may be had to satisfy any valid claim of the warehouseman for which he has a lien on the goods. The sale shall be had in the place where the lien was acquired, or, if such place is manifestly unsuitable for the purpose, at the nearest suitable place. After the time for the payment of the claim specified in the notice to the depositor has elapsed, an advertisement of the sale, describing the goods to be sold, and stating the name of the owner or person on whose account the goods are held, and the time and place of the sale, shall be published once a week for two consecutive weeks in a newspaper published in the place where such sale is to be held. The sale shall not be held less than fifteen days from the time of the first publication. If there is no newspaper published in such place, the advertisement shall be posted at least ten days before such sale in not less than six conspicuous places therein. From the proceeds of such sale the warehouseman shall satisfy his lien, including the reasonable charges of notice, advertisement and sale. The balance, if any, of such proceeds shall be held by the warehouseman, and delivered on demand to the person to whom he would have been bound to deliver or justified in delivering the goods. From the proceeds of such sale, the warehouseman shall satisfy his lien, including the reasonable charges of notice, advertisement and sale. The balance, if any, of such proceeds shall be deposited with the County Clerk of the County in which the warehouse is located and shall be delivered, on demand, to the person to whom the warehouseman would have been bound

to deliver, or justified in delivering the goods, for which the receipt was issued.

At any time before the goods are so sold any person claiming a right of property or possession therein may pay the warehouseman the amount necessary to satisfy his lien and to pay the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of such payment. The warehouseman shall deliver the goods to the person making such payment if he is a person entitled, under the provisions of this Act, to the possession of the goods on payment of charges thereon. Otherwise the warehouseman shall retain possession of the goods according to the terms of the original contract of deposit. (Id. sec. 33.)

Art. 7827½q. Same subject; perishable and hazardous goods.—If goods are of a perishable nature, or by keeping will deteriorate greatly in value, or by their odor, leakage, inflammability, or explosive nature, will be liable to injure other property, the warehouseman may give such notice to the owner, or to the person in whose name the goods are stored, as is reasonable and possible under the circumstances, to satisfy the lien upon such goods, and to remove them from the warehouse, and in the event of the failure of such person to satisfy the lien and to remove the goods within the time so specified, the warehouseman may sell the goods at public or private sale without advertising. If the warehouseman after a reasonable effort is unsable to sell such goods, he may dispose of them in any lawful manner, and shall incur no liability by reason thereof.

The proceeds of any sale made upon the terms of this auction shall be disposed of in the same way as the proceeds of sales made under the terms of the preceding section. (Id. sec. 34.)

Art. 7827½qq. Other methods of enforcing lien.—The remedy for enforcing a lien herein provided does not preclude any other remedies allowed by law for the enforcement of a lien against personal property nor bar the right to recover so much of the warehouseman's claim as shall not be paid by the proceeds of the sale of the property. (Id. sec. 35.)

Art. 7827½r. Effect of sale.—After goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of because of their perishable or hazardous nature, the warehouseman shall not thereafter be liable for failure to deliver the goods to the depositor, or owner of the goods, or to a holder of the receipt given for the goods when they were deposited, even if such receipt be negotiable. (Id. sec. 36.)

PART III. NEGOTIATION AND TRANSFER OF RECEIPTS

Art. 7827½rr. Negotiation by delivery.—A negotiable receipt may be negotiated by delivery—

(a) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the bearer or

(b) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the receipt has indorsed it in blank or to bearer.

Where, by the terms of a negotiable receipt, the goods are deliberable to bearer or when a negotiable receipt has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the receipt shall thereafter be negotiated only by the indorsement of such indorsee. (Acts 1919, ch. 126, sec. 37.)

Art. 7827½s. Negotiation by indorsement.—A negotiable receipt may be negotiated by the indorsement of the person to whose order the goods are, by the terms of the receipt, deliverable. Such indorsement may be in blank, to bearer or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer or to another specified person. Subsequent negotiation may be made in like manner. (Id. sec. 38.)

Art. 7827½ss. Transfer of receipt.—A receipt which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee.

A non-negotiable receipt can not be negotiated, and the indorsement of such receipt gives the transferee no additional right. (Id. sec. 39.)

Art. 7827½t. Who may negotiate receipt.—A negotiable receipt may be negotiated—

(a) By the owner thereof, or

(b) By any person to whom the possession or custody of the receipt has been entrusted by the owner, if, by the terms of the receipt the warehouseman undertakes to deliver the goods to the order of the person to whom the possession or custody of the receipt has been entrusted, or if at the time of such entrusting the receipt is in such form that it may be negotiated by delivery. (Id. sec. 40.)

Art. 7827½tt. Title acquired by negotiation of receipt.—A person to whom a negotiable receipt has been duly negotiated acquires thereby—

(a) Such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith for value, and

(b) The direct obligation of the warehouseman[d] to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him. (Id. sec. 41.)

Art. 7827½u. Title acquired by transfer of receipt.—A person to whom a receipt has been transferred but not negotiated, acquires thereby, as against the transferrer, the title of the goods, subject to the terms of any agreement with the transferrer.

If the receipt is non-negotiable such person also acquires the right to notify the warehouseman of the transfer to him of such receipt, and thereby to acquire the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt.

Prior to the notification of the warehouseman by the transferrer or transferee of a non-negotiable receipt, the title of the transferee to the goods and the right to acquire the obligation of the warehouseman may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor, or by a notification to the warehouseman by the transferrer of a subsequent purchaser from the transferrer of a subsequent sale of the goods by the transferrer. (Id. sec. 42.)

Art. 7827½uu. Transfer of negotiable receipt without indorsement.—Where a negotiable receipt is transferred for value by delivery, and the indorsement of the transferrer is essential for negotiation, the transferee acquires a right against the transferrer to compel him to indorse the receipt, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. (Id. sec. 43.)

Art. 7827½v. Warranties on negotiation, etc., of receipt.—A person who for value negotiable or transfers a receipt by indorsement or delivery, including one who assigns for value a claim secured by a receipt, unless a contrary intention appears, warrants—

(a) That the receipt is genuine,

(b) That he has a legal right to negotiate or transfer it,

(c) That he has knowledge of no fact which would impair the validity or worth of the receipt, and

(d) That he has a right to transfer the title to the goods and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented thereby. (Id. sec. 44.)

Art. 7827½vv. Indorser as guarantor.—The indorsement of a receipt shall not make the indorser liable for any failure on the part of the warehouseman or previous indorsers of the receipt to fulfill their respective obligations. (Id. sec. 45.)

Art. 7827½w. Implied warranty.—A mortgagee, pledgee or holder for security of a receipt who in good faith demands or receives payment of the debt for which such receipt is security, whether from a party to a draft drawn for such debt or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such receipt or the quantity or quality of the goods therein described. (Id. sec. 46.)

Art. 7827½ww. Fraud, mistake, or duress.—The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistake, or duress to entrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor, without notice of the breach of duty, or fraud, mistake or duress. (Id. sec. 47.)

Art. 7827½www. Subsequent negotiation.—Where a person having sold, mortgaged, or pledged goods which are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged, or pledged the negotiable receipt representing such goods, continues in possession of the negotiable receipt, the subsequent negotiation thereof by that person under any sale, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, mortgage, or pledge, shall have the same effect as if the first purchaser of the goods or receipt had expressly authorized the subsequent negotiation. (Id. sec. 48.)

Art. 7827½x. Seller's lien and stoppage in transitu.—Where a negotiable receipt has been issued for goods, no seller's lien or right or stoppage in transit shall defeat the rights of any purchaser for value in good faith to whom such receipt has been negotiated, whether such negotiation be prior or subsequent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage in transit. Nor shall the warehouseman be obliged to deliver or justified in delivering the goods to an unpaid seller unless the receipt is first surrendered for cancellation. (Id. sec. 49.)

PART IV. CRIMINAL OFFENSES

Sections 50-55 of this act. See Penal Code, arts. 977*o* to 977t.

PART V. WHO MAY BECOME PUBLIC WAREHOUSEMEN

Art. 7827½xx. Who may be public warehousemen; bonds.—Any person, firm, corporation, partnership, or association of persons, may become a Public Warehouseman under the terms and provisions of this Act by filing with the County Clerk of the County in which he is located, and proposes to do business, a good and sufficient bond in the sum of five thousand dollars on the condition that he will conduct his business in accordance with the terms and provisions of this Act.

Upon the filing and approval of such bond with the County Clerk, it shall be the duty of the County Clerk to immediately certify such fact to the Commissioner of Markets & Warehouses, of the State of Texas. Any one injured by the violation of the terms of the bond, and the provisions of this Act may recover damages to the extent of said bond; should said bond become impaired by recovery, or otherwise, the Commissioner of Markets and Warehouses, may require such Public Warehouseman to file an additional bond, but in no event shall such additional bond be for a greater amount than Five Thousand Dollars. The bond required thereunder shall be good for the term of one year from the date of filing and the right to continue as a Public Warehouseman shall be conditioned upon the renewal of said bond from year to year, according to the terms of this Act. The form of the bond required hereunder shall be prescribed by the Commissioner of Markets and Warehouses, and the bond provided for herein may be made by any surety company authorized to do business under the laws of the State of Texas; or by two solvent sureties to be approved by the County Clerk of the County in which such Public Warehouseman may desire to do business. (Acts 1919, ch. 126, sec. 56.)

Art. 7827½xxx. Supervision over private warehousemen.—The Commissioner of Markets and Warehouses may exercise a general supervision over all Private Warehouses operating under the provisions of this Act, and may, in his discretion, prescribe rules and regulations for the conduct of same not inconsistent with the terms and provisions of this Act. (Id. sec. 57.)

Art. 7827½y. Repeal.—All laws and parts of laws in conflict with any of the provisions of this Act are hereby repealed except that it is expressly provided for herein that this Act shall not in any wise repeal or impair any part of the Act of the First Called Session of the Thirty-fifth Legislature, approved May 26, 1917, and known as the Permanent Warehouse Act. (Id. sec. 58.)

For acts 1917, ch. 41, see ante, arts. 7827a-7827zzz.

PART VI. INTERPRETATION

Art. 7827½yy. Rules of law, equity, etc., applicable, when.—In any case not provided for in this Act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall govern. (Acts 1919, ch. 126, sec. 59.)

Art. 7827½yyy. Interpretation of act.—This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it. (Id. sec. 60.)

Art. 7827½z. Definitions.—(1) In this Act, unless the context or subject-matter otherwise requires—

"Action" includes counter claim, set-off, and suit in equity.

"Delivery" means voluntary transfer of possession from one person to another.

"Fungible goods" means goods of which any unit is from its nature or by mercantile custom, treated as the equivalent of any other unit.

"Goods" means chattels or merchandise in storage, or which has been or is about to be stored.

"Holder" of a receipt means a person who has both actual possession of such receipt and a right of property therein.

"Order" means an order by indorsement on the receipt.

"Owner" does not include mortgagee or pledgee.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

To "Purchase" includes to take as mortgagee or as pledgee.

"Purchaser" includes mortgagee and pledgee.

"Receipt" means a warehouse receipt.

"Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a receipt is taken either in satisfaction thereof or as security therefor.

"Warehouseman" means a person lawfully engaged in the business of storing goods for profit.

(2) A thing is done "in good faith" within the meaning of this Act, when it is in fact done honestly, whether it is done negligently or not. (Id. sec. 61.)

Art. 7827½zz. Retroactive effect of act.—The provisions of this Act do not apply to receipts made and delivered prior to the taking effect of this Act. (Id. sec. 62.)

Art. 7827½zzz. Citation of act.—This Act may be cited as the Uniform Warehouse Receipts Act. (Id. sec. 63.)

TITLE 132

WEIGHERS—PUBLIC

Arts. 7828, 7829. [Superseded by Acts 1919, ch. 76, post, arts. 7833a–7833o.]

Art. 7830. (4310) Duties.—When a person is appointed or elected public weigher, and shall have qualified as provided in article 7829, he shall enter upon the duties of his office and weigh, without unnecessary delay, all cotton, wool, sugar, hay, pecans, or grain, required to be weighed by him. He shall prepare a convenient place or places of easy access to the public in which to perform his duties. He shall mark upon the bales of cotton, hogshead or barrels of sugar, and bales of wool, or on tags attached thereto, the weights thereof in figures, and shall deliver to the owner, or his agent, of all cotton, wool, hay, sugar, pecans, or grain a certificate or a statement at the option of the owner in writing with ink or an indelible pencil, setting forth the weights of such cotton, wool, sugar, hay, pecans, or grain weighed by him, over his official signature. And where a certificate is issued it shall be negotiable by delivery and indorsement of the owner; and it shall be the duty of the public weigher issuing such certificate, if the produce for which the same was given is left with him on storage, to keep the produce for which the same was issued in his possession, and not remove or permit to be removed such produce until such certificate is returned and delivered to him; and he shall immediately stamp or mark in writing with ink such certificate, "canceled," and shall make a corresponding memorandum upon his book; provided, that, where the holder of such certificate desires to ship or receive from the possession of the public weigher a portion of the produce for which such certificate was given, he may deliver to the public weigher the certificate; whereupon it shall be the duty of the public weigher to deliver such portion of the produce, and, in lieu of the original certificate, he shall give the holder a new certificate for the balance remaining in his possession, and shall cause the original certificate to be canceled, and make the memorandum above provided for. He shall keep in a well-bound book a record of each bale of cotton, sack of wool, or barrel or hogshead of sugar, hay, grain, or pecans weighed by him, numbering the same, giving the gin's marks of cotton bales and number, with the name of the seller and purchaser thereof; which book shall be open at all reasonable hours for the inspection of the public; and he shall, upon application therefor by any one, issue certified copies of such certificate, for which he may charge the sum of ten cents, including certificate thereto. The provisions of this article shall also apply to private weighers who are engaged in weighing for the public, as well as to public weighers. (Acts 1903, p. 216.)

Art. 7831. [Superseded by Acts 1919, ch 76, post, arts. 7833a–7833o.]

Art. 7832. (4312) Shall keep accurate scales.—All public weighers appointed or elected under the provisions of this chapter shall keep accurate and well adjusted scales and balances and give accurate weights, and shall have the same tested and certified to as provided by law. Such public weighers shall be held responsible for their official acts and the official acts of their deputies, and shall be liable at suit for all damages that may have accrued to any person or persons by reason of their failure to perform their official duties, or the violation of any of the provisions of this chapter; and their bonds shall not be void upon the first recovery, but may be sued on from time to time, in the name of the person or persons injured until the whole thereof is recovered. (Acts 1899, p. 264.)

Art. 7833. (4314) Factor or commission merchant not to employ.—It shall not be lawful for any factor, commission merchant, or other person or persons, to employ any other than a public weigher, or his deputies, to weigh cotton, wool, sugar, hay, or grain, or other produce, sold or offered for sale in any city or justice precinct having a public weigher duly qualified; and any person or persons violating the provisions of this article shall be liable at the suit of the public weigher of such city or justice precinct to damages in any sum not less than five dollars for each bale of cotton, bale or sack of wool, ton of hay, or ton of grain, so unlawfully weighed, to be recovered in any court having jurisdiction thereof. (Id.)

Art. 7833a. Public weighers; who are.—All persons, firms, corporations, co-partnerships, or individuals, engaged in the business of public weighing for hire, or any person, firm, or corporation who shall weigh or measure any commodity, produce or article, and issue therefor a weight certificate or weight sheet, which shall be accepted as the accurate weight upon which the purchase or sale of such commodity, produce, or article is based, shall be known as a public weigher, and shall comply with the terms and provisions of this Act. (Acts 1919, ch. 76, sec. 1.)

Art. 7833b. For justice precincts; appointment; bonds.—Within sixty days after the taking effect of this Act, it shall be the duty of the Commissioners' Court of the various counties of Texas to appoint one public weigher for each justice precinct within each county in this State, when in their judgment it is necessary, and when no public weigher has previously been elected, who shall give a bond, payable to the State of Texas, in the penal sum of Twenty-five Hundred Dollars ($2,500), conditioned that he shall weigh or measure accurately thereafter, any commodity, article or quantity of produce tendered to him for weighing, as a public weigher in this State; that he will comply with the terms of law governing public weighers; that he will not permit anyone to molest, mutilate, or destroy, any article, produce, or commodity, while in his possession. Such bond shall be good for the term of two years from the date given, and shall be subject to the approval of the Commissioners' Court of the County in which such public weigher resides. After such bond is filed, approved and recorded, as provided by law, the County Clerk shall immediately certify such appointment, or election, to the Commissioner of Markets and Warehouses of Texas. Such bond shall not be void upon first recovery, but may be sued upon successively by any and all parties who are injured by reason of any false weight, or measure, or any wilful destruction or mutilation of such article, produce or commodity while in his possession, or false certificate given by such public weigher. (Id. sec. 2.)

Art. 7833c. Same subject; deputies; bonds.—Such public weigher, so appointed by the Commissioners' Court, or elected, shall have the right, and it shall be his duty to appoint a sufficient number of deputies in each precinct, to weigh all produce tendered for the purpose of weighing, at any and all points within such precinct. He shall require each of said deputies to file a bond in the penal sum of One Thousand ($1000) dollars, under the same terms and conditions as the bond which he filed with the Commissioners' Court of the County in which he resides, before he shall be permitted to engage in the business of deputy public weigher; such bond, so filed, shall be payable to the State of Texas, and shall be subject to the approval of the Commissioners' Court of the County in which he resides, and certified to the Commissioner of Markets and Warehouses, before such deputy public weigher shall be entitled to engage in the business of public weighing. (Id. sec. 3.)

Art. 7833d. Existing public weighers continued in office.—In all cases where a public weigher has been elected or appointed, under the present law governing public weighers, he shall be permitted to continue in office, but shall be required to file a bond within sixty days after the taking effect of this Act, with the Commissioners' Court of the County in which he resides, which bond shall be of the same terms and conditions as outlined in Section 2 of this Act [Art. 7833b]. It shall be his duty, as soon as such bond is filed and approved, and his certificate of authority issued by the Commissioner of Markets and Warehouses, to appoint a sufficient number of deputies to weigh all produce tendered to him for weighing in the precinct for which he was elected or appointed; each of such deputies shall give a bond, as prescribed in Section 2 of this Act. (Id. sec. 4.)

Art. 7833e. For cities; appointment; bonds.—In all cities and towns in this State, which receive as much as fifty thousand bales of cotton, twenty-five thousand tons of cotton seed; one hundred thousand bushels of grain or rice, or one hundred thousand pounds of wool; five thousand barrels of sugar or any other commodity in large quantities, it shall be lawful for the Governor to appoint a sufficient number of public weighers for such city, town or shipping point to carefully and accurately weigh all produce tendered for the purpose of weighing for shipment; such appointments shall be made by the Governor, on the recommendation of the Senator from whose senatorial district such appointment is made, together with a majority of the representatives in the legislature from such senatorial district. No man shall be appointed unless he shall receive the endorsement of a majority of the representatives, and the senator, from such district. Every public weigher so appointed shall file a bond payable to the State of Tex-

as, in the sum of Five Thousand ($5000) Dollars, conditioned that he will accurately weigh, or measure, all produce tendered to him for weighing or measuring, and that all certificates of weights issued by him shall represent a true and accurate weight of such produce so weighed, and otherwise complying with the terms and conditions of the bond, as outlined in Section 2 of this Act [Art. 7833b]; such bond, so given, shall not be void upon first recovery, but may be sued on successively by any and all persons who are injured by such public weigher. Such public weigher shall have the right to appoint a sufficient number of deputies to aid him in weighing, or measuring, any commodity that is tendered to him for weighing. All bonds given by such public weighers or their deputies shall be subject to approval of the Commissioner of Markets and Warehouses. (Id. sec. 5.)

Art. 7833f. Qualifications of weighers; oath of office.—No person shall be appointed or elected a public weigher in this State, unless he shall be at least twenty-one years of age, and is of good moral character and unquestioned integrity. He shall have a fair education and be able to keep an accurate set of books as required by this Act. He shall, before entering upon the duties of his office, take the constitutional oath of office prescribed for all officers in this State, which oath of office shall be filed with the Commissioners' Court of the County in which he resides. (Id. sec. 6.)

Art. 7833g. Bonds of weighers; filing.—All public weighers, or deputy public weighers, appointed or elected, under the terms and provisions of this Act, shall file their bonds, as required herein, with the Commissioners' Court of the County in which they reside, and shall obtain from the Commissioner of Markets and Warehouses a certificate of authority to carry on the business of public weigher or deputy public weigher, within the city, village, place, or shipping point, for which he was elected or appointed, and no one shall be allowed to pursue the business of weighing for the public, or grant a certificate or weight sheet upon which a purchase or sale is made, unless he shall comply with the terms and conditions of this Act. (Id. sec. 7.)

Art. 7833h. Weight certificates; form and contents.—The Commissioner of Markets and Warehouses shall prescribe the form of weight certificate to be used by all public weighers in this State, which certificate shall be known as a State Certificate of Weights and Measures; such certificate shall state thereon the kind of produce; the number of the same, the date of the receipt of the produce, the owner, agent or consignee, the total weight of the produce, the vessel, railroad, or other means by which the produce was received, and any trade or other mark thereon; and such other information as may be necessary to distinguish or identify the produce from a like kind. No certificate other than the one herein prescribed shall be used by any public weigher in this State, and such certificate, when so made and properly signed, shall be prima facie evidence of such weight. (Id. sec. 8.)

Art. 7833i. Seal of weighers; rules and regulations.—It shall be the duty of every public weigher in this State, to provide himself with a seal, consisting of a star of five points, and shall have inscribed on the outer margin thereof, the words, "Public Weigher, Precinct No. —, ——— County, Texas"; which seal shall be impressed upon each weight certificate issued by such public weigher, or deputy public weigher, or any and all weight sheets made out by them. The Commissioner of Markets and Warehouses of Texas, shall prescribe rules and regulations for government of public weighers throughout the State, which rules and regulations shall be uniform and shall be of the same force and effect when promulgated as if they were enacted into law. Such rules and regulations shall be observed by all public weighers or deputy public weighers. (Id. sec. 9.)

Art. 7833j. Records of weighings.—All public weighers, within this State, shall keep and preserve a correct and accurate record of all weights made by them, as provided in this Act, which record shall be open for the inspection of the Commissioner of Markets and Warehouses, his deputies or inspectors, at any and all times, and the public. Such record shall be uniform throughout the State, and the form of such record shall be prescribed by the Commissioner of Markets and Warehouses. (Id. sec. 10.)

For sections 11-14 of this act, see Penal Code, arts. 995a, 992a, 995b, 992b.

Art. 7833k. Certificates of authority issued to weighers; fee for.—It shall be the duty of the Commissioner of Markets and Warehouses to issue a certificate of authority to all persons engaged in the business of weighing for the public; to carefully and accurately test all scales, weights, beams and measures, used by such public weighers at least once every twelve months, and to charge such public weigher a fee of Five ($5.00) Dollars for such inspection, which fee shall be paid, by the Commissioner of Markets and Warehouses into the State Treasury; such inspection fee to be collected at the time the Certificate of Authority is issued to any public weigher or deputy public weigher in this State, and such fee shall be collected annually thereafter from all persons engaged in the business of public weigher or deputy public weigher. (Id. sec. 15.)

Art. 7833l. Re-weighing.—When any doubt or difference arises as to the correctness of the net or gross weight of any amount, commodity, or a part of a commodity, produce or article, for which a certificate of weight or measure has been issued, as provided in this State, by the public weigher, the owner, agent, or consignee, may, upon complaint to the Commissioner of Markets and Warehouses, have said amount, or part of any commodity, produce or article, re-weighed by the Commissioner of Markets and Warehouses, or his deputy, or by a public weigher designated by the Commissioner of Markets and Warehouses, by depositing with the Commissioner of Markets and Warehouses a sufficient sum of money to defray the cost of re-weighing such article or commodity. If, on re-weighing, if it is discovered that fraud or carelessness, or faulty weighing apparatus was the cause of a discrepancy in weights, the cost of re-weighing shall, in all instances, be

borne by the public weigher who issued the weight sheet or weight certificate. (Id. sec. 16.)

Art. 7833m. Suspension or dismissal of weighers.—Whenever any public weigher, or deputy public weigher appointed or elected under the terms and provisions of this Act, shall be guilty of malfeasance or misfeasance in office, or who is grossly incompetent in the performance of his duties, he shall be subject to suspension or dismissal from office by the Commissioners' Court of the County in which he resides, or by the Governor of Texas, should he be appointed by the Governor. In all cases it shall be the duty of the Commissioner of Markets and Warehouses, to file with the Commissioners' Court or the Governor, as the case may be, the specific charges alleging malfeasance, misfeasance, dishonesty or incompetency or other cause. Such case may be set down for hearing not less than ten days, nor more than thirty days from the filing of such charges. The person so accused shall be furnished a copy of such charges and be notified of the date set down for hearing of his case. He shall also have the right to be represented by an Attorney, to introduce evidence in his own behalf, and to have issued a compulsory process compelling the attendance of witnesses and production of record. Should he be found guilty, it shall be the duty of the Commissioners' Court, or Governor, to immediately discharge him as public weigher, or deputy public weigher, provided, however, he may have the right of appeal to the district court of his county or to the district court of Travis county, Texas. (Id. sec. 17.)

Art. 7833n. Duties of weighers.—All amounts, lots, or shipments, or consignments of produce, after having been weighed, shall be piled or stored separately as nearly as can be, in order that amounts, lots, shipments, or consignments, may be distinguished from the other lots, shipments, or consignments of like kind, and it shall be the duty of all public weighers in weighing any commodity, produce, or article, to immediately tag or mark such commodity, produce or article that has been weighed by him, so as to distinguish same from that which has not been weighed. (Id. sec. 18.)

Art. 7833o. Repeal.—All laws and parts of laws in conflict with this Act are hereby repealed. (Id. sec. 19.)

Art. 7834. (4316) Owner may weigh, etc.—Nothing in this chapter shall prevent any person, firm or corporation from weighing his own cotton, wool, sugar, hay, grain, or pecans in person; provided, that in places where there are no public weighers appointed or elected any person who shall weigh cotton, wool, sugar, grain, hay, or pecans for compensation shall be required before weighing such produce to enter into a bond with at least two good and sufficient sureties, in the sum of twenty-five hundred dollars, approved and payable as in the case of public weighers referred to in this chapter, and conditioned that he will faithfully perform the duties of his office and turn over all property weighed by him on demand of the owner; provided, that this article shall not apply to merchant flouring mills. (Acts 1905, p. 117.)

Art. 7835. (4316a) Weigher liable for damages when.—Any weigher who qualifies under the preceding article, and shall violate any of the provisions or fail to comply with any of such provisions, shall be liable at the suit of any person injured upon his bond for damages that may have accrued to such person by such violation or failure. (Id.)

TITLE 133

WEIGHTS, MEASURES, GRADES AND PACKS

Arts. 7836-7843. [Superseded by Acts 1919, ch. 130, and Acts 1919, ch. 131, post, arts. 7846¼-7846¼zzz.]

Art. 7844. (5330) False weights and measures.—Any person who shall sell by any weight, balance or measure that does not correspond to and agree with such copies, or who shall keep the same for the purpose of buying or selling thereby, shall forfeit and pay the sum of ten dollars for every month he may continue to keep the same, one-half of which shall go to the county in which such offense shall have been committed, and the other to the county judge, and it shall be his duty to sue for the penalty incurred by the commission of every such offense before some court of competent jurisdiction. (Acts 1858, p. 200, sec. 7; P. D. 5359.)

Art. 7845. (5331) Private informer may recover, when.—If the county judge shall fail to sue for any such penalty within three months after the same shall have been incurred, any other person may sue therefor and recover one-half thereof for his own use and the other half for the use of the county. (Id. sec. 8; P. D. 5360.)

Art. 7846. (5332) Forfeitures merely cumulative.—Nothing in the two preceding articles contained shall be construed to affect any provision of the Penal Code relating to the use of false weights and measures, nor shall a recovery of any forfeiture by civil action relieve an offender from criminal prosecution, or an action for damages resulting therefrom.

Art. 7846a. Standard containers for fruits and vegetables.—That the following standards of "containers" for the shipment of fruits and vegetables in this State are hereby established and adopted as State standards;

(a) Standard Bushel Basket. The standard bushel basket shall contain not less than 2150.4 cubic inches in the basket proper, regardless of the manner in which the lid is made.

(b) Standard Four Basket Crate. The baskets in said crates shall hold not less than three quarts dry measure, and the dimensions of such baskets shall be 5x8 inches at the bottom, 6x10 inches at the top, and 4 inches deep, and shall contain not less than 201.6 cubic inches. The heads of the crates holding said baskets shall be 4½ inches wide by 11 inches at the bottom, and 13 inches at the top in length and not less than 7/16 of an inch thick. The veneer or boards for the bottoms, sides and tops shall be not less than 4½, 4, and 5½ inches wide respectively, and not less than 1/7 of an inch thick and 22 inches long. Both crates and baskets shall be

made of good, substantial material, sufficiently strong to withstand the ordinary strain incident to transportation and handling.

(c) Standard Six-basket Crate. Each basket of a six-basket crate shall contain not less than 268.8 cubic inches.

(d) Standard Folding Onion Crate. The standard folding onion crate shall not be less than 19–5/8 inches long, 11–3/16 wide, and 9–13/16 inches deep, inside measurements, containing not less than 2150.4 cubic inches.

(e) Standard Orange Box. The dimensions of the standard orange box shall be 12x12x12 inches for each one-half of box, inside measurement, and the dimensions of a one-half (or strap box) shall be 12x12x6 inches for each one-half box, inside measurement.

(f) Standard Berry Box or Crate. The standard quart berry box or crate shall contain nor less than 24 quart baskets containing 67.2 cubic inches each, dry measure; and the standard pint berry box or crate shall hold not less than 24 pint baskets, containing not less than 33.6 cubic inches each, dry measure. (Acts 1917, ch. 181, sec. 1; Acts 1917, 3d C. S., ch. 6, sec. 1.)

Art. 7846b. Grades and packs for fruits and vegetables.—The following "grades and packs" are hereby established as State standards for the State of Texas.

(a) Standard Peach Grades and packs. Standard peach grades are three in number; namely, Fancy, Choice or No. 1, and No. 2.

Fancy peaches shall be medium to large size, good color for the variety named, firm and sound, of proper maturity for shipment to distant markets, carefully picked and closely packed in bushel baskets or crates of four or six basket capacity.

Choice or No. 1 peaches shall be of average size and color for the variety named, sound, firm, practically free from blemishes and defects, of proper maturity for shipment to distant markets, carefully picked and closely packed in bushel baskets, or crates of four or six baskets capacity.

No. 2 peaches shall be all such sound fruit as is not good enough for No. 1's, such as small, slightly uneven surface, greens, ripes or slight defects of whatsoever kind, but suitable for market purposes and for reasonably distant shipments. Each and every package of fruits and vegetables offered for sale or shipment shall have plainly stamped on it the grade of such fruits or vegetables and the name and postoffice address of the person shipping the same, provided that this shall apply only to shipments of such fruits and vegetables as have grades established by law.

Culls. Any and all peaches that are too small in size, ill shaped and poor in general quality to measure up to any of the above grades shall be known as culls, unfit for market purposes, and shall not be shipped unless branded "Culls" and shipped in a separate consignment.

Texas Standard Peach Packs. The standard peach packs for six basket crate shall be eight in number; namely, 72's, 96's, 138's, 162's, 180's, 216's, 270's and 324's.

To pack 72's. (Begin at end of basket.)—Place 1 and 2 alternately in 4 rows, two layers high, 6 to the layer on end, blossom end up.

To Pack 96's. Place 2 and 2 alternately in 4 rows, 2 layers high, 8 to the layer on end, blossom end up.

To Pack 138's. Place 2 and 1, alternately in 5 rows, 3 layers high, 8 and 7 alternately to the layer, flat.

To Pack 162's. Place 2 and 1 alternately in 6 rows, 3 layers high, 9 to the layer flat.

To Pack 180's. Place 2 and 2 alternately in 5 rows, 3 layers high, 10 to the layer, flat.

To Pack 216's. Place 2 and 2 alternately in 6 rows, 3 layers high, 12 to the layer, flat.

To Pack 270's. Place 3 and 3 alternately in 5 rows, 3 layers high, 15 to the layer, flat.

To Pack 324's. Place 3 and 3 alternately in 6 rows, 3 layers high, 18 to the layer, flat.

All packages must be filled tight, in all layers from bottom to top, and extend approximately 1 inch above the top rim or edge of the package, whether it be a bushel basket, crate basket, or box. All peaches in the same crate or package shall be as nearly as possible of a uniform degree of ripeness.

(b) Texas Standard Tomato Grades and Packs. Texas standard tomato grades may be two in number; namely, Fancy and Choice.

Texas standard tomato packs shall be seven (7) in number for the sir basket crate, and nine (9) in number for the four basket crate and the manner in which tomatoes are packed will partly determine their grade.

Texas Standard Six Basket Crate. Fancy. To Pack 72's. Place 2 and 2 alternately in 3 rows, 2 layers high, 6 to layer, blossom end up, 12 to the basket.

To Pack 84's. Place 2 and 2 alternately in 4 rows on edge 8 to the layer for first layer, and 2 and 2 alternately in 3 rows, flat, blossom end up, 6 to the layer for first layer, and 3 and 3 alternately in 3 rows, on edge, blossom end out; 9 to the layer for the second or last layer; 15 to the basket.

To Pack 108's. Place 3 and 3 alternately in 3 rows, on edge, 9 to the layer for the first layer, and 3 and 3 alternately in 3 rows on edge, blossom end out, 9 to the layer for the second or last layer, 18 to the basket.

Choice: To Pack 120's. Place 2 and 2 alternately in 4 rows, on edge, 8 to the layer for the first layer, and 3 and 3 alternately in 4 rows, on edge, blossom end out, 12 to the layer for the second or last layer, 20 to the basket.

To Pack 144's. Place 3 and 3 alternately in 4 rows, on edge, 12 to the layer for the first layer and 3 and 3 in 4 rows, on edge, blossom end out, 12 to the layer for the second or last layer, 24 to the basket.

To Pack 180's. Place 3 and 3 alternately in 5 rows, on edge, blossom end out, 15 to the layer for the second or last layer, 30 to the basket.

Texas Standard Four Basket Crate: Fancy:

To Pack 48's. Place 2 and 2 alternately in 3 rows, flat, blossom end up, 6 to the layer for the first layer and 2 and 2 alternately in 3 rows, flat, blossom end up, 6 to the layer for the second or last layer, 12 to the basket.

To pack 56's. Place 2 and 2 alternately in 4 rows, on edge, 8 to the layer for the first layer and 2 and 2 alternately in 3 rows, flat, blossom end up, 6 to the layer for the second or last layer, 14 to the basket.

To Pack 60's. Place 2 and 2 alternately in

3 rows, flat blossom end up, 6 to the layer for the first layer, and 3 and 3 alternately in 3 rows, on edge, blossom end out, 9 to the layer for the second or last layer, 15 to the basket.

To Pack 64's. Place 2 and 2 alternately in 3 rows, flat, blossom end up, 6 to the layer for the first layer, and 1 and 2 alternately in 7 rows, on edge, blossom end out, 10 to the layer, 16 to the basket.

To Pack 72's. Place 3 and 3 alternately in 3 rows, on edge, 9 to the layer, for the first layer, and 3 and 3 alternately in 3 rows, on edge, blossom end out, 9 to the layer for the second or last layer, 18 to the basket.

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To Pack 84's. Place 3 and 3 alternately in 3 rows, on edge 9 to the layer, for the first layer, and 3 and 3 alternately in 4 rows, on edge, blossom end out, 12 to the layer for the second or last layer, 21 to the basket.

To Pack 88's. Place 3 and 3 alternately in 3 rows, on edge, 9 to the layer for the first layer and 1 and 2 alternately in 9 rows, on edge, blossom end out, 18 to the layer, 22 to the basket.

To Pack 96's. Place 3 and 3 alternately in 4 rows, on edge, 12 to the layer for the first layer, and 3 and 3 alternately in 4 rows, on edge, blossom end out, 12 to the layer for the second or last layer, 24 to the basket.

To Pack 104's. Place 1 and 2 alternately in 9 rows, on edge, 13 to the layer for the first layer, and 1 and 2 alternately in 9 rows, on edge, 13 to the layer, blossom end out, for the second or last layer, 26 to the basket. All tomatoes in the same crate or package shall be as nearly as possible of a uniform degree of ripeness.

All fruit for both fancy and choice grades must be sound and free from undesirable scars, cat faces, and damage from insects or other causes.

(c) Texas Standard Orange Grades. Texas orange, satsuma, tangerine and grape fruit grades may be four in number, namely; Fancy Bright, Bright, Fancy Russet and Russet.

Fancy Brights shall be bright color, shapely form, practically free from any skin defects or blemishes, fine texture, reasonably thin, heavy, juicy and free from frost damage.

Brights shall show fairly bright color, texture not as fine or smooth as Fancy Brights, skin thicker, and may have other reasonable skin defects that do not affect the merchantable quality of the fruit.

Fancy Russets shall be of same general quality as Fancy Brights, except in color, which shall be "Golden" Russet.

Russets shall be same general quality as Brights, except in color, which may be rusty brown, not "Golden" enough for fancy Russets.

Texas Standard Orange Packs. The Standard orange packs shall be 8 in number; namely, 96's, 126's, 150's, 176's, 200's, 216's, 252's and 288's.

To Pack 96's. Put 3 and 3 alternately in 4 rows, 4 layers high, 12 to layer.

To Pack 126's. Put 3 and 2 alternately in 5 rows, 5 layers high 13 and 12 alternately to layer.

To Pack 150's. Put 3 and 3 alternately in 5 rows, 5 layers high, 15 to the layer.

To Pack 176's. Put 4 and 3 alternately in 5 rows, 5 layers high, 18 and 17 alternately to the layer.

To Pack 200's. Put 4 and 4 alternately in 5 rows, 5 layers high, 20 to the layer.

To Pack 216's. Put 3 and 3 alternately in 6 rows, 6 layers high, 18 to the layer.

To Pack 252's. Put 4 and 3 alternately in 6 rows, 6 layers high, 21 to the layer.

To Pack 288's. Put 4 and 4 alternately in 6 rows, 6 layers high, 24 to the layer.

The Standard Satsuma and Tangerine packs shall be 7 in number; namely, 90's, 106's, 120's, 168's, 196's, 216's and 224's.

To Pack 90's. Put 3 and 3 alternately in 5 rows, 3 layers high, 15 to the layer.

To Pack 106's. Put 4 and 3 alternately in 5 rows, 3 layers high, 18 and 17 alternately to the layer.

To Pack 120's. Put 4 and 4 alternately in 5 rows, 3 layers high, 20 to the layer.

To Pack 168's. Put 4 and 3 alternately in 6 rows, 4 layers high, 21 to the layer.

To Pack 196's. Put 4 and 3 alternately in 7 rows, 4 layers high, 25 and 24 alternately to the layer.

To Pack 216's. Put 5 and 4 alternately in 6 rows, 4 layers high, 27 to the layer.

To Pack 224's. Put 4 and 4 alternately in 7 rows, 4 layers high, 28 to the layer.

All oranges, satsumas and tangerines to conform to this standard must be packed "stem-in, twist" with blossom end down in first layer and stem end down in all other layers.

The standard grapefruit packs shall be 7 in number; namely, 28's, 36's, 46's, 54's, 64's, 80's, 96's.

To Pack 28's. Put 2 and 1 alternately in 3 rows, 3 layers high, 5 and 4 alternately to the layer.

To Pack 36's. Put 2 and 2 alternately in 3 rows, 3 layers high, 6 to the layer.

To Pack 46's. Put 3 and 2 alternately in 3 rows, 3 layers high, 8 and 7 alternately to the layer.

To Pack 54's. Put 3 and 3 alternately in 3 rows, 3 layers high, 9 to the layer.

To Pack 64's. Put 2 and 2 alternately in 4 rows, 4 layers high, 8 to the layer.

To Pack 80's. Put 2 and 2 alternately in 4 rows, 5 layers high, 8 to the layer.

To Pack 96's. Put 3 and 3 alternately in 4 rows, 4 layers high, 12 to the layer.

All grapefruit to conform to this standard must be packed on edge, except the 80 pack, which should be packed flat in same manner as oranges.

Provided that in the enforcement of the above standards of grade and pack an allowance may be made of not exceeding ten per cent difference in size between the fruit on top and in the interior of the package. And provided further that a variation of not more than three per cent. of actual count may be made in the number of any kind of fruit prescribed for each particular pack. (Acts 1917, ch. 181, sec. 2.)

Art. 7846bb. Culls.—Any and all fruits and vegetables for which standard "grades and packs" are established in this Act, or for which standard grades and packs may be hereafter promulgated by the Commissioner of Agriculture under the authority of this Act, that are too small in size, ill shaped, and too poor in general quality to measure up to the

grades herein established, shall be classed as "culls," and shall not be shipped, unless branded "culls" and shipped in a separate consignment. (Acts 1917, 3d C. S., ch. 6, sec. 1.)

Art. 7846bbb. Texas Bermuda onion grades.

Grade No. 1.

This grade shall consist of onions which are sound, mature, bright, well-shaped, of one variety, free from doubles, splits, bottle necks, and seed stems, and practically free from damage caused by dirt or other foreign matter, moisture, sunburn, cuts, disease, insects, or mechanical means. The minimum diameter shall be two (2) inches. In order to allow for variation incident to commercial grading and handling, six (6) per centum, by weight, of any lot need not meet the foregoing requirements of this grade. In the case of yellow onions, not more than five (5) per centum, by weight, of any lot may be noticeably pink.

If any lot which meet the requirements of this grade contains more than ten (10) per centum, by weight, of onions with a minimum diameter of three and one-half (3½) inches, the grade shall be "Grade No. 1, Large."

Boiler Grade.

This grade shall consist of onions which are sound, mature, bright, well-shaped, of one variety, free from doubles, splits, bottle necks, and seed stems, and practically free from damages caused by dirt or other foreign matter, moisture, sunburn, cuts, disease, insects, or mechanical means. The minimum diameter shall be one (1) inch and the maximum diameter shall be two (2) inches. In order to allow for variations incident to commercial grading and handling, six (6) per centum, by weight, of any lot need not meet the foregoing requirements of this grade. In the case of yellow onions, not more than five (5) per centum, by weight, of any lot may be noticeably pink.

Grade No. 2.

This grade shall consist of onions not meeting the requirements of Grade No. 1, which are sound, of one variety, free from doubles, splits, bottle necks and seed stems, and practically free from damage caused by moisture, sunburn, cuts, disease, insects, or mechanical means. The minimum diameter shall be two (2) inches. In order to allow for variations incident to commercial grading and handling, ten (10) per centum by weight, of any lot need not meet the requirements of this grade. If any lot which meets the requirements of this grade contains more than ten (10) per centum, by weight, of onions, with a minimum diameter of three and one-half (3½) inches, the grade name shall be "Grade No. 2, Large."

Grade No. 3.

This grade shall consist of onions not meeting the requirements of any of the foregoing grades, which are sound, free from doubles, splits, bottle necks, and seed stems, and practically free from damage caused by moisture, sunburn, cuts, disease, insects, or mechanical means. The minimum diameter shall be one (1) inch. In order to allow for variations incident to commercial grading and handling ten (10) per centum, by weight, of any lot need not meet the foregoing requirements of this grade.

Culls.

Culls shall consist of doubles, splits, bottle necks, and sed stems, or other onions which do not meet the requirements of any of the foregoing grades.

Terms Defined.

"Sound" means free from water-soaked, decayed, sprouted, or otherwise unsound onions.

"Mature" means having reached a stage of development at which the onions are firm—not soft or spongy.

"Bright" means having the normal, attractive, pearly luster of Bermuda onions.

"Well-shaped" means having the general appearance of being round—not three, four, or five-sided, or badly pinched by dry, hard soil, or thick-necked, but need not be of the exact, typical, flat Bermuda shape.

"One variety" means one variety or type, such as the Crystal Wax (white), or White Bermuda (yellow), or Red Bermuda (red), and not a mixture of different varieties or types.

"Practically free from damage" means that the appearance shall not be injured to an extent readily apparent upon casual examination.

"Sunburn" means discoloration due to exposure to the sun, but does not mean the green color running down the "veins" in the Crystal Wax (white) variety, unless such green color covers the surface between the veins.

"Diameter" means the greatest dimension at right angles to a straight line running from the stem to the root.

"Noticeable pink" means the pink color often found in the White Bermuda (yellow) variety which is to be readily apparent upon casual examination. (Acts 1918, 4th C. S., ch. 63, sec. 1.)

Added to Acts 1917, ch. 181, as sec. 2b, by Acts 1918, 4th C. S. ch. 63, sec. 1.

Art. 7846bbbb. Texas cabbage grades.

Grade No. 1.

This grade shall consist of sound, green colored, partially trimmed, and reasonably hard heads, weighing not less than one and one-half pounds nor more than eight pounds each; which are free from cracked or over-ripe heads, stem rot and other diseases, and practically free from dirt, worm holes and lice.

In order to allow for variations incident to commercial grading and handling, five per centum by weight, of any lot may be under prescribed size, and in addition, three per centum, by weight of any such lot may be below the remaining requirements of this grade.

Grade No. 2.

This grade shall consist of sound cabbage not meeting the requirements of Grade No. 1.

Terms Defined.

"Over-ripe" means such cabbage as shows signs of going to seed and turning white from age.

"Partially Trimmed" means that not more than three outside leaves shall be left on the head. (Id.)

Added to Acts 1917, ch. 181, as sec. 2b, by Acts 1919, 4th C. S. ch. 63, sec. 1.

Art. 7846bbbbb. Texas snap (string) bean grades.

Grade No. 1.

This grade shall consist of sound, bright, clean beans of one variety and color, from one-half to full grown; which are free from leaves, stems, spots, insect damage, rust, or other diseases, and over-ripe pods.

In order to allow for variation incident to commercial grading and handling three per centum (3%) by weight, may be of another variety of the same color.

Grade No. 2.

Any beans not meeting the above requirements shall be classed as No. 2.

All beans are to be packed in hamper weighing, when packed, not less than 17 pounds net weight for one-half bushel hamper, and 34 net weight for one bushel.

Terms Defined.

"Over-ripe" are such pods as will not snap on being broken, and where there is an absence of abundant juice (water) in the pods; also, when the beans in the pod show evidence of maturing. (Id.)

Added to Acts 1917, ch. 181, as sec. 2b, by Acts 1918, 4th C. S., ch. 63, sec. 1.

Art. 7846bbbbbb. Texas Bartlett pear grades.

Extra Fancy.

Shall consist of Bartlett Pears clean, bright, natural color and shape, sound, free from worms, specks, blemishes, bruises or limb scar red fruit.

Fancy.

Shall be the same as "Extra Fancy," except it may contain ten per cent slightly scarred fruit and slight blemishes that do not injure texture of the skin or its keeping qualities.

Choice.

Shall be the same as "Fancy," except it may contain ten per cent of fruit that is misshapen and with worm strings that have healed over.

Culls.

Any pears not measuring up to the above specifications, shall be branded as "Culls."

Packing.

Fruit shall be tightly packed in clean standard boxes, one end stamped with the grade, number of pears, name of and post-office of packer.

Packs Defined.

"Four Tier" shall be packed in four layers. Minimum pack 120 pears to box.

"Five Tier" shall be packed in six layers. Minimum pack 135, maximum pack 180 pears to box.

"Six Tier" shall be packed in six layers, containing 216 pears to the box, or in five layers containing 195 or 210 to the box, but will be considered "six tier." (Id.)

Added to Acts 1917, ch. 181, as sec. 2b, by Acts 1918, 4th C. S., ch. 63, sec. 1.

Art. 7846bbbbbbb. Texas Irish potato grades.

Grade No. 1.

This grade shall consist of sound potatoes of similar varietal characteristics, which are practically free from dirt or other foreign matter, frost injury, sunburn, second growth, cuts, scab, blight, dry rot, and damage caused by disease, insects, or mechanical means. The minimum diameter shall be one and three-fourths (1¾) inches. In order to allow for variation incident to commercial grading and handling, five per centum by weight of any lot may be under the prescribed size, and, in addition, three per centum by weight of any such lot may be below the remaining requirements for quality of this grade.

Grade No. 2.

This grade shall consist of potatoes of similar varietal characteristics, which are practically free from frost injury and decay, and which are free from serious damage caused by dirt or other foreign matter, sunburn, second growth, cuts, scab, blight, dry rot, or other disease, insects, or mechanical means. The minimum diameter shall be one and one-half (1½) inches. In order to allow for variations incident to commercial grading and handling, five percentum, by weight, of any lot may be under the prescribed size, and, in addition, five per centum by weight of any such lot may be below the remaining requirements for quality of this grade.

Culls.

Any potatoes that do not measure up to the requirements for size and general quality in the grades number one and two shall be classed as "Culls," and shall not be shipped unless branded or marked "Culls," and shipped in separate consignments.

Three per centum by weight shall be allowed on all Texas grown new potatoes, for natural shrinkage, and in instance where dirt adheres to the potatoes a fair and reasonable estimate, by weight, of such dirt, shall be made and deducted from the gross weight of the potatoes and dirt, which estimate may be made by removing and weighing the dirt from three or more samples of not less than fifty (50) pounds each, that, when taken together, represents the average conditions of the potatoes.

All potato containers must have some mark or brand showing the name and post-office address of the grower or shipper.

Terms Defined.

"Practically free" means that the appearance shall not be injured to an extent readily apparent upon casual examination, and that any damage from the causes mentioned can be removed by the ordinary process of paring without appreciable increase in waste over that which would occur if the potato were perfect. Loss of the outer skin (epidermis) only shall not be considered as an injury to the appearance.

"Diameter" means the greatest dimensions at right angles to the longitudinal axis.

"Free from serious damage" means that the appearance shall not be injured to the extent of more than twenty per centum of the surface and that any damage from the caus-

es mentioned can be removed by the ordinary processes of paring without increase in waste of more than ten per centum, by weight, over that which would occur if the potato were perfect. (Id.)

Added to Acts 1917, ch. 181, as sec. 2b, by Acts 1918, 4th C. S., ch. 63, sec. 1.

Art. 7846c. Manufacture and sale of containers; proviso.—That from and after the taking effect of this Act it shall be unlawful for any manufacturer of crates, boxes or baskets for the shipment of fruits and vegetables in this State to manufacture or sell any similar crate, box or basket of different size or dimensions from the standards prescribed in this Act. Provided that all manufacturers of crates, boxes and baskets in this State shall be allowed to sell all crates, boxes or baskets of a different size which they may have on hand or in stock when this law takes effect, and the penalty hereinafter provided for the violation of this Act shall not apply to manufacturers for selling crates, boxes or baskets in stock when this Act takes effect, until January 1, 1918. (Acts 1917, ch. 181, sec. 3.)

Art. 7846d. Commissioner of Agriculture shall enforce act and make rules and regulations, etc.—The Commissioner of Agriculture is hereby authorized and empowered to enforce all the provisions of this Act, and he shall promulgate and publish all necessary rules and regulations for the enforcement of this law, and such other information as will aid fruit and truck growers and the manufacturers of containers in complying with the provisions of this Act. (Id. sec. 4.)

Art. 7846e. Appointment of inspectors; expense; certificate of inspection.—It shall be the duty of the Commissioner of Agriculture to appoint inspectors to inspect fruits and vegetables at the different shipping or loading stations in this State, when called upon by the growers, shippers or shippers' agents representing the growers, and the expenses of such inspectors shall be paid by said growers, shippers or shippers' agents. Where two or more shipping agents are operating at the same shipping point, and one of them requests a State Inspector and such inspector is appointed by the Commissioner of Agriculture, each shipping agency at said shipping point shall be required to come under the State Inspector, and each shall pay his pro rata share of the expense of inspection.

Provided, that in the grading, packing and inspection of onions, only those shippers who desire State Inspection shall be required to have their onions inspected under State authority, and all railway and express companies may accept and ship onions not inspected by State Inspectors, provided that graded and non graded onions shall not be shipped in the same car, except in less than carload lots.

The Commissioner of Agriculture shall furnish a blank form or certificate to all State Inspectors, to be filled out by them to accompany each car load of fruits and vegetables, where State Inspection is enforced. Said certificate shall contain the name and number of the car, the kind and grade of fruit or vegetables, and number of packages contained, the date of shipment and name of inspector, together with the words, "Graded and packed under State Inspection." (Acts 1917, ch. 181, sec. 5; Acts 1919, ch. 54, sec. 1.)

Art. 7846f. Commissioner of Agriculture may promulgate other standards of containers, packs, and grades.—The Commissioner of Agriculture is hereby authorized and empowered to promulgate and publish other standards of "containers, packs and grades," conform to such standards as may hereafter be promulgated and established by the Secretary of Agriculture in pursuance of act of Congress conferring such authority upon the Secretary of Agriculture. The Commissioner of Agriculture may also promulgate and publish other standards of "containers, packs and grades," when in his judgment there is a general public demand for the promulgation of such "containers, packs and grades," and the best interest of the fruit and truck growers of the State will be served by the establishment of such standards. (Acts 1917, ch. 181, sec. 6.)

Sections 7 and 8 of this act are penal, see post, Penal Code, arts. 993½, 993½a.

Art. 7846g. Partial invalidity.—The holding of any section or any provision of this Act, void or invalid, by any court of competent jurisdiction in this State shall in no wise vitiate or invalidate any other section or provision of this Act. (Id. sec. 9.)

Art. 7846¼. Legal standards.—The standard of weights and measures adopted and used by the Government of the United States is hereby declared the legal standard of weights and measures of this State; provided, that as to commodities for which the Congress of the United States provided no standard of weights or measures the standards adopted by this State shall be the standard of weight or measures for such commodities. (Acts 1846, p. 180, sec. 4; P. D. 5352; Acts 1919, ch. 130, sec. 1; Acts 1919, ch. 131, sec. 1.)

Art. 7846¼a. Unit of standard of length and surface.—The unit of standard of length and surface, from which all the other measures of extension, whether lineal, superficial or solid, shall be derived and ascertained, is the standard yard designated in this Act, which is divided into three equal parts called feet, and each foot into twelve equal parts called inches. For measures of cloth, and other commodities commonly sold by the yard, it may be divided into halves, quarters, eighths and sixteenths. The rod, pole or perch contains five and one-half yards; the mile one thousand seven hundred and sixty yards. The Spanish vara, thirty-three and one third inches. Where land is measured by the English rule, the chain for measuring land shall be twenty-two yards long and divided into one hundred equal parts called links. The acre for land measure shall be measured horizontally and shall contain forty eight hundred, forty square yards; six hundred forty acres shall constitute a square mile. (Acts 1919, ch. 130, sec. 1.)

Art. 7846¼b. Standards of weight.—The units or standards of weight from which all the other weights shall be derived and ascertained shall be the standard of avoirdupois and troy weights designated in this Act, and avoirdupois pounds shall bear to the troy pounds the ratio of seven thousand to five thousand seven hundred and sixty grains, and the avoirdupois pound shall be

divided into sixteen equal parts called ounces. The hundred weight shall consist of one hundred avoirdupois pounds, and twenty hundred weight shall constitute a ton. The troy ounce shall be one twelfth of a troy pound. (Id. sec. 2.)

Art. 7846¼c. Standards of measure of capacity for liquids and solids.—The units or standards of measure of capacity for liquids from which all other measures shall be derived and ascertained, shall be the standard gallon and its parts designated in this Act. The barrel shall constitute thirty-one and one half gallons and two barrels shall make a hogshead. All other measures of capacity for liquids shall be derived from the liquid gallon by continual division by the number two, so as to make half gallons, quarts, pints, half pints and gills. The unit or standard measure of capacity for substance not liquids, from which all measures of such substance shall be derived and ascertained, is the standard half bushel mentioned in this Act. The peck, half peck, quarter peck, quart and pint measure for measuring commodities which are not liquid shall be derived from the half bushel by successively dividing that measure by two. The standard bushel measure shall constitute two thousand one hundred fifty and forty two one hundredths cubic inches; the standard half bushel measure shall contain ten hundred seventy five and twenty one hundredths cubic inches; the standard gallon shall contain two hundred thirty one cubic inches. All measures for measuring dry commodities shall not be heaped but shall be stricken with a straight stick or roller. (Id. sec. 3.)

Art. 7846¼d. Contracts to be governed by legal standards.—All contracts hereafter to be executed and made within this State for any work to be done, or for anything to be sold, delivered, done or agreed for, by weight or measure shall be taken and construed to be made according to the standard weight and measure ascertained as hereinbefore provided, unless there is an express contract to the contrary. In making any adjustment of weights or measures under the laws of this State, the standard herein given in this Act shall be taken as the rule and guide for making such adjustment. (Id. sec. 4.)

Art. 7846¼e. Weight of wheat, etc.—Whenever any of the following articles shall be contracted for, sold or delivered, the weight per bushel or barrel or divisible merchantable quantities of a bushel, or barrel or ton shall be as follows:

Wheat flour, per barrel, 200 pounds.
Wheat flour, per half barrel, sack 100 pounds.
Wheat flour, per quarter barrel sack, 50 pounds.
Wheat flour, per eighth barrel sack, 25 pounds.
Corn Meal, per bushel sack, 50 pounds.
Corn Meal, per half bushel sack, 25 pounds.
Corn Meal, per quarter bushel sack, 12½ pounds.
Alfalfa Seed, per bushel, 60 pounds.
Apples, green, per bushel, 50 pounds.
Apples, dried, per bushel, 28 pounds.
Barley, per bushel, 48 pounds.
Beans, green or string, per bushel, 24 pounds.
Beans, wax, per bushel, 24 pounds.
Beans, white, per bushel, 60 pounds.
Beans, castor, per bushel, 46 pounds.
Beets, per bushel, 60 pounds.
Blue Grass Seed, per bushel, 14 pounds.
Bran, per bushel, 20 pounds, by the 100 pounds in 100 pound bags.
Buckwheat, per bushel, 52 pounds.
Carrots, per bushel, 50 pounds.
Charcoal, per bushel, 22 pounds.
Clover Seed, per bushel, 60 pounds.
Coal, anthracite, per bushel, 80 pounds.
Coke, per bushel, 40 pounds.
Broom Corn Seed, per bushel, 48 pounds.
Corn meal, unbolted, per bushel, 48 pounds.
Corn, in the ear, per bushel, 70 pounds, after December 1st.
Corn, in the ear, per bushel, new crop, before December 1st, 72 pounds.
Corn, kaffir, per bushel, 50 pounds.
Corn, shelled, per bushel, 56 pounds.
Cotton seed, per bushel, 32 pounds; by the ton 2000 pounds.
Cranberries, per bushel, 33 pounds.
Cucumbers, per bushel, 48 pounds.
Flax seed, per bushel, 56 pounds.
Gooseberries, per bushel, 40 pounds.
Hair, plastering, unwashed, per bushel, 8 pounds.
Hair, plastering, washed, per bushel, 4 pounds.
Hemp seed, per bushel, 44 pounds.
Hickory nuts, per bushel, 50 pounds.
Hungarian grass seed, per bushel, 48 pounds.
Indian corn or maize, per bushel, 56 pounds.
Lime, unslaked, per barrel, 180 pounds net.
Lime, hydrated, per sack, 100 pounds net.
Lime, hydrated, per bag, 40 pounds net.
Lime, agricultural, per sack, 100 pounds net.
Lime, agricultural, per bag, 50 pounds net.
Milo Maize, per bushel, 50 pounds.
Millet, per bushel, 50 pounds.
Millet, Japanese barnyard, per bushel, 35 pounds.
Oats, per bushel, 32 pounds.
Onions, per bushel, 57 pounds.
Onion sets, top, per bushel, 30 pounds.
Onion sets, bottom, per bushel, 32 pounds.
Orchard grass seed, per bushel, 14 pounds.
Parsnips, per bushel, 50 pounds.
Peaches, per bushel, 50 pounds.
Peaches, dried, per bushel, 28 pounds.
Peanuts, green, per bushel, 22 pounds, Georgia or Virginia.
Peanuts, Spanish, per bushel, 24 pounds.
Peanuts, roasted, per bushel, 20 pounds.
Pears, per bushel, 58 pounds.
Peas, dried, per bushel, 60 pounds.
Peas, green, in pod, per bushel, 32 pounds.
Popcorn, in ear, per bushel, 70 pounds.
Popcorn, shelled, per bushel, 56 pounds.
Potatoes, Irish, per bushel, 60 pounds.
Potatoes, sweet, per bushel, 50 pounds.
Quinces, per bushel, 48 pounds.
Rape seed, per bushel, 50 pounds.
Red top seed, per bushel, 14 pounds.
Rough rice, per bushel, 45 pounds.
Rutabagas, per bushel, 50 pounds.
Rye meal, per bushel, 50 pounds.
Rye, per bushel, 56 pounds.
Salt, coarse, per bushel, 55 pounds.
Salt, fine, per bushel, 50 pounds.

Shorts, per bushel, 20 pounds; by 100 pounds in 100 pound bags.
Sorghum seed, per bushel, 50 pounds.
Sudan Grass seed, No. 1, per bushel, 32 pounds.
Sudan Grass seed, No. 2, per bushel, 30 pounds.
Sudan Grass seed, No. 3, per bushel, 28 pounds.
Spinach, per bushel, 12 pounds.
Sweet clover seed, unhulled, per bushel, 33 pounds.
Timothy seed, per bushel, 45 pounds.
Tomatoes, per bushel, 56 pounds.
Turnips, per bushel, 55 pounds.
Walnuts, per bushel, 50 pounds.
Wheat, per bushel, 60 pounds.

Whenever any commodity is sold in this State by the cord it shall mean 128 cubic feet, or the contents of a space eight feet long, four feet wide and four feet high. Whenever anything is sold in this State by the ton, it shall mean two thousand pounds avoirdupois.

Whenever any of the following named articles are sold by the cubic yard, and the same are weighed, the following weights shall govern:

Bank sand, 2,500 pounds, 1 cubic yard.
Torpedo sand, 3,000 pounds, 1 cubic yard.
Gravel, 3,000 pounds, 1 cubic yard.

Provided that the weights prescribed herein for flour shall not become effective until October 1, 1919, and shall not apply to retail merchants as to stock then on hand, and the weights prescribed for corn meal and feedstuff shall become effective immediately on the taking effect of this Act; provided that this Act shall not prevent millers from using such sacks and bags as they have on hand at the time this Act takes effect by having printed or stenciled on such sacks and bags the actual weight of the contents therein. Provided further that all sacks, containers and packages, prescribed by the National Bureau of Standards, under an Act now pending in Congress, known as H. R. No. 10957, should the same become the law, shall be recognized as official weights, packages, sacks or containers for flour, meal or feed under the terms and provisions of this Act; but all packages, sacks or containers shall in all instances contain the net weight of the article contained therein. (Acts 1883, p. 73; Acts 1901, p. 271; Acts 1919, ch. 130, sec. 5.)

Art. 7846¼f. Weights not provided for in preceding article.—Whenever it shall be ascertained that any article not mentioned in Section 5 [Art. 7846¼e] is to be sold by the bushel, by the cubic yard or by the ton, the Governor of this State is hereby empowered to issue a proclamation prescribing the number of pounds that shall be contained in a bushel or other unit that is necessary, in order to constitute a standard, and the Governor's proclamation defining a standard unit shall be as binding and shall have the same force and effect as if enacted into law. (Id. sec. 6.)

Sections 7 and 8 of Acts 1919, ch. 130, are penal, see post, Penal Code, arts. 992c, 992d.

Art. 7846¼g. State Superintendent of Weights and Measures.—The Commissioner of Markets and Warehouses of Texas is hereby constituted and appointed ex officio State Superintendent of Weights and Measures, with full power and authority under the terms of this Act to enforce, or cause to be enforced all the provisions of this Act. Whenever and wherever the term of "State Superintendent of Weights and Measures" or "Superintendent" is used in this Act, it shall mean the Commissioner of Markets and Warehouses for the State of Texas, who is ex officio State Superintendent of Weights and Measures. (Acts 1919, ch. 131, sec. 1.)

Art. 7846¼h. Same subject; term of office, etc.—The term of office of the State Superintendent of Weights and Measures shall be two years, and shall be the same as that of the Commissioner of Markets and Warehouses. In case of the death, resignation or removal of the Commissioner of Markets and Warehouses from office, the term of office of the State Superintendent of weights and measures shall automatically cease with that of the Commissioner of Markets and Warehouses. The Commissioner of Markets and Warehouses in his capacity as Superintendent of Weights and Measures shall receive no additional salary for services rendered as such. Before entering upon the duties of his office, he shall execute a separate bond to that of Commissioner of Markets and Warehouses, in the sum of Five Thousand Dollars ($5,000) payable to the Governor of Texas or his successor in office, conditioned upon the faithful performance of all the duties incumbent upon him as ex officio State Superintendent of Weights and Measures. (Id. sec. 2.)

Art. 7846¼i. Same subject; chief deputy and other deputies.—The State Superintendent shall appoint a chief deputy, who shall receive such salary as the Legislature may, from time to time appropriate. In the absence of the Superintendent, or his inability to act from any cause, the chief deputy may perform all the duties required by law of the State Superintendent. The State Superintendent shall also appoint such additional deputies from time to time to serve as sealers of weights and measures, as may be provided for by appropriation. He may designate such inspectors, lecturers, or employees serving under him as Commissioner of Markets and Warehouses also as sealers of weights and measures. The salaries of such deputies so appointed shall be fixed by the Legislature from time to time in the biennial appropriation bill; such deputies so appointed, together with the chief deputy and commissioner shall be entitled to their actual traveling expenses when traveling on business for the State. The Legislature shall provide from time to time by appropriation, other estimated expenses to fully carry out the provisions of this Act. (Id. sec. 3.)

Art. 7846¼j. State standards of weights and measures.—The standard of weights and measures received from the United States under a resolution of Congress, approved June 14, 1836, and such new weights and measures as shall be received from the United States as standard weights and measures in addition thereto, or in renewal thereof, and such as shall be procured by the State in conformity therewith and certified by the bureau of standards, shall be the State's Standards by which all State and municipal standard of weights and measures

shall be tried, authenticated, proved and sealed. (Id. sec. 4.)

Art. 7846¼k. Same subject; custody; certification; tolerances and specifications.—The standards referred to in the preceding section shall be kept by the State's Superintendent in a safe and suitable place in his office, from which they shall not be removed except for repairs or certification. He shall maintain such standards in good order and shall submit them, at least once in ten years to the National Bureau of Standards for certification. Upon demand the State Treasurer shall deliver to the State Superintendent all standards now under control and in his possession as ex officio State Sealer, of weights and measures. The State Superintendent, immediately upon receipt of such standards, shall submit them to the National Bureau of Standards for certification, and he shall replace such standards as are incorrect and purchase such additional standards as shall be necessary to complete and make up a complete standard of weights and measures as required by this Act. He shall also purchase such apparatus as shall be found necessary to a proper prosecution of the work of the office. The State Superintendent of Weights and Measures shall establish tolerances and specifications for commercial weighing and measuring apparatus for use in the State of Texas, similar to the tolerances and specifications recommended by the national bureau of standards and he may establish a standard net weight or net count of any commodity, produce, or article, and prescribe such tolerances for same as he may in his best judgment deem necessary for the proper protection of the public. (Id. sec. 5.)

The last sentence of this section is penal. See post, Penal Code, art. 992dd.

Art. 7846¼*l*. Same subject; copies for municipalities.—The State Superintendent shall, at the request of any City Council, town council, city commission or any other such legislative town or city body, furnish to them copies of the standard weights and measures of the State; such copies shall be furnished at the expense of any such city or town requesting the same. He shall, upon request of any such city council, town council, or city commission, test and accurately approve copies of the state's standards of weights and measures procured for the use of any such city, or town, to be used by the sealer of weights and measures for such city or town. All copies furnished under the provisions of this section or copies tested and approved by the State Superintendent under the provisions of this section shall be true and correct; shall be sealed and certified by the state superintendent and stamped with the letter "C." Such copies need not be of the same material or construction as the standards of the State and such copies may be furnished in any suitable materials or construction that the city or town requiring the same may specify, subject, however, to the approval of the State Superintendent. (Id. sec. 6.)

Art. 7846¼m. Same subject; inspection and correction of municipal standards; supervision over all weights and measures.—The state superintendent shall inspect and correct the standards used by any incorporated city or town in this State at least once every two years and compare the same with others in his possession, and keep a record of the state of inspection and character of weights and measures so compared. The state superintendent shall also have general supervision over all weights and measures and weighing and measuring devices sold or offered for sale in this State. If any false weights or measures are being sold, offered for sale, or about to be sold, he shall have full authority to condemn same and prohibit the sale and distribution of such false weights and measures, or weighing and measuring devices in this State. All sealers of weights and measures, or deputy sealers of weights and measures appointed under the terms and provisions of this act are prohibited from using for the purpose of comparison or vertification in any official capacity any weights or measures, unless same has been certified to by the State Superintendent. All expenses incurred in certifying to the correctness of the weights and measures or copies of the same used by any incorporated city or town in this state, shall be paid by such city or town for whom the comparison or test is made. In addition to the standards heretofore referred to, and required to be kept by the state, the state shall also have a complete set of copies of such original standards of weights and measures adopted by this act, which shall be used for adjusting municipal standards by the superintendent or his deputy in the performance of their duties, and the original standards shall not be used, except for the adjustment of this set of copies and for certification purposes. Additional complete sets of copies for such original standards of weights and measures may be purchased by the superintendent when the same are necessary for use by any State sealer of weights and measures, or deputy state sealer of weights and measures. In all instances where the state shall furnish true and correct copies of weights and measures for the use of any incorporated city or town in this State, such city or town shall reimburse the state for the actual cost thereof, plus such expenses as are necessary to pay the freight, express and cost of certification thereof. (Id. sec. 7.)

Art. 7846¼n. Testing weights and measures used by state institutions.—The State Superintendent or his deputy shall at least once annually, or oftener, if requested so to do, by the Board of Control, or board of supervisors, regents or other governing body of any State institution or penitentiary commission or the governing body of any other penal institution of the state; test all scales, weights and measures used in checking the receipt and distribution of supplies of any such institution under the control of the State, and shall report his findings to the Chairman of the Board, or the superintendent of such institution. He shall also test all scales, weights and measures used for any other purpose by such institution. (Id. sec. 8.)

Art. 7846¼*o*. Removal of sealers or deputy sealers of weights and measures.—The State Superintendent, if he finds that any sealer or deputy sealer of weights and measures appointed by any incorporated city or town in this state, by virtue of the author-

ity given them under the law, or under the provisions of their charter, is neglecting to perform the duties of his office, or has refused to accept the recommendations and instructions of the state superintendent and be guided thereby, or is guilty of any malfeasance in office, or who is incompetent. he shall present to the city council or officer who has control or supervision of such city sealer of weights and measures, or deputy sealer of weights and measures, a written charge and accusation based upon and clearly stating the offense of such sealer or deputy sealer and request such officer or city commission to hear and determine such accusation. Upon receipt of such charge and accusation, it shall be the duty of such officer or city commission with whom the same has been filed, to make an order setting the same for a hearing at a time which shall be not less than ten days nor more than twenty days from the date of filing of such charge and accusation and shall in such order fix the time and place for such hearing. A copy of such charge and accusation, together with a copy of such order, shall be served upon the accused at least seven days prior to the time fixed for such hearing. At such hearing the accused shall have the right to be represented by counsel, if he so desires, and to produce witnesses and documentary evidence in his defense. If, upon such hearing, he shall be found guilty of malfeasance, or misfeasance in office or adjudged to be incompetent to perform the duties of the office, the officer or city commission or city council before whom such hearing is had, must forthwith remove him from office. Such removal from office, however, shall not be a bar to a prosecution for violating any of the Penal statutes of this State. Whenever it shall become known to the state superintendent of weights and measures or his deputy that any local sealer of weights and measures for any city or town in this state, or deputy sealer of weights and measures, is guilty of accepting any bribe, gift or money from any one who is interested in procuring false weights and measures, as soon as such fact shall become known, or be made known to the officer or city commission employing such sealer or deputy sealer, he shall immediately suspend such sealer from office and not permit him to conduct the duties of his office any longer. (Id. sec. 9.)

Art. 7846¼p. Reports of local sealers of weights and measures.—Every local sealer of weights and measures, or deputy sealer, appointed by any city council or town council or city commission in this State shall be under the supervision of the state superintendent, and shall be required to report to him regularly and carry out all the instructions of the state superintendent of weights and measures. Failure or refusal to do so shall constitute a misdemeanor and shall be punished as hereinafter set forth, and shall likewise be grounds for dismissal from the service. (Id. sec. 10.)

Art. 7846¼q. Investigation of weights and measures; report.—It shall be the duty of the State Superintendent to investigate conditions throughout the State, and especially in all the cities and towns in the State, with respect to weights and measures, and the sale of goods, wares and merchandise, commodities, food stuff and feed stuff sold in packages or containers, and also all kinds of feed, fuel or ice that is sold by weight or measure. The State Superintendent shall annually report to the Governor, and shall, prior to each regular session of the Legislature file a copy of such reports made by him to the Governor, together with his recommendations, with the Legislature of the State. (Id. sec. 11.)

Art. 7846¼r. Rules and regulations sealers, etc., of weights and measures.—The State Superintendent shall issue instructions and make such rules and regulations for the government of all State sealers of weights and measures, deputy sealers, inspectors and local sealers, as he may in his judgment see proper, in order to carry out the purposes and intentions of this Act. All such rules and regulations so issued by him, or under his authority, shall be as binding and have the same force and effect as if they were enacted into law. (Id. sec. 12.)

Art. 7846¼s. Records kept by State Superintendent.—The State Superintendent shall keep in his office a complete record of all acts done by him; of all inspections made throughout the State, and a record of all prosecutions for the violation of the provisions of this Act. He shall keep an accurate record of the reports of all the various sealers of weights and measures, deputy sealers and inspectors appointed by him, or under his direction, as well as a record of the inspections of all local sealers of weights and measures appointed by the various cities of the State; such record shall always be open to the inspection of the public. Copies of such record may be had by application therefor, together with the necessary cost of making such copies. (Id. sec. 13.)

Art. 7846¼t. Jurisdiction of sealers and inspectors of weights and measures.—The jurisdiction of all State Sealers, deputy sealers and inspectors appointed by the State Superintendent shall be coextensive with the limits of the State and they shall have a right to inspect weights and measures in any and all districts or localities designated by the State Superintendent. The jurisdiction of all local sealers of weights and measures appointed by the city council or city commission of any city in this State shall be coextensive with the limits of said city. (Id. sec. 14.)

Art. 7846¼u. Duties of sealers, etc., of weights and measures.—It shall be the duty of every sealer of weights and measures, deputy sealer, inspector, or local sealer to carefully preserve all copies of the standards of weights and measures used by him in his inspection work, and to keep the same safe and in good order, when not in actual use. He shall keep a record of all work done by him showing the inspections made, for whom made, giving the names and post office addresses of each party for whom any measurement, test weight, inspection, condemnation or prosecution is made; such record shall be preserved by him, from which he shall compile his reports at regular intervals to the State Superintendent when required to make a report. He shall keep a careful record of all violations of the weights and measures law and report in detail to the State Superintendent. (Id. sec. 15.)

Art. 7846¼v. Sealing and marking of weights and measures.—Every person, firm or corporation, or association of persons, using or keeping for use, or having or offering for sale, weights, scales, beams or measures of any kind, instruments or mechanical devices for weighing or measuring, and tools, appliances and accessories connected with any or all of such instruments or measurements within this State shall cause all such weights, scales, beams, measures of every kind, instruments or mechanical devices for weighing or measuring and tools, appliances and accessories connected with any or all of such instruments or measures to be sealed and marked by the sealer of weights and measures as to their correctness, and no instrument shall be sold for the purpose of weighing or measuring unless such instrument, scale, weight, beam or measure shall bear the seal of the inspector of weights and measures as to its correctness. (Id. sec. 16.)

Art. 7846¼w. Fee for testing weights and measures.—The State Superintendent shall have the right and power to fix and collect a nominal fee for testing all weights, scales, beams and any kind of instruments or mechanical devices for weighing or measuring; all tools, appliances and accessories connected with all such instruments before they are offered for sale; such fee, however, to be reasonable and to be graduated according to the cost of such instrument, and it shall be unlawful for anyone to sell any weights, scales, beams, measuring instruments or mechanical devices for weighing or measuring, or to lease or rent same, unless such instruments have been inspected, tested and approved by the State Superintendent, or one of his duly accredited deputies. All moneys collected by the Superintendent shall be paid into the general fund of the State Treasury. (Id. sec. 17.)

Art. 7846¼x. Weights, etc., which may be sold.—When any weight, scale, beam, measure of any kind, instrument or mechanical device for weighing or measuring; also all tools, and appliances necessary or connected with any such instruments of measure have been tested and found correct by any sealer appointed under the provisions of this Act, the same may be used, kept for use, offered for sale, sold or kept for sale anywhere within this State for one year without being further tested. Any weight, scale, beam, measures of every kind, instruments or mechanical devices for weighing or measuring, or appliances and accessories connected with any or all of such instruments or measure, which have been tested and sealed and certified as correct by the National Bureau of Standards may be kept for sale, sold or offered for sale without being tested and sealed by a sealer under the provisions of this Act, but all such weights, scales, beams, measures of any kind, instruments or mechanical devices for weighing and measuring and all tools, appliances and accessories connected with any or all of such instruments or measures shall always be subject to inspection and testing as herein provided, notwithstanding that the same have been tested and sealed, either by a sealer appointed under the provisions of this Act, or by the National Bureau of Standards. (Id. sec. 18.)

Art. 7846¼xx. Same subject.—Any scale, beam or mechanical device for weighing or measuring, which, after being sold, and before being used for weighing or measuring, it is found necessary to assemble and set up, may be sold, kept for sale or offered for sale without first being tested and sealed, as provided in this Act, but such scale, beam or measuring device for weighing or measuring, before being used for weighing or measuring, without the consent of the State Superintendent, must be tested and sealed as provided in this Act. (Id. sec. 19.)

Art. 7846¼y. Inspection, testing, etc., of weights and measures by sealers and inspectors.—It shall be the duty of all sealers, deputy sealers, inspectors, and local sealers in this State to inspect, try and test all weights, scales, beams, measures of any kind, instruments or mechanical devices for weighing or measuring and all tools, appliances and accessories connected with any or all such instruments or measures kept for the purpose of sale, sold or used by any proprietor, agent, lessee or employee in proving the size, quantity, extent, area weight or measurement of quantities, things, produce, articles for distribution or consumption, purchased or offered or submitted by such person or persons for sale, hire, or award and ascertain if the same are correct, and he shall have the power to and shall from time to time weigh or measure packages or amounts of commodities of whatsoever kind kept for the purpose of sale, offered for sale or sold, or in the process of delivery, in order to determine whether the same contains the quantity or amount represented and whether they are being offered for sale or sold in accordance with law and may seize for use as evidence such amounts of commodities or packages which shall be found to contain a less amount than that represented. He shall at least once each year, or as much oftener as may be found necessary, and directed by the State Superintendent, see that the weights, measures and all weighing and measuring apparatus, used in any locality to which he is assigned for the purpose of inspection, are correct. All local sealers of weights and measures shall test at least once each year all scales, weights and measures of every kind and device within any such city to which they are appointed, and oftener, if required so to do. Any sealer or deputy sealer, or inspector for the purposes above mentioned, and in the general performance of his duty may, without warrant, enter, go into or upon any stand, place, building or premises, or stop any vendor, peddler, junk dealer, driver of a coal wagon, ice wagon or delivery wagon or the driver of any wagon containing commodities for sale or delivery, and if necessary require him to proceed to some place which the sealer may specify for the purpose of making the proper tests. (Id. sec. 20.)

Art. 7846¼yy. Prosecutions for violations of law.—Any sealer, deputy sealer, or inspector having a knowledge of a violation of any of the provisions of this Act, or any law relative to weights and measures, shall cause the violator to be prosecuted, when in

his opinion such violation is wilfully committed. (Id. sec. 21.)

Art. 7846¼z. Seizure and condemnation of weights and measures.—Whenever a sealer, deputy sealer, or inspector of weights and measures compares weights and measures, or weighing or measuring instruments and finds that they correspond, or cause them to correspond to the standards, or he shall seal or mark under his name such weight or measure or weighing or measuring instrument with an appropriate device showing that the weight or measure, or weighing or measuring instrument is correct, and the date of the inspection, which device shall be placed so as to be easily seen. He shall condemn and seize and may destroy incorrect weights and measures and weighing and measuring instruments, which in his best judgment are not susceptible of repair, but any weights and measures, or weighing or measuring instruments which shall be found to be incorrect, but which, in his best judgment are susceptible of repair, he shall cause to be marked with a tag or other suitable device with the words "Out or Order." The owner or user of any weights or measures, or weighing or measuring instruments, which have been marked "Out of Order," as in this Section provided, may have the same repaired or corrected within thirty days, but until the same have been repaired or corrected and tested as herein provided, the owner or user thereof must neither use nor dispose of the same in any way, but shall hold the same at the disposal of the State Superintendent or any deputy or local sealer. When the same have been repaired or corrected, the owner or user thereof shall notify the State Superintendent or his deputy, or local sealer and they shall again be tested for the purpose of proving the weight, measure or weighing or measuring instrument, which had been found to be incorrect and marked as in this Section, and until such weight, measure or weighing or measuring instrument has been re-inspected by the sealer and found correct, the same shall not be used or in any way disposed of by the owner. Any person who removes or obliterates any tag or device placed upon any weight or measure, or weighing or measuring instrument by any sealer, deputy sealer, or inspector, provided for in this Act, shall be guilty of a misdemeanor. When any weight, measure or weighing or measuring instrument has been repaired and corrected, as in this Act provided, and has been re-inspected and found correct by the sealer of weights and measures, as in this Act provided, the sealer of weights and measures shall remove the tag or device with the words "Out of Order" and shall mark such weight, measure or weighing or measuring instrument in the manner provided for the marking of the same where upon inspection they were found to be correct. (Id. sec. 22.)

Section 23 of this act is penal. See post, Penal Code, art. 992e.

Art. 7846¼zz. Powers as peace officers.—The State Superintendent, his deputy, sealers or inspectors and all local sealers and their deputies in the performance of their official duties, shall have the same power as peace officers in this State. (Id. sec. 24.)

Sections 25, 26, 27, 28 and 29 of this act are penal. See post, Penal Code, arts. 343b, 434a, 434b, 999b, 992f.

Art. 7846¼zzz. "Person" defined.—The word "person," whenever used in this Act, shall be deemed to include person, firm or corporation and all officers, directors and managers of corporations shall comply with the provisions of this Act on behalf of their respective corporations. The penal provisions of this Act shall apply to the executive head, manager, agent, trustee or receiver of any corporation doing business in this State. (Id. sec. 30.)

TITLE 134

WELLS—OIL, GAS AND WATER

Art. 7847. Wells, how cased.—The owner or operator of any well being constructed for the production of petroleum oil, natural gas, or mineral water, shall, before drilling into the oil or gas bearing rock, incase such well with good and sufficient wrought iron or steel casing, in such manner as shall exclude all surface or fresh water from the lower part of such well from penetrating the oil or gas bearing rock. Should any well be drilled through the first into a lower oil or gas bearing rock, the same shall be cased in such manner as will exclude all fresh water above the last oil or gas bearing rock penetrated. (Acts 1899, p. 68, sec. 1.)

Art. 7848. Abandoned wells to be filled.—The owner or operator of any well constructed for either or any of the purposes named in the preceding article, when about to abandon or cease operating the same, and before drawing the casing therefrom, shall securely fill such well with rock, sediment or with mortar, composed of two parts sand and one part cement or other suitable material to the depth of two hundred feet above the top of the first oil or gas bearing rock, and also in such manner as shall prevent the gas and oil from escaping therefrom. If the owner or operator of any such well shall fail to or shall inefficiently comply with the provisions of this article, then the owner of the land upon which the well is situated shall forthwith comply therewith. If all the persons hereinbefore named shall fail to or inefficiently fill such well in the manner hereinbefore described, then it shall be lawful for any person, after written demand therefor to any of said persons, to enter the premises where such well is situated, take possession thereof and fully comply with the provisions of this article. The reasonable cost and expense thereof shall forthwith be paid by the owner or operator of the well, and on his default by the owner of the land. The amount of such reasonable cost and expense shall forthwith be a lien upon the fixtures and machinery and leasehold interest of the owner and operator of said well, as upon the title and interest of the land owner in the land upon which said well is situated, and may be recovered and enforced against said owner or operator, in the order named, in any court of competent jurisdiction. (Id. sec. 2.)

Art. 7849. Gas to be confined until utilized; penalty.—Any person, co-partnership, or corporation in possession, either

as owner, lessee, agent or manager, of any well producing natural gas, in order to prevent the said gas from wasting by escape, shall, within ten days after penetrating the gas bearing rock in any well hereafter drilled, shut in and confine the gas in said well until and during such time as the gas therein shall be utilized for light or fuel or power; provided, that this shall not apply to any well that is operated for oil. Any person violating the provisions of this article shall be liable to a penalty of not less than $300.00 for each offense, to be recovered, with the costs of suit, in a civil action in the name of the state of Texas, in any court of competent jurisdiction in the county in which the act shall be committed or omitted, and each day such violation continues shall be considered a separate offense. Such suit may be brought at the instance of any resident of the state of Texas, without security or liability of cost. The amount of said penalty, when collected, shall be paid one-half into the school fund of the county in which said suit is brought, and one-half to said person at whose instance said suit shall be brought. (Acts 1899, p. 68, sec. 3; Acts 1913, p. 212, sec. 1.)

Art. 7850. Limitations on use of gas for illuminating purposes.—It shall be unlawful for any person, co-partnership or corporation to use natural gas for illuminating purposes by what are known as flambeau lights; but nothing herein shall prohibit the use of "Jumbo" burners, or any other burners consuming no more gas than such "Jumbo" burners, but the person, co-partnership, or corporation, consuming such gas and using such burners in the open air, shall inclose the same in glass globes or lamps; and any one using such gas in the open air, or in or around derricks, shall turn off said gas not later than eight o'clock in the morning of each day such lights are burning or used, and shall not turn on or relight the same between the hours of eight o'clock a. m. and five o'clock p. m. (Acts 1899, p. 68, sec. 4.)

Art. 7851. Penalties; disposition of fines.—Any person, co-partnership, or corporation violating any of the provisions of this chapter shall be liable to a penalty of one hundred dollars, to be recovered with the cost of suit in a civil action, in the name of the state of Texas, in any court of competent jurisdiction in the county in which the act shall be committed or omitted. Such suit may be brought at the instance of any resident of the state of Texas, without security or liability of cost. The amount of said penalty when collected shall be paid, one-half into the school fund of the county in which said suit is brought, and one-half to said person at whose instance said suit shall be brought. (Id. sec. 5.)

Art. 7852. Duties of persons where salt water appears in wells.—If any person or persons in this state, in boring any well or wells for oil, gas or mineral waters, shall pierce any cap-rock or other geological formation in such manner as to cause a flow of salt water or fresh water injurious to any oil well or wells already bored, or to any oil or gas deposits, and which shall or may probably result in the injury of such oil or gas field, or to such gas or oil wells already bored, such person or persons shall, if the flow of water can not be cased off, immediately abandon all work upon such well and plug and fill up the same in such manner and with such materials as will stop the flow of said water; and it shall be unlawful for any well owner, or person boring any such well, to remove the casing from the well drilled until the flow of water shall be stopped, either by casing off or plugging such well. The provisions of this article shall only apply where such cap-rock or other formation is pierced at a depth below the horizon at which oil or gas has already been discovered. If any well shall be abandoned from any cause, the same shall be securely plugged and sealed. (Acts 1905, p. 228, sec. 7.)

Art. 7853. District courts; jurisdiction and supervision; may appoint superintendent, make regulations, etc.—The district courts of each county in this state, and the judges thereof in vacation, shall have jurisdiction to enforce the provisions of this chapter; and they are hereby authorized and empowered, either in term time or in vacation, upon the application of any person or persons interested either as land owners, lessees of land or as well owners, in any oil or gas field in this state, in its discretion, to appoint some suitable person or persons as superintendent of such oil or gas field, and to require of such person a bond, the amount thereof to be fixed by the court, conditioned that such superintendent shall obey and carry out the rules, regulations, orders and decrees which may be from time to time prescribed and entered by said court for the protection of such oil or gas field, and the persons employed therein, from fire or other causes likely to be injurious to the properties and operations in such field, and with power and authority to enforce, under the orders of said court, a strict compliance by all persons with all the requirements of the laws of this state governing the boring and operation of oil or gas wells in oil or gas fields; and said courts are authorized and empowered to make from time to time such rules and regulations for the government of such oil and gas fields and the operations carried on therein, and the handling of the oil or gas products, as may, in the discretion of the court, be necessary or requisite for the protection of the several interests in said oil and gas field from fire or other probable injurious cause. The court may require of the persons who apply for the appointment of a superintendent of any oil or gas field or other protective order proper security for the payment of any and all costs of court, including the salaries of any superintendents, or necessary employés under him, as well as for such other costs and expense as may be necessary to be expended in the protection of such oil or gas field and enforcement of the orders of said courts. (Id. sec. 8.)

Art. 7854. Suits and penalties, how brought.—Any person or persons, co-partnership, corporation, or association of persons, violating any of the provisions of this chapter, or who shall fail or refuse to obey any order or decree, rule or regulation, made or promulgated by said district courts requiring any act to be done or omitted shall be liable to penalty of not less than five hundred dollars nor more than five thousand dollars, to be ascertained by the verdict of the

jury of the court trying the cause; said sum to be recovered with the costs of suit in a civil action brought for that purpose in the name of the state of Texas, in any court of competent jurisdiction, in the county in which the act complained of shall have been committed or omitted; and such suit may be brought at the instance of any resident of the state of Texas, without security or liability for costs; and the amount of said penalty when collected shall be paid into the school fund of the county in which said suit is brought. Such suit may be brought at the instance of either the district attorney or the county attorney of the county in which the act was committed or omitted. (Id. sec. 9.)

Art. 7854a. Wells to be plugged or shut in, etc.—If the owner of any such well shall neglect or refuse to cause said well to be plugged or shut in, as herein provided, for a period of twenty days after a written notice to do so, (which notice may be served personally upon such owner, or may be posted in a conspicuous place at or near the well), it shall be lawful for the owner or operator of any adjacent or neighboring lands to enter upon the premises where said well is situate and to cause the same to be plugged if it be an abandoned well, or shut in if not abandoned, pursuant to the provisions hereof; and the reasonable cost and expense incurred in so doing shall be paid by the owner of said well, and may be recovered as debts of like amount are by law recoverable. (Acts 1913, p. 212, sec. 2.)

Art. 7854b. Petition to restrain waste of gas; duty of district judge.—Aside from and in addition to the penalties provided in this chapter, it shall be the duty of any district judge, whether in term time or vacation, to hear and determine any petition which may be filed to restrain the waste of natural gas in violation of this Act and to issue such mandatory or restraining orders as may in his judgment, be necessary. Such petition may be filed by any citizen of the state of Texas and the same need allege no further financial interest than the petitioner possesses in common with all citizens of the state in the natural resources thereof. (Id. sec. 3.)

Art. 7854c. Waste in production of natural gas, and crude oil or petroleum; waste defined.—Natural gas and crude oil or petroleum shall not be produced in the State of Texas in such manner and under such conditions as to constitute waste. The terms "waste" in addition to its ordinary meaning shall include (a) escape of natural gas in commercial quantities into the open air from a stratum recognized as a natural gas stratum; but this is not intended to have application to gas pockets in high points in strata recognized as oil strata; (b) drowning with water of a gas stratum capable of producing gas in commercial quantities; (c) underground waste; (d) the permitting of any natural gas well to wastefully burn (e) the wasteful utilization of such gas; (f) burning flambeau lights except when casing head gas is used in same; provided not more than four may be used in or near the derrick of a drilling well and (g) the burning of gas for illuminating purposes between eight o'clock A. M. and five o'clock P. M. unless the use is regulated by meter. (Acts 1919, ch. 155, art. [sec.] 1.)

Art. 7854d. Same subject; confining gas in wells.—Whenever natural gas in such quantity and quantities, in a gas bearing stratum known to contain natural gas in such quantities, is encountered in any well drilled for oil or gas in this State, such gas shall be confined to its original stratum until such time as the same can be produced and utilized without waste and all such strata shall be adequately protected from infiltrating waters. All operators, contractors, or drillers, pipe line companies, gas distributing companies drilling for or producing crude oil or natural gas or piping oil or gas for any purpose shall use every possible precaution in accordance with the most approved methods to stop and prevent waste of oil and gas, or both, in drilling and producing operations, storage or in piping or distributing and shall not wastefully utilize oil or gas, or allow same to leak or escape from natural reservoirs, wells, tanks, containers, or pipes. (Id. art. [sec.] 2.)

Art. 7854e. Same subject; powers of railroad commission.—It shall be the duty of the railroad commission to make and enforce rules and regulations for the conservation of oil and gas, it shall have authority to prevent the waste of oil and gas in drilling and producing operations and in the storage, piping and distribution thereof, and to make rules and regulations for that purpose; it shall be its duty to require dry or abandoned wells to be plugged in such way as to confine oil, gas and water in the stratas in which they are found and to prevent them from escaping into other stratas and to establish rules and regulations for that purpose. It is empowered to establish rules and regulations for the drilling of wells and preserving a record thereof, and it shall be its duty to require such wells to be drilled in such manner as to prevent injury to the adjoining property, and to prevent oil and gas and water from escaping from the stratas in which they are found into other stratas, and to establish rules and regulations therefor; it shall be its duty to establish rules; and regulations for shooting wells and for separating oil from gas; it shall have authority to require records to be kept and reports made by oil and gas drillers, operators and pipe line companies and by its inspectors; it is authorized to do all things necessary for the conservation of oil and gas whether here especially enumerated or not, and to establish such other rules and regulations as will be necessary to carry into effect this Act and to conserve the oil and gas resources of the State. (Id. art. [sec.] 3.)

Art. 7854f. Same subject; duties of pipe line expert.—It shall be the duty of the pipe line expert provided for in Section 11, Chapter 30, of the Acts of 1917, to be the supervisor for the Railroad Commission in enforcing its rules and regulations. The Railroad Commission may appoint such deputy supervisor as may be necessary. It shall have the authority to increase the salary of the supervisor to a sum not exceeding $5,000.00 per annum and to fix the salaries of the deputies at not exceeding $3,600.00 per annum, all salaries and other expenses of the administration and enforcement of this Act

shall be paid out of the funds created in Chapter 30 of the Acts of 1917, and in the manner therein provided. It shall be the duty of the supervisor and his deputies to supervise the plugging of all abandoned wells and the shooting of wells and to conform to the rules and regulations of the Railroad Commission, dealing with the production and conservation of oil and gas. (Id. art. [sec.] 4.)

See ante, art. 7321/2j.

Art. 7854g. Same subject; certificate of compliance with laws before connecting with wells.—Owners or operators of gas wells shall, before connecting with any oil or gas pipe lines, secure from the Railroad Commission a certificate showing compliance with the oil and gas conservation laws of the State and conservation orders of the Railroad Commission. Pipe line companies shall not connect with oil or gas wells until the owners or operators thereof shall furnish certificates from the Railroad Commission that the conservation laws of the State have been complied with, provided this Act shall not prevent a temporary connection with any well or wells in order to take care of production and prevent waste until opportunity shall have been given the owner or operator of said well to secure certificate showing compliance with the conservation laws of the State. (Id. art. [sec.] 5.)

Art. 7854h. Same subject; books showing production of oil and gas.—It is hereby made the duty of all owners or operators of oil and gas wells to keep books showing the amount of oil and gas produced and disposed of, with the price for which the same was sold, together with the receipts from the sale or transfer of leases or other property, and the disbursements made in connection with or for the benefit of such business, which books shall be kept open for the inspection of the Railroad Commission, or any accredited representative thereof; and of any stockholder or shareholder in said business, and any owner or operator refusing to comply with the provisions of this Article shall be subject to the penalties imposed by this Act. (Id. art. [sec.] 6.)

Art. 7854i. Same subject; penalties.—In addition to any penalty that may be imposed by the Railroad Commission for contempt, any firm, person, corporation or any officer, agent or employé thereof, directly or indirectly violating the provisions of this Act or the orders or regulations of the Railroad Commission made in pursuance thereof, shall be subject to a penalty of not more than Five Thousand ($5,000.00) Dollars, to be recovered in any Court of competent jurisdiction, such suit to be brought in the name of the State of Texas, and to be instituted and conducted by any County or District Attorney, on the direction of the Railroad Commission. Each day that such violation continues shall be considered a separate offense. (Id. art. [sec.] 7.)

Art. 7854j. Same subject; repeal.—This Act shall be cumulative of all laws of this State which are not in direct conflict herewith, regulating the conservation of oil and gas, but it shall repeal all laws or parts of laws in conflict with its provisions. (Id. art. [sec.] 8.)

Art. 7854k. Same subject; partial invalidity of act.—If any of the provisions of this Act shall be held unconstitutional or for any other reason shall be held void, such holdings shall not have the effect to nullify the remaining parts of this Act, but the parts not so held to be void shall nevertheless remain in full force and effect. (Id. art. [sec.] 9.)

Art. 7854kk. Salaries and expenses, how paid.—All salaries and expenses necessary to enforce the provisions of Chapter 155, Acts of the Regular Session of the Thirty-sixth Legislature, to conserve the oil and gas resources of the State, shall be paid out of the fund created by Section 11, Chapter 30, Acts of the Regular Session of the Thirty-fifth Legislature. (Acts 1919, 2d C. S., ch. 31, sec. 2.)

See ante, art. 7321/2j, and arts. 7834c-7834k.

Art. 7854kkk. Act cumulative.—This Act shall be cumulative of all other laws for the conservation of oil and gas and the control of pipe lines. (Id. sec. 3.)

Art. 7854*l*. Owners and operators of wells to keep books; corporations, etc., operating wells, etc., to file name, etc., with railroad commission.—It is hereby made the duty of all owners and operators of oil and gas produced and disposed of, with the price for which the stock sold and unsold and amount of promotion money paid, amount of oil and gas produced and disposed of, with the price for which the same was sold, together with the receipts from the sale or transfer of leases or other property, and the disbursements made in connection with or for the benefit of such business; which books shall be kept open for the inspection of the Railroad Commission or any accredited representative thereof, and of any stockholder or shareholder or royalty-owner in said business, and shall report such information to the Railroad Commission of Texas for its information, when required by the Commission to do so. Any person, firm, partnership, joint stock association, corporation or other organization, domestic or foreign, operating wholly or partially within this State, acting as principal or agent for another, for the purpose of drilling, owning or operating any oil or gas well, or owning or controlling leases of oil and mineral rights, or the transportation of oil or gas by pipe line, shall immediately file with the Railroad Commission of Texas, at Austin, the name of the company or organization, giving the name and post office address of the organization, the plan under which it was organized, and the names and post office addresses of the trustee or trustees thereof, and the names and post office addresses of the officers and directors. Any person, firm, joint stock association, corporation or other organization, or the agent thereof, refusing to comply with any of the provisions of this section, shall be subject to all the fines and penalties imposed by Article 7, Chapter 155, Acts of the Regular Session of the Thirty-sixth Legislature, approved March 31st, 1919. (Id. sec. 1.)

TITLE 135

WILLS

Art. 7855. (5333) (4857) Persons competent to make a will.—Every person aged twenty-one years or upward, or who may be or may have been lawfully married, being

of sound mind, shall have power to make a last will and testament, under the rules and limitations prescribed be law. (Act Jan. 28, 1840; July 24, 1856; P. D. 5361, 3868.)

See Speer's Marital Rights, p. 344; Herron's Probate Guide, pp. 488 et seq.

Art. 7856. (5334) (4858) What may be devised, etc., by will.—Every person competent to make a last will and testament may thereby devise and bequeath all the estate, right, title and interest in possession, reversion or remainder, which he has, or at the time of his death shall have, of, in or to any lands, tenements, hereditaments or rents charged upon or issuing out of them, or shall have of, in, or to any personal property whatever, subject to the limitations prescribed by law. (P. D. 5361-2.)

See Speer's Marital Rights, p. 345; Herron's Probate Guide, p. 495; Fletcher v. Williams, 66 S. W. 860.

Art. 7857. (5335) (4859) Requisites of a will.—Every last will and testament, except where otherwise provided by law, shall be in writing and signed by the testator or by some other person by his direction and in his presence, and shall, if not wholly written by himself, be attested by two or more credible witnesses above the age of fourteen years, subscribing their names thereto in the presence of the testator. (Act Jan. 28, 1840; P. D. 5361.)

See Herron's Probate Guide, pp. 498-9; Lawson v. Dawson's Est., 53 S. W. 64; McLain v. Garrison, 88 S. W. 484; Dougherty v. Holscheider, 88 S. W. 1113; Warren v. Ellis, 137 S. W. 1182; Armendariz de Acosta v. Cadena, 165 S. W. 555; Maris v. Adams, 166 S. W. 475.

Art. 7858. (5336) (4860) Will wholly written by testator.—Where the will is wholly written by the testator the attestation of the subscribing witnesses, as required in the preceding article may be dispensed with. (Id.)

See Dougherty v. Holscheider, 88 S. W. 1113; Maris v. Adams, 166 S. W. 475.

Art. 7859. (5337) (4861) Revocation of written will.—No will in writing, made in ~~conformity~~ with the preceding articles, nor any clause thereof or devise therein, shall be revoked, except by a subsequent will, codicil or declaration in writing, executed with like formalities, or by the testator destroying, canceling or obliterating the same, or causing it to be done in his presence. (P. D. 5363.)

See Speer's Marital Rights, p. 359; Herron's Probate Guide, p. 502; Ellis v. Birkhead, 71 S. W. 32; Dougherty v. Holscheider, 88 S. W. 1113; Locust v. Randle, 102 S. W. 946; Ainsworth v. Briggs, 108 S. W. 753; Schnable v. Henderson, 152 S. W. 231.

Art. 7860. (5338) (4862) Nuncupative will.—Any person who is competent to make a last will and testament, under article 7856 [7855] may dispose of his property by a nuncupative will made under the conditions and limitations hereinafter prescribed. (P. D. 5366.)

See Herron's Probate Guide, pp. 502-3.

Art. 7861. (5339) (4863) Requisites of.—No nuncupative will shall be established, unless it be made in the time of the last sickness of the deceased, at his habitation or where he has resided for ten days next preceding, except when the deceased is taken sick from home and dies before he returns to such habitation; nor when the value exceeds thirty dollars, unless it be proved by three credible witnesses that the testator called on some person to take notice or bear testimony that such is his will, or words of like import. (P. D. 5366.)

See ante, arts. 3269, 3270; Herron's Probate Guide, p. 109.

Art. 7862. (5340) (4864) Notice and proof.—No nuncupative will shall be proved within fourteen days after the death of the testator, nor until those who would have been entitled by inheritance, had there been no will, have been summoned to contest the same, if they desire to do so. (P. D. 5371.)

See ante, arts. 3254, 3269.

Art. 7863. (5341) (4865) Testimony to be committed to writing, etc.—After six months have elapsed from the time of speaking the pretended testamentary words, no testimony shall be received to prove a nuncupative will, unless the testimony, or the substance thereof, shall have been committed to writing within six days after making the will. (P. D. 5367.)

See ante, arts. 3269, 3270; Herron's Probate Guide, p. 504.

Art. 7864. (5342) (4866) Wills of soldiers, etc., disposing of chattels.—Any soldier in actual military service, or any mariner or seaman being at sea, may dispose of his chattels without regard to the provisions of this title. (P. D. 5369.)

Art. 7865. (5343) (4867) Posthumous children.—When a testator shall have children born and his wife enceinte, the posthumous child, if unprovided for by settlement and pretermitted by his last will and testament, shall succeed to the same portion of the father's estate as such child would have been entitled to if the father had died intestate; toward which portion the devisees and legatees shall contribute proportionately out of the parts devised and bequeathed to them by such last will and testament. (P. D. 5363.)

Pearce v. Carrington, 124 S. W. 469.

Art. 7866. (5344) (4868) Children born after making a will.—If a testator having a child or children born at the time of making his last will and testament shall, at his death, leave a child or children born after the making of such last will and testament, the child or children so after-born and pretermitted shall, unless provided for by settlement, succeed to the same portion of the father's estate as they would have been entitled to if the father had died intestate; toward raising which portion the devisees and legatees shall contribute proportionately out of the parts devised and bequeathed to them by such last will and testament, in the same manner as is provided in article 7865. (P. D. 5364.)

Pearce v. Carrington, 124 S. W. 469; Evans v. Evans, 186 S. W. 815.

Art. 7867. (5345) (4869) The same.—Every last will and testament made when the testator had no child living, wherein any child he might have is not provided for or mentioned, if at the time of his death he shall leave a child, or leave his wife enceinte of a child which shall be born, shall have no effect during the life of such after-born child, and shall be void, unless the child die without having been married and before he

shall have attained the age of twenty-one years. (P. D. 5363.)

See Speer's Marital Rights, pp. 346, 360; Herron's Probate Guide, p. 506; Pearce v. Carrington, 124 S. W. 469; Pearce v. Pearce, 134 S. W. 210; Evans v. Evans, 186 S. W. 815.

Art. 7868. (5346) (4870) Term "children" includes descendants.—Under the name of "children," as used in this title, are included descendants of whatever degree they may be, it being understood they are only counted for the child they represent. (P. D. 5373.)

See Herron's Probate Guide, pp. 506-7.

Art. 7869. (5347) (4871) Bequest to children, etc., not to lapse.—Where a testator shall devise or bequeath an estate or interest of any kind by will to a child or other descendant of such testator, should such devisee or legatee, during the lifetime of the testator, die leaving children or descendants who shall survive such testator, such devise or legacy shall not lapse by reason of such death; but the estate so devised or bequeathed shall vest in the children or descendants of such legatee or devisee in the same manner as if he had survived the testator and died intestate. (P. D. 5365.)

See Watkins v. Blount, 94 S. W. 1116.

Art. 7870. (5348) (4872) Bequest to subscribing witness.—Should any person be subscribing witness to a will, and be also a legatee or devisee therein, if the will can not be otherwise established, such bequest shall be void, and such witness shall be allowed and compelled to appear and give his testimony in like manner as if no such bequest had been made. But, if in such case the witness would have been entitled to a share of the estate of the testator had there been no will, he shall be entitled to so much of such share as shall not exceed the value of the bequest to him in the will. (Acts 1875, p. 179.)

See Herron's Probate Guide, p. 115.

Art. 7871. (5349) (4873) Will in such case may be proved how.—In the case provided for in the preceding article, such will may be proved by the evidence of the subscribing witnesses, corroborated by the testimony of one or more other disinterested and credible persons, to the effect that the testimony of such subscribing witnesses necessary to sustain the will is substantially true; in which event the bequest to such subscribing witnesses shall not be void. (Id.)

See Herron's Probate Guide, p. 115.

Art. 7872. (5350) (4874) Husband or wife may authorize survivor to manage separate estate.—The husband or wife may, by last will and testament, give to the survivor of the marriage the power to keep his or her separate property together, until each of the several heirs shall become of lawful age, and to manage and control the same under the provisions of law relating to community property, and such other restrictions as may be imposed by such will; provided, the surviving husband or wife is the father or mother, as the case may be, of the minor heirs; and provided, further, that any child or heir entitled to any part of said property shall, at any time upon becoming of age, be entitled to receive his distributive portion of said estate. (Acts 1856, p. 51, sec. 8; P. D. 4653.)

See Speer's Marital Rights, p. 345.

Art. 7873. (5351) (4875) Original wills, etc., to be deposited with county clerk, etc.—All original wills, together with the probate thereof, shall be deposited in the office of the clerk of the county court of the county wherein the same shall have been probated, and shall there remain, except during such time as they may be removed to some other court, by proper process, for inspection. (P. D. 5372.)

See ante, arts. 3274, 3275; see Sayles' Practice, p. 465.

Art. 7874. (5352) (4876) To be recorded, etc.—Every such will, together with the probate thereof, shall be recorded by the clerk of the county court in a book to be kept for that purpose; and certified copies of such will and the probate of the same, or of the record thereof, may be recorded in other counties, and may be used in evidence as the original might be. (Id.)

See Herron's Probate Guide, pp. 508-9.

Art. 7875. (5353) How foreign will may be proved.—When any will or testament, or testamentary instrument of any character, conveying or in any manner disposing of land in this state, has been duly probated according to the laws of any of the United States or territories, a copy thereof and its probate, attested by the clerk of the court in which such will and testament or testamentary instrument was admitted to probate, and the seal of the court annexed, if there be a seal, together with a certificate from the judge or presiding magistrate of such court that the said attestation is in due form, may be filed and recorded in the register of deeds in any county in which said real estate is situated, in the same manner as deeds and conveyances are required to be recorded, and without further proof or authentication; provided, that, at any time within four years from the date of the record of such will in this state, the validity of such will may be contested in a proceeding instituted for that purpose, as the original might have been. (Acts 1887, p. 38, sec. 1.)

See ante, art. 3276; Herron's Probate Guide, pp. 78-80, 509-510; Dew v. Dew, 57 S. W. 926; Clarke v. Webster, 94 S. W. 1088; Haney v. Gartin, 113 S. W. 166; Mason v. Rodriguez, 115 S. W. 868; Gordon v. Lewis, 133 S. W. 927; Long v. Shelton, 155 S. W. 945; Keenon v. Burkhardt, 162 S. W. 483; Lane v. Miller & Vidor Lumber Co., 176 S. W. 100.

Art. 7876. (5354) Prima facie evidence, when.—A copy of such will and testament, or testamentary instrument, and its probate so attested, together with the certificate that said attestation is in due form, as required by the preceding article, shall be prima facie evidence that said will has been duly admitted to probate, according to the laws of the state wherein it has been admitted to probate, and shall be sufficient to authorize the same to be recorded in the proper county or counties in this state. (Id. sec. 2.)

See ante, art. 3276; Herron's Probate Guide, pp. 78-80.

Art. 7877. (5355) Shall take effect, when.—Every such will and testament, or testamentary instrument, and its probate, which shall be attested and proven, as provided in article 7875, and delivered to the clerk of the proper court to be recorded, shall take effect and be valid and effectual as a deed of conveyance of said property; and the record thereof shall have the same force and affect as the record of deeds or other con-

veyances to land from the time when such instrument was delivered to such clerk to be recorded, and from that time only. (Id. sec. 3.)

See Herron's Probate Guide, pp. 79-80; Haney v. Gartin, 113 S. W. 166; Long v. Shelton, 155 S. W. 945; Keenon v. Burkhardt, 162 S. W. 483; Lane v. Miller & Vidor Lumber Co., 176 S. W. 100.

Art. 7878. (5356) Shall operate as notice, etc.—The record of such will and testament, or testamentary instrument, and its probate, duly attested and proven, as provided in the preceding articles, and duly made in the proper county, shall be taken and held as notice to all persons of the existence of such will and testament, and of the title or titles conferred thereby. (Id. sec. 4.)

Art. 7878a. Sale by foreign executor or trustee under power in will.—When any foreign will, filed and recorded in this State, as authorized by Articles 7875, 7876, 7877 and 7878, Revised Civil Statutes, 1911, power is given to an executor or trustee to sell any real or personal property situated in this state, no order of court shall be necessary to authorize such executor or trustee to make such sale and execute proper conveyance, and whenever any particular directions are given by a testator in any such will respecting the sale of any such property situated in this state, belonging to his estate, the same shall be followed unless such directions have been annulled or suspended by order of a court of competent jurisdiction. (Acts 1915, ch. 69, sec. 1.)

Art. 7878b. Validation of sales previously made.—All sales and conveyances of real and personal property within this state which have been heretofore made by executors or trustees under foreign wills, duly filed and recorded, as provided in Articles 7875, 7876, 7877, and 7878, Revised Civil Statutes, 1911, where such wills confer upon the executors or trustees the power to sell such real or personal property, be and the same are hereby validated, and the record of such conveyance or releases heretofore made shall have the same effect as if they were made and recorded after the passage of this Act, and that all laws and parts of laws in conflict herewith are hereby in all things repealed. (Id.)

TITLE 136

WOOL GROWING INTERESTS

Art. 7878c. Sale of sheep affected with scab unlawful.—That from and after the taking effect of this Act it shall be unlawful for any person, firm or corporation to sell or buy any sheep affected with scab. (Acts 1911, p. 7, sec. 1.)

Acts 1915, ch. 111 (set forth ante as art. 7314), in its title purports to repeal "the law passed by the Thirty-second Legislature relative to appointing inspectors, and the eradication of scab," but the enacting part contains no more than a general repeal of all laws and parts of laws in conflict. It would seem, however, that this article, and arts. 7878b-7886g, post, and the subsequent acts amendatory thereof were superseded.

The legislature, in the 1915 session, created two new sections to be appended to the preceding title, to be designated as articles 7878a and 7878b.

Art. 7878d. Scab defined.—Scab in this Act is defined to be a disease or itch caused from a bug or parasite which works itself into the wool and flesh of the sheep, causing a crusted sore, injuring the wool and causing same to fall from the animal. (Id. sec. 1a.)

Art. 7878e. Importing sheep affected with scab unlawful.—That from and after the taking effect of this Act it shall be unlawful for any person, firm or corporation to import into this state any sheep affected with scab. (Id. sec. 2.)

Art. 7878f. Moving from one county to another unlawful.—That from and after the taking effect of this Act it shall be unlawful for any person, firm or corporation to move from one county to another in this state any sheep affected with scab. (Id. sec. 3.)

Art. 7878g. Moving from one to another part of county unlawful.—That from and after the taking effect of this Act it shall be unlawful for any person, firm or corporation to move from one part of any county in this state to any other part of the same county any sheep affected with scab. (Id. sec. 4.)

Art. 7878h. Driving across another's lands unlawful.—That from and after the taking effect of this Act it shall be unlawful for any person, firm or corporation to drive or cause to be driven on or across the lands of another any sheep affected with scab. (Id. sec. 5.)

Art. 7878i. Driving on public road unlawful.—That from and after the taking effect of this Act it shall be unlawful for any person, firm or corporation to drive along or over a public road any sheep affected with scab. (Id. sec. 6.)

Art. 7879. (5357) Inspectors of sheep to be appointed in counties, when.—Whenever it appears from the assessor's rolls of any county that there are as many as two thousand sheep owned and assessed for taxes in any county in this state, it shall be mandatory upon the commissioners court of said county, upon the application of six resident sheep owners in said county, to appoint a competent inspector of sheep, who shall be a resident citizen of such county. Such inspector shall hold his office for two years, or until his successor is appointed and qualified. Such inspector may appoint one or more deputies, who shall take the oath of office prescribed by the constitution, and may perform the same acts as inspector of sheep; and the inspector may require of his deputies so appointed, bonds, payable to himself, for the faithful performance of their duties as such deputies. (Id. sec. 9.)

Acts 1911, p. 7, sec. 20, repeals Title III, Rev. St. 1895, which corresponds to Title 136, Rev. St. 1911.

Art. 7880. (5358) Bond.—Said inspector of sheep shall, within twenty days after receiving notice of his appointment, and before entering upon the duties of his office, execute a bond with two or more good and sufficient sureties, in a sum to be fixed by the commissioners court, not less than one thousand nor more than five thousand dollars, payable to the county judge and his successors in office, conditioned that he will faithfully and impartially discharge and perform all the duties incumbent upon him as inspector of sheep. Said bond shall be approved by the commissioners court, and be recorded in the office of the county clerk of the county as other official bonds. (Id. sec. 10.)

Art. 7881. (5359) Duties.—It shall be the duty of the inspector of sheep or his dep-

uty to carefully and minutely examine and inspect at any time sheep in his county, or which may be driven into or through the county; and when one or more sheep affected with scab are found in any flock so inspected, the entire flock shall be condemned by said inspector or deputy and considered as affected with said disease. (Id. sec. 11.)

Art. 7882. (5360) Compensation.—The inspector provided for in the preceding articles shall be entitled to receive from the county in which he is appointed inspector of sheep, to be paid quarterly by warrant ordered drawn by the commissioners court of said county, upon the county treasurer thereof, the following compensation:

(a) In counties where the tax rolls of said counties show there are as many as two thousand and not more than ten thousand head of sheep rendered for taxes the sum of two hundred dollars per annum. (Id. sec. 12).

Subdivision b. In counties where the tax rolls of said counties show there is not less than ten thousand and not more than thirty-two thousand head of sheep rendered for taxes the sum of four hundred dollars per annum.

Subdivision c. In counties where the tax rolls of said counties show there are thirty thousand or more sheep rendered for taxes, the sum of one thousand dollars per annum. (Acts 1911, p. 7, sec. 12; amended Acts 1913, p. 422, sec. 1.)

Art. 7883. (5361) Duties and powers; expenses, how recovered; penalty.—It shall be the duty of each inspector of sheep to inspect each and every flock of sheep in his county at least once every three months; and he shall make written report of his findings, stating that he has complied with this provision, to the commissioners court of his county, which report shall be sworn to by him before any officer authorized to administer oaths. And should he find any flock or flocks of sheep in his county affected with scab, he shall notify the owner of such sheep, and demand of such owner that his sheep be cured of scab in thirty days; and should such owner fail or refuse to cure his sheep of scab within that period of time, then the inspector is authorized to take charge of such flock or flocks of sheep and dip the same in lime and sulphur; said preparation of dip to be made up in the proportion of one pound of lime to two pounds of sulphur, boiled and cooked well in ten gallons of water, and to use one gallon of said ooze to ten gallons of water in the vat in which the sheep are dipped; and each one of such sheep so dipped shall be allowed to remain in the dipping vat for a period of three minutes. And if the owner of such flock or flocks of sheep so found to be infected with scab shall fail or refuse to cure the same of scab as above provided, after being notified by the inspector so to do, and the inspector takes charge of such flock or flocks of sheep and cures the same of scab, the county in which he is inspector shall be entitled to recover of the owner of such flock or flocks of sheep all expenses incurred by the inspector; and in addition to such expense, the sum of two dollars per day for each day so required by the inspector in curing such sheep of scab; and it is hereby made the duty of the commissioners court of such county to enforce and collect of such owner or owners all such expense, as well as the sum of two dollars per day for each day the inspector shall consume in the dipping of such flock or flocks of sheep, by suit brought in the name of the county judge of such county, in any court of said county having jurisdiction of the amount involved. Provided, however, that if the owner or owners of such infected sheep can not be found in the county where the sheep are situated, then the notice herein provided for shall be given to the person or persons in charge of such sheep, and such notice shall be as binding as if given to the owner or owners. And in addition to the recovery by the commissioners court as herein provided, should any owner or any person in charge of such flock or flocks of sheep fail or refuse to cure such sheep of scab when instructed to do so by the inspector, such owner or person in charge of such sheep shall be liable upon conviction therefor to a fine of not less than one hundred dollars nor more than two hundred dollars. (Acts 1911, p. 7, sec. 13.)

Arts. 7884-7886. [Repealed.]

See note under art. 7879.

Art. 7886a. State inspector.—The office of state sheep inspector is hereby created. (Acts 1911, p. 7, sec. 14.)

Art. 7886b. Appointment and qualifications; bond; report; salary, etc.—The governor shall appoint to the office of state sheep inspector a person well versed in sheep husbandry and thoroughly conversant with scab in sheep to serve for one year and until appointment and qualification of his successor. Appointee shall qualify by taking official oath prescribed by the constitution and shall give bond in the sum of five thousand dollars for the faithful discharge of his duties, such bond made payable to the governor and approved by the comptroller of the state of Texas, and filed by him in his office: and said sheep inspector shall make his annual report to the governor. He may be discharged at any time by the governor and no warrant for his salary shall issue except on warrant of the governor. He shall be allowed as salary one hundred dollars per month and in addition thereto his traveling expenses, such expenses however, not to exceed in any month fifty dollars; said salary shall be paid to him on order of the governor, by warrant drawn by the comptroller of public accounts upon the state treasurer. And said inspector shall file with the governor at the end of each month his written, verified account of his traveling expenses. Provided, the office of state inspector shall expire at the end of two years. (Acts 1911, p. 7, sec. 15; amended Acts 1913, p. 422, sec. 2.)

Art. 7886c. Duties.—It shall be the duty of the state sheep inspector to zealously ferret out all violations of this Act, and to assist the several district and county attorneys in prosecuting all violations of this Act. And upon request of any sheep owner in those counties having less than 2000 sheep, it shall be the duty of the state inspector to perform those duties of county inspectors as defined in this Act. All county inspectors shall be under his immediate supervision and control. (Acts 1911, p. 7, sec. 16.)

Art. 7886d. Appropriation.—The sum of eighteen hundred dollars, or so much

thereof as may be necessary is hereby appropriated out of any funds in the state treasury not otherwise appropriated to be used in paying the salary and traveling expenses of state sheep inspector. (Acts 1911, p. 7, sec. 18; amended Acts 1913, p. 422, sec. 3.)

TITLE 137
WRECKS

CHAPTER ONE
OF WRECK-MASTERS

Art. 7887. (5365) Appointment of wreck-masters.—The governor shall appoint not less than one and not more than three persons of good character in each maritime county of the state as wreck-masters for such county. (Act April 30, 1846, p. 158, sec. 1; P. D. 5375.)

Art. 7888. (5366) Bond and oath.—Each person so appointed shall, before entering upon the duties of his office, give bond, with two or more good and sufficient sureties, in the sum of five thousand dollars, payable to the county judge of the county for which he is appointed, and to be approved by such officer, conditioned that the person so appointed shall faithfully discharge the duties of his office; which bond shall be deposited with the clerk of the county court of such county. The appointee shall also take the oath prescribed by the constitution for all officers; which oath shall be indorsed on said bond before the same is filed. (Id.)

Art. 7889. (5367) His duties.—It shall be the duty of each wreck-master so appointed, as soon as he may be apprised of any wreck in his county, or the portion of such county allotted to him, to repair at once to the place where such wreck has occurred, and, if the property so wrecked be found abandoned, to attend to the salving thereof, to use his best endeavors for the preservation of the same, and to attend generally to the interests of the owners of such property or whom it may concern; and the wreck-master shall have the command and direction of all persons engaged in saving and preserving such property. (Id. sec. 2; P. D. 5376.)

Art. 7890. (5368) To be controlled by pilot commissioners.—Wreck-masters shall be subject to the control and direction of the commissioners of pilots for the principal ports of their counties, if such there be; but, in case there are no such officers in such county, then wreck-masters shall be under the control of the county judge of their county. (Id. sec. 3; P. D. 5377.)

Art. 7891. (5369) To take possession of wrecked property and sell.—Each wreck-master shall take into his custody and safely keep all wrecked property salved by him, or under his direction, or found wrecked and abandoned in his county, or that portion of the county under his supervision and jurisdiction; and, after the notice required by law, he shall sell the same at public auction for the benefit of the owners or underwriters and the salvers, to all of whom he shall faithfully account. (Id. sec. 5; P. D. 5379.)

Art. 7892. (5370) To keep a record, etc.—Each wreck-master shall keep a true account of all property salved by him, or under his direction, with the circumstances under which it was salved, and the names of the person engaged in salving, the time that each was so employed and other circumstances needful for the proper apportionment of salvage. (Id. sec. 4; P. D. 5378.)

Art. 7893. (5371) Additional record and reports.—He shall also keep a true account, in a book to be kept for that purpose, of all sales made by him and the proceeds thereof, commissions, expenses, salvage, balance left, and the condition and disposition of the same; and, within one month after each sale, and at other times when required, he shall make an abstract report in writing, signed by him, of the matters and things provided for in this and the preceding article, to the commissioner of pilots or the county judge, as the case may be, and he shall also, when required, report the same, together with all needful information in his possession, to the court or other tribunal before which cases of salvage may be pending. (Id. sec. 4; P. D. 5378.)

Art. 7894. (5372) Fees and perquisites.—Wreck-masters shall receive a commission of five per cent upon the amount of all sales made by them, after deducting all expenses, not including salvage, with such reasonable expenses as may be allowed by the authority which may control them, or the court before which the case may come; which expenses may include the wages and mileage of a crier, at a rate to be fixed by such controlling authority. (Id. sec. 5; P. D. 5379.)

Art. 7895. (5373) Special duty to prosecute.—It shall be the special duty of each wreck-master to prosecute before the proper tribunal any person who may be guilty of wasting, stealing or embezzling any property coming within the description of wrecked property. (Id. sec. 6; P. D. 5380.)

CHAPTER TWO
OF COTTON SALVAGE

Art. 7896. (5374) Wrecked cotton to be advertised.—It shall be the duty of the person taking up cotton afloat, abandoned in rivers, or in the waters of the gulf of Mexico on the coast of this state, or in the bays or bayous thereof, to place the same in a secure place out of the weather, and give early notice by advertisement, or by other means, at the port to which said cotton was destined, if within this state, and, if without the limits of the state, or its destination be unknown to the finder, then at the nearest port of entry in this state to the locality where it may be taken up, of the finding of the same, giving a description of the marks or brands on said cotton, together with the place of finding and the name of the finder. (Act Aug. 30, 1856, p. 76, sec. 1; P. D. 1030.)

Art. 7897. (5375) And delivered to owner, when.—It shall be the duty of the person finding, or other person having said cotton in his possession, to deliver the same to the owner, insurer or consignee thereof, on demand, upon being paid the expense of advertisement, and five dollars upon each bale so saved and delivered. (Id. sec. 2; P. D. 1031.)

Art. 7898. (5376) If no owner appear, to be sold.—If no owner, insurer or consignee of the cotton appear within three months after such advertisement, the person

finding shall cause the same to be sold at auction by a legal wreck-master of the county in which said cotton is deposited, at public outcry to the highest bidder; and the wreck-master shall, from the proceeds of such sale, pay the necessary expenses attending the storage, advertising and sale of said cotton, and to the finder the salvage of five dollars for each bale as aforesaid. The remainder, less his commissions and other necessary expenses, he shall hold in trust for the benefit of the owner or others concerned. (Id. sec. 3; P. D. 1032.)

Art. 7899. (5377) And proceeds paid into state treasury.—If, at the expiration of one year thereafter, no legal claimant appears therefor, said proceeds shall be paid over by said wreck-master to the treasurer of the county in which the sale took place; and said county treasurer shall immediately pay the same over to the treasurer of the state, who shall pay the same over to the person entitled thereto, on proof being made of the right of the claimant, in the manner provided for the recovery of money paid into the treasury of the state by executors or administrators of estates where no heirs, devisees or legatees of the estate appear to claim the fund of the estate on the final settlement thereof. (Id.)

Art. 7900. (5378) If no wreck-master, county clerk to act.—In case there shall be no wreck-master in the county in which the cotton is deposited, then it shall be the duty of the clerk of the county court to perform all the duties required of wreck-masters by the two preceding articles, and such clerk shall be entitled to receive the same compensation for his services as is allowed to wreck-masters under this chapter. (Id. sec. 4; P. D. 1033.)

Art. 7901. (5379) Warrant to issue for suspected cotton.—Upon affidavit being made before any justice of the peace that the affiant has good reason to believe, and does believe, that certain cotton within his county has been so found, or having been found without such county has been brought therein, and that reasonable time has elapsed, and that the finder has neglected to comply with the requirements of the foregoing articles, it shall be the duty of such justice of the peace to issue his warrant and cause said cotton, or its proceeds, to be seized by a legal officer and delivered to the wreck-master of said county, to be disposed of according to the provisions of this chapter. (Id. sec. 6; P. D. 1035.)

FINAL TITLE

GENERAL PROVISIONS

Sec. 2. Revised Civil Statutes, how known and cited.—Be it further enacted, that these Revised Civil Statutes of the state of Texas shall be known and may be cited as the "Revised Statutes."

Sec. 3. To be liberally construed.—That the rule of the common law that statutes in derogation thereof shall be strictly construed shall have no application to the Revised Statutes; but the said statutes shall constitute the law of this state respecting the subjects to which they relate; and the provisions thereof shall be liberally construed with a view to effect their objects and to promote justice.

Berry v. Powell, 105 S. W. 345; Texas Cent. R. Co. v. Wheeler, 116 S. W. 83; Taylor v. Iowa Park Gin Co., 199 S. W. 853; Sugg v. Smith, 205 S. W. 363.

Sec. 4. Repealing clause.—That all civil statutes of a general nature, in force when the Revised Statutes take effect, and which are not included herein, or which are not hereby expressly continued in force, are hereby repealed.

Heil v. Martin, 70 S. W. 430; Mayhew v. S., 155 S. W. 191; Fielder v. Houston Oil Co. of Texas, 165 S. W. 48.

Sec. 5. Repeal does not affect, what.—That the repeal of any statute, or any portion thereof, by the preceding section, shall not affect or impair any act done, or right vested or accrued, or any proceeding, suit or prosecution had or commenced in any cause before such repeal shall take effect; but every such act done, or right vested or accrued, or proceeding, suit or prosecution had or commenced shall remain in full force and effect to all intents or purposes as if such statute, or part thereof so repealed, had remained in force, except that where the course of practice or procedure for the enforcement of such right, or the conducting of such proceeding, suit or prosecution shall be changed, the same shall be conducted as near as may be in accordance with the Revised Statutes.

Sec. 6. Same subject.—That no offense committed and no liability, penalty or forfeiture, either civil or criminal, incurred prior to the time when any statute, or part thereof, shall be repealed or altered by the Revised Statutes, shall be discharged or affected by such repeal or alteration; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted and proceeded with in all respects as if such prior statute, or part thereof, had not been repealed or altered, except that where the mode of procedure or matters of practice have been changed by the Revised Statutes the procedure had after the Revised Statutes shall have taken effect in such prosecution or suit shall be, as far as practicable, in accordance with the Revised Statutes.

Sec. 7. Validating and legalizing statutes not repealed.—That no general or special law heretofore enacted validating or legalizing the acts or omissions of any officer, or any law, act or proceeding whatever, shall be affected by the repealing clause of this title; but all such validating or legalizing statutes whatsoever now in force in this state are hereby continued in force, and the same shall be as effectual for all purposes after as before the Revised Statutes go into effect.

Sec. 8. Laws relating to public debt, etc., not repealed.—That no law relating to the public debt or the public credit shall be affected by the repealing clause of this title.

Sec. 9. Laws relating to university and school funds, etc., not repealed.—That no law relating to the university or public school fund, or in relation to the agricultural and mechanical college fund, or the investment of any such funds, or making any reservation in favor of the same, shall be affected or impaired by the repealing

clause of this title, except where altered or amended by the Revised Statutes.

Sec. 10. Laws creating, etc., counties and county seats not repealed.—That no statute, or part of a statute, creating, adding to or organizing any county, or establishing any county seat, in this state shall be affected or impaired by the repealing clause of this title, or by any law relating to the establishment of county boundaries contained in this act. (Acts 1879, chap. 157.)

Sec. 11. Judicial districts, and times of holding district courts.—That the laws now in force organizing the several district and other courts, and prescribing the times for holding the district courts therein, are continued in force.

Phipps v. S., 36 S. W. 753.

Sec. 12. No person, etc., released from any duty, etc.—That nothing in the repealing clause of this title shall be construed as releasing any person or corporation from any duty enjoined in the limitation or condition imposed by any law that may be repealed by the repealing clause of this title.

Sec. 13. Laws as to reservations for actual settlers and public buildings not repealed.—That no law in reference to land reservations, or setting apart portions of such reservations for the benefit of actual settlers, or for the construction or repairing of the public buildings of the state, nor any law establishing or providing for the maintenance of any public institution, shall be affected or impaired by the repealing clause of this title, unless expressly altered or repealed in some of the preceding articles of the Revised Statutes.

Sec. 14. Laws for the payment of unpaid school teachers, etc., and as to public libraries, not repealed.—That no law providing for the payment of unpaid school teachers in the public schools, or giving authority to cities or towns to establish public libraries, or for like purposes, shall be affected or impaired by the repealing clause herein.

Sec. 15. Certain local laws not repealed.—That all laws, civil or criminal, of a local nature operating in particular counties, cities or towns, or of a temporary nature operative when these Statutes go into effect, and all laws of a private nature operating on particular persons or corporations, are not affected by the said repealing clause.

Sec. 16. Shall be construed as continuation of former law, etc.—That the provisions of the Revised Statutes, so far as they are substantially the same as the statutes of this state in force at the time when the Revised Statutes shall go into effect, or of the common law in force in this state at said time, shall be construed as continuations thereof, and not as new enactments of the same.

Sec. 17. Laws of the thirty-second legislature not affected.—That no laws, general or special, enacted by the thirty-second legislature, shall be in any way affected by the repealing clause of this title; but any and all such laws shall continue to be the law of this state, this act of revision to the contrary notwithstanding.

Sec. 18. Revised Statutes not to be printed in pamphlet laws.—That the Revised Statutes shall not be printed in the pamphlet laws of the first session of the thirty-second legislature, but shall be printed, published and distributed at such time and in such manner as may be provided by law.

Sec. 19. When to take effect.—That these Revised Statutes shall take effect and be in force at twelve o'clock, meridian, on the first day of September, Anno Domini, one thousand nine hundred and eleven.

Hartford Fire Ins. Co. v. Walker, 61 S. W. 711; Marston v. Yaites, 66 S. W. 867; Judd v. S., 62 S. W. 543.

Sec. 20. Annotations not part of statute.—It is provided, however, that the annotations printed under the several articles of these Revised Civil Statutes shall not be construed to be any part of said Statutes, but shall be so printed merely for convenience as references.

Sec. 21. Not to affect acts of thirty-third legislature.—Nothing in this act shall be construed or held to repeal or in anywise affect the validity of any law or act passed by this legislature in its regular session.

Sec. 22. Emergency clause.—The importance and great length of this act, the length of time required for its publication, and the near approach of the end of the present session of the legislature, create an imperative public necessity requiring that the constitutional rule which requires that bills be read on three several days in each house should be and the same is hereby suspended.

APPENDIX

I. County Courts.
II. Local Road Laws.
III. Land Laws.
(A) A List of Laws Enacted Since 1873, and Not Included in the Revised Statutes or in Sayles' Early Laws.
(B) Text of Omitted and Repealed Laws Relating to the Public Lands, as the Same Appeared in Sayles' Civ. St. 1897.
IV. Boundaries of Texas.

I. COUNTY COURTS

AN ALPHABETICAL LIST OF COUNTIES WHOSE COURTS ARE ACTING UNDER SPECIAL LAWS

The acts are arranged in chronological order, so that the last act under any county will show the present condition of things. When it is said that an act relating to a county is the same as another, it is not intended that they are literally the same in all cases, but only substantially—in purport and effect. When the jurisdiction is diminished, the act is usually drawn on the plan of those under Angelina, Bexar and Chambers counties; when the jurisdiction is restored, it is done by an act similar to that under Atascosa county—the purport of the act seems to be to restore to the court the jurisdiction of a county court under the constitution and general laws.

The legislature has power, by local or general law, to increase, diminish or change the civil and criminal jurisdiction of county courts; and in cases of any such change of jurisdiction the legislature must also conform the jurisdiction of the other courts to such change. Const., art. 5, § 22.

If an act be regarded as an attempt to change the jurisdiction of a county court, it will be held inoperative if it fails to conform the jurisdiction of the other courts to such change. Erwin v. Blanks, 60 T. 583. The constitutional provision clearly empowers the legislature to take away the jurisdiction of the county court of any particular county, and to confer it upon the district court of such county. The constitutional amendment of 1891 did not restore to county courts the jurisdiction that had been previously taken from them; the provision in question was not changed by the amendment. Muench v. Oppenheimer, 86 T. 568, 26 S. W. 496.

The following are the usual forms of statement by which the jurisdiction of the other courts is conformed to the change:

Where the jurisdiction is diminished—"The district court of said county shall have and exercise jurisdiction in all matters and causes, civil and criminal, over which by the general laws of the state, the county court of said county would have jurisdiction, except as provided in section ——— of this act." Acts 1897, p. 38, § 2.

Where the jurisdiction is restored—"The district court of ——— county shall no longer have jurisdiction in cases in which the county court of said county by the provisions of this act has exclusive original or appellate jurisdiction." Acts 1897, p. 103, § 6.

In some cases, after defining the jurisdiction of the county court, the only provision is as follows: "All causes now pending in the district court of ——— county of which the county court of said county has jurisdiction under the provisions of this act, and all laws giving jurisdiction to the county court, shall be transferred to the county court of said county." Acts 1889, p. 82 (Sayles' Civ. St. Supp. 1894, art. 1172b, § 2); Acts 1893, p. 19 (Sayles' Civ. St. Supp. 1894, p. 916); Acts 1893, p. 12 (Sayles' Civ. St. Supp. 1894, p. 919).

Angelina—*Jurisdiction diminished:* Act Feb. 9, 1881, p. 3 (Sayles' Civ. St. 1889, art. 1172g). See Chambers county.

Restored: Act March 21, 1893, p. 31 (Sayles' Civ. St. Supp. 1894, p. 913). Same as provisions under Atascosa county.

Diminished: Act March 30, 1895, p. 47 (Sayles' Civ. St. 1897, p. 1923).

Restored: Acts 1901, ch. 83, p. 216 (Sayles' Civ. St. Supp. 1904, p. 591).

Armstrong—*Jurisdiction increased:* Acts 1913, p. 60.

Atascosa—*Jurisdiction diminished:* Act March 16, 1883, p. 24 (Sayles' Civ. St. 1889, art. 1172o). Same as the provision under Chambers county.

Restored: Act March 24, 1885, p. 47 (Sayles' Civ. St. 1889, art. 1172t). Same as Act 1897 below.

Diminished: Act May 11, 1893, p. 167 (Sayles' Civ. St. Supp. 1894, art. 1172b). See Angelina county.

Restored: Act April 6, 1897, p. 110 (Sayles' Civ. St. 1897, p. 1923).

Increased: Act March 22, 1915, c. 88, p. 141.

Bailey—*Jurisdiction increased:* Acts 1911, p. 171.

Bandera—*Jurisdiction diminished:* Act Feb. 25, 1881, p. 13 (Sayles' Civ. St. 1889, art. 1172h). See Bexar county.

Restored: Act March 25, 1891, p. 75 (Sayles' Civ. St. Supp. 1894, art. 1172b, § 17). Same as the provision under Atascosa county.

Diminished: Act April 12, 1895, p. 156. Same as the provision under Angelina county.

Bee—*Jurisdiction increased:* Acts 1903, p. 88 (Sayles' Civ. St. Supp. 1904, p. 593).

Bexar—*Jurisdiction diminished:* Act Feb. 25, 1881, p. 13 (Sayles' Civ. St. 1889, art. 1172h; Sayles' Civ. St. 1897, p. 1924).

Restored: Acts 1899, pp. 18, 20; Amend. Acts 1899, p. 191 (Sayles' Civ. St. Supp. 1904, p. 593).

For other special laws relating to this court, see ante, Chapter 4, Title 36, of the Civil Statutes, and post, Code Cr. Proc. arts. 104f–104r.

County court for criminal cases created: Act March 5, 1915, p. 78. See post, Code Cr. Proc. arts. 104f–104r.

Blanco—*Jurisdiction diminished:* Act Feb. 9, 1881, p. 3 (Sayles' Civ. St. 1889, art. 1172g). Same as provisions under Chambers county. Act Feb. 25, 1881, p. 13 (Sayles' Civ. St. 1889, art. 1172h). See Bexar county.

Bosque—*Jurisdiction diminished:* Act March 26, 1881, p. 64 (Sayles' Civ. St. 1889, art. 1172k). See Chambers county.

Civil jurisdiction restored: Act March 15, 1887, p. 22 (Sayles' Civ. St. 1889, art. 1172bb; Sayles' Civ. St. 1897, p. 1925).

Bowie—*Jurisdiction diminished:* Act July 8, 1879, S. S., p. 21 (Sayles' Civ. St. 1889, art. 1172f). Same as provision under Angelina county.

Restored: Act March 30, 1881, p. 74 (Sayles' Civ. St. 1889, art. 1172*l*). Same as the provision under Atascosa county, not including § 7.

Brazoria—*Jurisdiction diminished:* Act March 27, 1879, p. 68 (Sayles' Civ. St. 1889, art. 1172c). Amended. Act Feb. 9, 1881, p. 3 (Sayles' Civ. St. 1889, art. 1172g).

Restored: Act March 30, 1881, p. 74 (Sayles' Civ. St. 1889, art. 1172*l*). Same as provision under Atascosa county, not including § 7.

Brazos—*Jurisdiction diminished:* Act March 26, 1887, p. 55 (Sayles' Civ. St. 1889, art. 1172aa). Criminal and probate jurisdiction.

Civil jurisdiction restored: Act April 3, 1889, p. 82 (Sayles' Civ. St. Supp. 1894, art. 1172b, § 2). Same as the provision under Bosque county.

Jurisdiction diminished: Act March 26, 1917, c. 96, §§ 11–14.

Brewster—*Jurisdiction diminished:* Act Feb. 21, 1891, p. 12 (Sayles' Civ. St. Supp. 1894, art. 1172b, § 9). Same as the provision under Angelina county.

Restored: Acts 1909, p. 6 (Sayles' Civ. St. Supp. 1910, p. 496).

Brown—*Jurisdiction diminished:* Act March 27, 1879, p. 68 (Sayles' Civ. St. 1889, art. 1172c); Act Feb. 9, 1881, p. 3 (Sayles' Civ. St. 1889, art. 1172g). Same as provisions under Chambers county.

Restored: Act March 30, 1881, p. 74 (Sayles' Civ. St. 1889, art. 1172*l*). Same as provision under Atascosa county, not including § 7.

Burnet—*Jurisdiction diminished:* Act Feb. 25, 1881, p. 13 (Sayles' Civ. St. 1889, art. 1172h). Same as provision under Bexar county.

Restored: Act March 24, 1885, p. 47 (Sayles' Civ. St. 1889, art. 1172t). Same as the provisions under Atascosa county, not including § 7.

Callahan—*Jurisdiction diminished:* Act July 8, 1879, S. S., p. 21 (Sayles' Civ. St. 1889, art. 1172f). Same as provisions under Angelina county.

Restored: Act March 30, 1881, p. 74 (Sayles' Civ. St. 1889, art. 1172*l*). Same as the provision under Atascosa county, not including § 7.

Cameron—*Jurisdiction increased:* Acts 1903, p. 88 (Sayles' Civ. St. Supp. 1904, p. 593).

Camp—*Jurisdiction diminished:* Act March 27, 1879, p. 68 (Sayles' Civ. St. 1889, art. 1172c). Amended. Act Feb. 9, 1881, p. 3 (Sayles' Civ. St. 1889, art. 1172g). Same as provisions under Chambers county.

Restored: Act March 30, 1881, p. 74 (Sayles' Civ. St. 1889, art. 1172*l*). Same as provision under Atascosa county, not including § 7.

Diminished: Act March 16, 1883, p. 24 (Sayles' Civ. St. 1889, art. 1172*o*). Same as the provision under Chambers county.

Restored: Act April 26, 1895, p. 91. Same as the provisions under Atascosa county.

Carson—*Jurisdiction diminished:* Act Feb. 21, 1891, p. 12 (Sayles' Civ. St. Supp. 1894, art. 1172b, § 9). Same as the provision under Angelina county.

Restored: Act March 25, 1891, p. 75 (Sayles' Civ. St. Supp. 1894, art. 1172b, § 17). Same as the provisions under Atascosa county.

Diminished: Acts 1899, p. 260.

Restored: Acts 1919, 2d C. S., ch. 17.

Cass—*Jurisdiction diminished:* Act July 8, 1879, S. S., p. 21 (Sayles' Civ. St. 1889, art. 1172f). Same as provisions under Angelina county.

Castro—*Jurisdiction diminished:* Act April 26, 1893, p. 74 (Sayles' Civ. St. Supp. 1894, art. 1172b, § 3). Same as provisions under Angelina county.

Increased: Acts 1911, p. 171.

Restored: Acts 1913, p. 26, ch. 13.

Chambers—*Jurisdiction diminished:* Act March 27, 1879, p. 68 (Sayles' Civ. St. 1889, art. 1172c).

Amendment of act of 1879: Act Feb. 9, 1881, p. 3 (Sayles' Civ. St. 1889, art. 1172g; Sayles' Civ. St. 1897, p. 1926).

Restored: Acts 1905, p. 111 (Sayles' Civ. St. Supp. 1906, p. 567).

Coke—*Jurisdiction diminished:* Act March 25, 1891, p. 73 (Sayles' Civ. St. Supp. 1894, art. 1172b, § 13). See Angelina county.

Restored: Act March 21, 1893, p. 31 (Sayles' Civ. St. Supp. 1894, p. 913). Same as provisions under Atascosa county; also a provision conferring probate jurisdiction. See Delta county.

Restored: Acts 1901, ch. 37, p. 47 (Sayles' Civ. St. Supp. 1904, p. 595).

Coleman—*Jurisdiction diminished:* Act March 27, 1879, p. 68 (Sayles' Civ. St. 1889, art. 1172c). Amended. Act Feb. 9, 1881, p. 3 (Sayles' Civ. St. 1889, art. 1172g). Same as provisions under Chambers county.

Restored: Act March 30, 1881, p. 74 (Sayles' Civ. St. 1889, art. 1172*l*). Same as provision under Atascosa county, not including § 7.

Comal—*Jurisdiction diminished:* Act March 16, 1883, p. 24 (Sayles' Civ. St. 1889, art. 1172*o*). Same as the provision under Chambers county.

Comanche—*Jurisdiction diminished:* Act July 8, 1879, S. S., p. 21 (Sayles' Civ. St. 1889, art. 1172f). Same as provisions under Angelina county.

Restored: Act April 9, 1883, p. 55 (Sayles' Civ. St. 1889, art. 1172p). Same as the provision under Atascosa county, not including § 7.

Concho—*Jurisdiction diminished:* Act March 27, 1879, p. 68 (Sayles' Civ. St. 1889, art. 1172c). Amended. Act Feb. 9, 1881, p. 3 (Sayles' Civ. St. 1889, art. 1172g). Same as provisions under Chambers county.

Restored: Act March 31, 1885, p. 103 (Sayles' Civ. St. 1889, art. 1172x). Similar to the provision under Atascosa county.

Diminished: Act March 26, 1887, p. 54 (Sayles' Civ. St. 1889, art. 1172z). Same as the provision under Chambers county.

Restored: Acts 1909, p. 268 (Sayles' Civ. St. Supp. 1910, p. 498).

Coryell—*Jurisdiction diminished:* Act March 27, 1879, p. 68 (Sayles' Civ. St. 1899, art. 1172c). Amended. Act Feb. 9, 1881, p. 3 (Sayles' Civ. St. 1889, art. 1172g). Same as provisions under Chambers county.

Restored: Act March 27, 1887, p. 47 (Sayles' Civ. St. 1889, art. 1172y). Same as the provision under Atascosa county, not including § 7; also a provision conferring probate jurisdiction. See Delta county.

Crockett—*Jurisdiction diminished:* Act March 27, 1879, p. 68 (Sayles' Civ. St. 1889, art. 1172c). Amended. Act Feb. 9, 1881, p. 3 (Sayles' Civ. St. 1889, art. 1172g). Same as provisions under Chambers county.

Diminished: Acts 1909, p. 351 (Sayles' Civ. St. Supp. 1910, p. 495).

Dallas—Has the general jurisdiction of a county court, civil and criminal, original and appellate, and jurisdiction over misdemeanors is withheld from the criminal district court of Dallas county (see Sayles' Civ. St. 1889, art. 1513a). Act May 3, 1893, p. 116 (Sayles' Civ. St. Supp. 1894, art. 1172b, § 4).

For special laws relating to this court, see ante, Arts. 1786–1798*l*, of the Civil Statutes, and post, Code Cr. Proc. arts. 101a–104e.

Dawson—*Jurisdiction increased:* Act March 22, 1915, c. 88, p. 141.

Deaf Smith—*Jurisdiction increased:* Acts 1911, p. 171.

Delta—*Jurisdiction diminished:* Act April 17, 1893, p. 78 (Sayles' Civ. St. Supp. 1894, art. 1172b, § 5). See Angelina county.

Restored: Act March 12, 1895, p. 32. Same as the provision under Atascosa county, not including § 7.

Dickens—*Jurisdiction increased:* Act March 15, 1915, c. 59, p. 108.

Dimmitt—*Jurisdiction diminished:* Act Feb. 25, 1881, p. 13 (Sayles' Civ. St. 1889, art. 1172h). See Bexar county.

Restored: Act March 24, 1885, p. 47 (Sayles' Civ. St. 1889, art. 1172t). Same as the provisions under Atascosa county.

Diminished: Act Feb. 27, 1893, p. 7 (Sayles' Civ. St. Supp. 1894, art. 1172b, § 5a). Same as the provision under Angelina county.

Restored: Acts 1905, p. 136 (Sayles' Civ. St. Supp. 1906, p. 569).

Donley—*Jurisdiction diminished:* Act March 16, 1883, p. 24 (Sayles' Civ. St. 1889, art. 1172o). Same as the provision under Chambers county.

Restored: Act March 21, 1889, p. 48 (Sayles' Civ. St. Supp. 1894, art. 1172b, § 8; Sayles' Civ. St. 1897, p. 1928).

Duval—*Jurisdiction diminished:* Act Feb. 25, 1881, p. 13 (Sayles' Civ. St. 1889, art. 1172h). See Bexar county.

Restored: Act May 11, 1893, p. 152 (Sayles' Civ. St. Supp. 1894, art. 1172b, § 6). Same as the provisions under Atascosa county.

Diminished: Acts 1899, p. 2 (Sayles' Civ. St. Supp. 1904, p. 588).

Eastland—*Jurisdiction diminished:* Act July 8, 1879, S. S., p. 21 (Sayles' Civ. St. 1889, art. 1172f). Same as provisions under Angelina county.

Restored: Act March 30, 1881, p. 74 (Sayles' Civ. St. 1889, art. 1172*l*). Same as the provision under Atascosa county, not including § 7.

Edwards—*Jurisdiction diminished:* Act Feb. 21, 1891, p. 12 (Sayles' Civ. St. Supp. 1894, art. 1172b, § 9). Same as the provision under Angelina county.

Restored: Acts 1903, p. 64 (Sayles' Civ. St. Supp. 1904, p. 596).

Diminished: Acts 1909, p. 351 (Sayles' Civ. St. Supp. 1910, p. 495).

El Paso—*Jurisdiction diminished:* Act March 27, 1879, p. 68 (Sayles' Civ. St. 1889, art. 1172c). Amended. Act Feb. 9, 1881, p. 3 (Sayles' Civ. St. 1889, art. 1172g). Same as provisions under Chambers county.

Restored: Act April 9, 1883, p. 55 (Sayles' Civ. St. 1889, art. 1172p). Same as the provisions under Atascosa county, not including § 7.

For other special laws relating to this court, see ante, arts. 1811—133 to 1811—145, Civil Statutes.

Erath—*Jurisdiction diminished:* Act July 8, 1879, S. S., p. 21 (Sayles' Civ. St. 1889, art. 1172f). Same as provisions under Angelina county.

Restored: Act March 31, 1885, p. 103 (Sayles' Civ. St. 1889, art. 1172x). Substantially the same as the provisions under Atascosa county, not including § 7. The act also confers probate jurisdiction.

Falls—*Jurisdiction diminished:* Act March 20, 1917, c. 89, p. 243.

Franklin—*Jurisdiction diminished:* Act March 27, 1879, p. 68 (Sayles' Civ. St. 1889, art. 1172c). Amended. Act Feb. 9, 1881, p. 3 (Sayles' Civ. St. 1889, art. 1172g). Same as provisions under Chambers county.

Restored: Acts 1905, p. 12 (Sayles' Civ. St. Supp. 1906, p. 571).

Frio—*Jurisdiction diminished:* Act Feb. 25, 1881, p. 3 (Sayles' Civ. St. 1889, art. 1172h). See Bexar county.

Restored: Acts 1907, p. 40 (Sayles' Civ. St. Supp. 1908, p. 463).

Gaines—*Jurisdiction increased:* Act March 22, 1915, c. 88, p. 141.

Garza—*Jurisdiction increased:* Act March 22, 1915, c. 88, p. 141.

Gillespie—*Jurisdiction diminished:* Act Feb. 25, 1881, p. 13 (Sayles' Civ. St. 1889, art. 1172h). See Bexar county.

Goliad—*Civil jurisdiction increased:* Act April 15, 1895, p. 57 (Sayles' Civ. St. 1897, art. 1929).

Gray—*Jurisdiction diminished:* Acts 1905, p. 3 (Sayles' Civ. St. Supp. 1906, p. 565).

Restored: Acts 1907, p. 125 (Sayles' Civ. St. Supp. 1908, p. 464.)

Greer—*Jurisdiction diminished:* Act March 26, 1887, p. 54 (Sayles' Civ. St. 1889, art. 1172z). Same as the provision under Chambers county.

Restored: Act March 21, 1889, p. 48 (Sayles' Civ. St. Supp. 1894, art. 1172b, § 8). See Donley county.

Gregg—*Jurisdiction diminished:* Act May 11, 1893, p. 161 (Sayles' Civ. St. Supp. 1894, art. 1172b, § 7). See Angelina county.

Restored: Act Feb. 15, 1895, p. 6. Same as the provisions under Atascosa county, with a provision conferring probate jurisdiction. See Delta county.

Grimes—*Jurisdiction diminished:* Act March 15, 1881, p. 33 (Sayles' Civ. St. 1889, art. 1172j). See Angelina county.

Restored: Act Feb. 10, 1885, p. 11 (Sayles' Civ. St. 1889, art. 1172s). Substantially the

same as the provision under Atascosa county, not including § 7.

Hamilton—*Jurisdiction diminished:* Act March 27, 1879, p. 68 (Sayles' Civ. St. 1889, art. 1172c). Amended. Act Feb. 9, 1881, p. 3 (Sayles' Civ. St. 1889, art. 1172g). Same as provisions under Chambers county.

Restored: Act March 13, 1893, p. 22 (Sayles' Civ. St. Supp. 1894, p. 917). Same as the provision under Atascosa county, not including § 7; also a provision conferring probate jurisdiction. See Delta county.

Hansford—*Jurisdiction diminished:* Act Feb. 21, 1891, p. 12 (Sayles' Civ. St. Supp. 1894, art. 1172b, § 9). Same as the provision under Angelina county.

Restored: Act Feb. 13, 1917, c. 19, p. 31.

Hardin—*Jurisdiction diminished:* Act March 27, 1879, p. 68 (Sayles' Civ. St. 1889, art. 1172c). Amended. Act Feb. 9, 1881, p. 3 (Sayles' Civ. St. 1889, art. 1172g). Same as provisions under Chambers county.

Restored: Act March 20, 1897, p. 28. Same as the provision under Atascosa county.

Harris—For special laws relating to this court, see ante, Chapter 7, Title 36, of the Civil Statutes, and post, Code Cr. Proc. arts. 104s–104yy.

Harrison—*Jurisdiction diminished:* Acts 1911, p. 95.

Restored: Acts 1913, p. 103.

Hartley—*Jurisdiction diminished:* Act April 26, 1893, p. 74 (Sayles' Civ. St. Supp. 1894, art. 1172b, § 3). Same as provisions under Angelina county.

Restored: Acts 1903, p. 64 (Sayles' Civ. St. Supp. 1904, p. 596).

Haskell—*Jurisdiction increased:* Acts 1919, ch. 33.

Hemphill—*Jurisdiction diminished:* Act March 25, 1891, p. 73 (Sayles' Civ. St. Supp. 1894, art. 1172b, § 13). Same as the provision under Angelina county.

Jurisdiction increased: Act March 22, 1915, c. 125, p. 192.

Henderson—*Jurisdiction diminished:* Act Feb. 25, 1881, p. 13 (Sayles' Civ. St. 1889, art. 1172h). See Bexar county.

Criminal jurisdiction restored: Act Feb. 3, 1883, p. 14 (Sayles' Civ. St. 1889, art. 1172n). All the criminal jurisdiction which the court had under the constitution and laws prior to the enactment of the preceding law is restored.

Civil jurisdiction restored: Acts 1909, p. 80 (Sayles' Civ. St. Supp. 1910, p. 500).

Hidalgo—*Jurisdiction diminished:* Act Feb. 25, 1881, p. 13 (Sayles' Civ. St. 1889, art. 1172h). See Bexar county.

Restored: Act April 9, 1883, p. 55 (Sayles' Civ. St. 1889, art. 1172p). Same as the provisions under Atascosa county, not including § 7.

Restored: Acts 1903, p. 88 (Sayles' Civ. St. Supp. 1904, p. 593).

Houston—*Jurisdiction diminished:* Act March 16, 1883, p. 24 (Sayles' Civ. St. 1889, art. 1172o). Same as the provision under Chambers county.

Restored: Act April 13, 1883, p. 84 (Sayles' Civ. St. 1889, art. 1172q). Act of March 16, 1883, repealed, so far as it relates to this county.

Hutchinson—*Jurisdiction diminished:* Acts 1905, p. 8 (Sayles' Civ. St. Supp. 1906, p. 566).

Irion—*Jurisdiction diminished:* Act Feb. 21, 1891, p. 12 (Sayles' Civ. St. Supp. 1894, art. 1172b, § 9). Same as the provision under Angelina county.

Restored: Acts 1907, p. 170 (Sayles' Civ. St. Supp. 1908, p. 465).

Jurisdiction diminished: Act March 22, 1915, c. 87, p. 139; Act March 23, 1915, c. 115, p. 172.

Jasper—*Jurisdiction diminished:* Act March 27, 1879, p. 68 (Sayles' Civ. St. 1889, art. 1172c). Amended. Act Feb. 9, 1881, p. 3 (Sayles' Civ. St. 1889, art. 1172g). Same as provisions under Chambers county.

Restored: Acts 1911, p. 11.

Jefferson—*Jurisdiction diminished:* Act March 27, 1879, p. 68 (Sayles' Civ. St. 1889, art. 1172c). Amended. Act Feb. 9, 1881, p. 3; Sayles' Civ. St. 1889, art. 1172g. Same as provisions under Chambers county.

Restored: Act March 26, 1897, p. 81. Same as the provision under Atascosa county; also a provision conferring probate jurisdiction. See Delta county.

For other special laws relating to this court, see ante, Arts. 1811—119 to 1811—132, Civil Statutes, and post, Code Cr. Proc. arts. 104yyy–104zzz.

Karnes—*Jurisdiction diminished:* Act March 15, 1881, p. 33 (Sayles' Civ. St. 1889, art. 1172j). See Angelina county.

Restored: Act March 27, 1887, p. 47 (Sayles' Civ. St. 1889, art. 1172y). Same as provisions under Atascosa county, not including § 7; also a provision conferring probate jurisdiction. See Delta county.

Restored: Acts 1903, p. 20 (Sayles' Civ. St. Supp. 1904, p. 597).

Kendall—*Jurisdiction diminished:* Act Feb. 25, 1881, p. 13 (Sayles' Civ. St. 1889, art. 1172h). See Bexar county.

Restored: Act March 27, 1887, p. 47 (Sayles' Civ. St. 1889, art. 1172y). Same as provisions under Atascosa county, not including § 7; also a provision conferring probate jurisdiction. See Delta county.

Diminished: Acts 1911, p. 30.

Jurisdiction restored: Act June 4, 1915, 1st C. S., c. 27, p. 55.

Kerr—*Jurisdiction diminished:* Act March 16, 1883, p. 24 (Sayles' Civ. St. 1889, art. 1172o). Same as the provision under Chambers county.

Jurisdiction restored: Act March 28, 1917, c. 107, p. 296.

Kimble—*Jurisdiction diminished:* Act Feb. 25, 1881, p. 13 (Sayles' Civ. St. 1889, art. 1172h). See Bexar county.

Restored: Acts 1901, ch. 37, p. 47 (Sayles' Civ. St. Supp. 1904, p. 595).

Diminished: Acts 1903, p. 86 (Sayles' Civ. St. Supp. 1904, p. 588).

King—*Jurisdiction diminished:* Act April 27, 1897, p. 155. Same as the provision under Angelina county.

Restored: Acts 1903, p. 64 (Sayles' Civ. St. Supp. 1904, p. 596).

Lamb—*Jurisdiction increased:* Acts 1911, p. 171.

Lampasas—*Jurisdiction diminished:* Act Feb. 25, 1881, p. 13 (Sayles' Civ. St. 1889, art. 1172h). See Bexar county.

Restored: Act May 7, 1897, p. 181. Same as the provision under Atascosa county; also a provision conferring probate jurisdiction. See Delta county.

La Salle—*Jurisdiction diminished:* Act Feb. 25, 1881, p. 13 (Sayles' Civ. St. 1889, art. 1172h). See Bexar county.

Restored: Act March 27, 1887, p. 47 (Sayles' Civ. St. 1889, art. 1172y). Same as provisions under Atascosa county, not including § 7.

Diminished: Act March 27, 1889, p. 109 (Sayles' Civ. St. Supp. 1894, art. 1172b, § 10). Same as the provision under Chambers county.

Leon—*Jurisdiction diminished:* Act Feb. 6, 1879, p. 5 (Sayles' Civ. St. 1889, art. 1172b). See Angelina county.

Restored: Act March 24, 1885, p. 47 (Sayles' Civ. St. 1889, art. 1172t). Same as the provision under Atascosa county.

Jurisdiction diminished: Act April 8, 1893, p. 54 (Sayles' Civ. St. Supp. 1894, art. 1172b, § 11). See Angelina county.

Restored: Act April 3, 1897, p. 103. Same as the provisions under Atascosa county, not including § 7; also a provision conferring probate jurisdiction. See Delta county.

Liberty—*Jurisdiction diminished:* Act March 27, 1879, p. 68 (Sayles' Civ. St. 1889, art. 1172c). Amended. Act Feb. 9, 1881, p. 3 (Sayles' Civ. St. 1889, art. 1172g). Same as provisions under Chambers county.

Restored: Act April 15, 1895, p. 55. Same as the provision under Atascosa county, not including § 7; also a provision conferring probate jurisdiction. See Delta county.

Lipscomb—*Jurisdiction diminished:* Act Feb. 21, 1891, p. 12 (Sayles' Civ. St. Supp. 1894, art. 1172b, § 9). Same as the provision under Angelina county.

Restored: Acts 1907, p. 28 (Sayles' Civ. St. Supp. 1908, p. 467).

Live Oak—*Jurisdiction diminished:* Act March 16, 1883, p. 24 (Sayles' Civ. St. 1889, art. 1172o). Same as the provision under Chambers county.

Restored: Act March 27, 1887, p. 47 (Sayles' Civ. St. 1889, art. 1172y). Same as the provision under Atascosa county, not including § 7; also a provision conferring probate jurisdiction. See Delta county.

Llano—*Jurisdiction diminished:* Act March 27, 1879, p. 68 (Sayles' Civ. St. 1889, art. 1172c). Amended. Act Feb. 9, 1881, p. 3 (Sayles' Civ. St. 1889, art. 1172g). Same as provisions under Chambers county.

Restored: Act March 24, 1885, p. 47 (Sayles' Civ. St. 1889, art. 1172t). Same as provisions under Atascosa county. Act March 30, 1885, p. 69 (Sayles' Civ. St. 1889, art. 1172v). Same as the provisions under Atascosa county, not including § 7; also a provision conferring probate jurisdiction. See Delta county.

Lubbock—*Jurisdiction increased:* Acts 1911, p. 171.

Lynn—*Jurisdiction increased:* Act March 22, 1915, c. 88, p. 141.

McCulloch—*Jurisdiction diminished:* Act March 27, 1879, p. 68 (Sayles' Civ. St. 1889, art. 1172c). Amended. Act Feb. 9, 1881, p. 3 (Sayles' Civ. St. 1889, art. 1172g). Same as provisions under Chambers county.

Restored: Act April 13, 1891, p. 93 (Sayles' Civ. St. Supp. 1894, art. 1172b, § 12); Act April 3, 1891, p. 132 (Sayles' Civ. St. Supp. 1894, art. 1172b, § 12a). See Atascosa county.

Jurisdiction diminished: Act March 24, 1893, p. 35 (Sayles' Civ. St. Supp. 1894, art. 1172b, § 13). Same as the provision under Angelina county.

Restored: Acts 1901, ch. 82, p. 216 (Sayles' Civ. St. Supp. 1904, p. 600).

McMullen—*Jurisdiction diminished:* Act Feb. 25, 1881, p. 13 (Sayles' Civ. St. 1889, art. 1172h). See Bexar county.

Restored: Act March 13, 1893, p. 19 (Sayles' Civ. St. Supp. 1894, p. 916). Act of 1881 repealed.

Jurisdiction increased: Act March 22, 1915, c. 88, p. 141.

Marion—*Jurisdiction diminished:* Act March 27, 1879, p. 68 (Sayles' Civ. St. 1889, art. 1172c). Amended. Act Feb. 9, 1881, p. 3 (Sayles' Civ. St. 1889, art. 1172g). Same as provisions under Chambers county.

Civil jurisdiction restored: Act March 9, 1893, p. 18 (Sayles' Civ. St. Supp. 1894, p. 914). Same as provisions under Atascosa county, but by the title it purports to restore only civil jurisdiction.

Diminished: Act March 11, 1897, p. 38. Same as the provision under Angelina county.

Mason—*Jurisdiction diminished:* Act March 16, 1883, p. 24 (Sayles' Civ. St. 1889, art. 1172o). Same as Chambers county.

Restored: Act March 30, 1885, p. 69 (Sayles' Civ. St. 1889, art. 1172v). See Atascosa county.

Diminished: Act March 26, 1887, p. 54 (Sayles' Civ. St. 1889, art. 1172z). Same as the provision under Chambers county.

Matagorda—*Jurisdiction diminished:* Act March 27, 1879, p. 68 (Sayles' Civ. St. 1889, art. 1172c). Amended. Act Feb. 9, 1881, p. 3 (Sayles' Civ. St. 1889, art. 1172g). Same as provisions under Chambers county.

Restored: Act March 30, 1881, p. 74 (Sayles' Civ. St. 1889, art. 1172l). Same as provisions under Atascosa county, not including § 7.

Diminished: Act March 16, 1883, p. 24 (Sayles' Civ. St. 1889, art. 1172o). Same as the provision under Chambers county.

Restored: Acts 1903, p. 5 (Sayles' Civ. St. Supp. 1904, p. 598).

Medina—*Jurisdiction diminished:* Act Feb. 25, 1881, p. 13 (Sayles' Civ. St. 1889, art. 1172h). See Bexar county.

Restored: Act April 15, 1895, p. 55. Same as provision under Atascosa county, not including § 7; also a provision conferring probate jurisdiction. See Delta county.

Menard—*Jurisdiction diminished:* Act March 25, 1891, p. 73 (Sayles' Civ. St. Supp. 1894, art. 1272b, § 13). See Angelina county.

Restored: Act April 6, 1897, p. 110. See Atascosa county.

Diminished: Acts 1919, 2d C. S., ch. 15.

Mills—*Jurisdiction diminished:* Act March 27, 1889, p. 109 (Sayles' Civ. St. Supp. 1894, art. 1172b, § 10). Same as the provision under Chambers county.

Restored: Acts 1907, p. 199 (Sayles' Civ. St. Supp. 1908, p. 468).

Mitchell—*Jurisdiction increased:* Acts 1919, ch. 11.

Montgomery—*Jurisdiction diminished:* Act March 15, 1881, p. 33 (Sayles' Civ. St. 1889, art. 1172j). See Angelina county.

Restored: Act March 24, 1885, p. 47 (Sayles' Civ. St. 1889, art. 1172t). Same as

the provisions under Atascosa county, not including § 7.

Morris—*Jurisdiction diminished:* Act March 27, 1879, p. 68 (Sayles' Civ. St. 1889, art. 1172c). Amended. Act Feb. 9, 1881, p. 3 (Sayles' Civ. St. 1889, art. 1172g). Same as provisions under Chambers county.

Restored: Act March 30, 1881, p. 74 (Sayles' Civ. St. 1889, art. 1172*l*). See Atascosa county.

Diminished: Act Feb. 9, 1883, p. 6 (Sayles' Civ. St. 1889, art. 1172m). Has criminal and probate jurisdiction.

Nacogdoches—*Jurisdiction diminished:* Act March 27, 1879, p. 68 (Sayles' Civ. St. 1889, art. 1172c). Amended. Act Feb. 9, 1881, p. 3 (Sayles' Civ. St. 1889, art. 1172g). Same as provisions under Chambers county.

Restored: Act Feb. 16, 1891, p. 6 (Sayles' Civ. St. Supp. 1894, art. 1172b, § 14). Amended. Act March 10, 1891, p. 24 (Sayles' Civ. St. Supp. 1894, art. 1172b, § 14a). Same as provisions under Atascosa county.

Navarro—*Jurisdiction diminished:* Act July 2, 1879, S. S., p. 7 (Sayles' Civ. St. 1889, art. 1172e). Criminal and probate jurisdiction.

Restored: Act March 12, 1881, p. 28 (Sayles' Civ. St. 1889, art. 1172i). Act of 1879 repealed, and civil and criminal jurisdiction restored.

Newton—*Jurisdiction diminished:* Act March 27, 1879, p. 68 (Sayles' Civ. St. 1889, art. 1172c). Amended. Act Feb. 9, 1881, p. 3 (Sayles' Civ. St. 1889, art. 1172g). Same as provisions under Chambers county.

Restored: Acts 1905, p. 312 (Sayles' Civ. St. Supp. 1906, p. 573).

Nueces—*Jurisdiction diminished:* Act Feb. 25, 1881, p. 13 (Sayles' Civ. St. 1889, art. 1172h). See Bexar county.

Restored: Act March 13, 1893, p. 19 (Sayles' Civ. St. Supp. 1894, p. 916). Act of 1881 repealed.

Ochiltree—*Jurisdiction diminished:* Act Feb. 21, 1891, p. 12 (Sayles' Civ. St. Supp. 1894, art. 1172b, § 9). Same as the provision under Angelina county.

Restored: Acts 1909, p. 115 (Sayles' Civ. St. Supp. 1910, p. 501).

Oldham—*Jurisdiction diminished:* Act Feb. 25, 1881, p. 13 (Sayles' Civ. St. 1889, art. 1172h). See Bexar county.

Restored: Acts 1911, p. 122.

Orange—*Jurisdiction diminished:* Act March 27, 1879, p. 68 (Sayles' Civ. St. 1889, art. 1172c). Amended. Act Feb. 9, 1881, p. 3 (Sayles' Civ. St. 1889, art. 1172g). Same as provisions under Chambers county.

Civil jurisdiction restored: Act March 31, 1885, p. 94 (Sayles' Civ. St. 1889, art. 1172w). The civil jurisdiction prior to the act of 1879 restored.

Jurisdiction diminished: Act March 26, 1887, p. 54 (Sayles' Civ. St. 1889, art. 1172z). Same as the provision under Chambers county.

Criminal jurisdiction restored: Act March 31, 1897, p. 92. The ordinary provision conferring criminal jurisdiction. See Atascosa county, §§ 4, 5.

Civil jurisdiction restored: Acts 1903, p. 41 (Sayles' Civ. St. Supp. 1898–1904, p. 600).

Palo Pinto—*Jurisdiction diminished:* Act July 8, 1879, S. S., p. 21 (Sayles' Civ. St. 1889, art. 1172f). Same as provisions under Angelina county.

Restored: Act March 30, 1881, p. 74 (Sayles' Civ. St. 1889, art. 1172*l*). Same as the provision under Atascosa county, not including § 7.

Panola—*Jurisdiction diminished:* Act July 8, 1879, S. S., p. 21 (Sayles' Civ. St. 1889, art. 1172f). Same as provisions under Angelina county.

Restored: Act March 27, 1887, p. 47 (Sayles' Civ. St. 1889, art. 1172y). Same as provisions under Atascosa county, not including § 7; also a provision conferring probate jurisdiction. See Delta county.

Parker—*Jurisdiction diminished:* Act Feb. 25, 1881, p. 13 (Sayles' Civ. St. 1889, art. 1172h). See Bexar county.

Restored: Act Feb. 3, 1883, p. 14 (Sayles' Civ. St. 1889, art. 1172n). Act of 1881 repealed, so far as it relates to this county. Civil and criminal jurisdiction restored.

Parmer—*Jurisdiction increased:* Acts 1911, p. 171.

Pecos—*Jurisdiction diminished:* Act March 27, 1879, p. 68 (Sayles' Civ. St. 1889, art. 1172c). Amended. Act Feb. 9, 1881, p. 3 (Sayles' Civ. St. 1889, art. 1172g). Same as provisions under Chambers county.

Restored: Act April 9, 1883, p. 55 (Sayles' Civ. St. 1889, art. 1172p). Same as the provision under Atascosa county, not including § 7.

Polk—*Jurisdiction diminished:* Act March 27, 1879, p. 68 (Sayles' Civ. St. 1889, art. 1172c). Amended. Act Feb. 9, 1881, p. 3 (Sayles' Civ. St. 1889, art. 1172g). Same as provisions under Chambers county.

Restored: Acts 1903, p. 46 (Sayles' Civ. St. Supp. 1904, p. 601).

Presidio—*Jurisdiction diminished:* Act March 27, 1879, p. 68 (Sayles' Civ. St. 1889, art. 1172c). Amended. Act Feb. 9, 1881, p. 3 (Sayles' Civ. St. 1889, art. 1172g). Same as provisions under Chambers county.

Restored: Act April 9, 1883, p. 55 (Sayles' Civ. St. 1889, art. 1172p). Same as the provisions under Atascosa county, not including § 7.

Randall—*Jurisdiction increased:* Acts 1911, p. 171.

Real—*Jurisdiction diminished:* Act March 1, 1917, c. 53, p. 92.

Red River—*Jurisdiction diminished:* Act July 8, 1879, S. S., p. 21 (Sayles' Civ. St. 1889, art. 1172f). Same as provisions under Angelina county.

Restored: Act Feb. 3, 1883, p. 14 (Sayles' Civ. St. 1889, art. 1172n). The act of 1879 repealed, so far as it relates to this county. Civil and criminal jurisdiction restored.

Roberts—*Jurisdiction diminished:* Act Feb. 21, 1891, p. 12 (Sayles' Civ. St. Supp. 1894, art. 1172b, § 9). Same as the provision under Angelina county.

Restored: Acts 1905, p. 111 (Sayles' Civ. St. Supp. 1906, p. 567).

Robertson—*Jurisdiction diminished:* Act March 26, 1917, c. 96, §§ 15–18.

Sabine—*Jurisdiction diminished:* Act March 27, 1879, p. 68 (Sayles' Civ. St. 1889, art. 1172c). Amended. Act Feb. 9, 1881, p. 3 (Sayles' Civ. St. 1889, art. 1172g). Same as provisions under Chambers county.

Restored: Acts 1905, p. 146 (Sayles' Civ. St. Supp. 1906, p. 574).

San Augustine—*Jurisdiction diminished:* Act March 27, 1879, p. 68 (Sayles' Civ. St.

1889, art. 1172c). Amended. Act Feb. 9, 1881, p. 3 (Sayles' Civ. St. 1889, art. 1172g). Same as provisions under Chambers county.

Restored: Acts 1909, p. 71 (Sayles' Civ. St. Supp. 1910, p. 503).

San Jacinto—*Jurisdiction diminished:* Act March 27, 1879, p. 68 (Sayles' Civ. St. 1889, art. 1172c). Amended. Act Feb. 9, 1881, p. 3 (Sayles' Civ. St. 1889, art. 1172g). Same as provisions under Chambers county.

Restored: Acts 1907, p. 56 (Sayles' Civ. St. Supp. 1908, p. 469).

San Patricio—*Jurisdiction diminished:* Act March 26, 1881, p. 64 (Sayles' Civ. St. 1889, art. 1172k). Same as Chambers county.

Diminished: Act March 16, 1883, p. 24 (Sayles' Civ. St. 1889, art. 1172o). Same as the provision under Chambers county.

Restored: Act March 13, 1893, p. 19 (Sayles' Civ. St. Supp. 1894, p. 916). Act of 1881 repealed.

Restored: Act April 28, 1893, p. 85 (Sayles' Civ. St. Supp. 1894, art. 1172b, § 15). Same as the provision under Atascosa county; also a provision conferring probate jurisdiction. See Delta county.

San Saba—*Jurisdiction diminished:* Act March 27, 1879, p. 68 (Sayles' Civ. St. 1889, art. 1172c). Amended. Act Feb. 9, 1881, p. 3 (Sayles' Civ. St. 1889, art. 1172g). Same as provisions under Chambers county.

Restored: Act April 13, 1897, p. 120. Same as the provision under Atascosa county, not including § 7; also a provision conferring probate jurisdiction. See Delta county.

Restored: Acts 1903, p. 51 (Sayles' Civ. St. Supp. 1904, p. 603).

Schleicher—*Jurisdiction diminished:* Act March 1, 1915, c. 32, p. 57.

Scurry—*Jurisdiction increased:* Acts 1919, 2d C. S., ch. 13.

Shelby—*Jurisdiction diminished:* Act March 27, 1879, p. 68 (Sayles' Civ. St. 1889, art. 1172c). Amended. Act Feb. 9, 1881, p. 3 (Sayles' Civ. St. 1889, art. 1172g). Same as provisions under Chambers county.

Restored: Act March 21, 1893, p. 31 (Sayles' Civ. St. Supp. 1894, p. 913). Same as provisions under Atascosa county; also a provision conferring probate jurisdiction. See Delta county.

Diminished: Acts 1899, p. 82 (Sayles' Civ. St. Supp. 1904, p. 589).

Restored: Acts 1909, p. 14 (Sayles' Civ. St. Supp. 1910, p. 505).

Starr—*Jurisdiction diminished:* Act Feb. 25, 1881, p. 13 (Sayles' Civ. St. 1889, art. 1172h). See Bexar county.

Restored: Act Feb. 3, 1883, p. 14 (Sayles' Civ. St. 1889, art. 1172n). The act of 1881 repealed so far as it relates to this county. Civil and criminal jurisdiction restored.

Restored: Acts 1903, p. 88 (Sayles' Civ. St. Supp. 1904, p. 593).

Stephens—*Jurisdiction diminished:* Act July 8, 1879, S. S., p. 21 (Sayles' Civ. St. 1889, art. 1172f). Same as provisions under Angelina county.

Restored: Act March 30, 1881, p. 74 (Sayles' Civ. St. 1889, art. 1172*l*). Same as the provision under Atascosa county, not including § 7.

Sterling—*Jurisdiction diminished:* Act March 1, 1915, c. 31, p. 56; Act March 23, 1915, c. 116, p. 174.

Stonewall—*Jurisdiction diminished:* Act April 27, 1897, p. 155. Same as the provision under Angelina county.

Restored: Acts 1901, ch. 7, p. 5 (Sayles' Civ. St. Supp. 1904, p. 604).

Increased: Acts 1913, p. 86.

Sutton—*Jurisdiction diminished:* Acts 1903, p. 30 (Sayles' Civ. St. Supp. 1904, p. 589).

Tarrant—For special laws relating to this court, see Chapter 2, Title 36, of Vernon's Sayles' Civ. St.

Taylor—*Jurisdiction diminished:* Act July 8, 1879, S. S., p. 21 (Sayles' Civ. St. 1889, art. 1172f). Same as provisions under Angelina county.

Restored: Act March 30, 1881, p. 74 (Sayles' Civ. St. 1889, art. 1172*l*). Same as the provisions under Atascosa county, not including § 7.

Terry—*Jurisdiction increased:* Act March 22, 1915, c. 88, p. 141.

Throckmorton—*Jurisdiction diminished:* Act July 8, 1879, S. S., p. 21 (Sayles' Civ. St. 1889, art. 1172f). Same as provisions under Angelina county.

Restored: Act March 27, 1887, p. 47 (Sayles' Civ. St. 1889, art. 1172y). Same as provisions under Atascosa county, not including § 7; also a provision conferring probate jurisdiction. See Delta county.

Titus—*Jurisdiction diminished:* Act March 27, 1879, p. 68 (Sayles' Civ. St. 1889, art. 1172c). Amended. Act Feb. 9, 1881, p. 3 (Sayles' Civ. St. 1889, art. 1172g). Same as provisions under Chambers county.

Restored: Act April 13, 1883, p. 91 (Sayles' Civ. St. 1889, art. 1172r). See Atascosa county, §§ 4, 5.

Restored: Acts 1901, ch. 78, p. 201 (Sayles' Civ. St. Supp. 1904, p. 606).

Civil jurisdiction restored: Acts 1905, p. 56 (Sayles' Civ. St. Supp. 1906, p. 576).

Tom Green—*Jurisdiction diminished:* Act March 27, 1879, p. 68 (Sayles' Civ. St. 1889, art. 1172c). Amended. Act Feb. 9, 1881, p. 3 (Sayles' Civ. St. 1889, art. 1172g). Same as provisions under Chambers county.

Restored: Act April 9, 1883, p. 55 (Sayles' Civ. St. 1889, art. 1172p). Same as the provisions under Atascosa county, not including § 7.

Travis—*Civil jurisdiction diminished:* Act April 3, 1889, p. 139 (Sayles' Civ. St. Supp. 1894, art. 1172b, § 16). Criminal and probate jurisdiction.

Restored: Act March 25, 1891, p. 75 (Sayles' Civ. St. Supp. 1894, art. 1172b, § 17). Same as the provision under Atascosa county.

Trinity—*Jurisdiction diminished:* Act March 27, 1879, p. 68 (Sayles' Civ. St. 1889, art. 1172c). Act April 5, 1879, p. 77 (Sayles' Civ. St. 1889, art. 1172d). Amendment of act of March 27, 1879. Act Feb. 9, 1881, p. 3 (Sayles' Civ. St. 1889, art. 1172g). Same as provisions under Chambers county.

Restored: Acts 1905, p. 5 (Sayles' Civ. St. Supp. 1906, p. 578).

Tyler—*Jurisdiction diminished:* Act July 24, 1879, p. 68 (Sayles' Civ. St. 1889, art. 1172c). Amended. Act Feb. 9, 1881, p. 3 (Sayles' Civ. St. 1889, art. 1172g). Same as provisions under Chambers county.

Restored: Act March 31, 1885, p. 103 (Sayles' Civ. St. 1889, art. 1172x). Similar to the provisions under Atascosa county.

Diminished: Act March 26, 1887, p. 54 (Sayles' Civ. St. 1889, art. 1172z). Same as the provisions under Chambers county.

Restored: Act March 8, 1893, p. 12 (Sayles' Civ. St. Supp. 1894, p. 919). Same as provisions under Atascosa county, not including § 7.

Uvalde—*Jurisdiction diminished:* Act Feb. 25, 1881, p. 13 (Sayles' Civ. St. 1889, art. 1172h). See Bexar county.

Restored: Act Feb. 3, 1883, p. 14 (Sayles' Civ. St. 1889, art. 1172n). The act of 1881 repealed, so far as it relates to this county. Civil and criminal jurisdiction restored.

Webb—*Jurisdiction diminished:* Act Feb. 11, 1893, p. 5 (Sayles' Civ. St. Supp. 1894, art. 1172b, § 18). Same as the provision under Angelina county.

Wharton—*Jurisdiction diminished:* Act Feb. 25, 1881, p. 13 (Sayles' Civ. St. 1889, art. 1172h). See Bexar county.

Restored: Act March 13, 1893, p. 22 (Sayles' Civ. St. Supp. 1894, p. 917). Same as the provision under Atascosa county, not including § 7; also a provision conferring probate jurisdiction. See Delta county.

Wheeler—*Jurisdiction diminished:* Act Feb. 25, 1881, p. 13 (Sayles' Civ. St. 1889, art. 1172h). See Bexar county.

Restored: Acts 1911, p. 130.

Jurisdiction increased: Act March 22, 1915, c. 125, p. 192.

Wilson—*Jurisdiction diminished:* Act March 16, 1883, p. 24 (Sayles' Civ. St. 1889, art. 1172o). Same as the provision under Chambers county.

Restored: Act March 16, 1889, p. 41 (Sayles' Civ. St. 1889, art. 1172b, § 19). Same as the provision under Atascosa county, not including § 7; also a provision conferring probate jurisdiction. See Delta county.

Yoakum—*Jurisdiction increased:* Act March 22, 1915, c. 88, p. 141.

Young—*Jurisdiction diminished:* Act March 16, 1883, p. 24 (Sayles' Civ. St. 1889, art. 1172o). Same as the provision under Chambers county.

Restored: Act March 24, 1885, p. 47 (Sayles' Civ. St. 1889, art. 1172t). Same as the provisions under Atascosa county, not including § 7.

Zapata—*Jurisdiction diminished:* Act Feb. 25, 1881, p. 13 (Sayles' Civ. St. 1889, art. 1172h). See Bexar county.

Criminal jurisdiction restored: Act March 28, 1885, p. 60 (Sayles' Civ. St. 1889, art. 1172u; Sayles' Civ. St. 1897, p. 1937).

Diminished: Acts 1903, p. 19 (Sayles' Civ. St. Supp. 1904, p. 590).

Restored: Acts 1913, p. 83.

II. LOCAL ROAD LAWS

Anderson—Acts 1893, p. 60 (Sayles' Civ. St. Supp. 1894, art. 4456d); Acts 1895, pp. 207, 212; Sp. Acts 1909, p. 54; Sp. Acts 1911, p. 840; Sp. Acts 1917, p. 78.

Angelina—Sp. Acts 1915, p. 133; Sp. Acts 1917, p. 274; Sp. Acts 1919, p. 315.

Aransas—Sp. Acts 1913, pp. 276, 424.

Archer—Sp. Acts 1905, p. 1; Sp. Acts 1909, p. 408; Sp. Acts 1913, p. 509.

Atascosa—Sp. Acts 1913, p. 44; Sp. Acts 1915, p. 17.

Austin—Sp. Acts 1919, p. 80.

Bandera—Sp. Acts 1913, p. 556.

Bastrop—Sp. Acts 1905, p. 396; Sp. Acts 1909, p. 412; Sp. Acts 1911, p. 179; Sp. Acts 1911, 1 S. S., p. 155; Sp. Acts 1913, p. 306; Acts 1917, 1st C. S., p. 301.

Baylor—Sp. Acts 1913, p. 539; Sp. Acts 1919, p. 170.

Bee—Acts 1895, p. 218; Acts 1899, p. 160; Acts 1901, pp. 96, 310; Sp. Acts 1905, p. 316; Sp. Acts 1911, p. 716; Sp. Acts 1915, pp. 17, 158.

Bell—Acts 1893, p. 106 (Sayles' Civ. St. Supp. 1894, art. 4456c); Acts 1897, p. 47; Acts 1899, p. 90; Sp. Acts 1907, p. 505; Sp. Acts 1909, p. 388; Sp. Acts 1915, p. 132; Sp. Acts 1918, p. 275.

Bexar—Acts 1893, p. 94 (Sayles' Civ. St. Supp. 1894, art. 4456g); Sp. Acts 1909, p. 152; Sp. Acts 1911, p. 170; Sp. Acts 1913, p. 296; Sp. Acts 1917, p. 356.

Blanco—Sp. Acts 1911, 1 S. S., p. 156; Sp. Acts 1919, 2d C. S., p. 204.

Bosque—Sp. Acts 1913, pp. 72, 101; Acts 1917, 1st C. S., p. 328.

Bowie—Acts 1899, p. 239; Sp. Acts 1905, p. 440; Sp. Acts 1907, pp. 751, 755; Sp. Acts 1913, p. 390; Sp. Acts 1917, p. 533; Acts 1917, 1st C. S., p. 302.

Brazoria—Acts 1901, p. 181; Sp. Acts 1907, p. 766; Sp. Acts 1911, p. 839; Sp. Acts 1913, p. 214; Sp. Acts 1915, pp. 61, 72.

Brazos—Acts 1893, p. 94 (Sayles' Civ. St. Supp. 1894, art. 4456g); Acts 1901, p. 87; Sp. Acts 1911, p. 202; Sp. Acts 1919, 2d C. S., p. 252.

Brewster—Sp. Acts 1917, 3d C. S., p. 186.

Brown—Acts 1891, p. 69 (Sayles' Civ. St. Supp. 1894, art. 4456a); Acts 1901, p. 202; Sp. Acts 1909, p. 401; Sp. Acts 1911, pp. 774, 867; Sp. Acts 1917, p. 467; Sp. Acts 1919, 2d C. S., p. 215.

Burleson—Sp. Acts 1907, p. 546.

Burnet—Sp. Acts 1907, p. 525; Sp. Acts 1909, p. 546; Sp. Acts 1911, p. 194; Sp. Acts 1919, 2d C. S., p. 214.

Caldwell—Acts 1893, p. 14 (Sayles' Civ. St. Supp. 1894, p. 922); Sp. Acts 1905, pp. 123, 128; Sp. Acts 1907, p. 15; Sp. Acts 1911, p. 50; Sp. Acts 1915, p. 158.

Calhoun—Acts 1897, p. 174; Acts 1899, p. 305; Acts 1901, p. 310; Sp. Acts 1917, p. 208.

Callahan—Sp. Acts 1913, p. 590; Sp. Acts 1917, p. 247.

Cameron—Acts 1893, p. 94 (Sayles' Civ. St. Supp. 1894, art. 4456g); Sp. Acts 1913, p. 388.

Camp—Sp. Acts 1905, p. 223; Sp. Acts 1907, pp. 732, 775; Sp. Acts 1909, p. 164; Sp. Acts 1911, p. 763; Sp. Acts 1915, p. 140; Sp. Acts 1919, 2d C. S., p. 18.

Cass—Acts 1899, pp. 22, 213; Acts 1901, 1 S. S., p. 35; Sp. Acts 1905, p. 292; Sp. Acts 1907, p. 695; Sp. Acts 1913, p. 61; Sp. Acts 1917, p. 451; Sp. Acts 1917, 3d C. S., p. 127.

Chambers—Sp. Acts 1918, p. 276.

Cherokee—Acts 1893, p. 60 (Sayles' Civ. St. Supp. 1894, art. 4456d); Acts 1895, pp. 207, 212; Acts 1901, p. 163; Sp. Acts 1905, p. 12; Sp. Acts 1907, p. 517; Sp. Acts 1909, pp. 165, 753; Sp. Acts 1911, p. 157; Sp. Acts 1913, p. 56; Sp. Acts 1917, p. 479; Sp. Acts 1919, p. 1.

Childress—Sp. Acts 1907, p. 721; Sp. Acts 1913, p. 89.

Clay—Acts 1901, p. 163; Sp. Acts 1911, p. 728; Sp. Acts 1913, p. 86; Sp. Acts 1915, p. 128.

Coleman—Sp. Acts 1905, p. 461; Sp. Acts 1907, p. 763; Acts 1915, 1st C. S., p. 191; Sp. Acts 1917, 3d C. S., p. 176.

Collin—Acts 1891, p. 66 (Sayles' Civ. St. Supp. 1894, art. 4456b); Acts 1893, p. 106 (Sayles' Civ. St. Supp. 1894, art. 4456c); Acts 1897, p. 47 (see art. 4785a, Sayles' Civ. St. 1897); Sp. Acts 1911, p. 807; Sp. Acts 1913, p. 399; Sp. Acts 1915, pp. 31, 127; Sp. Acts 1919, p. 269.

Colorado—Acts 1901, p. 211; Sp. Acts 1905, p. 117; Sp. Acts 1915, p. 158; Sp. Acts 1917, p. 556.

Comal—Sp. Acts 1905, p. 122; Sp. Acts 1915, p. 158.

Comanche—Acts 1891, p. 69 (Sayles' Civ. St. Supp. 1894, art. 4456a); Sp. Acts 1905, p. 171; Sp. Acts 1907, p. 725; Sp. Acts 1911, p. 147; Sp. Acts 1913, p. 383; Acts 1915, 1st C. S., p. 176; Acts 1917, 1st C. S., p. 390.

Cooke—Acts 1895, p. 218; Acts 1901, p. 96; Sp. Acts 1905, pp. 193, 316; Sp. Acts 1909, p. 382; Sp. Acts 1919, p. 68.

Coryell—Acts 1893, p. 94 (Sayles' Civ. St. Supp. 1894, art. 4456g); Acts 1901, p. 60; Sp. Acts 1907, p. 468; Sp. Acts 1909, p. 214; Sp. Acts 1913, p. 384; Sp. Acts 1915, p. 207; Sp. Acts 1917, p. 125; Sp. Acts 1919, p. 82.

Dallas—Acts 1891, p. 69 (Sayles' Civ. St. Supp. 1894, art. 4456a); Acts 1893, p. 94 (Sayles' Civ. St. Supp. 1894, art. 4456g); Acts 1895, p. 213; Acts 1897, pp. 107, 178 (see art. 4785a, Sayles' Civ. St. 1897); Sp. Acts 1905, p. 320; Sp. Acts 1907, p. 820; Sp. Acts 1911, p. 172; Sp. Acts 1913, 1 S. S., p. 235; Sp. Acts 1915, p. 183; Sp. Acts 1919, 2d C. S., p. 172.

Delta—Acts 1893, p. 60 (Sayles' Civ. St. Supp. 1894, art. 4456d); Acts 1895, pp. 207, 212; Sp. Acts 1909, p. 467; Sp. Acts 1919, p. 283; Sp. Acts 1919, 2d C. S., p. 221.

Denton—Acts 1899, p. 35; Sp. Acts 1905, p. 279; Sp. Acts 1913, p. 345; Acts 1917, 1st C. S., p. 307.

DeWitt—Acts 1899, p. 52; Sp. Acts 1913, p. 344.

Dickens—Sp. Acts 1917, p. 388.

Dimmit—Sp. Acts 1913, p. 406.

Duval—Sp. Acts 1917, p. 469.

Eastland—Sp. Acts 1909, p. 409; Sp. Acts 1911, p. 217; Sp. Acts 1915, pp. 29, 182; Sp. Acts 1917, p. 427.

Ellis—Acts 1893, p. 94 (Sayles' Civ. St. Supp. 1894, art. 4456g); Acts 1897, p. 150; Sp. Acts 1905, p. 262; Sp. Acts 1909, p. 162; Sp. Acts 1911, p. 95; Sp. Acts 1917, p. 532.

El Paso—Sp. Acts 1911, p. 833; Sp. Acts 1915, p. 204.

Erath—Acts 1901, p. 191; Sp. Acts 1907, p. 444; Sp. Acts 1909, p. 404; Sp. Acts 1913, p. 1; Sp. Acts 1917, p. 474; Sp. Acts 1919, p. 250.

Falls—Acts 1901, p. 96; Sp. Acts 1905, p. 316; Sp. Acts 1911, p. 888; Sp. Acts 1913, p. 464; Sp. Acts 1919, p. 185; Sp. Acts 1919, 2d C. S., p. 113.

Fannin—Acts 1891, p. 69 (Sayles' Civ. St. Supp. 1894, art. 4456a); Acts 1895, p. 203; Sp. Acts 1913, p. 171; Acts 1917, 1st C. S., p. 372; Sp. Acts 1919, 2d C. S., p. 37.

Fayette—Acts 1891, p. 69 (Sayles' Civ. St. Supp. 1894, art. 4456a); Acts 1893, p. 94 (Sayles' Civ. St. Supp. 1894, art. 4456g); Acts 1901, p. 96; Sp. Acts 1907, p. 725; Sp. Acts 1909, p. 405; Sp. Acts 1913, pp. 44, 576; Sp. Acts 1915, p. 17; Sp. Acts 1917, pp. 272, 308; Sp. Acts 1919, p. 2.

Fisher—Sp. Acts 1911, p. 212.

Franklin—Acts 1893, p. 60 (Sayles' Civ. St. Supp. 1894, art. 4456d); Acts 1895, pp. 207, 212; Sp. Acts 1913, p. 346; Sp. Acts 1915, p. 18.

Freestone—Sp. Acts 1913, p. 253; Sp. Acts 1915, p. 274.

Frio—Acts 1901, p. 96; Sp. Acts 1907, p. 725; Sp. Acts 1909, p. 405; Sp. Acts 1913, p. 44; Sp. Acts 1915, p. 17.

Galveston—Acts 1891, p. 69 (Sayles' Civ. St. Supp. 1894, art. 4456a); Sp. Acts 1909, 3 S. S., p. 51; Sp. Acts 1913, 1 S. S., p. 226.

Gillespie—Sp. Acts 1907, p. 669; Sp. Acts 1911, p. 713; Sp. Acts 1915, pp. 158, 210; Sp. Acts 1917, p. 133; Sp. Acts 1919, p. 13.

Goliad—Sp. Acts 1913, p. 249.

Gonzales—Sp. Acts 1913, pp. 54, 487.

Grayson—Acts 1891, p. 69 (Sayles' Civ. St. Supp. 1894, art. 4456a); Acts 1893, p. 106 (Sayles' Civ. St. Supp. 1894, art. 4456c); Acts 1897, p. 47; Acts 1901, p. 187; Acts 1901, 1 S. S., p. 41; Sp. Acts 1907, p. 545; Sp. Acts 1909, p. 743; Sp. Acts 1913, p. 568; Sp. Acts 1915, pp. 73, 159; Sp. Acts 1917, p. 112; Sp. Acts 1919, p. 160.

Gregg—Acts 1897, p. 121; Sp. Acts 1911, p. 150; Sp. Acts 1913, p. 26; Acts 1915, 1st C. S., p. 202.

Grimes—Acts 1895, p. 218; Acts 1901, p. 96; Sp. Acts 1905, p. 316; Sp. Acts 1915, pp. 80, 158; Sp. Acts 1917, p. 313.

Guadalupe—Acts 1893, p. 80 (Sayles' Civ. St. Supp. 1894, art. 4456e); Acts 1895, p. 217; Sp. Acts 1911, p. 50; Sp. Acts 1915, p. 158.

Hall—Sp. Acts 1913, 1 S. S., p. 203; Sp. Acts 1915, p. 17.

Hamilton—Sp. Acts 1909, p. 496; Sp. Acts 1911, p. 216; Sp. Acts 1913, p. 82.

Hardeman—Sp. Acts 1919, p. 99.

Hardin—Sp. Acts 1911, p. 724; Sp. Acts 1919, p. 12.

Harris—Acts 1893, p. 94 (Sayles' Civ. St. Supp. 1894, art. 4456g); Acts 1901, p. 218; Sp. Acts 1905, p. 304; Sp. Acts 1913, p. 64; Sp. Acts 1917, 2d C. S., p. 29; Sp. Acts 1919, 2d C. S., p. 107.

Harrison—Acts 1893, p. 60 (Sayles' Civ. St. Supp. 1894, art. 4456d); Acts 1895, pp. 207, 212; Acts 1897, p. 121; Sp. Acts 1905, p. 465; Sp. Acts 1915, p. 25.

Haskell—Sp. Acts 1909, p. 218; Sp. Acts 1911, p. 827; Sp. Acts 1917, p. 620.

Hemphill—Sp. Acts 1913, p. 295.

Henderson—Sp. Acts 1905, p. 92; Sp. Acts 1907, p. 169; Sp. Acts 1913, p. 497; Sp. Acts 1915, pp. 5, 180; Sp. Acts 1917, p. 345; Sp. Acts 1918, p. 284.

Hidalgo—Sp. Acts 1915, p. 58.

Hill—Acts 1891, p. 69 (Sayles' Civ. St. Supp. 1894, art. 4456a); Acts 1895, p. 218; Acts 1899, p. 160; Acts 1901, p. 96; Sp. Acts 1905, p. 316; Sp. Acts 1913, p. 286; Sp. Acts 1915, p. 273; Sp. Acts 1919, p. 105; Sp. Acts 1919, 2d C. S., p. 15.

Hood—Acts 1901, p. 49; Sp. Acts 1907, p. 449.

Hopkins—Acts 1897, p. 87; Sp. Acts 1913, pp. 110, 111; Sp. Acts 1913, 1 S. S., p. 229; Sp. Acts 1915, pp. 28, 212; Sp. Acts 1917, p. 144; Sp. Acts 1919, 2d C. S., p. 249.

Houston—Acts 1893, p. 60 (Sayles' Civ. St. Supp. 1894, art. 4456d); Acts 1895, pp. 207, 212; Acts 1901, p. 106; Sp. Acts 1909, p. 427; Sp. Acts 1911, p. 871; Sp. Acts 1911, 1 S. S., p. 123; Sp. Acts 1915, p. 149; Sp. Acts 1917,

p. 175; Acts 1917, 1st C. S., p. 325; Sp. Acts 1919, p. 135.

Howard—Sp. Acts 1913, p. 510.

Hunt—Acts 1891, p. 69 (Sayles' Civ. St. Supp. 1894, art. 4456a); Acts 1895, p. 218; Acts 1899, p. 160; Acts 1901, p. 96; Sp. Acts 1905, p. 316; Sp. Acts 1909, p. 419; Sp. Acts 1911, p. 748; Sp. Acts 1913, pp. 190, 487; Sp. Acts 1917, p. 33; Sp. Acts 1919, p. 27.

Jack—Sp. Acts 1911, p. 829.

Jackson—Acts 1895, p. 218; Acts 1899, p. 160; Acts 1901, p. 96; Sp. Acts 1905, p. 316; Sp. Acts 1913, p. 407; Sp. Acts 1915, p. 158.

Jasper—Sp. Acts 1907, p. 741; Sp. Acts 1909, p. 720; Sp. Acts 1913, pp. 278, 406; Sp. Acts 1917, p. 439.

Jefferson—Acts 1901, p. 310; Sp. Acts 1905, p. 474; Sp. Acts 1911, p. 167.

Jim Wells—Sp. Acts 1917, p. 253.

Johnson—Sp. Acts 1905, p. 7; Sp. Acts 1911, p. 178; Sp. Acts 1915, p. 237; Sp. Acts 1917, p. 264.

Jones—Sp. Acts 1909, p. 218; Sp. Acts 1911, p. 827; Sp. Acts 1917, p. 620.

Karnes—Acts 1901, p. 173; Sp. Acts 1907, p. 508; Sp. Acts 1909, p. 217; Sp. Acts 1913, p. 473; Sp. Acts 1917, p. 519.

Kaufman—Acts 1891, p. 69 (Sayles' Civ. St. Supp. 1894, art. 4456a); Acts 1895, p. 203; Sp. Acts 1905, p. 25; Sp. Acts 1909, p. 203; Sp. Acts 1913, p. 120; Sp. Acts 1913, 1 S. S., p. 236; Sp. Acts 1919, 2d C. S., pp. 64, 248.

Kendall—Sp. Acts 1909, p. 476.

Kent—Sp. Acts 1917, p. 352.

Kerr—Acts 1901, p. 206; Sp. Acts 1919, p. 293; Sp. Acts 1919, 2d C. S., p. 196.

Knox—Sp. Acts 1913, p. 426.

Lamar—Acts 1893, p. 106 (Sayles' Civ. St. Supp. 1894, art. 4456c); Acts 1895, p. 213; Acts 1897, pp. 47, 107, 178; Acts 1899, p. 156; Sp. Acts 1905, p. 178; Sp. Acts 1907, p. 678; Sp. Acts 1909, pp. 446, 457; Sp. Acts 1909, 3 S. S., p. 55; Sp. Acts 1911, 1 S. S., p. 157; Sp. Acts 1913, p. 96; Sp. Acts 1915, p. 254; Sp. Acts 1917, p. 36; Sp. Acts 1919, 2d C. S., p. 24.

Lampasas—Sp. Acts 1909, p. 180; Sp. Acts 1917, p. 312.

Lavaca—Acts 1891, p. 174 (Sayles' Civ. St. Supp. 1894, art. 4456f); Acts 1899, p. 117; Acts 1901, p. 284; Sp. Acts 1907, p. 170; Sp. Acts 1909, p. 146; Sp. Acts 1915, p. 247.

Lee—Sp. Acts 1907, p. 692; Sp. Acts 1909, p. 448; Sp. Acts 1911, p. 186; Sp. Acts 1913, p. 165; Sp. Acts 1917, p. 188.

Leon—Acts 1901, p. 56; Sp. Acts 1907, p. 521; Sp. Acts 1911, p. 756; Sp. Acts 1913, p. 382; Sp. Acts 1915, p. 289.

Liberty—Acts 1899, p. 232; Acts 1901, p. 135; Sp. Acts 1913, p. 476; Sp. Acts 1913, 1 S. S., p. 253.

Limestone—Sp. Acts 1913, p. 331; Sp. Acts 1919, p. 236.

Live Oak—Sp. Acts 1911, p. 162; Sp. Acts 1917, p. 93; Sp. Acts 1919, p. 23.

Llano—Acts 1901, p. 140; Sp. Acts 1913, p. 71; Sp. Acts 1917, p. 12; Sp. Acts 1917, 3d C. S., p. 165.

McCulloch—Sp. Acts 1917, p. 127.

McLennan—Acts 1897, p. 60; Sp. Acts 1909, p. 383; Sp. Acts 1913, p. 132; Sp. Acts 1917, p. 304.

McMullen—Sp. Acts 1913, p. 44; Sp. Acts 1915, p. 17.

Madison—Acts 1901, p. 176; Sp. Acts 1913, p. 457; Sp. Acts 1917, 3d C. S., p. 142.

Marion—Acts 1897, p. 172; Sp. Acts 1915, p. 129.

Mason—Sp. Acts 1911, p. 733; Sp. Acts 1913, 1 S. S., p. 249; Sp. Acts 1917, p. 385; Sp. Acts 1919, p. 326.

Matagorda—Acts 1901, p. 81; Sp. Acts 1911, p. 854; Sp. Acts 1913, p. 148.

Maverick—Sp. Acts 1915, p. 158.

Medina—Acts 1895, p. 213; Acts 1897, p. 107; Sp. Acts 1907, p. 310; Sp. Acts 1915, p. 300.

Milam—Acts 1897, p. 162; Acts 1901, p. 195; Sp. Acts 1915, p. 231; Sp. Acts 1917, p. 495; Sp. Acts 1919, 2d C. S., p. 138.

Mills—Acts 1891, p. 69 (Sayles' Civ. St. Supp. 1894, art. 4456a); Sp. Acts 1907, p. 450; Sp. Acts 1909, p. 495; Sp. Acts 1915, p. 150; Sp. Acts 1919, p. 247.

Montague—Acts 1897, p. 77; Acts 1899, p. 179; Sp. Acts 1909, p. 543; Sp. Acts 1913, p. 586; Sp. Acts 1913, 1 S. S., p. 228; Acts 1915, 1st C. S., p. 184.

Montgomery—Acts 1901, p. 76; Sp. Acts 1913, p. 169.

Morris—Sp. Acts 1905, p. 239; Sp. Acts 1911, p. 785; Sp. Acts 1915, p. 168; Sp. Acts 1917, p. 326.

Nacogdoches—Acts 1893, p. 93 (Sayles' Civ. St. Supp. 1894, art. 4456h); Acts 1899, p. 125; Acts 1901, p. 145; Sp. Acts 1913, pp. 86, 100, 570.

Navarro—Acts 1899, p. 145; Sp. Acts 1913, p. 372; Sp. Acts 1919, p. 183.

Newton—Sp. Acts 1907, p. 741; Sp. Acts 1909, p. 489; Sp. Acts 1913, p. 328; Sp. Acts 1917, p. 417; Sp. Acts 1917, 3d C. S., p. 168; Sp. Acts 1919, p. 94.

Nolan—Sp. Acts 1911, p. 817; Acts 1917, 1st C. S., p. 364.

Nueces—Sp. Acts 1911, p. 217; Sp. Acts 1913, pp. 152, 609; Sp. Acts 1917, p. 242.

Palo Pinto—Sp. Acts 1913, p. 72.

Panola—Acts 1893, p. 60 (Sayles' Civ. St. Supp. 1894, art. 4456d); Acts 1895, pp. 207, 212; Acts 1901, p. 140; Sp. Acts 1913, p. 71.

Parker—Acts 1895, p. 208; Acts 1897, p. 227; Acts 1899, p. 51; Sp. Acts 1907, p. 531; Sp. Acts 1909, p. 500.

Polk—Sp. Acts 1909, p. 207; Sp. Acts 1913, p. 77.

Rains—Acts 1897, p. 32; Acts 1901, p. 95; Sp. Acts 1905, p. 115; Sp. Acts 1917, p. 525.

Red River—Acts 1897, p. 77; Acts 1899, p. 179; Acts 1901, p. 159; Sp. Acts 1913, p. 204; Sp. Acts 1915, p. 91; Sp. Acts 1917, 3d C. S., p. 156; Sp. Acts 1919, 2d C. S., p. 271.

Refugio—Sp. Acts 1913, p. 343.

Robertson—Acts 1895, p. 203; Acts 1899, p. 59; Sp. Acts 1905, p. 333; Sp. Acts 1907, p. 555; Sp. Acts 1911, 1 S. S., p. 146; Sp. Acts 1913, p. 304; Acts 1917, 1st C. S., pp. 362, 379.

Rockwall—Acts 1893, p. 94 (Sayles' Civ. St. Supp. 1894, art. 4456g); Sp. Acts 1913, p. 325; Sp. Acts 1919, p. 208; Sp. Acts 1919, 2d C. S., p. 17.

Runnels—Sp. Acts 1909, p. 469; Sp. Acts 1917, p. 493; Sp. Acts 1919, p. 102.

Rusk—Acts 1895, p. 212; Acts 1901, p. 87; Sp. Acts 1907, p. 457; Sp. Acts 1909, p. 481; Sp. Acts 1911, p. 703; Sp. Acts 1919, p. 100; Sp. Acts 1919, 2d C. S., p. 189.

Sabine—Sp. Acts 1907, p. 741; Sp. Acts 1909, p. 489; Sp. Acts 1913, p. 524; Sp. Acts 1919, p. 152.

San Augustine—Sp. Acts 1913, p. 366; Sp. Acts 1915, p. 69.

San Jacinto—Sp. Acts 1913, p. 19; Sp. Acts 1915, p. 255.

San Patricio—Sp. Acts 1913, p. 222; Sp. Acts 1913, 1 S. S., p. 238; Sp. Acts 1917, 3d C. S., p. 120; Sp. Acts 1918, p. 274; Sp. Acts 1919, p. 51.

San Saba—Sp. Acts 1905, p. 481; Sp. Acts 1911, p. 714; Sp. Acts 1915, p. 131.

Scurry—Sp. Acts 1911, p. 182; Sp. Acts 1918, p. 306.

Shelby—Acts 1893, p. 60 (Sayles' Civ. St. Supp. 1894, art. 4456d); Acts 1895, pp. 207, 212; Sp. Acts 1907, p. 4; Sp. Acts 1909, p. 156; Sp. Acts 1911, p. 51; Sp. Acts 1913, p. 2; Sp. Acts 1915, p. 3; Sp. Acts 1919, p. 21.

Smith—Acts 1893, p. 60 (Sayles' Civ. St. Supp. 1894, art. 4456d); Acts 1895, pp. 207, 212; Sp. Acts 1905, p. 17; Sp. Acts 1907, p. 697; Sp. Acts 1911, p. 893; Sp. Acts 1913, p. 262; Sp. Acts 1913, 1 S. S., p. 203; Sp. Acts 1915, pp. 27, 245; Sp. Acts 1918, p. 262; Sp. Acts 1919, 2d C. S., p. 68.

Stephens—Sp. Acts 1913, p. 599; Sp. Acts 1917, p. 423.

Tarrant—Sp. Acts 1911, 1 S. S., p. 168; Sp. Acts 1913, p. 527; Sp. Acts 1915, p. 62; Sp. Acts 1917, p. 478; Sp. Acts 1919, p. 245.

Taylor—Sp. Acts 1909, p. 218; Sp. Acts 1911, p. 827; Sp. Acts 1917, p. 620.

Terrell—Sp. Acts 1911, p. 756.

Titus—Sp. Acts 1905, p. 183; Sp. Acts 1909, p. 393; Sp. Acts 1913, p. 408; Sp. Acts 1917, 3d C. S., p. 141; Sp. Acts 1919, p. 85; Sp. Acts 1919, 2d C. S., p. 22.

Tom Green—Sp. Acts 1913, p. 155.

Travis—Acts 1891, p. 69 (Sayles' Civ. St. Supp. 1894, art. 4456a); Acts 1897, p. 20; Sp. Acts 1913, p. 337; Acts 1915, 1st C. S., p. 195; Sp. Acts 1917, p. 369.

Trinity—Acts 1893, p. 60 (Sayles' Civ. St. Supp. 1894, art. 4456d); Acts 1895, pp. 207, 212; Sp. Acts 1917, p. 601; Sp. Acts 1917, 3d C. S., p. 178; Sp. Acts 1919, p. 204.

Tyler—Sp. Acts 1905, p. 487; Sp. Acts 1909, p. 69; Sp. Acts 1911, p. 811; Sp. Acts 1919, 2d C. S., p. 224.

Upshur—Acts 1893, p. 60 (Sayles' Civ. St. Supp. 1894, art. 4456d); Acts 1895, pp. 207, 212; Acts 1897, p. 121; Sp. Acts 1905, p. 223; Sp. Acts 1911, p. 775; Sp. Acts 1913, p. 435.

Uvalde—Acts 1901, p. 96; Sp. Acts 1907, p. 725; Sp. Acts 1909, p. 405; Sp. Acts 1913, p. 44; Sp. Acts 1915, p. 17.

Val Verde—Sp. Acts 1909, p. 397.

Van Zandt—Acts 1901, p. 169; Sp. Acts 1907, p. 556; Sp. Acts 1909, 3 S. S., p. 65; Sp. Acts 1913, p. 350; Sp. Acts 1915, p. 138; Sp. Acts 1917, p. 505.

Victoria—Acts 1895, p. 218; Acts 1899, pp. 160, 305; Acts 1901, pp. 96, 310; Sp. Acts 1905, p. 316.

Walker—Sp. Acts 1913, p. 514; Acts 1915, 1st C. S., p. 182.

Washington—Sp. Acts 1907, p. 374; Sp. Acts 1911, p. 177; Sp. Acts 1913, p. 149.

Wharton—Acts 1899, p. 117; Acts 1901, p. 284; Sp. Acts 1907, p. 170; Sp. Acts 1913, p. 418.

Wichita—Acts 1897, p. 77; Acts 1899, p. 179; Sp. Acts 1911, 1 S. S., p. 114; Sp. Acts 1913, p. 159; Sp. Acts 1917, p. 403; Sp. Acts 1919, 2d C. S., p. 261.

Wilbarger—Sp. Acts 1907, p. 553; Sp. Acts 1913, p. 419.

Williamson—Acts 1893, p. 106 (Sayles' Civ. St. Supp. 1894, art. 4456c); Acts 1897, p. 47; Sp. Acts 1907, p. 325; Sp. Acts 1909, p. 187; Sp. Acts 1911, p. 176; Sp. Acts 1913, pp. 606, 607; Sp. Acts 1915, p. 219.

Wilson—Acts 1915, 1st C. S., p. 204; Sp. Acts 1917, p. 507.

Wise—Acts 1897, p. 54; Acts 1901, p. 157; Sp. Acts 1911, p. 801; Sp. Acts 1915, p. 199.

Wood—Acts 1899, p. 131; Sp. Acts 1907, p. 160; Sp. Acts 1909, p. 860; Sp. Acts 1911, pp. 50, 208; Sp. Acts 1913, p. 302; Sp. Acts 1913, 1 S. S., p. 222; Sp. Acts 1915, pp, 22, 158; Sp. Acts 1917, p. 234; Acts 1917, 1st C. S., p. 370; Sp. Acts 1919, p. 147.

Young—Sp. Acts 1915, p. 266.

Zavala—Sp. Acts 1913, p. 446; Sp. Acts 1917, p. 468.

NOTE.—No local road laws were enacted by the Twenty-Eighth Legislature.

III. LAND LAWS

(A) A LIST OF LAWS ENACTED SINCE 1873, AND NOT INCLUDED IN THE REVISED STATUTES OR IN SAYLES' EARLY LAWS

An act to adjust and define the rights of the Texas and Pacific Railway Company within the state of Texas, in order to encourage the speedy construction of a railway through the state to the Pacific Ocean. Act May 2, 1873, p. 318, Special Laws. Sayles' Civ. St. 1897, p. 1939.

An act for the relief of the International Railroad Company, now consolidated with the Houston and Great Northern Railroad Company, under the name of the International and Great Northern Railroad Company. Act March 10, 1875, Special Laws, ch. 49, p. 69. Sayles' Civ. St. 1897, p. 1945.

An act to provide for designating, surveying and sale of three million and fifty thousand acres of the unappropriated public domain for the erection of a new state capitol, and other necessary public buildings, at the seat of government, and to provide a fund to pay for surveying said lands. Act Feb. 20, 1879, ch. 13, p. 9. Sayles' Civ. St. 1897, p. 1947.

Joint resolution in regard to Pelican Island. March 8, 1879, p. 190. Sayles' Civ. St. 1897, p. 1952.

An act to protect the rights of pre-emption settlers who have heretofore or may hereafter enlist in the frontier battalion or other military forces of the state. Act April 7, 1879, ch. 72, p. 82. Sayles' Civ. St. 1897, p. 1949.

An act to require persons enclosing public free school lands to pay an annual rent therefor. Act April 17, 1879, ch. 92, p. 101.

Published as article 509, Penal Code of 1895.

An act to provide for building a new state capitol. Act April 18, 1879, ch. 106, p. 111. Sayles' Civ. St. 1897, p. 1950.

An act to require the governor of the state to countersign certificates for land hereafter issued from the general land office in certain cases. Act April 19, 1879, ch. 107, p. 115. Sayles' Civ. St. 1897, p. 1950.

An act for the relief of actual occupants of the public lands. Act April 24, 1879, ch. 145, p. 160. Sayles' Civ. St. 1897, p. 1951.

An act granting a land certificate of six hundred and forty acres to each of the in-

digent veterans who was engaged in the struggle for Texas independence prior to and at the battle of San Jacinto, enrolled under the act approved July 28, 1876. Act April 26, 1879, ch. 156, p. 175. Sayles' Civ. St. 1897, p. 1951.

An act to validate the titles to land reserved from location or patent at the time titles issued thereto. Act July 5, 1879, S. S., ch. 24, p. 20. Sayles' Civ. St. 1897, p. 1953.

An act to provide for the sale of the alternate sections of land in organized counties, as surveyed by railroad companies and other works of internal improvement and set apart for the benefit of the common school fund; to provide for the investment of the proceeds, and to repeal all laws in conflict therewith. Act July 8, 1879, S. S., ch. 28, p. 23. Sayles' Civ. St. 1897, p. 1953.

An act to provide for the sale of a portion of the unappropriated public lands of the state of Texas, and the investment of the proceeds of such sale. Act July 14, 1879, S. S., ch. 52, p. 48. Sayles' Civ. St. 1897, p. 1957.

An act to amend sections one and six of "An act to provide for the sale of a portion of the unappropriated public lands of the state of Texas, and the investment of the proceeds of such sale," passed at the special session of the sixteenth legislature. Act March 11, 1881, ch. 33, p. 24. Sayles' Civ. St. 1897, p. 1960.

An act to amend article 3971, chapter 11, of the Revised Civil Statutes, providing for the disposal of certain lands known as the Indian reservations, and to repeal articles 3972, 3973, 3974, 3975 and 3976 of the Revised Statutes upon the same subject. Act March 11, 1881, ch. 35, p. 27. Sayles' Civ. St. 1897, p. 1960.

An act granting a land certificate of twelve hundred and eighty (1280) acres to each of the surviving soldiers of the Texas revolution, and the surviving signers of the declaration of Texas independence, and to the surviving widows of such soldiers and signers, and to the widows of those who fell at the Dawson massacre; and to repeal an act, approved April 26, 1879, entitled "An act granting a land certificate of six hundred and forty acres to each of the indigent veterans who was engaged in the struggle for Texas independence prior to and at the battle of San Jacinto, enrolled under the act approved July 28, 1876." Act March 15, 1881, ch. 45, p. 35. Sayles' Civ. St. 1897, p. 1960.

An act authorizing and requiring owners of lands between the Nueces and Rio Grande rivers, under grants or titles thereto from the former governments, which were recorded in the respective counties before the adoption of the present constitution, to deposit and archive the same in the general land office. Act March 16, 1881, ch. 46, p. 37.

See Art. 82, subd. 6, of this compilation of the Revised Civil Statutes.

An act to provide for designating and setting apart three hundred leagues of land out of the unappropriated public domain for the benefit of the unorganized counties of the state, and to provide for the survey and location of the same. Act March 26, 1881, ch. 61, p. 65. Sayles' Civ. St. 1897, p. 1963.

See Sayles' Civ. St. 1897, art. 4280. The reference in that article to an act "approved March 16, 1882," is probably an error. The preamble to the act is as follows:

"Whereas, the commissioner and the contractor under an act entitled 'An act to provide for designating and setting apart three hundred leagues of land out of the unappropriated public domain for the benefit of the unorganized counties, and to provide for the survey and location of the same,' approved March 26, 1881, have surveyed three hundred and twenty-five leagues. And whereas, some of the four leagues of land surveyed for some of the unorganized counties of this state have been located in conflict with older surveys; and whereas, other instances of this kind may arise, therefore," etc. See Acts 1883, p. 45.

An act to validate certain locations and surveys upon lands situated in the counties of Hardeman, Cottle, Archer, Baylor, Wilbarger and Knox. Act April 4, 1881, ch. 91, p. 104. Sayles' Civ. St. 1897, p. 1965.

An act to authorize and require the issue of patents to lands situated between the Rio Grande and Nueces rivers, the titles to which have been confirmed under the act of February 11, 1860. Act April 4, 1881, ch. 92, p. 105. Sayles' Civ. St. 1897, p. 1965.

An act to amend the caption and sections 1, 2, 3, 4, 5, 6, 7 and 8 of an act entitled "An act to provide for the sale of alternate sections of lands in organized counties as surveyed by railroad companies and other works of internal improvement and set apart for the benefit of the common school fund; to provide for the investment of the proceeds, and to repeal all laws in conflict therewith," approved July 8, 1879, and to provide for the sale of such lands in unorganized counties. Act April 6, 1881, ch. 105, p. 119. Sayles' Civ. St. 1897, p. 1966.

An act granting to persons who have been permanently disabled by reason of wounds received while in the service of this state, or of the Confederate States, a land certificate for twelve hundred and eighty acres of land. Act April 9, 1881, ch. 106, p. 122. Sayles' Civ. St. 1897, p. 1969.

This act, and the repealing act of February 2, 1883, were published as a note to Sayles' Civ. St. 1897, art. 4218cc.

An act to repeal all laws granting lands or land certificates to any person, firm, corporation or company for the construction of railroads, canals and ditches. Act April 22, 1882, S. S., ch. 6, p. 3. Sayles' Civ. St. 1897, p. 1970.

An act to amend section eight of an act to amend the caption and sections one, two, three, four, five, six, seven and eight of an act entitled "An act to provide for the sale of alternate sections of lands in organized counties, as surveyed by railroad companies and other works of internal improvements, and set apart for the benefit of the common school fund; to provide for the investment of the proceeds, and to repeal all laws in conflict therewith," approved July 8, 1879, and to provide for the sale of such land in unorganized counties. Act May 6, 1882, S. S., ch. 27, p. 36. Sayles' Civ. St. 1897, p. 1970.

An act to repeal an act entitled "An act granting to persons who have been permanently disabled by wounds received while in the service of this state or of the Confederate States, a land certificate for 1280 acres of land." Act Feb. 2, 1883, ch. 25, p. 13.

This and Act April 9, 1881, ch. 106, p. 122, were published as a note to Sayles' Civ. St. 1897, art. 4218cc.

An act to withdraw from sale all the school, university and asylum lands, hereto-

fore by any law of this state authorized to be sold. Act Feb. 3, 1883, ch. 6, p. 3. Sayles' Civ. St. 1897, p. 1971.

An act confirming patents and surveys by virtue of headright and bounty warrants issued under special laws enacted after March 31st, 1870, and prior to April 17th, 1876. Act March 31, 1883, ch. 49, p. 38. Sayles' Civ. St. 1897, p. 1971.

An act to provide for the classification, sale and lease of the lands heretofore or hereafter surveyed and set apart for the benefit of the common school, university, the lunatic, blind, deaf and dumb and orphan asylum funds. Act April 12, 1883, ch. 88, p. 85. Sayles' Civ. St. 1897, p. 1972.

An act to create a land board with authority to investigate alleged land frauds and to authorize the institution of suits in the name of the state; to annul purchases in certain cases illegally and improperly made under an act to provide for the sale of alternate sections of land in organized counties as surveyed by railroad companies and other works of internal improvement and set apart for the benefit of the common school fund approved July 8, 1879, and an act amendatory thereof approved April 6, 1881, and to authorize the confirmation and validation of other purchases made under said acts; and with power to investigate the operations of the general land office and other matters relating to the John Gibson certificates and to make an appropriation therefor. Act April 14, 1883, ch. 104, p. 106. Sayles' Civ. St. 1897, p. 1978.

An act to provide for leasing the unorganized county school leagues. Act Feb. 6, 1884, S. S., ch. 26, p. 57. Sayles' Civ. St. 1897. p. 1981.

An act to validate certain purchases of public school lands made by clerks in the general land office. Act Feb. 6, 1884, S. S., ch. 34, p. 71. Sayles' Civ. St. 1897, p. 1983.

An act making certain reservations for public roads out of lands hereafter disposed of by the state. Act Feb. 7, 1884, S. S., ch. 30, p. 65. Sayles' Civ. St. 1897, p. 1982.

An act to prohibit the unlawful fencing or enclosing, or keeping enclosed, of the lands of another, and of the public school, public, university and asylum lands of the state of Texas, and to prevent the herding, or loose herding or detention of stock upon the lands of the state, the public schools, university and asylums, and to provide penalties for the violation of this act. Act Feb. 7, 1884, S. S., ch. 33, p. 68.

See Penal Code of 1895, p. 94.

An act to amend sections 9 and 10 of an act entitled "An act to provide for the classification, sale and lease of the lands heretofore or hereafter surveyed and set apart for the benefit of the common school, university, the lunatic, blind, deaf and dumb, and orphan asylum funds." Act Feb. 16, 1885, ch. 12, p. 13. Sayles' Civ. St. 1897, p. 1983.

An act to prevent the forfeiture of the rights of purchasers of public free school, university or asylum land. Act Feb. 23, 1885, ch. 17, p. 18. Sayles' Civ. St. 1897, p. 1984.

An act to protect persons in the settlement of the common school, university, the lunatic, blind, deaf and dumb and orphan asylum lands, and to prescribe penalties for an interference with their legal rights. Act March 31, 1885, ch. 89, p. 83.

See Penal Code of 1895, art. 972.

An act to repeal chapter forty-five of the general laws of the state of Texas passed by the seventeenth legislature of the state of Texas, and approved March 15, A. D. 1881. Act Feb. 15, 1887, ch. 7, p. 6. Sayles' Civ. St. 1897, p. 1985.

An act extending for ten years the payment of the principal of the purchase-money for lands purchased under the two acts of the legislature herein named. Act Feb. 25, 1887, ch. 11, p. 7. Sayles' Civ. St. 1897, p. 1985.

An act to authorize the holders and owners of patents issued to lands in Greer county and other reservations to surrender their patents for cancellation, and to authorize the commissioner to issue new certificates in such cases. Act April 1, 1887, ch. 107, p. 101. Sayles' Civ. St. 1897, p. 1986.

An act extending for ten years the payment of the principal of the purchase-money for lands purchased under the two acts of the legislature herein named. Act March 5, 1889, ch. 92, p. 105. Sayles' Civ. St. 1897, p. 1987.

An act for the relief of settlers upon the Milam county school lands located in Hood county, and to make an appropriation therefor. Act March 6, 1889, ch. 96, p. 108. Sayles' Civ. St. 1897, p. 1989.

An act to repeal chapter 8 and articles Nos. 3924, 3925, 3926, 3927, 3928, 3929, 3930, 3931, 3932, 3933, 3934, 3935, and 3936, of title 79, of the Revised Statutes of Texas. Act March 7, 1889, ch. 20, p. 16. Sayles' Civ. St. 1897, p. 1987.

An act to make valid and to confirm certain contracts of sale made by the land board of the state of Texas with divers persons for the sale of certain of the free school, university, and asylum lands of the state of Texas, sold under the act of the legislature of the state of Texas, approved April 12, 1883. Act March 12, 1889, ch. 93, p. 106. Sayles' Civ. St. 1897, p. 1988.

An act to validate certain surveys which for any reason might be deemed invalid, and to authorize the commissioner of the general land office to issue patents therefor. Act April 16, 1889, ch. 94, p. 107.

For the act of April 1, 1887 (chapter 99, p. 83, Acts 20th Leg.), and the act of April 4, 1895 (chapter 47, p. 63, Acts 24th Leg.), and the amendments thereto, providing for the sale and lease of public free school, university and asylum lands, see chapter 12*a*, title 87, and chapter 3, title 89, of Sayles' Civ. St. 1897.

By chapter 18, Acts 24th Legislature, the management of the university lands is vested in the board of regents. See Acts 1895, p. 19; Sayles' Civ. St. 1897, arts. 4263*a* to 4263*c*.

An act to make valid and confirm contracts of sale made by the land board of the state of Texas, with divers persons for the sale of the free school, university and asylum lands of the state of Texas sold under the act of the legislature of the state of Texas, approved April 12, 1883. Act April 2, 1891, ch. 87, p. 130. Sayles' Civ. St. 1897, p. 1990.

(B) TEXT OF OMITTED AND REPEALED LAWS RELATING TO THE PUBLIC LANDS, AS THE SAME APPEARED IN SAYLES' CIV. ST. 1897

The numbers and catchwording of those articles which were carried into the revision of 1911 are set forth with references to the appropriate articles in the Civil Statutes. Text supplanted by a later act relating to the same subject-matter carries a reference to the corresponding article in the Civil Statutes.

TITLE 87—THE PUBLIC LANDS

Chap.
1. Public Domain.
2. General Land Office.
3. Land Districts.
4. County and District Surveyors.
5. Land Certificates.
6. Entries and Locations.
7. Surveys and the Field-Notes Thereof.
8. Homestead Donations.
9. Patents.
10. Land Reservations.
11. Sale of Vacant and Unappropriated Lands.
12. General Provisions.
12a. Sale and Lease of Public Free School, Asylum and Public Lands.
13. Title to Certain Lands Quieted.

Preliminary explanatory notes.—This title was title 79 of the Revised Statutes of 1879. Many and important changes and omissions were introduced by the revisal of 1895, so that it became difficult to ascertain with certainty under what particular laws rights in land had vested, and whether there were not laws remaining in full force which were not included in the Revised Statutes of 1895.

The pre-emption laws were repealed by chapter 20 of the Acts of 1889. This accounts for the omission from the Revised Statutes of 1895 of old articles 3924 to 3936, inclusive.

The provisions of the Final Title in Revised Statutes 1895 bearing upon the subject were as follows:

"Sec. 4. That all civil statutes, of a general nature, in force when the Revised Statutes take effect, and which are not included herein, or which are not hereby expressly continued in force, are hereby repealed.

"Sec. 5. That the repeal of any statute, or any portion thereof by the preceding section, shall not affect or impair any act done or right vested or accrued, or any proceeding, suit or prosecution had or commenced in any cause before such repeal shall take effect; but every such act done or right vested or accrued, or proceeding, suit or prosecution had or commenced shall remain in full force and effect to all intents or purposes as if such statute or part thereof so repealed had remained in force, except that where the course of practice or procedure for the enforcement of such right or the conducting of such proceeding, suit or prosecution, shall be changed, the same shall be conducted as near as may be in accordance with the Revised Statutes."

"Sec. 9. That no law relating to the university or public school fund, or in relation to the agricultural and mechanical college fund, or the investment of any such funds, or making any reservation in favor of the same, shall be affected or impaired by the repealing clause of this title, except where altered or amended by the Revised Statutes."

"Sec. 13. That no law in reference to land reservations, or setting apart portions of such reservations for the benefit of actual settlers, or for the construction or repairing of the public buildings of the state shall be affected or impaired by the repealing clause of this title, unless expressly altered or repealed in some of the preceding articles of the Revised Statutes."

"Sec. 16. That all laws of a local nature operating in particular counties, cities or towns, and all laws of a private nature, operating on particular persons, are not affected by the said repealing clause.

"Sec. 17. That the repealing clause of this title shall not affect any law concerning pre-emption settlers further than such law may be amended or changed by the Revised Statutes."

Section 20 continues all laws of the twenty-third and twenty-fourth legislatures (1893 and 1895) in full force.

Chapter 1—Public Domain

Article 4035. (3794) Vacant lands belong to state.—All the vacant lands are the property of the state and subject alone to the disposition of the proper authorities thereof. (Act Dec. 14, 1837; H. D. 44—6.)

For boundaries of Texas, see post, in this Appendix.

Art. 4036. (3795) All public lands retained at annexation.

See ante, Art. 5279, Civ. St.

Art. 4037. (3796) No reservation shall be made.—No reservation of any part of the public domain for the purpose of satisfying a grant of lands to any railway company in this state, shall ever be made. (Const. art. 14, § 3.)

Art. 4038. (3797) Forfeiture on failure to comply, etc.—No land certificate shall be issued to such railway company until it shall have equipped, constructed and in running order, at least ten miles of road, and on the failure of such company to comply with the terms of its charter or alienate its land at a period to be fixed by law, in no event to exceed twelve years from the issuance of the patent, all said land shall be forfeited to the state and become a portion of the public domain, and liable to location and survey. (Id.)

Art. 4039. (3798) Same.—All lands heretofore or hereafter granted to railway companies, where the charter or law required or shall hereafter require their alienation within a certain period on pain of forfeiture, or is silent on the subject of forfeiture, and which lands have not been or shall not hereafter be alienated, in conformity with the terms of their charters and the laws under which the grants were made, are hereby declared forfeited to the state and subject to pre-emption, location and survey as other vacant lands. (Id. § 5.)

Art. 4040. (3799) Proceedings to forfeit land donations.—All lands heretofore granted to said railroad companies to which no forfeiture was attached on their failure to alienate, are not included in the foregoing clause, but in all such last-named cases it shall be the duty of the attorney-general, in every instance where alienations have been or hereafter may be made, to inquire into the same, and if such alienation has been made in fraud of the rights of the state, and is colorable only, the real and beneficial interest being still in such corporation, to institute legal proceedings, in the county where the seat of government is situated, to forfeit such lands to the state, and if such alienation be judicially ascertained to be fraudulent and colorable as aforesaid, such lands shall be forfeited to the state and become a part of the vacant public domain, liable to pre-emption, location and survey. (Id.)

Art. 4041. (3800) Title to mines, etc., released.—The state of Texas hereby releases to the owner or owners of the soil all mines or minerals that may be on the same, subject to taxation as other property. (Id. § 7.)

For the acts of April 14, 1883, and April 30, 1895, regulating the sale of minerals in public lands and the working of mines, see ante, Title 93, Civ. St.

Chapter 2—General Land Office

Articles 4042-4045.

See ante, Civ. St. Arts. 5280-5284.

Art. 4046. (3805) Indorsement of filing papers.—Any paper or document requir-

ed or permitted by law to be filed in the general land office shall be indorsed by the commissioner, or in his absence by the chief clerk, with ink, "filed," with the date of filing and file number, and signed by the clerk filing the same; and on the wrapper or cover containing said paper or file shall be indorsed a list with the corresponding numbers of the papers contained in said wrapper or cover, and signed by the clerk making the same, and if several papers constitute a single file they shall be numbered consecutively. (Id. § 2; P. D. 7099*ll*.)

Art. 4047. (3806) Clerk to be detailed, etc., when.—When an examination is desired by any person other than an employé of the office, the clerk detailed for such examination, before he shall permit such person to handle such papers or files, shall indorse as required by the preceding article on the cover or wrapper of said papers, numbering them as herein required, and sign his name to said list. (Id.; P. D. 7099*ll*.)

Arts. 4048-4053.

See ante, Civ. St. Arts. 5285-5290.

Art. 4054. (3809) Original certificate shall remain on file.—When the commissioner cancels a patent or permits the floating of certificates he shall not deliver the original certificate, but it shall remain in its original file. (Id. § 5; P. D. 7099*oo*.)

Art. 4055. (3810) Certificate for unlocated balance to issue, when.—Where a certificate has been located in part the original shall not be withdrawn from the general land office, but the commissioner shall deliver to the interested party a certificate for the unlocated balance, stating whether said certificate can be further divided. (Id. sec. 6; P. D. 7099pp.)

Art. 4056. (3811) Certificate to be indorsed when patented.—When a certificate has been patented the commissioner shall write in ink across the face of said certificate "patented," and sign his name thereto. (Id. sec. 7; P. D. 7099qq.)

Art. 4057. (3812) Notice to be given of forfeited survey.—When a survey has become forfeited and void from any cause, so soon as such forfeiture is discovered the commissioner shall notify the party interested in such survey or location, in writing by mail, directed to such party at his postoffice address, if known, and if not known, directed to him at the county seat of the county in which the land is situated, of such forfeiture; and no new file or location shall be made on the land covered by such forfeited survey or location, except by the owner of such forfeited survey or location, for a period of ninety days after the mailing of such notice; and the commissioner shall keep a record of the date said notice was mailed and the name of the party to whom the notice was mailed and the name of the postoffice to which said notice was addressed; and the record of such entries shall be prima facie evidence of the facts therein stated, and the absence of such entries shall be prima facie evidence that the notice required above had not been given. (Acts 1881, p. 6.)

Art. 4058. (3813) Certificate to be delivered only to owner.—A certificate for an unlocated balance shall be delivered only to the owner, or his agent or attorney; and when the same is delivered to the agent or attorney, the legal authority to receive the same shall be filed with the commissioner. (Id. sec. 8; P. D. 7099rr.)

Art. 4059. (3814) Before delivery to assignee, evidence of title to be filed.—If the assignee of the original grantee apply for the delivery of any paper, certificate or copy of certificate, if the evidence of title to the assignee is not already on file in the land office, it shall be filed before delivering the same; and the owner shall, by himself or his lawful agent or attorney, file with his other proof of title an affidavit that the party claiming delivery is a bona fide owner. (Id.)

Art. 4060. (3815) When commissioner is in doubt, proof, how made.—When the commissioner has doubts as to the identity of parties, or genuineness of any transfer or power of attorney, he shall not deliver such instrument to the party claiming until such doubtful matters are made clear by such additional proof as he may deem just and reasonable, which proof shall be by affidavits filed with the commissioner. (Id.)

Arts. 4061, 4062.

See ante, Civ. St. Arts. 5291, 5292.

Chapter 3—Land Districts

Articles 4063-4067a.

See ante, Civ. St. Arts. 5293-5298.

Art. 4067b. Counties attached.—The land districts composed of more than one county are defined and the unorganized counties are attached for surveying purposes as follows: (Id.)

1. The counties of Armstrong, Carson and Randall are attached to Donley county. (Act 1883.)

2. The counties of Andrews and Gaines are attached to Martin county. (Act 1887.)

3. The counties of Bailey, Cochran and Hockley are attached to Crosby county. (Id.)

4. The counties of Borden, Dawson, Lynn, Yoakum, Terry and Glasscock are attached to Howard county. (Acts 1883, 1889.)

5. The counties of Greer, Collingsworth, Hutchinson, Hansford, Ochiltree, Roberts, Hemphill and Lipscomb are attached to Wheeler county. (Act 1883.)

6. The counties of Crane, Ector and Upton are attached to Midland county. (Act 1889.)

7. The county of Lamb is attached to Baylor county. (Act 1881.)

8. The county of La Salle is attached to Nueces county. (Act 1874.)

9. The counties of Loving, Ward and Winkler are attached to Reeves county.* (Act 1877.)

10. The county of Stonewall is attached to Young county. (Act 1876.)

11. The county of Schleicher is attached to Menard county. (Act 1887.)

12. The counties of Crockett and Edwards are attached to Bexar county. (R. S. 1879, art. 3833.)

13. The counties of Dallam, Moore, Parmer, Potter and Sherman are attached to Oldham county. (Act 1883.)

*The county of Loving is disorganized by chapter 143 of the Acts of 1897, and is attached to Reeves county "for judicial and other purposes."

14. The county of Encinal is attached to Webb county. (Act 1885.)

15. The counties of Foley and Buchel are attached to Brewster county.* (Act 1889.)

16. The counties of Garza and Kent are attached to Scurry county. (Act 1887.)

17. The counties of Irion and Sterling are attached to Tom Green county.

18. The county of Jeff Davis is attached to Presidio county.

19. The county of King is attached to Knox county. (Act 1887.)

Chapter 4—County and District Surveyors

Articles 4068-4095.

See ante, Civ. St. Arts. 5300-5327.

Art. 4096. (3860) Authority to survey.—Any certificate of claim to land, which has been or may be obtained in the manner and form prescribed by law, shall be sufficient evidence to authorize any lawful surveyor to survey for any person holding such certificate any lands which he may point out agreeably to all the laws which do now or may hereafter exist on that subject; provided, that where more than one application is made for the same tract of land to be surveyed, the settler or occupant shall have the preference if their claims be otherwise equal. (Act Dec. 14, 1837.)

Art. 4097. (3861) Conflicting claims settled by jury.—In all cases where there is more than one claimant to the same location, or in case there be more occupant claimants than one, the conflicting claims shall be summarily tried by the nearest justice of the peace, and six disinterested jurors summoned for that purpose, who shall in all cases give preference to the oldest occupant and settler; and upon their decision the surveyor shall grant to the successful party the field-notes of the tract of land. (Id.)

Art. 4098. Right to examine books, etc.

See ante, Civ. St. Art. 5328.

Art. 4099. (3863) Right to demand statement, when.—Whenever an applicant calls upon a district, county, deputy or special surveyor to make an entry for location on his books, and shall be informed that the land indicated by the applicant has already been located, or located and surveyed, the applicant may demand of the surveyor a certificate in writing, setting forth the time at which the entry, location and survey, or either, was made, at whose instance, upon what certificate or warrant, and all the facts in the case, which certificate shall be held good evidence in law and equity against such surveyor in any suit brought against him to test the truth of the certificate and recover damages by the applicant; and any surveyor refusing any examination of his books and archives, or to give the certificates as herein provided, shall be subject to a fine of five hundred dollars for each offense, to be recovered before the district court by the party injured. (Act Jan. 26, 1858; P. D. 1086.)

Arts. 4100-4105.

See ante, Civ. St. Arts. 5329-5334.

Chapter 5—Land Certificates

Articles 4106-4118. Articles repealed.—All laws and parts of laws granting lands or land certificates to any person, firm, corporation or company for the construction of railroads, canals and ditches, are repealed. (Sen. Jour. 1895, p. 482; Id.)

This article repealed original article 4106 (3871), and articles 4107 (3872), 4108 (3873), 4109 (3874), 4110 (3875), 4111 (3876), 4112 (3877), 4113 (3878), 4114 (3879), 4115, 4116, 4117, and 4118 (3882). Articles 3871 to 3879 classified and described the various land certificates, including bounty warrants, donation warrants and land scrip. Articles 3880 to 3882 read as follows:

"Art. 3880. All unsatisfied genuine land certificates barred by article 10, section 4, of the constitution of 1869, by reason of the holders or owners thereof failing to have them surveyed and returned to the land office by the first day of January, 1875, are declared to have been revived on the eighteenth day of April, 1876.

"Art. 3881. All unsatisfied genuine land certificates in existence on the eighteenth day of April, 1876, shall be surveyed and returned to the general land office within five years thereafter, and on failure thereof shall be forever barred.

"Art. 3882. All genuine land certificates issued by the state after the eighteenth day of April, 1876, shall be surveyed and returned to the general land office within five years after issuance, and on failure thereof shall be forever barred." (See R. S. 1879; 2 Sayles' Civ. Stats. 1889.)

For "the veteran 1280 acre land certificate acts," of 1879 and 1881, and their repeal, see 2 Sayles' Civ. Stats. (1889) pp. 319-321. For the act of 1881, granting land to permanently disabled soldiers, and its repeal, see Art. 4218d, post, note.

Art. 4119. (3883) Duplicate certificates may be issued, when.—Whenever any headright certificate, soldier's discharge, bounty warrant, donation warrant or any other land certificate described in this chapter shall have been lost or destroyed a duplicate thereof may be issued by the commissioner of the general land office as hereinafter provided. (Act May 11, 1846; P. D. 4122.)

Art. 4120. (3884) Notice to be published for eight weeks.—Whenever any of the above-mentioned certificates or evidence of claim to land may have been lost or destroyed the owner thereof, or his agent or legal representative, shall cause a notice of such loss or destruction to be published for eight successive weeks in some weekly newspaper published in the county where such person, his agent or legal representative resides, or in the nearest county if none be so published, and such notice shall describe substantially, or as near as can be, the certificate or paper lost, and shall further state that unless intelligence of the same is received by him, or by the commissioner of the general land office, within three months of the date of said publication, he will apply to the proper officer for a duplicate of the certificate or paper so lost or destroyed. (Act Jan. 14, 1840; P. D. 4123.)

Art. 4121. (3885) Proofs to be made.—When any person shall apply for a duplicate of any such certificate or claim against the government, he shall be required to prove by the affidavit of the printer or publisher, duly made before some officer authorized to administer oaths, that the notice has been published as required in the preceding article; and he or his agent shall take and subscribe an oath before some officer, authorized as aforesaid, to the following effect: That he is the just owner of the said certificate or claim [describing it]; that he has not sold, alienated nor transferred the same in any manner; that it has been lost [or destroyed, as the case may be], and that since lost [or destroyed] he has not known or heard of the existence of the same. And he shall file said proof and affidavit in the general land office; and when the assignee of the original grantee applies for such duplicate, the evidence of

*The unorganized counties of Buchel and Foley were abolished by chapter 90, Acts of 1897, and their territory was incorporated in the county of Brewster. The act defines the boundaries of Brewster county.

this [his?] title shall be filed in the general land office, if not already on file; whereupon, if it shall appear to the commissioner of the general land office that the certificate or claim so lost or destroyed is a genuine and subsisting claim against the government, and that the provisions of this article have been fully complied with, no intelligence of said certificate or claim having been received by him, it shall be his duty to issue to the claimant, in the name of the original grantee, a duplicate certificate under his hand and the seal of his office, entitling him to the same quantity of land as was conferred by the original; provided, that administrators and the legal representatives of deceased owners shall not be required to take the oath above prescribed; and provided further, that when an agent or attorney applies for such duplicate, his legal authority to receive and receipt for the same be filed before delivery. (Id.; P. D. 4124.)

Art. 4122. (3886) Joint owners may join or sever in affidavit.—When any certificate or evidence of claim to land mentioned in this chapter shall be owned by two or more parties, and the same shall be lost or destroyed, the parties owning the same may jointly or severally make the affidavit required of such owner. (Act Feb. 7, 1852; P. D. 4127.)

Art. 4123. (3887) When unlocated balance certificate may be issued.—When two or more surveys have been made by virtue of any legal claim to lands and patents obtained therefor, if it shall appear by the district or county maps in the general land office, or by a plat or sketch giving a connection of the adjacent surveys certified to by the district or county surveyor and returned to said office, that the survey last made is so circumscribed by other surveys that no more vacant land can be obtained in that place, and the survey or surveys already made do not satisfy the claim, the commissioner of the general land office shall issue, on demand, to the owner or holder of said claim, a certificate for the unlocated balance thereof, which may be located, surveyed and patented as other certificates. (Act Jan. 10, 1850.)

Art. 4124. (3888) When location in conflict, may be changed.—Whenever the field-notes of a survey have been returned to the general land office, and upon examination the same are found to be in conflict with previous claims, it shall be lawful for the rightful claimant of the certificate so located in conflict to file his affidavit with the commissioner, setting forth that the certificate was not intentionally so located in conflict, but that he believed at the date of such location that the land covered thereby was vacant and unappropriated public domain; to abandon said survey and surrender all claim thereto by reason of the file, entry and survey made by him, and to receive from the commissioner a copy of the certificate on which the same was based, if such certificate be valid and genuine; and it shall be the duty of the commissioner to indorse upon the said copy that the original certificate is floated, and the county where the land is situated which is covered by such floated certificate, and that the copy is given in lieu of the original, but without any prejudice to the rights of any person by virtue of said certificate, and that the said copy may be located upon any unappropriated or vacant land. (Acts 1879, p. 20, S. S.)

Note.—The orginal article reads as follows:

"Whenever the field-notes of a survey have been returned to the general land office, and, upon examination, the same are found to be in conflict with previous claims, it shall be lawful for the rightful claimant of the certificate so located in conflict to file his affidavit with the commissioner, setting forth that the certificate was not intentionally so located in conflict, but that he believed, at the date of such location, that the land covered thereby was vacant and unappropriated public domain; to abandon said survey and surrender all claim thereto, by reason of the file, entry and survey made by him; and to receive from the commissioner a copy of the certificate on which the same was based, if such certificate be valid and genuine; and it shall be the duty of the commissioner to indorse upon the said copy that the original certificate is floated, and the county where the land is situated which is covered by such floated certificate; and that the copy is given in lieu of the original, but without any prejudice to the rights of any person by virtue of said certificate, and that the said copy may be located upon any unappropriated or vacant land." (Act Nov. 25, 1871; 12th Leg., S. S., p. 41; June 2, 1873, 13th Leg., p. 180; P. D. 7095, 7099*oo*.)

Art. 4125. (3889) When patent canceled, a duplicate certificate may issue.—Whenever any patent to land has been canceled according to law, it shall be the duty of the commissioner of the general land office to issue to the owner, his agent or legal representative, on his demand, a duplicate of the original certificate, or a certificate for the unlocated balance of said certificate, as the case may be, which may be located and surveyed and patented upon as in other cases; and the commissioner shall certify upon such certificate that the original patent has been canceled, the county where the land is situated, and that the duplicate or certificate is given in lieu of the original, but without any prejudice to the rights of any person. (Act Feb. 3, 1854; Act June 2, 1873, p. 180, § 5; P. D. 4301–2; P. D. 7099*oo*.)

Art. 4126. (3890) Where surveyed in part, certificate for unlocated balance to issue.—Whenever any genuine land certificate has been located and surveyed in part, and the same, with the field-notes, has been returned to and filed in the general land office, it shall be the duty of the commissioner of the general land office to issue to the owner thereof, his agent or legal representative, on demand, a certificate for the unlocated balance of said original, stating thereon the number and amount of locations made on the original, and the same may be located, surveyed and patented as in other cases. (Act June 2, 1873, p. 180, § 6; P. D. 7099pp.)

Art. 4127. (3891) Triplicate certificate, when obtained.—When any person may have applied for and obtained a duplicate land warrant, headright or other land certificate, or certificate for unlocated balance, under the provisions of this chapter, and the same may have been lost or destroyed, such person shall be entitled to demand and receive a triplicate thereof, or other certificate of unlocated balance, by complying with the provisions hereof in reference to obtaining duplicate certificates or certificate of unlocated balance. (Act Nov. 27, 1861; P. D. 4158.)

Art. 4128. (3892) Certificates issued by supreme and district courts validated.—All certificates heretofore or that may be hereafter issued by the supreme or district courts, in accordance with the provisions of an act passed by the Fifth congress of the republic of Texas, approved February 4, 1841,

shall be as valid and legal as if issued by any other legal authority. (Act March 28, 1848; P. D. 4237.)

Art. 4129. (3893) Commissioner authorized to issue certificate.—The commissioner of the general land office is hereby authorized to issue to all persons and corporations such land certificates as they may be entitled to under any general or special law. (Act March 6, 1863, p. 23, § 1.)

For act of April 19, 1879, directing the commissioner to act on the advice of the governor in issuing certificates in certain cases, see Sayles' Civ. Stat. (1889) art. 3893a.

Chapter 6—Entries and Locations

Article 4130. (3894) Surveyor shall keep a register of entries.—Each county, district and special deputy surveyor shall keep in his office a well-bound book as a register of entries, in which he shall register all entries or applications for land in his county or district. (Act Aug. 30, 1856; P. D. 4573.)

Art. 4131. (3895) Entry, etc., how made.—An entry or application shall be in writing, and be dated and signed by the applicant. It shall particularly describe the claim to be surveyed and the land applied for; which entry or application, together with the land certificate or scrip, or other legal evidence of title to be surveyed, shall be filed in the office of the county or district surveyor in which the land is situated; and where the said claim to be surveyed shall remain until returned, together with the field-notes, to the general land office. (Id.)

Art. 4132. (3896) Survey, how made.—The survey shall be made by a copy of the entry or application, and strictly in accordance with the same; and hereafter no survey shall be made until after entry or application, as provided in the preceding article. (Id.)

Art. 4133. (3897) Shall confer a preference right.—Every entry or application, made according to the two preceding articles, shall confer a preference right of location or survey over any subsequent entry or application.

Art. 4134. (3898) Certificate not to be lifted after entry.—It shall not be lawful for such surveyor to allow the holder of any land certificate or scrip, or other legal evidence of title to land, to lift or float the same after entry, location, file or survey, when the same is not made upon land previously appropriated. But when a conflict of entries, files, locations or surveys occur, upon a proper showing of the facts, which may be by the certificate of one of his deputies or from his knowledge, he shall allow the party having his entry, file, location or survey of subsequent date, to lift so much thereof as shall be affected by such conflict. (Id. § 2; P. D. 4574.)

Art. 4135. (3899) Effect of location on a valid title, etc.—Whenever an entry is made by virtue of a genuine certificate, upon any land which appears to be appropriated, deeded or patented, by the books of the proper surveyor's office, or records of the county court or general land office, the party making such entry shall abide by the same. And in the event that judgment final shall be rendered against the right of the party making such entry to hold such land, he shall not have the right to lift or re-enter said certificate. But the same shall be forfeited, and so declared to be by the judgment of the court. (Id.; P. D. 4575.)

Art. 4136. (3900) Certificate may be relocated on same land, when.—Any person holding a genuine certificate or other legal evidence of right to land under the republic or state of Texas, and having a survey made by virtue of the same, the field-notes of which may not have been returned to the general land office before the period prescribed by law, shall have the right to relocate the same certificate or other evidence of legal right to land, upon the same survey, but without being compelled to have the same resurveyed; provided, said survey shall not have been previously located by some other person by right of a genuine land claim. (Act Feb. 10, 1852; P. D. 4563.)

Art. 4137. (3901) Relocation, how made, etc.—Any person wishing to avail himself of the privilege of relocating the same land claim upon the same land, as permitted by the preceding article, shall present his land claim, or cause the same to be done for that purpose, to the district or county surveyor, as the case may be, of the district or county where the field-notes were first recorded, who shall duly enter such relocation upon the record of field-notes of the office, and duly certify the same to the commissioner of the general land office, which shall be sufficient authority for him to issue the patent for the land so relocated as in other cases. (Id.; P. D. 4564.)

Art. 4138. (3902) Surveys shall be made within twelve months.—All lands which may be located by entry or application, as aforesaid, shall be surveyed within twelve months from the date of entry or the same shall be null and void and the lands be subject to relocation and survey; but such lands shall not in any case be subject to relocation at any time by the same certificate. (Id.; P. D. 4568.)

Art. 4139. (3903) May be made in more than two places.—Locations of land by entry or application may be made in more than two places by virtue of any genuine land certificate, bounty warrant or other legal evidence of claim to land; provided, such other places be bounded by previous surveys and shall be enough to satisfy only a part of said claim. (Id.; P. D. 4532.)

Art. 4140. (3904) Where land lies in two or more districts, may be located in either.—Whenever it appears that an entry or location is made on the boundary of any county or land district, and a part of the land so entered or located upon is in the adjoining county or land district, the same shall be as valid and legal as if the land were situated entirely within the county or land district in which such entry or location was made; and it shall be the duty of the county or district surveyor to make out a certified copy of such entry or location and forward the same to the county or district surveyor of the county or district affected thereby.

Art. 4141. (3905) Surveyor to record such location.—It shall be the duty of the county or district surveyor receiving the entry or location mentioned in the preceding article, and which purports to locate part of the land within his district or county, to record the same as if such entry or location had been made in his own district or county.

Chapter 7—Surveys and the Field-Notes Thereof

Article 4142. (3906) What authorizes a survey.—All surveys shall be made by authority of law, or under or by virtue of some genuine land certificate which is at the time on file in the county or district surveyor's office where the land is situated, and by a county, district or deputy surveyor duly appointed or elected and qualified.

See ante, Art. 5335, Civ. St.

Act April 4, 1881, validated locations in certain counties prior to April 29, 1875. See 2 Sayles' Civ. Stats. (1889) art. 3906a.

Art. 4143. (3907).

Omitted as repealed by the report of the joint committee on amendments to the Revised Civil Code of 1895. The repealed article reads as follows:

"Art. 3907. It shall not be lawful for any county, district or deputy surveyor to locate any certificate for land issued prior to May 1, 1840, or to survey any land for any person holding such certificate unless the same be certified under the hand and seal of the commissioner of the general land office, that the same has been reported by the commissioners appointed under an act of congress to detect fraudulent land certificates, etc., passed January, 1840, as a genuine and legal claim against the government of Texas; and any survey made contrary to the meaning and intent hereof shall be null and void." [Act Feb. 5, 1840; P. D. 4537.]

The following act, "to validate certain surveys," etc., is chapter 94 of the Acts of 1889:

"Section 1. In all cases where parties resurveyed or relocated lands by virtue of any valid land certificates previously surveyed and on file in the general land office, without having taken out certified copies thereof, and thereby failed to comply strictly with the law, such last-named survey, which in law might be deemed a relocation, shall be valid and the owner shall hold thereunder thereby abandoning all other surveys previously made, and the commissioner of the general land office is authorized to issue patents therefor.

"Sec. 2. All surveys heretofore made by any county or district surveyor, which would otherwise be valid, shall not be called in question on account of said surveys having been made outside of the proper county or district, but said surveys shall be valid the same as if the said surveyor had jurisdiction in the territory embracing the same.

"Sec. 3. The provisions of this act shall not apply to nor affect the rights of third persons heretofore acquired by virtue of any purchase from the state location or surveys made in accordance with the laws in force at the time of such location and survey."

Art. 4144. Field-notes shall describe what.

See ante, Civ. St. Art. 5336.

Art. 4145. (3909) Surveys to be returned in twelve months.—The field-notes of all surveys shall be returned to and filed in the general land office within twelve months from the date of survey. (Act Feb. 10, 1852; P. D. 4566.)

Arts. 4146-4148.

See ante, Civ. St. Arts. 5337-5339.

Art. 4149. (3913) Two or more surveys permitted, when.—Two surveys may be made under any genuine land certificate, and more than two surveys may be made thereunder, provided the land to be located be bounded by previous surveys, and shall be enough to satisfy only a part of said claim, which fact shall be specially certified to by the surveyor making the survey. (Act Feb. 10, 1854; P. D. 4532.)

Arts. 4150-4156.

See ante, Civ. St. Arts. 5340-5346.

Art. 4157. (3921).

Omitted, as repealed by the report of the joint committee on amendments to the Revised Civil Code of 1895. The repealed article reads as follows:

"Art. 3921. All surveys properly made by virtue of genuine or valid land certificates, which surveys, together with the certificates by virtue of which they were made, have been returned and are now on file in the general land office, or were so on file on the twenty-fifth of April, 1871, and not in conflict with any other valid land claim, shall be deemed valid, and the commissioner of the general land office is hereby authorized and required to issue patents for the same." [Act April 25, 1871, p. 60, § 2; P. D. 7089.]

Art. 4158. (3922) Field-notes withdrawn to be returned, when.—In all cases where field-notes shall be withdrawn from the general land office the same shall be returned thereto within twelve months from the date of withdrawal, or such survey or surveys shall be null and void. (Act Nov. 29, 1871, p. 45, sec. 3; P. D. 7098.)

Art. 4159. (3923) Locations on the line and within two districts may be surveyed by either.—An entry or location made by virtue of a genuine land certificate upon any vacant and unappropriated land which lies partly in one and partly in another land district or county shall be surveyed by the surveyor of the district or county in which the entry or location was made; and the field-notes thereof shall be recorded in both districts or counties before they are returned to the general land office.

Art. 4159a. To relieve actual occupants.—Whenever the commissioner of the general land office shall find by inspection of the whole body of the application that it was made for the purpose of having a survey made of a portion of the unappropriated public domain for the homestead of the applicant, under "An act for the benefit of actual occupants of the public lands," approved May 26, 1873, and acts amendatory thereof, and upon which application the surveyor did make the survey as required by law, even though his field-notes were not returned to the land office within twelve months, and shall also find that the proof of occupancy as required by law is fully and properly made, from all of which it shall be manifestly clear to the commissioner that the applicant had in good faith endeavored to comply with the law hereinbefore recited, but was misled through the omission or ignorance of the officers charged by law to perform their duties in the premises, he shall issue and sign the patent, notwithstanding the application may not have been sworn to, or not signed if sworn to, or shall not have the seal of the officer before whom the affidavit was made attached thereto, and notwithstanding the application may contain a recital of articles 3926 and 3927 of the Revised Civil Statutes of Texas, "An act for the relief of actual occupants of the public lands," approved April 24, 1879, when it shall be manifest from all the papers on file in the land office that such recital was erroneously made. (Acts 1895, p. 149.)

See Early Laws, arts. 3774, 4257.

The articles referred to in this article, being parts of the act of May 26, 1873, do not appear to have been codified by the commission of 1893, nor to have been considered by the legislature in revising same. Articles 3926 and 3927 were a part of the chapter on Pre-emptions (arts. 3924-3936, R. S. 1879). The chapter is omitted from the revision of 1895 without note or comment other than is found in the above note. It was repealed by chapter 20 of the Acts of 1889.

Art. 4159b. Law not to apply, when.—Nothing in this law shall be construed to allow any applicant to obtain a patent in any case where subsequent settlers have, by reason of any of the failures or delays recited in this law, themselves settled upon any of such lands in good faith as a home, nor thus defeat such subsequent applicant. (Id. sec. 2.)

Art. 4159c. Land purchase-money refunded, when.

See ante, Art. 5404, Civ. St.

Chapter 8—Homestead Donations

Article 4160. (3937) Who is entitled to one hundred and sixty acres.—Every person who is the head of a family and without a homestead shall be entitled to receive a donation from the state of Texas of one hundred and sixty acres of vacant and unappropriated public land, upon the conditions and under the stipulations hereinafter provided. (Const. art. 14, sec. 6.)

Art. 4161. (3938) Who is entitled to eighty acres.—Every single man of the age of eighteen years or upward shall be entitled to receive a donation from the state of Texas of eighty acres of vacant and unappropriated public land, upon the conditions and under the stipulations hereinafter provided. (Id.)

Art. 4162. (3939) Shall present application in writing.—Any person desiring to acquire any portion of the public domain as a homestead donation, and who is entitled to apply for the same under the provisions of this chapter, shall present to the surveyor of the district or county in which the land is situated his application in writing, designating the land which he claims, and stating that he claims the same for himself, in good faith, under the laws granting homestead donations; that he is without any homestead of his own, and that he has actually settled upon the land which he claims, and that he believes the same to be vacant and unappropriated public domain.

Art. 4163. (3940) Shall be sworn to, filed and recorded.—Said application shall be made at the time of settlement or occupancy of the land, or within thirty days thereafter, and shall be sworn to before some officer authorized to administer oaths, and shall be filed with the said surveyor and recorded by him in a well-bound book kept for recording pre-emption and homestead applications; and the said surveyor shall give a receipt therefor, if desired.

Art. 4164. (3941).

Omitted, as repealed by the report of the joint committee on amendments to the Revised Civil Code of 1895. The article read as follows:

"Art. 3941. It shall be the duty of the surveyor of the proper district or county to survey the land described in the application aforesaid, as soon as practicable and within twelve months after the date of said application, and the field-notes thereof shall be certified to, recorded and mapped as required by law in other cases, the applicant paying all legal surveyors' fees."

Art. 4165. (3942) Preference right to survey and patent.—Any applicant for a homestead donation, after having settled upon the public land he claims, and having made his application in writing for a survey, as required by the provisions of this chapter, and continuing his said occupation, shall have a preference right over all subsequent locations or settlements to have the same surveyed, for a period of twelve months from the date of his application, and to secure a patent for the same under the provisions of this chapter. (Act Aug. 19, 1876, p. 197.)

Art. 4166. (3943) Field-notes to be returned to general land office in twelve months.—The field-notes of every survey made under the provisions of this chapter, after being duly certified, mapped and recorded, shall be returned to and filed in the general land office within twelve months after the date of the survey aforesaid. (Act May 26, 1873, p. 197.)

Art. 4167. (3944) Entitled to patent after three years' residence.—Whenever the field-notes of a homestead donation survey shall have been returned to the general land office according to the provisions of the preceding article, and when proof shall be made to the satisfaction of the commissioner of the general land office that the original applicant for a homestead donation has by himself, or in case the claim has been transferred, that he and his assignee have together in good faith resided upon, occupied and improved the land so claimed by him for a period of three consecutive years from the date of the application, it shall be the duty of said commissioner to issue a patent therefor to the original applicant or his assignee, as the case may be, upon payment of all the office and patent fees.

Art. 4168. (3945) Proof shall be by affidavit, etc.—The proof required in the preceding article shall be by an affidavit of the claimant to the effect that such original applicant has by himself, or in case the claim has been transferred, that he and his assignee have together in good faith resided upon, occupied and improved said land for three consecutive years from the date of his application for a homestead donation; which affidavit shall be corroborated by the affidavit of two disinterested and credible citizens of the county or surveyor's district in which the land is situated, which affidavits shall be subscribed and sworn to before some officer authorized to administer oaths, who shall certify to the same and to the credibility of said witnesses under his hand and seal of his office. (Act Aug. 19, 1876, p. 197.)

Art. 4169. (3946) Patents shall issue to the heirs, when.—When the original occupant or his assignee is dead, the patent shall issue to his heirs on application of the surviving widow, one of the heirs or his legal representative. (Act March 24, 1871, p. 16; P. D. 7053.)

Art. 4170. (3947) No assignment valid unless by deed, etc.—No assignment of the homestead donation right by the occupant or settler before the patent has been obtained shall be good and valid in law, unless the same be by deed duly authenticated as required by law. (Id.; P. D. 7053.)

Art. 4171. (3948) Shall forfeit right and title, when.—Should any person claiming a homestead donation fail to make the written application as provided in this chapter, or should he fail to have the survey made and to have the field-notes thereof (duly certified to and recorded) returned to and filed in the general land office within twelve months after the date of his application, or should he or his assignor fail to make satisfactory proof that he had resided upon, occupied and improved the land claimed by him for three years after the date of his application, as provided in this chapter, he shall in either event forfeit all right and title to said land, and the same shall become subject to entry or location as other vacant and unappropriated public land.

Art. 4172. (3949) Land certificate may be applied, etc., at any time.—Any person who shall have filed his application for a

homestead donation, according to the provisions of this chapter, or the vendee of such person, shall have the right and privilege at any time to locate upon his said claim or survey any genuine and unsatisfied land certificate, which shall have been duly transferred to him; and after returning the said certificate to and filing it in the general land office, he shall be entitled to receive a patent for the land in the same manner as if the certificate had been originally located upon it; provided, that the field-notes of the survey shall have been returned to the general land office within twelve months, as hereinbefore provided, and the homestead donation claim has not been forfeited under the preceding article.

Art. 4173. (3950) Temporary abandonment, when not computed.—If any person shall be driven from the land claimed or occupied by him as a homestead donation by hostile Indians or other public enemies, or having reasonable grounds to fear violence from such Indians or enemies to himself or family, shall temporarily abandon his said land and shall return to and occupy the same as soon as it shall appear reasonably safe for him to do so, he shall not forfeit or lose any right by reason thereof, and proof of the same may be made by the affidavit of the party and the certificate of the county or district surveyor. (Act March 13, 1875, p. 107.)

Art. 4174. (3951) Homestead donations on titled lands prohibited.—No person shall settle upon or occupy, nor shall any survey be made or patented under the provisions of this chapter upon any land titled or equitably owned under color of title from the sovereignty of the state, evidence of the appropriation of which is on the county records or in the general land office, or when the appropriation is evidenced by the occupation of the owner or of some person holding for him. (Const. art. 14, § 2.)

Chapter 9—Patents

Articles 4175-4187.

See ante, Civ. St. Arts. 5361-5373.

Art. 4188. (3964).

Omitted, as repealed by the report of the joint committee on amendments to the Revised Civil Code of 1895. The article reads as follows:

"Art. 3964. All genuine headright certificates, or genuine Toby or Bryan scrip, and all genuine certificates of any district or supreme court of this state establishing headrights that have been legally issued and properly reported to the proper officers, that have not been presented to the court of claims within the time prescribed by law, shall be recognized and patented the same as though they had been presented and approved by the commissioner of claims. The commissioner of the general land office may also patent in the same manner all certificates or warrants issued by the commissioner of claims or comptroller, acting commissioner of claims, but should any fraudulent certificate for land by accident, inadvertence or design, be perfected into a patent under this article, said patent shall be void and no title shall vest." [Acts 1859, p. 10; P. D. 1148.]

Arts. 4189-4196.

See ante, Civ. St. Arts. 5374-5382.

Chapter 10—Land Reservations

Article 4197.

By the report of the joint committee on amendments to the Revised Civil Code (No. 68, Sen. Jour., 1895, p. 482), article 4197 is renumbered 4198 and amended to include the words "under chapter 8, title LXXXVII, Revised Civil Statutes," and the article which follows and numbered by the codifiers of 1893 as 4198 (3969), is omitted as repealed.—Codifiers of 1895.

For the acts of February 20, 1879, and April 18, 1879, reserving public lands for the purpose of building a state capitol, see Sayles' Civ. Stat. (1889) art. 3968a.

For act of July 5, 1879, confirming titles to lands patented within reservations, see Sayles' Civ. Stat. (1889) art. 3968b.

Articles 3969 and 3970 of the Revised Statutes of 1879 (Act August 17, 1876; Act March 31, 1885) reserved lapsed reservations from location, except by pre-emption and homestead settlers. Sayles' Civ. Stat. (1889) arts. 3969, 3970. Article 3971 (Act January 25, 1875; Act July 1, 1881) appropriated what was known as the Indian reservations to the common free school fund, and articles 3972 to 3976 made provision for the protection of titles of settlers. Articles 3972 to 3976 were repealed by act of March 11, 1881. See Sayles' Civ. Stat. (1889) arts. 3971-3976.

Art. 4198. Severed from public domain.—All reservations of the public domain for the benefit of any railroad or railroad company heretofore made by law, and the right to which reservation has lapsed since January 1, 1872, or may hereafter lapse, are hereby declared then to have been severed from the mass of the public domain; and, in event of forfeiture to the state, are expressly reserved from location except by actual settlers under chapter 8, title LXXXVII, Revised Civil Statutes. (Acts 1885, p. 104; Amend. 1895, No. 68, Sen. Jour. p. 482.)

Art. 4199. Reservation surrendered, how.—Any railroad company in whose favor a reservation from the public domain may heretofore have been created by any law, general or special, may surrender its exclusive right to further locate lands within said reservation; and whenever any such railroad company shall file in the office of the secretary of state an instrument in writing, approved as to form by the attorney-general, relinquishing or surrendering its claim to such reservation, said relinquishment shall, upon the payment of all costs of suit, if one has been instituted, be accepted by the state, instead of a judicial forfeiture of the reservation, and shall be deemed a satisfaction of said suit; and it is especially provided that the lands so relinquished shall be subject to location only under the provisions of law embraced in this chapter. The surrender is not to affect the right of the company to construct its road in accordance with its charter, nor its relation to the laws regulating railroads and granting land subsidies to aid in their construction. Any action taken by any railroad company under the provisions of this chapter is to be held to be a complete acceptance of all the provisions of the constitution applicable to railroads, and of the laws of the state regulating railroads. (Acts 1879, p. 175.)

Chapter 11—Sale of Vacant and Unappropriated Lands

Article 4200. Subject to location, how; effect of surrender; certain land withdrawn from sale.—All the public lands heretofore authorized to be sold under the act entitled "An act to provide for the sale of the unappropriated public land of the state of Texas, and the investment of the proceeds of such sale," approved July 14, 1879, are withdrawn from sale; provided, that nothing contained in this article shall be construed to return the land reserved by an

act entitled "An act to provide for the sale of a portion of the unappropriated public lands of the state of Texas, and the investment of the proceeds of such sale," approved July 14, 1879, and the act amendatory of such act, approved March 11, 1881, to the mass of the public domain, but the same shall be construed to be reserved for the purposes for which said land was originally set apart and designated by said act until the legislature shall otherwise provide. (Acts 1883, p. 2.)

The acts referred to in this article may be found in 2 Sayles' Civ. Stat. (1889) pp. 351-353. See arts. infra 4253, 4307d.

Art. 4201. Manner of purchasing public domain in amounts less than six hundred and forty acres.—Any person desiring to purchase any of such appropriated public lands situated in organized counties of the state of Texas as contain not more than six hundred and forty acres, appropriated by an act to provide for the investment of the proceeds of such sale, approved July 14, 1879, may do so by causing the tract or tracts which such person may desire to purchase to be surveyed by the authorized public surveyor of the county in which such land is situated. The provisions of this article shall not be so construed as to prohibit the right of acquiring any of said lands under the homestead donation law, within the bounds of the reservation here made; but any person shall have the same right of acquiring a homestead within this reservation, under the homestead donation laws of this state, as he may have had prior to April, 1889; provided, where it is ascertained that any of such lands as contain not more than six hundred and forty acres are situated within the inclosed lands of any actual bona fide settler and resident of the state, such settler shall have the preference right for six months from the time that the same shall have been declared by the commissioner of the general land office to be vacant and subject to sale, to purchase as much of said land as may be embraced within his inclosure; provided, that said preference right shall not be given to any person who has inclosed any vacant land knowing the same to be vacant at the time of inclosing same. (Acts 1889, p. 48.)

Art. 4202. Application, how made.—The person desiring to purchase any of said lands shall make application therefor in writing, describing the lands by reference to the surrounding surveys. (Acts 1887, p. 61, § 2.)

Art. 4203. Lands to be surveyed.—It shall be the duty of the surveyor to survey the lands designated in said application within three months from the date thereof, and within sixty days after said survey to certify to, record and map the field-notes of said survey; and he shall also within the said sixty days return to and file the same in the general land office, together with the applications for the purchase thereof, as required by law in other cases. (Id. § 3.)

Art. 4204. Surveyor's fees.—Surveyors shall be entitled to receive from applicants for the purchase of lands under the authority of this chapter all legal surveyor's fees for work done by them. (Id. § 4.)

Art. 4205. Patent to issue, when.—Within ninety days after the return to and filing in the general land office of the surveyor's certificate, map and field-notes of the land desired to be purchased, it shall be the right of the person who has had the same surveyed to pay or cause to be paid into the treasury of the state of Texas the purchase-money therefor at two dollars per acre; and upon the presentation to the commissioner of the general land office of the receipt of the state treasurer for such purchase-money, said commissioner shall issue to said person a patent for the tract or tracts of land so surveyed and paid for. (Id. § 5.)

Art. 4206. Failure to pay to work forfeiture.—Should any applicant for the purchase of public land fail, refuse or neglect to pay for the same within the time prescribed in article 4205 he shall forfeit all rights thereto, and shall not thereafter be allowed to purchase the same, but such land so surveyed may be sold as if no survey had been made. (Id. § 6.)

Art. 4207. Reservations not to be disturbed.—Nothing in this title shall be so construed as to operate as a repeal of the reservations and donations of the lands referred to in this title to the free school and public debt funds made by former laws, but such reservations and donations shall be preserved intact, and the proceeds arising from the sale of the same under the provisions of this chapter shall go one-half to the permanent free school fund and the other half to the public debt. (Id. § 7.)

Chapter 12—General Provisions

Article 4208. (3977) Certificates shall not be located, etc., on titled land.—All genuine land certificates heretofore or hereafter issued shall be located, surveyed or patented only upon vacant and unappropriated public domain, and not upon any land titled or equitably owned under color of title from the sovereignty of the state, evidence of the appropriation of which is on the county records or in the general land office, or when the appropriation is evidenced by the occupation of the owner, or of some person holding for him. (Const. art. 14, § 2.)

See art. 4174.

Arts. 4209 (3978), 4210 (3981).

Omitted, as repealed by the report of the joint committee on amendments to the Revised Civil Code of 1895. Articles 3978 to 3981 are as follows:

"Art. 3978. The territory known as Fisher & Miller's colony is hereby declared to have been opened for location since the twenty-seventh day of February, 1875, as other vacant lands, in accordance with the laws governing locations; and it is further declared that all patents which were issued by the commissioner of the general land office, either to preëmptors or to owners of certificates, prior to the date aforesaid, or which have been issued since that date, are legal and valid; provided, that this article shall not be construed so as to affect any rights which had vested or accrued prior to the twenty-seventh day of February, 1875, under pre-existing laws." [Act Feb. 27, 1875, p. 193.]

For boundaries of Fisher & Miller's colony, see 1 Early Laws, p. 579; P. D. 256. For other laws on the subject, see 2 Early Laws, arts. 1873, 2372-2374, 2860, 2994. For the preamble to article 3978, see 3 Early Laws, art. 4141, § 8.

"Art. 3979. All patents for lands issued by the republic of Texas which have been sealed with the original seal of the general land office, having for device thereon a buffalo under a live oak tree, or which have been sealed with the other seal of said office having for device thereon a cotton plant, plow, scythe, sheaf of wheat, and meridian sun, shall be

as valid as though both of said seals had been devised and adopted by law." [Act April 29, 1846; P. D. 4088.]

"Art. 3980. All certified copies heretofore made of deeds, patents, books, records and papers belonging to the general land office, under the signature of the commissioner or chief clerk of said office, and sealed with either of the seals described, shall be as valid and shall have the same force and effect as if both of said seals had been devised and adopted by law." [Id.; P. D. 4088; 2 Early Laws, art. 1605.]

The seal now in use is prescribed by section 6 of the act of May 12, 1846 (art. 2867, ante; 2 Early Laws, art. 1715).

"Art. 3981. Whenever the records of any surveyor's office shall have been destroyed by fire or otherwise, it shall be the duty of the commissioner of the general land office, upon application of the county court, to furnish said surveyor's office with copies of all surveys and field-notes thereof that may properly belong to said county; provided, the county shall pay for such records at the rate of ten cents per one hundred words." [Act April 29, 1874, p. 168.]

Art. 4211. (3982) No officer shall be interested in public land, etc.

See ante, Civ. St. Art. 5388.

Arts. 4212 (3983), 4213 (3984), 4214 (3985).

Omitted, as repealed by the report of the joint committee on amendments to the Revised Civil Code of 1895. Article 3983 reads as follows:

"Art. 3983. The commissioner of the general land office shall make out and return to the comptroller of public accounts, as soon as practicable, an abstract of all the titled, patented and located lands in the state of Texas, which may have been patented or titled, or which have been located and surveyed, and the certificates and field-notes returned to the general land office up to September 1, 1875, which abstract shall designate the grantee and patentee, the amount of the grant, the class to which it belongs, whether headright, bounty, donation, special grant, or pre-emption, date and number of patent, number of certificate, name of grantee of certificate, or name of pre-emption locator, and name of the county in which situated; an abstract number shall also be affixed, but the numbers of the present official abstracts shall be preserved." [Act March 9, 1875, p. 71, § 1.]

Article 3984 provided for the employment of a draftsman and two clerks to complete the abstract mentioned in article 3983 and article 3985 made provision for their compensation.

Arts. 4215-4218a.

See ante, Civ. St. Arts. 5389-5393.

Chapter 12a—Sale and Lease of Public Free School, Asylum and Public Lands

Preliminary notes.—This act, passed in 1895, appears to be a copy, substantially, of the act of 1887, with the exception of the omission of the university lands. The act of 1887, with its amendments, is inserted by the codifiers of 1895 as chapter 3 of Title 89.

The title of the act of 1895 is as follows:

"An act to provide for the sale of all lands heretofore or hereafter surveyed and set apart for the benefit of the public free schools and the several asylums, and the lease of such lands and of the public lands of the state, and the patenting of any part of said lands for church, cemetery or schoolhouse sites; and to prevent the free use, occupancy, unlawful inclosure or unlawful appropriation of such lands, and to prescribe and provide adequate penalties therefor."

The title of the act of 1887 is as follows:

"An act to provide for the sale of all lands heretofore or hereafter surveyed and set apart for the benefit of the public free schools, the university, and the several asylums, and the lease of such lands and of the public lands of the state, and to prevent the free use, occupancy, unlawful inclosure, or unlawful appropriation of such lands, and to prescribe and provide adequate penalties therefor."

This act was amended in 1889, 1891 and 1893. See Acts 1889, p. 50; Acts 1891, p. 180; Acts 1893, p. 30.

The act of 1895 repeals all conflicting laws, and another act, passed in 1895 (Acts 1895, p. 19), entitled "An act to invest the board of regents of the university of Texas with the management and control of the university lands," vests in said board the sole and exclusive management and control of said lands, with the right to sell, lease, etc. This act appears as articles 4263a-4263c of the Revised Statutes.

The legislature, by the amendments of 1897, recognize this chapter as in force, to the exclusion of the other.

Articles 4218b, 4218c.

See ante, Civ. St. Arts. 5405, 5406.

Art. 4218d. Lands to be classified and valued.—The commissioner of the general land office shall from time to time, as the public interest may require, cause any or all of the lands belonging to the several funds mentioned in this chapter to be carefully and skilfully classified and valued that have not heretofore been classified, and for this purpose he may appoint, with the approval of the governor, such number of competent agents, who shall be citizens of the county or district where such land is situated, as may be necessary, or may determine and declare the classification and valuation without the aid of such agents, and upon such facts as may be satisfactory to the commissioner. Such agents shall receive for their work a reasonable compensation, to be fixed by the commissioner of the general land office, and not to exceed the sum of three dollars per section; and no such expense shall be incurred in the absence of an appropriation by law to cover such expenditure, and the state shall not be liable for any expenditure of this character incurred in excess of current appropriations. (Acts 1895, p. 63, § 3. Repealed by Chapter 129, Acts 1897.)

Art. 4218e. Commissioner may classify and reclassify.—The commissioner of the general land office may, from time to time, as the public interest may require, classify any or all of the lands belonging to the several funds mentioned in this chapter that have not been heretofore classified, upon such facts as may be satisfactory to him, designating the same as agricultural, grazing or timbered land, according to the fact in the particular case; and he may prescribe such regulations in relation thereto as he may deem necessary to secure a correct classification. He may also reclassify any lands heretofore erroneously classified, upon the official certificate of the commissioners' court of the county in which said land is situated, or of the county to which such county is attached for judicial purposes, certifying what the proper classification should be, said certificate to be signed by the entire commissioners' court, including the county judge, or upon such other evidence as may be satisfactory to the commissioner. (Acts 1895, p. 63, § 4; amended Acts 1897, p. 184.)

See ante, Civ. St. Art. 5407.

Art. 4218f. Classified lands subject to sale to actual settlers.—When any portion of said land has been classified to the satisfaction of the commissioner of the general land office, under the provisions of this chapter or former laws, such land shall be subject to sale, but to actual settlers only, except where otherwise provided by law, and in quantities of not less than eighty acres or multiples thereof, nor more than four sections containing six hundred and forty acres, more or less; provided, that the purchaser shall not include in his purchase more than two sections of agricultural land; and provided, that where there is a fraction less than eighty acres of any section left unsold, such fraction may be sold. Any bona fide purchaser who has heretofore purchased or who may hereafter purchase any lands as provided herein shall have the right to pur-

chase other lands in addition thereto; provided, that the total of his purchases shall not exceed four sections, and that it shall not include more than two sections of agricultural land, upon his making oath that he is not acting in collusion with others for the purpose of buying the land for any other person or corporation, and that no other person or corporation is interested in the purchase thereof. And if he or his vendor has already resided upon his home section for three years, or when he or his vendor, or both together, shall have resided upon it for three years, the additional lands purchased may be patented at any time. In all cases where a settler purchases more than one section the lands in excess of one section so purchased must be situated within a radius of five miles of the land occupied by him. Where any of the lands referred to in this act have been sold prior to July 30, 1895, in quantities greater or less than forty acres or multiples therof, and are in good standing as to interest payments, they may be patented in such quantities. In any cases where lands have been forfeited to the state for the nonpayment of interest, the purchasers or their vendees may have their claims reinstated on their written request, by paying into the treasury the full amount of interest due on such claim up to the date of reinstatement; provided, that no rights of third persons may have intervened. In all such cases the original obligations and penalties shall thereby become as binding as if no forfeiture had ever occurred. (Id. § 5; amended Acts 1897, p. 184.)

See ante, Civ. St. Art. 5410.

Art. 4218ff. Forfeiture of land on which purchaser settles.—When any purchaser buys and settles upon a section or part of a section of school lands, and buys, either at the same time or subsequently, other lands in addition thereto, a forfeiture for any legal cause of the part on which he resides, at any time before the three years' residence thereon has been completed, shall work a forfeiture of the entire purchase, except such part thereof as he may have previously sold to another. But after the three years' residence has been completed, a forfeiture of the home tract shall not of itself work a forfeiture of the other tract or tracts. In case of sale of any of said tracts before the three years' residence has been completed, the vendee must reside thereon until he has completed the three years' occupancy from the date of the original purchase, and a failure to do so shall subject his land to forfeiture; but in case of sale of any of said tracts after the completion of the three years' residence, the vendee shall be exempt from the condition of settlement and occupancy. (Acts 1897, p. 184.)

See ante, Art. 5426, Civ. St.

Art. 4218fff. Owner of land may buy contiguous lands; provision as to occupancy.—Any actual, bona fide owner of and resident upon any other lands contiguous to said lands, or within a radius of five miles thereof, may also buy any of the aforesaid lands, but in such case a failure to reside upon either his other lands or upon a part of the additional lands so purchased by him, so as to make his ownership and occupancy thereof continuous for three years, shall work a forfeiture of such additional lands so bought from the state, unless he shall have sold his land to another who may and does complete a three years' continuous ownership and occupancy of and residence upon his said lands as above stated and as is herein required of actual settlers. (Acts 1897, p. 184.)

See ante, Civ. St. Arts. 5410, 5416.

Art. 4218g. Commissioner of land office to notify county clerks.—It shall be the duty of the commissioner of the general land office to notify in writing the county clerk of each county of the valuation fixed upon each section of land in his county, and in each county attached to it for judicial purposes, which he offers for sale, which notification shall be kept by the clerk in his office and recorded in a well bound book, which shall be open to public inspection. (Acts 1895, p. 63, § 6.)

See ante, Civ. St. Art. 5407.

Art. 4218h. Price of public free school and asylum lands.—All agricultural lands belonging to the public free school and the several asylum funds shall be sold at not less than one dollar and fifty cents per acre; and all grazing lands shall be sold at not less than one dollar per acre; and all timbered lands shall be sold at not less than five dollars per acre. By timbered lands is meant lands valuable chiefly for the timber thereon. Provided, that the owner of land which is in fact agricultural, purchased under former laws, and which land is not subject to forfeiture at the time this law goes into effect, shall not be permitted, in case said land is forfeited, to purchase said forfeited land from the state for a less price per acre than the contract price under the former sale. (Id. § 7; amended Acts 1897, p. 184.)

See ante, Civ. St. Art. 5407.

Art. 4218i. Prior right reserved to existing actual settler.—Any bona fide actual settler who may reside on any part of the lands the sale of which is authorized by this chapter at the time this chapter may go into effect, shall have the prior right for a period of ninety days after this chapter goes into effect, or after said land shall have been placed upon the market, to purchase such quantity of land as may be limited by this chapter, to include his improvements, upon complying with the provisions of this chapter regulating sales as in other cases, and such land shall be appraised without reference to the improvements thereon. Any bona fide settler who has heretofore purchased or who may hereafter purchase not exceeding one section of agricultural land, shall have the right to purchase three strictly pastoral sections, upon his making oath that he is not acting in collusion with others for the purpose of buying for any other person or corporation, and that no other person or corporation is directly or indirectly interested in the purchase of the same. (Acts 1895, p. 63, § 8. Repealed by Chapter 129, Acts 1897.)

Art. 4218j. Commissioner to make all sales; conditions of same; status of vendee of original purchaser; sales after forfeiture; payments, etc.—All sales shall be made by the commissioner of the general land office, or under his direction, and he shall prescribe suitable regulations whereby all purchasers shall be required to reside upon as a home the land purchased by them for three consecutive years next succeeding the date of their purchase, except when other-

wise provided. Such regulations shall require the purchaser to reside upon the land for three consecutive years herein mentioned, and to make proper proof of such residence and occupancy to the commissioner of the general land office within two years next after the expiration of said three years, by his affidavit, corroborated by the affidavits of three disinterested and credible persons, to be certified by some officer authorized to administer oaths, and on making such proof the commissioner shall issue to the purchaser, his heirs and assigns, a certificate showing that fact.

If, however, any purchaser has sold his purchase, or any part thereof, his vendee shall be permitted to compute the time of the occupancy of his vendor as a part of his own occupancy; and if any person has sold the whole or any part of his purchase under this or any former law, his vendee, or if he refuses to do so, the vendor himself, may make proof of occupancy as provided herein.

Any person desiring to purchase land in accordance with the provisions of this chapter shall forward his application to the commissioner, describing the land sought to be purchased, which application shall be accompanied with the affidavit of the applicant, in effect that he desires to purchase the land for a home, and has in good faith settled thereon, except where otherwise provided herein, and he shall also swear that he is not acting in collusion with others for the purpose of buying the land for any other person or corporation, and that no other person or corporation is interested in the purchase thereof.

Any owner of land heretofore purchased, and which land has been or may be forfeited for non-payment of interest, shall have ninety days prior right after this chapter goes into effect, or after the land is again placed upon the market, to purchase said land without the condition of settlement and occupancy, in case it has been occupied for three consecutive years as required by law; but if not, then he shall reside thereon until the occupancy under the first and last purchase shall together amount to said term of three years; provided, that when any forfeiture has been made the commissioner of the general land office shall add to the appraised value of such land the amount of interest due thereon at the time of forfeiture, which shall be paid in cash with the first payment of one-fortieth of the appraised value of the land when purchased under the preference right to purchase given herein.

Any original purchaser or his vendee of any of the lands the sale of which is provided for in this chapter, who has improved such land as a home, and who has been forced to temporarily abandon same on account of drouth, and who shall in good faith re-occupy the same, either by themselves or vendees, within six months after this chapter goes into effect, shall not have the forfeiture declared against them under the law providing for the forfeiture of such lands for non-occupancy; provided, that they shall make affidavit, supported by the affidavit of three disinterested witnesses, that they have re-occupied the land as a home in good faith, and that they had abandoned the same since their purchase on account of the drouth and not otherwise; and such absence shall not be deducted from the three years' occupancy required by law in making final proof of occupancy; and provided further, that any purchasers or their vendees of such lands who have failed to make proof of occupancy as required by the law regulating such purchases shall have six months after this chapter shall take effect to make such proof of occupancy as required by the provisions of this chapter.

The purchaser shall transmit to the treasurer of the state one-fortieth of the aggregate purchase-money for the particular tract of land, and send to the commissioner his obligation to the state, duly executed, binding the purchaser to pay to the state on the first day of November of each year thereafter, until the whole purchase-money is paid, one-fortieth of the aggregate price, with interest at the rate of three per cent. per annum on the whole unpaid purchase-money, which interest shall also be payable on the first day of November of each year; and upon receipt of one-fortieth of the purchase-money by the treasurer, and the affidavit and obligation aforesaid by the commissioner, the sale shall be deemed and held effective from the date the affidavit and obligation are filed in the general land office; provided, that if the land applied for be timbered land, then the purchaser shall be required to pay the full amount of the purchase-money at the time of his purchase. (Id. § 9.)

See ante, Civ. St. Arts. 5406, 5409, 5410, 5419, 5423, 5435.

Art. 4218k. Optional payments; original purchasers may sell, etc.

See ante, Civ. St. Art. 5436.

Art. 4218*l*. Forfeiture of purchase by non-payment of interest, etc.—If upon the first day of November of any year the interest due on any obligation remains unpaid, the commissioner of the general land office shall indorse on such obligation "Land forfeited," and shall cause an entry to that effect to be made on the account kept with the purchaser, and thereupon said land shall thereby be forfeited to the state without the necessity of re-entry or judicial ascertainment, and shall revert to the particular fund to which it originally belonged, and be resold under the provisions of this chapter or any future law; provided, if any purchaser shall die, his heirs or legal representatives shall have one year in which to make payment after the first day of November next after such death, and shall be absolved and exempt from the requirement of settlement and residence thereon. And if any purchaser shall fail to reside upon and improve in good faith the land purchased by him, he shall forfeit said land and all payments made thereon to the state, in the same manner as for non-payment of interest, and such land shall be again for sale as if no such sale and forfeiture had occurred; provided, that all necessary and temporary absence from such land of such purchaser, for the time of not more than six months in any one year, for the purpose of earning money with which to pay for the land, or for the purpose of schooling his children, shall not work a forfeiture of his title; provided, further, that nothing in this article contained shall be construed to inhibit the state from instituting such legal proceedings as may be necessary to enforce such forfeiture, or to recover the full amount of the

interest and such penalties as may be due the state at the time such forfeiture occurred, or to protect any other right to such land, which suits may be instituted by the attorney-general or under his discretion, [direction] in the proper court of the county in which the land lies or of the county to which such county is attached for judicial purposes; provided, this article shall be printed on the back of receipt. (Id. § 11.)

See ante, Civ. St. Art. 5423.

For act of February 23, 1885, waiving forfeitures, and act of February 25, 1887, extending time of payment, see 2 Sayles' Civ. Stat. (1889) Arts. 4079, 4080.

Art. 4218*ll*. Same; includes all lands heretofore sold, etc.—If upon the first day of November of any year any portion of the interest due by any person to the state of Texas for lands heretofore sold by the state of Texas, whether said lands be a part of the public domain or shall have been heretofore set apart for the public schools, university, or any of the other various state institutions, has not been paid, it shall be the duty of the land commissioner to indorse on the obligation for said lands, "Lands forfeited," and shall cause an entry to that effect to be made on the account kept with such purchaser, and thereupon said land shall thereby be forfeited to the state, without the necessity of reentry or judicial ascertainment, and shall revert to the particular fund to which it originally belonged, and be resold under the provisions of the existing law, or any future law; provided, the purchaser of said land shall have the right, at any time within six months after such indorsement of "Lands forfeited," to institute a suit in district court of Travis county, Texas, against the commissioner of the general land office, for the purpose of contesting such forfeiture and setting aside the same, upon the ground that the facts did not exist, authorizing such forfeiture, but if no such suit has been instituted as above provided, such forfeiture of the commissioner of the general land office shall then become fixed and conclusive; provided, that if any purchaser shall die, or shall have died, his heirs or legal representatives shall have one year in which to make payment after the first day of November next after such death.

This article is cumulative, and is not intended to deny to the state the right to institute any legal proceedings that may be deemed necessary to secure the purchase-money or possession of the land so sold. And this article is intended to be applicable to all purchases heretofore made under any or all of the various acts of the legislature under which land may have been sold by the state. (Acts 1897, p. 39.)

See infra, art. 4307e, and ante, Civ. St. Art. 5423.

Art. 4218*lll*. Office forfeitures validated.—All forfeitures of public land, university land, public school land, or land set apart to any of the various state institutions, which have been heretofore sold under any of the various acts of the legislature, and the forfeitures made by the commissioner of the general land office for non-payment of any part of the interest due thereon, and without judicial ascertainment, shall be and the same are hereby in all things made valid; provided, that such purchaser shall have the right at any time within six months after the passage of this article, and not afterward, to institute suit in the district court of Travis county against the commissioner of the general land office to set aside such forfeiture upon the ground that the facts did not exist authorizing such forfeiture, and such forfeiture shall be a full liquidation of all claims of the state against such purchaser. (Acts 1897, p. 52.)

Art. 4218m. Coupling occupancy under second purchase to cure defects of first.—In all cases where persons have purchased or may hereafter purchase state, school or asylum lands under any act of the legislature authorizing the sale thereof and requiring a residence of three years thereon, and said persons have so resided upon said land or may hereafter reside thereon for the period of three years as required by law, and their files have been or may hereafter be canceled and purchases annulled by the commissioner of the general land office on account of conflict with other surveys, said persons shall have the right to purchase other lands of the classes mentioned in this article without being required to reside thereon. Persons desiring to avail themselves of the benefits of this provision shall make satisfactory proof to the commissioner of the three years' residence under their first purchase. (Acts 1895, p. 63, § 12.)

Arts. 4218n-4218p.

See ante, Civ. St. Arts. 5447-5449.

Art. 4218q. Sale of timber on timbered lands, etc.—The commissioner of the general land office shall adopt such regulations for the sale of timber on the timbered lands as may be deemed necessary and judicious. Such timber shall not be sold for less than five dollars per acre, cash, except in such cases as the commissioner may ascertain by definite examinations by an approved agent appointed by him for that purpose, to be paid by the purchaser, to be sparsely timbered or containing timber of but little value, in which case he may sell the timber on such sections or part of sections at its proper value; provided, such timber is sold at not less than two dollars per acre. The purchaser shall have five years from the date of his purchase within which to remove the timber therefrom, and in case of failure to do so, such timber shall thereby be forfeited to the state without judicial ascertainment; provided, that all timbered lands from which the timber has been cut and taken off may be placed on the market and sold as agricultural or grazing lands, according to classifications to be made by the land commissioner; provided, that the purchaser or his vendees of any such timber shall have the right to purchase the land upon which such timber so purchased is situated at two dollars per acre, cash, at any time before the expiration of five years from date of purchase of timber under the provisions of this chapter. (Id. § 16.)

See ante, Civ. St. Arts. 5429-5431.

Art. 4218r. Lands to be leased; terms, conditions, etc.—The public lands and all lands referred to in the several funds mentioned in this chapter shall be leased by the commissioner of the general land office under the provisions of this chapter, at not less than three cents per acre. All lands classified as agricultural and all lands containing permanent water thereon shall be leased for a term of five years or less, and all lands classified as pastoral or dry grazing lands

shall be leased for a term of not more than ten years, and the rental shall be paid yearly in advance, the first payment to be made at the time the lease contract is entered into. If at the termination of any lease the lands covered thereby are still for lease, the lessee thereof shall have the preference right to again lease such lands theretofore leased by him upon the terms and at the price then fixed by law.

All leases shall be executed under the hand and seal of the land commissioner and delivered to the lessee or his duly authorized agent, and such lease shall not take effect until the first annual rental is paid and such lease thereof duly filed for record in the clerk's office of the proper county, and it shall not be necessary for the commissioner to acknowledge such lease contract so signed and delivered; and all leases under the provisions of this chapter may be advertised by the commissioner in such manner as he may think best, and let to the highest responsible bidder in such quantities and under such regulations as he may think to the best interest of the state not inconsistent with the equities of the occupant. All bids and offers to lease may be rejected by him prior to signing the lease contract, for fraud or collusion or other good and sufficient cause. (Id. § 17; amended Acts 1895, p. 75.)

See ante, Civ. St. Arts. 5405, 5406, 5450-5452.

Art. 4218s. Same; lands subject to sale; termination of lease; restrictions as to number of animals to ten acres.— Any person desiring to lease any portion of the lands belonging to any of the funds mentioned in this chapter, shall make application in writing to the commissioner of the general land office, specifying and describing the particular lands he desires to lease, and thereupon, the commissioner, if satisfied that the lands applied for are not in immediate demand for purposes of actual settlement, shall notify the applicant in writing that his proposition to lease is accepted, and thereupon he shall execute to the lessee in the name and by the authority of the state of Texas a lease of said land for such time as may be agreed upon, and when satisfied that the lessee has paid to the treasurer of the state the rent for one year in advance, shall deliver said lease to the clerk of the county court of the county in which the land is situated or of the county to which said county is attached for judicial purposes, and it shall be the duty of the clerk to record in a well-bound book, to be kept in his office, open to public inspection, a memorandum or abstract of said lease, showing the number of the survey or surveys leased, the name of the original grantee, the amount leased, the name of the lessee, the date of the lease, and the number of years it has to run; and for entering said memorandum the clerk shall be entitled to a fee of twenty-five cents. Upon the payment of said fee, the clerk shall deliver the lease to the lessee; and no other record of leases hereafter made shall be required, except said memorandum.

All lease contracts heretofore made and not recorded, shall be filed for record with the clerk of the proper county, within three months after this article takes effect, and if any lessee shall fail to have his unrecorded lease so filed for record within said time, the commissioner of the general land office shall disregard said lease, and award the land to any other applicant accompanying his application with the certificate of the clerk that no lease of said land is of record in his office. When any of such leases are filed for record, the clerk shall make the memorandum or abstract above provided for.

All lands which may be leased shall be subject to sale at any time except where otherwise provided herein. This provision in regard to the sale of leased lands shall apply to leases heretofore made, as well as to those hereafter to be made. Any section or part of a section which may be leased, shall not be sold, nor shall the lessee be disturbed in his possession thereof during the term of his lease, in the following cases:

1. When the lessee has actually settled upon such section, or part of a section, and erected thereon his residence and substantial improvements for permanent settlement.

2. When he has placed on such section or part of a section improvements of the value of two hundred dollars.

3. When the aggregate of the land owned by a settler and leased by him does not exceed one section.

Any lands which may be leased south and west of the line herein designated shall not be sold during the term of the lease until otherwise provided by law; provided, the sections leased by any one party are not so selected as to detach sections which are thereby left unleased. Said line begins at the northwest corner of Yoakum county; thence east, to the northeast corner of Kent county; thence south, to the north line of Fisher county; thence west, to the northeast corner of Scurry county; thence south, to the north line of Coke county; thence east, to the northwest corner of Runnels county; thence south, to the southwest corner of Runnels county; thence east, to the northwest corner of Concho county; thence south, to the southwest corner of Concho county; thence east, to the southeast corner of Concho county; thence south, to the southwest corner of McCulloch county; thence east, to the southeast corner of McCulloch county; thence south to the southwest corner of San Saba county; thence east, to the northwest corner of Llano county; thence south, to the southeast corner of Mason county; thence west, to the northwest corner of Gillespie county; thence south, to the southwest corner of Gillespie county; thence east, to the northeast corner of Kerr county; thence south, to the southeast corner of Bandera county; thence west, to the northeast corner of Uvalde county; thence south, to the southwest corner of Medina county; thence east, to the northeast corner of Frio county; thence south, to the northeast corner of La Salle county; thence east, to the northeast corner of McMullen county; thence south, to the southeast corner of McMullen county; thence east, to the Nueces river; thence down said stream to its mouth: Except in that portion of the state south and west of the above delineated line, any actual settler shall have the right to lease within a radius of five miles of the land occupied by him, not exceeding three sections of the land held by a leaseholder who is leasing more than ten sections from the state, but shall not be allowed thereby to reduce the large leasehold to less than ten sections.

In all cases where the lease is terminated under any of the provisions of this chapter before the expiration of the term of lease, the lessee shall have a pro rata credit upon his next year's rent, or the money refunded to him by the treasurer, as he may elect. On the expiration of his lease, or its termination under any provision of law, the lessee shall have the right for the period of sixty days to remove any or all improvements he shall have placed upon the leased premises.

No purchaser or other person than the lessee shall be permitted to turn loose within such lessee's inclosure more than one head of horses, mules or cattle, or in lieu thereof four head of sheep or goats, for every ten acres of land so purchased, owned, or controlled by him and uninclosed. Each violation of the provisions of this chapter, which restrict the number of stock which may be turned loose in such inclosure, shall be an offense, and the offender, on conviction, shall be punished by a fine of one dollar for each head of stock he may so turn loose, and each thirty days' violation of the provisions of this article shall constitute a separate offense. (Id. § 18; amended Acts 1897, p. 184.)

See ante, Civ. St. Arts. 5452-5454.

Art. 4218t.

See ante, Civ. St. Art. 5455.

Art. 4218u. Payment of rents, how made.—All lessees shall pay the annual rents due for leased lands directly to the treasurer of the state, who shall execute receipts in duplicate for each payment made by any lessee, one of which receipts shall be delivered to the lessee and the other transmitted to the commissioner of the general land office. The treasurer shall cause to be kept an accurate account with each lessee, and the commissioner of the general land office shall file in his office all applications and other papers relating to leases, and keep a record of all leases made, which papers shall constitute a part of the records of his office. (Id. § 21.)

Art. 4218v. Leases, how canceled for non-payment of rents.—If any lessee shall fail to pay the annual rent due in advance for any year within sixty days after such rents shall become due, the commissioner of the general land office may declare such lease canceled by a writing under his hand and seal of office, which writing shall be filed with the other papers relating to such lease, and thereupon such lease shall immediately terminate, and the lands so leased shall become subject to purchase or lease under the provisions of this chapter. Such lease shall not be made to original lessees until all arrears are fully paid. During the continuance of all leases, and after forfeiture, the state shall have a lien upon all property owned by the lessee upon the leased premises to secure the payment of all rents due, which lien shall be superior to all other liens whatsoever; and it shall not be essential to the preservation or validity of such lien that it shall be reserved in the instrument of lease. (Id. § 22.)

See ante, Civ. St. Art. 5456.

Art. 4218w. Lessees privileged to purchase; personal property in improvements.—Lessees shall have the right at any time to purchase their leased lands, subject to the limitations as to quantity provided by this chapter, and at the price and on the conditions herein provided, without reference to any improvements made on such lands by such lessees; and all improvements made by lessees on lands leased by them are hereby declared to be personal property, which may be removed by such lessees on the expiration of their lease contracts; and they shall have sixty days after such expiration in which to remove the same. (Id. § 23.)

See ante, Civ. St. Art. 5452.

Art. 4218x. Suits to recover lands illegally occupied.—If the governor shall at any time be credibly informed that any portion of the public lands or the lands belonging to any of the several funds named in this chapter have been inclosed or that fences have been erected thereon without authority of law, he is authorized in his discretion to direct the attorney general to institute suit in the name of the state for the recovery of such lands and damages, and a fee of not less than ten dollars for the attorney when the sum recovered is less than one hundred dollars, and when it is over that sum the fee shall be ten per cent., to be paid by the defendant for the use and occupancy of the same, and the removal of such inclosures and fences; and such damages shall not be for a less sum than the amount of all the leases due during such occupancy.

For the recovery by the state of all lands sold under the provisions of this or former laws which have been or may hereafter be forfeited to the state for any reason, and for the recovery of any money due the states [state?] on leases made under this or former laws, and for the recovery of damages for the unlawful use and occupancy of such lands, as provided in this article, or any former laws, jurisdiction is expressly conferred on the courts of Travis county having jurisdiction thereof under the constitution concurrently with courts of the districts in which the land is situated, and all such suits shall be instituted by the attorney general or under his direction.

In suits provided for in this article, the court shall issue a writ of sequestration directed to any sheriff of the state, commanding and requiring such officer to take such land and all property thereon belonging to the person or persons so unlawfully occupying said lands into his actual custody, and hold the same subject to further orders of the court, and the state shall not be required to give bond. Such writ of sequestration may be executed by any sheriff of the state into whose hands it may be delivered, and it shall be the duty of any sheriff into whose hands it may come to proceed and execute such writ.

The defendant in such suit may replevy as in ordinary cases by giving bond as prescribed by law, and such cases shall have precedence on the docket and stand for trial before all other cases; and in case judgment is recovered by the state in such suit the court shall order such inclosure or fences to be removed, and shall tax the costs of the suit against the defendant, and all property found upon the land belonging to the defendant, not exempt from execution, shall be liable to the payment of such costs and damages in addition to the personal liability of the defendant.

Appeals may be prosecuted from all judgments in such cases as in ordinary cases, except that the state shall not be required to

give bond to perfect its appeal, and such cases on appeal shall have precedence over all other cases.

If any person shall make a lease contract, and after the same is inclosed by fence shall for any cause decide not to continue payment of his lease, either in whole or in part, he shall give public notice by publication in any local paper having the largest circulation, for at least sixty days before the time in which his next annual payment shall become due, that he will not continue his lease after the year for which payment is made, and shall also state the number and block of the land which he will not lease inside his inclosure, if he only intends to surrender a part of his lease, and shall post and shall keep posted for said sixty days notice on all gates of his pasture of such intention; then, and then only, he shall not be subject to the suit nor liable for the damages provided for in this article. (Id. § 24; amended Acts 1895, p. 75.)

See ante, Civ. St. Arts. 5460-5474.

Art. 4218y. Certain lands withheld from lease.—The commissioner of the general land office may withhold from lease any agricultural lands necessary for the purpose of settlement, and no agricultural lands shall be leased, if, in the judgment of the commissioner, they may be in immediate demand for settlement, but such lands shall be held for settlement, and sold to actual sellers only, under the provisions of this chapter; and all sections and fractions of sections, in all counties organized prior to the first day of January, 1875, except El Paso, Presidio and Pecos counties, which sections are isolated and detached from other public lands, may be sold to any purchaser, except to a corporation, without actual settlement, at one dollar per acre, upon the same terms as other public lands are sold under the provisions of this chapter. (Id. § 26; amended Acts 1897, p. 184.)

See ante, Civ. St. Art. 5450.

Art. 4218z. Certain illegal sales made valid.—All sales of public school, university, and the several asylum lands which were sold as isolated and detached lands under section 22, chapter 99 of the acts of the legislature of the state of Texas of 1887, and amendments thereto, which were in fact not isolated and detached, as construed by the supreme court, where the original sales have not been canceled and the lands resold, be and the same are in all things hereby legalized and made valid in all cases where such sales would have been valid if the lands so sold had in fact been isolated and detached; provided, that when applications have been made for the purchase of any such lands, in advance of placing of the same on the market again, it shall not have the effect of a sale of such lands, nor of requiring the commissioner of the general land office to award such lands to such applicants. (Acts 1897, p. 160.)

The section referred to is article 4301, post, the chapter in which it is found having been superseded, it seems, by this chapter. Notice that article 4218y contains the amendments referred to, and is substantially the same as article 4301. (See note at head of this chapter.)

Chapter 13—Title to Certain Lands Quieted

Article 4218aa. Patents on certificates issued to disabled soldiers under act of 1881.—All patents issued by the state upon locations or surveys of land made by virtue of any certificate issued under the provisions of an act of the legislature of the state of Texas entitled "An act granting to persons who have been permanently disabled by reason of wounds received while in the service of this state or of the Confederate States, a land certificate for twelve hundred and eighty acres of land," approved April 9th, 1881, be and are hereby validated, and the fact that the school and individual sections, or surveys made by virtue of any such certificate, may not have been made contiguous or adjacent to each other shall not be held to invalidate the patent issued on such survey, nor to invalidate the right of the public free school fund to the land located or surveyed for the benefit thereof by virtue of any such certificate. (Acts 1897, p. 113, § 1.)

Art. 4218bb. Locations and surveys made valid, etc.—All locations and surveys of land made by virtue of land certificates under said act of April 9th, 1881, entitled "An act granting to persons who have been permanently disabled by reason of wounds received while in the service of this state or of the Confederate States, a land certificate for twelve hundred and eighty acres of land," for which surveys the field-notes and certificates have been returned to the land office within the time required by law and located upon lands subject to location by certificates, are hereby validated, and where patents have been withheld for no other reason than that the school land required by said act to be located is not located adjacent to the individual land, the commissioner of the general land office is hereby authorized and required to issue patents to the persons to whom said certificates were issued, or to his or her assignee; provided, that said commissioner shall not be authorized or required to issue to any person to whom such certificate may have been issued, or to his or her assignee, a patent for any greater amount of land than may have been surveyed by virtue of such certificate for the benefit of the public free school fund. (Id. § 2.)

Art. 4218cc. Exceptions.—This chapter shall not be construed to affect or validate any of said patents or surveys mentioned in the two preceding articles that would be invalid for other reasons than that the school and individual sections were not located contiguous to each other; provided, that this chapter shall not be construed to validate any of the above lands obtained by fraud. (Id. § 3.)

The act of 1881, referred to above, and the repealing act, are as follows:

"An Act granting to persons who have been permanently disabled by reason of wounds received while in the service of this state, or of the Confederate States, a land certificate for twelve hundred and eighty acres of land.

"§ 1. That all persons who are now bona fide residents of this state, and who were resident citizens of this state, and as such citizens enlisted in the military service of this state or of the Confederate States in the late war between the states of the United States, as soldiers or as servants attending such soldiers, and while engaged in such military service, by reason of wounds received while in actual service, are permanently disabled, so as to seriously impair their ability to perform bodily labor, or earn a living for themselves and families, and the widows of soldiers who were residents as aforesaid and enlisted in the service as aforesaid, who died or were killed in actual service under such enlistment, who have remained widows and are now citizens of this state, and who show that they have not property of the value of one

thousand dollars, are hereby declared to be entitled to a land certificate for twelve hundred and eighty acres of land; provided, no person shall be entitled to the benefit of this act unless they show that they have not property of the value of one thousand dollars." (Act April 9, July 1, 1881; 17th Leg., p. 122; Sayles' Civ. Stat. 1889, vol. 2, p. 321.)

"§ 2. Any person desiring to obtain the benefit of this act shall prove to the satisfaction of the commissioners' court of the county of his residence, by at least two credible persons, that he is entitled to said land certificate under the provisions of this act, and upon the certificate of said commissioners' court under its seal that said applicant is entitled to said land certificate, the commissioner of the general land office is authorized and required to issue to said person a certificate for twelve hundred and eighty acres of land.

"§ 3. The certificate granted under the provisions of this act shall be located as follows: The locator shall also locate a like amount of land for the benefit of the permanent school fund before either shall be patented, and such location shall be made on any of the public domain of Texas not reserved by law from location."

"An Act to repeal an act entitled 'An act granting to persons who have been permanently disabled by wounds received while in the service of this state or of the Confederate States, a land certificate for 1280 acres of land.'

"An act entitled 'An act granting to persons who have been permanently disabled by wounds received while in the service of this state or of the Confederate States, a land certificate for 1280 acres of land,' approved April 9, 1881, is hereby repealed." (Act Feb. 2, 1883, 18th Leg., p. 13.)

Art. 4218dd. Certain patents confirmed and title relinquished.—The land patents numbered three hundred and eighty-eight (388), five hundred and eighty-three (583) and five hundred and eighty-four (584), Vol. No. four (4) (of the records of the general land office of the state of Texas), and issued to Thomas M. Joseph and Henry M. Truehart on the 20th day of December, A. D. 1859, and the 23d day of August, A. D. 1860, covering certain lands in Galveston county, state of Texas, be, and the same are hereby confirmed, and that all right and title of the state of Texas to the lands therein named, be, and the same are hereby relinquished to the parties to whom the said patents were issued, and sale made in accordance with an act approved on the 20th day of February, A. D. 1858, and an act amendatory of the same, approved on the 1st day of February, A. D. 1860, as also by a special act of the legislature of the state of Texas, approved July 29th, A. D. 1870. (Acts 1897, p. 222.)

For act of February 2, 1856, granting Pelican Island to the corporation of Galveston, and the joint resolution of March 8, 1879, in confirmation thereof, see 2 Sayles' Civ. Stat. (1889) art. 3961a.

For act of March 31, 1883, confirming "surveys and patents by virtue of headright or bounty warrants issued under special laws enacted after March 31, 1870, and prior to April 11, 1876," see Sayles' Civ. Stat. (1889) art. 3964a.

For act of April 4, 1881, directing the commissioner to issue patents for lands between the Rio Grande and Nueces rivers, see Sayles' Civ. Stat. (1889) art. 3964b. By act of March 16, 1881, owners of lands between those rivers were directed to archive their titles in the general land office. See ante, Civ. St. Art. 82, subd. 6.

TITLE 89—PUBLIC SCHOOL, ASYLUM AND UNIVERSITY LANDS

Chap.
1. University and Asylum Lands.
2. The Public Free School and County School Lands.
3. Sale and Lease of Public School, University and Asylum Lands.
4. Branch University for Colored People—Permanent Endowment.

Chapter 1—University and Asylum Lands

Article 4251. (4022) The fifty leagues appropriation.—The fifty leagues of land set apart and appropriated for the establishment and maintenance of the "University of Texas," by an act of congress of the republic of Texas, entitled "An act appropriating certain lands for the establishment of a general system of education," approved January 26, 1839, shall continue and remain as a part of the permanent university fund. (Const. art. 7, § 11; Act Jan. 26, 1839, p. 120; P. D. 3550.)

Art. 4252. (4023) The one million acres appropriation.—In addition to the lands heretofore granted to the University of Texas, there is hereby set apart and appropriated for the endowment, maintenance and support of said university and its branches one million acres of the unappropriated public domain, to be designated and surveyed as hereinafter provided. (Const. art. 7, § 15.)

Art. 4253. One-half of public domain added to permanent fund, etc.

See ante, Civ. St. Art. 5386. See, also, supra, art. 4200, and infra, Arts. 4268, 4307c, 4307d.

Art. 4254. (4024) The asylum lands.

See ante, Civ. St. Art. 5387. See, also, Early Laws, art. 2595.

Art. 4255. (4025) Such lands to be surveyed if necessary.—In case any of the lands appropriated and set apart by the provisions of the four preceding articles have not been surveyed, and the field-notes thereof returned to the general land office in accordance with law, the commissioner of the general land office shall, as soon as may be practicable, appoint one or more competent surveyors to survey such lands out of any vacant and unappropriated public lands. (Act Jan. 26, 1839, p. 120; P. D. 3550.)

Art. 4256. (4026) Surveys, how made and returned.—Such surveys shall be made in sections of six hundred and forty acres each, so far as the same may be practicable; and the surveyor shall locate and survey said lands under the direction of the commissioner of the general land office, and return the field-notes and maps thereof to the general land office within such time as may be prescribed by the commissioner, verified by his affidavit, in substance as follows: "I, A B, do solemnly swear [or affirm] that I have well and truly discharged my duties as surveyor of university [or asylum] lands to the best of my skill and ability; that in the performance of such duties I have selected and surveyed the most valuable unappropriated lands ascertainable by me in the locality designated by the commissioner of the general land office for my operations; and that the field-notes, maps and description of the lands herewith returned are as correct as I can make them, so help me God." (P. D. 3551.)

Art. 4257. (4027) Locations prohibited, when.—At the time of appointment of any surveyor for the purposes indicated in this chapter the commissioner of the general land office shall designate the general limits of the territory in which such surveyor shall operate, and notify the district surveyor having jurisdiction over such territory of such appointment and designation, and thereafter no locations shall be permitted within such limits until after receipt by the district surveyor of a certified copy of the maps and field-notes as provided in the succeeding article.

Art. 4258. (4028) Copies of field-notes, etc., forwarded to district surveyors.—After the return of the field-notes and

maps to the general land office by the surveyor appointed to make any such locations the commissioner of the general land office shall cause certified copies thereof to be forwarded to the district or county surveyor of any district or county in which any such lands are situated, who shall record the same in their respective offices as in other cases.

Art. 4259. (4029) Surveyors to continue until, etc.—Appointments of surveyors for the purpose indicated in the preceding article may be renewed or continued by the commissioner of the general land office, and additional surveys made until the whole amount of lands appropriated for the university or asylums are finally designated and surveyed.

Art. 4260. (4030) Surveyors, how paid.—The expenses of surveys made under the provisions of this chapter shall be paid out of the university fund of this state, or the fund of the proper asylum, upon the sworn account of the surveyor, approved by the commissioner of the general land office, and filed with the comptroller of public accounts.

Art. 4261. Commissioner to have surveys made, when.

See ante, Civ. St. Art. 5347.

Art. 4262. Bond, etc.

See ante, Civ. St. Art. 5348.

Art. 4263. May have lands surveyed, when.

See ante, Civ. St. Art. 5349.

Art. 4263a. Control of university lands confided to regents.

See ante, Civ. St. Art. 2633. See, also, infra, art. 4307c.

Art. 4263b. Duty of commissioner of land office.

See ante, Civ. St. Art. 2635.

Art. 4263c. Custody of records and funds.—All records and accounts of transactions in university lands, and of moneys paid thereon, shall be kept in the general land office and in office of the treasurer, as heretofore, and all patents shall be signed and issued as heretofore, and all moneys received on the sales or leases of said lands shall be paid to the treasurer of the state. (Id. § 3.)

Chapter 2—The Public Free School and County School Lands

Article 4264. (4031) The public school lands.—All the alternate sections of land reserved by the state out of grants heretofore made, or that may hereafter be made to railroads or other corporations of any nature whatever, one-half of the public domain, and all other lands heretofore set apart or that may hereafter be set apart for the benefit of public free schools shall constitute a part of the perpetual public free school fund. (Const. art. 7, § 2.)

Art. 4265. Locations validated.

See ante, Civ. St. Art. 5383.

Art. 4266. Lands sold for taxes to state, etc.

See ante, Civ. St. Art. 5384.

Art. 4267. Greer county lands.—All the vacant and unappropriated public domain embraced in the territorial limits of the county of Greer is appropriated, one-half thereof for [the] public free schools for the education of children in Texas without reference to race or color, and the other half for the payment of the state debt; and said lands shall be surveyed and disposed of for the purpose of carrying out the provisions of this article in such manner as may hereafter be provided by law. (Acts 1879, p. 16.)

See art. 4282a, post.

Art. 4268. One-half of unsold public domain to permanent fund.—After the payments of the amounts due from the state to the common free school fund, out of the proceeds of the sales heretofore made, or hereafter to be made, of that portion of the public lands set aside for the payment of the public debt, by an act approved July 14, 1879, and an act amendatory thereof, approved March 11, 1881, and the payment directed to be made to the common school and university funds by an act approved February 23, 1883, the remainder of said land, not to exceed two million of acres, contained in the counties and territory specially mentioned in said acts, or the proceeds thereof, set aside by said acts for the payment of the public debt, heretofore or hereafter to be received by the state, shall one-half thereof constitute a permanent endowment fund for the common free schools of this state. (Acts 1883, p. 71.)

See art. 4253, ante, and arts. 4307c, 4307d, post.

Art. 4269. Surveys validated.—The surveys of all county school lands heretofore made, either actually on the ground or by protraction, and returned into the general land office, according to law, and upon which patents have issued, are hereby declared valid surveys, and the titles to the lands included within the lines of said surveys, as returned to the general land office, are hereby vested in the counties for which the same were made; and in all such surveys the calls for distance shall have precedence and control calls for rivers or natural objects when the calls for distance will give the quantity of land intended to be included in the survey and the calls for natural objects or rivers will not; provided, this law shall not divest any vested right. (Acts 1883, p. 28.)

Art. 4270. (4035) Such lands belong to the counties.—All lands granted to counties for educational purposes, under the provisions of this chapter or any former law, shall belong to such counties respectively, and the titles thereto shall be fully vested in said counties; and no adverse possession or limitation shall ever be available against the title of any county to such lands. (Const. art. 7, § 6.)

Art. 4271. (4036) Land, how sold and proceeds invested.

See ante, Civ. St. Art. 5402.

Art. 4272. (4037) Actual settlers to have preference.

See ante, Civ. St. Art. 5403.

Art. 4273.

Omitted, as repealed by report of the joint committee on amendments to the Revised Civil Code 1895.

Art. 4274. Surplus segregated from public domain, when.

See ante, Civ. St. Art. 5396.

Art. 4275. Belong to public free school fund.

See ante, Civ. St. Art. 5397.

Art. 4276. Excess to be added.

See ante, Civ. St. Art. 5398.

Art. 4277. Shall not affect rights.

See ante, Civ. St. Art. 5399.

Art. 4278. Conflicts.

See ante, Civ. St. Art. 5400.

Art. 4279. Even-numbered surveys in conflict, etc.

See ante, Civ. St. Art. 5401.

Art. 4280. Unorganized county school land.—The three hundred and twenty-five leagues of land heretofore surveyed under the provisions of an act entitled "An act to provide for designating and setting apart three hundred leagues of land out of the unappropriated public domain, for the benefit of the unorganized counties of the state, and to provide for the survey and location of the same," approved March 16, 1882, is set apart and shall constitute a reservation out of which each of the unorganized counties of this state, as it may be organized, shall be entitled to receive four leagues of land for free school purposes, and out of which such organized counties of this state as may have located their certificate for four leagues of school land in conflict with or upon land already appropriated by valid prior location and survey, or which from any cause have failed to get title to their four leagues of school land, shall be entitled to receive so much of said land as may be necessary to secure to any such county the number of acres it may be entitled to from any cause, or that may be declared to be in conflict by the commissioner of the general land office. (Acts 1883, p. 45.)

Art. 4281. Shall be numbered, etc.—Each of said leagues of land shall be numbered by the commissioner of the general land office, in the order in which it was surveyed by the contractor or contractors, beginning at number one and extending to three hundred and twenty-five, and as each of the unorganized counties in this state shall be organized such county shall be entitled to the first four leagues out of the reservation authorized by the foregoing provisions, which shall not have been patented to other counties for free school purposes. Upon the payment to the treasurer of the state the actual cost of surveying fees and legal interest thereon from time of payment by the state, and upon the payment of such costs and interest, the commissioner of the general land office is required to issue patents to said county for four leagues of land as above provided, but said counties shall not be required to pay patent fees for said patents. (Id. § 2.)

Art. 4282. Lands, how obtained by counties.—Any organized county in this state shall, in like manner as provided in the preceding articles, be entitled to receive so much of said land, not exceeding four leagues, as shall be necessary to secure to any such county the number of acres of land heretofore located by such county, and which shall be declared to be in conflict with prior locations and surveys by the commissioner of the general land office or by the decree or judgment of any court having jurisdiction of the subject-matter. And it shall be the duty of the commissioner of the general land office, upon the written application of the county judge and any two of the county commissioners, accompanied by the decision of the commissioner of the land office, or a certified copy of such decree or judgment, to issue patents to such county upon the same conditions and in like manner as is provided for unorganized counties; provided, if any such county should be entitled to receive a quantity less than one league such land shall be surveyed at the expense of such county, in a square figure with at least two lines thereof (where more than one line is run) commencing on lines of original survey as may be selected by the county judge of the county that is entitled to the survey. (Id. § 3.)

Art. 4282a. Setting apart the four leagues granted to Greer county.—The four leagues of land heretofore patented to what is known as the territory of Greer county for free school purposes, under the provisions of an act entitled, "An act to reserve and set apart three hundred and twenty-five leagues of land heretofore surveyed for the benefit of the unorganized counties of the state, and such organized counties as may have located their four leagues of school land, or any part thereof in conflict with valid prior locations or surveys, or which from any cause fail to get title to the four leagues of land they are entitled to under the law," approved April 7th, 1883, be and the same is hereby set apart and appropriated for the support and maintenance of the public free schools of this state. (Acts 1897, p. 86, § 1.)

Art. 4282b. Attorney-general to institute proceedings.—The attorney-general of the state of Texas is hereby authorized to institute such proceedings as he deems necessary to recover said land against all adverse claims. (Id. § 2.)

Chapter 3—Sale and Lease of Public School, University and Asylum Lands

Article 4283. Lands to be sold or leased.—All lands heretofore or hereafter surveyed and set apart for the benefit of the public free schools, the university, the lunatic asylum, the blind asylum, the deaf and dumb asylum, and the orphan asylum, shall be sold and leased under the provisions of this chapter. (Acts 1887, p. 83, § 1.)

See supra, art. 4218z, and ante, Art. 5405, Civ. St.

Art. 4284. Commissioner to carry into effect, etc.—The commissioner of the general land office is hereby vested with all the power and authority necessary to carry into effect the provisions of this chapter, and shall have full charge and direction of all matters pertaining to the sale and lease of said lands, and their protection from free use and occupancy, and from unlawful inclosure, with such exceptions and under such restrictions as may be imposed by the provisions of this chapter, or by the constitution of the state. He shall, as soon as practicable, adopt such regulations not inconsistent with the constitution or this chapter as may be deemed necessary for carrying into effect the provisions of this chapter, and may from time to time alter or amend such regulations so as to protect the public interest, but all regulations shall be submitted to the governor for his approval before adoption or promulgation. He shall adopt all necessary forms of applications for sales or leases, and all other forms necessary or proper for the transaction of business imposed upon him by this chapter, including the forms of leases, receipts and acquittances, and may from time to time call upon the attorney-general to prepare such forms, and it shall be the duty of that officer to furnish the commissioner

of the general land office with such advice and legal assistance as may be requisite for the due execution of the provisions of this chapter; and it shall be the duty of such commissioner to call upon the attorney-general for advice whenever there is any doubt as to the meaning of this chapter or any provisions thereof. (Id. § 2.)

See ante, Civ. St. Art. 5406.

Art. 4285. Commissioner shall have classified and valued.—The commissioner of the general land office shall cause all the lands belonging to the several funds named in this chapter which may be in demand for immediate settlement, to be carefully and skilfully classified and valued; and for this purpose he may appoint, with the approval of the governor, such number of competent state agents as may be necessary to effect such classification and valuation; and he shall cause such classification and valuation to be made of the remainder of such lands from time to time as the same may come into demand for actual settlement; and with the approval of the governor he may allow such compensation to said state agents as may be just and proper, not to exceed the sum of one hundred and fifty dollars per month and necessary expenses for subsistence. He may also appoint such other assistants as may be found necessary to accomplish such classification and appraisement and the sale or lease of the land; but no state agents or other appointments shall be made in the absence of an appropriation by law to cover such expenditure, and the state shall not be liable for any expenditure of this character incurred in excess of the current appropriations. (Id. § 3.)

See ante, Civ. St. Art. 5407.

Art. 4286. Agents to be appointed, how, etc.—It shall be the duty of such state agents as may be appointed under the provisions of this chapter, under such regulations and instructions as may be prescribed by the commissioner of the general land office, to classify all the lands belonging to the several funds mentioned in this law, as prescribed in article 4285, lying in the particular territory to which such agent may be assigned, into agricultural, pasture and timber lands; and for this purpose they shall carefully examine the same, and after such examination they shall prepare an accurate plat of each section, showing the relative proportions of timber and open land on such section, and their situation, also the quality of the soil, the topography of the land and the quality and kind of timber, and the streams and other sources of water supply, and their location, noting such streams as may be permanent water, and such other facts as may be important; and from time to time, as may be prescribed by the commissioner of the general land office, such agent shall prepare and forward to the commissioner, with such plats, a tabulated statement of all the lands in any particular locality, with the value of each section; and such plats and reports shall be filed in the general land office as a part of the records of said office; but nothing in this article contained shall be construed to require a classification of lands already classified under former laws, if such classification is satisfactory to the commissioner. (Id. § 4.)

See ante, Civ. St. Art. 5410.

Art. 4287. To be sold to actual settlers only; conditions.—When any portion of said land has been classified to the satisfaction of the commissioner under the provisions of this chapter or former laws, such land shall be subject to sale, but to actual settlers only, and in quantities of not less than eighty acres and in multiples thereof, nor more than one section containing six hundred and forty acres, more or less; provided, that when there is a fraction less than eighty acres of any section left such fraction may be sold; but lands classified as purely pasture lands and without permanent water thereon may be sold in quantities not to exceed four sections to the same settler; and in no event shall sale be made to a corporation, either foreign or domestic, and all sales to a settler shall be upon the express condition that any sale or transfer of such land to any corporation, directly or indirectly, before patent is issued thereon, shall ipso facto terminate the title of the purchaser or owner, and such land shall be forfeited to the state without re-entry and become again a part of the particular fund to which it formerly belonged. (Id. § 5; amended Acts 1889, p. 50.)

See ante, Civ. St. Arts. 5407, 5410, 5420.

Art. 4288. County clerk to be notified of valuations.—It shall be the duty of the commissioner of the general land office to notify in writing the county clerk of each county of the valuation fixed upon each section of land in his county, and in each county attached to it for judicial purposes, which he offers for sale, which notification shall be kept by the clerk in his office and recorded in a well-bound book, which shall be open to public inspection. (Id. § 6.)

See ante, Civ. St. Art. 5407.

Art. 4289. Prices.—All lands belonging to the public free schools, university and the several asylum funds, shall be sold at not less than two dollars per acre. All sections of land having permanent water on, or bordering thereon, shall be sold at not less than three dollars per acre, and no less than one hundred and sixty acres shall be sold, except in cases where a fractional part of a section less than one hundred and sixty acres is unsold, in which case the entire fractional part of such survey shall be sold; provided, that no watered portion of any section shall be sold unless there is permanent water on, or bordering on, the part of said section remaining unsold; and all timber land shall be sold at not less than five dollars per acre. By timber lands here used is meant lands valuable chiefly for the timber thereon. (Id. § 7.)

See ante, Civ. St. Art. 5407.

Art. 4290. Purchase, how made.—Any *bona fide* actual settler who may reside on any part of the lands the sale of which is authorized by this chapter shall have the right, for a period of six months after the same shall have been appraised, to purchase such quantity of land as may be limited by this chapter, to include his improvements, upon complying with the provisions of this chapter regulating sales as in other cases;

and such land shall be appraised without reference to the improvements thereon; provided, that any *bona fide* settler who has heretofore purchased or may hereafter purchase one section of agricultural or watered land, and no more, shall have the right to purchase three dry and strictly pastural sections upon his making oath that he is not acting in collusion with others for the purpose of buying the land for any other person or corporation, and that no other person or corporation is directly or indirectly interested in the purchase of the same. (Id. § 8; amended Acts 1889, p. 50.)

See ante, Civ. St. Arts. 5416, 5420, 5426, 5435.

Art. 4291. Sales, how made.—All sales shall be made by the commissioner of the general land office or under his direction, and he shall prescribe suitable regulations whereby all purchasers shall be required to reside upon, as a home, the land purchased by them for three consecutive years next succeeding the date of their purchase. Such regulations shall require the purchaser to reside upon the land for the three consecutive years herein mentioned, and to make proper proof of such residence and occupancy to the commissioner of the general land office within one year next after the expiration of said three years by his affidavit, corroborated by the affidavits of three disinterested and credible citizens of the county, to be certified to by some officer of the county wherein the land is situated authorized to administer oaths. Any person desiring to purchase land in accordance with the provisions of this law shall forward his application to the commissioner, particularly describing the land sought to be purchased, which application shall in all cases, be accompanied with the affidavit of the applicant, in effect that he desires to purchase the land for a home, and has in good faith settled thereon; and he shall also swear that he is not acting in collusion with others for the purpose of buying the land for any other person or corporation, and that no other person or corporation is interested in the purchase save himself. The purchaser shall transmit to the treasurer of the state one-fortieth of the aggregate purchase-money for the particular tract of land and send to the commissioner his obligation to the state duly executed, and binding the purchaser to pay to the state on the first day of August of each year thereafter until the whole purchase-money is paid, one-fortieth of the aggregate price with interest thereon from date at the rate of five per cent. per annum on the whole unpaid purchase-money, which interest shall also be payable on the first day of August of each year; and upon receipt of one-fortieth of the purchase-money by the treasurer, and the affidavit and obligation aforesaid by the commissioner, the sale shall be deemed and held effective from the date the affidavit and obligation are filed in the general land office; provided, that if the land applied for be timbered land, then the purchaser shall be required to pay the full amount of the purchase-money at the time of his purchase. (Id. § 9.)

See ante, Civ. St. Arts. 5406, 5409-5411.

Art. 4292. Option of purchaser to pay, when.—All purchasers shall have the option of paying the purchase-money for their lands in full at any time after they have occupied the same for three consecutive years; and when they have made such payment in full, together with the proof that they have occupied the land and homestead for three consecutive years, they shall be entitled to receive patents for the same upon payment of the patent fees prescribed by law. Purchasers may also sell their land at any time after sale is effected under this law, and in such cases the vendee, or any subsequent vendee, may file his own obligation with the commissioner of the general land office, together with the duly authenticated conveyance, or transfer, from the original purchaser, and the intermediate vendee's conveyance or transfer, if any there be, duly recorded in the county where the land lies, or to which it may be attached for judicial purposes, together with his affidavit stating that he desires to purchase the land for a home, and that he has in good faith settled thereon, and that he is not acting in collusion with others for the purpose of buying the land for any other person or corporation, and that no other person or corporation is interested in the purchase save himself; and thereupon the original obligation may be surrendered or canceled, and the vendee shall become the purchaser direct from the state, and be subject to all the obligations and penalties prescribed by this law, and the original purchaser shall be absolved from further liability thereon; provided, that whenever a town shall be located and established upon any land sold under this or any former law, the purchaser or his vendee shall be permitted to pay the entire balance of principal and interest due the state upon such land, and obtain a patent therefor at any time; but no such payment shall be permitted or patent issue until such purchaser or owner of such land shall file in the general land office a certified plat of such town, made by the proper surveyor of the county, which shall be accompanied by the affidavit of the owner of such land, corroborated by the affidavit of five disinterested and credible citizens of the county, to the effect that a town, giving its name, has been located and established upon the land, and that there has been erected therein, and being occupied by *bona fide* citizens, twenty business and residence houses, or either or both. (Id. § 10.)

See ante, Civ. St. Arts. 5436, 5438.

Art. 4293. Time in which interest may be paid.—If, upon the first day of November of any year, the interest due for the year next preceding on any obligation remains unpaid, the commissioner of the general land office shall indorse on such obligation "land forfeited," and shall cause an entry to that effect to be made on the account kept with the purchaser, and thereupon said land shall be forfeited to the state, without the necessity of re-entry or judicial ascertainment, and shall revert to the particular fund to which it originally belonged, and be resold under the provisions of this chapter, or any future law; provided, if any purchaser shall die, his heirs or legal representatives shall have one year in which to make payment after the first day of November next after such death; and if any purchaser shall fail to reside upon and improve in good faith

the land purchased by him, he shall forfeit said land and payment thereon made, to the state, in the same manner as for non-payment of interest, and such land shall again be for sale, as if no such sale or forfeiture had occurred; or, if he shall fail to make the proof of occupancy within the time and in the manner prescribed by the regulations of the commissioner of the general land office, as provided for in article 4291, he shall in like manner forfeit the land and all payments thereon to the state; provided further, that nothing in this section contained shall be construed to inhibit the state from instituting such legal proceedings as may be necessary to enforce such forfeiture, or to protect any other right to such land; which suits may be instituted by the attorney-general under the direction of the governor, in the proper court of the county in which the land lies; provided, this article shall be printed on the back of the receipt. (Id. § 11; amended Acts 1889, p. 50; Acts 1891, p. 180; Acts 1893, p. 30.)

See ante, Civ. St. Art. 5423.

Art. 4294. Applications, etc., to remain on file in land office.—The commissioner of the general land office shall retain in his custody as records of his office all applications, affidavits, obligations and all other papers relating to the sales of said lands, and shall cause to be kept accurate accounts with each purchaser. All purchase-money due upon lands, as well as accrued interest and all other moneys arising from the sales or leases of said lands, shall be paid by the purchaser or lessee direct to the treasurer of the state, and who shall execute duplicate receipts for all sums of money paid to him under the provisions of this law, one of which receipts shall be delivered to the purchaser or his agent and the other transmitted to the commissioner of the general land office. (Id. § 12.)

See ante, Civ. St. Arts. 5414, 5449.

Art. 4295. Sales of timber.—The commissioner of the general land office shall adopt such regulations for the sale of the timber on timbered lands as may be deemed necessary and judicious, such regulations to be subject to the approval of the governor. Such timber shall not be sold for less than five dollars per acre cash, except in such cases as the commissioner may ascertain by definite examination of a state agent that any particular section is sparsely timbered or contains timber of but little value, in which case he shall be authorized to sell the timber on said section at the best price, on the best terms practicable; provided, such timber is sold at not less than two dollars per acre. And in no case shall less than one section of timbered land be sold to any purchaser, except in cases of fractional sections, which may be sold under the provisions of this chapter. The purchaser shall have five years from the date of his purchase within which to remove the timber therefrom, and in case of failure to do so, such timber shall be forfeited to the state without judicial ascertainment; provided, that all timbered lands from which the timber has been cut and taken off may be placed on the market and sold for not less than two dollars per acre, as other lands are sold under the provisions of this chapter. (Id. § 13; amended Acts 1889, p. 50.)

See ante, Civ. St. Arts. 5429, 5430.

All persons who have heretofore purchased timber on the school lands in this state under the provisions of the act of April 1, 1887, and the acts amendatory thereof, and who have not when this act takes effect removed the timber purchased by them from said land, and all persons claiming under said purchaser, shall have two years in addition to the time specified in their several contracts of purchase in which they may remove the timber on said lands so purchased by them; provided, that such purchaser or purchasers, or those claiming under them, shall for the two years' extension herein provided for annually pay in advance to the state treasurer for the use of the available school fund, six per cent. interest on the purchase-money so paid for such timber so purchased by them respectively. (Acts 1895, p. 14.)

Art. 4296. Terms of leases.—The public lands, and all lands belonging to the public free schools, asylums, or university fund, shall be leased by the commissioner of the general land office under the provisions of this chapter. All of such lands lying west of the Pecos river, and all of such lands lying south of the Texas and Pacific railroad, except in the counties of Concho, McCulloch, Coke, Sterling, Glasscock, Midland, Ector, Tom Green, Howard and Martin, and all university lands, shall be leased for a period of not longer than ten years; and all other such lands lying north of the Colorado river and north of the Texas and Pacific railroad, and the counties hereinbefore excepted from the ten years' lease, shall be leased for a period not longer than five years, and the lessee shall pay an annual rental of four cents per acre for all lands leased; provided, that the university lands may be leased at three cents per acre per annum; which rental shall be paid each year in advance, the first payment to be made at the time the lease is executed; and if at the termination of any lease any of such lands are not in demand for actual settlement they may be again leased for another five years, and the lessee thereof whose term of lease has expired shall have the refusal of such land as he has been leasing on the terms and at the price that may be fixed therefor by the commissioner of the general land office, and all leases shall be executed under the hand and seal of the commissioner of the general land office, and shall be delivered to the lessee or his duly authorized agent, and such leases shall not take effect until the first payment of annual rent is paid and the lease duly filed for record in the county where the land lies, or to which it may be attached for judicial purposes, and it shall not be necessary for the commissioner to acknowledge such lease before the same is placed on record. (Id. § 14; amended Acts 1889, p. 50; Acts 1891, p. 180.)

See ante, Civ. St. Arts. 5452, 5453.

Art. 4297. Application, etc., how made.—Any person desiring to lease any portion of the public lands belonging to any of the funds mentioned in this chapter the sale and lease of which is not provided for by any other law, shall make application in writing to the commissioner of the general land office, specifying and describing the particular lands he desires to lease; thereupon the commissioner, if satisfied the lands are not in demand for purposes of actual settle-

ment, and that such lands can be leased without detriment to the public interest, shall notify the applicant in writing that his proposition to lease is accepted, and thereupon he shall execute and deliver to the lessee in the name of the state a lease of said land for such terms as may be agreed upon, not longer than the period of time fixed by this chapter, according to its location, and deliver the same to such lessee when satisfied that the lessee has paid to the treasurer of the state the rental for one year in advance. No lands which are now or which may hereafter be classified as grazing lands within the territory where ten years lease is authorized, as set forth in the preceding article, shall be subject to sale during the term of the lease contract thereof, and the possession of the lessee shall not be disturbed during the term of his lease. (Id. § 15; amended Acts 1889, p. 50; Acts 1891, p. 180.)

See ante, Civ. St. Art. 5452.

Art. 4298. Rent to be paid, how.—All lessees shall pay the annual rent due for leased lands directly to the treasurer of the state, who shall execute receipts in duplicate for each payment made by any lessee, one of which receipts shall be delivered to the lessee and the other transmitted to the commissioner of the general land office. The treasurer shall cause to be kept an accurate account with each lessee, and the commissioner of the general land office shall file in his office all applications and other papers relating to leases, and keep a record of all leases made, which papers shall constitute a part of the records of his office. (Id. § 16.)

Art. 4299. Lease canceled, when.—If any lessee shall fail to pay the annual rent due in advance for any year, within sixty days after such rent shall become due, the commissioner of the general land office may declare such lease canceled, by a writing under his hand and seal of office, which writing shall be filed with the papers relating to such lease, and thereupon said lease shall immediately terminate, and the lands so leased shall become subject to purchase or lease, as the commissioner may determine for the best interest of the state. And during the continuance of all leases, and after forfeiture, the state shall have a lien upon all the property upon the leased premises to secure the payment of all rents due, which lien shall be prior and superior to all other liens whatsoever, and it shall not be essential to the preservation or validity of such lien that it shall be reserved in the instrument of lease. (Id. § 17.)

See ante, Civ. St. Art. 5456.

Art. 4300. Land inclosed or used without authority.—If the governor is informed at any time, upon the affidavit of some credible person, that any portion of the public lands, or lands belonging to the public free school, asylum or university funds, have been inclosed, or that fences have been erected thereon without authority of law, he is authorized, in his discretion to direct the attorney-general to institute suit in the name of the state for the recovery of such land and damages for the use and occupation of such land and the removal of such inclosures and fences. Such suit may be instituted in the district court of any county where the land, or a portion thereof, is situated, or in the district court of Travis county; and upon application of the attorney-general, and without affidavit or bond, the clerk of the court in which suit is instituted shall issue a writ of sequestration, directed to any sheriff of the state of Texas, commanding and requiring such officer to take such land and all property thereon into his actual custody, and the same hold subject to the further orders of the court. Such writ of sequestration may be executed by any sheriff of the state into whose hands it may be delivered, and it shall be the duty of any sheriff into whose hands it may come to proceed and execute such writ, and the governor is required, in his discretion, to furnish such sheriff with the necessary force of volunteer militia or other military force of the state to accomplish the purposes of the writ and to execute the process of the court. The defendant in such writ may replevy, as in ordinary cases, by giving bond as prescribed by law, and such cases shall have precedence on the docket and stand for trial before all other causes; and in case judgment is recovered by the state in such suit the court shall order such inclosures or fences to be removed, and shall tax the costs of the suit, including the cost of the military force, if any, against the defendant; and all property found upon the land belonging to the defendant shall be liable for such costs and damages in addition to the personal liability of the defendant. Appeals may be prosecuted from all judgments in such cases as in ordinary cases, except that the state shall not be required to give bond to perfect its appeal, and such cases on appeal shall have precedence over all other cases. (Id. § 20.)

See ante, Civ. St. Art. 5467.

Art. 4301. Lands may be withheld from lease, when.—The commissioner of the general land office, under the direction of the governor, may withhold from lease any agricultural lands necessary for purposes of settlement, and no agricultural lands shall be leased if in the judgment of the commissioner they may be in immediate demand for settlement, but such lands shall be held for settlement and sold to actual settlers only, under the provisions of this law, and all sections or fraction of sections in all counties organized prior to the first day of January, 1875, except El Paso, Pecos and Presidio counties, which sections are detached and isolated from other public lands, may be sold to any purchaser, except to a corporation, without actual settlement, at not less than two dollars per acre, upon such terms as the commissioner of the general land office may prescribe. (Id. § 22; amended Acts 1889, p. 50.)

See ante, Civ. St. Art. 5450. See, also, supra, arts. 4218y, 4218z, ante.

Art. 4302. Exempt from taxation.—Leaseholds created under the provisions of this chapter shall be exempt from all taxation. (Id. § 24.)

Art. 4303. Vested rights not to be disturbed.—Nothing in this law shall be construed to impair, interfere with or in any manner affect any lease or sale, or the rights growing out of the same, made under former

laws, of the lands herein referred to; provided, that any person or persons who have heretofore leased lands from this state at prices fixed by the land board, and whose leases have not yet expired, shall have their rental for the remainder of their unexpired term reduced to the prices charged under this law for the lease of similar lands. (Id. § 25.)

Art. 4304. Regulations for issuance of patents.—The commissioner of the general land office is authorized and required to issue patents to all parties purchasing university lands in accordance with the original subdivisions as made under the provisions of "An act authorizing the disposition and sale of university lands," approved August 30, 1856, where said subdivisions have been made and field-notes filed in the general land office in accordance with said act; and if it should appear from actual survey on the ground, conforming to the lines and corners of said original subdivisions, that there is any subdivision more or less than one hundred and sixty acres, the commissioner of the general land office shall issue patents for the number of acres contained in said subdivisions upon the purchaser paying into the state treasury the amount per acre that the subdivision may have been appraised at; provided, that this article shall not affect any rights heretofore acquired under existing laws relative to university lands. (Acts 1879, p. 39.)

Art. 4305.

Omitted, as repealed by the report of the joint committee on amendments to the Revised Civil Code, No. 79; Sen. Jour., 1895, p. 482—Codifiers of 1895.

Art. 4306. Lease of unorganized county school lands.—The commissioner of the general land office is hereby authorized to lease for a term of not exceeding ten years, at a price not less than two cents per acre, the three hundred and twenty leagues of land set apart and surveyed in the year 1882 for the unorganized counties of the state, situated in the counties of Hockley, Cochran, Bailey, Lamb, Andrews, Martin, Dawson and Gaines, under the same rules and upon the same terms as are prescribed by law for the lease of the university lands. The proceeds of such lease shall be paid into the state treasury and become a part of the available school fund of the state. (Acts 1889, p. 108, § 1.)

Art. 4307. Control to vest in county, when.—Whenever any county entitled to said lands shall be organized, the control of said lands belonging to such county shall vest in the commissioners' court of such county, and any lease money thereafter becoming due shall be payable to such county, but all leases executed before such organization of the county shall be binding for the full term thereof. (Id. § 2.)

Chapter 4—Branch University for Colored People—Permanent Endowment

Article 4307a. Appointment and bond of surveyor.—The governor and commissioner of the general land office be and they are hereby authorized to contract with and appoint a competent surveyor to survey and return to the general land office plats and field-notes of one hundred thousand acres of land, to be surveyed out of any of the vacant public and unsurveyed lands of this state in the manner hereinafter provided. They shall contract with such competent surveyor at the lowest price consistent with competency and efficiency in discharging the duties of surveyor. If they deem it necessary they may advertise for bids from surveyors. The surveyor so appointed shall enter into a good and sufficient bond in a sum of not less than double the contract price of the surveys, conditioned that he will faithfully comply with the requirements of this chapter, which bond shall be payable to the governor of the state, and be approved by him. (Acts 1897, p. 148, § 1.)

Art. 4307b. Surveys; record and return of field-notes.—The commissioner of the general land office shall furnish the surveyor appointed under authority of this chapter with sketches showing connections with any existing and established corners from which he may begin the surveys. He shall survey the lands into sections of six hundred and forty acres and in blocks after the manner of the railway surveys now existing in this state, and shall make plats of each block and survey, numbering the blocks in numerical order, beginning with number one, and shall also number each section in each block in the same manner, beginning with number one in each block. In all cases he shall mark and establish two corners on the ground for each survey, and the lines between which, if in timber, shall be distinctly marked. Said corners shall be made with at least two bearings, if in timber, and if in prairie, by earth mounds six feet in diameter and three feet high, or with a pile of rocks not less than two feet high. He shall actually survey each section on the ground and sign the field-notes, himself, of each survey separately and have his chain carriers to attest the field-notes of each survey by their own signatures. The surveyor shall then certify that he actually surveyed the land embraced in the field-notes, on the ground, and that the field-notes correctly described the land. He shall have the field-notes of each survey and plat recorded in the surveyor's record of the county or counties in which the lands surveyed are situated or in the county to which such county may be attached for surveying purposes in the manner now required by law. He shall, however, first forward the field-notes of all surveys made in any county to the commissioner of the land office for examination both as to correctness and as to conflicts with older valid surveys, and upon their return to the surveyor, after being approved by the commissioner, they shall be recorded as above required. After the field-notes are recorded the said surveyor shall make a plat of each block of surveys according to the field-notes so made by him, and return same, together with the original field-notes, recorded, to the general land office. All the lands surveyed as required by this chapter shall thereafter be mapped in the land office and shall be known and designated as the branch university surveys for the colored people. (Id. § 2.)

Art. 4307c. Alternate sections to belong to university and free schools respectively; sales and leases.—It shall be the duty of the commissioner to have the sec-

tions carefully numbered on the map in accordance with the field-notes of the surveys and blocks so returned by the surveyor. The odd-numbered surveys [sections?] shall thereafter be set apart and constitute a permanent endowment for a branch university for the colored people, and the even-numbered sections shall thereafter be set apart and constitute a permanent endowment for the public free schools of the state.

None of the odd-numbered lands surveyed, as required by this chapter, shall be put on the market and disposed of by the commissioner of the land office, but shall be under the control of the board of regents for the university of Texas, and held by the board in trust for the benefit of the said branch university for the colored people. All the funds received by said board for leases or sale of said lands shall be held sacred for the benefits and uses herein designated.

The commissioner shall not sell the even-numbered sections set apart herein for the public free school fund, but may lease the same to such persons only as may lease from the board of regents the odd numbers. Whenever the board may desire to sell said lands, they may contract for its [their] sale, and the purchaser, upon exhibiting to the commissioner of the land office such contract and depositing with him a duplicate copy of the same, [?] the commissioner may also sell the school sections corresponding with such odd numbers on the same terms and at the same price per acre as that embraced in the contract; provided, it shall not be sold for less than one dollar per acre: The proceeds to be paid into the treasury of the state, as now provided by law. (Id. § 3.)

See Arts. 4236a-4236c, ante.

Art. 4307d. Certain vacant and unsurveyed public domain may be surveyed.—Any of the vacant and unsurveyed public domain situated in any of the counties embraced in chapter XXXIII, approved March 11, 1881, may be surveyed for the purposes set out in this chapter, notwithstanding any reservation therein or elsewhere. (Id. § 4.)

All vacant and unappropriated land, situated in the following-named counties, viz.: Noland, Mitchell, Howard, Martin, Andrews, Gaines, Dawson, Borden, Scurry, Fisher, Stonewall, Kent, Garza, Lynn, Terry, Yoakum, Cochran, Hockley, Lubbock, Crosby, Dickens, King, Cottle, Motley, Floyd, Hale, Lamb, Bailey, Parmer, Castro, Swisher, Briscoe, Hall, Childress, Collingsworth, Donley, Armstrong, Randall, Deaf Smith, Oldham, Potter, Carson, Gray, Wheeler, Hemphill, Roberts, Hutchinson, Moore, Hartley, Sherman, Hansford, Ochiltree and Lipscomb be and the same is hereby appropriated and set apart for sale, together with all the unappropriated lands situated and being within and included in the Pacific reservation, and together with such separate tracts of unappropriated public lands situated in organized counties of this state, as contain not more than six hundred and forty acres; provided, that the three million and fifty thousand acres heretofore appropriated for the building of a state capitol shall have a preference right of location in the counties heretofore reserved for that purpose. The provisions of this act shall not be so construed as to prohibit the right of pre-empting within the bounds of the reservation here made, but any party shall have the same right of acquiring a homestead within this reservation under the pre-emption laws of this state as he may have had prior to the passage of this act. (Act March 11, 1881, p. 24, amending Act July 14, 1879.)

Compare supra, Arts. 4200, 4253, 4268.

Art. 4307e. Forfeiture of contract.—If any sale shall be made of the school lands herein as provided in article 4307d, and any payment of principal or interest shall not be made according to the contract of sale, it shall be the duty of the commissioner of the general land office to forfeit the contract without judicial ascertainment, as now provided by law, and the contract shall contain a stipulation authorizing such forfeiture which shall be signed by the purchaser. (Id. § 5.)

The act read "section 4 of this act." Section 3 (Art. 4307c) was probably intended. As to forfeitures, see supra, Arts. 4218*l*-4218*lll*.

Art. 4307f. Compensation of surveyor.—The surveyor shall be paid by a warrant of the comptroller drawn on the treasurer of the state out of the general revenue upon the presentation to the comptroller of the certificate of the commissioner of the general land office certifying that the lands have been surveyed and field-notes and plats have been properly returned to the land office. He shall also reimburse in the same manner the contractor [surveyor] for any sum of money for fees which he may have paid to the county surveyor for recording field-notes and plats, not in excess of the fees now provided by law for such recording. (Id. § 6.)

IV. BOUNDARIES OF TEXAS

Eastern and Northern Boundary. TREATY OF LIMITS WITH MEXICO CONCLUDED AT MEXICO JANUARY 12, 1828; RATIFICATION ADVISED BY SENATE APRIL 4, 1832; RATIFIED BY PRESIDENT; RATIFICATIONS EXCHANGED AT WASHINGTON APRIL 5, 1832; PROCLAIMED APRIL 5, 1832:

The limits of the United States of America with the bordering territories of Mexico have been fixed and designated by a solemn treaty, concluded and signed at Washington on the twenty-second day of February, in the year of our Lord one thousand eight hundred and nineteen, between the respective plenipotentiaries of the government of the United States of America on the one part, and that of Spain on the other; and whereas the said treaty having been sanctioned at a period when Mexico constituted a part of the Spanish monarchy, it is deemed necessary now to confirm the validity of the aforesaid treaty of limits, regarding it as still in force and binding between the United States of America and the United Mexican States. With this intention, the president of the United States of America has appointed Joel Roberts Poinsett their plenipotentiary, and the president of the United Mexican States their excellencies Sebastian Camacho and Jose Ygnacio Esteva; and the said plenipotentiaries, having exchanged their full powers, have agreed upon and concluded the following articles:

Article 1. The dividing limits of the respective bordering territories of the United States of America and of the United Mexican States being the same as were agreed and fixed upon by the above mentioned treaty of Washington, concluded and signed on the twenty-second day of February, in the year one thousand eight hundred and nineteen, the two high contracting parties will proceed forthwith to carry into full effect the third and fourth articles of said treaty, which are herein recited as follows:

Article 2. The boundary line between the two countries west of the Mississippi shall

begin on the Gulf of Mexico, at the mouth of the river Sabine, in the sea, continuing north along the western bank of that river to the thirty-second degree of latitude; thence by a line due north to the degree of latitude where it strikes the Rio Roxo, of Natchitoches, or Red river; then following the course of the Rio Roxo westward to the degree of longitude one hundred west from London and twenty-three from Washington; then crossing the said Red river, and running thence by a line due north to the river Arkansas; thence, following the course of the southern bank of the Arkansas to its source, in latitude forty-two north; and thence by that parallel of latitude to the South Sea; the whole being as laid down in Mellish's map of the United States, published at Philadelphia, improved to the first of January, one thousand eight hundred and eighteen. But if the source of the Arkansas river shall be found to fall north or south of latitude forty-two, then the line shall run from the said source due south or north, as the case may be, till it meets the said parallel of latitude forty-two, and thence along the said parallel to the South Sea, all the islands in the Sabine, and the said Red and Arkansas rivers, throughout the course thus described, to belong to the United States of America; but the use of the waters and the navigation of the Sabine to the sea, and of the said rivers Roxo and Arkansas, throughout the extent of the said boundary on their respective banks, shall be common to the respective inhabitants of both nations. The two high contracting parties agree to cede and renounce all their rights, claims, and pretensions to the territories described by the said line; that is to say, the United States hereby cede to his Catholic Majesty, and renounce forever, all their rights, claims, and pretensions to the territories lying west and south of the above described lines; and, in like manner, his Catholic Majesty cedes to the said United States all his rights, claims, and pretensions to any territories east and north of the said line; and, for himself, his heirs, and successors, renounces all claim to the said territories forever.

Article 3. To fix this line with more precision and to place the landmarks which shall designate exactly the limits of both nations, each of the contracting parties shall appoint a commissioner and a surveyor, who shall meet before the termination of one year from the date of the ratification of this treaty, at Natchitoches, on the Red river, and proceed to run and mark the said line, from the mouth of the Sabine to the Red river, and from the Red river to the river Arkansas, and to ascertain the latitude of the source of the said river Arkansas, in conformity to what is above agreed upon and stipulated, and the line of latitude forty-two to the South Sea. They shall make out plans and keep journals of their proceedings; and the result agreed upon by them shall be considered as part of this treaty, and shall have the same force as if it were inserted therein. The two governments will amicably agree respecting the necessary articles to be furnished to those persons, and also as to their respective escorts, should such be deemed necessary. (U. S. Revised Statutes, part 2, p. 474.)

Eastern Boundary. CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF TEXAS RELATIVE TO BOUNDARY, CONCLUDED AT WASHINGTON APRIL 25, 1838; RATIFICATION ADVISED BY SENATE MAY 10, 1838; RATIFIED BY PRESIDENT OCTOBER 4, 1838; RATIFICATIONS EXCHANGED AT WASHINGTON OCTOBER 12, 1838; PROCLAIMED OCTOBER 13, 1838.

Whereas, the treaty of limits made and concluded on the twelfth day of January, in the year of our Lord one thousand eight hundred and twenty-eight, between the United States of America on the one part and the United Mexican States on the other, is binding upon the Republic of Texas, the same having been entered into at a time when Texas formed a part of the said United Mexican States; and, whereas, it is deemed proper and expedient, in order to prevent future disputes and collisions between the United States and Texas in regard to the boundary between the two countries as designated by the said treaty, that a portion of the same should be run and marked without unnecessary delay. The president of the United States has appointed John Forsyth their plenipotentiary, and the president of the Republic of Texas has appointed Memucan Hunt its plenipotentiary; and the said plenipotentiaries, having exchanged their full powers, have agreed upon and concluded the following articles:

Article 1. Each of the contracting parties shall appoint a commissioner and surveyor, who shall meet, before the termination of twelve months from the exchange of the ratifications of this convention, at New Orleans, and proceed to run and mark that portion of the said boundary which extends from the mouth of the Sabine, where that river enters the Gulf of Mexico, to the Red river. They shall make out plans and keep journals of their proceedings, and the result agreed upon by them shall be considered as part of this convention, and shall have the same force as if it were inserted therein. The two governments will amicably agree respecting the necessary articles to be furnished to those persons, and also as to their respective escorts, should such be deemed necessary.

Article 2. And it is agreed that until this line shall be marked out, as is provided for in the foregoing article, each of the contracting parties shall continue to exercise jurisdiction in all territory over which its jurisdiction has hitherto been exercised; and that the remaining portion of the said boundary line shall be run and marked at such time hereafter as may suit the convenience of both the contracting parties, until which time each of the said parties shall exercise, without the interference of the other, within the territory of which the boundary shall not have been so marked and run, jurisdiction to the same extent to which it has been heretofore usually exercised. (U. S. Revised Statutes, part 2, p. 754.)

Eastern Boundary. By the Act of Dec. 19, 1836, the boundaries of the state of Texas are defined as follows: Beginning at the mouth of the Sabine river, and running west along the Gulf of Mexico three leagues from land, to the mouth of the Rio Grande; thence up the principal stream of said river

to its source; thence due north to the forty-second degree of north latitude; thence along the boundary line as defined in the treaty between the United States and Spain, to the beginning; and that the president be, and is hereby authorized and required to open a negotiation with the government of the United States of America, as soon as in his opinion the public interest requires it, to ascertain and define the boundary line as agreed upon in said treaty. (1 Cong. p. 133.)

By the Act of Nov. 24, 1849, the eastern boundary of the state is defined as follows: In accordance with the consent of the congress of the United States, given by an act of said congress, approved July 5, 1848, the eastern boundary of the state of Texas be, and the same is hereby extended so as to include within the limits of the state of Texas, the western half of Sabine pass, Sabine lake and Sabine river from its mouth as far north as the thirty-second degree of north latitude; and that the several counties of this state, bounded by said Sabine pass, Sabine lake and Sabine river from its mouth as far north as the thirty-second degree of north latitude, shall have and exercise jurisdiction over such portions of the western half of said pass, lake and river as are opposite to said counties respectively; and this act shall take effect from and after its passage. (3 Leg. p. 4.)

Western Boundary. The boundary line between Mexico and Texas, as defined in the treaty between the United States and Mexico, Feb. 2, July 4, 1848, U. S. Revised Statutes, p. 494, is as follows: The boundary line between the two republics shall commence in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, otherwise called the Rio Bravo del Norte, or opposite the mouth of its deepest branch, if it should have more than one branch emptying directly into the sea; from thence up the middle of that river, following the deepest channel, where it has more than one, to the point where it strikes the southern boundary of New Mexico.

By the treaty between the United States and Mexico, Dec. 30, 1853, June 30, 1854, R. S. p. 503, the boundary line is established as follows, so far as it relates to Texas: Beginning in the Gulf of Mexico, three leagues from land, opposite the mouth of the Rio Grande, as provided in the fifth article of the treaty of Guadalupe Hidalgo, thence as defined in the said article, up the middle of that river to the point where the parallel of 31° 47′ north latitude crosses the same.

By the joint resolution of Feb. 11, 1850, it was declared: That all territory which lies east of the Rio Grande and a line running north from the source of the Rio Grande to the forty-second degree of north latitude, and south of the forty-second degree of north latitude, and west and south of the line designated in the treaty between the United States and the late Republic of Texas, of right belongs to the state of Texas, is included within her rightful civil and political jurisdiction, and the state of Texas will maintain the integrity of her territory. (3 Leg. p. 207.)

Northwestern Boundary. By the Act of Nov. 25, 1850, the northwestern boundary of Texas was defined as follows: The state of Texas will agree that her boundary on the north shall commence at the point at which the meridian of 100° west from Greenwich is intersected by the parallel of 36° 30′ north latitude, and shall run from said point due west to the meridian of 103° west from Greenwich; thence her boundary shall run due south to the 32d degree of north latitude; thence on the said parallel of 32° of north latitude to the Rio Bravo del Norte; and thence with the channel of said river to the Gulf of Mexico.

The state of Texas cedes to the United States all her claim to territory exterior to the limits and boundaries which she agrees to establish by the first article of this agreement. (3 Leg. S. S. p. 4.)

Western Boundary. CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED STATES OF MEXICO, TOUCHING THE BOUNDARY LINE BETWEEN THE TWO COUNTRIES WHERE IT FOLLOWS THE BED OF THE RIO GRANDE AND THE RIO COLORADO. RATIFIED SEPTEMBER 13, 1886. STATUTES SECOND SESSION, 49 CONG. TREATIES, ETC., P. 37.

Whereas in virtue of the 5th article of the treaty of Guadalupe Hidalgo between the United States of America and the United States of Mexico, concluded February 2, 1848, and of the first article of that of December 30, 1853, certain parts of the dividing line between the two countries follow the middle of the channel of the Rio Grande and the Rio Colorado, to avoid difficulties which may arise through the changes of channel to which those rivers are subject, through the operation of natural forces, the government of the United States of America and the government of the United States of Mexico have resolved to conclude a convention * * * as follows:

Article 1. The dividing line shall forever be that described in the aforesaid treaty and follow the centre of the normal channel of the rivers named, notwithstanding any alterations in the banks or in the course of those rivers, provided that such alterations be effected by natural causes through the slow and gradual erosion and deposit of alluvium and not by the abandonment of an existing river bed and the opening of a new one.

Article 2. Any other change, wrought by the force of the current, whether by the cutting of a new bed, or when there is more than one channel by the deepening of another channel than that which marked the boundary at the time of the survey made under the aforesaid treaty, shall produce no change in the dividing line as fixed by the surveys of the International Boundary Commissions in 1852; but the line then fixed shall continue to follow the middle of the original channel bed, even though this should become wholly dry or be obstructed by deposits.

Article 3. No artificial change in the navigable course of the river, by building jetties, piers or obstructions which may tend to deflect the current or produce deposits of alluvium, or by dredging to deepen another than the original channel under the treaty when there is more than one channel, or by cutting waterways to shorten the navigable distance, shall be permitted to affect or alter the dividing line as determined by the afore-

said commissions in 1852 or as determined by article 1 hereof and under the reservation therein contained; but the protection of the banks on either side from erosion by revetments of stone or other material not unduly projecting into the current of the river shall not be deemed an artificial change.

Article 4. If any international bridge have been or shall be built across either of the rivers named, the point on such bridge exactly over the middle of the main channel as herein determined shall be marked by a suitable monument, which shall denote the dividing line for all the purposes of such bridge, notwithstanding any change in the channel which may thereafter supervene. But any rights other than in the bridge itself and in the ground on which it is built shall in event of any such subsequent change be determined in accordance with the general provisions of this convention.

Article 5. Rights of property in respect of lands which may have become separated through the creation of new channels as defined in article 2 hereof, shall not be affected thereby, but such lands shall continue to be under the jurisdiction of the country to which they previously belonged. In no case, however, shall this retained jurisdictional right affect or control the right of navigation common to the two countries under the stipulations of article 7 of the aforesaid treaty of Guadalupe Hidalgo; and such common right shall continue without prejudice throughout the actually navigable main channels of the said rivers, from the mouth of the Rio Grande to the point where the Rio Colorado ceases to be the international boundary, even though any part of the channel of said rivers through the changes herein provided against, may be comprised within the territory of one of the two nations.

ACT MAY 2, 1882 (17 LEG. S. S. P. 5).

Sec. 1. Boundary shall be run and marked by a joint commission. The governor of this state be and he is hereby authorized and empowered to appoint a suitable person, or persons, who, in conjunction with such person, or persons, as may be appointed by, or on behalf of, the United States, for the same purpose, shall run and mark the boundary lines between the territories of the United States and the state of Texas, as follows: Beginning at a point where a line drawn north from the intersection of the thirty-second degree of north latitude with the western bank of the Sabine river, crosses Red river and thence following the course of said river westwardly to the degree of longitude one hundred west from London, and twenty-three degrees west from Washington, as said line was laid down in Melish's map of the United States, published at Philadelphia, improved to the first of January, 1818, and designated in the treaty between the United States and Spain, made February 22, A. D. 1819.

Sec. 2. Line to be located by actual surveys, etc. Said joint commission will report their survey, made in accordance with the foregoing section of this act, together with all necessary notes, maps, and other papers, in order that in fixing that part of the boundary between the territories of the United States and the state of Texas the question may be definitely settled as to the true location of the one-hundredth degree of longitude west from London, and whether the north fork of Red river, or the Prairie Dog fork of said river, is the true Red river designated in the treaty between the United States and Spain made February 22, 1819; and in locating said line said commissioners shall be guided by actual surveys and measurements, together with such well established marks, natural and artificial, as may be found, and such well authenticated maps as may throw light upon the subject.

Sec. 3. Survey made, when; corner established. Such commissioner, or commissioners, on the part of Texas, shall attempt to have said survey, herein provided for by the joint commission, made and performed between the first day of July and the first day of October of the year in which said survey is made, when the ordinary stage of water in each fork of said Red river may be observed; and when the main or principal Red river is ascertained as agreed upon in said treaty of 1819, and the point is fully designated where the one-hundredth degree of longitude west from London, and twenty-third degree of longitude west from Washington, crosses said Red river, the same shall be plainly marked and defined as a corner in said boundary, and said commissioner shall establish such other permanent monuments as may be necessary to mark their work.

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